

The Republic of Trinidad and Tobago

IN THE COURT OF APPEAL

Civil Appeal No. P007 of 2023

Claim No. CV2022-01181

Between

RAVI BALGOBIN MAHARAJ

Appellant

And

THE MINISTER OF FINANCE

Respondent

PANEL:

N. BERAUX J.A.

P. RAJKUMAR J.A.

M. WILSON J.A.

Date of delivery: 15th September 2023

APPEARANCES:

Mr. A. Ramlogan SC, Mr. K. Samlal, Ms. J. Lutchmedial and Mr. R. Abdool Mitchell instructed by Mr. V. Siew saran and Ms. N. Bisram, Attorneys-at-law for the appellant

Mr. R. Martineau SC and Mr. J. Mootoo instructed by Mr. R. Thomas, Attorneys-at-law for the respondent

JUDGMENT

Delivered by Bereaux J.A.

Introduction

(1) The appellant challenges the appointment of Mr. Patrick Ferreira as chairman of the National Insurance Board of Trinidad and Tobago. I shall refer to the Board as “the NIB”. He alleges that the decision of the Minister of Finance to appoint Mr. Ferreira is *ultra vires* section 3(2)(d) of the **National Insurance Act Chap. 32:01** (“the Act”), because Mr. Ferreira is not “*independent*” of the Government or independent of Business as required by the Act. He applied for judicial review of the Minister’s decision seeking a declaration that the decision was unlawful and certiorari to quash it. Jacqueline Wilson J (“the trial judge”) granted judicial review but dismissed the application. He now appeals to this Court.

(2) The relevant provisions of section 3(2) of the Act provide -

“3. (1) There is hereby established for the purposes of this Act, a National Insurance Board of Trinidad and Tobago (hereinafter referred to as “the Board”) which shall be a body corporate.

(2) The Board shall consist of eleven members designated Directors, who shall be appointed by the Minister, as follows:

(a) three members nominated by the Government;

(b) three members nominated by the associations most representative of Business;

(c) three members nominated by the associations most representative of Labour;

(d) a person, who in the opinion of the Minister, is independent of the Government, Business and Labour, who shall be the Chairman;
(e) the Executive Director as ex officio member.
..."

(3) The appellant lists the following as the “*grounds*” of the application. They are really general submissions of law that the appointment should be struck down because:

- i. The decision is illegal, and contrary to law;
- ii. The decision is in excess of the jurisdiction granted to the Minister of Finance by section 3(2)(d) of the Act;
- iii. The appointment amounts to a failure to satisfy or observe conditions or procedures required by law;
- iv. The appointment amounts to an unreasonable, irregular or improper exercise of discretion;
- v. The appointment is in clear conflict with the policy of the Act; and
- vi. The appointment of Mr. Ferreira as Chairman and him being allowed to continue in the post is an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

Case for appellant

(4) At the heart of the appellant’s case is his contention that Mr. Ferreira is not “*independent*” of government or of business. As I understand it, the assertion (that Mr. Ferreira is not “*independent*”) underpins all of these contentions of law. The actual basis on which the contentions of law are founded are:

- (i) That Mr. Ferreira had previously been nominated to serve (and then served) as a director on the NIB by the Government and as a director of Deposit Insurance Corporation of Trinidad and Tobago (a subsidiary of the Central Bank of Trinidad and Tobago) for the period 2002 – 2008. He is also a member of the Board of Directors of the National Infrastructure and Property Development Company (“NIPDEC”) and the Trinidad and Tobago NGL Limited. The latter appointment took effect from 30th July 2020.

- (ii) That he has business interests, or as the appellant described him, he is “*an established businessman*”. The business interests of Mr. Ferreira as identified by the appellant is his membership on the Board and management of a number of companies in the Furness Group of Companies. According to the appellant the nature and scope of the business of the Furness Group of Companies is such that it must proactively and regularly engage with Government to succeed. He provides no actual evidence of this latter assertion.

Summary of decision

- (5) The trial judge was correct to dismiss the application. There is nothing in the Act which prohibits the appointment of Mr. Ferreira as chairman of the NIB. The application for judicial review is misconceived and the appeal must be dismissed.

The judge’s decision

- (6) The trial judge dealt with the application for leave and the substantive application together as a ‘*rolled up*’ hearing. She granted leave but dismissed

the application on the merits. In summary she held that:

- (i) Section 3(2)(d) of the Act when considered in conjunction with other provisions of the Act as a whole, does not disqualify a person from appointment as chairman by virtue of his business interests, his status as a former director of the Board or his other directorships. Thus, Mr. Ferreira's directorships, business interests and prior appointment as director of the Board are not disqualifying factors that preclude his appointment as Chairman.
 - (ii) The Minister's affidavit demonstrated that he considered Mr. Ferreira's past and present directorships, his business interests and track-record and assessed his personal and professional attributes before determining that he was a fit and proper person to be appointed as Chairman. In the circumstances, the Minister took relevant matters into account in making the appointment and his decision was justifiable by subjective and objective standards. The Minister's decision was therefore, within the scope of the Act, lawful and reasonable.
- (7) The reasoning of the judge was as follows:
- (i) Because the Act does not define the word "*independent*," the word must be given its natural and ordinary meaning, suitable to the context in which it is used in the provision. She found that the word "*independent*" in section 3(2)(d) should be taken as meaning "*not subject to authority or control*" or "*unwilling to be under an obligation to others*," both of which are definitions given in the Oxford dictionary.
 - (ii) The Minister's assessment or judgment of the independence of the nominee for chairman, must be supported by subjective and objective

criteria. He must honestly believe that the person is “free from influence or control” by others or “unwilling to be under an obligation” to them. His subjective belief must be justifiable on objective grounds. She held that the Minister’s subjective belief is established where, in his opinion or assessment, the personal and professional attributes of the nominee met the standard of “*independence*” required by the Act. His opinion is ‘*reasonably and objectively justified*’ where it is supported by a wider assessment of factors that may potentially establish (or undermine) the person’s independence. Such factors include, but are not limited to, the person’s history of employment, appointments, directorships, membership of associations and business or commercial interests, whether past or present.

- (iii) Sections 9 and 11 are of direct relevance to the meaning of section 3(2)(d). The language used in section 9 provided indicators or underlying features of “*independence*.” Its provisions apply to all of the Board’s directors, howsoever nominated, and required them to be subject to the control or direction of no person or authority except for the Minister, in giving general directions of the Government. She held that in applying the requirement for independence to all directors of the Board, and not exclusively to the chairman, section 9 affirmed that the Board’s directors do not represent the interests of the persons or associations nominating them but must act in their own independent judgment. Further, section 11 by making express provision for the declaration of pecuniary and non-pecuniary interests by the Board’s Directors and Chairman, acknowledged that personal or commercial interests per se do not preclude a person from appointment as a Director or as Chairman of the Board.

The appeal

- (8) The appellant challenges the judge's decision and her reasoning. Mr. Ramlogan submitted, *inter alia*, that the judge erred in both her interpretation of section 3(2)(d) of the Act and in her finding the decision of the Minister justifiable by subjective and objective standards. He contended that, far from simply construing section 3(2)(d) in the light of the latter sections, the trial judge in reality transposed the content of sections 9 and 11 directly into section 3, and did so in such a way as to render subsection 3(2)(d), and its relationship to the surrounding sub-sections, entirely unintelligible. Moreover, if the draftsman intended that the word '*independent*' at section 3(2)(d) should bear the same meaning as the content of sections 9 and 11, then the draftsman would have used consistent language and phrasing across these three sections to make this intention plain.
- (9) In response, Mr. Martineau submitted that the trial judge accurately interpreted section 3(2)(d) of the Act and it is the interpretation advocated by Mr. Ramlogan which is erroneous and ushers in an absurdity. He also supports the finding of the judge that the appointment of Mr. Ferreira was made in the proper exercise of the Minister's statutory discretion.

Evidence of the appellant

- (10) The appellant, citing the Furness Group website, contended that Furness Group of Companies is one of the oldest and largest conglomerates in the country which has been de-listed from the stock exchange with experience in shipping, sugar, insurance and engineering. It is still a multi-industry company with operations in insurance and cold storage but had diversified

its core operations into manufacturing, distribution and service industries.

- (11) In so far as he sought to challenge Mr. Ferreira's appointment, the appellant alleged at paragraph 27 of his affidavit, without any evidence that:

The nature and scope of the business of the Furness Group of Companies is such that it must proactively and regularly engage with the government; it must have a close and strong relationship with the government in order to succeed.

- (12) He also referred to an Express newspaper report of 13th February 2022 which expressed doubts about the financial status of the NIB and its ability to meet its commitments in the future in light of the COVID pandemic. He pointed to a proposal by the Government to increase the compulsory retirement age and contends that the independence of Mr. Ferreira in fairly assessing the merits of the proposal and the inability of the NIBTT to contribute towards and implement it, is doubtful.

- (13) The appellant contends that *"by virtue of his high level position in the Furness Group of Companies and his appointments as the Government's representative on the Board of NIBTT, NIPDEC and NGL Mr. Ferreira does not fall within the category of persons who are eligible to be considered ... for appointment to the office of Chairman of the NIBTT"*.

- (14) At paragraph 31, the appellant deposes to his motivation for bringing this action. He asserts that:

I am personally aggrieved by any failure to comply with the legal procedure for making an appointment to the office of

Chairman of the NIBTT because I am a contributory to the NIBTT and am genuinely concerned to ensure that the Chairman is appointed in accordance with the law.

Evidence of the Minister of Finance

(15) Finance Minister Colm Imbert deposed to an affidavit in opposition in which he defended the appointment of Mr. Ferreira in these terms (as summarized):

(i) What the Act requires is that a chairman be appointed who, in his opinion as Minister, is independent of Government, Business and Labour. As far he was aware, Mr. Ferreira is independent of them all and is in no way subject to any outside influence of Government, Business or Labour. For example, he is not controlled by them, he does not report to them and he does not represent them. It is the duty of the Board to operate and manage the system of national insurance established by the Act and the directors who comprise the Board are required at all times to exercise independent judgment and act in the best interests of the NIB in the decision at hand.

(ii) He has known Mr. Ferreira for upwards of 20 years and from his knowledge of him, gained through many interpersonal conversations and interactions, Mr. Ferreira is a man of independent thought who expresses his own opinions and judgment. Mr. Ferreira shows a keen and genuine interest in the Board and its operations and promotes its best interests. He was satisfied that Mr. Ferreira understands and faithfully subscribes to the duties owed by him to the Board and as chairman he will always act independently in the best interest of the

Board. Apart from his vast work experience, Mr. Ferreira is also the holder of a Certificate of Continuing Education in Law issued by the University of Essex in 2017.

- (iii) It is correct that Mr. Ferreira was appointed a government nominated director on the Board with effect from 25th November 2017 and his appointment, which was for a period of 2 years, expired on 24th November 2019. Mr. Ferreira was also appointed a government nominated director to the board for a further period of 2 years with effect from 20th January 2020, that appointment coming to an end on 19th January 2022. Mr. Ferreira, was thereafter appointed as chairman of the board effective 20th January 2022 following the expiry of the term of appointment of the prior chairman, Ms. Helen Drayton on 13th January 2020. His term of appointment as chairman expires on 19th January 2024.

- (iv) Over the years several different persons have served as chairman of the Board while at the same time having professional pursuits in business or been involved in business enterprises at high levels as officers or directors of the boards of those businesses. Those businesses have conducted business with Government of Trinidad and Tobago or State Enterprises or Public Authorities or Limited liability companies wholly owned by the State prior to and during the time that they occupied the office as chairman. (He thereafter lists eight examples of such chairmen.) He adds that all the eight former chairmen of the board referred to had had some connection or relationship with Business or Government prior to or during their tenure.

Minister Imbert then deposed that:

As Minister of Finance I nominated Mr. Ferreira as the Government nominee to the Board. Although I nominated him, I did not nominate him to represent the interests of the Government but rather as a Government nominee who I thought would be faithful to serving the best interests of the Board having regard to the duties of directors set out in the Act. I never regarded his appointment as one where he would be taking a partisan role and in fact my experience has been that Mr. Ferreira has never taken a partisan role in his duties or functions as a director of the Board.

Minister Imbert added, the fact that Mr. Ferreira previously served as Government's representative on the NIB was not something which, in his opinion, rendered him incapable of being independent of the Government on the NIB. When Mr. Ferreira assumed the post of Chairman of the NIB he was not in any way controlled by or accountable to Government. That continues to be the case. He holds no Government post or office and does not serve Government in any capacity whether by way of its representative on any company, institution or entity or howsoever otherwise. Mr. Ferreira does not hold any position or office in any organization or association which represents business interests. Mr. Ferreira's involvement in the Furness Group of Companies did not mean that as chairman of the board of NIB he will not be independent of Business within the meaning of section 3(2) of the Act. Further, it is not correct to say that the Furness Group of Companies must proactively and regularly engage with the Government in order to succeed or at all.

- (16) As to Mr. Ferreira's other directorship Minister Imbert deposed that:
- (i) NIPDEC is a wholly owned subsidiary of the NIB. The directors of NIB appoint the directors of NIPDEC. Mr. Ferreira is not the Government's representative on the board of NIPDEC. Further, because NIPDEC is a wholly owned subsidiary of the NIB it is customary for one or more directors of the NIB to be selected to serve as directors on the board of NIPDEC. Several previous chairmen of the NIB Board (examples given) have all served as members of the board of directors of NIPDEC while they each served as chairman of the board of the NIB. In any event, Mr. Ferreira's appointment as a director of NIPDEC came to an end on 5th March 2022.

 - (ii) As to Mr. Ferreira's appointment as a member of the Board of Management of the Deposit Insurance Corporation ("DIC") during the period 2002 to 2008, Mr. Ferreira was appointed as one of two members who had knowledge or experience in banking, commerce, finance, accounting, insurance or law. This appointment was made by the Minister of Finance at the time under section 44Q(1)(c) of the **Central Bank Act Chap. 79:02.**

 - (iii) Mr. Ferreira's appointment to the board of directors of Trinidad and Tobago NGL Limited ("TTNGL"), was made by shareholders. Those shareholders are made up of a diverse group of companies and individuals. Mr. Ferreira is not the Government's representative on TTNGL. TTNGL is not a subsidiary of the National Gas Company. In fact, the National Gas Company is a minority shareholder owing only 25% of the shares of TTNGL. The Board also owns 12.74% of the shares of TTNGL.

(17) As to the Government's proposal to increase the compulsory retirement age, Mr. Ferreira's independence is not compromised by his previous service on the board of the NIB. The proposal to increase the retirement age is not new. It had been recommended by the NIB to Government on several occasions as a result of several actuarial reports prepared by the International Labour Organization, going back many years before Mr. Ferreira was a member of the NIB. An increase in the retirement age will not wreak havoc on the lives of persons who are approaching 60 years of age. That assertion was based on pure speculation. The proposal to increase the retirement age is in fact a long-standing recommendation of the Boards' actuaries, designed to improve the financial viability of the national insurance system and dates back to the 8th and 9th actuarial reviews of the national insurance system, which were published in September 2012 and June 2015 respectively, under another Government. These are matters on which neither Government nor Parliament has made any firm decision.

Minister Imbert adds that:

The retention of Mr. Ferreira as Chairman of the Board is in the interest of the Board and furthers the object and purpose of the Act. This is more particularly so given Mr. Ferreira's qualifications, general knowledge and experience when coupled with my personal knowledge of his previous conduct as a member of the Board. In fact, the Claimant's statement in that paragraph is based on speculation and illogical conclusions.

Issues

(18) The main issue in this appeal is whether Mr. Ferreira's previous nomination

to the NIB by Government, and his business interests, render him ineligible for appointment as chairman of the NIB because he is not “independent” of the Government Business and Labour as required by section 3(2)(d). If the appointment is not prohibited the question is whether the Minister’s decision to appoint Mr. Ferreira was an unreasonable and unlawful exercise of his discretion and whether the Minister took irrelevant considerations into account.

Analysis

The meaning of section 3(2)(d) of the Act

(19) It is important to make it clear at the outset that we are here concerned with the interpretation of an ordinary Act of Parliament which is subject to the usual principles of statutory interpretation. The modern approach to statutory interpretation is encapsulated in the decision of the Supreme Court of the United Kingdom in **R (on the application of O (a minor, by her litigation friend AO)) v Secretary of State for the Home Department [2022] UKSC 3** at paragraphs 29-31 per Lord Hodge:

*“29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”:
Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613 per Lord Reid of Drem.
More recently, Lord Nicholls of Birkenhead stated:*

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.”

(R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in Spath Holme, 397:

“Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.”

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context

disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity.”

This approach is in line with the approach of this court in **Nadine Nabbie and another v The Law Association of Trinidad and Tobago and another Civil Appeal No. 72 of 2012** paragraphs 8-13 per Narine JA.

- (20) The starting point is thus the statute itself. The literal meaning of the words in issue must be read in the context of the section as a whole and in the wider context of a relevant group of sections. This is precisely the approach adopted by the trial judge. She held that because the Act did not define “*independent*” it should be given its natural and ordinary meaning “*suitable to the context in which it is used in the provision*”. I agree.
- (21) As to the literal meaning of “*independent*”, the **Oxford Dictionary** defines ‘*independent*’ as “*free from outside control or influence*”; “*not connected; separate*.” The literal meaning conveyed by section 3(2)(d) is that the Minister may appoint a person as chairman who in his opinion is separate from and free from the control or influence of government, business and labour. What then are the entities or activities which answer to the labels of government, business and labour and what can we draw from their context in section 3(2) itself.

- (22) Section 3(2) itself at (a)-(c), speaks of directors being appointed by the Minister who are nominated by *“the Government”*, *“the associations most representative of Business”* and *“the associations most representative of Labour”*. The *“Government”* would include the Cabinet of Trinidad and Tobago as established pursuant to section 75 of the **Constitution** bearing its collective responsibility to the country of Trinidad and Tobago as a whole. *“Associations most representative”* of *“Business”* and *“Labour”* connotes that Parliament, for the purposes of the Act recognizes ‘business’ and ‘labour’ as sectors in the society and/or the economy.
- (23) More significantly, the section refers to *“ASSOCIATIONS most representative of Business, Labour”*. It must mean that the Minister in appointing the directors must canvass more than one association of Business and of Labour. Indeed, he must be satisfied on reasonable grounds that the nominees are named by the respective Associations *“most representative”* of Business and Labour in Trinidad and Tobago.
- (24) Having then obtained nominees pursuant to sub-sections 2(a)(b) and (c), the Minister must then appoint a chairman pursuant to subsection 2(d). Such a person must in his opinion be *“independent of Government, Business and Labour”*. The absence of the word *“Associations”* from that phrase in relation to Business and Labour does not mean that a nominee for Chairman must have no relationship with those three sectors. Of course, the section calls for the Minister to take a broad view of government, business and labour but what the Minister is concerned with is that the appointee must be free from the control or influence of business and labour interest groups generally. In this way, persons charged with the administration of the Associations (which are the sectoral interest groups recognized by the Act) representative of labour and business or a member of the government of

Trinidad and Tobago will be ineligible. But the same would not apply to an individual who is merely a member of a trade union or business association or officer of a company for example.

(25) In my judgment, when the words in section 3 (2) are given their natural and ordinary meaning, having regard to their context, there is nothing in the Act which provides that the Labour, Business or Government nominees are to represent the interests of their nominators when sitting on the board of directors. At best, nominees may, with their background, bring a philosophy or perspective to the functions of the Board, which may inform how they approach those functions but once the nominees are appointed, they serve the board of the NIB not the interests of their nominators. The Act does not specify that the directors represent any “*interest*” such as to taint the director’s service on the Board in a partisan way. As such, on a strict reading of the Act, the relevant labour association can nominate someone with a business background and similarly the relevant business association can nominate anyone with labour background or history. The Act is also silent as to the qualification of the nominees to appointment to the NIB board. It does not distinguish between a labour director, a Business director or a Government director. Once they are appointed to the board of the NIB they are directors of the board of the NIB, and must pursue the best interests of the NIB.

(26) The trial judge rightly noted that section 9 affirms this position. It provides that the Board, in the exercise of -

its functions, powers and duties other than acting in accordance with any general directions of the Government given to it by the Minister, shall be subject to the control or

direction of no other person or authority.

This excludes the nominators themselves (including Government). The Government's input is confined to general policy directions given by the Minister pursuant to section 9. The Act thus provides complete autonomy to the directors in the exercise of their duties to the NIB other than the general directions given by the Government as shareholder. The input of Business, Labour and Government is simply to nominate them. Once nominated the directors are autonomous and function on behalf of the NIB and no one else. On that basis alone, Mr. Ferreira's service on the NIB board as nominee of the Government cannot taint or compromise his subsequent appointment as chairman. Mr. Ramlogan's submission that the trial judge transposed the content of sections 9 and 11 into section 3(2)(d) is deeply misplaced. The trial judge considered sections 9 and 11 as being supportive of the interpretation she placed on section 3(2)(d).

- (27) What the Minister had to be satisfied of was that the appointee as chairman was at the time of his appointment, separate from the broad tri-partite interest groups represented on the board of the NIB and did not report to, was not under the control of or subject to the influence of any of them.
- (28) There is no dispute between the parties that where legislation gives the Minister a discretion to act in his '*belief*' or '*opinion*', some level of subjectivity is open to the Minister. There is also a wide latitude within which he can operate provided that he is fair and reasonable in his approach and the conclusions he reaches are not perverse. The '*belief*' or '*opinion*' "***must be reasonable and objectively justified by relevant facts.***" See **Office of Fair Trading v IBA Health Ltd [2004] 4 ALL ER 1103** at [45]. The judge correctly stated the law. I have summarised her dictum at paragraph 7, see in

particular paragraph 7(ii) above.

- (29) I agree with the trial judge that the Minister's opinion of the independence of Mr. Ferreira must be supported by objective criteria. As she put it, his belief must be founded on grounds which when examined objectively, are justifiable. The Minister's subjective view may be founded on his personal encounters with the nominee or from briefings by his advisors but it must always be able to withstand objective and dispassionate assessment. In this case, Minister Imbert has set out in full his reasons for selection of Mr. Ferreira. He speaks about personal knowledge of having known Mr. Ferreira a considerable time and has set out in full Mr. Ferreira's professional experience. Viewed objectively and dispassionately there was a proper basis for his decision. I have set out his evidence at paragraph 15. That evidence shows that he gave proper consideration to the appointment of Mr. Ferreira as chairman. I endorse the trial judge's assessment of his evidence as encapsulated at paragraph 6(ii) above.
- (30) Mr. Ramlogan pointed to Mr. Ferreira's business association with the Furness Group as indicating a business interest which disqualifies him from the chairmanship of the Board because he is not independent. Mr. Ferreira's business interests attach to one of the largest and most well-known business conglomerates in the country which are still continuing. He submitted that there is no conceivably reasonable and objective basis for his appointment. The appointment amounted to an unreasonable, irregular or improper exercise of discretion.
- (31) Once again, there is no prohibition in the Act against a nominee being a businessman or in the employ of business. Indeed the fact of ownership of a business does not render the business owner incapable of independent

thought and decision making. Similarly, the fact that a previous chairman may have had ties to Labour (or may represent union interests in the Industrial Court for example) does not disqualify him from being Chairman. But the Minister's subjective assessment must be supported by evidence which, when viewed objectively and dispassionately provides a proper basis upon which the decision can be founded. A court will simply be concerned to see that there is a reasonable basis for the decision. Minister Imbert has given clear evidence in his affidavit of his consideration of Mr. Ferreira and why he was appointed. I agree with the trial judge that his evidence demonstrated that he considered Mr. Ferreira's past and present directorships, his business interests and track records and his personal attributes.

- (32) Neither does the fact of a nominee being involved in business or being the principal of a business which is a member of a business association render him or her, without more, subject to the authority, control or influence of the business association. It was for the appellant to show any connection to the business association of sufficient quality to indicate control or influence in this case and he has failed to do so. In so far as he has alleged that Mr. Ferreira's business interests require his lobbying of the Government that is a bald statement made without any proper evidence or foundation and which in any event has been denied by Minister Imbert.
- (33) Notably, section 11 sets out the basis upon which the NIB directors may have conflicts of interest which may require recusal. Section 11 demonstrates that the Act does not envisage that the chairman or indeed any other member of the Board will not have any dealings with business labour or government in some incarnation. Instead it provides a mechanism at section 11 for treatment of any conflicts of interests that may arise. That section

sets out parameters beyond which he or she can or cannot go. It would have been a simple matter for Parliament to have included a blanket statement prohibiting the chairman from owning a business or engaging in any form of business activity whatever. That it chose not to and to leave the appointment of the chairman to the Minister's discretion is unsurprising.

- (34) There is no identifiable error in the trial judge's interpretation of the meaning of section 3(2)(d) in paragraph 29 of her judgment and in her assessment of the exercise of the Minister's discretion.

Unreasonable decision/irrelevant considerations

- (35) Mr. Ramlogan submits that the respondent took irrelevant matters into account when he considered that Mr Ferreira understands how the Board operates and that he has vast work experience and continuing education certificates. He added that both the Minister and the trial judge excluded relevant matters from consideration, in particular, the Central Bank Corporate Governance Guidelines (2021) for '*Systemically Important Financial Institutions*' (of which the NIB is one) on the meaning of '*independence*.' I do not agree that the Central Bank Corporate Governance Guidelines (2021) were relevant considerations. There is no ambiguity as to the meaning of 'independent' in section 3(2)(d) of the Act so it is unnecessary for the Minister to take account of external aids such as the Central Bank Guidelines. The discretion is governed by the Act which takes precedence over any ideas of independence essayed by the Central Bank. Further those guidelines were only published in 2021, long after the Act was published and after successive ministers have been making appointments pursuant to section 3(2) (d). The draftsman cannot be said to have had the contents of the Central Bank guidelines in view when section 3(2)(d) was

drafted in the sense that it can be imputed into a reading of the section or make the section subject to those guidelines. The statute governs the exercise of the Minister's discretion.

- (36) When the evidence is considered in the round, there can be no argument that the appointment was *Wednesbury* unreasonable in the sense that no reasonable decision maker would appoint Mr. Ferreira simply because he is a businessman and has served on State companies including the NIB. To hold otherwise will lead to the absurdity that, for example, no businessman, former State board director or trade union member can be appointed chairman of the NIB. This has the potential to be more harmful than helpful to the functioning of the NIB by reducing the pool of potential appointees. In a country of approximately 1.3 million people (which is a population size nearly eight times less than that of London) this cannot be desirable.
- (37) In the overall analysis, the trial judge was not plainly wrong when she found at paragraph 38 that ***“the Minister took relevant matters into account in making the appointment and his decision was justifiable by subjective and objective standards. The Minister’s decision was therefore, within the scope of the Act, lawful and reasonable.”*** The result is that the Minister’s exercise of his discretion stands and the appeal is dismissed. We shall hear the parties on costs.

Nolan Breaux
Justice of Appeal

I have read in draft the judgment of Bereaux J.A. I agree with it and have nothing to add.

Peter Rajkumar
Justice of Appeal

I have also read in draft the judgment of Bereaux J.A. I too agree and have nothing to add.

Maria Wilson
Justice of Appeal