

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF
THE REPUBLIC OF TRINIDAD AND TOBAGO**

CIVIL APPEAL NO P-307 OF 2023

BETWEEN

F.R.

**(Anonymized pursuant to the order of the
court dated 26th October 2022)**

Appellant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

THE APPELLANT'S CASE

*(References to the Record of Proceedings are in the format
RR/Electronic Bundle Page Number/Paragraph or Line Number where available)*

Introduction

1. The core issue in this case is whether the Appellant, an alleged victim of a rape, is entitled to a remedy under the Constitution to expedite the criminal trial of her alleged perpetrator in circumstances where there has already been significant delay in the progress of the proceedings and there is a high probability of further significant delay. The Appellant's case is that on an application of general principles relevant to the right to security of the person (section 4(a) of the Constitution) and the protection of the law (section 4(b) of the Constitution), such a remedy is available to her and ought properly to be granted in this case.
2. The courts below erred in confining their analysis to the question of whether the Appellant's fundamental rights *have already been* contravened, although the Appellant says that they have. The Appellant has pleaded, and the evidence establishes, the *likely future* contravention of her rights for which she

is entitled under section 14 of the Constitution to an effective remedy. The Courts gave no consideration to the likelihood of a future violation. An important feature of this case is the complete absence of any evidence from the Respondent justifying or even explaining the likely future delay in the completion of the criminal proceedings.

3. The High Court granted relief to the Appellant for a breach of the right to the protection of the law on the basis that her criminal case ought to have been transferred to the recently constituted Children Court which would have resulted in a quicker disposal of the proceedings. On that basis alone, the trial judge issued orders directing the State to put mechanisms in place and to allocate sufficient resources to ensure that the trial of the accused for rape is completed expeditiously.¹ The Court of Appeal overturned the learned judge's findings and orders on the basis there is no right to a trial within a reasonable time guaranteed by the Constitution of Trinidad and Tobago, that the Appellant's rights to the security of the person and to the protection of the law had not been infringed, and that in any event an order directing the state to do such things as may be necessary to expedite the criminal proceedings violated the separation of powers doctrine. These, in summary, are the findings under appeal before your Lordships' Board. The Appellant says that the Court of Appeal erred in law in every respect.

The facts in brief

4. The Appellant was 16 years old when she was allegedly raped by her neighbour. At the time that her constitutional motion was filed, the preliminary inquiry into the charge had been ongoing for more than 4 years² and there had been 23 hearings without any evidence being led. The status of the inquiry at that time was that witness statements were in the process of being filed by the prosecution and disclosure was still ongoing. There were a further 7 hearings of the preliminary inquiry after the motion was filed, with the accused eventually being committed to stand trial on 30th May, 2022.

¹ RR499-500.

² The charge was laid on 15th October, 2017; the motion was filed on 29th November, 2021.

5. The prosecution case is not complex – it depends almost entirely on the evidence of the Appellant.³ The cross examination of all prosecution witnesses at the preliminary inquiry was completed on two afternoons⁴ with a total duration of approximately 4 hours.
6. The Respondent relied on the evidence of the presiding Magistrate Taramatie Ramdass and the Magistracy Registrar Shari Deonarinesingh. Both witnesses referred to the general procedure applicable to the conduct of preliminary inquiries and the various steps that are required to be taken. Ms. Deonarinesingh testified that in her experience, the length of a preliminary inquiry can “range from three (3) years and upward” and lists several factors which can affect the time period for completion⁵. The record reveals that in this case the delay was largely due to the prosecution’s lack of readiness which was at the very least tolerated (at worst, condoned) by the various presiding Magistrates.
7. In respect of likely future delay, the Respondent provided disclosure in the form of the Judiciary’s “Statistics on Criminal Charges of Rape Determined at the High Court (2016 – 2020)”.⁶ As at 31st December, 2021, there were 162 charges of rape pending at the High Court.⁷ In the year 2020, only 5 charges of rape were determined, while the highest annual disposal rate over the period 2016 to 2020 was 24 in 2018.⁸ When eventually indicted, the Appellant’s criminal complaint would join a long queue with an unenviable disposal rate.
8. Over the preceding five-year period, the average length of time from indictment to the determination of the proceedings was 6 years.⁹ Of the sixty-six cases determined during that period, the delay between indictment and conclusion in relation to seven of them was over 10 years, three of which took over 20 years. Thirty-two, or nearly half of the sixty-six cases, took over 5 years since indictment to be completed.¹⁰ The longest period was 41 years, 5 months and

³ The prosecution relied on 7 witnesses in total.

⁴ 16th March, 2022 - RR272 - and 22nd March, 2022 - RR318.

⁵ RR112, [5].

⁶ RR136-140.

⁷ RR140.

⁸ RR140, Table 2.

⁹ RR140.

¹⁰ RR138-139.

20 days, the shortest was 10 months and 9 days. The report does not indicate the manner of disposal, for example, whether some matters were disposed of early by reason of a guilty plea.

9. The Appellant's evidence is that there tends to be a significant delay of many years between the making of the committal order and the filing of an indictment by the Director of Public Prosecutions.¹¹ This is borne out by the fact that, to the Appellant's knowledge, no indictment has yet been filed in her case.
10. The Respondent has adduced no evidence explaining the reason for the delay between committal and indictment in this case or the likely delay between indictment and trial. There has been no attempt to justify, by way of evidence, the prevailing state of affairs which amounts on any account to unacceptable delay which is likely to seriously affect vulnerable victims.

Harm suffered by the appellant

11. The Appellant gave direct evidence of the harm she suffered as a result of her attendance at multiple court hearings and the general delay in concluding the criminal proceedings. She was informed by police officers that her attendance was required on each occasion in order to demonstrate that she was "interested in the case".¹² Whenever the matter was coming up in court, she cried both before and after court. Weeks before a court hearing, she got depressed and was unable to sleep. The fact that the matter is still ongoing after all these years has made her sad, angry and annoyed.¹³
12. The Appellant gave evidence of the accused smirking and laughing at her outside court when the matter was adjourned and that on one occasion he "brushed his shoulder" against her in passing.¹⁴ This traumatised her for days and she could not stop thinking about it. She finds dealing with court unbearable.¹⁵ She feels like she is trapped and there is no way out and she wants the case to be over so that she can get on with her life.¹⁶ She is

¹¹ RR133, para 18

¹² RR27, [25].

¹³ RR28, [28].

¹⁴ RR28, [29]-[30].

¹⁵ RR28, [31].

¹⁶ RR30, [37].

concerned that the criminal proceedings and the trauma that it keeps bringing up is going to “take a serious toll” on her. “I do not want my life to be in constant turmoil because in the end it may affect my daughters as well.”¹⁷

13. The Appellant adduced expert evidence from Ms. Isolde Ali Ghent-Garcia, a Clinical Psychologist who assessed the Appellant during the period April to June, 2022.¹⁸ The expert concluded that the Appellant is suffering from Posttraumatic Stress Disorder, Major Depression and Generalised Anxiety Disorder and that the ongoing court proceedings has “*added to her Posttraumatic Stress Disorder symptoms by re-traumatising her in court eliciting unwanted images, by attacking her character causing feelings of hopelessness, helplessness and acute fear*”.¹⁹
14. The Respondent chose not to cross-examine the Appellant or her expert witness. Their evidence went unchallenged.

The High Court’s decision

15. The trial judge found that the Appellant suffered serious psychological prejudice and that there was a causal connection between the harm she experienced in the delay in the ongoing court proceedings such as to constitute a violation of her right to the security of the person.²⁰ However, she found that the breach was carried out in accordance with the due process of law because the legal system as a whole was fair.²¹
16. As noted, the trial judge did find that the Appellant’s right to the protection of the law was infringed because of the failure to transfer the matter to the Children Court. This was not a submission made by the Appellant and is not defended on this appeal.

¹⁷ RR31, [38].

¹⁸ RR229-242.

¹⁹ RR237.

²⁰ RR475, [41] to RR478, [52].

²¹ RR480, [58] to RR481, [64].

17. The trial judge did not consider the question of whether the Appellant's fundamental rights were likely to be infringed in the future.²²

The Court of Appeal's decision

18. The Court of Appeal overturned the trial judge's finding that there was sufficient causal connection between the State's actions and the psychological prejudice suffered by the Appellant and agreed with the trial judge's finding that the legal system as a whole was fair. There was accordingly no breach of the Appellant's right to the security of the person.
19. The court found further that there was no breach of the right to the protection of the law because the Respondent provided a proper explanation for the delay which occurred and that there was no irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.
20. Running through the Court of Appeal's decision were two findings of broader principle. The first was that there was no right to a trial within a reasonable time under the Constitution. Secondly, the Court found that there is an inherent tension between the rights of victims and the rights of the accused and that constitutionalizing victim rights may damage the presumption of innocence.
21. The Court of Appeal, like the trial judge, did not consider whether the Appellant's fundamental rights were likely to be infringed in the future, despite the fact that the trial judge's omission to deal with the question was specifically raised as a ground in the counter notice of appeal.²³

General principles

22. Your Lordships are reminded in brief of the following general principles:

- i) Fundamental rights provisions are to be construed generously and on the basis that the Constitution is a living instrument – **Seepersad v Commissioner of Prisons** [2021] 1 WLR 4315, [21] to [26];

[RR3077]

²² This was pleaded at relief 7 of the Fixed Date Claim [RR6] and argued at para 9 to 10 of the Appellant's written submissions [RR370].

²³ RR567, [H].

- ii) A claimant is not required to assert that a specific state body, or individuals within that body, are responsible for the breach of her rights. All that is required to be established is that the State is responsible for the breach - ***Attorney General of Trinidad and Tobago v. Akili Charles*** [2023] 1 WLR 177, [42]; [RR1347]
- iii) Once an infringement of a fundamental right is established the court has a duty to provide an effective remedy. As stated by Lord Bingham in ***Hinds v. Attorney General of Barbados*** [2002] 1 AC 854, [24]: “As it is ***a living, so must the Constitution be an effective, instrument***”; [RR2105]
- iv) Delay jeopardises the achievement of just results and undermines confidence in the administration of justice. As Jamadar JCCJ of the Caribbean Court of Justice said in ***Solomon Marin v The Queen*** [2021] CCJ 6 (AJ) BZ1: “*In the delivery of justice, delay is anathema. Delay has a corrupting effect on the purity of justice. It renders its delivery increasingly valueless for the parties and all too often even prejudicial. It undermines public trust and confidence in the justice sector. It corrodes the very fabric of society. Delay denies justice...*” [RR3101]
- v) And as de la Bastide C.J (as he then was) said in ***Sookernany v Director of Public Prosecutions*** [1996] 2 LRC 292, 298d-e: “*the policy of the law is that criminal proceedings should be completed with expedition*”, and “*while delay in bringing accused persons to trial may or may not be prejudicial to the interest of such persons, it is invariably detrimental to the interest of the community in that such delay not only impairs the chances of convicting the guilty, but also greatly reduces the effectiveness of any punishment imposed on them following conviction.*” [RR3179]

The right to a trial within a reasonable time

- 23. The Court of Appeal found that there is no right to a trial within a reasonable time protected by the Constitution. This was a pivotal finding and appeared largely to dispose of the Appellant’s case because the Court was of the view

that if it was determined that there was no such right, it applied to accused persons and victims alike.²⁴

24. This was not the first time that the Court of Appeal had held that there was no right to a trial within a reasonable time guaranteed by the Constitution. The Court of Appeal had already done so in **Sookernany v Director of Public Prosecutions** [1996] 2 LRC 92 and your Lordships Board had followed suit not [RR3173] long after in **Director of Public Prosecutions v Tokai** [1996] AC 856. The [RR1978] Court of Appeal revisited the issue in this case and proceeded to determine it 'finally' because, in **Boodram v The State** [2001] 4 LRC 647, [41], your [RR1823] Lordships had entertained "an interesting argument" about the correctness of **Tokai** noting that that decision had been made without reference to Trinidad and Tobago's international obligations to secure to its citizens the right to a trial within a reasonable time and without considering whether, by necessary implication, there is such a right under the Constitution. But since it was not necessary to decide the point in that case, and the Board did not have the views of the Court of Appeal, your Lordships' deferred consideration of the question for an occasion when it is necessary to do so. This is such an occasion and your Lordships now have the Court of Appeal's views on the impact of Trinidad and Tobago's international obligations.²⁵
25. Before examining how the Court of Appeal dealt with Trinidad and Tobago's international obligations, it is first necessary to make some observations about the approach taken by the Court of Appeal in **Sookernany** and your Lordships Board in **Tokai**, the state of the law at the time those decisions were rendered and important developments since then.
26. Firstly, in **Sookernany**²⁶ as in **Tokai**²⁷, the Court was impressed by the fact [RR3178] that the right to a trial within a reasonable time was "on the menu of standard [RR1984] provisions which was an offer at the time when the framers of our 1962 Constitution made their selection"²⁸ but that right was not included among the

²⁴ RR847, [96].

²⁵ Subsequent to the Board's decision in Boodram, Baird J held in **The State v. Mohammed & Richardson** H.C 131/1995 that section 4(a) and 4(b) rights "must be interpreted to include the right to a trial within a reasonable time". RR3230

²⁶ At p. 297 a-b RR3178

²⁷ At p. 862 E RR1984

²⁸ At p. 297 a-b RR3178

rights chosen to be protected under the Constitution. The Court of Appeal treated this as a deliberate omission.²⁹

27. However, the fact is that there were two different menus on offer at the time of independence, one patterned after the European Convention on Human Rights which by independence in Trinidad and Tobago in 1962 had already been adopted by Jamaica and by some countries on the African continent, and was later to be adopted throughout the rest of the English Speaking Caribbean, including Belize and Guyana. The right to a trial within a reasonable time was expressly included on that menu. It followed that if a newly independent country had largely adopted that menu but excluded the right to a trial within a reasonable which was a prominent and familiar selection, the omission would surely signal a deliberate decision not to provide constitutional protection of the right.
28. However, the Trinidad and Tobago's Constitution is notorious for its deliberate rejection of the popular menu on offer and its selection instead of the Canadian Bill of Rights menu, the main distinguishing feature of which was the declaration of rights in broad language devoid of the detailed exceptions and limitations which was a prominent feature of the competing and more popular menu. Two other distinguishing features of the Canadian of Bill of Rights were the absence of an express right to a trial within a reasonable time but the presence of an express right to the due process of law protecting the rights to life, liberty and security of the person. The competing more popular menu did not contain an express due process clause.
29. Furthermore, neither the Court of Appeal in **Sookermany** nor the Board in **Tokai** paid any heed to the then prevailing understanding of what the framers of the Constitution intended that the rights to "due process of the law" and the "protection of the law" were to contain. As your Lordships Board held in **Thornhill v Attorney General of Trinidad and Tobago** [1981] AC 61, 70 G-H [RR3355] the various subsections of section 2 of the 1962 Constitution, now section 5 of the 1976 Constitution, "spell out in greater detail (though not exhaustively)

²⁹ Ibid.

what is included in the expression “due process of law” to which the appellant was entitled under paragraph (a) of section 1 (now 4) as a condition of his continued detention and “the protection of the law” to which he was entitled under paragraph (b).” See also *Seepersad v Commissioner of Prisons* [2021] 1 WLR 4315, [237]. The point is that if it was then accepted that the [RR3078] contents of the due process of the law and the protection of the law were not exhaustively detailed in the Chapter on fundamental rights and freedoms, no inference could properly be drawn from the failure to list a particular detail of what might on a proper construction constitute an important element of the due process of law or the protection of the law. But in neither case did the Court seek to determine whether the right to a trial within a reasonable time was encompassed in the due process clause or in the protection of the law.

30. Secondly, and to be sure, although it appeared that in *Sookernany* the contention was that an unreasonably delayed trial would not constitute due process of law, the Court of Appeal appeared to consider that such a breach, if there was one, could be remedied by the grant of bail if the accused had been denied bail. As the Chief Justice said:³⁰ [RR3197]

“If a person’s constitutional right not to be deprived of his liberty except by due process of law is infringed by his being imprisoned pending trial for an unduly protracted period, it would seem that that infringement would be adequately remedied (assuming the offence is bailable) by granting him bail, without going so far as to prohibit his further prosecution.”

31. It is apparent from this passage, and from a reading of the judgment, that the Chief Justice did not actually decide whether the right to the due of process of law included a right to a trial within a reasonable time. Absent from his consideration was what remedy would be available to someone denied bail for a non-bailable offence where there is unreasonable delay in bringing on a trial.
32. The question whether the right to due process of law encompassed the right to a trial within a reasonable time was also posed in *Tokai* but your Lordships

³⁰ At p. 298 d-e. RR3197

Board appeared to take the view that the only rights which the Constitution guaranteed were those which existed at common law. As the Board said:³¹

[RR1984]

“... the opening words of section 4³² indicate that the rights in question are rights which existed at the coming into force of the Constitution. The present Constitution is that of 1976, but the relevant wording in the original independence Constitution of 1962 was identical. It follows that the rights in question are rights which were enjoyed at common law before the Constitution of 1962 came into force. Neither Constitution purports to vary or enlarge these common law rights.”

The only common law right referred to was the right to apply to the Court under its abuse of process jurisdiction for a stay of a criminal trial where delay rendered a trial unfair³³, and no more.

[RR1617]

33. There have been subsequent developments which have called this restrictive approach into question.

Rights are not frozen in time

34. The notion that the fundamental rights provisions in the Trinidad and Tobago Constitution were intended to capture the then existing common law rights only was based upon the opening sentence of section 4 of the Constitution which declared the fasciculus of rights which were thereafter detailed to “have existed” and to “continue to exist.” The prevailing view first developed in *DPP v Nasralla* [1967] 1 AC 238, 247G in relation to the Jamaican Constitution and [RR2003] later followed in *De Freitas v Benny* [1976] AC 239, 244G-H in relation to the [RR1957] Trinidad and Tobago Constitution, was that the Chapter on fundamental rights proceeded “upon the presumption that the fundamental rights which it covers are already secured to the people by existing law.” The purpose and object of the declaration of rights was “to ensure that no future enactments shall in any matter which the chapter covers derogate from the rights which at the coming into force of the Constitution the individual enjoyed.”³⁴

[RR2004]

³¹ At p. 862 E-H. RR1984

³² “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...” RR1165

³³ *Attorney General’s Reference (no 1 of 1990)* [1992] 1 QB 630. RR1617

³⁴ *Nasralla*, p. 248a-b. RR2004

35. This rather conservative view of the protection which Westminster Model Constitutions afforded was deprecated quite early on with Lord Bingham declaring in ***Gairy v Attorney General of Grenada*** [2002] 1 AC 167, 179F that: [RR2083]

“In interpreting and applying the constitution of Grenada today, the protection of guaranteed rights is a primary objective, to which the traditional rules of the common law must so far as necessary yield.”

36. No long after, in ***Watson v R*** [2005] 1 AC 472, Lord Bingham returned to the [RR3360] theme, this time joined by Lord Nicholls, Lord Steyn and Lord Walker. In their joint concurring judgment, they insisted³⁵ that the Board in ***Nasralla*** “can [RR3388] scarcely have contemplated that human rights in Jamaica were to be frozen indefinitely at the point they had reached in August 1962.” Such an approach would contradict Lord Sankey’s admonition in ***Edwards v Attorney General of Canada*** [1930] AC 124, at 136 that the then Canadian Constitution had planted [RR2063] “a living tree capable of growth and expansion within its natural limits.”
37. More recently, in ***Suraj v Attorney General of Trinidad and Tobago*** [2023] AC 337, your Lordships’ Board frontally rejected an argument that the rights under the Trinidad and Tobago Constitution were limited to the way they were protected at the time the Constitution came into force. Lord Sales and Lord Hamblen JJSC, speaking for a unanimous Board, said (at [80]): [RR3277]

“... there is no indication in the Constitution that it was intended to be frozen in time in its application in this way. On the contrary, it was intended to lay down a basic framework to be applied at the time of its adoption and far into the future, with the capacity to adapt and develop in light of changes in society. ***The reference in the opening part of section 4 to the rights having existed and continuing to exist simply means that the citizen can be confident that there will be no reduction in the protection of their rights as compared with the position in 1962 or 1976, not that the very general rights specified in section 4 are to be taken to be frozen at those times.*** As was explained by the Board in *Minister of Home Affairs v Fisher* [1980] AC 319, 328, the rights set out in Constitutions of this kind are to be given a broad and purposive construction, since the Constitution is a living instrument capable of adaptation and growth as social standards change...” (Emphasis added)

³⁵ ***Watson v R*** [2005] 1 AC 472, at [60]. RR3388

38. This development is important because our understanding of the due process of law has grown over time. Lord Millet's elaboration on the concept of due process in **Thomas v Baptiste** [2000] 2 AC 1 is now accepted by the Board as the classic statement of principle. He said (at 22 B-C): [RR3328]

"The due process clause requires the process to be judicial; but it also requires it to be "due." In their Lordships' view "due process of law" is a compendious expression in which the word "law" does not refer to any particular law and is not a synonym for common law or statute. Rather it invokes the concept of the rule of law itself and the universally accepted standards of justice observed by civilised nations which observe the rule of law..."

39. Unconstrained by common law conceptions of rights and freedoms, and construing the due process of clause generously and as a living tree, the question now is whether "universally accepted standards of justice observed by civilised nations which observe the rule of law", include a right to tried within a reasonable time. One way to answer that question is to have regard to the international human rights treaties which nations have entered into, and to which Trinidad and Tobago is a signatory. This is the task which your Lordships in **Boodram** had said that the Board had not performed earlier in **Tokai** and it is the task which the Court of Appeal in this case carried out. But it is also a question which can be answered by interrogating the accepted *raison d'être* of the right to a trial within a reasonable time and any authorities which have answered the question directly.
40. As to the latter, there is some scantily reasoned authority in the United States Supreme Court's decisions in **Klopfer v North Carolina** 386 US 2213 (1967) [RR2283] and **Dicky v Florida** 398 US 30 (1970). The US Supreme Court held in those [RR1962] cases that the right to a speedy trial provided for in the Sixth Amendment to the US Constitution is made obligatory on states by the due process clause in the Fourteenth Amendment.
41. As to the former, there is an abundance of authority which establishes that the requirement of reasonable speed in the conduct of criminal trials is designed to protect the accused's liberty and security of the person interests. In **Mills v R** [1986] 1 SCR 863, Dickson CJ and Lamer J made the connection between the [RR2525]

section 11(b) right to a trial within a reasonable time and the section 7 right to life, liberty and the security of the person in the Canadian Charter of Rights and Freedoms (at p. 919):

[RR2580]

“In my view, the fundamental purpose of s. 11(b) is to secure, within a specific framework, the more extensive right to liberty and security of the person of which no one may be deprived except in accordance with the principles of fundamental justice. The purpose of s. 11(b) can, in other words, be ascertained by reference to s. 7 of the *Charter*. Section 11(b) is designed to protect, in a specific manner and setting, the rights set forth in s. 7, though, of course, the scope of s. 7 extends beyond those manifestations of the rights to liberty and security of the person which are found in s. 11...”

42. In **R v Morin** [1992] 1 SCR 771, 786, Sopinka J said:

[RR2984]

“The primary purpose of s. 11(b) is the protection of the individual rights of accused... The individual rights which the section seeks to protect are: (1) the right to security of the person, (2) the right to liberty, and (3) the right to a fair trial.

The right to security of the person is protected in s. 11(b) by seeking to minimize the anxiety, concern and stigma of exposure to criminal proceedings. The right to liberty is protected by seeking to minimize exposure to the restrictions on liberty which result from pre-trial incarceration and restrictive bail conditions. The right to a fair trial is protected by attempting to ensure that proceedings take place while evidence is available and fresh.”

43. Similar connections have been made by your Lordships’ Board and in the House of Lords. In **Mungroo v R** [1991] 1 WLR 1351, 1352G-H your Lordships [RR2644] noted that the right to a trial within a reasonable time secures “that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.” In **Mills v HM Advocate** [2004] 1 AC 441, Lord Steyn said (at [14]): “(I)n criminal matters, especially, it is [RR2512] designed to avoid that a person charged could remain too long in a state of uncertainty about his fate...” And in **Attorney General’s Reference (No. 2 of 2001)** [2004] 2 AC 72, Lord Bingham said (at [16]): “A defendant who is not [RR1645] guilty should have the opportunity of clearing his name without excessive delay. A guilty defendant, facing conviction and punishment, should not have to undergo the additional punishment of protracted delay, with all the implications it may have for his health and family life.”

44. An unreasonably delayed trial subjects an innocent accused to unnecessary stress and anxiety and if he has been denied bail, to a period of incarceration for which there is simply no justification. It cannot be in accord with universally accepted standards of justice to subject those presumed to be innocent to stress, trauma, and loss of liberty for longer than necessary, reasonable or justifiable. The rights under the Constitution are to liberty and security of the person and not to be deprived therefore except by due process of law. A prolonged trial which visits upon an accused stress, trauma and loss of liberty beyond what is reasonable is not a process which is due. Universally accepted standards of justice deprecate an overly delayed criminal trial.
45. It is the Appellant's respectful submission that applying the ordinary tenets of constitutional interpretation, the right not to be deprived of liberty and security of the persons except by the due process of law encompasses the right to a trial within a reasonable time. A trial which is unreasonably delayed unjustifiably impinges upon liberty and security of the person and is not a process which is due. This is confirmed by Trinidad and Tobago's accession to international human rights treaties which secure the right to a trial within a reasonable time.

International Obligations

46. The general principle which has been repeated time and again by your Lordships' Board is that statutes, including a Constitution, must be construed in such a way as to accord with a country's international obligations. Lord Hoffman has been a long-time advocate of this canon of construction. In ***Mattadeen v Pointu*** [1999] 1 AC 98, 114 G-H, he said: "It is a well recognised [RR2423] canon of construction that domestic legislation, including the Constitution, should if possible be construed so as to conform to such international instruments." See also ***Matthew v State*** [2005] 1 AC 433, per Lord Hoffman, at [RR2444] [12]; ***Boyce v R*** [2005] 1 AC 400, per Lord Hoffman at [25]-[26]; and ***Lewis v Attorney General of Jamaica*** [2001] 2 AC 50, 78, following Lord Hoffman in ***Mattadeen***. He put the principle slightly differently in ***R v Lyons*** [2003] 1 AC [RR2962] 976, at [27]: "there is a strong presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United

Kingdom in breach of an international obligation.” For his part, in **Reyes v R** [2002] 2 AC 235, Lord Bingham said (at [28]) that “courts will not be astute to [RR3054] find that a Constitution fails to conform with international standards of humanity and individual right unless it is clear, on a proper interpretation of the Constitution, that it does.”

47. The Court of Appeal acknowledged³⁶ that Trinidad and Tobago had ratified the American Convention on Human Rights and the International Covenant on Civil [RR3439] and Political Rights, both of which protected the right to a trial within a reasonable time. For the reasons already given, it is possible to construe the due process clause in section 4(a) of the Constitution as securing the right to a trial within a reasonable time in order to protect the right to liberty and the security of the person. This is accordingly an interpretation which your Lordships are urged to adopt in order to ensure Trinidad and Tobago’s compliance with its international obligations.
48. However, the Court of Appeal was unable to find its way to this conclusion. The Appellant respectfully submits that the Court erred for the following reasons.
49. Firstly, at no point did the Court consider the possible meaning of due process of law in order to determine whether it was capable of bearing a construction which would make it compliant with Trinidad and Tobago’s international obligations. At no time did the Court interrogate the established content of due process of law as set out in the judgment of Lord Millet in **Thomas v Baptiste**. At no time did the Court ask the question whether the universally acceptable standards of justice require criminal proceedings to be concluded within a reasonable time.
50. Secondly, the Court of Appeal misunderstood your Lordships as deciding in **Lendore v Attorney General of Trinidad and Tobago** [2017] 1 WLR 3369 [RR2293] that “international instruments will be much less valuable in prescribing the detailed content of fundamental rights or the mode of giving effect to them procedurally, especially when recognising any development of the law, which is not warranted by the express terms of the Constitution or which are necessarily

³⁶ RR840, [80-86].

implicit in them”.³⁷ The Court of Appeal derived this limitation on the use to which international obligations may be put in construing the Constitution from paragraphs 60 and 61 of your Lordships judgment in **Lendore**. But in those paragraphs, the Board was commenting on the limited persuasiveness of judgments of the European Court of Human Rights on the European Convention to which Trinidad and Tobago is not a party. Nothing which was said by your Lordships can be reasonably interpreted as casting any doubt on or limiting the application of the general presumption that the Constitution conforms to a State’s international obligations.

51. Thirdly, the Court of Appeal held that it was inapt to use Trinidad and Tobago’s international obligations to read into the unambiguous language of sections 4 and 5 of the Constitution a right to a trial within a reasonable time.³⁸ The Appellant of course accepts that where the Constitution unambiguously makes provisions which contradict international obligations there would be no room to apply the presumption of compatibility. But the Court of Appeal did not point to the language in sections 4 and 5 which it claimed unambiguously contradicted Trinidad and Tobago’s international obligation to accord citizens the right to a trial within a reasonable time. If there was indeed language in the Constitution which forswore the right to a trial within a reasonable time, your Lordships in **Boodram** would never have left the point for decision on another occasion. The task which the Court of Appeal did not take on was to determine whether the due process clause could be interpreted in such a way as to conform to Trinidad and Tobago’s international obligations.
52. Fourthly, the Court held that the right to a speedy trial was distinct and independent from the right to a fair trial and therefore could not properly be implied into any of the rights provided for in sections 4 and 5.³⁹ Respectfully, while the due process of law incorporates the right to a fair trial, it is wider than that. It was held in **Thomas v Baptiste**, for example, to include the right accorded to all litigants not to have the outcome of any pending appellate or other legal process pre-empted by executive action (p. 23 D-E). It also [RR3329]

³⁷ RR844 [90].

³⁸ RR845, [92].

³⁹ RR851, [101].

precludes more broadly legislative as well as executive interference with the judicial process (p. 22A). Even more broadly, it invokes the rule of law itself and [RR3328] the universally accepted standards of justice observed by civilised nations which observe the rule of law (p. 22 F-C). The Court of Appeal's enquiry [RR3328] accordingly was not to be limited to determining whether the right to a fair trial could be construed as including the right to a trial within a reasonable time in order ensure conformity with Trinidad and Tobago's obligations. The Court ought to have but did not ask itself whether universally accepted standards of justice observed by civilised nations included the right to a trial within a reasonable time guaranteed under the American Convention on Human Rights and the International Covenant on Civil and Political Rights.

53. For all of these reasons, the Court of Appeal erred in law finding that section 4(a) did not guarantee the right to a trial within a reasonable time. The Appellant asks your Lordships to find that it does.

The right to security of the person

54. The Court of Appeal accepts that the right to security of the person may be violated by omission or inactivity of the State which results in serious physical or psychological harm.⁴⁰ In this regard, the Court was guided by the decisions of the Supreme Court of Canada in **Blencoe v British Columbia Human Rights Commission** [2000] 2 SCR 307 and **New Brunswick v J.G.** [1999] 3 [RR1713] [RR2664] SCR 46 and its own decision in **Attorney General of Trinidad and Tobago v Rajesh Mathura** (Civ. App. No. 32 of 2006). However, the Court was not [RR1322] satisfied that the State was responsible for the delay in the progress of the criminal proceedings, or that the delay caused the Appellant any psychological harm beyond what is usually to be expected. Any psychological harm which the Appellant experienced was therefore not caused by the State. Further, even if the Appellant's right to security of the person had been violated by delay in the proceedings, that had occurred in accordance with the due process of the law because, considered as a whole, the legal system was fair.

55. It is respectfully submitted that the Court of Appeal erred in its findings.

⁴⁰ RR864, [130].

How is the right infringed

56. None of the cases considered by the Court of Appeal concerned a complaint by an alleged victim of crime, far less an alleged victim of rape, that she suffered psychological harm as a result of unreasonable delay in criminal proceedings in which she is the virtual complainant. The **Blencoe** case was the closest because it concerned the impact of delay in proceedings before the Human Rights Commission brought against a Minister of Government accused of sexual harassment. Although the Supreme Court of Canada did not rule out the possibility that state-caused delays in proceedings before the Human Rights Commission could infringe the right to security of the person [at [98]], it was [RR1772] careful to distinguish the application of the principles which determine whether the right to the security of the person is infringed by delay in criminal proceedings.

57. In relation to criminal proceedings, the Supreme Court has been clear in its findings that delay in criminal proceedings may cause the violation of the right to security of the person. In **Mills v R** [1986] 1 SCR 863 Lamer J (as he then was), with the concurrence of Dickson CJ, said the following (at pp. 919-920): [RR2581]

“... the concept of security of the person is not restricted to physical integrity; rather, it encompasses protection against “overlong subjection to the vexations and vicissitudes of a pending criminal accusation” (A. Amsterdam, *loc. cit.*, at p. 533). These include stigmatization of the accused, loss of privacy, stress and anxiety resulting from a multitude of factors, including possible disruption of family, social life and work, legal costs, uncertainty as to the outcome and sanction.”

58. Although this statement was made in a dissenting judgment in **Mills**, it was repeated by Lamer CJ, now elevated to Chief Justice, in **New Brunswick v JG** [1999] 3 SCR 46, 78 [62], this time with the concurrence of five of the other six [RR2680] Justices. In **New Brunswick** as well, that larger majority of the Justices stated more broadly (at p. 79, [65]): [RR2683]

“... the restrictions on liberty and security of the person that s. 7 is concerned with are those that occur as a result of an individual’s interaction with the justice system and its administration. In other words, the subject matter of s. 7 is the state’s conduct in the course

of enforcing and securing compliance with the law, where the state's conduct deprives an individual of his or her right to life, liberty, or security of the person."

59. The psychological harm of which the Appellant complains in this case was as a result of her interaction with the justice system and its administration and of the State's conduct in the course of enforcing and securing compliance with the law.

60. The Appellant does not complain about the trauma she experienced and is to be expected to experience in the normal course of criminal proceedings in which she is a virtual complainant. Some re-traumatisation is unavoidable. By analogy, a criminal defendant can hardly complain about 'vexations and vicissitudes' suffered in the ordinary course of criminal proceedings. As Lamer J (as he then was) explained in *Mills* (at p. 920 i-j):

[RR2582]

"while some such prejudice to the accused may be seen as a cost of the very right to a hearing, a fortiori a public one, it must nevertheless be kept to a minimum by a speedy determination of criminal responsibility."

61. Likewise, while the Appellant must expect to suffer psychological harm as a cost of seeking justice through the criminal process, what she complains about is the unreasonable and unnecessary prolongation of that psychological harm by the conduct of the state in failing to progress the criminal proceedings in a reasonably timely manner and without undue delay.

62. It is not a sufficient answer to her complaint to say therefore that the initial cause of her psychological harm is the criminal action of the accused which she has necessarily had to relive when interacting with the criminal justice system, or when having to be confronted by the smug and threatening conduct of the accused in court, or the harsh cross-examination by counsel for the accused. Her complaint is about the exacerbation of that psychological harm by being forced to live with those psychological insults for a period of time beyond what is reasonable to bring the criminal proceedings to an end.

63. The distinction between harm caused by third party actions and the exacerbation of it by state conduct was made clear by the Supreme Court of Canada in other cases.
64. In *Kazemi Estate and Another v Islamic Republic of Iran and Others* [2015] [RR2219] 4 LRC 1, the appellants had challenged a legislative provision which prevented them from suing the State of Iran in respect of torture which had been committed against a family member by the Iranian authorities. The Supreme Court refused to strike down the legislation, but it did discuss the right to security of the person and the necessary causative link between State action and prejudice suffered. The Court said at [133]: [RR2260]

“In this case the Attorney General of Canada argues that Iran, not Canada, caused the immediate harm suffered by Ms Kazemi and Mr Hashemi due to both the torture Iranian officials inflicted and Iran's ineffective justice system. **However, it is irrelevant whether the torture in Iran is the immediate source of the harm suffered by Mr Hashemi. If evidence properly introduced at trial demonstrated that the 1985 Act deprives people whose family members have been tortured of the ability to heal from the trauma that they have experienced, the Canadian state might, nonetheless, have sufficiently contributed to causing serious psychological harm.** Therefore, for the purpose of engaging s 7, the fact that the foreign state caused the original violence would not necessarily diminish the role of the Canadian state in **impeding the healing** of Canadian victims of torture or their family members.” (Emphasis added)

65. In *Attorney General of Canada v. Bedford* [2014] 4 LRC 74, the respondent [RR1230] was a sex worker who challenged laws that criminalised acts connected to prostitution, such as keeping a bawdy-house and living on the avails of prostitution. Prostitution itself at the time was not illegal. The claimants complained that the laws infringed their right to security of the person because it put the safety of sex workers at risk since they were forced to ply their trade on the streets rather than in legitimate institutions and that the law forced them into the hands of “Johns”. The Supreme Court agreed and struck down the laws. On the issue of causation it held at para 89:

“It makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. The [RR1251]

impugned laws deprive people engaged in a risky, but legal, activity of the means to protect themselves against those risks. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence.”

66. The responsibility of the State for failing to alleviate harm caused by the conduct of third parties was also recognised by the Court of Appeal in ***Attorney General of Trinidad and Tobago v. JM*** (Civ App S-302 of 2019). In [RR1358] that case, the respondent was physically abused while under the care of a State facility over a lengthy period of time. The Court of Appeal held that the State was liable for breach of the respondent’s right to security of the person because “*both directly in its supervisory and regulatory role and through its paid employees*” it was in a position to end the abuse but it did not.⁴¹ [RR1402]
67. In this case, the Court of Appeal found that the Appellant had failed to establish that the psychological harm she suffered was attributable to delay on the part of the State. Mohammed JA referred⁴² to dicta from the Supreme Court of Canada in ***Blencoe*** (at [59]) where it was stated that stress, anxiety and stigma may arise from any criminal trial regardless of whether the trial occurs within a reasonable time and that a court is concerned only with the impairment which can be said to flow from the delay. It would therefore be inappropriate to hold the state accountable for harms brought about by a third party who was not an agent of the State. After referring to evidence which established that the Appellant had suffered psychological harm caused by the trauma associated with the rape and its aftermath,⁴³ the Court first noted⁴⁴ that some of the delay was caused by the Covid epidemic or the absence of prosecutors or witnesses or because the accused or his attorney was absent. Further, the Court observed⁴⁵ that even if there were no delays or postponements of the hearings, the Appellant’s existing trauma “would still probably have been exacerbated because of the intrinsic nature of criminal litigation.” Importantly, the Court found⁴⁶ that the burden was on the Appellant to show not only that “the State directly interfered with her psychological well-being”, but also that

⁴¹ Para 71 RR1402

⁴² RR865, [135].

⁴³ RR866-868, [139-141].

⁴⁴ RR869, [143].

⁴⁵ RR870, [145].

⁴⁶ RR874, [156].

“the State’s action was the proximate cause of the harm she alleges was inflicted upon her.” The problem with the expert evidence tendered by the Appellant, the Court said, was that it did not “disaggregate the alleged rape, the trauma of the (Appellant) bearing a child and the alleged delay in the criminal proceedings.” In the circumstances, the Court came to the following conclusion:⁴⁷

“It is simply impossible to ascertain whether the alleged delay in the criminal proceedings and the adjournments were the proximate cause of the Respondent’s psychological prejudice. The fact that the Confidential Psychological Report does not disaggregate the trauma caused by the alleged sexual assault, the trauma of bearing a child, the alleged delay, and the course of criminal proceedings is a significant shortcoming in this aspect of the Respondent’s case. As noted above, there are inherent difficulties which participating in a criminal trial entail. Some of those difficulties cannot simply and selectively be excised. The Respondent incurred significant psychological damage because of the alleged sexual assault itself. Any harm the Respondent incurred cannot be directly attributed to the State.”

68. The Court therefore concluded⁴⁸ that there was no “direct caused link shown between the actions of the State and (the Appellant’s) prejudice.”
69. It is accordingly necessary to delve in some detail into the undisputed evidence adduced at trial on the basis of which the trial judge found that a causal link had indeed been established.

The evidence of psychological harm

70. The Appellant’s evidence of stress and anxiety caused by her participation in the criminal proceedings has been referred to in paragraphs in the Introduction. Her expert evidence is more detailed. The following findings are pertinent:
- i) Since the rape in 2017, FR has struggled with anxiety and depression. She suffers from intrusive memories, looping catastrophic thoughts as well as marked vigilance which are consistent with post-traumatic stress disorder. Her feelings of despair and acute fear have resulted in a mental

⁴⁷ RR874, [157].

⁴⁸ RR877, [164].

and social disconnect from her surroundings. All areas of functioning have been affected including family life, interpersonal relationships, education, and occupation.⁴⁹

- ii) Additionally, because this court proceeding has taken more than five years, she is continually retraumatized every time a hearing gets canceled, when she has to see Mr. Wilkinson in court or has to face his attorney, whom she believes is out to slander and tarnish her name.⁵⁰
- iii) FR was prone to becoming tearful and distressed when discussing not only her brutal rape, which occurred on the 30th of March 2017, but also the excessive delays in court proceedings. Most distressing to FR has been the gut-wrenching feelings of knowing she has to repeatedly show for court and face her assailant should she want to pursue justice for what has happened to her. For FR, mentally preparing herself for court is a painful, arduous and exhausting procedure since she also feels slandered and attacked by the defense attorneys who seem more intent on attacking her character than establishing the truth. FR has felt incredibly alone, abandoned, and re-victimized by the court.⁵¹
- iv) In session, it is clear that FR becomes markedly distressed when discussing her rape, feelings surrounding cancelled court hearings as well as her attack defense attorneys. These difficult memories seemed to elicit strong emotional reaction to the point of overwhelming her with fear, sadness, and anger. Because some memories were difficult for her to discuss, Ms. FR had to pause in between to catch her breath and collect her thoughts. During these times, Ms. FR's speech was pressured and eye contact erratic. At times, Ms. FR seemed to become so lost in distressing memories, she seemed to mentally disconnect from the session. While reassurance seemed to help calm her and reorient her to the session, Ms. FR' tone of voice, averted eye contact, volume of speech and flat affect tended to remain for the duration of the sessions. What was notably distressing to her were the jeers and mocking glances by the

⁴⁹ RR230.

⁵⁰ Ibid.

⁵¹ Ibid.

accused as well as the snide remarks by his attorney. The ongoing court proceedings seems to be facilitating continued distress by triggering the memories of her assault as well as the repeated mental, emotional and financial cost of pursuing these charges against her assailant.⁵²

- v) Ms. FR has described the court proceedings, or rather lack of court proceedings, as nothing short of a nightmare. The multiple postponements and cancellations have caused her to feel abandoned and discarded. She is left without any form of income to support herself or her child. Ms. FR has endured the pain of her assault coupled with the distress of being denied a sense of resolution due to the unfair postponement for more than five years. Ms. FR has been unable to seek consistent mental health support due to lack of funds; as such, she continues to suffer from extreme sadness, fear, hypervigilance, and despair on a daily basis... Each time Ms. FR sees Mr. Wilkinson in court, she is bombarded by recurring memories which cause extreme anxiety, fear and anguish. The repeated cancellations, postponements and hearings further exacerbate the existing trauma since Ms. FR feels as though she has to prepare herself mentally and emotionally for the nightmare of returning to court, seeing her rapist, and being chastised and demeaned by his defense lawyer. Ms. FR feels as though Mr. Wilkinson has been given a forum and audience to allow him to leer at her and intimidate her without consequence. Furthermore, she feels further victimized by the lack of care and protection by the court system.⁵³

71. Throughout the report there are repeated statements by the expert linking the ongoing criminal proceedings to the exacerbation of the psychological harm caused to the Appellant.⁵⁴ Of significance is the reference⁵⁵ to the Appellant being “denied the opportunity for healing, restitution, and closure due to the unfair delays in court proceedings with continuous trigger features of Posttraumatic Stress Disorder, depression, and anxiety.” The expert warns:⁵⁶

⁵² Ibid.

⁵³ RR232.

⁵⁴ See RR233, 234, 237, 242.

⁵⁵ RR233, [A(c)].

⁵⁶ RR237.

“The ongoing, unreasonable court proceeding has re-traumatized Ms. FR and will continue to do so. Please bear in mind, Ms. FR is displaying features of suicidal ideation and has a history of suicide attempts. The consistent postponements and delays have added to her stress and anxiety.”

72. The expert provides this brief summary:⁵⁷

“It is my opinion that (FR) is suffering from acute Post Traumatic Stress Disorder following a brutal rape on March 30th, 2017, as well as recurring trauma due to the excessive delays of the court proceedings which have re-traumatized her as well as added emotional and mental injury.”

73. One can only imagine that in the best of circumstances, it would be difficult for any expert to disaggregate the psychological harm caused by the rape, by the fact that the Appellant bore a child of the rape, by the interactions with the Appellant’s alleged rapist in the course of criminal proceedings and by her cross-examination by counsel, on the one hand, and the psychological harm caused by the delay in the court proceedings on the other. But there are two problems with the Court of Appeal’s approach. The first is that the (im)possibility of disaggregation was never put to the expert in cross-examination. Her statements linking the Appellant’s ongoing stress and the denial of the opportunity to heal to the delay in the proceedings were not challenged.

74. The second problem is that the complaint in this case is not about the psychological harm caused in the ordinary course of criminal proceedings which are concluded with the dispatch which such cases deserve. The complaint is about the prolongation of the proceedings causing the Appellant to confront the trauma over and over again and denying her the opportunity to heal and to put these tragic events behind her much sooner than the present circumstances allow.

75. The re-traumatisation of victims of rape and the denial of the opportunity to heal are tragically well-recognised features of delays in the completion of rape

⁵⁷ RR242.

trials. In its article - “*Justice Through a Gender Lens: Gender Equality Protocol*” - the Judicial Education Institute of Trinidad and Tobago observes (at page 76):

“... delay is particularly egregious in the prosecution of sexual offences. These victims usually represent the most vulnerable in society. Sexual abuse and attack in whatever form is a most traumatic experience. Most times true recovery cannot begin until the offender is punished for the crime. Even in situations where the prosecution results in an acquittal a virtual complainant cannot begin along the road to recovery until the trauma of publicly reliving the experience is over.”

76. Similar observations have been made in studies carried out in the United Kingdom on the psychological impact of delays on victims of sexual offences. Summarising the results of various studies, the researcher Vestina Virsilaitė said:⁵⁸

“Mental health issues, such as anxiety, depression and post-traumatic stress disorder (PTSD), are often made worse by the long wait for justice. Not only are victims suffering from lengthy legal proceedings, waiting for justice, but they also find themselves in a vicious circle of unresolved suffering and pain, with every setback affecting their ability to recover. Delays in court processes, according to Campbell et al (2001), are a major factor in the “second rape” – a phenomenon in which victims are re-traumatised by institutional insensitivity, scepticism and disregard. Moreover, the anticipation of facing the defendant in court, commonly without a set court date, contributes highly towards creating a state of psychological limbo that impairs the victim’s recovery (Campbell et al., 2001). This kind of long-term uncertainty has the potential to worsen emotional scars and create a psychological trauma loop by which survivors of sexual offences are constantly reminded of their abuse. As described by Maier (2024), legal delays play a pivotal role in increasing emotions such as helplessness and alienation, which in turn lead to secondary victimisation. Numerous survivors unanimously express their belief that the system puts bureaucratic efficiency above the victims’ welfare, which deepens the sense of institutional betrayal. Also, continuously delayed and postponed hearings on top of unclear legal timetables serve as persistent stress that slows closure, aggravating mental health issues and preventing therapeutic interventions (Maier,

⁵⁸ *The Impact of Court Delays on Sexual Assault and Rape Survivors’ Psychological Well-being and Perceptions of Justice* - The Journal of Crime & Justice Dissertations, pp. 10-11, and pp 12-14. See also, Michele Burman and Oona Brooks-Hay (both University of Glasgow and SCCJR) - *Delays in Trials: the implications for victim-survivors of rape and serious sexual assault* July 2020, pp. 2, 3, 4, 6; Rape Crisis England and Wales - *Breaking Point - The re-traumatisation of rape and sexual abuse survivors in the Crown Court backlog*, March 2023, pp. 12, 38, 49; Sasha Murray, Dr Sarah Welland, Dr Madeleine Storry - *Justice delayed: The impact of the Crown Court backlog on victims, victim services and the criminal justice system* - Victims Commissioner, March 2025, pp. 7, 21, 23, 24, 55.

[RR3734]

[RR3524]
[RR3465]

[RR3531]

2024). In addition to delaying justice, postponements often impair victims' ability to recover and rehabilitate entirely."

77. Respectfully, there was an abundance of evidence before the trial judge which supported her findings that there was causal link between the psychological harm suffered by the Appellant and the delay in the criminal proceedings. The delay and repeated hearings exacerbated the appellant's prejudice⁵⁹ and prevented her from healing from her trauma.⁶⁰ There was no reasonable ground upon which the Court of Appeal could overturn those findings. The Court of Appeal was not entitled to overturn the findings of the trial judge simply because it disagreed with the judge's decision. It was required to infer that the trial judge took into account all the relevant circumstances and should have refrained from overturning her conclusion unless it could have been shown that she made an error of law or that there was a clear mistake in her evaluation of the evidence – see *Wheatley v. Ramlal* [2026] UKPC 6 and *Alexander v. [RR3391] Gabriel* [2026] UKPC 7. No such clear mistake was identified by the Court of [RR1185] Appeal.
78. The Court of Appeal also erred in its interpretation of the various authorities on the question of causation. *Blencoe* does not support the position that it is only in "exceptional cases" that State imposed psychological harm would infringe section 4(a) rights. In the relevant passage which is cited by the Court of Appeal,⁶¹ the Supreme Court of Canada is referring to "*delay in human rights proceedings*", which the court describes as a form of "*administrative or civil proceedings*". The Court of Appeal did not consider, as it should have, the subsequent paragraphs of *Blencoe*⁶² which distinguish the interference of [RR1763] rights caused by delay in a criminal law context.

Who caused the delay?

79. The Court of Appeal erred in its assessment of the evidence when it found that while the State was responsible for some of the delay, "*much of the alleged delay and many of the adjournments*" were caused by third parties or factors

⁵⁹ As per *Blencoe* RR1713

⁶⁰ As per *Kazemi Estate* RR2219

⁶¹ Para 83 of *Blencoe*, cited at para 150 of the Court of Appeal decision – RR871.

⁶² Paras 84 and 85. RR1763

not attributable to the State.⁶³ The overwhelming majority of adjournments took place because the prosecution was simply not in a position to advance the matter, having failed to have prosecution witness statements sworn and having failed to complete disclosure.⁶⁴ For instance, on the 15th April, 2021, which was the 22nd hearing of the preliminary inquiry, some three and a half years after the charge was laid, the prosecution was unable to proceed because two witness statements were still outstanding and the prosecution had yet to complete disclosure. The position was the same at the 23rd hearing.

80. Further, contrary to the finding of the Court of Appeal,⁶⁵ neither of the Respondent's witnesses identified the pandemic as a reason for the numerous adjournments. Neither was there any evidence that the inquiry was adjourned because the accused was out of the country.⁶⁶ The adjournment on 12th March 2019 was because the prosecution had four outstanding statements for swearing. Although there were few occasions on which the accused or his attorney was absent, on subsequent hearing dates, the prosecution was still not ready to proceed because full disclosure had not been effected or the swearing of witness statements had not been completed.

Due process of law and the overall fairness of the legal system

81. On the assumption that the Appellant's right to security of the person had been infringed, the Court of Appeal was of the view that she had not been denied due process of law because the legal system as a whole was fair. This was so in turn because:
- i) The Appellant had two 'potent' avenues of redress to cure any delays she considered to have occurred, namely, to petition the Director of Public Prosecutions to ask the presiding Magistrate and eventually the High Court to expedite the matter having regard to her psychological state;⁶⁷

⁶³ RR869, [143].

⁶⁴ A summary of the occurrences at each hearing is at para 22 of the appellant's affidavit - RR25.

⁶⁵ RR869, [143].

⁶⁶ RR82.

⁶⁷ RR885, [184].

- ii) The Appellant could herself have advanced requests to the Magistrate and/or the Chief Justice to speed up the matter;⁶⁸
- iii) The Appellant is allowed to make a Victim Impact Statement which would eventually assist the Court in fixing an appropriate sentence if the accused is found guilty of the offence;⁶⁹
- iv) An obligation is imposed on prosecutors by the Code for Prosecutors to respect and treat victims and witnesses with courtesy, compassion, and respect for their dignity and privacy;⁷⁰
- v) The Criminal Procedure Rules requires the Court to treat with cases justly by implementing arrangements which are desirable and to facilitate the participation of the accused and any other persons. This ensures that the legal system is as fair to victims as is possible;⁷¹
- vi) The Rules allow victims in rape trials to give evidence in camera which would protect vulnerable witnesses from being exposed to the accused;⁷² and
- vii) Judges are permitted to give directions to juries on the impact of delay on the reliability of recollection.⁷³

82. The Court of Appeal embarked upon its task of determining whether the legal system as a whole was fair because it was held by your Lordships' Board in ***Independent Publishing Co. Ltd. v Attorney General of Trinidad and Tobago*** [2005] 1 AC 190, [88] that in order to determine whether a person is [RR2139] deprived of liberty or security of the person by due process of law it is necessary to consider the legal system as a whole. In ***Independent Publishing***, your Lordships Board held that although the journalist in that case [RR2106] had been deprived of liberty unlawfully, he was accorded due process because the legal system permitted him to appeal and he was released on bail

⁶⁸ Ibid.

⁶⁹ RR886, [185].

⁷⁰ RR888, [190].

⁷¹ RR888, [191].

⁷² RR889, [192] – [195].

⁷³ RR889, [194].

immediately pending that appeal. The legal system as a whole was fair. His situation was to be contrasted with that of Mr. Maharaj in ***Maharaj v Attorney General of Trinidad and Tobago*** [1979] 3 AC 385 who had no right of appeal against his committal to prison for contempt even though he was denied fundamental justice. See the reconciliation of these two cases in ***Duncan v Attorney General of Trinidad and Tobago*** [2021] 4 LRC 570. [25]. What was the key determinant in both cases was the presence or absence of a judicial process within the legal system by which relief against the assault on liberty could be remedied. As your Lordships Board said in ***Seepersad v Commissioner of Prisons of Trinidad and Tobago*** [2021] 1 WLR 4315, [37], in both ***Independent Publishing*** and ***Maharaj*** the determination as to whether the legal system as a whole was fair “entailed taking into account the availability of judicial remedies.”

83. On the assumption therefore that the Appellant’s security of the person had been violated by the State’s prolonged delay in progressing the criminal proceedings, the question whether she was deprived of her right by due process of law entailed an enquiry as to whether the legal system as a whole contained within it adequate remedies to accord her immediate relief for the injury suffered. Apart from damages for harm already incurred, the only relief analogous to bail pending an appeal is a judicial order expediting the trial. There of course is no avenue of appeal to the Court of appeal to obtain a speedy trial and the facility of requesting the Director’s intervention to speed up proceedings is not accompanied by an obligation on him to take any action. There is also something quite incongruous about asking the head of the office which is responsible for the delay at the very least in filing an indictment, to take steps to expedite the proceedings. Neither is there any obligation akin to the obligation to consider bail to compel a judicial officer to consider ordering a speedy trial. True it is that the Director or a judicial officer might voluntarily take steps to expedite the criminal proceedings, but there is no foundation in law outside of the constitution, we say, for the exercise of any such power.
84. It goes without saying that the giving of a Victim Impact Statement at the end of a trial, or the giving of appropriate directions to a jury on the impact of delay at

the close of evidence, or allowing a victim to give evidence in camera, are all incapable of providing the relief which is needed to put an end to the psychological harm caused by delay. Procedural directions to facilitate the participation of victims in criminal proceedings are also not obviously geared towards the giving of judicial orders to expedite the trial.

85. The Court of Appeal was accordingly plainly wrong to find that the legal system as a whole was fair in way relevant to the violation which the Appellant had suffered, such as to render that violation compliant with the due process of law. The Appellant had no judicial remedy open to her to expedite the criminal proceedings, other than the one that she is now seeking in these proceedings. The Court of Appeal was wrong to take into account laws, rules and measures which have been implemented for the protection of victims of crime generally, but which have no bearing on the speed of criminal proceedings. The only relevant consideration was whether there was a legal avenue open to the Appellant (that is, a remedy available to her in law) to alleviate the prejudice which she was suffering as a result of the delay in the conclusion of the proceedings. There was none.

Future breach of security of the person

86. The Court of Appeal failed to consider whether the appellant's right to security of the person is likely to be infringed in the future. The evidence established that there would be considerable delay of many years before the indictment would be filed and a further significant delay before the matter would come up for trial.
87. The appellant's case is that the serious prejudice that she will suffer is obvious. The delay has put her in limbo. As long as these proceedings are pending, she cannot start the healing process. She will continue to relive the trauma of the rape and its aftermath. There can be no question that the delay since committal and any future delay is entirely the fault of the State. The appellant is therefore entitled to an effective remedy to put an end to her psychological trauma.

The right to protection of the law

88. As that law now stands in Trinidad and Tobago in anticipation of a contrary ruling by your Lordships, there is no constitutional right to a trial within a reasonable time but an accused may apply successfully for a stay of proceedings if he can show “on the balance of probabilities that owing to the delay he will suffer serious prejudice to the extent that no fair trial can be held: in other words, that the continuance of the prosecution amounts to a misuse of the process of the court” - **Attorney-General's Reference (No. 1 of 1990)** [RR1630] [1992] Q.B. 630, 643G-644C. However, at common law the Court “always possessed a discretionary power to stay a prosecution if the delay either before or after the laying of the charge (or both) was so inordinate as to amount to oppression or a misuse of the court's process” - **Sookernany v Director of Public Prosecutions** [1996] 2 LRC 292, 299 f-g; **Charles v State** [2000] 1 WLR 384, 390E-F. A stay may be granted in those circumstances even if a fair trial remains possible - **The State of Trinidad and Tobago v Ali** [2026] 3 LRC 111, [57]. [RR3180] [RR1940] [RR3213]
89. The constitutional right to a trial within a reasonable time has undergone much reformulation over time. The current settled approach is set out in the following passage from the judgment of Lord Bingham in **Attorney General's Reference (No 2 of 2001)** [2004] 2 AC 72: [RR1649]
- “24 If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's Convention right under article 6(1). For such breach there must be afforded such remedy as may (section 8(1)) be just and appropriate or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the

circumstances. The prosecutor and the court do not act incompatibly with the defendant's Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since the breach consists in the delay which has accrued and not in the prospective hearing. If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction. Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time."

90. The current approach also accommodates a situation of extreme and unexplained delay. Lord Bingham said:

"25... There may well be cases (of which *Darmalingum v The State* [2000] 1 WLR 2303 is an example) where the delay is of such an order, or where a prosecutor's breach of professional duty is such (*Martin v Tauranga District Court* [1995] 2 NZLR 419 may be an example), as to make it unfair that the proceedings against a defendant should continue. It would be unwise to attempt to describe such cases in advance. They will be recognisable when they appear. Such cases will however be very exceptional, and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the defendant's Convention right."

[RR1650]

91. The delay in *Darmalingham* was seven and a half years from charge to conviction and five years and two months on appeal.

92. The approach set out in *Attorney General's Reference (No 2 of 2001)* has been determined to be applicable to Caribbean constitutions which contain a right to a trial within a reasonable time - see *Boolell v State* [2007] 2 LRC 483; *Tapper v Director of Public Prosecutions of Jamaica* [2012] 1 WLR 2712; *Attorney General v Gibson* [2010] 5 LRC 486; *R v Pigott* 88 WIR 299.

[RR1632]
[RR1839]
[RR3297]
[RR1448]
[RR3026]

93. The Appellant alleges that she was raped on 31st March 2017. Her alleged attacker was charged with rape on 15th October 2017. It was not until 30th May 2022, some 4 years 7 and a half months later that he was committed to stand trial in the Assizes. To date, as far as the Appellant is aware, her alleged rapist

has not been indicted. Nine years will have elapsed since charges were laid when this appeal is heard on 2nd November 2026, and the Appellant's case is not yet in the queue of the countless cases awaiting trial. As of 31st December 2021, there were 162 charges of rape pending in the High Court.⁷⁴ The information provided in the Judiciary's Statistics on Criminal Charges of Rape determined at the High Court between 2016 and 2020 indicates that the average period which elapses between the laying of an indictment on a rape charge and the determination of the case is 6 years.⁷⁵ There are some cases in which it has taken more than 10 years.⁷⁶ If the indictment in the Appellant's case is lodged by the DPP today, it is more probable than not that by the time this matter comes to trial nearly 15 years will have elapsed since the Appellant's alleged attacker was charged. The judiciary's statistics indicate that the longest period from the filing of an indictment to disposal of the charge was 41 years, 5 months and 20 days. In one case it was 23 years and in another 30 years.⁷⁷ As things stand at the moment, it is anyone's guess whether the Appellant's criminal complaint will be heard before the middle of the twenty-first century. No evidence has been presented by the State to give any indication as to when the Appellant's alleged attacker might be indicted or his charge brought on for trial. No assurances have been given or promises made.

94. Whether the common law continues to apply or your Lordships' Board holds that there is a constitutional right to a trial within a reasonable time as part of the due process of law, the Appellant's attacker is likely to have a good case to apply to the High Court to stay the criminal proceedings brought against him if he can establish that it is no longer possible for him to have a fair trial. The longer the delay the greater the likelihood that a fair trial cannot be held. The accused's witnesses, if he has any, may pass away or their memories may have failed, or they may be no longer interested in giving evidence on his behalf. But even if it is still by the remotest of chances still possible to have a fair trial, if and when it is eventually brought on, the accused may yet be entitled

⁷⁴ RR140.

⁷⁵ RR140.

⁷⁶ RR138-139.

⁷⁷ RR139.

to ask the court to stay the trial because the inordinate delay has rendered any trial oppressive.

95. The more time which passes therefore the greater the likelihood that the Appellant's accuser will escape the justice he might yet deserve. What remedy does the Appellant have in these circumstances? Can she invoke the right to the protection of law to obtain relief now to ensure that a fair trial is still possible?

The application of the right to the protection of the law

96. In *Patrice Kareem et al v The Attorney General* (CA No. 71 of 1987, 21st December 1990), the Court of Appeal of Trinidad and Tobago considered [RR2726] alleged violations of the right to the protection of the law in the context of operational failures by the police. In an approach which foreshadowed the modern developments on the ambit of the right to protection of the law, the Court of Appeal held that the failure of the police to identify and arrest the person who killed the relative of the claimant was a breach of the right to the protection of the law because it prevented the claimant from seeking redress from the court against the perpetrator. Davis JA said (at pp. 27 – 28): [RR2753]

“At the end of the day, therefore, I am prepared to hold that these two police officers, by their conduct, were negligent in not ascertaining the name of the assailant or of arresting him at the time of the unlawful killing of the deceased, and subsequently deliberately concealed the name and identify of that assailant. As a consequence, they have effectively denied the Appellants access to the Courts and hence have breached the Appellants’ fundamental rights to the protection of the law. To suggest that access to the Coroner’s Court was sufficient in the circumstances of this case is, to my mind, to take a most cynical view of the law. What, to my mind, is required here is access to a Court to vindicate the wrong done to a person by the recovery of damages, and hence access for that purpose was effectively denied the Appellants.” (Emphasis added)

97. Since then, the right to the protection of the law has been the subject of sustained development by the Caribbean Court of Justice which has been endorsed by the Privy Council. In *AG v Joseph & Boyce* (2006) 69 WIR 104 [RR1472] the right to the protection of the law was described as being “so broad and all

pervasive that it would be well-nigh impossible to encapsulate in a section of [RR1504] the constitution all the ways in which it may be involved or can be infringed.”

98. In *Juanita Lucas v Chief Education Officer* (2015) 86 WIR 100, [2015] CCJ 6 (AJ), Saunders JCCJ said (at [138]):

[RR2200]

“The right to the protection of the law is broad and pervasive. The right is anchored in and complements the State’s commitment to the rule of law. The rule of law demands that the citizenry be provided with access to appropriate avenues to prosecute, and effective remedies to vindicate, any interference with their rights. The citizen must be afforded “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The right to protection of the law may successfully be involved whenever the State seriously prejudices the entitlement of a citizen to be treated lawfully, fairly or reasonably and no cause of action is available effectively to assuage consequences to the citizen that are deleterious and substantial. There is therefore likely to be a breach of the right whenever a litigant is absolutely compelled to seek vindication under the Constitution for infringement by the State of a fundamental right. But even where no other fundamental right is impacted, the right to protection of the law may also be implicated when there is a violation of due process and a denial of a citizen’s expectation of fairness, procedural propriety and natural justice. One must quickly caution, however, that since the law usually provides avenues to pursue these latter violations, not every instance of them may be escalated up to a constitutional breach.” (Emphasis added)

99. For his part, Wit JCCJ said (at [175]):

[RR2214]

“The right to protection of the law forms part of the rule of law. It guarantees every person in the State whose rights have been infringed or who has been wronged otherwise a right to an effective remedy by due process or due course of the law. As remedies have to be obtained from duly constituted courts or tribunals, the right must also entail a right of proper access to those courts and tribunals. Clearly, the normative framework and inherent logic of a constitutional democracy require these courts and tribunals to be independent and impartial; these also require them in principle to give anyone before them a fair hearing and to dispense justice within a reasonable time or without undue delay.” (Emphasis added)

100. However, the CCJ was quick to make clear that the right to the protection of the law was not limited to, although it manifestly included, the right of access to court to vindicate rights and uphold obligations. Consistent with the

international jurisprudence in respect of State parties' positive obligation to ensure the protection and fulfillment of human rights, in ***The Maya Leaders Alliance v Attorney General of Belize*** [2015] CCJ 15 (AJ), a seven-member panel of the Court held unanimously (at [47]):

[RR2490]

“The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.” (Emphasis added)

101. In ***Maharaj v Prime Minister (Trinidad and Tobago)*** [2017] 2 LRC 439 and in ***Seepersad v Commissioner of Prisons*** [2021] 1 WLR 435, your Lordships' Board examined this line of cases with approval and treated it as applicable to the protection of the law under the Constitution of Trinidad and Tobago. In ***Seepersad***, the Board considered whether the detention of minors in adult prisons contrary to legislation which was intended to protect children in custody, breached their rights under section 4(b) to the protection of the law. Your Lordships held that the right had been violated because of the arbitrary behavior of the State in failing to put arrangements in place to give effect to the mandatory requirements of the Children Act. Your Lordships endorsed the reasoning of the CCJ in ***Joseph and Boyce*** and ***Maya Leaders*** emphasizing the following (at [55]):

[RR3089]

“... The central theme of these passages and the later passage at para 43 is that, ***while the right to the individual’s protection of the law is capable of being fulfilled by the availability of an efficacious and timeous remedy through judicial proceedings, a breach will arise where the remedy “cannot be or is not provided”***: para 40. The Board considers these words to be of some importance. The “cannot be” scenario will typically arise in a case where the affected person has not initiated legal proceedings because no appropriate remedy is available. ***In contrast, the “is not” scenario will normally arise in a case where the person concerned has indeed pursued legal proceedings in which event the focus will be on an adverse outcome or whether any remedy secured thereby was both prompt and efficacious.***” (Emphasis added)

102. In ***Boodhoo v. Attorney General of Trinidad and Tobago*** {2004} 1 WLR 1689, [9], a case concerning delay in the delivery of judgment, your Lordships [RR1819] endorsed the following statement of the law by de la Bastide CJ (as he then was):

“Surely, if the protection of the law means anything, it must mean that persons are entitled to have recourse to the appropriate court or tribunal prescribed by law for the purpose of enforcing or defending their rights against others or resolving disputes of one kind or another. It is axiomatic that such a right is meaningless without a decision by the court or tribunal to which the claim or dispute is referred for adjudication. In my view the right to a decision by the court or tribunal to which a claim has properly been referred, is one of the manifestations of the right to the protection of the law which is not expressly mentioned in section 5 of the Constitution.”

103. More particularly, your Lordships set out the following test for determining when the right to the protection of the law will be considered to have been infringed by the delay in or the non-delivery of judgment:

“12 In their Lordships' opinion delay in producing a judgment would be capable of depriving an individual of his right to the protection of the law, as provided for in section 4(b) of the Constitution of Trinidad and Tobago, ***but only in circumstances where by reason thereof the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should.*** For example, on an application to prevent the threatened abduction of a child, any delay in giving judgment might deprive both the applicant and the child of the benefit which the legal remedy was there to provide. Their Lordships do not think it profitable to attempt to define more precisely the circumstances in which this

[RR1821]

may occur or to specify periods of delay which may bring about such a result, since cases vary infinitely and each has to be considered on its merits, applying this principle.”

104. The Appellant's right to the protection of law against her alleged rapist is given effect to by the remedies which are available under the criminal law. She may, of course, have chosen to initiate a private prosecution to obtain the justice which she thinks she deserves, but the responsibility to investigate and detect crime and bring criminals to justice falls to the police. The Director of Public Prosecutions is constitutionally vested with the power in section 90 to institute and undertake criminal prosecutions against any person in respect of any offense and to take over and continue any such criminal proceedings. The Appellant's right to the protection in law has therefore been vindicated by the prosecution initiated by the police and to be continued by the Director's eventual indictment. This is not therefore a case where the remedy provided by the criminal law 'cannot' be provided.
105. But as it stands, having regard to the significant delay of nine years which has already occurred, and the likely future delay, the criminal proceedings designed to vindicate the Appellant's right to the protection of the law is in danger of being stymied either because a trial already is not or will no longer be fair, or because the eventual delay is so protracted as to make the continuation of the criminal proceedings oppressive. This is a case therefore where the remedy provided by the criminal law has turned out not to be 'prompt' and it may very well turn out not to be 'efficacious' at all. Paraphrasing ***Boodhoo***, this is likely to turn out to be a case where the criminal proceedings is no longer capable of producing a result on the merits and the Appellant is unable to obtain the benefit which she seeks and to which she may be entitled.
106. It is to be emphasized, that while the State has provided reasons for the delay in the completion of preliminary inquiries generally, it has not explained why it took 30 hearings over the course of 5 years to complete this particular inquiry. To the extent that the reasons for the delay can be ascertained from the available record of proceedings, the State has not explained what steps have been taken to address the *laizzez faire* attitude to criminal litigation which is apparent from the record. Neither has any explanation been given as to why an

indictment has not been filed. And there is no indication as to when this trial might be brought on. This is a case therefore where the State has conducted itself arbitrarily. The Appellant is in need of “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.”

107. In either case, therefore, the appropriate remedy is an order calling upon the state to expedite the criminal proceedings.

The presumption of innocence

108. The Court of Appeal expressed the view that the recognition of the Appellant’s right to the protection of the law would erode to some degree the accused’s right to the presumption of innocence.⁷⁸ The Court expressed its unequivocal agreement with the views expressed by Mr David M. Paciocco in his article “Why the constitutionalization of victim rights should not occur” (2005) 49 Crim LQ 393 at page 397, that:

“It is not possible, of course, to presume both that the complainant is a victim and that the accused is innocent. The presumption of innocence will therefore be contradicted by any constitutionalization of “victim” rights that treats complainants as victims and confers rights on them prior to conviction.”

109. Respectfully, none of the principles of law which the Appellant asks your Lordships to apply, or the conclusions which your Lordships are invited to draw, or the relief your Lordships are asked to grant, is premised on the accused’s guilt or the truth of the Appellant’s allegations. The ultimate order which the Appellant seeks expediting the trial does nothing to undermine the presumption of innocence. It seeks to bring on a trial to determine whether the accused is guilty of the offence as charged at a time when it is still possible to have a fair trial.

Appropriate relief

⁷⁸ RR911, [258].

110. The Court of Appeal accepted the Respondent's argument that the trial judge's order of mandamus violated the separation of powers doctrine, since it directed the manner in which State's resources are to be allocated.⁷⁹ This part of the decision was criticized by a different panel of the Court in **Attorney General of Trinidad and Tobago v AB** (Civil Appeal no. CA P180 of 2024, 23rd February 2026), at [115]. The court in **AB** referred to a number of final orders made [RR1318] which directed the allocation of State resources.⁸⁰ The Appellant relies on **AB**.
111. Under section 14(1) of the Constitution, the High Court is empowered to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled." An appropriate order for securing the enforcement of the Appellant's right to the security of the person and the protection of the law, is to order that the trial be brought on for hearing on an expedited basis. That would necessarily require the State to devote the necessary human and financial resources to ensure that that happens.
112. It is respectfully submitted that Sharma C.J stated the position correctly in **Jorsingh v. Attorney General of Trinidad and Tobago** (1997) 52 WIR 501: [RR2142]
- "The court is mandated to do whatever it thinks appropriate for the purpose of enforcing or securing the enforcement of any of the provisions dealing with the fundamental rights. There is no limitation on what the court can do. Any limitation of its powers can only derive from the Constitution itself. Not only can the court enlarge old remedies; it can invent new ones as well, if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the court itself, instead of being the protector, defender and guarantor of the constitutional rights would be guilty of the most serious betrayal." [RR2153]
113. As has been made clear by your Lordships' Board in **Chandler v State of Trinidad and Tobago** [2023] AC 285, the separation of powers doctrine is not [RR1888] a supra constitutional principle. It owes its existence to and is circumscribed by the provisions of the Constitution itself. The executive power under the Constitution to dispose of the state's resources in the running of the

⁷⁹ RR915, [275].

⁸⁰ Para 114 RR1318

government must be read as subject to the Court's power to make orders to vindicate fundamental rights and freedoms. The making of such an order is consistent with the separation of powers doctrine to the extent that executive power is expressly limited by the exercise of judicial power to uphold the Constitution.

Costs

114. On the question of costs, in the event that the appellant is successful she should be awarded her costs of this appeal and of the proceedings before the Court of Appeal. If she is not successful there should be no order as to costs on the basis of the principles set out in ***Naresh Boodram v. Attorney General of Trinidad and Tobago*** [2022] 4 LRC 335, [53]-[55].

[RR2662]

Conclusion

115. For the reasons set out herein, this appeal should be allowed and the trial judge's order of mandamus restored. This court should find that the failure to expeditiously conclude the criminal proceedings is in breach of the Appellant's section 4(a) and 4(b) rights and that it is likely that those rights will be breached in the future unless an effective remedy is granted.

116. Given that the basis on which the trial judge awarded nominal damages is not supported, the assessment of damages should be remitted to the High Court.

Dated this 21st day of September 2026

For the Appellant
Douglas Mendes S.C.
Chancery Chambers

Lee Merry S.C.
Allum Chambers