



## CARIBBEAN COURT OF JUSTICE

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### **MEDIA RELEASE**

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### **CCJ DISMISSES APPEAL BUT DETERMINES MILITARY OFFENCE LAWFUL**

**Port of Spain, Trinidad and Tobago.** On the 17 April 2024, the Caribbean Court of Justice (“CCJ”) dismissed the appeal in *The Barbados Defence Force v David Anthony Harewood* [2024] CCJ 15 (AJ) BB, and provided reasons for the decision on 19 July 2024. In these reasons the Court indicated that *section 75 of the Defence Act Cap 159* (‘the Act’) met the requirements of legal certainty, and that there is no need for the pre-existence of a written law, rule, regulation, standing order, precedent, or policy proscribing charged behaviour(s) as a pre-condition for laying a charge under *section 75 of the Act* provided there is sufficiency of detail in the statement of the particulars of the offence.

The Respondent was a commissioned officer of the Barbados Defence Force (‘BDF’) serving under the authority of the Barbados Coast Guard. In October 2018, an investigation into suspected criminal activity involving drug trafficking, money laundering, and gun trafficking within the Coast Guard division of the BDF was commenced and in furtherance of this the Respondent was interviewed. Arising out of disclosures which were made during his interview, the Respondent was charged and arraigned on 27 May 2019 on four charges under s 75 of the Defence Act, Cap 159 (‘the Act’). At the court-martial, Charges One and Two were dismissed as a consequence of a successful no case submission. However, on 4 June 2019, the court-martial panel unanimously ruled that the Respondent was guilty in respect of Charges Three and Four. The Respondent appealed to the Court of Appeal. On appeal, the dismissal of Charge Three was conceded during the hearing by the BDF, and the Court of Appeal, casting doubt on the propriety of s 75, found no legal or evidential bases for Charge Four and quashed the decision of the court-martial. The BDF then appealed to this Court.

In dismissing the appeal, the Court considered whether s 75 of the Act offended the rule of law and whether the particulars of the charges laid against the Respondent were in compliance with due process and fair hearing standards.

Section 75 of the Act provided as follows:

Any person who, being subject to military law under this Act, does, or omits to do, any act or thing that is prejudicial to good order and military discipline is guilty of an offence and liable on conviction by court-martial to 2 years imprisonment or any less punishment provided by this Act.

The Honourable Mr Justice Peter Jamadar, in delivering the reasons of the Court, found that the approach of the Court of Appeal to interpreting s 75 was too strict and restrictive, though the concerns that informed it were well founded. Justice Jamadar considered s 75 against the test in *McEwan v Attorney General of Guyana*. The judge explained that a law expressed in broad terms does not necessarily mean that its breadth offends the rule of law requirements for clarity and legality. Justice Jamadar stated that what is essential is that the offence is defined and described with sufficient clarity to enable a person to assess whether their conduct is implicated and can render them liable to be prosecuted.

The purpose of s 75 of the Act was to maintain a disciplined armed force. Similar provisions exist in numerous jurisdictions and have been interpreted and applied without compromising the rights of military officers. Justice Jamadar noted that the language of s 75 is expressed with sufficient clarity to be capable of objective assessment and self-regulation. International military guidelines contain examples of what may constitute an offence falling under the section. Also, the open-endedness of the offence is academically acknowledged and its utility in a military context is accepted.

Following this reasoning, differing from the Court of Appeal, Justice Jamadar found that the language of s 75 of the Act did not offend due process, the protection of the law or the rule of law. It meets the constitutional standard of foreseeability, allowing members of the BDF to understand the consequences of and appropriately regulate their conduct.

In the current case, the particulars of Charge Four lacked sufficient particularity. In a s 75 charge, the constitutional requirements of due process, the protection of the law, and fundamental fairness must be satisfied in the statement of the particulars of the offence, given the broad and general wording of the statutory offence. The BDF was required to expressly allege every element and material detail of a charge with precise particularity.

CCJ President, the Honourable Mr Justice Adrian Saunders in his concurring opinion reinforced that the Constitution of Barbados recognises, even if implicitly, the uniqueness of court-martials and the resulting specialized procedures and rules that exist for the prosecution of service members for transgressions committed in the course of service. The military requires enforcement of the strictest discipline. Courts-martial are specifically designed to ensure that breaches of military discipline and the unique requirements of military life and service are appropriately addressed, not by civilian Magistrates or Judges, but by military personnel. By excluding them from the remit of the normal criminal trial courts the Constitution recognises that courts-martial are best equipped to fulfil this role. However, courts-martial are not exempt from a duty to abide by overarching constitutional values.

The appeal could not succeed as the charge, as laid, lacked the specificity, the particulars, necessary to allow the accused to properly defend himself. This defect implicated the constitutional

right of the accused to the protection of the law. Where a person is charged, they must be told precisely what they are accused of, including the time, place, and manner of commission of the alleged offence. This clarity ensures that the defendant understands the nature of the charges and is able to prepare an appropriate defence. A well-particularised charge also guides the tribunal in the presentation and evaluation of evidence, making it easier for all to focus on relevant facts and determine whether the alleged conduct matches the elements of the charged offence. From that standpoint, the charge laid here was not appropriately framed.

Justice Saunders further indicated that s 75 of the Act is an essential catch-all provision targeting conduct that undermines the maintenance of strict discipline. Service men and women ought to readily appreciate what conduct would disrupt the efficient operation or morale of the armed forces. The prosecution must satisfy the court-martial that the accused person must have known or had reasonable cause to believe that the conduct in question was prejudicial to good order when it was engaged in. The court-martial must ultimately decide whether the conduct was objectively prejudicial and whether it was engaged in intentionally or recklessly.

Justice Saunders emphasised that s 75 is neither vague nor unconstitutional. Provided they are adequately particularised, charges laid under s 75 may be brought and are often conducive to maintaining discipline, unit cohesion, and overall operational effectiveness.

The Court upheld the dismissal of the appeal albeit on different grounds and made no order as to costs.

The members of the CCJ panel were Justices Saunders, Anderson, Rajnauth-Lee, Barrow, and Jamadar. Mr Leslie F Haynes KC, Mr Noah M Haynes, and Mr Kashawn K Woods appeared for the Appellant. Mr Vincent D Watson appeared for the Respondent. Commodore Errington Shurland appeared for Amicus Curiae.

The full CCJ judgment is available on its website at [www.ccj.org](http://www.ccj.org).

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### **About the Caribbean Court of Justice**

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of six judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, five states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Guyana, and Saint Lucia. However, by signing and ratifying the Agreement Establishing the Caribbean Court of

Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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