

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. CV2016-01690**

**IN THE MATTER OF AN APPLICATION BY ANDREW SEESAHAI FOR JUDICIAL  
REVIEW UNDER THE JUDICIAL REVIEW ACT CHAPTER 7:08**

**AND**

**IN THE MATTER OF THE FAILURE OF THE DEFENCE COUNCIL (ESTABLISHED  
UNDER SECTION 7 OF THE DEFENCE ACT CHAPTER 14:01) TO COMPLY WITH  
THE PROVISION SECTIONS 194 OF THE DEFENCE ACT CHAPTER 14:01**

**BETWEEN**

**ANDREW SEESAHAI**

**Claimant**

**AND**

**THE DEFENCE COUNCIL**

**Defendant**

**Before the Honourable Mr. Justice Frank Seepersad**

Appearances:

1. Mr. Gerald Ramdeen instructed by Ms. Dayadai Harripaul for the Claimant
2. Ms. Hinds instructed by Ms. Mark for the Defendant

**Date of Delivery: June 27, 2017**

## JUDGMENT

1. Before the court for its determination was the Claimant's Fixed Date Claim Form by virtue of which the following reliefs were sought:
  - (i) A declaration that the Claimant is entitled to a decision due to him in accordance with s.194 of the Defence Act Chapter 14:01 with respect to his complaint/petition dated August 28, 2014.
  - (ii) A declaration that there had been unreasonable delay on the part of the Defendant in making a decision on the Claimant's complaint/petition dated August 28, 2014.
  - (iii) A declaration that the failure of the Defendant, which failure is continuing, to make a decision with respect to the Claimant's complaint/petition dated August 28, 2014 is unreasonable, unlawful and illegal.
  - (iv) An order of mandamus to compel the Defendant to make a decision with respect to the Claimant's complaint/petition for redress of grievance within 7 days from the date hereof pursuant to s. 194 of the Defence Act.
  - (v) A declaration that the failure of the Defence Council to make a decision pursuant to s. 194(2) of the Defence Act on the complaint of the Claimant is in breach of the Claimant's right to the protection of the law guaranteed under s. 4(b) of the Constitution.
  - (vi) That the Defendant do pay to the Claimant costs of and associated with the making of this application to be assessed in default of agreement.
  - (vii) Such further orders, directions or writs as the court considers just and as the circumstances of the case warrant pursuant to s. 8(1)(d) of the Judicial Review Act 2000.
2. An affidavit was filed by the Claimant in support of the Fixed Date Claim Form and the Defendant filed two affidavits.

3. The issues to which the court addressed its mind are as follows:
  - (i) Whether the Claimant is guilty of material non-disclosure so as to warrant a refusal of the reliefs sought.
  - (ii) Whether no practical purpose would be achieved if the reliefs sought are granted.
  - (iii) Whether there has been unreasonable delay by the Defendant in making a determination on the Claimant's petition.
  - (iv) Whether the delay on the part of the Defendant in making a determination on the Claimant's petition amounts to a breach of the Claimant's constitutional right to the protection of the law rendering the failure to make a decision unlawful.
  - (v) Whether the Claimant is entitled to the relief sought in the Fixed Date Claim filed on June 6, 2016.

### Resolution of the Issues

#### Issue (i): Non-Disclosure

4. On the issue of non-disclosure, the Defendant, in its submissions, pointed to the fact that the Claimant failed to inform the court that he did proceed on resettlement training since October 2014. It is not in dispute that this information was not placed before the court by the Claimant and the Defendant only did so late in time. The critical issue, for determination is whether this fact was a material fact which the Claimant had an obligation to disclose.
5. The issue of whether or not information is material has to be determined by the court and in doing so the court must refer to the issues that are before it.
6. When one considers the relief sought by the Claimant, no issue is taken with the Claimant's resettlement but the thrust of the Claimant's complaint is focused upon the Defendant's alleged delay in discharging the statutory obligation under s.194 of the Defence Act (hereinafter referred to as "the Act") and a determination as to whether the evidence has

established that there has been unreasonable delay by the Defendant in the making of a decision relative to the Claimant's petition.

7. The Claimant's petition was annexed as "AS3" to his affidavit filed on May 18, 2016 and essentially contained complaints in relation to the conduct of Major Mc Clean. There is no correlation between the issue of resettlement training and the gist of the Claimant's complaint.
8. Accordingly, the failure of the Claimant to disclose the fact that he had proceeded on resettlement training did not materially impact upon the subject of his complaint, which is the alleged misconduct of Major Mc Clean and the non-disclosure is irrelevant to the issue as to whether or not there has been unreasonable delay to make a decision under s.194 of the Act. The issue of resettlement training was collateral to the issues raised in the Claimant's petition, the substantive issue being the alleged misconduct of Major Mc Clean and so the Claimant's failure to disclose same is not detrimental to the instant claim.

Issue (ii): Would any practical purpose be achieved by granting the relief sought?

9. Once the process under s. 194 of the Act has been invoked, there exists a statutory obligation to render a decision. The Defence Council, by virtue of s.7 of the Act, is comprised of the Minister of National Security, two cabinet ministers appointed by the Prime Minister, the Chief of the Defence Staff, and the Permanent Secretary of the Ministry of National Security.
10. Until the Council renders a decision, the complaints of complainants are extant and in that context it cannot be said that an action that calls into question the issue of delay under s.194 of the Act is without merit.
11. The armed forces and the conduct of all of its members should always be able to withstand public scrutiny and the highest standards of deportment and conduct are to be expected. When any allegation of alleged unbecoming conduct is made, the said issue must be thoroughly investigated, and where the process under s.194 of the Act has been invoked, a

decision by the Council must be made within a reasonable time period as it is in the public's interest that the statutory mandate under s.194 is discharged in accordance with the law.

12. The ambit of power vested in the Defence Council is extensive and the court, as a Court of Superior Record, should not hesitate to intervene, if its jurisdiction is invoked, to issue declaratory relief, if warranted so as to ensure that the statutory obligations are effectively and efficiently discharged.

Issues (iii) & (iv): Has there been unreasonable delay by the Defendant? If yes, does it amount to a breach of the Claimant's Constitutional rights?

13. S. 15 of the Judicial Review Act Chap. 7:08 gives statutory underpinning to the right to challenge an administrative decision on the basis of delay. S. 15 of the Judicial Review Act states:

*“15. (1) Where—*

*(a) a person has a duty to make a decision to which this Act applies;*

*(b) there is no law that prescribes a period within which the person is required to make that decision; and*

*(c) the person has failed to make that decision,*

*a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that there has been unreasonable delay in making that decision.”*

14. Delay, where it arises, does not accord with good administration and is justifiably recognised as a legitimate ground to warrant Judicial Review. Administrative decisions by administrative bodies directly impact upon the rights of citizens and must therefore be exercised in a way that is fair, just, and proportionate. In its determination as to whether the time period which elapsed in this case is unreasonable, the court had regard to s.23 of the Interpretation Act Chap. 3:01 which states that:

*“23. Where a written law requires or authorises something to be done but does not prescribe the time within which it shall or may be done, the law shall be construed as requiring or authorising the thing to be done without unreasonable delay having regard to the circumstances and as often as due occasion arises.”*

15. The Interpretation Act imposes upon a public authority the duty to act without unreasonable delay. On the facts before this court, there has been a delay of two (2) years and nine (9) months since the Claimant’s petition was lodged and to date no determination of same has been undertaken by the Defence Council and no decision has been made.
16. The factors to which the Court can have regard when determining whether there has been unreasonable delay includes the following:
  - (i) The importance of the issues to be determined to the person whose interest is at stake, per Elias J in **R v Secretary of State for the Home Department ex parte Mersin [2000] QBD 522.**
  - (ii) The volume of matters that the public authority has to deal with, per Carnwath J in **R v Secretary of State for the Home Department ex parte S [2007] EWCA Civil.**
  - (iii) Any policy of the Defendant public authority in relation to timing (**R v Secretary of State for the Housing Department ex parte Jawad [2010] EWHC 1800 (Admin)** paragraph 27-28 and 47 per Wyn Williams J).
  - (iv) The nature and complexity of the issues that the tribunal is required to determine.
  - (v) The prejudice that is being suffered by the Claimant as a result of the delay (**R v Secretary of State for the Home Department ex parte Jawad** (supra) paragraph 43-47 per Wyn Williams J).
  - (vi) The reasons advanced for the delay.
  - (vii) The need to ensure fairness (**R v Secretary of State for the Home Department ex parte S** (supra)).
  - (viii) The nature of the statutory provision that imposes the duty to make a decision.

17. No evidence has been adduced by the Defendant so as to establish that the issues contained in the petition are not important to the Claimant and no information has been adduced as to the number of unresolved petitions before the Defence Council to assist the court in determining whether the delay to render a decision was as a result of a voluminous amount of petitions. The issue on the Claimant's petition related to the lawfulness and appropriateness of the conduct of senior military officers. Inaction of the Defence Council can lead to a circumstance where the administration of the Defence Force could be brought into disrepute if it is established that inappropriate conduct by officers has gone unchecked.
18. S. 194 (2) of the Act imposes upon the Defendant a positive, non-delegable duty to investigate any complaint before it, and the court is of the view that the evidence adduced by Ms. Morris with respect to attempts by the Ministry of National Security to treat with the instant issue by the issuing of requests to the Chief of the Defence Staff does not amount to a discharge of the statutory mandate to "investigate the complaint".
19. In **Sam Maharaj v Prime Minister of Trinidad and Tobago [2016] UKPC 27, PC Appeal No. 0056 of 2015**, the right to act promptly has been confirmed by the Board of the Privy Council as an element of the "protection of the law" which is guaranteed, and "access to justice", the Board opined at paragraph 37, "*must be prompt and efficacious*". The right to a prompt and efficacious determination can also find foundational premise under s.5(2) of the Constitution.
20. With respect to the issue of promptness, the Claimant submitted as follows:
- (i) Under s. 194 of the Act, the Defendant has a duty to investigate the complaint of the Claimant and either report to His Excellency or redress the complaint.
  - (ii) The Claimant is entitled to a determination of his petition from the Defendant as part of the corpus of rights that he is guaranteed under the Constitution.
  - (iii) There is no dispute that the Defendant has not determined the Claimant's petition that was lodged with his superior officer since August 28, 2014.
  - (iv) The period that has elapsed since the Claimant lodged his petition to the Defendant is ex facie unreasonable and inordinate being a period of 2 years and 9 months.

- (v) No explanation has been advanced by the Defendant to justify the inordinate delay.
- (vi) The Claimant, on the affidavit evidence before the court, has suffered substantial prejudice as a result of the delay by the Defendant and the Defendant would have been aware of the prejudice suffered by the Claimant.

21. The Court is concerned that no proper explanation has been advanced by the Defendant so as to explain why the Claimant's petition has not been determined and a Body such as the Defendant, clothed with the statutory obligation to adjudicate upon the rights and obligations of members of the Defence Force, cannot simply abdicate its duty by its failure to promptly and efficiently address complaints referred to it. The Court deprecates the Defendant's inaction and the fact that for over 5 years the Defence Council did not meet to consider petitions must be strongly condemned. It is difficult to fathom why during the last four years of the previous government's tenure, no meeting of the defence council was occasioned. Such a circumstance is simply unacceptable and really amounts to a gross dereliction of the statutory obligation that it was mandated to follow. This untenable situation continued into the new administration's reign until a meeting was eventually held on the 14<sup>th</sup> July, 2016. The executive must be held to account when it fails to discharge a statutory obligation and the Court cannot condone such a situation as it serves to eviscerate public confidence in a good administration and it can result in significant prejudice being occasioned to officers who have engaged the process provided for under Section 194 of the Act.

22. In the circumstances, the Court is resolute in its view that the Defendant has denied the Claimant a prompt and efficacious determination of its petition and the delay in rendering same is unreasonable and unacceptable.

23. Guided though by the dicta in **Jaroo v. The Attorney General of Trinidad and Tobago (2002) UKPC**, the Court must consider, in determining whether or not it should grant constitutional relief whether there exists to the Claimant an alternative or alternate remedy. Having regard to the nature of the Claimant's claim, the Court is of the view that the Claimant's remedy lies in Judicial Review in so far as he has joined issue with the failure or refusal of the Defence Council to make a decision in respect of his petition. Appropriate



remedies can be issued to address the unreasonable delay by the Defence Council and the Court finds that there is no circumstance on the facts before it to justify any declaratory relief under the Constitution.

Issue (v): Grant of Relief

24. The court therefore finds that the Defendant's failure to make a decision with respect to the Claimant's petition before it dated August 28, 2014 is unlawful and, accordingly, hereby grants the following reliefs:

- (i) It is hereby declared that the Claimant is entitled to a decision relative to his petition dated August 28, 2014 in accordance with s.194 of the Defence Act Chap 14:01.
- (ii) The court declares that there has been unreasonable delay by the Defendant in the discharge of its obligations under s.194 of the Defence Act Chap. 14:01 to make a decision on the Claimant's complaint dated August 28, 2014.
- (iii) The court declares that the continued failure of the Defendant to issue a decision in relation to the Claimant's complaint dated August 28, 2014 is unreasonable.
- (iv) An order of mandamus is hereby issued so as to compel the Defendant to make a decision relative to the Claimant's petition dated August 28, 2014, pursuant to s.194 of the Defence Act Chap. 14:01, within fourteen (14) days of the date hereof.
- (v) The Defendant is to pay to the Claimant the cost of this action which shall be assessed by the Registrar in default of agreement.

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**FRANK SEEPERSAD**  
**JUDGE**