

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
Port of Spain**

Claim No. CV2018-03750

BETWEEN

JEFFREY ANTHONY HERNANDEZ

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mme. Justice Jacqueline Wilson QC

Date of Delivery: July 27, 2020

APPEARANCES:

Mr. Matthew Gayle instructed by Mr. Andre Rudder Attorneys at law for the Claimants

Mr. Sanjeev Lalla and Ms. Coreen Findley instructed by Ms. Diane Katwaroo Attorneys at law for the Defendant

JUDGMENT

BACKGROUND

1. The claimant is a Lieutenant in the Coast Guard. He alleges that his committal to stand trial by Court Martial for the breach of a Fraternisation Policy promulgated by the Chief of Defence Staff is unconstitutional. He alleges further that the prohibitions imposed by the Fraternization Policy and the sanction of imprisonment for non-compliance contravene his right to liberty, to the protection of the law

and to respect for his private and family life guaranteed by the Constitution.

2. The claimant also alleges that the charges laid against him relate to a period that is statute barred and that his trial on the basis of such charges is, similarly, unconstitutional.
3. The defendant denies the alleged contraventions and asserts that, inherent in a trial by Court Martial, are all of the safeguards required by the rule of law.
4. The defendant asserts that the Policy pursues a legitimate aim, namely, the promotion good order and discipline in the military and that its measures are proportionate.

THE DEFENCE ACT

5. The Defence Force is established under section 5(1) of the Defence Act. It comprises a unit of land forces (the Regiment), the Coast Guard, and such other units as the President may from time to time think fit to be formed. It is responsible for the defence of Trinidad and Tobago and such other duties as may from time to time be defined by the Defence Council.¹
6. The membership of the Defence Council comprises (a) the Minister (in the Ministry responsible for the Defence Force), as Chairman; (b) two other members of Cabinet appointed by the Prime Minister, one of whom shall be the Vice-Chairman; (c) the Chief of Defence Staff; and (d) the Permanent Secretary of the Ministry, as Secretary.²

¹ Section 5(2)

² Section 7(1)

7. The Defence Council is responsible for the command, administration and discipline of, and all other matters relating to, the Defence Force. Its responsibility does not include the operational use of the Force, for which the Chief of Defence Staff is responsible, subject to general or special directions of the Minister.³
8. Part V of the Defence Act lists a range of offences for which persons subject to military law may be tried by Court Martial. The offences include treachery, cowardice, mutiny, insubordination, desertion, absence without leave, malingering, drunkenness, the disclosure of information useful to an enemy, the making of false statements, documents, or accusations, scandalous conduct, the ill-treatment of officers or men of inferior rank, disgraceful conduct and conduct or neglect to the prejudice of good order and military discipline.
9. The forms of punishments that may be imposed on an officer upon sentence by a Court-martial are, in order of severity:
 - (a) death;
 - (b) imprisonment;
 - (c) cashiering;
 - (d) dismissal from the service of the State;
 - (e) fine of a sum not exceeding the equivalent of ninety days pay;
 - (f) forfeiture of seniority;
 - (g) severe reprimand or reprimand;
 - (h) where the offence has occasioned any expense, loss or damage, stoppages.⁴

³ Section 8

⁴ Section 79(1)

10. Where an allegation is made that a person subject to military law has committed an offence under Part V, the allegation must be reported in the form of a charge to the accused's commanding officer and the commanding officer must investigate the charge in the prescribed manner.⁵ After investigation, where the charge is not dealt with summarily, it must be remanded for trial by Court Martial.⁶

THE FRATERNIZATION POLICY

11. The Fraternization Policy is a General Order issued by the Chief of Defence Staff to Commanding Officers. It is deemed to take effect from 1 January 2015. It states that its essential purpose is to promote good order and discipline in the military. It describes the relationships and forms of behaviour that are prohibited and specifies the punishment that may be imposed for a breach.
12. The Policy begins with a detailed opening statement or "Policy Preamble." The preamble includes a statement that personal relationships that are unduly familiar and do not respect differences in rank violate long-standing custom and traditions of the military, are prejudicial to good order and discipline, and constitute an offence under Section 77 of the Defence Act.
13. The terms of the preamble are recited in full below:
 1. Personal relationships between commissioned officers (all ranks) and enlisted members (all ranks) which are unduly familiar and do not respect differences in rank and grade are prohibited and violate long-standing custom and tradition of the military. Similarly relationships that are unduly familiar between officers or between enlisted members of different

⁵ Section 85

⁶ Section 86

rank can also be prejudicial to good order, and discipline, or of a nature to bring disrepute on the Trinidad and Tobago Defence Force are strictly prohibited. Such inappropriate relationships shall constitute an offence under Section 77 of the Defence Act Chapter; 14:01 Laws of the Republic of Trinidad and Tobago.

2. Commissioned officers, enlisted members and civilian employees are prohibited from engaging in such unduly familiar personal relationships regardless of the service affiliation or service rules of the other person; including unduly familiar relationships with members of foreign military services. Commands are expected to take administrative and disciplinary action as necessary to correct such inappropriate behaviour.
3. This instruction on fraternization is a lawful General Order and any such breach thereof shall constitute an offence under Section 44 of the Defence Act Chapter; 14:01 Laws of the Republic of Trinidad and Tobago.
4. As such, violation of this instruction or Section 77 of the Defence Act Chapter: 14:01 Laws of the Republic of Trinidad and Tobago subjects the involved members to disciplinary action.
 - a. The Trinidad and Tobago Defence Force has historically relied upon custom and tradition to define the bounds of acceptable personal relationships among its members. Proper social interaction among officers and enlisted members has always been encouraged as it enhances unit morale and esprit de corps. At the same time, unduly familiar personal relationships between

Officers and enlisted members have traditionally been contrary to military custom, because they undermine the respect for authority which is essential to the Force's ability to accomplish its military mission.

- b. Over fifty-two (52) years of military experience demonstrates that senior ranks must maintain thoroughly professional relationships with junior ranks at all times. This custom recognizes the need to prevent use of a senior rank or position in such a way where it results in or gives; the appearance of favouritism, preferential treatment, personal gain, or involves actions which otherwise may reasonably be expected to undermine good order, discipline authority, or high unit morale. In like manner, custom requires that junior personnel recognise and respect the authority inherent in a senior's rank, or position. This recognition of authority is evidenced by observance and enforcement of the military courtesies and customs which have traditionally defined proper superior-subordinate relationships.
- c. "Fraternization" is the term traditionally used to identify personal relationships which contravene the customary bounds of acceptable superior-subordinate relationships. Although it has most commonly been applied to Officer-enlisted relationships, fraternization also includes improper relationships and social interactions between officers as well as between enlisted members, regardless of the service affiliation of the officers or enlisted members, including members of foreign

military services, students under the Specialised Youth Service Programme (SYSP) and civilians employed by the Trinidad and Tobago Defence Force (TTDF).

- d. Historically, and as used in this instruction, fraternization is a gender-neutral concept. Its focus is on the detriment to good order and discipline resulting from the erosion of respect for authority inherent in an unduly familiar superior-subordinate relationship, not the gender of the members involved. In this sense, fraternization is a unique military concept, although abuse of a senior's position for personal gain and actual or perceived preferential treatment are leadership and management problems which also arise in civilian organizations. In the context of military life, the potential erosion of respect for the authority and leadership position of a senior rank can have an enormously negative effect on good order and discipline and seriously undermine a Unit's effectiveness. Therefore, prohibition of fraternization serves a valid, mission essential purpose.

CONSTITUTION

14. The rights enshrined in sections 4(a), 4(b), 4(c) and 5(2)(e) of the Constitution, that the claimant alleges are breached, are set out in full below:

"4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without

discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

.....

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(a)...

(b)...

(c)...

(d)...

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations.”

THE CLAIMANT’S CASE

15. The claimant swore two affidavits in support of the claim.

16. The claimant joined the Coast Guard in 2008. He and Ms. Jilisa Baptiste met socially on 26 December 2013 and formed a relationship in or around January to March 2014. Ms. Baptiste joined the Coast Guard in September 2014 as an Officer Cadet. At that time, the claimant was a Sub-Lieutenant assigned to the Training Department as Assistant Training Officer. In June 2015, the claimant assumed duties as Training Officer and became responsible for the training of new recruits and newly admitted officer cadets, including Ms. Baptiste.

17. On or around 29 February 2016, an investigation was launched into the claimant's relationship with Ms. Baptiste. On 5 May 2016, four charges were laid against the claimant, all of which related to his relationship with Ms. Baptiste. Two of the charges related to the disobedience of Standing Orders and the breach of the Fraternization Policy, while the other charges alleged breaches of the Defence Act. The claimant and Ms. Baptiste were married 19 July 2016. She was discharged from the Defence Force on 1 June 2018.

18. The charges against the claimant are in the following terms:
 - (1) Disobedience of Standing Orders Contrary to Section 46 of The Defence Act, Part V, Chapter 14:01 of the Laws of Trinidad and Tobago, in that as the Training Officer, Trinidad and Tobago Coast Guard with immediate and direct responsibility for the training of 15046 Officer Cadet J. Baptiste (F), disobeyed paragraph 5b of the "Fraternization Policy" General Order No. 1 of 2015 on 12th August 2015, in that he and the Officer Cadet had at that time a personal relationship which was unduly familiar.

 - (2) Disobedience of Standing Orders Contrary to Section 46 of The Defence Act, Part V, Chapter 14:01 of the Laws of

Trinidad and Tobago, in that as the Training Officer, Trinidad and Tobago Coast Guard with immediate and direct responsibility for the training of 15046 Officer Cadet J. Baptiste (F), disobeyed paragraph 5 b of the “Fraternization Policy” General Order No. 1 of 2015 in that he and the Officer Cadet maintained from 13th August to 28th February 2016 a personal relationship which was unduly familiar.

(3) Scandalous conduct unbecoming the character of an officer and gentlemen contrary to section 72 of Part V of the Defence Act, Chapter 14:01, of the Laws of Trinidad and Tobago, in that as the Training Officer, Trinidad and Tobago Coast Guard, with immediate and direct responsibility for the training of 15046 Officer Cadet J Baptiste (F) was carrying on a relationship with Officer Cadet J Baptiste (F) that was sexually intimate during the period 12th August 2015 to 28th February 2016.

(4) Neglect to the prejudice of Good Order and Military Discipline contrary to section 77 of Part V of the Defence Act, Chapter 14:01 of the Laws of Trinidad and Tobago, in that as the Training Officer, Trinidad and Tobago Coast Guard, with immediate and direct responsibility for the training of 15046 Officer Cadet J. Baptiste (F) failed to report from 12th August 2015 to 28th February 2016 to Commander Don Polo as his senior Officer that he; Lieutenant Hernandez was carrying on a relationship with Officer Cadet J. Baptiste (F) that was unduly familiar.

19. On 8 November 2016, the claimant was remanded for trial by Court Martial on the four charges. On 15 October 2018, the charges came on for hearing by Court Martial and the first charge was withdrawn. The

hearing was adjourned to 17 October 2018 and on 16 October 2018 the claimant filed the present proceedings. The Court Martial proceedings are suspended pending the determination of this claim.

20. Counsel for the claimant submits that the Fraternalization Policy is an unlawful and unjustifiable interference with the claimant's right to respect for his private and family life as (i) it was introduced by way of Executive Order and not by Act of Parliament or by the Defence Force Council; and (ii) it outlaws relationships that may have existed prior to its introduction. Counsel submits that the retrospective operation of the Policy offends basic principles of the rule of law.
21. Counsel submits that the Policy contravenes the claimant's right to equality before the law as it ascribes treatment to the claimant that is different from the treatment of persons who are not serving in the military and it does not criminalize the fraternization of persons of the same rank or rating. Counsel submits that the claimant has been unfairly singled out for prosecution on the basis of an existing relationship, thereby further engaging his right to equal treatment.
22. Counsel submits further that the Policy infringes the claimant's right to liberty as it constitutes his relationship with Ms. Baptiste as an offence for which a term of imprisonment may be imposed, in circumstances where the relationship was not unlawful at the time it had begun or when Ms. Baptiste joined the Coast Guard.
23. Counsel submits that the claimant may not lawfully be prosecuted for events that transpired more than three years prior to the commencement of the Court Martial hearing and that, the Court Martial hearing having commenced on 16 October 2018, the charges are bad in law as they relate to a period beginning 12 August 2015 through 28 February 2016. Counsel submits that the charges against

the claimant allege positive acts by him and may not be considered as continuing offences that fall outside the scope of the limitation period.

THE DEFENDANT'S CASE

24. Commander Don Polo and Commander Daryl Dindial each swore an affidavit on behalf of the defendant.

25. Commander Polo has been a member of the Coast Guard for more than twenty-seven years and was promoted to the rank of Commander with effect from 1 December 2014. Commander Polo states that prior to 2014/2015, every Officer Cadet seeking entry into the Defence Force as a commissioned officer received training at the Britannia Royal Naval College in Dartmouth, England. He states that he was so trained in 1993 and that the claimant was trained similarly in 2009. He states that key features of the training were military custom and discipline, as core values of the Navy/Coast Guard.

26. Commander Polo explains the rationale for the Fraternization Policy in the following terms:⁷

“The Defence Force, and all other military institutions for that matter, has at its core and foundation, a hierarchical system of authority. This is commonly referred to as ranks and the interaction and relationship of the officers holding different ranks within a military system is the fundamental fabric of the institution itself. Military custom has traditionally defined the boundaries of acceptable codes of conduct for military personnel as well as for the personal relationships that may develop between them. Unduly familiar relationships (what is commonly referred to as fraternization) between members of the military

⁷ See paragraph 22 of affidavit

can become prejudicial to good order and discipline or undermine the very fabric of a unit and have been discouraged by naval custom, practice and tradition. They are greatly discouraged to avoid any compromise to the integrity of supervisory authority or the chain of command; actual or perceived partiality or unfairness; the improper use of rank or position for personal gain; and/or an actual or clearly predictable adverse impact on discipline, authority, morale or the ability of the command to accomplish its mission. It is not limited to sexual relations but applies to any unduly familiar conduct such as dating and private business partnerships that can become prejudicial to good order and discipline. It has always been part of our military law in Trinidad and Tobago and codified by statute in section 77 of the Trinidad and Tobago Defence Act Chapter 14:01 which provides that any person subject to military law who is found guilty of any conduct to be prejudicial to good order and military discipline is liable on conviction by court-martial to imprisonment of two years or less. Section 77 does not use the words fraternization, but speaks to conduct which is prejudicial to good order and military discipline, and therefore can and has always been applied by the Defence Force to include unduly familiar personal relationships between service persons of different rank.”

27. Commander Polo states that on 29 February 2016, he was requested by the then Commanding Officer of the Coast Guard, Captain Hayden Pritchard, to investigate allegations of an improper relationship between the claimant and Ms. Baptiste. In the course of investigations he interviewed the claimant and several Officer Cadets, including Ms. Baptiste. Ms. Baptiste confirmed that she was in a relationship with the claimant and that the relationship began before she joined the Coast Guard as an Officer Cadet.

28. Commander Polo submitted a report with his findings and recommendations (the Charge Report) to the then Executive Officer, Commander Wayne Armour. His findings were that a relationship existed between the claimant and Officer Cadet Baptiste, and his recommendations included the laying of disciplinary charges against the claimant.
29. Commander Armour decided that charges should be laid against the claimant and the Charge Report was sent to the then Commanding Officer, Captain Hayden Pritchard, who recommended the claimant's trial by Court Martial. On 5 May 2016, four disciplinary charges were laid against the claimant.
30. Commander Polo states that after disciplinary charges are laid, a summary hearing is convened to gather evidence for use in the Court Martial proceedings. A summary hearing was convened on 13, 14 and 17 October 2016, in the course of which evidence was led against the claimant and the claimant was given the opportunity to cross examine witnesses and to call witnesses on his behalf. The claimant called two witnesses on his behalf and cross-examined the witnesses who gave evidence against him.
31. Commander Dindial states in his affidavit that he was a member of the Chief of Defence Staff policy development team that was involved in the review and development of policies to address and deter inappropriate behaviour in the Defence Force. The objective of the exercise was to reduce into writing military custom and tradition relating to conduct that is prejudicial to good order and discipline in the Defence Force.
32. The team conducted research on the military's approach to fraternization in several jurisdictions, including the United Kingdom,

the United States and Canada. In all cases, sexual relationships between officers of superior and subordinate rank were considered to undermine the chain of command and respect for authority.

33. Commander Dindial states that the Fraternalization Policy was approved by the Force Command Group and was sent to the Chief of Defence Staff for promulgation. On 12 June 2015, the Policy was published by way of Defence Force Order. By email dated 12 August 2015, the then Executive Officer of the Coast Guard, Commander Wayne Armorer, distributed the Policy and other Orders to all Commanding Officers and key staff of the Defence Force, including the claimant.
34. Counsel for the defendant submits that the “due process of law” requirement in section 4(a) of the Constitution embraces the fundamental concept of a fair trial with the opportunity to be heard: ***Thomas v Baptiste*** [1999] UKPC 13. Counsel submits that the Defence Act provides for the establishment of a Court Martial to try persons who are subject to military law, and that such proceedings provide all of the safeguards that procedural fairness requires.
35. Counsel argues that the claimant may properly raise before the Court Martial any defence that is available to him in law, including the limitation argument, and that at the Court Martial hearing on 15 October 2018, one of the charges was dismissed on the basis of the limitation argument, although the argument did not succeed in respect of the other three charges.
36. Counsel submits that the Defence Act provides for an appeal to be made to the Court of Appeal against a conviction by Court Martial and that, should there be an error of law committed by the Court Martial, the remedy of an appeal is available to the claimant.

37. Counsel submits that the Fraternalization Policy does not introduce new measures but codifies long-established military custom and tradition relating to the conduct of military personnel and civilian staff.
38. Counsel argues that the Policy does not infringe the claimant's right to respect for his private and family life as (i) its measures pursue a legitimate aim, namely, to discourage conduct that is prejudicial to good order and military discipline; and (ii) do not prohibit all relationships between members of the Defence Force but only those between officers and enlisted members that are unduly familiar, as they undermine the respect for authority that is essential to the military's mission.

DISCUSSION

Right to Respect for Private and Family Life

39. There is no dispute that, in prohibiting certain forms of social interaction and relationships, the Fraternalisation Policy may interfere with the right to respect for private and family life that section 4(c) of the Constitution is designed to protect. In determining whether the interference is justified, the question for consideration is whether there is a legal basis upon which the Policy is premised, whether its measures are necessary for a legitimate purpose, and whether they represent a proportionate means of achieving that purpose: **Barry Francis v the State of Trinidad and Tobago** (2014) 86 WIR 418; **Kenneth Suratt v the Attorney General** [2007] UKPC 55.
40. The Policy states that it is premised upon section 77 of the Defence Act. Section 77 is saved as existing law by section 6 of the Constitution. Therefore the lawfulness of its provisions is not in dispute.

41. The claimant does not allege that the Policy exceeds the boundaries of section 77. He alleges that the manner of its introduction and the scope of its provisions render it unconstitutional. In my view, this argument must fail unless it is shown either that the provisions of section 77 are unlawful or that the Policy exceeds its requirement. No such argument has been advanced by the claimant.
42. The defendant's evidence is that the Defence Force, like other military institutions, has at its core a hierarchical system of authority, the breach of which is prejudicial to discipline and undermines the very fabric of the institution. The defendant's evidence states also that the Policy is the result of substantial research on the comparative positions in other jurisdictions, the results of which showed a clear consensus on where the lines of inappropriate relationships are drawn.
43. The range and scope of the offences prescribed by Part V bear testimony to the fundamental importance of discipline in the military.
44. For the above reasons, I consider that a legal basis for the Policy is established. The question whether the measures introduced by the Policy serve a legitimate purpose and are proportionate to its accomplishment would be examined, notwithstanding that the constitutionality of section 77 of the Act, upon which the Policy is based, is not in dispute.
45. The preamble to the Policy states that its essential purpose is to promote good order and discipline in the military. Included in the preamble is a statement that "in the context of military life, the potential erosion of respect for the authority and leadership position of a senior rank can have an enormously negative effect on good order and discipline and seriously undermine a Unit's effectiveness."

46. The Policy lists the relationships and forms of behaviour that are prohibited in the military and specifies the punishment that may be imposed for a breach. The prohibited relationships include personal relationships between senior and junior officers, instructor and student and recruiting personnel and applicants for enlistment. The Policy defines the boundaries of what had previously been established by custom and tradition to be unacceptable relationships involving members of the Defence Force and requires offending conduct to be addressed by appropriate action.
47. In so far as the proportionality of the Policy's measures are concerned, the Policy does not prohibit all forms of interaction or relationship among members of the Defence Force. It acknowledges and endorses proper social interaction as a means of enhancing morale, while prohibiting relationships that are considered to be prejudicial to good order and respect for authority. It contains the following statements regarding the circumstances in which a relationship may be considered as prejudicial to good order:⁸

“2. (c) When prejudicial to good order or of a nature to bring discredit on the Trinidad and Tobago Defence Force, personal relationships between Officers or between enlisted members which are unduly familiar and that do not respect differences in rank are strictly prohibited. Prejudice to good order and discipline or discredit to the military service may result from, but are not limited to, circumstances which:

- (i) *Call into question a senior's objectivity;*
- (ii) *Result in actual or apparent preferential treatment;*
- (iii) *Undermine the authority of a senior; or*
- (iv) *Compromise the chain of command.*

⁸ Paragraph 2 (c)

3. (a) It is impossible to set forth every act which may be prejudicial to good order and discipline or that is service discrediting because the prevailing circumstances often determine whether the conduct in question is inappropriate. Proper social interaction and appropriate personal relationships are an important part of unit morale and esprit de corps. Officer and enlisted participation on sports teams and other command-sponsored events intended to build unit morale and camaraderie are healthy and clearly appropriate. Dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling and borrowing money between Officers and enlisted members, regardless of service, are unduly familiar and are prohibited. Likewise, such conduct between officer members and between enlisted members of different rank or grade would be unduly familiar and constitute fraternization if the conduct is prejudicial to good order and discipline or is service discrediting.”

48. The Policy requires a member of the Defence Force who is married, or otherwise related, to another service member to adhere to established standards of discipline and respect for authority while on duty, in uniform, in public or at official social functions. The Policy provides also that a subsequent marriage does not exonerate persons who had previously engaged in fraternization.

49. The Policy lists a range of sanctions that may be imposed for its breach. They include, but are not limited to, the following:

- a. Discharge
- b. Counselling
- c. Adverse Evaluation Report(s)

- d. Reprimand
 - e. Reassignment
 - f. Forfeiture of all pay and allowances
 - g. Deduction of one (1) year seniority as well as not being eligible for promotion for the next three (3) years
- Demotion.

50. The range of sanctions that may be imposed for non-compliance with the Policy allows for discretion and flexibility in its application and prevents it from being characterised as arbitrary, capricious or oppressive.

51. In all the circumstances, I consider that the Policy's measures serve a legitimate purpose - namely, to maintain discipline in the Defence Force - and are proportionate to the objective that they pursue.

52. The claimant has therefore failed to establish that the Policy contravenes the right to respect for his private and family life.

Right to liberty

53. The mere fact that the claimant's conviction by Court Martial may result in the imposition of a custodial sentence does not, without more, invoke a breach of his right to liberty. It is well established that the right to liberty protected by the Constitution is not absolute and may be infringed by the "due process of the law."

54. In proceedings before a Court Martial the rules of evidence are the same as those that apply in the civil Court, which, by its definition means "a Court of ordinary criminal jurisdiction."⁹ Therefore, the claimant has the right to be represented by Counsel, to call witnesses

⁹ Section 106

on his behalf and to cross-examine witnesses who give evidence against him. Witnesses are examined under oath¹⁰ and are afforded the same privileges and immunities as in the High Court.¹¹

55. The Act provides for an appeal against conviction to the Court of Appeal (with the leave of the Court of Appeal),¹² and for a further appeal to the Privy Council, with the leave of the Court of Appeal, where the decision involves a point of law of exceptional public importance.¹³ I accept the submission of Counsel for the defendant that these safeguards embody the requirements of the rule of law and fundamental principles of fairness.

56. The claimant's argument that the charges are statute-barred does not, without more, constitute a ground of constitutional challenge. Counsel for the defendant is correct in his submission that the argument ought properly to be raised in the proceedings before the Court Martial and, thereafter, by way of appeal if it becomes necessary.

57. In the circumstances, the claimant has failed to establish an infringement of his right to liberty and the right not to be deprived thereof except by due process of law.

RIGHT TO EQUALITY

58. In so far as the alleged infringement of the claimant's right to equality before the law is concerned, no evidence was advanced by the claimant to support the alleged uneven application of the Policy.

59. The argument that the Policy contravenes the claimant's right to equality before the law in ascribing different treatment to relationships

¹⁰ Section 100

¹¹ Section 107

¹² Section 143

¹³ Section 147

between seniors and subordinates than that which applies to other relationships ignores the very objective that the Policy is intended to achieve. To this extent, the allegation of inequality is misconceived.

CONCLUSION

60. For the reasons given above, the claimant's claim fails and is hereby dismissed.

61. The claimant shall pay the defendant's costs to be assessed by this court in default of agreement.

Jacqueline Wilson QC
Judge