REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P206 of 2017
Claim No. CV2015-03720

CHANDRICKA SEETERRAM

APPELLANT

AND

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF TRINIDAD AND TOBAGO

RESPONDENT

PANEL: **Jamadar, J.A.**
Jones, J.A.
Des Vignes, J.A.

APPEARANCES: **Mr. D. Mendes S.C. and Mr. J. Mootoo for the Appellant**
Mr. F. Hosein S. C., Mr. A. Maraj and Ms. S. Bridgemohansingh for Respondent

DATE OF DELIVERY: WEDNESDAY 31ST OCTOBER, 2018

I have read the Judgement of Jones J.A. and I agree with it.

Jamadar, J.A
Justice of Appeal

I too agree

Des Vignes, J.A
Justice of Appeal

JUDGEMENT

Delivered by J. Jones, JA.

1. The Appellant, Chandricka Maharaj, a chartered accountant, is a member of the Institute of Chartered Accountants of Trinidad and Tobago ("ICATT") the Respondent herein. He appeals the decision of the Trial Judge dismissing his application for the judicial review of a decision of the ICATT's Disciplinary Committee to hear disciplinary charges brought against him. At issue here is the procedure adopted by ICATT in bringing the charges against the Appellant.

2. At the hearing the Appellant raised two issues for the Judge's determination: (i) whether the Disciplinary Committee had the jurisdiction to investigate the complaint submitted to them and (ii) the impact of delay in the pursuit of the disciplinary hearing.

3. In treating with the first issue the Judge found that the investigation was initiated by a valid complaint; that the breaches all emanated from the complaint and, in the circumstances, the Disciplinary Committee had the jurisdiction to hear the complaint. In the circumstances he found that the hearing could not be characterized as an excess of jurisdiction. With respect to delay the Judge found that there was no evidence that the delay of approximately 17 months in the commencement of the hearing before the Disciplinary Committee was prejudicial to the Appellant. The Appellant has not challenged the finding of the Judge on the issue of delay.

4. The facts are not in dispute and are stated in detail in the judgment of the Trial Judge. For the purpose of the appeal, it is sufficient to give a brief outline of the facts relevant to this appeal. The disciplinary charges against the Appellant arose out of a complaint ("the Browne Complaint") made by a member of ICATT and sent to its Secretary ("the Secretary") by way of an email dated 24th October 2012.

5. By that email the Secretary was provided with a link to an article published in a daily newspaper. The email simply requested that the Secretary refer the matter to the Investigations Committee. The article dealt with the cross-examination of the Appellant before a Commission of Enquiry ("the Commission") established to enquire into the failure of certain financial Institutions. The Institutions under investigation included the Hindu Credit Union Co-Operative Society ("the HCU"). The evidence of the Appellant was in respect of the HCU. The article highlighted the Appellant's cross-

examination on certain aspects of his evidence before the Commission. The complete article, entitled "Depositors in dark about $31m loss (with CNC3 video)", is annexed to the written judgment of the Judge. It is not necessary to repeat its contents.

6. The disciplinary scheme established under ICATT's Rules ("the Rules") provides for a staged process. The first stage is conducted by the Investigations Committee ("the IC") which, if it considers that the complaint discloses a prima facie case for disciplinary action, then refers a complaint to the Disciplinary Committee ("the DC"). The second stage is the hearing by the DC of the complaint referred to it. Under the Rules, it is the DC that is empowered to impose penalties, including expulsion from membership, on a member. Complaints reach the IC by two routes: via the Council of ICATT ("the Council") pursuant to rule 18(e) or via the Secretary pursuant to rule 23 (b).

7. In the course of its investigations, the IC required the Appellant to provide them with additional information, namely, any additional witness statements that the Appellant proposed to submit by way of explanation to the Commission. In addition to providing the IC with the information requested the Appellant provided it with his evidence, by way of transcript and copies of documents, given by him to the Commission in re-examination. At a hearing before the IC the Appellant responded to questions put to him by members of the IC and, by way of oral submissions by his Attorneys, submitted that a prima facie case had not been made out against him and that the complaint ought not to be referred to the DC.

8. The IC determined that the complaint disclosed a prima facie case for disciplinary action and referred a complaint to the DC. The complaint alleged breaches of rules 102, 202 and 203 of ICATT's rules of professional conduct.

9. No affidavits were filed by the IC in these proceedings. Other than from the Appellant the only evidence of what occurred before the IC comes from the affidavit of the Secretary, the minutes exhibited by her, the correspondence between it and the Appellant and its report to the DC.

10. In its report the IC identified the scope of its investigation as being: "[t]o evaluate Mr. Chanka Seeterram's public statements made at the Hindu Credit Union Co-Operative Society Limited Commission of Enquiry (COE) on October 22nd and 23rd, 2012 and May 02nd 2013 which may have impacted the profession and members of ICATT" and "[t]o document alleged breaches in accordance with ICATT rules, Rules of Conduct and International Standards of Auditing rules."

11. According to the IC the approach taken to investigate the matter included: obtaining and reviewing the Appellant's notes of the proceeding before the Commission on October 22nd and 23rd, 2012 to identify alleged breaches of ICATT rules, rules of conduct of ISA's[1]; obtaining and reviewing supporting documents presented to the Commission as evidence to determine any breaches of the rules identified in the scope; reviewing the Appellant's subsequent

[1] International Auditing Standard

submissions to the Commission; and interviewing the Appellant to obtain an understanding of the information and explanations presented to the Commission and the financial accounting treatment applied.

12. Both parties acknowledge that at all material times the IC misrepresented both to the Appellant and to the DC that the complaint had been referred to them by the Council.

13. On 16th March 2015 the DC issued a notice of complaint against the Appellant. Up to this time, the DC was acting under the misconception that it was dealing with a complaint referred to the IC by the Council. The Respondent categorises the misconception as a misunderstanding. In its oral submissions before us, however, the Appellant submits that it was a deliberate lie on the part of the IC and/or the DC. This does not seem to be a submission made before the Judge and he made no finding in this regard. For our purposes it is not necessary to make any such finding.

14. The notice of complaint issued by the DC comprised a little over 6 pages and mirrored the findings of the IC. In coming to their decision to issue the notice of complaint the DC considered the IC's report and supporting documents submitted to them by it. These were the transcripts of hearings dated 22nd and 23rd October 2012 and 2nd May 2013; the further statement of the Appellant sent to the Commission; the audited financial and audited consolidated financial statements of the HCU for the years 2004 and 2005 and various international accounting standards. It would seem that these were documents tendered into

evidence at the Commission's hearing and referred to in the evidence of the Appellant.

15. The true source of the complaint was only revealed to the Appellant by the DC after enquiries were made of them by the Appellant subsequent to the DC issuing the notice of complaint. On receipt of this information the Appellant took the position, by way of preliminary submissions, that the IC unlawfully relied on facts and matters not included in the complaint and that in those circumstances the referral to the DC from the IC, insofar as it charged him with breaches not arising from the complaint, was bad. These unlawful charges he identified as those alleging breaches of rules 202 and 203.

16. The DC determined that the charges were valid. In its written reasons it stated that it was not persuaded that the IC was limited by the matters contained in the complaint. It felt that it was entitled to take the view that, while the investigation may have been inspired by the Browne Complaint, on a careful review of its report it was reasonable to conclude that the IC actually proceeded to carry out its investigations under the referral powers of the Council under rule 18(e). According to the DC to confine the investigation to the narrow parameters of a complaint by a person under rule 23 would not do justice to the Rules.

17. It therefore determined that in deciding to refer a complaint to the DC the IC was entitled to take into account any of the facts and matters which were considered by it; was not limited by the matters contained in the complaint and, in any event, all of the potential breaches could have been supported by the

Browne Complaint. It concluded therefore that it had the jurisdiction to hear the complaints.

The Appellant's arguments

18. The crux of the argument presented by the Appellant on appeal is that the notice of complaint is bad because the jurisdiction of the DC only arises where the IC has acted properly in considering the relevant complaint and determining whether it discloses a prima facie case for disciplinary action. This, it submits, is not what happened in this case.

19. According to the Appellant, the evidence is that the members of the IC as a whole did not have sight of the Browne Complaint and, in any event, were not satisfactorily briefed on its contents even though they were made aware of its existence. In the circumstances, it submits, the IC launched into an enquiry of matters not referred to it by the Council and which were not encompassed in the Browne Complaint. Accordingly it referred to the DC a complaint which it did not consider in its capacity as an investigations committee under rule 18(e) because it was acting as a delegate of the Council under rule 18(e). In these circumstances, the DC had no jurisdiction to embark upon a hearing of the charges.

20. Further, without prejudice to its argument on jurisdiction and on the assumption that it does not succeed on that point, the Appellant submits that, in any event, the only matters properly the subject of the complaint are those set out at

paragraphs 1 and 2(i)(a) of the notice of complaint, that is, those complaints that allege breaches of rule 102. In fact, the complaint at paragraph 2 (i)(a) alleges a breach of rule 202.

The relevant disciplinary rules

21. **Rule 18 (e)** states:

> "Notwithstanding the terms of the Rules of Professional Conduct, the Council shall have the additional right and power to determine from time to time in particular cases, what acts, omissions, matters of things constitute unfitness, lack of moral character, or professional or other misconduct in members and students or constitute violations of the rules and regulations of the Institute or are or have been derogatory to the reputation, dignity or honor of the Institute or the Profession.
>
> Further, the Council may, whenever it, in its absolute discretion, considers a matter to be of public concern and which may be derogatory to the reputation, dignity or honour of the Institute or the profession call upon the member and or members in case of a partnership, directly concerned to provide such further information as the Council may consider necessary in order to deal with the matter. If the Council is of the opinion that the matter requires further investigation the Council may refer the matter to the Investigations Committee as a Complaint and the matter shall be dealt with thereafter in accordance with Rules 21 to 33 herein.

Failure on the part of the member or members as the case may be to comply with the Council's request for such information shall result in the suspension of the member and or members as the case may be until such time as the Council's request is complied with."

22. Insofar as it is relevant, **Rule 23** states:

"a. It shall be the right of any person to bring to the attention of the Secretary any facts or matters indicating that a *member and/or firm* or student may have become liable to disciplinary action.

b. Where any facts or matters come to the attention of the Secretary indicating that a *member and/or firm* or student may have become liable to disciplinary action in accordance with this Schedule (hereinafter referred to as a 'complaint'), or that a *member or member firm* may have become liable to disciplinary action, the Secretary shall lay it before the *Investigations Committee*.

c. The *Investigations Committee* shall consider whether a complaint dealt with discloses a prima facie case for disciplinary action. If it considers that it does it shall (i) refer a complaint to the Disciplinary Committee; or (ii) order that no further action be taken on the complaint.

d. If the *Investigations Committee* refers a complaint to the Disciplinary Committee it shall send to the Disciplinary Committee a summary of the fact and matters which were before the Investigations Committee, together with a summary or copy of any representations made by the defendant to the *Investigations Committee."*

23. By **rule 22,** the IC

> "shall have power to call for, and it shall be the duty *of every member and/or firm* or student to provide, such information, including books, papers and reports, as the *Investigations Committee* may consider necessary to enable it to discharge its functions under this Schedule."

Discussion

24. Crucial to this appeal is the difference between rules 18(e) and 23 (b) with respect to the scope of the complaint to be referred to the IC. By rule 23(b) the Secretary may only refer to the IC facts or matters brought to the Secretary's attention that indicate that a member may have become liable to disciplinary action in accordance with the schedule. Schedule here must mean the rules of professional conduct established by the Respondent. The Secretary simply has an administrative role and the referral is limited to matters brought to the Secretary's attention that suggest a breach of the rules of professional conduct.

25. The powers given to the Council in determining what may be referred as a complaint are far wider. Rule 18(e) gives the Council the additional right to

determine what acts constitute misconduct or are in violation of the rules and regulations or are or have been derogatory to the reputation, dignity and honor of ICATT or the profession. In addition to breaches of the rules of professional conduct, therefore, the Council may refer to the IC for its investigation matters which may not be breaches of the rules of professional conduct but which in their opinion constitute misconduct or are or have been derogatory to the reputation, dignity and honor of ICATT or the profession. Rule 18(e) therefore permits the Council to widen the ambit of what is to be considered professional misconduct and, where necessary, refer such widened complaint to the IC for its investigation.

26. Once the matter has been referred to the IC for investigation, the procedure to be followed is the same no matter the source of the complaint. The IC is empowered to investigate the complaint as referred to it and in the course of the investigation: (a) demand further information in accordance with rule 22; (b) consider whether the complaint referred to it discloses a prima facie case for disciplinary action in accordance with rule 23(c); and (c) refer the complaint to the DC or order that no further action be taken on it in accordance with rule 23. The difference between the two rules, therefore, is to the scope of the complaint that may be referred to the IC. The role and jurisdiction of the IC remains the same whatever the source of the complaint.

Was the Browne Complaint laid before the Investigations Committee

27. This is a question of fact. The Judge did not make a specific finding in this regard. He concluded, however, that the investigation was initiated by a valid complaint. The Appellant submits that the evidence is that the members of the IC as a whole did not have sight of the Browne Complaint and in any event were not satisfactorily briefed on its contents even though they were made aware of its existence.

28. Rule 23 (b) simply requires the complaint to be laid before the IC by the Secretary. ICATT relies on the unchallenged evidence contained in the affidavit of the Secretary. According to the Secretary on receipt of the Browne Complaint she forwarded it to the Chairperson of the IC. She says she attended a meeting of the IC on 31st October, 2012 and recorded the minutes of the meeting. She says that she recalls that at that meeting the Browne Complaint was brought to the attention of the IC and discussed. She noted this in the minutes. She identifies the process followed by the IC for confirming the minutes of meetings and verifies that the copy of the minutes placed into evidence was confirmed in accordance with that procedure. The minutes support her evidence on what transpired at the meeting.

29. There is no contrary evidence. Insofar as the rule simply requires that the complaint be laid by the Secretary before the IC, there can be no dispute the rule had been complied with. The Browne Complaint had been laid before the IC by the Secretary.

30. The Appellant's argument is based on the premise that the IC's investigation went beyond the strict confines of what was contained in the article and was made as though it was a referral from the Council. In those circumstances, he submits, the Browne Complaint was never considered by the IC. In support of this submission he refers to: (i) statements made by the Chairman of the IC contained in the minutes of 31st October, 2012 where she requests that members read the background of the complaint in the newspapers or on the website of the Commission; (ii) the contents of the IC's letter to the Appellant dated 27th December, 2012 and the report to the DC in which no mention was made of the Browne complaint; and (iii)) the evidence from the DC that it appeared that the IC was acting as a delegate of the Council.

31. It cannot be disputed that at all material times the IC acted as though, and led the Appellant to believe that, the complaint had come from the Council. This is evident from the contents of the letter of 27th December, 2012 and its report to the DC. The fact that in the correspondence and in its report there was no mention of "the Browne complaint" can be attributed to the IC's error in assuming that the source of the complaint was the Council. The fact that the Chairman referred the members of the IC to "the background of the complaint" does not of itself suggest that the IC did not consider the Browne Complaint. This fact is more relevant to the questions posed as to the scope of the IC's investigation. This is an issue that will be dealt with later in this judgment.

32. The position taken by ICATT is simply that, even though the IC acted under the mistaken impression that what had been referred to it was a complaint pursuant

to rule 18, in any event it had the power under rule 23 to investigate and did investigate the allegations made in the Browne Complaint. In those circumstances the question of lack, or acting in excess, of jurisdiction does not arise. To counter this argument the Appellant contends that the IC saw itself as a delegate of the Council, acted as such and as a result had no intention of exercising its powers under rule 23. In such a circumstance no recourse could now be had to rule 23(c) as it was never its intention to act pursuant to that rule.

33. In support the Appellant relies on the principle enunciated in the cases of **Briggs and Ors v Gleeds (Head Office) (a firm) and others [2015] 1All ER 533**; **Davis and another v Richards & Wallington Industries Ltd and others [1990] 1 WLR 1511** and **LRT Pension Fund Trustee Co. Ltd and others v Hatt and others [1993] OPLR 225**. In accordance with these cases the Appellant submits that the donee of a power may execute that power without referring to it providing it evinces an intention to execute the power. This, it submits, will only apply where an intention not to exercise the power has not been shown. In other words, where an intention not to execute the power is shown or can be inferred, it cannot be presumed that the donee intended to exercise the power. According to the Appellant, since the IC determined that it was acting as a delegate of the Council pursuant to rule 18, no intention to act in accordance with rule 23 can be presumed. In these circumstances, he submits, the IC cannot not now rely on any power given to it pursuant to rule 23.

34. Unfortunately for the Appellant there is no factual basis for such an assumption. In the first place there is no evidence from any of the documents generated by the IC or on their behalf that it considered that it was acting as delegate of the Council. The Appellant suggests that the failure of the IC to place any evidence before the Court means that we have to accept the evidence of the DC that the IC considered that it acted as a delegate for the Council. This is not a logical conclusion to draw from the failure of the IC to place any affidavit evidence on record.

35. The idea that the IC considered that it was acting as a delegate of the Council was not a position contained in any of the documents originating from the IC. Rather it is raised in an affidavit deposed to by a member of the DC and not a member of the IC. In that affidavit, in an attempt to explain the position taken by the IC, it is stated that:

> "the Investigations Committee did in fact refer to the concerns of the 'Council' in the Investigations Committee report. However, this appears to have emanated from the fact that it saw itself as a delegate of the Council at all times."

At best this is simply an opinion expressed by a member of the DC and of little or no evidentiary value.

36. In any event the power given to the IC under the Rules is to investigate complaints to determine whether the complaint discloses a prima facie case for disciplinary action. That is the only power vested in the IC by the Rules. This power is to be exercised by it regardless of whether the source of the complaint

is the Council (rule 18(e)) or the Secretary (rule 23(b)). This is the power that was clearly exercised by the IC in this case. It determined that the complaint, however the manner of referral, disclosed a prima facie case for disciplinary action.

37. This is not a case of the IC inventing a complaint as submitted by the Appellant. The fact that the DC may have come to the conclusion that the IC went outside the ambit of the Browne Complaint does not change the legal position. It falls to this Court to determine whether the IC has in fact done so and, if so, the effect of so doing.

38. It is clear from the Rules that once a complaint is referred to the IC the role of the IC remains the same no matter the source of the complaint. Its jurisdiction under the Rules is to determine whether the complaint referred to it discloses that a prima facie case for disciplinary action has been made out no matter what the source of the complaint. In those circumstances, an error as to the source of the complaint does not affect the jurisdiction of the IC to hear a complaint and if necessary refer that complaint to the DC.

39. Once it has been established that the IC did have the jurisdiction to investigate the Browne Complaint, the fact that they led the Appellant to believe that this was a complaint made by the Council would not affect their investigation unless, perhaps, the Appellant could show some prejudice to him. The suggestion by the Appellant, during the course of the oral submissions before us, that had he been aware that the complaint was not one instituted by the

Council he would have been entitled to refuse to provide the further information requested of him on the basis that the IC had no jurisdiction holds no water in the light of our finding that the IC had the jurisdiction to hear the Browne Complaint, did in fact hear the Browne Complaint and a consideration of the provisions of rule 22. Rule 22 gives the IC the power to call for further information and imposes a corresponding duty on the member to provide such information no matter what the source of the complaint.

Was the investigation embarked upon by the Investigations Committee broader than the four corners of the Browne Complaint and did this result in charges not within the scope of the complaint

40. The Appellant submits that the Judge erroneously determined that the IC was entitled to refer to the DC facts and matters beyond those set out in the Browne Complaint and that the notice of complaint issued to the Appellant properly extended to cover alleged breaches of rules 202 and 203 of the rules of conduct. Having not been successful on the jurisdiction point, the outcome of this appeal, therefore, is dependent on the scope of the investigation embarked upon by the IC and whether this resulted in charges based on allegations that were not within the four corners of the Browne Complaint.

41. The scope as identified by the IC was to investigate the Appellant's public statements made to the Commission that may have impacted on the profession and its members and to document alleged breaches in accordance with the Rules, rules of conduct and International Standards of Auditing rules (ISA). In

this regard, the IC was wrong. The scope of the investigation was to examine the Appellant's evidence before the Commission and determine whether the facts and matters referred to in the Browne Complaint raised a prima facie case for disciplinary action.

42. According to the Judge:

> "Being of the view that the matters disclosed in the article were of some concern the IC had the responsibility to confirm whether or not the article was a true reflection of the actions of the appellant…….to discern the facts in issue, it was perfectly allowable and reasonable for the Investigations Committee to carefully analyze the evidence in question to determine whether the furtherance of its objects as defined by the Act was, or could be, invoked."

43. If, in making this statement, the Judge was of the opinion that the IC could embark on an investigation and refer to the DC charges which were wider than the complaint before it, then the Judge was wrong. In accordance with the Rules, the extent of the IC's jurisdiction was only within the four corners of the complaint before it.

44. The position taken by the Appellant that the article simply referred to the $31 million loss is, however, not factually correct. The cross-examination reported in the article dealt with 6 specific points arising out of what the cross-examiner indicated was the Appellant's evidence before the Commission.

45. According to the article the cross-examination suggested that: (i) the Appellant colluded with the HCU to pull the wool over the eyes of its members by not disclosing its financial weakness to them; (ii) the weaknesses he had identified in the HCU's financial accounts were not disclosed to members (the suggestion in the article was that these weaknesses had been identified by the Appellant in the evidence given by him to the Commission); (iii) an example of his withholding critical information was the failure to show a loss of $31 million in his 2005 auditor's report and his decision to include it in a separate statement in 2006; (iv) at the HCU's 2005 Annual General Meeting he made no reference to the fact that the treatment of the $31 million was wrong; (v) he did not correct information given to the shareholders by the president of HCU that there was a 15% profit on shareholders returns despite admitting in evidence that it was erroneous; and (vi) despite a management letter in 2006 which disclosed that HCU was losing $2 million a month and had incurred a consolidated loss by September 2006 of $150 million this information was not reported to the AGM in 2006.

46. Two of these points, the collusion to pull wool over the eyes of the membership and the failure to disclose financial weakness identified in his evidence, were general allegations of impropriety and wide in their scope. The other four related to specific examples of the first two comments.

47. The IC was of the view that it was entitled to evaluate the Appellant's evidence made to the Commission on October 22nd and 23rd, 2012 and May 02nd, 2013. This included the Appellant's oral evidence-in-chief and cross-examination and

copies of documents tendered through him or on which he had been examined and the transcript of the evidence given by the Appellant in re-examination by way of explanation and presented to the IC by the Appellant.

48. The cross-examination described in the article referred to statements made by the Appellant in his evidence given on the 22nd and 23rd October, 2012. The IC was entitled to examine this evidence so as to identify these statements and the basis for the suggestions put to the Appellant in cross-examination and referred to in the article. In addition, natural justice required the IC to consider any explanations proffered by the Appellant in an attempt to persuade it that no prima facie case was disclosed. Indeed, the Rules required that, where a complaint has been referred to the DC, the IC forward to the DC a copy of any representation by to it by the defendant.

49. Insofar as the Appellant complains that the investigation exceeded the scope of the Browne Complaint there is no merit in the contention. As evidenced by the article the complaint required the IC to examine the evidence of the Appellant to ascertain the basis of the cross-examination and natural justice required them to consider any explanations given by him.

50. It remains now for us to treat with the Appellant's final and alternate submission: that the charges contained in the notice of complaint extend beyond the facts and matters covered by the Browne Complaint. According to the Appellant, the notice of complaint wrongly includes:

(a) at paragraph 2 (i) (b) thereof, an allegation that the financial statements of the HCU for the year ended 30 September 2005 did not account for losses of subsidiaries;

(b) at paragraph 2 (i) (c) thereof:

i. an allegation that Note 11 to the audited financial statements of the HCU for the year ended 30 September, 2004 did not provide an analysis and composition of the sum of $37,438,636 due by Related parties as required by International Accounting Standard (IAS) 24; and

ii. an allegation that Note 10 to the audited financial statements of the HCU for the year ended 30 September, 2005 did not provide an analysis and composition of the sum of $51,916,789 due by Related parties as required by International Accounting Standard (IAS) 24;

(c) at paragraph 2 (ii) thereof:

i. an allegation that the HCU's financial statements for the years ended 30 September, 2004 and 2005 did not disclose that the HCU was in breach of its bye-law 40 and section 28(1) of the Co-Operative Societies Act in that it had exceeded its maximum permitted liability and that it was lending to non-members;

ii. an allegation that in the audit report the Appellant ought to have mentioned such alleged breaches and that they had a material effect on the financial statements of the HCU for the years ended 30 September 2004 and 2005; and

iii. an allegation that the Appellant's audit opinion did not comply with ISA 250.

(d) at paragraph 2 (iii) thereof, an allegation that the Appellant had not conducted his audit work in accordance with ISA 550 (which pertains to the examination of related party transactions) and was, accordingly, in breach of rule 202 of ICATT's rules of conduct;

(e) at paragraph 2 (iv) thereof, an allegation that the Appellant, in breach of ISA 260, had failed to perform due diligence on the HCU's valuator, or to carry out additional audit work or engage another valuator to corroborate a significant appreciation in value of HCU's investment properties which had a material effect on HCU's financial statements for the years ended 30 September 2004 and 2005 respectively; and

(f) at paragraph 3 thereof, an allegation that the Appellant in his audit opinion stated that the financial statements for the years

ended 30 September 2004 and 2005 respectively were presented in conformity with generally accepted accounting principles when they did not so [conform].

51. The notice of complaint comprises a little over 6 pages. It alleges breaches of rules 101- Integrity and Objectivity; 202- Auditing Standards and 203- Accounting Principles. The format followed by the DC is to identify the relevant rule and then state the allegations of its breach.

52. The main thrust of the cross-examination reported in the article was that the Appellant had colluded with the HCU to pull wool over the eyes of its members by not disclosing the HCU's financial weakness to them and that this was done by withholding critical information from the membership. With this in mind it is difficult to conclude that breaches that merely allege that notes to audited financial statements did not provide an analysis and composition of sums due by related parties; or simply that the Appellant did not comply with various international accounting standards; or that statements that the 2004 and 2005 financial statements presented were in conformity with general accounting practices when they were not had the effect of withholding critical information as to the HCU's financial weakness from the membership or of pulling the wool over members' eyes. Such charges cannot be said to arise from the Browne Complaint.

53. To the contrary, allegations that: the financial statements did not account for subsidiaries' losses; that the statements and the audit report did not disclose that

the HCU had exceeded the maximum permitted liability and that it was lending to non- members; and that he had failed to perform due diligence on the HCU auditor or carry out additional audit work or engage another valuator to corroborate the appreciation in the value of the HCU investment properties relate to the allegation of pulling wool over the member's eyes, withholding critical information and not disclosing the HCU's financial weaknesses. These, therefore, are within the four corners of the Browne Complaint and are valid charges arising out of the complaint.

54. In the circumstances, some of the alleged breaches do extend beyond the scope of the facts and matters brought to the Secretary's attention and laid before the IC by the Browne Complaint while others fall within its scope. For accuracy and the avoidance of doubt, annexed to this judgment as Appendix A is a copy of notice of complaint in which those allegations that extend beyond the facts and matters covered by the Browne Complaint have been excised.

55. Accordingly, this appeal is allowed in part insofar as the charges now excised no longer form a part of the notice of complaint. In all other matters the order of the Trial Judge is affirmed.

Judith Jones
Justice of Appeal

APPENDIX A

Breaches of ICATT Rules:

Rule 102 – Integrity and Objectivity:

1. Rule 102 of the Rules of Conduct provides that:

> "*A member shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgement to others."*

(i) Rule 102 has been breached by you in that in your audit of the financial statements for the Hindu Credit Union Co-Operative Society Limited ("HCU") in respect of the financial year ended 30th September 2005, you knowingly misrepresented that the financial statements present fairly, in all material effects the financial position of the Society as at 30th September, 2005 and the results of its operations and cash flows for the year then ended in accordance with International Financial Standards", when you knew that the item called "Revaluation" of Land & Buildings in the amount of $31,032,034 (per Note 14 to the Financial Statements) had been recorded against Undivided Earnings instead of the Profit and Loss Account. Such facts were known to you when you issued your audit opinion dated 8th September 2006.

(ii) Furthermore, in evidence given by you before the Commission of Inquiry into the Failure of CL Financial Limited, Colonial Life Insurance Company Limited, Clico Investment Bank Limited, British American Insurance Company Limited and the HCU, ("the Commission of Enquiry"), you admitted, inter alia, that the treatment of the said $31,032,034 as indicated in paragraph 1(i) above, was not correct but it was a delicate matter and you took account of the fact that the HCU, at that point was experiencing a run and the management of HCU needed time to seek financial assistance in deciding on this treatment (Ref: *Notes of evidence of the Commission of Enquiry dated, October 23rd, 2012; Pages 101-106).*

You therefore subordinated your judgement to others in breach of Rule 102.

Rule 202-Auditing Standards:

2. Rule 202 of the Rules of Conduct provides that:

> "*A member shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant unless he has complied with the applicable Generally Accepted Auditing Standards*

promulgated by the Institute of Chartered Accountants of Trinidad and Tobago. Statements on Auditing issued by the Council are, for purposes of this rule, considered to be interpretations of the Generally Accepted Auditing Standards, and departures from such statements must be justified by those who do not follow them."

(i) Rule 202 has been breached by you as a result of a breach of International Auditing Standard 700 – The Auditor's Report on Financial Statements, in that, your audit opinion issued on 8th September 2006 in respect of the financial statements of the HCU for the year ended 30th September, 2005 was unqualified with regard to the following instances of non-compliance:

(a) **Non-compliance with paragraph 38 of International Accounting Standard 16 – Property Plant and Equipment:**

"*When an asset's carrying amount is decreased as a result of a revaluation, the decrease should be recognised as an expense."*

Note 14 of the Financial Statements of the HCU for the year ended 30th September, 2005, revealed a decrease in the amount of $31,032,034 as a result of a "Revaluation" of Land and Buildings. This amount was recorded against "Undivided Earnings" instead of an expense in the profit and loss account of the entity. Such treatment is not in compliance with paragraph 38 of IAS 16.

(b) ~~**Non-Compliance with paragraphs 3(a), 8, 9(g) and 11(d) of International Accounting Standard 36 – Impairment of Assets:**~~

~~The following paragraphs of International Accounting Standard 36 were not adopted in the preparation of the financial of statements of HCU for the year ended September 30, 2005.~~

~~*"#3(a) This standard applies to: subsidiaries, as defined in IAS 27 Consolidated Financial Statements and Accounting for Investments in Subsidiaries.*~~

~~*#8 An enterprise should assess at each balance sheet date whether there is any indication that an asset may be impaired. If such indication exists, the enterprise should estimate the recoverable amount of the asset.*~~

~~*#9(g) In assessing whether there is any indication that an asset may be impaired, an enterprise should consider, as a minimum, the following indications: evidence is available from internal reporting that indicates that the economic performance of an asset is, or will be, worse than expected.*~~

~~*#11(d) Evidence from internal reporting that indicates that an asset may be impaired includes the existence of: operating losses or net cash outflows for the asset, when current period figures are aggregated with budgeted figures for the future."*~~

~~The financial statements of the HCU for the year ended 30 September 2005 did not account for the losses of the subsidiaries by either providing for the loss of the respective investment and recoverability of the loans to the subsidiaries thereby accounting for the diminution in value as provided by IAS 36~~

(c) **<u>Non-Compliance with</u> International Accounting Standard 24 – Related Party Disclosures paragraphs 22 to 23 which provides as follows:**

#22 If there have been transactions between related parties, the reporting enterprise should disclose the nature of the related part relationships as well as the types of transactions and the elements of the transactions necessary for an understanding of the financial statements

#23 The elements of transactions necessary for an understanding of the financial statements would normally include:

(a) an indication of the volume of the transactions, either as an amount or as an appropriate proportion;
(b) amounts or appropriate proportions of outstanding items; and
(c) pricing policies."

The audited financial statements of HCU for the year ended September 30th 2004
contains a line item titled: "Due by Related Parties - $37,438,636" ~~and which was~~
~~referenced to Note 11 of the said financial statements. Note 11 did not provide an~~
~~analysis and composition of the said amount as required by IAS 24.~~

In relation to the above you gave evidence before the Commission of Enquiry on the 23rd October, 2012 that there was no documentation to support the loan agreements between HCU and its subsidiaries and therefore there was no documentation to support the said sum of $37,438,636 as being due to the HCU from related parties. Your audit opinion however confirmed that the said Financial Statements fairly presented the position of the HCU as of the date (*Ref. Notes of Evidence of Commission of Enquiry pages 16-21).*

~~Further, the audited financial statements of HCU for the year ended September 30th 2005 contains a line item titled: "Due by Related Parties - $51,916,789" and which was referenced to Note 10 of the said financial~~

~~statements. Note 10 did not provide an analysis and composition of the said amount as required by IAS 24.~~

(ii) **Non-Compliance with paragraph 35 of International Standard of Auditing 250 – Consideration of Laws and Regulations:**

Paragraph 35 of International Standard of Auditing 250 provides as follows:

"*#35. If the auditor concludes that the non compliance has a material*

effect on the financial statements, and has not been properly reflected in the financial statements, the auditor should express a qualified or an adverse opinion."

Your audit opinions for the HCU's financial statements for the years ended 30th September 2004 and 2005, did not disclose that the HCU was in breach of its Bye-Law 40 and section 28(1) of the Co-Operative Societies Act Chap. in that it has exceed its Maximum Permitted Liability of $100MM and was lending to non-members, in this case subsidiary companies, respectively.

You were aware of the abovementioned breaches by the HCU in that:

(i) You gave evidence before the Commission of Enquiry on the 23rd of October, 2012 that you were aware that HCU was operating beyond the maximum permitted liability in breach of Bye-Law 40 (*Ref pages 86-89 of the Notes of Evidence of the Commission of Enquiry)*; and

(ii) Note 4(ii) the financial statements for the year ended 30 September 2005 disclosed Loans to HCU subsidiaries in the amount of $88,618,177 in breach of section 28(1) of the Co-operative Societies Act Chap.

You ought to have concluded and provided in your audit report that the abovementioned breaches by the HCU had a material effect on the financial statements of the HCU for the years ended 30th September 2004 and 2005. Your audit opinion did not comply with ISA 250 paragraph 35.

(iii) ~~**Non-Compliance with paragraphs 2, 13 and 16 of International Standard of Auditing 550 – Related Parties:**~~

~~Paragraphs 2, 13 and 16 of International Auditing Standard 550 provides that:~~

~~"#2 The auditor should perform audit procedures designed to obtain sufficient appropriate audit evidence regarding the identification and disclosure by management of related parties and the effect of~~

~~related parties transactions that are material to the financial statement ……"~~

~~#13 In examining the related parties transactions, the auditor should obtain sufficient appropriate audit evidence to whether these transactions have being properly recorded and disclosed.~~

~~#16 If the auditor is unable to obtain sufficient appropriate audit evidence concerning relating parties and transactions with such parties and conclude that the disclosure in the financial statements are not adequate the auditor should modify the auditor's report appropriately.~~

~~From the evidence given by you before the Commission of Enquiry, it can be concluded that you did not conduct your audit work in accordance with ISA 550 with specific reference to the above quoted standard. You have therefore failed to perform your audits in accordance with the applicable standard as promulgated by ICATT and you are therefore in breach of Rule 202.~~

(iv) **Non-Compliance with paragraphs 12 and 13 of International Standard on Auditing 620 – Using the work of an Expert:**

Paragraphs 12 and 13 of International Auditing Standard 620 provides that:

> "#12 The auditor should assess the appropriateness of the expert's work as audit evidence regarding the financial statement assertions being considered. This will involve assessment of where the substance of the expert's findings is properly reflected in the financial statements or supports that financial statement assertions, and consideration of:
>
> - Sources dated used;
> - Assumption and methods used and their consistency with prior periods; and
> - Results of the expert's work in the light of the auditor's overall knowledge of the business and of the results of other audit procedures.
>
> *#13 When considering whether the expert has used source data which is appropriate in the circumstances, the auditor would consider the following procedures:*

(a) Making inquiries regarding any procedures undertaken by the expert to expert to establish whether the source data is sufficient, relevant and reliable;

(b) Reviewing or testing the data used by the expert"

The financial statements of HCU for the years ended 30th September 2004 and 2005 contained a line item titled: "Appreciation in Value of Investment Properties" in the amount of "$84,435,487" and "$18,203,577" respectively.

In evidence given by you before the Commission of Enquiry, you indicated that you had no reason to challenge the report from the valuator and as such maintained that you discharged your responsibilities in accordance with International Standard on Auditing 620 (Notes of Evidence of the Enquiry dated, October 23rd, 2012; Pages – 8, 9, 34 to 37.)

The appreciation in value of the investment properties had a material effect on the results shown in the said Financial Statements but you failed to perform due diligence on the valuator, or to carry out additional audit work, or engage another valuator to corroborate the significant appreciation in value in breach of ISA 620.

Rule 203 – Accounting Principles:

3. ~~Rules of Rules of Conduct provides that:~~

~~"*A member shall not express an opinion that financial statements are presented in conformity with Generally Accepted Accounting Principles if such statements contain any departure from an accounting principle promulgated by Council which has a material effect on the statements taken as a whole, unless the member can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases his report must describe the departure, the approximate effects thereof, of practicable, and the reasons why compliance with the principle would result in a misleading statement.*~~

~~Rule 203 has been breached by you in that in your audit opinion you stated that the financial statements of the HCU for the years ended 30th September 2004 and 2005 as presented were in conformity with generally accepted accounting principles when they did not so conform. In particular, the committee relies on paragraph 2(i) (a), (b) and (c) above.~~