

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-03072

BETWEEN

MOHAN MAHABIR-SINGH

Claimant

AND

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF TRINIDAD AND TOBAGO

First Defendant

**THE MEMBERS OF THE COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF TRINIDAD AND TOBAGO**

Second Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. W. Seenath for the Claimant

Mr. M. Quamina instructed by Mr. I. Ali for the Defendants

Judgment

1. This case concerns a dispute that arose during the election of members to the Council of the Institute of Chartered Accountants of Trinidad and Tobago (“ICATT”) on the 25th March 2015. The claimant is a member of ICATT in good standing since 1992. The claimant has also been a member of the Council of ICATT since 2012 and has served as the First Vice President of the Council during the 2014/2015 term. He was present at the Annual General Meeting (“AGM”) held on the 25th March, 2015.

The undisputed facts

2. ICATT pursuant to section 70 of the ICATT Rules held its AGM on the 25th March, 2015. One of the purposes of the AGM was to elect six out of thirteen nominated members of ICATT to ICATT’s Council. Members of ICATT’s Council hold office on a rotational basis. Pursuant to Section 42 of the ICATT Rules, one third of the standing members of the Council must retire each year and their vacancies are filled by new members who are elected by the general membership of ICATT at its AGM. According to Section 41 of the ICATT Rules, once the new members are elected to Council, the Council then holds its first meeting at which the new President and one or more Vice Presidents are elected to serve until the next AGM.
3. Nominations for members of ICATT’s Council are made from the general membership and persons who are nominated, are voted upon at the AGM. Members of ICATT have also been allowed to vote for members of the Council by proxy, so that they can vote even though they do not actually attend the AGM. The nominees who receive the highest number of votes are elected to the Council depending on the number of vacant seats, so that where there are six vacancies, only the nominees who secure the six highest votes are chosen for Council. The thirteen nominees who participated in the elections for the period 2015 to 2016 were Ryan Nunes, Jonny Ramjeawan, Carla Dube, Krishna Boohai, Dwayne

Rodriguez-Seijas, Saleem Mohammed, Andre Sookram, Ann Marie James, Anthony Pierre, Charles R. Pashley, Jillian Harricharan, Nigel Romano and Vijay Parabdeen.

4. During the AGM, Ms. Pria Narinesingh (“Narinesingh”), who served as Chairman of the meeting (and who was also the outgoing President of the Council) announced the six members who were successful in the elections, namely, Ryan Nunes, Jonny Ramjeawan, Carla Dube, Krishna Boohai, Dwayne Rodriguez-Seijas and Saleem Mohammed. Narinesingh did not communicate the votes of the other nominees who were not elected to the Council.
5. At the conclusion of the AGM, the six newly elected members and the existing members of Council proceeded to another room for the first Council meeting to be held. This meeting was interrupted by an ICATT staff member, Ms. Gizelle Gittens (“Gittens”). Narinesingh stepped out of the meeting to speak with Gittens. Subsequently, Narinesingh re-entered the room and informed the persons in attendance at the Council meeting that there appeared to be an error in the announcement of the results of the elections. That the sixth person elected to the Council appeared to be Mr. Anthony Pierre (“Pierre”) and not Mr. Saleem Mohammed (“Mohammed”) since Pierre received more votes than Mohammed. There are certain discrepancies between the claimant’s and the defendants’ version of events which took place after the announcement of the error which will be discussed and determined hereinafter. The final outcome of the announcement of the error was that Mohammed vacated his seat on the Council and Pierre replaced him.

The evidence

6. In support of his case, the claimant relied on two affidavits sworn to and filed on the 16th September, 2015 and the 2nd December, 2015. The defendants relied on the affidavits of Tabia Holder, Pria Narinesingh, Avion Alves-Rollock and Anthony Pierre all sworn to and filed on the 26th October, 2015.

The issues

7. The Court pauses at this juncture to remind itself of the parameters of this case. On the claimant's pleaded case, he made no challenge to the validity of the results of the elections. Further, during cross-examination, the claimant agreed that in this action he does not challenge the veracity of the votes that were cast for the nominees in the 2015 to 2016 elections. However, via his evidence and submissions, the claimant sought to make certain allegations of tampering in relation to the election results. That was not a pleaded issue in the Fixed date claim form, no order was sought in relation to that issue and the court deprecates the attempt by the claimant to raise the issue in evidence and submissions. Nonetheless the court has treated with allegation of tampering as an issue in this case.
8. The main issues of law in this case are as follows;
 - i. Whether the transcript of a telephone conversation between Pierre and the claimant on the 1st May, 2015 relied upon by the claimant should be struck out;
 - ii. Whether ICATT acted contrary to and/or ultra vires its rules in removing Mohammed from the Council and replacing him with Pierre after the AGM had concluded; and
 - iii. Whether the procedure undertaken by ICATT to convene a properly constituted Council was irregular and if so, whether that irregularity was such that the effect was to render the election of officers to council void

The case for the claimant

9. According to the evidence of the claimant, after Narinesingh announced that there was a discrepancy in the election of Mohammed, without consulting the fellow members of the Council, she unilaterally advised that Pierre was the duly elected member in place of Mohammed and proceeded to invite Pierre to the Council meeting without providing any documentation or proof of the change to the meeting.
10. It was the evidence of the claimant that the newly elected members challenged the process and advised that Narinesingh could not make changes in such an arbitrary manner without

any proof or proper explanation of the process. The Council meeting was aborted and all members returned to the room where the AGM was held. In this room some members who attended the AGM were still present. The claimant testified that Narinesingh tried to reconvene a meeting and heated discussions ensued as there was no clear indication as to what was the next step. The claimant further testified that many members indicated that the AGM was closed and Mohammed had been duly elected. Narinesingh sought to get a consensus on the next step by inquiring whether there was an attorney in the room who could give some advice on the situation. Further, Narinesingh attempted to take a vote by voice without presenting a resolution to the meeting. According to the claimant, this process was challenged by members and the process of the attempted vote was abandoned.

11. The claimant testified that the members present called for a recount of the votes for Mohammed and Pierre. According to the evidence of the claimant, during the period of the close of the AGM and the discussions on the possible recount which was now some forty (40) minutes after the close of the AGM, there was no control over the ballots that were cast in the elections. After the recount, Narinesingh announced that Pierre got two hundred and twenty-three (223) votes whereas Mohammed got two hundred and twenty (220) votes. As such, Narinesingh announced that Pierre was now a duly elected member of the Council. The claimant testified that during the chaotic process post AGM, the Corporate Secretary, Tabia Holder (“Holder”) offered no guidance on compliance with the Rules of ICATT.
12. According to the evidence of the claimant, in the absence of any legal or other internal advice, the thirteen members of Council which now included Pierre and excluded Mohammed nevertheless proceeded to elect the new President and Vice President of the Council. The claimant testified that a request was made to hold off on the election of the President and Vice President of the Council, however this was not agreed upon by all members.
13. The claimant testified that Narinesingh sought to advocate for the inclusion of Pierre as a member of Council for the following reasons;

- i. To make amends for the consequences of the faux pas that was made by not announcing the results of the votes that each nominee obtained;
- ii. Narinesingh wanted Pierre to be on the Council to assist with the revision of the ICATT Rules. According to the claimant, on the 1st May, 2015 he held a telephone conversation with Pierre, wherein Pierre informed him that Narinesingh encouraged him (Pierre) to seek re-election to Council for this reason.
- iii. Without Pierre's existence on Council, Narinesingh would not have been able to command the support of the majority of the Council members in order to be re-elected as ICATT's President for a second term.

14. Further, the claimant testified that by the aforementioned telephone conversation, Pierre further informed him that he (Pierre) had a conversation with Holder prior to the elections and she indicated to him (Pierre) that based upon the proxies she has for him, it was not likely that he would be re-elected to Council.

15. Subsequent to the first Council meeting, the claimant obtained legal advice on the events which ensued on the day of the AGM. By letter dated the 13th April, 2015 ("the claimant's first letter") written by the claimant's attorney, Mr. Winston Seenath to ICATT's Corporate Secretary, Ms. Holder, Mr. Seenath opined inter alia, that 1) the duly elected members of Council were those persons announced prior to the close of the AGM, 2) that the resumed Council meeting in which Pierre sat was ultra vires and the decisions arrived therein were void and of no effect since Pierre was not announced as a duly elected person prior to the closing of the AGM and 3) a Council meeting should be held immediately so as to allow for the elections of the President and First and Second Vice President. Mr. Seenath explained that his opinions were based on the fact that the manner in which one Council member was removed and replaced by another was not in accordance with Section 80 of ICATT Rules and that this conclusion was also supported by Robert's Rules of Order (*See M.M.2 attached to the affidavit of the claimant filed on the 16th September, 2015*). According to the Robert's Rules of Order, once the Chairman states the question on another motion, the window for challenging the vote is closed.

16. By letter dated the 17th April, 2015 (“the defendants’ first letter”) ICATT’s attorney, Mr. Michael A.A. Quamina responded to the claimant’s first letter and informed Mr. Seenath of the defendants’ versions of events and further informed him that what occurred was simply an erroneous announcement.
17. By letter dated the 29th April, 2015 (“the claimant’s second letter”) Mr. Seenath responded to the defendant’s first letter reiterating and reemphasizing the contents of the claimant’s first letter. In Mr. Quamina’s response by letter dated the 5th May, 2015 (“the defendants’ second letter”) he set out that Rule 82 and not Rule 80 was applicable in the circumstances since the former deals with the issue of voting by a poll whereas the latter deals with voting by a show of hand. Mr. Quamina further indicated that the proceedings at General meeting are provided for from Rules 76 to 90 of the ICATT Rules. Mr. Quamina maintained that what occurred in the 2015/2016 elections was an immaterial error which was corrected.

18. **Rules 76 to 90 of the ICATT Rules** provides as follows;

- i. *Rule 76 – At all general meetings the President or in his absence a Vice-President shall be Chairman; in the absence of the President and a Vice-President, the Chairman shall be a member of Council elected by the members present from among themselves.*
- ii. *Rule 77 – Twenty members present in person shall be a quorum at any general meeting. Unless the requisite quorum shall be present within fifteen minutes after the time appointed for the meeting, the meeting shall (unless convened on requisition) stand adjourned and then be held at such other day, time and place as the Council may by notice appoint but in all cases not before the expiration of fourteen (14) days, and the business on the agenda paper, but no other, shall then be disposed of by the members present in person or by proxy, who shall constitute a quorum. Unless a quorum be present, at any general meeting convened on the requisition of members within fifteen minutes after the time appointed for the meeting, the meeting shall be dissolved.*
- iii. *Rule 78 – The Chairman of any meeting may, with the consent of the meeting adjourn the meeting from time to time and from place to place, but no business*

shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice shall be given of any adjourned meeting unless it is so directed in the resolution for adjournment.

- iv. *Rule 79 – Subject to a poll being demanded as hereinafter mentioned every question to be decided by any general meeting, unless resolved on without dissent, shall be decided by a show of hand.*
- v. *Rule 80 – Unless a poll be demanded (before or on the declaration of the result of the show of hands) by the Chairman or by at least ten members of the Institute present in person or by proxy, a declaration by the Chairman that on a show of hands a resolution has been carried or carried by a particular majority or lost and entry to that effect made in minutes of the proceedings of the meeting shall be conclusive evidence of the fact so declared without proof of the number of proportion of votes given for or against the resolution. The members demanding a poll may nominate three members to act as scrutinizers on their behalf.*
- vi. *Rule 81 – No poll shall be taken as to the election of a Chairman or the appointment of scrutinizers or on a question of adjournment and notwithstanding a demand for a poll the meeting shall continue for the transaction of business other than the question in respect of which a poll has been demanded.*
- vii. *Rule 82 - On a poll being demanded as aforesaid, it shall be taken at such time (either at the meeting at which the poll is demanded or within twenty-one days after the said meeting) and place in such manner as the chairman shall direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll demanded. Provided always that it shall be in the absolute discretion of the chairman to direct that the poll shall be taken by means of postal voting and if he shall so direct the following procedure shall be follows:*
 - a) *Voting papers in such form as the chairman shall direct shall be issued to all members entitled to vote at the meeting at which the poll was demanded. The resolution or amendment shall be expressed in such terms as the chairman shall consider most suitable to ascertain the sense of the members and the chairman's decision as to the manner of stating such resolution or amendment shall be final;*

- b) *Each voting papers shall state the date by which it is to be returned, duly completed, to the Secretary, being a date not more than twenty-eight days after the date of issue of the voting papers;*
 - c) *The chairman shall fix a time and place for the counting of the votes and it shall be the duty of the scrutinizers to provide him with a written report on the result of the poll. The chairman's decision on the validity or otherwise of any vote shall be final;*
 - d) *The result of the poll shall be communicate to members in such manner as the chairman shall direct.*
- viii. *Rule 83 – In the case of an equality of votes either on a show of hands or at a poll the chairman of the meeting shall be entitled to a second or casting vote.*
 - ix. *Rule 84 – On a show of hands every member present in person shall have one vote and on a poll every member present in person or in proxy shall have one vote.*
 - x. *Rule 85 – No member shall be entitled to be present or to vote, at any general meeting who is in arrears with any subscription or sum payable by him to the Institute.*
 - xi. *Rule 86 – A member entitled to vote may appoint as his proxy any other member who is qualified to vote.*
 - xii. *Rule 87 – Every instrument of proxy shall be in writing and shall be signed by the appointor or his attorney and together with the power of attorney (if any) under which it is signed, shall be deposited with or sent to the Secretary so as to be received by him at least forty-eight hours before the time for holding the meeting or adjourned meeting at which it is to be acted on or, in the case of a poll, before the time appointed for the taking of the poll.*
 - xiii. *Rule 88 – a) an instrument appointing a proxy shall be in the following form or as near thereto as the circumstances admit or in such other form as the Council may from time to time prescribe or accept...*
 - b) *Where it is desired to offer members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or as near thereto as circumstances admit or in such other form as the Council may from time to time prescribe or accept...*

c) The instrument appointing a proxy shall be deemed to include authority to demand or join in demanding a poll.

d) Where an instrument of proxy is to be used in connection with an election to fill vacancies on the Council the form thereof may be modified in such manner as the Council may from time to time prescribe or accept so as to enable the member appointing a proxy to indicate how he wishes his votes to be cast in such election should a poll thereon be demanded.

e) A vote given under the terms of an instrument of proxy shall be valid notwithstanding the death or insanity of the appointor or the revocation of the proxy or of the authority under which the same as executed provided that the Secretary shall have received no intimation in writing of such death, insanity or revocation up to the time of the commencement of the meeting or adjourned meeting at which the proxy is used.

- xiv. *Rule 89 – No objection should be made to the validity of any vote except at the meeting or poll at which such vote shall be tendered, and every vote not disallowed at such meeting or poll shall be valid. The Chairman of the meeting shall be the sole and absolute judge of the validity of every vote tendered at any meeting or poll.*
- xv. *Rule 90 - Every entry in the minute book of the proceedings of the general meetings purporting to be signed by the Chairman of the meeting to which they relate or by the Chairman of a subsequent general meeting shall be sufficient evidence of the facts stated therein.*

19. Subsequently, on the 24th June, 2015 a meeting was held between the claimant, ICATT, and their respective attorneys in an attempt to amicably settle the matter. However, this meeting was fruitless as no agreement was attained.

20. It was the evidence of the claimant that at the second Council meeting, he informed the members that based upon the legal opinions he received from his attorney in relation to Pierre's appointment to Council, the Council was improperly constituted. During cross-examination, the claimant agreed that in this action he does not challenge the veracity of the votes that were cast for the nominees in the 2015/2016 elections. The claimant further testified that he has not placed any evidence before the court which contradicted the

evidence of the defendants' that Mohammed agreed to the recount and that he (Mohammed) was satisfied with the results that came about thereafter.

21. Further during cross-examination, the claimant testified that ICATT has held an election since the last election in 2015/2016 and that election was conducted by electronic voting. The claimant did not personally experience any problems with the electronic voting but he testified that he heard from others that there were problems. The claimant further testified that in light of the newly implemented electronic voting system, whatever issues occurred in the 2015/2016 elections should not occur again. The issues in this case are therefore academic at this stage.

22. Accordingly, it is the case of the claimant that the procedure in which ICATT adopted in removing Mohammed and replacing him with Pierre on the Council was contrary to the rules of ICATT. The Claimant testified that there are rules which govern the election of members to Council. Additionally, the claimant testified that Rules 83 to 90 of the ICATT Rules pertain to matters that regulate the election of members to Council. Consequently, by Fixed Date Claim Form filed on the 16th September, 2015, the claimant claimed the following relief;

- i. A declaration that the decision to appoint Anthony Pierre as a Council member after the results of the Annual General Meeting were formally declared is null and void and of no effect;*
- ii. A declaration that the manner of removing Saleem Mohammed and replacing him with Anthony Pierre at the time when Council had already been convened is wholly irregular, inappropriate and against ICATT's Rules;*
- iii. A declaration that pursuant to Rule 80 a decision having been made is final and binding and cannot be revoked unilaterally and or in the manner adopted to replace Saleem Mohammed;*
- iv. A declaration that the practice and procedure in replacing the said Saleem Mohammed is not in accordance with the established practice of the Rules which guides and ought to guide an electoral process assuming there is any discrepancy in relation to the interpretation of that particular Rule;*

- v. *A declaration that the election of Officers to Council and the Committees and of all resolution subsequent thereto be void and of no effect;*
- vi. *An order that Anthony Pierre be removed and replaced by Saleem Mohammed; and*
- vii. *An injunction restraining the members of Council from having Anthony Pierre sit with them to conduct meetings and or make decisions.*
- viii. *An order that Anthony Pierre be restrained from sitting with members of Council and/or from engaging in any decision making process until the resolution of the substantive issues.*

The case for the defendants

23. **Tabia Holder** (“Holder”) is currently employed by the ICATT as its Corporate Secretary. She is an attorney at law by profession. During cross-examination, Holder testified that she has been the Corporate Secretary of ICATT since 2014. According to the evidence of Holder, there are no rules regulating the conduct of the election of members to the Council. Holder testified that each election is held by ICATT by applying the procedures applied at previous elections and/or what the Council agreed to be fair in the circumstances. Holder further testified that there are no rules regulating the campaigning or solicitation of votes for the election of members to the Council. It was the evidence of Holder that prospective candidates offer themselves for elections in slates for which support is solicited either verbally or in writing such as e-mails. For the Council term 2015/2016, there were two main slates of candidates. One was headed by Narinesingh and the other was headed by the claimant. Mohammed was included in the claimant’s slate. Both the claimant and Narinesingh were existing members of the Council who were not due to retire. Although, Holder could not speak to their actual intentions, she assumed that as heads of their respective slates of candidates, Narinesingh and the claimant were competing against each other for the post of President. Holder testified that any person interested in being elected as President of the Council, may have also been interested to have members elected to the Council who would support and vote for them to be elected as President.

24. By notice dated the 3rd March, 2015, Holder informed the members of ICATT of the details of the AGM and notified them of the nominations which were received by her office. This notice which was circulated to all members on the 10th March, 2015 signaled the invitation to members who did not wish to attend the AGM, that they could submit their votes by proxy. The deadline for proxy forms in accordance with ICATT Rules was the 23rd March, 2015 at 4 p.m. To ensure that the proxy votes were not interfered with, all votes delivered by proxy were deposited in a locked proxy box which was placed in the waiting area of ICATT's office. When the offices were closed, the votes delivered by proxy were secured in a vault in Holder's locked office. Any vote sent in by mail was also deposited into the proxy box. Members who emailed their proxies would have received an acknowledgement of receipt.
25. According to the evidence of Holder, on the morning of the 24th March, 2015, (the day before the AGM) the box of proxy votes was opened and the votes therein were counted and tallied by her. After, Holder tallied the total proxy votes for each candidate, she inserted them into an Excel spreadsheet. Thereafter, Holder had to verify that all of the proxies received were sent in by financial members and that process was not completed on the 24th March, 2015.
26. Due to the number of proxies received, Holder continued the process of verifying the proxy votes on the morning of the AMG. At 3:30 p.m. Holder confirmed the results to ensure that the proxies received and the proxy holders appointed were all financial members. This was done as a final verification to ensure that the proxies were valid and so that the proxy holders could attend the AGM. Thereafter, Holder printed a summary of all proxy votes received for each nominee which she signed and distributed to the scrutineers.
27. As for the voting procedure at the AGM, the votes that were cast at the AGM were received and counted by three scrutineers, two of whom were not employed by ICATT but are members of ICATT. The head scrutineer was Ms. Krystal Paul ("Paul") and the other two were Mrs. Avion Alves-Rollock ("Alves-Rollock") and Mr. Junior Frederick ("Frederick"). The counting of the votes that were cast at the AGM took place in a separate and secure room. The room used for the first Council meeting was used for the counting of

the votes. The scrutineers added the results of the votes that were cast at the AGM to those contained on the summary of proxy votes. The scrutineers then signed off on the sheet on which the aggregated votes were written. When the results were ready, same was passed to Holder for transmission to Narinesingh. Subsequently, all ballots were left in a separate room to ensure that they were not tampered with and to be available should a recount be requested.

28. In a brief discussion before the announcement of the results were made, Narinesingh asked Holder to supply her with the names of those candidates who were elected to the Council, or in other words, only the top six candidates. Narinesingh informed Holder that she would not be announcing the number of votes that were cast for each nominee in order to avoid any embarrassment to individual nominees. Holder complied with this request and along with the scrutineers, the results' sheet was quickly scanned to determine the top six candidates. Thereafter, the top six candidates identified were listed by Holder on a separate sheet which was given to Narinesingh. Holder was present at the AGM when Narinesingh announced the six members who were elected to the Council.

29. According to the evidence of Holder, at the commencement of the first Council meeting, Narinesingh welcomed all Council members and congratulated the newly elected members. Narinesingh then formally declared the position of President, First and Second Vice President vacant before handing over the proceedings to Le Gendre. Le Gendre was the Chairman of the meeting for the purposes of conducting the election of the President and Vice President. Le Gendre began the process of issuing ballots for the voting of the President, when the meeting was interrupted by Gittens. Gittens came into the room and asked Narinesingh to speak to her outside the room and indicated it was urgent. The meeting was suspended as Narinesingh went outside to speak to Gittens. Holder testified that Narinesingh returned within a minute thereafter and informed the Council meeting that there appeared to be an error in the announcement of the result of the elections. That the sixth person elected to Council appeared to be Pierre and not Mohammed.

30. Holder was surprised on hearing this and immediately checked the results sheet she had received from the scrutineers. She then discovered that in fact an error occurred in the

listing of the members in order of votes gained and that Pierre had the sixth highest number of votes. During cross-examination, Holder testified that the results of the elections were kept with her. That she did not discover the error and did not ask how the error was discovered. Thereafter, Holder met with two of the scrutineers, Paul and Alves-Rollock, who confirmed that it was Pierre and not Mohammed who had received the sixth highest number of votes and that an error was made in the transcribing of the list in order of the votes received. Holder relayed this information to Narinesingh, who enquired from the Council whether they ought to return to the membership to advise them of the error in the announcement of the results. It was decided that the membership should be immediately advised of the error. Holder testified that the claimant was present at the meeting when all of this took place and did not voice any objection when the decision was made to return the matter to membership for advice. During cross-examination Holder testified that there was some confusion when the announcement was made. She further testified that Narinesingh took charge of the proceedings when the error was discovered.

31. According to the evidence of Holder, the entire Council including Mohammed and the claimant returned to the room in which the AGM was held and Narinesingh addressed the members informing them of the discrepancy in announcing the results. Paul, the head scrutineer was asked to confirm to the membership whether the results were accurate. Paul explained that the only error which was made was in announcing the top six candidates. Consequently, there was some discussion between the Council and the membership as to what ought to take place to rectify the error. Holder testified that as far as she knew this error was unprecedented and there was no rule in which to follow in the circumstances.
32. After some discussions, Mohammed who was conferring with other members inclusive of the claimant, decided that a recount of the votes should take place. Mohammed said that he would abide by the outcome of the recount. The members present and the members of the Council, including the claimant, made no protest at this time. As such, Mohammed, Holder, Paul and Alves-Rollock proceeded to the room in which the Council meeting was held and recounted all the votes. While the recount of the votes was proceeding, Pierre entered the room and also witnessed the recount being conducted. Pierre was permitted to

remain on the basis that his eligibility to sit on the Council was also to be decided by the recount.

33. Immediately following the recount, Mohammed said he accepted the results and conceded that Pierre had indeed obtained more votes. Mohammed apologized for the inconvenience and agreed that on the basis of the recount he was not entitled to be a part of the Council. Pierre also accepted the results and that he was entitled to sit on the Council. Subsequently, the results of the recount were announced to the general membership of ICATT at the meeting and there was no complaint from anyone, including the claimant against Mohammed's acceptance of the results. Holder testified that Mohammed did not actually give up a place on the Council, as the results of the elections showed that he was not entitled to a place in any event.
34. According to the evidence of Holder, the Council members, including Pierre and the claimant then returned to have their first meeting (as the previous meeting at which Mohammed was present had been aborted). Holder attended this meeting. Holder testified that when the Council began its prior meeting in which Mohammed was present, no decision was taken or even discussed with Mohammed. That Mohammed did not take part in any deliberation. Holder further testified that the prior meeting lasted only a few minutes before it was interrupted. That it was not twenty (20) minutes as the claimant alleged. However, during cross-examination Holder conceded that it was about twenty (20) minutes into the Council meeting before same was interrupted by Gittens.
35. Holder testified that the first time that ICATT became aware of the claimant's objection to the course of action which had been followed in replacing Mohammed with Pierre on the Council was by letter dated the 13th April, 2015.
36. Holder denied that she informed Pierre of the results of the proxy votes prior to the announcement of the results at the AGM. She testified that she did have a conversation with Pierre on the day of the AGM. That some ten minutes before the elections were held, Pierre asked her how many proxy votes were received in all. Holder informed Pierre that she had received over four hundred (400) proxy votes. She testified that in her mind the

disclosure of that information prior to the elections was not improper since Pierre was the holder of proxies for other members who did not attend the meeting and as a proxy holder, he was entitled to inspect proxy votes.

37. **Narinesingh** is an Accountant by profession and is currently serving as a member of ICATT. She has been a member of ICATT for more than ten years. Narinesingh testified that the practice of holding elections has generally been the same. That from her experience the elections are handled by the Secretary of ICATT and the election scrutineers. She further testified that no member of the Council has any control over the elections, save that it is for the outgoing President to announce the results of the elections.
38. According to the evidence of Narinesingh, in the 2015/2016 elections she made a minute departure from the usual format of announcing the election results. That instead of identifying all of the nominees and the votes received for each of them, Narinesingh only announced the nominees who had succeeded in gaining seats on the Council. Narinesingh informed some Council members of her intention to announce the results in the aforementioned manner and the Council members agreed with her that this would save the unsuccessful candidates embarrassment, as it was her experience in the past that the votes that were cast for nominees varied greatly. During cross-examination, Narinesingh testified that in hindsight, her minute departure from the usual format of announcing the election results was probably the cause of the error.
39. Narinesingh's evidence in relation to the events which transpired on the 25th March, 2015 was significantly the same as Holder's and as such, it need not be repeated.
40. During cross-examination, Narinesingh testified that the error which occurred at the 2015/2016 elections was unprecedented. That there was uncertainty as to what to do in the circumstances since the ICATT rules did not provide any guidance. She further testified that Holder was unable to give any advice on the situation since there was nothing specific in the rules which she could go to. During cross-examination, Narinesingh testified that she did not give the direction to remove Mohammed. That she was guiding the process of

trying to come to a resolution to a unique situation. Moreover, during cross-examination Narinesingh testified that she did not enquire as to how the error was discovered.

41. Narinesingh was elected by the members of the Council to return as President. She testified that the claimant was the only other candidate proposed as President and that he lost by one vote. Narinesingh further testified that the claimant participated in the process of the election of the President and made no objection at the meeting. That since then the Council has met several times to conduct the business of ICATT and the claimant and Pierre have participated in those meetings and decisions.
42. It was the evidence of Narinesingh that the claimant's challenge appears to be against the process by which Pierre took his rightful seat on the Council. That the claimant has made no challenge to the veracity of the results of the elections.
43. Narinesingh denied that she had a vested interest in having Pierre elected to Council. That it was unclear why she would want Pierre to be on Council to be able to revise ICATT rules since a person does not have to be member of the Council to work on the revision to the rules. She testified that ICATT has even retained attorneys to do the revisions to the rules. However, during cross-examination, Narinesingh testified that when elections came around, she urged Pierre to offer himself up for re-election because they were in the middle of working on ICATT's rules and regulations and she thought it would have been great to have Pierre on board since he had been a huge part of that project.
44. According to the evidence of Narinesingh, she believes that the course of action which was adopted was fair in the circumstances and in accordance with the spirit of all elections, which is to give effect to the wishes of the majority voters. Narinesingh testified that she believed that if the Council had not acted in the manner it did, Pierre would have been entitled to institute legal proceedings against ICATT for the denial of his rightful seat on the Council. She further testified that any meeting which Mohammed participated in may have been invalidated since he was not a valid member of the Council. That fortunately no decisions were made by the Council for the very few minutes in which Mohammed attended the first Council meeting.

45. **Alves-Rollock** is currently employed by ICATT as its Accountant. As mentioned before, Alves-Rollock was selected to be one of the scrutineers for the elections. She has served as a scrutineer at previous elections and the 2015/2016 elections was the sixth time she was performing those duties. Alves-Rollock testified that she saw her role as being an independent person to verify the integrity and accuracy of the results of the elections. Her main duty was collecting the ballot papers from the members after they had cast their vote and proceeding with the other scrutineers to a separate room to count the total votes received. Alves-Rollock further testified that she does not believe that the ballots were tampered with. That the ballots were collected by the scrutineers and after the first count, they placed them in an envelope and the envelope was delivered to Holder to be kept in her custody. During cross-examination, Alves-Rollock testified that the envelope was not sealed.
46. Alves-Rollock's evidence as to the events which transpired on the 25th March, 2015 was considerably the same as Holder's and Narinesingh's and as such, it need not be repeated.
47. During cross-examination Alves-Rollock testified that she was not there when the error was discovered. That Holder informed her of the error.
48. **Pierre** is a Chartered Accountant by profession and a member of ICATT. He is also a member of ICATT's Council and has served as President of the organization from 2009 to 2012.
49. According to the evidence of Pierre, after the members of the Council proceeded to hold its first meeting, he and other members waited in the room where the AGM was held to hear who would be chosen as President of the Council. Shortly thereafter, a staff member approached Pierre and pointed out to him that there was an error in the announcement of the results as he received three more votes than Mohammed. Looking at the score sheet which carried the signature of the scrutineers, Pierre alerted another former Council member, Kyle Rudden who stated that the Council meeting had to be stopped as there had been an error in announcing the results. Pierre was surprised at this development and was not aware how the error was made. During cross-examination, Pierre testified that he could

not recall who pointed out the error to him. He further testified that he could not recall who supplied him with the score sheet.

50. Pierre testified that Narinesingh then made the announcement to all members that the error had been made and she solicited suggestions as to how it could be rectified. Several suggestions were made, with some persons saying that nothing could be done. Narinesingh then asked Mohammed what he wanted to do and he stated that he wanted a recount of the votes. Mohammed further indicated that he would stand by the results of the recount. According to the evidence of Pierre, after the recount it emerged that two votes were not counted for him and three votes which were initially recorded for Mohammed were invalid. That in any event, the recount confirmed that Pierre had placed sixth in the elections. Upon the confirmation of the results, Mohammed shook Pierre's hand and said that he (Mohammed) accepted the results. Mohammed and Pierre then left the room in which the recount took place and informed Narinesingh of the decision, who in turn announced the development to the membership. At that point Pierre joined the Council for its first meeting. Pierre testified that the claimant did not voice any objection to the meeting taking place and in fact exercised his right to vote for the positions of President and First and Second Vice President. During cross-examination, Pierre testified that there was no chaos when the announcement of the error was made. That it was taken care of very calmly by Narinesingh. He further testified that he did hear Narinesingh ask whether there was an attorney present who could shed some light as to the procedure which should be undertaken but that Narinesingh did that sometime later when a debate started, as there were persons who were of the opinion that what Narinesingh was doing was wrong.

51. According to the evidence of Pierre, he firmly believes that he is entitled to sit on the Council as he was validly elected by the members of ICATT to that position. Pierre denied that he told the claimant that Narinesingh encouraged him to seek re-election. During cross-examination, Pierre testified that he recalled having a conversation with the claimant in relation to him being on the Council to complete the rules which was started under his presidency.

52. It was the evidence of Pierre that the evidence of the claimant in relation to the conversation he (Pierre) had with Holder was a distortion of the actual conversation. Pierre testified that he had a conversation with the claimant and the claimant asked him to step down from the Council. Pierre refused to do so, but at the same time, he congratulated the claimant on the efforts he made to gain the position of President of the Council. Pierre testified that he told the claimant that on the day before the elections, he (Pierre) spoke with Holder and asked her how many proxy votes she had received and she stated that she received close to four hundred (400) votes. Pierre further testified that Holder did not disclose to him what proportion of those votes had been cast for any nominees. That Holder only disclosed the total figure, but from the total figure, Pierre was able to fathom that most of those votes would have been for the claimant's slate since Pierre knew that about sixty proxy votes had been sent in for him. According to Pierre, this was only a speculation and he was not upset by this since he has been a member of the Council for several years and has also served as President of ICATT. Pierre testified that he was more than willing to step aside if members voted for another candidate.

Whether there was an ulterior motive on the part of Narinesingh to have Pierre elected to the Council and whether there was tampering with the results

53. The claimant alleged that there was some collusion to manipulate the election results in order to elect Pierre to the Council. That there was no error in the results but an orchestrated attempt to use a recount to influence the results in favour of Pierre. According to the claimant, Narinesingh urged Pierre for re-elections to ascertain his assistance with the revision of ICATT's Rules and in order for her to be re-elected as ICATT's President. Additionally, the claimant alleged that the fact that there was unclear evidence as to how the error was unearthed raised suspicions. That Holder testified that she had the elections results which left no room for the error to be discovered by anyone else besides her. According to the claimant, there was a possibility that Holder did not have the results and the results were left in the possession of persons who ought not to have had it which left room for the rigging of the election results. The claimant further alleged that it seemed as though Pierre's election to the Council was based on the recount of the results. Moreover,

the claimant alleged that during a conversation with Pierre, Pierre informed him that Holder told him (Pierre) that based on the proxies she received, he (Pierre) was not going to be re-elected to Council.

54. The Court finds that there was compelling evidence that there was no tampering and/or manipulation of the elections results and that Pierre did receive the sixth highest number of votes to be duly elected to the Council. Holder and Alves-Rollock, witnesses for the defendant gave evidence in relation to the processes undertaken during the 2015/2016 elections. The Court was satisfied by the evidence given by Holder and Alves-Rollock that there were sufficient checks and balances to eliminate any form of tampering and/or manipulation of the election results. The Court was further satisfied that the error which occurred was simply an error in communication. Moreover, the allegation that the results were not with Holder was purely speculative as Holder and Alves-Rollock gave clear evidence that the election results were delivered to and kept by Holder.
55. Even though there was evidence which showed that Narinesingh asked Pierre for re-election to assist her with the revision of ICATT's Rules, (ad admission made by Narinesingh in cross-examination) it was clear on the evidence that Narinesingh did not have any control over the election results save for the announcement of same. The fact that a party may advocate for another to be elected on the basis that the other party has the relevant expertise and knowledge to make a meaningful contribution to the decisions and policy implementation of Council is to be expected and is non-objectionable. In fact, this is the essence of the democratic process of elections. There is nothing untoward in such circumstances unless an ulterior motive is demonstrated on the part of the person who so advocates. Anything less would be pure speculation.
56. Therefore, although Narinesingh may have advocated for the inclusion of Pierre on the Council, it is the finding of this court that she held no ulterior motive for so doing and did not manipulate the results for that purpose. Narinesingh's participation in the elections was of a limited nature and did not lend itself to tampering. Additionally, the claimant's evidence that Narinesingh needed Pierre on the Council in order for her to be re-elected as

ICATT's President was once again purely speculative as there was no evidence to support that allegation.

57. Further, for the Court to believe that the error was an orchestrated attempt to include Pierre on the Council would mean disbelief of all of the evidence given by the defendants' witnesses. The claimant has lead no evidence capable in the court's view of proving that Holder and/or Alves-Rollock had any ulterior motives for the inclusion of Pierre on the Council. Therefore, the Court viewed Holder and Alves-Rollock as impartial and independent witnesses. The Court formed this opinion as Holder and Alves-Rollock had nothing to gain by giving testimony which in large measure supported the fact that the error was simply an error in communication. Thus, much weight was attached to the evidence of Holder and Alves-Rollock and their evidence materially eroded the case for the claimant.

58. Additionally, Pierre and Holder gave evidence that they did in fact have a discussion concerning the proxies. According to Pierre, Holder communicated to him the total number of proxies she received. Holder testified that in her mind the disclosure of that information prior to the elections was not improper since Pierre was the holder of proxies for other members who did not attend the meeting and as a proxy holder, he was entitled to inspect proxy votes. It was clear that this discussion between Holder and Pierre in no way affected the results of the elections and the court so finds.

59. Moreover, there is unchallenged evidence that Mohammed was the one who asked for the recount of the votes. During cross-examination the claimant testified that he did not place any evidence before the Court which contradicted the evidence of the defendants that Mohammed agreed to the recount and that he (Mohammed) was satisfied with the results that came about thereafter. In light of this evidence, the claimant's insinuations that the recount was used by Narinesingh and/or anyone else to manipulate the elections results is dispelled. Consequently, the purpose of the recount in the circumstances of this case would have been to ensure that Pierre did in fact receive the sixth highest number of votes (*as seen in the results score sheet attached to the claimant's affidavit filed on the 16th September, 2015 and marked "MMS 3"*) since prior to the recount Alves-Rollock and Paul,

two of the scrutineers of the elections, confirmed that the initial result which showed that Pierre did obtain the sixth highest number of votes was accurate.

60. There is one other matter that must be treated with before moving on. The claimant alleges that the circumstances surrounding the discovery of the error were suspicious in that Holder would have been present at the Council with the original results in her possession when Gittens entered and brought the error to the attention of Narinesingh. The court finds that prima facie the circumstances may have required an explanation. The defendants have failed to provide such an explanation. However that cannot be the end of the issue as suspicion by itself does not render the process invalid. In so saying the court's concern was adequately assuaged by the subsequent recount which demonstrated that there was in fact an error. Taken therefore in its proper context, the circumstances surrounding the entry of Ms. Gittens and her announcement is no longer cause for concern.

The transcript of a telephone conversation between Pierre and the claimant on the 1st May, 2015.

61. The claimant has sought to include and rely upon a transcript of a telephone conversation between Pierre and him. The claimant submitted that even though the transcript contained other extraneous facts which were not relied upon, those facts were still relevant to show that the conversation between Pierre and the Claimant took place in a particular setting. That in that particular setting, relevant evidence emerged which was referred to and quoted to buttress the claimant's points on the alleged error. The claimant further submitted that he has referred to the conversation in his affidavit and the defendants responded to same. That Pierre even though he said that the transcript was a distortion of the conversation, never denied that he did have the conversation with the claimant in relation to the elections and the results.
62. According to the claimant, the information contained in the transcript relates to specific facts and in particular that Pierre said certain things to the claimant. As such, it is the submission of the claimant that the facts therein have an important bearing on the case. The claimant further submitted that the facts transcribed is important as it shows the views of

Pierre with respect to the procedure adopted after the close of the AGM and what he, Pierre considered to be correct. That in many ways Pierre has confirmed many pieces of the conversation.

63. The defendants submitted that the transcript is irrelevant to any of the issues in this case as Pierre took no part in the elections process. The defendants further submitted that the transcript is inadmissible as the claimant has failed to produce the original recording from which he allegedly transcribed the transcript. According to the defendants, if as alleged Narinesingh wanted Pierre to be on the Council that is irrelevant to whether Pierre received the sixth highest votes on the elections which is of critical importance to the determination of this claim.
64. The defendants relied on the case of *James Philbert v Anil Roberts CV2012-05201* on this issue. In that case, Seepersad J in dealing with evidential objections struck out a CD recording of the Broadcast and a transcript of the said broadcast on the basis that there was no evidence to support the authenticity of the documents. There was no evidence of as to whom had recorded it, when it was recorded or how it was recorded. There was also no pleading as to how the claimant came into possession of the CD.
65. The defendant submitted that even though Philbert supra concerned an allegation of defamation and it was of crucial importance that the claimant therein prove the veracity of the words allegedly used by the defendant thereby heightening the importance of the CD recording and the transcript, the concerns expressed by His Lordship at paragraphs 18 to 20 of his decision are relevant in the instant case. The defendant argued that the claimant herein has deliberately not annexed a copy of the alleged recording so that the transcript could have been confirmed. That the claimant has also taken no steps in proving the authenticity of the transcript and has not followed the best evidence rule which would have required him to produce the actual recording and rely on that evidence instead of the transcript which Pierre had no hand in preparing or opportunity to confirm.

66. The Court finds that the transcript of the telephone conversation has to be struck out since same was not an agreed document and authenticity was not proven by he who relied on it namely the claimant.

67. **Section 41(1) of the Evidence Act, Chapter 7:02** provides as follows;

“41. (1) Without prejudice to the generality of section 22, where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 37, 39 or 40 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.”

68. In light of the fact that Pierre testified that the transcript was a distortion of the conversation he held with the claimant, it was incumbent upon the claimant to annex the recording so that the authenticity and accuracy of the transcript could have been confirmed. Further, the claimant led no evidence as to who and how the conversation was recorded. In any event the transcript was not relevant to the determination of the issues herein. The transcript did not show that Narinesingh made up the election results and/or that the elections results were tampered with. Furthermore, the transcript is not relevant in deciding whether ICATT acted contrary to its rules. Accordingly, the transcript is struck out.

Whether ICATT acted contrary to and/or ultra vires its rules in removing Mohammed from the Council and replacing him with Pierre after the AGM had concluded

69. The main thrust of the claimant’s submissions was that after the AGM was closed, no challenge could have been made to the election results and therefore the actions taken by ICATT, particularly by Narinesingh to remove Mohammed and replace him with Pierre was contrary to and/or ultra vires the ICATT Rules.

70. It was the submission of the claimant that at the close of the AGM, Narinesingh as Chairman of same became *functus officio* and therefore could not revisit the results she announced. According to the claimant, any recount and/or challenge of the votes ought to have been done at the time when the results were announced and not after the close of the AGM: **See Rule 89 of the ICATT Rules**. The claimant further submitted that it was for this reason **Rule 82(d) of the ICATT Rules** mandated that the results of the poll be communicated.
71. According to the claimant, **Rule 80 of the ICATT Rules** made it very clear that a declaration made by the Chairman shall be conclusive evidence of the fact so declared without proof of the number of votes given for or against the resolution. The claimant submitted that in the event that the Chairman made a declaration and there were no objections to that declaration then the entry made in the minutes of the meeting would be conclusive evidence of the resolution without proof as to the number of persons voting for or against the resolution. The claimant further submitted that Rule 82(d) must be read in conjunction with Rule 80.
72. Moreover, the claimant submitted that to say that there are no restrictions in communicating the election results is erroneous since **Section 90 of the ICATT Rules** which has the overriding or overarching power over all the previous rules confirms that the intention expressed by the words “*conclusive evidence*” and “*sufficient evidence*” (whether on a show of hands or on a poll being demanded) was to make the results so declared final unless the challenge is made before the close of the AGM.
73. Additionally, the claimant submitted that if it was found that Mohammed had to be removed from the Council, **Rule 47 (a) of the ICATT Rules** should have been invoked to guide the process. Rule 47(a) provides as follows;

“The Institute may by resolution in general meeting passed by a majority of those entitled to vote and voting thereat remove a member of Council from his office.”

74. The defendants submitted that the courts have long avoided a literal or legalistic interpretation of the rules of a private association, in favour of a pragmatic or purposive construction. In so submitting, the defendants relied on a number of cases, namely, *Heatons Transport (St. Helens) Ltd. V TGWU [1973] AC 15 (HL) at 21, Jacques v AUEW [1986] ICR 683 at 692, Talbot v General Federation of Trade Unions 2011 EWCH 84 (OB) at 34 and GKN Bolts and Nuts Sports and Social Club, Re Leek v Donkersley [1982] 1 WLR 774 at 776.*

Decision on the issue

75. The court was satisfied that the proper approach to the construction of the ICATT rules was that as pointed out by the defendant. As such, the court finds that on a pragmatic and/or purposive construction of Rule 82(d), it is pellucid that the Chairman can communicate the results of the elections in such a manner as she shall direct. Therefore, Narinesingh was not in breach of Rule 82(d) and/or any ICATT Rule when she decided to only communicate the persons who were duly elected to the Council.

76. Further, the court agrees that Rule 89 of the ICATT Rules provides that there shall be no objection to the validity of any vote except at the meeting or poll at which such vote shall be tendered. However, on the analysis of the facts of this case, it was clear that there was no challenge to the validity of the votes that were cast in the elections but simply the pointing out that there was an error in the communication of the said results. Therefore, Rule 89 of the ICATT Rules was not applicable to the instant case and the court so finds.

77. Additionally, the court finds that Rule 80 of the ICATT Rules deals unambiguously with a resolution being carried out by a show of hands and therefore was not applicable to the circumstances of this case. In this case, there was a poll via proxies and ballots. Rule 80 begins with the words “*unless a poll be demanded*”, which clearly indicated to this court that this rule was not applicable to instances where a poll was being demanded. In any event, Rules 80 states that “*entry to that effect made in the minutes of the proceedings of the meeting shall be conclusive evidence of the fact so declared without proof of the number*

of proportion of votes given for or against the resolution". In this case there was proof of the number of votes that were cast therefore any entry made in the minutes of the AGM that Mohammed was a duly elected member of Council was not conclusive evidence of the fact so declared as the entry would have been completely inaccurate in relation to the material issue of the number of votes cast and therefore the composition of the council. This inaccuracy would have derogated from the democratic will of the membership expressed by voting and demonstrated by the record of the poll. Such a circumstance is to be distinguished from the case where the inaccuracy does not result in a material change to the composition of the council. In such a case, one cannot ordinarily go behind the minute. But that is not the case here.

78. The court is also of the view that the dicta above is equally applicable to **Rule 90 of the ICATT Rules.** Rule 90 states that every entry made in the minute book of the proceedings of general meeting purporting to be signed by the Chairman of the meeting shall be sufficient evidence of the facts stated in the general meeting. Rule 90 in no way restricts the Chairman's ability to announce the results in the manner she so directs.

79. Moreover, the court agrees with the defendants that Rule 47(a) was also not applicable to the circumstances of this case. According to the defendants, whilst it is true that a Council member can only be removed by resolutions of members, Mohammed not having garnered sufficient votes to entitle him to a seat on the Council, was not entitled to the procedural protection of having a resolution passed before he could be removed from Council.

80. Consequently, the court finds that there was no specific rule contained in ICATT's Rules which could have guided the unprecedented incident which occurred in ICATT's 2015/2016 elections. Therefore, the court finds that ICATT did not act contrary to and/or ultra vires its rules by taking the course of action it did to correct the error which occurred in its elections.

Whether the procedure undertaken by ICATT to convene a properly constituted Council was irregular and if so, whether that irregularity was such that the effect was to render the election of officers to council void

81. Having found that ICATT did not act contrary to and/ultra vires its Rules, the court must now consider whether the actions taken by ICATT that is, the removing of Mohammed and replacing him with Pierre in order to properly constitute its Council, was so substantially irregular that it rendered the election unsafe. It was the submission of the defendants that the common law requires the claimant to point to a substantial irregularity which has the effect of affecting the results of the elections before the Court will intervene to set aside the results of an election. That trivial irregularities or irregularities which would not have affected the result of the elections would not suffice to require the Court's intervention. Further, the defendants submitted that provided that the claimant can establish that there has been a substantial irregularity in the elections which has the effect of affecting the results, the defendants are then under a burden to demonstrate that the irregularity, even though substantial, did not affect the results of the elections.

82. The defendants submitted that the abovementioned method is the approach of the Canadian courts which was set out in *Leroux v Molgat (1985) 67 BCLR 29 (SC)* and *Laboucan v Little Red River Cree Nation No. 447 2008 FC 193* and which was applied recently by Seepersad J in *Pino and Hassanali v Agricultural Society of Trinidad and Tobago CV2014-00563*. The words of my brother bears repeating;

“...The electoral process is ultimately conducted by human beings and errors can therefore be made, it is therefore highly unlikely that any election would be perfect. However any irregularities that arise, must be substantial in nature and must have been calculated to or have the resulting effect of impacting on or affecting the eventual election result. This Court is therefore of the view that the position outlined in Leroux (supra) and Laboucan (supra) should be applied and followed in the instant case. In determining whether or not there were substantial irregularities the Court must consider the evidence and matters that pertained to the manner in which the election was conducted and the processes that were adopted and same has to be examined under the general headings of illegality and fairness....the Court must then determine whether any irregularities that have been found to have occurred are of such a nature that they render the election as a whole unsafe, as

they were calculated to or had the effect of affecting the election result. To succeed the Claimants must present sufficient evidence so as to demonstrate that the irregularities complained about are substantial and had the effect of casting doubt on the election results. If they are able to do this, then the onus will be on the Defendant to demonstrate that the irregularities did not affect the results of the election.”

83. The defendants further submitted that a similar approach is applied by the UK courts when asked to review the elections of associations which are not governed by statute. In so submitting, the defendants relied on the case of *Brown v Amalgamated Union of Engineering Workers [1976] ICR 147*, wherein Walton J was asked to find that the elections of the union were invalid after a number of irregularities took place which included members not receiving their ballot papers on time. The facts of *Brown supra* are as follows. A trade union election was held by postal ballot. Members of one branch were excluded owing to a clerical mistake and certain ballot papers were delivered late or not at all. Although they had already received many complaints regarding the conduct of the election, the union executive announced the results. The plaintiff was elected. Following further complaints, another ballot was held in which the second defendant was elected. The plaintiff sought an injunction to prevent him being removed from office. The Court granted the injunction. It was held that the general conduct of the first election was in accordance with the rules. That as it was a postal ballot it was necessarily subject to the vagaries of the postal system. The failure of one branch to receive ballot papers was due to the mistake of a branch secretary. Neither of these factors affected the validity of election. Unless the election could have been shown to be a nullity, the union executive had no power to deprive the elected candidate of the post after the results had been declared. Consequently, the plaintiff remained in office.

84. The defendants argued that there was no conceivable way that the process which was adopted, whether or not provided for in the ICATT Rules, affected the results of the elections. The defendants submitted that the difficulty which faced the Council was that there was among its members one person who was not entitled to a seat and one person who was elected to Council and therefore entitled to a seat, but who was being excluded. According to the defendants, Megarry VC said in *Donkersley supra* at 776 stated that, “*the*

courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules". In this regard, the defendants submitted that where there were no rules applicable to a situation which faced the Council, the Council acted reasonably, fairly and with common sense when Mohammed was asked what course of action he wanted to take.

85. The defendants further submitted that there were good and practical reasons for the Council to have acted in the manner it did since if Pierre was not permitted to his rightful seat on the Council, ICATT could have been exposed to a legal claim from him for the denial of same. Moreover, the defendants submitted that if the Council did not act in the manner in which it did, it would have failed to give effect to the majority will of the membership of ICATT who voted for Pierre. That the results of the elections not having been impeached, had to be given effect.

Decision on the issue

86. The court notes that the claimant appeared not to have submitted on this issue. The submissions of the defendant however and in any event carries much weight and accords with the law as it stands. To that end the court agrees that the proper test is that which is set out in Leroux, Leboucan and Brown.

87. The court is therefore satisfied that an election result should only be set aside if it is demonstrated that there existed a substantial irregularity calculated to affect the results. Against that backdrop, the court finds that the claimant has failed to provide sufficient evidence to persuade it that the error in the announcement of the results and the actions taken by ICATT thereafter to remedy the error was so substantially irregular that it vitiated the results of the elections. In the view of the court, the course of action which was adopted by ICATT was fair and reasonable in the circumstances and was done in an effort to accord with the electoral will of the membership of ICATT. This is so both as a matter of common sense and as a matter of law. Having regard to the findings above, it is clear that the

corrective measures taken were not unlawful and not taken in an attempt to wrongfully affect or influence the outcome of the elections. It was reasonable and practical that the error be drawn to the attention of the Council as soon as it was discovered and that measures be taken to immediately remedy the material error. That was the proper and fair thing to do.

88. Consequently, the election to Council of Mr. Pierre was a valid one and the claim must fail.

89. The judgment of the court is therefore as follows;

- i. The claim is dismissed; and
- ii. The claimant shall pay to the defendants the prescribed costs of the Claim in the sum of fourteen thousand dollars (\$14,000.00).

Dated this 20th day of June, 2017

Ricky Rahim
Judge