Press Summary

10 November 2026

The Attorney General of Trinidad and Tobago and others (Respondents) v Jason Jones (Appellant) (Trinidad & Tobago)

[2026] UKPC 38

On appeal from: Civil Appeal No P337 of 2018

Justices: Lord Reed, Lord Sales, Lord Burrows, Lord Briggs and Lady Rose

Background to the Appeal

The central focus of this appeal concerns the rights of gay men in Trinidad and Tobago. Sections 13 and 16 of the Sexual Offences Act 1986 (the "**1986 Act**") criminalise private, consensual sexual activity between adults of the same sex. These sections create the crimes of "buggery" and "serious indecency" respectively. Section 16 of the 1986 Act provides an exception for private, consensual acts between an adult man and woman, but not between adults of the same sex. The 1986 Act was passed by Parliament using the super-majority procedure set out in section 13 of the Constitution of Trinidad and Tobago (the "**Constitution**"). Laws criminalising such sexual activity have existed since colonial times, before the adoption of the Constitution in 1976.

The Constitution provides for individuals to have the fundamental rights and freedoms set out in section 4. These include the right to respect for private and family life: section 4(c). Section 13 of the Constitution provides that, where an Act is passed using the super-majority procedure, it shall have effect even though inconsistent with the individual fundamental rights in section 4 "unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual" (the **"proviso"**). Section 6(1) of the Constitution provides that laws in existence when it came into force are not invalidated by anything in section 4 and also provides in section 6(2) that in certain circumstances enactments which repeal and re-enact such a law are likewise not invalidated by anything in section 4.

Mr Jones, the appellant, is a gay man from Trinidad and Tobago who has experienced harassment, discrimination and violence because of his sexual orientation. He has also lived with anxiety and fear that he might be arrested, prosecuted and punished under the 1986 Act.

Mr Jones brought proceedings to challenge the compatibility of sections 13 and 16 of the 1986 Act with the proviso in section 13 of the Constitution, arguing that they should be disapplied or read down in light of his fundamental rights as set out in the Constitution, in particular in section 4(c). Against this, the respondent Attorney General contends that sections 13 and 16 of the 1986 Act are not affected by Mr Jones's rights in section 4 of the Constitution because they

are immunised from such a challenge by section 6 and also by section 13 of the Constitution (since, on the Attorney General's argument, the proviso has no application).

The High Court upheld Mr Jones's claim, finding that Mr Jones's fundamental rights under section 4(c) of the Constitution were violated by sections 13 and 16 of the 1986 Act; those provisions were not immunised by section 6 of the Constitution from a challenge based on those rights; and nor were those provisions immunised from such a challenge by section 13 of the Constitution, because Mr Jones had shown that they were not reasonably justifiable according to the test in the proviso. By a majority, the Court of Appeal allowed the Attorney General's appeal to a material degree in relation to his argument based on section 6(2) of the Constitution, to the extent that sections 13 and 16 of the 1986 Act reflected the law in existence when the Constitution came into force. However, the Court of Appeal unanimously held that, in so far as those provisions went beyond existing law when the Constitution came into force, they were not reasonably justifiable within the meaning of the proviso and were to that extent incompatible with Mr Jones's fundamental rights and therefore, to that extent, had to be disapplied.

Mr Jones appeals to the Judicial Committee of the Privy Council in relation to the Court of Appeal's ruling based on section 6 of the Constitution. The Attorney General does not appeal against the disapplication of sections 13 and 16 of the 1986 Act as ordered by the Court of Appeal but cross-appeals to contend that the Court of Appeal's order to confirm the validity of those provisions to a material degree should also be upheld by reference to section 13 of the Constitution, maintaining that Mr Jones has failed to show that the provisions are, to that extent, not reasonably justifiable according to the test in the proviso.

Judgment

The Judicial Committee of the Privy Council unanimously allows Mr Jones's appeal and dismisses the Attorney General's cross-appeal. It holds that sections 13 and 16 of the 1986 Act are not protected as existing law by section 6 of the Constitution, nor are they protected to any extent by virtue of section 13 of the Constitution, because Mr Jones has shown that they are not reasonably justifiable according to the test in the proviso. Lord Sales and Lord Burrows give the judgment, with which the other members of the Judicial Committee agree.

Reasons for the Judgment

Under section 6(1) of the Constitution, laws which existed immediately before the Constitution came into force in 1976 ("**existing law**") are protected from a fundamental rights challenge **[26]**. The same protection from a challenge based on fundamental constitutional rights applies to subsequent legislation which repeals and re-enacts existing law with modifications: section 6(2) of the Constitution **[31]-[32].**

It is common ground that sections 13 and 16 of the 1986 Act do not fall within the meaning of existing law in section 6(1) of the Constitution **[29]**. With respect to section 6(2), the Court of Appeal erred in their finding that sections 13 and 16 of the 1986 Act were protected as laws which merely repealed and re-enacted existing law with modifications **[35]**. Rather, those provisions constituted new law and were therefore not immunised from a challenge based on the fundamental rights in section 4 of the Constitution. The Judicial Committee holds that constitutional provisions which immunise old laws from challenges based on fundamental constitutional rights should be interpreted narrowly so as not to protect large areas of old law from constitutional scrutiny even after Parliament has comprehensively reviewed and sought to modernise them **[44]-[46]**. The 1986 Act as a whole reflected Parliament's assessment in 1986 of the whole of the law of sexual offences in light of the circumstances at that time and was a new and comprehensive regime for Trinidad and Tobago **[37]-[38]**. The correct

categorisation of the 1986 Act is that it is new law enacted after the Constitution came into force and so is not made exempt by section 6(2) of the Constitution from a challenge based on the fundamental constitutional rights in section 4 of the Constitution **[51]**.

Section 13 of the Constitution permits Parliament to pass legislation which is inconsistent with fundamental rights if certain legislative conditions are met **[52]**. The 1986 Act was passed into law using the correct procedural conditions as specified in section 13 **[53]**. However, by virtue of the proviso, such legislation will not be protected from a challenge based on the fundamental constitutional rights in section 4 where it is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

The Attorney General's contention, that the question whether sections 13 and 16 of the 1986 Act were not reasonably justifiable according to the test in the proviso should be assessed according to the circumstances which existed when the legislation was enacted in 1986, could not be accepted. The relevant time for that assessment is when the rights of the individual bringing the challenge are in issue and the question of justifiability is before the court **[56]-[66]**.

In the assessment whether sections 13 and 16 of the 1986 Act meet the reasonably justifiable standard in the proviso, the rights and interests of Mr Jones which are at stake involve a particularly important facet of his existence and identity since the ability to form an intimate and loving relationship with another person lies at the core of the right to private and family life [68]-**[69]**. The Constitution affirms the dignity of the human person and the importance of respect for family life. The criminalisation of private, consensual same-sex relations interferes with a fundamental aspect of Mr Jones's life and identity **[69]**.

For sections 13 and 16 of the 1986 to be immunised by section 13 of the Constitution from a challenge based on the fundamental constitutional rights in section 4, in light of the test in the proviso, the Attorney General would need to demonstrate that the interference with Mr Jones's rights was in furtherance of a legitimate aim. To that end, the Attorney General argued that sections 13 and 16 of the 1986 Act reflected earlier laws which were traditional and of long standing **[70]**. However, to order to justify a law on that basis, evidence would be required to explain the strength of the tradition and its consistency with prevailing societal values **[73]**. No such evidence was put forward by the Attorney General. In any event, the interference with the most intimate aspects of Mr Jones's private life is too severe for the relevant provisions to be considered as striking a fair balance and to be reasonably justifiable according to the test in the proviso.

The Judicial Committee therefore agrees with the High Court and the Court of Appeal that sections 13 and 16 of the 1986 Act are not reasonably justifiable in a society which has a proper respect for the rights and freedoms of the individual **[74]-[81].**

The Judicial Committee will receive further written submissions from the parties before making its final order as to any modifications to sections 13 and 16 of the 1986 Act to ensure their compatibility with Mr Jones's fundamental constitutional rights in section 4 of the Constitution **[85]-[88]**. However, the Judicial Committee's provisional view is that the order made by the judge in the High Court should be upheld **[89]**.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court