

## **Maurice Tomlinson v The State of Belize and The State of Trinidad and Tobago**

Citation: [\[2014\] CCJ 2 \[OJ\]](#)  
Date of Judgment: 8 May 2014  
Nature of Judgment: Judgment on special leave  
Composition of the Court: President: D Byron  
Judges: R Nelson, A Saunders, J Wit, and W Anderson

<b>CCJ Application No</b>	<b>Parties</b>
<b>OA 1 of 2013</b>	<b>Applicant</b> Maurice Tomlinson <b>Proposed Respondent</b> The State of Belize
<b>OA 2 of 2013</b>	<b>Applicant</b> Maurice Tomlinson <b>Proposed Respondent</b> The State of Trinidad and Tobago
<b>These Applications were consolidated by Order of the Court dated 17 July 2013</b>	

### **Counsel**

- Applicant:  
Lord Anthony Gifford QC, Ms Anika Gray, Attorneys-at-law
- The State of Belize:  
Mr Nigel Hawke, Ms Iliana Swift and Mr Herbert Panton, Attorneys-at-law
- The State of Trinidad and Tobago:  
Mr Seenath Jairam SC, Mr Wayne D Sturge, Mr Gerald Ramdeen, Mr Kashka Hemans, Ms Nicole Anna Jones and Ms Lesley Almarales, Attorneys-at-law

### **Nature of Dispute**

The dispute involved a claim by Maurice Tomlinson, a homosexual, Jamaican national, that his right to free movement under Articles 45 and 46 of the Revised Treaty of Chaguaramas (RTC) and the Decision of the Conference of Heads of Government of the Caribbean Community (the 2007 Conference Decision) taken in 2007, was prejudiced by the Immigration

Laws of Belize and Trinidad and Tobago because the mere existence of those laws operated to deny him entry based on his sexuality. The Applicant also alleged that differentiated treatment of homosexual nationals in respect of the Immigration Laws of Trinidad and Tobago amounted to a breach of Article 7 of the RTC and his right thereunder to freedom from discrimination based on nationality. The Applicant sought special leave under Article 222 of the RTC to commence separate proceedings against Belize and Trinidad and Tobago. The Court consolidated the two actions.

### **Summary of Legal Conclusions and Orders**

- The Court granted special leave under Article 222 of the RTC with no order as to costs.

### **Legal Provisions at Issue**

- Article 222 of the RTC

### **Other Relevant Community Law / Material Relied on**

- Decision of the Conference of Heads of Government of the Caribbean Community taken at their Twenty-Eighth Meeting (the 2007 Conference Decision)

### **Past CCJ Case Law**

- *Shanique Myrie v The State of Barbados* [2013] CCJ 3 (OJ)
- *Trinidad Cement Limited & TCL Guyana Inc v The State of the Co-operative Republic of Guyana* [2009] CCJ 1 (OJ)
- *Hummingbird Rice Mills Ltd v Suriname and The Caribbean Community* [2011] CCJ 1 (OJ)

### **Other Sources of International Law**

- *Norris v Ireland* (1991) 13 EHRR 186
- *Toonen v Australia Communication* No 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994)
- *Case C-167/73 Commission v France*
- *Case C-58/89 Commission v Germany*
- *Case C-300/95 Commission v United Kingdom*
- *Case C-162/99 Commission v Italy*

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### **Facts**

The Applicant, a Jamaican national, is a homosexual male who had travelled to Belize and Trinidad and Tobago numerous times. Belize and Trinidad and Tobago had never denied entry to the Applicant, but had immigration laws under which they could deny entry to homosexuals. Since learning of the existence of those laws, the Applicant ceased to travel to both territories.

## **Findings**

The Applicant sought special leave of the Court under Article 222 of the RTC to bring proceedings against Belize and Trinidad and Tobago, alleging that his right to free movement under the RTC was prejudiced by the Immigration Laws of Belize and Trinidad and Tobago, under which he could be denied entry because he identifies as homosexual.

Article 222 of the RTC sets out the criteria for the grant of special leave, but at issue in this proceeding was whether the Applicant had established an arguable case that the mere existence of the respective Immigration Acts had resulted in prejudice to the enjoyment of his Community right, within the meaning of Article 222(b).

The Court considered that prejudice in the area of inter-CARICOM movement of nationals is not strictly limited to situations where a CARICOM national has actually been refused entry by a CARICOM Member State. If the national can show that he has good reasons to fear that he will be refused entry on the ground that he is a homosexual, for example because in the past other homosexuals have been refused entry by that State, he would seem to be on solid ground to claim prejudice. In this case, however, the Applicant had not been able to establish any such facts, and the question was whether the very existence of the impugned Immigration Acts constitutes prejudice.

The Court noted international case law from the European Court of Human Rights and the UN Human Rights Committee, which suggests that under certain circumstances the mere existence of legislation, even if not enforced, may justify a person to be considered a victim of a violation of his or her rights under an international human rights instrument. On this basis, the Court considered that it would seem at least arguable that such an approach may also be a possible or proper one under the RTC. For this reason, the Court concluded that the requirements under Article 222 of the RTC had been satisfied and granted the Applicant special leave to bring proceedings against Belize and Trinidad and Tobago.

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*This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.*