



[2024] UKPC 29  
Privy Council Appeal No 0084 of 2022

## **JUDGMENT**

**Claude Gerald (Appellant) v Herman Sergeant and  
another (Respondents) (Montserrat)**

**From the Court of Appeal of the Eastern Caribbean  
Supreme Court (Montserrat)**

before

**Lord Reed  
Lord Lloyd-Jones  
Lord Sales  
Lord Leggatt  
Lady Rose**

**JUDGMENT GIVEN ON  
18 September 2024**

**Heard on 9 May 2024**

*Appellant*  
David Dorsett  
(Instructed by Teacher Stern LLP)

*Respondents*  
Renee Morgan  
Claire Colonnese  
(Instructed by Signature Litigation LLP (London))

## **LORD LLOYD-JONES:**

1. Radio Montserrat/ZJB is a radio station owned and operated by the Government of Montserrat. It is the only radio station on Montserrat. In January 2014 Mr Herman Sergeant, the first respondent, was the station manager with the responsibility for approving programmes and managing programme content.

2. Mr Claude Gerald, the appellant, is an agricultural economist. On 29 January 2014 he was an in-studio guest on a talk show programme on Radio Montserrat, the Warren Cassell Show, which was hosted by Mr Warren Cassell and broadcast live. The discussion was on health issues and the use of marijuana. During the broadcast, Mr Sergeant, who had not had the opportunity to consider or approve the content of the programme before it was broadcast, formed the view that Mr Gerald was promoting the use of marijuana, the possession or supply of which is illegal in Montserrat, and directed that the discussion cease immediately. As a result, Mr Cassell terminated the interview.

3. On 15 September 2014 Mr Gerald brought constitutional proceedings against Mr Sergeant alleging that his right to freedom of expression under section 13 of the Montserrat Constitution had been infringed as a result of the interruption of the live broadcast on 29 January 2014. Mr Gerald joined the Attorney General as a second respondent. Mr Gerald sought declaratory relief and damages.

4. In an affidavit filed in support of the originating motion, Mr Gerald stated that he holds the opinion that “marijuana has tremendous medicinal properties”. While a guest on the radio programme he expressed this opinion and imparted information about the medicinal benefits of marijuana. He complained that, on account of his expressing his opinion about marijuana and imparting information about the medicinal benefits of marijuana, his further participation (or any meaningful and substantive further participation) on the programme was immediately terminated by Mr Sergeant. This, he maintained, was an unlawful interference with his right to freedom of expression as guaranteed by section 13 of the Constitution, as such interference was not reasonably justified in a democratic society.

5. In his affidavit, Mr Gerald gave the following account. He stated that sometime in January 2014 he agreed to make a weekly appearance on the Warren Cassell Show. He explained that he champions natural health issues and his article “Cannabis and coconut oil in a capsule: A Medical Miracle?” was the foundation for the debut discussion on 29 January 2014. He continued:

“Whilst on the said program I expressed the view that marijuana has tremendous medicinal proprieties (sic) and on account of its medicinal properties several countries had

legalised its use. It was also made clear that it is an illegal substance and possession of it has serious consequences.

On the said program I imparted information on the medicinal benefits of marijuana and that the plant is now back into acceptance by mainstream society worldwide. I gave a history of the politics surrounding its fall from grace, its potential and pointed out that marijuana is naturally accepted by the human body's biological systems.

Having expressed my opinion and imparted this information my further participation on the program was curtailed by [Mr Sergeant] and for all intents and purposes brought to an end.

I was pulled off the program in a most unceremonious manner. It has stressed me out. I feel that my freedom to express my views on a topic which was quite current has been stifled. The convenience of sharing information about the medicinal properties of marijuana to a significant segment of the public had been severely constrained and curtailed on account of me being pulled off the station.”

6. In an undated letter to the Attorney General, Mr Gerald stated in relation to the broadcast on 29 January 2014:

“During the discussion the manager Herman Sergeant sent a note to host Warren Cassell stating, “END THE PROGRAMME NOW – Herman”.

7. Mr Gerald went on in his affidavit to refer to subsequent events, in particular a second appearance by him on the Warren Cassell Show on 5 February 2014. He stated that on 5 February 2014, after Mr James White, the programme director, had given clearance to him and to Mr Cassell separately, he once again appeared on the show. Mr White had indicated that the issue of marijuana was the source of contention and that it would be prudent to stay clear of such a topic. Mr Gerald continued:

“I returned on Wednesday 5 February 2014 and after a quick introduction by Mr Cassell I began a discussion on the aloe vera plant. Moments into that thought (and before concluding it) Mr White entered the studio and in my presence informed Mr Cassell that the station manager [Mr Sergeant] had telephoned

and insisted that I am not to be allowed on the radio and that no permission was given for me to appear.”

8. In an affidavit in response, Mr Sergeant explained that as station manager he is responsible for approving programmes and programme content to be aired on the radio station, co-ordinating the programme schedule and workflow of the department, and supervising and managing the people who work within the radio station. He stated that prior to approving programmes and programme content, the station manager is expected to evaluate the programmes to ensure that the content of programmes is kept within the station’s guidelines, to ensure the integrity of the programme content, and to ensure that there is nothing which will be contrary to the law, or which will offend ethical and industry standards. The station manager is also expected to continue to monitor programmes to ensure that standards are maintained.

9. Mr Sergeant stated that the Warren Cassell Show is broadcast on three days per week for a total of four hours. The programme is produced and hosted by Mr Cassell, an independent producer, who pays the radio station a monthly fee for his radio programme. Mr Sergeant gave the following account of what occurred on 29 January 2014. He was listening to the broadcast of the Warren Cassell Show when he heard Mr Gerald being introduced as a features presenter on a new weekly segment on the Warren Cassell Show where health-related issues would be discussed. Prior to hearing this announcement during the broadcast, he had not been informed that this new weekly segment was being introduced or that Mr Gerald was going to be presenting it. As Mr Sergeant listened to the programme, the discussion moved to the topic of marijuana.

“As I listened, I became increasingly concerned about the discussion which was taking place because the discussion appeared to me, to be promoting the use of marijuana in all of its forms.

Radio Montserrat/ZJB, being a Government owned radio station should not, in my view, be seen to be supporting or promoting the use of marijuana which is illegal in Montserrat, and I was concerned that the discussion which was taking place may be perceived as supporting or promoting the use of marijuana. ...

I decided that, in the best interest of everyone I should stop the discussion on this topic and I sent a note to the host, Mr Warren Cassell, indicating that he should stop the discussion immediately. The discussion on the topic of marijuana ended shortly thereafter and Mr Cassell continued with his show.

On 29 January 2014, I asked Mr James White, the executive producer to remind Mr Warren Cassell of the station procedures for introducing new programme segments; of the need to seek the approval of the station manager before introducing any new programme content and before dealing with potentially controversial topics; and the need for programmes to be vetted and approved by the station manager before they are aired. I am informed by Mr James White and verily believed (sic) that he reminded Mr Cassell of these procedures.”

10. Mr Sergeant gave the following account of subsequent events. He stated that on Wednesday 5 February 2014, he was listening to the broadcast of the Warren Cassell Show, when he heard Mr Gerald discussing the health benefits of aloe vera.

“I immediately called Mr James White and instructed him to stop the discussion on the health issues, and the discussion which was taking place at that point was stopped shortly thereafter and the Warren Cassell show continued.

The discussion was stopped because the proper station procedures had not been followed. Mr Warren Cassell had by email communication to Mr James White on Thursday 30 January 2014 and copied to me, asked if the claimant, Mr Claude Gerald can appear on the Warren Cassell programme and speak on health topics, but no decision had been taken in relation to the matter.

I had not been provided with the programme content for the new segment for the purposes of review and I had not given my approval for the segment to be aired as part of the Warren Cassell Show.

On 5 February 2014 after the health discussion on aloe vera had been stopped, Mr James White informed me that he had indicated to Mr Cassell that the claimant, Mr Gerald could appear on the Warren Cassell programme to discuss health related issues. Prior to this, I was not aware that Mr White had given this approval. Mr White was not authorized to give that approval.

On the 12 February 2014 Mr Gerald asked me if he could have a programme on natural health as part of the Warren Cassell

Show. I informed Mr Gerald that I had no objection to him doing the programme segment, but I indicated that, like the majority of the other programmes aired on Radio Montserrat/ZJB, his segment would have to be pre-recorded so that it could be vetted. Mr Gerald objected to this and we had no further discussion on this matter.”

11. Mr Sergeant explained that thereafter, as part of a review of the Radio Montserrat programming structure undertaken by a new director of information and communication, it was decided that approval of new programmes would stop until the complete review of all programmes was concluded. As at the date of the affidavit, 9 October 2014, that review was still ongoing.

12. Mr Sergeant stated that the discussion on marijuana on 29 January 2014 was stopped because he was concerned that it would have appeared that the radio station was supporting or promoting the use of marijuana, a substance which is illegal in Montserrat. He stated that the discussion on aloe vera on 5 February 2014 was stopped because the station procedures for approval of programmes and programme content had not been followed.

13. Mr David Dorsett, counsel for Mr Gerald, made clear to the Board at the oral hearing that the constitutional complaint relates to the termination of the broadcast on 29 January 2014 and not to what occurred subsequently.

14. Section 2 of the Montserrat Constitution (as provided for by the Montserrat Constitution Order 2010) provides that every person in Montserrat is entitled to the fundamental freedoms of the individual which it defines, subject to respect for the rights and freedoms of others and for the public interest:

“Whereas the realisation of the right to self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations;

Whereas every person in Montserrat is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(a) life, liberty, security of the person and the protection of the law;

(b) freedom of conscience and of religion, of expression, and of assembly and association;

(c) protection for his or her private and family life, the privacy of his or her home and other property and from deprivation of property save in the public interest and on payment of fair compensation,

the subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

Section 13 makes specific provision for the enjoyment of freedom of expression:

“(1) Except with his or her consent, no person shall be hindered in the enjoyment of his or her freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and freedom to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence and other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the



disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or

(c) for the imposition of restrictions on public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions.

(3) For the purposes of subsection (2)(c) in so far as it relates to public officers, ‘law’ in subsection (2) includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government.”

15. In Montserrat, cannabis from which marijuana is derived is a controlled drug of Class B under the provisions of the Drugs (Misuse of Prevention) Act Cap 4.07 (section 4, Third Schedule, Part 2). The production and supply of controlled drugs (section 6) and the possession of controlled drugs (section 7) are restricted, subject to any regulations made under section 9. The cultivation of the cannabis plant (section 8) is restricted subject to any regulations made under section 9. Under section 9, the Governor acting on the advice of the Cabinet may regulate exceptions to the restriction on the production, supply and possession of controlled drugs. The Drugs (Prevention of Misuse) Regulations have been made pursuant to section 9.

16. The Drugs (Prevention of Misuse) Regulations permit the production and supply of the controlled drugs listed in Schedules 1, 2 and 3 to the Regulations by certain listed medical professionals acting in their capacity as such (Regulations 7 and 8). Similarly, regulation 9 permits the possession of the controlled drugs listed in Schedules 2 and 3 for medical, dental or veterinary purposes in accordance with the directions of a practitioner. Cannabis is not listed in Schedules 1, 2 or 3 of the Regulations but in Schedule 4. It is therefore excluded from the general provisions permitting the medical prescription of certain controlled drugs. Regulation 4 provides that where the minister has granted a licence, the production, supply or possession of controlled drugs is not unlawful. Regulations 13–17 impose requirements upon suppliers of controlled drugs, including prescribers, and it would seem that these were also intended to apply in cases where a licence had been issued under regulation 4 to supply cannabis or another Schedule 4 controlled drug to an individual. (See, for example, the specific requirements in regulation 17 upon authorised persons to keep a register including details of any Schedule 4 drugs which have been supplied, and the heading to Schedule 4 itself). As such, it appears that the only way a person seeking to use cannabis for medical purposes may do so lawfully in Montserrat is by making a direct request to the minister to issue licences for them and

their medical practitioners on an individual basis. Counsel were not aware of any such licences being issued in relation to cannabis under regulation 4. (There have been recent legislative developments in this area, with a bill proposed in the Montserrat Legislative Assembly in June 2024. However, this does not directly affect this appeal, which concerns events taking place in 2014.)

17. On 17 April 2015 the constitutional motion was heard by Redhead J (Ag) who on 3 July 2015 dismissed it. He concluded, first, that Mr Gerald had never been provided with a platform on Radio Montserrat/ZJB to express his views on marijuana and that there had been no capricious or arbitrary withdrawal of such a platform. In this regard he referred to the evidence of Mr Sergeant that there had been a failure to follow the appropriate station policy, which appeared to be that the approval of the station manager must be obtained before introducing any new programme content and before dealing with potentially controversial topics. Secondly, he considered that the conduct of Mr Sergeant in ending the discussion had been justified. He had taken the action to close down the programme out of concern to uphold the law because he was concerned that the discussion which was taking place might be perceived as supporting or promoting the use of marijuana. Redhead J expressed the view that “the station manager must have a positive role in the scheme of things”. He could see nothing objectionable in the station manager disapproving programmes that were contrary to the law or which were offensive in any way. In the circumstances, it could not be said that Mr Gerald had been denied his constitutional right of freedom of expression.

18. On 17 August 2015 Mr Gerald lodged an appeal to the Court of Appeal which on 10 November 2017, heard and dismissed the appeal, affirming the judgment and order of the judge. In doing so, it addressed three grounds of appeal. The first, submitting that the judge had erred in holding that section 2 of the Montserrat Constitution did not expressly refer to freedom of expression, was considered to be of no consequence. Secondly, the Court of Appeal rejected a submission that the judge had erred in holding that Mr Gerald was supporting or promoting the use of marijuana when the transcript of the broadcast did not support this. In coming to this conclusion, the Court of Appeal affirmed the finding of the judge on this issue of primary fact. The Court of Appeal observed:

“The remainder of the transcript of the broadcast shows the appellant extolling the virtues of marijuana expressly going beyond medicinal qualities.

...

Upon our analysis we think that the appellant went beyond what he suggested to be ‘providing and conveying information about marijuana including its reported medicinal properties’ into the

realm of promoting or supporting its use and the station manager was justified in intervening in the way that he did.”

Thirdly, the Court of Appeal rejected a broad submission that the judge erred in holding that there was no breach of Mr Gerald’s right to freedom of expression when the requirements of section 13(2) had not been satisfied. It considered that (a) there was no violation of section 13 in the first place, and (b) there were, in any event, grounds of justification under section 13(2)(a).

19. On 3 June 2019 the Court of Appeal granted Mr Gerald permission to appeal to the Judicial Committee of the Privy Council. The issues on the appeal to the Board are as follows:

(1) Was the Court of Appeal correct to find that the High Court had not erred in finding that the appellant’s right to freedom of expression under the Montserrat Constitution was not contravened, particularly with reference to section 13(2)(a)?

(2) If there was an unconstitutional contravention of the appellant’s right to freedom of expression, what remedies is he entitled to?

20. Although in the present proceedings much of the argument in the courts below has concentrated on the question whether infringement of a right of freedom of expression was justified, it is necessary to address first whether the right of freedom of expression under section 13 was engaged at all.

21. In considering freedom of expression in the context of the broadcasting media, it is necessary to distinguish between the primary right of freedom to express opinions—a right not to be hindered in the imparting of ideas—and an ancillary right to fair consideration of applications for access to a platform from which to express them. This was the distinction drawn by Lord Hoffmann in his speech in *R (Pro-Life Alliance) v British Broadcasting Corpn* [2003] UKHL 23; [2004] 1 AC 185, a case concerning the analogous right under article 10 of the European Convention on Human Rights and Fundamental Freedoms (“ECHR”) given effect within the United Kingdom as a Convention right under the Human Rights Act 1998. In that case, the claimant, the Pro-Life Alliance, a political party opposed to abortion, was entitled to broadcast a party election broadcast. However, the British Broadcasting Corporation (“the BBC”) refused to transmit successive versions of a proposed broadcast on grounds of taste and decency. Lord Hoffmann considered that the primary right protected by article 10, the right of every citizen not to be prevented from expressing opinions, was not engaged. The Pro-Life Alliance was not prevented from expressing its views; indeed it was entitled to a party election broadcast. Nevertheless, article 10 applied in a different way which Lord Hoffmann explained as follows:

“57. There is no human right to use a television channel. Parliament has required the broadcasters to allow political parties to broadcast but has done so subject to conditions, both as to qualification for a [party election broadcast] and as to its contents. No one disputes the necessity for qualifying conditions. It would obviously not be possible to give every grouping which registers as a political party a [party political broadcast] or [party election broadcast]. The issue in this case is about the condition as to contents, namely that it should not offend against standards of truth and decency.

58. The fact that no one has a right to broadcast on television does not mean that article 10 has no application to such broadcasts. But the nature of the right in such cases is different. Instead of being a right not to be prevented from expressing one’s opinions, it becomes a right to fair consideration for being afforded the opportunity to do so; a right not to have one’s access to public media denied on discriminatory, arbitrary or unreasonable grounds.”

As a result, the Court of Appeal in that case had erred in treating the case as if it concerned the primary right not to be prevented from expressing one’s political views and in concluding that questions of taste and decency were not an adequate ground for censorship.

“The real issue in the case is whether the requirements of taste and decency are a discriminatory, arbitrary or unreasonable condition for allowing a political party free access at election time to a particular public medium, namely television.” (at para 62.)

A majority of the House of Lords concluded that the BBC’s refusal to transmit the claimant’s broadcast had not been a discriminatory, arbitrary or unreasonable denial of the right to freedom of expression under article 10 ECHR.

22. It was this ancillary right which was in issue in the earlier decision of the Judicial Committee of the Privy Council in *Benjamin v Minister of Information and Broadcasting* [2001] UKPC 8; [2001] 1 WLR 1040. The appeal concerned a phone-in programme on Radio Anguilla, which was owned and run by the Government of Anguilla. One evening a caller to the programme questioned the legality and propriety of the recently established national lottery. Mr Benjamin, the presenter of the programme who was responsible for its format and obtaining sponsorship, expressed the view that the lottery was inappropriate

for Anguilla and was unlawful. A representative of the company which ran the lottery responded. The next day he gave notice of the company's intention to sue the radio station and Mr Benjamin for defamation. Without discussing the matter with Mr Benjamin, the minister with responsibility for the department which ran the radio station suspended the programme. Mr Benjamin and two regular listeners and contributors to the programme applied to the High Court of Anguilla for redress under section 16(1) of the Constitution of Anguilla alleging infringement of their constitutional rights under section 11 to freedom of expression. Section 11 is in very similar terms to section 13 of the Montserrat Constitution. At first instance the judge declared that the suspension of the programme constituted a contravention of the applicants' rights to freedom of expression. The Court of Appeal of Anguilla reversed that decision, holding that the right to freedom of expression did not place a positive obligation on the government to provide means for expressing that right.

23. On a further appeal to the Judicial Committee of the Privy Council, the Board advised that the appeal should be allowed. The Board considered (at para 31) that circumstances may exist where freedom of speech may be hindered within the meaning of section 11(1) where there is no contractual and no absolute generalised right to speak in the way in which the individual wishes to express his views. Lord Slynn, delivering the judgment of the Board, stated (at para 32):

“There are obviously limits to the exercise of this freedom even without a law falling within section 11(2) of the Constitution. Thus no one has a right in all circumstances to insist on holding a meeting in another individual's house or in the middle of a highway in a way which impedes traffic or to use language intended to stir up violence or a breach of the peace. But the circumstances of each case have to be looked at.”

The Board considered (at paras 49-52) that the motive of the government in closing the programme was a relevant factor in deciding whether there was a contravention of section 11. It appeared that, as long as people were not criticising the government on sensitive issues, the government was content for the programme to continue. The government-controlled media must, however, comply with section 11. In the Board's view there was in that case an arbitrary or capricious withdrawal of a platform which had been made available by the government. Furthermore, nothing advanced by the government established any of the derogations capable of justification under section 11(2).

24. Access to the platform provided by the broadcasting media cannot be unconditional. A broadcaster such as Radio Montserrat/ZJB must be entitled to exercise a level of control over its programming and to enforce station policies. Indeed, Mr Dorsett expressly accepted as much during the oral hearing. As Lord Mance observed in *Central Broadcasting Services Ltd v Attorney General* [2006] UKPC 35; [2006] 1 WLR 2891, an

appeal from Trinidad and Tobago to the Judicial Committee of the Privy Council (at para 30):

“In relation to a government-controlled radio station, the Government as owners with direct responsibility for policy and finance would normally, and rightly, be recognised as having wide control over operations and programming.”

This is also reflected in the reference to regulating wireless broadcasting in section 13(2)(b) of the Constitution. The first question to be addressed is, therefore, whether in operating its policies in relation to access to the airwaves, or in withdrawing access once conferred, a broadcaster such as Radio Montserrat/ZJB imposed discriminatory, arbitrary or unreasonable conditions.

25. Was Mr Gerald afforded by Radio Montserrat/ZJB a platform for the expression of his views which was then wrongfully withdrawn? In the present case, the judge found, on the basis of Mr Sergeant’s evidence, that the proper station policy had not been followed before new programme content which was potentially controversial was permitted. This, however, does not necessarily mean that Radio Montserrat/ZJB was entitled to act as it did. First, it is unclear how it came about that Mr Gerald was invited to take part in the broadcast of 29 January 2014. Although Mr Sergeant gave evidence that the proper station policy had not been followed because his approval had not been obtained, the issue of the scope of authority of various persons within Radio Montserrat/ZJB to grant permission to broadcast was not investigated at the hearing of the constitutional motion before Redhead J. In particular, there was no investigation into the law of Montserrat concerning the structures and regulation of broadcasting or of the established procedures of Radio Montserrat/ZJB in this regard. Nor was there any consideration of the criteria applied, including the guidelines for programme content. Secondly, it is clear that Mr Gerald did receive an invitation to appear on the Warren Cassell Show and there is no suggestion that Mr Gerald was aware that the appropriate procedures had not been followed in his case. There may be an issue as to the apparent authority of Mr White and Mr Cassell in this regard. In the Board’s view, it was not necessary for Mr Gerald to satisfy himself that the appropriate procedures had been followed. The fact that the correct procedures may not have been followed in introducing the new programme content does not necessarily provide an answer to Mr Gerald’s complaint that the policies applied to him were discriminatory, arbitrary or unreasonable.

26. What was the scope of the invitation extended to Mr Gerald? Once again, there is no direct evidence of this. However, it appears that it was intended that Mr Gerald should speak on the medical benefits of various substances including marijuana. Mr Gerald himself stated in his affidavit that he is a champion of natural health issues and that the article “Cannabis and coconut oil in a capsule: A Medical Miracle?” was the foundation for the first discussion on 29 January 2014. That article began by referring to the

criminalisation of marijuana in the United States before moving to a supportive account of its therapeutic use. It stated that, at that time, the use of marijuana for medical purposes was legal in 20 US states and the District of Columbia. The theme of the article was that there was a growing body of scientific evidence that marijuana possesses beneficial medicinal properties that should not be overlooked. This was supported by references to medical research. The article suggested that medical marijuana capsules infused in coconut oil were an alternative way to use cannabis therapeutically without having to inhale it.

27. That the intention was that Mr Gerald should speak on the medical benefits of various substances including marijuana is also apparent from the transcript of the discussion broadcast on 29 January 2014. The transcript is headed “Discussion on Health Issues”. It began with Mr Gerald speaking of the bad medical effects of sugar and distinguishing between “good fats” and “bad fats”. He spoke of the health benefits of “a very good source of protein, very good sources of oils and very clean source of water”. Mr Cassell, in his first intervention in the transcript, then led the discussion directly to the medicinal use of marijuana:

“ ... Now tell us about coconut oil and at least in terms of medicinal marijuana in terms of fighting cancer. Now let’s just say up front here when we talk about medicinal marijuana let me make it clear we are talking about something that would have to be prescribed by a doctor of course, right and something that is used in other countries. What are the reports about medicinal marijuana and coconut oil in terms of cancer and fighting cancer?”

28. However, Mr Gerald then embarked on a more general account of the virtues of marijuana, including a lengthy account of what he claimed were the politics behind how marijuana had become illegal in the United States. He claimed that marijuana had been demonized by politicians and legislators. He expressed the view that marijuana could save the world. Mr Sergeant, who was listening to the live broadcast, stated that he formed the view that the discussion was promoting the use of marijuana in all its forms. He was concerned that the discussion might be perceived as supporting or promoting the use of marijuana. In the present proceedings there were concurrent findings of fact by Redhead J and the Court of Appeal that Mr Gerald was extolling the virtues of marijuana and supporting and promoting its use generally. Furthermore, there was ample evidence to support that conclusion. In those circumstances the practice of the Board is not to engage with challenges to concurrent findings of fact by the courts below, save in exceptional circumstances (*Devi v Roy* [1946] AC 508, per Lord Thankerton at p 521; *Dass v Marchant (Practice Note)* [2021] UKPC 2; [2021] 1 WLR 1788, per Lord Burrows at paras 15, 16; *Sancus Financial Holdings Ltd v Holm (Practice Note)* [2022] UKPC 41; [2022] 1 WLR 5181, per Lord Briggs at paras 2-8). In any event, the Board concurs with

that view. Mr Gerald had been afforded a limited platform to speak on the medical uses of marijuana and had clearly exceeded that permission.

29. Faced with this situation, the controller was entitled to take immediate action to end the broadcast. Mr Gerald was departing substantially from the agreed subject matter and Mr Sergeant was entitled to exercise editorial control. If it was the case that the correct procedures had not been followed, that made it all the more important that the programme controller should react immediately to what was unfolding before him. In all the circumstances, the decision to terminate the broadcast interview on 29 January 2014 cannot be considered discriminatory, arbitrary or unreasonable.

30. As a result, the Board considers that section 13 of the Constitution was not engaged and that this provides a complete answer to Mr Gerald's complaint of infringement of his section 13 rights.

31. If, however, contrary to this view, section 13 and Mr Gerald's right of freedom of expression were engaged, that right is not an absolute right. It is qualified by section 13(2) which provides, inter alia, that nothing in any law or done under its authority shall be held to contravene section 13 to the extent that it is reasonably justifiable in a democratic society in the interests of public order. The production, supply and possession of marijuana is illegal in Montserrat. Mr Sergeant stopped the discussion on 29 January 2014 because he formed the view, correctly in the Board's view, that it would have appeared that Radio Montserrat/ZJB was supporting or promoting the use of marijuana which is illegal in Montserrat. He was justified in doing so in the interest of public order as a necessary and proportionate response to the situation with which he was confronted. There was no infringement of Mr Gerald's right of freedom of expression under section 13.

32. In these circumstances, it is not necessary to express a view on whether these measures were necessary and proportionate for the purpose of regulating wireless broadcasting or other means of communication within section 13(2)(b) of the Constitution.

33. The issue of remedies does not arise.

34. For these reasons the Board will humbly advise His Majesty that the appeal should be dismissed.