



PRESS SUMMARY

16 August 2018

The Honourable Chief Justice of Trinidad and Tobago Mr Justice Ivor Archie O.R.T.T. (Appellant) v The Law Association of Trinidad and Tobago (Respondent) (Trinidad and Tobago) [2018] UKPC 23

On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

THE BOARD: Lady Hale, Lord Reed, Lord Kerr, Lord Wilson, Lord Sumption

BACKGROUND TO THE APPEAL

Between November 2017 and January 2018 there appeared a series of press reports making allegations against the appellant, Mr Justice Ivor Archie, who has been Chief Justice of Trinidad and Tobago since January 2008. Under the Legal Profession Act 1986, the principal purpose of the respondent, the Law Association of Trinidad and Tobago (LATT), is to regulate the legal profession. The LATT resolved to set up a committee to inquire into the allegations against the Chief Justice with a view to deciding what course of action to take, including whether or not to make a complaint to the Prime Minister. Under section 137 of the Constitution, the Prime Minister is the only person who can advise the President to initiate a formal inquiry into the conduct of a member of the higher judiciary [1].

The Chief Justice brought judicial review proceedings against the LATT, claiming that it had no power to conduct the proposed inquiry because (1) the formal procedure under section 137 of the Constitution was the only type of inquiry which is permitted; and (2) the inquiry was not within LATT's statutory powers. He also alleged apparent bias, bad faith and procedural unfairness and succeeded on grounds (1) and (2) in the High Court. When the Court of Appeal allowed the LATT's appeal and dismissed the Chief Justice's cross appeal, the Chief Justice appealed to the Board [2].

JUDGMENT

In a judgment delivered by Lady Hale, the Board unanimously dismisses the Chief Justice's appeal. It also discharges the injunction granted by the Court of Appeal restraining the LATT from convening a meeting of its membership to consider any legal advice it might receive in relation to its inquiry and/or investigation of the Chief Justice [42].

REASONS FOR THE JUDGMENT

The issues before the Board were these.

(1) As to whether section 137 of the Constitution is effective to prevent LATT conducting the investigation, the Board decides it is not. The independence of the judiciary from the other arms of Government, the executive and the legislature is a vital element in any modern democratic constitution. Judicial independence is secured in a number of ways, but principally by providing for security of tenure: and in particular that a judge may only be removed from office, or otherwise penalised, for inability or misbehaviour; and removal from office should be in accordance with a procedure which guarantees fairness and the independence of the decision-makers from government [18].

Section 137 of the Constitution of Trinidad and Tobago makes elaborate provision for the removal of judges (of the High Court and Court of Appeal) requiring the appointment of a tribunal where the question of removing a judge ought to be investigated [19]. The Court of Appeal decided, and the Board agrees, that there was nothing in section 137 to indicate that it was the only way in which the conduct of a judge could lawfully be investigated [20]. The committee set up by LATT was not the same as the tribunal that may be appointed under section 137; it has no constitutional status and its report would have no binding effect upon anyone [21]; the LATT is in no position to make findings of fact which are in any way binding upon the Chief Justice or upon any tribunal which might be established under section 137. The Association “will be conscious of any possible legal constraints relating to the publication of its report. But... section 137 of the Constitution is not one of them” [24].

(2) As to whether conducting an investigation is within the powers of LATT under the Legal Profession Act [27], the Board decides that it is. The Law Association is established under section 3 of the Legal Profession Act 1986. The Court of Appeal held, and the Board agrees, that the purposes of the Association in section 5(b), (f) and (g) (representing and protecting the interests of the legal profession), (f) (promoting, maintaining and supporting the administration of justice and the rule of law) and (g) (doing such things as are incidental or conducive to these purposes) empowered the LATT to make a complaint to the authorities about the conduct of a judge - and there was nothing to prevent it from conducting an inquiry before doing so, so as to inform itself whether a complaint would be appropriate [29]. In the Board’s view, the crucial question was whether the allegations were sufficiently serious to have the potential to undermine the administration of justice and the rule of law. If they are, then taking some action to promote, support and maintain the administration of justice and the rule of law clearly falls within section 5(f). There is then power under section 5(g) to do such things as are conducive to achieving that purpose. The LATT has no power to “hold the Chief Justice accountable”. But it does have the power to make a formal complaint where this is justified and the duty to defend the judiciary against unjustified criticism. Some “inquiry to establish whether there or not there is a prima facie case for making a complaint is the obvious way to reconcile those two purposes” [31].

(3) As for the complaints of apparent bias and unfairness, the Board decides that these are not well founded. The Board agrees with the Court of Appeal that the LATT’s investigation cannot be equated with a judicial or quasi-judicial determination of legal rights and liabilities to which the conventional rules of natural justice apply. Nor was it necessary for the Board to consider the more difficult question of the extent to which public bodies are required to be impartial in carrying out their statutory functions. This was because “there are concurrent findings in the courts below that the matters relied upon by the Chief Justice are not such as to give rise to an appearance of bias on the part of the LATT, applying the test laid down in *Porter v Magill* [2002] 2 AC 357” [35]. Since the local courts in Trinidad and Tobago were far better placed than the Board to consider what the fair-minded and informed observer in Trinidad and Tobago would make of the matters complained of, it was not for the Board to disagree [37]. However, even if the rules of natural justice applicable to the decisions of a judicial or quasi-judicial body did not apply, “public authorities do have a duty to carry out their statutory functions fairly”: *R v Secretary of State for the Home Department, ex parte Doody* [1994] AC 531, at p 560 [38]. The standards of fairness required vary enormously according to the type of decision in question. *Doody* was “concerned with the minimum time which a prisoner serving a mandatory sentence of life imprisonment would have to serve before being considered for release on licence. That is a very different matter from a decision whether or not to make a complaint to the Prime Minister” [39]. The Board “finds it unnecessary to consider precisely what the minimum requirements of fairness were in the circumstances. It agrees with the Court of Appeal that on any view of the matter they were met in this case” [41].

NOTE

References in square brackets are to paragraphs in the judgment. This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.