

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO. 2525 of 2003

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE REFERENCE BY HIS WORSHIP THE CHIEF MAGISTRATE MR. SHERMAN MCNICHOLS PURSUANT TO SECTION 14(4) OF THE CONSTITUTION FOR THE DETERMINATION OF THE QUESTION WHETHER COMPLAINTS NO. 12401, 12402, AND 12403 OF 2002 LAID BY SENIOR SUPERINTENDENT WELLINGTON VIRGIL UNDER SECTION 27(1)(b) OF THE INTEGRITY IN PUBLIC LIFE ACT, 1987 AGAINST THE APPLICANT AND THE SUMMONSES ISSUED IN PURSUANCE THEREOF ARE IN CONTRAVENTION OF SECTIONS 4 AND 5 OF THE SAID CONSTITUTION

BETWEEN

BASDAY PANDAY

Applicant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

BEFORE THE HONOURABLE MADAM JUSTICE M. RAJNAUTH-LEE

APPEARANCES:

Mr. Allan Alexander S.C., Mr. Desmond Allum S.C., Mr. Fyard Hosein, Mr. Rajiv Persad instructed by Mr. Devesh Maharaj for the Applicant

Dr. Lloyd G. Barnett and Mr. Douglas Mendes instructed by Mr. Sean Julien for the Respondent

DATE DELIVERED:

20th February, 2004

JUDGMENT

INTRODUCTION:

1. By his Notice of Motion dated and filed the 16th September, 2003, the applicant sought the following reliefs:

“1 A declaration that the preferring of charges no. 12401, 12402 and 12403 of 2002 against the Applicant contrary to sections 27(1)(b) of The Integrity in Public Life Act No. 8 of 1987 is unconstitutional., invalid, null and void and of no effect in that it contravenes the Applicant’s fundamental rights to liberty and to the enjoyment of property and the right not to be deprived thereof except by due process of law as enshrined in section 4(a) of the Constitution of Trinidad and Tobago.

2. A declaration that the three summonses numbered as Nos. 12401, 12402 and 12403 of 2002, each dated and/or issued on September 18, 2002 and directed to and served on the Applicant on the said date (hereinafter collectively referred to as “the said summonses”) are unconstitutional, illegal, invalid, null and void and of no effect in that they contravene the Applicant’s fundamental rights as enshrined in section 4(a), (b), (c), 5(2)(e) and (h) of the Constitution of Trinidad and Tobago.

3. An order that the said Complaints and Summonses be dismissed and set aside and/or quashed and or struck out.

4. An order that the hearing of the Complaints before the presiding Magistrate in the Court of summary jurisdiction be stayed pending the hearing and determination of these proceedings.

5. Damages.

6. Such further order or other relief as the justice of the case may require including such orders, writs and directions as may be necessary or appropriate to enforce the rights and fundamental freedoms of the applicant as guaranteed by the Constitution of Trinidad and Tobago.
 7. Costs.”
2. The grounds of the application were set out in the Notice of Motion as follows:
- “(a) The Applicant is and has been a Member of Parliament since 1965 and was a former Prime Minister of Trinidad and Tobago for the period December 1995 to December 2001.
- (b) On September 18, 2002 the Complainant, Senior Superintendent of Police Wellington Virgil made three (3) complaints to the Deputy Chief Magistrate Deborah Felix-Thomas against the Applicant numbered as Nos. 12401, 12402 and 12403 of 2002 and requested in each complaint that the Applicant be summoned to answer the said Complaints in the following terms:-
- (i) Complaint No. 12401 of 2002 – that the applicant on Friday 9th April 1999 at Port of Spain, in the County of St. George West knowingly made a declaration, namely Declaration of Income, Assets and Liabilities for the year ended 31st December 1997, that is false in a material particular in that he, the said Basdeo Panday, failed to include in the said declaration, money held in account number 39036189 at the National Westminster Bank PLC, London England in the name of the said Basdeo Panday and Oma Panday contrary to section 27(1)(b) of the Integrity in Public Life Act, 1987.

- (ii) Charge No. 12402 of 2002 – that the applicant on a day unknown between the period Thursday 15th March, 2001 and Thursday 22nd March 2001, at Port of Spain in the County of St. George West, knowingly made a declaration, namely Declaration of Income, Assets and Liabilities for the year ended 31st December, 1999, that is false in a material particular in that he, the said Basdeo Panday, failed to include in the said declaration, money held in account number 39036189 at the National Westminster Bank PLC, London England in the name of the said Basdeo Panday and Oma Panday contrary to section 27(1)(b) of the integrity in Public Life Act, 1987.

- (iii) Charge No. 12403 of 2002 – that the applicant on a day unknown between the period Sunday 19th December 1999 and Friday 24th December 1999 at Port of Spain, in the County of St. George West, knowingly made a declaration namely Declaration of Income, Assets and Liabilities for the year ended 31st December 1998 that is false in a material particular in that he, the said Basdeo Panday, failed to include the said declaration, money held in account No. 39036189 at the National Westminster Bank PLC, London, England in the name of the said Basdeo Panday and Oma Panday contrary to section 27(1)(b) of the Integrity in Public Life Act, 1987.

- (c) Subsequent to September 18, 2002, 3 summonses were served on the applicant under the hand of the Justice of the Peace issued on the said September 18, 2002 requiring him to be and appear at the Port of Spain Magistrate’s Court to answer the said complaints on Tuesday November 19, 2003. In compliance therewith the applicant appeared at the Port of

Spain Magistrate's Court on November 19, 2002, February 24, 2003, April 8, 2003 and July 16, 2003.

(d) The Integrity in Public Life Act, 1987 ("the 1987 Act") was repealed by section 43 of the Integrity in Public Life Act, 2000 ("the 2000 Act") which came into force by Legal Notice 265 of 2000 dated November 6, 2000.

(e) Section 27(1)(d) of the Interpretation Act, Chapter 3:01 provides:

"Where a written law repeals or revokes a written law, the repeal or revocation does not, except as in this section otherwise provided, and unless the **contrary intention** appears –

... (d) affect any offence committed against the written law so repealed or revoked, or any penalty of forfeiture or punishment incurred in respect thereof."

(f) The 2000 Act evinces a **contrary intention** in section 44 thereof as follows:

"44. Where anything has been commenced by or under the authority of the Integrity Commission under the Integrity in Public Life Act, 1987, repealed by this Act, such thing may be carried out and completed by or under the authority of the Integrity Commission."

(g) The investigation into the charges were commenced by the Integrity Commission on May 21, 2002 by a letter from the Registrar of the Integrity Commission, Mr. Albert Alkins to the Applicant making

inquiries into a bank account No. 39036189, which account forms the basis for these charges.

- (h) These inquiries which were commenced after the repeal of the 1987 Act, which are not comprehended within the meaning and intent of section 44 of the 2000 Act and the complaints are, therefore, not admissible under section 27 of the 1987 Act.
- (i) Further the conjoint effect of section 27 of the 1987 Act, section 67 of the Interpretation Act, Chapter 3:01 and section 33 of the Summary Courts Act, Chapter 4:20 is that complaints under section 27 of the 1987 Act must be laid within 6 months from the time when the matter(s) giving rise to the complaints arose.
- (j) The laying of the complaints offends the due process prohibition and has deprived the applicant of his liberty and threatens to deprive him thereafter of his right to liberty and the enjoyment of property.”

3. The applicant swore an affidavit in support of the Motion on the 16th September, 2003. The respondent filed two affidavits in opposition to the Motion, that is to say:

- The affidavit of Geoffrey Henderson sworn the 31st October, 2003.
- The affidavit of Geoffrey Henderson sworn the 6th November, 2003.

UNDISPUTED FACTS:

4. The facts are mainly undisputed and can be gleaned from the affidavits filed on behalf of the parties and from the Statement of Agreed Facts submitted to the Court on the 13th November, 2003.

- (1) The applicant has been a member of Parliament since 1965 and was Prime Minister of the Republic of Trinidad and Tobago from December, 1995 to December, 2001.
- (2) By virtue of the Integrity in Public Life Act, 1987 and as a Member of Parliament and Prime Minister throughout the years 1997, 1998 and 1999, the applicant was required to file with the Integrity Commission a declaration of his income, assets and liabilities in respect of each of the said years.
- (3) The declaration in respect of the year 1997 was required to be filed by the 31st May, 1998. The declaration in respect of the year 1998 was required to be filed by the 31st May, 1999. The declaration in respect of the year 1999 was required to be filed by the 31st May, 2000.
- (4) On the 9th April, 1999, the Secretary to the Integrity Commission received a declaration of income, assets and liabilities for the year ended 31st December, 1997 in the name of the applicant and signed by the applicant. On 16th April, 1999, the declaration was placed before the Integrity Commission, which reviewed and certified the declaration.
- (5) On the 23rd December, 1999, the Secretary to the Integrity Commission received a declaration of the income, assets and liabilities for the year ended 31st December, 1998, in the name of the applicant, signed by the applicant and dated the 20th December, 1999. On the 14th January, 2000, the declaration was placed before the Integrity Commission which reviewed and certified the declaration.
- (6) The Integrity in Public Life Act, 1987 (“the 1987 Act”) was repealed by section 43 of the Integrity in Public Life Act 2000 (“the 2000 Act”). The 1987 Act was enacted pursuant to the provisions of subsection (1) of

section 13 of the Constitution and has legal effect even though inconsistent with sections 4 and 5 of the Constitution. By Legal Notice No. 265 of 2000, the 2000 Act came into operation on the 6th November, 2000. The 2000 Act was also enacted pursuant to the provisions of subsection (1) of section 13 of the Constitution and has legal effect even though inconsistent with sections 4 and 5 of the Constitution.

- (7) On 21st March, 2001, the Secretary to the Integrity Commission received a declaration of income, assets and liabilities for the year ended 31st December, 1999 in the name of the applicant and signed by the applicant. On the 28th March, 2001, the declaration was placed before the Integrity Commission, which deferred consideration of the declaration.
- (8) By letter dated the 2nd May, 2002, Mr. Karl T. Hudson Phillips, Q.C. forwarded to the then Director of Public Prosecutions, Mr. Mark Mohammed, S.C., a document headed “Schedule of Transactions by The Undermentioned Public Officials prior to and post 6th November, 2000.” The Schedule set out various deposits made over the period November, 1997 to October, 2001 into an account in the name of the applicant and his wife, Mrs. Oma Panday, at the National Westminster Bank, Wimbledon, London. At the time of the writing of the letter, Mr. Hudson-Phillips was an advisor to the Anti-Corruption Bureau which was engaged in certain criminal investigations.
- (9) By letter dated 6th May, 2002 Mr. Mohammed forwarded a copy of the said correspondence to the Chairman of the Integrity Commission for his urgent attention.
- (10) Thereafter, there passed between the applicant and the Integrity Commission certain correspondence concerning the said account. The

several letters are referred to in the Summaries of Evidence annexed as “B.P. 1” to the affidavit of the applicant.

- (11) By letter dated 18th July, 2002 the Chairman of the Integrity Commission wrote to the Mr. Geoffrey Henderson, Director of Public Prosecutions on the subject “Re: Mr. Basdeo Panday, M.P.” forwarding copies of the relevant documents and stating *inter alia*:

“The above mentioned Member of Parliament did in fact file the said declarations for the years 1997, 1998 and 1999 and the Commission verified the same for 1997 and 1998. However, as a result of information received from the former Director of Public Prosecutions, the Commission conducted an investigation into the said declarations. The findings of this investigation disclosed that certain sums of money in account No. 39036189 at the National Westminster Bank, P.C. 16 Wimbledon Hall, London SW 197 ZD of which the said Member of Parliament appears to have been joint owner with his wife Mrs. Oma Panday, were not disclosed as part of his assets. The declarant was given every opportunity to be heard as to the reason why he failed to disclose this asset. The said investigation having been completed, the Commission is satisfied that there are reasonable grounds for suspecting that offences have been committed under the former Act, and respectfully makes this report to you, Mr. Director, under the provisions of Section 34(5) of the present Act, the Integrity in Public Life Act, 2000 (No. 83 of 2000).”

- (12) The Director of Public Prosecutions reviewed the material received from the Integrity Commission and by letter dated the 22nd July, 2002 wrote to the Commissioner of Police submitting the file to the Police Commissioner for his further investigation and action.
- (13) Thereafter, Senior Superintendent Wellington Virgil conducted enquiries

and on the 16th September, 2002, submitted a file to the Director of Public Prosecutions containing the results of his investigation. Included in the file was a memorandum dated the 13th September, 2002 from Senior Superintendent Virgil to the Assistant Commissioner of Police 'Crime' in which Virgil summarized the results of his investigations and expressed the view that there existed a prime facie case of a violation of section 27(1)(b) of the 1987 Act.

- (14) The Director of Public Prosecutions reviewed the file, was satisfied that there was sufficient evidence to provide a realistic prospect of conviction of the applicant for breaches of section 27(1)(b) of the 1987 Act and by memorandum dated the 17th September, 2002, to the Commissioner of Police directed that the applicant be charged with knowingly making declarations that were false in material particulars, contrary to section 27(1)(b) of the 1987 Act.
- (15) On 18th September, 2002 the Director of Public Prosecutions gave his written consent to the laying of three complaints against the applicant.
- (16) Sometime after the 18th September, 2002, the applicant was served with three summonses directing him to appear at the Port of Spain Magistrates' Court to answer the complaints set out at paragraph (b)(i)(ii) and (iii) of the Grounds stated in the applicant's notice of motion. The applicant appeared at the Port of Spain Magistrates' Court on 19th November, 2002, 24th February, 2003, 8th April, 2003 and the 16th July, 2003.
- (17) On the 8th April, 2003, (and not 18th April as appears on the Statement of Agreed Facts) Attorneys acting for the applicant requested that the Chief Magistrate (who was hearing the said complaints) refer the matters to the High Court on the ground that the proceedings were in contravention of section 4(a) of the Constitution. On the said 8th April, 2003, the Chief

Magistrate ordered that the matters raised in the submissions of Attorneys for the applicant be submitted to the High Court for determination.

- (18) By letter dated the 17th July, 2003, the Chief Magistrate wrote to the Registrar of the Supreme Court referring the said matters for determination by the High Court. A certified copy of the proceedings containing the said submissions were thereby forwarded to the Registrar.
- (19) The parties herein have agreed that the questions which arose in the proceedings before the Chief Magistrate as to the contravention of the provisions of Chapter I of the Constitution were those questions appearing in the notes of evidence forwarded by the Chief Magistrate to the Registrar (contained in the certified copy of the proceedings referred to above).
- (20) On 24th July, 2003, the Registrar of the Supreme Court orally summoned Attorneys for the applicant and for the Director of Public Prosecutions to her chambers. On that date, the Assistant Registrar of the Supreme Court ordered that the applicant do file a constitutional motion by the 16th September, 2003.

CONSTITUTIONAL FRAMEWORK:

5. The applicant claims that his fundamental rights contained in sections 4(a), (b), (c) and 5(2)(e) and (h) of the Constitution are being contravened. The sections read in part as follows:

“4. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely –

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life.”

“Section 5(2) Parliament may not ...

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”

6. The 1987 Act and the 2000 Act were enacted pursuant to the provisions of subsection (1) of section 13 of the Constitution which reads as follows:

“13.(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.”

7. Section 14 of the Constitution provides the machinery for dealing with contraventions of constitutional rights. In ordinary cases, the applicant will invoke section 14(1) of the Constitution, which reads as follows:

“14.(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.”

8. By virtue of section 14(2), “the High Court shall have original jurisdiction-

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4),

and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.”

9. Section 14(4) provides the machinery for the referral to the High Court of any question arising as to the contravention of any provision of Chapter I of the Constitution and reads as follows:

“(4) Where in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of this Chapter the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.”

10. The Integrity Commission is established by section 138 of the Constitution which reads as follows:

“138. (1) There shall be an Integrity Commission (in his section and in section 139 referred to as “the Commission”) for Trinidad and Tobago consisting of such number of members, qualified and appointed in such manner and holding office upon such tenure as may be prescribed.

- (2) The Commission shall be charged with the duty of –
 - (a) receiving, from time to time, declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers;
 - (b) the supervision of all matters connected therewith as may be prescribed.”

11. Section 138(2) has been amended by the Constitution (Amendment) (No.2) Act, 2000 by inserting after paragraph (b) the following:

- “(c) the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of offices referred to in paragraph (a), as well as Senators, members of the Diplomatic Service, Advisers to the Government and any person appointed by a Service Commission or the Statutory Authorities’ Service Commission;
- (d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.”

By virtue of section 139 of the Constitution, Parliament is empowered to make laws relating to the Integrity Commission.

12. Section 90(2) of the Constitution provides for the appointment of a Director of Public Prosecutions, who is empowered to carry out the various functions set out in subsection (3) of section 90, which reads in part:

“(3) The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so-

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority.”

13. By virtue of section 90(6) of the Constitution, the Director of Public Prosecutions may exercise the functions under subsection (3) either by him in person or through other persons and in accordance with his general or special instructions.

THE ISSUES :

14. THE APPLICANT’S CONTENTIONS:

(a) Senior Counsel for the applicant contended that by virtue of section 27 of the 1987 Act the offences created thereunder were summary offences and accordingly, the complaint in respect of each offence must be laid within six (6) months of the commission of the alleged offence and no later.

(b) It was further contended that section 28 of the 1987 Act, far from specially limiting the time for making the complaint, merely created an

immunity, that is and say, that after the five years provided for in section 28, a person in public life may not be prosecuted for such an offence.

- (c) It was therefore contended on behalf of the applicant that the complaints are statute barred, constitute a contravention of substantive due process, and thereby constitute a deprivation of or interference with the constitutional rights of the applicant to the enjoyment of property and/or liberty.
- (d) Senior Counsel for the applicant also contended that the 1987 Act having been repealed, and section 44 of the 2000 Act having evinced a contrary intention, the applicant could not be prosecuted for offences allegedly committed against the repealed 1987 Act.
- (e) It was further contended that by virtue of section 44 of the 2000 Act, the Integrity Commission established under the 2000 Act and hereafter referred to as “the 2000 Commission” was only empowered to carry out and complete that which had been commenced by or under the Integrity Commission established under the 1987 Act and hereinafter referred to as “the 1987 Commission”.
- (f) It was therefore argued, in respect of complaints Nos. 12401 and 12403 of 2002, the 2000 Commission had no authority to interfere with or investigate the declarations filed by the applicant in respect of the years ending the 31st December, 1997 and 31st December, 1998 respectively, because the 1987 Commission had not commenced any enquiry of its own accord, requested the appointment of a tribunal, referred the matter to the Director of Public Prosecutions or commenced any other action so as to enable the 2000 Commission to carry out or complete that which the 1987 Commission had begun.

- (g) It was further argued that under section 33 of the 2000 Act, the power given to the 2000 Commission to consider and enquire into any alleged breaches of the Act referred to breaches which occurred during the currency of the 2000 Commission or breaches which occurred during the currency of the 1987 Commission but about which the 1987 Commission had commenced enquiries.
- (h) Senior Counsel for the applicant also argued that as a matter of construction, the making of a false declaration did not constitute corrupt or dishonest conduct under section 33 of the 2000 Act. He relied on the canon of construction that different words used in a statute are presumed to have different meanings.
- (i) As to the propriety of the proceedings, the applicant launched an interesting argument. He argued that the jurisdiction of the High Court pursuant to section 14(4) of the Constitution was solely to determine the question referred to the Court [section 14(2)(b)] and not to hear and determine [section 14 (2)(a)]. It was therefore argued that in a referral to the High Court under section 14(4) of the Constitution, the High Court could not refuse to hear the questions referred to it by the Chief Magistrate. The power of refusal could not as a matter of construction be included in the jurisdiction to determine only.
- (j) It was contended therefore that the submissions advanced on behalf of the Attorney General on the principles enunciated by the Privy Council in **Jaroo and Maharaj** (No. 2) had no application to the referral before the Court.
- (k) It was further argued that this matter falls within the exception in **Jaroo** in that there is no dispute as to facts. The issues before the Court involve questions of pure law.

15. **THE RESPONDENT'S CONTENTIONS:**

(a) The main thrust of the argument advanced on behalf of the Attorney General was that the constitutional proceedings before the Court were inappropriate, an abuse of the process of the court and could not be sustained for the following reasons:

- The contentions raised by the applicant are that the summonses and complaints are invalid because they are statute – barred and are laid in respect of offences allegedly committed against legislation which has been repealed.
- Such contentions concern ordinary principles of statutory construction. The judicial system provides access to the Court and alternative mechanisms for ventilating such issues without any need to resort to the High Court for constitutional redress. It was argued that pursuant to section 156 (1) of the Summary Courts Act Chapter 4:20, it was open to the applicant to ask for the specific questions of construction to be referred by case stated for the opinion of the Court of Appeal.
- The applicant took the initiative to launch a constitutional action by invoking section 14(4) of the Constitution. The use of section 14(4) cannot oust the jurisdiction of the High Court in these proceedings to hold either that no contravention of any of the applicant's constitutional rights is here concerned, or that to cause a referral to the High

Court under section 14(4) in these circumstances is an abuse of process.

- The only question that the Chief Magistrate could have decided was whether the questions raised by the applicant before him were merely frivolous or vexatious. The Chief Magistrate could not have considered the **Jaroo** principle that there were adequate alternative remedies. The Chief Magistrate could also not have adjudicated on the separate issues whether there was a cause of action in constitutional law.

(b) As to the issue whether there was a constitutional cause of action, it was argued on behalf of the Attorney General that:

- (i) there was no allegation in the instant case that the judicial system did not provide for due process and did not make available to the applicant mechanisms by which the validity of the complaints and summonses might be determined; and
- (ii) where there is in the criminal process a defect being challenged or an allegation of invalidity with respect to the legal provisions being invoked against a person, that person has no constitutional cause of action on the basis of the alleged deprivation of the protection of the law or of due process, where the judicial system provides mechanisms for his challenge to these defective or invalid proceedings.

(c) As to the repeal of the 1987 Act, it was argued on behalf of the respondent that the obligations to file declarations and to refrain from knowingly making a declaration that is false in some material particular,

the offences committed under the 1987 Act, and criminal proceedings with respect to those obligations, were all preserved by the provisions of section 27 (1) of the Interpretation Act, Chapter 3:01, despite the repeal.

- (d) It was also contended that the 2000 Commission did not act ultra vires and was entitled to investigate the matters concerning the applicant.

- (e) It was argued in the alternative that even if the 2000 Commission acted ultra vires in conducting investigations into offences against the 1987 Act, the charges were validly laid against the applicant having regard to the following:
 - (i) the criminal offences created by section 27(1) of the 1987 Act are independent of any prior or subsequent investigation or determination by the Integrity Commission.

 - (ii) by virtue of action 90(3) of the Constitution, the Director of Public Prosecutions was vested with exclusive power to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago. Accordingly, it was argued, irrespective of the legality of the investigations carried out by the 2000 Commission, the Director of Public Prosecutions was empowered to institute the criminal proceedings against the applicant by directing Senior Superintendent Virgil to lay the complaints against him.

- (f) As to the applicant's contention that the prosecution was statute-barred, it was argued on behalf of the respondent, that section 28 of the

1987 Act was a complete answer since a period of time for making a complaint under the 1987 Act was specially limited by section 28.

THE FIRST ISSUE:

Is there a constitutional cause of action?

16. By virtue of section 14(4) of the Constitution, this Court is empowered to consider whether the preferring of the charges against the applicant in respect of offences allegedly committed against the provisions of a statute which statute has been repealed, and in circumstances in which the prosecution is statute-barred, contravenes any fundamental human right of the applicant. The question, can be framed thus:

Has there been, is there being or is there likely to be, any contravention of the applicant's right to due process, to the protection of the law or to any other fundamental human right by the preferring of the charges against him?

17. In the well-known case of **Maharaj v Attorney General of Trinidad and Tobago** (No 2) [1978] 2 W.L.R. 902 at page 912 Lord Diplock enunciated the following principles:

“In the first place, no human right or fundamental freedom recognised by Chapter 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights

protected by section 1 (a); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.”

18. In the later case of **Chokolingo v Attorney General of Trinidad and Tobago**, [1981] 1 W.L.R. 106, the Privy Council adopted its statement in **Maharaj** (No. 2) and confirmed what they had held therein. “The fundamental human right guaranteed by section 1(a) and (b) and section 2, of the Constitution is not to a legal system which is infallible but to one which is fair.” (page 111). Accordingly, the Privy Council rejected the appellant’s argument as leading to the consequence that “in every criminal case, in which a person who had been convicted alleged that the judge had made **an error of substantive law** as to the necessary characteristics of the offence, there would be parallel remedies available to him: one by appeal to the Court of Appeal; the other by originating application under section 6(1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee.” The Privy Council therefore rejected the appellant’s argument that that the convicted person could launch such “a collateral attack” and concluded as follows:

“To give to Chapter 1 of the Constitution an interpretation that would lead to this result, would, in their Lordships’ view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine.” (page 112).

19. In the case of **Attorney General of Trinidad and Tobago v McLeod** [1984] 1 W.L.R. 522, the applicant had challenged the constitutionality of the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978, on the ground that it had not been passed by the majority of votes required by section 54(3). In delivering the judgment of the Privy Council, Lord Diplock said at page 531:

“For Parliament to purport to make a law that is void under section 2 of the Constitution, because of its inconsistency with the Constitution, deprives no one of the “protection of the law,” so long as the judicial system of Trinidad and Tobago affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain from the courts of justice, in which the plentitude of the judicial power of the state is vested, a declaration of its invalidity that will be binding upon the Parliament itself and upon all persons attempting to act under or enforce the purported law. Access to a court of justice for that purpose is itself “the protection of the law” to which all individuals are entitled under section 4(b).” (emphasis mine)

20. In addition to the authorities already cited, Senior Counsel for the respondent relied on several cases including **Boodram v Attorney General of Trinidad and Tobago** [1996] A.C. 842 and **Peters and Another v Attorney General** [2002] 3 L.R.C. 32, where the general principles enunciated above have been applied.

21. In *Boodram –v- Attorney General of Trinidad and Tobago* [1996] A.C. 842, in the Privy Council, the words of Sharma J.A. (as he then was) in the judgment of the Court of Appeal of Trinidad and Tobago were cited with approval at page 851 letter H:

“I am of the opinion that ‘the protection of the law’ that the applicant is entitled to receive in theses circumstances is his access to the Constitutional Court and the criminal courts where the judge will apply all the necessary procedural steps and substantive law to ensure a fair trial... Protection of the law was also discussed in **Attorney-General of Trinidad and Tobago v. McLeod** [1984] 1 W.L.R. 522, 531; 32 W.I.R. 450, 459. Applying the principles therein set out to the instant case it would appear that so long as the judicial system of Trinidad and

Tobago affords a procedure by which the applicant as a person interested in establishing that he cannot get a fair trial can obtain from the courts a declaration to this effect then in these circumstances he cannot complain that he is deprived of the protection of the law. Access to the court for that purpose itself is protection of the law to which he is entitled and of course trial by the court itself would be 'due process' to which he is also entitled."

In delivering the judgment of the Board, Lord Mustill said at page 854:

"The 'due process of law' guaranteed by this section has two elements relevant to the present case. First, and obviously, there is the fairness of the trial itself. Secondly, there is the availability of the mechanisms which enable the trial court to protect the fairness of the trial from invasion by outside influences. These mechanisms form part of the 'protection of the law' which is guaranteed by section 4(b), as do the appeal procedures designed to ensure that if the mechanisms are incorrectly operated the matter is put right. It is only if it can be shown that the mechanisms themselves (as distinct from the way in which in the individual case, they are put into practice) have been, are being or will be subverted that the complaint moves from the ordinary process of appeal into the realm of constitutional law. No such case is made out here. It is not even suggested that if an application to stay the trial is made, either at the commencement of the trial or in advance if a sufficient need is shown, the court will fail to receive it; or will not do its best to arrive at a solution which measures together the risk of prejudice, the steps which can be taken to ensure that the verdict is uninfluenced by improper comment, and the public interest in making sure that a case which has been committed for trial does in fact come to trial, and at a proper speed. Nobody could pretend that these are always easy decisions for the judge to make, but they are concerned with trial management within the context of a system whose fairness as a system has not been attacked. Thus, in the opinion of the Board no constitutional question is invoked." (emphasis mine)

22. In Peters, de la Bastide C. J. applied the passage in Mc Leod to the facts and said at page 51:

“...it would seem to follow that the representation petitions do not deprive the appellants of the protection of the law so long as the judicial system of Trinidad and Tobago affords a procedure by which ‘the appellants can obtain from any Judge before whom these representation petitions come, declarations that will be binding on all concerned, in the same or similar terms as those which they seek in these motions, or at any rate, relief that will have the same effect.’ (emphasis mine).

Accordingly, de la Bastide C.J. posed the following questions at page 52:

“Does the judge dealing with the representation petitions not have the power then to decide whether the absence of rules made by the Rules Committee under s 144 has the effect of depriving him of jurisdiction to hear and determine the representation petitions? Could the appellants not have received a competent and authoritative ruling on whether the grant of leave to bring these petitions on an ex parte application was a nullity, either from the Court of Appeal on an appeal brought against the order granting leave, or from the judge dealing with the representation petitions.”

23. In answer, de la Bastide C.J. concluded that the judge hearing the representation petitions certainly had the authority to determine whether he had jurisdiction in any case that came before him, as well as to decide whether any step previously taken in the proceedings was a nullity.

24. In the instant case, it was argued on behalf of the respondent that the applicant was entitled to raise the issues concerning the validity of the charges/complaints/summonses through the following mechanisms or procedures:

- (i) in submissions in limine before the Chief Magistrate;
- (ii) before the Chief Magistrate on a no-case submission or in closing submissions;
- (iii) if the Chief Magistrate overruled his submissions, on appeal to the Court of Appeal;
- (iv) on an application by way of judicial review; and
- (v) pursuant to section 156 (1) of the Summary Courts Act, Chapter 4:20, on application to the Chief Magistrate to state a case on any point of law arising in the case for the opinion of the Court of Appeal.

25. The respondent referred to the cases of **Meek v Powell** [1952] 1 All E.R. 347, the **Queen v Gillyard** (1848) 12 Q. B. 527, **Reg. v Justices of Kent** (1889) 24 Q.B.D. 181 and **Reg v Rose ex parte Mary Wood** (1855) 19 J.P. 676 as illustrating the mechanisms available to litigants to challenge invalid complaints, as well as demonstrating the supervisory jurisdiction of the court to correct defects of inferior courts.

26. On the other hand, Senior Counsel for the applicant contended that by the preferring of the charges there had been a breach of substantive due process. He drew a distinction between substantive due process and procedural due process. According to Senior Counsel, where a person is charged or convicted in respect of an offence which was non-existent at the time of the laying of the charge or where the charge could not have been laid by virtue of the period of limitation having expired, then a situation of abuse of substantive due process arises. He relied on the well-accepted principles enunciated in **Lassalle v The Attorney General** [1971] 18 W.I.R. 379 where Phillips J.A., at page 391, while not attempting to give an exhaustive definition of the term due process of law referred to due process of law as connoting adherence to the following fundamental principles:

- (i) reasonableness and certainty in the definition of criminal offences;
- (ii) trial by an independent and impartial tribunal;
- (iii) observance of the rules of natural justice.

27. In the case of **Thomas and Another v Baptiste and Others** [1999] 54 W.I.R. 387, Lord Millet while citing the judgment of Phillips J.A. with approval, defined due process as involving the concept of the rule of law. He stated at page 421 thus:

“In their lordships’ view, ‘due process of law’ is a compendious expression in which the word ‘law’ does not refer to any particular law and is not a synonym for common law or statute. Rather, it involves the concept of the rule of law itself and the universally accepted standards of justice observed by civilized nations which observe the rule of law.”

28. Senior Counsel for the applicant also placed reliance on the unreported case of **Northern Construction Limited v Attorney General of Trinidad and Tobago** H.C.A. 733 of 2002 [Judgment delivered 31st July, 2002] and the treatment by Jamadar J. of the relationship between due process and the proviso to section 13(1) of the Constitution. Jamadar J. adopted the dicta of Sir William Douglas in the case of **Mootoo v Attorney General of Trinidad and Tobago**, [1979] 30 W.I.R. 411 which concerned the challenge to the constitutionality of the Unemployment Levy Act, 1970.

29. At pages 418 – 419 of **Mootoo**, Sir William Douglas stated:

“The third submission put forward on behalf of the appellant is that the Act infringes s I (a) of the Constitution which guarantees protection against the taking or deprivation of property without due process. It is urged that ‘due process’ does not refer simply to procedure but extends to

the substance of the statute, regulation or other law, giving that term the wide interpretation accorded to it by s 105 of the Constitution.”

“It is also contended that ‘due process of law’ requires that a statute should be reasonably certain and should be predictable in its application. Reference is made to *Lassalle v Attorney-General* (7) which dealt with due process of law in relation to a criminal matter. Counsel’s submission is that certainty and predictability must extend to the provisions of a taxing statute.

Their Lordships entertain not the slightest doubt in respect of the scope of the principle of due process of law. It embraces both procedural law and substantive law; and this is so without any necessity for recourse to the extended meaning of the term ‘law’ provided at s 105 of the Constitution.”

30. The case of **Northern Construction** concerned *inter alia* the challenge by the applicant company to the constitutionality of section 33 of the Proceeds of Crime Act, 2000, on the ground that it contravened the applicant’s fundamental rights guaranteed by sections 4(a)(b)(c) and 5(2)(e) and (h) of the Constitution being a provision which was not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

31. There is nothing in either **Lassalle** or in the line of cases following which suggests that the mere preferring of criminal charges in the circumstances of the present case amounts to a breach of substantive due process. The fundamental principle of reasonableness and certainty in the definition of criminal offences is not contravened by the preferring of charges in respect of offences allegedly committed against legislation which has been repealed or in respect whereof the prosecution is statute-barred.

32. The Court has also considered the South African case of **Ferreira and Others v Levin** [1996] 3 L.R.C. 527 which was cited by Senior Counsel for the applicant. Counsel for the respondent, Dr. Barnett, has pointed out that in Ferreira, there were several significant features which distinguished it from the present case. Firstly, the case concerned the question of the constitutionality of provisions of the Companies Act which were in direct conflict with the fundamental right to protection from self-incrimination. Secondly, under the South African Constitution there was established a constitutional court with exclusive jurisdiction in respect of the construction of the South African Constitution. Thirdly, the Constitution provided that a court before which a constitutional issue was raised had a duty to refer that question to the constitutional court but only if certain prescribed conditions were met. In Ferreira, however, the conditions were not met and the challenge failed. The Court has seen nothing in the judgments delivered in Ferreira which impacts on the well-accepted principles enunciated in Maharaj (No.2).

33. Any error in the preferring of the charges or any defect in the legal process can be challenged at the instance of the applicant by resort to the ordinary mechanisms or procedures provided by the judicial system of Trinidad and Tobago, by which the validity of the charges might be determined. Several avenues are open to the applicant, by these ordinary mechanisms, to raise the issues concerning the validity of the charges without resort to the High Court under section 14 (4) of the Constitution. Further, there is no complaint either in the applicant's motion or in the arguments advanced on his behalf that there is any subversion of these mechanisms or procedures. These very mechanisms or procedures form part of the protection of the law and due process of law guaranteed by the Constitution.

34. There is, accordingly, no contravention or threatened contravention of any of the applicant's fundamental human rights by the preferring of the charges or

the prosecution of the summonses against him. There is there no constitutional cause of action. On this ground alone, I would dismiss this matter.

35. Although the Court's determination of this issue effectively disposes of this matter, I propose to consider the other issues which have been raised in this application.

THE SECOND ISSUE:

Are these constitutional proceedings an abuse of process? (the **Jaroo** argument)

36. The main thrust of the applicant's contentions was that under section 14(4) of the Constitution, the jurisdiction of the High Court was restricted solely to the determination of the questions referred to the Court by the Chief Magistrate. It was argued that there was no power vested in the High Court to refuse to hear the questions referred to the Court by the Chief Magistrate or to hold that the constitutional proceedings commenced as a result of the referral were an abuse of the process of the court. Senior Counsel for the applicant submitted that by virtue of the wording of section 14(2)(b) and section 14(4), the jurisdiction of the High Court on a referral was limited to a determination of the questions only and did not extend to the jurisdiction to "hear and determine" under section 14(2)(a).

37. Reliance was also placed on the unreported case of **Leon Paul Williams v The Attorney General of Trinidad and Tobago** H.C.A. 3388 of 2001 and the judgment of Dean-Armorer J. given on the 15th July, 2002. It had been contended on behalf of the Attorney General in Williams that the proceedings were an abuse of process since the applicant had a parallel remedy. Among the arguments raised before Dean-Armorer J. were:

- (i) the submission advanced on behalf of the applicant (in resisting the Attorney-General's contention) that exceptional circumstances

existed in Williams, that is to say, that the matter was referred to the High Court by the magistrate pursuant to section 14 of the Constitution.

Dean-Armorer J. appeared not to agree with that argument and made no further reference to it in her judgment.

- (ii) the applicant's contention that there was no substantial dispute of fact in Williams and that Jaroo had acknowledged that constitutional proceedings were therefore appropriate. The learned Judge dismissed the Jaroo point which had been taken in limine on this basis.

38. In the case of **Jaroo v Attorney General of Trinidad and Tobago [2002] 1 A.C. 871**, citing **Harrikissoon v Attorney General of Trinidad and Tobago [1980] A.C. 265**, **Chokolingo, Maharaj (No. 2)**, **McLeod and Hinds**, Lord Hope of Craighead, in delivering the judgment of the Privy Council stated as follows (page 883):

“Nevertheless, it has been made clear more than once by their Lordships’ Board that the right to apply to the High Court which section 14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.”

39. Having traced the history of the proceedings in Jaroo, Lord Hope referred to the “fundamental change” which arose in the matter when an affidavit was filed on behalf of the Attorney General in opposition to the motion. Lord Hope stated at 885:

“Their Lordships wish to emphasise that the originating motion procedure under section 14(1) is appropriate for use in cases where

the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law.”

40. At page 886 of the judgment, the Privy Council agreed with the Court of Appeal of Trinidad and Tobago and stated as follows:

“Their Lordships respectfully agree with the Court of Appeal that, before he resorts to this procedure, the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.”

41. I understand this to be rationale of **Jaroo**. In every matter in which an applicant alleges that his constitutional rights are being infringed, the applicant must consider the true nature of the right which he claims is being infringed, and once there is some other procedure or mechanism either under the common law or pursuant to statute available to him, resort to the Constitution under section 14 will be inappropriate.

42. While it is true that **Jaroo** and the line of cases it followed were all matters which dealt with applications by originating motion brought either under

section 14(1) of the Constitution or its equivalent, it is the Court's view that the principles enunciated in **Jaroo** are applicable here. It must be remembered that it is the applicant who took the initiative to launch these constitutional proceedings by invoking section 14(4) of the Constitution. It was the request of the applicant which set in motion the referral to the High Court pursuant to section 14(4). The Chief Magistrate could not refuse to refer the question to the High Court unless in his opinion the questions were merely frivolous or vexatious. In my view, the proceedings are no less an abuse of process because section 14(4) of the Constitution has been invoked.

43. In the unreported appeals of **The Attorney General of Trinidad and Tobago v Joseph George** and **The Attorney General of Trinidad and Tobago v McLean Durham** [Civil Appeals No. 63 of 2002 and No. 74 of 2002,] the Court of Appeal of Trinidad and Tobago (per R. Hamel-Smith J.A.) made it abundantly clear that before an applicant resorted to the procedure of bringing a constitutional motion, the balancing exercise suggested in **Jaroo** had to be performed. In my judgment, where, as in the instant case, the issues which the applicant requires to be ventilated, touch and concern ordinary principles of statutory construction, involving no contravention of any human right or fundamental freedom, and there are available to him, other procedures or mechanisms by which these issues can be determined, the applicant should not seek relief by way of invoking constitutional proceedings, whether pursuant to section 14 (1) or section 14 (4) of the Constitution.

44. The case of **Beckles v Dellamore (1965) 9 W.I.R. 299** was relied on by the applicant. I think it best to repeat fully what was said by Wooding C.J., after dismissing the appellant's challenge to the constitutionality of Regulation 7(1) of the Emergency Regulations 1965, and affirming the conviction and sentence (at page 309 – 310):

“For the reasons I have given I have reached the conclusion that the appeal should be dismissed and the conviction and sentence affirmed. Before leaving the matter however, there was another point canvassed on which I ought to make some pronouncement. At the end of the trial before the magistrate and after considerable argument on the question whether reg. 7 (1) contravened the provisions of ss. 1 and 2 of the Constitution, his solicitor requested the court to refer it to the High Court for determination. In support of that request, he called the magistrate’s attention to the clear and explicit provisions of s. 6 (3) of the Constitution which reads as follows:

“If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the ... foregoing sections ... the person presiding in that court may, and *shall if any party to the proceedings so requests*, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.”

Yet, notwithstanding the solicitor for the appellant’s request, the magistrate did not so refer it. He has nowhere intimated whether in his opinion the raising of the question was merely frivolous. Perhaps he thought it merely vexatious ! He has not said so however. He has simply left us guessing. I see from the record that the counsel who appeared for the respondent at the trial made it ‘abundantly clear’ that he was not of the view that any such question arose, but the counsel who appeared for him on the appeal has made it no less clear that he thought otherwise. But, on his part, the magistrate was singularly silent. He reserved his decision and when he delivered it three weeks later he made no reference whatever to any of the constitutional issues which had been discussed as the record shows. I think this a grave omission. When points regarding the Constitution are raised, they deserve at least some passing notice. However, the appellant has been able on this appeal to argue them fully and, in the result, he has had them determined by this court to which they would almost inevitably have

come from the High Court if the reference had been made as the Constitution commands. Nevertheless, I cannot too strongly stress that it was the appellant's constitutional right to have the Supreme Court adjudicate on the matter. And my injunction is that no one should brush aside any such right in future."

The Court accepts without hesitation the warning and injunction of Wooding C.J. Wooding C.J. was making reference to the magistrate's brushing aside of the application of Counsel for the appellant to have the constitutional issues referred to the High Court. The Court does not however, accept the dicta of Wooding C.J. as a mandatory injunction that once an applicant raises constitutional points, the High Court is bound to determine them. Where as in the instant case, there are parallel remedies available to the applicant, the Court does not agree that it was intended by Wooding C.J. that in these circumstances the High Court is bound to determine the question referred, despite the obvious abuse of process.

45. The Court accordingly rejects the applicant's contention that, by virtue of the distinct wording of section 14 (2) (a) as against section 14 (2) (b), the Court does not have the jurisdiction to refuse to hear the proceedings on the ground of abuse of process.
46. Further, in the Court's view, it cannot be said that the Privy Council in **Jaroo** held that once there was no dispute of fact, the proceedings under the Constitution were appropriate, despite the fact that there was a parallel remedy available to the applicant.
47. I therefore hold that the proceedings before me are inappropriate and an abuse of the process of the court. There were available to the applicant parallel remedies by which he could have challenged the validity of charges preferred against him.

THIRD ISSUE:

48. Can the applicant be charged for offences allegedly committed against the 1987 Act after six (6) months had elapsed since the commission of the offences?
49. Senior Counsel for the applicant traced the history of the three (3) offences:
- (i) As to complaint No. 12401 of 2002 it is alleged that on Friday the 9th April, 1999, the applicant knowingly made a false declaration, that is to say, a declaration of income, assets and liabilities for the year ended 31st December, 1997. The complaint in respect of that offence was laid on the 18th September, 2002.
 - (ii) As to complaint No. 12402 of 2002, is alleged that on a day unknown between the period Thursday 15th March, 2001 and Thursday 22nd March, 2001, the applicant knowingly made a false declaration, that is to say, a declaration of income, assets and liabilities for the year ended 31st December, 1999. The complaint in respect of that offence was also laid on the 18th September, 2002.
 - (iii) As to complaint No. 12403 of 2002, it is alleged that on a day unknown between the period Sunday 19th December, 1999 and Friday 24th December, 1999, the applicant knowingly made a false declaration, that is to say, a declaration of income, assets and liabilities for the year ended 31st December, 1998. The complaint in respect of that offence was also laid on the 18th September, 2002.

50. Section 27(1) of the 1987 Act reads in part:
- “A person who -
- (b) knowingly makes a declaration that is false in some material particular,
- is guilty of an offence, and liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for a term of two years.”
51. Section 67 of the Interpretation Act, Chapter 3:01 provides as follows:
- “Where in a written law an offence is declared to be punishable on summary conviction, the procedure in respect of the trial and punishment of the offence and the recovery of the penalty, and all matters incidental to or arising out of the trial and punishment of the offence or the recovery of the penalty shall be in accordance with the Summary Courts Act.”
52. Section 33(2) of the Summary Courts Act, Chapter 4:20 provides as follows:
- “In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within six months from the time when the matter of the complaint arose, and not after.”
53. It has been argued on behalf of the applicant, that by virtue of the conjoint effect of section 67 of the Interpretation Act and section 33(2) of the Summary Courts Act, the statutory limit for laying the complaints is six months and no more from the date when the offence was committed.
54. The Attorney General has countered the applicant’s argument by contending that section 28 of the 1987 Act is a complete answer, since a period of

time for making a complaint under the 1987 Act is specially limited therein. Section 28 of the 1987 Act reads in part:

“No prosecution for an offence under this Act, other than an offence under section 12(2), may be instituted –

(b) after five years from the date when the person in respect of whose declaration or financial affairs the alleged offence was committed, ceased to be a person in public life.”

55. The term “person in public life” is defined in section 2 of the 1987 Act as “a person referred to or listed in the First Schedule.” The First Schedule lists the following as “persons in public life”:

1. Members of the House of Representatives
2. Ministers of Government
3. Parliamentary Secretaries
4. Permanent Secretaries
5. Chief Technical Officers

56. It has been argued on behalf of the applicant that section 28 of the 1987 Act did not satisfy the prescription contained in section 33(2) of Summary Courts Act for the limiting of time for the making of complaints for summary offences. Senior Counsel for the applicant submitted that section 28 merely created an immunity, disabling the institution of proceedings for offences under the 1987 Act after the expiration of five years of the person in public life ceasing to be such.

57. Section 2 (1) of the Interpretation Act provides that every provision of that Act extends and applies to every written law passed or made before or after the commencement of that Act, unless a contrary intention appears in that Act or the

written law. Mr. Mendes, on behalf of the respondent, submitted that a contrary intention appeared in the 1987 Act, that section 33(2) of the Summary Courts Act should not apply to the 1987 Act.

58. Mr. Mendes pointed out that section 23, subsections (1), (4) and (5) of the 1987 Act, empower the Commission to do certain things in furtherance of conducting enquiries as to the accuracy or fullness of any declaration filed with it. In the case of subsections (1) and (5), no time limits are placed on the Commission's powers. In the case of subsection (4), an inquiry may not be commenced after five years from the date when the person in respect of whose declaration the inquiry is being conducted ceased to be a person in public life.

59. In addition, Mr. Mendes, on behalf of the respondent, with the leave of the Court, submitted to the Court a document prepared by him. Mr. Mendes submitted that by changing the formulation of the words in the document, the same results were achieved in section 33 (2) of the Summary Courts Act as in section 28 (b) of the 1987 Act. The document reads as follows:

“Section 33(2) of the Summary Courts Act”

- (1) The complaint shall be made within six months from the time when the matter of complaint arose, and not after.
- (2) The prosecution for a summary offence shall be instituted within six months from the time when the matter of the complaint arose, and not after.
- (3) The prosecution for a summary offence shall not be instituted after six months from the time when the matter of complaint arose.

- (4) No prosecution for a summary offence may be instituted after six months from the time when the matter of complaint arose.”

“Section 28(b) of the 1987 Act:

- (a) No prosecution for an offence under this Act may be instituted after five years from the date when the person ceased to be a person in public life.
- (b) The prosecution for an offence under this Act shall not be instituted after five years from the date when the person ceased to be a person in public life.
- (c) The complaint for an offence under this Act shall not be made after five years from the date when the person ceased to be a person in public life.
- (d) the complaint for an offence under this Act shall be made within five years from the date when the person ceased to be a person in public life, and not after.”

60. Having regard to the submissions made to the Court, the following questions are to be answered:

- (i) Is there a contrary intention shown in the 1987 Act that section 33(2) of the Summary Courts Act should not apply; and
- (ii) Does section 28(b) of the 1987 Act contain words of special limitation?

61. It is a well-known principle statutory interpretation that a statute should be construed so as to suppress the mischief and advance the remedy. The 1987 Act sought to promote integrity in public life and to provide mechanisms for the

monitoring of the financial affairs of persons in public life. Section 23 of the 1987 Act empowered the Integrity Commission to make enquiries into the accuracy or fullness of declarations filed by persons in public life. It was the clear intention of Parliament that an inquiry could have been commenced up to five years after a declarant ceased to be a person in public life.

62. It would indeed be an absurdity that a tribunal could be appointed by the President and an inquiry commenced, but no charges could be laid against the person in public life because six months had elapsed since the making of the false declaration.

63. Accordingly, the Court is of the view that the first question must be answered in the affirmative. A contrary intention is shown in the 1987 Act that section 33(2) of the Summary Courts Act shall not apply.

64. As to the second question, the **Halsbury's Laws of England** 4th ed. Volume 29 paragraph 291 and the Reissue at Volume 29(2) paragraph 589 refer to various enactments which, by their express provisions, specially limit time. One such enactment is the **Food and Drugs Act 1955**, [section 108] which reads in part:

“108. Prosecutions

(1) Subject to the provisions of this Act, all offences under this Act and regulations and byelaws made thereunder, and any offence against an order made under section five of this Act, shall be punishable on summary conviction:

Provided that, notwithstanding anything in the Magistrates' Courts Act, 1952,-

(a) where a sample has been procured under this Act, no prosecution in respect of the article or substance sampled shall be begun after the expiration of the following period, beginning with the date on which the sample was procured, that is to say -

(i) in the case of a sample of milk, twenty-eight days,

(ii) in any other case, two months.”

65. Another enactment referred to is the **Food Safety Act 1990**, (section 34) which reads as follows:

“34 Time limit for prosecutions

No prosecution for an offence under this Act which is punishable under section 35(2) below shall be begun after the expiry of –

(a) three years from the commission of the offence; or

(b) one year from its discovery by the prosecutor,

whichever is the earlier.”

66. Having examined these enactments, the Court is satisfied that no particular choice or formulation of words or phrasing is required to limit time specially. In my judgment, section 28(b) of the 1987 Act contains a special limitation as to time and accordingly, section 33(2) of the Summary Courts Act does not apply to the complaints laid against the applicant. Charges can be preferred against the applicant for offences allegedly committed against the 1987 Act, although six months have elapsed since the alleged commission of the offences.

FOURTH ISSUE:

67. Can the applicant be charged for offences allegedly committed against the 1987 Act which Act has been repealed?

68. By virtue of section 27(1) of the Interpretation Act, a written law though repealed can continue to have legal effect. Section 27(1) provides:

“Where a written law repeals or revokes a written law, the repeal or revocation does not, except as in this section otherwise provided, and unless the contrary intention appears –

- (a) revive any written law or thing not in force or existing at the time at which the repeal or revocation takes effect;
- (b) affect the previous operation of the written law so repealed or revoked, or anything duly done or suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the written law so repealed or revoked;
- (d) affect any offence committed against the written law so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as mentioned above,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the written law had not been repealed or revoked.”

69. It was argued on behalf of the applicant that section 44 of the 2000 Act had evinced a contrary intention, that is to say, that the repealed 1987 Act should continue to have legal effect only in circumstances in which the 2000 Commission was carrying out or completing that which had been commenced by or under the authority of the 1987 Commission. In other words, the argument of the applicant was that outside of the authority and power given to the 2000 Commission to carry out or complete that which had been begun by the 1987 Commission, the 1987 Act ceased to have legal effect on its repeal.

70. Sections 43 and 44 of the 2000 Act read as follows:

“43. The Integrity in Public Life Act, 1987 is hereby repealed.

44. Where anything has been commenced by or under the authority of the Integrity Commission under the Integrity in Public Life Act, 1987, repealed by this Act, such thing may be carried out and completed by or under the authority of the Integrity Commission.”

71. On the other hand, it was argued on behalf of the respondent that section 44 did not evince a contrary intention and that section 27(1) of the Interpretation Act was applicable.

72. While this issue was being ventilated, the parties argued the related issue whether the 2000 Commission had any authority to carry out any investigations in relation to the applicant’s declarations. In this regard, it was contended on the part of the applicant, that the 2000 Commission had acted without authority in

conducting investigations in relation to the declarations filed by him. I propose to consider both issues at this stage.

73. In the Addendum to Respondent’s Skeleton Submissions, it was submitted on the part of the respondent that the 2000 Commission was not limited in its authority and scope as Senior Counsel for the applicant had argued.

74. By virtue of the Integrity in Public Life (Amendment) Act 2000, [section 5], section 16 of the 2000 Act is amended by deleting subsection (3) and substituting the following subsections:

“(3) An enquiry under section 15 or an investigation under Part V may be held in relation to –

- (a) a person, who within the meaning of this Act, ceases to be a person in public life or a person exercising a public function; and
- (b) a person who was a person in public life under the former Act.

(4) In this section, “former Act” means the Integrity in Public Life Act, 1987 repealed by section 43.”

75. What is clearly intended by this amending provision is that the Integrity Commission as a continuing constitutional institution should be empowered to carry out its functions either under section 15 or Part V of the 2000 Act in relation to persons who were persons in public life under the 1987 Act. Section 15 of the 2000 Act empowers the 2000 Commission in the circumstances therein prescribed, to advise the President to appoint a tribunal to conduct an enquiry to verify the contents of a declaration or statement filed with the Commission. On the other hand, in Part V, (sections 32 to 44), the 2000 Commission is empowered to carry out investigations in circumstances set out in the provisions therein contained. In section 33 of the 2000 Act, it is provided:

“The Commission –

- (a) may on its own initiative; or
- (b) shall upon the complaint of any member of the public, consider and enquire into any alleged breaches of the Act or any allegations of corrupt or dishonest conduct.”

76. In addition, section 5 (1) (f) of the 2000 Act empowers the Commission to investigate the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption.

77. In the view of the Court, the conjoint effect of section 16 subsections (3) and (4) as amended, section 5 (1) (f) and section 33 of the 2000 Act is that the 2000 Commission either of its own initiative or on a complaint by a member of the public is empowered to consider and enquire into any breaches of the 2000 Act or any allegations of corrupt or dishonest conduct on the part of the applicant as a person in public life under the 1987 Act.

78. The Court agrees with the submissions advanced on behalf of the respondent that the reference to “allegations of corrupt or dishonest conduct” in section 33 of the 200 Act includes the allegation that a person knowingly made a false declaration under the 1987 Act. The empowering of the 2000 Commission to consider and investigate a person who was a person in public life under the 1987 Act must necessarily involve its consideration and investigation of an allegation that such a person may have committed an offence under the 1987 Act, including the making of a false declaration under the Act.

79. Section 34 (5) of the 2000 Act further empowers the Commission, after the conduct of an investigation, where the Commission is satisfied that there are reasonable grounds for suspecting that an offence has been committed, to make a

report to the Director of Public Prosecutions who may take such action as he thinks appropriate.

80. Senior Counsel for the applicant has argued that in relation to section 33 of the 2000 Act, the 2000 Commission was limited in its powers to its consideration and investigation of alleged breaches which occurred during the currency of the 2000 Commission or breaches which occurred during the currency of the 1987 Commission but about which the 1987 Commission had commenced enquiries. In the view of the Court, there is nothing in section 33 which so limits the powers of the 2000 Commission. Far from limiting or narrowing the powers of the 2000 Commission, it is clearly intended by the provisions of the 2000 Act as amended that the 2000 Commission should have the power to carry out its constitutional duties and exercise its statutory powers over those persons who were persons in public life under the 1987 Act.

81. Section 27(4) of the Interpretation Act was also relied on by the respondent. It reads as follows:

“(4) The inclusion in the repealing provisions of a written law of any express saving with respect to the repeals effected thereby shall not be taken to prejudice the operation of this section with respect to the operation of those repeals.”

82. Section 27(4) therefore provides that an express saving in a written law, such as section 44 of the 2000 Act, is not to prejudice the operation of section 27(1), as it applies to the 1987 Act.

83. Accordingly, I conclude as follows:

(i) Section 44 of the 2000 Act does not evince a contrary intention, that is to say, that the 1987 Act does not continue to have effect

after repeal. To state this conclusion positively, the 1987 Act, albeit repealed, continues to have the effect prescribed by section 27(1) of the Interpretation Act.

- (ii) Section 44, as an express saving, does not prejudice the operation of section 27(1) of the Interpretation Act with respect to the provisions of the 1987 Act. Accordingly, the 2000 Commission was authorized to institute investigations as to the fullness or accuracy of the declarations filed by the applicant under the provisions of the 1987 Act and as to whether any offences had been committed in relation to those declarations.

84. By virtue of section 27(1) of the Interpretation Act, the repeal of the written law does not affect any offence committed against the written law so repealed. Neither does it affect any investigation, legal proceeding or remedy in respect of any obligation or liability incurred under the written law and any such investigation may be instituted, continued or enforced as if the written law had not been repealed. The Court agrees with the submissions advanced by Counsel for the respondent that the disjunctive use of the words “instituted, continued or enforced” shows the clear intention that an investigation or legal proceedings may be instituted, not merely continued or enforced, after the repeal of the written law for an offence committed contrary to the repealed written law.

85. There is one further point which the Court has considered. Counsel for the respondent has submitted that, even if the 2000 Commission had acted *ultra vires* in conducting investigations into offences allegedly committed by the applicant against the 1987 Act, that by itself would not invalidate the complaints.

86. De la Bastide C.J. in the unreported case of **Hans Boos v Inspector M. Charles** [Magisterial Appeal No. 152 of 1993] dealt with a similar submission at pages 4 – 5:

“It is clear, therefore, that the magistrate ought not to have issued the search warrant in this case. But he did. The warrant was executed and a large number of articles were seized in reliance on it and brought to the magistrate. The magistrate then issued his summons to the appellant to show cause why these articles should not be destroyed, and the appellant appeared before the magistrate in obedience to that summons. It does not appear from the record of what transpired before the magistrate that the appellant’s attorney ever took the point that because of the defects in the complaint the magistrate was not empowered to issue the summons or to determine the question whether an order for destruction should be made or to make such an order. But even if that point had been taken, we do not think that it ought to have succeeded. The authorities seem to indicate that provided there is a stage at which proceedings are validly initiated, the fact that there has been some previous irregularity in the process by which the person against whom those proceedings are directed, was brought before the Court, does not have the effect of vitiating the proceedings and rendering them a nullity.”

87. The Court agrees with the submissions advanced on behalf of the applicant for the following reasons:

- (a) The criminal offences created by section 27(1) of the 1987 Act are independent of any investigation instituted by the Commission. In other words, a valid investigation by the Commission is not a prerequisite to the preferring of charges against a person in public life.
- (b) By virtue of section 90 (3) of the Constitution, the Director of Public Prosecutions is vested with the power “to institute and undertake criminal proceedings before any court in respect of any offence against the law of Trinidad and Tobago.” The Director may exercise these powers either by him in person or through other

persons acting under and in accordance with his general or special instructions. There is nothing in the 1987 Act or the 2000 Act which limits the Director's powers. Accordingly, the criminal proceedings instituted against the applicant were validly instituted by the Director of Public Prosecutions and no lack of authority, if any, on the part of the 2000 Commission in any way taints the complaints.

88. **ORDERS:**

For the reasons stated above, the Motion is hereby dismissed. The applicant is ordered to pay the respondent's costs certified fit for Advocate Attorney.

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Maureen Rajnauth-Lee
Judge