THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2012-00892

In the Matter of the Legal Profession Act Chap 90:03

And

In the Matter of the Interpretation of sections 9 and 27 of the Legal Profession Act Chap 90:03

And

In the Matter of the construction of section 26 of the Legal Profession Act Chap 90:03

Between

LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

And

MICHELLE MAYERS

Representing the interests of Judicial Research Assistants pursuant to the Order of the Honourable Madame Justice Rajnauth-Lee dated 12th March, 2012

Interested Party No.1

And

NADINE NABIE
Representing the interests of the other Law Officers pursuant to the Order of the Honourable Madame Justice Rajnauth-Lee dated 12th March, 2012

Interested Party No. 2

Before the Honourable Madam Justice Rajnauth-Lee

Appearances

Mr. Alvin K. Fitzpatrick S.C. leading Mr. Shiv A. Sharma and instructed by Mr. Kemrajh Harrikissoon for the Claimant

Mr. Russell Martineau S.C. leading Mr. Duncan Byam and Ms. Monica Smith instructed by Ms. Zelica Haynes, Ms. Kerri-Ann Oliverie and Ms. Stephenie Sobrian for the Defendant

Mr. Ian Benjamin instructed by Ms. Marcelle Ferdinand for the Interested Parties

Dated: **the 26th March, 2012**

JUDGMENT

THE QUESTIONS FOR DETERMINATION

1. On the 5th March, 2012, the Law Association of Trinidad and Tobago ("the Association"), a body corporate established by section 3 of the Legal Profession Act Chap. 90:03 ("the Act"), sought the determination of the High Court of the following questions:

(1) Whether, according to the provisions of the Act, "law officers" as defined by section 26 thereof are entitled to –

(i) attend and vote at a general meeting of the Association or at an Elections of the Association; or

(ii) be elected to the Council of the Association,

without paying fees under the Act.

(2) Whether "Judicial Research Assistants" ("JRAs") employed by the Judiciary of Trinidad and Tobago are law officers within the provisions of the Act.

SECOND QUESTION - ARE JRAs LAW OFFICERS?

2. For the sake of convenience I will deal with this question first. Law Officers are dealt with at sections 26 and 27 of the Act. By virtue of section 26(1) of the Act, for the purposes of this Act, a law officer is defined as –

(i) an Attorney-at-law who holds office in the Judicial and Legal Service established by the Judicial and Legal Service Act, which office is declared by Order of the Minister to be a law office; or

(ii) a legal officer employed by the State on contract.

3. It is not disputed that JRAs are employed by the Judiciary of Trinidad and Tobago on contract. It is also not disputed that JRAs are Attorneys-at-Law and that the Act governs them.

Accordingly, the only question that arises is whether the Judiciary of Trinidad and Tobago is part of or an organ of the State for the purposes of section 26(1)(ii) of the Act.

4. Section 2(2) of the State Liability and Proceedings Act Chap. 8:02 provides that "the State" means the Republic of Trinidad and Tobago. Mr. Fitzpatrick S.C. has submitted that the constitutional system operated in this jurisdiction recognizes three separate branches of the State – the Executive, the Legislature and the Judiciary. Mr. Fitzpatrick S.C. has also made the point that he has not found any compelling argument to suggest that the Judiciary of Trinidad and Tobago was not included in the provisions of section 26(1)(ii) of the Act. He therefore submitted that JRAs were law officers and for purposes of the Act were to be treated as such. Mr. Martineau shares a similar view that JRAs are employed by the State on contract and are law officers pursuant to section 26(1) of the Act. Of course, Mr. Benjamin has acknowledged these concessions. Two other issues have been raised in the correspondence which had been exhibited to the affidavit of Ms. Donna Allison Prowell-Raphael, the Honorary Secretary of the Association, filed in support of the claim on the 5th March, 2012, and in the affidavit of Ms. Michelle Mayers filed on the 13th March, 2012:

(i) Who should be the proper officer to sign the Form 3B certificates on behalf of JRAs?

(ii) Whether JRAs are required to pay arrears of subscription or contributions to the Compensation Fund for past years in which they have been allowed to hold practising certificates?

5. Happily, these issues have been resolved consensually between Mr. Fitzpatrick and Mr. Benjamin. As to the first question, who is the proper officer to sign the Form 3B certificates, it

has been recognised quite properly that section 26(3) does not restrict who can sign such a certificate, but merely provides that a Form 3A or 3B certificate signed by the Minister of Legal Affairs or a Chief Legal Officer[1] that a particular person is a law officer is *prima facie* evidence of that fact. Accordingly, it is now accepted by the Association that any appropriate officer within the Judiciary of Trinidad and Tobago, such as the Court Executive Administrator or the Head of the Human Resources Department, is entitled to sign Form 3B certificates on behalf of the JRAs. The Court trusts that this will put an end to any misunderstanding that may have existed between the Association and the JRAs and to the obvious inconvenience and distress suffered by the JRAs.[2]

6. As to the question whether the JRAs must pay any arrears of subscriptions or of contributions, the Court notes that this has also been resolved amicably. Mr. Fitzpatrick has indeed conceded that JRAs would be entitled to a refund of any monies that they were required to pay in order to obtain practising certificates, that is to say, any monies paid by way of subscriptions to the Association, contributions to the Compensation Fund and any administrative fees paid to the Association. The Court expects that this exercise will be carried out by the Association promptly and that all monies incorrectly collected from JRAs will be repaid promptly. Accordingly, as the Court understands Mr. Fitzpatrick's concession, JRAs are therefore not required to pay any arrears of subscriptions or contributions to the Compensation Fund for the past years in which they held practising certificates.

7. It is clear to the Court that this question has to be answered in the affirmative; that Judicial Research Assistants are law officers within the provisions of the Act.

[1] "Chief Legal Officer" has been defined at section 26(4) as meaning the Solicitor General, the Director of Public Prosecutions or the Chief Parliamentary Counsel
[2] See Ms. Mayers' affidavit

8. Before I pass on the other question, this is a convenient stage to make some observations on matters raised in the affidavits of Ms. Mayers and Ms. Nadine Nabie, the Interested Parties. Ms. Mayers has deposed at paragraph 7 of her affidavit that in addition to the annual subscriptions, JRAs were also required to pay an administrative fee of $1,500.00 which was said to represent the charges for outstanding fees and also to facilitate the filing of an application under section 24 of the Act before a practising certificate would be issued. At paragraph 8, she has made the point that she was not able to say whether the administrative fee was authorized by any resolution of the Association. The Court wishes to urge the Association to consider whether the imposition of this administrative fee whether in relation to JRAs or other Attorneys-at-law has been properly authorized by the Association pursuant to the Act. I will say no more.

9. In addition, Ms. Nabie has highlighted the plight of legal officers employed on contract at various ministries and departments of the State. Like the JRAs they too were being required to pay subscriptions to the Association in order to obtain practising certificates. The Court notes that these legal officers employed on contract by the State can be in no worse position than the JRAs. They are also law officers within the provisions of the Act and the Court therefore expects that they too will be reimbursed promptly for any fees incorrectly collected from them by the Association. As to the issue as to the proper officer to sign their Form 3B certificates, the Court's views expressed in relation to the JRAs apply equally to these legal officers employed on contract by the State. It would appear that any Senior Administrative Officer within such a ministry or department and certainly the Minister of Public Administration and the Minister of Legal Affairs would be appropriate officers to sign these certificates.

FIRST QUESTION – CAN LAW OFFICERS ATTEND AND VOTE OR BE ELECTED TO COUNCIL WITHOUT PAYING FEES UNDER THE ACT?

10. The first question posed by the Association remains to be answered. The long title of the Act is an Act to provide for the reorganisation and regulation of the legal profession for the qualification, enrolment and discipline of its members and for other matters relating thereto. Pursuant to section 13 of the Constitution of the Republic of Trinidad and Tobago, the Act was passed by both Houses of Parliament and at the final vote thereon in each House the Act was supported by the votes of not less than three-fifths of all the members of that House.

11. By virtue of section 3(2) of the Act, the Association shall consist of practitioner members, non-practitioner members and honorary members. The affairs of the Association are managed and its functions performed by a Council constituted in accordance with the First Schedule to the Act.[3] The purposes of the Association are set out in section 5 of the Act as follows:

(a) to maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago;

(b) to represent and protect the interests of the legal profession in Trinidad and Tobago;

(c) to protect and assist the public in Trinidad and Tobago in all matters relating to the law;

[3] Section 4 of the Act

(d) to promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;

(e) to promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;

(f) to promote, maintain and support the administration of justice and the rule of law;

(g) to do such things as are incidental or conducive to the achievement of the purposes set out at (a) to (f).

12. Section 6 of the Act provides:

(1) Every Attorney-at-law to whom a practising certificate is issued is a member of the Association and shall remain a member for so long as his practising certificate has effect.

(2) Subject to this Act, a practising certificate ceases to have effect where the practitioner member to whom it relates fails to pay –

(a) his contribution to the Fund for one year; or

(b) his subscription to the Association for three successive years.

(3) Every Attorney-at-law who is a member of the Association by virtue of subsection (1) is in this Act referred to as a "practitioner member".

13. Section 20 of the Act provides *inter alia* that every person whose name is entered on the Roll in accordance with this Act shall be known as an Attorney-at-law and subject to sub-section

(2) is entitled to practise law, that is, to practise as a Barrister or Solicitor or an Attorney-at-law, or the undertaking or performing of the functions of a Barrister or Solicitor of Attorney-at-law as provided or recognised by any law whatever before or after the passing of the Act.[4] By virtue of section 20(2), no person may practise law unless his name if entered on the Roll in accordance with the Act and he is the holder of a valid practising certificate.

14. Section 23(1) of the Act provides that an Attorney-at-law who desires to practise law shall apply to the Registrar for a certificate to be called a practising certificate. On being satisfied that the Attorney-at-law has paid his annual subscription to the Association under section 12 and his annual contribution to the Fund under section 56, the Registrar shall issue to him a practising certificate.[5]

15. The annual subscription referred to in sections 6(2) and 23(2) is collected by the Registrar on behalf of the Association and the amount thereof is fixed by the Council of the Association.[6] The Fund referred to in sections 6(2) and 23(2) is the Compensation Fund established under section 54 of the Act[7] and dealt with under Part VI of the Act. Section 54(2) provides that the Fund shall be the property of the Council who shall hold it as trustee for the purposes of this Act. The Council is empowered to make a grant out of the Fund for the purposes of relieving or mitigating any loss sustained by any person in consequence of dishonesty on the part of an Attorney-at-law or any clerk or servant of an Attorney-at-law in connection with the practice of that Attorney-at-law or in connection with any trust of which that Attorney-at-law is a trustee.[8]

[4] Section 2 of the Act
[5] Section 23(2) of the Act
[6] Section 12(1) of the Act
[7] Section 2 of the Act
[8] Section 57(1) of the Act.

16. The Court has already set out section 26(1) of the Act at paragraph 2 of this judgment. Section 26(2) provides that a law officer so long as he remains a law officer shall be *deemed* to be the *holder of a valid practising certificate* and to be a *practitioner member*. [emphasis mine] By virtue of section 26(3), a certificate in the forms set out as Form 3A or Form 3B in the Second Schedule signed by the Minister or by a Chief Legal Officer to the effect that a particular person is a law officer is *prima facie* evidence to that fact. Section 26(4) provides that in section 26, "Chief Legal Officer" means the Solicitor General, the Director of Public Prosecutions or the Chief Parliamentary Counsel.

17. Section 27 provides for certain exemptions as they relate to law officers. Section 27 of the Act reads –

> Subject to section 9(2) a law officer is *exempt* from paying –
>
> (a) annual subscription to the Law Association; and
>
> (b) annual contribution to the Compensation Fund.

18. Mr. Fitzpatrick on behalf of the Association has submitted that section 27 is subject to an express proviso set out in section 9(2) of the Act. Section 9(1) of the Act provides that subject to this section and to section 10, all members of the Association have the same rights and privileges. Section 9(2) of the Act provides –

> (2) Only practitioner members who pay their annual subscription to the Law Association are eligible –
>
> (a) to attend and vote at a general meeting or at an election of members of the Council; or

(b) to be elected to the Council.

19. Mr. Fitzpatrick has submitted that there is no need for the Court to depart from the literal interpretation of section 27 and that sections 27 and 9(2) should be given their plain and ordinary meaning. He submitted that when the Court interprets legislation its primary task is to identify the intention of Parliament[9]. Parliament must be presumed to have intended what it expressly states, he submitted. In his view, the phrase *"subject to"* used in section 27 was the hallmark of a deliberate imposition of a proviso or condition and it appeared to be an express statement by the legislature that in reading section 27, section 9(2) must be given its full force and effect. He contended that on the plain and ordinary meaning of section 27 (reading it subject to the proviso) all practitioner members including law officers must pay their annual subscriptions to the Association as a precondition to attending and voting at a general meeting/election of the Council or being elected to the Council. He submitted that the proviso was intended to apply to law officers. According to Mr. Fitzpatrick, there is no express requirement that law officers must pay annual contributions to the Compensation Fund in order to attend and vote or to be elected to the Council. He submitted that that conclusion was only logical as the *client* of law officers was the State and there could be no resort by the State to the Compensation Fund. Accordingly, he argued even though a law officer has not paid any annual contribution to the Compensation Fund, he can still participate in the elections of members of the Council or be elected to the Council. Mr. Fitzpatrick further submitted that the requirement of payment of the annual subscription to the Association in section 9(2) of the Act would appear to refer to the payment of the annual subscription for the current year. In his submission, the expression *"practitioner members who pay their annual subscription"* was not apt to require payment of all arrears of

[9] See Lord Woolf CJ in **Poplar Housing and Regeneration Community Association Ltd v Donoghue** [2002] QB 48 at p. 72, para. 75

annual subscriptions; that would be burdensome and explicit language to that effect would be needed to impose such a requirement.

20. Mr. Martineau S.C. acting on behalf of the Attorney General began his address by stating that the position taken by the Attorney-General was that he was there primarily to assist the Court and not to take sides. Mr. Martineau arrived at the same conclusion as Mr. Fitzpatrick on behalf of the Association but by a slightly different route. According to Mr. Martineau the conjoint effect of sections 27 and 9(2) was that law officers do not have to pay subscriptions to the Association except in a section 9(2) situation where they wish to participate in the meeting or elections of the Association and wish to be elected to the Council of the Association.

21. Mr. Martineau further submitted that there was a clear distinction between *deeming* a law officer to be the holder of a valid practising certificate and to be a practitioner member and *exempting* law officers from paying certain sums of money.[10] According to Mr. Martineau, law officers are *deemed* to be holders of practising certificates and to be practitioner members but are not *deemed to have paid* but are *exempt from paying* subscriptions to the Association and contributions to the Compensation Fund. He submitted that Parliament had deliberately used those two phrases/words to mean something different.

22. Mr. Martineau cited the case of **R v Secretary of State for the Environment, Transport and the Regions and another, ex parte Spath Holme Ltd** [2001] 1 All ER 195 [H.L] and the important observations of Lord Nicholls of Birkenhead at pages 216 and 217. Lord Nicholls made the point that he was going back to first principles and he went on to observe:

[10] Compare sections 26(2) and 27

Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] 1 All ER 810 at 814, [1975] AC 591 at 613: 'We often say that we are looking for the intention of Parliament, but that is not quite accurate. ***We are seeking the meaning of the words which Parliament used****'. [emphasis mine]*

In identifying the meaning of the words used, the courts employ accepted principles of interpretation as useful guides. For instance, an appropriate starting point is that language is to be taken to bear its ordinary meaning in the general context of the statute. Another, recently enacted, principle is that so far as possible legislation must be read in a way which is compatible with human rights and fundamental freedoms (see s 3

of the Human Rights Act 1998). The principles of interpretation include also certain presumptions. To take a familiar instance, the courts presume that a mental ingredient is an essential element in every statutory offence unless Parliament has indicated a contrary intention expressly or by necessary implication.

Additionally, the courts employ other recognised aids. They may be internal aids. Other provisions in the same statute may shed light on the meaning of the words under consideration. Or the aids may be external to the statute, such as its background setting and its legislative history. This extraneous material includes reports of Royal Commissions and advisory committees, reports of the Law Commission (with or without a draft Bill attached), and a statute's legislative antecedents.

Use of non-statutory materials as an aid to interpretation is not a new development. As long ago as 1584 the Barons of the Exchequer enunciated the so-called mischief rule. In interpreting statutes courts should take into account, among other matters, 'the mischief and defect for which the common law did not provide' (see Heydon's Case (1584) 3 Co Rep 7a at 7b, 76 ER 637 at 638). Nowadays the courts look at external aids for more than merely identifying the mischief the statute is intended to cure. In adopting a purposive approach to the interpretation of statutory language, courts seek to identify and give effect to the purpose of the legislation. To the extent that extraneous material assists in identifying the purpose of the legislation, it is a useful tool.

This is subject to an important caveat. External aids differ significantly from internal aids. Unlike internal aids, external aids are not found within the statute in which Parliament has expressed its intention in the words in question. This difference is of

constitutional importance. Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament. This gives rise to a tension between the need for legal certainty, which is one of the fundamental elements of the rule of law, and the need to give effect to the intention of Parliament, from whatever source that (objectively assessed) intention can be gleaned.

23. Lord Nicholls then went on to note that Lord Diplock had drawn attention to the importance of this aspect of the rule of law in ***Fothergill v Monarch Airlines Ltd*** [1980] 2 All ER 696 at 704, [1981] AC 251 at 279-280 where Lord Diplock had observed that the source to which Parliament must have intended the citizen to refer was the language of the Act itself. These were the words which Parliament had itself approved as accurately expressing its intentions, Lord Diplock said. If the meaning of those words was clear and unambiguous and did not lead to a result that was manifestly absurd or unreasonable, it would have been a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not have relied on that meaning but had been required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation.[11]

24. Lord Nicholls also observed that this constitutional consideration did not mean that when deciding whether statutory language was clear and unambiguous and not productive of absurdity, the courts were confined to looking solely at the language in question in its context within the

[11] Page 217 of ex p Spath Holme

statute. According to Lord Nicholls, that would impose on the courts much too restrictive an approach. No legislation was enacted in a vacuum, Lord Nicholls observed. Regard must also be had to extraneous material, such as the setting in which the legislation was enacted.[12]

25. Accordingly, Mr. Martineau argued that the reasonable man applying the various aids of interpretation and looking at sections 27 and 9(2) in the context of the Act would conclude that the Parliament intended that sometimes law officers have to pay. He submitted that section 9(2) provided a real exception to which law officers were subject, but only if they chose to participate in the meetings and elections of the Association. According to Mr. Martineau law officers had a choice and accordingly one could not argue that this interpretation led to any absurdity.

26. On the other hand, Mr. Benjamin submitted that the effective resolution of these matters required that the court engage in an interpretative exercise in which a critical analysis of the general scheme of the Act must be undertaken. Mr. Benjamin relied on the judgment of the Trinidad and Tobago Court of Appeal in the case of **Omar Maraj v the Public Service Appeal Board** Civil Appeal No. 100 of 2006[13], where Jamadar JA delivering the judgment of the Court [page 17], and dealing with the purposive approach to statutory interpretation, pointed out that Lord Bingham in the House of Lords had addressed the proper approach to statutory interpretation as follows:

> *The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to the difficulty. Such as approach ... may also (under the banner of loyalty to*

[12] Page 217 of ex p Spath Holme
[13] Upheld by their Lordships of the Privy Council

the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement on the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.[14]

Jamadar J.A. then observed that the purposive approach and the use of context, both legislative and historical, as a legitimate aid to interpretation made complete sense if the underlying task of the court in interpreting a statute was to give effect to the intention of Parliament.[15]

27. Mr. Benjamin argued that the deeming provision of section 26(2) of the Act made it clear that law officers were deemed to be (i) the holders of practising certificates and (ii) to be practitioner members. He argued that section 26 made no provision for the payment of anything by law officers and urged the Court to consider section 27 in that context.

28. Mr. Benjamin further drew the Court's attention to the fact that section 9(1) of the Act has been made specifically subject to section 9 as a whole and section 10. As I have already noted, section 9(1) provides that all members of the Association have the same rights and privileges. Mr. Benjamin then drew the Court's attention to section 9(3) and section 10 of the Act. Section 9(3) provides that practitioner members may by a resolution exclude from a general

[14] In R(Quintavalle) v Secretary of State for Health [2003] 2 WLR 692 at page 697
[15] Page 17 para. 59

meeting of the Association or any part thereof all other members. Mr. Benjamin appeared to have accepted, however, that practitioner members may therefore exclude by a resolution non-practitioner members or honorary members. In my view, section 9(3) therefore does not provide for the exclusion of any practitioner members, including law officers.

29. Section 10 of the Act provides:

> (1) A practitioner member or a non-practitioner member of the Association may in the prescribed manner, and upon such grounds as may be prescribed, after being given a reasonable opportunity to answer all allegations made against him-
>
> (a) be expelled from membership; or
>
> (b) be deprived of any one or more rights and privileges of membership.
>
> (2) In this section "prescribed" means prescribed by Rules made by the Council.

30. Mr. Benjamin therefore argued that law officers being practitioner members are not to be deprived of attending and voting and being elected to Council without the proper observance of the protections set out in section 10. It is difficult for the Court to understand why Mr. Benjamin should apply the section 10 procedures for discipline, including expulsion from the Association and suspension of the rights and privileges of a practitioner member or a non-practitioner member, to the franchise rights of law officers [the term "*franchise rights*" being used by him to refer to the purported rights of law officers to attend and vote and to be elected to Council]. I do not understand section 10 to have that impact or to be relevant to the question to be determined by the Court.

31. Mr. Benjamin went on to consider sections 11, 12, 13, 20(2) and 23. According to Mr. Benjamin, when section 23 is read with sections 26 and 27 of the Act, it is clear why Parliament used the language of exemption in section 27, providing specifically that law officers are practitioner members and for the avoidance of doubt, section 27 makes clear what is implied in section 26, that law officers do not have to pay.

32. Mr. Benjamin then turned to sections 36 and 37 of the Act which provide for the establishment of the Disciplinary Committee and how complaints are to be entertained before the Disciplinary Committee respectively. Mr. Benjamin pointed out that in sections 37(1) and 37(2) the Attorney General and law officers are excepted from the provisions for discipline under the Act. Despite that exception section 38(1) was specifically enacted and provided that the Fifth Schedule shall have effect in relation to disciplinary proceedings against Attorneys-at-law other than the Attorney General or law officers. Mr. Benjamin therefore argued that it was not necessary for the legislature to have section 38(1) enacted since there can be no complaints against law officers pursuant to sections 37(1) and 37(2).

33. Mr. Benjamin argued that section 27 was akin to section 38(1) and that the Act could exist without it; it was otiose. He argued that the Court would be able to conclude on a consideration of section 26 alone that law officers, because they have been deemed to have a practising certificate and to be practitioner members, are not required to pay subscriptions to the Association and contributions to the Fund. Mr. Benjamin therefore argued that there was a need to depart from the literal approach to section 27 and not merely to look at the *minutiae* of the sections in controversy.

34. Mr. Benjamin then joined Mr. Fitzpatrick and Mr. Martineau who raised the issue of the use of the word *"their"* in section 9(2). Section 9(2) provided that only practitioner members who pay *their* annual subscription to the Law Association are eligible to attend and vote and be elected to Council. From their submissions one main question arose: Does the use of the word "*their"* lead to an ambiguity and if it does what should be the approach of the Court in resolving that ambiguity? Both Mr. Fitzpatrick and Mr. Martineau argued that the use of the word *"their"* did not lead to any ambiguity. They argued that the use of the word *"their"* could not mean *"only if they are obligated to pay"*. Mr. Martineau described the argument as superficially attractive. Both Mr. Fitzpatrick and Mr. Martineau submitted that if the Court found that that there was ambiguity, it was open to the Court to look at the debate in Parliament recorded in the Hansard. Mr. Benjamin's approach, on the other hand, was for the Court to look within the Act and in the context of the Act to resolve any ambiguity. He objected to the Hansard being looked at in the circumstances of this case.

35. Mr. Benjamin also urged the Court to consider section 5 of the Act and the purposes of the Association. According to him, the section 5 purposes were fundamental to the Act. He therefore urged the Court to choose and to prefer an interpretation of the entire Act in general and sections 9 and 27 in particular which maintains the franchise rights of law officers having proper regard to the purposes of the Association, and not to choose an interpretation which grants an exemption with one hand and snatches it back with the other.

36. As to the debate in the Parliament recorded in the Hansard, Mr. Benjamin argued that the criteria in **Pepper (Inspector of Taxes) v Hart** [1993] AC 593 had not been satisfied on the narrow purpose for which the rule was designed. Mr. Benjamin further submitted that the rule in **Pepper v Hart** was not satisfied in the circumstances of this case in that the rule did not apply to

the House of Parliament sitting in Committee. He further argued that the only proper recourse to Hansard was for assistance on the historical context in which the Act was promulgated [**David Gopaul on behalf of H V Holdings Ltd v Vitra Imam Baksh on behalf of the Incorporated Trustees of the Presbyterian Church of Trinidad and Tobago** [2012] UKPC 1]. In **H V Holdings**, Lord Walker in giving the judgment of their Lordships observed that although the Board had been provided with a good deal of material about the origins of the Land Tenants (Security of Tenure) Act Chapter 59:54, he made it clear that none of that material met the stringent requirements of **Pepper v Hart** and therefore it could not be determinative of the particular issue of statutory construction that the Board had to decide. He noted however that the material did help to explain the general background and the mischief (referred to in Parliament as a crisis) which the Land Tenants Act was intended to remedy.

37. In the case of **ex parte Spath Holme** referred to earlier in this judgment Lord Nicholls had observed that the occasions on which reference to parliamentary proceedings was of assistance were rare and to be of assistance as an external aid the parliamentary statement relied on must be clear and unequivocal. According to Lord Nicholls, parliamentary statements seldom satisfied this test on the points of interpretation which came before the Court. Lord Nicholls pointed out that once the statements were clear and were made by a minister or other promoter of the bill, they qualified as an external aid. In such a case therefore the statements were a factor the court would take into account in construing legislation which was ambiguous or obscure or productive of absurdity. They were then part of the legislative background, *but they were no more than this*. Lord Nicholls set out the correct approach:

> G*overnment statements, however they are made and however explicit they may be, cannot control the meaning of an Act of Parliament. As with other extraneous material,*

it is for the court, when determining what was the intention of Parliament in using the words in question, to decide how much importance, or weight, if any, should be attached to a government statement. The weight will depend on all the circumstances.[16]

38. On Thursday the 31st July, 1986, the then Attorney General of Trinidad and Tobago and Minister of Legal Affairs who piloted the Legal Profession Bill said while the House of Representatives was in Committee[17]:

The position of the law officers. First of all we are given the erroneous statement that law officers are not subject to the code of ethics. Not true. Nothing in the bill says that the only thing we said about the law officers is that they do not have to contribute to the Compensation Fund and they do not have to make the annual subscription. What do I propose to do? I propose an amendment, as is circulated, which says, if they want to enjoy the privileges of voting and being on the Council, then they should pay the subscription, but if they do not want to do that they do not have to pay. The situation with the Compensation Fund is simple. The Compensation Fund is really to compensate the victims who are clients, of advocates, of counsel or barristers or attorney, whatever you want to call them. The client of the law officer is the State. The State is not going to the Compensation Fund and make a claim. So why must they pay a contribution to the Compensation Fund in respect of something that will never arise? Then we are told that they must be subject to the same form of discipline as the other barristers, that they Disciplinary Committee must have jurisdiction over them. As I pointed out ...

[16] Page 218
[17] Pages 491 and 492 of Hansard

Mr. N. Mohammed: *I am sorry to interrupt the learned Attorney General. Is the learned Attorney General aware of such lawyers being engaged in actual dealing with members of the public? Only yesterday, for example, I saw where a barrister-at-law who is attached to a bank, signed and executed a bill of sale that had to do with some finance company. I know of practitioners who are not advocates and who are not solicitors in private practice. They do deeds of conveyances, they do other forms of deeds. They practice to an extent. Will not the public require protection from such persons, or are they going to be debarred? Just give us an explanation.*

2.45 p.m.

Sen. The Hon. R. Martineau*: Yes, but we were not dealing with them; we are dealing with law officers. Law officers are the people who work with the State in the office of the DPP and the Solicitor General; those are the people whom they are saying must pay to the Compensation Fund; and those are the people about who – I am saying no, because they do not have clients out there, their client is the State. I am not dealing with non-State lawyers at all.*

The quarrel the Association has and I understood you to have – it seems as though you do not know what was the quarrel you put forward to us. It is the law officers they are saying must be subject to these things.

At pgs 502 and 503

Clause 9.

Question proposed, That clause 9 stand part of the bill.

Sen. Martineau: *Mr. Chairman, I beg to move that this clause be amended as in the list of amendments circulated. This is really designed to alter the extreme position now with law officers. What we are saying is that if they want to enjoy the benefits of the Association they must pay their subscription.*

Mr. Chairman: *The amendment is hon. Members, that after the word "members" occurring in line 1 the words "pay their annual subscription to the Law Association", be added.*

Mr. N. Mohammed: *Is the Attorney General saying that you cannot be a practitioner without paying the annual subscription to the Law Association?*

Sen. Martineau: *The position as the bill is drafted is that law officers do not have to pay a subscription to the Association or the Compensation Fund for the reasons I gave and the arguments that came up. What we are saying is if they want to enjoy the rights and entitlement of members of the Association they must pay the subscription.*

At pg. 511

Clause 27.

Question proposed, That clause 27 stand part of the bill.

Sen. Martineau: *The amendment on clause 27 is intended to tie in with that of clause 29, which as I say is designed to make the law officer pay his subscriptions etc., if he wants to enjoy the benefits. It is complementary to the amendment on clause 29.*

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the bill.

39. In my judgment, these statements from the Hansard meet the criteria set down in **Pepper v Hart** and can be considered by the Court in the event of any ambiguity for the purposes set out by Lord Nicholls in **ex parte Spath Holme.** They are clear and unequivocal and made by the promoter of the Bill. It would then be for the Court to determine what weight and importance should be attached to those statements in the circumstances of this case. I can see nothing in the law and no good reason why parliamentary statements made by the promoter of a bill in the House *in Committee* should be ignored if they satisfy the criteria set down by **Pepper v Hart**.

40. The Court has considered the various submissions advanced on behalf of the parties. In my view, Mr. Benjamin has correctly contended that in giving effect to the intention of Parliament, the Court ought to apply the purposive approach to statutory interpretation and not concentrate unduly on the minutiae of the enactment. I accept that the proper approach is to read the controversial provisions in the context of the statute as a whole and the statute as a whole should be read in the historical context which led to its enactment.

41. The Court has considered sections 9(2) and 27 within the context of the Act as a whole. I have found no ambiguity in this case. The use of the word "their" in section 9(2) of the Act does not suggest that only those persons who are obligated to pay should fall within the purview of that section. To come to that conclusion would be for the Court to concentrate unduly on the minutiae of the enactment. Further, within the context of the Act as a whole, I find nothing ambiguous or absurd with Parliament, having deemed law officers to be the holders of valid practising certificates and to be practitioner members, making provision in the following section of the Act that these law officers are exempt from the payment of subscriptions and contributions

subject to section 9(2). Further, I do not agree with Mr. Benjamin's argument that section 27 is really otiose, akin to section 38 of the Act. Such an interpretation, in my view, ignores the specific provisions of sections 9(2) and 27 within the context of the Act as a whole. I agree with Mr. Fitzpatrick that even if the Court could treat section 27 as otiose, section 9(2) cannot be so treated or overlooked and would still apply to law officers.

42. The Court has looked at sections 9(2) and 27 within the context of the Act as a whole as a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed.[18] In my judgment, it was the intention of Parliament that law officers should be treated as all other practitioner members so far it relates to their participation in the general meetings and elections of the Association. Parliament intended that in order to attend and vote at general meetings or at an election of members of the Council, and to be elected to the Council, law officers must pay annual subscriptions to the Association. The Court notes the important concession made by Mr. Fitzpatrick and recorded at paragraph 19 of this judgment that the legislation did not require the payment of all arrears of subscriptions but only payment of the annual subscriptions for the current year.

43. In the Court's view, such an interpretation does not deprive law officers of any franchise rights. It places law officers on an equal footing with all other practitioner members and treats them as all other practitioner members enjoying the same franchise rights. In my judgment, it was the intention of Parliament that once law officers wished to participate in the general meetings and elections of the Association, they should pay subscriptions to the Association in the same way as other practitioner members. In these circumstances, in my view, there is no breach

[18] See Lord Hoffmann in Attorney General of Belize and others v Belize Telecom Ltd and another [2009] 2 All ER 1127, at page 1132 para. 16

of the constitutional right of association as has been argued by Mr. Benjamin. Further, there is no disenfranchisement of law officers by such an interpretation. In addition, I do not accept that law officers are by such an interpretation being unfairly excluded from participation in the general meetings and elections of the Association. I agree with Mr. Martineau that the sections in controversy seek to regulate the general meetings and elections of the Association in the context of the Act and that the constitutional right of association, even if could be applied in this context, was not absolute.

44. It must be remembered that law officers can participate in all other affairs of the Association without paying any subscriptions to the Association. They also continue to enjoy all rights and benefits as other practitioner members without paying contributions to the Compensation Fund or subscriptions to the Association. If they do not wish to participate in the general meetings and elections of the Association, they do not have to pay subscriptions. That option is not open to other practitioner members who must pay both contributions to the Fund and subscriptions to the Association in order to obtain practising certificates.

45. Mr. Benjamin raised the important issue of the section 5 purposes of the Association. The Court does not accept that the Court's interpretation of sections 9(2) and 27 somehow negatively impacts on these purposes. It must be remembered that the conjoint effect of the deeming provisions of section 26 and the provisions of section 6 of the Act entitle law officers to practise law as if they held a practising certificate. By virtue of those provisions of the Act they are also members of the Association and enjoy the benefits of that membership, subject only to sections 9(2) and 27. In my view, law officers are not prevented from accomplishing the purposes contained in section 5 of the Act because they have to pay subscriptions to the Association.

46. If I am wrong, and there is ambiguity or absurdity in the sections to be construed, I will have regard to the external aid provided by the parliamentary statements set out at paragraph 38 of this judgment bearing in mind the principles laid down by Lord Nicholls in **ex parte Spath Holme**[19] that the statements are merely a factor to be taken into account in construing legislation which is ambiguous and cannot control the meaning of an Act of Parliament; it is not the subjective intention of the promoter of the Bill that matters; it is an objective concept. It is therefore for the Court when determining what was the intention of Parliament in using the words in question to determine how much importance and weight should be attached to those statements. In those circumstances, I have found that my construction of the sections in controversy has not change. In my judgment, this external aid serves as yet another factor in my arriving at the conclusion that Parliament intended that law officers should pay subscriptions in order to participate in the general meetings and elections of the Association.

47. As to the issue of costs, the parties agreed at the commencement of the hearing of this matter, that each party would bear its own costs.

ORDER:

The Court determines the questions as follows:

(1) According to the provisions of the Legal Profession Act Chap. 90:03 ("the Act") law officers as defined by section 26 of the Act are not entitled to –

(i) attend and vote at a general meeting of the Law Association of Trinidad and Tobago ("the Association") or at an election of members of the Council; or

[19] See paragraph 37 of this judgment

(ii) be elected to the Council,

without paying subscriptions to the Association.

(2) Judicial Research Assistants employed by the Judiciary of Trinidad and Tobago are law officers within the provisions of the Act.

AND IT IS FURTHER ORDERED that each party do bear its own costs.

.....

MAUREEN RAJNAUTH-LEE

JUDGE