Easter Term
[2023] UKPC 17
Privy Council Appeal No 0016 of 2023

JUDGMENT

Ravi Balgobin Maharaj (Appellant) *v* The Cabinet of the Republic of Trinidad and Tobago and another (Respondents) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed
Lord Hodge
Lord Briggs
Lord Kitchin
Lord Richards

JUDGMENT GIVEN ON
18 May 2023

Heard on 15 March 2023

Appellant
Anand Ramlogan SC
Peter Carter KC
Mohammud Jaamae Hafeez-Baig
Adam Riley
(Instructed by Vishaal Siewsaran of Freedom Law Chambers (San Fernando, Trinidad and Tobago))

Respondents
Thomas Roe KC
Rishi Dass SC
Leah Abdulah
(Instructed by Charles Russell Speechlys LLP (London))

Respondents:
(1) The Cabinet of the Republic of Trinidad and Tobago
(2) The Minister of Rural Development and Local Government

LORD RICHARDS (with whom Lord Reed and Lord Hodge agree):

1. On 2 December 2019, local government elections were held in Trinidad and Tobago. In accordance with the Municipal Corporations Act 1990 ("the MCA"), Councillors were directly elected by popular vote for a period of three years. Aldermen were also elected for a period of three years, using a party list system under which Aldermen were elected according to the number of votes cast for candidates of each party in the election for Councillors. The Councillors and Aldermen elected in December 2019 were due to lose office in December 2022 and further local elections were due to be held by March 2023.

2. The periods of office of Councillors and Aldermen were fixed by sections 11(4) and 12(5) respectively of the MCA. Significant changes to the internal structure of local government were made by the Miscellaneous Provisions (Local Government Reform) Act, 2022 ("the 2022 Act"), which received Assent on 1 July 2022. The position of Councillors and Aldermen within the structure of local government was left largely unchanged, save that they were to serve for periods of four years, instead of three years. The 2022 Act did not immediately come into effect, but by section 2 it was to come into operation on such date as fixed by the President by Proclamation. This power may be exercised as regards the whole Act or such provisions as may be specified: section 5(2) of the Statutes Act 1962. The President acts on the advice of the Government.

3. On 7 November 2022, a Proclamation was issued, bringing a small number of provisions of the 2022 Act into force with effect from 8 November 2022. The principal changes were to substitute four years for three years as the periods of office of Councillors and Aldermen.

4. On 3 November 2022, the Minister of Rural Development and Local Government had announced the Government's intention to bring these provisions of the 2022 Act into force. He stated that the new four-year term would apply to the Councillors and Aldermen then in office ("incumbent Councillors" and "incumbent Aldermen"), who would therefore serve for an additional term of one year until December 2023, with elections postponed for one year.

5. The Government's interpretation of the effect of the amendments on the terms of office of the incumbent Councillors and Aldermen was challenged by the appellant, Ravi Balgobin Maharaj. He filed applications for leave to apply for judicial review on 15 November 2022 and for interim relief on 21 November 2022. On 30 November 2022, Wilson J refused the application for interim relief. While she considered that there was

a serious issue to be tried, she considered on discretionary grounds that interim relief should not be granted.

6. On appeal against the refusal of interim relief, the Court of Appeal agreed that, having regard to the importance of the case and the seriousness of the consequences, it would determine the "core issue" in the substantive claim, namely, whether sections 11 and 12 of the MCA, as amended by the 2022 Act, applied to the incumbent Councillors and Aldermen. In careful judgments given on 10 February 2023, the Court of Appeal (P Moosai, G Lucky and JC Aboud JJA) unanimously dismissed the appeal. The Court of Appeal granted permission to appeal to the Board.

7. Before the enactment of the MCA, local government was based largely on a system of elected county councils. The county councils were replaced under the terms of the MCA by newly constituted municipal corporations, with four existing municipal corporations continuing but subject to the provisions of the MCA. Section 8 provides that the Mayor, Aldermen, Councillors and electors of each Municipality shall be a body corporate. Section 10 provides that the powers of each municipal corporation shall be exercised by its Council, which shall consist of the Mayor, Aldermen and Councillors. The municipal corporations are tasked with a wide range of duties, many of which are essential to the proper functioning of their areas.

8. As with the county councils, the municipal corporations were established as democratically elected bodies. The Councillors are directly elected by popular vote of the registered electorate. This is provided by section 11 of the MCA which lies at the heart of this appeal.

9. Before the amendments made with effect from 8 November 2022, section 11 was in the following terms:

> "(1) Councillors shall be elected by the electors for each Municipality in the manner provided for in the Representation of the People Act.
>
> (2) The number of Councillors to be elected to the Council of each Corporation shall, subject to the provisions of the Elections and Boundaries Commission (Local Government) Act, be as set out in the Third Schedule, or in any Order made pursuant to section 5(2).

(3) One Councillor shall be returned for each electoral district.

(4) The term of office of Councillors shall be three years, and they shall retire together on the last day of every triennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.

(4A) An election referred to in subsection (1) shall be held within three months of the expiry of the term of office of the Mayor, Councillors and Aldermen comprising the Council.

(4B) Notwithstanding subsection (4A), for the purposes only of the elections due in the year 1995, under this section, such election shall be held within nine months of the expiry of the terms of office of the Councillors and Aldermen comprising the Council.

(4C) Notwithstanding subsection (4A), for the purposes only of the elections due in the year 2002, under this section, such election shall be held within one year of the expiry of the terms of office of the Councillors and Aldermen comprising the Council.

(5) A Councillor who has been elected to fill a vacancy shall hold office until the time when the person whose vacancy he filled would have gone out of office through effluxion of time.

(6) Subject to subsection (7), a person is qualified to be elected as a Councillor if, and is qualified to continue to be a Councillor if, he—

(a) is a citizen of Trinidad and Tobago;

(b) is qualified to be an elector under section 13 of the Representation of the People Act except that such person is not disqualified to be a candidate by reason only that—

(i) he resides; or

(ii) his qualifying property is situated, in the electoral area but in an electoral district other than the electoral district for which he seeks to be a candidate;

(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language.

(7) In subsection (6), 'electoral area' and 'electoral district' have the meanings assigned to those expressions in section 2 of the Elections and Boundaries Commission (Local Government) Act.

(8) A person is disqualified from being a Councillor if he—

(a) is by virtue of his own act under any acknowledgement of allegiance, obedience or adherence to a foreign power or State;

(b) has been adjudged or otherwise declared bankrupt and has not been discharged;

(c) is a mentally ill person within the meaning of the Mental Health Act;

(d) is under sentence of death or is serving a sentence of imprisonment exceeding twelve months imposed on him by a Court of competent jurisdiction in Trinidad and Tobago or substituted by competent authority for some other sentence imposed on him by such a Court or is under such a sentence of imprisonment the execution of which has been suspended;

(e) is disqualified for such election under the Representation of the People Act;

(f) is a member of the Senate, the House of Representatives, the Tobago House of Assembly or another Municipal Council;

(g) holds any office or place of profit, other than Mayor or Deputy Mayor, in the gift or disposal of the Corporation; but a person shall not be disqualified by reason of—

(i) receiving or being entitled to receive payment by way only of travelling or subsistence allowances, or a refund of out-of-pocket expenses;

(ii) his receiving fees as a medical practitioner from the Corporation as the local authority of a sanitary district, fees for the notification of cases of infectious diseases under the Public Health Ordinance or any similar written law;

(h) is debarred from exercising the practice of his profession on account of any act involving dishonesty;

(i) has within five years before the day of the election or since his election been surcharged to an amount exceeding two thousand five hundred dollars under the Exchequer and Audit Act or under Part VI of this Act;

(j) is a person whose name appears on the List of Aldermen under section 12A; and

(k) is a person who is a sitting Alderman having been declared an Alderman by the Elections and Boundaries Commission under section 13."

10. Each Councillor was therefore elected by popular vote for a term of three years (section 11(4)), as had been the case under the previous system of local government, with a requirement added by amendment in 1992 that elections be held within three months of the expiry of their term of office (section 11(4A)). Likewise, section 12(5) provided that the term of office of Aldermen was three years.

11. As mentioned above, the 2022 Act, running to 64 pages without its schedules, makes extensive and varied changes to the MCA. In particular, it provides for the creation of a municipal council and an executive council for each municipal corporation, with provisions for their composition, functions and duties, and detailed provisions for the divisions to be established by each municipal corporation for different areas of activity.

12. However, the provisions for the democratic election of Councillors and Aldermen remain unchanged except for the extension of the terms from three years to four years. This is achieved by substituting "four years" and "quadrennial period" for "three years" and "triennial period" where they appear in sections 11(4) and 12(5).

13. The 2022 Act contains no provision as to whether these changes are to apply to incumbent Councillors and Aldermen. There are, for example, no transitional provisions.

14. The appellant's challenge to the Government's stated position that the amended periods of office applied as from 8 November 2022 to the incumbent Councillors and Aldermen was put on the following bases. First, if that was the effect of bringing the amendments to sections 11 and 12 into force, the amendments contravened entrenched rights to vote under the Constitution, to be derived from the right to join political parties and to express political views under section 4(e). Second, in the alternative, on the proper construction of the 2022 Act, the amendments did not apply to incumbent Councillors and Aldermen. These submissions were fully considered by the Court of Appeal and rejected.

15. While it appears from the judgments in the Court of Appeal that the appellant's submission based on the Constitution was his primary case, it was presented to the Board as a secondary argument.

16. The Board can deal briefly with the submission based on the Constitution, which must in our view fail.

17. The appellant is right to say that democratic values and the requirement for a representative democracy lie at the heart of the Constitution. The Preamble states:

> "Whereas the People of Trinidad and Tobago –

> (c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority."

18. The Constitution contains extensive provisions concerning the establishment, composition, powers and privileges of Parliament and of its constituent parts, the Senate and the House of Representatives, and concerning the constituencies for which representatives are to be elected: see Chapter 4, comprising sections 39 to 73. There are provisions directly addressing the qualification to vote at general elections (section 51), a maximum term of five years for Parliament (section 68), a general election to be held within three months after the dissolution of Parliament (section 69(1)), bye-elections in the event of a vacancy (section 69(3)), and the system of balloting (section 73).

19. The Constitution contains no express reference to democratic participation in local government and no detailed provisions as regards local government similar to those concerning elections for members of the House of Representatives. The Court of Appeal deduced from this that there is no constitutional provision for any particular form of local government nor any constitutional right to participate in elections for local government assemblies, and that accordingly the appellant's constitutional challenge must fail.

20. It is unnecessary to decide the issue on as fundamental a basis as that adopted by the Court of Appeal and in those circumstances, given in particular the general terms of paragraph (c) of the Preamble, it is in the Board's view better not to do so. However, on any footing, the absence of any detailed provisions concerning local government elections leads to the inevitable conclusion that a change in the length of the terms of office of incumbent Councillors and Aldermen cannot amount to a contravention of the Constitution. The term for which representatives have been elected is important but an increase by one year in the term of incumbent Councillors and Aldermen does not of itself breach any provision of the Constitution.

21. We turn to the principal issue on the appeal to the Board: whether as a matter of construction, applying relevant principles of construction, the amendments to sections 11 and 12 of the MCA apply to incumbent Councillors and Aldermen at the time that the amendments came into force.

22. The Court of Appeal held that a plain reading of the amended provisions of the MCA revealed Parliament's intention to alter the terms of office of incumbent

Councillors and Aldermen from three to four years. It held that the language used was clear and unambiguous in revealing this intention. The reasons were as follows. First, section 2 of the 2022 Act expressly provides that the amendments made to the MCA were to come into operation on the date fixed by the President by Proclamation. Secondly, section 11(4), as amended with effect from 8 November 2022, "plainly states that [the] term of office shall be for four years and that Councillors shall retire together on the last day of every quadrennial period" and that "the last day of this quadrennial period is calculated with reference to their first day of holding office, which the section states is deemed to have begun on the day on which they were elected to office" (para 96). The same applied to Aldermen, by virtue of the amendments made to section 12. The court continued at para 97:

> "The current officeholders were elected to office on 2 December 2019. The last day of the quadrennial period is 1 December 2019 [*this is clearly intended to be a reference to 1 December 2023*]. Therefore, the next election was to be called within three months of 1 December 2023. When this is considered against the expressly stated intention that the provisions were to come into force on the date of proclamation, and in the context of the statutorily imposed presumption that upon proclamation laws were to be treated as having always existed [section 30 of the Interpretation Act 1962], the answer as to when, and by extension, to whom the amendments applied, is capable of precise calculation and/or determination."

23. The Court of Appeal added some observations at para 98, of which the third was that "the language of the amended sections 11 and 12 does not suggest that it applies only to persons elected to the office of Councillor in the future".

24. The Board is unable to share the Court of Appeal's confidence that a plain reading of the amended sections 11 and 12 applies to incumbent Councillors and Aldermen at the time that the amendments were brought into force. There can be no dispute about the points made in para 96 of the judgment but they do not provide an answer to the question whether the changes from three to four years apply only to Councillors and Aldermen elected in the future or also apply to incumbents at the time that the amendments took effect. The fact that the amendments came into force on the date specified by the Proclamation also provides no answer to that question.

25. Nor does section 30 of the Interpretation Act 1962 supply an answer. Section 30 provides:

> "An amendment [of a] written law shall, so far as consistent with the tenor thereof, be construed as part of the written law that it amends, and, without prejudice to section 17(1), has, as from the date on which it comes into operation, effect accordingly for the purposes of the construction and operation of any other written law that refers to, or is incorporated with, the written law that it amends."

26. The second part of section 30 affects only the construction of other statutory provisions. The Board does not read the first part as having the effect, stated in para 97 of the judgment, of creating a "statutorily imposed presumption that upon proclamation laws were to be treated as having always existed". This reading amounts to a statutory abolition of the presumption against retrospectivity and would require much clearer language. The first part of section 30 is altogether more modest in scope and says nothing about an amendment's effect on past events and their continuing impact.

27. The question therefore remains whether the amended sections were intended to apply to incumbent Councillors and Aldermen. In our view, even read on their own, they more naturally read as applying to Councillors and Aldermen elected after the amendments come into force. When the amendments took effect on 8 November 2022, section 11(1) ("Councillors shall be elected by the electors for each Municipality…") was looking to the future. It is not, as at that time, referring to elections that have already taken place. The same is true of section 11(2), referring to the "number of Councillors to be elected", and section 11(3), providing that "[o]ne Councillor shall be returned for each electoral district". It is a natural reading of section 11(4), stating that the "term of office of Councillors shall be four years", that it too applies to Councillors elected in the future. There is no difficulty in concluding, on the terms of the amended sections, that incumbent Councillors and Aldermen continue to hold office for the terms for which they were elected. Nor is there any difficulty in concluding that section 11(8) ("A person is disqualified from being a Councillor…"), which is not relevantly amended by the 2022 Act, continues to apply to the incumbent Councillors.

28. The Board does not, however, go so far as to say that the Court of Appeal's reading of the amended sections is not a possible reading. The Board accepts that there is a degree of ambiguity if the focus is solely on the language of the amended sections. That is not, however, the proper approach to their construction, nor to be fair did the Court of Appeal suggest that it was. The court must have regard to the context and purpose of the amendments and to relevant principles and presumptions of statutory construction.

29. It is central to a consideration of the intended application of the amendments to sections 11 and 12 that, if construed to apply to incumbent Councillors and Aldermen, they effected a change to the basis on which those Councillors and Aldermen had been elected.

30. It might be thought unnecessary to state some basic features of a representative democracy but, in view of some of the submissions made to the Board, it is appropriate to do so in this case.

31. The essential characteristic of a representative democracy, whether at a national or local level, is that the representatives are chosen by popular vote. In a modern democracy, such as Trinidad and Tobago, all individuals have the right to participate in the popular vote, subject only to specified conditions and disqualifications. In the case of municipal corporations, the popular vote is direct for the Councillors and indirect, by means of party lists, for Aldermen. It is also an essential element of any democratic form of government, whether at a national or a local level, that the electorate choose their representatives for a limited period. The right to vote out representatives is as important as the right to vote in representatives. At the end of the period for which they were elected, the electorate has the right to decide whether they wish the incumbent representatives to remain in office, assuming they stand for re-election.

32. The rights conferred by a democratic system of government are not only individual rights enjoyed by each person entitled to vote. It is also the right of all members of the relevant community to be governed by representatives chosen democratically, whether or not individually they are entitled to vote or have exercised that right.

33. A democratic society will necessarily engage other rights – freedom of expression and association, for example – but the election of representatives for a fixed or maximum period is the foundation on which it is built.

34. It is inimical to a representative democracy that the representatives are chosen by anyone other than the electorate. It is not for Parliament, still less the Government, to choose the representatives. But, if the amendments to sections 11 and 12 are construed to apply to the incumbent Councillors and Aldermen, the effect will be that they have been chosen as representatives for an additional year, not by the electorate but by the Government, which brought the amendments into force while those Councillors and Aldermen were still in office.

35. Given that the application of the amendments to incumbent Councillors and Aldermen would not alter rights guaranteed by the Constitution, it is clear that it is within the legislative competence of Parliament to make the amendments, if that were their effect.

36. The issue is whether, having regard to the context, sections 11 and 12 as amended by the 2022 Act are to be construed as having that effect. The context is the regulation of the electoral process. As explained above, the respondents' construction involves an interference with the election of representatives for a period limited to three years.

37. The appellant submits that, on a matter of such importance as the democratic basis on which incumbent Councillors and Aldermen have been elected, Parliament must make its intention clear.

38. Before the Court of Appeal, the appellant submitted or characterised this as an appeal to the "principle of legality" but the respondents submitted that it was inapplicable.

39. The "principle of legality" is a term used to describe a principle of statutory construction that, in the absence of clear words, legislation will not be construed as being contrary to fundamental common law rights (see *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at para 33 (Lord Hodge)) or, as Lord Reed put it in *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46, [2012] 1 AC 868 at para 152, "Parliament cannot itself override fundamental rights or the rule of law by general or ambiguous words".

40. The right of citizens to vote for Councillors and, indirectly, for Aldermen, indeed the whole democratic structure of local government, is statutory. This is true of all voting rights and democratic processes, at the level of central as well as local government. Voting rights are not a product of the common law: see *Moohan v Lord Advocate* [2014] UKSC 67, [2015] AC 901.

41. It does not, however, follow that, in construing legislation that is said to have an effect which diminishes the rights of the electorate or interferes with the democratic process, the courts will approach issues of construction in a way which is no different from the construction of what might be called ordinary legislation. In view of the fundamental importance of these matters to the workings of a democratic system of

government, at a local as well as a national level, the courts are bound to scrutinise the legislation to discern whether it does indeed have that effect. It cannot be supposed that Parliament can have intended to compromise the electorate's right to choose their representatives without that being clearly the intention of Parliament.

42. The fact that the democratic process, and the voting rights of individuals in that process, are derived solely from statute does not diminish their fundamental importance: see *Hipperson v Newbury District Electoral Registration Officer* [1985] QB 1060 at 1067 (Sir John Donaldson MR), *Watkins v Secretary of State for the Home Department* [2006] UKHL 17, [2006] 2 AC 395 at para 25 (Lord Bingham of Cornhill) and para 61 (Lord Rodger of Earlsferry), *Moohan v Lord Advocate* [2015] AC 901 at para 33 (Lord Hodge). Ambiguities in legislation are resolved in favour of democratic rights: for an old example, see *Piercy v Maclean* (1870) LR 5 CP 252 at 261 (Willes J).

43. While the principle of legality is, strictly speaking applicable only to fundamental common law rights, it does not follow that general or ambiguous words will be a sufficient basis for interfering with the basis on which incumbent representatives were elected. In the Board's judgment, it is the central importance of the statutory regime for democratic government that requires the use of clear language.

44. Although the respondents have submitted that democratic rights, unless embodied in the Constitution, are not of such significance as to attract this approach to construction, this was not accepted, rightly in our view, by the Court of Appeal. In a passage addressing the principle of legality, it was noted at para 75 that counsel for the respondents had not ruled out the applicability of the principle to rights created by statute, but he had submitted that they must be "fundamental to the country's democracy" in the sense of having a mooring in the Constitution. The Court of Appeal rejected this submission at para 76:

> "We would nonetheless hesitate to conclude definitively that the principle is inapplicable save and except where expressly stated or implicit constitutional rights are potentially engaged. Our reservations in this case are borne mainly from the fact that we view the scheme of local government as an integral feature of our democracy, even in the absence of a constitutional link. Local government has historically made up one tier of our two-tiered system of governance. As long as it continues to exist, the attendant right to vote in these elections can be viewed as nothing less than basic and important. Given this significance, it is difficult to accept that any potential impairment of the right is excluded from a

higher level of scrutiny on the sole basis that it does not find its expression in the Constitution."

45. While the need for clarity in a case such as the present may be thought self-evident, it is worth saying that it is the subject matter of legislation that may require clarity, even though the principle of legality is not directly engaged. A person's right to maintain the confidence of communications with lawyers for the purpose of obtaining legal advice (legal professional privilege) is a common law right that attracts the principle of legality. If the common law right were replaced by a statutory right in similar terms, it cannot be supposed that the need for clarity in a subsequent statutory modification would no longer apply. It is the nature of the subject matter that, as a matter of construction, demands clarity.

46. In the Court of Appeal, as mentioned above, the respondents submitted that the heightened scrutiny associated with the principle of legality is appropriate only where the right in question has "a constitutional mooring". This submission misunderstood the effect of the scrutiny. The Constitution, and the rights conferred by it, are protected in a number of ways, including sections 2 and 54 and the requirement that an interference with the individual rights set out in section 4 was permissible provided only that it had a legitimate aim and used means that were proportionate to that aim. Unless permitted by the Constitution, legislation that is inconsistent with constitutional rights is void, irrespective of the clarity or otherwise of the terms of the legislation. The principle of legality is very much more modest. It requires only that Parliament should have expressed itself specifically, clearly and unambiguously. Likewise, when considering the effect of legislation such as that amending sections 11 and 12 of the MCA, no more than clarity is required in the way in which Parliament expresses its legislative intention.

47. The need for clarity arises also on the basis of the retrospective effect of the amendments to sections 11 and 12, if interpreted as applying to the incumbent Councillors and Aldermen. As regards the electorate, this is in substance no more than a restatement of the points made above. If the amendments apply to incumbent Councillors and Aldermen, it directly interferes with and undermines the electorate's decision to elect them for a term of three years.

48. There is a further sense in which the amendments would have retrospective effect. The Councillors and Aldermen stood for election on the basis of a three-year term. If the amendments apply to them, there will be imposed on them an obligation to serve a further period of one year. It may well be that some, perhaps many, of them will welcome a further year in office without the need to submit themselves to the electorate. But, one Councillor gave evidence that he did not wish to do so and it

cannot be assumed that there are not others who are of the same view. This would not cause a problem if they were free to resign. However, under section 25(1) of the MCA, they can do so only on payment of a fine currently fixed at $4,000 and due to rise to $10,000. If the amendments were intended to apply to incumbent Councillors and Aldermen, the presumption against retrospective effect would require clear language.

49. In assessing whether the amendments were intended to apply to the incumbent Councillors and Aldermen, it is of course right to consider other provisions in the MCA and the 2022 Act. As already mentioned, there is nothing in the 2022 Act that provides expressly for the amendments to apply to them. It is generally conventional for legislation dealing with the terms on which public offices are held to make clear, if that is the intention, that changes are to apply to current office holders: for a recent example in the United Kingdom, see paragraph 43 of Schedule 1 to the Public Service Pensions and Judicial Offices Act 2022, increasing the retirement age for judicial office holders. On the several occasions on which the terms of incumbent Councillors and Aldermen have been increased, this has been expressly provided in the MCA (sections 11(4B) and (4C) and 273(1A) to (1K)). Section 273(1) expressly extended the term of office of Council members in the pre-MCA local authorities in office on 13 September 1990 "for a period of one year or to such date as the President may specify by Order published in the Gazette, whichever first occurs".

50. In the Board's view, all this suggests that the amendments were not intended to apply to the incumbent Councillors and Aldermen. But, perhaps the most powerful indication in the text of the 2022 Act is section 2, giving the President, which in reality means the Government, power to bring the Act (or parts of it) into effect on the date(s) specified by Proclamation. The amendments to sections 11 and 12 can therefore be brought into effect at a time when there are incumbent Councillors and Aldermen or at times after they have vacated office and before elections have been held. If the respondents are right, Parliament has therefore conferred on the Government power to decide whether or not the terms of office of elected representatives should be extended by a year. Counsel for the respondents described this as a "modest" and "relatively anodyne" change. The Board disagrees. The continuation in office of elected representatives for a year, an increase of one-third in their term, without reference to the electorate does not seem to the Board to be modest. If Parliament had intended to give the Government such a power, it is reasonable to expect that it would have done so expressly. The legislation does not do so, nor does it appear that any consideration was given to this possibility in any of the steps which led to the changes made in local government by the 2022 Act.

51. For the reasons given in this judgment, the Board is unable to agree with the Court of Appeal that the amendments to sections 11 and 12 of the MCA, increasing

terms of office from three to four years, applied to the incumbent Councillors and Aldermen. The Board therefore allows the appeal.

LORD BRIGGS (dissenting, with whom Lord Kitchin agrees):

52. I have the misfortune to disagree with the reasoning and decision of the majority in this difficult and urgent case. In my judgment the effect of the amendments to section 11(4) of the MCA which came into force in November 2022 was to extend the term of office of Councillors already in office at that date from three to four years. By the same token the similar amendments to section 12(5) of the MCA had the same effect in relation to Aldermen. The combined knock-on effect of those two changes was to postpone the next local government elections for a year.

53. I wish to make it plain that my different conclusion is not the result of applying different legal principles to this question of construction than those applied and explained by the majority. We agree that those principles include the following, for the reasons given by them. First, nothing in the Constitution of Trinidad and Tobago prevents Parliament altering the term of office of elected local government office holders from that in force at the time of their election, whether by extension or abridgment, or prevents Parliament from thereby altering the periodicity of local government elections. This is so even if the right to vote in local elections is an aspect of the right of free expression of political opinion which is protected in general terms by the Constitution.

54. Secondly, although Parliament has such a power, the alteration of the term of office of an incumbent elected local government office holder from that in force when they were elected is an important matter affecting democratic life in the country. Such a change therefore needs to be articulated in clear terms, either expressly or by necessary implication. The court will not lightly assume that Parliament has done such a thing, if the relevant statutory language admits of an alternative interpretation which does not have that effect.

55. Thirdly however, and subject to the need for clarity, this is a question of statutory interpretation to be resolved on the usual objective basis, that is, divining the meaning of the language used by appropriate reference to its context and purpose. It became common ground during the hearing before the Board that the answer to this question was not illuminated by any *travaux preparatoires* or other extraneous materials.

56. Fourthly, the court should lean against an interpretation which gives legislation retrospective effect, if there is an available alternative interpretation which does not, or which does so to a lesser extent.

57. This appeal does not give rise to any question of construction of the 2022 Act itself. Provision is made by sections 3(c)(iii) and 3(d)(iii) for the insertion of amendments to sections 11 and 12 of the MCA, and they have no meaning of their own outside the context of the provisions of the MCA which they amend. It is common ground that by the combined effect of section 2 of the 2022 Act read with section 5(2) of the Statutes Act 1962, Parliament conferred power on the President (acting on the advice of Cabinet) to bring single provisions into force on different dates. There is thus no challenge to the legitimacy of the bringing into force of the provisions (which amend sections 11 and 12 of the MCA) so as to replace three year terms with four year terms for Councillors and Aldermen in November 2022, shortly before the then expected local government elections, separately from the rest of the reforms to local government contained in the 2022 Act.

58. The precise question which the Board is called upon to answer also became common ground. It arises mainly from section 11(4) of the MCA which (as amended in November 2022) now reads as follows:

> "The term of office of Councillors shall be four years, and they shall retire together on the last day of every quadrennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office."

The question which arises from that amended form of words is whether the subsection does or does not apply to Councillors who were in office in November 2022 when the amendment (substituting four rather than three years and a quadrennial rather than triennial period) came into force. I will call them incumbent Councillors. It is common ground that, if it does apply to incumbent Councillors, then their term of office is extended for a year beyond the three year term in force at the time of their election or, to use the language of the majority, the term for which they were elected. A similar question arises in relation to Aldermen under section 12(5), but it is not suggested that it yields to any different analysis than does section 11(4).

59. My reasons for answering that question in the affirmative may be summarised as follows:

1) The plain language of section 11(4) of the MCA, read on its own and in its context as part of section 11, uses “Councillors” as including incumbents. Both its language and its functional purpose apply to incumbents, for whom election is a past event.

2) If “Councillors” were to mean only those to be elected at the next election, there would be no statutory provision in the Act at all specifying the term of office of incumbent Councillors. That is a strange vacuum which construction should if possible avoid.

3) At all times prior to November 2022 section 11(4) applied, and was clearly understood by Parliament as applying, to incumbent Councillors. By no sensible process of construction can the simple change from three to four (or triennial to quadrennial) effect such a radical change to the scope of the subsection as a whole, as would be achieved by limiting it to future Councillors upon election.

4) Even on the interpretation of the majority section 11(4) will apply to incumbent Councillors after the next local government election.

5) Thus, the interpretation of the majority has the effect of treating section 11(4) as having one meaning (in terms of its scope) for the whole of its life from October 1991 when it originally came into force until November 2022, and after the next election into the indefinite future (subject to any further amendment), but a very different and much narrower scope during the short period between November 2022 and the next local government elections. That would be a transitional meaning. But it is common ground that section 11(4) is not on its face a transitional provision, and the construction of the majority would treat it as subject to an essentially transitional special meaning purely by implication.

6) There is no basis for reading the MCA as a whole as a hostile environment for the extension of the terms of office of elected local government officers beyond that in force when they were elected. On the contrary, Parliament has done so by amendment of this very Act on numerous occasions during its life to date.

7) Since the plain purpose of Parliament was to extend the term of office of Councillors and Aldermen from three years to four years, and the periodicity of

local government elections from three to four years, the interpretation of section 11(4) which includes incumbent Councillors within its scope (and of section 12(5) in relation to Aldermen) enables government to implement that change sooner than under the interpretation of the majority, and thereby more quickly to give effect to that purpose.

8) The construction of section 11(4) which applies it to incumbent Councillors does not truly have retrospective effect.

9) Accordingly, section 11(4) expresses the necessary clarity of intention by its express words, and the alternative interpretation faces obstacles which, in respectful disagreement with the majority, stand in the way of it being reasonably available.

I will take those points in turn.

60. Speaking generally, section 11 of the MCA does not make consistent use of the word "Councillors" either as always including or always excluding incumbents. Subsections (1), (2) and (3) are expressly about elections, and about Councillors to be elected at such elections. They have no application to incumbents, save only in the pure happenstance that a person wishing to stand for election happens already to be an incumbent. But their status as incumbents is not why subsections (1) to (3) apply to them.

61. Subsection (8) is by contrast plainly about incumbents. This is because it deals with disqualification from "being" i.e. serving as a Councillor, not just about disqualification from standing for election. Working backwards, subsection (7) makes no mention of Councillors, but subsection (6) plainly applies both to incumbents and those seeking election. This is because the words "and is qualified to continue to be a Councillor" in the opening sentence can only mean while an incumbent.

62. Subsection (5) is, like subsection (4), about a Councillor's statutory term of office. It plainly applies to a particular class of incumbent, namely a "Councillor who has been elected to fill a vacancy". Its purpose is to prescribe (by a formula) the date when such a Councillor shall cease to hold office, i.e. shall retire.

63. Subsections (4A), (4B) and (4C) each refer to Councillors as part of the phrase "the expiry of the term[s] of office of the…Councillors". Their purpose is to set a deadline by when there must be a further election of Councillors under subsection (1),

but the reference to Councillors in each of them is necessarily to incumbent Councillors. Otherwise the formulae for identifying those deadlines would not work.

64. Subsection (4A) is now (although not a part of the MCA in its original form) the primary provision regulating the date by which elections of Councillors must be held. Subsections (4B) and (4C) may be described as transitional or temporary provisions, since they make different short-term provision from subsection (4A) for the holding of elections in two particular past years. They are now spent, in terms of having any statutory force but, like others to which I shall have to refer in due course, they remained embedded in the MCA as a visible part of its history by the time when section 11(4) was amended in November 2022.

65. This perhaps discursive trawl through the rest of section 11 apart from subsection (4) serves two purposes. First it sets subsection (4) in its immediate context. Secondly it shows how, by close attention to the language and functional purpose of each subsection it is possible to discern whether references to Councillors include references to incumbents.

66. Applying those tools of construction to subsection (4) clearly leads in my opinion to the conclusion that it includes incumbents. I would be disposed to accept that, if the first phrase "The term of office of Councillors shall be four years" had stood alone, it would not be easy to decide whether this was providing simply the term for which they were to be elected, or for their statutory term of office once elected. If it had said "The term of office for which Counsellors shall be elected shall be four years" then the former of those meanings would have been indicated, putting this early part of subsection (4) in line with the references to Councillors in subsections (1) to (3), and thereby not referring to incumbents. But the language actually used in the first phrase may be said to be neutral.

67. But the rest of subsection (4) expressly provides the required clarity. It continues: "and they shall retire together on the last day of every quadrennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office." The first point to note is that "they" clearly refers to "Councillors" in the opening phrase, so that if "they" must be incumbents, so must the "Councillors" in the opening phrase. Secondly the purpose of the remainder of the subsection is precisely to define (with some help from section 2(2)), when their periods of office are to finish. It is about when they are to leave office, described by reference to retirement, and by use of a formula (the last day of a quadrennial period after their election), both of which assume that they have already been elected. In short their election is treated as a past event, both expressly ("day on which the Councillors <u>were</u> elected") and as a necessary inference for the formula to work. This is in my view as

clear an express reference to incumbent Councillors as in any of the other subsections which follow.

68. The next point (no. 2 in my summary), that if section 11(4) does not apply to incumbents, then there is nothing in the Act which prescribes their term of office and when they are to retire, was made by a member of the Board during argument. In my view it received no satisfactory answer. Following November 2022 when the amendments to sections 11 and 12 came into force, there is only a provision for a four year term, which either does or does not apply to incumbents. There is no provision there or anywhere else that for incumbents as at the date of commencement of the amendments the now repealed three year term in the old section 11(4) is to continue to apply.

69. Nor is there any provision, if subsection (4) does not apply to incumbents, by reference to which the deadline for the next election is to be calculated. Section 11 (4A) provides a deadline for election of three months from "the expiry of the term of office of the …Councillors and Aldermen comprising the Council". That must (for reasons already given) mean the term of office of the incumbent Councillors. If section 11(4) does not apply to incumbent Councillors, then what is their term of office? There is nothing in the MCA which says that, if there is a lacuna in the statutory provision of a term of office, it is to be deemed to be the term of office for which the incumbent Councillors were elected, under the Act as it then stood. On the contrary, a reasonable reader of section 11(4A) would think that the term of office of the incumbent Councillors being referred to would be the term specified in section 11(4).

70. It is in my view nothing to the point that there may have been an expectation in Trinidad and Tobago prior to the proclamation of the amendments to sections 11 and 12 in November 2022 that there were going to be local government elections in early 2023. But for the amendments, there would have been such elections, because that was what the MCA clearly then prescribed. But that prescription was not preserved by any transitional provisions when section 11(4) was amended, to the effect that, despite the amendments, incumbent Councillors would continue to serve only a three year term, with elections shortly thereafter. As I shall shortly explain, my principal objection to the construction adopted by the majority is that this is precisely what they are seeking to conjure up from a silent void.

71. I have thus far been seeking to construe section 11(4) in its current amended form. It is now necessary to consider what Parliament itself must be assumed to have thought was the scope of section 11(4) in its original (three year) form when they set about to amend it. Of course, all the points thus far made about the language of section 11(4) in its current form apply with equal force to its three year predecessor.

Furthermore, the main reasons why the majority would construe section 11(4) in its current form so as to exclude incumbents do not apply to the same subsection in its three year form. This is because it is precisely the change from three to four years as the term, by way of a non-democratic extension (using their language) of the term for which the incumbents were elected, that is said to call for clear express words, which they conclude are absent. I do not understand that the majority would take issue with my view that the three year version of section 11(4) did apply to incumbent Councillors.

72. But it is also clear from the express terms of other amendments and additions to the Act made when section 11(4) was in its three year form that Parliament must be taken to have understood that it applied to incumbent Councillors. They are to be found in section 273, which contains a miscellany of (now spent) transitional provisions. The first is section 273(1D). It provided for a continuation in office of Councillors for twelve months from the date of the expiry of their existing office, solely for the purposes of the elections due in 2006. It did so "Notwithstanding section 11(4) and (4A)…" The Councillors whose terms were thereby extended were all incumbent as at the date when section 273(1D) came into force. The express overriding of section 11(4) only makes sense on the basis that Parliament then thought that it applied to incumbents, and then specified a three year term of office which Parliament wished to extend. Secondly, in section 273(1J) exactly the same provision was made in relation to the elections due in 2009, with the same overriding of section 11(4) and (4A).

73. The question then arises whether it is reasonable to suppose that Parliament, being of the view that section 11(4) applied to incumbent Councillors, but wishing (on the majority's view) to carve out from its usual effect all Councillors incumbent as at the date of coming into force of the four year amendments, would have done so simply by changing three to four and triennial to quadrennial. Those numerical changes affect only the consequences of the subsection on those within its scope. They say nothing at all about what that scope is and leave its application to incumbents apparently entirely unaffected. It seems to me that, objectively speaking, Parliament cannot have so intended.

74. To complete the picture of the scope of section 11(4) over time, it is no part of the reasoning of the majority that section 11(4) should be interpreted as permanently altered in November 2022 so as to be inapplicable, ever again, to incumbent Councillors. On the contrary, the appellant's case, and the majority's reasoning, is only that its effect on incumbent Councillors should be interpreted as suspended, until the holding of the next local government elections, in 2023. It is conceded that it now applies to prospective councillors, so that their terms of office, once elected, should be four rather than three years. Following the election, they would be the incumbent

Councillors, serving for four years pursuant to the amended section 11(4). And on the majority's construction the reacquisition by section 11(4) of its previous effect upon incumbents would happen, at the next election, without any change of its wording at all.

75. Standing back, the interpretation of the scope of section 11(4) over time which has persuaded the majority is this. From the inception of the Act until November 2022 it applied to incumbents, mainly because its three year term was consistent with the understanding by incumbent Councillors and their electorate upon the basis of which they had been elected. From November 2022 until the holding of elections in 2023 it has no application to incumbents. Then from that election it applies again, for the indefinite future (until further amended) to all those who are incumbents thereafter. The first of those changes in scope is effected simply by the change from three to four years. The second is effected without any change in the language at all.

76. In my respectful view that interpretation faces a number of steep hurdles beyond those already identified which are, at least in the aggregate, insuperable. First, the reasoning that section 11(4) suffers a very large diminution in its scope, for a very short period, before reverting, with no further amendment, to its original scope, in effect erects a transitional provision as a way of construing a section which, even as amended, is of indefinite rather than transitional effect. Those responsible for giving effect to the wish of Parliament that there be temporary or transitional provisions by way of departure from the permanent provisions of this Act were well capable of doing so by conventional and clear means, as is illustrated by section 11 (4B) and (4C) and by the lengthy series in section 273.

77. Secondly, there is simply no language or text which even hints at such a temporary or transitional provision. The only amendment of section 11(4) is an alteration of its effect upon those within its scope, not an alteration of scope itself, let alone the dramatic reduction of scope which would be achieved by excluding all incumbent Councillors. It would be a large (albeit short term) derogation from the plain meaning of section 11(4) even in its amended form, arrived at not by suitable words but purely by implication.

78. Thirdly, the effect of suspending the operation of section 11(4) upon incumbent Councillors from the date of Proclamation until the next election would run directly counter to Parliament's decision to confer upon the Government (the President upon the advice of Cabinet) the right to decide when the three to four year amendments should be brought into force. That may sound a relatively modest postponement when measured from November 2022 to early 2023. But suppose that the same amendments were proclaimed one month after the next elections in, say, 2023. They

would in effect be suspended in their effect upon the timing of local elections for almost six years, because the date of the 2026 elections would be unaffected, and the first relevant consequence would be to extend the 2029 elections to 2030.

79. At the heart of the reasoning of the majority is the proposition that to extend the term of office of Councillors and Aldermen beyond that for which it may be said that they have been elected, and to give the timing of the change to the Government, is such an inroad into democracy that it should only be concluded that Parliament really intended to do it by the use of the clearest language. I recognise that there is some element of an inroad into the democratic process, particularly in the sense that Councillors and Aldermen are thereby required to serve an extra year beyond that for which it may be said that they volunteered, and are only able to avoid that additional burden by resigning on terms involving the payment of a civil penalty. But Parliament has legislated for so many such extensions during the relatively short life of this Act, that doing it again at the outset of a permanent change from three to four years' service can hardly be described as surprising. It only requires an inspection of section 273 to see that it was done for four consecutive years in a row, namely 2006, 2007, 2008 and 2009. It was also done in substance in 1990, 1995 and 2002, under the cloak of making them members of an advisory committee on the same terms and conditions as they enjoyed as Councillors and Aldermen. All those extensions were made against the background of the general retention of a three year cycle. It strikes me as considerably less of an inroad into democracy to provide for a one year extension of service of current Councillors and Aldermen against the backdrop of the introduction of a permanent change to a four year cycle.

80. Further the notion that this extension of the service of incumbent Councillors and Aldermen is an inroad into democracy has to be seen against the facts that Parliament is a superior democratically elected institution in its own right, with a longer five year cycle of renewal by election, and that the Government to which Parliament entrusted the fine tuning of the timing of the change is itself a democratically elected body, accountable to the people through Parliament.

81. The relevance of this point is that, although I acknowledge that any legislative alteration in the term of service of elected officers is an important matter which calls for careful scrutiny, the context in which the change implemented in November 2022 happened was one of a background of repeated changes of a similar type, and was in fulfilment of a permanent rather than merely temporary change from a three year to a four year cycle, as part of a planned reform of local government by Parliament, the democratic body charged with that responsibility.

82. It cannot I think be doubted that the interpretation of section 11(4) (as amended) in November adopted by the Court of Appeal better enables the Government to proceed by Proclamation to a speedy implementation of the overall move to a four year cycle upon which Parliament had resolved than that favoured by the majority, as is demonstrated both by what has happened (proclamation before the 2023 election) and by the example given at the end of paragraph 78 above.

83. The appellant places significant weight upon the supposed retrospectivity inherent in the Court of Appeal's interpretation. The submission appears to be that a change to four years' service for Councillors and Aldermen elected to serve for only three years somehow revisited that election and changed its effect retrospectively. I respectfully disagree. The effect of the election of the incumbent Councillors and Aldermen was to put them in office for a statutory period specified in the MCA from time to time. That period was, like any other provision in the MCA, liable to be varied by Parliament, and it could be either lengthened or shortened at any time thereafter. The incumbent Councillors and Aldermen had no vested right based on their election either to serve the then full term or to retire at the end of the three years in force at the time of the election. The MCA contained other provisions (such as qualification and disqualification) which might shorten that period, and the three year period in force under section 11(4) at the time of their election had frequently been extended in the past. The historic fact of those extensions remained recorded in the MCA itself, and was in any event probably a well-known aspect of local electoral history accessible to any aspiring Councillor or Alderman. The only practical effect of the amendment proclaimed in November 2022 was prospective: namely that at the conclusion of the previously three year term at the end of 2022 they would remain in office for another year. Accordingly, there was nothing truly retrospective about the November 2022 amendment, as construed by the Court of Appeal, that needed to be scrutinised and subjected to any kind of clear words test.

84. It was also submitted for the appellant that sections 11(4) and 12(5) lacked sufficiently clear words to apply to incumbent Councillors and Aldermen and thereby extend their terms of office when compared with the language of the provisions which brought about such extensions earlier in the history of the MCA. It is certainly true that sections 273(1D) to (1K) do prescribe extensions of office in very clear terms, which may be said to be even clearer than the extensions which I consider were wrought by sections 11(4) and 12(5). Sections 273(1D) to (1K) are, as I have already said, transitional or temporary provisions. But the comparison between them and sections 11 and 12 as amended does not in my view serve the appellant's forensic purpose. The reason why sections 273(1D) to (1K) have to be in such precise terms is because they bring about temporary departures from the continuing three year terms at that time still provided by sections 11(4) and 12(5). The same may be said of the temporary effect of section 11(4B) and (4C) upon section 11(4A). In sharp contrast the

amendments to sections 11(4) and 12(5) bring about permanent alterations in the duration of the terms of service. They do not need to be in precise terms as to date because there is nothing anywhere else in the MCA in contradiction with them.