

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE EQUAL OPPORTUNITY TRIBUNAL

E.O.T. No. 0001 OF 2019

BETWEEN

**DR. RAYMOND RAMCHARITAR**

*Complainant*

AND

**THE UNIVERSITY OF THE WEST INDIES**

*Respondent*

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Before: H.H. Donna Prowell-Raphael.

Appearances: Mr. Jagdeo Singh and Mr. Kiel Taklalsingh instructed by Shoshanna V. Lall for the Complainant.  
Mr. Ravi Nanga instructed by Ms. Elena Araujo for the Respondent.

Dated: September 25, 2019.

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## THE EQUAL OPPORTUNITY TRIBUNAL

1. The Equal Opportunity Tribunal<sup>1</sup> (‘the Tribunal’) is an anti-discrimination court established by the Equal Opportunity Act<sup>2</sup> (‘the Act’). The Act permits a person who claims that he has been discriminated against to submit<sup>3</sup> “*a written complaint ... setting out the details of the alleged act of discrimination*” to the Equal Opportunity Commission (‘the Commission’). If the complaint, after investigation cannot be or is not resolved through conciliation by the Commission, the Commission is mandated, with the consent and on behalf of the Complainant, to institute proceedings before Tribunal for judicial determination of the complaint.

## THE COMPLAINT

2. These proceedings were initiated by referral dated 2<sup>nd</sup> January, 2019 from the Equal Opportunity Commission (‘the Commission’). In these proceedings the Complainant is seeking declarations for discrimination and damages pursuant to sections 6 and 8 of the Act, consequential relief and damages.
3. By Notice dated 11<sup>th</sup> January, 2019 time was fixed for the Complainant to file his Complaint and Particulars thereof on or before the 14<sup>th</sup> February, 2019 and the Respondent to file its Defence on or before 14<sup>th</sup> March, 2019. A Case Management Hearing was fixed for 4<sup>th</sup> June, 2019. The Complainant filed his Complaint on the 14<sup>th</sup> February, 2019.

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<sup>1</sup> *Equal Opportunity Act*, 41. (1) *For the purposes of this Act, there is hereby established an Equal Opportunity Tribunal (hereinafter referred to as “the Tribunal”) which shall be a superior Court of record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a Court.*

<sup>2</sup> Ch. 22:03, Laws of the Republic of Trinidad and Tobago.

<sup>3</sup> *Equal Opportunity Act*, s30: 30. (1) *A person who alleges that some other person has discriminated against him or has contravened section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination.*

#### **APPLICATIONS**

4. The Respondent filed a Notice of Application on 22<sup>nd</sup> February, 2019 seeking the following orders pursuant to Parts 7.13 and 24.1 of the Equal Opportunity Tribunal Rules and Procedure 2016 ('the ETR') and or Parts 26.1 (1)(d) and 27(9)(1) of the Civil Proceedings Rules 1998 ('the CPR'):
  - (i) A declaration that the Tribunal has no jurisdiction in this matter;
  - (ii) In the alternative, that the time for the filing of the Respondent's Defence be extended to 14 days after the determination of this Application;
  - (iii) That the Complainant pays the Respondent's costs.
5. This application is supported by the affidavit of Camille Ramcharan ('the Respondent's affidavit') sworn to on 21<sup>st</sup> February, 2019 and filed herein on the 22<sup>nd</sup> February, 2019.
6. The Respondent filed submissions in support its application and its List of Authorities on the 1<sup>st</sup> April, 2019.
7. The Complainant filed his submissions in opposition to the Respondent's application on the 17<sup>th</sup> May, 2019. The Respondent filed its reply to the Complainant's submissions on the 3<sup>rd</sup> June, 2019.

#### **SUBMISSIONS**

8. The Respondent submits that the Tribunal ought to decline jurisdiction over hearing this matter on the basis that it involves the temporary appointment to an academic office within the Respondent and the exclusive jurisdiction on such matters resides with the University Visitor pursuant to the Charter of the University of the West Indies and or its successive amendments ('the Charter').

9. The Complainant, in its response to the application, raises *inter alia* the issue as to whether the exclusive jurisdiction of the University Visitor is inconsistent with the Constitution and the Act ('the constitutional issue'). He contends that -
- (i) The Charter as subsidiary law is inconsistent with the fundamental tenet of a democratic state such as Trinidad and Tobago as declared in section 1 of its Constitution;
  - (ii) In so far as the Charter asserts exclusive jurisdiction of the Visitor in matters of natural justice and discrimination it is null and void. This is inconsistent with section 2 of the Constitution, which provides that the Constitution is the supreme law of the country and any law that is inconsistent with the Constitution is void to the extent of such inconsistency;
  - (iii) At the core of this Complaint is the Complainant's right to equality before the law and to the protection of the law (section 4(b) of the Constitution) and the right not to be deprived of a fair hearing in accordance with the principles of natural justice for determination of his rights and obligations (Section 5(2)(e) of the Constitution); and
  - (iv) By section 4 of the Constitution, the enjoyment of fundamental rights and freedoms are secured without discrimination by reason of race, origin, colour religion or sex.
10. The Respondent contends that the Tribunal does not have the power to determine the constitutional issue and therefore the constitutional issue raised by the Complainant must fail.

## REFERRAL UNDER SECTION 14.4 OF THE CONSTITUTION

11. In *Suratt v. AG*<sup>4</sup>: Baroness Hale in considering the jurisdiction of the Tribunal with respect to breaches of sections 4 and 5 of the constitution stated:

*“...Secondly, under s 14(4) of the Constitution, the tribunal may refer to the High Court any question of contravention of the rights in ss 4 or 5 of the Constitution and must do so if a party to proceedings before the tribunal so requests, unless the raising of the question is merely frivolous or vexatious. The Respondent to any complaint before the tribunal could therefore have the matter referred to the High Court. ... The body of law which the tribunal will be administering may on occasions overlap with s 4 of the Constitution but in most cases it will not... [emphasis mine]”.*

12. In Section 14.4 of the Constitution provides:

*“... (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.*

13. The Respondent’s claim for the protection of the Respondent’s rights under sections 4 and 5 of the Constitution raises a question as to the contravention of Chapter 14.4 of the Constitution. While Baroness Hale stated that the body of law that the Tribunal will be administering may overlap with s4 of the Constitution, she also noted the discretion of the Tribunal acting on its own initiative or upon the request of a party to refer a question as to a breach of section 4 to the High Court for determination.

14. The Tribunal recently considered the issue of the exclusive jurisdiction of the University Visitor in an interlocutory application in *Peter Hanoomansingh v. University of the West Indies*<sup>5</sup>. Although I expressed some observations on the constitutionality

<sup>4</sup> *Suratt and others v Attorney General of Trinidad and Tobago* [2007] UKPC 55; 411 para 47

<sup>5</sup> E.O.T... No 0005 of 2018.

of the Charter, this issue was not directly raised by the parties. The eventual disposition of that application on a procedural point rendered it unnecessary for the Tribunal to make a decision on the constitutionality of the Charter.

15. In the instant application the issue of the constitutionality of the Charter has been raised by the Complainant. The Respondent has joined issue with the Complainant by submitting that the Tribunal does not have the jurisdiction to decide constitutional matters and therefore the submission should fail.
16. I am of the view that inherent in the determination of the issue of the constitutionality of the Charter are questions as to the possible contravention of sections 4 and or 5 of the Constitution, that I do not consider to be frivolous or vexatious. I therefore must consider whether I should exercise the discretion under section 14(4) to remit this matter to the High Court for determination of the constitutional issue, which I frame as follows:

*“Whether the exclusive jurisdiction of the University Visitor is inconsistent with ss 1 and 2 of the Constitution and or whether that alleged inconsistency infringes the rights of the Respondent under s 4 and 5 of the Constitution?”*

17. I propose, before I make a final decision on the referral of the constitutional issue to the High Court, to hear parties on the question whether I should exercise this discretion in this matter.

#### **DIRECTIONS**

18. I therefore give the following directions for the filing of skeletal submissions on the referral of the said issue of the constitutionality of the Charter to the High Court: -
- (i) The Respondent to file and serve skeletal submissions on or before 18<sup>th</sup> October, 2019;

- (ii) The Complainant to file and serve skeletal submissions on or before 15<sup>th</sup> November, 2019; and
- (iii) A Directions Hearing is fixed for 12<sup>th</sup> December, 2019 at 10:00 am in the courtroom of the Tribunal.

19. This decision is made and delivered by the Chairman pursuant to section 44(7)<sup>6</sup> of the Act.

20. An appeal lies from the Tribunal to the Court of Appeal, whether as of right or with leave, on grounds specified in s 50(2)<sup>7</sup> of the Act, but subject to that the orders, awards, findings or decisions of the Tribunal in any matter may not be challenged, appealed against, reviewed, quashed or called in question on any account whatever and the Tribunal may not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever (s 50(1))<sup>8</sup>.

Donna Prowell-Raphael,  
Judge/Chairman,  
Equal Opportunity Tribunal.

<sup>6</sup> (7) The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him.  
<sup>7</sup> 50. (1) Subject to subsection (2), the hearing and determination of any proceedings before the Tribunal, and an order or award or any finding or decision of the Tribunal in any matter (including an order or award) — (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and (b) shall not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever. (2) Subject to this Act, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other: (a) that the Tribunal has no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such grounds of appeal, unless objection to the jurisdiction of the Tribunal has been formally taken at some time during the progress of the matter before the making of the order or award; (b) that the Tribunal has exceeded its jurisdiction in the matter; (c) that the order or award has been obtained by fraud; (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law; (e) that the Tribunal has erred on a question of fact saved that no appeal shall lie except by leave of the Court of Appeal sitting in full Court; or (f) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings..

<sup>8</sup> See *Suratt and others v. Attorney General of Trinidad and Tobago* [2007] UKPC 55, para 6.