



Hilary Term
[2026] UKPC 4
Privy Council Appeal No 0015 of 2024

JUDGMENT

Ravi Balgobin Maharaj (Appellant) v The Minister of Finance (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hodge, Deputy President
Lord Briggs
Lord Burrows
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
3 February 2026

Heard on 17 July 2025

Appellant
Anand Ramlogan SC
Mohammud Jaamae Hafeez-Baig
(Instructed by Vishaal Siewsaran, Freedom Law Chambers)

Respondent
Jason Mootoo SC
Thomas de la Mare KC
(Instructed by Blake Morgan LLP)

LORD BURROWS (with whom Lord Hodge and Lord Briggs agree):

1. Introduction

1. Mr Ravi Balgobin Maharaj is a social media journalist and blogger who takes a close interest in the observance of the rule of law. He lives, and pays taxes, in Trinidad and Tobago. At first instance, he was granted leave by Jacqueline Wilson J to bring a judicial review claim challenging the Minister of Finance's appointment of Mr Patrick Ferreira as Chair of the National Insurance Board of Trinidad and Tobago ("the NIB").

2. Although formulated as involving more than one ground of judicial review, including irrationality or *Wednesbury* unreasonableness (labelled after the famous case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223), Mr Maharaj's essential allegation is that the Minister made an error of law in interpreting and applying section 3(2)(d) of the National Insurance Act Chapter 32:01 ("the NI Act") so that the appointment of Mr Ferreira was ultra vires. That subsection requires the Chair of the NIB to be "a person, who in the opinion of the Minister, is independent of the Government, Business and Labour". The allegation is that Mr Ferreira was not independent of the Government, Business and Labour and that, had the Minister applied the correct interpretation of section 3(2)(d), he would not have, and no reasonable Minister could have, appointed Mr Ferreira. Therefore, the essential question raised on this appeal is, what is the correct interpretation of section 3(2)(d) of the NI Act?

3. Having granted leave, the application for judicial review failed (in a rolled-up hearing) before Jacqueline Wilson J: Claim No CV 2022-01181, 19 December 2022. She held that the Minister had correctly interpreted section 3(2)(d) of the Act. Her decision was upheld by the Court of Appeal (Bereaux JA, with whom Rajkumar and Wilson JJA agreed): Civil Appeal No P007 of 2023, 15 September 2023. Mr Maharaj now appeals to the Board (ie the Privy Council).

4. Two recent developments must be mentioned at the outset. The first is that, following a general election in Trinidad and Tobago on 28 April 2025, which resulted in a change of government, Mr Ferreira resigned as Chair of the NIB on 5 May 2025. This means that, as regards Mr Ferreira remaining in office, the judicial review application is hypothetical (or, as it is often described, "academic"). Nevertheless, the question of statutory interpretation in issue is one of general public importance. The answer given by the Board to that question will be central to future appointments of Chairs to the NIB which is an important public position. The Board, in the exercise of its discretion, has therefore decided that, applying the test laid down by the House of Lords in *R v Secretary of State for the Home Department, Ex p Salem* [1999] 1 AC 450 at p 457 (and applied by the Privy Council, on an appeal from the Court of Appeal of Trinidad and Tobago, in *Special Tribunal v Estate Police Association* [2024] UKPC 13; [2024] 1 WLR 4252, at

para 25), there is “a good reason in the public interest” to hear the appeal on the correct interpretation of section 3(2)(d) of the NI Act.

5. The second recent development is that, on the evening before the hearing, the Board was informed that the Minister of Finance was withdrawing his opposition to the appeal. The Board therefore treated the written case for the respondent as an amicus brief and the role of counsel, Thomas de la Mare KC, who had been instructed by the respondent, as being that of an amicus. He attended the hearing but did not make any oral submissions addressing the substance of the appeal.

2. The NI Act

6. Part I of the NI Act establishes the NIB. By section 3(1), it is a body corporate. Section 3(2) explains the NIB’s composition:

“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.”

7. Under section 3(7), the Minister must revoke the appointment of a Director in four specified circumstances. These are being absent from three consecutive meetings except while on leave or if the Director is guilty of such behaviour as to call into question the NIB’s good faith or if the Director becomes bankrupt (and related situations). The fourth specified circumstance is set out in section 3(7)(d) and reads:

“(d) on the representation of the associations most representative of Business or Labour, as the case may be, the Director is no longer a nominee of Business or Labour, as the case may be.”

8. By section 8(1), it is the duty of the NIB to operate and manage the system of national insurance established by the NI Act and it shall have and exercise such functions, powers, and duties as are conferred on it by the Act and any other written law. By section 8(1A), the NIB may exercise and perform such powers and functions as may be approved by the Minister by Order subject to affirmative resolution of Parliament. By section 8(2), in the performance of its functions and duties and in the exercise of its powers the NIB may do all lawful things that are necessary or expedient to secure the due execution of the purposes of the Act.

9. Section 9 reads as follows:

“In the exercise and performance of its functions, powers and duties under this or any other written law the Board shall act in accordance with any general directions of the Government, given to it by the Minister; but subject to this section, the Board shall, when exercising and performing its functions, powers and duties, be subject to the control or direction of no other person or authority.”

10. By section 11, a Director is required to declare a self-interest and to recuse himself or herself from a deliberation or decision in respect of a contract or proposed contract with the NIB in which he or she has any direct or indirect pecuniary interest.

11. Part II of the Act deals with the registration system whereby every employer and employee must be registered for the purposes of the system of national insurance.

12. Part III of the NI Act establishes the system of compulsory national insurance under which employed persons are insured in respect of contingencies in relation to which benefits are provided. The benefits include sickness benefit, maternity benefit, maternity grant, maternity allowance, invalidity benefit, funeral grant, retirement pension, retirement grant, and survivor’s benefit. Contributions for most benefits are paid partly by the employed person and partly by their employer. Payment of contribution by an employed person is effected by their employer deducting the relevant amount from the employee’s earnings.

13. Part IV deals with miscellaneous matters. These include, under sections 60–62, appeals from the decisions of the NIB. Section 60(1) reads as follows:

“The President shall appoint persons to serve on appeals tribunals as follows:

(a) a person who in the opinion of the President is independent of the Government, Business and Labour, as Chairman;

(b) three persons nominated by the Government;

(c) three persons nominated by the associations most representative of Business;

(d) three persons nominated by the associations most representative of Labour;

(e) the Chief Medical Officer.”

14. The President is here referring to the President of Trinidad and Tobago. By section 62(1) appeals to the appeals tribunals are on questions of fact only and appeals on questions of law, and partly of law and partly of fact, go to the High Court and then to the Court of Appeal.

3. Mr Ferreira’s connections with the Government and Business

15. Mr Maharaj’s objections to Mr Ferreira’s appointment rest on Mr Ferreira’s close connections with both the Government and Business. Mr Ferreira was a government-nominated director on the NIB for four years immediately before his appointment as Chair on 20 January 2022. Moreover, he served on the boards of various state enterprises. For example, he was a member of the board of the National Insurance Property Development Company Limited, a wholly-owned subsidiary of the NIB, until 5 March 2022. He also served as a member of the board of Trinidad and Tobago NGL Limited from 30 July 2020; and he was a member of the Board of Management of the Deposit Insurance Corporation, a subsidiary of the Central Bank of Trinidad and Tobago, from 2002 to 2008.

16. More generally, Mr Ferreira was an established businessman. He held a number of positions within the Furness Group of Companies, one of the oldest and largest conglomerates in Trinidad and Tobago. He served as the Chief Executive Officer of three

Furness entities and, as at 26 January 2022, he was Chairman of three other Furness entities.

4. The Minister's explanation for the appointment of Mr Ferreira

17. In his affidavit of 1 June 2022, resisting the judicial review challenge, the Minister of Finance, Colm Imbert, set out his reasons for appointing Mr Ferreira. It is helpful to set out some of the key passages from that affidavit.

“9. I am the Minister to whom the responsibility for appointing Directors to the Board is assigned. As Minister I appointed Mr Ferreira as Chairman of the NIB on 20 January 2022 because in my opinion he was a person who is independent of the Government, Business and Labour even if he is a businessman and was previously appointed a member of the Board, having been nominated by Government. As Chairman, Mr Ferreira does not serve the interests of Government and/or Business and/or Labour but exercises the functions powers and duties conferred on him by the Act.

10. I do not agree that my appointment of Mr Ferreira as Chairman of the Board is in breach of any legislative protocol or against the rule of law and I certainly do not agree that his appointment is in breach of the Act. What the Act requires is that I appoint a Chairman who, in my opinion, is independent of Government, Business and Labour. As far as I am aware, Mr Ferreira is so independent 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 ...

11. I have known Mr Ferreira for upwards of 20 years and from my knowledge of him, gained through our many conversations and interactions, he has been a man of independent thought who expresses his own opinions and judgment. I have also known him to show a keen and genuine interest in the Board and its operations and to promote its best interests. I am also satisfied that he 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 ...

23. Further, the fact that Mr Ferreira previously served as Government's representative on the Board is not something which, in my opinion, rendered him incapable of being independent of the Government on the Board. Several nationals of Trinidad and Tobago have at one time or another represented Government in one capacity or the other or held high public office and have thereafter gone on to hold independent positions or offices and discharge the functions thereof with distinction. Some examples are as follows: former Judges and Chief Justices who held public offices prior to their appointment, a former Minister of Government (Mr Ken Gordon) became Chairman of the Integrity Commission, a former Minister of Government (Mr Gary Griffith) became the Commissioner of Police, a former Minister of Government (Mr ANR Robinson) became President of the Republic and a former Parliamentarian (Mr Nizam Mohammed) became chairman of the Police Service Commission. Former Public Servants have also gone on to be appointed as Chairmen of Public Service Commission.

24. In fact, the fact that a person has served in Government does not, in my opinion, render that person incapable of exercising functions as chairman of an institution in a manner independent of Government influence ...

25. In addition, at the time that Mr. Ferreira assumed the post of Chairman of the Board he was not in any way controlled by or accountable to Government. That continues to be the case to this day. 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.

26. Similarly, the fact that Mr. Ferreira has business interests does not in my opinion render him incapable of being independent as chairman of the NIB ...

28. 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.”

5. The rival submissions and how they fared in the courts below

18. Anand Ramlogan SC, on behalf of Mr Maharaj, submits, as he did in the courts below, that the correct meaning of “independent of the Government, Business and Labour” in section 3(2)(d) of the NI Act is that the person appointed as Chair must not be significantly connected to, associated with, or involved in, the Government, Business or Labour. For shorthand, we can refer to this as the “significant connection” interpretation. Applying that interpretation, Mr Ramlogan submits that Mr Ferreira was not independent given his links to the Government and Business as set out in paras 15–16 above.

19. The contrary submission, put forward on behalf of the Minister of Finance in the courts below, and in his capacity as amicus by Thomas de la Mare KC before the Board, is that the correct meaning of “independent of the Government, Business and Labour”, in section 3(2)(d) of the NI Act, is that the person must not be subject to control or influence by the Government, Business or Labour. As the submission was put at first instance, as recorded by Jacqueline Wilson J at para 21 of her judgment, a candidate must “possess the trait or quality of independence or the personal quality or attribute of independent judgment and thought.”

20. Jacqueline Wilson J, at first instance, essentially accepted the submissions on behalf of the Minister. She said at para 29:

“As the Act does not define the word ‘*independent*,’ it must be given its natural and ordinary meaning, suitable to the context in which it is used in the provision. I consider that the word ‘*independent*’ where it appears 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,’ ...”

21. She further explained that, although section 3(2)(d) uses the words “in the opinion of the Minister” it is well-established (and, as authority, she cited *IBA Healthcare Ltd v Office of Fair Trading v* [2004] EWCA Civ 142; [2004] ICR 1364, at para 45) that the decision must be justifiable on objective as well as subjective grounds.

22. Then with reference to the Minister’s affidavit, she said at para 38:

“The Minister’s affidavit demonstrates 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.”

23. Her reasoning was essentially upheld by the Court of Appeal. Bereaux JA said at para 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.”

6. The correct interpretation of section 3(2)(d)

24. It is well-settled that the modern approach to statutory interpretation is to ascertain the meaning of the words used, in the light of their context and the purpose of the provision: *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 28–29; *News Corp UK & Ireland Ltd v Revenue and Customs Comrs* [2023] UKSC 7; [2024] AC 89, para 27; *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2025] AC 1473, para 62; *Rubis Bahamas Ltd v Russell* [2025] UKPC 13; [2025] 1 WLR 2162, para 34; *Darwall v Dartmoor National Park Authority* [2025] UKSC 20; [2025] AC 1292, para 15.

25. In the Board’s view, the interpretation favoured by Jacqueline Wilson J, and upheld by the Court of Appeal, is correct. The natural meaning of the words “independent of the Government, Business and Labour”, viewed in their context, is that the candidate must not be under the control or influence of the Government, Business or Labour. As it was described at the hearing, in discussion with the Board, the Chair must be able “to rise above the fray”. At a slightly deeper level, this is an interpretation that focuses on the personal quality of the candidate as being someone who is independent-minded (see the submission at first instance set out in para 19 above).

26. This interpretation is supported by the purpose of the provision. While one might regard the nine Directors, nominated by the Government, Business or Labour, as having some responsibility to represent the sector nominating them (and the nomination of a Director by, respectively, the associations most representative of Business and Labour,

can be revoked under section 3(7) which is set out at para 7 above) the general aim of the Board, as made clear by section 9 (set out at para 9 above) is to reach decisions that are independent of the interests of any one of the three sectors. The general role of the Chair is therefore to further such independent decision-making.

27. This interpretation also has the beneficial consequence of enabling the choice for Chair to be made from a wide field. In contrast, the “significant connection” interpretation put forward on behalf of Mr Maharaj appears to have the absurd consequence of reducing the pool of possible candidates almost to vanishing point (on the assumption that the pool should not be confined to those who have long retired). On the face of it, almost all suitable candidates will have, or have had, some significant connection with the Government, Business or Labour. It is well-established that an interpretation which avoids absurd consequences is to be preferred to one that has those consequences: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), chapter 13.1; *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; [2025] 2 WLR 879, at para 160. As was said by Bereaux JA in the Court of Appeal at para 36:

“To [accept the submission for Mr Maharaj] 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.”

The local court is in a better position than the Board to assess whether the fear of harmfully reducing the pool is a real concern or not.

28. Mr Ramlogan sought to deny that absurdity by suggesting that the significant connection test could be applied so as not to impose too high a threshold. But when pressed on what this meant in the case of, for example, Labour, he appeared to indicate that Labour here refers to being involved in one of the associations most representative of employees (eg a trade union) and that being an employee as such did not mean that the person was significantly connected with Labour. But that approach contradicted his submissions on the meaning of Business, where he did not seek to confine the relevant connection as being to one of the associations most representative of Business. In the Board’s view, it is significant that in section 3(2) the nomination in subsection (b) is “by the associations most representative of Business” and in subsection (c) “by the associations most representative of Labour” but that there is no mention of those associations in respect of the appointment of the Chair in section 3(2)(d). This means that connections with Labour or Business cannot be confined (and in relation to this we disagree with the reasoning of Bereaux JA in the Court of Appeal at para 24) to

connections with associations most representative of Labour or Business. But it then follows that Mr Ramlogan’s submissions that “significant connection” is the correct interpretation fails to explain how that interpretation avoids the absurdity of reducing the pool of suitable candidates to almost no one.

29. There is a further linked point. The ideal candidate to be Chair may be someone who is independent-minded and yet has wide experience of Business or Labour or Government. It may even be that that person has gained valuable experience from already serving on the NIB as a nominated Director. Yet, applying the interpretation put forward on behalf of Mr Maharaj, such an ideal candidate would not be eligible for appointment as Chair.

30. The insertion of the words “in the opinion of the Minister” is also relevant. It is important to stress that those words are directed to whether a person is independent of the Government, Business or Labour and are not directed towards choosing the best candidate (which is obviously a matter for the discretion of the Minister). If the “significant connection” interpretation were correct, there would be very little evaluative judgment required by the Minister in order to determine whether a candidate was independent and therefore eligible to be Chair. The application of the test of “significant connection” would be largely mechanical. In contrast, there is a major evaluative judgment required in deciding whether a candidate has the personal quality of being unlikely to be controlled or influenced by the Government, Business or Labour. That is, to decide that someone is independent-minded requires a largely evaluative judgment, albeit with objective elements. The insertion of the words “in the opinion of the Minister” suggests that a largely evaluative judgment by the Minister is required in determining whether the person is independent of the Government, Business or Labour and those words therefore point against the more mechanical “significant connection” interpretation.

31. Applying the interpretation favoured by the Board, in contrast to that put forward by Mr Ramlogan, a person with very strong connections to Business or Government or Labour will not automatically be ruled out as ineligible for appointment. It may be more difficult for the Minister to satisfy the requirement of having objective grounds for his or her belief that the person is independent where those connections are very strong but nevertheless the Minister is still entitled to appoint a person, even with such connections, who, in the Minister’s opinion, is independent-minded provided there are objective grounds for his or her belief.

32. Section 60(1) (see para 13 above) is also noteworthy. That subsection is concerned with the appointment of members of appeals tribunals (hearing appeals from the NIB) and mirrors the appointment of Directors of the NIB. As regards the Chair, it uses the same language (substituting “President” for “Minister”) as section 3(2)(d): “(a) a person who in the opinion of the President is independent of the Government, Business and Labour, as Chairman”. The significance of this is that, with a tribunal, as with any court,

an important requirement for the Chair is the personal quality of not being controlled or influenced by any particular sector. That is, in a tribunal or court, a Chair must be independent-minded and one expects that of such a Chair whatever his or her working background. Mr Ramlogan accepted at the hearing, in discussion with the Bench, that judges were expected to be independent in that sense. But once it is accepted that “independent” in section 60(1)(a) is concerned with the personal quality of the candidate and not with whether that person has a “significant connection” to the Government, Business or Labour, it is strongly arguable that consistency demands that the same meaning should be given to the same words used in the same statute in section 3(2)(d). Indeed it has been recognised that there is a presumption that a word has the same meaning when used more than once in the same statute: see *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), chapter 21.3; *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; [2025] 2 WLR 879, at para 13.

33. For all these reasons, it is the view of the Board that the interpretation of section 3(2)(d) adopted by Jacqueline Wilson J, and upheld by the Court of Appeal, is correct.

34. Furthermore, once one has that correct interpretation in mind, it is clear from the affidavit of the Minister (see para 17 above and Jacqueline Wilson J’s analysis at para 22 above) that he applied rational and justified subjective and objective criteria in appointing Mr Ferreira. For the reasons he gave, he was entitled to regard Mr Ferreira as someone who, as Chair, would be independent because he would not be controlled or influenced by Government or Business (or Labour).

7. Conclusion

35. For the reasons given, the appeal is dismissed.

LADY ROSE AND LORD RICHARDS (dissenting):

36. We are grateful to Lord Burrows for setting out the background facts and law in this appeal and describing the issues. However, we cannot agree with the Board’s conclusion that all that is required for a person to be eligible for appointment as Chairman of the NIB in accordance with section 3(2) of the NI Act is that the Minister forms the reasonable view that the person is independent-minded, regardless of what roles the candidate has had in the past or will continue to have which connect him with Labour or Business or Government. That is, in our view, contrary to the intention of the provision which is that the Chairman should clearly be in a different position from the other nine members, each of whom will have been nominated by one of the three groups mentioned in section 3—the Government, Business and Labour.

37. Those three groups have conflicting interests on questions about the kinds of social security benefits that should be provided and the criteria for entitlement to each such benefit. Broadly, “Labour” has an interest in the NIB deciding to provide more generous benefits for citizens who are financially dependent on those benefits but also has an interest in the level of workers’ contributions. “Business” has to fund the provision of those benefits in part by its contributions and so has an interest in limiting them. “Government” has an interest in ensuring that every citizen has sufficient funds to live in dignity without becoming overly dependent on the state so that the burden on the taxpayer is reduced so far as possible.

38. The issues to be considered by the NIB are of great importance in the lives of many citizens of Trinidad and Tobago. Section 3(2) is aimed at giving those citizens confidence that the constitution of the NIB is made up of people who will ensure that the difficult balancing exercise that must often be performed is properly and fairly carried out. For example, the NIB is responsible for fixing the rates of contributions and benefits (section 56), for making regulations governing a wide range of matters relating to contributions and benefits (sections 44 and 55), for determining all claims and questions under or in connection with the NI Act (section 59), and for the investment of the funds held by the NIB (section 23) although responsibility for investments is principally the role of the Investment Committee whose membership is governed by elaborate provisions in section 24. The need to arrive at a fair decision weighing up the strongly conflicting financial interests on these and other issues facing the NIB is the “fray” that one needs to have in mind when considering whether a candidate is in the category of people capable of being considered “above the fray”.

39. We therefore would accept Mr Ramlogan’s submissions on behalf of Mr Maharaj that there must come a point when a candidate’s past and current connections with Government, Business or Labour are so significant that the candidate cannot be regarded as independent in the sense required by section 3(2). Such a person is not eligible to be considered by the Minister for appointment as Chairman. That is, in our view, an empirical matter that exists regardless of the Minister’s views as to their personal qualities, formed over however long or close a period of acquaintance.

40. Focusing first on the wording of section 3(2)(d) itself, Wilson J, noting that the word “independent” was not defined by the NI Act, said that it must be given its natural and ordinary meaning, suitable to the context in which it is used. She considered that the word “independent” 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.” In deciding whether a person was independent of the Government, Business and Labour for this purpose, she held that the Minister must honestly believe that the person is “free from influence or control” by others or “unwilling to be under an obligation” to them, such belief being justifiable on objective grounds. She held that the Minister’s belief would be established where, in the Minister’s assessment, “the personal and professional attributes” of the person meet the standard of independence as she

defined it. The Minister's opinion will be reasonably and objectively justified where it is supported by a wider assessment of relevant factors, including "the person's history of employment, appointments, directorships, membership of associations and business or commercial interests, whether past or present."

41. The Court of Appeal endorsed the approach of Wilson J. Bereaux JA began his analysis at para 21 with a reference to the definition of "independent" in the Oxford Dictionary as "free from outside control or influence"; "not connected"; "separate". After referring to section 3(2)(a)–(c) and section 9, he said at para 27 that the Minister had to be satisfied that the 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", repeating what he had earlier described at para 21 as the literal meaning of section 3(2)(d). Thus, in that formulation, being separate from the three groups, as well as not being under the control or influence of any of them, was an integral part of independence. However, read as a whole it seems clear from the judgment that the Court did not regard being separate from the three groups as some additional indicator of independence, but considered, rather, that independence meant simply being free from the influence or control of any of those groups.

42. Like Lord Burrows, we shall use the expression "no significant connection" to describe the appellant's submission as to the meaning of "independent" in section 3(2)(d), and we shall use "not controlled" to describe the meaning found by the courts below.

43. The structure and language of section 3(2), in our judgment, strongly supports the view that the natural and obvious meaning of paragraph (d) is that the Chairman must have no significant connection with the Government, Business or Labour. Having identified these three groups for the purpose of the appointment of members nominated by or on behalf of each group, section 3(2)(d) requires the appointment as Chairman of a person who, in the Minister's opinion, "is independent of the Government, Business and Labour". The natural meaning of that expression is that a person should not be part of any of those groups, in the sense of not being significantly associated or connected with them.

44. The test of "independence" from the three groups in this context is not naturally focusing on the person's state of mind (namely, that the person has the capacity to reach decisions without influence from or control by any of those groups) but on the person's status (that the person has no significant association or connection with those groups). The latter is objectively verifiable, as are the criteria for appointment under paragraphs (a), (b) and (c). The statutory requirement of independence must be satisfied at the time of appointment. The question to be answered in respect of a candidate is: is that person now "independent" of the three interest groups? The no significant connection test is readily applicable at that point. The not controlled test involves an assessment as to whether, once in office, the Chairman will act without regard to the interests of any of the

groups notwithstanding connections with one or more of those groups. It is essentially an evaluation of likely future performance, rather than existing fact.

45. The function of an “independent” Chairman is both to improve the quality of decision-making by the NIB and to promote public confidence in the NIB’s decision-making. Section 3(2)(d) seeks to achieve this by requiring the Minister to be satisfied that the Chairman is a person who is able, and importantly who is seen by the public to be able, to hold the ring between the nominees of the three interest groups and to bring a disinterested viewpoint to the role of Chairman. By so providing, Parliament recognised that the public would be sceptical that a Chairman whose own position and interests would naturally align him or her with one of the three groups could be said to be independent of them.

46. Mr Ramlogan helpfully referred the Board to the wording of equivalent legislation in other Caribbean jurisdictions. In some of those, the Chairman of the board can be drawn from the directors who have been nominated by one of the interest groups. For example, in Barbados, the relevant law is the National Insurance and Social Security Act, Chapter 47 (2007). That provides in section 3 that the Minister appoints two persons to the board to represent employers’ associations, two persons for trade unions and three others. The Minister can then appoint two from among the members to be chairman and deputy chairman. St Lucia provides for the Minister to appoint the chairperson and deputy chairperson of the board from amongst the members (see the National Insurance Corporation Act (2000) Cap 16.01) and similarly in Grenada, St Vincent and the Grenadines and several other Caribbean countries.

47. We agree with Mr Ramlogan’s submission that in enacting the wording of section 3(2) of the NI Act, the Trinidad and Tobago legislature has adopted a different and more stringent model whereby the Chairman is not to be chosen from amongst the other Directors. This again emphasises the importance placed by that legislature on the requirement that the Chairman is independent of the three groups. The efficacy of the provision risks being seriously diluted if the only ground of challenge is that the Minister has not acted reasonably in forming the view that the candidate is independent-minded. This is also important given that, as Mr Maharaj points out, the appointment as Chairman lasts only two years, a substantial proportion of which may have expired by the time any challenge is determined by a court—a number of important decisions may have been made by the NIB during that time.

48. Looking beyond the wording of section 3 itself to consider what light is shed by other provisions of the NI Act, the parties made submissions as regards both section 9 and section 11. In our judgment, the terms of section 9 reinforce the view that section 3(2)(d) requires that the Chairman should not have a significant association or connection with any of the three groups. It provides that, subject to any general directions of the Government, “the [NIB] shall, when exercising and performing its functions, powers and

duties, be subject to the control or direction of no other person or authority.” This provision renders section 3(2)(d) effectively otiose, if all that is needed for a candidate to be “independent” of the Government, Business and Labour is that he or she must not be subject to the influence or control of any of those groups.

49. In her judgment, Wilson J noted that section 9 applied to all the Directors, however nominated, and required them to be subject to the control or direction of no person or authority (except general directions given by the Minister). It affirmed the requirement for independence for all Directors, not just the Chairman, and that they do not represent the interests of their appointors but must act in their own independent judgement. We agree that this is the effect of section 9 but it demonstrates that, if correct, the meaning given by the courts below to “independent” in section 3(2)(d) would add nothing to section 9.

50. The same point may be made of the Court of Appeal’s reliance on section 9. Bereaux JA said at para 26 that section 9 “provides complete autonomy to the directors in the exercise of their duties to the NIB … 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.” Mr de la Mare KC, appearing for the Minister of Finance, saw the significance of this difficulty for the conclusion reached by the courts below. He sought to meet it by rejecting what Wilson J and Bereaux JA said about the position of the Directors at paras 25–26 and advancing a radically different approach. He said (at para 5(b) of his written case) that the NIB members nominated by the three interest groups “broadly represent their nominating interests … [and] are thus under the control or influence of the parties nominating them.” This, it was submitted, reinforced and made plain that in section 3(2)(d) an “independent” Chairman is one who is not under the control or influence of any of the three interest groups. It is not clear whether this submission was made to the courts below (it is not addressed in their judgments) but we have no hesitation in rejecting it as being wholly contrary to section 9, as interpreted by the courts below and by us.

51. Section 11 of the NI Act deals with Directors’ conflicts of interest. In support of their interpretation of “independent”, both Wilson J and Bereaux JA placed reliance on this section. Wilson J said that section 11 acknowledges that personal or commercial interests do not preclude a person from appointment as a Director or Chairman, and Bereaux JA said that section 11 demonstrated that the NI Act does not envisage that the Chairman or other Directors “will not have any dealings with business, labour or government in some incarnation.”

52. We do not think that section 11 assists in resolving the proper interpretation of the requirement of section 3(2)(d) that a person appointed as Chairman must be “independent of the Government, Business and Labour”. It deals with the specific circumstance of any Director, not just the Chairman, “who is in any way, whether directly or indirectly,

interested in a contract or proposed contract with the [NIB] or any other matter whatsoever in which the [NIB] is concerned”. It is not confined to commercial interests, and it is entirely possible for a Chairman who satisfies the no significant connection test and is therefore independent for the purposes of section 3(2)(d), to have an interest to which section 11 would apply.

53. Bereaux JA was concerned that the “no significant connection” interpretation would reduce the pool of potential appointees. At para 36, he said it would be absurd if:

“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.”

54. That concern does not arise on our understanding of Mr Ramlogan’s submissions. Mr Ramlogan made it very clear at the hearing that he was certainly not saying that anyone who had been or was at the time of appointment an employee or a member of a trade union would be disqualified because they were not “independent” of Labour. Similarly, he was not saying that anyone who had ever been or was at that time a director of a company—however small—or in public sector service in whatever capacity was disqualified. He fully accepted that the connection must be much more substantial than that before the candidate was ruled out for appointment as Chairman. We agree with those submissions.

55. Mr Ramlogan went on to submit that a person would be independent of Labour provided that he or she was not actively involved in representing the workers’ interests in active trade unionism and was not actively involved in some form of workers’ rights advocacy, dealing with broad representation of workers’ rights, or advocating and promoting the welfare of workers. He was thereby seeking to refute the reasoning in para 24 of the Court of Appeal’s judgment where Bereaux JA suggested that it was only a connection with a particular business or labour interest group such as one of the associations involved in nominating the other Directors to the NIB that would be enough to disqualify a candidate for lack of independence. Mr Ramlogan’s case was that something more than merely being an employed person was needed to prevent someone being independent of Labour and something more than being a director or manager of a small company was needed to prevent someone being independent of Business. But he submitted that the disqualifying link did not have to be a formal link with a particular association or interest group which represents Labour or Business.

56. It is easy to see what could count as a significant connection with Business. Mr Ramlogan argues that Mr Ferreira's connections with the Furness Group of Companies would be enough. According to the agreed Statement of Facts and Issues, Furness is one of the oldest and largest conglomerates in Trinidad and Tobago; Mr Ferreira served as the Chief Executive of three Furness entities and has been Chairman of three others. Mr Maharaj relies not only on the fact that Furness clearly employs a large number of people but also that it has a strong interest in maintaining cordial and cooperative relations with Government in order to ensure the continued success of the many businesses in which it is involved. Those factors are precisely the kinds of factors, Mr Ramlogan says, which establish a connection sufficient to disqualify Mr Ferreira from being considered as Chairman, however independent-minded he has seemed in his conversations over the years with the Minister.

57. Mr Ramlogan was pressed at the hearing as to what the equivalent would be as regards a significant connection with Labour. If he is right that something more is required than simply being employed or being a trade union member but it can be something less than, for example, leading a trade union, what would it be? The answer arrived at was that, for example, someone could not be regarded as independent of Labour if he or she had led a charity or advocacy group supporting workers or low paid people. Such a person would be regarded as ineligible.

58. Further, there are many occupations that do not in any event involve a significant connection with those groups but in which the work gives a person the knowledge and expertise needed to fulfil the role, by way of example only, the professions and those in academic life. Persons with a background in, say, law, economics, investment, accountancy or as actuaries specialising in the areas covered by the NIB's work, to take just some obvious examples, might be well-qualified to fulfil the role of Chairman.

59. Mr de la Mare further submitted that success and experience in business, politics or in trade union or like representative activity indicates that the candidate has the requisite competence to preside over the NIB's business. If it had been intended that the Chairman should be drawn from people with such success and experience, then rather than requiring independence from those groups, the legislation could have been drafted to follow the example of many states in the Caribbean.

60. It is suggested that it is relevant to the interpretation of section 3(2)(d) that the person appointed as Chairman must be independent "in the opinion of the Minister", because if the no significant connection test were correct, there would be very little evaluative judgment required and the provision clearly envisages such an evaluation being necessary. However, the need for the Minister to form an opinion as to the independence of the candidate still has real content on our preferred construction of the NI Act. Whether a person has a significant connection to one of the groups must always

involve an evaluation. In some cases, it may be straightforward but there are bound to be cases which call for careful analysis.

61. Separately and in addition, the Minister must form a judgment as to whether any particular candidate, who meets the test of independence, is suitable for appointment. This will involve an assessment of the candidate's experience, expertise and personal characteristics, including the candidate's independence of mind. A particular candidate may be someone who does not have a significant connection with the Government, Labour or Business, but the Minister may still form the view that he or she is not independent on the basis, for example, of frequent partisan comments made in the past by the candidate in the media.

62. Lord Burrows draws attention to section 60 of the NI Act, concerning the appointment of members of appeals tribunals. It mirrors the appointment of NIB members and uses the same language as section 3(2)(d) for the appointment of an independent chairman. He correctly says that, like a judge, a tribunal chairman must be independent-minded. We agree with him that where the same language is used in two parts of the same enactment, there is a presumption that it carries the same meaning in both places. In our view, this supports the no significant connection test. It is not just the tribunal chairman but all members of a tribunal who are expected to be independent-minded. The requirement that a chairman be independent of the three interest groups must therefore be separate and additional. Given that other tribunal members are nominated by or on behalf of the three interest groups, and the chairman must be independent of them, it follows in our view that "independent" is used in the sense of no significant connection with any of them.

63. The analogy with judges does not support the "not controlled" test. For example, the Guide to Judicial Conduct published in 2023 by the Lord Chief Justice of England and Wales and the Senior President of Tribunals states that:

"The judiciary must be seen to be independent of the legislative and executive arms of government both as individuals and as a whole.

Judicial office holders should bear in mind that the principle of judicial independence extends well beyond the traditional separation of powers and requires that a judicial office holder be, and be seen to be, independent of all sources of power or influence in society, including the media and commercial interests."

64. As this passage shows, the independence required of judges is not just independence of mind but is also independence in the sense of having no material connection with any particular interest group. That means, for example, that in England and Wales salaried judges must not hold commercial directorships and there is a statutory prohibition on salaried judges undertaking any kind of political activity or having ties with a political party. Equally, a judge must have no material connection with a party in a case being heard by the judge, both because such a connection might influence the judge's handling of the case and the judge's decision and because, equally as important, any appearance of bias must be avoided. As Lord Hodge, giving the judgment of the Supreme Court in *Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48; [2021] AC 1083, said at para 1: "It is axiomatic that a judge or an arbitrator must be impartial; he or she must not be biased in favour of or against any party in a litigation or reference. A judge or arbitrator, who is not in fact subject to any bias, must also not give the appearance of bias: justice must be seen to be done."

65. Applying the judicial analogy to section 60, and to section 3(2)(d), leads inevitably and properly to the no significant connection test as the correct meaning of "independent" in those sections.

66. Lord Burrows has explained in paras 4 and 5 above that Mr Ferreira has now left office and the Government no longer contests Mr Maharaj's appeal. It is not therefore appropriate for us to express a final view as to whether Mr Ferreira's connection with Furness or his previous tenure as a Government-nominated member of the NIB in fact disqualified him from being considered for the post of Chairman and therefore whether this appeal should be allowed or dismissed. But as the Board is deciding this appeal as a matter of principle, we wish to make clear that in our judgment a person with significant connections to Business, Labour or Government is ineligible for appointment as Chairman under section 3(2) of the NI Act.