



[2018] UKPC 23  
Privy Council Appeal No 0063 of 2018

## **JUDGMENT**

**The Honourable Chief Justice of Trinidad and  
Tobago Mr Justice Ivor Archie O.R.T.T.  
(Appellant) v The Law Association of Trinidad and  
Tobago (Respondent) (Trinidad and Tobago)**

**From the Court of Appeal of the Republic of Trinidad  
and Tobago**

before

**Lady Hale  
Lord Reed  
Lord Kerr  
Lord Wilson  
Lord Sumption**

**JUDGMENT GIVEN ON**

**16 August 2018**

**Heard on 23 July 2018**

*Appellant*

Philip Havers QC  
John Jeremie SC  
Ian L Benjamin SC  
Kerwyn Garcia  
Hannah Noyce  
(Instructed by Simons  
Muirhead & Burton LLP)

*Respondent*

Chris Hamel-Smith SC  
Jason Mootoo  
Rishi P A Dass  
Rowan Pennington-Benton  
(Instructed by Alvin  
Pariagsingh)

## **LADY HALE:**

1. The appellant has been Chief Justice of Trinidad and Tobago since January 2008. Between November 2017 and January 2018 there appeared a series of press reports making allegations against him. The respondent is the Law Association of Trinidad and Tobago (LATT), set up under the Legal Profession Act 1986 with the principal purpose of regulating the legal profession in Trinidad and Tobago. The LATT resolved to set up a committee to inquire into the allegations against the Chief Justice with a view to deciding what course of action to take, including whether or not to make a complaint to the Prime Minister. Under section 137 of the Constitution of Trinidad and Tobago, the Prime Minister is the only person who can advise the President to initiate a formal inquiry into the conduct of a member of the higher judiciary which might in due course lead to his removal from office.

2. The Chief Justice brought judicial review proceedings against the LATT, claiming that it had no power to conduct the proposed inquiry, on two principal grounds: first, that the formal procedure under section 137 of the Constitution is the only type of inquiry into a judge's conduct which is permitted; and second, that the proposed inquiry was not within the statutory powers of the LATT. He also alleged apparent bias, bad faith and procedural unfairness. He succeeded on his two principal grounds at first instance (but not on the others). The LATT's appeal was allowed (and the Chief Justice's cross-appeal dismissed) by a unanimous Court of Appeal. The Chief Justice now appeals to this Board.

### *The essential facts*

3. The series of articles (which appeared in print and on-line on the preceding day) began with an article in the Sunday Express of 12 November 2017, under the title "CJ and the Convict" and "A favour for friend". This alleged that the Chief Justice had tried to influence Supreme Court Justices to change their state-provided personal security in favour of a private company with which his close friend, Mr Dillian Johnson, a convicted felon, was associated. This allegation was repeated several times in the Express newspaper, which also published an editorial on 16 November expressing concern at the Chief Justice's close friendship with Mr Johnson, "given [his] conviction for fraud, suspension from his job at the Water and Sewerage Authority (WASA) and the attention he has received from the police as a person of interest following the 2015 murder of ... a senior manager at WASA".

4. On 19 November, the Sunday Express published another article, this time alleging that "Dillian Johnson was among 12 people recommended for Housing

Development Corporation (HDC) units” by the Chief Justice, who had “personally called and communicated via social media with a senior HDC official to fast track the applications”.

5. On 3 December, the Sunday Express commented thus on the Chief Justice’s failure to respond to these allegations: “Instead he has shown a brazen imperviousness to public questioning and criticism which has laid bare the effective autocracy of the Chief Justice”. The following day an article in the Express referred to the Chief Justice, “57, who has been joined by Johnson, 36, while on official business abroad”. These allegations were repeated several times until January 2018. On 5 January 2018, lawyers acting for the Chief Justice sent a pre-action protocol letter to the editor in chief of the Express, as a prelude to bringing proceedings in defamation against the newspaper.

6. In the judicial review proceedings *Kangaloo J*, at first instance also took judicial notice of two media reports of the government’s reaction to the publicity surrounding the Chief Justice. On 27 November, the Guardian newspaper reported that the Attorney General had said that the executive was not getting involved: there is “nothing at this point in time which should occupy the executive’s attention in this matter”. And on 6 December, in a televised interview, the Prime Minister said that the Office of Prime Minister was “constrained by law, by the Constitution, as to what its responsibility is ... The Office of Prime Minister cannot ‘willy nilly’ decide that I am unhappy with the Chief Justice today or unhappy with the Judiciary today so I jump in and fix it”. The Judge interpreted this as a statement that the Prime Minister would not get involved (para 28).

7. The LATT, on the other hand, did decide to get involved. The day after the first article appeared, the newspaper reported that it had contacted Mr Rajiv Persad, Vice-President of the LATT, for a comment. He had replied that the matter would be discussed at the next meeting of the LATT, on 15 November, and until then any comment was reserved. On 15 November, the Council of the LATT issued a press notice, stating that the allegation that the Chief Justice had tried to influence the judges to change their security arrangements was “as yet unsubstantiated”; but noting its concern at the report that, after meeting the judges, the Chief Justice had communicated with a friend who was connected with a private security firm, indicating that he had spoken with the judges about their security; and considering that “the prudent course” for the Chief Justice would be to address that concern publicly.

8. On 29 November, the Council of the LATT decided “(i) that the allegations made were sufficiently grave to warrant further consideration by the Council as to what appropriate action it should take; and (ii) that a committee be established to ascertain/substantiate the facts upon which the allegations made against the Chief Justice were alleged to be based and to report back to Council for further consideration”. The membership was so informed by an email dated 2 December, which also denied a

press report that the Council had voted on whether to call a special general meeting to debate whether to call upon the Prime Minister to invoke section 137 of the Constitution.

9. On 30 November, the President of the LATT, Mr Douglas Mendes SC and Mr Elton Prescott SC had a meeting with the Chief Justice. As reported in an email to the membership dated 18 December, they told the Chief Justice that the LATT considered that it had a dual role to play - to protect the judiciary from unfounded allegations and to hold the judiciary accountable for its actions; that the LATT considered the allegations to be serious, a view shared by others; that his failure to respond had “most likely led members of society to conclude that there is some truth to the allegations”; that the gravity of the allegations and his failure to respond had brought the office of Chief Justice and, by extension, the entire judiciary into disrepute; and finally, that “the Council of the Law Association had resolved to investigate the allegations to determine whether they are true or not”. The Chief Justice had said that he would think about their representations. On 15 December he issued a press release denying the allegations relating to Mr Dillian Johnson, though admitting that he had forwarded the names of some “needy and deserving persons” to the HDC for such consideration as might be appropriate.

10. On 18 December the Guardian newspaper reported an interview with Mr Mendes, under the headline “Law body adopts cautious approach”. He had said that the Council would “await the outcome of the work of a committee set up last week to look into and verify allegations made against the Chief Justice ... before it decides on its next course of action”. The committee would be speaking to those who “may know something” and would also “as part of the due process of law” give the Chief Justice an opportunity to be heard.

11. A letter from Mr Mendes, as President of the LATT and chair of the investigating committee, to the Chief Justice, dated 20 January 2018, reminded him that the Council had established a committee “to attempt to ascertain/establish the basis of certain allegations made against you” and that the LATT “considers it its duty to protect you against these allegations, if they are not substantiated, or to hold you accountable, if they are”. The intention was to submit the committee’s report to Dr Francis Alexis QC (President of the Bar Association of Grenada) and Mr Eamon Courtenay SC (former Attorney General of Belize) for their respective advices and then convene a meeting of the LATT. The purpose of the letter was to give the Chief Justice an opportunity to respond to a detailed list of questions. But:

“The Council ... fully appreciates that it has no power to compel you to respond and that it has no disciplinary or other power in relation to you. We do consider however that, as with any other citizen, we have the power to refer a complaint to the Prime

Minister for him to treat with as he deems fit and we are satisfied that the power to refer such a complaint falls within our statutory mandate.”

12. In a letter dated 30 January, lawyers for the Chief Justice contested the Council’s view of its role, and by letter dated 31 January asked to be provided with the material collected by the committee. This was provided under cover of a letter dated 6 February. The Chief Justice’s lawyers complained that this could have been done on 20 January. The LATT pressed for a response from the Chief Justice by 22 February, as it would shortly be sending a brief to its two legal advisers. On 21 February, a pre-action protocol letter asked the LATT to take no further steps until the court had pronounced upon the legal and constitutional propriety of its investigation. By letter dated 23 February, the LATT by its attorneys rejected that suggestion and stated that it had decided to proceed with its investigation (the decision under review).

13. On 26 February, the LATT issued notice of a special general meeting to be held on 15 March to consider the report of the committee and the advice of the two senior counsel and to direct the Council as to the course of action to be taken, if any.

14. On 27 February, the Chief Justice filed an application for leave to make a claim for judicial review. This came before Kangaloo J that day. She directed a “rolled up” hearing on 2 March. She gave an oral judgment after that hearing and a written judgment on 6 March allowing the claim. She declared that the decision in the letter of 23 February to continue the investigation was “illegal and/or ultra vires and/or unreasonable and/or irrational and/or contrary to the provisions of the Legal Profession Act” and quashed it.

15. On 10 April, the Court of Appeal (Mendonça CJ (Ag), Jamadar JA and Bereaux JA) heard (1) the LATT’s appeal against the judge’s conclusions (i) that section 137 of the Constitution was effective to restrict its inquiring into the allegations with a view to deciding how it should proceed, including whether to make a complaint to the Prime Minister; and (ii) that the investigation was ultra vires the Legal Profession Act; and (2) the Chief Justice’s cross-appeal against the judge’s failure to find (i) that the LATT’s decision had the appearance of bias; and (ii) that the investigation was being conducted in bad faith and in breach of the requirements of natural justice. On 22 May a unanimous Court of Appeal allowed the LATT’s appeal and dismissed the Chief Justice’s cross-appeal, each of their lordships delivering a judgment.

16. In essence, therefore, there are five issues before the Board:

(1) whether section 137 of the Constitution is effective to prevent the LATT conducting the investigation;

- (2) whether to conduct such an investigation is within the powers of the LATT under the Legal Profession Act;
- (3) whether the rules of natural justice apply to such an investigation;
- (4) if they do, whether there is an appearance of bias on the part of the LATT;
- (5) if they do, whether the investigation has treated the Chief Justice unfairly and/or in breach of the rules of natural justice.

17. The courts in Trinidad and Tobago have dealt with this important and sensitive matter with commendable speed. The Board has likewise expedited the hearing of the Chief Justice's appeal.

#### *Section 137 of the Constitution*

18. A vital element in any modern democratic constitution is the independence of the judiciary from the other arms of government, the executive and the legislature. This is crucial to maintaining the rule of law: the judges must be free to interpret and apply the law, in accordance with their judicial oaths, not only in disputes between private persons but also in disputes between private persons and the state. The state, in the shape of the executive, is as much subject to the rule of law as are private persons. An important part of the judicial task in a constitutional democracy is not only to ensure that public authorities act within their powers but also to enforce the fundamental rights of individuals against the state. Judicial independence is secured in a number of ways, but principally by providing for security of tenure: in particular this requires that a judge may only be removed from office, or otherwise penalised, for inability or misbehaviour and not because the government does not like the decisions which he or she makes. It is also required that removal from office should be in accordance with a procedure which guarantees fairness and the independence of the decision-makers from government.

19. The Constitution of Trinidad and Tobago is no exception. It provides, in sections 4 and 5, for certain fundamental rights which cannot be infringed by public authorities or encroached upon by Parliament save by an enhanced majority: these include freedom of thought and expression. It also provides, in section 110, for a Judicial and Legal Service Commission, chaired by the Chief Justice, with powers in section 111 to appoint and to discipline judicial office-holders. It makes elaborate provision for the removal of judges (of the High Court and Court of Appeal) in section 137, which is worth setting out in full:

“(1) A Judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(2) A Judge shall be removed from office by the President where the question of removal of that Judge has been referred by the President to the Judicial Committee and the Judicial Committee has advised the President that the Judge ought to be removed from office for such inability or for misbehaviour.

(3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then -

(a) the President shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the President acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a Judge, from among persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether he should refer the question of removal of that Judge from office to the Judicial Committee; and

(c) where the tribunal so recommends, the President shall refer the question accordingly.

(4) Where the question of removing a Judge from office has been referred to a tribunal under subsection (3), the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, may suspend the Judge from



performing the functions of his office, and any such suspension may at any time be revoked by the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, and shall in any case cease to have effect -

(a) where the tribunal recommends to the President that he should not refer the question of removal of the Judge from office to the Judicial Committee; or

(b) where the Judicial Committee advises the President that the Judge ought not to be removed from office.”

20. It was originally argued on behalf of the Chief Justice that section 137 laid down the only way in which the conduct of a judge might be investigated. Kangaloo J must have accepted this argument, for she found (para 31) that the LATT was seeking to “shadow” the procedure set out in section 137 and this it was not entitled to do. The Court of Appeal disagreed: there was nothing in section 137 to indicate that it was the only way in which the conduct of a judge could lawfully be investigated. Indeed, someone would have had to do some investigation before a decision could be taken that it was appropriate to invoke the procedure under section 137.

21. The committee set up by the LATT was not the same as the tribunal which may be appointed under section 137; it had no constitutional status and its report would have no binding effect upon anyone (per Mendonça CJ (Ag) at para 72). The adverse consequences of construing the Constitution in the way suggested far outweighed any beneficial consequences: it was accepted that the media could investigate the Chief Justice’s conduct, and that he was not immune from criminal prosecution. If the argument on behalf of the Chief Justice was accepted only certain citizens would be prohibited from inquiry; this would impinge upon their fundamental rights to freedom of thought and expression. Public confidence in the judiciary would be strengthened if the allegations were found to be baseless, and if they were not, then it would be right for the section 137 procedure to be invoked; and if there is no investigation, the allegations do not die or disappear - on the contrary, “they may grow louder in volume” (per Mendonça CJ (Ag) at para 80).

22. Before the Board, Mr Philip Havers QC, for the Chief Justice, accepts that the LATT can inquire into the allegations sufficiently to enable it to decide whether there is a sound basis for making a complaint to the Prime Minister. He very sensibly acknowledges that in *In re Chief Justice of Gibraltar* [2009] UKPC 43; [2010] 2 LRC 450, the process under the Constitution of Gibraltar, very similar to section 137, was triggered by a memorandum to the Governor, among whose signatories were all the

Queen's Counsel in Gibraltar apart from the Speaker of the House of Assembly. Similarly, in *Meerabux v Attorney General of Belize* [2005] UKPC 12; [2005] 2 AC 513, the complaints which led to the proceedings to remove a High Court judge from office had largely emanated from a committee established by the Bar Association of Belize: the Judicial Committee of the Privy Council pointed out that "it must ... have been appreciated that complaints alleging inability or misbehaviour on the part of a justice of the Supreme Court would be a matter of concern to the Bar Association, and that it would be likely to be involved in the presentation of such complaints to any tribunal that was convened to inquire into the matter ..." (para 28).

23. However, argues Mr Havers, the position here is quite different. The LATT is a public authority created by statute with specific powers and duties. It has claimed a specific power and obligation to carry out its investigation. That investigation is a formal affair. And, as the public announcements show, the object is not simply to enable it to decide whether to make a complaint to the Prime Minister. It is to find out the facts. All this has the potential to mislead the public as to the role of the LATT and the weight to be attached to its findings. It also has the potential to make the task of any future tribunal more difficult: for example, if witnesses have been rehearsed in their evidence. Public confidence in the section 137 process might be undermined if the tribunal were to come to different conclusions on the facts. If the LATT's conclusions on the facts are published, there would be widespread media coverage and pressure on the Chief Justice to resign, thus undermining the very protection which the section 137 process is designed to give him. That process is properly designed for such a serious and sensitive matter: very senior members of the judiciary are involved in it and the procedure can be relied upon to be fair. That is as it should be, given the importance of the independence of the judiciary.

24. The short answer to all these points is that the LATT is in no position to make findings of fact which are in any way binding upon the Chief Justice or upon any tribunal which might be established under section 137. As acknowledged in its letter of 23 February, the "further steps" to be considered "might include assuring the public that, after due examination, the Law Association is satisfied that the allegations have no merit and/or provide no basis for concern. Or, at the other end of the spectrum, the further steps ... might include referring a complaint to the Prime Minister for him to treat with it as he deems fit." That is the most that it could do. It is in the same position as any other body or individual which might wish to inquire into such allegations and reach such conclusions as it could upon the evidence available to it. Indeed, as a body of lawyers who have so far proceeded with considerable caution, they might be thought better able to conduct such an investigation and present its conclusions in a responsible manner than many others. The LATT will be conscious of any possible legal constraints relating to the publication of its report. But, as the Court of Appeal so comprehensively explained, section 137 of the Constitution is not one of them.

25. This ground of appeal must therefore fail.

*The statutory powers of the LATT*

26. The legal profession in Trinidad and Tobago was reorganised and regulated under the Legal Profession Act 1986, with the long title: “An Act to provide for the reorganisation and regulation of the legal profession for the qualification, enrolment and discipline of its members and for other matters relating thereto.”

27. The LATT is established under section 3 of that Act. Under section 4, its affairs are managed and its functions performed by a Council established in accordance with the First Schedule. Its statutory purposes are laid down in section 5:

“The purposes of the Association are -

(a) to maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago;

(b) to represent and protect the interests of the legal profession in Trinidad and Tobago;

(c) to protect and assist the public in Trinidad and Tobago in all matters relating to the law;

(d) to promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;

(e) to promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;

(f) to promote, maintain and support the administration of justice and the rule of law;

(g) to do such other things as are incidental or conducive to the achievement of the purposes set out at (a) to (f).”

28. Section 35 provides that the rules contained in the Code of Ethics set out in the Third Schedule shall regulate the professional practice, etiquette, conduct and discipline of Attorneys-at-law. Rule 36 states that:

“(1) An Attorney-at-law shall maintain a respectful attitude towards the Court and shall not engage in undignified or discourteous conduct which is degrading to the Court.

(2) An Attorney-at-law shall encourage respect for the Courts and the Judges.

(3) An Attorney-at-law shall support Judges and Magistrates against unjust criticisms.

(4) Where there is ground for complaint against a Judge or Magistrate an Attorney-at-law may make representations to the proper authorities and in such cases, the Attorney-at-law shall be protected.”

29. Kangaloo J found that neither section 5(f) nor rule 36(4) empowered the LATT to conduct an investigation into the misbehaviour of the Chief Justice in any terms. The sole procedure for doing so was to be found in the Constitution (para 36). The Court of Appeal held that section 5(b), (f) and (g) empowered the LATT to make a complaint to the authorities about the conduct of a judge - and there was nothing to prevent it from conducting an inquiry before doing so, so as to inform itself whether a complaint would be appropriate. Indeed, this was the responsible thing to do. The allegations had such a negative impact upon the office of the Chief Justice and the judiciary that they threatened to undermine the administration of justice and the rule of law.

30. Before the Board, Mr Havers argues that section 5 should be construed in the context of the Act as a whole and in the light of the objectives in the long title, which have to do with the regulation of the legal profession. There is no express power to carry out an investigation such as this, prior to but in many ways parallel to the section 137 process. Such an investigation was much more likely to undermine than to strengthen the administration of justice and the rule of law: it duplicates the section 137 inquiry, but without any of the procedural safeguards or guarantees of fairness; thus, he argues, it has the potential to mislead the public and to undermine the public’s perception of justice being done in accordance with the Constitution.

31. The crucial question is whether the allegations are sufficiently serious to have the potential to undermine the administration of justice and the rule of law. If they are,

then taking some action to promote, support and maintain the administration of justice and the rule of law clearly falls within section 5(f). There is then power under section 5(g) to do such things as are conducive to achieving that purpose. It is accepted that the LATT, like any other citizen, has power to make a complaint about a judge or the Chief Justice: this is reinforced by rule 36(4) in the Code of Ethics, and the duty to act responsibly when making such complaints is reinforced by the other provisions of rule 36. In the Board's judgment, the LATT was right to consider that it had a dual role in such a situation, although in its letter dated 20 January 2018 this might have been better put. The LATT has no power to "hold the Chief Justice accountable". But it does have the power to make a formal complaint where this is justified and the duty to defend the judiciary against unjustified criticism. Some inquiry to establish whether or not there is a prima facie case for making a complaint is the obvious way to reconcile those two purposes. It is not ultra vires.

32. This ground of appeal must therefore fail.

#### *Apparent bias and unfairness*

33. The Chief Justice complains (i) that the LATT is apparently biased against him; and (ii) that because of certain procedural failures in its inquiries, it has acted unfairly or in breach of the rules of natural justice towards him. The allegation of bad faith has not been pursued before the Board.

34. To the extent that these complaints equate the activities of the LATT with the decisions of a judicial or quasi-judicial tribunal to which the well-known rules of natural justice apply, the Court of Appeal held that they were misconceived. The LATT is not determining any of the Chief Justice's civil rights or liabilities or coming to a determination which is binding upon him (per Mendonça CJ (Ag), para 103). The LATT is not acting in any disciplinary capacity, nor could it (per Beraux JA, para 53). The LATT is not, in the conduct of its investigation, either a "prosecutor" or a "decision maker" in relation to any rights, liabilities or responsibilities of the Chief Justice (per Jamadar JA, para 93).

35. The Board agrees that this investigation by the LATT cannot be equated with a judicial or quasi-judicial determination of legal rights and liabilities to which the conventional rules of natural justice apply. Nor is it necessary for the Board to consider the more difficult question of the extent to which public bodies are required to be impartial in carrying out their statutory functions. This is because there are concurrent findings in the courts below that the matters relied upon by the Chief Justice are not such as to give rise to an appearance of bias on the part of the LATT, applying the test laid down in *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357: would a fair-minded and informed observer, having considered the facts, conclude that there was a real

possibility that the LATT was biased? As Lord Hope explained in *Gillies v Secretary of State for Work and Pensions* [2006] UKHL 2; [2006] 1 WLR 781, para 17:

“The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed, as Kirby J put it in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53, that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant, and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant.”

In short, the fair-minded and informed observer is also a sensible and rational person.

36. The pleaded case relied only on events earlier in 2017 to support the allegation of apparent bias. On 1 June 2017, the LATT held a special general meeting at which a motion of no confidence in the Chief Justice and some members of the Judicial and Legal Service Commission was passed. This arose out of public and professional concern about the appointment of the Chief Magistrate to the Supreme Court bench, at a time when she had many outstanding part-heard matters, and her subsequent resignation from the bench. Kangaloo J held that this was not capable of giving rise to an appearance of bias (para 37). Before the Court of Appeal, the Chief Justice conceded that this single event might not be sufficient, but argued that, in combination with the fact that the President of the LATT was also a member of the committee established to conduct the investigation and the statements made by the LATT to its membership and to the press about the current allegations, including its calls for the Chief Justice to respond to them, it was sufficient. The majority of the Court of Appeal considered that the earlier resolution of no confidence was a separate matter, unrelated to the present investigation, and that it was unfair to raise these extra matters, as they had not been pleaded and the LATT had had no opportunity of giving evidence in response. Jamadar JA robustly concluded that “there is absolutely nothing in these that in the context of what was unfolding could be reasonably considered as disclosing a real possibility of bias” (para 89). “Thus the fair-minded and informed observer would recognise that in Trinidad and Tobago, what the Council was demanding at the time was nothing extraordinary or remarkable. It was simply what many others were also demanding, even if done by the LATT in strident and condemnatory tones and terms” (para 90).

37. The local courts in Trinidad and Tobago are far better placed than is this Board to consider what the fair-minded and informed observer in Trinidad and Tobago would

make of the matters complained of. It is not for this Board to disagree. This ground of appeal must therefore fail.

38. However, even if the rules of natural justice applicable to the decisions of a judicial or quasi-judicial body do not apply, public authorities do have a duty to carry out their statutory functions fairly. The principles were summed up by Lord Mustill in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560:

“(1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

39. It is apparent that the standards of fairness required vary enormously according to the type of decision in question. *Doody* was concerned with the minimum time which a prisoner serving a mandatory sentence of life imprisonment would have to serve before being considered for release on licence. That is a very different matter from a decision whether or not to make a complaint to the Prime Minister.

40. The Chief Justice complains that the LATT did not provide him with copies of the material which its committee was considering until asked and has not undertaken to provide him with a copy of its interim or final report, nor has it disclosed its terms of reference or the procedure it has adopted. The Court of Appeal held that, in providing the material when asked and in giving the Chief Justice an opportunity of responding to the questions asked in the letter of 20 January, the LATT had done all that could reasonably be required of it. Indeed, Bereaux JA struggled to understand the nature of the duty of fairness which the Chief Justice had sought to place upon the LATT in the

circumstances (para 63). But, as Jamadar JA pointed out, from its very first meeting with the Chief Justice on 30 November, “the LATT has been open and transparent about its intentions and process”. The written correspondence and emails “reveal a cooperative and facilitative, even if firm, approach” (para 101). “There is just no evidence of deceit, deception, misinformation or mala fides on the part of the LATT. There is rather evidence of openness, transparency, disclosure and invitation” (para 102).

41. The Board finds it unnecessary to consider precisely what the minimum requirements of fairness were in the circumstances. It agrees with the Court of Appeal that on any view of the matter they were met in this case. This ground of appeal must therefore fail.

### *Conclusion*

42. It follows that each of the grounds of appeal relied upon by the Chief Justice must be rejected and that this appeal is dismissed. The injunction (granted by the Court of Appeal when giving final leave to appeal on 11 June 2018), which restrained the LATT from convening a meeting of its membership to consider any legal advice it might receive in relation to its inquiry and/or investigation of the Chief Justice until this appeal is heard and determined, is discharged.