

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Port of Spain**

**Claim No. CV2019-01537**

**BETWEEN**

**DINANATH RAMNARINE**

Claimant

**AND**

**THE TRINIDAD AND TOBAGO CRICKET BOARD OF CONTROL (TTCB)**

Defendant

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

**Date of Delivery:** January 27, 2020

**Appearances:**

1. Mr. Vivek Lakhani-Joseph and Mr. Kiel Taklalsingh instructed by Mr. Rajesh Bududass for the Claimant.
2. Mr. Odai N.S Ramischand and Mr. Navindra Ramnanan instructed by Mr. Shivanand Ramnanan for the Defendant.

## Decision

1. Before the Court for its determination is the Claimant's fixed date claim form filed on May 8, 2019 by virtue of which the following reliefs were sought:
  - I. An order striking out Article 8.02 (ii), (iii), (iv), (v),(vi) from the Constitution of the Defendant, the words which allow for material conflicts of interest in the composition of the Defendant's board.
  - II. An order of Mandamus directing the Defendant to adjust Article 1.2 of the Defendant's Zonal regulations thereby removing members of Affiliates, Primary School Representatives, Secondary School representatives and Umpire's Association from the Voting membership of the Zonal council.
  - III. An order of Mandamus directing the Defendant to submit copies of the Constitution and Rules, Audited financial Reports for the last three year board term, Annual report for the last three year board term and Quarterly reports for the last three year board term, for all of its Zonal Councils and Affiliate members, to the Claimant and full Board membership, in line with the Articles of its Constitution and Zonal Regulations within 30 days of the determination of this matter or in such time which the Honourable Court deems fit and just in the circumstances.
  - IV. An order of Mandamus directing the Defendant to institute industry standard governance, reporting and financial procedures within 90 days of the determination of this matter

or in such time which the Honourable Court deems fit and just in the circumstances.

- V. The Report on the Governance of Trinidad and Tobago Cricket led by the Honourable Justice Vasheist Kokoram (Chairman), Dr Sheila Rampersad and Mr. Ellis Lewis (former President of the TTCB) can be used as a necessary starting point in improving the Governance of the TTCB.
- VI. An order of Mandamus directing the Defendant to institute internal controls for the proper Financial and Operational management TTCB, its fully owned subsidiary Red Force Cricket T&T Ltd, its Zonal Councils and Affiliate members within three (3) months of the determination of this matter or in such time which the Honourable Court deems fit and just in the circumstances.
- VII. An order of Mandamus directing the Defendant to hold fresh Zonal elections within three (3) months of the determination of this matter or in such time which the Honourable Court deems fit and just in the circumstances.
- VIII. An order of Mandamus directing the Defendant to hold executive elections within six (6) months of the determination of this matter or in such time which the Honourable Court deems fit and just in the circumstances.
- IX. An order that this Honourable Court, subsequent to the hearing of this application for judicial review, maintain a supervisory

jurisdiction, over the Orders granted and Electoral processes of the Defendant.

X. Costs.

XI. Any other relief and/or order the Honourable Court may deem fit and appropriate in all the Circumstances.

2. The parties agreed that the issues for the Court's determination had been narrowed and a statement of agreed and unagreed issues was filed on November 25, 2019.

3. The issues to be determined by this Court are as follows;

- i. Whether the instant matter amounts to an abuse of the Court's process.
- ii. Whether leave should be granted to pursue the instant claim.
- iii. Whether or not non-compliance with Article 12 of the TTCB rules, in particular Rule 12.05, debars affiliate members from voting in executive and/or zonal elections.
- iv. Whether participation at the executive elections and the casting of votes is dependent upon Compliance by Zones with articles 4, 6, 8 and 10 of the Defendant's Zonal Regulations.
- v. Whether the Court should call upon the Defendant to investigate and or audit its finances based on the findings of the NGC audit.

## RESOLUTION OF ISSUES

### Issue I

4. The Court considered the decision in **CV2016-03556 Dinanath Ramnarine (et al) v Trinidad and Tobago Cricket Board of Control** (the previous matter) and noted that although the Claimant's claim initially sought reliefs which are mirrored in the instant claim, there was an abandonment of the grounds which related to zonal election irregularities and the judgment delivered in the previous matter dealt only with the legality of Article 4.01 (i) and (ii).
5. When this Court has regard to the issues before it, it cannot be said that the Court is now being asked to re-litigate issues which have been previously determined by another court.
6. At the core of the instant matter is the interpretation and effect of Article 12 of the Defendant's constitution and that exercise was not undertaken in the previous matter. Accordingly, the issue of the abuse of the Court's process does not arise on the factual matrix before this Court.

### Issue II

7. There are interpretive issues in this matter which warrant the Court's attention and the arguments advanced by the Claimant, are not devoid of merit and are they are arguments which have a reasonable prospect of success.
8. The Court noted that the Claimant did not in its leave application disclose matters which ought to have been disclosed, namely in relation to the previous matter. The issue of non-disclosure was however subsequently addressed. Ultimately this Court holds the view that the non-disclosure

occasioned no prejudice to the Defendant nor was any advantage enjoyed by the Claimant.

9. This Court is of the view that the grant of leave is appropriate and warranted, notwithstanding the non-disclosure, but the Court holds the view that it should bear the non-disclosure in mind when it exercises its discretion and considers the merits of the case.

### **Issues III and IV**

10. Article 12.05 of the TTCB's Constitution provides –

*“Each affiliate shall be required to submit to the General Secretary of the TTCB the following –*

- (i) A copy of the Constitution and Rules as amended*
- (ii) Within seven (7) days of its AGM, a list of its executive and TTCB representatives;*
- (iii) Within fifteen (15) days of its Annual General Meeting a copy of its Annual report (Secretary's report)*
- (iv) Within fifteen (15) days of its Annual General Meeting, a copy of its audited financial report*
- (v) Quarterly reports for presentation at the TTCB quarterly meetings”*

11. Article 12.01 of the TTCB's Constitution states that the Board **shall** recognize the following affiliates which includes (i) The National Primary School League (NPSL), (ii) The Secondary Schools Cricket League (SSCL), (iii) The Tobago Cricket Association (TCA), (iv) The Trinidad and Tobago Cricket Umpires and Scorers Council (T&TCUSC), and (v) The Trinidad and Tobago

Women's Cricket Association (TTWCA) and (vi) Such other Associations/Leagues promoting cricket.

12. Article 3.02 of the TTCB's Constitution states that the membership of the Board **shall** comprise, *inter – alia*, voting members to include, *inter – alia*, two (2) members each of the NPSL, SSCL, TCA, T&TCUSC and TTWCA. By virtue of Section 3.02, these members are constitutionally entrenched members of the Board. Of the 49 voting members on the Board, these affiliates comprise 10 voting members.
13. Under the constitution, affiliates referenced under Article 12.01 (vi) are allocated to zones and form part of the Zonal Council. In accordance with Article 3.02, 2 members from each of these affiliates/associates/leagues promoting cricket shall be elected by their league and their election would depend upon process adopted by each affiliate.
14. Article 12.05 provides that the affiliates are required to submit specified information to the Cricket Board within specified time periods.
15. At paragraphs 13 to 19 of the Claimant's principal affidavit, he alleged that affiliates who participated in the January 2019 elections were not compliant with Article 12 of the constitution and given the crucial role which affiliates play in the electoral process, Article 12 should be viewed as being mandatory. He submitted that compliance with same should be a condition precedent to enable voting in the election. The Claimant further argued that the affiliates should lose their affiliate status, if there is non-compliance with Article 12 and that Article 12 is a clear expression of policy from which the Defendant cannot depart.
16. The Claimant further argued that the Defendant had an obligation to consider the issue as to non-compliance with Article 12, as a relevant consideration and its decision to proceed with the elections was one which cannot stand.

17. In his affidavit, the Claimant pointed to the fact that the Defendant was informed prior to the election that there were concerns that affiliates did not conform with Article 12 however these concerns were ignored. The Claimant pointed out that the Defendant failed to proffer an explanation as to why it elected to proceed with the elections and permit non-compliant affiliates to vote. The Claimant then suggested that such a course underscored the arbitrary, unreasoned and reviewable approach which was adopted by the Defendant.
18. The Court found, that the failure by the Defendant to explain, why, despite non-compliance with Article 12, the affiliates, were permitted to participate in the election process and/or AGM, was odd. The Court therefore considered the learning in **Judicial Remedies in Public Law, Fifth Edition, Lewis at paragraph 9-097** which states as follows:

*“The courts generally recognize that there is an obligation on a public authority to make candid disclosure to the court of its decision-making process, laying before it the relevant facts and the reasoning for the decision challenged. The Court of Appeal has indicated that judicial review is unlike civil litigation and once permission has been granted the defendant should provide sufficient information to enable the court to determine whether the actions complained of were lawful. Sir John Donaldson M.R expressed the view that the defendant was under “a duty to make full and fair disclosure” once permission was granted. Purchas LJ expressed his view more circumspectly, stating that the defendant “... should set out fully what they did and why so far as is necessary fully and fairly to meet the challenge” made by the claimant.”*



19. The Court also noted that Lord Donaldson M.R in **R v Lancashire County Council, ex p Huddleston [1986] 2 All ER 941** articulated the following view in relation to a Defendant's duty of candour:

*“Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration. With very few exceptions, all public authorities conscientiously seek to discharge their duties strictly in accordance with public law and in general they succeed. But it must be recognised that complete success by all authorities at all times is a quite unattainable goal. Errors will occur despite the best of endeavours. The courts, for their part, must and do respect the fact that it is not for them to intervene in the administrative field, unless there is a reason to inquire whether a particular authority has been successful in its endeavours. The courts must and do recognise that, where errors have, or are alleged to have, occurred, it by no means follows that the authority is to be criticised. In proceedings for judicial review, the applicant no doubt has an axe to grind. This should not be true of the authority. The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities. It is not discreditable to get it wrong. What is discreditable is a reluctance to explain fully what has occurred and why”.*

20. The Defendant agreed that its General Secretary has the authority to extend the time for the submission of items referenced in Article 12 but adopted the position that there exists no nexus between Article 12 compliance and the right to vote, as Article 3.02 affiliates have a constitutional right to vote at the annual general meeting.
21. The Claimant also asserted that there was non-compliance by the Zones in relation to various Articles of the Zonal Regulations.
22. The various articles of the Defendant's Zonal regulations require the Zonal councils to submit to the board of the Defendant copies of their Members, Rules, Audited financial Reports each year, Annual reports for each year, Quarterly reports for each year, income and expenditure statements for each year, have an AGM as well as multiple other requirements.
23. The matter of alleged non-compliance was extensively detailed in the Affidavits filed by the Claimant. He outlined that in the face of non-compliance these Zonal councils were permitted to participate in the January 2019 elections.
24. The Claimant stated that in the circumstances, the Defendant acted unlawfully, unreasonably and in bad faith by not adhering to the Articles 2, 3, 4, 6, 7, 8, 9 and 10 of the Defendant's Zonal regulations. Consequently, he stated that in exercising its power and by its decision on this particular issue, the election process was unfair, illegal, unreasonable and undemocratic.
25. In **Sylvester Pino v The Agricultural Society of Trinidad and Tobago Claim No. CV2014-00563 at paragraphs 20 and 21** this Court said as follows:

20. *“The holding of elections that are free and fair is one of the foundational pillars of any democratic system of governance and extreme caution must be exercised before election results are overturned. The electoral process is ultimately conducted by human beings and errors can therefore be made, it is therefore highly unlikely that any election would be perfect. However any irregularities that arise, must be substantial in nature and must have been calculated to or have the resulting effect of impacting on or affecting the eventual election result. This Court is therefore of the view that the position outlined in Leroux (supra) and Laboucan (supra) should be applied and followed in the instant case. In determining whether or not there were substantial irregularities the Court must consider the evidence and matters that pertained to the manner in which the election was conducted and the processes that were adopted and same has to be examined under the general headings of illegality and fairness. The Court must also consider the issue as to whether or not the Claimants were deprived of any legitimate expectation. Ultimately, the process has to be measured against the accepted applicable principles of Natural Justice.*

21. *Once such an exercise is undertaken, the Court must then determine whether any irregularities that have been found to have occurred are of such a nature that they render the election as a whole unsafe, as they were calculated to or had the effect of affecting the election result. To succeed the Claimants must present sufficient evidence so as to demonstrate that the irregularities complained about are substantial and had the effect of casting doubt on the election results. If they are able to do this, then the onus will be on the Defendant to demonstrate that the*

*irregularities did not affect the results of the election.”*

26. **The Defendant discharges a very important mandate as its decisions can materially impact upon the welfare of the sport of cricket. Cricket is a sport which is intricately woven into the cultural and social fabric of this Republic and the wider Caribbean region. One therefore cannot disregard the local environment and in particular the method by which local and village cricket occurs within the various geographic areas in this Republic.**
  
27. **The Court can and does take judicial notice of the fact that many who engage in the sport, manage and regulate teams on a voluntary basis, fuelled by their love of the game. In many instances the persons who run these small teams may not have the best education nor are they versed in accounting or proper record keeping but they do provide an invaluable service to their villages and schools.**
  
28. **A general flexible approach has to be adopted in relation to the zones and it cannot be said that the failure to strictly comply with Articles of the Zonal Regulations should deter delinquent zones from participating in the executive elections, notably the constitution makes no express provision for the adoption of such a stance.**
  
29. **Although the constitution lays out a specified and detailed requirement in relation to reporting, it is impractical to expect that all village clubs within zones may meet these heightened levels of reporting. The approach suggested by the Claimant may have a negative impact which can frustrate the development of the sport. Ultimately a measured degree of uniformity has to characterise the approach which is adopted.**

30. In **GKN Bolts and Nuts Sports and Social Club, Re Leek v Donkersly [1982] 2**

**All ER 855** Megarry V.C articulated the following approach –

“As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints”.

**31. This Court is of the view that the approach adopted by the Defendant in relation to the zones cannot be viewed as being one which was unreasonable or arbitrary and the Defendant was not mandated to rigidly apply rules so as to impose an implied sanction where none was expressed in the constitution. In the round, the approach adopted reflected the “play at the joints” position articulated by Megarry V.C.**

32. In relation to the issue as to the purport and effect of Article 12, the Court noted that annexed to the Defendant’s principal affidavit filed on June 11, 2019, as ‘AR20’, was a bundle which contained reports from the respective affiliates. In addition, the minutes of the meeting held on February 20, 2019, reflect at item 6, that all zones and affiliates had submitted their respective reports.

33. Having considered the Defendant's constitution, this Court is resolute in its view that there exists no nexus between Article 12 and the right to vote at an annual general meeting. In fact all the affiliates referenced at Article 3.02 of the constitution, have a constitutional right to vote at annual general meetings even if there is non-compliance with the reporting requirements outlined under Article 12.
34. By way of an analogy, every working citizen of this Republic who earns more than the exempted non-taxable annual income must pay taxes. Taxes fund the administration of the State and are essential yet a citizen who fails to pay taxes can participate in local government and national elections.
35. Where there exists a recognised right to engage in an electoral process, any limitations on the exercise of that franchise which may lead to disqualification from participating in the said process, must be expressly stated. The Defendant's constitution forms a contract between the organisation and its constituent members thereby vesting mutual rights and obligations. Non-compliance with Article 12 should lead to the imposition of sanctions but in the absence of an express constitutional provision which removes the right to vote for non-compliance, the affiliates cannot be deprived of their right to vote as established under Article 3.02.
36. The Court has the authority to invalidate the electoral process but its discretion should be exercised when the adduced evidence demonstrates that the electoral process was marred by substantial irregularities which cast fundamental doubt upon the fairness and sanctity of the process and the resultant electoral results.
37. The Claimant in this case has not discharged the evidential burden and no irregularities have been established which can lead the Court to conclude that

the electoral process was so flawed that the results have been compromised. The Court in its assessment of the purport of Article 12 also considered the law as summarized in De Smith's Judicial Review 8th Edition at paragraph 5-060, which states:

“A second reason for the tangle in this area is the use of the terms “mandatory” and “directory”; the latter term especially misleading. **All statutory requirements are prima facie mandatory.** However, in some situations the violation of a provision will, in the context of the statute as a whole and the circumstances of the particular decision, not violate the objects and purpose of the statute. Condoning such a breach does not however, render the statutory provision directory or discretionary. The breach of the particular provision is treated in the circumstances as not involving a breach of statute taken as a whole. Furthermore, logically, a provision cannot be mandatory if a court has discretion to enforce it”

**38. The Court having considered the law and the nature of the service provided by the Defendant, mindful that context is everything, is of the view and holds that Article 12 of the constitution does not outline mandatory requirements which must be satisfied as a condition precedent to enable affiliates to exercise the right outlined at Article 3.02 of the Defendant's constitution.**

39. If there is a view that Article 12 non-compliance should prevent the defaulters from voting, then the constitution should be amended in accordance with Article 29. This Court would not arbitrarily usurp the authority of the Defendant and effectively engage in a judicial constitutional amendment.

40. Even if the Court's interpretation of the effect and purport of Article 12 and its correlation to the voting process is wrong, the Court noted that under the

Defendant's constitution, the affiliates have 10 votes. If one assumes that the elected President Mr. Azim Bassarath got the 10 affiliate votes and these 10 votes are deducted from the total number of votes he received, he would still be left with the majority of votes. Consequently the role of the affiliates in the election did not materially alter the election result.

#### **Issue V: The NGC Audit**

41. It is evident that the Defendant, like many other entities, despite having a statutory underpinning, has for the most part been left to its own devices in relation to the administration of cricket. Apart from incorporating statutes and in some cases, general regulations, sporting bodies, professional associations, trade unions and societies such as the Agricultural Society of Trinidad and Tobago, have all been embroiled in litigation which has challenged, *inter alia*, disciplinary matters and electoral outcomes.

42. In the absence of any mandatory overarching code of conduct or governance to guide these bodies, the Claimant invited the Court to exercise its supervisory jurisdiction so as to ensure that the Defendant acts lawfully. The Claimant contended that the importance of such judicial supervision is necessary given that cricket within Caribbean Societies contributes significantly to the quality and enjoyment of life for many citizens.

43. Cricket is a vital strand in the fabric of Caribbean culture. The sport has over the years been a source of national and international pride. Consequently, the future and viability of the sport depends on proper unbiased and efficient administration.

44. The Claimant argued that the NGC Audit report provides a sufficient basis for the Defendant to undertake a full investigation into the matters raised therein. The content of the Audit was outlined in the Claimant's evidence and he



revealed that there were several calls for an investigation into the matters raised by this NGC audit however these calls were ignored by the Defendant.

45. **Allegations of financial impropriety, wherever they are levied, should be investigated and debunked promptly, in order to maintain and/ or restore the public’s confidence in the image of the institution impugned. This duty is not only rational, but forms part of the wider concept of good governance to which all public authorities should adhere. In Nadarajah v Secretary of State for the Home Department [2005] EWCA Civ 1363 at paragraph 68 Lord Justice Laws in relation to good administration said as follows:**

*“I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public.”*

46. **The requirement for a public body to “deal straightforwardly with the public” imposes an obligation when allegations of corruption and/or financial impropriety are made, upon the public authority to investigate same.**
47. **Corruption has plagued public bodies in this Republic for far too long and corruption has been and continues to be cancerous. Corrupt practices are systemic and now possibly affects every facet of national life. The proliferation of corruption and/or corrupt activities violate core principles of the Rule of Law and impinge upon democratic corner stones such as equity, fairness and protection from arbitrary and/or irrational exercise of discretion. The continued adoption of corrupt practices has had a fundamental impact upon national life and has impeded our ability to realise our fullest potential.**

48. The NGC audit provides a sufficient *prima facie* basis for the need to launch an investigation into issues of possible financial irregularity and/ or impropriety and no good reason has been articulated as to why such an investigation has not been undertaken.

49. The Court holds the view that the duty to investigate in the attendant circumstances forms part of the wider Tameside Duty to which all public authorities are bound. In **Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014**, the Court considered the Secretary of Education's decision to implement a former Council's plan to remove Grammar Schools in circumstances where the current Council had adopted a new approach to that question. The Minister was vested with the Statutory Power as follows:

*“Secretary of State is satisfied, either on complaint by any person or otherwise, that any local education authority or the managers or governors of any county or voluntary school have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act, he may, notwithstanding any enactment rendering the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the managers or governors, give such directions as to the exercise of the power or the performance of the duty as appear to him to be expedient.”*

50. Lord Diplock outlined the legal duty of the Minister as follows:

*“It was for the Secretary of State to decide that. It is not for any court of law to substitute its own opinion for his, but it is for a court of law to determine whether it has been established that in reaching his decision*

*unfavourable to the Council he had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider; see Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223 at p. 229 per Lord Greene M.R. Or, put more compendiously, the question for the Court is, **did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?**”*

51. This duty was also addressed by Mendonça JA in **Civil Appeal No. P 075 of 2018 The Law Association of Trinidad and Tobago v The Honourable Chief Justice of Trinidad and Tobago and the Court stated at paragraph 52:**

*“Applied to the Law Association in the context of this case, **the Tameside duty may require an investigation of the facts before exercising its powers to, for example, promote, maintain and support the administration of justice and the rule of law.** So for example in relation to its power to support judges against unjust criticisms as an example of its purpose to support, maintain and promote the administration of justice and the rule of law, it is not reasonable to expect the Law Association to properly perform that power before conducting sufficient enquiry or investigation into the relevant facts.”*

52. There certainly must be a duty of a public body to act in a manner to maintain public confidence in its operations or at the least the debunking of allegations of financial irregularity.

53. The Defendant has a statutory duty to act in the best interest of cricket and in particular has a duty by virtue of Section 3 (d) of Act No. 34 of 1989 to perform all such other acts of things which are “***conducive to the Welfare of Cricket in Trinidad and Tobago***”. Further, as a statutory body, the Defendant has a duty to act lawfully i.e. to not act irrationally, unreasonably and/or ultra vires its duties as prescribed within the parent Act.
54. A public body has a duty to properly acquaint itself with the facts of an issue prior to deciding the particular course of conduct which should be adopted.
55. **Having regard to the outlined duties, this Court holds the view that the Defendant’s conduct in ignoring and/or refusing and/or neglecting to inquire into the matters raised by the NGC Audit is inconsistent with the duty to act in the best interest and welfare of Cricket.**
56. **Those charged with the obligation to manage the sport should do so conscientiously always mindful that the game must stand above their personal interests.**
57. **Public Policy cannot remain static and must vary with the passage of time to ensure its continued relevance. This Court is not prepared to disregard the fact that the NGC audit suggests that there may be significant concerns in relation to the manner in which the Defendant’s affairs have been addressed.**
58. The Court carefully considered the case of **Board of Control for Cricket in India v Cricket Association of Bihar & Ors CIVIL APPEAL NO.4235 OF 2014** and noted the rationale adopted in same.
59. The **Judicial Review Act Ch 7:08** provides as follows:

“5A. (1) Where an application is filed under section 5(2)(b) or (6), the Court may suspend the hearing of the matter for such time as it considers just, and appoint a person or such number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the facts of the complaint or matter and to submit a report on its finding to the Court within such time as is specified by the Court. (2) Such report shall be made available to the parties to the action who shall be entitled to be heard in respect of the report and make whatever application to the Court in respect of the report that they consider just”.

60. Judicial Review is ultimately concerned with good administration. The Defendant's failure to implement steps to debunk the perception of irregularity as raised in the NGC audit is the antithesis of the good administration of cricket.

61. In *Bihar* (supra) the Supreme Court of India granted orders which provided for a further investigation into the matters before it.

62. The Defendant is predominantly funded by the Government of the Republic of Trinidad and Tobago (GORTT) through the Ministry of Sport and its related State Agencies. To receive funding the TTCB is required to provide audited financial statements, annual operating plans, projected revenues, and expenditures, etc. This is in accordance with the Ministry of Sport's funding policy to National Sporting Bodies.

63. The Court before it determined the approach to be adopted also considered the case **3716724 Canada Inc v Charelston Condominium Corporation No. 375 2016 ONCA 650**, which dealt *inter alia* with the authority vested in a Board

of Directors and particular regard was given to paragraph 48 which says – “*The issue has been canvassed extensively in the corporate law context. In reviewing decisions rendered by the directors and officers of for-profit corporations, Canadian courts have been guided by the "business judgment rule". This rule recognizes the autonomy and integrity of corporations and the fact that **directors and officers are in a far better position to make decisions affecting their corporations than a court reviewing a matter after the fact:** UPMKymmene Corp. v. UPM-Kymmene Miramichi Inc. (2004), 250 D.L.R. (4th) 526 (Ont. C.A.), at para. 6; see also Brant Investments Ltd. v. KeepRite Inc. (1991), 3 O.R. (3d) 289 (C.A.), at p. 320. Therefore, where the rule applies, a court will not second-guess a decision rendered by a board as long as it acted fairly and reasonably: Maple Leaf Foods Inc. v. Schneider Corp. (1999), 42 O.R. (3d) 177 (C.A.), at p. 191”.*

64. The Court went on to say at paragraph 50 – “[50] While the business judgment rule was developed in the context of for-profit businesses, **it has been applied to not-for-profit corporations as well:** see, for example, *Hadjor v. Homes First Society*, 2010 ONSC 1589, 70 B.L.R. (4th) 101, at paras. 47-52.

65. This Court is mindful that the Defendant is vested with the authority to administer its affairs and manage its processes and it has the power to develop and amend its Constitution and regulatory processes, as it sees fit, pursuant to the provisions of its constitution.

66. **The Court must be careful that it does not usurp the authority vested in the Defendant and it is therefore not inclined to adopt the supervisory approach as outlined by the Claimant. The Court is of the view that the Defendant should appoint a five (5) member committee to investigate the issues which arise from the NGC audit and the Claimant should be a member of the said committee.**

67. Accordingly and for the reasons outlined, the Court orders as follows:

- i. All the Declaratory Relief sought by the Claimant is denied and the consequential relief sought at paragraphs 17,18,19,20,21,22,23 and 24 is also denied.
- ii. The Court declares that the Defendant should appoint a five member committee to investigate the issues and concerns raised in the NGC report. The Claimant should be a member of this committee and the remaining four members should be appointed within 30 days of the date of this order. The committee shall generate a report which must be prepared within 120 days of the committee's appointment. Upon completion and within 30 days thereafter copies of the committee's report must be presented to affiliates, zones as well as the Minister of Sport . The terms of reference of the committee's mandate is to be settled by the Claimant's and Defendant's attorneys within 15 days of this order. In default the parties shall furnish the Court with their respective view as to the applicable terms of reference and the Court shall proceed to settle same.
- iii. The parties shall be heard on the issue of costs.

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**FRANK SEEPERSAD**  
**JUDGE**