THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2024-02805

IN THE MATTER OF AN APPLICATION BY RAVI BALGOBIN MAHARAJ FOR AN ADMINISTRATIVE ORDER UNDER PART 56 OF THE CIVIL PROCEEDINGS RULES 1998 IN THE FORM OF REDRESS PURSUANT TO SECTION 14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE JUDICIAL REVIEW ACT, CHAPTER 7:08

AND

IN THE MATTER OF SECTION 4 AND 5 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO ACT NO. 4 OF 1976

AND

IN THE MATTER OF AN APPLICATION FOR REDRESSS IN ACCORDANCE WITH SECTION 14 OF THE CONSTITUTION BY RAVI BALGOBIN MAHARAJ, A CITIZEN OF THE REPUBLIC OF TRINIDAD AND TOBAGO ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN CONTRAVENED

Between

RAVI BALGOBIN MAHARAJ

Applicant

And

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

First Respondent

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Respondent

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Applicant:	**Mr. Anand Ramlogan S.C., Ms. Jayanti R. Lutchmedial, Mr. Kent Samlal and Ms. Aasha Ramlal instructed by Ms. Natasha Bisram and Mr. Vishaal Siewsaran**
First Respondent:	**Ms. Deborah Peake S.C., Mr. Heffes-Doon and Ms. Avion Romain instructed by Ms. Nikita Ali and Ms. Chelsea Downes**
Second Respondent:	**Mr. Douglas Mendes S.C., Ms. Nicol Yee Fung and Mr. Murvani Ojah Maharaj instructed by Ms. Radha Sookdeo and Ms. Abigail Bristo**
Date of Delivery:	**November 26, 2025 Amended on December 1, 2025**

JUDICIAL REVIEW APPLICATION

[1] The Applicant filed an *Ex Parte* Application for Leave to make a Claim for Judicial Review and a Claim for Constitutional redress against the Speaker of the House of Representatives by which he challenges/questions the decision of the Speaker of the House of Representatives made pursuant to **Standing Order 18(2)** to **(8)**[1] of the **Standing Orders** to deny the request of the Applicant to have his response to the remarks of a Member of Parliament who referred to him in the course of Parliamentary Debate, read by the Clerk at a Sitting of Parliament and incorporated into the Parliamentary record. Pursuant to that Application the Applicant sought the following Reliefs:

i. A Declaration that the Applicant has been treated unfairly and in breach of the Principles of Natural Justice contrary to **Section 20**[2] of the **Judicial Review Act**[3].

ii. A Declaration that the said decision is manifestly unfair, irrational, illegal, null and void and of no legal effect.

[1] **Standing Order 18:**

(1) *…*

(2) *A person not being a Member, who has been referred to in the House by name, or in such a way as to be readily identifiable, may make a submission to the Speaker in writing –*

- ***(a)*** *claiming that as a result of the reference, to have been adversely affected in reputation or claiming injury to occupation, trade or office;*
- ***(b)*** *submitting a response to the reference; and*
- ***(c)*** *requesting that the response be incorporated in the Parliamentary record.*

(3) *A submission must be made within two (2) weeks of the reference having been made and must be succinct and strictly relevant to the reference that was made. It must not contain anything offensive in character.*

(4) *The Speaker shall consider whether in all the circumstances of the case the response should be incorporated into the Parliamentary record.*

(5) *In that consideration, the Speaker –*

- ***(a)*** *shall take account of the extent to which the reference is capable of adversely affecting, or damaging the reputation of the person making the submission;*
- ***(b)*** *may confer with the person making the submission and with the Member who referred to that person in the House;*
- ***(c)*** *must be satisfied that –*
  - ***(i)*** *the subject matter is not trivial; or*
  - ***(ii)*** *the subject matter is not trivial; or*

(6) *The Speaker shall not consider or judge the truth of the reference made in the House or of the response to it.*

(7) *If the Speaker decides that the response should not be incorporated in the Parliamentary record, the Speaker shall direct the Clerk to so inform the person concerned and that no further action will be taken.*

(8) *If the Speaker decides that the response should be incorporated in the parliamentary record, he shall order that the submission, as may be amended by him, be read by the Clerk at the next subsequent sitting after his determination.*

[2] ***Section 20*** *- An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.* [3] **Chapter 7:08**

iii. An Order of Certiorari to quash the decision of the Speaker of the House of Representatives dated May 10, 2024 and May 16, 2024 denying the Applicant the Right of Reply under **Standing Order 18**.

iv. An Order remitting the matter to the Speaker of the House of Representatives with a directive for her to reconsider the matter and reach a decision in accordance with the findings of the Court pursuant to **Section 21**[1] of the **Judicial Review Act**.

v. Such further and other Orders, directions or Writs as the Honourable Court considers just and as the circumstances of this case warrant pursuant to **Section 8(1)(d)**[2] of the **Judicial Review Act**.

vi. A Declaration that the decision breached the Applicant's right to protection of the law under **Section 4(b)**[3] of the **Constitution of the Republic of Trinidad and Tobago**[4].

vii. An Order remitting the Applicant's request to the Speaker of the House of Representatives for her to reconsider in accordance with the findings of the Court.

viii. An Order for monetary compensation including Vindicatory Damages for breach of the Applicant's Constitutional Rights.

ix. Costs.

x. Such further and/or other Relief as the Honourable Court may deem fit in the circumstances of the case.

Historical Background

[2] The Claim arose as a result of a statement made by Mr. Keith Scotland, Member of Parliament for Port of

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[1] **Section 21** - *If, on an application for Judicial Review seeking an Order of Certiorari, the Court quashes the decision to which the application relates, the Court may remit the matter to the Court, Tribunal, public body, public authority or person concerned, with a directive to reconsider it and reach a decision in accordance with the findings of the Court.*

[2] **Section 8(1)** - *On an application for Judicial Review, the Court may grant the following forms of Relief:*

(d) *such other Orders, directions or writs as it considers just and as the circumstances warrant.*

[3] **Section 4** - *It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*

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

[4] **Chapter 1:01**

Spain South, during the course of a Debate in the House of Representatives on a Motion by the Opposition Member for Caroni East calling on the Government 'to implement measures to immediately improve the delivery of healthcare services to the people of Trinidad and Tobago and to address mismanagement in the healthcare sector'. Mr. Scotland made the following statement:

> *"The point that I wish to make, is whilst they are saying that, and piloting this Motion, they elided to tell the public of the actions of one of their Activists, one Ravi Balgobin. Because in the past three (3) years no less than nine (9) Court matters have been brought by this Activist, who is selfproclaimed to be a tool, or a medium of the Honourable Members on the other side. And what has this done to the healthcare workers? They have to take time off their jobs to go and do research, to answer his frivolous and vexatious claims. They have to take time from attending to patients in the Neonatal Department, and other Departments, in order to depose to the Affidavit.*
>
> *They have to take time to give Attorneys-at-Law instructions in order to prepare their case, and then, be it virtual or in physical Court, as a Deponent, they have to attend Court. Madame Speaker, Court may not be stressful for us, because of our background, but for the layperson, there could be nothing more stressful than having to appear in Court, particularly to answer ghost allegations.*
>
> *And this is what healthcare workers, hundreds (100s) of them, have faced over the past three (3) years by the actions of this so-called Activist. I have not experienced so much cognitive dissonance by understanding this fourth (4th) recital. It is an insincerity of epic proportions for the Honourable Member to come now to tell this Honourable, August body, that the healthcare workers are under stress, when they themselves, and their activists and puppets, are putting them under stress.*
>
> *And, where the rubber hits the road is this. In order to defend those over nine cases, this Government has had to spend over fourteen million six hundred and twenty thousand three hundred and forty dollars ($14,620,340.00). On legal fees, having to Lawyer up before a Court to defend the health system and the healthcare workers of Trinidad and Tobago. Could this money not be better spent in the healthcare system, getting needed drugs?"*

[3] By letter dated May 3, 2024, the Applicant wrote to the First Respondent seeking her 'indulgence pursuant to **Standing Order 18** to read into the Hansard [his] response' to the statements made by Mr. Scotland. In summary, the statement which he asked the Speaker of the House of Representatives to read into the Parliamentary record in direct answer to Mr. Scotland's statements, is as follows:

i. The statement that he brought 'nine (9) Court matters' in the last three (3) years which caused healthcare workers to conduct research to answer his claims, that his matters required medical staff to divert their attention from 'attending to patients in the Neonatal and other Departments' in order to treat with these legal matters and to take time to respond to his 'ghost allegations' and hence, hundreds (100s) of healthcare workers had been diverted into dealing with such matters, are all false because while he filed several Freedom of Information Applications to obtain information pertaining to the mismanagement and negligence in the public healthcare system, very few of these matters were litigated in Court as the Regional Health Authorities provided the requested information.

ii. None of his cases which went to Court would have required medical staff to divert their time from taking care of patients, be it in the Neonatal or any other Government Department, because they concern the amount of money spent in legal fees by the Regional Health Authorities on Medical Negligence Claims. These were matters for the Legal and Accounting Department, to deal with and not the staff who provide medical attention to babies. None of the cases he filed regarding the state of public healthcare in the country required attention from healthcare workers because the issues pertain to the policies and management of the hospital.

iii. He currently enjoys a ninety percent (90%) success rate in all his litigation matters against the State so it would be incorrect to refer to his matters as 'frivolous and vexatious' or to describe the issues raised as 'ghost allegations'.

iv. The information provided by the Regional Health Authorities indicate that the State did not spend fourteen point six million dollars ($14.6m) to defend cases that he brought against the health system in Trinidad and Tobago.

Submissions of the First Respondent

The First Respondent relied on the Submissions below.

[4] The **Constitution of the Republic** of **Trinidad and Tobago** expressly incorporates and vests all of the privileges of the United Kingdom Parliament in *inter alia* the House of Representatives. Parliamentary privileges in Trinidad and Tobago are not subordinate to any other provision of the **Constitution** and the manner of their exercise is constitutionally protected.

[5] This means that once the category and scope of privilege is established, it is for Parliament, not the Courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate.

[6] The Speaker relied on the case of **The Attorney General of Trinidad and Tobago v Wayne Daniel Sturge**

and Others[5], **Colm Imbert (Chairman Joint Select Committee on Energy Affairs) v Wayne Daniel Sturge and Others**[6] in which the Court of Appeal opined[7]:

> *"We now turn to … the meaning and effect of **Section 55(3)** of the **Constitution of the Republic of Trinidad and Tobago**. There is an added Constitutional dimension to this matter unique to the Commonwealth Caribbean, which warrants separate mention. **Section 55(3)** of the **Constitution** provides that:*
>
> > *"In other respects, the powers, privileges and immunities of each House and of the Members and the Committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this **Constitution** and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and Committees at the commencement of this **Constitution**."*
>
> *…This **Section** effectively amounts to a Constitutional mandate directed at the Courts to not inquire into matters of Parliament…*
>
> *The significance of this Constitutional provision cannot be underestimated. It accords a fundamental Constitutional right to Parliament to regulate its own proceedings.*
>
> *There is a well-established principle of construction that one part of the **Constitution** cannot abrogate another part of the **Constitution** unless the **Constitution** itself expressly says so. The **Constitution** cannot be inconsistent with yourself, and must be read as a harmonious or an organic whole and in this regard, we referred to well-known authority[8]. The judgment[9] of Justice McLachlin, as she then was before being Chief Justice.*
>
> *Justice McLachlin[10], as she then was, helpfully explained the reconciliation exercise to be performed when interpreting any apparent tension between constitutionally protected Parliamentary privilege, and any other provisions of the **Constitution**. She stated[11]:*

[5] CA P-112/2020
[6] CA P-113/2020
[7] At pages 114 to 115
[8] **Meerabux v The Attorney General of Belize** (2005) 4 Law Reports of the Commonwealth at page 281
[9] **New Brunswick Broadcasting Company v Nova Scotia (The Speaker of the House of Assembly)** (1993) Volume 1 Supreme Courts
[10] **Harvey v New Brunswick (Attorney General)** (1996), Volume 2 Supreme Courts 876
[11] Paragraph 70

*"The necessary reconciliation of Parliamentary privilege on **Section 3** of the **Charter** is achieved by interpreting the democratic guarantees of **Section** 3 in a purposive way. The purpose of the democratic guarantees in the **Charter** must be taken to be the preservation of democratic values inherent in the existing Canadian **Constitution**, including the fundamental Constitutional right of Parliament and the Legislature to regulate their own proceedings. Express words would be required to overthrow such an important Constitutional principle as Parliamentary privilege."*

*And I pause here to stress those words. And I continue with the quote, "It follows that **Section 3** of the **Charter** must be read as being consistent with Parliamentary privilege. However, this does not leave **Section 3** without meaning". And the learned Judge went on to give certain examples.*

*Coming out of the Court, consistent with these principles of construction, **Section 55(3)** of the **Constitution** as it relates to the specific factual milieu of this case, is not subordinate in our view to any other provision of the **Constitution**. This is part of the deliberate structural, architectural arrangement of the **Constitution**.*

It is our view that the manner of the exercise of the power involved in this particular case is constitutionally protected."

[7] This Respondent submitted that as the Court of Appeal noted, the Trinidad and Tobago **Constitution** is 'unique to the Commonwealth Caribbean' as it is the only **Constitution** in the Commonwealth Caribbean which expressly incorporates and vests all of the privileges of the United Kingdom Parliament in *inter alia* the House of Representatives. It was also noted by the Court that the 'significance of this Constitutional provision' is that 'it accords a fundamental Constitutional right to Parliament to regulate its own proceedings'. This fundamental right is not subordinate to any other provision of the **Constitution**, including the fundamental rights and freedom provisions. This Respondent, relying on the case of **Canada (House of Commons) v Vaid**[12] further submitted that:

"Parliamentary privilege, therefore, is one of the ways in which the fundamental Constitutional separation of powers is respected."

[8] Since the **Constitution** of Canada contained a provision similar in terms to **Section 55** of the **Trinidad and Tobago Constitution**, the First Respondent relied on several Canadian cases in support of her contention that the exercise of her power to decline the Claimant's request was constitutionally protected and

[12] [2005] 1 S.C.R. 667 [tab 4] at paragraph 21

shielded from scrutiny by the Courts. Those cases are outlined below. In **Harvey v New Brunswick (Attorney General)**[16] McLachlin J stated:

> *"Because Parliamentary privilege enjoys Constitutional status, it is not subject to the **Charter** as our ordinary laws. Both Parliamentary privilege and the **Charter** constitute essential parts of the **Constitution** of **Canada**. Neither prevails over the other."*

[9] The Court continued:

> *"**29.9.** Once the category (or sphere of activity) is established, it is for Parliament, not the Courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the Courts.*
>
> ***29.10.** Categories include freedom of speech…; control by the Houses of Parliament over 'debates or proceedings in Parliament' (as guaranteed by the **Bill of Rights of 1689**) including day-to-day procedure in the House…"*

[10] In **Speaker of the Legislative Assembly of Ontario v Ontario Human Rights Commission**[17], the Court held that:

> *"The **Standing Orders** are protected by Parliamentary privilege and neither the Courts nor any quasi-judicial body has the right to inquire into the contents or to question whether a particular part of the **Standing Orders** is necessary or lawful. If the **Standing Orders**, which include the prayers, are determined to be necessary to the proper functioning of the Assembly, then that is the end of the inquiry. While it is true that Parliamentary privilege covers only matters that are necessary to the functioning of the Assembly, 'necessity' in this context applies to categories of matters, and each particular exercise of privilege within a category is not scrutinised against a standard of necessity. Actions taken pursuant to **Standing Orders** that are necessary in this sense are immune from examination, even when those actions are alleged to breach the human rights code. The Assembly must be absolutely free to set its own guidelines for how its legislative sessions will be carried out and the **Standing Orders** that detail the operation of Parliamentary procedure are privileged and insulated from outside review. Having made the determination that the activity falls within the protected sphere, it is not open to the Court, nor to any other body*

[16] 1996 2 S.C.R. at page 879
[17] 54 O.R. (3d) 595 [TAB 7)

associated with the Executive or Judicial Branches of Government, to question any individual exercise of the conduct."

[11] The First Respondent argued that Parliament has a fundamental Constitutional right to regulate its own proceedings, including the content of the Parliamentary record. **Standing Order 18**, which deals with the discretion of the Speaker of the House of Representatives to allow the statement of a non-Member to be read into the Parliamentary record, is clearly part and parcel of that right, and is clearly necessary for the functioning of Parliament.

[12] The Speaker of the House of Representatives argued that this right is not subordinate to any other provision of the **Constitution**, including the fundamental human rights provisions and **Section 4(b)** thereof.

[13] Accordingly, actions taken pursuant to **Standing Order 18**, are immune from examination, even when those actions are alleged to breach **Section 4(b) of the Constitution of the Republic of Trinidad and Tobago** as Parliament must be absolutely free to set its own guidelines for how its legislative sessions will be carried out. Accordingly, the manner in which the Speaker of the House of Representatives exercised her discretion to determine whether or not the statement of a non-Member of Parliament may be incorporated into the Parliamentary record is constitutionally protected.

[14] It was also argued that Trinidad and Tobago is the only country in the Commonwealth Caribbean whose **Constitution** expressly incorporates all of the privileges of the United Kingdom Parliament. The **Constitution** does so by **Section 55**, especially **Section 55(3)**, which provides:

*"**55(1)** Subject to the provisions of this **Constitution** and to the Rules and Standing Orders regulating the procedure of the Senate and House of Representatives, there shall be freedom of speech in the Senate and House of Representatives.*

***(2)** No civil or criminal proceedings may be instituted against any Member of either House for words spoken before, or written in a report to, the House of which he is a Member or in which he has a right of audience under **Section 62** or a Committee thereof or any Joint Committee or meeting of the Senate and House of Representatives or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise; or for the publication by or under the authority of either House of any report, paper, votes or proceedings.*

(3) *In other respects, the powers, privileges and immunities of each House and of the Members and the Committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this* ***Constitution*** *and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and Committees at the commencement of this* ***Constitution****."*

[15] Thus, by **Section 55(1)** of the privilege of freedom of speech in Parliament is enshrined in the **Constitution** itself and **Section 55(3)** has vested all the privileges and immunities of the United Kingdom Parliament in the Trinidad and Tobago House of Representatives and its Committees. A similar Constitutional regime obtains in Canada. The Supreme Court of Canada has held that as Parliamentary privileges have their basis in the **Constitution** itself, they are not subject or subordinate to the fundamental rights provisions and cannot be abrogated by those provisions. The result is that once the Court finds that Parliament is exercising a power which is within the scope of an established privilege, the manner of its exercise cannot be enquired into by the Courts, even if an allegation of a breach of fundamental rights has been made.

[16] In such a case, it is Parliament that has the exclusive jurisdiction (or exclusive cognisance as the Supreme Court of the United Kingdom describes it) over its proceedings. Accordingly, any irregularities in the procedure adopted by a Parliament (and there is no evidence of any irregularity in this case) are to be dealt with by Parliament, and not the Courts.

[17] It was submitted that the Privy Council in **Bahamas District of the Methodist Church in the Caribbean and the Americas v The Honourable Vernon J. Symonette**[13] outlined the principle:

"The second general principle is that the Courts recognise that Parliament has exclusive control over the conduct of its own affairs. The Courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions: where some of the earlier authorities are mentioned by Lord Browne-Wilkinson[14]. The lawmakers must be free to deliberate upon such matters as they wish. Alleged irregularities in the conduct of Parliamentary business are a matter for Parliament alone. This Constitutional principle, going back to the seventeenth (17th) century, is encapsulated in the United Kingdom in ***Article 9*** *of the* ***Bill of Rights 1689****: 'That…proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament'. The principle is essential to the smooth working of a democratic society which espouses the separation of power between a legislative Parliament, an executive Government and an independent Judiciary.*

[13] (2000) 59 WIR 1

[14] **Prebble v Television New Zealand Limited** [1994] 1 LRC 122 at 133

…

*That is the basic position in the United Kingdom. In other common law countries their written **Constitutions**, not Parliament, are supreme.*

…

*Likewise, the second general principle must be modified to the extent, but only to the extent, necessary to give effect to the supremacy of the **Constitution**. Subject to that important modification, the rationale underlying the second Constitutional principle remains as applicable in a country having a supreme, written **Constitution** as it is in the United Kingdom where the principle originated."*

[18] The First Respondent contended that as the privileges of Parliament in Trinidad and Tobago are derived from the **Constitution** itself, the status of these privileges is not subordinate to the fundamental human rights in the **Constitution**. Both have Constitutional status and neither trumps the other.

[19] This Respondent went on to argue that, Parliament had the right to regulate its own proceedings with the result that, an allegation of breach of Constitutional rights cannot open decisions of Parliament or of the Speaker of the House of Representatives, which are made in the exercise of Parliamentary privilege and the **Standing Orders**, to review by the Courts; citing **Vaid (supra)**, it was contended that 'the purpose of privilege is to recognise Parliament's exclusive jurisdiction to deal with complaints within its privileged sphere of activity'. It was also argued that Parliamentary privilege is one of the ways in which the fundamental Constitutional separation of powers is respected.

[20] It was submitted that Parliament alone was the judge of the occasion and manner of the exercise of privilege and such exercise is not reviewable by the Courts[15]. Categories of privilege include[16]:

*"Freedom of speech…; control by the Houses of Parliament over 'debates or proceedings in Parliament' (as guaranteed by the **Bill of Rights of 1689**) including day-to-day procedure in the House, for example the practice of the Ontario Legislature to start the day's sitting with the Lord's Prayer (Ontario (Speaker of the Legislative Assembly)[22],); the power to exclude strangers from*

[15] **Canada (House of Commons) v Vaid (supra)**
[16] At paragraph 29.10
[22] At paragraph 23

proceedings…; disciplinary authority over Members[17]; and non-Members who interfere with the discharge of Parliamentary duties[24], including immunity of Members from subpoenas during a Parliamentary session[25]. Such general categories have historically been considered to be justified by the exigencies of Parliamentary work…"

[21] Where, as here, a non-Member of Parliament alleges reputational harm and injury by Parliamentary debate, for which the ordinary law provides no remedy, it lay within the exclusive jurisdiction of Parliament to consider compliance with human rights and civil liberties. It was further submitted that the appropriate course which the Applicant should have pursued was provided for in **Standing Order 18(2)** to **(8)**[26].

[22] A decision to read a statement of a non-Member at a sitting of Parliament and to thereby incorporate same into the Parliamentary record, is part of the established privilege of 'control by…Parliament over debates or proceedings in Parliament (as guaranteed by the **Bill of Rights 1689**), including day-to-day procedure in the House' in the **Vaid (supra)** decision[27]. 'Exclusive control over the House's own proceedings' was also identified in the **New Brunswick Broadcasting Company (supra)** decision[28], which also noted that 'the right of the House to be the sole judge of the lawfulness of its own proceedings is similarly evident; Erskine May states that this right is fully established'.

[24] **Payson v Hubert (1904)**, 1904 CanLII 68 (SCC), 34 S.C.R. 400, at page 413; **Behrens**

[25] **TeleZone Incorporated; Ainsworth Lumber Company v Canada (Attorney General)** (2003), 226 D.L.R. (4th) 93, 2003 BCCA 239 (CanLII); **Samson Indian Nation and Band** [26] **Standing Order 18**:

(1) *…*

(2) *A person not being a Member, who has been referred to in the House by name, or in such a way as to be readily identifiable, may make a submission to the Speaker in writing –*

(a) claiming that as a result of the reference, to have been adversely affected in reputation or claiming injury to occupation, trade or office;

(b) submitting a response to the reference; and

(c) requesting that the response be incorporated in the Parliamentary record.

(3) *A submission must be made within two (2) weeks of the reference having been made and must be succinct and strictly relevant to the reference that was made. It must contain anything offensive in character.*

(4) *The Speaker shall consider whether in all the circumstances of the case the response should be incorporated into the Parliamentary record.*

(5) *In that consideration, the Speaker –*

(a) *Shall take account of the extent to which the reference is capable of adversely affecting, or damaging the reputation of the person making the submission;*

(b) *May confer with the person making the submission and with the Member who referred to that person in the House;*

(c) *Must be satisfied that –*

(i) *The subject matter is not trivial; or*

(ii) *The submission is not frivolous, vexatious or offensive in character.*

[17] **Harvey**; see also **Tafler v British Columbia (Commissioner of Conflict of Interest)** (1998), 1998 CanLII 6216 (B.C.C.A.), 161 D.L.R. (4th) 511 (B.C.C.A), at paragraphs 15-18; **Morin v Crawford** (1999), 29 C.P.C. (4th) 362 (N.W.T.S.C.))

(6) *The Speaker shall not consider or judge the truth of the reference made in the House or of the response to it.*

(7) *If the Speaker decides that the response should not be incorporated in the Parliamentary record, the Speaker shall direct the Clerk to so inform the person concerned and that no further action will be taken.*

(8) *If the Speaker decides that the response should be incorporated in the Parliamentary record, he shall order that the submission, as may be amended by him, be read by the Clerk at the next subsequent sitting after his determination.*

[27] At paragraph 29.10

[28] At page 386

[23] It was submitted in the round that that actions taken pursuant to **Standing Order 18** are immune from examination, even when those actions are alleged to breach **Section 4(b)** of the **Constitution,** as Parliament must be absolutely free to set its own guidelines for how its legislative sessions will be carried out. The manner in which the Speaker of the House of Representatives exercised her discretion to determine whether or not the statement of a non-Member of Parliament may be incorporated into the Parliamentary record is constitutionally protected from interference by the Judiciary.

Submissions of the Second Respondent

[24] The Attorney General submitted that the issue arises from the facts of this case is whether the Speaker's exercise of power under **Standing Order 18** is covered by privilege and not, as the Applicant has submitted whether the lawfulness of the Speaker's decision is covered by Parliamentary privilege. It was submitted that Parliamentary privilege applies over the internal affairs, proceedings and arrangements of Parliament including the administration of Parliament's Standing Orders.

[25] The Second Respondent submitted that the Speaker's decision whether to permit a responsive statement to be included in the Parliamentary record pursuant to **Standing Order 18** is part and parcel of the internal proceedings of the House.

[26] It was further submitted that any request to read a reply into the record of the House and any decision by the Speaker of the House of Representatives to do so or not to do so directly touches upon the inner workings and business of the House. In fact, **Standing Order 1** expressly provides that:

> *"These Standing Orders contain rules for the conduct of the proceedings of the House and for the exercise of the powers possessed by the House. They are not intended to diminish or restrict the rights, privileges and immunities of the House and its Committees collectively or of its Members individually."*

[27] The Attorney General submitted that any decision as to what is to form the record of the House impinges directly on the inner workings and internal affairs of the House. The internal records of the House are a fundamental part of the internal affairs and business of the Parliament. The Parliamentary record and the

process and method by which anything is or is not placed thereon, are internal to the House and are matters for the sole and absolute discretion of the Parliament itself and the representatives of the people whom they elect.

[28] This Respondent argued that Parliament's control of its internal proceedings and freedom of speech are recognised categories of Parliamentary privilege which pass the necessity test. The issue that falls to be determined in this case is whether the Speaker's decision falls within those categories. Relying on the case of **Canada (House of Commons) v Vaid**[18] this Respondent submitted:

> *"In order to sustain a claim of Parliamentary privilege, the Assembly or Member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the Assembly or its Members of their functions as a legislative and deliberative body, including the Assembly's work in holding the Government to account, that outside interference would undermine the level of autonomy required to enable the Assembly and its Members to do their work with dignity and efficiency."*

[29] The Second Respondent argued that once the existence and scope of a category of privilege is established, the proof of necessity is met; thereafter, it is for Parliament, not the Courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. Citing **Vaid (supra)**, it was argued that 'each specific instance of the exercise of a privilege need not be shown to be necessary'[19].

[30] It was contended that an adjudication of the Applicant's Claim would require the Court to examine whether the Speaker of the House of Representatives acted unlawfully in deciding no to accede to the Applicant's request to include his statement in the Parliamentary record, and whether this impairs Parliamentarians' ability to vigorously debate laws and hold the Executive to account, discharge their functions including their deliberative and legislative functions, or their freedom of speech, or the House's ability to fulfil its core Constitutional functions – all of which is not permissible because it does not

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[18] [2005] 1 SCR 667, ([46])

[19] **Vaid** at paragraphs 29(9) and (11):

*"Proof of necessity is required only to establish the existence and scope of a category of privilege. Once the category (or sphere of activity) is established, it is for Parliament, not the Courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the Courts: 'Each specific instance of the exercise of a privilege need not be shown to be necessary' (**New Brunswick Broadcasting Company (supra)** at page 343 by Binnie J) …*

The role of the Courts is to ensure that a claim of privilege does not immunise from the ordinary law the consequences of conduct by Parliament or its Officers and employees that exceeds the necessary scope of the category of privilege…"

address the issue whether the decision of the Speaker of the House of Representatives is a necessary or legal incident of the conduct of the business of the Parliament.

Analysis and Conclusion

[31] **Section 55** of the **Constitution of the Republic of Trinidad and Tobago** provides:

> *(1) Subject to the provisions of this **Constitution** and to the rules and **Standing Orders** regulating the procedure of the Senate and House of Representatives, there shall be freedom of speech in the Senate and House of Representatives.*
>
> *(2) No civil or criminal proceedings may be instituted against any Member of either House for words spoken before, or written in a report to, the House of which he is a Member or in which he has a right of audience under **Section 62** or a Committee thereof or any Joint Committee or meeting of the Senate and House of Representatives or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise; or for the publication by or under the authority of either House of any report, paper, votes or proceedings.*
>
> *(3) In other respects, the powers, privileges and immunities of each House and of the Members and the Committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this **Constitution** and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and Committees at the commencement of this **Constitution**.*

[32] In the Court of Appeal decision of the **Attorney General v Wayne Daniel Sturge and Others**[20], the Court of Appeal held that **Section 55** of the **Constitution of the Republic of Trinidad and Tobago (supra)** 'effectively amounts to a Constitutional mandate directed at the Courts to not inquire into matters of Parliament. The **Section** also gives a fundamental right to Parliament to regulate its own proceedings[21]. Given that **Section 55** is a Constitutional provision, it cannot be abrogated by other **Sections** of the **Constitution** unless the **Constitution** itself so provides[2223]. The importance of this Constitutional provision is that it grants a fundamental Constitutional right to Parliament to regulate its own proceedings. This point was emphasised by the Supreme Court of Canada in **New Brunswick Broadcasting Company v Nova Scotia (The Speaker of the House of the Assembly)**[34] which held that the **Charter** did not prevail over the

[20] Ca P-112/2020
[21] At pages 114 to 115
[22] **Meerabux v The Attorney General of Belize** 2005 4 Law Reports of the Commonwealth at page 282
[34] 1993 1 S.C.R. 319
[23] th Edition 1.7

privileges of Parliament to regulate its proceedings which was as much part of the fundamental Constitutional arrangements as the **Charter** itself and one part of the **Constitution** cannot abrogate another part of the **Constitution**.

[33] The Trinidad and Tobago **Constitution** expressly incorporates and vests all of the privileges and immunities of the United Kingdom Parliament in the House of Representatives. A similar provision is included in the Canadian **Constitution**. The authors of **Hogg, Constitutional Law of Canada**[35]opine 'The powers authorised by Parliamentary privilege are not subject to the **Charter of Rights'**. In **Canada (House of Commons) v Vaid** the Court explains why an allegation of the breach of Constitutional rights cannot open decisions of Parliament, or of the Speaker of the House, which are made in the exercise of Parliamentary privilege and the **Standing Orders**, to review by the Courts:

> *"**4.** … The Courts below held that Parliamentary privilege does not include the freedom to discriminate on Grounds prohibited by the Canadian **Charter of Rights** and freedoms or the Canadian **Human Rights Act** because such discrimination is not necessary to the proper functioning of the Senate or House of Commons. On this view, an allegation of discrimination destroys any privilege that might otherwise immunise the Speaker's conduct from external review. I do not agree. The purpose of privilege is to recognise Parliament's exclusive jurisdiction to deal with complaints within its privileged sphere of activity. The proper focus, in my view, is not the Grounds on which a particular privilege is exercised, but the prior question of the existence and scope of the privilege asserted by Parliament in the first place.*
>
> *…*
>
> ***20.** It is a wise principle that the Courts and Parliament strive to respect each other's role in the conduct of public affairs. Parliament, for its part, refrains from commenting on matters before the Courts under the sub judice rule. The Courts, for their part, are careful not to interfere with the workings of Parliament. None of the Parties to this proceeding questions the preeminent importance of the House of Commons as 'the grand inquest of the nation'. Nor is doubt thrown by any Party on the need for its legislative activities to proceed unimpeded by any external body or institution, including the Courts. It would be intolerable, for example, if a Member of the House of Commons who was overlooked by the Speaker at a question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker's choice of another Member of the House discriminated on some ground prohibited by the **Canadian Human Rights Act**, or to seek a ruling from the ordinary Courts that the Speaker's choice violated the*

*Member's guarantee of free speech under the **Charter**. These are truly matters 'internal to the House' to be resolved by its own procedures. Quite apart from the potential interference by outsiders in the direction of the House, such external intervention would inevitably create delays, disruption, uncertainties and costs which would hold up the nation's business and, on that account, would be unacceptable even if, in the end, the Speaker's rulings were vindicated as entirely proper.*

21. *Parliamentary privilege, therefore, is one of the ways in which the fundamental Constitutional separation of powers is respected. In Canada, the principle has its roots in the preamble to our **Constitution Act, 1867** which calls for 'a **Constitution** similar in principle to that of the United Kingdom'. Each of the branches of the State is vouchsafed a measure of autonomy from the others…*

29.3. *Parliamentary privilege does not create a gap in the general public law of Canada but is an important part of it, inherited from the Parliament at Westminster by virtue of the preamble to the **Constitution Act, 1867**…*

29.5. *The historical foundation of every privilege of Parliament is necessity. If a sphere of the legislative body's activity could be left to be dealt with under the ordinary law of the land without interfering with the Assembly's ability to fulfil its Constitutional functions, then immunity would be unnecessary and the claimed privilege would not exist…*

…

29.9. *Proof of necessity is required only to establish the existence and scope of a category of privilege. Once the category (or sphere of activity) is established, it is for Parliament, not the Courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the Courts: 'Each specific instance of the exercise of a privilege need not be shown to be necessary'…*

29.10. *Categories include freedom of speech…; control by the Houses of Parliament over 'debates or proceedings in Parliament' (as guaranteed by the **Bill of Rights of 1689**) including day-to-day procedure in the House, for example the practice of the Ontario Legislature to start the day's sitting with the Lord's Prayer (Ontario (Speaker of the Legislative Assembly[24])); the power to*

[24] At paragraph 23

exclude strangers from proceedings…' disciplinary authority over Members[25]; and non-Members who interfere with the discharge of Parliamentary duties[26], including immunity of Members from subpoenas during a Parliamentary session[2728]. Such general categories have historically been considered to be justified by the exigencies of Parliamentary work…

***30.** It should be emphasised that a finding that a particular area of Parliamentary activity is covered by privilege has very significant legal consequences for non-Members who claim to be injured by Parliamentary conduct, including those whose reputations may suffer because of references to them in Parliamentary debate, for whom the ordinary law will provide no remedy. In **New Brunswick Broadcasting Company** itself, it was held that the press freedom guaranteed by **Section 2(b)** of the **Charter** did not prevail over Parliamentary privilege, which was held to be as much part of our fundamental Constitutional arrangements as the **Charter** itself. One part of the **Constitution** cannot abrogate another part of the **Constitution**[40]. In matter of privilege, it would lie within the exclusive competence of the Legislative Assembly itself to consider compliance with human rights and civil liberties…*

***37.** … Nevertheless, the framers of the **Constitution Act, 1867** thought it right to use Westminster as the benchmark for Parliamentary privilege in Canada, and if the existence and scope of a privilege at Westminster is authoritatively established (either by British or Canadian precedent), it ought to be accepted by a Canadian Court without the need for further inquiry into its necessity. This result contrasts with the situation in the provinces were legislated privilege, without any underpinning similar to **Section 18** of the **Constitution Act, 1867**, would likely have to meet the necessity test…"*

[34] I agree with the Respondents' submissions that the Speaker's decision is not reviewable on the ground that the Applicant's fundamental rights have been infringed. I agree that the Speaker's decision is covered by the Parliamentary privilege of exclusive control over its internal affairs and freedom of speech. As noted above, the Speaker of the House of Representatives is the only Adjudicator on the interpretation and application of the **Standing Orders**[41].

[35] **Standing Order 18(6)** specifically provides that 'the Speaker of the House of Representatives shall not

[25] **Harvey**; see also **Tafler v British Columbia (Commissioner of Conflict of Interest** (1998), 1998 CanLII 6216 (BCCA), 161 D.L.R. (4th) 511 (BCCA), at paragraphs 15-18, **Morin v Crawford** (1999), 29 C.P.C (4th) 362 (N.W.T.S.C.)
[26] **Payson v Hubert** (1904), 1904 CanLII 68 (SCC), 34 S.C.R. 400 at page 413; **Behrens**
[27] **TeleZone Incorporated; Ainsworth Lumber Company v Canada (Attorney General)** (2003), 226 D.L.R. (4th) 93, 2003 BCCA
[28] (CanLII); **Samson Indian Nation and Band**

consider or judge the truth of the reference made in the House of Representatives or of the response to it'. As submitted by the First Respondent, 'the issue of whether or not the statement made by the Member in relation to the Applicant, is true or not, or whether the Applicant's proposed response is true or not, is according to **Standing Order 18(6)** wholly irrelevant to the Speaker's decision.

[40] **Reference Re Bill 30, An Act to Amend the Education Act (Ont.)**, 10987 CanLII 65 (SCC), [1987] 1 S.C.R. 1148; **New Brunswick Broadcasting Company**, at pages 373 and 390

[41] **Standing Orders 2(1)**, **(4)**, **(5)** and **(6)** provide as follows:

*"**(1)** The Speaker (or other Member presiding) is responsible for ruling whenever any question arises as to the interpretation or application of a **Standing Order** and for deciding cases not otherwise provided for…*

***(4)** The Speaker shall have power to regulate the conduct of business in all matters not provided for in these **Standing Orders**.*

***(5)** The decision in all cases for which these **Standing Orders** do not provide, shall lie within the discretion of the Speaker, and shall not be open to challenge.*

***(6)** The Speaker may issue Practice Notes on the procedure and practice to be followed under any **Standing Order**."*

[36] Whether the statement of any Member is false or had no proper basis are matters into which the Speaker of the House of Representatives could not look into. As discussed below, this Court has no jurisdiction to review the Speaker's decision on this complaint. The Speaker of the House of Representatives is entitled to rely upon the privilege of Parliament to regulate its own internal affairs, in this case the content of the Parliamentary record without interference from the Courts.

[37] The **Standing Orders** are necessary to the proper functioning of the House of Representatives and are protected by Parliamentary privilege and neither the Courts nor any quasi-judicial body have the right to inquire into their contents or to question whether a particular part of the **Standing Orders** is necessary or lawful[29].

[38] It is established by caselaw that Parliament's control of its internal proceedings and freedom of speech are recognised categories of Parliamentary privilege which pass the necessity test[43] used to determine the sphere of exclusive Parliamentary or legislative jurisdiction. In this case, the Speaker's authority to determine whether a non-Member can respond to a statement made by a Member of Parliament by reading the former's response into the record falls within the sphere of exclusive Parliamentary jurisdiction. Having found that the Speaker's decision fell within the parameters of the exercise of valid privilege, it would be impermissible for this Court to examine the content of the exercise of this valid privilege. A particular exercise of necessary privilege cannot be reviewed by the Court. The Courts may determine if the privilege claimed is necessary for the proper functioning of the Legislature, but they do

[29] **Ontario (Speaker of the Legislative Assembly) v Ontario (Human Rights Commission)** 2001 54 O.R. (3d) 595 paragraph 23

[43] **Marin v The Office of the Ombudsman** 2017 ONSC 1687

not have the power to review the rightness or wrongness of a particular decision made pursuant to the privilege.

[39] I am of the view that an adjudication of the Applicant's Claim would require this Court to hear evidence concerning the motives and reasoning of the Speaker of the House of Representatives culminating in the decision to refuse the Applicant's request. This would require the Speaker's decision to be subject to an external review by the Court of a matter within her exclusive jurisdiction.

[40] The Speaker's decision falls within the scope of **Standing Order 18** and therefore falls within the scope of her privilege. Accordingly, actions taken pursuant to **Standing Order 18** are immune from examination even when those actions are alleged to breach **Section 4(b)** of the **Constitution of the Republic of Trinidad and Tobago** as Parliament must be free to set its own guidelines for how legislative sessions will be carried out.

[41] In the circumstances, , I hold that the Application for Leave to file Judicial Review as well as the Claim for Constitutional redress against the Speaker of the House of Representatives and the Attorney General are dismissed on the ground that decisions of the Speaker of the House of Representatives taken pursuant to **Standing Order 18** are immune from examination by the Court even where the decision is alleged to have **breached Section 4(b)** of the **Constitution of the Republic of Trinidad and Tobago**.

[42] The Parties to submit a note on costs to the Court within one (1) month of the date of this Order.

Joan Charles

Judge