

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

**Claim No. CV 2012-00892
Civil Appeal No: 72 of 2012**

IN THE MATTER OF THE LEGAL PROFESSION ACT CHAP 90:03

AND

**IN THE MATTER OF THE INTERPRETATION OF SECTIONS 9 AND 27 OF THE
LEGAL PROFESSION ACT CHAP 90:03**

AND

**IN THE MATTER OF THE CONSTRUCTION OF SECTION 26 OF THE LEGAL
PROFESSION ACT CHAP 90:03**

BETWEEN

**NADINE NABIE
MICHELLE MAYERS**

**Appellants/
Interested Parties**

AND

LAW ASSOCIATION OF TRINIDAD AND TOBAGO

**First Respondent/
Claimant**

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

**Second Respondent/
Defendant**

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Panel:

A. Mendonca J.A.

R. Narine J.A.

G. Smith J.A.

Appearances: Mr. I. Benjamin and Mr. R. Heffes-Doon for the Appellants.
Mr. A. Fitzpatrick S.C. and Mr. S. Sharma for the First Respondent/Claimant.
Mr. R. Martineau S.C., Ms. Haynes and Ms. Smith instructed by Ms. Subria for the Second Respondent/Defendant.

DATE DELIVERED: 8th June, 2012.

I agree with the Judgment of Narine J.A. and have nothing to add.

A. Mendonca
Justice of Appeal.

I too agree and have nothing to add.

G. Smith
Justice of Appeal.

JUDGMENT

Delivered by R. Narine J.A.

1. This appeal involves the interpretation of certain provisions of the Legal Profession Act (LPA) Chap. 90:03. By a fixed date claim form filed on 5th March 2012, the Law Association of Trinidad and Tobago (LATT) applied to the High Court for a determination of the following issues:
 1. Whether, according to the provisions of the LPA, 'law officers' as defined by Section 26 thereof are entitled to-

- (i) attend and vote at a general meeting of the Association or at an election of the Association; or
 - (ii) be elected to the Council of the Association, without paying fees under the Act.
- 2. Whether 'Judicial Research Assistants' employed by the Judiciary of Trinidad and Tobago are 'Law Officers' within the provisions of the Act.
- 2. The second issue was resolved consensually by the Attorneys for the Appellants and the LATT. It was conceded that Judicial Research Assistants are "law officers" within the provisions of the Act.
- 3. With respect to the first issue, Rajnauth-Lee J held that law officers are not entitled to attend and vote at a general meeting of the LATT, or at an election of members of the Council, nor are they entitled to be elected to the Council, without paying subscriptions to the LATT. The Appellants have appealed this decision.
- 4. For the purposes of this appeal the relevant provisions of the LPA are:

Section 3 establishes the LATT as a body corporate and provides that the LATT shall consist of three kinds or classes of members—practitioner members, non-practitioner members and honorary members.

Section 4 provides that the affairs of the association shall be managed and its functions performed by a Council constituted in accordance with the First Schedule to the Act.

Section 5 sets out the purposes of the LATT.

Section 6 (1) provides that every Attorney-at-Law, to whom a practising certificate is issued is a member of the association and shall remain a member for so long as his practising certificate has effect.

(2) provides that subject to the Act, a practising certificate ceases to have effect where the practitioner member to whom it relates fails to pay—

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

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

- Section 6** (3) provides that every Attorney-at-Law who is a member of the association by virtue of subsection (1) is referred to in the Act as a “practitioner member”
- Section 7** defines a “non-practitioner member” as an Attorney-at-Law who does not hold a practising certificate.
- Section 8** empowers the Council to confer honorary membership on such distinguished lawyers as it sees fit.
- Section 9** provides as follows:
9(1) Subject to this section and section 10, all members of the association have the same rights and privileges. (my emphasis)
9(2) Only practitioner members who pay their annual subscription to the Law Association are eligible-
(a) to attend and vote at a general meeting or at an election of members of the Council; or
(b) to be elected to the Council.
9(3) Practitioner members may by a resolution exclude from a general meeting of the Association or any part thereof all other members.
- Section 10** provides for the expulsion or deprivation of rights and privileges of membership, after a practitioner member, or non-practitioner member has been given a reasonable opportunity to answer allegations made against him.
- Section 12** provides for the fixing by the Council of the amount of the annual subscription to be paid by members other than honorary members.
- Section 23** (1) provides that an Attorney-at-Law who desires to practise law shall apply to the Registrar for a practising certificate. The Registrar shall issue a practising certificate on being satisfied that the Attorney-at-Law has paid his annual subscription to the Association and his annual contribution to the Compensation Fund.
- Section 26** (1) defines “law officer” as follows:

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

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

Section 26 (2) provides that a law officer shall be deemed to be the holder of a valid practising certificate.

Section 27 provides that subject to subsection 9(2) a law officer is exempt from paying an annual subscription to the Law Association and an annual contribution to the Compensation Fund. (my emphasis)

Submissions of Counsel

5. In essence, both Mr. Fitzpatrick and Mr. Martineau submitted for the Respondent that on an interpretation of sections 27 and 9(2) of the LPA, giving the words used their plain and ordinary meaning, the trial judge was correct in holding that law officers are not entitled to attend and vote at a general meeting of the LATT, or at an election of members of the Council, or to be elected to the Council, without paying subscriptions to the LATT.
6. However, in case there is ambiguity in the language used in the relevant sections, the Respondents submit that the trial judge was correct in referring to the Hansard record of proceedings in the Parliament as an aid in construing the legislation.
7. Mr. Benjamin, for the appellants, submitted that historically law officers have always been treated as a separate class of practitioner, and have never been required to pay any kind of fee or subscription in respect of the enjoyment of their rights and privileges as barristers and solicitors before the passage of the LPA in 1986. In view of their peculiar position as a separate class of legal practitioner, section 9(2) of the LPA should be construed in such a way so as to permit a minimum infringement of their rights of association, their rights to participate in the affairs of the Association and their franchise rights, that is, the right to vote at elections of the Council, and to stand for election to the Council.

The Principles of Statutory Interpretation

8. The presumption in favour of a literal interpretation of the words of a statute are set out in **Bennion on Statutory Interpretation** (5th ed) at page 864:

Section 284

Presumption that text is the primary indication of legal meaning.

“In construing an enactment, the text of the enactment, in its setting within the Act or other instrument containing it, is to be regarded as the pre-eminent indication of the legislator’s intention.”

Section 285

Presumption that literal meaning to be followed.

“Prima facie, the meaning of an enactment which was intended by the legislator (in other words its legal meaning) is taken to be that which corresponds to the literal meaning.”

9. In seeking to ascertain the intention of Parliament as expressed in the language it employed, it must be borne in mind that the intention of Parliament is an objective concept. The task of the court in finding the intention of Parliament from the language of an enactment was articulated by Lord Nicholls of Birkenhead in the House of Lords decision in **R v Secretary of State for the Environment, Transport and the Regions, Ex-parte Spath Holme Ltd** (2001) 2 AC 349 at 396 F – 397-B.

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the “intention of Parliament” is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to

Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and –such a meaning “cannot be what Parliament intended”, they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in **Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG** [1975] AC 591,613: “We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used.”

In identifying the meaning of the words used, the courts employ accepted principles of interpretation as useful guides. For instance, an appropriate starting point is that language is to be taken to bear its ordinary meaning in the general context of the statute. (Emphasis mine)

11. It is desirable that parliament should express its intention in clear and unambiguous language so that ordinary citizens and their advisors are able to understand their meaning. This aspect of the rule of law, and the need for legal certainty was expressed by Lord Diplock in **Fothergill v Monarch Airlines Ltd.** (1981) AC 251 at 279-280, and cited by Lord Nicholls in **R v Secretary of State for the Environment, Transport and the Regions, Ex-parte Spath Holme Ltd.** (supra.) at 397 H to 398 B:

“The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its

intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation."

10. The "objective" meaning of an instrument is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed. This view was expressed by Lord Hoffman in the Privy Council decision in **A.G. of Belize and Ors. v Belize Telecom Ltd. and Anor.** (2009) All E.R. 1127 at 1132 F-H.

*"The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see **Investors' Compensation Scheme Ltd. v West Bromwich Building Society** [1998] 1 All ER 98 at 114-115, [1998] WLR 869 at 912-913. It is this objective meaning which is conventionally called the intention of the parties, or the*

intention of whatever person or body was or is deemed to have been the author of the instrument.”

12. Where a literal interpretation of the enactment produces a result which does not accord with the purpose that Parliament intended to achieve, the court may adopt a purposive approach which seeks to identify and give effect to the purpose of the legislation. In doing so the court considers the particular provisions within the context of the statute as a whole, and construes the statute in the historical context in which it was enacted. This approach was articulated by Lord Bingham in the case **R. (Quintavalle) v Secretary of State for Health** (2003) 2 WLR 692 at 697 D-G:

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions would be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.” (emphasis mine)

13. In construing particular provisions of a statute, the court may employ internal aids, such as other provisions in the same statute. The court may also employ external aids, such as the historical background, reports of advisory committees, or records of parliamentary debates.
14. In **Pepper v Hart** (1993) AC 593, it was held by the House of Lords that where legislation was ambiguous or obscure or led to absurdity, Parliamentary material consisting of one or more statements of a Minister or other promoter of a Bill, could be used as an aid in construction, provided that the statements relied upon are clear.

Applying the Literal Approach

15. The issue to be decided in this case is whether, on a proper interpretation of the relevant provisions of the LPA, the judge was correct in coming to her decision.
I will now consider the relevant provisions of the Act, construing those provisions in order to find the intention of Parliament by presuming that the words used were intended to convey their literal and ordinary meaning in the context of the statute.
16. Section 3 of the LPA sets up the LATT and provides for categories or classes of members—practitioner members, non-practitioner members and honorary members.
17. Section 6 provides that every Attorney-at-law to whom a practising certificate is issued is a member of the association, and is referred to in the Act as a “practitioner member”.
18. Section 23(1) makes it compulsory for an attorney-at-law who desires to practise law, to apply for a practising certificate. In order to obtain a practising certificate, the Attorney-at-law must satisfy the Registrar that he has paid his annual subscription to the LATT and has paid his annual contribution to the Compensation Fund.
19. Section 26 defines “law officer” and provides that a law officer “shall be deemed to be the holder of a valid practising certificate and to be a practitioner member.”

20. Section 27 exempts a law officer from paying an annual subscription to the LATT or an annual contribution to the Compensation Fund. This section as noted earlier is, however, subject to section 9(2).
21. Section 9(1) provides that subject to this section and section 10, all members of the LATT have the same rights and privileges. However, section 9(2) expressly states that only practitioner members who pay their annual subscription to the LATT are eligible
 - (a) to attend and vote at a general meeting or at an election of members of the Council; or
 - (b) to be elected to the Council.
22. Section 10 provides for the expulsion or suspension of rights and privileges of a practitioner member or a non-practitioner member after he has been given a reasonable opportunity to answer allegations made against him.
23. It follows from the plain and ordinary meaning of the words of the provisions referred to above, that law officers are deemed to be practitioner members of the LATT. They are expressly exempted from the payment of an annual subscription to the LATT or contribution to the Compensation Fund by section 27. However, section 27 is made expressly subject to section 9(2), which makes it clear that only practitioner members who pay their annual subscription to the LATT, are eligible to attend and vote at a general meeting or at an election of members of the Council or to be elected to the Council.
24. In my view, on a reading of the provisions, giving the words used by Parliament their plain and ordinary meaning, the intention of Parliament is clear. It was intended that law officers should fall into the category or class of practitioner members, and are deemed to hold practising certificates which entitle them to practise law. It is clear from the words used that they are not required to pay an annual subscription or a contribution to the Compensation Fund, subject to section 9(2), which makes it compulsory for them to pay their annual subscription to the LATT in order to exercise the privileges contained in section 9(2)(a) and 9(2)(b).

25. The trial judge concluded as I do that on a literal interpretation of the relevant sections there is no ambiguity or absurdity which requires the court to apply any other rule of statutory interpretation, or any external aid, such as parliamentary statements. However, in case she was wrong, she went on to consider whether the criteria set down by the House of Lords in **Pepper v Hart** (supra.) were satisfied. These criteria are:
1. The legislation is ambiguous or obscure or leads to absurdity,
 2. The material relied upon consists of one or more statements by a minister or other promoter of the bill, and
 3. The statements relied upon are clear.
26. Mr. Benjamin submitted before the trial judge and before this court that the **Pepper v Hart** principles ought not to be applied in this case, since reliance was being placed on statements of the promoter of the bill which were made during the course of proceedings of the House of Representatives in Committee, as opposed to the House in open session. However, Mr. Benjamin was unable to provide any authority or persuasive argument to support his contention. I can think of no reason in principle, why the Hansard record of proceedings of the House in Committee should be treated differently to proceedings in open session. In my view, the trial judge was right to reject Mr. Benjamin's submissions in this regard, and was correct in holding that the statements of the promoter of the bill, were clear and unequivocal, and supported her interpretation of the relevant sections of the Act.
27. Although it was not strictly necessary for her to do so the trial judge went on to apply the purposive approach to statutory interpretation, reading the controversial provisions of the Act in the context which led to its enactment, from the perspective of a reasonable person having all the background knowledge which would reasonably be available to the audience to which the instrument was addressed. The judge concluded that it was the intention of Parliament that law officers should enjoy all the rights of a practitioner except that if they wished to "participate" in the general meetings and elections of the LATT, they should pay their annual subscription for the current year. They were not disenfranchised by

this interpretation, since like any other practitioner member, they were entitled to exercise the rights set out in section 9(2), once they paid their annual subscription.

28. In my view, the conclusion of the trial judge was correct, save for the use of the word “participate”, which is not the language used in section 9(2) of the LPA. The rights referred to in this section are:

“(a) to attend and vote at a general meeting or at an election of members of the Council; or

(b) to be elected to Council.”

29. It is clear from section 9(2) that practitioner members who have not paid their annual subscriptions are not permitted to stand for election to the Council. However, subsection 9(2)(a) is capable of two meanings, depending on whether, the words “to attend and vote” are read disjunctively or conjunctively. If read disjunctively it means that practitioner members who have not paid their annual subscription may not attend a general meeting, and may not vote at an election of members of the Council. If read conjunctively, it means that such members may attend but are not permitted to vote. The former interpretation is far more restrictive of the rights of practitioner members, since it does not allow for any participation whatsoever in a general meeting of the LATT. The latter interpretation permits attendance and participation in discussions, but precludes voting at a general meeting on any issues put to the floor, or at an election of members of the Council.

30. The issue as to whether the words “attend and vote” which occur in section 9(2)(a) of the LPA should be read disjunctively or conjunctively was not canvassed before the trial judge, nor was she required to deal with it having regard to the issue she was asked to determine by the terms of the relief sought in the Fixed Date Claim Form filed on 5th March, 2012.

31. Before this court both Mr. Fitzpatrick and Mr. Martineau for the Respondents, expressed the view that the words should be read conjunctively so as to allow for attendance by law officers and participation in discussions among members of the profession at general meetings of the LATT. However, we have not had the benefit of reasoned argument on the issue and for this reason we prefer to

reserve judgment on this issue until such time as we receive full submissions of counsel supported by careful and exhaustive research. If, at this stage, I am to express a view on the Issue, I prefer to lean on the side of an interpretation which is not unduly restrictive of the rights of law officers to participate in the resolution of important matters which concern the legal profession. I therefore prefer to read the words “attend and vote” conjunctively.

32. This is sufficient to dispose of this appeal. However, for the sake of completeness, and in deference to the remarkable energy and industry of counsel for the Appellants, I will deal briefly with his salient submissions.
33. Mr. Benjamin traced the history of law officers from the Law Officers Ordinance enacted in 1936 to the passage of the LPA in 1986. By section 2 of the Ordinance, persons holding offices listed in Part 1 of the Schedule to the Ordinance, such as Crown Counsel, Solicitor General and Attorney General, were declared to have all the rights and privileges of a barrister entitled to practise in the colony. Section 3 provided that the offices listed in Part II of the Schedule, such as Crown Solicitor, were to have and enjoy the rights and privileges of a Solicitor of the Supreme Court duly enrolled and admitted without being required to pay any stamp duty or licence fee.
34. Mr. Benjamin then referred to section 85(3) of the Supreme Court of Judicature Act Ch. 4:01 which empowers the Registrar to enter on the roll of barristers all persons entitled to practise as barrister before 2nd October 1975, including persons entitled to enjoy the rights and privileges of a barrister under the Judicial and Legal Service Act Ch. 6:01. These officers are listed under Part I of the Third Schedule and include State Counsel, Solicitor General and Director of Public Prosecutions. Section 3(2) of the Solicitors Act Ch. 6:50 empowers the Registrar to enter on a roll of Solicitors all the names of persons entitled to enjoy the rights and privileges of a Solicitor under the Judicial and Legal Service Act. The offices are specified in Part II of the Third Schedule and include State Solicitor, and Chief State Solicitor.
35. Mr. Benjamin then referred to sections 26 and 27 of the LPA, and submits that historically law officers have always been recognised as a “separate class of

lawyers” and have always enjoyed certain rights and privileges without being required to pay any fee. In his view, sections 26 and 27 of the LPA continue the same trend. Section 26(2) provides that a law officer is deemed to be the holder of a valid practising certificate, thus entitling him to enjoy the rights to practise law, while section 27 exempts him from payment.

36. Mr. Benjamin recognises that section 27 created an exception to the exemption it grants. This exception is contained in section 9(2). However, he contends that there are three kinds of rights involved in section 9(2) – the right of members to freely associate with their colleagues, the right to participate in the affairs of the association and their “franchise rights”, that is, the right to vote, and the right to be elected to the council. Mr. Benjamin invited the court to consider each right disjunctively, and to construe the section restrictively so that there is minimum infringement on the rights of the member to attend, associate, participate and exercise his “franchise rights”.
37. In support of this submission, Mr. Benjamin referred to section 9(3) of the LPA which provides that practitioner members may by a resolution exclude all other members from a general meeting of the Association. This sub-section is not made expressly subject to the payment of an annual subscription. Clearly, then, this section is consistent with an interpretation of section 9(2) which permits attendance at general meetings and participation in discussions without the requirement of payment of the annual subscription. However, Mr. Benjamin is quite insistent that section 9(2) should be interpreted in such a way so as not to infringe on “franchise rights”.
38. In support of this submission he relies heavily on what he sees as the historical evolution of law officers as a separate class of lawyers and not merely a sub-set of “practitioner member”. In order to provide further support for this submission, he referred to section 12 of the LPA, which provides for the fixing by the Council of the annual subscription to be paid by different classes of members, and points out that no annual subscription has been fixed for law officers. It follows, according to his submission that since no annual subscription has been fixed for law officers as a separate class, then their rights under section 9(2) ought not to

be taken away. Mr. Benjamin further relies on sections 37 and 38, of the LPA which provides for disciplinary proceedings against Attorneys-at-law other than the Attorney General and a law officer. Mr. Benjamin submits that these sections provide further support for his contention that law officers are separate class of practitioner member.

39. In my view, the historical exposition of the office of law officer, while interesting, does not assist in the interpretation of the relevant sections of the LPA. The Law Officers Ordinance, the Supreme Court of Judicature Act and the Solicitors Act, all recognise that legal officers enjoyed the rights and privileges of barristers and solicitors in terms of their right to practise law. The LPA, goes further, in that it does not only provide for the issue of a practising certificate which entitles an Attorney-at-law to practise law, it establishes a Law Association, it provides for three distinct classes or categories of members, and it regulates the rights and privileges of members, not only in relation to the practice of law, but in relation to membership in the Association.
40. By section 3 of the LPA, there are three classes of members— practitioners, non-practitioners and honorary members. Section 26 of the LPA defines the term “law officer” and deems him to be a “practitioner member”. Section 27 exempts a law officer from the payment of an annual subscription to the LATT and an annual contribution to the Compensation Fund. However, section 27 is expressly made subject to section 9(2), which requires the payment by practitioner members of the annual subscription to the Association, if they wish to exercise the rights specified in section 9(2)(a) and 9(2)(b). There is no specified class of “law officer” for the purposes of membership in the Association pursuant to section 3 of the LPA. The failure of Mr. Benjamin to appreciate the conjoint effect of sections 3, 26(2), 27 and 9(2), in so far as they relate to the rights of a practitioner member, has given rise to his erroneous submissions. The LPA does not recognise a separate class of “law officers”. It expressly recognises a class of “practitioner member”, which includes “law officers” by virtue of section 26(2).

41. Mr. Benjamin's reliance on section 12 and sections 37 and 38, is also misplaced. Section 12 merely empowers the Council to fix the amount of the annual subscription for members of the association other than honorary members. In doing so the Council may divide the members into "classes". In practice the Association fixes the annual subscription by reference to standing in the profession, that is, on the basis of the number of years an Attorney has been admitted to practise. There is no separate class of "law officer" recognised by the Act or by the Council for the purposes of section 12.
42. Sections 37 and 38 of the Act which deal with disciplinary proceedings against Attorneys-at-law, expressly do not apply to the Attorney General or law officers. The position of the Attorney General does not concern us in this matter. Law officers are appointed by the Judicial and Legal Service Commission, and are subject to the disciplinary control of that Commission. Accordingly, it is not surprising that law officers are not subject to the disciplinary procedures of the LATT. It follows that sections 37 and 38 of the LPA provide no support for Mr. Benjamin's submissions.

Disposition

It follows that this appeal must be dismissed. Having regard to the importance of this matter to the parties concerned, we order that each party will bear his own costs.

Dated the 8th day of June, 2012.

R. Narine
Justice of Appeal.