

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SAN FERNANDO**

Claim No. CV2020-01149

Between

DEVANT MAHARAJ

Applicant/Intended Claimant

AND

**SENATOR THE HONORABLE DONNA COX
MINISTER OF COMMUNICATIONS**

Respondent/Intended Defendant

THE ATTORNEY-GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice K. Ramcharan

Date of Delivery: 13 May, 2020

Appearances:

Applicant/Intended Claimant: Mr. Anand Ramlogan, SC, Ms. Renuka Rambhajan, Mr. Jared Jagroo
instructed by Mr. Douglas Bayley Attorneys-at-Law

Respondent/Intended Defendant: Mr Reginald Armour, SC, Ms Vanessa Gopaul, Mr Rishi Dass instructed by Ms Savitri Maharaj, Ms Tenille Ramkissoon and Ms Andella Ramroop Attorneys-at-Law

DECISION

Background

1. The Applicant/Intended Claimant, Mr. Devant Maharaj, a social media and online journalist and social and political activist. He was also a former Senator in the Parliament of Trinidad and Tobago and Government Minister. The Respondent/Intended Defendant is the Minister of Communications, Senator the Honorable Donna Cox and the Attorney General of Trinidad and Tobago is the Defendant for the purpose of the constitutional law claim.

2. The Applicant/Intended Claimant by its application dated the 29th of April, 2020 is pleading with the Court for the following reliefs and remedies:

As against the Responded/Intended Defendant:

- a. An Order granting leave to apply for judicial review;
- b. A Declaration that the Responded/Intended Defendant's continuing inaction, failure and/or refusal to allow the Applicant/Intended Claimant to attend via web

link the daily Virtual Media Conferences hosted by the Government of the Republic of Trinidad and Tobago is unfair, irrational and illegal;

- c. A Declaration that the Applicant/Intended Claimant is entitled to access to the daily Virtual Media Conferences by being allowed to attend virtually and to participate in asking questions as a member of the media;
- d. A Declaration that the Applicant/Intended Claimant was treated unfairly contrary to the principles of natural justice pursuant to section 20 of the Judicial Review Act Chap. 7:08 (“JRA”);
- e. An Order of Mandamus to compel the Respondent/Intended Defendant to allow the Applicant/Intended Claimant to attend via web link the daily Virtual Media Conferences hosted by the Government of the Republic of Trinidad and Tobago.

As against the Defendant:

- f. A Declaration that the exclusion and/or denial of access to the Applicant/Intended Claimant by the Minister of Communications from the daily Virtual Media Conferences has contravened and continues to breach the Applicant/Intended Claimant’s constitutional rights under section 4(b) and/or (d) and/or (k) of the Constitution;
- g. A Consequential Order directing the Defendants to grant to the Applicant/Intended Claimant access to the daily Virtual Media Conferences by being allowed to attend virtually and to participate in asking questions as a member of the media;

- h. An Order that the Applicant/Intended Claimant is entitled to an award of damages, including vindictory damages, for the breach of his constitutional rights;

As against both the Respondent/Intended Defendant and the Defendant:

- i. Costs; and
- j. Such further and/or other relief as the Court may see fit in the exercise of its jurisdiction.

Interim Relief claimed against both the Respondent/Intended Defendant and the Defendant:

- k. Pursuant to section 10 of the JRA, the inherent jurisdiction of the Court and/or Part 56.4 (7), (8) and (9) and/or Part 17.1 of of the Civil Proceedings Rules 1998 (as amended) (“CPR”), an interim injunction compelling the Responded/Intended Defendant and the Defendant to allow the Applicant/Intended Claimant to attend via web link the Virtual Media Conferences hosted by the Government of Trinidad and Tobago, established to disseminate information to the public regarding the COVID-19 pandemic pending the hearing and determination of this claim.

3. The Claimant had also sought interim relief, but before hearing, the parties agreed that the Claimant would abandon his application for interim relief, and further that the Application for leave to apply for judicial review would be dealt with as a rolled up hearing, that is to say as an application for leave and the substantive application at the same time.

The Applicant/Intended Claimant's Case

4. On the 30th of January, 2020, following the declaration by the The World Health Organization that COVID-19 is a Public Health Emergency of International Concern and a pandemic, Her Excellency the President of the Republic of Trinidad and Tobago by Proclamation dated the 31st of January, 2020 (Legal Notice 34 of 2020) declared COVID-19 to be an infectious disease. The Minister of Health also published the Public Health (2019) Novel Coronavirus (2019-nCov) Regulations 2020 which seeks to encourage social distancing in an effort to minimize the risk of exposure of citizens to the virus. The Regulations outline the services deemed to be essential and restrict the opening of certain non-essential businesses and public gatherings of more than 5 persons. As of recent, Public Health (2019) Novel Coronavirus (2019-nCov) (No. 12), seeks to restrict the opening of businesses and public gatherings up to the 15th of May, 2020.
5. On the 30th of March, 2020 the Ministry of Communications advised that it would be hosting Virtual Media Conferences (hereinafter referred to as "VMCs"), a mechanism by

which the media can seek information on pressing and important issues in order to hold the Government accountable, in order to provide information on the following:

- a. The spread of the virus;
 - b. The policies and measures that the Government will implement to safeguard public health;
 - c. Social reliefs and grants to ease the adverse impact on the population;
 - d. Account for public expenditure;
 - e. Information about any new developments and advisories; and
 - f. Generally account to the nation in the interest of transparency.
6. At these VMCs, members of the media are granted access and/or allowed to attend virtually by the provision of a web link, so that they may be allowed to ask questions of Ministers and experts.
7. Since then, information and updates with respect to public expenditure, the pandemic, testing and treatment and preventative measures undertaken by the Government to curb the spread of the virus were shared from various Ministers of Government and Medical personnel via these VMCs. It also deals with political issues such as public expenditure at a time when Parliament was not sitting, the state of the economy, relief grants and the plight of the poor in society who are in dire need of help.

8. Social media journalists have the opportunity to probe government ministers and other public officials by posing questions on issues of public concern to ensure transparency, accountability and equity in the expenditure of public funds and interrogate the viability and success of their response plan to the virus. There are many important issues that have not been highlighted at the VMCs to date which the Claimant wishes to address.

9. The Applicant/Intended Claimant is an established social media journalist operating through “Former Minister Devant Maharaj” and “Former Minister Senator Devant Maharaj” with an independent media organization, D News Network, (hereinafter referred to as “DNN”) and as such he is entitled to be treated fairly and given similar favorable consideration and access to the VMC as a journalist.

10. The Applicant/Intended Claimant presently commands an avid collective following on these social media pages with over 14,000 “likes” and followers. He utilizes this modern-day platform to regularly contribute to national discussion by publishing inter alia international and local articles/posts on current issues, public interest issues and recent judicial decisions, thus stimulating debates and educating the population. On average his posts reach approximately 60,000 Facebook users. Due to rapid technological advancement in recent years, the scope and definition of a journalist and the press have evolved significantly and now captures online journalists as opposed to only the traditional media houses. The Applicant/Intended Claimant has also opted to share information via DNN.

11. The Applicant/Intended Claimant has been inundated with questions from numerous citizens who have concerns regarding what they perceive as the lack of accountability and transparency by the Government and their handling of the pandemic in general.

12. Since the 30th of March, 2020 the Applicant/Intended Claimant noticed that numerous non-traditional, online and social media journalists were virtually attending the conferences. This included Ms. Rhoda Bharat (Newsauce), Mr. Lasana Liburd (Wired868), Mr. Prior Beharry (AZP News) and Looptt. These individuals and/or entities are based in social media and/or operate online and the virtual world and are not attached to established, traditional media houses. They are no different to the Applicant/Intended Claimant's social media/online presence. However, at no point in time was he ever notified nor was he invited to be part of the conferences.

13. The Applicant/Intended Claimant called the Ministry of Communications and was informed that he only needed to request access via the relevant Ministry. As such he obtained the email address so as to apply to gain access. Emails were sent on the 12th of the 15th of April, 2020 along with SMS and Facebook messages to the Minister of Communications requesting to be present at the VCMs. Thereafter the Minister confirmed in the press conference that she would check on the said request. However there has been no response to date.

14. On the 12th of April, 2020 the Applicant/Intended Claimant wrote an email to the Minister of Communications, Senator the Honorable Donna Cox and to Corporate Communications Manager at the Ministry of Health, Ms. Candice Alcantara requesting the ability to attend the VMCs. He indicated that he was desirous of contributing daily to the national discussion by asking questions and sharing information with the public as his reach being estimated to be approximately 60,000 citizens. However no response was received.
15. On the 13th of April, 2020 online media outlet AZP News published an article where the Minister of Communications was quoted as having stated that she was unaware of the Applicant/Intended Claimant's request. She did confirm seeing something relating to the said request on Facebook and that it contained legal jargon. However there was still no response from her despite her assurance at the press conference that she will check on it which was her response to an Express Reporter's question asking for the criteria used to determine who would attend press conferences.
16. Having had no response, on the 15th of April, 2020, the Applicant/Intended Claimant wrote a second email to the Minister of Communications and Ms. Alcantara which was also copied to numerous other media personnel and journalists. His requests were also forwarded to the Minister's mobile phone via text as well as her Facebook via Facebook Messenger. However, to date he has received no response. Therefore access to the VMCs by the Minister was denied. It is unfair and discriminatory as a number of other online

and social media journalists, similarly circumstanced to be, continued to be allowed to attend and ask questions.

17. The Applicant/Intended Claimant is a supporter of the Opposition United National Congress but he maintains an independent outlook on national affairs. The failure and/or refusal of the Minister to allow him access is troubling as Ms Rhoda Bharath is, again, a well-known political social media blogger/journalist who supports the government. This was confirmed when on the 15th of April, 2020 the Minister published on her Facebook account, "Press Conference today at 10 am" where she then tagged Ms Bharath in a comment stating "today is your day". Ms Bharath does not interrogate the government on burning issues that have been raised in the public domain but poses soft questions that ministers seem quite well-prepared to answer. She has also remained a fixture at the VMCs despite strong objection from members of the public and the Media Association of Trinidad and Tobago. Ms. Rhoda Bharat in particular is employed by the National Lotteries Control Board (State controlled) as a Communication Specialist and is a known supporter of the Government as she regularly posts pro-Government sentiments on her Facebook page. Moreover she enjoys a significantly smaller following than that of the Applicant/Intended Claimant with less than 5000 followers.

18. In light of the above, on the 16th of April of 2020 the Applicant/Intended Claimant instructed his Attorneys-at-Law to send a Pre-action protocol letter to the Attorney General regarding the action on the part of the State through the Honorable Minister of

Communications or otherwise, which has compromised and violated his right to equality of treatment from a public authority, the protection of the law and to freedom of the press. This was sent via email to the Solicitor General on the morning of the said date requesting a response to be provided no later than 4:00 pm on that date due to the obvious urgency of the matter. However, there was no response within the stipulated time frame.

19. Instead, on the 17th of April 2020, the Solicitor General sent a response via email requesting more time to seek instructions. The Applicant/Intended Claimant waited 11 days since sending the pre-action protocol letter for a substantive response. None was received.

20. The response of the Solicitor General Stated that the Ministry was operating at “reduced capacity” due to the pandemic. However the Applicant/Intended Claimant notes that as per the Public Health (2019) Novel Coronavirus (2019-nCov) (No. 10) Regulations 2020 at “law offices and legal services” and “Ministries are listed as essential services at Regulation 3(2)(j) and 3(2) (ab) respectively. As such there should be no reduced capacity that prevents a clear timeline or reason to be given to the said letter.

Respondent/Intended Defendant's Case

Affidavit of Donna Cox

21. Shortly after the WHO declaration that the COVID-19 is a pandemic, the Ministry of Communications received a request from the Ministry of Health to facilitate its media briefings so that it could inform the population about the virus and the measures undertaken by the Government to reduce its effect on the population.

22. Initially the media briefings were done in person. However, subsequently a decision was taken for it to be conducted virtually, under the auspices of the Ministry of Health. The Ministry of Health has its own Communication Department which determines who will be invited to the media briefings, sends its invitations to the invitees and requests that confirmation of attendance be sent to the Senior Government Communication Specialist at the Ministry of Communications. The latter step assists the MOC in organizing the logistics for the briefings.

23. Ms. Donna Cox is aware that Ms. Rhoda Bharath, whom she has known professionally as a former member of the traditional media house and as an online media voice on social media, made a request to the Ministry of Communications to be added to the media briefings. There was no reason why Ms. Bharath could not be added to the media briefings and so, Ms. Donna Cox asked the Ministry of Communications' Senior Government

Communication Specialist, Ms. Charlene Stuart, to let the Ministry of Health add her to the media briefings.

24. The Ministry of Communications arranges with the Trinidad and Tobago Television for the hosting of the media briefings at its studio and the use of their video feed for other television stations. Also the Ministry of Communications streams the media briefing live on its Facebook page where any member of the viewing public can send in questions. Ms. Donna Cox's role in moderating the proceedings includes putting forward these said questions, which are monitored by a member of staff who forwards the questions to her electronically, to the panel if time allows.
25. As the media briefings are held for no longer than one hour and the large number of journalists in attendance, there are time constraints as to the number of questions that can be entertained during the question and answer segment which depends on how long the panelists speak.
26. There is a limit of two questions per person/media house and the invitees are called upon a first come first serve basis by a show of hands. The Government is committed to respecting the freedom of the press and has never attempted to dictate or restrict any questions which the members of the press choose to ask. Additionally, there has been no complaints from the Media Association of Trinidad and Tobago that any member of the

press has been excluded from participation at the media briefings which is testament to the even handed approach taken by the Government.

27. Ms. Donna Cox, in her years of experience states that she is not aware of any media organization called “D News Network” or of Applicant/Intended Claimant being a journalist. She has also noted the allegations that Ms. Rhoda Bharath is a well-known supporter and blogger for and on behalf of the Government. She is not aware of her political affiliation or whether she is a supporter of the Government.
28. With respect to the Facebook Post on the 15th of April, 2020 where Ms. Rhoda Bharath was tagged in a comment stating “today is your day”, it was a remark made jokingly about female interest in one of the male panelists who is a doctor and who was attending the media briefing. It was intended to stimulate excitement and interest and to encourage the viewing of the media briefing. She states that she has many Facebook “friends” who are journalists or who have online voices but they are not her personal friends, Ms. Bharath being one of those persons.
29. Ms. Donna Cox disagrees with the Applicant’s/Intended Claimant’s statement that the Ministry of Health virtual media conferences represent the only real opportunity for the the questioning of Government Ministers to ensure transparency, accountability and equity in the expenditure of public funds and to interrogate the success of the Government’s response to the pandemic. The use of parliamentary mechanisms remains

available to the Opposition and Independent Senators to question the Government of issues of national importance or its general importance. Private member motions can be used as well as motions on national policy issues and questions can be asked to explain work, policies decisions and actions of Ministries and agencies. Matters raised on the adjournment of parliamentary sittings can be used to raise matters for which Cabinet is responsible. Additionally any member of the press is free to submit questions directly to any member of the Government or to their officers at any time.

30. With respect to the emails dated the 12th of April, 2020 and the 15th of April, 2020, Ms. Donna Cox stated that she confirmed that she did in fact receive them. She explained that she did not see them earlier because of the large volume of emails which she receives on a daily basis coupled with the increasing demands during this specific time. She was aware of a document circulating on social media around to 12th/13th of April, 2020 and recalled glancing at it and noticing legal jargon. However she checked her text messages on her phone and via facebook and did not receive any messages from Applicant/Intended Claimant.

31. Ms. Donna Cox was also aware of the pre-action protocol letter sent on the 16th of April, 2020. However as the Ministry of Communications was gathering instructions to provide to the Solicitor General for advice and response the matter was filed before this process was completed.

32. It is untrue that a decision was made to not invite and/or exclude the Applicant/Intended Claimant from the media briefings. His request has been considered and Ms. Cox is unable to see how it is appropriate for him to attend having regard to the fact that he is a politician which the forum is not intended for but rather for members of the media.
33. On the 15th of March, 2020 the Media Association of Trinidad and Tobago wrote a letter to her raising concerns about the media briefings and their recommendations to address said concerns. The Ministry of Communications is reviewing the current system and is formulating guidelines for media accreditation which will be available for consultation before being finalized. This is intended to replace the current ad hoc system.

Affidavit of Charlene Stuart

34. Ms. Charlene Stuart is the Senior Government Communications Specialist employed at the Ministry of Communications. The Ministry of Communications facilitates the media briefings by providing logistical and technical support and expertise to ensure proper execution. Attendance at media briefings are by invitation only. In some cases a reporter or media person can make a request for an invitation to be submitted to him/her. Depending on the timing and circumstances the request may be allowed and an invitation will be extended.

35. When the Ministry of Health issues its invitations it requests that all media attending should send their names and email addresses to the Ministry of Communication who will then send the link for the Zoom application to the assigned individual.

36. On the 2nd of April, 2020 Ms. Stuart received a request via email from Ms. Rhoda Bharath for an invitation to the media briefings. A response was issued to her advising that she ought to contact the Ministry of Health. Sometime later, the Minister of Communications instructed Ms. Stuart that Ms. Bharath should be added to the media briefings. Accordingly Ms. Candace Alcantara, the Communications Manager at the Ministry of Health was informed.

37. Ms. Stuart is also aware that the Applicant/Intended Claimant requested an invitation to attend the said media briefings as she was added/copied on emails he sent to the Minister of Communications and Ms. Alcantara on the 12th and 15th of April, 2020.

38. As a communications professional she has never heard of D News Network nor received any communication from the Applicant/Intended Claimant requesting to be a part of the media pool for media briefings prior to the 12th of April. She also states that she does not know Applicant/Intended Claimant to be a journalist.

Affidavit of Candice Alcantara

39. Ms. Candice Alcantara is the Manager of Corporate Communications at the Ministry of Health. Her responsibilities include the development, implementation, direction and evaluation of the Ministry of Health's marketing and communication strategies and programmes.

40. In March 2020, she was tasked with the responsibility of arranging, on an urgent basis, a series of media briefings for the Ministry of Health so that officials could speak directly to the population about COVID-19 and the measures being put in place to protect the populations. At first these were in person briefings but on the 30th of March the Ministry of Health switched to virtual media briefings.

41. In accordance with the established practice, attendance by the media at media briefings is by invitation via email from the Ministry of Health. The switch to the virtual media briefings via Zoom technology led to the Ministry of Communications becoming more heavily involved. It was the Ministry of Communications' responsibility to issue zoom links to facilitate participation. As far as Ms. Alcantara was aware the Ministry of Health was not involved in that part of the process or in determining which media entities were given final access to the virtual media conference via the link.

42. Following the switch to the virtual media briefings, the Ministry of Health added the four following persons to the COVID-19 media briefings:
- a. Mr. Lasana Liburd, Vice-President of the Media Association of Trinidad and Tobago of Wired868, an online news website;
 - b. Ms. Kim Boodram, a senior journalist at the Trinidad Express, one of the three daily newspapers in national circulation and an established media house;
 - c. Astrenut News, an online health and fitness website; and
 - d. Ms. Rhoda Bharath on the instruction of the Ministry of Communications.
43. Furthermore the Ministry of Health has been inviting Mr. Prior Beharry even prior to the switch to the virtual media briefings who Ms. Alcantara knows to be a journalist who operates an online news service and who had previously worked for a number of years with an established media house in Trinidad.
44. She is also aware that the Applicant/Intended Claimant requested an invitation to the media briefings via email sent to herself, Ms. Charlene Stuart from the Ministry of Communications and to the standard corporate communications email of the Ministry of Health on the 12th of April, 2020. She then advised her relevant superiors. Additionally, she was added to an email which the Applicant/Intended Claimant sent to the Minister of Communications and others on the 15th of April. 2020. However a response was not issued as it was her understanding that it would be handled by the Ministry of Communications.

45. As a communications professional, Ms. Alcantara has never heard of D News Network nor received any communication from the Applicant/Intended respondent requesting to be part of a media pool for the media briefings.

Affidavit in Reply of Applicant/Intended Claimant

46. The Applicant/Intended Claimant states that it is not correct to say that the Ministry of Health determines who attends the VMCs because the Minister of Communications was able to direct and instruct Ms. Alcantara of the Ministry of Health to include and/or add a media personality which was accepted by both Ms. Stuart and Ms. Alcantara.
47. He also states that like Ms. Rhoda Bharath, he is a former member of the traditional media house and an online media voice on social media. Ms. Bharath's association with a traditional media house was that she was the host on the morning talk show "power breakfast show" aired on POWER102FM. If this is the criterion the Applicant/Intended Claimant states that he is also qualified as he hosted a talk show for many years on Radio Jagriti. He also notes that he does not object to Ms. Bharath's presence at the VMCs. Ms. Bharath was not advised that any viewing member of the public can send in questions on the Ministry of Communications' Live Facebook page. Instead, she was given direct access to the VMC so she could personally attend virtually and pose questions without censorship.

48. According to Ms. Donna Cox there appears to be two routes by which persons can request to be invited to the VMC: via the Ministry of Health or the Ministry of Communications. The latter received the request from Ms. Bharath, considered it and gave instructions for approval. However the Applicant/Intended Claimant is yet to be afforded similar treatment in having his request dealt with expeditiously.
49. In response to the Minister of Communications stating that there has been no complaint from the Media Association of Trinidad and Tobago, the Claimant/Intended Applicant states that on the 2nd of May, 2020, a press release was issued where it expressed that the right to freedom of press was being threatened by Government's response to the pandemic. It said, "MATT added the challenges being faced by a free press in T & T highlighted the responsibility of the governments to walk their talk of commitment to the institution of a free press".
50. Again the Applicant/Intended Claimant states that prior to entering Government he had a long and distinguished career in the print and electronic media. He was also a columnist with the Newsday newspaper and worked as a radio broadcast journalist with Radio Jagriti for several years. Prior to his stint as a Member of Parliament, he was the CEO of Central Broadcasting Services Limited where he was the most senior broadcast journalist on staff. Since demitting public office, he has not been engaged or involved in active politics as he has been concentrating on developing my social media news page, pursuing

his PhD and seeking the welfare of workers as president of the Sanctuary Workers Trade Union.

51. He is also a founding member of the Association of Independent Media of Trinidad and Tobago, an independent grouping of media practitioners and workers open to not only the traditional media such as radio, television and print but new media such as social networks. It currently operates through a Facebook page with over 400 members.
52. While it is true that the Applicant/Intended Claimant supports the Opposition, he does not hold an official position on the executive of the party and has not mounted a political platform since 2015. Also he states that he is no different to Ms. Bharath who is equally affiliated as a strong supporter of the ruling People's National Movement.
53. With respect to the Facebook post, the Applicant/Intended Claimant states that the Minister of Communications tagged 3 other persons, namely, Ms. Jocelyn Bodden, Ms. Lynetter Quamina and Ms. Renee Bain-Keller, who are all supporters of the PNM.
54. In response to the avenues outlined by the Minister of Communications where the Applicant/Intended Claimant can voice his concerns, he states that as he is not a Member of Parliament he cannot utilise those said parliamentary avenues. Further, questions to the Government Minister on various issues have been sent but he received no response.

55. With respect to the issue raised regarding the large volumes of emails received by the Minister of Communications, the Applicant/Intended Claimant anticipated as much, hence the reason the request to join the VMCs were sent to Ms. Charlene Staurt and Ms. Candice Alcantara. However there was no acknowledgment or response.

56. It has been three weeks since his initial request and two weeks were allowed to pass in order to facilitate a response to his pre-action protocol letter. However, none was forthcoming. Whilst Ms. Bharath's request was expeditiously approved, the Minister has indicated in her Affidavit that she would not grant access to him as she thinks that he is a politician. Prior to this he was never given a reason for the denial, far less given an opportunity to address the matters being held and used against him.

57. This said denial is further evidence of the unfair and unequal manner in which the Applicant/Intended Claimant has been treated. "AZP News", represented by Mr. Errol Fabien attends the VMCs. He is an active politician who has a voice on social media and heavily campaigns against the PNM and UNC and seeks to win political support for himself when he publicly declared his intention to contest the constituency for St. Joseph. He is an active politician who intends to contest a seat at the next general elections due this year and the Minister did not see it fit to deny him access.

58. There are numerous people who have served in political office and returned to their work and career in media after they have demitted office similar to the Applicant/Intended Claimant.
59. The Applicant/Intended Claimant notes that Ms. Candice Alcantara paints a different picture of who is responsible for selecting media personnel to access the VMC than that given by the Minister of Communications. She states that the Ministry of Health, to the best of her knowledge, is not engaged in determining who can access the VMC via the web link.
60. Ms. Alcantara also listed the persons who were granted said access which included Astrenut News, an online and fitness website, with no statement as to whether they fell within the designation of a journalist which she says the Applicant/Intended Claimant is not. Further she states that Ms. Rhoda Bharath was listed on the instruction of the Ministry of Communications which allowed her access. However, this does not accord with the Minister of Communications' statement that it is the Ministry of Health that determines who is granted permission. Yet, his access was denied in her affidavit in reply that was filed.

Further Affidavit in Response of Charlene Stuart

61. Ms. Charlene Stuart swore a further Affidavit in Response to certain new matter raised in the Applicant's/Intended Claimant's Affidavit in Reply. She states that she is not aware of the existence of the Association of Independent Media of Trinidad and Tobago.

62. The Ministry of Communications does not get involved in the assignment of persons nominated/assigned by a media house/organization to attend media briefings. "AZP News" sent an email address for Mr. Fabien to access the Zoom link on the 14th of April, 2020 and the 1st of May, 2020. For the VMCs held on other dates, AZP news sent an email address for Mr. Prior Beharry to access the Zoom Link.

63. It is general practice that all invitations for the media briefings are issued by the Ministry of Health with instructions for the email addresses (who will be attending) to be sent to the Ministry of Communications for the Zoom link. The Ministry of Communications will then send the Zoom link to those said persons.

64. All emails received by the Ministry of Communications were from traditional media houses, radio and television stations, print and online media and/or online voices.

Submissions

65. At the hearing of the Notice of Application, the Claimant indicated that the real issue in this case was the question of equality of treatment under section 4(d) of the constitution. He noted that this was a provision unique to the Constitution of Trinidad and Tobago, whereby public authorities themselves were mandated to treat persons equally. Section 4(b) deals with the equality of laws and the administration thereof, while section 4(d) relates to treatment of citizens by public authorities.
66. It was not necessary for the Claimant to show that his comparator was identical to him, but rather, that they were broadly similar. In that respect reference was made to the case of ***Central Broadcasting Services Ltd v The Attorney General of Trinidad and Tobago***¹, where it had been argued before the Court of Appeal (and the first instance court) that Citadel Ltd and the SDMS were not identical comparators.² He also noted that there was no need to establish *mala fides* on the part of the public authority as it was the discriminatory effect and not intent which was relevant.
67. The Claimant contends that Ms Bharath and himself are proper comparators. He says that they are both “social media journalists” with an online voice. They are both politically

¹ Civ App 16 of 2004, [2006] UKPC 35

² Counsel for the Claimant had suggested that one of the differences pointed out was that the SDMS was a religious organization, and Citadel was a commercial enterprise. This is inaccurate as firstly, the Court of Appeal held that the SMDS application was not approved, but rather the application of Central Broadcasting Services, and secondly, the issue of religious organization never arose in the comparison (para 26 of the judgement of Mendonca, JA). Nothing turns on this mistake, however.

active. Ms Bharath is a keen supported of the PNM, of which the Intended Defendant is a member and he is a supporter of the UNC, which is the opposition party. He contends that this is the only difference between the two. It is to be noted that while in his affidavit, and submission, the Claimant made reference to Mr Prior Beharry and Mr Lasana Liburd, and latterly, Mr Errol Fabien, most of his efforts, in his affidavit, his written submissions and especially his oral submissions, were in establishing the similarity between himself and Ms Bharath.

68. When asked, the Claimant stated that it was immaterial as to how the Claimant described himself. All that was relevant was that it was established that he and (especially) Ms Bharath had been shown to be broadly similar.

69. The Claimant went on to submit that even if they were not comparators in the legal sense of the word, the court could still find that there was a breach of the equal treatment provisions in 4(b) and 4(d) if it could be shown that there was inequality of treatment. As stated in paragraph 96 of their submissions: **“The Claimant does not challenge the utility of an analytical framework which generally asks, first, whether situations are comparable, analogous or broadly similar, and next whether (if there is such broad comparability) the difference in treatment is justified. But rigid formulism is to be avoided... And there is no principled basis to require individuals to prove “broad comparability as a first hurdle before a public authority’s reasons for differential treatment are subjected to scrutiny.”**

70. He relied in his written submissions on the cases of *Audline Mootoo v The Attorney-General & Anor.*³ and *Dianne Jhamilly Hadeed v The Attorney General & Ors*⁴. He also referred to the very recent Court of Appeal decision in *Nalini Kokaram-Maharaj v The Attorney General & Anor*⁵ in his oral submissions.
71. On the question of the protection of the law, after going through the relevant case law, he submitted that the concept of the protection of the law was applicable in his case as it could not be shown that there was fair play in action.
72. He further submitted that the Judicial Review Act by virtue of section 20 of the Judicial Review Act, substantive fairness was reviewable in Trinidad and Tobago, and that the act on a whole showed that unlike England and Wales, multiple categories of reviewable matters were encouraged.
73. With respect to the breach of 4(k) of the Constitution, the Claimant contended that the definition of journalist has broadened over the years and pointed to the development of the defence in *Reynolds v Times Newspaper Ltd*⁶. He noted that in the prevailing

³ Civ App 38 of 2009

⁴ CV2018-02726

⁵ Civ App P274 of 2018

⁶ [2001] 2 AC 127

circumstances and the stay at home directions under which the country now exists, many more people are relying on online news sources to get information.

74. When asked whether there was an objective definition of journalist, the claimant stated that there probably was, but that it may evolve over time. He further submitted that the form was not important. Whether he was in fact a journalist was a “red herring” and what was critical was the similarity between Ms Bharath and himself.
75. In those circumstances he submitted that the right to the freedom of the press ought to be jealously guarded and that the capricious manner in denying him access to the VMCs was a breach of the right to freedom of the press.
76. The Intended Defendant and Defendant (collectively referred to as “the Defendants” for convenience) submitted firstly that the Claimant failed at the first hurdle of establishing that he was a journalist. It was noted that the Facebook pages to which he referred described him as a politician. Further, it was noted that there was no evidence to back up his assertions that he was a journalist. Reference was made to the Irish case of ***Jordan v Ireland & Ors***⁷ in which it was noted that mere assertions cannot be evidence, even of a *prima facie* nature.

⁷ [2018] IEHC 438

77. This they said, was fatal to the Claimant's case. His case is pleaded on the foundation that he is a journalist.
78. With respect to the question of the protection of law, the Defendant submitted that the protection of law deals solely with the right to procedural fairness. Reference was made to the cases cited by the Claimant in his submissions and it was suggested that in all these cases, what was denied the Claimants were access to proper procedural protections.
79. With respect to the question of comparators, the Defendants submitted that the Claimant failed to establish that there were suitable comparators. They submitted that the Claimant recognized that all the other alleged comparators were journalists, including Ms Bharath. However, being unable to establish that he was a journalist, whether online or otherwise, he was not broadly similar to them at all. Therefore, he could establish that his right to equality of treatment by a public authority.
80. With respect to the Claimant's submission that even if the Claimant could not establish that there were appropriate comparators, one could still find that there was still a breach of 4(d) if there was differential in treatment, the Defendants relied heavily on the case of ***Sahatoo v The Attorney General***⁸, in that case, the Judicial Committee of the Privy Council (JCPC) after outlining the criteria in ***Webster v The Attorney General***⁹, declined to revisit

⁸ [2019] UKPC 19

⁹ [2015] UKPC 10

the criteria set out in that case. Therefore the Defendants contend, insofar as any authority suggests that there is no need for a Claimant to establish the existence of suitable comparators, they are either overruled, or bad law and should not be followed.

81. On the question of the freedom of the press, the Defendants firstly state that as the Claimant is not a member of the press, but rather a self-styled politician who enjoys a substantial following on Facebook. Further, the right to freedom of the press deals with matters such as the protection of sources and as well with an overlap with the freedom of expression. Importantly they contend that the freedom of press does not guarantee a greater access of information, or to government.

Analysis

82. It would be useful to consider the matter by examining the following questions:
- a. Has the Claimant established that he is a journalist?
 - b. Has the Claimant established that there are suitable comparators?
 - c. If the answer to (b) is yes, was there a justification for the different treatment by the Intended Defendant.
 - d. Is there a requirement for the Claimant to establish suitable comparators in order to succeed in a claim for unequal treatment?
 - e. If the answer to (d) is no, have the Defendants established a justification for the difference in treatment meted out to the Claimant?
 - f. Was there a breach of the Claimant's right to protection of the law?
 - g. Has there been a breach of the Claimant's right to freedom of the press?

- h. Was the minister's eventual decision to exclude the Defendant from the VMCs irrational or unreasonable?
- i. Has the Defendant established that he is entitled to be invited to attend the VMCs?

Is the Claimant a journalist?

83. The Claimant has stated throughout his affidavit, that he is a well-respected journalist. In the preamble to his affidavits, he describes himself as **“social media journalist, former minister and social and political activist and freelance journalist...”**; at paragraph 7(i) he states that **“As an established and legitimate social media journalist...”**; again at paragraph 7(vi) he states **“As an established social media journalist with an independent media organization D News Network (DNN)...”**; at paragraph 9 he states **“I am an established, recognized and respected blogger, independent social media and online journalist...”**
84. He further states that he is an experienced radio personality, having hosted a radio talk show with Kamal Persad in 1996 on 91.1 FM called the Hindu View Point (sic). He states that he was a weekly columnist with the Trinidad Express and that his articles have been published in the Trinidad Guardian as well as many other Caribbean publications.
85. More recently, he points to his Facebook pages, *“Former Minister Devant Maharaj”* and *“Former Minister Senator Devant Maharaj”*. The former page has approximately 14000

likes, while the former page has approximately 1500 likes. There he says he posts articles of local and international interest.

86. In essence that was the basis for the Claimant's assertion that he was a journalist. Now, it is to be noted that the critical question is whether at the time that the request was made to the Intended Defendant, the Claimant was a journalist. Whether he was a journalist previously is not relevant to the determination as to whether he is a journalist now. As the Claimant noted, when speaking about politicians, it is possible for people to move from one field to another. Because a person is a journalist today, does not permanently label them a journalist for life, just as being a politician today does not permanently label them a politician for life. They may retain aspects of their journalistic instincts, but they are no longer journalists. I take judicial notice of the fact that several former journalists have been called to the Bar, and no longer practice as journalists. One such journalist has indeed been elevated to the Bench. In no way can they still be said to be journalists.
87. As noted above, the Claimant asserted that the definition of journalist must evolve over time. I do not fully agree. What journalists do does not change. The manner in which they do it is what changes, and the advent of widely accessible high-speed internet, as well as ubiquitous social media platforms such as Facebook mean that many more people can engage in the activity called journalism.

88. What then is a journalist? A useful definition can be found from the website Lexico.com (a product of the Oxford University Press). It states that a journalist is one who **“writes for newspapers, magazines, or news websites or prepares news to be broadcast.”** I would venture further to say that this could be expanded to include social media sites such as Facebook. It is to be noted that many persons get their news from social media sources such as Facebook, to the extent that many of the “traditional” news outlets maintain an active social media presence.
89. Looking at the Claimant in the instant case however, on the evidence that he has provided, it cannot be said that he is a journalist. Firstly, the mere fact that a he has a substantial following on social media is insufficient to say that he is a journalist. Many people have substantial followings on social media. Actors, musicians, sports personalities, politicians, all enjoy substantial social media followings. This gives them an online voice, but it does not mean that they are journalists by any stretch of the imagination. It is clear that the Claimant himself does not consider that he is a journalist. In the description to both his Facebook pages, he describes himself as a politician, not a journalist. On that evidence alone, his Facebook pages fail the test of being journalistic sources of information.
90. We must consider what he describes as the means through which he has recently shared news with members of the public, D News Network, or DNN. It is remarkable that he has named this entity as being the vehicle through which he disseminates news but has failed to provide any other information about it. There is no evidence of any Facebook page,

website, publication, number of readers/viewers, number of stories or anything. There is a complete absence of information. When one contrasts that with the copies of the Facebook pages, showing engagement and number of likes, as well as the Facebook page of the AimTT, I am left with the inevitable inference that DNN exists only in the mind of the Claimant and is not a *bona fide* entity at all.

91. Further to this there is the uncontradicted evidence that none of the officials of the Ministries or the Intended Defendant had any knowledge of the Claimant being a journalist, nor had any of them ever knew, or heard of DNN. In light of these denials, one would have expected the Claimant to provide evidence of the existence of DNN.

92. Given the above, it leads one to the inevitable conclusion that the Claimant is not a journalist. He certainly sees himself as a politician before journalist. It is the court's view that he has only recently put on the cloak of journalist to access the VMCs and other such fora. At best he is a journalist of convenience.

Are there suitable comparators?

93. As noted in *Webster*, a comparator is "***comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment.***"¹⁰ In *Kokaram-Maharaj* the Court of Appeal noted that "**While it is true that the person who alleges inequality of treatment bears the burden of proof of**

¹⁰ At paragraph 24.

establishing comparators, the standard or onus of proof is to raise a prima facie case.”¹¹

The Claimant therefore must raise on a prima facie basis that there were persons who were comparable, analogous or broadly similar to the Claimant.

94. The Claimant contended forcibly that there was no difference between himself and Ms Bharath. They were one and the same. The Claimant was a former journalist with an online voice. On the Defendants’ evidence, Ms Bharath was a former journalist with an online voice. There was no substantive difference between the two of them. They both are political activists. He was no more a politician than she was.
95. In his submissions, the Claimant proffered a definition of politician, and suggested that the Claimant could not fall within any of those categories any more than Ms Bharath could. It was noted by the Defendants that the Claimant himself recognized Ms Bharath as a journalist as he did Mr Prior Beharry and Mr Lasana Liburd. He could not now say that she was not a journalist.
96. The Claimant did not strenuously contend that he was similarly circumstanced to Mr Beharry or Mr Liburd sufficiently to be considered suitable comparators to them. His main focus was on Ms Bharath. It is interesting to note that in his affidavit, he noted that all three have Facebook pages through which they disseminate their news: AZPNews (Mr Beharry), Wired868 (Mr Liburd) and Newsauce (Ms Bharath). He claimed to have a news

¹¹ At paragraph 16

outlet of his own, but as noted earlier there is absolutely no evidence of that being in existence. Interestingly as well, although he mentioned these pages, he did not exhibit copies of them to his affidavit, other than that of Ms Bharath.

97. He did however, exhibit an article published by Mr Beharry on the AZP News website, (and not Facebook page), which shows that there is substance behind AZP News, whether run by one man or 20. Ms Alcantara in her affidavit gave uncontradicted evidence that Mr Liburd runs an online news website. Further on Ms Bharath's page, there is a link to a website, again suggestive that there is substance to this alter ego. Given the relative lack of evidence with respect to Wired868 and AZP News, there is nothing to suggest that these are not *bona fide* news organisations.

98. In his submissions reference was made to Mr Errol Fabien who the Claimant has described as an active politician who ran for the St Joseph seat, and who is critical of the PNM and the UNC. Further, Mr Fabien intends to run again for political office. While it is a matter of public record that Mr Fabien ran for political office previously, there is no evidence before the court that Mr Fabien is a frequent critic of both political parties, which in any event does not make one a politician. There is also absolutely no evidence put before the court that Mr Fabien intends to run for public office in the future. This is again an assertion by the Claimant without the evidential backing to support it.

99. The Claimant also resisted the suggestion by the court that Mr Fabien was present at the VMC as a representative of AZP News. This led to back and forth between the Claimant

and the Defendants as to whether the email from AZP News asking for Mr Fabien to be joined was disclosable. At the end of the day, the Claimant opted not to make any application for specific disclosure, but the Defendants did in any event chose to disclose the emails to the Court.

100. The emails themselves are unremarkable. One asks for Mr Fabien to be given access to the AZP News on the 14th April on behalf of AZP News. The second asks for Mr Fabien to be given access on behalf of AZP News and Gayelle the Channel. There is no evidence to suggest that Mr Fabien has been allowed access to the VMC whether on behalf of AZP News, or otherwise.
101. It is also to be noted that the Claimant does not suggest that either Mr Liburd or Mr Beharry are politically active. In those circumstances, it is clear that neither of them could be proper comparators to the Claimant. Mr Fabien was granted access on behalf of AZP News, a *bona fide* news organization. Therefore, he clearly is also not a proper comparator.
102. That leaves Ms Bharath. As noted above, this is where the Claimant spent most of his energy in trying to establish a proper comparator. Again however, he is confronted by his acceptance and assertion that Ms Bharath is a journalist. In oral submissions, he indicated that what was meant was that Ms Bharath was a journalist in as much as he was. However, when looking at the objective facts, there are material differences between the Claimant and Ms Bharath. Firstly, as noted earlier, Ms Bharath's Facebook has a link to a

website Newsauce.com. This is suggestive, though not determinative of a news site. No evidence of this site is before the court, however.

103. Secondly, Ms Bharath describes herself as a blogger. Now a blogger is not coterminous with journalist. One can have a sports blog, a company blog, a political blog, an entertainment blog as well as a news blog. However, it could be said that when someone describes themselves as a blogger, they are more likely than not engaging in the activities of a journalist.
104. The Claimant exhibited certain posts of Ms Bharath from her Facebook page. He admitted at the hearing that it was a curated selection of posts. In that regard, it is viewed with some caution. The Claimant suggested that it would be possible for this court to peruse Ms Bharath's page. The court does not think that this is appropriate. It would not be appropriate for the Court to base its decision on matters which were not evidence before the court. For the record, this court does not follow, or like any of the relevant Facebook pages mentioned in these proceedings.
105. A further distinction is the knowledge of the relevant officers in the Ministry of Communications and Health, as well as the Intended Defendant. As noted earlier, the Intended Defendants nor the Ministries' communication officials were not aware that the Claimant was a journalist at the time of the request, nor had anyone heard of DNN. By contrast, she knew that Ms Bharath had an "online voice". Though the Claimant attempted to describe himself as having an online voice, what constitutes an online voice

is subject to interpretation. One however, can reasonably that the Intended Defendant would have at least been able to glean the information from Ms Bharath's Facebook page, which shows that she describes herself as a blogger and that she has a website known as Newsauce.com. On the other hand all the information she would have had from about the Defendant is that he describes himself as a politician on his Facebook pages, and that he claims to run a news organization that does not exist.

106. In the circumstances again, Ms Bharath is not a suitable comparator of the Claimant. Firstly, the uncontradicted evidence from the Claimant is that she is an online journalist, and from an objective point of view, on the evidence before the court, while she may be a harsh critic of the UNC, she could be described as a journalist. On the other hand, there is no basis on which the Claimant could be considered a journalist, and in light of his self-appellation as a politician, there is nothing which prevent a reasonable person from concluding that this is what he is.

107. That being the case, the Claimant has failed to establish that there are suitable comparators. Further, there is no need to consider the question as to whether there was any justification for any differential treatment by the Intended Defendant.

Is There a Requirement for the Claimant to Establish Suitable Comparators?

108. In this regard, the Claimant relied primarily on the cases of *Audine Mootoo* and *Dianne Hadeed*, which quoted from the *Mootoo* case. In *Mootoo*, Moosai, JA stated:

“[83] Notwithstanding the failure of the appellant to establish that the persons relied on were valid comparators for the Extension post, her case had another dimension to it. As part of her claim to unequal treatment, the appellant also relied on the unfair and arbitrary treatment by the respondent in its application of the regulations to her in this post of Extension, as well as the posts of Horticulture (Ministry of Agriculture), Crop Production and Horticulture (Ministry of Public Utilities). Essentially the appellant focuses on non-compliance with regulations 25 to 28. In spite of that, the trial judge, in my respectful view, omitted to deal with this additional feature of the appellant’s claim to unequal treatment. Once she ascertained that the persons relied on by the appellant in the Extension post would not be appropriate comparators, the judge incorrectly concluded that there was no breach of the right to equality of treatment. It must be borne in mind that the constitutional concept of equality of treatment is significantly wide to encompass the duty to act consistently. Accordingly, like cases should be treated alike”.

“[84] It would follow that what was further required was a consideration of the constitutional implications of the contention as to the arbitrary and inconsistent application of the regulations towards her in these posts, while other similarly circumstanced persons in the respective fields (Bheekoo, Baksh, Fortune and Simon) were treated differently”¹²

109. In *Dianne Hadeed*, after quoting the above passage of Moosai, JA, Kokaram, J (As he then was) stated: **“Interestingly, Justice of Appeal Moosai added a useful element to the analysis of inequality of treatment. He pointed out in *Audine Mootoo v The Attorney General and the Public Service Commission Civil Appeal No. 38/2009* that simply**

¹² Paras 83 - 84

because the Claimant has not established a suitable comparator does not mean the claim of inequality of treatment fails: *'It must be borne in mind that the constitutional concept of equality of treatment is significantly wide to encompass the duty to act consistently. Accordingly, like cases should be treated alike.'* What was required was an explanation of the inconsistent application of the laws towards the Claimant."¹³

110. The Claimant also relied on ***Nalini Kokaram-Maharaj*** as supporting this principle.
111. Despite the force with which the Claimant expressed these submissions, they do not stand up to scrutiny. Firstly, in ***Kokaram-Maharaj***, Smith, JA did not say that that the Claimant was not under an obligation to establish comparators, but rather was indicating what was the appropriate evidential threshold the Claimant had to satisfy in establishing that there were suitable comparators. He was critical of the trial judge's resort to minutiae details in holding that the complainant had not established that there were suitable comparators.
112. Secondly, Kokaram, J's observations in ***Hadeed*** were at best obiter, as he indeed considered what constituted suitable comparators in that matter.
113. That leaves us the ***Mootoo***, which would have been decided before ***Webster***. The criteria in ***Webster*** are very clear: **"(1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to**

¹³ Para 133

the difference in treatment. (2) *Once such broad comparability is shown*, it is for the public authority to explain and justify the difference in treatment. (3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. (4) Weighty reasons will be required to justify differences in treatment based on the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex. (5) It is not necessary to prove *mala fides* on the part of the public authority in question (unless of course this is specifically alleged)."¹⁴ (Emphasis supplied)

114. The crux of this is that *Webster* provides that the Claimant *must* establish suitable comparators, and that this *must* be done before the differential treatment can be considered. This test was challenged in *Sarattoo*, but the JPC held that it was not appropriate to revisit the test. There was no reason to “**question the helpful and structured approach explained by Baroness Hale.**”¹⁵ At the end of the day therefore, the proper sequence of events is that the Claimant must establish that there are suitable comparators before he can ask the Defendants to justify any differential treatment. He has failed to do so.

115. In the circumstances, again, there is no need to consider whether the Defendant has justified any differential treatment of the Claimant by the Intended Defendant.

¹⁴ Para 24.

¹⁵ Para 24

Has there been a breach of the Claimant's right to Protection of the Law.

116. The law surrounding the expansion of the concept of the protection of the law has been well expounded by several decisions of courts. The courts have progressively moved away from the restrictive position enunciated in *McCleod v The Attorney General*¹⁶ to a much more pervasive and expansive definition as outlined by the CCJ in *Maya Leaders Alliance v The Attorney General of Belize*¹⁷ that “The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, ‘adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.’ The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied

¹⁶ PC 24 of 1982

¹⁷ [2015] CCJ 15

rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”¹⁸

117. If the law was in flux in 2015, it has fully developed now, as subsequent cases have followed and adopted this overarching principle. Most recently, the JCPC referred to the case with approval in *Jamaicans for Justice v Police Service Commissioner & Anor.*¹⁹
118. However, while it can be agreed that the right to protection of the law deals with the protection from arbitrariness and unfairness, the court agrees with the Defendants' submissions that this is restricted to procedural fairness. Once the process is fair and proper, the right to protection of the law has been satisfied. An example of a situation where there may be substantive unfairness but procedural fairness and therefore no breach of section 4(b) can be seen in criminal trials. A person who is actually innocent may be nevertheless convicted of an offence, even though he has been afforded a fair trial. In such a case, even though he has undoubtedly been the victim of substantial unfairness, he cannot say that he has been denied the protection of the law.
119. In light of this, and applying this to the instant case, it cannot be rightfully said that the Claimant has suffered any breach to his right to protection of the law under section 4(b).

¹⁸ At para 47

¹⁹ [2019] UKPC 12

he sent in an application, and the application was considered. At best, he can say that the application was considered after some delay, the decision not having been made until after the proceedings were filed. However, in light of the prevailing circumstances, that is to say, the situation within which the country finds itself, the increased workload on Cabinet in general and the Intended Defendant in particular, it cannot be said that the decision was inordinately delayed. In the circumstances, it cannot be said that there was a breach of the Claimant's right to protection of the law.

Have the Claimant's rights under section 4(k) of the Constitution been breached?

120. The Claimant has not established that he is a journalist, therefore he cannot argue that his right to freedom of the press has been breached.

Was the Decision of the Intended Defendant Unfair, Irrational or Illegal.

121. The principles behind the unreasonableness and irrationality of decisions, so-called Wednesbury unreasonableness is also well outlined in case law. The principle was outlined in the seminal case of *Associated Provincial Picture Houses v Wednesbury Corporation*²⁰, where the Court stated "It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretion often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For

²⁰ [1948] 1 KB 223

instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and is often said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."²¹

122. The principle of *Wednesbury* reasonableness was given careful consideration and scrutiny by Kokaram, J as he then was in *Law Association of Trinidad and Tobago v The Prime Minister of Trinidad and Tobago & Ors*²². The Court opined that there ought to be a distinction between *Wednesbury* unreasonableness and proportionality. He said that the court would not in either case engage in a merits-based examination of the decision made. In broad terms, the conclusions of Kokaram, J, as he then was, are accepted. This court must determine whether the decision made by the Intended Defendant could be reasonably justifiable in the circumstances. Given the fact that the Defendant is not a journalist, and did not provide the Intended Defendant with any cogent evidence that he was a journalist on its own is sufficient to defeat his claim under this head.
123. In the circumstances, the decision of the Intended Defendant cannot be criticised for being unreasonable, or even on the *LATT* test, of being disproportionate. In the circumstances, the Claimant's claim for judicial review must fail.

²¹ P. 229

²² CV2019-03989 paras 156 – 189

Leave to Apply to Judicial Review.

124. Even though the Claimant has failed in his application for judicial review, it is to be noted that this has been treated as a rolled up question, so that the issue as to whether leave ought to have been granted in the first place.
125. The test for granting leave to apply for judicial review was set out most comprehensively in *Sharma v Brown-Antoine*²³. There the JCPC opined where the Board opined **“The ordinary rule now is that the court will not grant leave to apply for judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success.”**²⁴ Kangaloo, JA in *Ferguson & Anor v The Attorney-General*²⁵ sought to give some context to the test, and indicated that the test of arguability must be applied contextually and cannot be divorced from the nature of the challenge which is raised by litigant.²⁶ He went on to state that the purpose of the leave process is to weed out unmeritorious applications.
126. In the instant case the Claimant has applied for leave to apply for judicial review with respect to a decision (or lack thereof) to include him at the VMCs. His claim was premised on the fact that he, at the time of the application to be included was a journalist. However, on the evidence that was presented to the court in the application for leave,

²³ [2006] UKPC 57

²⁴ At para 14(4)

²⁵ Civ App 207 of 2010

²⁶ At para. 3

the Claimant failed to establish that he could be considered as a journalist. In the circumstances, the Claimant has not satisfied the threshold test that he has an arguable ground for judicial review with a reasonable prospect of success.

Conclusion

127. In the circumstances, the Claimants claim both for Judicial Review (and leave to apply therefor), and relief under section 14 of the Constitution of Trinidad and Tobago must fail.

128. The parties will be invited to make submissions on costs.

**KEVIN RAMCHARAN
JUDGE**

(JRC: Ms Sarita Maharajh)