[2024] UKPC 28
Privy Council Appeal No 0051 of 2024

JUDGMENT

Terrisa Dhoray (Appellant) *v* Attorney General of Trinidad and Tobago and another (Respondents) (Trinidad and Tobago)

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

before

Lord Reed
Lord Lloyd-Jones
Lord Burrows
Lord Stephens
Lady Simler

JUDGMENT GIVEN ON
16 September 2024

Heard on 18 July 2024

Appellant
Anand Ramlogan SC
Robert Strang
Katherine Bailey
(Instructed by Freedom Law Chambers)

Respondent
Douglas L Mendes SC
Michael de la Bastide SC
(Instructed by Charles Russell Speechlys LLP (London))

LADY SIMLER:

1. Introduction

1. The Trinidad and Tobago Revenue Authority Act, Act No 17 of 2021 ("the Act") was passed by Parliament by a simple majority in 2021 and received the assent of the President of Trinidad and Tobago on 23 December 2021. The Act creates a new (semi-autonomous) body corporate, the Trinidad and Tobago Revenue Authority (referred to below as "the Authority"), which will be an agent of the state. Not all provisions of the Act have come into operation. On 15 March 2022, parts of the Act came into force to allow for the appointment of the Board of the Authority ("the Board") and other matters. For the time being the Authority has the function of advising the government on matters relating to taxation but is not yet exercising its revenue functions under the Act.

2. The Act provides that the Authority shall have functions (among others, the assessment and collection of tax under the revenue laws) that have to date been performed by the Inland Revenue Division (under the Board of Inland Revenue) and the Customs and Excise Division (under the Comptroller of Customs and Excise), both departments of central government in the Ministry of Finance. Staff currently employed in those Divisions are designated as "public officers" by section 3 of the 1976 Constitution of the Republic of Trinidad and Tobago ("the Constitution"). This means that they hold office in the service of the government under the Constitution and attract the protection afforded to public officers by chapter 9 of the Constitution. That protection includes the vesting of power to appoint public officers in the Public Service Commission which also has the power to promote, remove and exercise disciplinary control over public officers employed in the service of the government. By means of the Public Service Commission and chapter 9 protection, public officers are immunised from improper political pressure and interference.

3. Under the Act a significant proportion of staff employed to discharge the revenue functions devolved to the Authority will not be "public officers" within the meaning of the Constitution: they will be employed by the Authority and appointed either by the Minister of Finance ("the Minister") or by the Board and not by the Public Service Commission. They will not therefore attract the protection of chapter 9 of the Constitution. The appellant challenges this consequence of the Act. She contends that the Act is unconstitutional insofar as it devolves revenue functions to the Authority to be discharged by private employees.

4. The appellant is a public officer in the Customs and Excise Division performing functions that will in due course be performed by employees of the Authority. She contends that tax and tax administration and enforcement are critical to government. Her case depends on two principal arguments. First, she contends that there are certain core

or intrinsic governmental functions that are within the province of government and can only be entrusted to public officers who enjoy the protection of chapter 9 of the Constitution. Secondly, the transfer by the Act of intrinsically governmental functions to people who are not public officers and who do not enjoy the protection of chapter 9 is therefore contrary to the scheme and intent of the Constitution. She seeks a declaration that the Act is inconsistent with the Constitution and therefore, by operation of section 2 of the Constitution, void to the extent of that inconsistency, together with a further declaration that implementation of the Act infringes or threatens to infringe her rights guaranteed by the Constitution.

5. By a judgment delivered on 17 November 2023, James J dismissed the appellant's claim. On appeal by the appellant, the Court of Appeal (Bereaux, Pemberton, Dean-Armorer JJA) upheld that decision by a judgment delivered on 28 May 2024. Final leave to appeal to the Judicial Committee of the Privy Council was granted on 7 June 2024 and the appeal has been expedited.

6. The appellant has also sought a stay of the operation of section 18 of the Act pending the determination of her claim. Section 18 gives eligible public officers the option to transfer to the employment of the Authority on terms and conditions no less favourable than those presently enjoyed, or to retire from the public service on terms to be agreed, or to remain in the public service in a different role. Section 18(2) originally provided for the exercise of these options within a period of three months of the commencement of section 18, but that period has been extended from time to time, primarily for the purpose of facilitating the hearing of these proceedings. The option period has now been extended to 31 July 2024. Further, the Minister has given an undertaking, that any option exercised pursuant to section 18 of the Act on or before 31 July 2024 will be processed internally by the Ministry of Finance but not implemented or put into effect pending the hearing and determination of this appeal. The undertaking is considered acceptable by this Board, balancing the interests of the appellant and the wider public interest.

2. The material provisions of the Act

7. Part II of the Act deals with the Authority. Section 5(1) of the Act establishes the Authority as a body corporate known as "the Trinidad and Tobago Revenue Authority", and section 5(2) provides that the Authority shall be an agent of the state.

8. Section 6 identifies the functions of the Authority as follows:

> "6 (1) Subject to sections 8 and 14, the functions of the Authority are—

(a) the assessment and collection of taxes under the revenue laws;

(b) the administration of the revenue laws;

(c) the enforcement of the revenue laws;

(d) the enforcement of border control measures subject to any other written law;

(e) subject to subsection (2), the provision of revenue collection services to any statutory or other body to collect public monies;

(f) the facilitation of legitimate trade; and

(g) to advise the Government on matters relating to taxation."

9. The "revenue laws" referred to are set out in the schedule to the Act and include: the Income Tax Act, Chap 75:01 and all other tax Acts; the Excise (General Provisions) Act Chap 78:50 and all other Acts which make provision in relation to excisable goods; and the Customs Act Chap 78:01 and all other Acts which make provision for the control of traffic through the borders of Trinidad and Tobago.

10. Part III of the Act deals with the Board Management of the Authority. Section 7(1) establishes the Board Management, comprised of nine members appointed by the Minister, to include a Permanent Secretary of the Ministry, a person nominated by the Tobago House of Assembly, an attorney-at-law, a chartered or certified accountant, two other persons from the private sector and, ex officio, the Director General (whose role and responsibility is described below): section 7(2). Section 7(3) provides that members of the Board shall be selected from among persons who have demonstrated the capacity to oversee, and have considerable experience in overseeing, the management of a large diverse organisation; and who have qualifications and experience in the areas of tax or customs administration, corporate management or areas such as accounting, economics, law, business, public administration, human resource management, industrial relations, project management, or other relevant fields. Members of Parliament, the Tobago House of Assembly, or a municipal corporation, and those employed on a full-time basis as a public officer are disqualified from appointment to the Board: section 7(4) (b) and (c).

11. The Chairman and Vice-Chairman of the Board are appointed for five-year terms and the other members (except for the Permanent Secretary and Director General) for three-year terms: section 10. The terms and conditions of appointment of all members (save for the Permanent Secretary and Director General) are determined by the Minister: section 10(3).

12. The Board's functions and powers are prescribed by section 8 of the Act. This provides:

> "8 (1) Subject to subsection (2), the Board shall be responsible for formulating, approving and ensuring the implementation of management policies in relation to—
>
> (a) the approval and review of the policy of the Authority;
>
> (b) the monitoring of the performance of the Authority in the carrying out of its functions;
>
> (c) the finances, real property and other assets and resources of the Authority, the securing of contracts, the procurement of goods and services and other administrative activities;
>
> (d) human resources, including those related to recruitment, remuneration, promotion, training and development, performance assessment, conditions of work, discipline, termination of employment and superannuation benefits;
>
> (e) service standards and performance targets;
>
> (f) a code of conduct for the employees of the Authority;
>
> (g) the strategic plan, annual budget, monitoring of operation plan and annual report of the Authority;
>
> (h) the mandate for collective bargaining and approving collective agreements in relation to the terms and

conditions of employment of persons employed by the Authority;

(i) probity in the use and allocation of resources;

(j) the principles of good corporate governance procedures and practice;

(k) the internal audit of the Authority; and

(l) enterprise risk management, other than risks associated with tax compliance.

(2) In the exercise of its functions, the Board shall not be responsible for the functions of the Authority as specified in section 6 and shall not—

(a) provide specific directions to the Director General or any employee of the Authority with respect to the functions of the Authority;

(b) have access to any information concerning an individual or other person, whether or not incorporated, which may be obtained by the Authority as a result of the functions of the Authority; or

(c) have access to any documents or other information concerning—

(i) legal actions instituted in the name of the Authority for the purpose of enforcing any of the revenue laws; or

(ii) legal actions brought against the Authority in relation to a function of the Director General under any of the revenue laws.

> (3) The Minister may give to the Board such general policy directives with respect to the carrying out of its functions under this Act as he considers necessary or expedient and the Board shall give effect to such directives."

13. Accordingly, the Board has a supervisory and policy oversight role under the general direction of the Minister, but expressly (by section 8(2)) has no responsibility for the section 6 functions of the Authority and may not give directions to the Director General or to any Authority employee in relation to those functions.

14. Part IV of the Act deals with staff of the Authority. Section 13(1) gives the Minister power to appoint (subject to affirmative resolution of Parliament) a Director General of the Authority and such Deputy Directors General as are required. There is one exception relating to the Deputy Directors General, where different provision is made. This is in respect of the Deputy Director General—Enforcement ("the DDGE"). Section 13(1) provides that the DDGE shall be a public officer (within the meaning of section 3 of the Constitution) and the head of the Enforcement Division.

15. The Director General and all other Deputy Directors General must "have a minimum of five years' demonstrated skill and experience in the area of tax or customs administration, corporate management or areas such as accounting, economics, law, business**,** public administration or other relevant fields, and who have a capacity to manage and direct large and complex organisations and who have an understanding of the welfare of employees": section 13(2). They are appointed for terms not exceeding five years (section 13(4)) and can only be removed by the Minister subject to affirmative resolution of Parliament on specified grounds or for other sufficient cause: section 15(3).

16. The responsibilities of the Director General are set out in section 14(1) as follows:

> "14 (1) Subject to subsection (2), the Director General shall be responsible for—
>
> (a) the daily management and direction of the administration of the Authority;
>
> (b) the daily management and direction of the functions of the Authority as specified in section 6, including the enforcement of the revenue laws by means of civil proceedings;

> (c) advising the Minister, on his own initiative or at the request of the Minister, on revenue implications, tax administration and aspects of policy changes relating to all taxes referred to in the Schedule, any matter that could affect public policy or public finances and any other matter that the Minister considers could improve the effectiveness or efficiency of the administration or enforcement of the revenue laws; and
>
> (d) collecting and processing statistics needed to provide forecasts of tax receipts, studying the revenue laws and proposing to the Minister, such amendments as it considers appropriate thereto, so as to improve the administration of, and compliance with, such laws."

17. So far as the Enforcement Division is concerned, "enforcement" is defined by section 3 of the Act as ""enforcement", in relation to the Customs laws, the Excise Act and other revenue laws, means the exercise of the powers, authorities and privileges conferred by those revenue laws". Included among these powers, are powers in relation to border control. Section 3 defines "border control" as the regulation of exports and imports of goods from and into the country; the regulation of conveyances entering or departing from the country; and the patrolling, surveillance and protection of the country's borders. These powers are exercisable by way of enforcement of border control measures by the Enforcement Division. To the extent that the appellant suggests that the border control functions vested in the Authority include those in relation to the control of immigration, this is incorrect. Immigration functions are dealt with by the Immigration Act which confers powers and functions on specified immigration officers. The only powers conferred on the Authority under the Act are powers under the revenue laws listed in the schedule to the Act. The Immigration Act is not one of them.

18. The Enforcement Division comprises the DDGE and such other public officers who may, for the purposes of enforcement of the revenue laws, "exercise the powers, authorities and privileges conferred by those revenue laws" (section 14(3)(a)) and such other employees of the Authority as the Board thinks fit (section 14(3)(b)). Section 14(4) provides that the Public Service Commission shall appoint, remove, transfer and exercise disciplinary control over the DDGE and the other public officers of the Enforcement Division; while the Board shall appoint, remove, transfer and exercise disciplinary control over the other employees of the Enforcement Division.

19. The responsibilities of the DDGE are provided by section 14(2) as follows:

> "(2) The Deputy Director General—Enforcement shall be responsible for—

(a) the daily management and direction of the administration of the Enforcement Division;

(b) the daily management and direction of the enforcement of the Customs laws, the Excise Act and other revenue laws;

(c) advising the Director General on any matter that could affect public policy or public finances;

(d) advising the Director General on any matter that could improve the effectiveness or efficiency of the administration of the Enforcement Division or the enforcement of the Customs laws, the Excise Act and other revenue laws."

20. Section 14(5) applies to the Director General and the DDGE. It provides:

"(5) In the performance of his functions under—

(a) subsection (1)(a), the Director General is subject to the general directions of the Board;

(b) subsection (1)(b), the Director General is subject to the general policy directions of the Minister;

(c) subsection (2)(a), the Deputy Director General—Enforcement is subject to the general directions of the Board which shall be communicated to him through the Director General; and

(d) subsection (2)(b), the Deputy Director General—Enforcement is subject to the general policy directions of the Minister which shall be communicated to him through the Director General."

21. The employment or retainer of staff of the Authority is provided for by sections 16 and 17 which permit the Authority's Board to employ staff and contractors as required by the Authority, on such terms and conditions as it determines, or the Authority agrees.

22. Section 18 of the Act provides for the transfer of public officers upon the Act coming into force, in the following terms:

> "18 (1) This section applies to an officer who, on the date of the coming into force of this Act—
>
> (a) holds a permanent appointment to; or
>
> (b) holds a temporary appointment to, and has served at least two continuous years in,
>
> an office in the Public Service on the establishment of the Inland Revenue Division or Customs and Excise Division.
>
> (2) A person to whom this section applies may, within three months of the coming into force of this Act, or within such extended period as the Minister may, by Order subject to negative resolution of Parliament allow, exercise one of the following options:
>
> (a) voluntarily retire from the Public Service on terms and conditions agreed between him or his appropriate recognised association and the Chief Personnel Officer;
>
> (b) transfer to the Authority with the approval of the appropriate Service Commission on terms and conditions which, taken as a whole, are no less favourable than those enjoyed by him in the Public Service;
>
> (c) be appointed on transfer by the Public Service Commission to a suitable public office in the Enforcement Division on terms and conditions which, taken as a whole, are no less favourable than those enjoyed by him in the Public Service on the date of the coming into force of this Act; or
>
> (d) remain in the Public Service provided that an office commensurate with the office held by him in the Public

> Service prior to the date of the coming into force of this Act, is available."

23. This provision applies to the appellant and other public officers currently employed in government service in the Inland Revenue or Customs and Excise Divisions. However, as indicated above, the operation of section 18 has been suspended until 31 July 2024 and the Minister has given an acceptable undertaking in relation to the exercise of the option pending determination of the appellant's appeal.

24. The funding and expenditure of the Authority are dealt with by section 23. The Authority is to be funded by moneys appropriated by Parliament for its purposes, and by other means approved by the Minister or borrowing in accordance with the Act; and these funds are to be used to defray the capital and operating expenses of the Authority in carrying out its functions, including the remuneration of its staff. However, by section 23(4) the salaries and allowances payable to holders of public offices in the Enforcement Division are to be a charge on the Consolidated Fund. By section 26:

> "26. All public moneys collected by the Director General under the revenue laws shall be paid into the Exchequer Account at such times and in such manner as the Minister may direct."

3. The relevant provisions of the Constitution

25. Section 2 of the Constitution declares that it is the supreme law of Trinidad and Tobago, and that any other law that is inconsistent with the Constitution is void to the extent of the inconsistency.

26. Section 3 of the Constitution defines a number of terms including the following:

> ""public office" means an office of emolument in the public service;
>
> "public officer" means the holder of any public office and includes any person appointed to act in any such office;
>
> "public service" means, subject to the provisions of subsections (4) and (5), the service of the Government of Trinidad and Tobago or of the Tobago House of Assembly established by

> section 3 of the Tobago House of Assembly Act, in a civil capacity;
>
> "Service Commission" means the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission or the Teaching Service Commission; …"

27. Section 5(1) limits the ability of Parliament to legislate in a way that abrogates or infringes fundamental rights and freedoms guaranteed by the Constitution. It is not suggested that the Act abrogates or infringes any such rights.

28. Section 54 is relied on by the appellant. So far as material it provides:

> "54. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.
>
> (2) In so far as it alters—
>
> > (a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 110, 113, 116 to 125 and 133 to 137; or
> >
> > (b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),
>
> a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House."

29. Section 74 deals with executive powers. So far as material it provides:

> "74. (1) The executive authority of Trinidad and Tobago shall be vested in the President and, subject to this Constitution, may be exercised by him either directly or through officers subordinate to him.

…

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President."

30. Chapter 9 is headed "Appointments to, and tenure of, offices". Part 1 of chapter 9 deals with the establishment of a Public Service Commission, a Police Service Commission, and a Teaching Service Commission. The Public Service Commission is established by section 120(1) as a body whose members are appointed in accordance with section 120(2) and hold office in accordance with section 126.

31. By section 121(1) and (7), the power of appointment, promotion, transfer, removal and disciplinary control over persons who hold or act in all public offices to which this section applies, in other words "public officers", is vested in the Public Service Commission as follows:

"121. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers shall vest in the Public Service Commission.

…

(7) This section applies to all public offices including in particular offices in the Civil Service, the Fire Service and the Prison Service, but this section does not apply to offices to which appointments are made by the Judicial and Legal Service Commission, the Police Service Commission or the Teaching Service Commission or offices to which appointments are to be made by the President."

32. Sections 120 and 121 of the Constitution (and section 3 insofar as it applies to them) are entrenched provisions by virtue of section 54(2)(a) of the Constitution. This means that they may only be altered by legislation passed with the votes of two-thirds of the members of each House of Parliament.

4. The problem with the definition of "enforcement" under the Act

33. As is apparent from this consideration of the relevant provisions of the Act and the Constitution, members of the Authority's Board are appointed and may be removed by the Minister. Likewise, the Director General and Deputy Directors General (except for the DDGE) are appointed and may also be removed (or disciplined) by the Minister. However, the DDGE and certain officers of the Enforcement Division are appointed and removed by and subject to the disciplinary control of the Public Service Commission. All other employees of the Authority are appointed and removed by and subject to the disciplinary control of the Board. This contrasts with the position of the bodies which presently carry out the functions of the Authority. The Comptroller of Customs and Excise, the Commissioners of the Board of Inland Revenue and the officers of the Customs and Excise Division and Inland Revenue Division are expressly acknowledged by statute to be public officers, for the purposes of the Constitution, and the powers of appointment, removal and disciplinary control in relation to them are vested in the Public Service Commission, in accordance with sections 121(1) and (7) of the Constitution.

34. The plain intent of the Act is to draw a clear line between the functions of the Enforcement Division on the one hand (staffed by the DDGE and public officers who "exercise the powers, authorities and privileges conferred by those revenue laws" and are subject to the jurisdiction of the Public Service Commission) and the other revenue functions (in particular, assessment and collection of tax) which are functions of the Authority and intended to be discharged by "such other employees of the Authority as the Board thinks fit", in other words private employees of the Authority who are not public officers. The intent is that the Enforcement Division remains under the control and direction of the Public Service Commission, thus preserving security of tenure and the other protections afforded by chapter 9 of the Constitution for those employed in the Enforcement Division.

35. The appellant contends (with some justification) that this intent has not been fully or successfully achieved. She relies, for example, on the fact that section 14(2)(b) of the Act gives the DDGE responsibility for "the daily management and direction of the enforcement of the Customs laws, the Excise Act and other revenue laws" while section 14(1)(b) gives the Director General responsibility for "the daily management and direction of the functions of the Authority as specified in section 6, including the enforcement of the revenue laws by means of civil proceedings". In other words, since the functions of the Authority as specified in section 6 clearly include the enforcement of the revenue laws and the enforcement of border control, the Act does not appear to reserve all enforcement functions to the DDGE. It reserves civil enforcement to the Director General and does not reserve enforcement functions exclusively to the DDGE. The appellant also points to section 40 of the Act which purports to confirm this intended division of responsibilities but appears to allocate responsibility for enforcing civil proceedings to the Director General.

36. Furthermore, on the face of it, the scope of the powers purportedly reserved to public officers of the Enforcement Division is not as carefully or clearly defined by the Act as might be desirable, particularly in legislation of this kind. Thus, for example, the application of the definition of enforcement in section 3 of the Act ("enforcement" means "the exercise of the powers, authorities and privileges conferred by those revenue laws") to section 14(3) which provides that the Enforcement Division shall include "such other public officers who may … exercise the powers, authorities and privileges conferred by those revenue laws" is circular. On the face of it, it gives no substantive meaning to the circumstances in which the powers, authorities and privileges conferred by the Customs laws, the Excise Act and other revenue laws are to be exercised by public officers in the Enforcement Division and appears not to reserve with any clarity the exercise of any such powers exclusively to public officers.

37. The Minister accepts that applying the definition of "enforcement" strictly in this way does result in a definition of the functions of the Enforcement Division in section 14(3) which is "circular and to an extent unintelligible" (para 14 of the Respondent's Case). However, the Minister maintains that properly construed in accordance with its ordinary dictionary meaning in the context of the Act, the Act does adequately and intelligibly define the functions of the Enforcement Division: it simply means compel compliance with the revenue and customs laws. In other words, the Enforcement Division shall include public officers who may for the purpose of "enforcing" the customs and other revenue laws, that is to compel compliance with or observance of those laws, exercise the powers, authorities and privileges conferred by those laws for enforcement purposes.

38. Although this is a controversy of some potential importance, it is unnecessary to resolve it on this appeal. On this appeal, the Board is faced with a much more fundamental constitutional challenge to the whole enterprise of the Act, namely the transfer of important revenue and customs functions from government service to the Authority. There might be more targeted challenges to the proper interpretation of "enforcement" and the extent to which the intended division of functions is achieved by the Act, but these are not for determination on this appeal. If and when they arise for determination, they will have to be resolved by the domestic courts in Trinidad and Tobago in light of the Constitution.

5. *Perch v Attorney General* [2003] UKPC 17; [2003] 5 LRC 508 *("Perch")*

39. Since it is central to the arguments advanced by the appellant, and formed an essential part of the reasoning and approach of the majority reasoning in the Court of Appeal, it is convenient at this point to describe the decision of the Board in *Perch*.

40. Historically the Post Office in Trinidad and Tobago was a department of government, and its employees were public officers. Recognised grades of postal workers were entitled to the protection afforded to public officers by chapter 9 of the Constitution. In the 1990s technological advances rendered postal services vulnerable to competition and, at that time, it was government policy to limit its participation in commercial activities. The result was the establishment, pursuant to the Trinidad and Tobago Postal Corporation Act 1999 ("the 1999 Act"), of the Trinidad and Tobago Postal Corporation ("Trinidad and Tobago Post") charged with providing inland and foreign postal services and empowered to carry out related businesses. By section 36 of the 1999 Act, public officers affected by this transfer were offered the option (among others) of transferring to Trinidad and Tobago Post or remaining in a different government department as a public officer.

41. The appellants opted to remain in government service, but no suitable positions could be found for them. They retired but brought proceedings claiming that the imposition of that choice violated their constitutional right enshrined in section 121(1) of the Constitution. The argument before the Board was that since Trinidad and Tobago Post was subject to close governmental control it was simply a postal service run by the government in a different way and the employees of Trinidad and Tobago Post continued to work in the service of the government in a civil capacity. It followed that the power to appoint them to Trinidad and Tobago Post or to remove them from the Post Office was exclusively vested in the Public Service Commission. The present and former employees of the Post Office were therefore entitled to the protection of section 121(1) of the Constitution and section 36(2) of the 1999 Act establishing Trinidad and Tobago Post, which provided the options of retirement, transfer or lateral movement within the public service was therefore void.

42. Lord Bingham of Cornhill, who gave the judgment of the Board, rejected the argument that Trinidad and Tobago Post remained a service operated by the government. At para 15 the Board held:

> "The Board is of the clear opinion that employees of the new corporation are not holders of any public office and are not employed in the service of the Government in a civil capacity within the meaning of section 3(1) of the Constitution."

That being so, the Board went on to hold that section 36(2) of the 1999 Act did not violate the rights of the appellants and there was nothing in section 36 which was in any way incompatible with the Constitution:

> "15. … In the case of those who, like the appellants, chose the section 36(2)(c) option and for whom, unlike the appellants,

> another office was available in the Public Service, there would plainly be no violation, although the appointment to another department on transfer from the Post Office would require to be made by the Public Service Commission by virtue of section 121(1), a requirement with which section 36(2) does not purport to dispense. For those, like the appellants, who chose the section 36(2)(c) option, but for whom no other office in the public service was available, there was again no constitutional violation. Retirement, whether voluntary or compulsory, is a mode of leaving the Public Service recognised by section 12 of the Civil Service Act. So is the abolition of an office held, which in the appellants' case was imminent. It is established that a legislature or (subject to any relevant legislation) a government may abolish a public office in the interests of good administration; see *Young* v *Waller* [1898] AC 661, *Reilly v R* [1934] AC 176 and *Pillai* v *State of Kerala* [1974] 1 SCR 515. It would seem, by virtue of the extended meaning given to 'remove' by section 3(6) of the Constitution and by virtue of section 12 of the Civil Service Act, that the retirement of the appellants would require the sanction of the Public Service Commission. But there is again nothing in section 36(2) which dispenses with that requirement if it did apply; the sanction of the commission would inevitably have been given, with the abolition of the appellants' offices imminent; there is no evidence that the sanction of the commission was not given; and even if the correct procedure was not followed it caused the appellants no harm and in any event affords no ground for impugning the constitutionality of the 1999 Act. The option offered in section 36(2)(a) raises no issue beyond these already discussed even if, as Mr Fitzgerald suggested, the appellants' retirement from the Public Service was not truly voluntary. The section 36(2)(b) option involved a transfer to an employer (namely the new corporation) outside the Public Service. For reasons already given, it would seem that such a transfer involved retirement from the Public Service, and so required the sanction of the commission, but there is nothing in the 1999 Act which purports to dispense with that requirement and the sanction of the commission would inevitably have been given. There is, in short, nothing in section 36 which is in any way incompatible with the Constitution."

43. In the course of his judgment, Lord Bingham addressed the question of the broader constitutionality of divesting postal services from central government to a corporation. At paras 13 and 14 he said:

"13. The 1999 Act exemplifies a widespread international trend towards the divestment by governments of functions previously carried on by them directly or indirectly but forming no part of the core functions of government (such as defence, the maintenance of law and order and the administration of justice) and lending themselves to commercial non-governmental operation in the interests of efficiency and economy. If it were sought to devolve the Police Service or the Prison Service to a corporation analogous to Trinidad and Tobago Post there would be strong arguments (on which it is unnecessary to pronounce) for holding that such a change contradicted express terms of the Constitution and assumptions on which it was based. But no such problem arises here. There is nothing intrinsically governmental in collecting and delivering letters and parcels, any more than there is in operating telephones, or trains, or lotteries, or meteorological offices, or scientific laboratories, or libraries, or hospitals. It is certainly true, as Mr Fitzgerald emphasised and as is apparent from the summary in para 7, above, that the government reserved a significant measure of control over the new corporation. This is understandable. Since it had no shareholders, the corporation could only be accountable to the government; and since the corporation could not fail without grave damage to the credit of the state, a degree of oversight was to be expected. But the minister's power of direction under section 17 did not extend to operational matters and, significantly, the board was to be composed of persons (section 11(1)) with 'proven experience or qualifications in postal services, business, law, financial management, economics and human resource management'. This was intended to be a high grade commercial business. …

14. Reliance was placed on *Thomas v Attorney General* (1981) 32 WIR 375 at 381, where Lord Diplock deprecated the spoils system which has operated elsewhere, notoriously in the Post Office, and Mr Fitzgerald warned of the danger if employees of the new corporation were to lose the protection of section 121(1). But Lord Diplock was addressing the risk if civil servants, police officers and the like were dismissible summarily without cause, a risk against which the Constitution provides express protection. Employees of the new corporation enjoy all the rights of employees in the private sector. If the members of the board were to exercise the corporation's employment powers to advance the interests of any party or faction they would act outside the powers conferred upon them and would be susceptible to challenge. So would the minister if

> he purported to direct board members to act in such a way. He would also be susceptible to challenge on the ground discussed in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357."

6. The decisions below in summary

44. As stated, James J dismissed the appellant's claim. He described the growing trend in the last two decades of other countries (more than half in the world) having adopted a semi-autonomous revenue authority for collecting revenue of the state (including Barbados and Guyana). He also recognised that this model is not without its criticisms but made clear that the court is not concerned with the merits of or the political debate surrounding the policy.

45. James J referred to the well-known dictum of Lord Dunedin in *Whitney v Inland Revenue Comrs* [1926] AC 37, 52:

> "Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

46. He said that three stages (assessment, collection, and enforcement) of taxation were in issue here but given the difference in treatment of enforcement on the one hand and assessment and collection on the other under the Act, he would consider them separately.

47. In relation to assessment and collection of tax, while he recognised that taxation is a key source of revenue for governments and the process of assessing and collecting taxes is essential for any government, he did not regard these functions as akin to defence, law and order, security of the state or the administration of justice (identified by Lord Bingham as "core" in *Perch*). He pointed to instances where private individuals or entities perform these functions (for example, through PAYE or VAT registration), to the fact that the Authority is deemed an agent of the state (under section 5(2) of the Act) empowered to collect taxes of the state, but Parliament remains responsible for setting tax policy and imposing tax. He concluded that these functions are not core governmental functions (as contemplated by the Board in *Perch* at para 13).

48. As for enforcement, he held that this function would be executed by public officers protected by chapter 9 of the Constitution. He rejected the appellant's argument that to the extent that "other officers" were to be employed in the Enforcement Division they would be exercising "powers, authorities and privileges" conferred by revenue laws, holding that "other officers" refers to other staff who are in the nature of support staff not exercising those powers, but performing roles of receptionist, clerk, and maintenance personnel. He also rejected her argument that public officers in the Enforcement Division would act under the ultimate command of the Director General who is not a public officer, holding that section 14(1) of the Act is subject to section 14(2) which makes the provision for the DDGE who shall be responsible for the daily management and direction of the Enforcement Division. Accordingly, even if the functions of the Enforcement Division are core governmental functions as contemplated by *Perch*, they would be performed by public officers protected by chapter 9.

49. In the alternative, he relied on section 74(3) of the Constitution (to the effect that "Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President") and adopted the reasoning of Chang JA in the Court of Appeal of Guyana in *Chue v Attorney General of Guyana* (2006) 72 WIR 213. In *Chue* it was conceded that the assessment and collection of taxes was a core governmental function. The Court of Appeal held nonetheless that section 99(2) of the Constitution of Guyana (the equivalent of section 74(3)) permitted Parliament to transfer the functions of the assessment and collection of taxes to a statutory body similar to the Authority in Trinidad and Tobago. Chang JA held that there was no warrant for the court to restrict Parliament in the exercise of this legislative power. James J reasoned by analogy that the Authority would be an agent of government for the assessment and collection of tax and so the executive function had not been removed from government. Moreover, the jurisdiction of the Public Service Commission had not been reduced or altered.

50. The Court of Appeal upheld that decision and dismissed the appeal. Dean-Armorer JA, with whom Pemberton JA agreed, first addressed the question whether the Constitution impliedly recognises functions within the public service that, by their nature, can be regarded as core governmental functions and which may only be performed by persons who enjoy the protection of chapter 9 and a Service Commission (para 61). She held (at para 87) that it is implicit in the Constitution that there exist core government functions which cannot be delegated to persons who are not public officers protected by chapter 9 of the Constitution.

51. Next, she addressed what those functions are, and whether they include any of the stages of taxation (para 87). At para 97, having considered *Perch*, she defined the core or "non-delegable functions" as those involving the exercise of coercive powers:

> "97. It seems clear to us that the non-delegable functions are those that are linked to the exercise of coercive powers, that is

> to say, those functions the exercise of which have the potential to affect the civil liberties of the individual citizen. They clearly do not include innocuous commercial type functions of postal services, transport services, health services, all of which were listed by Lord Bingham. These functions may be transferred by Parliament without fear of constitutional infringement and therefore by simple majority."

52. Dean-Armorer JA rejected the appellant's argument that taxation is an indivisible executive function and agreed with James J that there are distinct stages of taxation (the material stages being the assessment of tax; the collection of tax; and the enforcement of unpaid tax), holding as follows:

> "102. In respect of the stage of assessment, we observe that the assessment which the Authority is empowered to conduct is in reality an arithmetical stage of the process and does not confer on the assessor any coercive power.
>
> 103. Collection is also not coercive and is generally voluntary. The function of collection is often carried out by third parties in case of value added tax (VAT) collection and Pay-As-You-Earn (PAYE). These processes have been carried out by third parties for many years and it would be artificial at this time to suggest they can only be exercised by public officers. Moreover, there is no exercise of coercive power in collection. The employer who deducts PAYE for the purpose of remitting taxes to the Board of Inland Revenue cannot compel payment. A similar observation may be made in respect of the retailer who deducts VAT from customers. They clearly have no coercive power.
>
> 104. The process of enforcement under the Act continues to be performed by public officers, who by section 14(3) of the Act continue to be under the purview of the Public Service Commission. In respect of enforcement therefore, there was no delegation of a core governmental function."

53. Based on that reasoning, Dean-Armorer JA found that the Act was not inconsistent with the Constitution:

> "105. It follows that we hold the view that there was no transfer of non-delegable core functions away from the Public Service.

> We accordingly find no reason to disagree with the Judge on this issue ..."

54. Dean-Armorer JA also held that the provisions of the Act did not breach the constitutional principle of the separation of powers (para 118); and that the Act, being lawful, could not be found to have infringed the appellant's right to the protection of the law under section 4(b) of the Constitution (para 122).

55. In a separate judgment, Bereaux JA agreed with the conclusions reached by Dean-Armorer JA but found it unnecessary to lay down any definitive test of what is a "core power" (para 1). In his judgment, it was sufficient for the purposes of this appeal to say that the enforcement function was not in fact being divested from public officers (para 3). He found it unnecessary to lay down in definitive terms a test that effectively defines the core functions as those involving the exercise of a coercive power. To do so introduced a hard and fast formula that was unnecessary for present purposes, especially in circumstances where the Board in *Perch* had not done so. He observed that this question is best left to be decided on a case by case basis (para 4).

7. The presumption of constitutionality

56. Against that background, the question for the Board is whether the Act's provisions transferring certain revenue functions to the Authority (in particular, assessment and collection) to be performed by employees of the Authority rather than public officers in government service, is in breach of the Constitution.

57. It is a strong thing to hold that legislation passed by a democratic Parliament is unconstitutional. The presumption of constitutionality is strong and there is a heavy burden on a party seeking to establish invalidity: see *Suratt v Attorney General of Trinidad and Tobago* [2007] UKPC 55; [2008] AC 655 at para 45.

58. The expression core or intrinsic governmental function is not found in the Constitution. The appellant accepts that there is no express provision of the Constitution prohibiting the transfer of such functions to a separate body and, accordingly, her objective has been to establish invalidity by reference to an implied provision or assumption in the Constitution that certain functions are core and cannot therefore be divested or devolved.

8. The problem of defining core governmental functions

59. The Court of Appeal majority approached the question of constitutionality, relying on para 13 in *Perch*, by trying to identify what a core governmental function is and what is a function that lends itself to commercial non-governmental operation in the interests of efficiency and economy. The Court of Appeal proceeded on the basis that core governmental functions by their nature must be performed by public officers protected by chapter 9 and cannot be delegated to other bodies, but non-core functions can be so transferred.

60. However, the reasoning in the passage relied on by the Court of Appeal in para 13 of the judgment in *Perch* was not essential to Lord Bingham's conclusion and, in any event, Lord Bingham regarded it as unnecessary to decide this point. Moreover, Lord Bingham did not attempt to define the expression "core functions of government" and nor did the Board hold that core functions cannot be devolved to a corporation. In the Board's view, it does not follow from the fact that under the Constitution commercial type government functions may be transferred to persons outside government service, that the Constitution prohibits the transfer of any non-commercial, or "core" government function to persons outside government service. And equally, it does not follow from the fact that the transfer of commercial type government functions does not give rise to constitutional issues, that such issues do arise from a transfer of any function that can be described as a "core" function of government.

61. Nonetheless, taking the examples given by Lord Bingham, the Court of Appeal reasoned (at para 97) that non-delegable functions are linked to the exercise of coercive powers which have the potential to affect the civil liberties of citizens. On that approach, the functions of the police, prisons and defence all fall clearly on the coercive side of the line, while the functions of a telephone service, the railway, and hospitals fall on the other.

62. The Board well understands the concern about the use of coercive powers by private or semi-autonomous bodies potentially for private profit or gain but considers that this is not a principled basis for distinguishing between different functions, and nor does this distinction work in practice. It is not a distinction identified by Lord Bingham, who made no mention of coercive powers. It is unsupported by any authority. In other countries prisons and immigration detention centres have been privatised notwithstanding the exercise of coercive powers by private employees in these organisations; and it is easy to imagine that hospital staff in hospitals exercise intrusive, if not coercive, powers from time to time.

63. More specifically, the distinction does not work in relation to the functions of tax assessment and collection, and the Board is not persuaded by the reasoning of the Court of Appeal at paras 102 and 103. The assessment stage is not purely arithmetical and can

entail the exercise of both investigative and adjudicatory powers. Moreover, collection is not purely voluntary. For example, for the purposes of assessment, the revenue laws grant to tax officers intrusive powers, such as the powers of inspection, entry, search and seizure; and they grant similar powers to customs officers controlling the import and export of goods. Some of these powers are coercive though not all are coercive in the sense used by the Court of Appeal. Nevertheless, given the extent of the discretionary authority exercised by such officers, they can be highly intrusive and reinforced by coercive powers, they involve the potential for harm and disruption to the lives and businesses of taxpayers. The Board therefore disagrees with the majority Court of Appeal reasoning that led to the conclusion at para 105 that there was no transfer of non-delegable functions in relation to assessment and collection.

64. The appellant's case in writing defines "an intrinsically governmental function" as a function which "entails the exercise of powers which could only be granted by government and could not arise in the hands of a private citizen" and which "entails the wielding of control or decision-making power over citizens (such that it ought to be entrusted to an independent public service)" (see para 25 of her written case). In other words, she defines core governmental functions that cannot be delegated as functions involving "discretionary authority exercised by officers who should be public". In the Board's view, this does not provide a definition at all but, instead, begs the very question it seeks to answer. Moreover, there would be real difficulties in applying this test since these are imprecise concepts involving questions of degree.

65. The appellant relies on statements made in a number of cases, highlighting the importance of assessment and collection of tax. These include *Ranaweera v Ramachandran* [1970] AC 962, 974C, where, in a dissenting judgment, Lord Diplock said:

> "The assessment and collection of taxes to defray the expenses of the central government of the country is a classic constitutional function of central government itself. The performance of this function must needs be undertaken by natural persons for the purpose of administering the fiscal legislation on the central government's behalf. Those natural persons who so administer it, at any rate if appointed by a Minister of the Crown acting in his official capacity and if paid out of the central revenues of Ceylon, are in my view "servants of the Crown.""

66. Similarly, the Caribbean Court of Justice in *Griffith v Guyana Revenue Authority* (2006) 69 WIR 320, at para 38, described the administration of tax laws and the collection and paying over of revenue to the government as "essentially governmental".

67. However, these statements do not appear to go further than confirming the important point that since the raising, receipt and use of tax revenue are essential to any modern government which is committed to providing services for its public, it follows that one of the intrinsic functions of government is to make arrangements for the imposition, assessment, collection and use of tax revenue. Leaving aside imposition of tax, which is a legislative function, these arrangements are otherwise usually delivered by government departments. But that is not the only way of delivering them (as the expert evidence of Professor Mick Moore demonstrates: it is increasingly the case that the function of assessing and collecting taxes is carried out by semi-autonomous statutory bodies such as the Trinidad and Tobago Revenue Authority). Lord Diplock's statement, made in a dissenting judgment where the majority did not address this point, was not directed at defining a core governmental function that must be discharged by a public officer enjoying the protection of chapter 9.

68. By way of illustration, the appellant also relies on definitions of what is a governmental act or function developed by courts in the sphere of international and European Community law. She relies, for example, on the doctrine of sovereign immunity which gives immunity to acts of a governmental nature, but not to acts of a commercial nature (see *Playa Larga v I Congreso del Partido* [1983] 1 AC 244); and concepts like "emanation of the state" discussed in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546 at paras 54 to 55. The Board does not find these authorities helpful. As the appellant herself recognises, there can be no direct application of definitions like these, developed in altogether different contexts and for different purposes.

69. The obvious difficulty the parties and the courts below have had in seeking to define what is an undefined and very likely, undefinable concept, that can and has changed over time with developments in society, is significant. It has led the Board to conclude, as Bereaux JA did, that it is both unnecessary and preferable not to define core governmental functions, still less in terms of a hard and fast rule that such functions involve the exercise of coercive powers.

9. An alternative approach: focussing on the rationale for chapter 9 protection

70. Accordingly, the better approach in the Board's view, is to focus on the rationale or purpose of chapter 9 of the Constitution in order to determine whether the divestment of tax functions contradicts its terms or the assumptions on which it is based. On this approach, the Board is not concerned to identify core governmental functions.

71. The rationale for the chapter 9 protection is twofold. First, as Lord Bingham explained in *Perch,* the three independent Service Commissions provided for by chapter 9 of the Constitution "are so composed, structured and regulated as to ensure that they are

independent and immune from political pressure, the object being to ensure that civil servants, police officers and teachers are similarly independent and immune" (see para 5). By giving them security of tenure and protection from political interference in decisions on appointment, transfer and promotion, public officers are protected from the political influence or interference to which they would otherwise be vulnerable by the government of the day. A similar explanation was given by Lord Diplock for the Board in *Endell Thomas v Attorney General of Trinidad and Tobago* [1981] AC 113, 124C. The second closely related indirect purpose is to protect the public from the effects of such political interference by having a cadre of public servants who can act independently of the particular government in power and free from political interference.

72. In both cases the risk to public servants and to the public arises from the fact that these public officers are institutionally part of government and subject to the direction of ministers.

73. However, no matter how wide or narrow the concept of government function might be (core or otherwise), the fact that there is a Public (Police or Teaching) Service Commission does not mean that every government function or service (for example, the provision of water, sewerage or electricity) must be provided by public officers covered by chapter 9. Teachers are an obvious example because, although those employed in state schools are public officers covered by chapter 9, those employed in private schools are not and do not have such protection.

74. There is nothing in the terms of chapter 9 itself, or elsewhere in the Constitution, that expressly requires that core government functions are only performed or delivered by public servants covered by chapter 9 or that vests functions carried out by public officers in those public officers giving rise to an implied prohibition against devolving those functions elsewhere. The appellant has not pointed to any provision of the Constitution which expressly prohibits the transfer effected by the Act.

75. Indeed, section 74(3) of the Constitution appears to negative the existence of any such constitutional assumption. Although by section 74(1) of the Constitution the executive authority of Trinidad and Tobago is vested in the President, section 74(3) provides that nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President. There is no limitation on that power determined by whether the executive function is considered a core or intrinsic governmental function or not. The Board has not been shown any constitutional principle which prohibits the vesting of intrinsic governmental functions in a non-governmental statutory body. Further, this provision is consistent with the Constitution expressly authorising Parliament to transfer executive functions to persons other than the President.

76. Since the whole rationale of chapter 9 is to protect public officers and indirectly the public from improper political pressure by virtue of the fact that they are institutionally part of government, if the function performed by such officers is removed from government and put into the hands of a separate statutory body, there is no longer the need for those protections, provided two important conditions are satisfied. First, the separate statutory body or corporation must be genuinely independent and not a device or a sham. Secondly, there must be adequate and effective safeguards to ensure that there is in fact independence and sufficient protection for employees from political interference by the executive.

10. The adequacy and effectiveness of the safeguards from political interference and improper pressure

77. There is nothing to suggest that the Authority is a device or a sham, and such a suggestion has not formed any part of the appellant's case.

78. The second condition focuses on the effectiveness of the protections and safeguards from improper pressure by the executive afforded by the Act and other avenues available.

79. First, there are safeguards that prevent either the Board or the Minister from playing any part in the day to day operations of the Authority. The Board (although appointed by the Minister) is comprised of professional people with relevant experience and skills; and its chair and vice-chair are appointed for five-year terms, while other members are appointed for three-year terms (section 10(1) and (2)). It is charged with responsibility for setting and oversight of management policies for the Authority but has no responsibility for any of the Authority's revenue functions (section 8(2)). Further, there is an express prohibition on the Board giving directions to the Director General or any employee of the Authority with respect to those revenue functions (section 8(2)(a)). The Board is also prohibited from accessing any information about individuals or entities obtained by the Authority in exercise of its functions, or documents concerning legal actions by or against the Authority to enforce revenue laws or in relation to functions of the Director General (section 8(2)(b) and (c)). Moreover, the Minister may only give general policy directions to the Board in relation to the Board's own functions (section 8(3)) and is given no statutory authority to give directions to the Authority.

80. Secondly, employees of the Authority have protections that give them security of employment and insulate them from improper interference from the executive. Both the Director General and Deputy Directors General are appointed for terms not exceeding five years (section 13(4)), and though this is appointment by the Minister, these appointments are subject to affirmative resolution of Parliament. The Director General and Deputy Directors General must have at least five years' relevant experience (section

13(2)) and members of Parliament (and others) are disqualified from holding these posts (section 13(3)). The Director General and Deputy Directors General may be removed by the Minister from office but only on specified grounds or for cause, again subject to affirmative resolution of Parliament. Accordingly, appointments and removals take place in public and subject to compliance with the principles of public law.

81. All other staff of the Authority enjoy all the rights of employees in the private sector. Those who fall within the ambit of the protection afforded by the provisions of the Industrial Relations Act, Chap 88:01 as "workers" have statutory remedies (including re-employment, reinstatement, damages or compensation) for dismissal which is harsh and oppressive or not in accordance with good industrial relations practice (see section 10). As private employees they have private law contractual rights. They also have constitutional and other guarantees of their right to maintain trade union membership (section 4(j) of the Constitution and section 42 of the Industrial Relations Act). Trade unions may be recognised and certified for the purposes of collective bargaining. If members of the Board sought to exercise the Authority's employment powers to pressurise staff to act in a way that would advance the interests of a rival political party or faction of government (for example, by requiring an investigation into the tax affairs of a political rival, perhaps in the run up to an election), they would act outside the powers conferred upon them and would be susceptible to challenge. So too would the Minister if he or she purported to direct the Board to act in such a way.

82. Thirdly, apart from the protections which employees and officers of the Authority enjoy, the Director General is responsible for the daily management and direction of the administration of the Authority (section 14(1)(a)) and is required only to act on the "general directions of the Board" and on the "general policy directions of the Minister" (section 14(5)(a) and (b)). All public monies collected by the Director General under the revenue laws must be paid into the Exchequer Account at such times and in such manner as the Minister may direct (section 26).

83. Finally, to the extent that the Authority's powers are misused in such a way as to cause a taxpayer to pay tax which is not due under law, an appeal lies to the Tax Appeal Board to correct such errors and there is a further appeal from the Tax Appeal Board to the Court of Appeal.

84. For all these reasons the Board is satisfied that there are the necessary mechanisms and effective safeguards to protect the staff and officers of the Authority and members of the public from executive interference. The Board is fortified in reaching this conclusion by the fact that such mechanisms and safeguards are similar to those identified by Lord Bingham in *Perch.*

85. Following the conclusion of the hearing, the Board received additional written submissions from the appellant. The appellant described these as directed at addressing the approach favoured by the Board (as set out at paras 70 to 76 above) and submitted that they should be considered because this point had not been raised at any time before the hearing and took the appellant by surprise. In these circumstances, the Board has considered the submissions, together with the submissions in response filed by the Minister. However, the Board does not consider that the two arguments advanced by the appellant take the matter any further.

86. The first is a specific argument that a change from existing government departments staffed by public officers under the direction of public officers, all of whom are appointed by the Public Service Commission, to divisions of the Authority staffed by employees, who will be appointed by a Board in turn appointed by the Minister, and directed by a person appointed by the Minister, will mean the possibility for political pressure will be substantially increased. The Board has addressed this argument and identified the effective safeguards from improper pressure by the executive afforded by the Act, together with other avenues of protection available. The second more general argument is that employees of the Authority are in substance public officers for the purposes of the Constitution because they are subject to direction from ministers and perform government functions, and accordingly they fall under the jurisdiction of the Public Services Commission and chapter 9. This argument does not arise out of the approach favoured by the Board. In any event, the Board rejects it for the same reasons as those given by the Board for rejecting the same argument in *Perch*. The relevant passages are set out in para 42 above.

87. In *Perch* the Board held that Parliament did not act in breach of section 121(1) of the Constitution when it abolished the offices of postal employees in the public service. As Lord Bingham said at para 16:

> "Smith J held that section 36 of the 1999 Act was incompatible with section 121(1) of the Constitution in so far as it abolished the offices of postal officers and terminated their employment in the public service. Since the provision was not passed by the special majority needed for a constitutional amendment, it was unconstitutional. Mr Fitzgerald did not seek to support this reasoning, since it is not a breach of section 121(1) for Parliament to abolish a post in the Public Service, as the Court of Appeal rightly held. Whilst the Board would not support all the reasoning of the Court of Appeal in allowing the Attorney General's appeal against the judge's ruling in favour of the appellants, it is in complete agreement that the establishment of the new corporation, undertaken for sound governmental, administrative and commercial reasons, involved no breach or threatened breach of the appellants' constitutional rights."

88. The same is true here. It is common ground that there is no constitutional prohibition against abolition of posts in the public service by Parliament. This appeal concerns the removal of public offices from the public service and not the removal of public officers from offices which vest in the Public Service Commission. Section 121(1) of the Constitution vests power in the Public Service Commission to protect persons in the appointment and removal from public offices and not to protect public offices themselves against abolition by Parliament or even the government. Accordingly, the establishment of the Authority does not alter in any way the entrenched provisions of the Constitution (sections 120 and 121 in particular) and section 54(2) of the Constitution has no application to this case.

89. The Constitution requires that the obligation to pay tax is imposed by law and further requires that all monies collected by way of taxation be deposited into the Exchequer Fund and that payment out be authorised by Parliament. The Act is consistent with these requirements. There is no express provision of the Constitution or any assumption on which it is based that requires the assessment and collection of tax to be carried out only by persons directly employed in the service of government. Given the rationale for the chapter 9 protection, and the fact that those employed by the Authority pursuant to the Act will no longer be part of government, the assessment and collection of taxes can be done fairly and responsibly by a body corporate such as the Authority provided that it is genuinely independent, and there are adequate and effective safeguards available to protect those employed by it (and indirectly the public) from improper political interference.

11. Conclusion

90. Accordingly, the Board agrees with the courts below (albeit for different reasons) that the appellant has not succeeded in displacing the presumption of constitutionality of the Act. There is no constitutional prohibition against the arrangements made by the Act. For the reasons given above, the transfer of revenue functions to the Authority pursuant to the Act does not breach any implied provision or assumption on which the Constitution is based. The appeal must therefore be dismissed.