JCPC 2018/0063

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF THE
REPUBLIC OF TRINIDAD AND TOBAGO

BETWEEN:

THE HONOURABLE THE CHIEF JUSTICE OF TRINIDAD AND TOBAGO
MR. JUSTICE IVOR ARCHIE O.R.T.T.

Appellant

AND

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Respondent

RESPONDENT'S CASE

References to the Record of Proceedings are in the format [R/Volume No. /Electronic Bundle Page Number /Paragraph or Line Number where available]

Introduction

1. A number of articles have been published in the press containing serious allegations in relation to the conduct of the Appellant, who is the Chief Justice of Trinidad and Tobago, some of which, even if untrue, are capable of undermining public confidence in the judiciary and the administration of justice.

2. The Chief Justice himself[1] recognised the seriousness of the allegations. In his own words, the articles falsely, improperly and maliciously suggested that he had corruptly and knowingly used his office, as Chief Justice of Trinidad and Tobago, in concert with convicted felons for their benefit by seeking to persuade the Judiciary and/or otherwise obtain a private security contract for judges' personal safety and that he had corruptly and knowingly used his office in concert with convicted felons for their benefit by seeking and/or with the intention of defrauding innocent persons to obtain HDC housing.[2]

3. Despite calls for him to respond to the allegations from the Law Association[3] and others including former Chief Justice and President of the Caribbean Court of Justice Michael de la Bastide[4] there was no response by the Chief Justice to these allegations for some considerable time and, when he eventually responded, he provided a limited and partial response.

4. The initial lack of response by the Chief Justice and, thereafter, the timing and content of his response, precipitated further public criticism from senior public commentators including former Chief Justices Bernard, de la Bastide and Sharma,[5] former President of the Law Association Martin Daly SC and former Attorney General Ramesh Lawrence Maharaj SC. Others strongly supported the Chief Justice, including a group of anonymous judges who issued a press statement.

5. In light of this increasing public imbroglio and, following an unsuccessful call by the Law Association for the Chief Justice to address the allegations being made against him, the Council of the Law Association decided that, with a view to obtaining advice from two Queen's Counsel and then considering what, if any, action should be taken by the Law Association, it would establish a committee to try to ascertain/establish the facts in relation to the allegations that had been made against the Chief Justice.

[1] See paragraph 6 of the Chief Justice's Principal Affidavit [R1/32/6]
[2] The Housing Development Corporation is an Agency of the Ministry of Housing & Urban Development
[3] [R1/627-628] at a meeting on 30 November 2017.
[4] [R2/600].
[5] [R1/52] and [R1/54].

6. The ultimate issue that must be determined on this appeal is whether it is unlawful for the Law Association to attempt to ascertain or establish the facts in relation to admittedly serious allegations made against the Chief Justice for the purpose of receiving advice thereon and considering what further action, if any, should be taken.

7. The Appellant's application for judicial review is in respect of a decision described as being *"contained in the Law Association's letter dated February 23, 2018 to continue to take further steps to further an enquiry and/or an investigation to ascertain and/or substantiate allegations made against the appellant and/or refused (sic) to take no further steps in that regard"* [**R1/12/1]**.

8. On 27 February 2018 the Chief Justice filed his Application for Leave for Judicial Review which came on for hearing that afternoon before the Honourable Madame Justice Nadia Kangaloo who, with the parties' consent, gave directions for evidence and for the matter to be heard as a 'rolled up' hearing, on 2 March 2018.

9. On 2 March 2018 the matter was heard[6] and the Learned Judge delivered her judgment on 6 March 2018. The Judge found[7] that the Law Association had acted outwith its authority under the Legal Profession Act in commencing and continuing its enquiry and/or investigation into the allegations against the Chief Justice and granted a declaration and quashing order accordingly. The Judge rejected the claim that the Law Association 'was guilty of apparent bias'[8] and made no finding in respect of the Chief Justice's claim of unfairness and bad faith.

10. On 22 May 2018 the Court of Appeal (Mendonca,[9] Chief Justice (Ag.), Jamadar J.A[10] & Bereaux J.A[11]) allowed the Law Association's appeal and dismissed the cross appeal of the Chief Justice finding that:

[6][R 1/ 164 to 444]
[7] [R 2/732 to 755]
[8] [R2/751/37]
[9] [R 3/1012 to 11079]
[10] [R 3/1180 to 1116]
[11] [R 3/1117 to 1187]

a. section 137 of the Constitution did not proscribe the Law Association from enquiring into or investigating the conduct of the Appellant;[12]
b. that section 5 of the Legal Profession Act permitted the Law Association's enquiry or investigation;[13]
c. that the test of apparent bias was inapplicable to a case of this nature and that, if it did apply, no case of apparent bias was made out;[14]
d. that the allegation of bad faith on the part of the Respondent was not made out;[15] and
e. the Chief Justice had not been treated unfairly by the Law Association.[16]

11. The Chief Justice now appeals on the grounds[17] that the Court of Appeal should have found that:

a. section 137 of the Constitution provided the sole basis and procedure for investigating the conduct of the Chief Justice and removing him/her from office;

b. section 5 of the Legal Profession Act ("the LPA") did not provide the Law Association with authority to conduct an investigation into allegations made against the Chief Justice;

c. the Law Association's investigation of these allegations is tainted by pre-judgement and/or apparent bias by reason of (a) its motion of no-confidence in the Chief Justice passed 1 June 2017 and (b) its comments as set out in its press release on 14 December 2014; and

d. the Law Association's investigation has been carried out unfairly by reason of its failure and refusal to provide the chief justice with (a) details of the procedures for the material which it investigating committee has considered/is considering, or the legal advice which it has received, or a copy of the

[12] Mendonca JA [R2/1058/87] & Bereaux JA [R2/1100/31 and 33], Jamadar JA [R2/1137/40-42] and[R2/1149/ 70-71]
[13]Mendonca JA [R2/1058/87] & Bereaux JA[R1/1104/40]& Jamadar JA [R2/1124/13], [R2/1129/26] and [R2/1132/32], [R2/1134/35].
[14] Mendonca JA [R2/1064/101-103, 114] & Bereaux JA [R2/1111/53-56 & Jamadar JA [R2/1158/90-93]
[15] Mendonca Ja [R2/1078/129]& Bereaux JA [R2/1116/66] & Jamdar JA [R2/1162/102].
[16] Mendonca JA [R2/1078/129] & Bereaux JA[R2/1115/63] &Jamadar JA R2/1161/98].
[17] Grounds of Appeal -[R3/1205/2].

Committee's interim and/or final report and (b) the opportunity to comment thereon.

Outline Submissions

Section 137

12. The Chief Justice now concedes, for the first time,[18] that anyone is entitled to investigate a judicial officer but submits that any such investigation must be restricted to establishing that there is a *prima facie* case, or a *'proper basis'* on which a reference may be made under section 137 of the Constitution. The Chief Justice's claim is that, because section 137 establishes the sole basis for the investigation and removal of judges, it therefore bars anyone from conducting an enquiry into the conduct of judges beyond satisfying themselves that there is a *prima facie* case, or a 'proper basis' on which a reference under section 137 might be made.

13. The Law Association submits that this is misconceived. The purpose of section 137 is to create an exclusive procedure for the removal of judges for inability to perform their jobs or for misconduct. The Chief Justice's interpretation of section 137 implies into that section a bar that prohibits anyone from enquiring into alleged inability to perform or misconduct on the part of judges, beyond whether there is a *prima facie* case, or a 'proper basis' to refer. That is an extreme and unlikely reading of the provision. Section 137 does not immunise the members of the judiciary from scrutiny to which they, like all public officials in a liberal democratic state, must be subject.

14. In any event, and quite apart from this, the Law Association did not do any more than what the Chief Justice now concedes is appropriate.

Vires

15. The challenge in respect of the vires of the Law Association's action is answered simply by reference to section 5 of the Legal Profession Act ("the LPA") which provides, i*nter alia*, that its purposes are 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

[18] Appellant's case paragraph 11.

achievement of these and other purposes set out in section 5 of the LPA. The allegations that have been made concerning the conduct of the Chief Justice go directly to the heart of the administration of justice and the rule of law, including maintaining public confidence in the administration of justice and the rule of law. These allegations also plainly impact upon the interests of the legal profession in Trinidad and Tobago.

16. In any event, the Chief Justice now accepts that the Law Association could make a reference to the Prime Minister about possible misconduct, and that to this end it could embark on an investigation into the facts. The Chief Justice submits that that investigation would have to be very limited. The Law Association does not agree about that, but the question of *vires* is perhaps of less significance in light of the Chief Justice's concession.

17. In acting to fulfil its statutory purpose, the Law Association could not be expected to act without reasonable enquiry to try to inform itself, as best as it could, as to the facts that were relevant to the allegations made against the Chief Justice and to seek legal advice thereon before making any decisions about whether it should do anything further. This is precisely what it did and what precipitated the challenge herein.

Bias/Prejudgment

18. There have been concurrent findings by both the first instance judge and a unanimous Court of Appeal that no claim of apparent bias has been made out. A final court will only interfere with such concurrent findings in exceptional circumstances. This reluctance applies with even greater force in the context of findings by the local courts in relation to the views of the notional '*fair minded and reasonably informed bystander*' in a Trinidad and Tobago context. In this case, there is no reason to interfere with this finding of the courts below on the issue of apparent bias, and the finding is fully justified on the facts.

19. In any event, the Law Association is not a decision maker who determines any rights in this context, or which will make any final findings in respect of the Chief Justice. Depending on the outcome of its enquiries, the nature of the advice it receives from its legal advisors and any future decisions it may make, the Law Association potentially

might become, at highest, a complainant to the Prime Minister. It would therefore be contrary to principle and impractical for the Law Association to be made subject to strictures imposed upon or be treated as though it was the actual arbiter of any rights of the Chief Justice.

Unfairness

20. It is axiomatic that obligations as to fairness are informed by context and the particular circumstances of each case. The Law Association has no decision making role in the section 137 process leading to the removal of a Chief Justice or the actual decision as to whether or not he should be removed. The scope and nature of the investigation needs to be appreciated when considering the extent to which the requirements of natural justice apply and have been met.

21. Properly understood, at all times the Law Association was engaged in the exercise of gathering facts so as to fully inform itself as to what, if anything, it should do in relation to the allegations concerning the Chief Justice, including in particular limited, at the extreme end of the spectrum of possibilities, sending a reference to the Prime Minister. In the course of that exercise the Law Association met and/or exceeded the obligations of fairness owed to him. It informed the Chief Justice of the allegations made against him which it was considering, provided him with all information and materials he or his lawyers requested, and gave him an opportunity to be heard.

The nature and scope of the investigation or enquiry, and the Chief Justice's concession

22. In his pre-action protocol letter dated 21 February 2018, the Chief Justice's lawyers identified that *"[t]he 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 that Act in particular to conduct, ascertain or establish the basis of allegations against the Chief Justice"* [R1/77]. And they asserted that: *"It is unconstitutional and unfair for the Law Association to conduct an investigation since it has no authority to*

do so. Any such enquiry is outwith the procedural safeguards established under section 137 of the Constitution and the body of case law on that provision." [R1/78]

23. As set out in the grounds on which he was seeking judicial review in his Without Notice Application, the Chief Justice was contending that:

> *"The LATT had and has no power to determine whether any allegation made against the Applicant carried sufficient weight and/or was sufficiently established. It had no power to determine, even preliminarily, the truth or falsity of the allegations made against the Applicant…"* [R1/ 20/(m)].

24. At paragraph 11 of his Case, the Chief Justice now concedes that Section 137 of the Constitution *"does not prohibit anyone from investigating allegations against the Chief Justice as a preliminary step before making a complaint to the Prime Minister."* He now contends that: *"However, they may do so only insofar as is necessary to satisfy themselves that there is a prima facie case against the Chief Justice; or, in other words, a proper basis on which the Prime Minister might refer the question to the President so as to initiate an investigation under section 137."* This is a concession not made in either of the courts below.

25. The investigation that the Chief Justice now accepts that it would be legitimate for anyone (including the Law Association) to conduct which would, at a minimum (and at this stage putting it as neutrally as possible) include the gathering of evidence and information about the allegations, and about the facts said to underpin those allegations, and to subject that data to some form of merits-based appraisal and evaluation.

26. The Law Association welcomes this clarification of the Chief Justice's position. The Law Association's investigation did not go beyond this entitlement as conceded by the Chief Justice (see below).

27. However, the Law Association does not accept that its (or anyone else's) enquiries concerning a judge's alleged inability to perform his job or misconduct must necessarily cease at the point that it (or anyone else) has sufficient evidence or information upon

which it could be said there is a *prima facie* case or that there has been established a 'proper basis' a reference might be made under section 137.

28. It would be odd if the Law Association (and anyone else who was enquiring into a judge's alleged inability to perform the jobs or misconduct) was required to cease collecting information and evidence; to stop talking to relevant persons, and to cease all evaluation and appraisal, as soon as it might be said that there was sufficient evidence or information upon which it could be said (by whom and on what basis?) that there is a *prima facie* case or that there has been established a 'proper basis' on which a reference might be made by the Prime Minister under section 137. With respect, that cannot be right. The Law Association (and anyone else) must be entitled to do the best they can to get to the facts, and to take legal advice thereon, before making decisions. That is what the Law Association has sought to do here.

29. At paragraph 12 of his Case, the Chief Justice submits that section 137 "*does not permit anyone other than the Tribunal duly established under that section to (1) conduct an investigation with* the *intention of determining whether the allegations are in fact true; or (2) take any further action in relation to those allegations, other than making a complaint to the Prime Minister."* At paragraph 13 of his Case, it is said that the Law Association, by its investigation, intends to do both things.

30. The Law Association does not accept that, on its true construction, section 137 has the effect contended for in paragraph 12 of the Chief Justice's case. For example, depending on the circumstances, a determination of whether allegations against a judge, including a Chief Justice *"…are in fact true"* may be made outside of the section 137 procedure. One obvious illustration of this is where criminal charges are laid against a judge.

31. In any event, the assertions made in paragraph 13 of his Case with respect to the Law Association's intentions are incorrect.

32. Dealing with (2) initially, it is not correct to suggest that the Law Association intends to take any further action in relation to the allegations against the Chief Justice other than potentially making a complaint to the Prime Minister. In fact, the Law Association

has made it clear that the most it would do, adverse to the Chief Justice, is make a reference/complaint to the Prime Minister for him to consider under section 137.

33. In reply to the Chief Justice's pre-action protocol letter, the Law Association's lawyers identified that the steps it would be under a duty to consider taking might include assuring the public that the Law Association is satisfied that the allegations have no merit and/or provide no basis for concern and, at the other end of the spectrum, referring a complaint to the Prime Minister.

34. Consistent with this, as submitted to Kangaloo J at first instance, the investigation would seek to ascertain the facts as best the Law Association could before taking any action. At one end of the range of action might be a pronouncement that *"This is just people stirring up muck at one extreme"*.[19] At the *"...furthest extreme"* the Law Association would refer the matter to the Prime Minister *"…to then do his or her job"*.[20] (See also Law Association's written submissions to the Court of Appeal, at paras 31, 32 and 35 [R3/903-904]; and its oral submissions made in the Court of Appeal: [R3/929, lines 30-35]).

35. As for (1), the Law Association accepts there was at one stage a degree of imprecision or inconsistency in the description of its intended investigation. However, when considered in the context of, first, the Law Association's admitted inability to call witnesses or to exercise any disciplinary function over the Chief Justice; and secondly, its stated intention to send the results of the investigation into the facts to Queen's Counsel for advice as to whether any further action should be taken (which at worst would be a reference to the Prime Minister), it is clear that the Law Association's investigation was not intended to finally determine the truth of the allegations.

36. In any event, references to truth must of course be considered in context. Even if the Law Association did determine for itself the truth or otherwise of the allegations, this would in reality be its view or opinion of where the truth lay. The Law Association does not accept that section 137 prevents it (or indeed any other person) from holding a view

[19] Transcript, [R1/383 lines 15-23]
[20] See transcript, [R1/383-384]

or opinion, based on their own enquiry, on the conduct of the Chief Justice. This is dealt with elsewhere in the Case.

37. It is useful however to trace this issue from the initial correspondence, through the exchanges before the High Court and Court of Appeal, to where we now stand.

38. The SFI sets out the background and core documents and correspondence. By email to its members, dated 2 December 2017, the Law Association reported that it would be establishing a committee to *"...ascertain/ substantiate the facts upon which the allegations made against the Appellant were alleged to be based and to report back to Council for further consideration"* (SFI, para 23; the email is at [R2/624]). Self-evidently this does not mean to decide or pronounce (certainly not in any final sense) whether the allegations are true. This same phrase was used by the Law Association in its public statement on 14 December 2017 (SFI, para 28; [R1/43]).

39. By email dated 18 December 2017, the Law Association's Secretary explained to the membership that it had informed the Chief Justice of its intention to *"...investigate the allegations to* determine *whether they are true or not"* (SFI, para 36). The Chief Justice has put considerable focus on this particular description of the Law Association's intentions. It is accepted that it was not the most helpful summary of the position.

40. In the same email however it was also said that the Law Association's Council had *"...resolved to retain two Senior Counsel to advise on the question whether there was sufficient basis to refer a question of misbehaviour by the Chief Justice to the Prime Minister for his consideration pursuant to section 137 of the Constitution"*-[R2/628/3]. It was clear therefore that the backdrop to all this was a potential reference to the Prime Minister, with a view to him in turn instigating (if thought appropriate) the section 137 process. The question that the Committee was addressing was whether there was a 'sufficient basis' to make that reference, not, it might be said, to finally determine the truth of the allegations. It might also be said that this was an email from the Law Association to its membership summarising what had been resolved, and not a formal public statement.

41. On 20 January 2018, the Law Association wrote to the Chief Justice reiterating that it had created a committee to *"...attempt to ascertain/establish the basis of certain*

allegations made against you" (SFI, para 45; [R1/58]). The Law Association considered that it had the duty to 'protect' the Chief Justice if the allegations were not substantiated and to hold him to account if they were. Words like 'substantiate' and 'ascertain' admit of degree, and must be read in context. The context, again, was explained as being a potential complaint to the Prime Minister to instigate section 137 proceedings [R/58/para 4]. The Law Association accepted in terms that it did not have the power to compel the Chief Justice to respond, or to take any disciplinary action [R/ 58/ para 4].

42. The inference to be drawn from this correspondence and the general context is that the Law Association was not intending, including as a matter of practical reality, to finally determine whether or not the Chief Justice was guilty of the allegations.

43. The response of the Chief Justice's lawyers, was to state that *"...The Association has no duty to protect the Chief Justice and no duty to hold the Chief Justice accountable at all, let alone whether the allegations are substantiated or not"* [R1/63]. In his pre-action protocol letter the Chief Justice's lawyers explained that they considered the Law Association to lack the power to *"...conduct, ascertain or establish the basis of the allegations"* [R1/77]. There was no reference to the Association's purported decision to determine whether the allegations 'were true or not', nor to the email from the Secretary of 18 December 2018.

44. The Law Association responded, contending that section 137 did not prevent it (or anyone else) from *"...examining or forming a view about the conduct of your Client"* [R1/81]. Again, however, it was emphasised that at one end of the spectrum, the investigation might reveal *"...that the allegations have no merit and/or provide no basis for concern"*[R1/81]; and that, at the other end of the spectrum the Law Association might take other action including *"...referring a complaint to the Prime Minister"* [R1/82]. It was again emphasised that the LATT did not enjoy any disciplinary powers, had no power to compel the Chief Justice, and that by way of a safeguard it had resolved to send the results of its investigation to two Senior Counsel so as to *"...obtain their advice on the way forward"* [R1/84].

45. The consistent theme of the communications was the committee's intention to attempt to ascertain or establish the basis of the facts underlying the allegations, with a view to

deciding whether to take any action including making a complaint to the Prime Minister.

46. This issue was in any event not left unexplored when the matter came on for hearing. During the hearing before Kangaloo J, the Law Association highlighted to the judge an apparent inconsistency between, on the one hand, its right to complain to the Prime Minister, and on the other the Chief Justice's contention that *"....you can't conduct an investigation to ascertain the facts and determine whether, in fact, there's a proper basis for making that representation to the Prime Minister"*.[21] This looks very much like what the Chief Justice now accepts can be done. It was made clear that the purpose was limited to the possibility, at most, of making a reference to the Prime Minister.

47. Later during the same hearing the Association submitted that if it was entitled to be a complainant under section 137 it must also be *"...entitled to check its facts"*; the Association *"...should check* their *facts as best they can, because ultimately of course they are not going to be determining the final outcome..."*. This was the *"...responsible thing for them to do"*.[22] It was recognised that as a result of this checking, it might become clear that *"...there is nothing there"*. The Association did however agree with the judge that, on the basis of their investigation, they would 'form a view' as best they could.[23] Its position was summarised thus:

> *"...due diligence, as best it can, to ascertain the facts, as it happens to be in this case, in relation to the allegations that may have some to their attention, prior to choosing, prior to making the judgment as to whether it is a matter that should be referred to the JLSC or the Prime Minister...*
> *...what is the way in which it should be presented and what material should be provided. That is the responsible and sensible thing."*[24]

48. The Association submitted that it would be 'fanciful' for it to make the reference to the Prime Minister *"...without them having ascertained, as far as they reasonably could, by going through a* process *what the facts were that were going to be contained in their*

[21] Transcript, [R1/349, lines 4-7]
[22] Transcript, [R1/366].
[23] Transcript, [R1/367 lines 22-27].
[24] Transcript, [R1/368, lines 12-21].

memoranda…".[25] See also, the submissions at (R/383, lines 15-23) and (R/ 384, lines 4-17). The focus was to be on *"…an inquiry into the facts that underlie the alleged conduct"*.[26] See also (R/413).

49. The Law Association also emphasised that its investigation would include seeking the advice of two Senior Counsel. The fact gathering exercise was *"…literally ascertaining the facts for the purpose of briefing to counsel, so counsel could give its advice…"*.[27] This was to get *"…their independent professional advice as to what the right thing for the Law Association to do is"*.[28]

50. In his reply submissions before Kangaloo J, the Chief Justice did not appear to take any issue with the above extracted explanations of the nature, scope and purpose of the Association's investigation. It was, however, submitted that there was no basis for it in the law.[29]

51. In her judgment, Kangaloo J said that no authority had been provided to show that the Law Association had *"…the entitlement and obligation to conduct an enquiry and/or investigation into a judge or Chief Justice with the potential aim of such judge or Chief Justice removed from office"* (para 21, R/744). However, it is clear that this was not the scope or purpose of the investigation, save to the extent that an investigation with the aim of deciding if to make a reference/complaint to the Prime Minister for his/her consideration can be seen as one which does have the potential aim of having the issue of removal from office considered pursuant to the provisions of section 137. The Law Association was mindful of the need to do the best it could to get to the facts, and to take legal advice thereon, before deciding whether it should or should not make a complaint to the Prime Minister. The Law Association's investigation does not have the aim, and could not have the effect, of removing the Chief Justice. The final determination as to the truth of the allegations and what was to be done about them would lie with the tribunal established under section 137, if any such tribunal were to be subsequently appointed.

[25] Transcript, [R1/376, lines 15-17].
[26] Transcript, [R1/414, lines 18-19]. See also [R1/413].
[27] Transcript, [R1/410, lines 5-14].
[28] Transcript, [R1/413, lines 21-23].
[29] e.g. [R1/429 lines 11-14]

52. Kangaloo J accepted that the results of the factual enquiry would be sent to counsel for advice *"…on whether there* is *sufficient basis to refer a question of misbehaviour… to the Prime Minister"* [R2/748/27]. She held however that the Law Association was not authorised under the relevant legislation *"…to conduct an investigation into the misbehaviour of the Chief Justice in any terms. The sole procedure for doing so is to be found in the Constitution"*. In light of paragraph 11 of his Case, the Chief Justice presumably now accepts, insofar as the judge found that no investigation at all was allowed, this was wrong. At the very least, even on the Chief Justice's present case, the Law Association is entitled to enquire into the facts so as to determine whether there is a proper basis to the allegations, worthy of consideration under section 137.

53. The Law Association sought to appeal Kangaloo J's finding in this regard. In its Notice of Appeal, it complained that the judge *"…went on to erroneously find that no enquiry or investigation could be undertaken… for the purpose of deciding if to make… representations to the Prime Minister with respect to the exercise of his power under section 137…"* [R1/764]. Again, the focus was on an enquiry with a view to establishing whether there was a case to be put before the Prime Minister. It was *"…attempting to inform itself as to the facts"* (written submissions to the Court of Appeal, [R3/903/para 31 – see also paras 32 and 33]).

54. The Court of Appeal sought clarification on the nature and scope of the investigation. It is probably most fair for the Board to read [R3/914-919] in full. The Law Association submitted in sum that the Committee was to:

> *"…enquire and investigate into the facts that would either cause you to make such a complaint if that enquiry suggested that there was enough there for the concern to be serious enough to represent to the decision-maker that he, she, or it should consider what their duty was under Section 137, or alternatively, to conclude that having enquired or investigated into the facts relating to the allegations… there was no proper basis for making that representation or complaint…"*[30]

55. The analogy used by the Law Association was with the sort of fact-finding that a solicitor must do when his client comes to him with a potential case. As Jamadar JA

[30] [R3/919, lines 21-36].

put it during the hearing *"…what you say the Law Association is doing is information gathering"*. The Association agreed, but went on to confirm that it was *"…not suggesting that there is no element… of interrogating the facts"*. The Law Association was entitled, it submitted, to evaluate those facts.[31] It stands by this submission. However, the context remained the possible reference to the Prime Minister; i.e. *"Do we feel we should defend the judge or do we feel there is enough to at least ask the Prime Minister to look at it?"*.[32] To this end the Law Association would be bound to undertake *"…a certain amount of sifting and assessment of them [the facts] to see if there was anything in them…"*.[33]

56. In any event, by the time the issues were fleshed out in the High Court, and certainly following the hearing in the Court of Appeal the scope and nature of the investigation was clear. In particular it was clear that the Law Association's investigation was not aimed at, and would not formally pronounce upon, the ultimate truth of the allegations against the Chief Justice.

57. The Law Association maintains, as a fair summary, that the investigation is to ascertain or substantiate the facts upon which the allegations are alleged to be based. The investigation may well involve the Law Association forming, at least on a preliminary basis, a view about the conduct of the Chief Justice. The Association submits that the true scope and nature of its investigation has been made clear in its public statements and *inter partes* correspondence. This is beyond doubt in light of the clear and consistent explanations given in both courts below. Insofar as clarification is needed, the Law Association does not intend to finally pronounce on whether the allegations are true. But it does not consider its investigation to be constitutionally limited to establishing the barest of facts or evidence necessary to make out a *prima facie* case. Neither does the Law Association consider the proposed tests of 'proper basis' or '*prima facie* case' to be useful or appropriate tests for delineating the constitutional limits of its investigation. In the end the Association must be free to inform itself best as it can of the underlying facts before getting legal advice and taking any action and that is what it has sought to do.

[31] [R3/934].
[32] [R3/935, lines 26-30].
[33] [R3/936, lines 16-22]. See also [R3/937, lines 23-31].

Section 137

The breadth of the alleged prohibition under section 137

58. Before turning to consider the terms of section 137 when read in light of other provisions in the Constitution, it is worth considering the breadth of the prohibition said by the Chief Justice to flow from section 137.

59. First, there is the question of the nature and scope of enquiry that it is said section 137 debars. The Chief Justice now says that any person (including the LATT) is entitled to enquire into the facts but only to the extent of satisfying themselves of a *prima facie* case or a proper basis for the Prime Minister to refer. He contends that no-one is entitled to investigate the facts concerning any judge's ability to perform his/her job or his/her conduct, beyond this threshold.

60. Secondly (and relatedly), it is important to note that the Chief Justice's position relates not to objective truth but to opinion. The constitutional prohibition said to flow from section 137 affects not just an investigation into the facts, but the right to form and hold a view or opinion about the conduct of the Chief Justice. Even if the Law Association was to reach a conclusion as the merits of any particular allegation against the Chief Justice, this would necessarily be its opinion or view, and not objective fact.

61. Finally, the Chief Justice's position is that the prohibition applies to all. The Chief Justice's case is that section 137 prohibits all and any investigation into the merits or truth of the allegations, beyond the threshold limits he identifies, by anyone. It is said that this stems as a matter of law from a construction of section 137 of the Constitution (Appellant's Case, para 12).

62. The Law Association's position is that, insofar as the Chief Justice's says that section 137 prohibits all investigations into the allegations (beyond the threshold limits he identifies) by whomever they are conducted, then this would have extreme and chilling effects on a wide range of people and bodies in Trinidad and Tobago, and simply cannot be right.

Principles of interpretation

63. The Chief Justice[34] relies upon the well-known observation of Lord Wilberforce in *Minister of Home Affairs v Fisher* [1980] AC 319 as to the generous interpretation to be given to constitutional documents. It is important however to understand the context and limitation of Lord Wilberforce's comments. It is clear from the decision in *Fisher* that the need for a generous interpretation was more particularly relevant when dealing with the Fundamental and Rights and Freedoms provisions of a Constitution which, by their very nature, were drafted in broad terms requiring generous interpretation, as opposed to the remaining parts of the Constitution. This is clear when the full passage from *Fisher* relied upon by the Chief Justice is set out:[35]

> *"It can be seen that [the Constitution] has certain special characteristics. 1. It is, particularly in Chapter I, drafted in a broad and ample style which lays down principles of width and generality. 2. Chapter I is headed "Protection of Fundamental Rights and Freedoms of the Individual." It is known that this chapter, as similar portions of other constitutional instruments drafted in the post-colonial period, starting with the Constitution of Nigeria, and including the Constitutions of most Caribbean territories, was greatly influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969). That Convention was signed and ratified by the United Kingdom and applied to dependent territories including Bermuda. It was in turn influenced by the United Nations' Universal Declaration of Human Rights of 1948. These antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called "the austerity of tabulated legalism," suitable to give to individuals the full measure of the fundamental rights and freedoms referred to."*

64. More importantly, even where the generosity of the *Fisher* approach is appropriate, the exercise of judicial construction is not unrestrained but is necessarily constrained by the actual language used. Lord Wilberforce was careful to note that "*[r]espect must be paid to the language which has been used and to traditions and usages which have given meaning to that language*" [1980] AC 319, 329. Sydney Kentridge Ag J famously noted the danger in ignoring this limitation: "*If the language used by the lawgiver is*

[34] Appellant's written case paragraph [99].
[35] [1980] AC 319, 328E-H.

ignored in favour of a general resort to 'values' the result is not interpretation but divination." *State v Zuma* [1995] 1 LRC 145, 155.

65. This preliminary point is set out to underscore the enormity of the submission of the Chief Justice which appears to require the Court to derive from section 137 a prohibition upon any person from enquiring into the conduct of the Chief Justice with a view to determining if the allegations are true (Appellant's Case, paras 11, 12, 92, 106 and 113-115). No person it seems is entitled to enquire and form a view about the Chief Justice's conduct, beyond simply that there appears to be a prima facie case. If right, section 137 has an extreme and chilling effect.

Chilling effect of the Chief Justice's reading of section 137

66. The Law Association (like others in Trinidad and Tobago) enjoys rights and freedoms at common law and under the Constitution. There are rights integral to the maintenance of the status of a sovereign democratic state such as the right to criticise public officials - see *Hector v Attorney General of Antigua* [1990] 2 AC 312, 318. This allows freedom of expression "to act as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country"- *R v Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115, 127 F. This has been described as a "core principle of democracy" under Westminster style Constitutions -*Benjamin v Minister of Information and Broadcasting* [2001] 1 WLR 1040, 1050–1051.

67. These principles find express support as well in the preamble to the Constitution which provides that this nation is founded upon principles that:

    a. acknowledge "the position of the family in a society of free men and free institutions"; subsection (a).
    b. that we have asserted "belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority" subsection (c).

68. Rights of public debate and scrutiny are additionally specifically guaranteed under section 4 of the Constitution. Significantly the Constitution provides a modality for enacting legislation inconsistent with the fundamental rights of expressly guaranteed.

69. Even in the context of speech about the judiciary, there is a fairly narrow type of conduct that can be restrained under the law of defamation or scandalising the court. Otherwise it would constitute too great an intrusion into freedom of expression and be unjustifiable- see *Ahnee v DPP* [1999] 2 AC 294 per Lord Steyn: *"The field of application of the offence is also narrowed by the need in a democratic society for public scrutiny of the conduct of judges, and for the right of citizens to comment on matters of public concern."* [21]. A newspaper which had repeated ill judged, factually inaccurate and defamatory claims of a Chief Justice and which thereafter called for the equivalent of a section 137 enquiry to be established to enquire into the conduct of the Chief Justice was found to be free to do so - *Dhooharika v DPP* [2015] AC 875. Lord Clarke specifically invoked the well-known dictum that justice was *"…not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."*

70. These cases illustrate the unprecedented reach of the claim now being advanced by the Chief Justice which far exceeds the scope of any other existing intrusion into rights of freedom of thought and expression. There is no legislative or constitutional basis for a claim to such a restriction. Such a restriction would be a retrograde step in a democratic state and could not be achieved by judicial action or development of the common law, only by express legislation which is passed with the necessary special majority - *Independent Publishing Co Ltd v Attorney General of Trinidad and Tobago* [2005] 1 AC 190 at [65].

The Separation of Powers Restricts only the Arms of the State

71. Lord Steyn made the following observations about the separation of powers:

"… subject to its specific provisions, the Constitution entrenches the principle of the separation of powers between the legislature, the executive, and the judiciary. Under

the Constitution one branch of government may not trespass upon the province of any other. Thirdly, the Constitution gave to each arm of government such powers as were deemed to be necessary in order to discharge the functions of a legislature, an executive and a judiciary." Ahnee [1999] 2 AC 294 at [14].

72. Section 137 is in part recognition of the separation of powers under the Constitution. However, it is inconsistent with the doctrine of the separation of powers for restrictions to be imposed outside of the triumvirate of the legislature, executive and judiciary. The separation of powers as embodied under the Constitution is designed to protect against encroachment from among the limbs of government. It is to protect and enhance the freedom of the citizen, not to impose any limitation thereon- see Lord Diplock's judgment in *Hinds v Queen* [1977] AC 195 PC at 212B-G. This is consistent with the how judicial independence is generally understood, as Lord Bingham has noted[36]:

> "*What does the principle mean? It means, broadly, that judges should not be liable to be removed or in any way penalized save for gross personal misbehaviour. This does not of course protect a judge who is shown to be corrupt, persistently drunk, incurably idle, or otherwise unfit to hold office. But it does protect a judge from being penalized on account of his judicial decisions, not only by removal but by reduction of salary, banishment to a distant court far from his home and family, or any other detriment short of removal. Protect the judge against whom? The answer is clear: against the authority which would otherwise have power to remove him, dock his salary, or penalize him, which would almost always be, in one guise or another, the executive*." [emphasis added]

73. There is no constitutional purpose served by insulating the judiciary from the good faith scrutiny of citizens whether by invoking the separation of powers or otherwise and this would be plainly inconsistent with the essential constitutional purpose of demarcating the political rights of the various limbs of the State in order to protect the rights of the citizen.

[36] Tom Bingham: ***Lives of the Law, Selected Essays and Speeches*** 2000- 2010 (OUP) Chapter 9: Governments and Judges at p. 145.

74. There are other problems with the claim by the Chief Justice of constitutional protection. If this claim were correct it would be enforceable against all persons both public and private. It is well established that rights under the Constitution do not have direct horizontal effect and are enforceable only against the State or such emanations of the State as exercise coercive power – *Maharaj v AG (No. 2)* [1979] AC 385, 396.

75. The fallacy of the Chief Justice's case has been to create an entire corpus of rights apparently actionable against the country at large which has been teased out of a section which was designed to protect the judiciary against undue interference by the other limbs of State.

The wording of section 137

76. Section 137 provides that:

> *137. (1) A Judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.*
> *(2) A Judge shall be removed from office by the President where the question of removal of that Judge has been referred by the President to the Judicial Committee and the Judicial Committee has advised the President that the Judge ought to be removed from office for such inability or for misbehaviour.*
> *(3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then—*
> *(a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the President acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a Judge, from among persons who hold or have held office as a judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the*

Commonwealth or a Court having jurisdiction in appeals from any such Court;

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

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

(4) Where the question of removing a Judge from office has been referred to a tribunal under subsection (3), the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, and shall in any case cease to have effect—

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

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

77. The effect of the scope of section 137 was set out by Lord Slynn in *Rees v Crane* [1994] 2 A.C. 173 PC, 187 -188. Lord Slynn went further to find that even before any action adverse to a judicial officer was taken that he will be afforded a fair hearing at 193B:

> *"The commission may receive isolated complaints of a purely administrative nature which they consider can be dealt with adequately through administrative action by the Chief Justice. Then they would no doubt not make a representation that the question of removal be considered. Indeed it may well in the public interest be desirable that such matters be dealt with quickly by the Chief Justice rather than that the full panoply of representation, tribunal and the Judicial Committee be set in motion. The commission before it represents must, thus, be*

satisfied that the complaint has prima facie sufficient basis in fact and must be sufficiently serious to warrant representation to the President, effectively the equivalent of impeachment proceedings. Both in deciding what material it needs in order to make such a decision and in deciding whether to represent to the President, the commission must act fairly."

78. Given there is no express prohibition on the sort of factual enquiry the Chief Justice objects to, he must persuade the Board that it is necessarily implicit that the authors of section 137 intended to bar any factual enquiry by whomsoever conducted over-and-above looking to whether there is a *prima facie* case in respect of alleged misconduct. Section 137 simply provides for a protected procedure for the removal of judges. It is about security of tenure. It underpins the separation of powers by preventing the arbitrary removal of judges. There is however no basis to reason from this that it was also intended to prevent factual enquiries by members of the public or other interested persons into the conduct of judges.

79. As noted above, it would have an extreme and chilling effect. Textually, the Chief Justice's reading of section 137 is contrary to the principle of legality, namely that any intrusion into fundamental rights would need to be expressed in clear language: *R v Secretary of State for the Home Department ex p. Simms* [2000] 2 AC 115 at 130E, per Lord Steyn and 131E per Lord Hoffman. If the authors of the Constitution wished to achieve the purpose contended for by the Chief Justice, they would have said so. They would simply have added: 'And no other person shall enquire into the conduct of the Chief Justice, for any purpose'.

80. In *Francis Hinds v State* [2015] 2 LRC 244 Archie CJ and Jamadar JA (in dissent, though not on this point) considered that no limitation upon the plenitude of rights secured under sections 4 and 5 of the Constitution could be derived from any other section of the Constitution and that such an approach would be contrary to section 5 (1) of the Constitution – see joint judgment at paras [90], [91], and [102].

81. Significantly the Chief Justice's argument in this case is somewhat similar to the argument which was attempted in *Sharma* where the implicit suggestion that no prosecution could be mounted against the Chief Justice was withdrawn before the Court

of Appeal.[37] This was withdrawn not because section 137 expressly mentioned or excluded criminal prosecution, but because section 137 did not deal with prosecution, it dealt with the discipline and removal of a public officer by the State. From that process could be derived no wider restriction so as to preclude criminal prosecution. Similarly, from the terms of section 137 can be derived no further restriction imposed upon the population at large from enquiring into, forming views upon, or commenting on the actions or conduct of judges.

The fallacy that a merits enquiry is inconsistent with section 137

82. Underlying the Chief Justice's case on section 137 is an assumption that a merits enquiry (i.e. an investigation or enquiry into the substance of the allegations, beyond merely establishing a *prima facie* case) necessarily conflicts with section 137. Quite apart from the reality of this case (i.e. the true nature and scope of the Law Association's investigation as described above), it is difficult to understand on what basis an investigation by the Law Association (or any other person) would prevent the proper operation of section 137.

83. The Chief Justice says that the Law Association's investigation *"…duplicates and thereby undermines the procedure provides for in section 137"* (Appellant's Case, para 18). The Law Association does not accept the premise, but in any event says that the conclusion does not follow. There is no basis for it. The Chief Justice contends that section 137 provides the *"…sole basis for investigating the conduct of the Chief Justice in order to decide whether he should be removed or not"* (Appellant's Case, para 90). Agreed. But of what relevance is this restatement of the plain meaning and effect of section 137 to the Law Association's investigation? The Law Association's investigation does not, and could not, decide whether the Chief Justice should be removed. That is and remains a matter for the prescribed persons under section 137, ultimately the Judicial Committee.

[37] Civil Appeals 91,92 and 93 of 2006 *Carla Brown Antoine and Ors -v- Sharma* at page 27*:* "If, by that statement she meant the question whether section 137 of the Constitution was the only permissible route to address the alleged criminal conduct, then the respondent has not put his case that high. Counsel conceded in argument that since judges enjoy no immunity from the general criminal law, his contention really was that, in the circumstances, it was more appropriate to invoke section 137 and (possibly) to have the criminal proceedings await the outcome of the section 137 proceedings."

84. Any view that the Law Association may - or may not - form as to the merits or demerits of the allegations is not relevant to the operation section 137, save and except to the extent that it may result in the Law Association deciding to a make reference/complaint to the Prime Minister, which the Chief Justice accepts it is entitled to do. It does not change who decides whether the Chief Justice should be removed. Section 137 provides, no doubt in the interests of judicial independence and separation of powers, that a judge or Chief Justice may only be removed from office in accordance with a certain procedure, and by final decision of the Judicial Committee. It is not understood how an enquiry by the Law Association would change that.

85. In any event, the Chief Justice does not even begin to make his case in this respect. But it is submitted that in order to set-up section 137 as a Constitutional bar to enquiry into the Chief Justice's conduct, he must demonstrate that such an enquiry (by whomever conducted and wherever they seek to establish, in their own minds, any assessment of the merits above a *prima facie* case), would prevent section 137 from operating as intended such that the authors of the Constitution must have intended for them to be excluded. For there is no express prohibition (as there might have been) on such enquiries into the conduct of judges. The Chief Justice must say that such prohibition is necessarily implicit in section 137. But on what basis?

86. It is noted, of course, that the Chief Justice makes various complaints about the lack of procedural safeguards attending the Law Association's investigation. These are addressed on the merits, below, but the underlying assumption appears, again, to be that the Law Association is deciding something it is not. The result of the Law Association's investigations will not and cannot be the removal of the Chief Justice. It will not and cannot interfere with the constitutional process under section 137.

Vires of the Law Association's Action

87. The Law Association submits that it was plainly empowered under the LPA to enquire into the conduct of the Chief Justice. In this regard, it relies on sections 5 and 35 of the LPA together with rule 36(4) contained in Part A, Code of Ethics, of the Third Schedule Part thereto.

88. Section 5 of the LPA provides as follows:

"The purposes of the Association are—

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

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

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

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

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

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

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

[Emphasis Added]

89. Section 35 (1) of the Act provides that the rules contained in the Code of Ethics set out in the Third Schedule to the Act "*shall regulate the professional practice, etiquette, conduct and discipline of Attorneys-at-law*". Included in Part A (Code of Ethics) of the Third Schedule Part A is rule 36(4) which states that:

> *"Where there is ground for complaint against a Judge or magistrate an Attorney-at-law may make representation to the proper authorities and in such cases, the Attorney-at-law shall be protected."*

90. The Law Association submits firstly, that sub-sections 5 (b), (f) and (g), when read together, plainly empower the Law Association to take action where it reasonably

considers that circumstances are such that the administration of justice and/or the rule of law are under threat or at risk of being undermined.

91. Secondly, the type of action which the Law Association may take in furtherance of its purposes is not limited by the LPA, but instead, is by sub-clause 5(g) quite sensibly left both open and flexible so as to permit the Law Association to act in a wide variety of ways to address an infinite number of situations which may arise and require action on the part of the Law Association.

92. Thirdly, Rule 36 (4), on its face, plainly envisages that members of the Judiciary are not immune from complaint by members of the legal profession and, quite significantly, recognises that it is the complaining party who is to be afforded protection and not the judge in question. Indeed, it is submitted that implicit in this protective measure, is a recognition that judges, being public officials holding positions of trust and confidence, are open to scrutiny.

93. It cannot be disputed that the allegations that have been made concerning the conduct of the Chief Justice go directly to the heart of the administration of justice and the rule of law, including maintaining public confidence in the administration of justice and the rule of law. These allegations also plainly impact upon the interests of the legal profession in Trinidad and Tobago.

94. In the circumstances, it is submitted that the Law Association has plainly acted in furtherance of the very purposes for which it was established. Bereaux JA below held that that the allegations against the Chief Justice were so serious that they 'required' an enquiry by the Law Association and were made "all the more necessary by the failure of the Chief Justice to respond speedily and became even more justified by his clearly inadequate response".- [R3/1107/43]

95. Further, to achieve its stated objective the Law Association could not have been expected to simply adopt a passive role or to serve as a mere post-box for complaints made of and concerning the conduct of the Chief Justice. The Law Association needed, and certainly was entitled to try to inform itself as best it could as to the facts that were relevant to the allegations made against the Chief Justice - and to seek legal advice

thereon - before making any decisions about whether it should do anything further. This is precisely what the Law Association did.

96. The decisions of the Privy Council in *Re Chief Justice of Gibraltar (supra)* and *Meerabux v Attorney General of Belize [2005] 2 AC 513* also support the Law Association's conduct in the instant case.

97. In *Meerabux*, Section 98 of the Belizean Constitution provided, inter alia, that a Chief Justice could be removed from office only for inability to perform the functions of his office or for misbehaviour following an initial determination by the Governor General that the question of removing him ought to be investigated[38]. In that case, the Belizean Bar Association complained to the Governor General about misbehaviour on the part of the then Chief Justice and called upon the Governor General to act in accordance with section 98 of the Belizean Constitution.

98. Similarly, in *Re Chief Justice of Gibraltar*, section 64[39] of the Constitution of Gibraltar, provided for the removal of a Chief Justice only in circumstances where inability to discharge the functions of his office or for misbehaviour could be established. The constitutional arrangements in Gibraltar further mirrored those in Belize to the extent that the process of removal could only be triggered if the Governor General of Gibraltar considered that the question of removing a Chief Justice for inability of misbehaviour ought to be investigated. The Governor General of Gibraltar, in that case, faced with two memoranda signed by all the Queen's Counsel in Gibraltar[40] (with the exception of the Speaker of the House of Assembly) on behalf of themselves and their respective firms stating that they had lost confidence in the ability of the Chief Justice to discharge the functions of his office, appointed a tribunal to investigate the Chief Justice.

99. The constitutional arrangements for removal in both *Meerabux* and *Re Chief Justice of Gibraltar* are not materially dissimilar to those provided for under section 137 of the Constitution of Trinidad and Tobago which itself provides that, where the Prime Minister represents to the President that the question of removing the Chief Justice for

[38] See para 3 and 16 of the judgment
[39] See para 2 of the judgment
[40] See para 4 of the judgment

inability to perform the functions of office or for misbehaviour ought to be investigated, the President shall appoint a tribunal.

100. The cases of both *Meerabux* and *Re Chief Justice of Gibraltar* illustrate beyond a shadow of a doubt that questions as to whether a Chief Justice should be removed would invariably involve some measure of input by the legal profession. Indeed, in *Meerabux*, their Lordships observed that "*complaints alleging inability or misbehaviour on the part of a justice of the Supreme Court would be a matter of concern to the Bar Association, and that it would be likely to be involved in the presentation of such complaints to any tribunal that was convened to inquire into the matter.*" [41]

101. It is in any event clear when reading both *Meerabux* and *Re Chief Justice of Gibraltar* that there was due enquiry in both of those cases which is apparent from the nature of the submissions of the legal profession in each of those cases.

102. In the Meerabux proceedings some of the facts are related at first instance in the decision of Conteh J, delivered on 12 March *2001 Meerabux -v- Attorney General et al* BZ 2001 SC 2. The complaint of the Bar Committee of the Bar Association of Belize asserted misbehaviour and was accompanied by four affidavits of assertions. (see page 6 of printed judgment). There was plainly some process of enquiring into facts and considering same before preparing these affidavits which was undertaken by the Bar Committee. Indeed the fact of enquiry is put beyond question by the fact that the affidavits included an affidavit of a police officer who had served as a driver for the Justice Meerabux- see decision of Conteh J, delivered on 12 March 2001 at page 12 of printed copy, paragraph 8. Similarly, in *Re Chief Justice of Gibraltar* there was the submission of memorandum by Queen's Counsel and thereafter a supplementary memorandum "which set out in detail the reasons for their dissatisfaction with the Chief Justice"[42]. Again it seems impossible to conclude from this that there was not some process of reasonably ascertaining the facts before these two memoranda were prepared and submitted.

[41] See para 28 of the judgment
[42] At paragraph [4] of the Judgment.

103. The Court of Appeal was therefore correct to unanimously find that enquiry by the Law Association was intra vires the LPA.

The Respondent's claim of Breach of the Obligations of Fairness and/or Natural Justice

104. The Chief Justice in his grounds of appeal alleges that the Law Association acted unfairly and contrary to natural justice in connection with its investigation into his conduct. He complains that the investigation was lacking in appropriate and effective procedural safeguards by reason of the Law Association's failure to provide him with the procedures for its investigation, all the material of its Investigating Committee, and a copy of the Committee's interim or final report as well as an opportunity to comment on all of the above.

105. The Court of Appeal found that the Chief Justice's complaint was unsustainable. Mendonca C.J (acting) observed that the Law Association, to meet its obligation of fairness, was not required to supply the abovementioned documents or information. He also found that the allegation as non-compliance with the principles and/or requirements of natural justice failed. Bereaux JA found that natural justice considerations simply could not be imported given the nature of the enquiry being undertaken by the Law Association, and even if they could: (i) the Law Association was not required to provide the Chief Justice with the material he alleges he was deprived of ; and (ii) the Chief Justice's request for disclosure of the processes and procedures adopted by the Committee of the Law Association and/or the advice received by it could not be supported because it had not been pleaded . Jamadar JA found that the Chief Justice's argument on natural justice "fell short of the mark" and that the evidence did not cross the threshold to establish that the CJ was not duly and amply informed of the allegations against him that were being investigated by the LATT, or that he was not given a reasonable and adequate opportunity to respond to them in whatever fashion he chose.

106. For the reasons which follow, the Law Association submits that the Court of Appeal was right to conclude that it did not act unfairly or breach any of the requirements of natural justice.

107. However, before examining the arguments as to unfairness and/or natural justice considerations raised by the Chief Justice, the Law Association contends that the ambit of the Chief Justice's complaint now before the Board is impermissibly wide given the grounds upon which he commenced his claim for judicial review. In particular, those grounds are absent an allegation that the Law Association failed to disclose to the Chief Justice the processes or procedures for its investigation. It is however fair to say that the Chief Justice sought to canvass this new ground in the Court of Appeal, but objection was taken to this course by the Law Association and Bereaux JA ultimately agreed that because it was not pleaded it should be disallowed. Faced with that objection, the Chief Justice elected not to amend his grounds. In the circumstances, it is submitted that the Chief Justice ought not to be permitted to pursue this new ground.

108. Without prejudice to the above submission, the Law Association now turns to address the arguments of the Chief Justice on the issues of fairness and/or natural justice.

109. It is well accepted that the starting point for determining what is fair necessarily depends on context and the particular circumstances of each case *(see R (Eisai Ltd v national Institute for Health and Clinical Excellence* [2008] EWCA Civ 438 at [27]).

110. The contextual nature of the concept of fairness was made plain in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, a case involving judicial review of the exercise of the power of the Secretary of State for the Home Department under section 61 of the English Criminal Justice Act 1967 in which the Secretary of State considered the date on which certain prisoners who had been convicted for murder might be released upon licence. In that case Lord Mustill, with whom the other members of the House of Lords agreed, stated as follows at pg 560 letters D to G of his judgment:

"*What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (I) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."*

111. In the instant case, in considering the extent of any obligation of fairness imposed upon the Law Association, it is important to appreciate that the context in which the Law Association acted was one in which it was attempting to inform itself as to the facts in relation to the very serious allegations that had been publicly made against the Chief Justice so as to thereafter obtain legal advice and then make a decision as to what, if anything, should be done by it, including but not limited to seeking to protect the Chief Justice (if the allegations appeared unfounded) or making representations to the Prime Minister with respect to the exercise of his powers under section 137 of the Constitution (in the event that they appeared to merit investigation). Significantly, the Law Association was not acting in a disciplinary capacity in relation to the Chief Justice

and at no time did it either hold itself out as having the power to discipline the Chief Justice or did it ever purport to do so.

112. It is submitted that the Law Association, in engaging in the exercise of informing itself, should not be held to owe the Chief Justice any duty of fairness akin to that of any of the decision makers under section 137, namely, the Prime Minister, a tribunal appointed by the President or the Judicial Committee. That this is so ought to be obvious because in the context of section 137 the Law Association carries no decision-making powers whatsoever. Its only potential role is that it might, depending on the outcome of its enquiry and the legal advice it receives, decide to make a reference/complaint to the Prime Minister.

113. Further, it is noteworthy that in *Rees v Crane* [1994] 2 A.C. 173 (see pg 194 letters C to G and pg 196 letters C to E) the Judicial Committee recognised that the requirements of fairness would have been satisfied if the judge in question had, at an early stage, been told of the allegations made against him and been given the chance to deal with them. Importantly, their Lordships did not extend the duty of fairness to include an obligation to provide the judge with any preliminary views which the Judicial and Legal Services Commission might have formed in relation to him or to provide him with any source material in the possession of the Judicial and Legal Services Commission which might have supported the allegations.

114. Properly understood, insofar as the allegations concerning the judge in Rees v Crane were concerned, the Judicial Committee simply required the gist of the allegations to be put to the judge and nothing more. To limit the duty in this way was perfectly understandable because the function which to be exercised by the Judicial and Legal Service Commission was preliminary in nature, that is to say, to consider whether the judge ought to be investigated – a task fundamentally different to the investigation to be undertaken by a section 137 tribunal at which a judge or Chief Justice would necessarily be entitled to considerably more information for the obligations of fairness owed to him/her at that stage to be satisfied.

115. The complaints made by the Chief Justice as to the failure on the part of the Law Association to provide him with copies of the material it had gathered, and the

report of its internal committee, therefore go way beyond the threshold for fairness laid down in *Rees v Crane*. Indeed, a finding that the Law Association was required to do so would be to effectively judicialize the process by which it formed its views.

116. Further, in *Re Pergamon Press Ltd* [1971] Ch 388, a case involving an investigation into the affairs of a company pursuant to section 165 (b) of the English Companies Act 1948, Denning MR, in delivering his judgment in the Court of Appeal, stated as follows (at pgs 399 letter H to 400 letter G) in relation to a request for certain information made by directors of the company:

> "*I am clearly of the opinion that the inspectors must act fairly. This is a duty which rests on them, as on many other bodies, even though they are not judicial, nor quasi-judicial, but only administrative: see Reg.· v. Gaming Board for Great Britain, Ex parte Benaim and Khaida [1970] 2.Q.B 417. The inspectors can obtain information in any way they think best, but before they condemn or criticise a man, they must give him a fair opportunity for correcting or contradicting what is said against him. They need not quote chapter and verse. An outline of the charge will usually suffice.*
>
> *That is what the inspectors here propose to do, but the directors of the company want more. They want to see the transcripts of the witnesses who speak adversely of them, and to see any documents which may be used against them. They, or some of them, even claim to cross-examine the witnesses.*
>
> *In all this the directors go too far*."

117. Further and in any event, the Law Association submits that (notwithstanding the fact that, for the purpose of forming an opinion as to whether it ought to make representations to the Prime Minister, it is not to be held to the standards of fairness imposed upon the Prime Minister or the Judicial and Legal Service Commission acting under section 137 of the Constitution) it nonetheless met and/or exceeded those standards because it informed the Chief Justice of the allegations against him and provided him with numerous opportunities to respond thereto. In this connection, the following conduct on its part is of relevance:

a. The Law Association sent its representatives to meet with the Chief Justice on 30 November 2017 during which meeting they, inter alia :

   i. set out the allegations publicly made against the Chief Justice;
   ii. explained to the Chief Justice that those allegations were considered to be serious by the Law Association and civil society;
   iii. advised that the Council of the Law Association had resolved to investigate the allegations;
   iv. notified the Chief Justice that the Law Association had also resolved to retain two Senior Counsel to advise on the question as to whether there is sufficient basis to refer a question of misbehaviour by the Chief Justice to the Prime Minister for consideration pursuant to section 137 of the Constitution; and
   v. informed the Chief Justice that upon receiving the advice from the Senior Counsel the Council of the Law Association would convene a meeting of the general membership to consider such advice and obtain directions as to the way forward.

b. The Law Association wrote to the Chief Justice by letter dated 20 January 2018 calling upon him to answer the allegations, posed specific questions to him in relation to the allegations, and advised that if he provided his response by 26 January 2018 his response would be included in the brief to be sent to the two Queen's Counsel;

c. By email communication from its President dated 20 February 2018, the Law Association advised the lead Attorney at Law for the Chief Justice that the Law Association would shortly be sending a brief to the two Queen's Counsel and that the Chief Justice's response to the allegations would be sent to them provided such response was sent by 22 February 2018;

d. By letter dated 23 February 2018 from its Attorneys at Law, Attorneys at Law for the Chief Justice were advised that the Law Association remained desirous of receiving a response from the Chief Justice and that due consideration would be given to same if and when received; and

e. In the affidavit filed by its President in the Court below the Law Association expressed a continuing willingness to take into account any response or information which the Chief Justice might be prepared to provide.

118. It is important to note that at no time was any document requested by the Chief Justice ever withheld. On the contrary, every single thing that was ever asked for by the Chief Justice (or his Attorneys) was provided by the Law Association. In his Application for Judicial Review, the Chief Justice for the first time complained that the Law Association did not undertake to provide a copy of its Committee's report to him. Significantly, despite the Law Association's demonstrated track record of responding positively to all of the requests made by the Chief Justice and/or his Attorneys, the Chief Justice (or his Attorneys) never even made a request to be provided with a copy of the Committee's report.

119. In any event, the Committee's report was prepared for onward transmission to lawyers for the Law Association for advice. At highest, it was nothing more than a provisional view. Accordingly, it was not a document to which the Chief Justice was, on any view, entitled to as a matter of fairness. In this regard, the words of Lord Diplock in *Hoffman La-Roche & Co. AG v Secretary of State for Trade and Industry* [1975] AC 295, HL, 396 are apposite: "*the rules of natural justice do not require the decision maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticising his mental processes before he reaches a final decision*".

120. Additionally, the Chief Justice complains that disclosure was not provided except upon demand. This is self-evidently not a ground upon which any relief can be granted as, having had the admitted benefit of disclosure whenever he asked for it, there can be no breach of natural of justice as claimed by the Chief Justice.

121. Equally unsustainable is the allegation that the Chief Justice and his Attorneys were somehow kept in the dark about the process being followed by the Law Association. In this regard, the Law Association submits that the chronology of facts set out in the Agreed Statement of Facts make plain that the Chief Justice was adequately informed of the nature of the process being undertaken by it, given an

opportunity to participate in that process, and informed at a relatively early stage that the report to be prepared by its internal committee would be forwarded to two Queen's Counsel for their advice and that such advice would thereafter be made available to the membership of the Law Association to obtain directions as to the way forward.

122. In the circumstances, it is submitted that all of the Chief Justice's s arguments as to unfairness and/or breach of natural justice must fail.

Bias

123. By his Application for Judicial Review, the Chief Justice claimed that the Law Association's decision to continue its enquiry and/or investigation had the appearance of bias because the Law Association had previously passed a motion of no confidence against him.[43] He further claimed that there was "especially" an appearance of bias because of the fact "that when the No Confidence Motion was passed there had been no investigation and no findings of fact made against the Chief Justice. The no-confidence motion was also passed against the Chief Justice when the allegations made dealt with his role and function as the Chairman of the Judicial and Legal Service Commission. Further the resolution itself contained other errors and irregularities"[44].

124. The Chief Justice both before the Court of Appeal and on this appeal to the Judicial Committee has sought to expand the grounds of challenge to include new grounds not included in his application.

125. For the purpose of an application for judicial review the only pleading required is the written application for leave which sets out the grounds upon which relief is sought – *C.O. Williams Construction Ltd v Blackman* (1994) 45 WIR 94 PC, at 100f per Lord Bridge.

[43] [R1/20/ para [n]]
[44] [R1/21/ para [o]]

126. The Chief Justice now raises a new ground of bias based upon a public statement of the Law Association on 14 December 2018.[45]

127. Without prejudice to the objection that these new matters ought not now to be raised, the Law Association submits that they can in any event take the argument of bias no further.

128. The Law Association accepts the well-known test of bias set out in the cases relied upon by the Chief Justice, namely, *Porter v Magill*. *Locabail (UK) Ltd v Bayfield Properties Ltd & Anor [2000] 1 QB 451* which underscores the focus of bias on actual decision makers or legal arbiters who determine rights and liabilities of affected parties.

129. It is however important to consider the nature of the decision which has been challenged. The basis for the rule against bias is derived from the maxim *nemo judex in causa sua*; that no man may be a judge in his own cause. It is not appropriate to seek to apply such a standard to the particular decision of the Law Association which is the subject of challenge in these proceedings.

130. There are a range of decisions to some of which it would be appropriate to apply the well-recognised test of bias and to others it would be unnecessary and inappropriate to do so. For example, at one end of the spectrum, there are decisions about whether or not to offer a comment or express an opinion or point of view. Near this same end of the spectrum there are decisions about whether or not to criticise or defend particular conduct or to make a complaint about such conduct to the appropriate authorities for those authorities to deal with the complaint as they deem fit. At the other end of the spectrum, there are decisions that determine or affect the rights or obligations of parties.

131. It is well established that a complainant, even in a criminal context, is not required to meet any threshold commensurate with judicial standards of impartiality. What is required is that any ultimate decision-maker be impartial. Indeed, even a wrongful complaint is not actionable at common law without malice. Further, as a general rule even a prosecutor in not required to be impartial as a matter of general

[45] Grounds of Appeal -[R3/1206/c]

fairness, only the tribunal which ultimately makes a decision - *Regina (Haase) -v- District Jude Nuttal* [2009] 2 WLR 1004 at [18] – [20] and [29]. This is reflected in the fact that domestic criminal procedure generally permits private prosecutions which do not meet the threshold of such impartiality- see the reasoning in *Haase* at para [24][46].

132. This case involves a decision by the Law Association to enquire into the facts relating to allegations concerning the conduct of the Chief Justice that have been made in the public domain with a view to placing those facts before the Law Association's legal advisers and then making a further decision as to what, if anything, should be done by the Law Association.

133. Depending on the outcome of its enquiries, the nature of the advice it receives from its legal advisors and any future decisions it may make, the Law Association potentially might become, at highest, a complainant to the Prime Minister. It would be unjustifiable and unworkable for the Law Association to be required to conform to the standards of a judicial decision maker.

134. In relation to the new ground of bias, based upon the statement of the Law Association on 14 December 2014, the Chief Justice refers to the decision in *Locabail* for the *obiter* statement that a decision maker who expresses extreme and unbalanced during the course of a hearing may disqualify himself. A more relevant citation might have been the decision, also cited by the Chief Justice, of *Porter v Magill* [2002] AC 357.

135. *Porter* involved claims of political corruption in which the statutory auditor was given the express power to recover from persons any loss caused by their wilful misconduct[47]. The case was of considerable importance not least because of the very substantial sum which the auditor adjudged liable of some £31 million.[48] A challenge was made to the auditor's certificate on the ground of apparent bias arising out of the publication of certain provisional findings which were made in a press conference in

[46] Private prosecutions also necessarily entail private investigations, which further shows the erroneous scope of the immunity which is claimed by the Chief Justice in this case.
[47] See *Porter* at para [137]
[48] *Ibid*. para [162]

which "florid language" was used and references were made to the thoroughness of the investigation which had been undertaken. This was all undertaken in the glare of extravagant security suggesting that the auditor's report was under threat. - see Lord Hope at [2002] AC 357 para [96].

136. Notwithstanding this undesirable conduct, the allegation of bias was found not be substantiated, with Lord Hope noting that:

> "*105. I think that it is plain, as the Divisional Court observed, at p 174B, that the auditor made an error of judgment when he decided to make his statement in public at a press conference. The main impression which this would have conveyed to the fair-minded observer was that the purpose of this exercise was to attract publicity to himself, and perhaps also to his firm. It was an exercise in self-promotion in which he should not have indulged. But it is quite another matter to conclude from this that there was a real possibility that he was biased. Schiemann LJ said, at p 1457D-E, that there was room for a casual observer to form the view after the press conference that the auditor might be biased. Nevertheless he concluded, at p 1457H, having examined the facts more closely, that there was no real danger that this was so. I would take the same view. The question is what the fair-minded and informed observer would have thought, and whether his conclusion would have been that there was real possibility of bias.* ***The auditor's conduct must be seen in the context of the investigation which he was carrying out, which had generated a great deal of public interest. A statement as to his progress would not have been inappropriate. His error was to make it at a press conference. This created the risk of unfair reporting, but there was nothing in the words he used to indicate that there was a real possibility that he was biased. He was at pains to point out to the press that his findings were provisional****. There is no reason to doubt his word on this point, as his subsequent conduct demonstrates. I would hold, looking at the matter objectively, that a real possibility that he was biased has not been demonstrated."*
>
> [emphasis added]

137. In this case, the context in which statements of the Law Association must be considered include that:

a. The allegations against the Chief Justice had generated tremendous public interest and were of obvious public importance;
b. The Law Association has made no finding of any sort whether provisional or otherwise;
c. The contents of the Committee's report has never been disclosed to the press nor its content publicly adverted to in any way;
d. The Law Association issued a press release in language that was restrained, balanced and responsible and which did not purport to make any findings;
e. The Law Association did not call a press conference or contact the newspapers to provide information but merely responded to queries from the press;[49]
f. In its public statements the Law Association was at pains to state that no allegation against the Chief Justice had been established and that it would not be rushed in conducting the exercise it had undertaken;
g. The Law Association was not responsible for any final decision which might impose any liability upon the Chief Justice; and
h. The statements of the Law Association complained of by the Chief Justice related not to the merits of any decision so as to create any concern of predetermination, but related to its concern that the Chief Justice was not taking steps to clarify a matter of abiding and self-evident public importance.

138. Finally, and in any event, it is clear that there could be no reasonable apprehension of bias on any basis. As set out in the Law Association's letter of 23 February 2018[50], the fair minded and reasonably informed observer would be aware of the following facts:

a. 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

[49] R2/591/10 – Affidavit of Douglas Mendes
[50] R1/83

decision to appoint a Committee to ascertain/substantiate the allegations made against the Chief Justice;

b. That the previous Motion of No Confidence was requisitioned by a group of attorneys and not by the Council and passed by a vote of the Law Association in general meeting, not by the Council of the Law Association;
c. That the decision to conduct the investigation was made by the Council of the Law Association, not by the Law Association in general meeting;
d. That the Law Association is required to promote, maintain and support the administration of justice and the rule of law;
e. That a number of serious allegations have been made in the public domain concerning the conduct of the Chief Justice;
f. 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;
g. That, where allegations of that nature have been made concerning the conduct of the Chief Justice, the Law Association has a responsibility to enquire into those matters;
h. 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 substantiated but called upon the Chief Justice to respond to allegations that he discussed the judges' security arrangements with his friend;
i. 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 attempt to enquire into the allegations made against the Chief Justice;
j. That the President of the Law Association and a senior ordinary member met with the Chief Justice on 30 November 2017 to inform him of the decision of the Council of the Law Association;
k. 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;

l. 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 concerning his conduct;

m. That the Law Association has retained the services of two highly regarded and independent Queens 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; and

n. That while 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.

139. The Chief Justice draws reference in his case at [159] to the observations of the trial judge as to the presence of the President of the Law Association upon the Committee and says that given these observations the trial judge was wrong not find an appearance of bias from the public statement of 14 December 2017. It is not entirely clear what this submission means. This was not raised in the grounds of appeal to the Judicial Committee but appears now tangentially raised in the Appellant's written case.

140. Out of an abundance of caution, if the Chief Justice is raising yet another unpleaded allegation of bias, the Law Association submits that it is not fairly raised, and in any event cannot substantiate a finding of apparent bias.

141. This submission is premised upon an *obiter* but misconceived comment of the learned trial Judge:

> *"[30] The Court also asks itself, as was an issue in the Meerabux case, what was the necessity for the President of the Law Association to also be the President or indeed even a member of the Committee to ascertain/substantiate the allegations against the Honourable Chief Justice?"*

142. In *Meerabux* [2005] 2 AC 513 this was only an issue because of the peculiar legislative arrangements which obtained in Belize whereby the equivalent of the section

137 procedure permitted an Attorney at Law to be the chairman of the Belize Advisory Council and required the Chairman to preside in the case of removal of a judge - see *Meerabux* at paragraph 17. In that case a complaint had been made by the Belize Bar Association of which the Chairman was necessarily a member. It was in that context that an issue of apparent bias arose. In order to placate any fears which might have arisen by virtue of the Chairman's membership of the Bar Association it was pointed out that the Chairman had not participated in the making of the complaint or the passing of any resolution in relation to the complaints - see *Meerabux* at paragraph 23.

143. This concern could be of no relevance to the case at bar where the President of the Law Association is not required to be a member of any tribunal established under section 137 - the concerns which arose in Meerabux as a result of their peculiar constitutional and legislative arrangements therefore simply do not arise domestically. Accordingly, the participation of the President of the Law Association in the activities of the committee could not be objectionable.

Conclusion

144. For all the foregoing reasons the Law Association submits that the appeal ought to be dismissed.

Chris Hamel-Smith S.C.
Jason Mootoo
Rishi P. A. Dass
Rowan Pennington-Benton

JCPC 2018/0063

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF THE
REPUBLIC OF TRINIDAD AND TOBAGO

BETWEEN:

THE HONOURABLE THE CHIEF JUSTICE OF TRINIDAD AND TOBAGO
MR. JUSTICE IVOR ARCHIE O.R.T.T.
Appellant

AND

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO
Respondent

RESPONDENT'S CASE

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Dated this 16th day of July 2018