Easter Term
[2019] UKPC 21
Privy Council Appeal No 0047 of 2018

JUDGMENT

Maharaj (Appellant) *v* Petroleum Company of Trinidad and Tobago Ltd (Respondent) (Trinidad and Tobago)

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

before

Lord Wilson
Lord Hodge
Lady Arden
Lord Kitchin
Lord Sales

JUDGMENT GIVEN ON

20 May 2019

Heard on 20 March 2019

Appellant	*Respondent*
Richard Clayton QC Anand Ramlogan SC Christopher Knight Chelsea Stewart (Instructed by Alvin Pariagsingh)	Thomas Roe QC Dominique Martineau (Instructed by Signature Litigation LLP)

LORD SALES:

1. This appeal concerns a request made by the appellant (Mr Maharaj) pursuant to the Freedom of Information Act 1999 ("FOIA") for disclosure of certain documents by the Petroleum Company of Trinidad and Tobago ("Petrotrin"), a state-owned company. The documents in issue are certain witness statements filed in arbitration proceedings between Petrotrin and World GTL Inc and World GTL St Lucia Ltd (together, "World GTL").

2. Petrotrin refused Mr Maharaj's request for disclosure. Mr Maharaj made an application for leave to apply for judicial review of that refusal. By a decision of 31 March 2017 des Vignes J dismissed that application. In a short ruling delivered *ex tempore* on 10 July 2017, the Court of Appeal dismissed Mr Maharaj's appeal. He now appeals to the Board.

3. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether Mr Maharaj has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in *Sharma v Brown-Antoine* [2006] UKPC 57; [2007] 1 WLR 780, para 14.

The legislative regime

4. The long title of the FOIA is:

> "An Act to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto."

5. The definition of "public authority" in section 4 includes "a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the state". It is common ground that Petrotrin is a public authority for the purposes of the Act.

6. The definition of "official document" in section 4 is:

> "a document held by a public authority in connection with its functions as such, whether or not it was created by that authority,

and whether or not it was created before the commencement of this Act and, for the purposes of this definition, a document is held by a public authority if it is in its possession, custody or power."

It is common ground that the witness statements in issue are official documents held by Petrotrin.

7. Section 3 provides:

> "(1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by -
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> > (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorisations, policies, rules and practices; and
> >
> > (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.
>
> (2) The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information."

8. Section 11(1) provides:

> "Notwithstanding any law to the contrary and subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document."

9. Section 13 deals with the process for making a request to obtain access to official documents.

10. Section 39(1) provides that a person aggrieved by a decision of a public authority under the FOIA may apply to the High Court for judicial review of the decision.

11. Part 4 of the FOIA sets out provisions which identify certain documents or types of document as exempt documents. Section 32(1) provides:

> "A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and -
>
> (a) the information would be exempt information if it were generated by a public authority; or
>
> (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future."

12. A public authority may be under a duty to disclose an exempt document if section 35 applies. It provides:

> "Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant -
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> (a) abuse of authority or neglect in the performance of official duty; or
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> (b) injustice to an individual; or
>
> (c) danger to the health or safety of an individual or of the public; or

(d) unauthorised use of public funds,

has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so."

13. It is common ground that section 35 has two distinct limbs. A public authority is required to give access to an exempt document (i) where there is reasonable evidence that one or more of the matters set out in the sub-paragraphs has or is likely to have occurred, or (ii) where, in the circumstances, giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

14. Section 5(3) of the Judicial Review Act 2000 sets out a non-exhaustive list of grounds for judicial review, including:

"(a) that the decision was in any way unauthorised or contrary to law;

…

(c) failure to satisfy or observe conditions … required by law;

…

(e) unreasonable, irregular or improper exercise of discretion;

…

(i) conflict with the policy of an Act;

(j) error of law, whether or not apparent on the face of the record;

…

(l) breach of or omission to perform a duty;

…

(o) an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power."

Factual background

15. For present purposes, the factual background can be summarised shortly as follows. Mr Maharaj describes himself as a concerned citizen and social activist. He is also a member of the opposition United National Congress political party. He has a particular interest in matters relating to good governance, accountability, transparency and the rule of law.

16. In 2005 Petrotrin and World GTL embarked upon a joint venture to build, finance and operate a gas-to-liquids plant in Trinidad. Mr Malcolm Jones ("Mr Jones") was the Executive Chairman and a member of the board of directors of Petrotrin at this time and was involved in the decision to proceed with the venture. Petrotrin was to supply the feedstock for the plant and to acquire its output, while World GTL was to supply the technology for the plant and be responsible for its management and operation.

17. As part of the arrangements to finance the construction of the plant, in September 2006 Petrotrin's board, including Mr Jones, caused Petrotrin to give a guarantee in respect of the financing provided by Credit Suisse. In particular, Petrotrin undertook to assume liability in respect of costs incurred in excess of those budgeted for the project.

18. The venture foundered in 2009 when Petrotrin elected to declare an event of default after construction delays and extensive cost overruns. The failure of the venture has been very costly for Petrotrin. It has had to meet substantial claims brought against it under the guarantee.

19. Petrotrin brought International Chamber of Commerce proceedings against World GTL. In December 2012 Petrotrin secured an arbitration award in its favour. However, that arbitration award has not been paid.

20. Meanwhile, in November 2011 World GTL commenced its own arbitration proceedings against Petrotrin in the London Court of International Arbitration ("LCIA"), alleging that Petrotrin's termination of the venture had been in breach of duty

and claiming compensation ("the LCIA arbitration"). In those proceedings, Petrotrin relied on witness statements from, among others, Charmaine Baptiste (dated 2 July and 21 December 2012) and Anthony Chan Tack (also dated 2 July and 21 December 2012). World GTL also filed witness statements.

21. Article 30 of the LCIA Arbitration Rules applicable at the relevant time made provision for confidentiality of documents. Article 30.1 provided:

> "Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority."

22. In April 2013 Petrotrin commenced a claim against Mr Jones for alleged failure to take proper care in the conduct of Petrotrin's business and for breach of fiduciary duty in relation to the decision to enter into the guarantee ("the negligence claim"). Petrotrin alleged that the decision was taken without adequate due diligence or assessment of the commercial risks and in the knowledge that World GTL would not be able to reimburse Petrotrin if payments fell to be made under the guarantee. The claim was for compensation in a sum in excess of US$97m. A detailed Statement of Case running to 42 pages was served. The action was commenced on the basis of a legal opinion written by Mr Vincent Nelson QC dated 1 March 2011 and a further opinion written by Mr Russell Martineau SC dated 21 June 2011. The Statement of Case was signed by two other lawyers, Gerald Ramdeen and Varun Debideen. In due course Mr Jones served a detailed Defence.

23. In April 2014 an award was made in favour of Petrotrin in the LCIA arbitration, dismissing World GTL's claims.

24. On 7 September 2015 there was a general election in Trinidad and Tobago, which resulted in a change of government. Shortly after this a new board of directors of Petrotrin was appointed.

25. On 8 October 2015 Mr Jones was appointed by the new Government to the Cabinet Standing Committee on Energy. On 8 and 9 October 2015 the Minister of

Communications was reported as saying that he thought that the claim against Mr Jones was heading in the direction of being dropped.

26. However, on the information currently available as gathered by Mr Maharaj, it seems that it was only on 11 October 2015 that relevant legal advice was obtained by Petrotrin regarding its claim against Mr Jones, in the form of a short written advice from Mr Nelson QC. Mr Nelson advised that it was likely that the court would order disclosure to Mr Jones of the witness statements deployed by Petrotrin in the LCIA arbitration. Mr Nelson further advised, in a single paragraph, that he had considered the witness statements of Charmaine Baptiste and Anthony Chan Tack, which had not been available to him previously, and that it was now his view, in light of what they said, that "there is a reasonable likelihood that a judge will be persuaded that there was a bad business decision but no negligence". Mr Nelson did not set out what was said in the witness statements which caused him to take that view. These witness statements have not been released into the public domain.

27. On 1 March 2016 the Attorney General for Trinidad and Tobago announced that the board of Petrotrin had decided in February 2016 to withdraw its claim against Mr Jones in the light of Mr Nelson QC's advice of 11 October 2015, which the Attorney General published on the same day as his announcement. There was media and public interest in the discontinuance of Petrotrin's claim. Questions were raised as to the reasons for that decision, whether the Attorney General had been involved in it and regarding the sums of money involved in giving up the claim and settling the action. Petrotrin maintains that adequate answers have been given.

28. On 2 March 2016, a letter dated 2 February 2016 to the Attorney General from Mr Varun Debideen (one of the attorneys who had signed the Statement of Case against Mr Jones) was published in the press. This letter gave an account of Mr Debideen's involvement in the case, denied that he had acted unprofessionally in any way and stated that he would "not allow [himself] to be used as the scapegoat in the event there exists a political intention to scuttle or sabotage these matters so that they do not proceed to trial".

29. On 9 March 2016 the Attorney General referred himself to the Law Association of Trinidad and Tobago in relation to his conduct concerning the discontinuance of the claim against Mr Jones.

30. On 11 March 2016 Mr Maharaj sent his freedom of information request to Petrotrin. He expressed concern about the discontinuance of the claim against Mr Jones and, pursuant to section 13 of the FOIA, asked for disclosure of the arbitration award in the LCIA arbitration and all witness statements filed in that arbitration.

31. On 21 March 2016 the Joint Select Committee of Parliament on State Enterprises commenced a public hearing into the management and operations of Petrotrin. The Select Committee released a number of relevant documents into the public domain, including documents pertaining to the joint venture with World GTL.

32. Petrotrin responded to Mr Maharaj's request by letter dated 22 April 2016 ("the Decision Letter"). Petrotrin provided a copy of the award in the LCIA arbitration, which had by that stage come into the public domain. However, it refused Mr Maharaj's request for the witness statements. It wrote:

> "The documents relating to the second request are exempt under section 32(1) of the Freedom of Information Act as they would disclose information or a matter communicated in confidence by or on behalf of persons to Petrotrin and (a) the information would be exempt information if it were generated by Petrotrin; and (b) the disclosure of the information would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of Petrotrin to obtain similar information in the future. If witnesses who have given witness statements in confidence are to have those statements disclosed, future potential witnesses would not be willing to give such evidence. Similarly, arbitration proceedings are confidential and the arbitration court which receives witness statements given in confidence will not, in future, be willing to provide arbitration services to Petrotrin. The second disclosure sought, if granted, is likely to destroy the usefulness of the Rules of the London Court of International Arbitration (LCIA) as an alternative form of resolving disputes to the Supreme Court so far as Petrotrin and similar state entities of Trinidad and Tobago are concerned. Further, the agreement of Petrotrin and such state bodies in the conduct of their business would be of greatly reduced, if any, value.
>
> The disclosure of the witness statements would amount to a divulgence of information contrary to the provisions of the LCIA which governed the arbitration in question. Article 30 of the LCIA Arbitration Rules obligates parties to keep confidential all awards in the arbitration, together with all materials created for the purpose of the arbitration and all other documents produced by another party in the proceedings. Those rules also provide in part that the deliberations of the Arbitral Tribunal shall remain confidential to its members. The witness statements and award were communicated in confidence to the LCIA and to Petrotrin but the award is already in the public domain so that Petrotrin is able to disclose same to you.

> In short, in view of the public interest provisions at section 32(1)(b) divulgence of the second requested information can impair Petrotrin's ability to obtain similar information in the future. If such divulgence occurs, witnesses may be less likely to give testimony if it is known that notwithstanding an undertaking of confidentiality by Petrotrin to an arbitration Tribunal, such statements can be disclosed to third parties.
>
> Further, consideration has been given to the overriding general public interest considerations at section 35 of the Freedom of Information Act. Having regard to any benefit and to any damage that may arise from disclosure, disclosure is not justified in the public interest in that damage would be done to the public interest which encourages litigants to settle their differences utilizing alternative dispute resolution processes such as arbitration by the LCIA. Disclosure will jeopardise the usefulness and availability of that procedure and is likely to deter witnesses from participating in the same in a full and frank manner. Further there is a public interest in protecting an individual's personal information and right to privacy (see the Constitution section 4 and the Data Protection Act section 6). The witness statements contain such personal information which should not be disclosed without consent."

33. In the present legal proceedings, Mr Maharaj has narrowed down his request for disclosure of all the witness statements filed in the LCIA arbitration to a claim for disclosure of the witness statements of Charmaine Baptiste and Anthony Chan Tack ("the Baptiste and Chan Tack statements"), ie the statements relied upon by Mr Nelson QC for his advice of 11 October 2015. Both these witnesses were employees of Petrotrin at all material times. It therefore seems likely that, by virtue of their contracts of employment, they were under an obligation to provide Petrotrin with information in their knowledge regarding its affairs to the extent that such information was needed by Petrotrin for the conduct of its business.

34. Mr Maharaj and Petrotrin engaged in a round of correspondence in advance of litigation in an effort to resolve their differences, but without success. However, as a result, no point has been taken regarding any delay in the issue of proceedings. Mr Maharaj filed his application for leave to apply for judicial review on 24 October 2016. It was supported by a lengthy affidavit and exhibits which gathered together relevant information in the public domain. Mr Maharaj presented his claim for disclosure of the Baptiste and Chan Tack statements in reliance on both limb (i) and limb (ii) of section 35 of the FOIA.

The judgments below

35. A hearing before des Vignes J took place on 31 March 2017. Although an application for leave to apply for judicial review is made *ex parte*, the judge had invited submissions from counsel for Petrotrin so as to have the benefit of legal arguments on both sides. The judge helpfully provided a written judgment the same day, dismissing Mr Maharaj's application for leave. The judge considered the claim as put on behalf of Mr Maharaj under several heads, reflecting particular sub-paragraphs in section 5(3) of the Judicial Review Act. The critical point made by des Vignes J was that the Baptiste and Chan Tack statements were exempt documents within the meaning of section 32 of the FOIA and that Petrotrin had not acted irrationally in deciding whether, notwithstanding this, they should be disclosed pursuant to section 35 of the FOIA: see, in particular, paras 22, 33 and 38-40.

36. In the Court of Appeal it was common ground, as it is before the Board, that the Baptiste and Chan Tack statements are exempt documents within the meaning of section 32. It appears that at the hearing before the Court of Appeal counsel for Mr Maharaj placed more emphasis on limb (i) of section 35, although limb (ii) of section 35 was also relied upon. Mr Maharaj's appeal was dismissed on the basis that the court considered that it was concerned with the judge's exercise of discretion; that he had "quite clearly considered, himself, the section 35 considerations"; and "we cannot say that the judge was plainly wrong". The Board respectfully considers that the court's view that des Vignes J weighed the section 35 considerations for himself in relation to limb (ii) of that provision is erroneous, as the judge's approach was only to inquire whether Petrotrin had acted irrationally.

Discussion

37. It is not the Board's role at this early stage in proceedings to express any final view on the merits of Mr Maharaj's claim for judicial review. However, the Board considers that Mr Maharaj has an arguable claim for judicial review based on limb (ii) of section 35 of the FOIA in relation to Petrotrin's decision to refuse to disclose the Baptiste and Chan Tack statements. That claim has a realistic prospect of success.

38. The law of Trinidad and Tobago regarding the application of the FOIA appears to be in a state of development. The Board notes the leading decision of the Court of Appeal in *Minister of Planning and Sustainable Development v Joint Consultative Council for the Construction Industry*, 28 October 2016 (Civil Appeal No P200 of 2014) and the recent summary of relevant principles by Rampersad J in *Maharaj v Port Authority of Trinidad and Tobago*, 22 January 2019 (Claim No CV2018-01817), at para 27. The present appeal in relation to a refusal of leave to apply for judicial review is not an appropriate occasion for the Board to seek to lay down any definitive principles in

this area. On any future appeal the Board will no doubt be assisted by further examination and development of the law by the courts in Trinidad and Tobago.

39. As emerges from these and other cases, an important issue is the proper legal approach to judicial review of a decision of a public authority not to disclose an exempt document taken under limb (ii) of section 35. Is such a decision to be reviewed according to a simple rationality standard or does the court have a role itself as primary decision-maker to decide how the public interest factors for and against disclosure of that document are to be balanced? If the latter, the court would have to make its own decision after being informed by evidence from the public authority in relation to the damage to the public interest which disclosure of a document might involve and giving due weight to that evidence; it would then have to balance those concerns against any benefit to the public interest associated with such disclosure.

40. The *Council for the Construction Industry* case concerned an application for disclosure of legal advice given to the Minister. The relevant documents were exempt documents, but by a majority the Court of Appeal held pursuant to limb (ii) of section 35 that disclosure should be given. Bereaux JA noted that the intention of the FOIA in making information available about the operations of public authorities "is a radical departure from the culture of secrecy and confidentiality which pervaded the public service at the time of the Act's passage" (para 69). He observed that in that case it did not appear that any section 35 balancing exercise had been performed by the Minister (para 71), and it was on that basis that he held that it fell to the court to decide the public interest issues under limb (ii) of section 35 (para 75). His conclusion, after performing the relevant balancing exercise, was that the legal advice in question should be disclosed (para 84). Although Bereaux JA appears to have considered that it was the absence of consideration by the Minister of the balance between any benefit and any damage to the public interest which opened the way to consideration of that balance by the court itself, he did not propose that the decision should be remitted to the Minister, as might have been expected if he was of the view that the Minister should be treated as the primary decision-maker subject to ordinary judicial review on grounds of rationality.

41. Although he was in the minority as to the result in the case, Narine JA regarded the issue of deciding how the balance was to be struck in relation to the public interest as one for the court, and did not suggest that it was a precondition that the Minister had failed to carry out the relevant balancing exercise himself: see paras 71-81 of his judgment.

42. Jamadar JA was explicit at para 40 of his judgment that "when one comes to the evaluative exercise demanded by section 35 of the FOIA, in so far as denial of access to information is justified, both a public authority (initially) and a court of review (subsequently) are obliged to carry out the required balancing exercise in the context of the … statutory and constitutional framework and values". That is to say, although the

public authority must carry out the relevant balancing exercise for the purposes of limb (ii) of section 35 in the first place, the court has an independent role in carrying out its own balancing exercise thereafter to rule on whether the right of a member of the public to be given access to information in the possession of a public authority has been infringed by the decision taken by that authority. After performing that balancing exercise in the case at hand, Jamadar JA concluded, in agreement with Bereaux JA, that the legal advice in question should be disclosed (para 47). Jamadar JA's statement at para 40 of his judgment was cited by Rampersad J as part of the relevant guidance regarding the application of section 35, at para 27.13 of his judgment in the *Port Authority* case cited above.

43. In the present proceedings, the Board considers that Mr Maharaj has a reasonably arguable claim for judicial review and that this is so regardless of whether the correct legal approach under limb (ii) of section 35 is a normal rationality approach, or a hybrid approach as might be indicated by Bereaux JA in the *Council for the Construction Industry* case, or an approach in which the court itself has to conduct the relevant balancing exercise as indicated by Jamadar JA in that case. This is because, as regards the first two approaches, it is arguable that in the Decision Letter Petrotrin failed to bring into account any aspect of the public interest which pointed in favour of disclosure of the Baptiste and Chan Tack statements and hence, as in the *Council for the Construction Industry* case, did not itself carry out the relevant balancing exercise as required under section 35. If such an argument were accepted after full examination at the substantive judicial review hearing, that would mean that it is arguable that either the Decision Letter should be quashed and the matter remitted to Petrotrin to consider the balance of public interest factors properly or the court should proceed to conduct the balancing exercise itself.

44. If the proper approach to limb (ii) of section 35 is that indicated by Jamadar JA, the Board again considers that Mr Maharaj has a reasonably arguable claim for judicial review of the Decision Letter. This is on the basis that there is a realistic prospect that the court might conclude, on conducting the relevant balancing exercise itself, that disclosure of the Baptiste and Chan Tack statements is required in the public interest pursuant to that provision. On the basis of such a conclusion it would be open to Mr Maharaj to contend that the Decision Letter is contrary to law, that it failed to observe conditions required by law, that it conflicted with the policy of the FOIA, that it proceeded on the basis of an error of law or that it involved a breach of or omission to perform a duty, within the meaning of one or more of the subparagraphs in section 5(3) of the Judicial Review Act set out above.

45. As regards such a balancing exercise, the Board notes that there is undoubtedly a public interest in preserving the confidentiality of arbitration proceedings, so that they can be effective and the state can have access to private forms of dispute resolution where that may serve the common good. However, the confidentiality requirement in article 30 of the LCIA Arbitration Rules is not absolute and the strength of the public

interest in confidentiality is arguably somewhat attenuated in the present case by the facts that it is disclosure of statements by Petrotrin's own employees which is sought and that it may well have been the case that Petrotrin could have required them to provide such information in the course of their employment whether arbitration proceedings were on foot or not. Petrotrin would have had a clear interest in understanding what had happened in relation to the failure of the joint venture for construction of the gas-to-liquid plant quite apart from any arbitration proceedings, including as part of its consideration whether it had any good claim against Mr Jones. Arguably, it is an adventitious feature of the case that Petrotrin happened to have conveniently at hand relevant information from Ms Baptiste and Mr Chan Tack in respect of its claim against Mr Jones, in the form of their witness statements prepared for the LCIA arbitration, thereby making it unnecessary to obtain fresh statements from them for the purposes of the court proceedings against Mr Jones. Also, it is arguable that the force of Petrotrin's contention that witnesses might not be forthcoming in similar circumstances in other cases if disclosure is ordered might be considered to be reduced if Ms Baptiste and Mr Chan Tack had a legal duty to provide Petrotrin with the information in question. The courts below will have to consider to what extent this means that cases which discount arguments based on the threat to "frankness and candour" on the part of civil servants, as referred to by Jamadar JA at para 46 of his judgment in the *Council for the Construction Industry* case, might provide a relevant analogy in the present case.

46. So far as concerns possible benefits for the public interest of disclosure of the Baptiste and Chan Tack statements, the Board considers that it is arguable that they are of significant weight, with a view to securing transparency and accountability in relation to relevant decisions in a number of respects. Without seeking to be in any way exhaustive, the Board refers to the following possible public interest benefits of disclosure: (a) to enable the public to understand and, if appropriate, criticise decisions taken by Petrotrin in embarking on the joint venture and in entering into the guarantee which have proved to be so costly to it; (b) to enable the public to be fully informed about those matters and Mr Jones's involvement in them so that they could, if appropriate, criticise or oppose the appointment of Mr Jones to roles within government with a focus on energy matters, such as his appointment as a member of the Cabinet Standing Committee on Energy; and (c) to enable the public to understand, and if appropriate criticise, the decisions to bring the civil claim against Mr Jones in the first place and then to abandon it.

47. In relation to point (c), it appears to the Board that as the available evidence stands at the moment, there are some grounds for thinking that the decision to abandon the claim against Mr Jones may have been influenced by political factors. This is in view of the comments reportedly made by a government minister on 8 and 9 October 2015, in advance of receipt of the written advice of 11 October 2015 from Mr Nelson QC, indicating that the claim against Mr Jones was likely to be abandoned; the very summary and tentative consideration given to the merits of the claim against Mr Jones in that written advice (in particular as compared to the previous detailed advices of

counsel when the claim was commenced), on the basis of which Petrotrin seems to have been willing to abandon the claim without further review; and the appearance of involvement of the Attorney General in taking that decision. Against this, Mr Roe QC for Petrotrin rightly emphasised that Mr Maharaj has not suggested that Mr Nelson QC acted improperly in giving his advice of 11 October 2015. And, of course, Petrotrin and the Attorney General may be able to dispel any concerns by evidence they may file in answer to Mr Maharaj's claim. But if they do not, the public interest in having disclosure of the Baptiste and Chan Tack statements in the interests of transparency and securing accountability of government and public authorities might be thought to be increased.

48. For the reasons given above, the Board allows Mr Maharaj's appeal in so far as it is based upon limb (ii) of section 35.

49. Finally, the Board turns to deal briefly with Mr Maharaj's claim based on limb (i) of section 35. Mr Clayton QC, for Mr Maharaj, all but abandoned this part of the claim. He made no oral submissions about it, relying simply on what was said in a single brief paragraph of his written submissions. In the Board's judgment, on the materials deployed by Mr Maharaj in his affidavit, there is no realistic prospect that a court would conclude that reasonable evidence exists that any of the matters referred to in the subparagraphs in section 35 has or is likely to have occurred. The courts below plainly thought that Mr Maharaj has no arguable claim based on limb (i) of section 35. The Board agrees. To say that there is a public interest in understanding the role that political factors may have played in the decision to abandon the claim against Mr Jones (see para 47 above) is very different from saying that there is evidence that significant abuse of authority, neglect in the performance of official duty or unauthorised use of public funds has occurred or is likely to have occurred. Accordingly, the Board dismisses Mr Maharaj's appeal in so far as it is based upon limb (i) of section 35.