

**Randolph Trueman Toussaint**

*Appellant*

v.

**The Attorney General of  
Saint Vincent and the Grenadines**

*Respondent*

FROM

**THE COURT OF APPEAL OF  
SAINT VINCENT AND THE GRENADINES**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 16<sup>th</sup> July 2007

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*Present at the hearing:-*

Lord Hoffmann  
Lord Hope of Craighead  
Lord Scott of Foscote  
Lord Walker of Gestingthorpe  
Lord Mance

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*[Delivered by Lord Mance]*

1. The appellant, Mr Toussaint, appeals against a decision of the Court of Appeal dated 14 March 2005. The Court of Appeal allowed his appeal against a decision of Blenman J dated 25 May 2004 to strike out certain paragraphs of the appellant's claim and affidavit in support, but did so only on a limited basis. Mr Toussaint's claim is against the Government for constitutional relief in respect of what he alleges to have been discriminatory and/or illegitimate expropriation of property, and he seeks in his claim form dated 6 October 2003 to rely upon a statement allegedly made by the Prime Minister during the budget debate in the

House of Assembly on 5 December 2002. The Court of Appeal held that, no permission having been given by the Speaker for its use in court, the statement was inadmissible under s. 16 of the House of Assembly (Privileges, Immunities and Powers) Act 1966 (“the Privileges Act 1966”). But it also held that, if and when the debate and proceedings on 5 December 2002 are printed by the Government Printer (an event which, perhaps surprisingly, has not yet occurred), they would become admissible in that form under s. 40 of the Evidence Act 1988. The appeal to the Board thus raises questions about the use in support of a claim for constitutional relief of a ministerial statement made in the House of Assembly. It also raises an issue about costs under Part 56.13(6) of the Eastern Caribbean Civil Procedure Rules 2000, which applies to administrative law proceedings.

2. Mr Toussaint was in 1990 the Commissioner of Police of The Saint Vincent and The Grenadines Police Force. In that year, he bought 12,957 sq. ft. of land in Canouan in the Grenadines from the Development Corporation for \$6,478.50. Its sale and conveyance to him were subject to covenants in schedule 2 that no (re)sale would take place without the Corporation’s agreement, that the land would be developed within three years and that failure to develop it would mean its reversion to the Corporation at the original selling price. However, in 1993 Mr Toussaint sought and evidently obtained a three year extension in respect of the covenant to develop, and in 1996 he sought and obtained a deed of release from all the schedule 2 covenants.

3. The government of the Islands changed and on 26 March 2002 the respondent, the Attorney General, wrote asserting that the land had to Mr Toussaint’s knowledge had development potential, that it had been sold at a low price not reflecting its fair market value because of Mr Toussaint’s close relationship with the previous government, and that “the entire process was patently wrong”. She required him to pay \$84,220.50 (evidently representing the alleged shortfall of the price paid below the market value in either 1990 or 2002) plus stamp duty forthwith. This request not being met, she wrote again on May 9, 2002 to say that “the Government is now providing you with an opportunity to return the said land to the State and be refunded the purchase price which you paid”.

4. On 5 December 2002 the Prime Minister during the budget debate in the House of Assembly made the statement upon which Mr Toussaint wishes to rely. It explained why the cabinet had, that day, taken a decision compulsorily to purchase Mr Toussaint’s land under the Land Acquisition Act 1946 (No. 22 of 1946) and to publish an extraordinary Gazette containing a declaration to that effect. The budget debate was

televised and Mr Toussaint watched it, and later obtained what he says is a videotape, the transcript of which is before the Board.

5. On the same day, the Prime Minister's Office caused the issue and publication of a declaration in the Government Gazette (Extraordinary) to the effect that the Governor-General, acting in accordance with the advice of the Cabinet and pursuant purportedly to s. 3 of the Land Acquisition Act 1946, considered that Mr Toussaint's land "should be acquired for a public purpose, to wit, a Learning Resource Centre for the people of Canouan", such acquisition to take effect upon the second publication of the declaration, which in fact occurred on 10<sup>th</sup> December 2002. The declaration said nothing about any compensatory payment. But on 12 March 2003 the Lands and Surveys Department wrote telling Mr Toussaint that \$9,717.80 had been deposited at the Treasury Department in his name, being "payment (plus interest at the rate of 5% over a period of ten years)" for the land acquired by him in 1990. The compulsory acquisition purportedly affected was thus not at the alleged market value, but at the original purchase price, plus 5% per annum simple interest.

6. Mr Toussaint claims that the Prime Minister's statement during the budget debate on 5 December 2002 shows the true reasons for the acquisition. He alleges that these were political. He also alleges that the public purpose of a Learning Resource Centre alleged in the declaration was "a sham and a stratagem to deprive him of his land unlawfully".

7. The Attorney General's application to strike out relied on s. 46 of the Constitution, on ss. 3, 4 and 16 of the Privileges Act 1966 and on s. 40 of the Evidence Act 1988. As developed before the Board, the Attorney General's case also rests substantially upon article 9 of the Bill of Rights 1689 and the wider common law principle concerning freedom of speech and parliamentary privileges and immunities discussed in *Prebble v. Television New Zealand Ltd.* [1995] 1 AC 321. The Board will start with the relevant constitutional and other legislative provisions:

*The Constitution*

"46. Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the members and officers of the House and of other persons concerned in the business of the House or its committees, no civil or criminal proceedings may be instituted against any member of the House for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise."

*The Privileges Act 1966*

“3. Neither the Speaker nor any officer of the House shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer by or under the Constitution, this Act or any order of the House.

4. No civil or criminal proceedings may be instituted against any member –

- (a) in respect of words spoken before;
- (b) in respect of words written in a report to; or
- (c) by reason of any matter or thing brought by petition, bill, motion or otherwise, before –

the House or a committee thereof.

16. No evidence relating to any of the following matters, that is to say –

- (a) debates or proceedings in the House;
- (b) the contents of the minutes of evidence taken or any document laid before the House or a committee or any proceedings of or before, or any examinations had before the House or any such committee,

shall be admissible in any proceedings before a court or person authorised by law to take evidence, unless the court or such last mentioned person is satisfied that permission has been given by the Speaker for such evidence to be given.”

*Evidence Act 1988*

“All documents purporting to be copies of the debates and proceedings of the House of Assembly or of papers presented to the House of Assembly, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof in all courts.”

*Article 9 of the Bill of Rights 1689:*

“That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.”

8. The Court of Appeal was clearly correct in considering neither s. 46 of the Constitution nor s. 4 of the Privileges Act 1966 to be of present moment. These sections concern only proceedings against members of the House for or in respect of words or conduct within the House. The present proceedings are against the executive for action taken outside the House. The Court of Appeal also correctly identified s. 16 of the

Privileges Act 1966 as on its face applicable: Mr Toussaint is seeking to rely on evidence relating to a debate in the House without any permission to do so from the Speaker, and s. 3 of the Constitution affirms the independence of the Speaker from any judicial control in respect of the exercise of his powers. Mr Clayton QC's response is that s. 16 must yield on the particular facts to Mr Toussaint's constitutional right to access to justice in respect of his complaint of discrimination and/or expropriation. Mr Astaphan SC submits on the other hand that there is not merely an evidential bar under s. 16, but also a fundamental constitutional bar to any investigation of or reference to what the Prime Minister may or may not have said, based upon article 9 of the Bill of Rights and the wider common law principle.

9. Finally, it is common ground that the Court of Appeal was in error in the potential significance attached to s. 40 of the Evidence Act 1988. Mr Clayton accepts that, all else failing, that section cannot enable Mr Toussaint to rely on the Prime Minister's statements in the House, even after printing by the Government Printer of the debate and proceedings on 5<sup>th</sup> December 2002. S. 40 is merely machinery by which otherwise admissible evidence of matters occurring in the House of Assembly may be adduced. It cannot itself make admissible evidence of matters which are privileged from use, whether under s. 16 of the Privileges Act 1966 or under article 9 of the Bill of Rights or under the wider common law principle.

10. Against this background, the Board turns to article 9 of the Bill of Rights and the wider common law principle identified in *Prebble*. Article 9 precludes the impeaching or questioning in court or out of Parliament of the freedom of speech and debates or proceedings in Parliament. The Board is concerned with the proposed use in court of a statement made during a parliamentary debate. But it notes in passing that the general and somewhat obscure wording of article 9 cannot on any view be read absolutely literally. The prohibition on questioning "out of Parliament" would otherwise have "absurd consequences", e.g. in preventing the public and media from discussing and criticising proceedings in parliament, as pointed out by the Joint Committee on Parliamentary Privilege, paragraph 91 (United Kingdom, Session 1998-1999, HL Paper 43-I, HC 214-I). On the other hand, article 9 does not necessarily represent the full extent of the parliamentary privilege recognised at common law. As Lord Browne-Wilkinson said in *Prebble* at p. 332C-D, there is in addition:

"a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective

constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges.”

11. In *Prebble* the defendants, in answer to a claim by a minister for defamation, wished to aver that the minister had made misleading statements in the New Zealand House of Representatives to the effect that the government did not intend to sell state assets when he was conspiring to do just that, and that the conspiracy had been implemented by dishonestly and improperly introducing legislation into the House. Lord Browne-Wilkinson said at p. 332F-G:

“According to conventional wisdom, the combined operation of article 9 and that wider principle would undoubtedly prohibit any suggestion in the present action (whether by way of direct evidence, cross-examination or submission) that statements were made in the House which were lies or motivated by a desire to mislead. It would also prohibit any suggestion that proceedings in the House were initiated or carried through into legislation in pursuance of the alleged conspiracy.”

12. Lord Browne-Wilkinson went on at pp. 332G-337A to reject the defendant’s submissions that the principle only operated to prevent questioning in proceedings asserting legal consequences against the maker of the statement for making the statement, or in proceedings brought by the member of Parliament making the statement. The “basic concept” was that members of the House and witnesses before committees should be able to:

“speak freely without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness *at the time he speaks* is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks he would not know whether or not there would subsequently be a challenge to what he is saying (p. 334B-C).”

13. At p. 336G-H, Lord Browne-Wilkinson identified three issues as in play in cases such as the present: the need to ensure that the legislature can exercise its powers freely on behalf of its electors, the need to protect freedom of speech and the interests of justice in ensuring that all relevant evidence is available to the courts. He said that, while the first of these

must prevail, the other two cannot be ignored. Summarising the resulting position, he said at p. 337A-B:

“For these reasons (which are in substance those of the courts below) their Lordships are of the view that parties to litigation, by whomsoever commenced, cannot bring into question anything said or done in the House by suggesting (whether by direct evidence, cross-examination, inference or submission) that the actions or words were inspired by improper motives or were untrue or misleading. Such matters lie entirely within the jurisdiction of the House, subject to any statutory exception such as exists in New Zealand in relation to perjury under section 108 of the Crimes Act 1961.”

14. He continued with these important words:

“However, their Lordships wish to make it clear that this principle does not exclude all references in court proceedings to what has taken place in the House.”

15. He then discussed the separate right which the United Kingdom Parliament used, until 1980, to assert, to restrain publication of its proceedings, and observed that this had given rise to confusion in some authorities between the right to prove the occurrence of Parliamentary events and the embargo on questioning their propriety (p.337C-D). He concluded at p. 337F-G that the judge had been right to strike out the defendant’s pleadings so far as they relied on matters in Parliament as part of the alleged conspiracy or its implementation, but added that:

“Their Lordships wish to make it clear that if the defendant wishes at the trial to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning there is no objection to that course.”

16. Consistently with this, the House of Lords has on a number of occasions stated that use may be made of ministerial statements in Parliament in judicial review proceedings. *R v. Secretary of State for the Home Department, ex p. Brind* [1991] 1 AC 696 is an example noted by Lord Browne-Wilkinson in *Pepper v. Hart* [1993] AC 593, 639F. Similar recognition of this “established practice” is found in the speeches in *Wilson v. First County Trust Ltd. (No. 2)* [2003] UKHL 40; [2004] 1 AC 816 of Lord Nicholls of Birkenhead (para. 60), Lord Hope of Craighead (para. 113) and Lord Hobhouse of Woodborough (para. 142). Further examples were noted in the Report of the Joint Committee on Parliament

Privilege quoted by Lord Bingham of Cornhill, giving the opinion of the Board in *Buchanan v. Jennings* [2004] UKPC 36; [2005] 1 AC 115, paragraph 16.

17. In such cases, the minister's statement is relied upon to explain the conduct occurring outside Parliament, and the policy and motivation leading to it. This is unobjectionable although the aim and effect is to show that such conduct involved the improper exercise of a power "for an alien purpose or in a wholly unreasonable manner": *Pepper v. Hart*, per Lord Browne-Wilkinson at p. 639A. The Joint Committee expressed the view that Parliament should welcome this development, on the basis that "Both parliamentary scrutiny and judicial review have important roles, separate and distinct in a modern democratic society" (para. 50) and on the basis that "The contrary view would have bizarre consequences", hampering challenges to the "legality of executive decisions by ring-fencing what ministers said in Parliament", and "making ministerial decisions announced in Parliament ... less readily open to examination than other ministerial decisions"(para 51). The Joint Committee observed, pertinently, that

"That would be an ironic consequence of article 9. Intended to protect the integrity of the legislature from the executive and the courts, article 9 would become a source of protection of the executive from the courts (para 51)."

18. In *R (Javed) v. Home Secretary* [2001] EWCA Civ 789; [2002] QB 129, the Court of Appeal of England and Wales addressed the position (not directly relevant in the present case) of subordinate legislation tabled and approved in Parliament. It said, correctly in the Board's view, that both article 9 of the Bill of Rights and the wider common law principle accommodate the right and duty of the court to review the legality of subordinate legislation. The court can review the material facts and form its own judgment on the legality of subordinate legislation tabled in both Houses of Parliament and approved there, even though the result might be discordant with statements made in parliamentary debate.

19. The present case is concerned with executive action outside the House of which the Prime Minister gave prior notice to the House in his budget speech. Mr Clayton submits that the Prime Minister's statement in the House of Assembly is relied upon simply for its explanation of the motivation of the executive's action outside the House. The only allegation of impropriety relates to that action. It is *not* alleged that the Prime Minister misled the House or acted improperly within the House. The Prime Minister's statement in the House is relied on for what it says, rather than questioned or challenged. If Mr Clayton is right in these

submissions, then the Board agrees, in the light of the authorities cited above, that the use proposed of the Prime Minister's statement falls squarely within the permissible, though subject still to the need to address the evidential impact of s. 16 of the 1966 Act.

20. Mr Clayton's submissions depend upon the use made of the Prime Minister's statement being limited in the manner indicated in the previous paragraph. As the Board observed in the course of argument, one interpretation of the statement is that the actual motivation of the executive's advice to the Governor-General was not political (as presently pleaded), but was to reverse what the new government perceived as a "scandal" or "injustice" involving the purchase at an under-value of state assets by a "close friend and confidant" of the previous Prime Minister. It would not, of course, follow that this was a proper motive justifying action under s. 3 of the Land Acquisition Act 1946. The Board is not concerned with and says nothing about that.

21. A second point, not raised before the Board but which the Board notes, relates to Mr Toussaint's claim that the reason given in the declaration for compulsory purpose was a sham and stratagem. The Prime Minister in his statement to the House, after explaining the cabinet's decision, went on to read the draft wording of the declaration, including words which appear in the transcript as follows:

"Whereas it is enacted by section 3 of the Land Acquisition Act 1946 that, if the Governor-General considers that any land should be acquired for a public purpose, he may cause a declaration to that effect to be made, and Whereas it is considered by the Governor-General that the undermentioned parcel of land should be acquired for a public purpose, to wit, a Learning Centre for the people of Canouan (*thumping of desks*), now it is hereby declared ....."

22. Section 55 of the Constitution requires the Governor-General to act in the exercise of his functions on the advice of the cabinet. It is the cabinet's purpose in advising the Governor-General which is issue in Mr Toussaint's claim. The Prime Minister in his contemporaneous explanation to the House of the cabinet's decision, leading up to his recitation of the wording of the draft declaration, focused exclusively on Mr Toussaint's acquisition of the land in the early 1990s and his relationship with the previous government. He made no mention of any need or purpose to acquire the land for a Learning Resource Centre. Further, after reciting the wording of the declaration, the Prime Minister reverted to the circumstances of the original acquisition and concluded:

“We have acted, whoever think, whatever individual may think that he possesses a right there is always the law courts. But we cannot sit idly by.”

23. In relation to the points identified in the previous three paragraphs, the Board observes that the meaning of the Prime Minister’s statements to the House is an objective matter. Mr Clayton accepts that Mr Toussaint can only rely on the statements for their actual meaning, whatever the judge may rule that to be. While no suggestion may be made that the Prime Minister misled the House by his statement, Mr Toussaint also remains free to deploy any evidence available to him on the issue whether the public purpose recited in the declaration was a sham – for example, evidence as to the nature and location of the land and the likelihood or otherwise of its being required for a Learning Resource Centre. The Prime Minister’s statement to the House is potentially relevant to Mr Toussaint’s claim as an admission or explanation of the executive’s motivation. If the Prime Minister were to suggest that he expressed himself incorrectly, and did not intend to say what he said, then it would not be Mr Toussaint who was questioning or challenging what was said to the House.

24. The Board turns to the evidential hurdle presented by s. 16 of the Privileges Act 1966. This is buttressed by the provision in s. 3 of the same Act making the Speaker immune from the jurisdiction of any court. The Speaker of the House of Assembly has been requested, but has refused, to give permission for Mr Toussaint to give evidence of the Prime Minister’s statement to the House during the budget debate on 5 December 2002. To overcome this hurdle, Mr Clayton on behalf of Mr Toussaint invokes the protection of the Constitution. He submits that section 16 of the Privileges Act 1966, read literally, represents an unconstitutional bar to Mr Toussaint’s constitutional right of access to the court to enforce his constitutional rights to property and to non-discriminatory treatment, and that it should be construed with such modifications, adaptations or qualifications as necessary to avoid such inconsistency. In particular, it should be read so as to allow the pursuit against the state of a challenge by way of judicial review to state action, such as Mr Toussaint pursues.

25. By section 101 the Constitution is the supreme law of Saint Vincent and the Grenadines, which prevails over and renders void any other law to the extent of any inconsistency. By Part 2 of Schedule 2 to the Constitution, existing laws are, as from the commencement of the Constitution, to be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into

conformity with the Constitution. The Privileges Act 1966 is an existing law.

26. Section 6(1) of the Constitution provides that no property shall be compulsorily taken except for a public purpose and except where provision is made for the payment within a reasonable time of adequate compensation. Section 6(2) goes on to give every person whose interest in property is compulsorily acquired a right of direct access to the High Court for determining the nature and extent of that interest, whether that acquisition was duly carried out in accordance with a law authorising it and what compensation he is entitled to under such law and for obtaining that compensation. Section 13(2) provides that no persons shall be treated in any discriminatory manner by any persons acting by virtue of any written law or in the performance of the functions of any public office or any public authority. Section 16(1) gives a right of access to the High Court to any person alleging that any provision of the Constitution has been, or is likely to be contravened in relation to him, and section 16(2) gives the High Court original jurisdiction to hear and determine any such application and to “make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 of the Constitution”. Section 8(8) supplements this, if necessary, by express provision that any court prescribed by law for the determination of the existence or extent of any civil right or obligation shall be independent and impartial, and that proceedings instituted before any such court shall be given a fair hearing within a reasonable time.

27. The right of access to a court is basic to both sections 8(8) and 16. Fairness, publicity and promptness are (as the European Court of Justice said in *McElhinney v. Ireland* (2001) 34 EHRR 322, para. 33, summarising its reasoning in the previous case of *Golder v. United Kingdom* (1975) 1 EHRR 524) “meaningless in the absence of any protection for the pre-condition for the enjoyment of those guarantees, namely, access to court”. Lord Hoffmann pursued the theme in *Matthews v. Ministry of Defence*[2003] UKHL 4; [2003] 1 AC 1163, paragraph 29:

“29. These principles require not only that you should be able to get to the court room door. The rule of law and separation of powers would be equally at risk if the executive government was entitled, as a matter of arbitrary discretion, to instruct the court to dismiss your action. There are different ways in which one could draft a law to give the executive such a power. It might say that the cause of action was not complete without the government's consent. That would look like a rule of substantive law. Or it could provide that the government could

issue a certificate saying that the action was not to proceed. That looks like a procedural bar. But provided one holds onto the underlying principle, which is to maintain the rule of law and the separation of powers, it should not matter how the law is framed. What matters is whether the effect is to give the executive a power to make decisions about people's rights which under the rule of law should be made by the judicial branch of government.”

Mr Clayton submits that a like objection applies to an apparently unconstrained power over the pursuit of a claim given to the Speaker of a legislature.

28. Mr Astaphan has several responses to Mr Clayton’s submissions. He submits that s. 16 does not affect Mr Toussaint’s cause of action, and that there is no objection to the exclusion from use of certain evidence in support of his cause of action. He submits that there is nothing inconsistent with the Constitution or with Mr Toussaint’s right of access to the High Court in such an exclusion. More fundamentally, he submits that there is no absolute right of access to the courts, and finally he submits that s. 16 is a Parliamentary privilege of a character which has been accepted as legitimate by the European Court of Human Rights.

29. With regard to these submissions, the Board makes these observations. First, any legal system may lay down rules of evidence. But ministerial statements to Parliament constitute a type of evidence, the importance of which is evident and well-recognised in the context of applications for judicial review. The Board has noted above the comment of the Joint Committee on Parliamentary Privilege that it would be “bizarre” if challenges to executive decisions were hampered by ring-fencing what ministers said in Parliament. Ministerial decisions announced in Parliament would be less readily open to examination than other ministerial decisions. A source of protection of the legislature against the executive and the courts would be converted into a source of protection of the executive from the courts and the rule of law.

30. Mr Astaphan’s submission that other means of proving Mr Toussaint’s case may either be, or through disclosure of documents or other procedures become, open to him is speculative, and it amounts to depriving Mr Toussaint of the best possible contemporaneous evidence, made in the most responsible context where a frank explanation would be expected and is all that Mr Toussaint seeks to suggest occurred.

31. Second, the exclusion relied upon by the Attorney General is not a settled rule of evidence exercised on established principles. It depends on

the unexplained and unchallengeable exercise of a discretion by the Speaker of the House of Assembly. Such an exclusion is in the Board's view inherently problematic in the context of a claim for judicial review of executive action. It involves a potentially very significant inroad into the doctrine of separation of powers. Nothing in the nature of, or need to protect, Parliamentary activity requires an officer of the legislature to have so unconstrained a power over the use before the courts, to explain and review executive action, of statements made in Parliament.

32. Third, while it is true that there are situations in which a right of access to the courts may not exist or may be restricted, here the Constitution grants a specific right of access in respect of constitutional violations. Mr Toussaint's complaint relating to wrongful expropriation may fall within section 16, rather than section 6(2) of the Constitution, since he is challenging root and branch the existence of any valid purpose or acquisition under the Land Acquisition Act 1946. But, if that is wrong, the complaint must in the Board's view fall within section 6(2)(b), on which basis that subsection must embrace situations where an acquisition is challenged as being outside the law ostensibly relied upon because motivated by an improper purpose.

33. Finally, although the European Court of Justice has recognised both Parliamentary and state immunity in various cases (cf e.g. *Young v. Ireland* App. No 646/94, *McEhinney v. Ireland* (2001) 34 EHRR 322 and *A v. United Kingdom* (2002) 36 EHRR 393[917]), none of these cases concerns or suggests a parliamentary immunity more extensive than that applicable under article 9 of the Bill of Rights and the wider common law principle. None of them suggests that the European Court would recognise an immunity in respect of statements made in Parliament upon which a citizen wished to rely to explain the motivation of executive action taken outside Parliament. Nothing in them suggests that the European Court would accept that the effective pursuit of a claim for breach of fundamental rights could be made subject to the absolute discretion of the Speaker of a Parliament.

34. In the Board's view, Mr Clayton's basic submissions on s. 16 of the Privileges Act 1966 are well-founded. On the facts of the present case, the Board is satisfied that Mr Toussaint's right of access to the court for constitutional relief would be unduly and effectively undermined, if he were not able to rely upon the Prime Minister's statement in the budget debate on 5 December 2002. S. 16 must be read subject to the modification, adaptation or qualification necessary to enable evidence relating to such a statement to be admissible, where necessary, as in this case, to explain executive action and to enable its judicial review.

35. The Board will therefore humbly advise Her Majesty that the appeal should be allowed and that the Prime Minister's statement made in the House of Assembly during the budget debate on 5 December 2002 is admissible in evidence in support of the appellant's claim in these proceedings, notwithstanding s. 16 of the House of Assembly (Privileges, Immunities and Powers) Act 1966.

36. There remains the issue of costs. The judge at first instance struck out paragraphs in the claim and affidavit based on the Prime Minister's statement and the allegations which she perceived as based thereon. But she noted that it was open to Mr Toussaint to rely on any other grounds for challenging the compulsory acquisition "that are not related to the .... speech during the Budget Debate". She ordered that the costs of the Attorney General's successful application to strike out should be in the cause. The Court of Appeal allowed the appeal (though only by reference to s. 40 of the Evidence Act 1988), but set aside the judge's order for costs and directed that there be no order as to costs in the High Court or Court of Appeal.

37. When making this direction, the Court of Appeal referred to Rule 56.13 of the East Caribbean Civil Procedure Rules 2000. This governs administrative law applications, including applications against the State for constitutional relief or judicial review. Paragraphs (4) and (6) of Rule 56.13 provide:

“(4) The judge may .... make such order as to costs as appear to the judge to be just ....

(6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.”

38. The Court of Appeal's reasoning was that neither party had "acted so unreasonably in making and defending the application to strike out that it took the case outside of the general rule stated in Part 56.13(6) of the Rules", and that the judge's direction would "therefore" be set aside and would be replaced by a direction that there be no order for no costs, and that "for the same reason" there would be no order as to costs on this appeal.

39. The Court of Appeal thus appears to have viewed Rule 56.13(6) as a general rule, not merely that no order for costs would be made *against* an unsuccessful applicant who had acted reasonably, but as a general rule that no order for costs would be made in favour of a successful applicant against the unsuccessful State represented by the Attorney General. The

Board cannot agree with this interpretation of Rule 56.13(6), which is a provision intended to facilitate administrative law applications, not to deprive a successful litigant against the State of the ordinary award of costs in his favour. In the present case, the application to strike out was a discrete application, which has now for all relevant purposes failed.

40. In these circumstances, the Board will humbly advise Her Majesty that the orders for costs made in the courts below should be set aside, and that in lieu thereof there should be an order that the Attorney General should pay Mr Toussaint's costs in the High Court and Court of Appeal, the assessment of such costs pursuant to Rule 56.13(5) to be remitted to the Court of Appeal. The Board will further humbly advise Her Majesty that the Attorney General should pay to the appellant Mr Toussaint his costs of the proceedings before the Board, to be assessed if not agreed.