
[2010] UKPC 24
**Privy Council Appeal No 0092 of 2009**

# JUDGMENT

# Report of The Tribunal to The Governor of The Cayman Islands - Madam Justice Levers (Judge of The Grand Court of The Cayman Islands)

## From the Court of Appeal of the Cayman Islands

**before**

**Lord Phillips, President**
**Lord Saville**
**Lady Hale**
**Lord Mance**
**Lord Judge**
**Lord Kerr**
**Dame Janet Smith**

## JUDGMENT DELIVERED BY
## Lord Phillips
## ON

## 29 July 2010

**Heard on 21, 22, 23, 24 June 2010**

| *Appellant* | *Respondent* |
| --- | --- |
| Stanley Brodie QC<br>Anthony Akiwuyi<br>(Instructed by Stuarts Walker Hersant) | Timothy Otty QC<br><br>(Instructed by Clifford Chance) |

**LORD PHILLIPS:**

1. The Board has been asked to advise Her Majesty whether Madam Justice Levers ("Levers J") should be removed from her office as a Judge of the Grand Court of the Cayman Islands on the ground of inability to perform that office or of misbehaviour.

2. Subsections (2) and (4) of section 49J of the Cayman Islands (Constitution) Order 1972 ("the Constitution") provide as follows:

> "(2) A judge of the Grand Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour…
>
> (4) If the Governor considers that the question of removing a judge of the Grand Court from office for inability as aforesaid or for misbehaviour ought to be investigated then -
>
> (a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office.
>
> (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee;"

By instruments of appointment dated 25 September 2008 His Excellency Stuart Jack CVO, Governor of the Cayman Islands ("the Governor") recited that pursuant to section 49J(4) of the Constitution he had deemed it advisable to appoint a tribunal ("the Tribunal"):

> "to inquire into the question of removing Madam Justice Levers, Judge of the Grand Court from Office for inability to discharge the functions of her Office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and therefore to investigate and inquire into

> any and all allegations of inability or misbehaviour against the said Judge and matters connected with and relating thereto and to report to me on the facts thereof."

The Governor appointed as members of the Tribunal the Rt Hon Sir Andrew Leggatt (Chairman), the Rt Hon Sir Philip Otton and the Hon Sir David Simmons. Sir Andrew and Sir Philip have served as members of the Court of Appeal of England and Wales and Sir David is the Chief Justice of Barbados.

3. In a lengthy report dated 12 August 2009 ("the Report") the Tribunal advised the Governor to request that the question of the removal of Levers J be referred by Her Majesty to the Judicial Committee of the Privy Council. The Tribunal expressed the view in strong terms that Levers J had been guilty of misbehaviour that justified her removal from office.

4. Mr Stanley Brodie QC, who appeared for Levers J both before the Tribunal and before the Board, challenged the Tribunal's conclusions and submitted that it had exceeded its proper function in expressing them. He further submitted that aspects of the procedure followed, both before and after the appointment of the Tribunal, infringed principles of natural justice required under public law. He submitted that the Board should find that this invalidated the Tribunal's Report and, inferentially, that the Board should not base a recommendation for the removal of Levers J upon the Tribunal's findings. These submissions make it necessary to give a summary of the events leading up to the appointment of the Tribunal.

*Events preceding the appointment of the Tribunal.*

5. Levers J was born in Sri Lanka but educated in England where, in 1967, she was called to the bar. She practised in Sri Lanka, in England and subsequently in Bermuda. In 1977 she married a Jamaican and moved to Jamaica, where she practised for the next 27 years. In 2002 she was invited to sit as an additional judge of the Grand Court and in the following year she applied successfully for a permanent appointment to that court. She bought a house in Grand Cayman with the intention of making it her permanent home.

6. In 2005 Levers J suffered kidney failure and was obliged to have regular dialysis, pending a successful kidney transplant. She has expressly instructed her counsel that her illness should not be advanced by way of explanation or mitigation of her conduct at any stage of the story. Those instructions have been respected. It follows that the Board has been unable to explore whether her illness, and her dedication to her work during it, may have provided some explanation for the notable discrepancy between the

high regard in which she was held by many and the incidents which have led to these proceedings (see paragraph 51 below).

7. Levers J had been encouraged to apply for a seat on the Grand Court by Anthony Smellie, the Chief Justice of the Cayman Islands ("the Chief Justice"). For the next four years they maintained a relationship that was harmonious, both on a professional and a social basis.

8. Then in March 2007 the Chief Justice was approached by Karen Myren, a Canadian court reporter with a complaint about the manner in which Levers J conducted criminal trials. She alleged, among other matters, that Levers J had a practice of issuing arrest warrants against jurors who failed to attend court, regardless of the circumstances. At the request of the Chief Justice Ms Myren prepared a bundle of transcripts as illustrations of the conduct of which she had complained. She provided these under cover of a memorandum dated 23 March 2007. This alleged that Levers J demonstrated bias against women and in favour of male defendants.

9. At about this time the Chief Justice received separate complaints from two unsuccessful women litigants in relation to the manner in which they had been treated by Levers J in family proceedings. The complainants were Jennifer Rankine and Amanita Cummings.

10. Over the next two months the Chief Justice considered a number of transcripts of trials over which Levers J had presided. Based in part on these he prepared a schedule of 17 incidents, with his own comments in relation to some of these. These comments suggested that the incidents demonstrated summary arrest of jurors, discourtesy to counsel, unfavourable treatment of female complainants, lack of sensitivity and injudicious use of language and criticism of fellow judges. He sent the schedule and the transcripts to Levers J under cover of a memorandum dated 24 May 2007. This began as follows:

> "It is with great regret that I am compelled to write this, but I may no longer ignore what has become a ground-swell of concerns and complaints.
>
> The most recent is that of Amanita Cummings, which is enclosed. That of Ms. Jennifer Rankine, is also enclosed and has been sent also to the Complaints Commissioner. Both complaints speak for themselves.

> Enclosed further are several transcripts of proceedings before the Court. I called for them to consider the myriad other complaints which have been received.
>
> Having read and considered the transcripts, the breakdown which I have done of what they disclose (enclosed) explains the nature of the concerns as they occur to my mind. On reflection, I believe you will accept that they disclose a judicial attitude which is not to be expected from any experienced and compassionate judge. Taken in its worse light, some of this material reveals a mind set which may be criticised for being biased against persons because of their ethnicity or other circumstances and so may even bring into question fitness to hold high judicial office.
>
> After you will have had the opportunity to consider the material, we must discuss the matter having regard to the concerns as I have sought to identify them."

The letter went on to instruct that the summary arrest of jurors had to cease. The Chief Justice accepted before the Tribunal that the references in this letter to "a ground-swell of concerns and complaints" and "the myriad other complaints" overstated the position.

11. Levers J was surprised and distressed to receive this memorandum, the more so as the Chief Justice had in March recommended that her tenure of office be extended for a further five years. Levers J consulted a leading member of the bar in the Cayman Islands, who advised her that she should make a detailed response to the memorandum. This she did by a memorandum dated 4 June 2007. In relation to almost all the incidents she denied that her conduct was open to criticism. In her witness statement of 13 February 2009 she described her response as:

> "a balanced, fair and forthright refutation of the serious allegations that the Chief Justice had made against me."

She ended her memorandum:

> "In view of the contents of this memorandum, I believe you will agree that the very damaging words 'and so may even bring into question fitness to hold high judicial office' can no longer stand and trust that it will be removed and expunged from my personnel file."

12. The Chief Justice responded with a lengthy email the next day, June 5. This accepted Levers J's explanation in respect of two of the incidents, but added:

> "I would be better assured to know that you have fully considered and appropriately resolved in your own mind, all the concerns in the round."

As to the comment on her fitness to hold high judicial office, he explained

> "These words were intended to be descriptive of the nature of all the concerns raised, taken as a whole, and in the event they were to be substantiated. I have neither formed nor expressed any such view myself and indeed no such view could properly be formed without proper and full enquiry. No such enquiry has taken place. Indeed, because after very careful consideration I decided that matters had yet not reached the stage of requiring that kind of formal treatment and anxious to prevent it, I took the course of referring the matters to you, on the entirely confidential and collegiate basis on which I did; even while seeking to make plain the seriousness with which I consider the matters must be regarded."

On 24 August 2007 the Governor, on the recommendation of the Chief Justice, appointed Levers J as acting Chief Justice during 28 August – 16 September 2007 when he was absent from the Caymans.

13. Between June 2007 and April 2008 there were a number of events that led the Chief Justice to conclude that Levers J's conduct continued to be cause for criticism, and these led him to send a private memorandum to the Governor dated 28 April 2008. This started by stating that with regret he felt compelled to bring to the Governor's attention concerns about the behaviour of Levers J. He enclosed copies of the exchanges between them, to which the Board has just referred. He also referred to some significant matters of concern that he had not yet raised with her. These included a letter of complaint to him dated 11 October 2007 from Mrs Sidey Ebanks in respect of comments made about her in a divorce hearing and a complaint from Ms Elisabeth Lees, Crown Counsel, about Levers J's conduct of the trial of *R v Dilbert.* The Chief Justice added:

> "I have very good reason to believe as well that Justice Levers has a direct hand in the dissension which is now self-evident within the ranks of the Judicial Administration and which has already presented itself to you in the form of a petition."

This referred to a petition of complaint about pay and appointments sent to the Governor by members of the court staff on 21 February 2008.

14. The Governor referred the matters that had been placed before him by the Chief Justice to Ms Dale Simon, the Head of the Office of Judicial Complaints for England and Wales, seeking her advice. The Chief Justice was also in direct contact with Ms Simon. On 28 May he sent her a number of additional transcripts of court hearings over which Levers J had presided. Ms Simon reported to the Governor on 5 June 2008. She summarised the material that she had considered and advised that, taken as a whole, this provided a wealth of evidence that suggested serious misbehaviour on the part of Levers J that justified the appointment of a tribunal to investigate whether it would be appropriate to remove her. She added that Levers J had not had the opportunity to comment on all the matters alleged and observed that the principles of natural justice suggested that she should be given the opportunity to comment on the complaints made against her before the final decision whether or not to appoint a tribunal of investigation was taken. She added that the Chief Justice was of the very strong opinion that the Governor should make the decision to appoint a tribunal and immediately suspend Levers J before giving her a chance to comment on the matters that the Governor wished the tribunal to consider.

15. The Governor then instructed counsel, Mr Benjamin Aina, who, on 12 July 2008, produced a detailed case summary of complaints about Levers J between May 2006 and April 2008. These included matters that the Chief Justice had placed before the Governor after he had consulted Dale Simon, some of which were set out in a document headed "Complaints: Judicial Misconduct" dated 27 May 2008.

16. Mr Aina summarised the position as he saw it as follows. Levers J had failed to heed the advice of the Chief Justice and had been unable or unwilling to modify her behaviour. The complaints when taken as a whole suggested serious misbehaviour on the part of Levers J, but she ought to be given an opportunity to comment on the matters in the case summary before the Governor reached a final decision whether or not to appoint a tribunal of investigation.

17. The Governor took this advice. On 16 July 2008 he wrote to Levers J, enclosing the case summary and accompanying documents and inviting her to respond within 14 days, before he made a decision whether or not to appoint a tribunal of investigation. On 23 July the Chief Justice wrote to Levers J confirming a discussion with her under which they had agreed that she would be relieved of sitting duties for a maximum of 28 days to allow her time to respond to the case summary and the Governor time to consider what action to take in the light of her response.

18. On 8 August 2008 Levers J submitted a detailed response to the case statement, contending that no case of misbehaviour was made out. This was dated 7 August and had been prepared by James Eadie QC.

19. On 13 August 2008 Mr Aina produced for the Governor an amended case summary. This incorporated Levers J's response to the original case summary. It also included references to three further complaints about Levers J.

20. On 12 September 2008 the Governor wrote to Levers J, giving her notice that he had decided to refer her conduct to a tribunal pursuant to section 49(J)(4) of the Constitution. He referred to Levers J's response of 7 August and commented:

> "I have considered the matters contained in your response with care. I have also revisited the allegations contained in the case summary dated 12 July 2008. I regret that I have reached the decision that the matters contained in the case summary dated 12 July raise allegations of misbehaviour on your part which ought to be investigated."

The Governor informed Levers J that he had decided to suspend her from performing her judicial functions pursuant to section 49(J)(6) of the Constitution. He enclosed the amended case summary and informed her that this contained a summary of the allegations which he would be requesting the tribunal to investigate.

*The public law challenges*

*The conduct of the Chief Justice*

21. Mr Brodie submitted that the Chief Justice was in breach of the requirements of natural justice in two respects. Firstly he failed to allow Levers J the opportunity to respond to some of the criticisms against her before, by sending the memorandum of 28 April 2008, he initiated the process that led to the appointment of the Tribunal. Secondly he thereafter improperly sought to influence the Governor's decision to appoint the Tribunal.

22. Mr Brodie founded the first criticism on the decision of the Privy Council in *Rees v Crane* [1994] 2 AC 173. That appeal involved judicial review proceedings commenced by a judge of the High Court of Trinidad. He had been suspended from sitting by the Chief Justice of Trinidad and Tobago and investigated by the Judicial and Legal Service Commission, which had recommended to the President that the question of removing the judge from office should be investigated, whereupon the President appointed a tribunal to consider that matter. The Privy Council, upholding the Court of Appeal, held that the Chief Justice had acted beyond his powers in suspending the judge. The Board further held that the Commission had been in breach of a duty to treat the judge fairly in that it had failed to inform him of the allegations made against him and to give him a chance to answer them, before recommending the appointment of a

tribunal. This breach of natural justice had both invalidated the Commission's recommendation that a tribunal should be appointed and the consequent appointment of the tribunal.

23. Mr Brodie submitted that the position of the Chief Justice fell to be compared with that of the Commission in *Rees v Crane.* Each had initiated the process that led to the appointment of the Tribunal, in the case of *Rees v Crane* by the President; in the present case by the Governor. The Chief Justice was in a special position and had acted in an official capacity in initiating the proceedings against Levers J. Mr Brodie derived support for this last submission from correspondence disclosed in the course of the hearing before the Board. On 17 September 2008 the Chief Justice sent an email to the Governor commenting on his choice of counsel for the hearing before the Tribunal. The Governor replied:

> "Given your position as a complainant, potential victim/witness in this matter I suggest that you should distance yourself including from such issues as the choice of QC…"

The Chief Justice responded saying that the Governor's characterisation of his position was misconceived:

> "As Chief Justice I have responsibility for and management of all matters in Judicature. See section 49I(1) of the Constitution as read with section 4 of the Grand Court Law. It was in that capacity that I at first sought to advise Justice Levers about her conduct and it was in that capacity that I later became obliged to bring the matter to your attention. In other words, acting in the due process of my legal and Constitutional responsibilities as Chief Justice."

24. Mr Brodie sought to buttress his argument by submitting that the terms of the Chief Justice's email of June 5 2007 had given rise to a legitimate expectation on the part of Levers J that he would not take any further action without first giving her the chance to deal with any additional concerns that he had about her behaviour. Had he done so, Mr Brodie submitted that Levers J would have been in a position to demonstrate that those additional concerns were groundless. The Tribunal were to hold that there was no credible or cogent evidence that Levers J was implicated in the staff petition, and it was this belief that had weighed most strongly with him in referring Levers J's conduct to the Governor. Two other matters that had concerned him were to be held by the Tribunal as falling short of "serious misconduct".

25. The provisions of section 137 of the Constitution of Trinidad and Tobago that were considered by the Privy Council in *Rees v Crane* were as follows:

> "(1) A judge may be removed from office only for inability to perform the functions of his office, (whether arising from infirmity of mind or body or any other cause), or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section. (2) A judge shall be removed from office by the President where the question of removal of that judge has been referred by the President to the Judicial Committee and the Judicial Committee has advised the President that the judge ought to be removed from office for such inability or for misbehaviour. (3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a judge, other than the Chief Justice, represents to the President that the question of removing a judge under this section ought to be investigated, then—(a) the President shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a judge, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to the President whether he should refer the question of removal of that judge from office to the Judicial Committee; and (c) where the tribunal so recommends, the President shall refer the question accordingly. . . ."

The Chief Justice was *ex officio* a member of the Commission, although he took no part in the meetings which led directly to the decision to appoint a tribunal.

26. Counsel for the appellants, who included the Commission, argued that the Commission was too remote from the decision whether or not to remove a judge to be subject to a requirement to inform the judge of the case against him. In giving the opinion of the Board, Lord Slynn of Hadley summarised the issue as follows at p 189

> "Their Lordships accept that section 137(3) envisages three stages, before the commission, the tribunal and the Judicial Committee of the Privy Council, and indeed there may be a prior stage since it is likely that complaints will have originated with or been channelled through the Chief Justice.
>
> It is also correct, as the appellants contend, that in a number of cases to which they refer it has been decided that in certain preliminary or initiating procedures there was no right on the part of an individual to

know of complaints or to be allowed to answer them. That right may arise at a later stage and the appellants accept that a judge being investigated has a right to know of complaints, and to have an opportunity to deal with them, before the tribunal and before the Judicial Committee of the Privy Council. It thus falls to be decided whether in this case the right to be informed and to reply at a later stage dispenses with the obligation or duty to inform at the commission stage."

27. Commenting on this issue, the Board observed at p 192:

"Plainly in the present case there would have been an opportunity for the respondent to answer the complaint at a later stage before the tribunal and before the Judicial Committee. That is a pointer in favour of the general practice but it is not conclusive. Section 137 which sets up the three-tier process is silent as to the procedure to be followed at each stage and as a matter of interpretation is not to be construed as necessarily excluding a right to be informed and heard at the first stage. On the contrary its silence on procedures in the absence of other factors indicates, or at least leaves open the possibility, that there may well be circumstances in which fairness requires that the party whose case is to be referred should be told and given a chance to comment. It is not a priori sufficient to say, as the appellants in effect do, that it is accepted that the rules of natural justice apply to the procedure as a whole but they do not have to be followed in any individual stage. The question remains whether fairness requires that the audi alteram partem rule be applied at the commission stage."

28. The Board's conclusion was that there was indeed an obligation on the Commission to inform the judge of the allegations made against him and to deal with them – not necessarily by an oral hearing, but in whatever way was necessary for him reasonably to make his reply – p 196. The reason was that the decision of the Commission was bound to have adverse consequences for the judge, even if at a later stage of the process the judge was cleared of incapacity or misbehaviour. The Board observed at p 194:

"The fact that a representation was made, a tribunal appointed and the respondent suspended on the basis of bodily infirmity and misbehaviour were bound to raise suspicion or conviction that the commission and even the President were satisfied that the charges were made out, in a way which subsequent revocation of the suspension would not necessarily dissipate. If the respondent had had a chance to reply to such charges and had been given the opportunity to do so before the representation was made this suspicion and damage to his reputation might have been

> avoided. If he gave no adequate reply then the matter could have gone forward without justifiable complaint on his part."

29. Mr Otty QC, for the Governor, submitted that it was not correct to compare the position of the Chief Justice in the present case with that of the Commission in *Rees v Crane*. Under section 137 of the Trinidad and Tobago Constitution the representation of the Commission that a tribunal should be appointed was one with which the President was required to comply. Thus the Commission was the body that took the decision whether or not to appoint a tribunal. The Cayman Constitution gave the Chief Justice no specific role in the process of the removal of a judge. Consideration by the Governor of whether or not to appoint a Tribunal was the first stage of the process laid down by the Constitution. Thus it was the Governor in the Cayman Islands, not the Chief Justice, who fell to be compared with the Commission in Trinidad and Tobago.

30. The difference between the two Constitutions is significant, but not necessarily conclusive on this issue. The Board in *Rees v Crane* referred to a prior stage of the proceedings involving the Chief Justice – see para 26 above. In that case there was a separate allegation of bias against the Chief Justice and the Commission. In dismissing this the Board made the following observations about the Chief Justice's conduct at pp 196-197:

> "It is indeed unsatisfactory that the respondent was not told by Bernard CJ of his decision to suspend the respondent and to raise with the commission the question of referring the matter to a tribunal. It is also curious to say the least that the respondent on his return had such difficulty in seeing Bernard CJ.
>
> On the other hand it is to be assumed that Bernard CJ either accepted that the complaints made to him were sufficiently established, or that, at any rate, he considered that they were sufficiently serious to warrant reference to the commission. If he so thought, he was entitled to refer the matter to the commission. He had, even if in a hostile way, given the respondent an opportunity to deal with earlier complaints. Bernard CJ must have realised the seriousness of these complaints for the respondent and *even if he failed to deal fairly with the respondent, by giving him notice of them and a chance to deal with them*, it is not lightly to be assumed that he would allow personal hostility to colour his decision to suspend the respondent or to recommend to the commission that the matter be referred to a tribunal. (Emphasis added)."

31. The Board considers that the Chief Justice was under a duty to act fairly in his official dealings with other members of his court. Had he referred his initial concerns

to the Governor without raising them with Levers J or giving her a chance to deal with them, it could forcefully have been argued that he had acted unfairly. The Board does not consider, however, that if the Chief Justice had acted in this way that would have invalidated any subsequent consideration of the Governor of the matters placed before him. On the contrary, the Governor would have been under a duty to consider those matters. What was at stake was not only the position of Levers J, but the due administration of justice in the Cayman Islands. The Governor would have been in a position to put right any unfairness by giving Levers J the opportunity to deal with the matters raised by the Chief Justice before taking the decision, and it was a decision for him, whether or not to appoint a tribunal of investigation. In short, when considering whether there was unfairness capable of invalidating the appointment of the Tribunal it is at the conduct of the Governor that one must look, rather than at the conduct of the Chief Justice.

32. In any event the Board acquits the Chief Justice of unfairness. In his letter to the Governor of 28 April 2008 he stated that he was convinced that no good could come of his continuing to deal with his concerns internally with Levers J. In the light of what he knew or reasonably believed about Levers J's attitude towards him that was a realistic appraisal. As the Board will show, Levers J had reacted to the Chief Justice's initial approach not as an attempt to assist a colleague but as a hostile act. The Board does not consider that he can be criticised for his decision to place matters in the hands of the Governor. Nor would the Board criticise him for his subsequent contacts with the Governor. As Chief Justice he was understandably concerned at the impact that he considered Levers J's conduct was having on the administration of justice within his jurisdiction, and he cannot be blamed for making his views plain to the Governor. Furthermore, even if his approaches to the Governor had amounted to impropriety, this would not have invalidated the Governor's decision. The Governor told the Chief Justice that he should distance himself and went on to form his own view of how to proceed, after taking independent advice from Dale Simon and Mr Aina.

33. The Board does not consider that the terms of the Chief Justice's email of 5 June could have given rise to a legitimate expectation on the part of Levers J that he would not refer her conduct to the Governor without first giving her the opportunity to answer any concerns he had about her continuing behaviour. A rather different argument on legitimate expectation was advanced before the Tribunal. This was that the Chief Justice had given Levers J a legitimate expectation that nothing further would be done about her past conduct. This argument was at odds with the statement in para 63 of Levers J's witness statement that she regarded the Chief Justice's email of 5 June 2007 as "effectively and unfairly putting me on notice".

*The conduct of the Governor*

34. Mr Brodie submitted that the Governor had also acted unfairly and in breach of natural justice in failing to notify Levers J of the three additional complaints that were incorporated into the amended case statement before deciding to appoint the Tribunal. The short answer to that submission is that the Governor made it plain in his letter to Levers J of 12 September 2008 that he was basing his decision on the original case statement. There was no reason to doubt that statement. The three additional complaints did not add significantly to the case against Levers J.

35. Mr Brodie made a discrete attack on the conduct of the Governor in respect of a significant delay on his part in making arrangements for the funding of Levers J's reasonable legal costs in relation to the Tribunal's investigation. The Tribunal itself commented on this, and on the delay that it caused, in paras 1.11 and 1.12 of its Report. Adequate funding was, however, ultimately provided. When asked how delay in the provision of this funding could invalidate the appointment of the Tribunal Mr Brodie appeared to suggest that the Governor might have set out deliberately to starve Levers J of the funds that she would need to defend herself when appointing the Tribunal. Such a submission had not been made before and, in these circumstances, it is not one that the Board would entertain. The delay in providing funding for Levers J has no relevance to the issues before the Board.

*The conduct of the Tribunal*

36. Mr Brodie sought to advance the points of public law considered above before the Tribunal. The Tribunal declined to entertain them on the ground that they were "not within the remit of the Tribunal". Mr Brodie submitted that this response was unlawful. The matters that he had raised went to the jurisdiction of the Tribunal. Once he had raised them, the Tribunal was bound to consider them. It was now well established that a tribunal could entertain a challenge to its own jurisdiction – see *Wandsworth London Borough Council v Winder* [1985] AC 461; *Boddington v British Transport Police* [1999] 2 AC 143; *Kay v Lambeth London Borough Council* [2006] 2 AC 465. Mr Brodie submitted that the Tribunal's unlawful refusal to entertain his submissions on its jurisdiction was made more serious by a failure to give any reasons for concluding that they were not within its remit. Its effect was to render the Tribunal's decision null and void.

37. The "matter" into which the Constitution provides that a tribunal shall inquire is "the question of removing a judge of the Grand Court from office for inability…or misbehaviour". The Terms of Reference, set out in paragraph 41 below, restricted the scope of the Tribunal's investigation to considering the conduct of Levers J. They did not extend to examining the circumstances of the Tribunal's own appointment. None

the less, the Board does not consider that the Tribunal could have been criticised had it been prepared to consider an attack on its own jurisdiction. It is, however, a startling proposition that a refusal to entertain an attack on its jurisdiction will of itself invalidate the decision that a tribunal reaches on the substance of the matter with which it is seised, even if the attack on its jurisdiction is without merit. Mr Brodie was invited to produce authority that supported this proposition. He did not do so. The Board concludes that this attack on the validity of the Tribunal's Report is without merit.

*The role of the Tribunal*

38. The Tribunal introduced its Report with an executive summary. This castigated the conduct of Levers J in strong terms. Her comments in court were described as "disgraceful" (para 7). Criticism of the Chief Justice and his administration of the Courts "with the evident intention of undermining him in the way of his office" was said to be "conduct of such disconcerting proportions that no judicial system could reasonably be expected to tolerate its existence" (para 13). Dealing with "an increasingly hostile and mean attitude towards her fellow judges" the Tribunal commented:

> "By so behaving both in public and private towards her fellow judges Levers J undoubtedly destroyed and forfeited the respect, support and understanding which previously existed. Once this has been destroyed the situation is irredeemable. She has poisoned the well to such an extent that her reputation in this regard (as revealed in this Report) will inevitably precede and follow her wherever she might ever be able to sit both in and outside the Cayman Islands. It is to our minds unthinkable that she should be allowed to resume or continue to sit in any jurisdiction where she would be sitting with colleagues. Moreover, we consider it an overwhelming probability that if allowed to sit on her own she would continue to behave in a similar fashion."

39. In the body of the Report the Tribunal dealt with the individual incidents one by one, finding facts when these were in dispute and then evaluating their significance. The Tribunal used the description "misbehaviour" to describe misconduct, whether individual or cumulative, of such seriousness as to warrant removal. The description "serious misconduct" was used to describe seriously bad behaviour that fell short of misbehaviour. No single epithet was used to describe bad behaviour that did not amount to serious misconduct. Quite often the Tribunal described behaviour in critical terms but commented that it fell short of serious misconduct.

40. Mr Brodie submitted that the Tribunal exceeded its remit. Its role was to recommend whether or not the conduct of a judge should be referred to the Privy

Council, not to decide whether that conduct justified the judge's removal. He submitted that the comments made by the Tribunal in its Executive Summary that have been quoted above exceeded its powers and were self-discrediting.

41. The Terms of Reference of the Tribunal in the present case, as clarified by the Governor, began as follows:

> "1. The Investigating Tribunal (hereinafter referred to as 'the Tribunal') is requested to consider allegations that between August 2004 and June 2008 Madam Justice Levers' conduct, manner and behaviour towards witnesses, attorneys, court staff and judges officiating in the Cayman Islands was such as, when taken together, [to] amount to misbehaviour, as set out in section 49J(2) of the Cayman Islands (Constitution) Amendment Order 1993.
>
> 2. The Tribunal should carry out a factual investigation and report to the Governor whether the conduct of Madam Justice Levers taken as a whole has fallen below the standard reasonably to be expected of a holder of the office of Judge of the Grand Court so as to warrant proceedings for her removal."

42. These terms unequivocally required the Tribunal to advise whether Levers J had been guilty of misbehaviour warranting her removal. It is implicit in Mr Brodie's submissions that they should not have done so.

43. The procedure for the removal of a judge in the Constitution has its origin in the Memorandum of the Lords of the Council on the Removal of Colonial Judges (1870) 6 Moo. N.S. Appendix ix. The Memorandum stated that it was unsatisfactory for the Judicial Committee to exercise an original jurisdiction in relation to the removal of Colonial judges because of the difficulty and delay in placing evidence before it. The scheme proposed was one whereby the Governor would investigate the facts and make a provisional decision whether they justified removal. If so, the Governor would suspend the judge and refer the matter to the Judicial Committee for review. The Memorandum suggested an exception to this scheme in respect of misconduct charged that was "purely judicial". This was not amenable to the decision of the Executive acting on the advice of Law Officers or "advisers of inferior rank" and should be considered directly by the Privy Council.

44. The requirement in the Constitution that the Governor take advice from a Tribunal made up of those who hold, or have held, high judicial office meets the latter point. It is implicit that the Tribunal, after investigating the facts, will only recommend a reference to the Privy Council if it considers that the judge's conduct amounts to

misbehaviour justifying removal. The Board can see no reason in principle why the Governor should not request the Tribunal to advise him expressly on whether they consider that the conduct of the judge that they are investigating justifies his or her removal. There are a number of advantages in so doing. The removal of a judge is a most serious step and a Governor can reasonably wish to be satisfied that the Tribunal considers this justified before requesting a reference to the Privy Council. The procedure before the Tribunal is likely to be directed to the question of whether the judge has behaved in a way that justifies removal, and it seems to the Board desirable that the Tribunal should express its views on that issue. The findings of the Tribunal will then provide a convenient framework for the hearing before the Privy Council.

45. To some extent this will make the task of the Judicial Committee appellate in nature. The Board will be likely to accept the Tribunal's findings of primary fact, unless these can be demonstrated to be unsound. As to the consequences of those findings, however, it is for the Board to form its own views as to whether they amount to misbehaviour or incapacity justifying removal.

46. Having regard to this the Board considers that it was not appropriate for the Tribunal to castigate Levers J's conduct in the extreme terms adopted in the Executive Summary. It is one thing for an investigating tribunal to identify conduct that it considers amounts to misbehaviour justifying removal. It is quite another to do so in terms that may irreparably damage the reputation of a judge before her conduct has been appraised by the Judicial Committee.

47. There can be no objection to the Tribunal's categorisation of different incidents as those which in its opinion did and those which did not amount to misbehaviour justifying removal. This helpfully enabled Mr Brodie to concentrate particularly on those instances of Levers J's conduct that the Tribunal had considered to be most serious. At one point in his submissions he appeared to be treating adverse findings of fact which the Tribunal had found fell short of "serious misconduct" as being matters of no concern. There was no justification for so doing. In reaching its conclusions the Board has to look at the overall picture. All relevant findings of fact, whether favourable or unfavourable have to be taken into account.

*Misbehaviour justifying removal*

48. The standard of behaviour to be expected of a judge is set out in the Bangalore Principles of Judicial Conduct. The Bangalore Principles were approved at a meeting of Chief Justices and other Supreme Court Justices at the Hague in November 2002 and were on 27 July 2006 the subject of Resolution 2006/23 of the United Nations Economic and Security Council inviting Member States to take them into consideration when

reviewing or developing rules with respect to the professional and ethical conduct of the judiciary.

49. The Tribunal rightly identified the following principles as being particularly relevant in this case:

> "A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary (paragraph 2.2).
>
> A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer (paragraph 3.1).
>
> The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but also be seen to be done (paragraph 3.2).
>
> A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary (paragraph 4.6).
>
> A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds (paragraph 5.2).
>
> A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties (paragraph 5.3).
>
> A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity... (paragraph 6.6)."

These are standards that all judges should aspire to achieve but it does not follow that a failure to do so will automatically amount to misconduct.

50. The public rightly expects the highest standard of behaviour from a judge, but the protection of judicial independence demands that a judge shall not be removed for misbehaviour unless the judge has fallen so far short of that standard of behaviour as to demonstrate that he or she is not fit to remain in office. The test is whether the confidence in the justice system of those appearing before the judge or the public in general, with knowledge of the material circumstances, will be undermined if the judge continues to sit – see *Therrien v Canada (Minister for Justice)* [2001] 2 SCR 3. If a judge, by a course of conduct, demonstrates an inability to behave with due propriety misbehaviour can merge into incapacity.

*Evidence of good character*

51. Levers J set out in her witness statement details of her qualifications and her practice up to the time that she was appointed a judge of the Grand Court. The account portrays a successful and highly regarded practitioner. The account is substantiated by about 30 letters or witness statements speaking of Levers J's career and her character. The Tribunal was right to say that these attributed to her most of the qualities with which a judge should be invested, describing her as "fair, impartial, attentive, courteous, dignified and helpful". Mr Brodie criticised the Tribunal for attaching insufficient weight to these statements, suggesting that it belittled them by describing them as "character references" and by disregarding them when they were an important part of the overall picture of Levers J's behaviour. The Board has read those statements and they make impressive reading. They suggest that on the very many occasions to which they relate Levers J's conduct was exemplary. Indeed, it is difficult to recognise the judge portrayed by those statements as the same person as the judge described by some of the witnesses who gave evidence before the Tribunal. The Board has kept well in mind, when evaluating that evidence, the large body of favourable evidence relied on by Levers J.

52. The conduct that the Tribunal found amounted to misbehaviour justifying removal was partly in court and partly out of court. Some of the conduct in court occurred when Levers J was presiding over criminal proceedings, and some when she was sitting in family cases. The Board proposes to follow the same course as the Tribunal. First it will consider one by one the incidents of conduct in relation to which the Tribunal made adverse comment. The Board will then consider Levers J's relationship with the Chief Justice in the period after the Memorandum of 24 May 2007 and her attitude to the Chief Justice and her fellow judges. The Board will finally consider the implications of her conduct, viewed as a whole against the background of the evidence of her good character and many good qualities as a judge.

*Conduct of criminal proceedings*

53. It is convenient to start with the criminal proceedings, for the material evidence is in the form of transcripts and thus not open to dispute.

54. Two of the incidents that the Tribunal held to amount to misconduct involved criticisms of other judges made in open court.

***R v Christopher Ebanks***

55. This case was heard on 13 February 2006. Counsel complained to Levers J that the case had been taken out of the list without notice, but added that he understood the pressures that the listing officer was under. Levers J responded:

> "Well, Mr Smith, I think it's a perceived pressure really because if you walk around the courthouse after 2.30 the pressure is de minimis. Half the judges are having coffee, so I don't know what all this pressure is about, and I say that openly for the record. I can be quoted. It does not matter to me. It's ridiculous about May and June and July dates when after 2.00 o'clock nobody is doing anything but reading the newspaper."

56. This was one of the matters raised by the Chief Justice in his Memorandum of 24 May 2007. Levers J apologised to him for her remarks and accepted before the Tribunal that they were inappropriate. She had had one colleague in particular in mind when she made her comment. The comment would have been rightly perceived as being open criticism of her fellow judges. It was likely to bring them into disrepute. The Tribunal considered this an incident of serious misconduct. The Board agrees.

57. Levers J apologised to the Chief Justice for this comment, as she did for her comment in *Ebanks.* The Chief Justice could properly have accepted those apologies and treated her comments as two isolated occasions of injudicious conduct by a hard working judge under stress had he had no other reason to be concerned about her conduct.

***R v Ming***

58. In this case there was discussion about listing half a day for legal argument. Counsel mentioned the possibility that this would be on a Friday afternoon and asked whether that would be convenient to the court. Levers J is recorded as responding:

> "Well, the other judges don't like to sit in the afternoon, but I don't mind sitting."

Levers J told the Tribunal that she had referred to "other judges" in general, not to her colleagues in the Grand Court. In responding to the Chief Justice she had remarked that "the world over, judges do not sit on a Friday afternoon unless they have to". The Tribunal did not accept this gloss on her comment. The Board would not upset that finding. There is other evidence which demonstrates that Levers J had a low opinion of the industry of at least one of her colleagues and the likelihood is that the reporter correctly transcribed her comment. It was not as serious as the comment in *Ebanks*, in that it was elicited by counsel's implication that she might not be happy to sit on a Friday afternoon. The Tribunal described the comment as "wholly inappropriate". The Board would characterise the comment as "inappropriate".

***R v Alton Phillips***

59. Crown counsel complained about Levers J's conduct of this trial, which was held on 9 May 2006. The charge was of statutory rape by an 18 year old of his 12 year old girlfriend. The complaint was two-fold. First Levers J wrongly accused Crown counsel of challenging a juror in order to reverse a ruling that she had just made refusing to excuse him. The second was that she showed animosity to the victim and bias in favour of the defendant. The Tribunal decided to give Levers J the benefit of the doubt. Having read the transcript the Board considers that this was generous, but accepts the Tribunal's decision.

***R v Linton***

60. This complaint related to the sentencing hearing on 16 November 2006 of a defendant who had pleaded guilty to the statutory rape of a girl aged 14. The Tribunal found that Levers J made insensitive and inappropriate remarks, but these did not amount to serious misconduct. The Board agrees.

***R v Jensen***

61. This trial on 13 and 14 December 2006 involved a charge of assault by a man on a woman. The allegation was that Levers J made remarks which showed bias against the victim in favour of the defendant. The Tribunal found that she made an improper remark to the Court reporter:

> "I couldn't have done any more for him, could I?"

The Tribunal found that the evidence did not go so far as to establish that Levers J was guilty of serious misconduct. The Board endorses both the finding of impropriety and the finding that it fell short of serious misconduct.

***R v Bryan***

62. This complaint related to a sentencing hearing in May 2007 of a defendant who had pleaded guilty to two counts of grievous bodily harm. One of the victims was Pauline Hunter, who had once been the defendant's girl friend. The Defendant beat her about the head with a bicycle pump and she ended up in hospital with a head wound. The other victim was Mr Ramoon. The Tribunal quoted the following extracts from the transcript:

> "3.37 At the start of the proceedings Levers J asked where the victims and the defendant came from:
>
> THE COURT: Now, Pauline Hunter, is she a Caymanian?
>
> MS LEES: She is Jamaican.
>
> THE COURT: And Anthony Bryan?
>
> MS LEES: Is also Jamaican.
>
> THE COURT: And Ramoon?
>
> MS LEES: I think he's also Jamaican. Caymanian. So those two are Jamaican and Olney Ramoon is Caymanian.
>
> THE COURT: So they're on work permits here, is that it?
>
> 3.38 Later there was this exchange:
>
> THE COURT: Where is she now?
>
> MS LEES: She's still in the Cayman Islands.
>
> THE COURT: Why hasn't she been sent home? Oh, she's married to a Caymanian, is that it?

MS LEES: Mrs. McField. It says she's also known as Andrea Pauline Hunter and she's now McField. So she is now married to a Mr McField.

A little while later came this exchange:

THE COURT: You see, Ms Lees, these people get away with it. They don't come here and have a savings account. They send it all back home. So what are we going to do? And even if I sentence him to 50 years in prison, not going to make [$] 8,000.

MS LEES: Yes My Lady, that's why I say –

THE COURT: This is – I just wonder why Cayman has to feed these people? We must get some arrangement where they go back and do time in jail there. Why should we keep them here?

The officer in the case interjected:

DETECTIVE INSPECTOR
BAILEY: …She's about to get Caymanian Status.

THE COURT: What do you mean 'about to get Caymanian Status'?

DETECTIVE INSPECTOR
BAILEY: She has residency … with naturalization.

THE COURT Lord. But can't somebody object? I mean, what is a woman like that doing getting Caymanian—

DETECTIVE INSPECTOR
BAILEY: She's married. She's married.

Then Crown Counsel intervened:

MS LEES: My Lady, I don't know if there is any suggestion that she has brought on these injuries.

THE COURT: Well, you're married, you live with this man, you know? And—and I bet you he has beaten her before, but she sticks there, you know? I mean, the only way she's getting permanent residency and all this sort of

thing, is she was married to a Caymanian. Having made use of him now, she's gone on to her own kind.

Ms Lees pointed out the victim had been living in the Cayman Islands for 19 years.

Levers J interrupted the Defence address in mitigation:

> 'I tell you, this woman was spreading her goodwill around.'

3.39 Later another interruption occurred:

THE COURT: But this is the problem I have. They don't make anything of themselves. It's all about money. They come here, they make use of the country, and then they just send their money back. They don't – they stick to each other, they don't integrate into the community and they bring their violent ways with them. This is a problem, Mr. Miller. This is why we run away from Jamaica, because of the violence. And what are they doing to this beautiful island now? The same thing that they do to Jamaica in Jamaica. It really saddens me, because they have the golden opportunity to improve themselves here, you know? Yes?

3.40 While counsel was still trying to mitigate there was a further interruption:

THE COURT: But the tragedy is of sending him to prison in Cayman, it's like giving him a holiday at a hotel.

Because if he went to prison in Jamaica, trust me, it's a different story. As a private practitioner, I have been just to lock ups to see people, Mr. Miller, and you open the door and you don't see the difference between the door and the cockroaches. No, really, I'm very serous about it. Here when I send them to prison, what does he get, one-third off?

MR MILLER: Five-ninths.

THE COURT: Five-ninths off?

MR MILLER: Well, no, he will have to serve five-ninths.

THE COURT: Oh, he will have to serve. Four-ninths off? Well, and what, he will get excellent food. I'm sure he's going to get exercise, body building, anything you want. To study. You know? And I'm not sure about the other, alcohol and that sort of thing, whether that goes on too. But it's like a holiday here. Yes Mr Miller, maybe you can help me."

63. The Court Reporter, Ms Rouse, who drew the attention of the Chief Justice to this transcript wrote:

> "I would only say that, despite the Defendant pleading guilty, Justice Levers seemed to turn the focus of the proceedings on the female victim and seemed to indicate she had brought it on herself. I had never seen anything like this in my 14 years of court reporting. In my opinion Justice Levers appears to have a problem with Jamaican women…"

64. The Tribunal found Ms Rouse's comment to be wholly justified. The Board agrees. There was no justification whatsoever for this series of interventions, which flagrantly violated the Bangalore principles. They showed bias, and indeed contempt, for Jamaicans which extended not merely to the defendant but to his victim, who happily was not in court. The comments about Pauline Hunter were monstrous, suggesting that she should have been sent "home", describing her as "a woman like that" and accusing her of "spreading her goodwill around" – a clear allegation of promiscuity.

65. The Tribunal found that this incident constituted misbehaviour that would, of itself, have justified the removal of Levers J. The Board agrees. Her comments were comparable to those made by Judge Moreau-Bérubé, a judge of the New Brunswick Provincial Court in the course of sentencing a defendant which led to her removal, notwithstanding that she had made a public apology three days later – *HM The Queen v Moreau- Bérubé* [2002] 1 SCR 249. Her stance contrasts with that of Levers J, who has entirely failed to acknowledge that her behaviour was unacceptable.

***R v Irvalyn Bush***

66. The facts of this case are not in issue, although their implications are. Those facts, as stated by the Tribunal, were as follows:

"The case began on 15 August 2007. The defendant was charged with possession of a firearm. Ms Elisabeth Lees was Crown Counsel and Mr Nicholas Dixey appears for the defendant. Most of the evidence was agreed, including how and where the gun was found.

The issue in the case related to DNA. In the afternoon of the day on which the case began meetings were arranged between counsel and the DNA experts. Without reference to counsel Levers J visited the crime scene. . . . She later told counsel that she had visited the house where the gun was found and formed the view that it might have been planted. She said that she thought it was important that the jury should see where the gun was found, so that they could decide whether the gun had been planted. The following morning the jury visited the scene.

Asked in cross-examination whether, having visited the scene, she formed the view that the gun might have been planted, Levers J replied:

> 'No, I did not form the view that it might have been planted, but I did form the view that because [the house] was built on stilts and because the police having gone straight to it and found it and then stopped looking, the defence could have a defence of plant.'

A little later in her evidence she said:

> 'I formed the view that because of the circumstances and the way the house was built and the fact that the police went straight there and stopped after they found the gun, there could have been raised, if other circumstances were there, a defence of plant.'

When the jury returned from the scene, Ms Lees intimated to Levers J in chambers that she intended to make a recusal application. But in view of Levers J's assurance that she would not raise the matter of planting before the jury, Ms Lees decided not to pursue the application. Nevertheless in her summing-up Levers J directed the jury that:

> 'It was clearly dark and you might feel that they knew exactly what they were looking for and where they were going to look for it … They found it under the house and they stopped looking as soon as they found it.'

There was no suggestion of this either by the defence or in the evidence."

67. The Tribunal held that it had been improper for Levers J to visit the crime scene without informing counsel, to invent a defence of 'plant' in the absence of evidence or submission, and to breach her undertaking not to advance the issue in her summing-up, and that this together amounted to serious misconduct. What Levers J had been attempting to do was to procure the acquittal of the defendant by improper means. The defendant was, in the event, acquitted.

68. Mr Brodie challenged this analysis of the evidence. In particular, he submitted that the direction that the jury might feel that the police knew exactly what they were looking for and where they were going to look for it was not intended to suggest to the jury that the gun might have been planted. The Board does not accept that submission. It has read the transcript and considers that the Tribunal correctly analysed the evidence. Levers J was clearly doing her best to ensure that the defendant was acquitted. While it is not advisable for a judge to visit the scene of the crime without first discussing that intention with counsel, the visit was not, of itself, misconduct. But Levers J went beyond the bounds of propriety in suggesting that the jury should visit the scene as a precursor to considering a defence which the defendant had not advanced and which imputed misconduct to the police. She explained to the Tribunal:

> "…I did form the view that because [the house] was on stilts and because the police having gone straight to it and found it and then stopped looking, the defence could have a defence of plant."

Having regard to that evidence, her suggestion to the jury that the police knew what they were looking for and where to find it can only have been intended by Levers J to suggest a plant, albeit that the jury may not have appreciated this. The Board agrees with the Tribunal that this constituted serious misconduct.

***R v Craig Dilbert***

69. On 12 February 2008 Ms Elisabeth Lees, Crown counsel, sent to the Attorney General a lengthy written complaint alleging that the manner in which Levers J had conducted this trial, between 21 and 23 January 2008, gave an appearance of bias against the prosecution. The transcript discloses comments that the Tribunal rightly found were calculated to belittle the DNA evidence called by the Crown. It also discloses comments in relation to Ms Lees that the Tribunal rightly described as "unnecessary and unpleasant conduct". In opening, counsel to the Tribunal did not seek to attach great significance to this complaint, and so counsel to Levers J did not cross-examine Ms Lees about it. For this reason alone the Tribunal did not characterise this conduct as amounting to serious misconduct and, for the same reason, it would not be

right for the Board to do so. The Board would, however, endorse the Tribunal's conclusion that Levers J's conduct constituted unacceptable behaviour.

***R v Parchment***

70. The facts of this complaint are not in dispute, nor is the fact that they constituted discreditable behaviour. The Board will adopt the summary of them made by the Tribunal

71. On 26 November 2007 Levers J confirmed in writing to the Chief Justice a spurious complaint that she had first made to him orally. She copied her letter to the Attorney General and the Solicitor General. She described the behaviour of the Crown Counsel, Ms Tricia Hutchison, as 'very unsatisfactory'. First, she said that counsel had told the jury that Parchment, Jarrett and Ebanks jointly undertook a robbery. In fact, counsel had correctly told the jury that Mr Ebanks was involved in the last of three robberies as the driver of the car that was used. Mr Ebanks said that he was duped into participation, but he had to admit to having accepted money afterwards. Hence his plea of guilty to being an accessory after the fact.

72. Contrary to the assertion of Levers J that the Crown did not indicate that Mr Ebanks had pleaded guilty to the charge, the transcript shows that counsel did exactly that. Levers J said that the failure to lead the evidence caused an injustice to the accused who was denied the opportunity to cross-examine Mr Ebanks on the plea. The transcript shows that the accused's attorney did in fact cross-examine Mr Ebanks on that very point.

73. Levers J concluded her complaint by saying:

> "To my mind this behaviour is not to be condoned and should be brought to the attention of someone in charge of the conduct of Crown Counsel. It is misconduct . . . I bring this to your attention in the hope that some strenuous efforts are made by the Legal Department to ensure that this does not happen again."

74. The Tribunal considered that Levers J acted recklessly in making this complaint. The Board agrees. For counsel to be subject to an official complaint of this nature is not only highly distressing but, potentially, professionally damaging. Fortunately Ms Hutchison was able to demonstrate by reference to the transcript that the complaint was without foundation. Levers J should have checked the transcript, or the tape-recording of the hearing before making her complaint. The Board endorses the Tribunal's conclusion that this was a simple but damaging example of serious misconduct.

***R v Campbell and Parsons***

75. In this case the Tribunal was not satisfied on the balance of probabilities that the complaint was made out because it was not corroborated.

*Conduct of family cases*

76. The Tribunal considered six family cases over which Levers J had presided within the same period as the criminal cases. In the first case considered, *the Punnewaert litigation*, the Tribunal heard evidence by video link from one party to this litigation, Ms Punnewaert, and also evidence from counsel who had appeared for each of the parties. Counsel did not support the complaints made by Ms Punnewaert and the Tribunal found that the complaints about Levers J's conduct of this litigation were not made out. In relation to the *Sidey Ebanks litigation*, to which the Board will come in due course, the Tribunal was critical of Levers J but concluded that her conduct fell short of serious misconduct. The Tribunal found that Levers J's conduct in relation to the other four cases amounted to serious misconduct and that her conduct of the family litigation as a whole amounted to misbehaviour that demonstrated that she was unfit to hold judicial office.

77. Transcript evidence was not available in respect of the family litigation. The primary evidence in each case came from one of the parties to the litigation. Family litigation is necessarily stressful, and parties to such litigation will not necessarily view it objectively, or constitute a reliable source of evidence. It is prudent to look for corroboration of such evidence before basing adverse findings upon it, and the Tribunal's findings in relation to *the Punnewaert litigation* demonstrate that approach.

78. An example of the difficulty of evaluating evidence from a party to family litigation is provided by the last case that the Board will consider, *Elverson v Tyson.* Evidence in that case was given by Ms Elverson, but not by Mr Tyson. Mr Tyson read the Tribunal's Report and concluded that in a number of instances its findings of what had transpired at the hearing were not accurate. On 9 June 2010 he wrote a lengthy letter to be delivered by hand to Mr Akiwumi, junior counsel to Levers J, drawing attention to the relevant findings. That letter was placed before the Board without objection from Mr Otty, but without any explanation of the circumstances in which it came to be written and delivered so late in the day. Mr Brodie did not invite the Board to make positive findings on the basis of this letter, and it would not be appropriate to do so. But the detailed particulars set out in the letter have been enough to raise doubts on the part of the Board as to some of the findings made by the Tribunal. This has led the Board to approach the family proceedings with caution and to look for corroboration either from Levers J herself, or from counsel, as desirable to provide a firm foundation for criticism of Levers J in relation to these proceedings.

***The Cummings Litigation***

79. This litigation involved a dispute between Ms Cummings, a Canadian national and Mr Rankin, a Caymanian national. It came before Levers J on 20 October 2006. Ms Cummings gave evidence to the Tribunal by video link that Levers J made a number of derogatory statements about her which suggested that she was biased against her. The effect of these was set out in the Report as follows:

> "'How am I to know that you are in fact a good mother? You are obviously a liar.'
>
> And later:
>
> 'What were you thinking having a child with this man given you did not intend to stay with the father?'
>
> And later, having frequently referred to 'you people':
>
> 'You people come here and have babies for these men and then leave thinking someone else will raise their children in Canada.'
>
> And:
>
> 'I suppose you have no money either. It is after all a welfare system in Canada.'
>
> And:
>
> 'Look at the work you did in Cayman . . . the Westin Bodyworks.'
>
> This was a reference to her employment at the Westin Hotel in the Wellness Centre.
>
> At the end of the hearing Levers J addressed the father:
>
> 'I bet you wish you didn't have a child with this woman.'"

80. The Tribunal might have observed, but did not, that these alleged remarks reflected an attitude on the part of Levers J that was evidenced by the transcript in the criminal case of *Bryan.* Levers J did not challenge the gist of the remarks attributed to her, but contended that they did not display bias and were relevant to the issues before her.

81. Ms Merren, who had appeared for Ms Cummings, corroborated much of her evidence. She recalled that Levers J had, more than once, asked why Ms Cummings had had a child with someone with whom she had no intention of living. Levers J had referred to "you people", by which Ms Merren understood her to mean Canadians. She said that Levers J was fed up with seeing the same situation where foreign women came to the Island, got involved with Cayman men, and then tried to leave with the children. At the end of the hearing she said something to the father about having a child, although Ms Merren could not remember precisely what she said.

82. Mr Brodie submitted that the question of whether Levers J's conduct of this case was inappropriate had been subsequently resolved in proceedings brought by Ms Cummings before the Supreme Court of British Columbia, which had upheld the order made by Levers J. He criticised the Tribunal for not having regard to this. The Tribunal recorded that Levers J had pointed out that her decision had been upheld by the Supreme Court of British Columbia and subsequently endorsed by a Consent Order. It did not, however, draw any significance from that fact. The Tribunal's approach to the British Columbian decision cannot be faulted. No point was taken before that court in relation to the way in which Levers J had conducted the case, as opposed to the merits of her substantive decision.

83. The Tribunal held that Levers J behaved in an inappropriate manner and that she showed bias in favour of the father on account of his gender. She made a series of derogatory remarks towards Ms Cummings, referring to her status as a woman who was a foreigner, her impecuniosity, and as part of the pattern of foreign women having sexual relations with Cayman men and then seeking to leave the jurisdiction with their offspring. The Tribunal considered that the use of the phrase "you people" in its context was aimed at Ms Cummings as a Canadian and was particularly offensive.

84. The Board is not persuaded that Levers J's comments suggested gender discrimination as such. Furthermore, Levers J could properly have wished to explore whether Ms Cummings had deliberately had a child whom she intended to bring up without involvement of the father. The way she did this, however, was highly offensive and racist. This was a wholly inappropriate way of treating a litigant, or indeed anyone, in Levers J's court. The Board is satisfied that the comments amounted to serious misconduct.

***The Rankine Litigation***

85. This involved a dispute about child maintenance between Ms Rankine and her ex-husband which came before Levers J in November 2006 and April 2007. Three days after the second hearing Ms Rankine wrote an 8 page letter of complaint about the way that she had been treated to the Complaints Commissioner, with a copy to the Chief Justice. She complained that Levers J had made embarrassing and disparaging comments about her and shown bias against her and in favour of her ex-husband. The Tribunal made the following summary of her complaints:

> "By chance before the hearing Ms Rankine learnt that Levers J was suffering from kidney problems similar to those afflicting her ex-husband. Levers J, instead of standing down, proceeded to hear the case. By this time Ms Rankine was pregnant. As she entered Levers J's chambers the judge commented:
>
> 'I see there is another member of the human race on the way'
>
> and enquired who the father was. Counsel indicated she had no instructions on the matter, to which the judge replied:
>
> 'As long as we are clear that it is not [the respondent's] child.'
>
> Ms Rankine asserted that she felt that being pregnant was something she should be embarrassed about, and later remarks made her feel 'like a lowly irresponsible person who had got herself pregnant by some stray guy' and that she should feel ashamed of herself.
>
> Ms Rankine also complained that Levers J displayed bias in favour of her ex-husband and against herself. She displayed her own knowledge of the medical condition that she shared with Mr Rankine, and the symptoms and the costs of treatment, notwithstanding the absence of any evidence about these items. She asked the respondent if he would like his doctor present. Ms Rankine's perception was that the judge 'dished out a large dose of sympathy for him and proceeded to act as his advocate', whilst not taking her case seriously.
>
> Ms Rankine had been attending college part-time for the previous ten years while in full employment. This led Levers J to remark with sarcasm:

> ‘That’s some commitment. How long before you finish? Another ten years?’
>
> The learned Judge failed to appreciate, or deliberately ignored the fact, that attendance at college (she was studying for a Bachelor’s Degree) was while she was in full-time employment in addition to bringing up two children.
>
> The Respondent’s business had begun to fail. Ms Rankine attempted to suggest how it might be made more profitable. The judge sarcastically cut her short. As the parties were leaving her chambers, Levers J wished the respondent ‘Good Luck’. Her attorney enquired ‘What about my client?’ to which the judge responded:
>
> ‘Good Luck for what? Pregnancy?’”

86. The Tribunal expressed regret that it had not had evidence from either Ms Parke, Ms Rankine’s attorney or Ms DaCosta, Mr Rankine’s counsel, but made no mention of a five page memorandum dated 5 August 2008 addressed by Ms Parke to the Chief Justice, which dealt with Ms Rankine’s complaint. Ms Parke explained that her recollection of what transpired at the hearing was not very clear so long after the event and that she was therefore “very hesitant” to confirm the events as written by her former client. She went on to state what she did remember. This included the fact that Ms Rankine was very disappointed by the result. She remembered Levers J discussing the symptoms of the illness that she had in common with Mr Rankine. She said that Levers J might have asked at the beginning if Ms Rankine’s pregnancy was related to the proceedings. As to her closing remarks, she stated:

> “I do recall that at the end of the proceedings, when we were packing to leave the chambers, the Hon Judge spoke to the Petitioner and his attorney directly and wished him well in the future etc. and I admit, that I cheekily added if the same greeting was going to be extended to my client. This was not meant in a disrespectful manner, as I [was] simply adding to the conversation. I do not recall the Judge’s exact response, but I believe she did say something about pregnancy vs the Petitioner’s reported illness.”

87. Levers J herself confirmed the comment made about the time that Ms Rankine might take to complete her studies, but denied that the comment was sarcastic. As to the closing remarks, she stated that this was a light hearted exchange.

88. The Tribunal criticised Levers J for discussing the medical condition that she had in common with Mr Rankine, indeed it suggested that she might have been wiser to recuse herself because of this shared condition. The Tribunal held that because of this discussion Ms Rankine was justified in perceiving that Levers J was biased towards her ex-husband. The Tribunal made these closing observations about Levers J's conduct and ended by commenting that it amounted beyond reasonable doubt to very serious misconduct:

> "This conduct was compounded by the final exchanges on leaving the judge's chambers. We do not accept that this was a civil, light-hearted exchange. The final remark (which Levers J does not deny) was cruel, unnecessary and inappropriate, and was redolent of bias. It was also consistent with the judge's earlier ill-chosen and insensitive remark about Ms Rankine's pregnancy. We also find that on more than one occasion the judge's penchant for sarcasm got the better of her. Her remark about Ms Rankine's academic endeavours was cheap and uttered without regard to Ms Rankine's worthy efforts to support herself and her children and at the same time to improve her situation."

89. The Board considers that the Tribunal was justified in treating as accurate the comments of Levers J that Ms Rankine included in her letter of complaint only three days after the hearing. The manner in which Levers J dealt with her pregnancy was insensitive and inappropriate. The Board finds it significant, however, that the hearing does not appear to have left Ms Parke with the impression that Levers J was showing overt bias or contempt for her client. On her evidence the final exchanges were in the nature of light-hearted banter. We have concluded that Ms Rankine's view of the proceedings may have been unduly coloured by her disappointment with the result. The Board does not consider that a case of misconduct in relation to this litigation has been made out.

***The Foster Litigation***

90. Ms Foster was a Filipino, divorced from her Caymanian husband. She came before Levers J on 27 November 2006 on a hearing relating to the custody of the children of the family and ancillary matters. She found the experience distressing. Levers J accused her of bringing relatives to the Island to find husbands and made sarcastic remarks about Ms Foster's brother, who had established himself with a good job as an engineer. When a further hearing became necessary in the matter, Ms Foster wrote to the Clerk of Courts alleging that:

> "It was very obvious that I was not given a fair judgment by the said judge as she seemed to favour my Caymanian husband and showed her strong dislike to non-Caymanian."

Ms Foster requested that the case should be referred to another judge.

91. In the event, the case was brought back before Levers J on 11 April 2007. Ms Foster alleged that on that occasion Levers J said to her:

> "So you want more money, why don't you go back to the Philippines?"

Ms Foster got upset and emotional whereupon, according to her, Levers J threatened that if she said one more thing she would put her in jail. She then telephoned a man to "pick her up" and a man entered the room. Levers J said that Ms Foster became difficult and the lawyers felt threatened, so she called the Marshal but denied that she had threatened to put Ms Foster in jail.

92. The Tribunal accepted Ms Foster's version of the events at the second hearing. The Board can see no basis for upsetting that finding. The suggestion that Ms Foster go back to the Philippines accords with other evidence of Levers J's attitude to foreigners in the Cayman Islands. Ms Foster is unlikely to have invented the threat to put her in prison. The Tribunal concluded that the way in which Levers J treated Ms Foster constituted serious misconduct. The Board concurs.

***The Sidey Ebanks Litigation***

93. Ms Sidey Ebanks is a Costa Rican national who married a black Caymanian. They had been married for 15 years, had three children and had acquired a family home, but the marriage failed and she was a petitioner in divorce proceedings before Levers J on 27 August 2007. On 11 October she wrote a letter of complaint to the Chief Justice about comments made by Levers J in the course of the hearing. The Tribunal found that she was an honest witness, but determined only to accept that part of her evidence which was fully corroborated by Ms Merren, her counsel. This was an exchange at the end of the hearing. When Levers J ruled that the children would live with their father, Ms Ebanks asked how she could give custody of the children to their father when he basically spent his time in a bar drinking and playing darts and dominoes while they were young while she dedicated her life to them. To this, Levers J replied:

> "That's what you get for being married to a black man. If you had married an Englishman or a white man that would not have happened to you."

Levers J accepted that she made this comment, save that she said that in place of "black" she said "Caribbean".

94. The Tribunal commented that this was a gratuitous insult to Ms Ebank regarding her choice of husband from a particular ethnic group and that it was also a racist remark. The Tribunal decided, however, that this comment fell short of serious misconduct. The Board does not agree. The judge's comment was outrageously racist. The Board understands that what may be totally unacceptable in some places may be common currency in others. Nor does it suggest that Levers J, who is after all married to a Jamaican, is herself racist. But a comment such as that will inevitably be perceived as racist by those who hear it and is totally unacceptable from the bench anywhere in the world. The Board considers that it constituted serious misconduct. Mr Brodie submitted that it would not be fair for the Board to treat this incident more seriously than did the Tribunal. The Board does not agree. In making its own appraisal of the significance of the facts found by the Tribunal the Board must be free to differ from the views of the Tribunal in either direction.

***Elverson v Tyson***

95. The Board has referred at paragraph 77 to the doubts that the letter from Mr Tyson has raised over some of the findings made by the Tribunal. It remains to consider the implications of aspects of the hearing before Levers J that are not subject to dispute. Ms Elverson had been married to Mr Tyson and they had joint custody of their two children. They were in dispute as to whether their elder son, aged 11, should be sent to boarding school in England. Mr Tyson was in favour of this course. Ms Elverson was opposed to her son, who suffered from Attention Deficit Hyperactive Disorder, being sent to boarding school before he reached the age of 16.

96. At the outset of the hearing Levers J stated that she had been to boarding school and had sent her three children to boarding school. Ms Elverson felt that the judge was unsympathetic to her and to her case from the start. This contrasted to her attitude to Mr Tyson. Mr Tyson's father had been a housemaster at Rugby School and Levers J remarked that her brother had been to that school. She said that she would telephone her brother to see whether he remembered Mr Tyson's father. Ms Merren, Ms Elverson's counsel remembered that she did this during a break in the hearing.

97. The Tribunal described this behaviour as inexcusable and inexplicable, commenting that it would have been obvious to any objective bystander that the exchange about the ex-husband's father's position as housemaster and the telephone call during the adjournment were unjustified and a departure from the proper standards.

98. A judge must always be careful to be, and be seen to be, even handed and impartial. This is particularly important in family cases where emotions run high and where the judge exercises a wide discretion. Levers J's conduct in telephoning her brother to enquire if he remembered Mr Tyson's father was inappropriate and ill-advised. It was likely to give rise to the impression of being favourably disposed to Mr Tyson and did so. The Board would not, however, describe this as serious misconduct.

*Levers J's relationship with the Chief Justice after May 2007*

99. The Tribunal devoted the 5th chapter of its Report to the relationship between the Chief Justice and Levers J. The 6th chapter of the Report deals with criticism by Levers J of the Chief Justice and other judges, but concentrates on the other judges. Inevitably there is a degree of overlap between the two chapters. The judges involved apart from the Chief Justice were Henderson J, a Canadian who was a full time Judge of the Grand Court, Sanderson J, a Canadian who served as a part time Judge of the Grand Court and Mrs Ramsay-Hale, who held full time office as the Chief Magistrate.

100. The Tribunal criticised Levers J for the terms of her memorandum of 4 June 2007 on the following grounds. First its tone and content were calculated to inflame what was a very tense and serious situation. Secondly it made ill-judged allegations of malice against those who had drawn the Chief Justice's attention to the matters set out in his memorandum. Thirdly, some of the language used was disproportionate.

101. Levers J's response to the memorandum was certainly angry and indignant. In response to the Chief Justice's disapproval of the way in which Levers J had treated jurors, she responded by implicitly criticising the Chief Justice by observing that a practice direction, or at least a telephone call to herself, would have been helpful. Levers J alleged, in relation to one complaint, that

> "Someone who wants to harm me and prejudice your mind has trawled through the transcript to find this exchange ...This is an example of the malicious judgment of those who brought this to your attention."

She unjustifiably accused the Chief Justice of summarily accepting as correct the statements of Mrs Cummings and Mrs Rankine. She said that the advice that the Chief Justice had given in respect of the three written complaints "had been taken" and that she had already implemented procedures to ensure that allegations of that nature, however unfair they might be, could never be made again in the future.

102. The Board does not consider that the tone or the nature of Levers J's memorandum amounted to misconduct. It was the reaction of someone who was hurt

and upset. It did, however, demonstrate a lack of insight into her own behaviour and a failure to appreciate the considerable shortcomings to which some of it amounted.

*Mrs Webb's evidence*

103. In dealing with events that followed the exchange of memoranda between the Chief Justice and Levers J the Tribunal commented that Mrs Elizabeth Webb was an important witness who was helpful in understanding the deterioration of the relationship between the Chief Justice and Levers J. Mrs Webb was Levers J's secretary from the time that she joined the Grand Court bench. The Tribunal did not accept, on balance of probabilities, an important, indeed the most important, part of Mrs Webb's evidence, but found that she was not lying and relied other parts of her evidence. Mr Brodie submitted that the Tribunal should have held that Mrs Webb had lied and should have discounted her evidence in its entirety.

104. The part of Mrs Webb's evidence that the Tribunal did not accept related to a letter that was published in the *Cayman Net News* that purported to have been sent to the Editor and which was signed 'Leticia Barton'. It was one of a series of letters bearing fictitious signatures that were published by that newspaper. This correspondence was critical of the administration of justice in the Cayman Islands in general and of the Chief Justice in particular.

105. In a witness statement dated 24 November 2008 she gave a detailed account of seeing in July 2007 a single sheet of notepaper with writing in Levers J's hand that was addressed to "the Editor" and signed "Leticia Barton". She said that she had suspected that Levers J had written the previous letters to the *Cayman Net News* and that, the same day, she told both Yasmin Ebanks and Mrs Caudeiron, (an advocate in practice in the Cayman Islands), about the Leticia Barton letter. About two weeks later she read the letter signed 'Leticia Barton' in the newspaper (this publication was on 27 July). Yasmin Ebanks was a Listing Officer at the Grand Court. She signed a witness statement on 26 November 2008 in which she confirmed that Mrs Webb had told her about seeing the manuscript letter before the Leticia Barton letter was published. Mrs Caudeiron in her witness statement of 24 November 2008 said that she was away the whole of July 2007, but that on her return in August Mrs Webb told her that she had seen a letter in Levers J's possession under the name of "Barton" before it was published in the *Cayman Net News.* Thus there was in the witness statements a discrepancy, at least as to timing, between the evidence of Mrs Webb and that of Ms Caudeiron.

106. Mr Brodie cross-examined Mrs Webb strenuously about the Leticia Barton letter. He produced a manuscript letter written for the purpose by Levers J that reproduced the text of the letter published in the *Cayman Net News* to demonstrate that it was impossible for the letter to have been contained on a single page of notepaper.

He suggested that she had conspired with Ms Yasmin Ebanks to make up a false story about the letter. She insisted that the events that she had described had occurred.

107. `When giving evidence in chief, Yasmin Ebanks confirmed Mrs Webb's evidence. She ended her evidence, however, with the remark that "when the Barton one came out I had my suspicion about that letter".

108. Mr Brodie picked up this comment in cross-examination and asked her whether it was possible that her conversation with Mrs Webb occurred after the publication of the letter. She did not accept this, but her evidence under cross-examination was somewhat confused. Mr Brodie did not suggest to her that she had conspired with Mrs Webb to make up a false story.

109. The Tribunal observed that the Leticia Barton letter was important because, had it been shown that Levers J was the author of it she would be shown to have made offensive allegations critical of the Chief Justice and other members of the judiciary, and would stand condemned out of her own mouth. The Board would put it more strongly. The pseudonymous letters, including the Leticia Barton letter, made personal attacks on individual judges, including the Chief Justice, and on the judiciary in general. To write such letters under pseudonyms to the press would have been misbehaviour of the highest order. Mr Brodie accepted that, if correct, Mrs Webb's evidence would have justified Levers J's removal.

110. The Tribunal concluded, however, that

> "having weighed the probabilities, we are unable to conclude that it is more probable than not that Levers J wrote the published letter. We did not believe that Mrs Webb was lying, but the lack of specificity in this part of her evidence left room in our view for misconstruction, confusion or imperfect recollection. That did not detract from the main tenor of her evidence, which corroborated Levers J's antipathy for Sanderson J, her criticisms, of him and Henderson J and of the Chief Magistrate, and her readiness after May 2007 to criticise the Chief Justice, apparently for no better reason than that he had reproved her. "

111. The material placed before the Board shows that strenuous steps, including a police investigation, were taken to identify the writer of the pseudonymous letters to the *Cayman Net News*, both before the appointment of the Tribunal and in preparation for the hearing before the Tribunal. This included some remarkable correspondence from the Editors of that newspaper, which raised a suspicion that the creation of the published correspondence might have been internal. Before the Tribunal and before this Board Mr

Otty accepted that he could not properly seek a finding that Levers J was responsible for that correspondence. The Board is in no doubt that he was right.

112. The Board does not consider that the relevant evidence of Mrs Webb could properly be described as lacking in specificity. Her evidence about seeing the manuscript letter signed 'Leticia Barton' was highly specific. She did, however, state in a supplementary witness statement dated 1 May 2009, that her conversation with Mrs Caudeiron might have taken place on an occasion after the day on which she saw the letter. Mrs Caudeiron's veracity was not challenged. It is clear that after the publication of the Leticia Barton letter Mrs Webb told her that she had seen the manuscript written by Levers J. The Board considers it possible that this was also when she told Yasmin Ebanks about it. The two were close friends and it is likely that they discussed the incident at a later stage. Mrs Webb may have coloured Mrs Ebanks' recollection as to when their conversation took place.

113. The Tribunal heard Mrs Webb giving evidence and concluded that she was not deliberately lying. The Board is not in a position to reverse that finding. Mrs Webb was, on her own evidence, under stress at the time. She suspected Levers J of responsibility for the pseudonymous letters and it is possible that, after the publication of the Leticia Barton letter, her memory was defective. On any footing, however, Mrs Webb was not a reliable witness and evidence from her that is not corroborated should not be relied upon. Into this category falls her belief that Levers J was implicated in the staff petition, belief that she transmitted to the Chief Justice. The Tribunal found that there was no reliable evidence of this; it might have added that those responsible for the petition strenuously denied that Levers J had had any involvement in its presentation and that counsel to the Tribunal had commented that all the direct evidence pointed against such involvement.

114. Some aspects of Mrs Webb's evidence are corroborated by contemporary documentation. On 6 August 2007 she typed a letter from Levers J to Mr Charles Quin QC, who was subsequently to be appointed to the Grand Court, and Mrs Carla Reid, her trustees, in which she complained that the atmosphere working in the Judicial Department was the worst that she had experienced in her life and that the personnel that she had to deal with left a great deal to be desired. Dealing with her possible death she instructed that there should be no attendance at her funeral or any memorial service by "the Chief Justice, any Canadian member of the judiciary that included Mr Foldats, Henderson J, and the Court reporters". She ended her letter by stating that she was convinced that she did not wish "such hypocrites and less than decent human beings" to attend her funeral.

115. This letter demonstrates that by August 2007 Levers J had formed a powerful dislike of the Chief Justice, Henderson J and those others that she mentioned and was not concealing that from Mrs Webb. The Board considers that it was quite inappropriate

for Levers J to get her secretary, who was a member of the court administration, to type a letter displaying such sentiments. Her action lent some support, however, to Mrs Webb's evidence that, after Levers J received the memorandum from the Chief Justice, she became critical of the Chief Justice, Henderson J, and Sanderson J, whom she believed had instigated the complaints about her.

116. It was Mrs Webb's evidence that Levers J regularly made criticisms to her about her fellow judges and that in August 2007, after a period of sick leave as a result of stress she told Levers J that she did not wish to hear any more of the "Court's office issues". She said that this made Levers J very upset. This seems to have been the case. Levers J got Mrs Webb to type a letter to a friend which included the statement that her secretary had "offensively told me that she did not want to hear office gossip! What can I tell you – what I know is I must say words can either be said at the appropriate time or not!" The Board considers that it showed extreme insensitivity on the part of Levers J to get her secretary to type this derogatory comment about herself.

*Evidence from other witnesses*

117. Mr Brodie made the point that, in so far that Levers J was critical of the Chief Justice or her fellow judges, this was in private conversations and was not capable of amounting to misconduct. The Cayman Islands is a small jurisdiction. Those in the court administration there are in regular communication with each other. Comments made to one are likely to be spread on to others. The Tribunal received a considerable body of evidence, some of it by the nature of things hearsay, of adverse comments made by Levers J about the Chief Justice.

118. In an email sent on 5 June to Mr Robinson, a friend in Jamaica, Levers J described the Chief Justice as "weak". The Tribunal, understandably, attached particular weight to evidence from Mr Quin, provided in the form of answers to questions posed by those representing Levers J. He said that he was aware that Levers J was speaking to people, criticising the Chief Justice and his administration of the courts. She criticised the Chief Justice on many occasions to him and he urged her not to do so, but to mend her fences with the Chief Justice, which she declined to do.

119. A number of witnesses spoke to Levers J's reaction to the memorandum that she received from the Chief Justice. Ms Palmer, the personal assistant to the Chief Justice, saw Levers J on 25 July 2007, who referred to the memorandum. She said that she was upset by it and that no one was going to sully her reputation and get away with it. Chief Magistrate Ramsay-Hale said that at about the time that she received the memorandum, Levers J. described the Chief Justice as "spineless, lacking backbone and having no balls". She said that in the middle of 2007 Levers J "ranted" to her about the Chief Justice at length. Mrs Caudeiron said that Levers J said that the memorandum had

the hallmarks of Sanderson J and that the Canadian court reporters were also involved. Levers J denied that this conversation had taken place, but the Tribunal was satisfied that Mrs Caudeiron's account was accurate. Ms Hennie, a Judicial Secretary in the Judicial Administration Department, said that Levers J said that she would "never forgive" the Chief Justice for the memorandum.

120. The evidence of Mrs Webb that on a number of occasions Levers J spoke critically to her about the Chief Justice reflected evidence given not merely by Quin J but by a number of other witnesses. There was widespread gossip, reflected in the pseudonymous correspondence in the *Cayman Net News* in relation to the appointment of Mrs Cathy Cheshunt to the post of research analyst. It was suggested that she had received this appointment despite the fact that she was not qualified for it because she enjoyed the favour of the Chief Justice and, in some quarters, because he enjoyed her favours. Mrs Caudeiron testified that Levers J had stated to her that Mrs Cheshunt did not have the necessary qualifications and had got the job because of her friendship with the Chief Justice. Once again the Tribunal did not accept Levers J's assertion that this conversation had never taken place. Other witnesses said that Levers J had referred to statements by others to this effect.

121. The Tribunal summarised the position as follows:

> "It is our finding that, thereafter, Levers J spoke disparagingly of the Chief Justice to various persons within the justice system of the Cayman Islands. Her remarks filtered back to the Chief Justice through persons closely connected to the administration of justice such as Ms Lorraine Hennie, Mrs Elizabeth Webb, Mrs Yasmin Ebanks, Ms Delene Cacho and Mrs Terrence Caudeiron.
>
> From May 2007 Levers J surreptitiously undermined the Chief Justice by her constant criticism of him to third parties. She stubbornly refused to accept the sage advice of Mr Quin to seek private communication with the Chief Justice. Instead of harkening to such advice, she preferred to destabilise the Chief Justice through her own criticisms and by giving currency to rumours uncomplimentary of the Chief Justice. Such behaviour, in our view, was not congruent with the ethical standards applicable to a judicial officer. It would put an unusual strain on common sense for us not to believe that Levers J knew what she was doing, the implications of what she was doing, and the consequences of her actions. There could be only one purpose: the undermining of the office and the holder of the office of Chief Justice."

The Tribunal concluded that this behaviour amounted beyond reasonable doubt to misbehaviour justifying Levers J's removal.

122. The Board would not condemn as misconduct criticism made in good faith, in private conversation with a friend, by one judge of another, even if that other is the Chief Justice and even if the criticism is misconceived. Nor would the Board necessarily condemn such a comment if made to a trusted member of staff. But the disparagement by Levers J of the Chief Justice, which included a scurrilous allegation impugning both his private and his public life, was made to administrative staff, was so widespread and persistent that it was almost bound to go beyond those to whom she spoke, and was duly reported to the Chief Justice. It can be difficult to identify the point at which indiscretion becomes misconduct, but the Board considers that Levers J crossed the line.

*Criticism of other members of the judiciary.*

123. Henderson J was included in the list of those whom Levers J had instructed should not attend her funeral. Evidence of her ill-feeling towards him also came from Mrs Ramsay-Hale who gave evidence that on one occasion Levers J asked her to sit between her and Henderson J because she could not stand the man. Mrs Webb produced photocopies of notes made by Levers J in June 2007 that suggested disapproval of Henderson J's timekeeping. But there was little evidence of personal disparagement of Henderson J, albeit that there was evidence that Levers referred in conversation to gossip that he and his wife smoked cannabis at home.

124. Levers J had never sought to conceal her hostility and mistrust of Sanderson J. She accused him of having been behind the Chief Justice's memorandum and expressed opposition to his appointment as a part time member of the Grand Court. Two witnesses at least spoke of Levers J referring to the fact that Sanderson J brought firearms onto the Island. This was true, but he had obtained the necessary permission to do as a competitor in sharpshooting.

125. There was evidence that when Mrs Ramsay-Hale first came to the Island from Jamaica as Chief Magistrate Levers J expressed strong disapproval of her practice of enjoying a game of dominoes over drinks at the Sunset Club. This was passed on to Mrs Ramsay-Hale by Howard Hamilton QC, of whose chambers Mrs Ramsay-Hale had been a member, and according to him she thereafter desisted from this practice. Mr Hamilton stated in his witness statement that Levers J did not share the high regard that he had for Mrs Ramsay-Hale's legal abilities, and repeatedly made this plain in conversations with him.

126. There was a body of evidence that Levers J made, on occasions, disparaging comments to judicial staff about the practice of her fellow judges smoking and drinking coffee, and this tallied with her comment in open court in *R v Christopher Ebanks.*

127. The picture that this evidence paints is of a judge who was given to making derogatory comments about her colleagues to friends and to members of the administrative staff. The Tribunal commented that this caused disequilibrium within the judiciary, that sowing the seeds of disunity in a court of only four judges in a jurisdiction made up of small islands militated against the development of judicial collegiality and cohesiveness and that it was bound to bring the judiciary into disrepute. There is force in the earlier points, but the final comment perhaps puts the matter too high. The Board is none the less particularly concerned at Levers J's practice of denigrating her colleagues to the administrative staff. When one considers as a single course of conduct the comments made by Levers J about all her colleagues, including the Chief Justice, serious misconduct is made out. The Board does not consider, however, that this, of itself, amounted to misbehaviour that would have justified the removal of Levers J.

*Conclusions*

128. It is now time to stand back and look at the overall picture. The large body of statements of those who have known and who have worked with Levers J over the years shows that she has many admirable qualities. She is a sound lawyer. She is industrious and she sets high standards. She had many admirers at the court. One witness who spoke highly of her was Lillian Curbelo-Bush, the Administration and Finance Manager of the Justice Department. The following comments are extracted from her statement, which was adduced by counsel to the Tribunal:

> "I respect Justice Levers tremendously. She is an extremely analytical person and she will criticise you if you do not do something properly. That said, when she says something critical she usually also follows it up with something constructive as well. I respect her for this… As I mentioned before, Justice Levers is a very critical person…Justice Levers likes things to be done by the book. If things are not done properly she will take the matter to the highest authority until it is resolved… I do not think Justice Levers' behaviour is out of the ordinary. It is common to find criticism in other co-workers. She can be very harsh but normally follows criticism up with constructive advice. Justice Levers maintains decorum and expects those who are involved with the Justice Department to also have high standards. If the Judiciary cannot uphold the dignity and integrity that is essential how can we look up to them?"

129. These comments give the clue to the conflict between the evidence from the many witnesses who spoke to Levers J's good character, and the evidence of misconduct that the Board has set out in this advice. Levers J has high standards and shows strong disapproval for those whom she does not consider measure up to them. That disapproval has extended both to some who have appeared in her court and to her own colleagues. Unfortunately she has not kept that disapproval to herself. It has led her repeatedly to make in court comments that have ranged from the inappropriate to the outrageous about those who have appeared before her and, on two occasions, about her judicial colleagues. So far as those who appeared in her court were concerned, the disapproval and inappropriate comments in evidence before the Board appear to have been directed predominantly against women, and particularly women from outside the Cayman Islands, but it would not be right to deduce from those instances any race or gender bias on the part of Levers J.

130. By the time that the Chief Justice had prepared his memorandum of 24 May 2007 these comments had cumulatively amounted to misbehaviour justifying the removal of Levers J from the bench. Indeed the Board has concluded that removal would have been justified by her comments in *Bryan* alone. Anyone who heard those comments could justifiably have concluded that a judge who behaved in this way should not be permitted to continue to sit.

131. The Chief Justice did not, however, consider referring her conduct then and there for consideration by the Governor. Instead he placed the memorandum before her for her consideration in the hope that it would lead her to avoid such behaviour in the future.

132. Unfortunately this hope was not fulfilled. Levers J accepted that her comments in *Ebanks* and *Ming* had been inappropriate, although she argued that they had been misconstrued, but she did not accept that apart from these two incidents the Chief Justice's criticism was justified. Rather her reaction was that she was being unfairly victimised. Her resentment soured her relationship with the Chief Justice and she thereafter regularly disparaged him as well as other judicial colleagues in private conversations with a number of those involved in judicial administration in a manner and to an extent that constituted misconduct.

133. More significantly in the eyes of the Board, Levers J continued to behave in a manner that was unacceptable in the performance of her judicial duties. Her behaviour in relation to *Irvayln Bush*, *Dilbert*, *Parchment*, and *Sidey Ebanks* was unacceptable and, in three cases, amounted to serious misconduct. Levers J did nothing to redeem the conduct to which the Chief Justice had drawn her attention in his memorandum of 24 May 2007. She did not accept that she had any need to mend her ways and did not do so.

134. The Board has been most concerned with those occasions when Levers J has been guilty in court of completely inexcusable conduct that have given the appearance of racism, bias against foreigners and bias in favour of the defence in criminal cases. They have been fatal flaws in a judicial career that has had many admirable features. The Board does not endorse the unqualified terms in which the Tribunal saw fit to condemn Levers J, as quoted at paragraph 38 above. The Board is, however, satisfied that by her misconduct Levers J showed that she was not fit to continue to serve as a judge of the Grand Court and humbly advises Her Majesty that she should be removed from that office on the ground of her misbehaviour.