

**THE REPUBLIC OF TRINIDAD & TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2023-03582**

Between

**JEFFREY HERNANDEZ**

Claimant

And

**THE COMMANDING OFFICER OF THE TRINIDAD AND TOBAGO COAST GUARD**

First Defendant

**THE DEFENCE FORCE COMMISSIONS BOARD**

Second Defendant

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Third Defendant

**Appearances:**

**Claimant:** Arden Williams instructed by Mariah Ramrattan and Anthony Moore

**Defendants:** Natoya Moore and Raquel Le Blanc instructed by Savitri Maharaj and  
Chelsea Downes

**Before The Honourable Mr. Justice Devindra Rampersad**

**Date of Delivery: December 19, 2025**

**RULING**

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## **Introduction**

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1. This is an application for judicial review of administrative decisions relating to promotion within the Trinidad and Tobago Coast Guard. The Court emphasises at the outset that it is not exercising appellate or disciplinary jurisdiction. Its function is confined to determining whether the impugned decisions were unlawful, irrational, procedurally improper, or otherwise outside the range of decisions reasonably open to the decision-makers.
2. In accordance with modern judicial review principles, the question is not whether the Court would have reached the same conclusion, but whether the decisions challenged were rationally open to the decision-makers on the material before them.

## **The Claim**

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3. The Claimant seeks the following 16 reliefs in his fixed date claim form filed on 27 March 2024:
  - 3.1. A declaration that the 1st Defendant's decision not to recommend the Claimant for promotion to Acting Lieutenant Commander and subsequently to substantive Lieutenant Commander is unreasonable, unfair, and unjust.
  - 3.2. A declaration that the 2nd Defendant's decision not to promote him to Acting Lieutenant Commander and subsequently to the substantive rank is unlawful, unfair, unreasonable, and irrational.
  - 3.3. A declaration that the 1st and 2nd Defendants' reliance on charges laid against the Claimant and/or on a pending Court Martial not yet determined, as a bar to promotion, is unfair, unreasonable, irrational, ultra vires, and in violation of the Claimant's constitutional right to the protection of the law under section 4(b) of the Constitution.

- 3.4. An order declaring that the Claimant held a legitimate expectation of being promoted to Acting Lieutenant Commander, and Substantive Lieutenant Commander.
- 3.5. A declaration that the decision of the 1st and 2nd Defendants to promote junior officers ahead of the Claimant is unfair, unreasonable, in breach of section 4(b) & 4(d) of the Constitution (protection of the law and equality of treatment).
- 3.6. A declaration that the 1st Defendant's failure to properly appraise the Claimant and provide him with an opportunity to improve is irregular, unfair, unreasonable, and unlawful.
- 3.7. A declaration that the Claimant's proper due date for promotion to Acting Lieutenant Commander is 19 June 2020.
- 3.8. A declaration that his due date for promotion to substantive Lieutenant Commander is 19 June 2022.
- 3.9. An order of certiorari to quash the 1st Defendant's refusal to recommend promotion to Acting Lieutenant Commander (effective 19 June 2020) and to substantive rank (effective 19 June 2022).
- 3.10. An order of certiorari to quash the 1st and 2nd Defendants' use of the Court Martial charges (said to be statute-barred) as a basis to deny promotion.
- 3.11. An order of mandamus compelling the 1st and 2nd Defendants to promote the Claimant to Acting Lieutenant Commander from 19 June 2020, and Substantive Lieutenant Commander from 19 June 2022.
- 3.12. An order directing the Defendants to pay all arrears of salary and benefits resulting from the failure to promote him.
- 3.13. General damages, inclusive of vindicatory damages.

3.14. All such writs, orders, and directions necessary to enforce or secure the enforcement of his constitutional rights.

3.15. Costs

3.16. Costs of the Judicial Review application, and the application for leave to pursue Judicial Review.

3.17. Such further or other relief as the Court considers just under section 8(1)(d) of the Judicial Review Act.

### **The Background**

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4. The claimant has been a Lieutenant with the Trinidad and Tobago Coast Guard (TTCG) since 19 June 2013. According to him, there is a practice within the TTCG that a Lieutenant is eligible for promotion to the rank of acting Lieutenant Commander after 7 years of commission service as a Lieutenant and is entitled to the substantive rank of Lieutenant Commander after 9 years. He has satisfied both of those time requirements.
5. He was charged with being in breach of the TTDF's fraternization policy in June 2016, and there has been no finding on that to date. He says, however, that the Defence Council has never promulgated such a policy and therefore cannot have been found guilty of the offence. The constitutionality of that policy was challenged and is now before the Court of Appeal for decision, but there was no stay of the court-martial pending the appeal, so there was nothing to stop it proceeding. The court notes, however, that it would make perfect sense to await the outcome of the Court of Appeal decision, notwithstanding the failure to obtain a stay, since any decision in the Court of Appeal can seriously impact upon whether or not the court-martial is proper in the first place. To proceed with the court-martial without a finding from the Court of Appeal is not only a waste of time and resources, but, at the end of the day, it may very well be unfounded and therefore any finding would be nullified.

6. He says that, in any event, the members of the panel for the court-martial would have to be reconvened under a new panel due to retirements amongst the current panel, and if the process is restarted, it would be statute-barred.
7. There is also a complaint about multiple years of appraisal being done in one sitting, resulting in the inability to improve on the findings in appraisals for early years. Further, the commanding officer's comments on his performance appraisals insinuated guilt regarding his court-martial charges, which he believes is statute-barred in any event. He complained about the same without any remedy.
8. He also complains of not being treated equally with respect to junior officers who completed and failed the written promotional exam, who were able to engage the same internal complaints and grievance procedure as he did and were able to be promoted without any re-examination. He, on the other hand, passed his examinations.
9. The claimant says that in the normal order of things, his promotions ought to have taken effect on 19 June 2020 to the acting rank and 19 June 2022 to the substantive rank. He therefore suffered a pecuniary loss of salary and loss of seniority, with the difference in salary being \$2290.90 from 19 June 2020.

#### **Reasons Identified In The Affidavit Of Captain Steve Don Riguel Polo**

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10. This is the primary affidavit filed on behalf of the defendant on 10 March 2025, providing the detailed reasons for not recommending the Claimant for promotion. Captain Polo sets out six major categories of reasons. These are the core of the Defence's case.

#### **Unduly Familiar / Improper Personal Relationship With Trainee**

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11. Captain Polo states that while the Claimant was a Training Officer, he had a personal, intimate (and later sexual) relationship with Officer Cadet J. Baptiste, a trainee under his supervision. This was “unduly familiar” and contrary to the Defence Force’s standards.
12. It violated the Fraternization Policy (para 11–12 and exhibit S.P.3). This is treated as misconduct affecting suitability for senior command.
13. In response, the claimant said:
  - 13.1. The relationship pre-dated enlistment and before the Fraternization Policy existed (Reply, para 18).
  - 13.2. The policy was not legally valid. He argues the Fraternization Policy is ultra vires because it was not promulgated by the Defence Council, the only body empowered to create such regulations (Reply, para 25). Therefore, he could not be “found guilty” of an offence under it.
  - 13.3. The relationship ended in 2018. Any concern about undue familiarity “ceased to exist” from the moment she was discharged (Reply, para 20).

#### Disobedience of Direct Orders

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14. Polo says that he instructed the Claimant to end the relationship with the trainee because it breached the fraternization rules.
15. The Claimant disobeyed the instruction, continued the relationship, and then married the trainee before facing charges.
16. This amounted to insubordination and disregard for authority.
17. Disobedience of orders is identified as a primary reason why he could not recommend the Claimant for a higher role.
18. In response, the claimant says

19. He categorically denies ever receiving such an order

“I was never instructed to end my relationship with Ms. Baptiste...”

(Reply, para 21).

20. No disciplinary charge for disobedience exists. He states that if such an order existed, the charge sheet would include a charge for disobedience of a lawful instruction, but it does not (Reply, para 21).
21. Puts the CO to strict proof. He expressly challenges Captain Polo to produce evidence that any such instruction was given (Reply, paras 17, 21).

#### Scandalous Conduct and Prejudicial Behaviour

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22. Four formal disciplinary charges were laid against the claimant:
- 22.1. Disobedience of Standing Orders under s.46 Defence Act – relationship while responsible for her training.
- 22.2. A second count of disobedience of Standing Orders for continuing the relationship.
- 22.3. Scandalous conduct unbecoming an officer and gentleman.
- 22.4. Neglect to the prejudice of good order and discipline under s.77 Defence Act.
23. These charges, he says, go directly to moral integrity, leadership suitability and ability to command respect.

#### Failure to Report the Relationship

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24. Polo states that the claimant failed to disclose the relationship before the interview. He says that the Claimant allegedly admitted this failure.
25. This omission contributed to a finding of dishonesty and lack of transparency.

#### Risk of Favouritism, Preferential Treatment and Damage to Morale

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26. Polo says promoting the Claimant would create an appearance of favouritism, undermine junior officers' trust, affect discipline and morale, and compromise the integrity of TTCG leadership.
27. Thus, promotion would be harmful to the organisation.
28. In reply, the claimant said:
- 28.1. No such allegation was ever made to him. He was never informed of accusations of favouritism (Reply, para 19).
- 28.2. No evidence exists. There were no complaints, reports, or investigations of preferential treatment.
- 28.3. He puts Captain Polo to strict proof (Reply, para 19).

#### General Fitness, Overall Performance and Devotion to Duty

29. Captain Polo concludes that the claimant's general fitness, conduct, overall performance, and devotion to duty were not satisfactory for promotion, in light of the misconduct issues.
30. He emphasised that promotion depends on the Commanding Officer's recommendation and that he could not in good conscience recommend the Claimant.
31. The claimant says in response that:
- 31.1. His Performance Appraisals contradict the allegations. His appraisals consistently rate him "Good" and "Very Good" (Reply, para 26). His Confidential Reports recommended him for promotion every year (Reply, para 14). The CO personally marked his promotion suitability "NOW" or "IN THE ORDINARY COURSE" for several years.

- 31.2. No adverse performance issues were ever communicated. He was never told he had issues with general fitness or devotion to duty (Reply, para 26).
- 31.3. His professional record shows leadership and contribution. He details his roles:
- 31.3.1. Founding member of Military Academy project team (Reply, para 27).
  - 31.3.2. Curriculum Officer, Academic Branch Director (2021–2024) (Reply, para 27–28).
  - 31.3.3. Developed curricula, delivered instruction, led training systems (Reply, para 28).
- 31.4. Appraisals were delayed because of the Commanding Officer, not him. He signed appraisals years late because they were presented to him late (Reply, para 29–31). COVID could not justify the delays, since the military was an essential service and virtual meetings were used (Reply, paras 33–35).
- 31.5. The CO's actions contradict his own written appraisals. The CO did recommend him for promotion on paper, but later claimed he did not (Reply, para 14).
- 31.6. Promotions cannot be denied on undisclosed criteria. Under TTCG Regulations, suitability must be determined based on Confidential Reports and qualifications, not undisclosed reasons (Reply, para 13).
- 31.7. If the CO did not recommend him, the Board could not consider him yet the CO claims the Board considered his appraisals. This is “passing strange” and procedurally impossible (Reply, para 15–16). He has demanded minutes of the Board's deliberations, which the Defendants now claim do not exist (Supplemental Affidavit, paras 6–10).

### Seniority Not a Reason (Clarification)

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32. Polo states that seniority alone was not the reason for the decision. The determinative factor was unsuitability, evidenced by misconduct.

### Pending Court Martial Proceedings

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33. Polo references the pending charges from 2016 as part of the context for reluctance to recommend promotion.
34. In response, the claimants said:
- 34.1. Charges are statute-barred. He relies on section 128 of the Defence Act, which bars any Court Martial trial after 3 years unless begun within that period (Reply, para 3). Since a new Court Martial would have to be convened, it is unlawful to proceed against him now.
- 34.2. Cannot use unresolved charges to deny promotion. Using undetermined allegations violates the constitutional presumption of innocence (Reply, para 17).
- 34.3. The underlying issue no longer exists. The relationship that gave rise to the charges ended in 2018, and the partner was discharged from the service (Reply, para 18, 20).

## Discussion

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### The Law

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35. This court, in its recent decision in ***Ravi Balgobin Maharaj vs. The Integrity Commission of Trinidad and Tobago***<sup>1</sup> discussed the applicable law on judicial review principles and the modern shift away from the originally formulated test in ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation***<sup>2</sup>

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<sup>1</sup> CV 2023 – 04535, at paragraphs 12 et al.

<sup>2</sup> [1947] 2 All ER 680

(the “Wednesbury test”) to a more nuanced view. The modern approach to unreasonableness and/or irrationality is achieved by asking the following question: Did the defendant reach rational decisions that were open to it? It matters not whether this court agrees with the defendant’s decisions or whether this court would have made the same decision as the defendant.

36. Having regard to the depth of the discussion in that matter i.e. **Ravi Balgobin Maharaj** supra, the court does not feel it necessary to completely quote the discussion but, rather to just refer to the discussion and the outcome mentioned above. Against that background, the court will consider the issues.

#### The Fraternization Issue:

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37. This is a core issue in this matter because it really grounds the court martial proceedings and created the environment in respect of which the failure to promote the claimant arose.
38. The Court is not called upon to find, and makes no finding, of guilt or misconduct. A competent tribunal has made no disciplinary determination, and none is assumed.
39. At the time relevant to the impugned decisions, a Fraternisation Policy was in force within the Trinidad and Tobago Defence Force. That policy had not been declared unlawful or unconstitutional and therefore formed part of the normative framework within which commanding officers assessed conduct and suitability.
40. It is not disputed that disciplinary charges were laid in 2016 alleging breaches of that policy. While the Court accepts that the court-martial proceedings may have since become statute-barred, that legal consequence does not retrospectively erase the underlying allegations or the institutional concerns they generated at the time.
41. The Court does not determine whether any instruction was given to the claimant to end the relationship in question. That issue is not decisive. Even in

the absence of a proven instruction, the existence of formal charges and the seriousness with which the matter was treated were capable of informing a reasonable decision-maker's assessment of suitability for higher command.

42. The Court therefore confines itself to examining whether it was rational for the Commanding Officer to regard the circumstances surrounding the fraternisation allegations as relevant to suitability, rather than whether those allegations were true.
43. At the date of the filing of this claim, on 27 March 2024, there was a fraternization policy in force in the Trinidad and Tobago Defence Force ("the TTDF"). Commanding Officer Polo described the preamble thereof at paragraph 10 of his affidavit:

*"According to the Preamble of the Fraternization Policy, **relationships that are unduly familiar between officers who violate the traditions and custom of the military**, are prejudicial to good order and discipline and bring disrepute on the TTDF. They are strictly prohibited and constitute an offence under section 77 of the Defence Act. The Preamble further states that **the TTDF has historically relied on custom and tradition to define the bounds of acceptable personal relationships among its members**. Unduly familiar personal relationships between officers undermine the respect for authority and the TTDF's ability to accomplish its military mission. They are also contrary to the TTDF's custom to prevent use of a senior rank which gives the appearance of favouritism, preferential treatment, and personal gain....."*

*[Emphasis added]*

44. Section 77 of the Defence Act provides:

*"77. Any person subject to **military law** who is found guilty of any conduct or neglect **to the prejudice of good order and military discipline** is liable, on conviction by Court-martial, to imprisonment for two years or less punishment."*

*[Emphasis added]*

45. From its very definition, it is clear that there is a direct reference in section 77 to military law, thereby setting a different standard than one involving civilian conduct. The section is a general provision which gives a broad discretion to determine what constitutes “prejudice” to “good order and military discipline”. In that regard, it is essential to note the observation made by Mendonça JA in the ***Attorney General of Trinidad and Tobago vs. Dion Samuel***<sup>3</sup> as to the peculiarity of military law and conduct.
46. There is no issue as to jurisdiction in this matter or any objection in relation to the court’s intervention or involvement. Still, the reason for the reference to ***Dion Samuel*** supra is the recognition of the deference given to matters of military law and the recognition of its own peculiarities, which are often judged according to military standards. Military law is appropriate in its own environment, in this court’s respectful view. For example, further reading done by the court of its own accord on the issue of the fraternization policy generally traces the same back to Roman times, more than 2500 years ago<sup>4</sup> and relates primarily to a custom that has developed in this particular area. The constitutionality of the policy was challenged by this claimant in CV 2018 – 03750, but was dismissed by Madame Justice Jacqueline Wilson on 27 July 2020 and is now on appeal.
47. Up to the time of the court writing this judgment, there has been no declaration of unconstitutionality or illegality in relation to this said policy and therefore the court has to take it that it has full force and effect in the TTDF. Very importantly, it was in force when the decision at issue in this review was made. That is on top of the wide berth already given under section 77.
48. Against that background, CO Polo conducted his investigation on or around 29 February 2016, interviewing the claimant and one Ms. Baptiste. The latter confirmed that she was in a relationship with the claimant and that the

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<sup>3</sup> C.A.Civ.P181/2013 at paragraph 20 -22

<sup>4</sup> See for example "***An History of the Development of Fraternization Policies***", a thesis by Jeffrey C Russell, Captain, USAF out of the Air Force Institute of Technology, September 1988

relationship began before she joined the Trinidad and Tobago Coast Guard in September 2014. When she joined, she was the claimant's trainer. He said, presumably as part of that interview process, that he instructed both of them to end their relationship, which they acknowledged. There is no written record of these instructions.

49. CO Polo said after completing his investigation, he submitted a report with his findings and recommendations to the then Executive Officer, Commander Wayne Armour, who then proceeded to sign off on four charges against the claimant on 5 May 2016, just over 2 months later. A copy of that report was not put before the court to corroborate, in particular, the instructions that he said he gave to the claimant and Ms. Baptiste.

50. Those charges were:

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

*(2) Disobedience of Standing Orders Contrary to Section 46 of The Defence Act, Part V, Chapter 14:01 of the Laws of Trinidad and Tobago, in that as the Training Officer, Trinidad and Tobago Coast Guard with immediate and direct responsibility for the training of 15046 Officer Cadet J. Baptiste (F), disobeyed paragraph 5 b of the “Fraternization Policy” General Order No. 1 of 2015 in that he and the Officer Cadet maintained from 13<sup>th</sup> August to 28<sup>th</sup> February 2016 a personal relationship which was unduly familiar.*

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

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

51. Although there is no *written* confirmation of any order given to the claimant to end the relationship, it is clear that CO Polo considered the matter serious enough to continue bearing it in mind when considering the claimant for promotion. His reasons are as set out in detail above.
52. The claimant alleges that CO Polo has not proven this instruction or this order and that the burden was on him to do so. Therefore, the lack of cross-examination is of no moment, as the defendant has failed to establish any such order. On the other hand, the claimant also alleged that the relationship with Ms. Baptiste ended, but there is no evidence of that before the court.
53. In this court’s respectful view, the very fact that reference was made to the breach of the fraternization policy in the charges made and the nature of the charges that were laid is sufficient for the decision-maker’s state of mind to be understood. No doubt, CO Polo was of the view as expressed in his affidavit that he did not think he could recommend the claimant for promotion having

regard to what, in general terms, was a lapse in judgment in continuing this relationship with Ms. Baptiste. In this court's respectful view, even if there was no such instruction or order in 2016, the claimant continued that relationship even though there was this very serious objection to it, as evidenced by the charges laid.

54. The court notes that no details were given in the claimant's principal affidavit about the relationship with Ms. Baptiste, notwithstanding the fact of its importance in the decision-making process. Further, even though CO Polo referred to the claimant marrying Ms. Baptiste<sup>5</sup> on 19 July 2016, after the charges were laid, the claimant never provided any confirmation of the same. Clearly, though, this aggravated CO Polo as he stated in his said affidavit that this:

*"the Claimant's now marital relationship with Ms. Baptiste further undermined the Fraternization Policy, military custom and respect for his authority and command ..."*

55. One can fully understand the situation. The discovery of the relationship in contravention of the policy, the laying of charges and the subsequent marriage.
56. Against that background, there is the issue of the court-martial proceedings. That may now be statute-barred and therefore may have to be resolved in favour of the claimant, thereby vindicating him by the operation of the law. This is a valid discharge of those charges against him, as there was no valid reason why they could not have been resolved before the statutory 3-year period.
57. Considering the reasons raised and given by CO Polo, the court is of the respectful view that his reasons provide an insight into the thinking and rationale behind the decision not to promote the claimant.

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<sup>5</sup> At paragraph 15 of his affidavit

58. The court process, however, cannot be complete without an analysis of the claimant's appraisals.

### Appraisals

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59. His 2016 appraisal is dated 24 March 2022 and described him as *"pending Court Martial"* and states:

*"Lieutenant Hernandez has made some poor choices but remains on strength and does his duty. Hopefully, some resolution will come soon."*

The Commanding Officer's comments stated:

*"Lieutenant Hernandez has been replaced as Training Officer as a result of an alleged breach of the court of conduct. This matter has been remanded for court-martial. He therefore has been tested in a difficult report. He has made and the duties assigned to him have also been to assist his on what progress step-by-step. As an Officer he will have to work past that this development and renew the confidence of the Command in his abilities."*

60. His 2017 appraisal is dated 16 January 2022. It describes him as *"a competent individual"* with *"a satisfactory grasp of his duties"* and *"always willing to assist"*. It went on to report *"Lieutenant Hernandez should not allow the several incidents affecting him personally to cloud his perception of the organization."*
61. His 2018 appraisal once again hinted at his *"ongoing personal challenges"* but described him as being a *"capable officer"* who continued *"to deport himself in a positive manner"* and *"with a professional outlook"*. The Commanding Officer's comments were hopeful that *"the disciplinary matters involving him ends"* and that he would *"be able to move pass it and continue with his career."*
62. In 2019, he had a glowing appraisal by his Head of Department praising him as a *"committed and focused officer"* whose comportment and bearing were of

*“a high quality”* exuding *“maturity and strong work ethics”*. He was seen as a *“problem solver”* looking for *“innovative ways to improve efficiency and effectiveness”* and who was *“very supportive of his superiors and gave sound advice and performance”*. The Commanding Officer opined that he had continued to function even though he does have *“some outstanding legal matters to be resolved but could cloud his future”*. Once again, the officer was hopeful that a timely resolution could be achieved. The claimant objected to the mention of the words *“outstanding legal matters”*.

63. His 2020 appraisal was even more glowing with his head of branch, whose name was indecipherable to the court, indicating that he had *“no issues in recommending him for promotion to the next higher rank”*. His Commanding Officer, however, continued to show concern about the *“shadows of past indiscretions”* which continued to *“haunt”* him because of his *“reluctance to accept responsibility for his actions.”* The claimant objected to that stated reluctance. The court notes, however, that there was no expression of contrition at any point in time in the affidavits before the court or in any proceedings that were pending. Instead, as mentioned, the claimant seems to have shied away totally from the details of the alleged breach of fraternisation.
64. In 2021, his Head of Branch again showered him with praise for his ability, intelligence and work ethic. Once again, the Commanding Officer commented on the ongoing matter before the courts regarding his *“pending court-martial”*. The claimant objected and cited his constitutional right to be presumed innocent.

## Conclusion

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65. From these reports, it is clear that the claimant’s Commanding Officer always bore the fact of the pending matter in mind when completing the appraisal reports, notwithstanding the claimant’s demonstrated efficiency and intelligence otherwise.

66. The claimant's annual appraisals consistently reflected strong professional competence, intelligence, and work ethic. These matters weigh in his favour and are expressly acknowledged by the Court.
67. However, the appraisals also demonstrate that the Commanding Officers repeatedly noted the pending disciplinary issues as a matter affecting confidence, perception, and future progression. The Court does not treat these references as findings of guilt, but as evidence of the factors actually considered by those charged with making suitability assessments.
68. Promotion under the Trinidad and Tobago Coast Guard Regulations is not automatic upon the satisfaction of seniority or examination requirements. It remains contingent upon a favourable assessment of suitability, including personal qualities and devotion to duty, as evaluated by the Commanding Officer and the Defence Force Commissions Board.
69. Section II of the Trinidad and Tobago Coast Guard Regulations (TTCGR) deals with promotions, which state that promotions to Lieutenant Commander are dependent on the recommendation of his Commanding Officer, the recommendation of the 2<sup>nd</sup> Defendant and are based on seniority and suitability, with the latter including both personal qualities and professional competence.
70. The court generally agrees with the defendant's submission that it would have been irrational for the defendants to recommend the claimant for promotion to the highest rank in the TTCG, knowing first-hand that he disobeyed his orders, evaded disciplinary charges (although "evaded" is not the word the court would have used) and that his conduct did not meet the criteria for recommendation. Even if no formal instruction was given, the existence of charges and the seriousness with which the matter was treated were sufficient to inform the decision-maker's perception of unsuitability. Yet, despite that, and again as mentioned, the claimant chose to adopt a different course. The Commanding Officer viewed it as an indiscretion that quite obviously tainted

and stained his reputation with those in command who had the responsibility to recommend his promotion.

71. The court can take judicial notice of the fact that fraternization policies do not only apply in the military but also abound in the private sector as well. What the court wishes to comment upon, however, is that the claimant sought to gloss over the fraternisation in his case as if trivialising the issue in his mind. Further, contentions were put forward that there was no evidence of any favouritism or adverse effect arising from the relationship between him and Ms. Baptiste. In this court's respectful view, that is not required. It is akin to the reasonable apprehension of bias in matters involving recusal before the court. No actual bias is required to be proven. At the end of the day, it is the perception.
72. Similarly, in the court's respectful view, CO Polo indicated an inclination and a position within the military that the general administration of the military's standard of conduct requires this type of conduct to be avoided. The claimant had a choice in the face of an established fraternisation policy, which is still in force, and he chose to persist in the face of charges. The court makes no pronouncement on that decision but notes that the effect of it was to paint him into a corner in the minds of his superiors, who viewed his action in the manner in which it was set out above. Whether or not it seems fair to him, the fact is that the human mind may very well find it difficult to disassociate itself from a perception of disobedience with an established protocol and the conduct required for the recommendation for promotion in a military setting. Discipline, strict adherence to rules and regulations and the ability to conform to certain military customs may very well be a standard that a commanding officer may look to in such a setting.
73. In this court's respectful view, despite the questionable veracity of the court-martial proceedings, the underlying factual matrix cannot simply be ignored. On the evidence before the court, the claimant was in a relationship with Ms. Baptiste while the fraternization policy was in force, and he continued that

relationship even after charges were laid. Against that background, and bearing in mind the established policies in assessing suitability for promotion, the failure to recommend him for promotion was plainly an option open to the decision-maker on the facts before him. Having made that decision based on the factors already outlined, the court is unable to conclude that it was an unreasonable or irrational decision which should be overturned by this court on the principles of judicial review.

74. The Court is satisfied that the Commanding Officer's assessment was not arbitrary or capricious, but grounded in considerations expressly permitted by the regulatory framework.
75. The court therefore is not minded at all to grant the declaration that the first defendant's decision not to recommend the applicant was unreasonable, unfair and unjust. Consequently, and without that recommendation, the 2<sup>nd</sup> defendant could not have made a decision to promote the claimant and therefore its decision not to promote him is not unlawful, unfair, unreasonable or irrational.

### Presumption of Innocence

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76. With respect to the use of the charges laid against the claimant to bar him from promotion, the court accepts the questionable validity of the court-martial for the reasons given in relation to it being statute-barred, but notes that it was only one of the factors considered by CO Polo.
77. The Court accepts the claimant's submission that unresolved allegations cannot lawfully be treated as proof of misconduct. However, the presumption of innocence does not preclude an administrative decision-maker from considering whether unresolved matters reasonably affect confidence in an officer's suitability for promotion to senior command.

78. The Court draws a clear distinction between punitive action and evaluative judgment. The latter does not require proof beyond a reasonable doubt, nor does it amount to a finding of guilt.
79. On the evidence before the Court, it was open to the Commanding Officer to conclude that the claimant's suitability for promotion was affected by the circumstances surrounding the fraternisation allegations, irrespective of their ultimate legal disposition.
80. The Court therefore cannot conclude that the refusal to recommend the claimant for promotion fell outside the range of rational responses available to a reasonable decision-maker acting within the applicable regulatory framework.
81. Therefore, the court cannot make the declaration in that regard either.
82. The court will now go on to consider the reliefs sought in respect of legitimate expectation.

#### Legitimate Expectation

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83. The most recent authority on legitimate expectation is the binding Privy Council decision in ***United Policyholders Group and others vs. The Attorney General of Trinidad and Tobago***<sup>6</sup>. This court discussed that decision in a military context in its decision in ***Caleb Edwards vs. The Chief of Defence Staff & Or***<sup>7</sup>. The court relies on its statement of the law in that regard and its discussion of the facts therein, insofar as they apply in the matter before this court.
84. The factors for promotion are set out in the TTCG Regulations cited in the claimant's principal affidavit. Under those Regulations, promotion is based on two primary factors:

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<sup>6</sup> (2016) UK PC 17, paragraphs 37 - 38

<sup>7</sup> CV 2023 – 04200, at paragraph 27 et al., which is under appeal

- 84.1. Length of Service
- 84.2. Suitability, which includes personal qualities and professional competence
- 85. Suitability is determined by professional qualifications and the Confidential Reports (annual appraisals). For promotion to Lieutenant-Commander, eligibility requires passing the promotion examination, recommendation of the Commanding Officer and confirmation via the Defence Force Commissions Board (DFCB).
- 86. The DFCB Rules, i.e. Rule 8, require the Board to consider all of the following:
  - 86.1. General fitness
  - 86.2. Position on the seniority list
  - 86.3. Position on the list of results of promotion examinations
  - 86.4. Special qualifications
  - 86.5. Special courses of training undertaken
  - 86.6. Overall performance as reflected in annual confidential reports
  - 86.7. Letters of commendation or special reports
  - 86.8. The duties of which the officer has had knowledge
  - 86.9. Specific recommendations of the Commanding Officer
  - 86.10. Previous military service
  - 86.11. Any special report for which the Board may call
  - 86.12. Devotion to duty
  - 86.13. Any other information which the Board may deem relevant

87. These factors are mandatory considerations for all promotions to substantive or acting rank. There is no room to bypass the discretionary aspects of these rules and regulations.
88. The claimant asserts that his performance met the criteria, with his appraisals being either “Good” or “Very Good”, and he reasonably expected to be promoted. He said there was an established, regular, settled practice that he felt applied to his case.
89. To repeat the defendants’ position on this issue, the defendants have submitted that the claimant has not shown any clear, unambiguous promise of promotion, any consistent regular practice applicable to his situation and any basis on which an expectation could legally arise. In this case, the claimant was not recommended for promotion. The factors included his conduct, performance and devotion to duty. However, the discretionary factors of suitability to be determined by the commanding officers are, in the court’s respectful view, a valid and weighty consideration. As a result, under the regulatory framework, the defendants say that the claimant cannot rely on any legitimate expectation in circumstances where no such solution arose.
90. The claimant has not established the existence of a clear, unambiguous representation or settled practice amounting to a legitimate expectation of promotion. Promotion within the Coast Guard remains discretionary and dependent on suitability.
91. Accordingly, no enforceable legitimate expectation arises.
92. Consequently, the court is of the respectful view that no legitimate expectation arises and will therefore not make any order in that regard.

#### **The Other Declarations Sought**

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93. Firstly, the court will not grant the declarations in relation to the claimant’s “due date for promotion”. In the court’s respectful view, no such due date can

be ascribed to a process which requires discretionary output by commanding officers as described above. Therefore, both declarations regarding the “due date for promotion” to Ag. Lieutenant Commander and Lieutenant Commander refused.

94. Consequently, the orders of certiorari and mandamus, along with the orders for damages inclusive of vindictory damages, do not arise.

95. With respect to the declaration sought in relation to the decision to promote persons who were junior in rank ahead of the claimant, the court accepts the submissions for the defendants that:

95.1. Seniority is not a basis for promotion and does not guarantee promotion. Therefore, any suggestion of the promotion of a Junior person in rank is incomplete without a proper consideration of all the other factors set out above. Therefore, the court dismisses this aspect of the declaration sought.

95.2. In any event, the junior officers were in a different situation from the claimant. Their temporary failure in the 2022 promotional exams were remedied lawfully before the promotion and they became fully eligible before the promotion exercise. According to the defendants’ position, by the time of the 2023 promotions, the junior officers had passed the qualifying exams, had been recommended by their Commanding Officer, and had also been recommended by the Commission’s Board. As a result, unlike the claimant, those junior officers met the requirements for promotion.

## **Conclusion and Order**

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96. In all of the circumstances, the court is of the respectful view that it cannot accede to the claim put forward by the claimant for the reasons given above.

97. For the reasons set out above, the claim is dismissed. The Court makes no findings on disciplinary culpability and emphasises that its decision rests solely on the limits of judicial review.
98. The claimant shall pay the defendants' costs of the claim to be quantified pursuant to Part 67.12 of the CPR before the Assistant Registrar of the Supreme Court in default of agreement.

/s/ D. Rampersad J.  
Judge