THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. CA S103 of 2018
Consolidated Claims Nos. CV2014-04785 and CV2014-0055

In The matter of the decision of The Commissioner for Co-operative Development made under Section 18(1) of The Co-Operative Societies Act Chapter 81:03 to cancel the registration of The National Transportation Co-Operative Society Limited

and

In the matter of an appeal made under section 18(3) of the Co-operative Societies Act Chapter 81:03 to the Honourable Minister of Labour and Small and Micro Enterprise Development of the decision of the Commissioner for Co-operative Development to cancel the registration of The National Transportation Co-operative Society Limited

and

In the matter of an appeal of the decision of the Honourable Minister of Labour and Small and Micro Enterprise Development made under section 74 of the Co-operative Societies Act Chapter 81:03

CV2014-04785

BETWEEN

JONAS DUKHEDIN LALLA Claimant/Appellant

and

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Defendant/Respondent

and (as consolidated in the High Court)

between

CV2014-0055

NATIONAL TRANSPORTATION CO-OPERATIVE SOCIETY LIMITED

Claimant/Appellant

and

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Defendant/Respondent

PANEL:

Justice Prakash Moosai JA
Justice Charmaine Pemberton JA
Justice James Christopher Aboud JA

APPEARANCES:

Mr K Neebar on behalf of Jonas Dukhedin Lalla and National Transportation Co-operative Society limited

Ms T Gibbons-Glenn, Ms S Sukhram and Ms J Teeluckdharry instructed by Mr R Grant on behalf of the Commissioner for Co-operative Development

DATE OF ORAL DELIVERY: 28 June 2022

I heard the oral judgment of Mr Justice JC Aboud JA as now transcribed by him in an approved text. As before, I concur and have nothing to add to the approved text of the transcript.

Prakash Moosai

Justice of Appeal

I, too, heard the oral judgment of Mr Justice JC Aboud JA as now transcribed by him in an approved text. As before, I concur and have nothing to add to the approved text of the transcript.

Charmaine Pemberton

Justice of Appeal

Oral Judgment

(delivered on 28 June 2022 and now issued in an approved transcript)

Delivered by Mr Justice JC Aboud JA

1. I will now deliver an oral judgment. I reserve the right, if it becomes necessary, to issue my oral judgment by way of an approved transcript and to add, amplify, or correct any grammatical errors and to perfect the language that I will use today. The *ratio* of the judgment will not change but its language and formatting might.

2. This is an action that was consolidated below. It was heard and determined before Justice Mira Dean-Armorer J (as she then was). Originally there were two Claimants in two actions. Both Claims were brought by way of an appeal under section 74 of the Co-operative Societies Act, Chap. 81.03 ("the Act"). That section says this:

> "74. A party aggrieved or adversely affected by any order or decision of the Commissioner under this Act may appeal therefrom to the Minister within two months of such order or decision, and a further appeal may lie therefrom to a Judge in Chambers within one month of such order or decision of the Minister."

3. Jonas Lalla filed a statutory appeal by way of a Fixed Date Claim against the Commissioner for Co-operative Development (the "Commissioner") in the first claim. National Transportation Co-operative Society Limited ("the Society") filed a second statutory appeal in virtually the same terms. The two claims were later consolidated by the trial judge, as they concerned the same facts.

4. Both Claims were originally accompanied by separate Statements of Case. I note in passing that although the decision of the Minister of

Small and Micro Enterprise Development ("the Minister") is what triggered the appeal to the High Court Judge in Chambers, the Minister was not named as a defendant before the trial judge or as a respondent on appeal. Reliefs are nonetheless sought against the Minister's decision to uphold the Commissioner's ruling. No issue was raised on this issue on the appeal before us, or before the trial judge.

5. In the first Claim Mr Lalla describes himself as the claimant. He is described as a member, shareholder and the President of the Society. Mr Lalla, obviously, must be taken to be keenly aware of what is taking place within the Society, not only as a member, on which footing his claim is primarily based, but later in a presidential capacity.

6. The Society was registered in 1987 with 45 members who were all employees of a trucking company that went into receivership. The Society purchased 52 of its assets: tractors, trucks, wagons and trailers. The Society then secured a contract with National Petroleum and carried out business quite profitably. In a short while, it started expanding and obviously came into some level of wealth. Its offices and premises were located on a prestigious road in San Fernando, namely, Cipero Street. Things were going along well, according to Mr Neebar's pleading, until a variety of issues began between 2007 and 2008. I need not now recite what these external issues were, as they were spelt out in the trial judge's written judgment, but they had nothing to do with how the Society was being operated. These external business dilemmas occurred, and the Society's profits started to dry up.

7. In the circumstances, the Society unilaterally began looking for a purchaser for its property and they sold all of its real estate and trucking assets to one Mr Victor Jattan on 26 October 2010 for $20.5 million. It is not an insubstantial sum of money.

8. It must be noted that the Society is registered under the Act. The Act governs the Society, and all Co-operative Societies in Trinidad and Tobago. Its governance is regulated through the office of the Commissioner. The Commissioner's role is not that of a figurehead. The Act makes that quite clear. He has a supervisory and regulatory role. His role is not unlike that of the Supervisor of Insurance or the Governor of the Central Bank. His role is defined in the Act, and it is a supervisory and intrusive role.

9. Obviously, he has an interest because, as a Co-operative Society, the Society enjoys tax exempt status. It enjoys certain tax and other privileges that ordinary individuals and corporations, including banks, do not enjoy in Trinidad and Tobago. Moreover, the members of a Co-operative society also need his protection.

10. Having the benefit of this special status ascribed to it by the Act, of course, the Commissioner has to look after the welfare of the members of a society. He has a duty to regulate and to ensure that these societies, who enjoy this special status, strictly comply with the Act and the Bylaws of each society (which he has approved as Bylaws). He must utilise his own aptitude as to what is proper, right, lawful, and efficacious in relation to each society. Of course, if a society fails to realise its economic potential, all the members might be pauperised. He obviously has an interest in protecting the members of the societies, but also the taxpayers who are concerned with the collection or non-collection of revenue due to its tax-exempt status.

11. The property and assets were sold on 26 October 2010 for $20.5 million. That is our start date. The Society only collected $15.5 million. $5 million is still outstanding from the purchaser. Although it is outstanding, the Society has conceded that it has cash in hand of some $650,000.00. This means that out of the money it received of $15.5

million, all that remains to the credit of the society is $700,000. At the date of hearing of the appeal some $4.8 million had either already been paid out or was not proven to be in the hands of the Society, despite the Commissioner's many enquiries.

12. The Commissioner's interest had been piqued in relation to the goings-on at the Society. It is pleaded in the Defence that in or around 2010 an investigation was launched into the affairs of the Society. It was initiated as a result of a newspaper article in the Trinidad Guardian Newspaper. It was reported that the General Secretary had been criminally charged, together with three other persons, with attempting to illegally export 68,000 litres of auto diesel.

13. In his Defence, the Commissioner says that his interest was activated in the goings-on of the Society when he read that newspaper article.

14. The Commissioner then discovered that there was a sale of the Society's assets, and there began a long trail of letters. I will not carry you through them all, but numerous letters were written over the course of approximately two years. All of these letters are conceded as being received and admitted as authentic in Mr Neebar's Statement of Case. Mr Neebar is the Attorney at Law for the Society and Mr Lalla. The Commissioner continued writing letters, making requests and demands, and the Society continued supplying, in part, some of the information that was requested, and failing and/or neglecting to supply the rest.

15. Now, admittedly, when the Society sold its assets to Mr Jattan, it had no office; it had no place to conduct its affairs. It had no business because its business premises had been sold. It had no more employees because most of the employees (who were members of the Society) were now employed by Mr Jattan. In a letter written by the

Society to the Commissioner, it is stated that all the Society's documents were put in a freight container that was placed on the property of its Attorney-at-Law, Mr. Neebar.

16. I imagine that it would be difficult to maintain an ordered document filing system when your documents are kept in a freight trailer. So, obviously, there must have been challenges in relation to the Society being able to organise the documents and to answer the Commissioner's many requests. That is however no excuse for failing to supply the lawfully requested documents. A bank could not lawfully refuse to supply a request for documents from the Governor of the Central Bank simply because the documents were moved to some other allegedly inaccessible location.

17. According to the pleading, after writing all of these letters, and after initiating an inquiry, the Commissioner wrote a letter on 31 October 2011 indicating his intention to cancel the Society's registration under the Act. That was the first letter. That letter was not delivered by registered post, and the cancellation of registration was not published in the Gazette. It was pointed out that that was wrong, and the Commissioner then issued a second letter of 4 April 2012, which was properly gazetted. It was delivered by hand because there was no registered office, according to the Commissioner.

18. Certain keys to his decision were identified in that letter. That letter is found at page 149 of the Record, and the keys to the decision to cancel are contained at page 153. I will read them. "Key to decision to cancel: Failure to have your Co-operative decide on a new business model or plan, since the sale of the trucks in 2010, which was used to transport gasoline, and which comprise the business operations on October 26th, 2010."

19. This is a second key: "Failure to adhere to instructions/guidance of the Commissioner for Co-operative Development concerning..." (among other things), ". . .the Annual General Meeting, constitutionality of the Special General Meeting, decisions made at improperly convened Special General Meetings, the outstanding financial statements...". I highlight this key identified by the Commissioner: "...Decision-making without pertinent financial data; and payment of bonuses, shares, and 'top up' severance payments."

20. I think, for the purposes of this Appeal, and also for the trial judge, these last three keys are the critical ones. Of course, the first one is also critical: failure to have a new business plan or model.

21. According to Mr. Neebar's 29 July 2011 letter to the Commissioner (cited in the Defence): "The business plan is not yet formalised or finalised, and all proposals discussed are confidential." This is almost a year after the sale of the property. There is, at that time, no business plan in place and, according to Mr Neebar, it is a "confidential" matter.

22. Now, when one reads the Defence, I ask myself whether this letter frustrated the Commissioner in carrying out his statutory duties. The question then arises, you have an entity that is a regulated entity. It is not a free player like an ordinary limited liability company. It is operated and managed subject to the requirements of an Act to protect its members. It sells its all of its assets for TT$20.5 million, and its then-business altogether ceases. What does it do with the $20.5 million in 2010? One of the things that it needs to do, in my opinion, is to tell the Commissioner what its business plan is, and how it proposes to distribute the purchase monies among its members or advance its business as a society. The Commissioner was not, in my view, unreasonable to have those concerns.

23. Secondly, one of the Commissioner's stated keys was that the financial statements for the year 2004 to 2010 had not been supplied to him. Mr Neebar says that it is the duty of the Commissioner, together with the Society, to prepare the financial statements, but this is not correct at all and ought to be rejected. The trial judge did not accept that argument.

24. A society that is involved in a business ought to have access to its cheque payment vouchers, its cheque books, and its accounting records. The Commissioner does not write cheques on the account of the Society. All of these records are used to prepare the Society's audited financial statements, which are of concern to the Commissioner. A Society does not file tax returns, so it is not a matter of public record.

25. No financial statements had been submitted for that year. Indeed, (a) up to the time to the date of the Commissioner's decision, (b) the appeal to the Minister, and (c) the appeal to the High Court, were the Society's 2010 and 2011 financial statements supplied.

26. The financial statements are, in my opinion, essential. The Commissioner also lists as one of his keys: "Decision-making without pertinent financial data." Of course, that is also essential because the Society is still on the Commissioner's books as a regulated society. It is not any longer operating any business as a society *per se* but it still has a licence to operate as a Society. For the Act to be properly operationalised the Commissioner needs financial data. All the necessary financial data has not been provided, and the record is very clear on that. This behaviour is certainly not in keeping with the Act. Moreover, Mr Lalla, as the current President, ought to be privy to that information. The trial judge was not proven to be plainly wrong in

upholding the Commissioner's decision to cancel the Society's registration.

27. I now turn to the allegation of improper conduct by the Minister on his hearing of the appeal against the Commissioner's decision. The Defence before the trial judge is that the Minister was in breach of a statutory duty imposed on him by Section 81(j) by failing to make regulations for the procedure to be followed in presenting and disposing of appeals. The appeal to the Minister was launched both by the Society and by its President, Mr Lalla, who Mr Neebar at first told us was simply a member.

28. But as President at that time, he would be expected to be more in tune with all the representations that were going back and forth, much more than a mere member.

29. The claim is that the Minister was (a) in breach of his statutory duty under Section 81(j) by failing to make regulations to conduct the appeal, (b) that the Minister affirmed the decision of the Commissioner without hearing any oral evidence for or on behalf of the parties and his decision is therefore unsound and unlawful, (c) that the Minister's decision to uphold the Commissioner's ruling was made in breach of the rules of natural justice; (d) that the Minister wrongly directed himself when he proceeded to hear and/or determine the Claimant's appeal without prescribing regulations.

30. It is further alleged that the Minister wrongly directed himself by giving directions to the parties to make written submissions. The Minister is also said to have wrongly directed himself in making his findings of fact.

31. The procedure adopted by the Minister at the hearing was said to have been unlawful. He allegedly misdirected himself in construing Section 18 of the Act as not requiring the parties to present or lead evidence in support, and that his decision was unjust and unfair to the Society's members. The Minister is alleged to have misunderstood his role as an appellate tribunal by not probing or seeking to probe into the veracity and/or justice of the Commissioner's decision.

32. In so far as the Commissioner was concerned, a series of grounds were set out, complaining that the Commissioner acted in breach of natural justice: (a) the decision was made in breach of the duty imposed on him by the Constitution; (b) it was harsh, oppressive and/or drastic, and (c) no properly directed tribunal could have reasonably made that decision to cancel the registration.

33. In her written judgment, the trial judge dismissed the consolidated claims. Her judgment is dated 22 March 2019. She found that there was no breach of natural justice. She found that neither in the Commissioner's decision to cancel the registration or in the way the Minister conducted the appeal was there any breach of natural justice.

34. She found that the complaint about the absence of regulations was unmeritorious. Firstly, because it was not ventilated before the Minister, and it would be wrong to find that the Minister was plainly wrong in respect of belatedly made arguments. She also said that Section 81(j) gives the Minister a power to make regulations but does not obligate him to do so. She added that although there was no cross-examination, the uncontested evidence was before the Minister, and that he considered the "witness statements".

35. As I have discovered in reading the file, Mr Neebar did not file witness statements. He filed affidavits on behalf of his clients. An affidavit is

sworn testimony. Throughout the course of today's appeal, Mr Neebar kept referring to them as witness statements. A witness statement is not sworn testimony. The documentary evidence, contained in Mr Neebar's affidavit and in the Commissioner's affidavit, were not contested as to their authenticity. They are part of an agreed record. They tell their own story. And, basically, the Commissioner's correspondence can be abbreviated like this: "Dear Society, please assist me to assist you. I need you to supply me with "A", "B", "C", "D" and "E". I need a business plan from you. Time is running. You have received $20.5 million. Did you pay out any of it? To whom did you pay it? I need to see your financial records."

36. The Commissioner was of the view that in the absence of seeing the balance sheet or audited financial statements, that it was open to him to find that monies had been paid out. He wrote a letter to the Society. Mr Lalla was not yet its President. He would have likely been later aware of the letter instructing that no further payments be made to anyone. Not having received any affirmation by a bank statement or by a financial return, the Commissioner could not certify whether any payments had been made in breach of his directive.

37. The law that governs the resolution of this dispute is not controversial. Firstly, section 18(1) of the Act says: "Subject to this section, the Commissioner may, if he thinks fit, at any time cancel the registration of a society and where such registration is cancelled the society shall be deemed to have been dissolved from the date on which its affairs are wound up. (2) The Commissioner shall, before exercising the power conferred by him . . . signify his intention to cancel the registration of a society by registered letter . . . to the Board, and by notice published in the Gazette. (3) Any officer . . . aggrieved has a right of appeal to the Minister" within a certain timeline.

38. Now, firstly, Section 18(1) confers a discretionary power. Of course, a discretionary power has to be exercised on grounds that are reasonable. Subject to the reasonableness of the exercise of the discretionary power, the Commissioner has the right to cancel the registration at any time.

39. Of course, he is supposed to conduct an inquiry, and, in this case, as the trial judge noted, an inquiry was started. The legality of that inquiry is provided for in section 4. Section 4 empowers the Commissioner to "...hold an inquiry into the constitution, operations, and financial position of the Society and in the course of such inquiry shall inspect the books, accounts and other records of the society."

40. His inquiry was conducted on the basis of correspondence, and not a hearing. His inquiry was conducted on the basis of sending one of his officers to attend Annual General Meetings. His inquiry was conducted on the basis of reading and trying to understand the written responses of the Society. It dragged on for approximately two years until, eventually, as I said before, he wrote his second 2012 letter cancelling the Society's registration that was properly gazetted. There is nothing in the Act that suggests that the inquiry must be conducted orally, or within any specific timeframe.

41. That inquiry, obviously, was never concluded because, on the evidence before the trial judge, the Commissioner acted with all due dispatch with a view to bringing matters to an end as soon as possible for the benefit of the Society at large, and for the benefit of the members of the Society. And, obviously, as well, for the issue of good Co-operative Society governance, which he is empowered and obligated to achieve.

42. The appellants have grounded their appeal on a number of grounds that are set out in the amended Notice of Appeal. I will condense them into broad headings, which are repeated now for purposes of emphasis.

43. Firstly, breach of natural justice, (a) by the Commissioner, in failing to notify the members of the Society—that is Mr Lalla's case—and with respect to the Society's appeal, by his decision to cancel its registration; (b) breach of natural justice in the way that the Minister conducted hearing of the appeal.

44. Secondly, breach of the statute. In particular, section 81(j) in that the Minister never created regulations for the conduct of the appeal and, therefore, the procedure that he adopted was flawed.

45. Thirdly, that the Minister did not receive any evidence at the hearing and, therefore, his decision is also flawed.

46. That is a condensation, and I will deal with them in turn.

47. Before I do so I should point out that the trial judge properly defined the rules of natural justice. In *Lloyd v McMahon* [1987] AC 625, Lord Bridge said,

> "My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when statute has conferred on any body the power to make decisions

> affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional safeguards as will ensure the attainment of fairness."

48. It is to be noted that the rules are not written on tablets of stone. There is flexibility in determining the levels of fairness in each given fact situation. One of the important duties of the Court is to examine the statutory framework within which the decision-maker is operating. I will come back to the Act.

49. I will briefly refer to the important case of *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531. At p 560, Lord Mustill described the minimum standards of fairness.

> "What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities . . . From them, I derive the following:
>
> (1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances.
> (2) The standards of fairness are not immutable. They may change with the passage of time, both in general and in their application to decisions of a particular type." Of a particular type.
> "(3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.
> (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken."
> (5) Fairness will very often require that a person who may be adversely affected by the decision will have an

> opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification; or both.
> (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he was informed of the case which he has to answer."

50. Now, looking at the Record in the whole, certainly, insofar as number 6 is concerned, the then President and the Society knew exactly what the case was that it had to answer.

51. Two years of correspondence is sufficient to provide knowledge of what case is being made against the Society. The Society and Mr Lalla, as its President, must or should have known what the key interest of the Commissioner was. What was his complaint? The correspondence spells it out in plain English. The trial judge recognised this.

52. As a regulated body, the Society ought to have known that the Commissioner had a direct interest in receiving its financial statements and knowing what its future business plan was. In repeatedly delaying and refusing or failing to provide the information, the Society must be taken to have known that the Commissioner's patience would eventually run out. His requests were lawfully made, and the Society had a duty to co-operate (see section 5 of the Act). When it received the Commissioner's letter indicating that he was interested in taking legal steps, the Society should have been put on notice to act expeditiously in providing the requested information.

53. Let us now look at the two allegations of breach of natural justice. Firstly, the natural justice breach as against the Commissioner. In my

opinion, there is ample evidence that the Society and Mr Lalla, as its President, was aware of what was requested, and how critical that information was.

54. The Society made numerous written representations to the Commissioner. Representations, as a matter of law, are not always required to be made orally. The decision-maker can decide to act on written representations if an oral hearing is not statutorily prescribed.

55. According to the trial judge at para 14 of her judgment, "The terms of the correspondence speak for themselves. This court observes however, repeated, unanswered requests by the [Commissioner], including requests for audited accounts for the years 2006 to 2009. The Court observes as well that the [Society] was asked to cease and desist from making payments in a letter dated the 26th May, 2011 and the evidence was that they did not comply with this request." The trial judge therefore had all the letters before her, and based on her reading of the correspondence, held that the Commissioner was not unfair or irrational in cancelling the Society's registration.

56. One of the letters before her was Mr Neebar's 29 July 2011 missive that is six pages long. It does not provide any assurance that Commissioner is any closer to getting the information that he requires to carry out his statutory functions.

57. Two things stand out to me in Mr. Neebar's letter of representation to the Commissioner. The trial judge had that letter before her, and she found it unconvincing in relation to the allegations of breach of natural justice, irrationality or unfairness.

58. Firstly, Mr Neebar is complaining to the Commissioner that he, the Commissioner, is supposed to supply him, Mr. Neebar, with a list of what documents the Commissioner has already received. A responsible Society that is delivering lawfully requested documents to the Commissioner pursuant to his lawful demands should keep a record of what documents it has sent. To do otherwise delays or frustrates the almost two-year process that the Commissioner has initiated, as the trial judge recognised.

59. The other thing is that while the Commissioner wrote a letter on 26 May 2011, bearing the caption, "Payments and/or refund of shares to shareholders," and directed that no further payments by paid out, Mr Neebar says: "I am instructed that no payments or refund of shares were made to shareholders, subsequent to the receipt of your said 'advice'."

60. Of course, the inverted commas around the word "advice" are not needed. The Commissioner issued strict instructions, not "advice".

61. The important point here is that Mr Neebar is only providing his client's instructions. There is no bank statement, or any financial statement attached to his letter that would prove these instructions to the trial judge. Cheque stubs would surely be available. An accountant's letter saying that he certifies that he has examined the Society's books and that no payments were made would have gone far to assuage the Commissioner's and the trial judge's concerns. The trial judge found that the Society did not comply with the Commissioner's 26 May 2011 demand that no further payments be made (para 14 of her judgment). In the absence of audited financial statements, the trial judge cannot reasonably be faulted for so holding to the extent that she can be said to be plainly wrong.

62. The Commissioner was not asking for a lawyer's "instructions" that no payments were made. He wanted proof that no payments were made. That is why he kept asking for the financial statements. The trial judge correctly took account of the absence of these records.

63. The third thing about Mr Neebar's written representation, which was before the trial judge and the Minister, is that the future business plan of the Society is "not yet formalised or finalised. All proposals discussed are confidential." The Society, of course owes a statutory duty of full disclosure to the Commissioner.

64. Mr Neebar goes on to state: "Insofar as your requests for information concerning the payment out to the members is concerned, some of the members of the Society are a bit nervous about the way the information is being sought. They consider it confidential because of the crime situation. So, you would no doubt appreciate that the members' concerns, having regard to the crime situation, is far from fanciful or unreal. *It is for this reason that the confidential records of the Society should remain with the Society.* Making copies of documents regarding members' accounts ought, in the circumstances, to be discouraged as far as possible." (emphasis added)

65. This amounts to an indirect refusal to supply requested information on payments made by the Society to its members or other persons.

66. The letter attaches none of the financial statements. It does not supply the financial plan. It gives no indication of what payments had been made, and it is a representation that falls short, in my respectful view, of the specific directive issued to the Society by the Commissioner.

67. In my opinion, the trial judge, on these facts, has not been proven to have been plainly wrong to hold that there was no breach of natural justice, or unfairness, or irrationality, in the Commissioner's decision to cancel the Society's registration.

68. Insofar as the breach of natural justice, as alleged against the Minister in the conduct of the appeal is concerned, there is no requirement that regulations be passed for the conduct of an appeal, as the trial judge in my view correctly held. If those regulations are not passed pursuant to section 81(j), the appeal process is not invalidated or nullified. The trial judge was correct to so hold. I say so for the reasons that were stated in *ex parte Doody* that the trial judge cited. One has to look at the statutory framework, and one also has to look at the particular circumstances of the individual case.

69. One of the things that must be considered is that the Minister issued two procedural directions as to how he wanted the appeal to be conducted. The appeal was not conducted on an *ad hoc*, idiosyncratic, or whimsical basis. It was conducted strictly in accordance with the directions that the Minister issued. The trial judge was not incorrect in so holding. When one looks at the directions, they are fair and reasonable.

70. Secondly, no complaint about the procedure was made by Mr Neebar, who appeared before the Minister. No complaint was made about the absence of the section 81(j) regulations or the Minister's procedural directions, as the trial judge correctly held. These directions were attached to letters addressed to the Society's instructing Attorney at Law, Mr Ramnath.

71. The first direction governs the exchange of submissions, and, among other things, extensions of time, if needed.

72. The second direction is entitled, "Procedure for the hearing of an appeal." It contains this sentence: "This document is developed as a guide only and may be modified at the Minister's discretion to facilitate the fairness of the appeal process."

73. If the Appellants had complaints about the intended process outlined in these two procedural directions, they should have been raised before, or at the hearing before the Minister. A departure from these procedural directions might amount to procedural unfairness. In my opinion, the trial judge, properly examined the record that was before the Minister. She made the important points that (a) the Minister was meticulous in hearing both sides, (b) the evidence before him was uncontested and (c) there was no need for cross-examination (para 41). She was not proven to have been plainly wrong to hold that there was no procedural unfairness at the hearing.

74. At page 703 of the Record, after listing the guidelines in hearing an appeal, under the rubric "Selection of procedure," the Minister directed as follows: "After the Notice of Appeal is acknowledged, the Minister will set a prehearing conference to discuss with the parties how the case will proceed . . . the parties may agree that the procedure to be followed will be by written submissions, oral submissions, or a combination of written and oral submissions, but if the parties do not agree, *the Minister will select the procedure which he believes will best permit the resolution of the matter in the shortest practical time*." (Emphasis added). Two sets of procedures are therefore set out.

75. In so far as the oral procedure is concerned, the Minister gave this direction: "If it is proceeding by oral submissions, the Minister shall indicate the time and date for hearing oral submissions. He may then

issue a formal notice inviting relevant parties, their witnesses, if any, and, if they so choose their legal representatives or persons who they want." The full directions were before the trial judge. The evidence was by affidavit and not by witness statements, as Mr Neebar conceded at the hearing before us.

76. The procedure for the oral hearing is stipulated: "The order for proceedings to be appealed shall, unless the Minister otherwise directs, will be as follows: The Appellant shall outline the grounds of his appeal, adducing any fresh evidence. Hearing of any witnesses called, followed by cross-examination, response by the Respondent." It is important to note that this direction refers to fresh and not uncontested sworn evidence.

77. Nonetheless, I go back to Rule 9 of what is found at page 703 of the Record: "The Parties may agree that the procedure to be followed will be written submissions, oral submissions, or a combination of both. And if they don't, the Minister will select the procedure which he believes will be best permit the resolution in the matter in the shortest practical time." The trial judge held, following *ex parte Doody* and the judgment of Mendonça JA in *Godfrey Raj-kumar v. Medical Board*, Civil Appeal No 139 of 2005, that the procedure adopted by the Minister was fair.

78. All the undisputed documents were before the Minister and the trial judge. The appellants raised no objection to the procedure adopted by the Minister at the hearing. The appellants also did not object to the authenticity of any document attached to the sworn testimony.

79. In our courts and our tribunals many disputes are determined on the basis of sworn testimony alone, without cross-examination, especially in cases where the documentary and factual evidence is not

contradicted, and where the parties are given every opportunity to make full written and oral submissions.

80. The written submissions contained all of the appellants' essential arguments at the time of the hearing. The trial judge cannot be said to have been plainly wrong to have held that the procedure was not unfair. She said at para 46 that the two pillars of natural justice had been met: there was no allegation of bias and both sides were heard in compliance with the maxim *audi alteram partem*.

81. The trial judge found that that the process before the Minister was not *Wednesbury* unreasonable. She carefully examined the law and the facts in arriving at her decision. She was not proven to be plainly wrong to so find.

82. For all of these reasons, the appeal is dismissed.

83. I now defer to the chairman of the panel, Justice Moosai JA, to enquire about the question of the costs of the appeal.

James Christopher Aboud JA