July 22nd 2019

**Mr. Douglas Mendes SC**

**President**

Law Association of Trinidad and Tobago

Nos. [95-97 Frederick Street](https://maps.google.com/?q=95-97,+Frederick+Street+Port-of-Spain,+Trinidad+West+Indies&entry=gmail&source=g)

**PORT-OF-SPAIN**

Dear Mr Mendes SC

**RE: IN THE MATTER OF THE CHIEF JUSTICE OF TRINIDAD AND TOBAGO**

I refer to your letter dated December 13th 2018, enclosing the Report of the Committee established by the Council of the Law Association dated February 23rd 2018 (the ‘Report’), an addendum thereto dated October 3rd 2018 (the ‘Addendum Report’) and other documents in connection with allegations made against the Chief Justice. You invited me to determine whether a representation to the President under section 137 of the Constitution is warranted.

I have carefully considered the Reports and other documents, including the Opinions of Dr. Alexis QC and Mr. Eamon Courtenay QC, and I further sought the express advice on all matters from Mr. Howard Stevens QC, who as you may be aware has direct and specific experience in considering section 137 of the Constitution issues in our jurisdictional context, he having participated in a previous section 137 issue relating to a previous Chief Justice in Trinidad and Tobago. Having done so, I have decided **not** to make a representation to Her Excellency the President.

I summarise below the reasons for my decision.

If I do not mention any particular matter, you should not assume that I have not considered it. I have considered all the material submitted as well as Queen’s Counsel’s advice before coming to a decision.

*Approach*

I have been guided by section 137 itself and, among other authorities, the judgment of the Judicial Committee in Rees –v– Crane [1994] 2 AC 173, in which the Committee observed that *‘[t]he commission before it represents must, thus, be satisfied that the complaint has prima facie sufficient basis in fact and must be sufficiently serious to warrant representation to the President, effectively the equivalent of impeachment proceedings’.* For the Commission, must of course be substituted, the Prime Minister, where a complaint concerns the Chief Justice.

Before making any representation to the President, I must therefore be satisfied of three things: first that one or more of the matters in respect of which the Committee has expressed concern (I shall refer to them as complaints) may amount to one of the two circumstances provided for by section 137 in which a judge may be removed from office, namely inability or misbehaviour; secondly, that one or more of the complaints has *prima facie* sufficient basis in fact; and, thirdly, that such complaint or complaints is/are sufficiently serious to warrant a representation to the President – i.e. sufficiently serious that, if substantiated, it/they might ultimately lead to the Judicial Committee advising the President that the Chief Justice ought to be removed from office.

I have also had regard to the *Statements of Principle and Guidelines for Judicial Conduct*, first produced in 2011 and subsequently published by the Judicial Education Institute of Trinidad and Tobago in 2017, which provide important and authoritative guidance, including objective and widely recognised criteria against which judicial conduct can be assessed, albeit (as is clear from the final recital) they are not, and are not to be used as, a code or list of prohibited behaviours defining judicial misconduct under section 137.

I have also borne in mind that it is not for me to try to resolve conflict or uncertainty in the available evidence; rather, my task is to decide whether the question of removing the Chief Justice ought to be investigated. Nevertheless, whilst questions of fact, assessment of the seriousness of any misbehaviour and the question of removal are matters for the tribunal and/or Judicial Committee, clearly the ‘test’ formulated in Rees –v– Cranerequires some consideration at least of matters such as the nature and quality of the material provided in support of any complaint, as well as of the potential seriousness of the complaint. Effectively, therefore, the test sets threshold requirements, in respect of matters which, in the event of a representation to the President, are for the tribunal and, if referred to it by the President, the Judicial Committee to determine.

Turning to the complaints, I note that the Committee found some of the allegations to be insufficiently substantiated. I have confined my consideration to the complaints which are maintained.

*Judicial security arrangements*

The remaining complaints concerning judicial security arrangements relate to: (a) an alleged WhatsApp message from the Chief Justice to Dillian Johnson, and (b) Seepersad J’s police escort (the Report refers in paragraph 2 to Rampersad J but this is clearly a mistake).

*Alleged WhatsApp communication with Johnson*

This complaint is set out in paragraphs 43-45 of the Report. It is maintained despite the complaint that the Chief Justice attempted to persuade judges to engage the services of a private security firm with which Johnson was concerned not being pursued (see paragraphs 14-17 of the Report).

The Report notes (paragraphs 27 and 51) that the Chief Justice did not deny the WhatsApp exchange. In the Addendum Report, however, the Committee refers to a letter dated September 14th 2018 from the Chief Justice’s attorneys, which stated: *‘As for allegedly seeking to influence Judges’ private security… Your reference to, and apparent reliance on, fabricated WhatsApp messages is misplaced’*. Although the correspondence to which the Chief Justice’s attorneys were responding referred also to other WhatsApp messages, it would seem clear from the context that the reference to *‘fabricated WhatsApp messages’* included the alleged WhatsApp message in question.

In any event, I note that Ms. Renne (though she claimed to be confident of the authenticity of the various WhatsApp messages in her possession) was not prepared to reveal the identity of her source. Thus, as the Committee put it (paragraph 50 of the Report), *‘[s]hort of interviewing Johnson ourselves and obtaining a statement from him, we are therefore reliant entirely on Ms. Renne’s report of what she was told by her source and Mr. Johnson’* – Johnson, according to Ms. Renne, having verified the message. Even if Johnson, who is said to have left the country in *‘dramatic circumstances’* (paragraph 9 of the Report), could be interviewed, the reliability of his evidence would clearly be doubtful; apart from anything else, he has been convicted of an offence of forging the signature of a judicial officer.

There must, therefore, be very considerable doubt as to whether the complaint relating to the disputed WhatsApp exchange (based as it is on an apparently disputed document provided by an unidentified source and being otherwise uncorroborated) between the Chief Justice and Johnson could be substantiated. I consider that I am entitled to, and should, take both the paucity and poor quality of the evidence in this regard into account in considering this complaint.

Furthermore, whilst if proved, the disputed WhatsApp communication would evidence both that *some* discussion had taken place between the Chief Justice and Johnson and the Chief Justice and some judges, I also very much doubt whether, without more (and there is no other evidence), it would in any event be considered serious enough to require removal from office.

I note also (as the Report acknowledges) that what Johnson is reported to have told Ms. Renne did not advance the inference which the Committee suggested could be drawn from the WhatsApp message, namely that *‘Johnson may have been seeking out security opportunities… and the Chief Justice was facilitating that by speaking to judges about changing their security’* (see paragraphs 46-48 of the Report). Thus, even if Johnson could be interviewed, quite apart from the reliability of his evidence, there must also be doubt as to whether he would add anything that might assist in relation to the alleged WhatsApp communication.

In all the circumstances, I have decided that the alleged WhatsApp communication does not provide a sufficient basis for concluding that the question of the Chief Justice’s removal ought to be investigated.

*Seepersad J’s police escort*

As to the complaint that the Chief Justice cancelled Seepersad J’s police escort (see paragraphs 102-108 of the Report), based on the material you have provided, I have proceeded on the assumption that the Chief Justice instructed the police to discontinue the police escort the day after the judge wrote to him, informing him of concerns he had for his safety and that of his family, and noting that the police escort which had previously been discontinued had been reinstated.

It would appear that the Chief Justice, through Ms. Pierre, informed Seepersad J that the Senior Superintendent, Special Branch, had confirmed that the police escort was requested by the judge and instituted at his insistence, and that a draft risk assessment submitted to the Commissioner of Police for his approval did not recommend a police escort. It is difficult to conceive of the Chief Justice communicating this information to Seepersad J unless he had been so informed by the police. And there is no suggestion or allegation that the Chief Justice fabricated this account.

On the other hand, according to an undated document which appears to be a communication from Seepersad J (possibly an email, though to whom is unclear), and which refers to *‘my letter to the Commissioner’*, not only was Seepersad J never provided with the risk assessment, but both the Commissioner and Inspector Knutt (possibly Knott) had *‘indicated that there was no interim report’*. (There is a letter from Seepersad J to the Commissioner dated May 29th 2017 regarding the cancellation of the police escort and the risk assessment but no reply from the Commissioner.)

It is not for me to attempt to resolve this apparent conflict in evidence. But as I have noted, there is no suggestion or allegation that the Chief Justice fabricated the account provided to Seepersad J by Ms. Pierre.

It is clear from what appears to be a letter or an email from Seepersad J to his fellow judges that he had a number of other concerns apart from security. None of these, however, are the subject of any complaint by the Law Association about the Chief Justice. No broader complaint, for example relating more generally to the Chief Justice’s conduct towards Seepersad J is made. Nor is the complaint said to be connected in any way with the complaint relating to the alleged WhatsApp communication with Johnson.

Other than, (a) summarising the evidence and chronology (paragraphs 102-108 of the Report), (b) surmising that presumably the information given by Ms. Pierre to Seepersad J was the explanation for the discontinuance of the police escort (paragraph 105), (c) noting Seepersad J’s concern that he was not consulted before the police escort was discontinued (paragraph 107), and (d) noting that an attempt by Seepersad J and other judges to arrange a meeting with Chief Justice was unsuccessful (paragraph 108), the Committee draws no conclusions and makes no specific allegation or complaint in the Report. In the Executive Summary, the Committee states merely (paragraph 57) that *‘[the] security detail was discontinued unilaterally by the Chief Justice without discussion or consultation with the judge.’*

Whilst the Chief Justice might possibly be criticised in the latter respect, I am of the view that it is very difficult to see how this complaint could be found to amount to such serious misbehaviour as to require removal from office, and I have decided that it does not require investigation. I note that, in relation to this complaint, Dr. Alexis advised that *‘[t]he way the Chief Justice handled the issue of security for Mr Justice Seepersad may be unfortunate but cannot constitute inability or misbehaviour.’* See paragraph 7.14 of his Opinion.

*HDC complaints*

Whilst the evidence on which each of the HDC complaints depends is different, the gravamen of two of them is the same, namely that the Chief Justice acted at the behest of Romero, regardless of the merits of the applications; in other words, the complaint is that he made the recommendations merely because Romero asked him to. Additionally, it is suggested that he asked that various applications be fast-tracked.

In considering these complaints, I have borne in mind paragraph 3.12 of the *Statements of Principle and Guidelines*, which provides: *‘A judge shall not use or lend the prestige of the judicial office to advance his private interests or those of a member of the judge’s family or of anyone else, nor shall a judge permit others to convey the impression that anyone is in a special position to influence the judge in the performance of his duties’.*

Despite suggestions that Romero used his relationship with the Chief Justice in connection with his fraudulent scheme, there is no suggestion that the Chief Justice permitted Romero to convey to any of his victims the impression that he (Romero) was in a special position to influence the Chief Justice. Nor is there any evidence that the Chief Justice was aware of Romero’s fraudulent activities when any recommendations for housing were made. The Chief Justice’s attorneys’ letter of September 14th 2018 stated: *‘As for Kern Romero, it was the Chief Justice’s actions that triggered the police involvement that resulted in Mr. Romero’s eventual conviction. Thus, at no time did the Chief Justice countenance the improper use of his name in connection with any fraud.’*

The lack of any evidence that the Chief Justice was aware of the criminal proclivities of either Romero or Johnson (and therefore knowingly associated with persons engaged in criminal activities) rules out any allegation that he associated, or developed close personal relationships, with persons engaged in criminal activities, as set out in paragraph 3(iii) of the Executive Summary. There is no such complaint or allegation in the Report (although it is possible that the redacted third allegation in paragraph 2 of the Report was in similar terms) and no such complaint is pursued.

As to the suggestion by Dr. Alexis (in paragraph 7.13 of his Opinion) that the Chief Justice must expect to have to answer in respect of his association with Romero and Johnson, the Addendum Report acknowledges that if the Chief Justice was unaware of their criminal proclivities, there would be no basis for concern that, in forming close personal relationships with them, he had shown a lack of judgment. I note also paragraph 29 of the Executive Summary, which makes it clear that the Committee’s concern as to lack of judgment related to the criminal activities of Romero and Johnson, and that the Committee had no evidence to contradict the Chief Justice’s statement that he was unaware of their criminal activities.

Turning to the specific complaints, in his press release dated December 15th 2017 the Chief Justice stated that in 2015, he *‘did forward the names of some needy and deserving persons to the [HDC] for such consideration as might be appropriate.’* He denied, however, recommending Johnson. I have therefore borne in mind that the Chief Justice accepts that he put forward *some* people for HDC housing.

*First HDC complaint*

The first HDC complaint is that the Chief Justice contacted me by WhatsApp, recommending Dylan Huggins, Carol Williams and Felicia Pierre for HDC housing, or seeking my assistance in obtaining HDC housing for them (see paragraphs 53-54 & 99-101 of the Report). According to the Report, Ms. Renne told the Committee that she had seen a WhatsApp message from the Chief Justice to me recommending HDC housing for these three individuals. The Committee suggests that *‘[i]f true, it can be inferred that the Chief Justice sought the Prime Minister’s assistance because Romero, a person with whom he was personally involved, asked him to do so’* (paragraph 54 of the Report). The Committee relies for this on (a) the connection between the Chief Justice and Romero, and (b) the connection between two of the individuals and Romero, on the basis that they were victims of his fraud.

Ms. Renne told the Committee that she did not have a copy of the WhatsApp message and she did not disclose her source. The complaint therefore depends on her claim to have seen a WhatsApp message (the content of which she related to the Committee), the connection between the Chief Justice and Romero and, as regards the connection between the three individuals (or at least two of them) and Romero, a statement given by Huggins to the police.

I can confirm that there I have not received from the Chief Justice nor have I sent any WhatsApp messages to him regarding HDC housing, nor indeed have I had any communication with the Chief Justice regarding HDC housing. Further I have no records from or to the Chief Justice regarding HDC housing.

Clearly I cannot ignore this fact, which effectively disposes of this complaint.

Additionally, however, I note discrepancies in the other evidence relied on.

According to the typed note of the Committee’s interview with Ms. Renne, *‘[t]he three names in the message were Dylan Huggins, Carol Williams and Casey Edwards.’* The name Casey Edwards is different to the third name given in the Report – Felicia Pierre. Further, in his statement, Huggins mentions his aunt, whose name he gives as Carol Rivers (not Williams), and Felicia Pierre. He says that he told his aunt and Ms. Pierre about Romero’s ‘offer’ but only mentions his aunt doing a deal with Romero.

*Second HDC complaint*

The second HDC complaint is that the Chief Justice recommended a number of other (unidentified) people for HDC housing because Romero asked him to. This complaint depends on (a) an alleged internal HDC email from Siama Fonrose to Lauren-Ann Legall, dated August 5th 2015, with the subject heading *‘Chief Justice’*, seeking an update in respect of *‘names forwarded by the Chief Justice’* set out in a table; and (b) information provided to the Committee by Ms. Renne, to the effect that that she had spoken to some of the individuals and that they were *‘clients’* of Romero, who had been successful in obtaining housing. Again, the Committee suggests that the inference to be drawn is that the Chief Justice merely acted on Romero’s request. See paragraphs 57-59, 64, 99 & 100 of the Report.

The evidential basis for this complaint is likewise problematic. First, the authenticity of the email is uncertain (see paragraph 65 of the Report). Ms. Renne has said that she was provided with the email by *‘her source at the HDC’* but has not identified the source (see the Committee’s letter to the Chief Justice’s attorneys dated September 5th 2018). Mr. Brent Lyons, the Managing Director of HDC, noted *‘stark inconsistencies in the print layout of the email which does not match prints from our email server’*, and stated that HDC was therefore *‘unable to verify the authenticity of the email’*.

Additionally, Mr. Lyons informed the Committee that, other than two recommendations made in 2013, HDC had not been able to find any record of recommendations (or of any attempt by the Chief Justice to fast-track applications), or to identify any current officer or employee who had communicated with the Chief Justice in relation to housing. Ms. Legall no longer worked for the HDC, but Ms. Fonrose, to whom the alleged email was shown, had no recollection of it, but accepted that it was possible that she sent *‘such an email’*. She however denied having ever spoken with the Chief Justice.

The Committee tentatively suggests (paragraph 67 of the Report) that, since one would not expect a recommendation by the Chief Justice to be readily forgotten, the fact that Ms. Fonrose did not deny sending the email, together with her acceptance that she might have sent such an email, provides some support at least for the Chief Justice having submitted the names in the email for consideration. It is however doubtful how much weight should be given to this suggestion, bearing in mind the large number of recommendations received by the HDC from ‘officials’ according to Ms. Jearlean John, its former Managing Director (see her letter dated January 12th 2018).

Bearing in mind the inquiries made by the Committee and the investigation carried out by Mr. Lyons/HDC in order to respond to the Committee, it must also be doubtful whether, in the event of further investigation, the evidential position in respect of the alleged email or HDC’s records would change.

An additional problem in respect of this complaint is that, whilst Ms. Renne told the Committee that she had spoken to some of the applicants named in the alleged email and that they were ‘clients’ of Romero, she said that she was not at liberty to reveal their identity. The link between some unidentified applicants (the number being unclear) and Romero depends therefore entirely on the non-specific hearsay evidence of Ms. Renne. And whilst efforts might be made to contact the individuals named in the alleged email, clearly there is a very real possibility, if not likelihood, that none would be prepared to assist; they did not want to be identified by Ms. Renne and they would have every reason not to confirm their involvement with Romero’s fraudulent scheme.

*Third HDC complaint*

The third HDC complaint is that the Chief Justice contacted a senior HDC manager and made recommendations for housing, and asked that they be ‘fast-tracked’.

This allegation relies, in part, on WhatsApp messages, which Ms. Renne claims to have seen (but has not provided) from the Chief Justice to a senior HDC manager. Additionally, Ms. Renne told the Committee that she had spoken with the senior HDC manager who confirmed that the Chief Justice had sent WhatsApp messages to him/her and also telephoned him/her with a view to applications being fast-tracked. The source of the alleged WhatsApp messages is unclear, and Ms. Renne has declined to identify the manager. The Committee was left with the impression that it was Ms. John. See paragraphs 57, 61, 81, 91 & 95 of the Report.

If Ms. John *was* the source of the WhatsApp messages and/or Ms. Renne’s information, the extent to which she would be prepared to provide information ‘on the record’ must be very doubtful. Equally, if she was the source of the alleged internal email, that would raise further questions, since she told the Committee that she was denied access to all HDC records after being removed as Managing Director in December 2015, and has both said and reiterated that *‘all documentation in this matter concerning your request would lie in the records of the [HDC]’* (see her letter of January 12th 2018 and email of February 16th 2018).

The President of the Committee also spoke with another unidentified former officer of HDC, who told him that he was in Ms. John’s presence on an occasion when the Chief Justice telephoned her, and from what he heard of the conversation it was about certain applications for HDC housing. He provided no further detail however. See paragraphs 11, 82 & 95 of the Report.

Additionally, according to the Report, a third former senior HDC employee told the Committee that Colin Edwards, whom he knew to be a friend of the Chief Justice, had contacted him in 2015 and asked him to intervene/seek favourable consideration on behalf of two applicants for HDC housing (see paragraphs 12, 84 & 95 of the Report). There is a note of a meeting between the Committee and this former HDC employee, which suggests that Colin Edwards was a colleague of his and does not say that he was a friend of the Chief Justice. According to the note, he said: *‘I think Colin told me that [the two people seeking HDC housing] may have been working with the CJ and possibly at his house though I cannot expressly recall.’*  If true, this would tend to suggest that the Chief Justice knew the two people personally. I also note that he asked: *‘One of the things I wanted to ask you about was whether it was all so unethical? If he wanted to help somebody… is that so wrong?’*

Clearly, there is evidence to suggest *some* contact between the Chief Justice and the HDC, as indeed the Chief Justice accepts there was. And even if the hearsay information provided by Ms. Renne about the alleged WhatsApp messages and her contact with a senior HDC manager is ignored, by enlisting the assistance of Edwards, the Chief Justice may have gone further than merely putting forward names for consideration – assuming the evidence given to the Committee in that respect to be true.

But if so, it does not necessarily follow that any contact between the Chief Justice and the HDC went further than the Chief Justice suggested in his press release, or that it was inappropriate. HDC policy provides for 25% of available housing to be allocated on the recommendation of the Minister in special cases/emergencies. It would not necessarily be inappropriate, when recommending an applicant believed to be deserving of special or urgent consideration, to go further than merely putting forward the person’s name. Any communications there may have been by the Chief Justice might be justified on this basis, bearing in mind that in his press release he referred specifically to forwarding the names of *‘needy and deserving persons’.*

Be that as it may, even if the Chief Justice went further than he ought to have done in relation to any applicant, it is unlikely that it could justify removal from office, at any rate if he did not do so merely at the behest of Romero. He might in such circumstances be criticised for a lack of judgment; but not for such serious misbehaviour as to require removal. I therefore consider that the third HDC complaint stands or falls with the first and second HDC complaints.

*Conclusions regarding the HDC complaints*

I do not consider that there is a *‘prima facie sufficient basis in fact’* (per Rees –v– Crane) that the Chief Justice acted at the behest of Romero in making recommendations, i.e. effectively that he used his office to promote applications to which he gave no independent consideration, such as to warrant a representation to the President.

As I have said, I have no recollection of having received any WhatsApp or any other communication from the Chief Justice regarding HDC housing nor have I sent any form of communication to him. The consequence of this is that the case against the Chief Justice in respect of the HDC housing complaints is considerably weaker, bearing in mind the doubtful status of the alleged HDC email and the non-specific hearsay evidence on which the second HDC complaint depends. The fact that the alleged WhatApp communication with me is likely to have been a fabrication (since I never sent nor received any such communication) also raises the distinct possibility that someone sought falsely to implicate the Chief Justice.

In all the circumstances, I consider that I am entitled to have regard to the conspicuous weakness and non-specific hearsay nature of the evidence touching on the second HDC complaint. Again, I bear in mind the limits of my function. Paucity and weakness of evidence (problems which feature in all the HDC complaints) however, as well as very considerable doubt as to the prospects of further and/or specific non-hearsay evidence being forthcoming, are plainly relevant considerations. In particular, where matters have been investigated (as in this case by the Committee), the evidence that has emerged from that investigation and what more might be forthcoming in the event of a representation to the President are relevant considerations.

There is a further consideration, namely that there is no direct evidence that the Chief Justice recommended anyone for housing merely because Romero asked him to; rather (and in some ways unsurprisingly) the complaint in that respect depends on inference. The inference does not however necessarily follow, even if the Chief Justice *was* asked by Romero to make recommendations; rather it would only be a possible inference. He might, for example, have considered what Romero told him about prospective applicants before making any recommendation. The inference that he simply acted, without any consideration, at Romero’s behest would be no more likely than this alternative in my view. Though, again, ultimately a matter for any tribunal, the uncertainty in this respect is a further relevant consideration, given the other matters to which I have referred.

The conclusion I have reached in all the circumstances therefore is that the HDC complaints have an insufficient basis in fact to warrant a representation to the President that the Chief Justice’s removal ought to be investigated.

Having considered the various complaints, I have therefore determined that a representation to the President is not warranted.

**Yours sincerely,**

**Dr. Keith Christopher Rowley MP**

**Prime Minister**