

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2020-01000**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 14(1) OF THE  
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

**BETWEEN**

**ONE CARIBBEAN MEDIA GROUP LIMITED**

**First Claimant**

**TRINIDAD EXPRESS NEWSPAPER LIMITED**

**Second Claimant**

**OMATIE LYDER**

**Third Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**First Defendant**

**THE COMMISSIONER OF POLICE**

**Second Defendant**

**SUPERINTENDENT WENDELL LUCAS**

**Third Defendant**

**Before the Honourable Mr Justice Frank Seepersad**

Date: September 3, 2020.

Appearances:

1. Ms Ria Mohammed-Davidson and Mr Michael Rooplal, Attorneys-at-law for the Applicant.
2. Ms Sophia Chote S.C., Mr Peter Carter, Ms Vahni K. Seunath instructed by Ms Dana-Marie Smith, Attorneys-at-law for the Claimants.
3. Mr Fyard Hosein S.C., Mr Rishi Dass instructed by Ms Kendra Mark-Gordon Attorneys-at-law for the Defendants.

## **DECISION:**

1. The Applicant is the Media Association of Trinidad and Tobago and before the Court is its application, filed on August 27, 2020 by virtue of which it has asked the Court to issue the following orders:
  - a. That the Applicant be added as an Interested Party to the instant proceedings;
  - b. That permission be granted to the Applicant to make submissions at the hearing of this matter;
  - c. Any further order that the Honourable Court sees fit;
  - d. That there be no order as to costs.
  
2. By its substantive claim the Claimants are seeking the following reliefs:
  - a. A declaration that the search warrants issued by a Justice of the Peace on March 11, 2020 upon the application(s) of the Third Defendant, Police Superintendent Wendell Lucas were unconstitutional, unlawful, arbitrary, unnecessary and disproportionate. The warrants were invalid, null and void and of no effect in that they contravened the constitutional right to freedom of the press enjoyed by the Claimants under Section 4(k) of the Constitution of the Republic of Trinidad and Tobago.
  - b. A declaration that the execution of the second warrant and the seizure of items namely four USB flash drives from the office of Omatie Lyder located at No 35-37 Independence Square, Port-of-Spain was unconstitutional, unlawful, unnecessary and disproportionate in that it contravened the fundamental rights of the Second and Third Named Claimants to the enjoyment of property and the right not to be deprived thereof except by due process of law.
  - c. A declaration that the search warrant obtained by the Third Defendant from a Justice of the Peace and issued on March 11, 2020 to search the premises “owned and managed by Omatie Lyder” was unconstitutional, unlawful, unnecessary, arbitrary and disproportionate. It was invalid, null and void and of no effect in that

it contravened the fundamental right to the enjoyment of property, the right not to be deprived thereof except by due process of law, the protection of the law of the Second and Third Named Claimants.

- d. A declaration that the search warrant obtained by the Third Defendant from a Justice of the Peace and issued on March 11, 2020 to search the premises of the Trinidad Express Newspapers situated at No. 35-37 Independence Square, Port-of-Spain was unconstitutional, unlawful, unnecessary, arbitrary and disproportionate. It was invalid, null and void and of no effect in that it contravened the Claimants' fundamental right to the enjoyment of property, the right not to be deprived thereof except by due process of law, the protection of the law.
  - e. Damages for breach of constitutional rights.
  - f. Such further and/or other reliefs as the Court may in exercise of its jurisdiction under section 14 of the Constitution and under its inherent jurisdiction consider appropriate for the purpose of enforcing and protecting or securing the enforcement and protection of the Claimant's said rights;
  - g. Costs.
3. Upon the filing of the Applicant's application, although the Claimants consented, the Defendants indicated via email that they wished to be heard before the determination of the application. As a result, the Court ordered that written submissions be filed in support/in opposition to the said application and scheduled a hearing of the matter.
  4. The substantive reliefs sought are administrative orders which the Court is empowered to make under Part 56 of the Civil Proceedings Rules 1998 (as amended) (the CPR). In relation to instant application the Court addressed its mind to Part 56.14(1) of the CPR which provides as follows:

Part 56.14:

(1) At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not he has been served with the application.

5. The Court considered in detail the Court of Appeal's decision in **Civil Appeal No. P-204 of 2016 United States of America v Jack Austin Warner and The Attorney General of Trinidad and Tobago.**
6. The Court noted that a determination as to whether the Applicant has a sufficient interest has to be made but any such determination would not automatically entitle the Applicant to be heard at a hearing and the Court has to consider whether it should exercise its discretionary judgment to so do.
7. Mendonça JA in *USA v Jack Warner* (supra) at paragraph 21 construed what is meant by “claim” in Part 56.14(1). His Lordship stated as follows:

21. ... “Claim” in 56.12(3) and 56.14(1) in my judgment will certainly apply to the decision that is the subject matter of the application, but ***the word “claim” is to be construed in accordance with part 8 of the CPR (see rule 2.3) and is wide enough to include the relief sought by the application for judicial review*** (see rule 8.5). ***For the purposes of rules 56.12(3) and 56.14(1) a person will appear to have a sufficient interest in the subject matter of the claim if he is adversely affected by the decision that is the subject matter of the application and wishes to support the application but will also be someone who may be adversely affected by the relief claimed which might be granted if the judicial review application is successful and wishes to oppose it.***

(Emphasis Court’s)

8. Evidently the substantive proceedings primarily concern the constitutionality of the acts engaged by the Second and Third Defendants when they sought and obtained two search warrants which were executed at the premises of the Claimants.
9. The issues which arise for consideration in the claim are important and the claim should be expeditiously determined.
10. Freedom of the press is an essential and critical facet of a functional democracy.
11. In its determination as to whether it should exercise its discretion, the Court must also have regard to the overriding objective of the CPR which requires that matters need to be dealt with justly. Mendonça JA in Jack Warner (supra) at paragraphs 26 to 29 indicated that the Court ought to consider matters of time and efficacy. In this regard, the Court also reviewed the Canadian case **Halpern v Toronto (City), 2000 Carswell Ont 4504 (2000)**.
12. In the aforesaid case the court adopted the view that it must determine, *inter alia*, whether the intervener has a sufficient direct interest and the “useful contribution” which the proposed intervener could make to the proceedings.
13. In **R (on the application of Fraser and another) v National Institute for Health and Another [2009] EWHC 452 (Admin)** Simon J of the England Queens Bench Division, Administrative Court at paragraph 115 stated:

*“In order to succeed with a claim for Judicial Review the Interested Party has to show a sufficient interest in the matter in issue. The court recognises a sufficient interest in cases where individuals or groups seek Judicial Review and there are serious issues of public importance. Among the factors which may be relevant are the merits of the challenge, the importance of vindicating the Rule of Law, the*

*importance of the issue raised and the likely absence of any other responsible challenger.”*

14. “Useful contribution”, according to the Court in Halpern (supra), would not necessarily exist if the intervener is simply proposing to repeat the issues put forward by the main parties although some overlap may be permissible. In addition, the Court acknowledged that it should balance any such contribution against any resulting delay or prejudice which may be occasioned to the other parties (See paragraphs 19 and 20 of Halpern (supra)).
15. The Applicant is a professional association of journalists and is understandably concerned, *inter alia*, with the preservation and protection of press freedom, the development of journalism and the associated rights of its members. The Applicant is expected to advocate for press freedom and should be objectively and impartially engaged in public debate on matters affecting journalists and journalism.
16. In this Republic, freedom of the press is a recognised and fundamental right which is enshrined in the Constitution. This nation's first Prime Minister in his first Independence address stated, *inter alia*, “democracy, finally, rests on a higher power than Parliament. It rests on an informed and cultivated and alert public opinion.”
17. The moment press freedom is arbitrarily infringed or curtailed is the moment that we all lose our prized freedom. The dissemination of unbiased information must be encouraged and not thwarted so as to protect myopic or insular interests. Journalists and media houses operate as the watchdogs of the citizenry. They are charged with the unenviable public interest burden to vigilantly monitor private business and governmental action as well as socio economic and cultural realities, so as to ensure that relevant and critical information is disseminated to the public at large. Democracy is meaningless if the public is deliberately, or by design, kept in the dark and a society's actions and reactions should never be predicated upon misinformation, ignorance, lies or deceit. The role of accurate

and responsible investigative journalism is therefore vital as unearthed information can empower the citizenry and serves to guard against inequity, discrimination, corruption, public malfeasance and maladministration by holding the influential, wealthy and powerful accountable.

18. Rights are never absolute and the due process of law and the preservation of the rights of all citizens must remain matters of paramount consideration. The press cannot be presumed to have a monopoly on the truth and in the pursuit of market share and profitability there have been instances where there has been the publication of pieces which have violated the rights of citizens. The Judiciary consequently acts as an arbiter to effect and ensure that there is balance between the protection of individual rights and privacy on the one hand and the publication of matters which are of public interest on the other.

19. If the Court holds the view that the Applicant has a sufficient interest in this matter then the Court must address its mind as to whether its discretion should be favourably exercised under Part 56.14(1) of the CPR. The Applicant has raised its role in the society and has asserted that it has a real and identifiable interest in the outcome of the substantive proceedings. It says it has a broad and identifiable membership base and can provide a perspective which may be distinct from the position advanced by the Claimants.

20. According to the learned authors of **De Smith's Judicial Review**, 7<sup>th</sup> edition, at paragraph **2-068**:

*"...a person may apply for permission to make written and/or oral submissions-"interventions"-at the hearing of the judicial review...Since 2000 there has been a noticeable increase in the number of interventions, in judicial review and other proceedings in the Administrative Court, Court of Appeal, and before the House of Lords...**On the one hand, the court's decision-making may benefit from the***

***perspectives of interveners, who will make different or broader legal points, or provide additional facts, from those raised by the claimant and defendant...***

(Emphasis Court's)

21. In this jurisdiction, intervening third parties have been given leave to present submissions and courts should welcome assistance from parties who are empowered to make meaningful contributions. Such an approach was adopted in CV2017-00720 Jason Jones v The Attorney General of Trinidad and Tobago where the Equal Opportunity Commission, the Trinidad and Tobago Council of Evangelical Churches and the Sanatan Dharma Maha Sabha of Trinidad and Tobago were all permitted to make submissions relating to a claim which involved the constitutionality of various sections of the Sexual Offences Act Ch. 11:28. Additionally, in CV2018-02726 Dianne Hadeed v The Attorney General of Trinidad and Tobago both the Law Association of Trinidad and Tobago and the Registrar of the Supreme Court of Trinidad and Tobago were heard as interested parties in litigation which challenged Section 15(1A) of the Legal Profession Act Ch. 90:03.
  
22. The matter before this Court involves matters of constitutional law and fundamental human rights. The Applicant, as the representative body of media practitioners and journalists is likely to be affected by any decision which the Court renders at the substantive hearing.
  
23. The substantive claim requires a judicial determination, *inter alia*, of matters of import such as the powers and limits of a free press to protect the identity of informers, the circumstances in which search warrants pertaining to the press should be issued and by whom, the scope and extent of the protection afforded to journalists and media personnel under section 14 of the Constitution and the processes which should be adopted by law enforcement so as to ensure that their ability to investigate criminal activity is not circumvented by the cover of "press freedom" as the responsibility to



inform the public cannot be viewed as a licence to operate with an air of untouchability. The Court also considered the reality that many journalists now operate independently from traditional media houses and the fact that the Applicant may represent their unique interests.

24. The issues to be determined are in this Court's view of evident public importance and it is vital that the media profession has clarity as to the circumstances which could justify a raid upon them and/or their media houses.

25. This Court is also unable to comprehend how the addition of the Applicant as an interested party would occasion delay or prejudice to the existing parties. The Court noted that the parties have previously applied for alterations to the timeline initially set by the Court. This Court manages its docket in such a manner which enables it to accommodate a hearing as soon as all directions have been followed. It must be emphasized that the Court, and not the lawyers, controls the process and it will ensure that any direction to the interested party, if added, for the filing of submissions, would contemplate a reasonable timeline with a view of ensuring that there is an expeditious determination of this matter. This Court will not arbitrarily abdicate its management of the matter. It must be pointed out that the requests for variation of the timeline have been entertained primarily because of the current pandemic and its impact on the discharge of professional obligations.

26. Having considered the claim before it, this Court is resolute in its view that the Applicant has demonstrated that it has a sufficient interest in the proceedings and the outcome of the substantive proceedings will have a material and fundamental impact upon the association and its members. The Court is also of the view that in the exercise of its discretion the Applicant should be afforded an opportunity to be heard.

27. The Court therefore grants the orders sought and the Media Association of Trinidad and Tobago shall be added as an Interested Party. The application is therefore granted. The parties shall now be heard as to an appropriate timeline for further directions to be issued. In relation to the application which has been determined the Court orders that there shall be no order as to costs.

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**FRANK SEEPERSAD**  
**JUDGE**