THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(SUB-REGISTRY) SAN FERNANDO

CLAIM NO: CV 2009 - 01683

BETWEEN

WRENWICK THEOPHILUS

Claimant

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Anand Ramlogan, Ms. Cindy Bhagwandeen.

Mr. Ian Roach, Ms. Rehanna Hosein.

Judgment

Facts

1. The claimant, a police officer, applied to the Commissioner of Police for a firearm user's licence. His application was refused on August 17 2007. He sought to appeal that decision to the Firearms Appeal Board (FAB) on May 16 2008. He

was later notified that the FAB was not constituted since March 1 2008, the tenure of the previous board having expired, with no new board being appointed.

2. These facts are not in dispute. The claimant contends that as he is not in a position to avail himself of the statutory right of appeal established in the Firearms Act (S.21A S.22A) he has been deprived of his Constitutional right to the protection of the law.

Issues

3. Does the non appointment of the FAB constitute a breach of the Claimant's Constitutional right to the protection of the law?

4. Whether the Claimant must be confined to his remedy of judicial review.

Disposition

5. It is clear on the authorities that the non appointment of the FAB constitutes a breach of the Constitutional right to the protection of the law.

6. To contend otherwise would be to significantly impair this constitutional right. If it encompasses the right to due process before a tribunal or court as it clearly does, it must encompass the right to the existence or establishment of such tribunal or court where statutorily prescribed. There is nothing in law which requires a restrictive approach to the construction of this provision. In fact

established principles of constitutional interpretation mandate a purposive construction and such an interpretation accords with common sense.

7. The protection of law requires both due process before a tribunal or court, and the existence of the tribunal or court, if statute provides for such. If the right to due process is recognized but the tribunal before which due process is guaranteed is allowed to cease to exist (e.g. due to lapse of time or non appointment of members) the right is devoid of content .Once the legislature has prescribed a statutory regime which requires the existence of a Firearms Appeal Board the Constitution guarantees the continued right of access to it as an essential constituent of the right to the protection of the law.

8. In those circumstances, [being permitted by the substantive law,] CPR 56.9, and in particular 56.9(1), permits the Claimant to pursue the reliefs he has sought though such relief may also be available on an application for judicial review. See also **Antonio Webster v The Attorney General C.A. Civ. 113 of 2009.**

Remedies:

(i) A declaration is granted that the Claimant has been deprived of his right of appeal by reason of the continuing inaction and/or omission of the Cabinet in failing to advise and/or cause the President to appoint a new Firearms Appeal Board (FAB).

(ii) A declaration is granted that the continuing omission and/or failure and/or refusal of the State to appoint a FAB has violated and continues to violate the Claimant's right to the protection of the law as guaranteed under section 4 (5) of the Constitution and/or the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under section 5 (2) (e) of the Constitution.

(iii) Compensatory damages for breach of the constitutional right are awarded in the sum of $10,000. I take into account that the applicant's appeal is currently in limbo, and though there is no guarantee that his appeal would be successful, he has been deprived of the opportunity to find out once and for all.

(iv) I find no basis on the evidence for an award of vindicatory damages.

See **Suratt v The Attorney General of Trinidad and Tobago [2008] UKPC 38** at paragraph 10

> *"Their Lordships think it plain that no call arises here for "vindicatory" damages. Sometimes, of course, such an award is appropriate. As Lord Nicholls of Birkenhead put it in his judgment for the Board in Attorney-General of Trinidad and Tobago v Ramanoop [2005] UKPC 15; [2006] 1 AC 328, 336 (para 19):*
>
> *"An additional award, not necessarily of substantive size, may be needed to reflect the sense of public outrage, emphasise the*

importance of the constitutional right and the gravity of the breach, and deter further breaches."

I find such an award is not required in the circumstances of this case.

(v) The defendant is to pay the applicant's costs, to be assessed in default of agreement.

Analysis and Reasoning - Principles of Constitutional interpretation

9. It is well established that the Constitution should be afforded a generous, liberal and purposive construction and, conversely, a court should not derogate from rights conferred by the Constitution by an unduly restrictive construction.

10. Some rights now taken for granted were not at the time they were the subject of applications for constitutional redress, generally accepted as constitutional rights. Some examples of this are:

    (a) The right to instruct and retain a legal adviser. **Thornhill v AG [1981] A.C. 61**. This was only confirmed as a constitutional right on appeal to Privy Council, upholding the court of first instance.

    (b) **Whiteman v AG** [1991] 2 A.C. 240. The right to be informed of the right to retain and instruct a legal adviser – Though rejected by the

court of first instance it was confirmed as a constitutional right by the Court of Appeal and the Privy Council.

11. In the case of **Bernard Coard & Ors v The Attorney General Privy Council Appeal No. 10 of 2006** Lord Hoffman stated at paragraph 33

> *In Hinds v Attorney-General of Barbados [2002] 1 AC 854, 870 Lord Bingham qualified the principle stated by Lord Diplock in Chokolingo v Attorney General of Trinidad and Tobago [1981] 1 WLR 106 with this observation:*
>
> "*It would be undesirable to stifle or inhibit the grant of constitutional relief in cases where a claim to such relief is established and such relief is unavailable or not readily available through the ordinary avenue of appeal. As it is a living, so must the Constitution be an effective, instrument."*

12. Further in **Charles Matthew v The State Privy Council No. 12 of 2004** at paragraph 42 of the dissenting judgment of Lord Bingham of Cornhill it was stated that:

> *"The correct approach to interpretation of a constitution such as that of Trinidad and Tobago is well-established by authority of high standing. In* Edwards v Attorney-General for Canada *[1930] AC 124, 136, Lord*

Sankey LC, giving the judgment of the Board, classically described the constitution established by the British North America Act 1867 as "a living tree capable of growth and expansion within its natural limits".

The provisions of the Act were not to be cut down "by a narrow and technical construction", but called for "a large and liberal interpretation". Lord Wilberforce spoke in similar vein in Minister of Home Affairs v Fisher *[1980] AC 319, 328-329, when he pointed to the need for a "generous interpretation", "suitable to give to individuals the full measure of the fundamental rights and freedoms referred to" in the constitution and "guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a statement of which the Constitution commences". The same approach was commended by Dickson J, giving the judgment of the Supreme Court of Canada in* Hunter v Southam Inc *[1984] 2 SCR 145, 155:*

"The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and

development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American courts 'not to read the provisions of the Constitution like a last will and testament lest it become one'."

In Attorney-General of Trinidad and Tobago v Whiteman [1991] 2 AC 240, 247, Lord Keith of Kinkel, giving the judgment of the Board, said:" The language of a Constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit, and this is particularly true of those provisions which are concerned with the protection of human rights.""

13. In his dissenting opinion Lord Nicholls of Birkenhead in **Charles Matthew** at Paragraphs 70 and 71 stated as follows:

"A constitution should be interpreted as an evolving statement of a country's supreme law.

This is not to substitute the personal predilections of individual judges for the chosen language of the constitution. Rather, it is a recognition that the values underlying a constitution should be given due weight when the constitution falls to be interpreted in changed conditions. A supreme court which fails to do this is not fulfilling its proper role as guardian of

the constitution. It is abdicating its responsibility to ensure that the people of a country, including those least able to protect themselves, have the full measure of protection against the executive which a constitution exists to provide".

The content of the right to the protection of the law -whether the right to the protection of the law has been infringed.

14. The complaint is that failure to appoint the Firearms Appeal Board "FAB" constitutes a violation of the right to a protection of the law. The existence of the tribunal (the FAB) is in fact contemplated and required within the statutory context of the Firearms Act S.21A, S.22A. It is that Act which provides the legal framework for inter alia appeals from decisions/refusals of the Police Commissioner. In the absence of a FAB the statutory appellate protection of persons whose applications for Firearms users licences have been refused, simply does not exist.

The cases

In ***Christopher Lezama and others v. The Commissioner of Prisons and The Attorney General of Trinidad and Tobago H.C.A. 2098 of 2002*** *the Honourable Justice Stollmeyer, (as he then was) stated:*

"The right to the protection of the law would also seem to include the right to due process. The fundamental concept of due process includes "the right to be allowed to complete a current appellate or other legal process without having it rendered nugatory by executive action before it is completed…[is part of the fundamental concept of due process] " (See Thomas v. Baptiste (PC) [2002] 2 AC 1 per Lord Millet at page 24). It must also include the right to be allowed to initiate that process. The protection of the law therefore includes access to the appellate process, and in the instant case by the Applicants to the Appeal Court." page 9 (emphasis added)

Lord Millet said in ***Thomas v Baptiste [2000] 2 AC 1 at 22****:*

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

Thomas v Baptiste *[pg 24] - It is the general right accorded to all litigants not to have the outcome of any pending appellate or other legal process pre empted by executive action. This general right is not created by the Convention; it is accorded by the common law and affirmed by S. 4 (a) of the Constitution.*

*In **Lewis v Attorney General of Jamaica [2001] 2 AC 50** it was held that the right to 'protection of the law' covered the same ground as an entitlement to due process of law". [pg 84]The 'protection of the law' there [where the state had allowed individuals to petition human rights bodies] entitled the Appellant to complete the procedure that allowed the exhaustion of his right to petition international human right bodies.' He had a right to obtain reports from international bodies, for consideration by the Jamaican Privy Council before determination of an application for mercy and a stay of execution until those reports had been received and considered.*

In **Ramnarine Jorsingh v The Attorney General of Trinidad and Tobago (1997) 52 WIR 501** the Court of Appeal recognised that failure to deliver a judgment by a court could infringe a Claimant's rights under section 4 (b) of the Constitution section and 5 (2) (h) of the Constitution [per Davis Justice of Appeal - October 26th 1990]

Similarly in Privy Council Appeal No. 8 of 2003: **- Jerome Boodhoo v Attorney General of Trinidad and Tobago**, (a) paragraph 12 the Privy Council indicated that delay in producing a judgment could violate the constitutional right to protection of the law:

> *"In their Lordships' opinion delay in producing a judgment would be <u>capable</u> of depriving an individual of his right to the protection of the law, as provided for in section 4(b) of the Constitution of Trinidad and Tobago, <u>but only in circumstances where by reason thereof the judge could no longer produce a</u>*

proper judgment or the parties were unable to obtain from the decision the benefit which they should. For example, on an application to prevent the threatened abduction of a child, any delay in giving judgment might deprive both the applicant and the child of the benefit which the legal remedy was there to provide. Their Lordships do not think it profitable to attempt to define more precisely the circumstances in which this may occur or to specify periods of delay which may bring about such a result, since cases vary infinitely and each has to be considered on its merits, applying this principle."

In ***Suratt v The Attorney General of Trinidad and Tobago [2008] UKPC 38*** *their Lordships were considering for the second occasion, introduction of the Equal Opportunities Act 2000 ("the EOA"). Per Lord Brown:*

"5. Turning to the two other claims for further relief, the Board propose to deal with these together. It is the appellants' contention that the non-implementation of legislation which is in force and to their advantage has violated their fundamental human right to "the protection of the law" under section 4(b) of the Constitution and that that right has not been satisfied by their entitlement to seek (as here they have) the Court's ruling that the legislation is indeed constitutional and so must be implemented. The respondent contends to the contrary essentially that access to the Courts in itself provides "the protection of the law". [emphasis added]

This issue is plainly of great importance and its resolution by the Board would determine the position not just for Trinidad and Tobago but for most of the Caribbean States. Although raised as an issue in the present proceedings, it was, of course, immaterial so long as the view was taken, as it was in both courts below, that the Act was in any event unconstitutional. Smith J accordingly dealt with the issue (at paras 18-22 of his judgment) "in a summary way", concluding (para 21):

"Suffice it to say that I preferred the arguments proffered by the applicants and I find that all things being equal, the suspension/non-implementation of the Act would have deprived the applicants of the due protection of the law." (emphasis added by the judge)

Archie JA's single judgment for the Court of Appeal simply never addressed the issue, concluding only (para 62):

> *"In light of the finding that the EOA is unconstitutional and therefore void, it follows that the appellants were not deprived of the protection of the law."*

Whether the Court of Appeal was thereby implicitly approving Smith J's dictum is a point itself no doubt open to argument.

Against this background, and having heard no argument on the issue during the original hearing of the appeal, not all of their Lordships were prepared for full argument on the point at the subsequent hearing and certainly, at the conclusion of this further hearing,

not all of their Lordships were of the same view on the issue. However – and this will explain why the Board have chosen to deal with this issue and the section 14 issue together – their Lordships have all reached the clear view that, whether or not the non-implementation of the Act is properly to be regarded as having deprived the appellants of the protection of the law, the making of the declarations already made by the Board on 15 October 2007 provides the appellants in the particular circumstances of this case with proper and sufficient "redress" pursuant to section 14 of the Constitution.

Principles

15. The following principles can be extracted from the authorities:

a) Protection of the law includes the right to due process: **Lezama v The Commissioner of Prisons HCA 2098 of 2002**, **Lewis v Attorney General [2001] 2 AC 50 at 84.**

b) Protection of the law covers the same ground as entitlement to due process.

c) Protection of the law must include access to an appellate process prescribed by statute.

d) Protection of the law prohibits/proscribes executive action or inaction from rendering a legal/appellate process nugatory: **Thomas v Baptiste [2002] 2 A.C. 1 at page 24**.

e) Protection of the law can encompass, for example, delay in producing a judgment in certain circumstances: **Jerome Boodhoo v Ag P.C Appeal No. 8 of 2003** and therefore contemplates that a legal process which

is rendered nugatory may run afoul of the constitutional protection of the law.

f) Non-Implementation of legislation may, (although not decided definitely), constitute a violation of the fundamental right to the protection of the law: **Suratt v AG [2008] UKPC 38**. - This is equally consistent with the wider principle suggested previously at (d) above.

16. Due process of the law invokes the concept of the rule of law. Protection of the law includes the right to due process and therefore equally invokes the concept of the rule of the law. Its interpretation must be consistent with this. Protection of the law is however a wider right than the right to due process. The rule of law contemplates that where a statutory structure establishes the law enacted by the legislature the protection of the law recognises that legislative framework can only be changed by the legislature and not by unilateral executive action or inaction.

17. The Constitution as the supreme law ensures that circumvention of the rule of law by executive action or inaction is prohibited and could give rise to a constitutional violation.

18. Forte JA in the Court of Appeal of Jamaica in the case of **Neville Lewis v AG of Jamaica [2001] 2 A.C. 50** considered that the terms due process of law and protection of the law were synonymous. At page 84 of Lewis the Privy Council

agreed with the Court in Lewis that "the protection of the law" covers the same ground as an "entitlement to due process"

19. However it is submitted that while they cover that same ground, and overlap, they are not synonymous. The protection of the law must encompass the entitlement to due process, as the very facts of this case demonstrate.

20. Alternatively the entitlement to due process must be construed sufficiently broadly to encompass the right to the existence of the body before whom the opportunity for a hearing is constitutionally guaranteed.

21. It is clear from authorities cited above that the right to the protection of the law encompasses:

    (a) the right to access to a tribunal,

    (b) the right to a fair hearing, and

    (c) the right to such procedural provisions to give effect to that right.

22. It is clear that if the failure to afford due process in respect of a hearing before a tribunal could constitute a breach of the right to protection of the law then equally and in fact more so, would the very failure to appoint the tribunal constitute a violation of the right to the protection of the law.

23. Non appointment of that board diminishes and in fact, eliminates the protections created by the statute. Such non appointment of that board is capable of violating and in fact does violate the constitutional right to protection of the law. Such protections enshrined in statute cannot be negated by the non-appointment of necessary institutions or personnel without the possibility of constitutional infringement.

24. I find that the thread running through the authorities is that the evisceration of legal protections created by statute is prohibited by the Constitution. One cannot even partially nullify legal protections enshrined by statute without the risk of running afoul of the constitutional prohibition.

Respondent's submissions

25. The respondent contends that the statement in **Felix Augustus Durity v. The Attorney General of Trinidad and Tobago, [2009] 4 LRC 376,** at paragraph 15 is applicable:

> *"It is trite law that so long as the judicial system of Trinidad and Tobago affords a person access to the Courts, there can be no denial of the protection of the law or indeed a denial of natural justice. [emphasis added*]

Lord Hope of Craighead in delivering the advice of the Privy Council stated:

"Whether this was a case for the appellant's immediate suspension is more open to question. But their Lordships agree with the Court of Appeal that it cannot be said that the appellant was deprived of the protection of the law when this step was taken against him. It was open to him to challenge the legality of the decision immediately by means of judicial review. Taken on its own therefore this complaint is not one that stands up to examination as an infringement of the appellant's constitutional rights. In any event, as a remedy by way of judicial review was available from the outset, a constitutional motion was never the right way of invoking judicial control of the Commission's decision to suspend him. The choice of remedy is not simply a matter for the individual, to decide upon as and when he pleases. As Lord Diplock observed in Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265, 268, the value of the safeguard that is provided by section 14 will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In Jaroo v Attorney-General of Trinidad and Tobago [2002] UKPC 5, [2002] 1 AC 871, para 39, the Board said that if another procedure is available, resort to the procedure by way of an originating motion will be inappropriate and it will be an abuse of the process to resort to it. Their Lordships consider therefore that the decision to suspend the appellant is not a proper subject for relief by way of a constitutional motion under section 14. (emphasis supplied)

26. The Respondent contends that in this case, as in Durity, the option was available to the Claimant, to approach the Court on a judicial review application and within the stipulated permitted time for an administrative order under CPR 56.3, including an order for Mandamus.

27. But that situation is not similar. Durity was not precluded from approaching the court for his remedy to challenge the legality of the very decision taken against him. Here the claimant was precluded from approaching the Firearm Appeal Board to challenge the decision taken against him. If the contention is that he should have been confined to the procedure of judicial review to review the decision of Cabinet not to appoint the Firearm Appeal Board such an argument holds no attraction and is not required in a case where a Constitutional infringement occurs, without a parallel and equally effective mode of alternative redress. Even in such a judicial review the alleged violation of the protection of the law would be at the heart of any illegality alleged. In these circumstances such an argument is based on artificiality. It cannot be said here, unlike in Durity, that by definition there can be no denial of the protection of the law, once the applicant was able to access the court. Here the claimant's right of access to the court does not provide him with a remedy immediately responsive to his complaint – namely the denial of his Firearm user's licence.

28. It is contended by the Respondent in essence:

(i) that similarly it is an abuse of process for the claimant here to seek relief under the Constitution for breach of his constitutional right to the protection of the law,

(ii) that he could have sought judicial review upon being informed of the non existence of the FAB,

(iii) that had he done so he would have been required to act promptly and subject to time bars if he did not, and

(iv) that he would have been required to institute such proceedings against the Cabinet.

29. However, if a fundamental constitutional right has been infringed then, especially in light of CPR Part 59, it cannot be an abuse of process if judicial review has not been the mode of invoking the court's jurisdiction. This is especially so if the illegality upon which such a judicial review must be based is infringement of the Constitution. Furthermore the assertion that time bars apply in the case of a continuing breach assumed less importance in the light of the case of **The Honourable Patrick Manning v Chandresh Sharma P.C Appeal No.22 of 2008** at paragraph 21.

30. It is also clear that the Privy Council never intended, whether by **Jaroo**, or **Harrikisson**, or **Durity**, that a claimant's claim should be struck out on grounds of such a technical nature.

31. The position has been clarified by the decision of the Privy Council in **The Attorney General v Siewchand Ramanoop Privy Council Appeal No. 13 of 2004 at paragraphs 21- 33**

The starting point is the established principle adumbrated in Harrikissoon v Attorney-General of Trinidad and Tobago [1980] AC 265. Unlike the constitutions of some other Caribbean countries, the Constitution of Trinidad and Tobago contains no provision precluding the exercise by the court of its power to grant constitutional redress if satisfied that adequate means of legal redress are otherwise available. The Constitution of The Bahamas is an example of this. Nor does the Constitution of Trinidad and Tobago include an express provision empowering the court to decline to grant constitutional relief if so satisfied. The Constitution of Grenada is an instance of this. Despite this, discretion to decline to grant constitutional relief is built into the Constitution of Trinidad and Tobago. Section 14(2) provides that the court "may" make such orders, etc, as it may consider appropriate for the purpose of enforcing a constitutional right.

In Harrikissoon the Board gave guidance on how this discretion should be exercised where a parallel remedy at common law or under statute is available to an applicant. Speaking in the context of judicial review as a parallel remedy, Lord Diplock warned against applications for constitutional relief

being used as a general substitute for the normal procedures for invoking judicial control of administrative action. Permitting such use of applications for constitutional redress would diminish the value of the safeguard such applications are intended to have. Lord Diplock observed that an allegation of contravention of a human right or fundamental freedom does not of itself entitle an applicant to invoke the section 14 procedure if it is apparent this allegation is an abuse of process because it is made ***"solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right"****: [1981] AC 265, 268 (emphasis added).*

In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.

That said, their Lordships hasten to add that the need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where, acting in good faith, they believe the

circumstances of their case contain a feature which renders it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are to be repelled. But "bona fide resort to rights under the Constitution ought not to be discouraged": Lord Steyn in Ahnee v Director of Public Prosecutions [1999] 2 AC 294, 307, and see Lord Cooke of Thorndon in Observer Publications Ltd v Matthew (2001) 58 WIR 188, 206.

Over the years admonitions against the misuse of constitutional proceedings have been repeated: Chokolingo v Attorney-General of Trinidad and Tobago [1981] 1 WLR 106, 111-112, and Attorney-General of Trinidad and Tobago v McLeod [1984] 1 WLR 522, 530. These warnings were reiterated more recently by Lord Bingham of Cornhill in Hinds v Attorney-General of Barbados [2002] 1 AC 854, 870, para 24.

Despite these warnings, abuse of the court's jurisdiction to grant constitutional relief has been "unrelenting" until brought to a "sudden and welcome halt" by the decision of the Board in Jaroo v Attorney-General of Trinidad and Tobago [2002] 1 AC 871: see Hamel-Smith JA in George v Attorney-General of Trinidad and Tobago (8 April 2003, unreported). The explanation for the continuing misuse of this jurisdiction seems to be that proceedings brought by way of originating motion for constitutional relief are less costly and lead to a speedier hearing than proceedings brought by way of writ.

From an applicant's point of view this reason for seeking constitutional relief is eminently understandable. But this reason does not in itself furnish a sufficient ground for invoking the constitutional jurisdiction. In the ordinary course it does not constitute a reason why the parallel remedy at law is to be regarded as inadequate. Proceedings brought by way of constitutional motion solely for this reason are a misuse of the section 14 jurisdiction.

32. I do not consider the instant claim to be an abuse of process in the light of the observations and clarifications made in **Ramanoop**.

33. I find that it is not apparent that this application for constitutional relief is made "solely for the purpose of avoiding the necessity of applying for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right".

34. Conclusion:-

In those circumstances I grant the following reliefs:

(i) A declaration is granted that the Claimant has been deprived of his right of appeal by reason of the continuing inaction and/or omission of the Cabinet in failing to advise and/or cause the President to appoint a new Firearms Appeal Board (FAB).

(ii) A declaration is granted that the continuing omission and/or failure and/or refusal of the State to appoint a FAB has violated and continues to violate the Claimant's right to the protection of the law as guaranteed under section 4 (5) of the Constitution and/or the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under section 5 (2) (e) of the Constitution.

(iii) Compensatory damages for breach of the constitutional right are awarded in the sum of $10,000. I take into account that the applicant's appeal is currently in limbo, and though there is no guarantee that his appeal would be successful, he has been deprived of the opportunity to find out once and for all.

(iv) I find no basis on the evidence for an award of vindicatory damages.

See **Suratt v The Attorney General of Trinidad and Tobago [2008] UKPC 38** at paragraph 10

"Their Lordships think it plain that no call arises here for "vindicatory" damages. Sometimes, of course, such an award is appropriate. As Lord Nicholls of Birkenhead put it in his judgment for the Board in Attorney-General of Trinidad and Tobago v Ramanoop [2005] UKPC 15; [2006] 1 AC 328, 336 (para 19):

> *"An additional award, not necessarily of substantive size, may be needed to reflect the sense of public outrage, emphasise the*

importance of the constitutional right and the gravity of the breach, and deter further breaches."

I find such an award is not required in the circumstances of this case.

(v) The defendant is to pay the applicant's costs, to be assessed in default of agreement.

Dated this 26th day of April 2010

Peter A. Rajkumar
Judge