The Republic of Trinidad and Tobago

IN THE COURT OF APPEAL

Civil Appeal No. P310 of 2019
Claim No. CV 2018-02726

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO ALLEGING THAT THE PROVISIONS OF SECTION 4 THEREOF HAVE BEEN, ARE BEING, AND ARE LIKELY TO BE ABROGATED ABRIDGED OR INFRINGED

And

IN THE MATTER OF SECTION 15 (1A) OF THE LEGAL PROFESSION ACT CHAPTER 90:03

Between

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant

And

DIANNE JHAMILLY HADEED

Respondent

And

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

First Interested Party

And

THE REGISTRAR OF THE SUPREME COURT OF TRINIDAD AND TOBAGO

Second Interested Party

PANEL:

N. BEREAUX J.A.
J. JONES J.A.
A. DES VIGNES J.A.

Date of delivery: July 31, 2020

APPEARANCES:
F. Hosein SC, R. Dass, R. Thurab instructed by L. Persad and K. Matthews, Attorneys-at-law, for the Appellant

R. Caesar, C. Rodriguez, S. Kirk-Solomon instructed by D. Francis, Attorneys-at-law, for the Respondent

A. Fitzpatrick SC, J. Sookoo, C Hackett instructed by Bryne and Byrne Attorneys-at-law for The Law Association of Trinidad and Tobago (the First Interested Party)

I. Benjamin SC, P. Rudder instructed by M. Benjamin, attorneys-at-law for The Registrar of the Supreme Court of Trinidad and Tobago (the Second Interested Party)

JUDGMENT

Delivered by Bereaux J.A.

Introduction

(1) The main issue in this appeal is whether section 15(1A) of the Legal Profession Act contravenes the equality provisions of sections 4(b) and (d) of the **Constitution of the Republic of Trinidad and Tobago** ("the **Constitution**"). The short question is whether the respondent, Dianne Hadeed, a dual citizen of St. Lucia and Grenada, was discriminated against by virtue of her *"origin"* pursuant to section 4(b) and (d) of the Constitution. It is the Attorney General's appeal from the decision of the High Court which declared section 15(1A) of the **Legal Profession Act Chapter 90:03** ("the **LPA**") unconstitutional because it contravened the provisions of section 4(b) and (d) of the **Constitution**.

(2) Ms Hadeed has cross-appealed, challenging the judge's dismissal of her claims of a breach of her rights enshrined under section 4(a) and section 4(b) of the **Constitution** including a claim of a breach of legitimate expectation. Consequently, there are other issues raised in the appeal as to whether her rights to property and her legitimate expectation under certain international treaties were abridged. Ms. Hadeed is referred to in this judgment either as Ms. Hadeed or the respondent.

(3) The respondent wishes to be admitted to the Trinidad and Tobago Bar. She applied for admission pursuant to the provisions of section 15(1A) of the **LPA**. Section 15(1A), introduced in October 2000 as an amendment to the **LPA** permits Trinidad and Tobago nationals to practise law in Trinidad and Tobago without the necessity of obtaining a Legal Education Certificate (LEC). The respondent's application was refused because she is not a Trinidad and Tobago national. Only Trinidad and Tobago nationals can be called to the Trinidad and Tobago Bar pursuant to section 15(1A). Prior to the promulgation of section 15(1A), possession of a LEC was the sole basis upon which anyone could be admitted to the Trinidad and Tobago Bar (subject to certain exceptions which are not relevant here). Non-nationals who wish to practise law in Trinidad and Tobago, remain obliged to obtain the LEC through the various options permitted by the **LPA** and the **Council of Legal Education Act Chap 39:50** ("the **CLE Act**").

Background

(4) The **CLE Act** governs legal education in Trinidad and Tobago. It implemented an agreement made among governments of certain Caribbean territories (the Agreement) including the Government of Trinidad and Tobago, with respect to legal education within their jurisdictions. It established a Council of Legal Education as a body

corporate, empowered, inter alia, to undertake and discharge general responsibility for the practical training of persons seeking to become members of the legal profession. The Council's powers also include power to establish and maintain law schools for the purpose of providing post graduate professional legal training, courses of study and practical instruction, for the holding of examinations and for the granting of diplomas and certificates.

(5) By Article 5 of the Agreement, no person was admissible to practise law in Trinidad and Tobago without a LEC. Article 5 (among other articles) is enacted into law in Trinidad and Tobago by section 3 of the **CLE Act**. All participating territories were required to enact this provision. Article 5 further provides that *"nothing herein contained in this Article shall prevent any territory from imposing additional qualifications as a condition of admission to practice herein"*. As it stood, therefore, the LEC was the minimum standard of qualification prior to section 15(1A) of the **LPA.**

(6) A LEC is obtained from the Council after undergoing an approved course of study at a law school administered by the Council. LLB graduates of the University of the West Indies are accorded automatic admission to the law schools. The admission of non-UWI graduates is subject to the availability of places and to such other conditions as the Council may require.

(7) Having regard to the provisions of Articles 3 and 4 of the Agreement which govern the qualifications required to enter a law school administered by the Council, the options of the respondent to qualify to practice in Trinidad and Tobago (or the other participating territories), otherwise than pursuant to section 15(1A) of the **LPA** are:

(i) Obtain a UWI LLB degree and pursue a course of study and professional training at a law school (usually a 2 year course).

Admission to the law school would be automatic pursuant to Article 3.

(ii) Obtain a non-UWI degree which is recognised by the Council as equivalent to a UWI LLB degree and apply for entry into the law school. Such admission is subject to availability of places.

(iii) Obtain a non-UWI degree which is recognised by the Council as equivalent to an UWI LLB degree and either of the two following qualifications:

(a) a qualification, approved by the Council, from a common law jurisdiction for admission to practise law in that jurisdiction, or,

(b) a qualification which would have been recognised, prior to 1st October, 1972, by all the participating territories, as a qualification to be admitted to practise as a barrister or solicitor in those territories,

(c) AND, thereafter, complete a six month course of training organised by the Council.

(8) These are options from which Ms. Hadeed must also choose if she wishes to practice in her home country be it St. Lucia or Grenada. The enactment of section 15(1A) of the **LPA** created four additional bases on which to qualify to practice law in Trinidad and Tobago, none of which requires the obtaining of a LEC. Section 15(1A) provides as follows:

"Notwithstanding this Act or any other written law to the contrary, a national of Trinidad and Tobago who-

(a) has passed the Bar Finals or the Bar Vocational Course at an institution validated by the general Council of the Bar of England and Wales, has been called to the Bar of England and Wales and has completed pupillage of at least six months and is certified as

such;

(b) has passed the Law Society Finals or the Legal

(c) Course at an institution validated by the Law Society of England and Wales and having undertaken articles or a training contract in accordance with the Training Regulations of the Law Society of England and Wales, has been admitted to the roll of Solicitors of the Supreme Court of England and Wales;

(d) has passed the Bar Vocational Course at an institution validated by the general Council of the Bar of England and Wales; or

(e) has passed the Legal Practice Course at an institution validated by the Law Society of England and Wales; and

(f) in the case of persons referred to in paragraphs (c) and (d) has obtained a certificate from the head of chambers of an Attorney-at-law of not less than ten years standing, practising in Trinidad and Tobago to the effect that the national has undergone an attachment at those chambers for a continuous period of not less than six months doing work relating to the practice of Law, is deemed to hold the qualification prescribed by Law and is entitled, subject to the payment of the prescribed fees, to practise as an Attorney-at-law in Trinidad and Tobago."

Because section 15(1A) is specific to nationals of Trinidad and Tobago, non-nationals wishing to practise law in Trinidad and Tobago continue to be required to obtain a LEC in the way set out in the **CLE Act** (as they would in any other participating territory). This is the basis of the respondent's complaint.

Additional facts

(9) Ms. Hadeed has completed all the requirements to be called to the Bar under section 15(1A) of the **LPA**, including her six-month attachment. On 7th April, 2017, she received a *"Certificate of Recognition of Caribbean Community Skills Qualification"* from the Trinidad and Tobago Government. During the course of her attachment she sent a notice to the Registrar of the Supreme Court indicating her intention to apply for admission to practise law in Trinidad and Tobago. This notification included proof of her nationality and qualifications, including a copy of her passport, birth certificate, Bachelor of Laws (LLB) certificate and Legal Practice Certificate (LPC). She received no intimation of an objection to her intended admission. Rather, she received a letter of congratulation from an Assistant Registrar, informing her that 10th November, 2017 was the date that general admissions will be held.

(10) The respondent could not meet that date (probably because she only completed her attachment on 1st December, 2017). Ultimately, the respondent's non-eligibility was discovered and the Assistant Registrar informed her that she could not be admitted to Trinidad and Tobago Bar pursuant to section 15(1A) of the **LPA**. Before the discovery she had received a second e-mail of congratulation from another Assistant Registrar and had been interviewed by the Law Association with a view to her fitness to practise and was advised that she could receive a certificate of fitness in ten working days. It appears that similar errors were not discovered in respect of several non-Trinidad and Tobago nationals who in earlier years were admitted to the Trinidad and Tobago

Bar pursuant to section 15(1A) qualifications.

(11) Ms. Hadeed is unable to practise law in Trinidad and Tobago. She complains about those non-nationals who have been admitted to the Trinidad and Tobago Bar pursuant to section 15(1A) of the **LPA** namely; Skeeta John of St. Lucia and Janel Lindie of Guyana both of whom were admitted in 2016.

(12) After the hearing of the appeal the respondent discovered other persons who are non-Trinidad and Tobago nationals, who were also admitted to practise. She filed an application to have these names admitted as further evidence. That application is dismissed for reasons which are given at paragraphs 74 and 75 below.

(13) The respondent alleges that being denied the opportunity to practise as an attorney-at-law in Trinidad and Tobago is:

(i) a breach of her right to equality before the law under section 4(b) of the **Constitution**;

(ii) a breach of her right to equality of treatment by a public authority under section 4(d) of the **Constitution** because other non-nationals, who were equally circumstanced, applied and were admitted to practise law in Trinidad and Tobago under section 15(1A) of the **LPA**;

(iii) a breach of her right not to be deprived of property as guaranteed by section 4(a) of the **Constitution**.

(14) As the holder of a Caribbean Community Skilled Nationals Certificate, she contends that she should not be subjected to any restrictions on her right to engage in any gainful employment or occupation that do not apply to nationals of Trinidad and Tobago. The respondent also alleges that she had a legitimate expectation that she would be accepted by the Registrar as having fulfilled all the conditions laid down by law to be eligible to

apply to be admitted to practise as an attorney-at-law in Trinidad and Tobago.

(15) Ms. Oliverie Stuart (Assistant Registrar), Ms. Theresa Hadad, treasurer of the Law Association, Ms. Lila Rodriguez Roberts and Ms. Laura Persad, both of the Chief State Solicitors office all deposed to affidavits in reply to Ms. Hadeed's evidence. Ms. Rodriguez Roberts exhibited the Hansard record of the passage of the section 15(1A) amendment to the **LPA** in the House of Representatives and in the Senate. Ms. Persad provided very helpful information as to areas and instances in which legislation has given preference to Trinidad and Tobago nationals over non-nationals in the award of benefits. I have read all the affidavits. I shall refer to such evidence as is relevant and only when necessary.

The judgment below

(16) The relevant judgment for the purposes of this appeal was delivered on 25th July, 2019. It is fulsome and consists of some one hundred and twenty-four pages. In summary, the judge held as follows:

(i) The concept of *"origin"* used in the Constitution was wide enough to incorporate concepts of nationality as part of one's personhood. Alternatively, nationality must represent a feature of one's identity, a characteristic which is not specifically mentioned in the section 4 general prohibition of the **Constitution** but which is nonetheless a personal characteristic which is integral to the respondent's personhood. Either interpretation calls for justification by the State.

(ii) The reason given by the State to justify the difference in treatment was the need to treat with the limited spaces in the law schools and afford local students a shorter route to being called to the Bar than that set out in the Agreement and the **CLE Act**. This was not rational, proportionate or desirable. Nor was this a policy decision

in which the court should demur to the wisdom of Parliament.

(iii) The respondent's right to liberty and enjoyment of property under section 4(a), had not been breached. The respondent's case did not rise to the level of a deprivation of her right to liberty or a property right. The **Constitution**, at best, guaranteed her an opportunity to work. She has not lost that opportunity.

(iv) There was no breach of the respondent's legitimate expectation because no unequivocal promise had been made to her from any legitimate source, which had been breached. Neither was such a promise to be gleaned from the CARICOM Skills Certificate, the previous practice of the Registrar, the LATT website or an interpretation of the **LPA** consistent with the Revised Treaty of Chaguaramas (RTC).

(v) Declaratory relief was sufficient to vindicate the respondent's constitutional right and it was therefore sufficient to grant a declaration that section 15(1A) of the **LPA** was in breach of section 4(b) and (d) of the Constitution and that it was unconstitutional and should be struck down. The respondent's request for an order striking out the words *"national of Trinidad and Tobago"* from section 15(1A) of the **LPA** and replacing them with *"any person"*, is refused.

(17) We are grateful for the submissions, written and oral, put forward by all counsel. The Law Association did not address us on the issue of the constitutionality of section 15(1A) of the **LPA** but rather on the remedy the court should grant in the event that it upholds the unconstitutionality of section 15(1A). Given that we have found the section to be constitutional, it is not necessary to consider this issue.

<u>Summary of Decision</u>

(18) The appeal is allowed for the following reasons:

(i) The respondent is entitled to the protection afforded by sections 4(a), (b) and (d) of the **Constitution.**

(ii) *"Origin"* in section 4 of the **Constitution** must be given a wide and generous interpretation. It includes nationality both in terms of citizenship as well as ancestry and is wide enough to include place of origin, geographic origin and social origin.

(iii) While the statute on its face treats nationals and non-nationals differently, the fact of different treatment did not mean that the appellant has been discriminated against. Discrimination means a failure to treat like cases alike. This is not such a case. There is an obvious difference. The respondent as a non-national is not in the same position as a national and is not entitled as of right to be treated in the same way. It is therefore not necessary to deploy the proportionality test. Nor is it necessary to seek to justify the enactment of section 15(1A) of the **LPA.**

(iv) In any event, there is a rational justification for treating nationals of Trinidad and Tobago differently; hardship to a large number of Trinidad and Tobago nationals wishing to qualify as attorneys-at-law who are unable to gain admission to the UWI Faculty of Law and the law schools because of limited availability of places. This was an issue specific to Trinidad and Tobago in relation to the demand for legal education.

(v) The Parliament of Trinidad and Tobago, the legislative arm of government, is entitled, as a matter of policy, to enact legislation which accords its nationals the option of pursing qualifications which would entitle them to practise in Trinidad and Tobago.

(vi) Further, even if the proportionality test should be deployed, section 15(1A) of the **LPA** serves a legitimate aim and is rational and proportionate.

(vii) The cross-appeal is dismissed. The judge was correct to find there was no breach on the respondent's right to property, protection of the law and legitimate expectation. The respondent's application

for the admission of fresh evidence is also dismissed.

Analysis

The appeal

(19) I shall deal first with the Attorney General's appeal. Section 4 of the **Constitution**, under the rubric *"Rights Enshrined"* recognises and declares 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 human rights and freedoms which are thereafter immediately set out. The relevant rights for discussion in this appeal are:

(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) …

(d) The right of the individual to equality of treatment from any public authority in the exercise of any functions.

(20) Some doubt arose as to whether the respondent as a non-national could invoke the provisions of sections 4 and 5 of the **Constitution.** In my judgment the respondent, is entitled to the protection accorded by fundamental rights and freedoms set out in section 4(a), (b) and (d) of the **Constitution**. Sections 4(a) to (d) of the **Constitution** speak not of the right of *"citizens of Trinidad and Tobago"* but of the *"individual"*; thus encompassing all manner of peoples within our shores, i.e. Trinidad and Tobago nationals, as well as non-nationals such as tourists or foreign workers on contract, foreign students and refugees. But as Ms. Persad demonstrated in her affidavit, a non-national will suffer certain legal

disadvantages which as a matter of law will accrue only to nationals of Trinidad and Tobago (social benefits for example).

Meaning of origin

(21) The **Concise Oxford Dictionary 11th Edition** defines *"origin"* as *"a person's social background or ancestry"*. **Collins English Dictionary, Millennium Edition,** speaks of *"origin"* as *"ancestry or parentage; birth extraction"*. The Latin root is given as *"origo beginning, birth from; orīrī to rise, spring from"*. The same **Concise Oxford Dictionary** defines *"nationality"* in two ways:

(i) The status of belonging to a particular nation.

(ii) An ethnic group forming part of one or more political nations.

Collins gives five meanings:

(i) The state or fact of being a citizen of a particular nation.

(ii) A body of people sharing common descent, history, language etc.

(iii) A national group; *"30 different nationalities are found in this city."*

(iv) National character or quality.

(v) The state or fact of being a nation.

(22) *"National"* in section 15(1A) of the **LPA** is used in the sense of citizenship of Trinidad and Tobago. The question is whether *"origin"* includes *"nationality"* in the sense of citizenship. I entertain no doubt that it does. The context in which *"origin"* is used in section 4 of the **Constitution**, however, suggests a contextual limitation to its meaning as being a personal characteristic. In **R v. Chief Constable of South Yorkshire [2004] 4 ALL E.R. 193** (cited before the judge) Lord Steyn at paragraph 48 seemed to accept such a generalisation. That generalisation of *"personal characteristic"* was made by the European Court of Human Rights in **Kjeldsen v Denmark (1976) 1 EHRR 711** in respect of the phrase *"other status"* appearing in Article 14 of the **European Convention on**

Human Rights. Article 14 provides that the fundamental rights therein set out were to be enjoyed *"without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, associated with a national minority, property, birth or other status"*. But citizenship is also a personal characteristic. Indeed, the vast majority of people are born into citizenship.

(23) Some assistance is provided in the decision of the House of Lords in **London Borough of Ealing v. Race Relations Board [1972] AC 342**. In that case a local council adopted a rule that an applicant for housing accommodation must be a British subject within the meaning of the British Nationality Act 1948, in order to be accepted on a waiting list for such accommodation. A Polish national who was qualified by residence for housing accommodation, was not accepted on the waiting list because he was not of British nationality. The question before the House of Lords was whether the council had unlawfully discriminated against him on the ground of his *"national origin"* within sections (1)(1) which prohibited discrimination on the grounds of *"colour, race or ethnic or national origin"*.

(24) The House of Lords, by a majority, held that *"national"* in *"national origin"* meant national in the sense of race and not citizenship and accordingly the council had not acted unlawfully in breach of section 5 in refusing to enter Z's name on the housing waiting list and a declaration should be granted to that effect. The decision turned on the context in which *"national origin"* was used in section 1(1) and required an examination of the statute as a whole. But it provides useful dictum on the scope and breadth of the respective meanings of *"national"* and *"origin"* as well as *"national origin"*. The speech of Lord Simon of Glaisdale is relevant. He stated at pages 363-364:

"Origin," in its ordinary sense, signifies a source, someone

or something from which someone or something else has descended. "Nation" and "national," in their popular in contrast to their legal sense, are also vague terms. They do not necessarily imply statehood. For example, there were many submerged nations in the former Hapsburg Empire. Scotland is not a nation in the eye of international law, but Scotsmen constitute a nation by reason of those most powerful elements in the creation of national spirit - tradition, folk memory, a sentiment of community. The Scots are a nation because of Bannockburn and Flodden, Culloden and the pipes at Lucknow, because of Jenny Geddes and Flora Macdonald, because of frugal living and respect for learning, because of Robert Burns and Walter Scott. So, too, the English are a nation - because Norman, Angevin and Tudor monarchs forged them together, because their land is mostly sea-girt, because of the common law and of gifts for poetry and parliamentary government, because (despite the Wars of the Roses and Old Trafford and Headingley) Yorkshireman and Lancastrian feel more in common than in difference and are even prepared at a pinch to extend their sense of community to southron folk. By the Act of Union English and Scots lost their separate nationalities, but they retained their separate nationhoods, and their descendants have thereby retained their national origins. So, again, the Welsh are a nation - in the popular, though not in the legal, sense - by reason of Offa's Dyke, by recollection of battles long ago and pride in the present valour of their regiments, because of musical gifts and religious dissent, because of fortitude in the face of economic adversity, because of the satisfaction of all Wales that Lloyd George became an architect of the

> ***welfare state and prime minister of victory. To discriminate against Englishmen, Scots or Welsh, as such, would, in my opinion, be to discriminate against them on the ground of their national origins. To have discriminated against Mr. Zesko on the ground of his Polish descent would have been to have discriminated against him on the ground of his national origins."***

(25) Lord Simon's comments were in the context of the issue before him and went towards justifying the decision to confine *"national"* in the phrase *"national origin"* to a racial context. But they give a proper perspective of the scope of *"nationality"*.

(26) The judge was right to construe *"origin"* as widely as he did. We are construing, not ordinary legislation as in **Ealing** but a Constitution. It is not to be interpreted in a narrow or pedantic way but *sui generis* as being unique and in a class of its own. It must be given a wide and generous construction. See **Minister of Home Affairs and Anor. v. Barbosa [2019] UKPC 41** at paragraph 45 as follows:

> ***"The Board … is conscious of the guidance given by the Board in Minister of Home Affairs v Fisher [1980] AC 319. Lord Wilberforce, giving the advice of the Board, explained that the Constitution is, particularly in Chapter I, drafted in a broad and ample style which lays down principles of width and generality (p 328F); that its antecedents (the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations' Universal Declaration of Human Rights) and the form of Chapter I call for a generous interpretation, avoiding the austerity of tabulated legalism, suitable to give to individuals the full measure***

> ***of the fundamental rights and freedoms to which it refers (p 328G-H); and that respect must be paid to the language that has been used and the traditions and usages which have given rise to that language, but there must also be a recognition of the character and origin of the instrument, and a need to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms (p 329E-F).”***

Our history

(27) The words *“race, origin, colour, religion or sex”* as set out in section 4 of the **Constitution** are especially apposite in a country such as ours. They are placed in proper perspective when we look to our history. Trinidad and Tobago is a country rich in diversity - population, religion, culture. We are a people derived from many nationalities. Our population comprises people of African, East Indian, European, Chinese, Middle Eastern and Venezuelan descent, a fair proportion being of mixed race. Many of us can also trace our lineage to the first peoples who lived here long before Columbus allegedly discovered us. These ancestral links identify us and are our *“origin”*. They were also a source of division and prejudice. We cannot begin to appreciate the scope of the words *“without discrimination by reason, origin, colour, religion …”* without having regard to our history.

(28) Our diversity is very much a product of our colonial history. Although first a colony of Spain and then Great Britain, Trinidad was largely settled by French settlers from other Caribbean islands particularly in the mid to late 18th century during the administration of the last Spanish Governor Don José María Chacón. Donald Wood in his book ***Trinidad in Transition, the Years After Slavery*** **(1968)** summarises it in this way at page 1:

"Trinidad was a conquered colony. When apprenticeship ended in 1838 there were still people living who could remember the capitulation of the last Spanish Governor in 1797. The Roman Catholic settlers, both white and coloured, found themselves whether they liked it or not, under an alien Protestant flag. The terms of the surrender had guaranteed their liberty of worship; others fearing for their safety in French and Spanish territories soon joined their French-and Spanish-speaking compatriots in Trinidad, while at the same time colonists from the British Caribbean and from Britain itself moved into a virtually unexploited island which seemed to hold out an infinite promise of prosperity. Thus from the beginning of British rule the free classes were divided by religion and language and in this way Trinidad was different from older established British colonies in the Caribbean.

The foreigners always remained loyal to the British Crown in spite of great provocations, but they saw no reason why some of the most cherished aspects of their own culture should be forced under by the mere fact of conquest by another colonial power …

A major part of the working capital of the more prosperous of these settlers was their black slaves. On their African customs and beliefs or, rather, on that part which survived the catastrophic effects of servitude, something of the language, religion, and habits of their masters had been imposed. Even in the first decades of the nineteenth century the most important trait of Trinidad society was apparent – the mixture of people of different cultures and races which outdid in its variety any

other West Indian island; yet after emancipation they were joined by men and women from America, Europe, Africa and Asia. By 1870 the ethnic composition of the population was as rich as it is today; in the preceding years had been formed some of these assumptions and prejudices held by one group of Trinidadians about another that are still influential at the present time."

Tobago was itself the subject of claims by Spain, Britain, France, Holland, Latvia *"and even the buccaneers operating on a commission issued by the Governor of Jamaica"*. See **Eric Williams, *History of the people of Trinidad and Tobago* (A&R Publishers Group, 1963)**

(29) We are thus a nation formed from many nationalities to which we can also point as our *"origin"*. The prejudices and assumptions of each other which they formed and of which **Donald Wood** spoke in 1968 (the time of first publication of his work) continue to be influential today. This is consistent with a colonial history of exploitation, prejudice and racism in which the white ruling class was superior and the black descendants of slaves were deemed inferior. This has shaped our socialisation.

(30) The post emancipation period between 1838-1938 was a period in which Trinidad was *"a divided or segmented society consisting of sectors which perceived themselves and were perceived by others as separate and distinct"* – See **Bridget Brereton**, ***A History of Modern Trinidad 1783 – 1962* (Heinemann, 1981)** at page 116. She wrote:

"The segments were hierarchically arranged, and, generally speaking, most people accepted the place of each sector in the hierarchy. At the risk of over-simplification, we can say that Trinidad in this period was divided into four major sectors. There was the white upper class; few questioned its ranking as the political,

social and economic elite. There was the black and coloured middle class, distinguished by education and by white-collar jobs. There were the Creole working class, mainly of African descent. Finally, the Indians, although strong numerically, were separated from the rest of the population by culture and religion, by race and by legal restrictions, and by their relatively late arrival. They were not generally considered to be part of "Creole society" in this period.

The powerful white elite was the ruling class of Trinidad for the whole of this period, and its position was not seriously challenged until the late 1930's. It consisted of two main groups: there were the British officials and the English and Scottish merchants, planters and professionals resident in this island, and there were the white Creoles, born in the island, descended from French, Spanish, English, Italian or German immigrants who had settled in Trinidad since the eighteenth century. Trinidad was home for these people, and they felt that they had a "natural" right to form the local aristocracy.

The French Creoles were the most numerous group among the white Creole sector. They were mostly descended from French settlers, but the term was understood to include people of English, Irish, Spanish, Italian or German descent, born in the island and traditionally Roman Catholic … They formed a closely united elite, racially exclusive, imbued with aristocratic traditions, descended (for the most part) from the royalist French immigrants who had come to Trinidad after 1783. They greatly valued family traditions and kinship: to be a

> ***true French Creole, one had to belong to one of the "good" families, one had to bear one of the "respected" names … Even more crucial, a member of the French Creole elite had to be "pure white" and a Roman Catholic …***
>
> ***The critical points, for the French Creoles, were racial purity and aristocratic tradition … Some of the leading French Creoles, were descended from minor French noblemen … others were not, but still adopted aristocratic pretensions. There was an exaggerated deference to birth and breeding. A member of the de Verteuil family wrote as late as 1932 "I am a repecter of the old blood… I still have that which they cannot buy". Naturally, the French Creoles hardly ever married outside the group, and intermarriage was extensive. So few families were acceptable: free from any taint of "Negro blood", impeccably Catholic, aristocratic enough to meet the requirements."***

(31) It was out of this, sometimes volatile, alchemy of nationalities, races, cultures and religions with their attendant prejudices and assumptions of each other that modern Trinidad and Tobago society emerged.

(32) *"Colour"* is of special significance in a country of people with a variety of skin tones, hair texture and facial characteristics all measured favourably or unfavourably by proximity to whiteness. The lighter the skin tone and softer the hair texture, the better looking you were and greater the social privileges and opportunities for upward mobility. The blacker the skin tone the greater likelihood that privileges and opportunities of any kind would be denied. Many of us are old enough to recall that until the Black Power protests of 1970 people were denied employment at Barclays

Bank and admission to the Country Club in Maraval because they were *"black"* or *"too black"* and that black women were not pretty enough to win the Carnival queen beauty pageant. Blackness is a function of one's African or East Indian derivation (whether or not we wish to admit it). Such discrimination is as much on a basis of ancestral and national *"origin"* as it is of *"colour"* or *"race"* and remains very much a feature in Trinidad and Tobago.

(33) But we are also a composite twin island state and as a nation, we are all citizens of Trinidad and Tobago. We have come a long way since independence in 1962. As a people, we are unique with a distinct, discrete identity. Our nationality defines us. We have a national personality - the lilting accent, our warmth and our welcoming spirit, our generosity, our love of life and of fete, our deep religious faith and love of religion, our religious tolerance, our distinct culture – music, dance and food in particular, all drawn from or influenced by multiple nationalities who settled here (though not all by choice). In agreement with the judge I say that our nationality is part of and forms our personhood. As such, the fact of citizenship of Trinidad and Tobago – our nationality - is itself a basis by which we are identified as Trinbagonian and by which we can be singled out for discrimination. To the extent that we are born here and are nationals of Trinidad and Tobago with our discrete identity we are of Trinidad and Tobago *"origin"*. But there are those nationals of Trinidad and Tobago who have acquired Trinidad and Tobago citizenship by naturalisation whose country of birth may be Grenada, Barbados or Germany and who as former citizens of those countries may thus be described as being of Grenadian, Barbadian or German *"origin"* and who, because of their origin, may be singled out for discrimination. Nationality in the sense of citizenship is thus as much a subject of prejudice as is ancestral nationality.

(34) In my judgment *"origin"* must therefore be interpreted widely to include

national origin not just in the sense of lineage or ancestry or in the sense of nationality qua race or but also, where the context so admits, nationality in the sense of citizenship. In agreement with the judge, it is broad enough also to include place of origin, geographic origin or social origin.

(35) The respondent is a citizen of Grenada and also of St. Lucia. She may be described as being of Grenadian or St. Lucian *"origin"*. To the extent that the respondent is not a national of Trinidad and Tobago and that section 15(1A) of the **LPA** conveys a benefit on nationals of Trinidad and Tobago, there appears to be *prima facie* different treatment by the statute based on her *"origin"*. It does not follow however that such different treatment amounts to discrimination.

*Does section 15(1A) of the **LPA** infringe sections 4(b) and (d) of the **Constitution**?*

(36) The respondent's complaint is directed at section 15(1A) of the **LPA.** It is legislative action of which she complains, as opposed to any act of commission by a public official. In my judgment that excludes section 4(d) which is directed at public officials who, and public institutions which, are public authorities. While Parliament can of course be described as a public authority, the specific constitutional prohibition against legislative infringement of the section 4 rights, is set out in section 5(1) of the **Constitution** which provides:

> ***"Except as is otherwise expressly provided in this chapter and in section 54, no law may abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognized and declared."***

(37) The question is therefore whether section 15(1A) of the **LPA** abrogates,

abridges or infringes section 4(b) of the **Constitution**. The trial judge applied the proportionality test as set out in **Suratt v. AG [2007] UKPC 55**. At page 58 Baroness Hale noted that freedom of thought and expression and the enjoyment of property were both:

> ***"qualified rights which may be limited, either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it."***

(38) She added that ***"It is for Parliament in the first instance to strike the balance between individual rights and the general interest"*** and that ***"The courts may on occasion have to decide whether Parliament has achieved the right balance."***

(39) But the deployment of the proportionality test is not necessary in this case, because there is no inconsistency with, impingement or abridgment of any constitutional right. This is not a case of like and like. Nationals and non-nationals are not on an equal footing. Lord Hoffman's comments in **R (Carson) v. Secretary of State for Work and Pensions, R (Reynolds) v. Same (2006) 1 A.C. 173** are relevant. That was a decision of the House of Lords which, while not binding on us, is still highly persuasive. The claimant was a British citizen who had spent most of her working life in England and had a full record of national insurance contributions. At the date of her retirement in 2001 she was resident in South Africa but still qualified to receive a retirement pension. By virtue of regulation 3 of the Social Security Benefits Up-Rating Regulations 2001 and, because South Africa was not a country with which the UK had made a bilateral agreement allowing reciprocal uprating of benefits, the claimant continued to receive her pension at the same 2001 level without any annual cost of living increase as given to other recipients of pensions under section 150 of the Social Security Administration Act. She sought a declaration that regulation 3 was ultra

vires as it unlawfully interfered with her right under article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, scheduled to the Human Rights Act 1998, to the enjoyment without discrimination on the ground of her *"status"*, namely her residence in South Africa, of her Convention right to peaceful enjoyment of possessions under article 1 of the First Protocol to the Convention.

(40) The House of Lords held that a distinction was to be drawn between grounds of discrimination under article 14 which prima facie appeared to offend the respect due to the individual, as in the case of sex or race, where severe scrutiny was called for, and those which merely required some rational justification; that discrimination on the ground of residence or in relation to age fell into the latter category.

(41) Lord Hoffmann stated at paragraph 14 that the fact that the claimant was treated differently from a pensioner who has the same contribution record but lives in the United Kingdom or a treaty country was not enough to amount to discrimination.

> ***"Discrimination means a failure to treat like cases alike. There is obviously no discrimination when the cases are relevantly different …***
>
> ***Whether cases are sufficiently different is partly a matter of values and partly a question of rationality. Article 14 expresses the Enlightenment value that every human being is entitled to equal respect and to be treated as an end and not a means. Characteristics such as race, caste, noble birth, membership of a political party and (here a change in values since the Enlightenment) gender, are seldom, if ever, acceptable grounds for differences in treatment. In some constitutions, the prohibition on***

discrimination is confined to grounds of this kind and I rather suspect that article 14 was also intended to be so limited. But the Strasbourg court has given it a wide interpretation, approaching that of the Fourteenth Amendment, and it is therefore necessary, as in the United States, to distinguish between those grounds of discrimination which prima facie appear to offend our notions of the respect due to the individual and those which merely require some rational justification: Massachusetts Board of Retirement v Murgia (1976) 427 US 307.

There are two important consequences of making this distinction. First, discrimination in the first category cannot be justified merely on utilitarian grounds, e g that it is rational to prefer to employ men rather than women because more women than men give up employment to look after children. That offends the notion that everyone is entitled to be treated as an individual and not a statistical unit. On the other hand, differences in treatment in the second category (e g on grounds of ability, education, wealth, occupation) usually depend upon considerations of the general public interest. Secondly, while the courts, as guardians of the right of the individual to equal respect, will carefully examine the reasons offered for any discrimination in the first category, decisions about the general public interest which underpin differences in treatment in the second category are very much a matter for the democratically elected branches of government."

(42) Later at paragraph 25 under the rubric *"Parliamentary choice"* he stated:

> ***"Furthermore, I think that this is very much a case in which Parliament is entitled to decide whether the differences justify a difference in treatment. It cannot be the law that the United Kingdom is prohibited from treating expatriate pensioners generously unless it treats them in precisely the same way as pensioners at home. Once it is accepted that the position of Ms Carson is relevantly different from that of a UK resident and that she therefore cannot claim equality of treatment, the amount (if any) which she receives must be a matter for Parliament."***

(43) I agree. The judge found that the respondent had properly identified a comparator group of persons who possess the academic qualification and who are entitled to avail themselves of the section 15(1A) pathway to legal practice. He held that what distinguishes her from this comparator group was her nationality. That consequently the law was thus discriminatory. He held that equality of treatment was an important aspect of the rule of law and that any objective, justifiable or proportional reason for a difference in treatment cannot include a breach of the law. The amendment to introduce section 15(1A) of the **LPA** was an *"ill advised"* step which could not legitimately be the reason to limit a benefit to a class or group.

(44) He added that the intention to treat nationals more favourably than non-nationals in the context of a Caribbean scheme of legal education was not rational policy. It went against the grain of providing Caribbean standards for the practice of law. Section 15(1A) promoted inferior qualification to the UK legal market from which the qualification was obtained. He concluded by saying that section 15(1A) was most importantly in plain breach of the law and undermines the rule of law.

(45) These findings are misconceived. Nationals of Trinidad and Tobago and non-nationals are not on the same footing. Nationals by virtue of their citizenship, belong to the country of citizenship. They are entitled to freely enter and exit their country as they wish. Non-nationals enter and stay at the grace of the host country, subject to conditions, some quite restrictive. Usually the length of their stay is limited. If they are here for employment there are usually visa and work permit requirements. If they are here for study, there are visa requirements. There may be national security restrictions for any visitor. Nationals are entitled to enjoy the patrimony and resources of their country as a matter of right. Non-nationals do not. Any entitlement of non-nationals to work here is at the grace of the State through legislation as is the case of skilled CARICOM nationals under the **Immigration (Caribbean Community Skilled Nationals) Act Chapter 18:03 (**section 3).

(46) Such national entitlement has been pursued by the governments of most countries as a matter of social policy by the enactment of legislation ensuring preferable treatment to nationals in areas of public administration and education by which non-nationals are only employed if suitably qualified citizens cannot be found. Such legislation does not breach constitutional safeguards because citizens and non-nationals are not similarly circumstanced. The necessity of non-nationals having to secure a work permit is another example of that social policy. Access to disability assistance, old age pensions and welfare payments are also affected by these differences. Non-nationals would not have any entitlement to them as of right. There is simply no equation. Because there is an inherent difference between nationals and non-nationals there will be different treatment but such different treatment is not discrimination.

(47) In my judgment that is sufficient differentiation to dispose of any allegation of discrimination. Justification does not arise, neither does the

proportionality test.

(48) Alternatively, on Lord Hoffman's formulation, if a rational justification is required then the reasons given by the then Attorney General during the enactment of section 15(1A) of the **LPA** in Parliament provide it.

(49) We can look to Hansard to determine the purpose and reasons for the amendment. The decision of the Privy Council in **David Gopaul v. Baksh [2012] UKPC 1** is authority for us looking to Hansard for an indication of the legislative purpose. See **Lord Walker's** comments at paragraphs 3 and 7. The reasons given by the Attorney General during the passage of section 15(1A) of the **LPA** were that hardship was being caused to citizens of Trinidad and Tobago who did not have UWI LLB degrees and were not guaranteed automatic entry into the Caribbean law schools. There were also limited places available to Trinidad and Tobago students wishing to enter the law faculty, a prerequisite to the professional qualification. Once those places were filled, other Trinidad and Tobago students were forced to study abroad and those who could not afford it, were forced to obtain external degrees. The automatic entry of UWI law graduates to the law schools meant that many Trinidad and Tobago students abroad, having completed their LLB degrees, were forced to complete their professional training abroad because they were not able to gain entry into the law schools in order to obtain the LECs. There were numbers of nationals awaiting entry into the Hugh Wooding Law School.

(50) Those reasons provide a rational policy justification for the passage of section 15(1A). It was entirely for Parliament to decide as a matter of social policy whether to enact legislation which it considers necessary to ameliorate the circumstances of its nationals. As harsh as it is, there was no corresponding duty on the Trinidad and Tobago Parliament to do the same for Ms. Hadeed. It is no business of this court that section 15(1A) of the **LPA** was enacted in breach of Trinidad and Tobago's treaty

obligations under the Agreement. Many may say that it was a betrayal of the aims and objects of Caribbean legal education. Whether that is correct or not is a matter between states to be addressed among them.

(51) Further, even applying the proportionality test here, I find that the legislation pursues a legitimate aim that is to say, relief of the hardship which Parliament perceived was being caused to Trinidad and Tobago nationals. Its limitation to nationals is proportionate so as to enable them to practice law in Trinidad and Tobago. It is important to recognise how section 15(1A) of the **LPA** came to be enacted. Non-nationals were not targeted for discrimination by section 15(1A). Under the Agreement all participating states are required to enact legislation which makes the obtaining of the LEC a mandatory and exclusive qualification to practice law within their territory and those of other participating states. Trinidad and Tobago's problem was specific to Trinidad and Tobago nationals. Because of the difficulties Trinidad and Tobago nationals encountered in entering the law schools, the Trinidad and Tobago Parliament culled out Trinidad and Tobago nationals and granted them a pathway to practice solely in Trinidad and Tobago.

(52) The question whether Parliament in enacting legislation has done so in breach of an international treaty is not a matter for the domestic courts. Such a breach may be justifiable to the legislature for a number of reasons. They are solely the province of the legislature. Domestic courts have no jurisdiction to construe or apply the provisions of a treaty. See **Thomas v. Baptiste** at page 422b-e per Lord Millett and **Higgs v. Minister of National Security** per Lord Hoffman at page 242 (Both these authorities are cited at paragraph 68 post).

(53) To have amended the **LPA** to include non-Trinidad and Tobago nationals into the scope of section 15(1A) would have been an even greater breach of the Agreement and would have been disproportionate. In effect Ms.

Hadeed's complaint is not about the breach of the Agreement but the fact that the breach has not been extended to her. Ms. Hadeed as a non-national continues to be required to obtain the LEC, as would always have been required of her before section 15(1A) of the LPA was enacted. This requirement still obtains in her home countries of St. Lucia and Grenada (about which she has no complaint) and which have had no similar issue to Trinidad and Tobago. Moreover, Caribbean legal education remains an option for Trinidad and Tobago nationals and for many of them the only option, given the cost of legal education outside the region.

(54) The judge found that section 15(1A) of the **LPA** is in breach of the **Constitution** and undermines the rule of law. I do not agree. Section 15(1A) was enacted in 2000 by Parliament after quite lively debate. Article 5(1) of the Agreement was enacted into law by section 3 the **CLE Act** in 1975. To the extent that it provided, in effect, that only holders of the LEC could be admitted to practise law in Trinidad and Tobago, Article 5(1) was impliedly abridged by the passage in Parliament of section 15(1A). The actions of a previous Parliament cannot bind a succeeding Parliament unless there was some form of entrenchment of section 3 of the **CLE Act** which has not been complied with. Section 15(1A) as enacted is now the law. There is no illegality.

(55) It is trite that the legislature cannot bind itself. It is constitutionally entitled to enact legislation which is inconsistent with previous legislation. See **Bennion on Statutory Interpretation** Chapter 6 Section 6.4 under the rubric *"implied amendment"*:

> ***"Where a later Act is inconsistent with an earlier Act, the later by implication amends the earlier so far as is necessary to remove the inconsistency between them. If Parliament enacts legislation that is inconsistent with an earlier Act, it must be taken to have intended to amend***

the earlier Act (even if it has not said so expressly). This is a necessary consequence of the doctrine of Parliamentary sovereignty and the notion that Parliament is unable to bind its successors. Where two Acts or provisions are so inconsistent that the two cannot stand together the effect of the later one may be to impliedly repeal the earlier one".

(56) There is no dispute that section 15(1A) of the **LPA** abridges the requirement of having a LEC to practise law in Trinidad and Tobago.

(57) The judge also found that section 15(1A) of the **LPA** goes against the grain of providing minimum Caribbean standards for the practice of law and therefore had no rational relation to the aims and objectives of the legislation. At paragraphs 157 to 168, he criticized Parliament for acting inconsistently with Trinidad and Tobago's treaty obligations. He erred. Once the Agreement was enacted into Trinidad and Tobago domestic law, it was subject to review and amendment by Parliament as with any other statute. The question of legal education standards, minimum or otherwise, is a matter of policy for Parliament. Moreover, it is the duty of Court to construe domestic law. It has no jurisdiction to interpret or apply the Agreement . See Lord Hoffman's comment in **R v. Lyons [2003] 1 AC 976** at paragraph 27:

"… the Convention is an international treaty and the ECHR is an international court with jurisdiction under international law to interpret and apply it. But the question of whether the appellants' convictions were unsafe is a matter of English law. And it is firmly established that international treaties do not form part of English law and that English courts have no jurisdiction to interpret or apply them: JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry [1990] 2 AC 418.

> ***Parliament may pass a law which mirrors the terms of the treaty and in that sense incorporates the treaty into English law. But even then, the metaphor of incorporation may be misleading. It is not the treaty but the statute which forms part of English law. And English courts will not (unless the statute expressly so provides) be bound to give effect to interpretations of the treaty by an international court, even though the United Kingdom is bound by international law to do so. Of course there is a strong presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United Kingdom in breach of an international obligation."***

(58) In this case whether there was a breach of the Agreement or not was irrelevant to the decision in this case. The judge's opinions as to our Caribbean identity however admirable, have no place in any discussion of the constitutionality of section 15(1A) of the **LPA.** The aims and objectives of Caribbean legal education as expressed in the Agreement are statements of policy by the respective participating territories. The Agreement gives them no binding legal effect in domestic law such as to be enforceable in local courts. Only those provisions in the Agreement which have been enacted in domestic law are legally binding. But as domestic law they are subject to amendment and even repeal by succeeding legislation. The passage of section 15(1A) into the **LPA** effectively amended section 3 of the **CLE Act** by which Article 5 of the Agreement was enacted into Trinidad and Tobago law.

(59) The judge construed nationality in a wider Caribbean context. He had no legal basis for doing so and was wrong. Caribbean nationhood went out the window with the collapse of the ten country West Indian Federation in 1961 (after Jamaica's withdrawal and with the now famous quip of Dr.

Williams, then Premier of Trinidad and Tobago, that *"one from ten leaves nought"*). The countries which once made up that federation are now separate states in their own right and while the Agreement represents a commonality and unity of purpose towards Caribbean legal education and even Caribbean integration, it has not acquired some supra-national force which renders it impervious to legal contradiction or domestic legislative abridgment.

The cross-appeal

(60) The judge rejected the respondent's claim of a breach of her right to property, her right to the protection of the law and her legitimate expectation to be admitted to practice.

Protection of the law

(61) The respondent contends that her right to the protection of the law has been infringed. Procedural fairness requires the consistent application of all the relevant practices and procedures. The Registrar has infringed the right to the protection of the law because she refused to take all the relevant practices and procedures into account. These include the respondent's rights under Articles 7, 8 and 37 of the RTC and section 3(3) of the **Immigration (CARICOM Skilled Nationals Certificate) Act**.

(62) Ms. Caesar submitted that consistent with the concept of protection of the law is Trinidad and Tobago's need to observe and apply international rights and obligations within their domestic sphere per Article 26 of the Vienna Convention on the Law of Treaties. This is so whether the treaties have been incorporated domestically or not. International obligations create rights and legitimate expectations for citizens domestically and the state is in violation of the respondent's right to the protection of the law in so far as it has failed to give effect to community rights by denying

CARICOM nationals the benefits attendant to the RTC.

(63) She submitted that the State created a substantive legitimate expectation by virtue of Article 7 of the RTC and section 3(3) of the **Immigration (CARICOM Skilled Nationals Certificate) Act.** The previous practice of the Registrar is consistent with the RTC. The Registrar's failure to interpret the LPA in a manner consistent with the RTC is a breach of her legitimate expectation. In this case the RTC has been incorporated into domestic law of Trinidad and Tobago by the **Caribbean Community Act Chapter 81:11** and the **CLE Act**.

(64) The submissions are misconceived. First, I am not satisfied that Article 7 of the RTC applies in this case. As I have set out at paragraph 51 above, the respondent was not singled out by nationality for discrimination. Section 15(1A) of the **LPA** simply culled out nationals of Trinidad and Tobago and permitted them the option to pursue qualifications which allow them to practise law but only in Trinidad and Tobago. Second, and as I have also stated at paragraph 53, the respondent is in effect seeking to have the breach of the Agreement magnified by extending it to CARICOM nationals. Any inclusion of non-Trinidad and Tobago nationals into section 15(1A) is an even greater breach of the Agreement. The only corrective action is a complete repeal or a striking down by the court of 15(1A) of the **LPA** as the judge rightly held. Such a repeal or striking down does not affect the respondent because, repeal or no repeal, she is still required to obtain the LEC.

Legitimate expectation

(65) As to the claim of breach of legitimate expectation, the claim is made on four grounds:

(i) the right to be treated in a manner consistent with Trinidad and Tobago's obligations under the RTC,

(ii) the right to be admitted to practice based on a practice developed by prior Registrars to allow non-nationals to be admitted to practice under section 15(1A) of the **LPA.**

(iii) the publication on the LATT's website inviting CARICOM nationals to apply under section 15(1A)of the **LPA**, in so far as the LATT acted as agent of the Registrar

(iv) that as the holder of Caribbean Skills Nationals' Certificate she is entitled to the benefits of section 3(3) of the **Immigration (CARICOM Skilled Nationals Certificate) Act**.

(66) A legitimate expectation may arise in two ways (1) by a promise or (2) by an established practice of consultation. See Lord Bridge in **Westminster City Council [1986] AC 668** at 692. Lord Diplock's exposition in 1986 of the doctrine in the **Council of the Civil Services Unions v Minister for the Civil Service [1986] 1 AC 374** remains relevant. Dealing with the reviewability of the decision in question he said at page 408:

> ***"…the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:***
>
> ***(a) …***
>
> ***(b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn…***

For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute…"

(67) The doctrine of legitimate expectation has since advanced beyond mere consultation before change of practice, to entitlement of the benefit of the practice or the expectation itself. But Ms. Hadeed can claim no such benefit here for the reasons which follow.

(68) The Privy Council decisions in **Fisher v. Minister of Public Safety (No. 2) PC [1999] 2 WLR 349**, **Thomas v. Baptiste [1999] 3 WLR 249** and **Higgs v. Minister of National Security [2000] 2 AC 228** are binding authority that a procedural legitimate expectation (of which Lord Diplock spoke) can be created by the ratification of an international treaty but the decision maker is free to act inconsistently with the expectation provided he acts fairly towards those likely to be affected. Lord Lloyd in **Fisher** stated at page 356:

"… Mr. Davies relied on the decision of the High Court of Australia in Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh (1995) 183 C.L.R. 273. It was held in that case that the ratification of the United Nations Convention on the Rights of the Child by the Commonwealth Executive in 1990 gave rise to a

legitimate expectation that the minister would act in conformity with the Convention, and treat the best interests of the applicant's children as a primary consideration in deciding whether or not he should be deported. But legitimate expectations do not create binding rules of law. As Mason C.J. made clear, at p. 291 a decision-maker can act inconsistently with a legitimate expectation which he has created, provided he gives adequate notice of his intention to do so, and provided he gives those who are affected an opportunity to state their case. Procedural fairness requires of him no more than that".

Fisher was followed and applied by Lord Millett in **Thomas v. Baptiste (supra)** see page 262H – 263B.

(69) Similar sentiments were expressed in **Higgs** by Lord Hoffman at page 241. His comments bear repetition:

"…unincorporated treaties cannot change the law of the land. They have no effect upon the rights and duties of citizens in common or statute law: see the classic judgment of Sir Robert Phillimore in The Parlement Belge (1879) 4 P.D. 129. They may have an indirect effect upon the construction of statutes as a result of the presumption that Parliament does not intend to pass legislation which would put the Crown in breach of its international obligations. Or the existence of a treaty may give rise to a legitimate expectation on the part of citizens that the government, in its acts affecting them, will observe the terms of the treaty: see Minister for Immigration and Ethnic Affairs v. Teoh (1995) 183 C.L.R. 273. In this respect there is nothing special about a treaty. Such legitimate

> ***expectations may arise from any course of conduct which the executive has made it known that it will follow. And, as the High Court of Australia made clear in Teoh's case, the legal effect of creating such a legitimate expectation is purely procedural. The executive cannot depart from the expected course of conduct unless it has given notice that intends to do so and has given the person affected an opportunity to make representations."***

(70) The respondent can claim no such expectation here. The Agreement was enacted into Trinidad and Tobago law in 1975. It was impliedly amended when section 15(1A) of the **LPA** was enacted in October 2000. This amendment was thus effected long before the respondent had even entered Trinidad and Tobago or begun her legal studies. Indeed, she was ten years old and living in St. Lucia. She began residing in Trinidad and Tobago on 29th August, 2012. Section 15(1A) had been enacted some twelve years previously. A legitimate expectation arising out of the Agreement could not have arisen. Neither could she have had a right to be heard before section 15(1A) was passed.

(71) Ms. Hadeed claims a legitimate expectation to be treated in a manner consistent with Trinidad and Tobago's obligations under the RTC. She relies on Articles 7, 8, 9 and 37 of the RTC which was enacted into Trinidad and Tobago law in 2005 by section 3(1) of the **Caribbean Community Act Chapter 81:11**. The judge found that this was not *"an articulated ground"* to support a claim of breach of legitimate expectation. He also found that any breach of the RTC was not a matter for the court. That is an obvious reference to section 5 of the **Caribbean Community Act** which states that any question concerning the interpretation or application of the Treaty shall be treated as question of law to be referred to the Caribbean Court of Justice.

(72) To the extent that the respondent relies on Articles 7, 8, 9 and 37, the judge is correct. Articles 8, 9 and 37 have no relevance to the issues in this appeal and are properly matters for the Caribbean Court of Justice. So too is Article 7 but in so far as Article 7 refers to discrimination against CARICOM nationals I say in any event that there has been no discrimination for the reasons articulated at paragraph 51. There was no targeting of the appellant or any other CARICOM nationals by the enactment of section 15(1A) of the **LPA.**

Prior practice of admitting non-nationals under section 15(1A)

(73) The respondent also contends that she should have the benefit of being allowed to be admitted to legal practice based on the fact that there were non-nationals who were admitted under section 15(1A)of the **LPA.** She alleges that this was a *"practice"* under a previous Assistant Registrar.

(74) In agreement with the judge, I say that there was no such practice. The Registrar's unchallenged evidence was that the admissions of Skeeta John and Janel Lindie were done in error. Since it was done in error and the admissions were *ultra vires* section 15(1A)of the **LPA**, it was not proper practice, far less one from which there can be an expectation which is legitimate. The contention is without merit.

Fresh evidence

(75) Before moving to the next submission under this head I must address the respondent's application filed on 10th March, 2020 for the admission of fresh evidence. The fresh evidence is the discovery of more persons who were purportedly admitted pursuant to section 15(1A) of the **LPA** to the Trinidad and Tobago Bar although they are not nationals of Trinidad and Tobago. The respondent relies on the **Ladd v. Marshall [1954] 3 ALL ER**

745 principles. In my judgment the application did not get off the ground. In the first place, it did not satisfy two of the **Ladd v. Marshall** guidelines because this was evidence which, with reasonable diligence could have been discovered at the time of filing of the claim. It is not sufficient to say that the public notoriety of the case caused more names to be brought forward. Reasonable diligence means just that; efforts must be reasonably made to collect the evidence. I do not accept that such evidence only became available because of the publicity given to the decision in the high court. Further, the admission of that evidence would not have changed the outcome for the reason which next follows.

(76) Secondly, and in any event, those admissions were *ultra vires* section 15(1A) of the **LPA** and could not found any legitimate expectation, nor any basis for a breach of a section 4 right. Multiple admissions made in breach of section 15(1A) do not assist Ms. Hadeed's case.

(77) As to her reliance on the LATT website's of a purported invitation to CARICOM nationals to apply for admission under 15(1A) of the **LPA**, in agreement with the Judge, I say that the LATT is not the Registrar of the Supreme Court. Additionally, nothing stated or posted on the LATT's website can bind the Registrar of the Supreme Court.

(78) As to Caribbean Skilled Nationals Certificate creating an expectation, any such expectation could not have arisen from the statute. In agreement with Mr. Hosein I say that the certificate does no more than permit the respondent to practice her profession provided the qualifications to practice are legally acquired. These qualifications must be acquired as permitted by laws of Trinidad and Tobago. In this case section 15(1A) of the **LPA** does *not* permit non-nationals to be admitted to the Trinidad and Tobago Bar. The respondent is free to pursue the LEC in the ordinary way and will be entitled to practise those legal skills as and when she acquires the LEC.

Right to liberty and property

(79) The respondent contends that section 15(1A) of the **LPA** breaches her right to liberty and to property because it deprives her of her right to pursue the profession of her choice. She alleges that her right to engage in the profession of her choice is a property right. The judge held that the respondent's claim was founded in a claim of discrimination and did not rise to the level of a property right.

(80) In **Jaglal v. The Attorney General of Trinidad and Tobago 2004 HC 2007**, it was held that the right to a livelihood was at best a liberty question. Certainly in this case the respondent's right to pursue her property falls within the liberty provisions of section 4(a)of the **Constitution**. It is not a property right. There is no breach of section 4(a). As to the liberty question it is now trite that the right to liberty (like all the section 4 and 5 rights) is a qualified right which is subject to regulation and control by Parliament. The respondent's right to pursue her livelihood (in so far as she is a resident of Trinidad and Tobago) is subject to the law of Trinidad and Tobago. Section 15(1A) of the **LPA** is such a law and it entitles only nationals of Trinidad and Tobago to pursue the qualifications set out therein. Article 5 of the Agreement which has been enacted into domestic law in Trinidad and Tobago pursuant to the **CLE Act** is also such a law. The respondent can pursue her profession of choice by obtaining a LEC in accordance with the **CLE Act**. The judge was right to dismiss her claim. The cross-appeal must be dismissed.

Remedies

(81) In light of my conclusions on both the substantive appeal and the cross-appeal, it is unnecessary to consider the issue of the appropriate remedies which ought to have been granted by the court below.

Order

(82) The appeal is allowed and the orders of the judge are set aside. The cross-appeal is dismissed. We will hear the parties on costs.

/s/ Nolan P.G Bereaux
Justice of Appeal

I have read the judgment of Bereaux J.A. I agree with it and have nothing to add.

/s/ J. JONES J.A.

I agree with the judgment of Bereaux J.A. which I have read in draft. I have nothing to add.

/s/ A. DES VIGNES J.A.