

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2007-00185**

**IN THE MATTER OF THE JUDICIAL REVIEW ACT 2000**

**AND**

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

**AND**

**IN THE MATTER OF AN APPLICATION BY DR. KEITH CHRISTOPHER  
ROWLEY, MEMBER OF PARLIAMENT (HOUSE OF REPRESENTATIVES)  
FOR THE ELECTORAL DISTRICT OF DIEGO MARTIN WEST AND  
MINISTER OF HOUSING OF THE GOVERNMENT OF THE REPUBLIC OF  
TRINIDAD AND TOBAGO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
OF THE DECISION OF THE INTEGRITY COMMISSION TO MAKE AND/OR  
CONCLUDE AND/OR PUBLISH A REPORT IN RELATION TO HIM IN  
PURPORTED PURSUANCE OF THE PROVISIONS OF THE INTEGRITY IN  
PUBLIC LIFE ACT 2000 AS AMENDED**

**BETWEEN**

**DR. KEITH CHRISTOPHER ROWLEY**

**Claimant**

**AND**

**THE INTEGRITY COMMISSION**

**Defendant**

**Appearances:**

**Mr. Reginald T.A. Armour S.C. and Mr. Gilbert Peterson S.C. leading Miss Vanessa Gopaul and Miss Margaret Rose instructed by Miss Ria Joseph for the Claimant**

**Mr. Christopher Hamel-Smith S.C. leading Mr. Jonathan Walker instructed by Miss Fanta Punch for the Defendant.**

**Dated: 3<sup>rd</sup> February, 2009.**

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**JUDGMENT**

**INTRODUCTION:**

1. Dr. Keith Rowley (“Dr. Rowley”) has been and continues to be the Parliamentary Representative for the Constituency of Diego Martin West since the year 1991. Under the administration of the Prime Minister, the Honourable Mr. Patrick Manning (“the Prime Minister”), Dr. Rowley was Minister of Planning from 2001 to 2003 and Minister of Housing from November, 2003 to November, 2007. Thereafter he was appointed Minister of Trade and Industry until the year 2008 when he was sacked as a Cabinet Minister by the Prime Minister. Dr. Rowley is married to Mrs. Sharon Clark-Rowley (“Mrs. Clark-Rowley”).
2. The Integrity Commission is established by section 138 of the Constitution of Trinidad and Tobago and is charged with the duty of:
  - (a) receiving, from time to time, declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers;

- (b) the supervision of all matters connected therewith as may be prescribed.
- (c) the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of offices referred to in paragraph (a), as well as Senators, members of the Diplomatic Service, Advisers to the Government and any person appointed by a Service Commission or the Statutory Authorities' Service Commission;
- (d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.

3. The Integrity in Public Life Act Chap. 22:01 (“the Act”) provides inter alia for the establishment of the Integrity Commission, to make new provisions for the prevention of corruption of persons in public life by providing for public disclosure, to regulate the conduct of persons exercising public functions and to preserve and promote the integrity of public officials and institutions.

4. On the 19<sup>th</sup> January, 2007 Dr. Rowley sought leave to apply for judicial review of the decision of the Integrity Commission to make and/or conclude and/or publish a report in relation to him in purported pursuance of the provisions of the Act. Leave was granted on the 22nd January, 2007. The main thrust of Dr. Rowley’s application was that contrary to section 38 of the Act, the Integrity Commission had concluded a report in relation to him and had forwarded it to the Director of Public Prosecutions without giving him a fair opportunity to be heard either in person or by Counsel in relation to unspecified allegations made against him and being investigated by the Integrity Commission prior to the conclusion of the report.

5. By Claim Form filed on the 24<sup>th</sup> January, 2007 pursuant to the leave granted, Dr. Rowley sought the following relief:

- (i) A declaration that the decision of the Integrity Commission to make and/or conclude and/or publish a report on or about 7<sup>th</sup> August 2006 (hereinafter referred to as 'the Report') in relation to him in purported pursuance of the provisions of the Act is illegal and/or ultra vires the Act, null and void and of no effect.
- (ii) A declaration that the failure of the Integrity Commission to inform Dr. Rowley of the allegations under investigation in relation to him and/or to give reasonable notice to him of any alleged failure on his part to fulfil a duty or obligation under the Act and/or to afford him an opportunity to be heard either in person or by Counsel, before the making and/or conclusion and/or publishing of the Report, is ultra vires the Act and/or is in breach of the rules of natural justice and/or his legitimate expectation of a right to be heard and/or is procedurally unfair.
- (iii) A declaration that the Report in relation to Dr. Rowley was made and/or concluded and/or published in breach of the provisions of the Act and/or the rules of natural justice and/or his legitimate expectation.
- (iv) A declaration that the Integrity Commission induced and/or caused Dr. Rowley, his servants and/or agents to hand over information to the Integrity Commission after the making and/or conclusion and/or publication of the Report to the Director of Public Prosecutions on 7<sup>th</sup> August 2006 in contravention of his right to be afforded protection against self-incrimination.

- (v) An order of certiorari quashing the Report of the Integrity Commission made and/or concluded and/or published in relation to Dr. Rowley in purported pursuance of the provisions of the Act.
- (vi) An order of mandamus directing the Integrity Commission to comply with the statutory duty imposed on it by section 38 of the Act to give reasonable notice to him of any or any alleged failure by him to fulfil a duty and/or obligation under the Act and to allow him a full opportunity to be heard either in person or by Counsel, before making or concluding or publishing a report to the Director of Public Prosecutions pursuant to the provisions of the Act.
- (vii) Such further and/or other relief and/or consequential orders and/or directions as this Honourable Court may deem just and/or appropriate.

6. The grounds on which the relief was sought were set out in the application for leave filed on the 19<sup>th</sup> January, 2007. I propose to set out the grounds in full since they provide the relevant background to the claim.

- (a) In or about the month of November 2004 the Integrity Commission embarked on an investigation pursuant to section 33 of the Act in respect of unspecified allegations regarding the siphoning of materials from the Scarborough Hospital Site to a development project at Mason Hall, Tobago.
- (b) Mrs. Clark-Rowley, is the owner and developer of Eight Point Eight Six Zero Eight (8.8608) hectares of land situate at Mason Hall, Les Coteaux Road in the Island of Tobago. The development project thereon is commonly referred to as the 'Landate Project' or 'Landdate Project.'

- (c) At all material times and notwithstanding the oral and written requests and complaints of the Dr. Rowley and Mrs. Clark-Rowley, the Integrity Commission and its servants and/or agents and in particular its Investigating Officers failed to inform and/or notify and/or provide him with (i) particulars of the allegations made in relation to him and which were being investigated by the Integrity Commission in relation to him in respect of the siphoning of materials from the Scarborough Hospital site to the development project at Mason Hall, Tobago or (ii) the terms of reference of the Integrity Commission in relation to same.
- (d) In the premises and at all material times, Dr. Rowley was placed in the unfair and disadvantageous position of having to comply with the duty of disclosure imposed on him by the provisions of the Act, under pain of fine and imprisonment, without the benefit of any or any reasonable notice having been given to him of the allegations made against him and being investigated by the Integrity Commission in relation to the siphoning of materials from the Scarborough Hospital site to the development project at Mason Hall, Tobago.
- (e) By letter dated 14<sup>th</sup> October 2005 the Integrity Commission in purported response to the aforesaid requests and/or complaints of Dr. Rowley and Mrs. Clark-Rowley, assured Attorney acting for Dr. Rowley that they *'will be given full opportunity to be heard as required by section 38 should this prove necessary.'*
- (f) At all material times and in reliance on the Integrity Commission's aforesaid assurance, Dr. Rowley and Mrs. Clark-Rowley co-

operated with the Integrity Commission, its servants and/or agents in discharge of their duty of disclosure under the Act.

- (g) On 17<sup>th</sup> December 2006 an article entitled “***Latest on Landdate Issue: Police Probing Minister Rowley***” was published in the Sunday Guardian. This article by one Sita Bridgemohan states, amongst other things, that “*PMN Housing Minister Rowley is being investigated by the Fraud Squad, in connection with the siphoning of building material from the Tobago hospital project at Signal Hill to the private Landate development in Mason Hall, Tobago. The investigations follow the submission of a file from the Integrity Commission to Director of Public Prosecutions Geoffrey Henderson. Henderson confirmed on Friday that he received the file on the Landate matter from the Integrity Commission. He declined to give details of what the Commission’s information to him was, saying only that he did receive certain material from the Integrity Commission and he has since passed this on to the police for investigation.*”
- (h) At no time prior to the publication of this article was Dr. Rowley aware or informed or notified by the Integrity Commission that it had referred, made, produced, concluded and/or sent a report to the Director of Public Prosecutions in relation to him.
- (i) By letter dated the 28<sup>th</sup> December 2006 Dr. Rowley caused his Attorney to write to the Integrity Commission requesting confirmation and clarification on whether the Integrity Commission had indeed sent a file pertaining to him to the Director of Public Prosecutions pursuant to section 34(5) of the Act.

- (j) The Integrity Commission failed to respond to this specific request. Instead, it advised Dr. Rowley that *it is only fair that the Commission inform [him] that it has been advised that the Director of Public Prosecutions has referred the Commission's Report to the Commissioner of Police for investigation* and that the Integrity Commission had fulfilled the requirement of giving the applicant a full opportunity to be heard through his 'many meetings with agents of the Commission and also the exchange of correspondence' between the Commission and himself.
- (k) Save for one meeting sometime in the middle of November 2004 and a letter written by Dr. Rowley to the Integrity Commission on 24<sup>th</sup> August 2005, Dr. Rowley has had no other meeting with the Integrity Commission and/or its agents nor exchanged any other correspondence with the Integrity Commission in relation to its investigation regarding the siphoning of materials from the Scarborough Hospital site to the development project at Mason Hall, Tobago.
- (l) It was only upon the making of further enquiries by Dr. Rowley by letter dated 10<sup>th</sup> January 2007 that the Integrity Commission by its letter dated 16<sup>th</sup> January 2007 informed him for the first time that it had made a report in relation to him and that it sent same to the Director of Public Prosecutions on 7<sup>th</sup> August 2006.
- (m) To date, the Integrity Commission has not provided Dr. Rowley with any or any fair opportunity to be heard either in person or by Counsel in relation to unspecified allegations made against him and being investigated by the Integrity Commission and/or in relation to the findings and/or report of the Integrity Commission prior to its conclusion or at all. Neither has the Integrity

Commission provided him with a summary of its findings and/or a copy of its Report prior to its conclusion or at all.

- (n) At all material times and notwithstanding the making and/or concluding and/or publication of its Report to the Director of Public Prosecutions but which it had not alerted Dr. Rowley to, the Integrity Commission continued to engage in correspondence with Mrs. Clark-Rowley in relation to the said investigation and to request and/or elicit information from her in respect of the Landdate Project.
- (o) By the actions and/or conduct and/or assurances of the Integrity Commission Dr. Rowley was thereby led to believe at all material times that the Integrity Commission's investigation was ongoing, was being conducted in accordance with law and in relation to which, in good faith, he continued to cooperate with the Commission and that he would be given an opportunity to be heard as required by section 38 of the Act.
- (p) In all the premises, the Integrity Commission has acted unfairly and/or contrary to law and/or in excess of its jurisdiction and/or failed to satisfy or observe conditions or procedures required by law and/or acted in breach of the principles of natural justice and/or in violation of Dr. Rowley's entitlement to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations and/or to be protected against self incrimination.
- (q) Dr. Rowley is personally and directly aggrieved by the unlawful actions and/or procedures adopted by the Integrity Commission in respect of its said investigation in relation to him.

(r) There is no alternative form of procedure or redress available to him.

7. Dr. Rowley and Mrs. Clark-Rowley swore to affidavits in support of the application for leave on the 19<sup>th</sup> January, 2007. Dr. Rowley and Mrs. Clarke-Rowley also lodged statutory declarations dated the 19<sup>th</sup> January, 2007, which statutory declarations remain in the custody of the Court.
8. Pursuant to the order for leave, the first case management conference was held on the 12<sup>th</sup> February, 2007. At that time, the Integrity Commission had not filed any affidavits in opposition to the claim, and the Court extended the time for the filing of such affidavits to the 12<sup>th</sup> March, 2007. The case management conference was adjourned to the 18<sup>th</sup> April, 2007.
9. On the 16<sup>th</sup> April, 2007, Dr. Rowley filed an application for an order that the Integrity Commission disclose to him its report made and/or concluded on or about the 7<sup>th</sup> August, 2006 and to provide him with a copy thereof.
10. On 17<sup>th</sup> April, 2007, the Integrity Commission filed the affidavit of Martin Farrell (“Mr. Farrell”), its Acting Registrar (“Mr. Farrell’s first affidavit”). By paragraph 3 of Mr. Farrell’s first affidavit, he confirmed that the correspondence exhibited to the affidavits and declarations of Dr. Rowley and Mrs. Clark-Rowley sworn on the 19<sup>th</sup> January, 2007, accurately reflected all the relevant correspondence between the Integrity Commission, Dr. Rowley and Mrs. Clark-Rowley for the period November, 2004 to the 19<sup>th</sup> January, 2007.
11. At paragraph 4 of Mr. Farrell’s first affidavit, he responded to paragraph 33 of Dr. Rowley’s affidavit and paragraph 12 of Mrs. Clark-Rowley’s affidavit both sworn and filed on the 19<sup>th</sup> January, 2007. According to Mr. Farrell:

- (a) By letter dated June 22, 2006 Mrs. Clark-Rowley had written the Integrity Commission and advised that the development at Mason Hall had been completed and final payment had been made to Warner Construction and Sanitation Limited.
- (b) By that time the Integrity Commission's investigation under section 33 of the Act had been concluded. However, the Integrity Commission considered that Dr. Rowley had a beneficial interest in this development and that the income that was generated as a result of the development was relevant to the income, assets and liabilities of Dr. Rowley and/or his spouse.
- (c) In those circumstances, the Integrity Commission wrote to Mrs. Clark-Rowley on July 31, 2006 and requested a full accounting of the project.
- (d) This request was made in relation to Dr. Rowley's duty to provide information as to his income, assets and liabilities (as well as those of his spouse) for each year that he was a person in public life.
- (e) By letter dated August 21, 2006 Mrs. Clark-Rowley wrote the Integrity Commission and asked that, in connection with its request for a full accounting, it provide her with a list of the specific information or documents which the Integrity Commission required.
- (f) By letter dated September 26, 2006 the Integrity Commission wrote Mrs. Clark-Rowley and provided clarification as to what it had meant when it requested a full accounting for the project.

- (g) The information was provided by Mrs. Clark-Rowley under cover of a letter dated December 20, 2006.
- (h) Dr. Rowley provided no information to the Integrity Commission after August 7, 2006. The only information that was provided to the Integrity Commission after that date was that contained in Mrs. Clark-Rowley's letter dated December 20, 2006. This information was not forwarded to the Director of Public Prosecutions.

12. On the 18<sup>th</sup> April, 2007, at the adjourned case management conference, Mr. Hamel-Smith Senior Counsel for the Integrity Commission conceded that Dr. Rowley had not been given reasonable notice of the allegations under investigation in relation to him and that he had not been allowed a full opportunity to be heard either in person or by Counsel as required by section 38 of the Act. According to Mr. Hamel-Smith S.C., ninety per cent (90%) of Dr. Rowley's claim was conceded and he was prepared to attend a trial of the matter to say that the Integrity Commission was not filing evidence in opposition to that part of the claim. It was therefore agreed by Senior Counsel for Dr. Rowley and for the Integrity Commission that the Court would fix a trial for the 20<sup>th</sup> April, 2007 at which this concession would be formally made and the Court would make an appropriate order with the assistance of Counsel. It was further agreed that the issue at paragraph (iv) of the Claim, that is, that is, the self-incrimination point, would be reserved for hearing and determination at a later stage.

13. At the same case management conference, Mr. Armour Senior Counsel for Dr. Rowley, requested an adjournment of the case management conference to do three (3) things:

- (a) to reply to Mr. Farrell's first affidavit;
- (b) to consider the making of an application to cross-examine

Mr. Farrell; and

- (c) to consider the making of an application to amend the claim to allege bad faith on the part of the Integrity Commission and to seek damages.

14. On the 20<sup>th</sup> April, 2007, after hearing submissions advanced on behalf of the parties, having regard to the concession set out in paragraph 12 of this judgment, and upon Senior Counsel for the Integrity Commission informing the Court that it did not intend to file evidence in opposition to the reliefs at paragraph (i), (ii), (iii), (v) and (vi) of the Claim, the Court made the following order:

- (i) The decision of the Integrity Commission to make, conclude and publish its report on or about the 7<sup>th</sup> August 2006 (hereinafter referred to as “the Report”) in relation to the Dr. Rowley is illegal ultra vires the Act null and void and of no effect.
- (ii) The failure of the Integrity Commission to inform Dr. Rowley of allegations under investigation in relation to him or to give reasonable notice to him of any alleged failure on his part to fulfil a duty or obligation under the Act and/or to afford him an opportunity to be heard either in person or by Counsel, before the making and/or conclusion and/or publishing of the Report, was ultra vires the Act, in breach of the rules of natural justice and Dr. Rowley’s legitimate expectation of a right to be heard and was procedurally unfair.
- (iii) The Report was made and concluded and published in breach of the provisions of the Act, the rules of natural justice and the legitimate expectation of Dr. Rowley.

- (iv) An order of certiorari do forthwith issue to quash the Report of the Integrity Commission in relation to Dr. Rowley and that the Report be and is hereby accordingly quashed.
- (v) An order of mandamus do forthwith issue that the Integrity Commission be and is directed hereafter in relation to Dr. Rowley to comply with the statutory duty imposed on it by the Act and section 38 thereof in particular and that it do give reasonable notice to him of any or any alleged failure by him to fulfill a duty and/or obligation under the said Act and that the Integrity Commission do allow Dr. Rowley a full opportunity to be heard either in person or by Counsel, before making or concluding or publishing a report to the Director of Public Prosecutions pursuant to the provisions of the Act.
- (vi) All further consideration of this matter including Dr. Rowley's interlocutory applications filed herein be adjourned to Case Management Conference on a date to be fixed.
- (vii) Liberty to apply.
- (viii) Costs to be reserved.

A case management conference was fixed for the 11<sup>th</sup> May, 2007.

15. On the said 20<sup>th</sup> April, 2007, Dr. Rowley filed an application to amend his Claim Form dated and filed on the 24th January, 2007 to include a claim for damages, including aggravated and/or exemplary damages in terms of the draft amended Fixed Date Claim Form annexed to the application.

16. On the 9<sup>th</sup> May, 2007, Dr. Rowley filed an affidavit in reply to Mr. Farrell's first affidavit and on the 16<sup>th</sup> May, 2007, Dr. Rowley filed an application to cross-examine Mr. Farrell on the contents of his first affidavit.
17. By application filed on the 13<sup>th</sup> July, 2007, Dr. Rowley applied to further amend his claim to include a claim for a declaration that the Integrity Commission had acted in bad faith and/or was motivated by ulterior motives and/or was recklessly indifferent to the illegality of its actions and the probability of causing injury to Dr. Rowley in the circumstances set out in the draft amended Claim Form annexed to the application.
18. The Court heard submissions on the applications to amend, the application for specific disclosure of the Report, and the application to cross-examine. On the 17<sup>th</sup> July, 2007 the Court granted permission to Dr. Rowley to amend his claim in terms of the applications filed on the 20<sup>th</sup> April, 2007 and the 13<sup>th</sup> July, 2007. The Amended Claim Form was filed on the 10<sup>th</sup> August, 2007. The Court also granted permission to the Integrity Commission to file supplemental and/or further affidavits. Permission was also granted to Dr. Rowley to cross-examine Mr. Farrell on his first affidavit.
19. With respect to the application for specific disclosure, the Report of Integrity Commission, sent to the Director of Public Prosecutions, that is the Intelysis Report dated that 20<sup>th</sup> December, 2005, had been disclosed to the Court with the consent of the parties. Having perused the Report, the Court ordered the specific disclosure of page 113 of the Report by statutory declaration of Mr. Farrell. The order was complied with and on the 18<sup>th</sup> July, 2007, the statutory declaration of Mr. Farrell exhibited page 113 of the Report. Page 113 (redacted as ordered by the Court) read as follows:

## **Next Steps**

456. In order to bring this investigation to its logical conclusion, a number of critical steps are required which we identify below in specific order.
  457. The Commission should seek the advice of counsel and at the same time identify areas that may require further investigation in order to obtain additional evidence.
  458. Identify witnesses who can corroborate the evidence obtained thus far and/or provide additional evidence. At this time, it is suggested that the following witnesses be interviewed.
  459. Conduct witness interviews and obtain formal statements from the witnesses. This step may be considered as part of the investigation that the Department of Public Prosecutions (“DPP”) may conduct, or it may be conducted by the Commission with the DPP’s assistance prior to addressing Rowley as described below.
  460. Interview Rowley, present him with the findings of this investigation and allow him the opportunity to respond. This is also a requirement under section 38 of the Act.
  461. Prepare and submit a final report to the DPP incorporating any additional findings obtained through the above-noted next steps.
20. By statutory declaration dated the 2<sup>nd</sup> July, 2007 and lodged with the Court, Dr. Rowley exhibited a letter received from the Integrity Commission dated the 25<sup>th</sup> June, 2007 which sought to inform him of the allegations made

against him and invited him pursuant to section 38 of the Act to make comments, responses and representations to the Integrity Commission.

21. Pursuant to the order of the Court made on the 17<sup>th</sup> July, 2007, the following affidavits were filed on behalf of the parties:

- the affidavit of Mr. Farrell sworn to and filed on the 16<sup>th</sup> August, 2007. (“Mr. Farrell’s second affidavit”).
- the affidavit of Dr. Rowley in reply sworn to and filed on the 5<sup>th</sup> September, 2007 (“Dr. Rowley’s affidavit in reply”). To this affidavit, Dr. Rowley exhibited his Response to the Integrity Commission dated the 16<sup>th</sup> August, 2007.
- the affidavit of Mr. Farrell sworn to and filed on the 20<sup>th</sup> September, 2007 (“Mr. Farrell’s third affidavit”) in response to Dr. Rowley’s affidavit in reply.
- the affidavit of Bashir Rahemtulla sworn to and filed on the 25<sup>th</sup> September, 2007 in response to Dr. Rowley’s affidavit in reply. Mr. Rahemtulla, a Canadian Forensic Accountant, was on the 27<sup>th</sup> October, 2004 appointed by the Integrity Commission as an investigating officer to investigate Dr. Rowley [paragraph 3 of Rahemtulla’s affidavit]. In cross-examination, Mr. Rahemtulla clarified that he had been appointed to investigate allegations relating to Dr. Rowley made in the Parliament by Member Mr. Ganga Singh, and not Dr. Rowley specifically. After his investigations, Mr. Rahemtulla prepared the Intelysis Report referred to at paragraph 19 of this judgment.

22. On the 17<sup>th</sup> July, 2007, the Court fixed the 25<sup>th</sup> and 26<sup>th</sup> September, 2007 for the continuation of the trial. Prior to the trial, Dr. Rowley made two (2) applications to cross-examine Mr. Farrell and Mr. Rahemtulla on their affidavits. These applications were heard and granted by the Court.

23. After cross-examination of Mr. Farrell and Mr. Rahemtulla, and prior to the oral addresses of Senior Counsel on behalf of the parties, Dr. Rowley filed a further affidavit on the 27<sup>th</sup> February, 2008 to which he exhibited the letter of the Integrity Commission dated the 1<sup>st</sup> February, 2008, and written to him, which read as follows:

“Re: Investigations into alleged breaches of the Integrity in Public Life Act, 2000 by the Honourable Dr. Keith Rowley M.P.

I refer to the matter at caption and to our letters dated June 25, 2007 and July 17, 2007 in which the Commission advised that as a result of information that it received it appeared that you may have conducted yourself in a manner that was in breach of your duties under the Integrity in Public Life Act, 2000 (the Act).

As a result of further investigations into this matter, the Commission is now of the view that there is no longer any basis for suspecting that you may have conducted yourself in a manner that was in breach of your duties under “the Act” and I have been directed to advise the Director of Public Prosecutions of this decision.

This investigation is now at an end and the Commission thanks you for your co-operation.”

The letter was signed by Mr. Farrell as Registrar of the Integrity Commission.

24. Attorneys for both parties have agreed that the facts and matters which originally had been considered confidential and were put into evidence by statutory declarations were now in the public domain and should be treated accordingly. Apart from the statutory declarations of Dr. Rowley and Mrs. Clark-Rowley dated the 19<sup>th</sup> January, 2007, the Court will therefore openly refer to those matters in this judgment.

**ISSUES:**

25. At the continuation of the trial, therefore, two (2) main issues remained for the determination of the Court:

- (a) whether the Integrity Commission had acted in bad faith, and/or was motivated by ulterior motives and/or was recklessly indifferent to the illegality of its actions and the probability of causing injury to Dr. Rowley, and was therefore guilty of the tort of misfeasance in public office;
- (b) whether the Integrity Commission induced and/or caused Dr. Rowley, his servants and/or agents, to hand over information to it, after the publication of its Report to the Director of Public Prosecutions on the 7th August, 2006 in contravention of his right to be afforded protection against self-incrimination.

**DECLARATION OF BAD FAITH/MISFEASANCE IN PUBLIC OFFICE**

26. In his Amended Claim Form filed on the 10<sup>th</sup> August, 2007, Dr. Rowley alleged that the Integrity Commission had acted in bad faith and/or was motivated by ulterior motives and/or was recklessly indifferent to the illegality of its action and the probability of causing injury to him when:

- (a) It failed to inform him of the allegations under investigation in relation to him before the making and/or conclusion and/or publishing its secret report;
- (b) It failed to give him reasonable notice of any alleged failure on his part to fulfill a duty or obligation under the Act, before the making and/or conclusion and/or publishing its secret report;
- (c) It failed to afford to him an opportunity to be heard either in person or by counsel before the making and/or conclusion and/or publishing its secret report and/or;
- (d) It induced and and/or caused him, his servants and/or agents to hand over information to the Integrity Commission after the making and/or conclusion and/or publication of the Report to the Director of Public Prosecutions on or about 7<sup>th</sup> August 2006 in contravention of his right to be afforded protection against self-incrimination.

27. In the case of **Three Rivers District Council and Others v Governor and Company of the Bank of England** (No. 3) [2000] 2 W.L.R 1220 Lord Steyn identified the six ingredients of the tort of misfeasance in public office:

- (1) the defendant must be a public officer;
- (2) the impugned conduct must be in the exercise or the purported exercise of power as a public officer;
- (3) the defendant must have the requisite state of mind;

- (4) the claimant must have sufficient interest to found a legal standing to sue;
- (5) the wrongful act must cause injury to the claimant; and
- (6) the damage is not too remote.

28. It is not in dispute that the requirements at (1) (2) and (4) have been satisfied. The dispute between the parties centres on the following requirements:

- (a) whether the Integrity Commission had the requisite state of mind;
- (b) whether the wrongful act caused injury to Dr. Rowley; and
- (c) whether the damage to Dr. Rowley is not too remote.

**STATE OF MIND – BAD FAITH:**

29. It has been submitted on behalf of Dr. Rowley that the Integrity Commission's knowledge of the unlawfulness of its conduct and its reckless indifference to same were painfully apparent and categorically proved on the affidavit evidence before the Court. Dr. Rowley in his Written Submissions filed on the 21<sup>st</sup> January, 2008 accuses the Integrity Commission of duplicitous and egregious conduct in relation to him, which supports a finding that the Integrity Commission had acted in bad faith in relation to him. The following facts are highlighted in the Written Submissions:

- (a) The Integrity Commission when embarking upon the investigations into the 'siphoning allegations' was aware or ought to have been aware that:

- (i) the initial 'siphoning allegations' were generated by Mr. Ganga Singh, Dr. Rowley's political opponent, who thereafter failed to submit himself to public scrutiny at the Commission of Enquiry established to investigate the allegations despite repeated requests for him so to do.
  - (ii) the allegations were continued in the public Commission of Enquiry by one Mr. Barrington Thomas, another admitted political opponent of the Claimant and who the Commission of Enquiry categorically found to be a false witness in specific reference to his sworn testimony relating to Dr. Rowley. This witnesses testimony was dismissed and expressly not relied upon by the Integrity Commission.
- (b) That the Integrity Commission from inception formed an opinion on the allegations and thereafter adopted a prosecutorial approach rather than its statutorily mandated investigative approach. This is evidenced by:
  - (i) In an unprecedented move in respect of any allegation into a public official or Member of Parliament, before or since, calling upon the Prime Minister to establish a public Commission of Enquiry into the Singh allegations a mere 4 days after the allegations first surfaced in Parliament.
  - (ii) During the course of the Commission of Enquiry, the Integrity Commission was so anxious to prosecute Dr. Rowley that it authorised its investigators to unlawfully disclose confidential information to the Commission of Enquiry.
  - (iii) Willfully turning a blind eye to the Commission of Enquiry's Report which effectively exonerated Dr. Rowley from any

unlawful conduct in respect of the 'siphoning allegation' and publicly keeping those allegations alive by conducting its own investigation into the 'siphoning allegation' and consistently referring to same in communications with the media in Trinidad and Tobago.

- (c) Deliberately failing to comply with its statutory obligation to give Dr. Rowley an opportunity to be heard even after being advised by its own investigator in December 2005 that he ought to be given an opportunity to be heard on the allegations.
- (d) Deliberately concluding a report in respect of breaches of the Code of Conduct which the Investigator's report discloses may have occurred without giving Dr. Rowley an opportunity to be heard as advised as above.
- (e) Deliberately failing to comply with its statutory obligation to give Dr. Rowley an opportunity to be heard even after seeking and obtaining the legal advice of Senior Counsel on 28<sup>th</sup> June 2006 that he ought to be given an opportunity to be heard on the allegations.
- (e) On August 7<sup>th</sup> 2006, deliberately and hastily forwarding its secret report to the Director of Public Prosecutions (i) in breach of the Act and (ii) without giving Rowley an opportunity to be heard as advised as above.
- (f) On December 29<sup>th</sup> 2006, falsely maintaining in the face of Dr. Rowley's complaints that he had not been given an opportunity to be heard that 'the requirement [to give an opportunity to be heard] was fulfilled through your many meetings with agents of the Commission and also the exchange of correspondence' between the Integrity Commission and Dr. Rowley. This was done with full knowledge

- (i) That the Integrity Commission's agent only had ONE meeting with Dr. Rowley, sometime in late 2004.
- (ii) That the ONLY correspondence written by Dr. Rowley to the Integrity Commission in respect of these investigations was in respect of a complaint about the Integrity Commission's conduct at the Commission of Enquiry, the unbridled manner of the investigations being conducted and a request for an opportunity to be heard all in a letter dated 24<sup>th</sup> August 2005.
- (g) Since the advice of Senior Counsel dated 28<sup>th</sup> June 2006, neither the Integrity Commission nor any of its servants and/or agents met with, wrote to, or had any communication of whatsoever nature pertaining to the current investigation until the order of mandamus was granted to compel the Integrity Commission to do so.
- (h) On December 29<sup>th</sup> 2006, misleading Dr. Rowley in correspondence of that date that the investigations in relation to him were concluded as the report had been forwarded to the Director of Public Prosecutions, while on the same date informing attorney at law Sheldon Ramnanan acting for Dr. Rowley's political opponent that the investigations were ongoing.
- (i) Continuing to mislead Dr. Rowley in the affidavit of Martin Farrell of April 17<sup>th</sup> 2007 by stating at paragraph 4 that the Integrity Commission's investigation under section 33 of the Act was concluded by June 22<sup>nd</sup> 2006, when in fact the Mendes advice "M.F.2" dated June 28<sup>th</sup> 2006 suggests otherwise.
- (j) Misleading Dr. Rowley's agent and wife Mrs. Sharon Clark-Rowley, from June 22<sup>nd</sup> 2006 to December 2006 that the section 33 investigations were

still ongoing and therefore she was obligated under pain of prosecution to comply with the Integrity Commission's requests for further information.

- (k) Misleading Dr. Rowley and the Court to the effect that the Integrity Commission had concluded a report and sent it to the Director of Public Prosecutions pursuant to its powers under section 31 (3) of the Act, when in fact what was forwarded to the DPP appears to be an incomplete investigator's report.
  - (l) Misleading Dr. Rowley into believing that investigations were restricted to the issue of the siphoning allegations when in fact the Integrity Commission was pursuing several other allegations as borne out by the correspondence of June 25<sup>th</sup> 2007 (K.R. 16) and the correspondence of June 28<sup>th</sup> 2006 (M.F.2).
  - (m) Misleading the public to believe that the siphoning allegations in relation to Dr. Rowley were alive and under active investigation when they were in fact concluded in favour of Dr. Rowley.
  - (n) In respect of the latest allegations, willfully turning a blind eye to patently obvious evidence supportive of Dr. Rowley's innocence. (K.R.20).
30. On the other hand, it has been contended on behalf of the Integrity Commission that the issue was whether the Integrity Commission, by referring the report to the Director of Public Prosecutions without first affording Dr. Rowley an opportunity to be heard, acted with malice or in bad faith by taking the decision to refer the report to the Director of Public Prosecutions in the knowledge that it was in excess of the powers of the Integrity Commission and:

- (a) intended to injure Dr. Rowley; or

- (b) knew that (or was recklessly indifferent as to whether) this conduct was illegal; and
- (c) was aware that (or was recklessly indifferent as to whether) there was a probability of directly causing injury to Dr. Rowley.

It was submitted on behalf of the Integrity Commission that its conduct in this case failed to satisfy any of the above criteria.

31. The essence of the tort of misfeasance in public office is a deliberate and dishonest abuse of power by a public officer or public body [**Clive Lewis, Judicial Remedies in Public Law, 3<sup>rd</sup> Ed, paragraph 14-092**]. The tort of misfeasance is an intentional tort [**Three Rivers** per Lord Millett page 1273]. According to **Three Rivers**, the tort of misfeasance in public office involved an element of bad faith and arose when a public officer exercised his power specifically intending to injure the plaintiff, or when he acted in the knowledge of, or with reckless indifference to, the illegality of his act and in the knowledge of, or with reckless indifference to, the probability of causing injury to the plaintiff or persons of a class of which the plaintiff was a member; that subjective recklessness in the sense of not caring whether the act was illegal or whether the consequences happened was sufficient; that a deliberate omission involving an actual decision not to act might also give rise to liability; that only losses which had been foreseen by the public officer as a probable consequence of his act were recoverable; and that such a formulation of the tort struck the appropriate balance between providing adequate protection for the public and protecting public officers from unmeritorious claims. [page 1221].

32. In the judgment of the Court, this matter centres on the referring of the report to the Director of Public Prosecutions without affording Dr. Rowley a right to be heard. The first question the Court must ask is whether in doing so, the

Integrity Commission knew or was recklessly indifferent as to whether this conduct was illegal.

33. During the cross-examination of Mr. Farrell, he surprisingly testified that there was a “*coming together of pure chaos [at the Integrity Commission], and unfortunately Dr. Rowley was not heard.*” According to him, the Integrity Commission was coming to an end. I understand this to mean that the terms of the members of the Integrity Commission were coming to an end. According to Mr. Farrell, the Registrar, then Mr. Albert Alkins, was retiring. The management of the Integrity Commission was changing. The Integrity Commission had had the Report of Mr. Rahemtulla since December, 2005 and the advice of Mr. Douglas Mendes S.C. by letter dated 28<sup>th</sup> June, 2006. According to Mr. Farrell, there had been meetings between the Integrity Commission and Mr. Mendes. However, the Integrity Commission has not explained why nothing was done between the June advice of Mr. Mendes and the last meeting of the Commission which took place on the 7<sup>th</sup> August, 2006. Of course, Mr. Farrell went on to say that “*chaos*” was a wrong word and that there was nothing which prevented the report of Mr. Rahemtulla from being dealt with by a new Commission. In fact, Mr. Farrell admitted that other matters were handed over to the new Commission. The Court must express its alarm at what it has heard from Mr. Farrell. Mr. Farrell is the Registrar of the Integrity Commission and the Commission is a constitutional body with important obligations and duties and extensive powers.

34. Mr. Mendes had submitted his advice to the Integrity Commission by letter dated the 28<sup>th</sup> June, 2006. It is clear from the letter that Mr. Mendes had been asked to advise on several matters. His letter refers to (i) the role Dr. Rowley played in the change in the zoning classification for the Landate project (ii) the breaches of the Code of Conduct and (iii) the complaint of receipt of benefits from NHIC.

35. Attorneys for Dr. Rowley have submitted that whilst the Integrity Commission has sought to split these allegations into the Code of Conduct allegations and the declarations allegations, the Mendes' advice does not support that distinction. Nowhere in the advice does Mr. Mendes specifically refer to the declarations allegations. Of course, one of the two (2) letters prepared by him for onward submission to Dr. Rowley concerns a request for explanations in relation to his 2003 and 2004 declarations.

36. At paragraph 3 of Mr. Mendes' advice, he had presented two (2) options to the Integrity Commission:

- (i) forward the file immediately to the Director of Public Prosecutions so that investigations may be completed, or
- (ii) exercise its power under section 34 of the Act to require the public officers concerned to give their statements in writing.

According to Mr. Mendes, if the Integrity Commission followed the option at (i) they would necessarily have decided not to pursue, for the time being at least, the breaches of the Code of Conduct which may have occurred. In the view of the Court, based on the submissions advanced on behalf of the Integrity Commission, the Commission understood Mr. Mendes' advice to mean that the declarations allegations could be forwarded to the Director of Public Prosecutions, and not the Code of Conduct allegations.

37. As indicated by Mr. Farrell, Mr. Mendes' letter of advice remained unattended until the last meeting of the Integrity Commission on the 7<sup>th</sup> August, 2006 at which Mr. Farrell was present. According to the Minutes recorded by Mr. Alkins at that meeting under the subject: Report of the Utilization of Materials and Labour from the Scarborough Hospital Project and Construction Site for use in a private housing development owned by Minister Keith Rowley, the

Commission agreed based on the advice received from Mr. Douglas Mendes to separate the issue of the Code of Conduct from the matters raised in the declarations. The issue with respect to the Code of Conduct will be referred to the Director of Public Prosecutions on Monday August 7<sup>th</sup> 2006. The Commission also decided that further action on the matter of Dr. Rowley's declarations will depend on the response from Mrs. Clark-Rowley concerning the final accounting for the Landate Project.

38. Accordingly, on the very day of the meeting, that is on the said 7<sup>th</sup> August, 2006, Mr. Alkins then Registrar of the Integrity Commission, forwarded the following letter to the Director of Public Prosecutions:

"I wish to inform you that the Integrity Commission has conducted an investigation in accordance with the Integrity in Public Life Act, 2000 into the utilization of materials and labour from the Scarborough Hospital Project and construction site for use in a private housing development owned by Minister Keith Rowley. The terms of reference of the investigation are attached.

The Investigator, Intelysis Corp of Toronto/Canada has made a report which is attached. The Commission has decided to refer this report to you under Section 31(3) of the Integrity in Public in Act, 2000 in respect of breaches of the Code of Conduct which the Investigator's report discloses may have occurred."

39. It has been submitted in the Written Submissions of the Integrity Commission filed on 18<sup>th</sup> February, 2008 that the Commission had inter alia misinterpreted Mr. Mendes' advice and that in error the Commission had forwarded an incomplete interim report to the Director of Public Prosecutions under section 31 (3) of the Act (another error) when it ought to have forwarded the matter to the Director of Public Prosecutions for further investigations. The

Court notes that nowhere in the affidavits or cross-examination of the witnesses of the Integrity Commission is there such evidence. The Court agrees with the submissions advanced on behalf of Dr. Rowley that it would be manifestly unfair for the Integrity Commission to seek in its closing Written Submissions to argue that the incomplete/interim report was erroneously forwarded to the Director of Public Prosecutions under the wrong section. In cross-examination, Mr. Farrell made it clear that the Report was sent to the Director of Public Prosecutions solely pursuant to section 31 (3) of the Act and not pursuant to Mr. Mendes' advice or the advice in the Next Steps contained in the Intelysis Report. Section 31(3) of the Act obligated the Integrity Commission to report to the Director of Public Prosecutions any breach of Part IV by a Member of Parliament.

40. In all the circumstances, the Court finds as a fact that the Integrity Commission had decided and had intended at its meeting of the 7<sup>th</sup> August, 2006 to forward the Intelysis Report to the Director of Public Prosecutions under section 31(3) of the Act. The Court finds as a fact that it had thus referred the Code of Conduct issue to the Director of Public Prosecutions. There was no misunderstanding or error on the part of the Integrity Commission. As to their decision to refer the Code of Conduct issue to the Director of Public Prosecutions, they do not say whether they had decided to follow Mr. Mendes' advice. As mentioned before, Mr. Mendes had carefully advised that if the matter was being sent to the Director of Public Prosecutions so that investigations may be completed, the Code of Conduct allegations could not be pursued for the time being at least. Mr. Mendes had also advised the Integrity Commission "*for the reasons already given,*" that he was of the view that Dr. Rowley should be heard on these complaints. Mr. Mendes' advice was clearly not accepted by the Integrity Commission. In cross-examination, Mr. Farrell had conceded that the Integrity Commission had not complied with Mr. Mendes' advice that Dr. Rowley should be heard on these complaints. Not only did they disregard Mr. Mendes' advice, but they also disregarded the advice contained in the Next Steps set out in the Intelysis Report and referred to at paragraph 19 of this judgment and in

particular, that Dr. Rowley should be presented with the findings of the investigation and allowed an opportunity to respond. I find at the very least that the Integrity Commission did not care whether section 38 of the Act was being breached.

41. I am fortified in my findings by the letter that is forwarded to Dr. Rowley by the Integrity Commission after Dr. Rowley's Attorneys by letter dated the 28<sup>th</sup> December, 2006, had complained to the Integrity Commission that the Guardian Newspaper had by an article dated the 17<sup>th</sup> December, 2006, reported that the Integrity Commission had submitted a file to the Director of Public Prosecutions allegedly relating to their investigation into the so-called Landate matter. Mr. Farrell sent the following response by letter dated the 29<sup>th</sup> December, 2006 directly Dr. Rowley:

Re: Landate Project

I have been directed to refer to correspondence between the Integrity Commission and yourself and Mrs. Sharon Clarke-Rowley ending with a letter from Mrs. Rowley dated December 20, 2006 which has been separately acknowledged. I refer, in particular to the Commission's letter dated October 14 2005 which concluded with the assurance that you would be given a full opportunity to be heard as required by section 38 of the Integrity in Public Life Act, 2000.

The Commission is of the view that the requirement was fulfilled through your many meetings with agents of the Commission and also the exchange of correspondence between the Commission and yourself.

It is only fair that the Commission informs you that it has been advised that the Director of Public Prosecutions has referred the Commission's Report to the Commissioner of Police for investigation; however, the

Commission is not aware of the steps, if any, the Commissioner of Police may have taken.

42. It is not disputed on the affidavit evidence before the Court that prior to the referral of the Report to the Director of Public Prosecutions, Dr. Rowley had met only once with Mr. Rahemutulla, the Integrity Commission's Investigator. The Court does not accept Mr. Rahemutulla's evidence given in cross-examination that he held two (2) meetings with Dr. Rowley. In any case, it is certainly not disputed that in the meeting (s) and in the correspondence which passed between Dr. Rowley and the Integrity Commission, Dr. Rowley was never informed of the allegations made against him and was never afforded an opportunity to be heard. This was so despite the Integrity Commission's assurance given to Dr. Rowley since the 14th October, 2005 that Dr. Rowley and Mrs. Clark-Rowley would be given a full opportunity to be heard as required by section 38 should this prove necessary. [K.R. 4 to the affidavit of Dr. Rowley sworn on the 19<sup>th</sup> January, 2007].

43. Paragraph 2 of the Integrity Commission's letter is both callous and frightening. The promptness of the response – in one day – suggests to the Court either (i) that this had been the view of the Integrity Commission when they decided to forward the Report to the Director of Public Prosecutions or (ii) that they did not care whether Dr. Rowley's right to be heard was breached by their conduct or not. The promptness of the response, and the very response, suggest that no proper investigation was carried out into the complaint lodged by Dr. Rowley's Attorneys.

44. In all the circumstances of this case, the Court finds that when the Integrity Commission referred its report to the Director of Public Prosecutions on the 7<sup>th</sup> August, 2006, it was recklessly indifferent as to whether this conduct was illegal. In the judgment of the Court, the Integrity Commission was subjectively reckless in the sense of not caring whether their conduct was illegal or not. I

therefore find that the Integrity Commission had the requisite state of mind to satisfy the third requirement of the tort of misfeasance in public office. The Court wishes to add that the case of **London Borough of Southwark v. Dennett** [2007] EWCA Civ 1091 cited by Mr. Hamel-Smith is not applicable to the facts of the instant case. There is no issue here of having to identify the mind that had the bad faith.

45. At this stage, the Court wishes to make the following troubling observations:

- (i) The Court does not accept the Integrity Commission's explanation as to why it wrote to the Honourable Prime Minister on the 19<sup>th</sup> October, 2004, to ascertain whether an inquiry was to be undertaken and if so, the names of the persons to man the enquiry and their terms of reference. The Court notes that the Integrity Commission is an independent constitutional body which ought to act independently pursuant to its constitutional and statutory powers and duties.
- (ii) The Integrity Commission has admitted that it wrongly permitted its Investigating Officers to give evidence before the Sealey Commission of Enquiry in violation of section 35 of the Act. The Integrity Commission has extensive access to much confidential information and must treat seriously with its confidentiality obligations.

## CAUSATION AND REMOTENESS

46. It is not in dispute that the tort of misfeasance in public office is not a tort that is actionable per se. The proving of special damage has either been expressly recognized as an essential ingredient or it has been assumed. [**Watkins v. Secretary of State for the Home Department and others** [2006] 2 A.C. 395 at p. 408 (para 23)].

47. In **Watkins**, the claimant was a serving prisoner, whose correspondence with his legal advisers had been opened in breach of the Prison Rules. He brought proceedings against the Home Office, prison foreman and several prison officers claiming damages for misfeasance in public office. The judge held that although three of the officers had opened the claimant's correspondence in bad faith and in breach of the rules, nonetheless the claims must be dismissed because the claimant had not established loss or damage, which the judge found to be an essential ingredient of the tort of misfeasance in public office. The Court of Appeal allowed the claimant's appeal holding that, where the wrongful and malicious act of a public officer interfered with a constitutional right, the claimant had a cause of action for misfeasance in public office without the need to prove special damage, that the right of access to the claimants constituted such a right and that therefore the claimant was entitled at least to nominal damages against the three prison officers.

48. In delivering the primary judgment of the House of Lords, Lord Bingham restated some policy considerations at paragraphs 8 and 9 of his judgment. According to him:

“8. *There is great force in the respondent's submission that if a public officer knowingly and deliberately acts in breach of his lawful duty he should be amenable to civil action at the suit of anyone who suffers at his hands. There is an obvious public interest in*

*bringing public servants guilty of outrageous conduct to book. Those who act in such a way should not be free to do so with impunity.*

9. *On the other hand, it is correctly said that the primary role of the law of tort is to provide monetary compensation for those who have suffered material damage rather than to vindicate the rights of those who have not. If public officers behave with outrageous disregard for their legal duties, but without causing material damage, there are other and more appropriate ways of bringing them to book. It is said to be unnecessary and untimely to develop this tort beyond the bounds hitherto recognized. I touch further on some of these considerations below.”*

49. Lord Bingham examined the history of the tort of misfeasance in public office and concluded that none of the cases lent support to the proposition that the tort was actionable per se. Lord Bingham expressed his reluctance to disturb a rule which had been understood to represent the law for 300 years, and which had been adopted elsewhere, unless there were compelling reasons for doing so. [para 23 **Watkins**].

50. Lord Bingham also noted that the feature on which the Court of Appeal had fastened in **Watkins** had been the breach of the claimant’s constitutional right to protection of the confidentiality of his legal correspondence. That was seen as providing an analogy with the plaintiff’s constitutional right to vote in **Ashby v White** (1703) 1 Smith’s L.C. (13<sup>th</sup> ed.) 253. Lord Bingham further noted that the claimant relied on the authority of the Court of Appeal (per Steyn LJ) that the right of access to a court closely linked with the right to obtain confidential legal advice, was a constitutional right: **R v Secretary of State for the Home Department, Ex p Leech** [1994] QB 198, 210.

51. Having examined **Ashby v White** and having concluded that Holt CJ never used the expression that the right to vote was basic, fundamental or constitutional, Lord Bingham made the following important point at paragraph 26:

*Novelty is not in itself a fatal objection, and the respondent contends that the importance of the right in question requires or justifies the modification of a rule, if there be such, that material damage must be proved to establish a cause of action. I do not, however, think that the House should take or endorse this novel step, for a number of reasons. The first is that it would open the door to argument whether other rights less obviously fundamental, basic or constitutional than the right to vote and the right to preserve the confidentiality of legal correspondence, were sufficiently close to or analogous with those rights to be treated, for damage purposes, in the same way. Since in the absence of a codified constitution, these terms are incapable of precise definition, the outcome of such argument in other than clear cases would necessarily be uncertain (emphasis mine).*

52. Lord Rodger also delivered a well-reasoned judgment in **Watkins**, tracing the history of the tort. According to Lord Rodger at paragraph 58:

*Leaving on one side the proper interpretation of Ashby v White, the Court of Appeal's decision is noteworthy for the novel use which it makes of the concept of a "constitutional right" or a "right of this level of importance" to create a type of misfeasance in public office which is actionable per se. For such an innovation to be workable, it would have to be possible to identify fairly readily what were to count as "constitutional rights" for this purpose in a country without a written constitution. As it happened, in the present case the Court of Appeal was able to refer to R v Secretary of State for the Home Department, Ex p Leech [1994] QB 198, 210 A-B where Steyn LJ had commented that, "even in our unwritten constitution",*

*the basic right of access to the court “must rank as a constitutional right”. There is, however, no magic in the term “constitutional right”. So, for instance, Lord McCluskey must have been making much the same point in Leech v Secretary of State for Scotland 1992 SC 89, 98 when he spoke of “a basic civil right of access to the courts”. Moreover, as Laws J remarked in R v Lord Chancellor Ex p Witham [1998] QB 575, 585G, although the right of access to the courts has been described as a constitutional right, “the cases do not explain what that means” (emphasis mine).*

53. We do not have such a challenge in Trinidad and Tobago where the written Constitution of Trinidad and Tobago protects and guarantees fundamental human rights and freedoms including the right of the individual to the protection of the law and to the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations [sections 4 (b) and 5 (2) (e)]. These rights have been interpreted to include the right of the individual to be informed of the specific allegations made against him and the right to be given an opportunity to deal with them in the circumstances set out in the case of **Rees and Others v. Crane** (1994) 43 WIR 444. According to Lord Slynn who delivered the judgment of the Judicial Committee of the Privy Council, the protection of the law referred to in section 4 (b) upon which the respondent also relies would include the right to natural justice (page 453). The right to be informed of the specific allegations made against an individual and the right to be heard on those allegations have been codified in several enactments in Trinidad and Tobago, including section 38 of the Act.

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

rights, there is no need to establish proof of actual damage for the purpose of the tort of misfeasance in public office.

55. Attorneys for the Integrity Commission have drawn the Court's attention to the case of **Karagozlu v. Metropolitan Police Commissioners** [2007] 1 WLR 1881 in which the Court of Appeal was of the view that Lord Bingham's opinion in **Watkins** as to what constituted material damage was not exhaustive. The Court of Appeal considered that it was appropriate to look at other torts to see whether the damage that was being alleged fell within a specie of recognized damage in another tort. The Court of Appeal compared the tort of malicious prosecution to misfeasance, where both torts required proof of damage.

56. Looking at the tort of malicious prosecution, the Court of Appeal in **Karagozlu** examined several cases which set out the three sorts of damages, any one of which was sufficient to support the tort:

- (1) damage to fame or reputation if the matter be scandalous;
- (2) loss of life, limb or liberty; and
- (3) damage to property.

The Court of Appeal concluded at paragraph 34:

*Thus a person who is imprisoned or loses his life, limb or liberty has suffered injury or damage sufficient to support the tort of malicious prosecution and, in the light of Thompson's case [1998] QB 498, sufficient to entitle him to general damages. It is we think of note that, at any rate in the reports in Lord Raymond and Carthew, Holt CJ treated loss of life, limb and liberty as injuries to the person, or at least as analogous to injuries to the person. Mr. Beer submits that malicious prosecution and misfeasance are different torts and that the reason why loss of life, loss of limb or loss of liberty were all sufficient damage for the purposes of malicious prosecution was that historically some criminal offences*

*were punishable by loss of life, limb or liberty. That may be so but we can see no reason in principle to hold that what is damage for the purposes of malicious prosecution is not damage for the purposes of misfeasance. [emphasis mine]*

57. Attorneys for the Integrity Commission have submitted that the approach adopted by the Court in **Karagozlu** was wrong and amounted to a misapplication of **Watkins**. On the other, it has been argued on behalf of Dr. Rowley that in the **Three Rivers** case, Lord Hobhouse had explained that special damage meant loss or injury specific to the claimant and which was not suffered in common with the public in general. It was further contended on behalf of Dr. Rowley that of all persons under investigation by the Integrity Commission, Dr. Rowley's reputation had been damaged above and beyond that of other persons in that his investigation was elevated to a criminal investigation by reason of the Integrity Commission's illegal action.

58. As to the broad allegations made by Dr. Rowley that he has suffered damage to his reputation, the Court agrees with the Integrity Commission that it is a bald assertion not supported by evidence. In the circumstances, the Court does not think it necessary to decide whether the Court of Appeal's approach in **Karagozlu** was wrong, and whether damage to one's reputation was sufficient to constitute damage for the purpose of Dr. Rowley's claim for misfeasance.

### **SELF INCRIMINATION**

59. It has been contended on behalf of Dr. Rowley that his right to the protection against self-incrimination has been breached in that the Integrity Commission sought information from his wife, Mrs. Clark-Rowley, subsequent to the making and/or conclusion and/or publication of the report to the Director of Public Prosecutions on the 7<sup>th</sup> August, 2006.

60. In his first affidavit, Dr. Rowley referred to his meeting with Mr. Rahemutulla which took place in mid-November, 2004. According to Dr. Rowley, Mr. Rahemutulla informed him at that meeting that he was an accountant and that he was hired by the Integrity Commission to conduct a forensic investigation into the allegation of the siphoning of materials from the Scarborough Hospital to the Landate project. Dr. Rowley informed Mr. Rahemutulla that his wife, Mrs. Clarke-Rowley, was the owner and developer of the Landate project and he referred him to her in respect of any queries he had in respect of the project. [paragraph 8].

61. By Mr. Farrell's first affidavit, he set out the correspondence which passed between Mrs. Rowley and the Integrity Commission. He alleged that by June 2006 the Integrity Commission's investigation under section 33 of the Act had been concluded. and he made inter alia the following points:

- (i) that the Integrity Commission's request to Mrs. Rowley by letter dated the 31<sup>st</sup> July, 2006 for a full accounting of the development project was made in relation to Dr. Rowley's duty to provide information as to his income, assets and liabilities (as well as those of his spouse) for each year that he was a person in public life.
- (ii) that Dr. Rowley provided no information to the Integrity Commission after the 7<sup>th</sup> August, 2006, the date when the Integrity Commission referred its report to the Director of Public Prosecutions.
- (iii) that the only information provided to the Integrity Commission after the 7<sup>th</sup> August, 2006 was contained in Mrs. Clarke-Rowley's letter dated the 20<sup>th</sup> December, 2006 when she provided a full accounting of the development project.

62. By his affidavit in reply sworn and filed on the 9<sup>th</sup> May, 2007, Dr. Rowley acknowledged that the Integrity Commission was empowered to seek information relevant to his income, assets and liabilities in accordance with section 13 of the Act, but said that at no time had the Integrity Commission ever requested from him as a declarant any information or explanation relevant to his declaration of his wife's interest in the development project. [paragraph 7]. In fact, Dr. Rowley complained that Mr. Farrell's first affidavit was the first time that the Integrity Commission had revealed to him that it was allegedly seeking information or any explanation relevant to his declarations, and that such request was being made of someone other than himself as declarant.
63. Further, at paragraph 13 of Dr. Rowley's affidavit in reply, he drew to the attention of the Court that the correspondence between his wife and the Integrity Commission subsequent to the conclusion and publication of its secret report, (a) referred to the requests for further information made by the Integrity Commission of his wife prior to the conclusion and publication of its secret report and in respect of its purported investigation in relation to him, (b) evidenced his wife's belief that the purported investigation was then still ongoing and that it was in that regard that she was submitting the said further information requested by the Integrity Commission and, (c) notwithstanding which at no time in its said correspondence with his wife and in receiving the said further information provided by her, did the Integrity Commission alert her or him to the purported fact now stated blithely by the deponent that by that time the Commission's investigation under section 33 of the Integrity in Public Life Act had been concluded.
64. In her affidavit sworn to and filed on the 19<sup>th</sup> January, 2007, Mrs. Clarke-Rowley exhibited a letter dated 3<sup>rd</sup> June, 2005, from the Integrity Commission which introduced to her three Investigating Officers authorized under section 34 of the Act to conduct enquiries on behalf of the Commission and requested her to

provide these Officers with information with regard to the Commission's investigations made relative to Dr. Rowley (S.R. 1).

65. In cross-examination, Mr. Farrell admitted that the Integrity Commission did not inform Dr. Rowley or Ms. Clarke-Rowley that investigations subsequent to the 7<sup>th</sup> August, 2006, concerned the declarations investigation. Mr. Farrell agreed that the investigations were being pursued as if it was the Landate investigation and that that was the impression conveyed to Mrs. Clarke-Rowley. According to Mr. Farrell, the Act did not allow the Integrity Commission to go to Mrs. Clarke Rowley without Dr. Rowley's authorization so to do and Dr. Rowley's authorization was not sought or obtained to deal with Mrs. Rowley on the declarations issue.

66. By virtue of section 13 (1) of the Act, the Integrity Commission is obliged to examine every declaration that is filed and may request from a declarant any information or explanation relevant to such declaration. By section 13 (2) of the Act, the Integrity Commission is also empowered to require that

- (a) a declarant furnish such particulars relating to his financial affairs as may be considered necessary;
- (b) a declarant or his duly appointed agent attend at the offices of the Commission in order to verify his declaration;
- (c) a declaration be certified by a chartered or certified accountant.

67. Section 34 (2) (b) of the Act empowers the Integrity Commission to

*“(b) require any person to furnish, notwithstanding the provisions of any other written law to the contrary, all information in his possession relating to the affairs of any suspected person being*

*investigated and to produce or furnish any document or true copy of any document relating to the person under investigation and which is in the possession or under the control of the person required to furnish the information.”*

68. The Constitution of Trinidad and Tobago protects an individual who is before any Court, tribunal, commission, board or other authority from being compelled to give evidence unless he is afforded protection against self-incrimination section by virtue of section 5 (2) (d). The privilege against self-incrimination is an important element of the principles of a fair trial and due process.

69. In order to maintain a claim that his right to the protection against self-protection has been breached, the onus is on Dr. Rowley to

(a) demonstrate that there is a real and appreciable danger that the information that was provided by his wife was either incriminatory of him or could eventually lead to incriminating evidence and the risk of a criminal charge; and

(b) establish that he has a “*spousal privilege*” which gives him a right to object to his wife’s answering any questions that were posed to her or to her providing information requested of her.

70. The Court agrees with the submission advanced on behalf of the Integrity Commission that there is no evidence to demonstrate how the information provided by Mrs. Clarke-Rowley by letter dated the 20<sup>th</sup> December, 2006 was either incriminatory of Dr. Rowley or could eventually lead to incriminating evidence and the risk of a criminal charge. The Court also agrees that Dr. Rowley has failed to demonstrate the necessary factual basis for invoking the privilege. Accordingly, the Court does not find it necessary to determine whether the issue of “*spousal privilege*” has been established or even whether it is

relevant in all the circumstances of the case. The Court wishes to say, however, that the facts enunciated above suggest that there was an unfair abuse of power on the part of the Integrity Commission in leading Dr. Rowley and Mrs. Clarke-Rowley to believe that the investigations in respect of the Landate project were on-going by the Commission and that Mrs. Clarke-Rowley had a continuing obligation to provide information to the Integrity Commission pursuant to section 34 (2) (b) of the Act.

## **DAMAGES**

71. The Court has considered the Further Written Submissions filed on behalf of Dr. Rowley on the 27<sup>th</sup> March, 2008 and on behalf of the Integrity Commission on the 13<sup>th</sup> June, 2008. The Court does not consider it appropriate that a separate enquiry should be held to assess damages in this case. The Court has to assess damages for breach of the tort of misfeasance in public office. Dr. Rowley has suffered no special damage by virtue of the breach. He has not suffered any financial damage. The Court has already ruled that he has made a bald assertion that he has suffered damage to his reputation unsupported by evidence.
72. In all the circumstances of the case, having regard to the nature of the breach and doing the best it can, in its discretion, the Court awards Dr. Rowley damages in the sum of \$100, 000.00. Having examined the authorities cited to the Court on the issues of exemplary and aggravated damages, the Court does not consider an award of exemplary and/or aggravated damages appropriate in this case.

**CONCLUSION**

73. The Court has looked closely at the words of Lord Bingham in **Watkins** and his obvious disinclination to expand *the reach* of the tort of misfeasance in public office. The Court considers this desirable and understandable, but wishes to say that this case turned on very special and exceptional facts to which the Court could not turn a blind eye.

**ORDER OF THE COURT**

- (1) The Court declares that the Integrity Commission has acted in bad faith in relation to Dr. Rowley and is guilty of the tort of misfeasance in public office.
  
- (2) The Integrity Commission shall pay to Dr. Rowley damages assessed in the sum of \$100, 000.00 with interest thereon at the rate of 12% per annum from the 10<sup>th</sup> August, 2007, the date of the Amended Claim Form, to the date hereof.
  
- (3) The Integrity Commission shall pay to Dr. Rowley costs of the Claim and the Amended Claim to be assessed on a date to be fixed by the Court and certified fit for two counsel.

.....  
MAUREEN RAJNAUTH-LEE  
JUDGE

