



# OTWAY AND ASSOCIATES

ATTORNEYS-AT-LAW

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23<sup>rd</sup> February 2018

Messrs. Alexander, Jeremie & Co.  
81 St. Vincent Street  
Port-of-Spain

Attention: Ms. Raisa D. Caesar

Dear Sirs,

**Re: The Honourable Chief Justice Mr. Ivor Archie**

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We act on behalf of the Law Association of Trinidad and Tobago and have been instructed to respond to your letter to our Client dated 21 February 2018 ("**your Client's Pre-Action Letter**").

We note that your Client's Pre-Action Letter identifies that: *"The main issue that we will ask the Court to determine is whether the Law Association is empowered under the Legal Profession Act in general or section 5 of the Act in particular to conduct, ascertain or establish the basis of allegations made against the Chief Justice"*.

The Law Association rejects any suggestion that Section 137 of the Constitution establishes an exclusive procedure for the examination of the conduct of the Chief Justice such as to prohibit or disentitle the Law Association (and presumably all other persons or organisations) from examining or forming a view about the conduct of your Client.

As with all public officials, your Client's conduct is subject to public scrutiny. The Chief Justice is no exception to this rule. Your Client has no right to restrict the examination and consideration of his stewardship by the Law Association, or by any member of the public for that matter. There is nothing in Section 137 of the Constitution that immunises your Client from such scrutiny in the way that you contend.

Further, under section 5 of the Legal Profession Act, the Law Association is required to represent and protect the interests of the legal profession in Trinidad and Tobago, to promote, maintain and support the administration of justice and the rule of law and to do such other things as are incidental or conducive to the achievement of its purposes. Where allegations have been made concerning the conduct of the Chief Justice which

have the potential to negatively impact confidence in the administration of justice and the rule of law, the Law Association would not only be entitled, but would have a responsibility to examine those allegations and, depending on the results of such examination, to take such steps as may be appropriate to promote, maintain and support the administration of justice and the rule of law.

By way of example and illustration, the further steps that the Law Association would be under a duty to consider taking (pursuant to its statutory mandate to promote, maintain and support the administration of justice and the rule of law) might include assuring the public that, after due examination, the Law Association is satisfied that the allegations have no merit and/or provide no basis for concern. Or, at the other end of the spectrum, the further steps that the Law Association would be under a duty to consider taking (pursuant to its statutory mandate to promote, maintain and support the administration of justice and the rule of law) might include referring a complaint to the Prime Minister for him to treat with it as he deems fit.

As you know, in ***Meerabux v AG of Belize*** [2005] 2 WLR 1307 the Judicial Committee of the Privy Council considered certain provisions of the Legal Profession Act of Belize which are similar in material respects to those contained in section 5 of the Legal Profession Act of Trinidad and Tobago. In doing so, the Judicial Committee (at para 28) recognised that the Bar Association of Belize was legitimately entitled to be concerned about complaints alleging inability or misbehaviour on the part of a Judge of the Supreme Court and, further, was likely to be involved in the presentation of such complaints to any tribunal that was convened to inquire into that matter.

It should be uncontroversial that the Law Association is entitled, and indeed has a responsibility, to examine the allegations that have been made concerning the conduct of the Chief Justice and, based upon the results of such examination, to take such steps as may be appropriate to promote, maintain and support the administration of justice and the rule of law. Our client therefore rejects your Client's suggestion that its examination of the allegations that have been made concerning the conduct of the Chief Justice is being conducted without any authority to do so.

We turn next to your Client's second contention that *"the fair-minded and informed observer, having considered all the facts, would conclude that there was a real possibility that the Law Association's insistence on conducting an investigation is motivated by the Law Association's pre-conceived disposition against our client as such is reflected in the said motion of 'No Confidence'."*

Our Client rejects this suggestion. There is no legal basis upon which the fair-minded observer test can be extended to preclude the examination of the conduct of public officials, including that of the Chief Justice. Quite apart from this, it is clear that the fair-minded and informed observer, having considered all the facts, would not conclude that the Law Association's decision to enquire into the allegations concerning the conduct of the Chief Justice is motivated by any pre-conceived disposition against your Client. In this regard, the only matter that you rely upon is the Law Association's previous Motion of No

Confidence in the Chief Justice. It should be noted, however, that the fair-minded and informed observer would be aware:

1. That the previous Motion of No Confidence had nothing to do with the allegations that are now the subject of the Council of the Law Association's decision to appoint a Committee to ascertain/substantiate the allegations made against the Chief Justice;
2. That the previous Motion of No Confidence was passed by a vote of the Law Association in general meeting, not by the Council of the Law Association;
3. That the decision to appoint a Committee to ascertain/substantiate the allegations made against the Chief Justice was made by the Council of the Law Association, not by the Law Association in general meeting;
4. That the Law Association is required to promote, maintain and support the administration of justice and the rule of law;
5. That a number of serious allegations have been made in the public domain concerning the conduct of the Chief Justice;
6. That the existence of these allegations in the public domain have the potential to negatively impact confidence in the administration of justice and the rule of law;
7. That, where allegations of that nature have been made concerning the conduct of the Chief Justice, the Law Association has a responsibility to examine those allegations;
8. That, when the first article was published alleging that the Chief Justice had sought to influence Judges to hire the services of a private firm with which his friend was associated, the Council of the Law Association issued a press release stating that the allegation was not as yet substantiated but called upon the Chief Justice to respond to allegations that he discussed the Judges' security arrangements with his friend;
9. That it was only after the Chief Justice failed to respond to this and additional allegations were made in the press to the effect that he had sought to influence the distribution of HDC housing to certain applicants, that the Council of the Law Association made its decision to establish a Committee to ascertain/substantiate the allegations made against the Chief Justice;
10. That the President of the Law Association and a senior ordinary member met with your Client on 30<sup>th</sup> November 2017 to inform him of the decision of the Council of the Law Association;

11. That the Law Association has been careful to recognise and acknowledge that it has no disciplinary or other power in relation to the Chief Justice;
12. That the Law Association has also been careful to recognise and acknowledge that it has no power to compel the Chief Justice to respond to the allegations that had been made concerning his conduct;
13. That the Law Association has retained the services of two highly regarded and independent Queen's Counsel, from within the CARICOM region but outside of Trinidad and Tobago, Dr. Francis Alexis Q.C. and Mr. Eamon Courtenay Q.C., for the purpose of obtaining their advice on the way forward prior to convening any general meeting of the Law Association;
14. That whilst acknowledging that it had no powers to compel the Chief Justice to do so, the Law Association has offered the Chief Justice the opportunity to provide a response to the allegations, prior to the brief being sent to Dr. Alexis Q.C. and Mr. Courtenay Q.C. for their advice.

Please note that the Council of the Law Association has not received an interim report from its legal advisors, Dr. Alexis Q.C. and Mr. Courtenay Q.C. The preliminary report to which you make reference in your Client's Pre-Action Letter is merely a preliminary report of the Committee to the Council.

Since 30<sup>th</sup> November 2017, your Client had been informed of the Council's decision to seek to ascertain/substantiate the allegations that had been made against him. By its letter dated 20<sup>th</sup> January 2018, the Law Association had also informed your Client of *inter alia* its intention to submit a brief to Dr. Alexis Q.C. and Mr. Courtenay Q.C. to advise it on the way forward and had asked the Chief Justice to provide a response to the allegations for inclusion in such brief to be sent to Queen's Counsel.

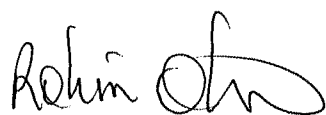
In all the circumstances, our instructions are that the Law Association intends to proceed in the manner previously indicated to your Client, i.e. by sending a brief to Dr. Alexis Q.C. and Mr. Courtenay Q.C. to advise it on the way forward. The Law Association remains desirous of receiving any response or information that your Client chooses to provide in relation to these matters and due consideration will, of course, be given to same, if and when received. We respectfully suggest, that rather than focus on launching legal proceedings to attempt to prevent the Law Association from complying with its responsibilities, your Client should instead consider embracing the opportunity that this presents for the Chief Justice to respond to the allegations that have been made against him.

Finally, we would emphasise that there is nothing that would properly justify your Client making an application for any type of *ex parte* order in this matter, particularly since there can be no justifiable concern about Dr. Alexis Q.C. and Mr. Courtenay Q.C. being provided with their brief to advise the Law Association. However, in the event that your Client chooses to issue proceedings against the Law Association and to seek any type of *ex*

*parte* order, we ask that you: i) specifically draw this letter to the attention of the Court, ii) provide us with early and adequate notice of your intention to do so, and iii) note that we are prepared to attend at short notice to oppose any relief that may be sought against our Client.

We do hope that good sense will prevail in this matter and that unnecessary litigation will be avoided.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robin Otway', with a stylized, flowing script.

Robin Otway

cc: Christopher Hamel-Smith S.C.  
Jason Mootoo  
Rishi Dass  
Law Association of Trinidad and Tobago