

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2014-00477**

**IN THE MATTER OF THE EQUAL OPPORTUNITY ACT, CHAP 22:03**

**[ACT NO. 69 OF 2000 AS AMENDED BY ACT NO. 5 OF 2001]**

**BETWEEN**

**EQUAL OPPORTUNITY COMMISSION**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**AND**

**DIRECTOR OF PERSONNEL ADMINISTRATION**

**Interested Party**

Before the Honourable Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Haran Ramakaransingh instructed by Ms Aleyya Gafoor-Ali for the Claimant

Mr Avory Sinanan SC leading Mr Kevin Ramkissoon instructed by Ms Rishma Ramrattan for the Defendant

Mr Russell Martineau SC leading Ms Kavita Jodhan instructed by Sean Julien for the Interested Party

Dated: 16 October 2014

## JUDGMENT

1. The claimant is the Equal Opportunity Commission established by the **Equal Opportunity Act, Chap. 22:03**. It has asked the court to interpret specific provisions of the Equal Opportunity Act (the EOA/ the Act) to determine the true meaning of the term “employer” in the Act and the limits of the investigatory and conciliatory powers of the Equal Opportunity Commission and the adjudicative powers of the Equal Opportunity Tribunal.
2. The Equal Opportunity Act is a unique Act which allows citizens to challenge certain kinds of discrimination before two new bodies. It aims to promote equality of opportunity. It establishes an Equal Opportunity Commission (the EOC) and an Equal Opportunity Tribunal (the EOT or the Tribunal).
3. Section 27 of the Act gives the EOC the jurisdiction to receive, investigate and, as far as possible, conciliate allegations of discrimination. Section 41 of the Act establishes the EOT as an adjudicating body/ superior court of record charged with the duty of hearing and determining complaints referred to it by the EOC.
4. The Act has been held to be consistent with the Constitution: **Suratt v The Attorney General [2007] UKPC 55**. The Act does not derogate from the powers or the jurisdiction of the High Court. The EOC and the EOT have their own distinct jurisdiction and function. The Act aims to provide a simple process for dealing with complaints of discrimination. Persons who are discriminated against cannot always be expected to go to court. The court process can be

expensive, slow at times, and is bound by legal strictures which often make it difficult to prove discrimination has occurred. A litigant has an uphill and sustained battle to prove discrimination in the court. The Act was intended to give another layer of protection with an investigative process. The less complicated the process, the better it is for the average citizen to have his or her case properly investigated and to obtain some relief if necessary. The Act, therefore, expanded the options available to citizens since the litigation option is not always the most feasible or practical means to obtain redress.

5. As Baroness Hale observed in the **Suratt** case at paragraph 43:

“The problems addressed by the EOA are a case in point. Since the Second World War, it has been common for human rights instruments and constitutions to protect the citizen against discrimination by the state on grounds such as race or sex. In a separate and more recent development, ordinary statute law has prohibited discrimination on similar grounds by the suppliers of goods, facilities, services, accommodation, education and employment. This was controversial at first, but is now a well-accepted way of countering historic prejudice against particular groups or sections of society and helping to achieve greater equality of opportunity and participation in society for all. It is a common feature of such laws that they try to proceed by persuasion and agreement rather than by coercion. They tend therefore to have commissions charged with both general duties to work towards the elimination of discrimination and specific duties to receive and investigate individual complaints. They emphasise the importance of conciliation rather than adjudication. But in the last resort adjudication is available, often by a specialist body.”

## **The Claim**

6. The four broad questions for the court’s opinion can be framed as follows:

(i) Whether, having regard –

- To sections 8 to 14 inclusive of the Equal Opportunity Act, 2000;
- To sections 121, 123 and 125 of the Constitution; and

- To regulations made or deemed to be made under section 129 of the Constitution and/or section 85 of the **Education Act, Chapter 39:01**

the Public Service Commission, the Police Service Commission and the Teaching Service Commission respectively should be considered “employers” for the purposes of the Act.

- (ii) Whether having regard to sections 30 to 40 inclusive of the Equal Opportunity Act, the EOC can resume an investigation after a matter has been referred to conciliation and has not been resolved.
- (iii) Whether having regard to sections 30 to 40 inclusive of the Equal Opportunity Act, the EOC can resume an investigation in circumstances where a report has been prepared and published, sent to the parties and made available for public inspection but is thereafter retitled as an interim report.
- (iv) Whether having regard to sections 39, 41, 44 and 46 of the Equal Opportunity Act, a complainant whose matter has been referred to the Equal Opportunity Tribunal can raise issues before the Tribunal that were not investigated by the EOC.

7. I note that the background to these questions are actual problems that the EOC has been having in seeking to implement the Act. They have been faced with the Service Commissions saying they do not fall within the ambit of the Act and they have had teething problems with the management of certain specific complaints which have been made. The EOC has come to the court therefore to see if any guidance can be given that will assist its members with the operation of the Act. They have thus taken a proactive approach to their functions and whatever views I express here should be seen in the context of views being expressed to ensure the better functioning of the EOC and the operation of the Act. There is no question of this court

revisiting any aspect of the constitutionality of the Act which has been authoritatively decided by the Privy Council.

8. As noted, the claim was made concerning the Public Service Commission, the Police Commission and the Teaching Service Commission. The functioning of the Judicial and Legal Service Commission was not included in the claim form, but it is to be noted that the wording of the Act does not restrict the Service Commissions to which it applies. The Act speaks of Service Commissions.

9. The first question requires an interpretation of the term “employer” as used in the Act. The question concerns whether a Service Commission is an employer under the ambit of the State.

10. As to the second and third questions, the court has to decide what is the correct process or procedure to be used by the EOC and the Tribunal where a complaint has been made. The third question also requires the court to determine the meaning of the term “interim report” and the way the EOC should proceed with a document it has entitled a “Report” or “Interim Report” and the connection of the EOC with the EOT in the resolution of complaints.

11. The fourth question requires the court to consider whether a complainant can raise, and whether the Tribunal can address, fresh issues not previously referred to it by the EOC.

## **The Law**

12. The interpretation section, which is section 3 of the Act, provides:

*“Commission” means the Equal Opportunity Commission established under*

*section 26(1);*

*“employment” means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour and includes the employment of an independent contractor;*

*“State” includes—*

*(a) Government Ministries;*

*(b) Municipal Corporations;*

*(c) Statutory Authorities;*

*(d) Enterprises owned or controlled by or on behalf of the State or which receives funding from the State of more than two thirds of its total income in any one year;*

*(e) Service Commissions; and*

*(f) Tobago House of Assembly;*

*(emphasis supplied)*

*“Tribunal” means the Equal Opportunity Tribunal established under section 41.*

13. Section 8 of the Act provides:

*“An employer or a prospective employer shall not discriminate against a person—*

*(a) in the arrangements he makes for the purpose of determining who should be offered employment;*

*(b) in the terms or conditions on which employment is offered; or*

*(c) by refusing or deliberately omitting to offer employment.”*

14. Section 9 provides that an employer shall not discriminate against a person employed by him –

*(a) in the terms and conditions of employment that the employer affords the person;*

*(b) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or*

*(c) by dismissing the person or subjecting the person to any other detriment.*

15. Section 39 of the Act provides:

*(1) Where the Commission is of the opinion that the subject matter of a complaint cannot be resolved by conciliation or it has attempted to resolve the matter by conciliation but has not been successful in that attempt, the Commission shall—*

*(a) prepare a report relating to the investigation with its recommendations;*

*(b) send a copy of the report to the parties to the complaint;*

*(c) publish the report; and*

*(d) make the report available for inspection by the public.*

*(2) Where the subject matter referred to in subsection (1) remains unresolved and the Commission has fulfilled the requirements set out in subsection 1(a) to (d), the Commission shall, with the consent and on behalf of the complainant, initiate proceedings before the Tribunal.*

16. Further, section 3 of the Constitution provides the following aids to interpretation:

*“public office” means an office of emolument in the public service;*

*“public officer” means the holder of any public office and includes any person appointed to act in any such office;*

*“public service” means, subject to the provisions of subsections (4) and (5), the service of the Government of Trinidad and Tobago or of the Tobago House of Assembly established by section 3 of the Tobago House of Assembly Act, in a civil capacity;*

*“Service Commission” means the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission or the Teaching Service Commission;*

### **The Principles of Interpretation**

17. In **Bennion on Statutory Interpretation, 5<sup>th</sup> Edition** it was stated that:

*“The interpreter is required to determine and apply the legal meaning of the enactment, that is the meaning that correctly conveys the legislative intention. This usually corresponds to the grammatical meaning of verbal formula that constitutes the enactment. If however the verbal formula in its application to the facts of the instant case, is ambiguous the legal meaning will be in doubt.”*

18. An excerpt from **Maxwell on Statutory Interpretation (12<sup>th</sup> Edition)** suggests that:

*“In determining the general object of the legislature or the meaning of its language, the intention which appears to be most in accord with convenience,*



*reason, justice and legal principles should in all cases of doubtful significance, be presumed to be the true one."*

**Question One: Whether the Service Commissions are 'employers' for the purposes of [a complaint under] the Act?**

19. Both the EOC and the Attorney General say yes. The Attorney General however expresses a reservation as it concerns the Police Service Commission.

20. The EOC contends that for the purposes of the Act a public officer does not have one single 'employer' as there are different bodies or entities whose remit impacts on the different facets of the employment relationship protected under the Act.

21. The EOC submits that where a public officer is claiming discrimination in employment in matters of appointment, promotion, transfer, removal or disciplinary control, the Commissions should be construed as the relevant 'employer' as these matters fall under their exclusive jurisdiction. Similarly, for the purposes of a complaint about terms and conditions on which employment is offered, the Personnel Department/ CPO ought to be deemed the employer.

22. In other words, to the extent that different departments or arms of the State perform employer-type functions, they come within the ambit of the Act in relation to those employment-type functions.

23. The Attorney General says the central question is not whether the Service Commissions are employers at large but whether they are "employers" for the purposes of a complaint under the Act concerning the employment of the relevant officer.

24. The Attorney General submits that the specific powers with which the Service Commissions are vested under sections 121, 123 and 125 of the Constitution are **aspects of employment** – aspects upon which a discrimination complaint may be founded under Part III (sections 8 to 14) of the Act.

25. While the contract of service is with the State and it is the CPO that deals with terms and conditions such as salaries, equally important and integral aspects of employment are promotion, transfer and discipline. It is submitted that such aspects being constitutionally assigned to the Commissions, the Commissions are to be considered employer practically, administratively and constitutionally in administering them.

26. The Director of Personnel Administration's (DPA) answer to the question, on behalf of the Service Commissions, is categorically no. Their argument essentially is that you cannot complain about what the Service Commissions do under the Act. You can only complain about what the employer does and the Service Commissions are not employers.

27. The DPA submits that nothing in the definition of employment points to the Commissions being 'employer' under the Act. The Commissions are not parties to any **contract of service** with public officers. Those officers are not paid by the Commissions and their terms and conditions of service are not negotiated with or agreed upon by the Commissions. The State or executive does. The State is therefore the employer. The fact that the Service Commissions deal with aspects of employment do not make them employers.

### **Employment/ Employer/ State**

28. Significantly, the term '**employer**' is not defined in the Act. '**Employment**' however is defined as "*employment under a contract of service....*"

29. The DPA asserts that a contract of employment governs an employer and employee relationship where a party has entered into a contractual relationship with another party. It is contended that a public officer has a contract of service with the Government / Executive and is an employee of the State. As discussed by Lord Diplock in **Thomas v Attorney General (1981) 32 WIR 375** at page 386e the contract of employment relates to the terms of service and includes such matters as the duration of the contract, remuneration, pensions and code of conduct – see also **Cooper and Balbosa v Director of Personnel Administration [2006] UKPC 37**. I readily accept the interpretation of these cases as advanced by Mr Martineau SC. However, the issue here is the meaning of employer under this specific Act or for the purposes of the Act.

30. The authors of **Selwyn's Law of Employment, 17<sup>th</sup> edition** state at para 2.4, page 40, that "*the employer is usually a readily identifiable entity, and may be defined as any person, partnership, corporate body or unincorporated association who (or which) employs one or more persons under a contract of employment...*" The authors go on to note however that this definition is not particularly helpful as frequently, the 'acts' of employer are in reality done by various levels of management who are themselves 'employees'. In the building industry, for example, the term is used for someone who engages a main contractor (whereas he ought properly to be called 'the client'). In examining the nature and formation of the contract of employment as well, it is clear that apart from terms and conditions, other aspects of the contract of employment include disciplinary procedures for example.

31. The **State**, which no one disputes is an employer, is defined in the Act. The State includes: Government Ministries; Municipal Corporations, Statutory Authorities...Service Commissions, the Tobago House of Assembly. For the purposes of the EOA therefore, the State, as an employer, includes the Service Commissions.

### **Discrimination in Employment**

32. The Act applies to discrimination in relation to employment, if the discrimination is on the ground of status as defined in section 5 or by victimisation as defined in section 6 of the Act. Part III of the Act deals specifically with prohibited acts of discrimination in employment. While the court was asked to look at sections 8 to 14, the submissions of the parties focused mainly on sections 8 and 9 of the Act as being the critical provisions.

33. Section 8 protects an applicant from discrimination by an *employer* or *prospective employer* –

**(a) in the arrangements he makes for the purpose of determining who should be offered employment;**

**(b) in the terms and conditions on which employment is offered; or**

**(c) by refusing or deliberately omitting to offer employment.**

(emphasis supplied)

34. Section 9 provides that an *employer* shall not discriminate against a person employed by him –

**(d) in the terms and conditions of employment that the employer affords the person;**

**(e) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or**

**(f) by dismissing the person or subjecting the person to any other detriment.**

(emphasis supplied)

35. The Act plainly contemplates that the matters referred to in sections 8 and 9 are aspects of employment that an employer would be engaged in – matters of hiring/ offer of employment, terms and conditions, promotion, transfer, removal. Moreover they are functions or aspects of employment that fall within the ambit of protection against discrimination in the Act.

## **Powers of the Service Commissions**

36. Under sections 121, 123 and 125 of the Constitution the Public, Police and Teaching Service Commissions are vested with the exclusive powers **to appoint, promote, transfer, remove and discipline** officers in the respective services. The Judicial and Legal Service Commission performs similar functions in relation to the certain offices under its purview. In other respects they advise another State official (such as the President) on appointments to be made. Where they advise on appointments, the functionary is required to give effect to that advice.

37. As regards the Police Service Commission, a 2006 constitutional amendment (section 123A) puts the powers above in relation to certain categories of police officers in the hands of the Commissioner of Police. Thus the jurisdiction of the EOC is limited to the matters under the purview of the Police Service Commission as identified in the Act.

## **The State as Employer under the Act**

38. Again, that the State 'employs' or is an 'employer' is not in dispute. As held in **Thomas v Attorney General and Cooper**, the State is and remains the employer of public officers. A public officer's contract of employment is with the State.

39. Employment under a contract of service in the State, however, does not involve one entity or relate only to the terms and conditions of employment. The latter is too narrow and strict a view particularly when it comes to the workings of the State. In fact, it is clear from sections 8 and 9 of the Act that employment under any contract of service - for the purposes at least of the anti-discriminatory provisions of the Act - entails much more than terms and conditions.

40. The State is not one readily identifiable entity. It employs and engages in employment functions through a number of arms/ departments/ entities responsible for different aspects of the employment process. These different entities are in a sense agents of the State. The actual contract signed is with the State/ Executive. But the Personnel Department/ CPO settles the terms and conditions of employment on behalf the Executive. The Service Commissions on the other hand, are responsible for recruitment/ appointments, promotions, transfers and discipline. All these aspects of employment are plainly intended to be covered and protected by the Act.

41. The State as an employer or prospective employer of a public officer, for example, invites applicants to apply through the Public Service Commission. The Public Service Commission is responsible for or in charge of this process. It makes arrangements to deal with the applications. It is precisely matters like this that the Act specifically provides for. Any complaint of discrimination against applicants/ in the application process (as contemplated by section 8) can therefore be brought against the Public Service Commission as the aspect of the State responsible and involved here in the employment/prospective employment of an applicant.

#### **How should 'employer' be construed?**

42. The State is the employer of public officers. Nothing in the Act changes this. The Act applies to the State. The Act expressly defines the State for the purposes of the Act as including a number of bodies/ entities, one of which is the Service Commissions. The definition of State in the Act must serve a purpose. It is to set out those arms / bodies / functionaries which are amenable to the Act given that the Act binds the State.

43. The true question then is less whether they are 'employers' but rather whether in the performance of their functions the Service Commissions are subject to the Act. Or alternatively, whether for the purposes of the Act the Service Commissions are answerable as a proper party to a complaint of discrimination brought against the State as employer. The plain answer is yes. Not only do the functions/powers of the Commissions comprise aspects of employment clearly

covered and protected under the Act but, as noted above, the State is expressly defined in the Act to include the Service Commissions.

44. This definition of State is noteworthy. Not even in the Constitution is the State defined so extensively. The only reference in the Constitution is to its geographical extent in section 1 (2). And in section 2(1) of the **State Liability and Proceedings Act, Chap 8:02** the 'State' simply means the Republic of Trinidad and Tobago.

45. The Commissions' powers and constitutional remit to appoint, promote, transfer, remove and discipline are to be regarded as aspects of employment/ employment-type functions under the Act – see sections 8 and 9. In my view, they must be answerable to any complaint of discriminatory action/ conduct for those matters that fall within their exclusive remit under the Act.

46. Even if a complaint is brought against the State as the 'employer' in the strict contractual sense, where it relates to a function for which the Service Commission is clearly or directly responsible it is the relevant Commission that should be answerable or the proper party to the complaint. A complaint against the Service Commission is a complaint against the State. The Commissions cannot simply say they are not employers for the purposes of a complaint under the Act when they are clearly considered as part of the State.

47. An analogy may be drawn with the **State Liability and Proceedings Act**. Section 19(8) of that Act states:

“Proceedings against an authority established by the Constitution or a member thereof arising out of or in connection with the exercise of the powers of the authority or the performance of its functions or duties are deemed to be proceedings against the State.”

48. By section 19 (9), ‘authority’ means a Service Commission as defined in section 3(1) of the Constitution. By section 25, judicial review proceedings may still be brought, despite section 19 (8) and (9), against any of the Service Commissions in its own name – see **Attorney General v Smith [2009] UKPC 50**.

49. To say that the Service Commission is not the employer but the State is and therefore it is the State which should be the proper party to the complaint really serves no practical purpose. Where the Service Commission is directly responsible for a matter complained about under sections 8 or 9 any investigation by the EOC of a complaint brought against the ‘State’ in such a circumstance would invariably lead right back to the Service Commission.

50. The Act must be construed in a purposive and practical way. The term ‘employer’ has to be construed in keeping with the scheme and purpose of the Act. A purposive interpretation in this context must look to the intention of the Act to promote equal opportunity. Artificial barriers should not be placed in the way of its functioning. What the Act provides is an additional layer or avenue of protection against discrimination. It does not take away a person’s right to come to court for judicial review or constitutional relief.

51. To adopt the interpretation the DPA urges would defeat the purposes of the Act and from a plain reading of the Act could not be the intention of Parliament. It would be defeating the purpose of the Act if a complainant who alleges discriminatory treatment in a matter of promotion, for example, is told ‘well your complaint is against the State who is your employer, not us’ when the Service Commission has made the decision.

52. For the purposes of a complaint against an employer or prospective employer under the Act therefore, the Service Commissions being expressly part of the State, can be properly construed as the employer of a public officer and is subject to the EOC.



53. Further, making the Service Commissions answerable to the EOC does not in any way take away from the independence of the Service Commissions or the constitutional protection of them. Their independence is preserved in the manner of the appointment of members and the conditions under which the members of the Commissions serve. Being accountable for the way in which they perform their functions ought not to be seen as an attempt to reduce their value. It is rather to enhance and make more tangible the protection offered to citizens.

**Question Two: Whether the EOC can resume an investigation after a matter has been referred to conciliation and has not been resolved.**

**Question Three: Whether the Act allows the EOC to resume an investigation of a concluded matter that has been retitled as an “interim report”.**

54. These two issues can be dealt with together as both involve the operation of sections 30 to 40 of the Act regarding complaints. The EOC has a duty to investigate each individual complaint and where possible encourage conciliation. The sections set out the procedure to be followed by the EOC from the stage of receipt of a complaint to the conclusion of the matter by either successful conciliation or not.

55. A two-stage process of investigation and conciliation is essentially involved at the end of which certain actions are taken. First, each complaint lodged must be investigated. If upon investigation the EOC finds no evidence of discrimination, the complainant is informed, told of the reasons why, and that is the end of the matter. If evidence of discrimination is found, the next stage kicks in.

56. Where the EOC is of the view that the complaint may be resolved by conciliation, conciliation proceedings under section 35(2) are engaged. If the conciliation is successful and the complaint is settled a written agreement is registered with the Tribunal. Where, on the other

hand, the EOC is of the opinion that the complaint **cannot be resolved by conciliation** or **conciliation has been attempted but it has not been successful**, the EOC must then:

- prepare a report relating to the investigation with its recommendations;
- send a copy of the report to the parties to the complaint;
- publish the report;
- make the report available for inspection by the public; and
- following all of the above, if the matter remains unresolved, initiate proceedings before the Tribunal with the consent and on behalf of the complainant.

57. The Attorney General says a step by step sequential procedure is provided and nothing in the Act allows for the re-opening of an investigation where conciliation fails. The Attorney General says once the complaint has not been resolved by conciliation or where the EOC finds that it cannot be resolved conciliation, the EOC must follow the mandatory process prescribed in section 39(1). Both the Attorney General and the DPA say further that once the Report is submitted in accordance with section 39 the EOC cannot re-open an investigation nor can it withdraw and treat that report as an interim report. They point to the object of dealing with complaints expeditiously and that the investigation process cannot be interminable. Further, fairness applies to both sides.

58. Nothing from the scheme of the provisions allows for the resumption of an investigation **after the conciliation process has failed/ ended**. Section 39(1) is clear on the procedure to be followed once conciliation has been attempted and has been unsuccessful. The EOC must proceed to prepare, send and publish its report of its investigation and recommendations.

59. While the Act contemplates an investigative and conciliatory procedure, it does not however seem to contemplate the final completion of one stage (investigation) before proceeding to the other (conciliation). The EOC of course cannot ordinarily form an opinion on whether or not a complaint may be resolved by conciliation without some investigation of the matter even

though it may not have come to a definite conclusion. The investigation of the matter is undoubtedly the first step that is required. This does not mean however that at the stage of conciliation the investigatory process must have been completed or that it cannot continue. The conciliation process may show the need for further investigation. Conciliation may also take place over a period of time; over more than one session for example. It may have to be postponed while further investigations take place.

60. In my view the EOC's investigatory role may continue up to and during the conciliation stage. Nothing in the Act suggests that the EOC's investigatory role ends when a matter is referred to conciliation. The language of section 35(1) merely refers to the EOC forming an opinion regarding conciliation based on the 'subject matter' of the complaint, not on the result of an investigation. Further, the EOC is not *functus* as regards its investigatory powers until it prepares and publishes its report. This report is not required until the end of the conciliation process. Once **the conciliation has been unsuccessful**, however, the investigation is then concluded and the EOC must proceed to prepare its report in accordance with section 39(1).

61. The answer to whether the EOC has the power to resume an investigation after a report has been prepared is much simpler. As noted above the EOC's report comes after the investigatory and conciliatory processes have been completed. This indicates that the matter has been concluded. The Act makes no provision for the re-opening of an investigation where a report is prepared, published, sent to the parties and made available for public inspection in accordance with section 39. Nor does the Act allow for such a report to be withdrawn and treated as an 'interim report'. Having submitted its report, the EOC is *functus officio* and its only residual function in relation to the matter is to refer it to the Tribunal with the consent of the complainant if it remains unresolved. Any report published in accordance with section 39 is therefore a final report.

62. The ultimate test for the EOC in conducting its investigations and in the process it adopts to consider complaints is one of fairness. Fairness must apply to both sides. Fairness requires giving a full opportunity for the complainant to provide information and be heard. It requires

that the party being complained against is told specifically and clearly of the complaint made against it. The party must get a proper and sufficient time to reply to the complaint and to provide information relevant to the complaint; the right to be heard. The other aspect of fairness has to do with the members or individual members not acting in a matter in which they may have a conflict of interest.

**Question Four: Whether the Equal Opportunity Tribunal has jurisdiction/power to consider a fresh complaint that was not investigated by the EOC.**

63. The claimant made oral submissions on this issue. The Attorney General submitted that for the purposes of the EOA, the jurisdiction of the Tribunal is limited only to entertain matters that have been investigated by the Commission. They rely on the authority of **Suratt v The Attorney General** where the Privy Council held that the Act did not contemplate that the Tribunal should have unlimited or inherent jurisdiction and therefore it is bound to deal with only those matters referred to it by the EOC.

64. The Attorney General also submitted, referring to the authority of **John v Rees (1969) 2 All ER 275**, that it would be contrary to the principles of natural justice to permit the deliberation by the tribunal of issues not canvassed by the EOC since it is well settled that a person must be given full particulars of allegations against him or her to answer the allegations made.

65. Mr Martineau SC submitted that the answer lies in the whole scheme of the Act. He noted the Act provides for a procedure where the complaints are lodged with the EOC and not with the Tribunal. This in itself is self-explanatory and it would be an abuse of process if new issues are permitted by the Tribunal as this would defeat the true object of the Act and its prescribed procedure. Thus for the purposes of **sections 39, 41, 44 and 46 of the Act**, the

complainant cannot raise fresh issues before the Tribunal which were not investigated by the EOC.

66. I agree with the submissions of the Attorney General and the DPA that the Equal Opportunity Tribunal can only deal with such matters as are referred to it by the EOC. Thus in the hearing of a complaint they may not permit fresh matters not previously investigated and referred by the EOC to be added to the subject of a hearing of a matter previously referred to it by the EOC. To do so would be manifestly unfair.

### **Conclusion**

67. The Equal Opportunity Act was implemented for a purpose. It was to address the offensive practice of discrimination. Discrimination strikes at the heart of notions of equality, dignity and respect for all human beings. It impedes the development of a merit based society. It can lead to acute social tension and unrest. We all know of our painful history of different groups and individuals, at different times, being subject to discrimination. We have since come a long way, but there is still a good way to go. The Act affords us, as a country, the opportunity to chip away at some aspects of the discriminatory treatment of persons. The court cannot accede to technical arguments about who is strictly an employer when the Act is plainly intended to cover the operations of the various bodies that the Act has identified.

68. It is hoped that the observations made here will lead to a better understanding of the powers and functions of the Equal Opportunity Commission and the Equal Opportunity Tribunal. The proper functioning of these bodies are vital to ensuring that we eliminate discriminatory practices which stand in the way of realising a fair and just society for all of our citizens.

69. The Act must be seen as an important means, albeit imperfect, to enhance the avenues open to citizens to have complaints of discrimination investigated and acted upon. Public officials and bodies must resist the inclination to put up unjustified barriers, which frustrate the operation of the Act. Rather they must shift their focus to eliminating systems, processes and practices that discriminate against citizens of this country.

70. I wish to thank the attorneys on all sides for the assistance provided to the court in this matter. The appropriate order is that each party must bear their own costs.

The Honourable Mr. Justice Ronnie Boodoosingh  
Supreme Court of Trinidad and Tobago

Ronnie Boodoosingh

Judge