Craig Barlow * considers the decision in The Attorney General of Trinidad and Tobago v Jason Jones.

Case Summary

The decision of the Judicial Committee of the Privy Council ('PC') in The Attorney General of Trinidad and Tobago v Jason Kones [2026] UKPC 38 represents a significant development in Commonwealth Caribbean constitutional jurisprudence.

Facts

The case concerned the constitutionality of sections 13 and 16 of the Sexual Offences Act 1986, which purported to criminalise certain sexual activities between persons of the same sex.

The Issues

This is a "gay's rights" type of case. At its heart, the appeal raised fundamental questions concerning constitutional supremacy, the protection of individual rights and the continuing influence of colonial-era legislation.

Jason Jones challenged the provisions on the basis that they infringed his constitutionally protected rights, particularly the right to respect for private and family life under section 4 of the Constitution of Trinidad and Tobago.

Conversely, the Attorney General ('AG') sought to defend the legislation by relying upon the constitutional savings provision in section 6 and the special legislative procedure under section 13.

Outcome

The PC unanimously allowed Jones's appeal and dismissed the AG's cross-appeal. Its decision rested upon two important constitutional conclusions.

Analysis

First, the PC rejected the argument that sections 13 and 16 of the Sexual Offences Act 1986 were protected by section 6(2) of the Constitution. The savings provision protects certain existing laws and subsequent legislation which repeals and re-enacts existing laws with modifications.

However, the PC concluded that the 1986 legislation could not properly be characterised, as merely repealing and re-enacting the previous law with modifications.

This distinction is significant because it prevents a 'coach and horses' being driven through constitutional protections, via reenactment under the savings clauses.

Secondly, the PC considered whether the legislation could be protected under section 13, which permits Parliament to enact legislation inconsistent with fundamental rights through a special majority.

Crucially, that exception is subject to the requirement that the legislation be reasonably justifiable in a society that respects individual rights and freedoms.

The PC concluded that the impugned provisions failed this requirement. In particular, the AG had not demonstrated, that criminalising private, consensual same-sex relations between adults was reasonably justified.

The PC emphasised the importance of intimate relationships being inherent to a person's identity and private life.

It also rejected reliance upon historical tradition without sufficient evidence demonstrating its contemporary constitutional justification.

Discussion

The judgment is persuasive in recognising that constitutional rights must remain meaningful and enforceable.

Historical acceptance of discriminatory legislation cannot, without more, establish its modern constitutional legitimacy.

Equally, parliamentary approval, even through a special legislative majority, cannot automatically displace fundamental rights.

Nevertheless, the decision raises an important question concerning the appropriate limits of judicial intervention. Courts must be cautious not to substitute their own moral preferences for legitimate legislative choices.

However, that caution cannot justify judicial deference where legislation imposes serious restrictions upon fundamental freedoms without adequate justification.

Conclusion

Ultimately, this decision reinforces the principle that constitutional democracy involves more than majority rule. It requires the protection of individual rights, including those belonging to unpopular or historically marginalised minorities.

Its significance therefore extends beyond Trinidad and Tobago, offering an important contribution to the continuing development of constitutionalism and human rights protection throughout the Commonwealth Caribbean.

*the author acknowledges the use of AI during the preparation of this article.