

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 30 of 2008

IN THE MATTER OF THE INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED

AND

**IN THE MATTER OF THE CONSTRUCTION OF PARAGRAPHS 8 AND 9 OF THE
SCHEDULE TO THE INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED**

BETWEEN

**TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO LIMITED
INTERESTED PARTY/APPELLANT**

AND

**THE INTEGRITY COMMISSION
PLAINTIFF/RESPONDENT**

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
DEFENDANT/RESPONDENT**

**PANEL: I. Archie C.J.
A. Mendonça J.A.
G. Smith J.A.**

APPEARANCES:

Mrs. D. Peake S.C. and Ms. Marcelle Ferdinand
on behalf of the Integrity Commission

Mr. S. Marcus S.C. and Ms. Glenda Edwards
on behalf of the Law Reform Commission

Mr. F. Hosein S.C., Mr. A. Bullock and Ms. Indarsingh
on behalf of the Attorney General of Trinidad and Tobago

Dr. C. Denbow S.C., Mr. D. Allahar and Mrs. D. Denbow
on behalf of Telecommunications Services of Trinidad and Tobago Limited

DATE OF DELIVERY: 27th June, 2013.

I have read the judgment written by Smith J.A.
I agree with it and have nothing to add.

**I. Archie
Chief Justice**

I, too, have read the judgment written by Smith J.A.
I also agree with it and have nothing to add.

**A. Mendonça
Justice of Appeal**

Delivered by G. Smith J.A.

JUDGMENT

INTRODUCTION

1. Sections 138 and 139 of the Constitution of the Republic of Trinidad and Tobago (the Constitution) and the **Integrity in Public Life Act** Chapter 22:01 (the Integrity Act) have established an Integrity Commission with far reaching powers.

Persons who are subject to the jurisdiction of the Integrity Commission (the Commission) have onerous duties and responsibilities placed upon them. For instance, they are required to file exhaustive and detailed annual financial returns with the Commission in respect of themselves, their spouses and dependent children.¹ Breaches of the provisions of the Integrity Act can be visited by severe penalties. By way of illustration, failing (a) to file the required returns, (b) to give information required by the Commission or (c) to attend an inquiry or (d) the giving of a false declaration are criminal offences punishable on summary conviction by a fine of

¹ See sections 11 to 14 of the Integrity Act.

\$250,000.00 and imprisonment for ten years. Individuals who are caught by the Integrity Act are also subject to a stringent code of conduct and to a thorough investigation by the Commission.²

It is a matter of considerable importance for an individual to know if he is subject to the jurisdiction of the Commission. The Appeal of Telecommunications Services of Trinidad and Tobago Limited (TSTT) arises out of such a concern on behalf of the members of its Board of Directors.

2. Equally, the Commission is an autonomous creature of the Constitution, answerable to no one³ and vested with sweeping and invasive powers over persons and bodies under its jurisdiction.⁴ Its functions are very expansive and comprehensive. By way of illustration, the Commission is tasked with examining and retaining all returns filed; making inquiries to verify the accuracy of those returns; investigating complaints with respect to breaches of the Integrity Act; investigating conduct which may be considered corrupt; instructing, advising and assisting heads of public bodies in respect of practice and procedure and carrying out programs of public education.⁵

To ensure its proper and efficient functioning and in the interests of good administration it is essential that the Commission should be aware of the persons or bodies over whom it exercises jurisdiction.

It is in these circumstances that the Commission commenced this interpretation summons and now also pursues an appeal from the trial judge's findings.

3. More specifically, this appeal addresses the interpretation of the phrase:

“Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest”

as it appears in the Schedule to the Integrity Act as being persons who are deemed to be persons in public life and so subject to the jurisdiction of the Commission.

Even though we heard four sets of addresses in this appeal, there are really two distinct areas of focus in respect of the two parties who have appealed.

² See Part IV of the Integrity Act.

³ See section 5(2)(a) of the Integrity Act

⁴ See for example section 5 of the Integrity Act.

⁵ See note 4 above.

4. TSTT asks us to review the trial judge's decision in respect of the meaning of the phrase **“Members of the Boards of all ... State Enterprises including those bodies in which the State has a controlling interest”**.

The trial judge decided that for the purposes of the Integrity Act, a State Enterprise is (*inter alia*) a company or business controlled by or on behalf of the State. Further, for the purpose of determining control by or on behalf of the State one had to look to section 119(9) of the Constitution where it says (*inter alia*) that, **“...a company shall be taken to be controlled by the State if the State either exercises or is entitled to exercise control directly or indirectly over its affairs...”** (my emphasis).⁶

TSTT contends that the trial judge applied a wrong method of statutory interpretation in coming to this decision. The test of direct or indirect control is too wide and produces an unintended result as well as too much vagueness in the application of the Integrity Act to Members of the Boards of State Enterprises.

We find that the test of direct and indirect control was not an appropriate one to be applied to the Integrity Act and sections 138 and 139 of the Constitution (jointly referred to as the Integrity Provisions). We adopt firstly the test of de jure or legal control to all cases and in exceptional cases, resort may be had to the de facto or factual test of control.

In the present matter, on an application of the de jure test, TSTT is not a State Enterprise to which the Integrity Act applies. Further, on the evidence before us there are no exceptional circumstances to pray in aid the de facto test of control so as to have TSTT declared a State Enterprise. The members of its Board are not subject to the jurisdiction of the Commission.

5. The second area of focus concerns the Commission's appeal. They ask us to review the decision of the trial judge in respect of the phrase **“Members of the Boards of all Statutory Bodies... including those bodies in which the State has a controlling interest”**. The trial judge applied a literal or **“natural and ordinary interpretation”** to the phrase.

The Commission contends that this literal interpretation of the phrase in the Integrity Act is too wide. It would extend the reach of the Commission far beyond its intended purpose and reign in hundreds of people who really should not be subject to the Act. This in turn will make the functioning of the Commission impossible. The Commission suggests an interpretation of this phrase which limits its application to members of the board of statutory bodies which are public in nature and/or which exercise public functions and/or functions on behalf of the State.

⁶ See paragraphs 235, 236 and 251 of the trial judge's decision.

We are of the opinion that the application of this part of the Schedule to the Integrity Act is limited to the members of the boards of those statutory bodies which exercise public functions.

6. Before delivering an analysis of our reasons it is first necessary to give a brief context and history of the relevant legislation so as to get a proper grasp of the decision.

LEGISLATIVE CONTEXT AND HISTORY

7. Sections 138 and 139 of the Constitution in its original form provided for the establishment of an Integrity Commission whose primary function was the receipt and declaration of assets from limited and defined persons namely:

“members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers”.

The jurisdiction of the Commission was basically limited to persons in public political life.

It was not until 1987 that, pursuant to section 139 of the Constitution that Parliament enacted the Integrity in Public Life Act No. 8 of 1987. That Act established the Commission. It declared that it applied to every person in public life. A person in public life was further defined as a person referred to in the First Schedule to that Act. The First Schedule itself listed the same persons as those stated in section 138 of the Constitution (referred to above) as being persons in public life.

Thus the Constitution and the Integrity in Public Life Act of 1987 were in sync with respect to the persons who were subject to the jurisdiction of the Commission.

8. In 2000 Parliament extended the jurisdiction of the Commission by virtue of (a) two constitutional amendments; (b) the repeal and replacement of the 1987 Integrity in Public Life Act; and (c) the Amendment of the 2000 Integrity Act.

By virtue of the two constitutional amendments in 2000 (and the correction of a drafting error) the Commission now had jurisdiction over the following persons (see the 2006 Revised Edition of the Laws of Trinidad and Tobago):

“...members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Senators, Judges, Magistrates, Permanent Secretaries and Chief Technical Officers, Members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities and members of Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed.”

(I have underlined the new persons and bodies added by the Constitutional Amendments to the Commission’s original jurisdiction)

9. Like in the case of the 1987 Integrity Act, the new Integrity Act of 2000 declares that it applies (*inter alia*) to every person in public life.⁷ A person in public life is further defined as a person referred to in the First Schedule. The First Schedule lists the same persons as those stated in the new section 138 of the Constitution save for one difference.

The Constitution applies (*inter alia*) to “**...Members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed**”.

However, the corresponding section of the First Schedule of the new Integrity Act applies to “**9. Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest**” (the change is underlined).

10. Another relevant change to the new Integrity Act is in section 3. Whereas section 3 of the old Integrity Act stated that the old Act applied to every person in public life, section 3 of the new Integrity Act applies to every person in public life “**and to persons exercising public functions.**”

Section 2 of the new Integrity Act defines ‘persons exercising public functions’ as including all persons holding office under each of the Service Commissions as well as members of the of the Diplomatic Service and Advisers to the Government. As we will discuss later in this judgment,⁸ this method of defining persons exercising public functions as including certain categories of persons, was not intended to be an exhaustive definition of those persons but mere illustrations of the persons who would be included in the expression ‘persons exercising public functions’.

In any event, there is no issue in this case with the application of the Integrity Provisions to ‘persons exercising public functions’ as stated in section 3 of the Integrity Act. The focus of

⁷ See section 3 of the integrity Act.

⁸ See paragraphs 50 and 51 below.

this case is the application of the Integrity Act in Section 3 and the First Schedule to persons in public life as it relates to “**Members of the Boards of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest**”.⁹

11. A point to note about this case is that in the earlier part of her judgment the trial judge ruled that the attempt to extend the jurisdiction of the Commission to Judges and Magistrates was unconstitutional. There is no appeal from this finding. This appeal is only concerned with the trial judge’s findings in respect of persons listed at item 9 of the Schedule to the Integrity Act as stated above.

ANALYSIS

12. I now consider the position of the two Appellants, namely (A) TSTT and (B) The Integrity Commission.

A. TSTT is not a State Enterprise

13. A proper starting point for this discussion is a brief statement of the corporate structure of TSTT. The information for this statement is garnered from the uncontested affidavits of Mr. Norris Campbell, Corporate Secretary of TSTT.

TSTT is a privately owned company. It is the product of a joint venture arrangement between the Government of Trinidad and Tobago (the Government) and the Cable and Wireless Group (C&W). Under the joint venture arrangement, the Government held a 51% shareholding in TSTT and C&W held a 49% shareholding in TSTT. The joint venture was managed through a Shareholders’ Agreement. Under the terms of this Shareholders’ Agreement, it would be correct to say that the Government did not enjoy a free hand in the business of TSTT. In fact the Government, even though it was the majority shareholder, had to manage in sync with the directives of C&W. One example of the lack of a free hand of the Government was the fact that under the Shareholders’ Agreement, the Board of Directors of TSTT was to be comprised of nine

⁹ See item 9 of the First Schedule of the Integrity Act.

Directors; five appointed by the Government and four by C&W. At the time of the affidavit of Mr. Norris Campbell, none of the four C&W Directors was resident in Trinidad and Tobago.

14. In 1999 the Government incorporated a company called National Enterprises Limited (NEL). The purpose behind NEL was for the Government to divest itself of its shareholdings in three companies, namely, National Flour Mills Limited, Trinidad Nitrogen Company Limited and TSTT.

The Government's 51% shareholding in TSTT was transferred to NEL, which was a publicly traded company and the Government then proceeded to sell some of its shares in NEL on the stock market. At the time of the affidavit of Mr. Campbell, the Government held 82% of the shares in NEL and members of the public held the other 18% of the shares in NEL.

15. NEL and not the Government is now the holder of the 51% shareholding in TSTT. Further, NEL has entered into a Deed of Adherence to comply with the original Shareholders' Agreement with C&W (which is still the holder of the remaining 49% of the shares in TSTT).

16. Given these facts, can TSTT be said to be a State Enterprise? A factor to bear in mind is that if TSTT is a State Enterprise, the members of its Board would be subject to the jurisdiction of the Integrity Commission. This may very well apply to the four foreign C&W Directors and would be an odd and probably unintended consequence of the Integrity Act.

17. In answering this question, the trial judge correctly noted that there was no definition of the term "State Enterprise" in either the Constitution or the Integrity Act.

However, the trial judge considered apparently comparable terminology in the Constitution to assist her in defining the term "State Enterprise".

18. Section 116(3) of the Constitution empowers the Auditor General to carry out audits of "**all enterprises that are owned or controlled by the State**".

Similarly, section 119(8) enables the Public Accounts (Enterprises) Committee to consider and report on the accounts (etc) of "**all enterprises that are owned or controlled by or on behalf of the State**".

Finally, section 119(9) provides that "**For the purposes of subsection (8) and section 116(3) an enterprise shall be taken to be controlled by the State if the Government...—**

- (a) **exercises or is entitled to exercise control directly or indirectly over the affairs of the enterprise;**

- (b) is entitled to appoint a majority of the directors of the Board of Directors of the enterprise; or**
- (c) holds at least fifty per cent of the ordinary share capital of the enterprise”.**

19. Prior to the formation of NEL, (b) and (c) above would have applied to TSTT to make it a State Enterprise because of the Government’s right to appoint five of the nine members of the TSTT Board¹⁰ and/or its 51% shareholding in TSTT.¹¹

Now, after the formation of NEL it is only (a) above which could apply to TSTT to make it a State Enterprise, because it is at least very arguable that the Government can exercise control indirectly over TSTT by the use of its majority shareholding in NEL.

This test of direct and indirect control now left the Commission with the task of investigating the day to day management of TSTT to determine whether the Government did in fact exercise indirect control over TSTT to such an extent that it would be a State Enterprise.

20. TSTT argues that the trial judge was wrong to resort to section 119(9) of the Constitution as an aid to determining the meaning of the term State Enterprise.

I condense TSTT’s arguments as stating that:

- (1) Section 119(9) of the Constitution is not of a similar context to the Integrity Provisions and a fortiori, even further removed in context from the Integrity Act.
- (2) If Parliament had intended those tests in section 119(9) of the Constitution to apply to the Integrity Provisions, Parliament could and should have done so, as it did with sections 116(3) and 119(8) mentioned above. In other words, Parliament could have stated that section 119(9) would apply to the Integrity Act and to sections 138 and 139 of the Constitution.

21. TSTT suggests that the correct test to apply in determining what is a State Enterprise has to be the de jure or legal control test. Namely, one examines those legal sources that determine control (such as articles of incorporation, share register and legal shareholders’ agreements).

If this test is adopted one need only examine TSTT’s share register and Shareholders’ Agreement to determine who controls the company. This would show that NEL and C&W, and not the Government control TSTT. That being the case TSTT would not be a State Enterprise.

¹⁰ See section 119(9)(b) of the Constitution.

¹¹ See section 119(9)(c) of the Constitution.

22. The Commission argues (in summary) that the trial judge was not wrong to pray in aid section 119(9) of the Constitution to arrive at a definition of a State Enterprise. However, they contend that it was inappropriate to do so in this case since: (1) It created further uncertainty, especially by the “indirect control” test and (2) It was too wide a definition given that the Integrity Act is penal in nature and also infringes fundamental rights and freedoms.

Interestingly enough, the Commission referred the Court to the **Tobago House of Assembly Act** Chapter 25:03 where in section 3 there is a definition of the term “State Enterprise”, namely “**an enterprise that is controlled by or on behalf of the State**”. This suggests that control is a key feature in determining a State Enterprise.

Also, the Commission referred the Court to the **Prevention of Corruption Act** Chapter 11:11 (which is an Act of 1987) where in section 2 “State Enterprise” is defined as “**all enterprises referred to in section 119(9) of the Constitution**”. This suggests that if Parliament (in the year 2000) had intended for section 119(9) of the Constitution to apply to the term “State Enterprise” as it appears in the Integrity Provisions, they could and would have done so.

23. However, unlike TSTT, the Commission does not accept that the de jure test of control is always appropriate to determine what is a State Enterprise. They suggest that resort may be had to the de facto or factual control test in cases where for instance the de jure test is being used as a ruse to evade the statute; For example, if Company 1 owns all the shares in Company 2 which in turn owns all the shares in Company 3, there can be no doubt that Company 1 controls Company 3 even though it holds no shares in Company 3.¹²

In such a case the de jure or legal test can be used to avoid the Integrity Provisions. A situation that should not be condoned by a court. In such a case a court can properly resort to the factual control test.

24. The Attorney General submits that the trial judge was not at fault in applying the tests laid out in section 119(9) of the Constitution in determining the meaning of the term State Enterprise. However the Attorney General suggests that the Court should adopt a more cautious and case by case approach in determining what is a State Enterprise rather than sticking to the tests in section 119(9) of the Constitution.

¹² And see **British American Tobacco Limited v Inland Revenue Commissioners** [1943] AC 335 at pages 338 et seq.

25. We are of the view that the tests of control as set out in section 119(9) of the Constitution are not appropriate to determine what is a State Enterprise for the purposes of the Integrity Provisions. We say so for the following three reasons:

26. Firstly, the tests set out in section 119 (9) of the Constitution have a very different context from the term “State Enterprise” as it appears in the Integrity Provisions.

Section 119(9) only subjects an “enterprise” to an audit or public report of its accounts. The Integrity Provisions directly affect individuals and expose them to onerous personal duties and penalties, which would otherwise be contrary to their constitutional rights.

A court ought to be cautious in applying the same tests to two different contextual provisions.

27. Secondly, and as a consequence of the contextual difference, the test of “direct and indirect” control is too uncertain to apply to a situation where Parliament is imposing onerous duties and penalties on individuals. A fortiori, the test of indirect control is so vague that it could possibly extend the reach of the Commission way beyond its capacities.

Legislation or executive action can affect many entities indirectly in such a way as to enable government to exercise indirect control over them. How far is the test of indirect control to be applied? Where can the Commission draw the line in applying this test of indirect control to the demanding and personal obligations of the Integrity Provisions? The test of indirect control is too uncertain.

28. Thirdly, we agree with the arguments of TSTT and the Commission that say that if Parliament had intended that the section 119(9) tests should have applied to the term “State Enterprise”, they could and should have done so.¹³

29. Given that the section 119(9) tests were inappropriate to apply to the Integrity Provisions, what tests or yardsticks should guide the Commission in deciding what is a State Enterprise?

30. We are of the view that given the onerous personal duties and severe penal consequences that the Integrity Provisions create, one should err on the side of caution in extending the jurisdiction of the Commission.

In that regard we find that the narrower de jure or legal test of control should be the first guide for the Commission in determining what is a State Enterprise.

¹³ See paragraphs 20 and 22 above.

As stated above, the Commission need only examine the legal sources that determine control such as articles of incorporation, the share register and any relevant and legal shareholders agreements.

However in exceptional circumstances, as mentioned in paragraph 23 above, the Commission can resort to the de facto or factual test of control. To repeat, if for example there is a good likelihood that the legal sources cover up a naked attempt to evade the Integrity Provisions, the Commission may resort to the de facto or factual test of control.

31. With respect to TSTT, an examination of the legal sources of control, namely the shareholding and the Shareholders' Agreement reveals that NEL and C&W have control of TSTT, not the Government. As such, TSTT is (prima facie) not a State Enterprise.

Further, given the uncontested evidence, there are no exceptional circumstances here which call for the application of the de facto or factual test of control to be applied. There is no suggestion that the Government's divestment of its 51% shareholding in TSTT to NEL was anything other than a bona fide divestment of its 'control' over TSTT.

TSTT is not a State Enterprise and the Integrity Provisions do not apply to the members of the Board of TSTT.

B. The Commission's Appeal

32. The Commission's Appeal is really an application to vary that part of the trial judge's decision in respect of the phrase that appears in the Schedule to the Integrity Act, namely:

“Members of the Boards of all Statutory Bodies... including those bodies in which the State has a controlling interest.”

33. The trial judge decided that this phrase meant that the Integrity Act applied to the members of the management or decision making body of all organisations or bodies established by statute.

34. The Commission and the Attorney General contend that this phrase should only apply to those members of the decision making body of bodies established by statute which bodies are public in nature in that they exercise public functions and/or functions on behalf of the State or the Executive.

35. As we stated in the introduction to this judgment we are of the opinion that this phrase only applies to the members of the boards of those statutory bodies which exercise public functions.

The analysis of our decision will comprise of three sub-sections as follows:

- (i) An application of a purposive construction to the phrase in the statute;
- (ii) The meaning of the words “**Members of the Boards of all Statutory Bodies**”; and
- (iii) The meaning of the words “**Including those bodies in which the State has a controlling interest**” (the tailpiece).

- (i) An application of a purposive construction to the phrase in the statute

36. In cases where a literal interpretation of legislation would clearly defeat the purposes of the legislation itself, a court can adopt a purposive approach to the construction of the legislation in question. In adopting this purposive construction the court can “**correct obvious drafting errors**”¹⁴ and “**In suitable circumstances... the court will add words, or omit words or substitute words.**”¹⁵

37. As stated before, the trial judge preferred a literal interpretation of the phrase in question¹⁶ and decided that the Integrity Provisions applied to the members of the management or decision making body of all organisations or bodies established by statute.¹⁷

The Commission and the Attorney General rightly accept that if this literal interpretation is adopted, hundreds of persons who were not hitherto regarded as subject to the Integrity Act and who have no connection with public life whatsoever would now be caught by the Integrity Provisions. By way of illustration, this would include every manager or director of every charitable, sporting, professional, religious and cultural association, organisation and society once that body is incorporated by statute.

As a corollary to this, the work of the Commission would increase so dramatically that the business of the Commission would be over burdensome and unworkable.

This could not have been the intention of Parliament.

¹⁴ **Fazal Ghany v The Compensation Committee and The Attorney General of Trinidad and Tobago** Civil Appeal 197 of 2008 per Stollmeyer JA at paragraph 38 applying **Inco Europe Limited v First Choice Distribution and Others** [2000] 2 All ER 109 (HL) and **The Commissioner of Police and The Attorney General of Trinidad and Tobago v Ulric Skerrit** Civil Appeal 156 of 2008.

¹⁵ See note 13 above.

¹⁶ See paragraph 5 above.

¹⁷ See paragraph 33 above.

In fact the trial judge recognized that the literal interpretation would extend the scope of the Commission to persons who were “**not in positions which were amenable to the type of corruption that the Act seeks to prevent**”.¹⁸ However she felt that this was something for Parliament to correct and not the Courts.

38. We disagree. We are of the opinion that a court can and in this case should have applied a purposive construction to the Integrity Act.

39. The Courts of Trinidad and Tobago have decided that before a purposive construction is applied, three conditions must be satisfied:¹⁹

- (a) the Court must be satisfied of the intended purpose of the statute or provision in question;
- (b) that by inadvertence the draftsman and Parliament failed to give effect to that purpose; and
- (c) the Court must feel sure of the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error been noticed.

I will now demonstrate that these three conditions are satisfied in this case so as to permit the application of the purposive construction of the phrase in question.

- (a) The intended purpose of the statute or provision in question:

40. The intention of the Integrity Act was to make provision for the prevention of corruption of persons in public life and to regulate the conduct of persons exercising public functions. This can be clearly gleaned from the Long Title to the Integrity Act and section 3 of the Integrity Act. The Long Title to the Integrity Act states that it is:

“An Act to provide for the establishment of the Integrity Commission; to make new provisions for the prevention of corruption of persons in public life...; to regulate the conduct of persons exercising public functions...”

Section 3 of the Integrity Act states that it “**applies to every person in public life and to persons exercising public functions.**”

It is safe to say that the Integrity Act was not meant to apply to persons or bodies engaged in private life or in the exercise of private functions.

- (b) Parliamentary Inadvertence:

¹⁸ See paragraph 253 of the trial judge’s judgment.

¹⁹ See **Fazal Ghany v The Compensation Committee and The Attorney General of Trinidad and Tobago** (op cit.)

41. Parliament could not have intended to legislate beyond the scope of its expressed purpose. A fortiori, in this case where this extension beyond purpose would impose new and heavy duties, burdens and penalties upon persons in private life.

It is in this sense that one can infer Parliamentary inadvertence to the possible extension of a statute (the Integrity Act) aimed at public officials exercising public functions to persons exercising private functions.

(c) The substance of the provision Parliament would have made:

42. This poses no difficulty. The intention of the Integrity Act is clear. There is no difficulty giving such a meaning to the phrase in question that it applies only to the members of the Boards of those Statutory Bodies which exercise public functions.

There is no need for us to state as well that the relevant part of the First Schedule of the Integrity Act applies to persons in public life. Section 3 of the Integrity Act and its application to the First Schedule deems that “**Members of the Boards of all Statutory Bodies**” are persons in public life. In other words it would be tautologous for us to state that the relevant provisions apply to persons in public life who are members of the Boards of those statutory bodies which exercise public functions. The expression “**Members of the Boards of all Statutory Bodies**” as we have interpreted it, necessarily extends to persons in public life as defined by the Integrity Act.

43. The suggestion of the Commission and the Attorney General to give the phrase a more limited meaning would seem to go beyond the expressed intention in the Long Title and section 3 of the Integrity Act and indeed in the Integrity Provisions.

The Commission and the Attorney General suggest that the phrase should apply to those Statutory Bodies “which are public in nature in that they exercise public functions and/or functions on behalf of the State or of the Executive” (my emphasis).

The words that are emphasised do not appear in the Long Title and section 3 of the Integrity Act nor indeed do they appear in a limiting or defining capacity anywhere in the Integrity Provisions. It would be second guessing Parliament to assume that Parliament would have intended that the jurisdiction of the Commission would be limited to those statutory bodies that are both “public in nature” and which exercise public functions “on behalf of the State or of the Executive”.

Those additional words would not pass the third test of purposive construction in the sense of being surely representative of the substance of the provision that Parliament would have made.

Addendum

44. We recognize that the construction we have given to the phrase, that limits its application to the members of the boards of those statutory bodies which exercise public functions, is not exhaustive. It does not define or delimit those bodies which exercise public functions.

As we stated before, the construction we have given to the phrase is in keeping with the purpose stated in the Long Title and section 3 of the Integrity Act. Further, we do not wish to tread on the special province of the Commission as is stated in section 36 of the Integrity Act.

Under section 36, a person can apply to the Commission to determine whether he is subject to the jurisdiction of the Commission and if so, to what extent. The Commission is also enabled to make enquiries upon such an application and to give its opinion and recommendations.

It is left to the Commission to determine which statutory bodies exercise public functions. If an individual or a statutory body has a concern, he, or the statutory body can apply to the Commission to determine the issue. Further, in cases of doubt, the Commission, the individual or the statutory body can refer to the Court upon an interpretation summons (as in the present matter) for further assistance.

(ii) “Members of the Boards of all Statutory Bodies”

45. Before analysing the meaning of the phrase “**Members of the Boards of all Statutory Bodies**” it is well to remember that the full phrase in the Integrity Act is “**Members of the Boards of all Statutory Bodies and State Enterprises...**”.

The trial judge correctly reasoned that the word “**Board**” as used in that part of the phrase was meant to be the equivalent of the Board of Directors of a company.²⁰ Hence, the trial judge concluded that “**the phrase “Members of the Boards of Statutory Bodies and State Enterprises” refers to the members of that part of those organisations responsible for its decision-making or management.**”²¹

²⁰ See paragraph 244 of the trial judge’s judgment.

²¹ See paragraph 245 of the trial judge’s judgment.

46. While this is a practical, working definition we prefer to adopt a definition that is closer to the functions of a board of directors of a company as set out in section 60(b) of the **Companies Act** Chapter 81:01.

We state that the phrase “**Members of the Boards of all Statutory Bodies...**” refers to the committee, group or other similar body within a statutory body which ‘**directs the management of the business and affairs**’ of that statutory body.

47. We recognize that even with this more specific definition, thorny issues can arise in its application to the myriad of situations that may exist in respect of statutory bodies. Some of these were identified by the Commission in its skeleton arguments, and they called upon the Court for assistance.

To give three such situations:

- (a) What if there is more than one decision-making body in a statutory body? Which, if any, would be subject to the Integrity Provisions?
- (b) What about the case where the Board of a statutory body performs merely in an advisory capacity e.g. to advise a Minister on a course of action. Would such a body be subject to the Integrity Provisions?
- (c) What about those boards which perform very minimal management functions and are really quasi-judicial bodies such as the Tax Appeal Board?

48. We do not propose to give definitive answers in respect of the questions posed by the Commission for the following two reasons:

Firstly, as stated before,²² pursuant to section 36 of the Integrity Act, it is the Commission that has the first responsibility to determine these issues. We do not wish to tread on the special province of the Commission.

Secondly, we are not privy to the special facts and circumstances of any statutory body which may or may not make the members of its governing body subject to the Integrity Provisions.

In these circumstances we are of the opinion that the general guidance we have previously given would be the best assistance we can give to the Commission in deciding which members of the Boards of statutory bodies which exercise public functions are subject to the

²² See paragraph 44 above.

Integrity Provisions. In cases of real doubt as we have stated before,²³ the Commission, the individual/s or the statutory body can refer to the Court for further assistance.

49. There is however, one area of concern which we wish to address. That is the enquiry of the Commission as to whether the word “Board” is to be interpreted literally and narrowly. That is, whether the Integrity Provisions would apply only to those statutory bodies that have a “Board”. By this definition bodies for example which are run by a “Commission”²⁴ or by an “Authority”²⁵ would be exempt from the Integrity Provisions.

50. To their credit, the Commission adopts a neutral position on this issue and presents the Court with compelling arguments either way.

On the one hand, they recognize that the Integrity Act is a penal statute that creates heavy burdens and sanctions. In such a case, they argue that one should err on the side of caution and construe its provisions as narrowly as possible. Therefore only statutory bodies with “Boards” would fall within the Integrity Provisions.

On the other hand, the Commission recognizes that by section 18 of the **Interpretation Act** Chapter 3:01, in a written law, a name commonly applied to a body or thing means the body or thing to which the name is commonly applied. In that case the word “Board” is usually applied to the body which “**directs, controls, governs the work of the relevant Statutory Body**”.²⁶ This would include those bodies which direct the management of the business affairs of a Statutory Body such as an “Authority” or a “Commission”. This wider interpretation of the word “Board” would also be in keeping with the purposes of the Integrity Provisions.

51. We are of the opinion that the word “**Board**” is to be given its wider meaning so as to include those bodies, by whatever name they are referred to, which direct the management of the business affairs of a Statutory Body which exercises public functions.

This is more in keeping with both section 18 of the Interpretation Act referred to above and the declared intent behind the Integrity Act as stated in the Long Title, namely “...**the prevention of corruption of persons in public life... to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions...**”

²³ See paragraph 44 above.

²⁴ For example the Trinidad and Tobago Electricity Commission.

²⁵ For example the Water and Sewerage Authority.

²⁶ See paragraph 27 of the skeleton submissions of the Integrity Commission.

The literal or narrow meaning would clearly frustrate the declared intention of Parliament as it would allow many persons to whom the Integrity Provisions are addressed to slip through the net of the Commission.

(iii) “Including those bodies in which the State has a controlling interest”

52. The trial judge opined that these words serve no other purpose but of being illustrative of those State Enterprises and Statutory Bodies which fall within the reach of the Commission. They were not meant to be words that define the jurisdiction of the Commission. So, for instance, those words would not mean that the Integrity Provisions would include those State Enterprises where the State has a controlling interest in addition to those where the State did not have such a controlling interest. Nor does this mean that the Integrity Provisions would include all Statutory Bodies where the State has a controlling interest and would exclude all Statutory Bodies where the State does not have a controlling interest.

The words are only illustrative of which Bodies can fall within the jurisdiction of the Commission.

This approach to the interpretation of the phrase was the same as that adopted by the Court of Appeal in **Board of Inland Revenue v Young**.²⁷

53. We agree with the opinion of the trial judge. The tailpiece is only meant to be illustrative of those bodies which fall within the jurisdiction of the Commission. It is not meant to define or delimit the ambit of the Commission’s jurisdiction.

While this tailpiece generated much discussion by Counsel, it is of less relevance to our opinion bearing in mind what we have said before. In fact this tailpiece confirms and illustrates what we have said in relation to:

- (a) State Enterprises: namely, that the “controlling interest” of the State would refer to de jure control and de facto control in exceptional cases; and
- (b) Statutory Bodies: where the Commission would have jurisdiction over those Statutory Bodies which exercise public functions whether or not the State has a controlling interest in them.

²⁷ (1997) 53 WIR 335 per de la Bastide C.J. at page 366 g.

CONCLUSION

54. TSTT is not a State Enterprise. The members of its Board are not subject to the Integrity Provisions.

55. It is only the members of the Boards of those Statutory Bodies which exercise public functions that are subject to the jurisdiction of the Commission.

G. Smith
Justice of Appeal