

# HERBERT SMITH FREEHILLS SECURES IMPORTANT PRO BONO VICTORY FOR CARIBBEAN DEATH ROW INMATES

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Firm news

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A team of lawyers in Herbert Smith Freehills' London Disputes Practice has secured a significant ruling which will benefit many prisoners in Trinidad and Tobago who had endured years on death row.

Professional Support Lawyer Jan O'Neill and Associates Caitlin Eaton and Ashley Thompson acted pro bono for a prisoner in a test case before the UK Judicial Committee of the Privy Council, which considered what should happen to the numerous prisoners who had been kept on death row for so many years that the State of Trinidad and Tobago had been forced to commute their death sentence because executing them after so long would be unconstitutional. The ruling on 16 May 2022 said that prisoners in that position are entitled to a full resentencing taking into account their individual circumstances, rather than an arbitrary blanket sentence of life imprisonment.

The case is the latest in the firm's continuing work supporting individuals who have suffered injustice due to deficiencies in criminal justice systems in the Caribbean.

## **Background to the case: Naresh Boodram**

Mr Boodram was convicted of murder in Trinidad and Tobago in 1996 and sentenced to death by hanging (under a controversial law which requires the death sentence for all murder convictions, regardless of the circumstances). However, like many other prisoners at the time, his sentence was not carried out due to various issues in the criminal justice system and he remained on death row for over a decade, in constant fear of execution.

As a result of prior successful pro bono work by Herbert Smith Freehills and other firms, Trinidad and Tobago (and other Caribbean countries) were forced to commute the death sentences of all such prisoners on the basis that carrying out an execution after a long delay (over five years) constitutes inhuman or degrading punishment and would be unconstitutional.

However, Trinidad and Tobago took the position that all such sentences must be commuted to life imprisonment, with no scope for a court to substitute a lesser sentence taking into account the time spent on death row and the individual circumstances. Mr Boodram (with pro bono support) secured a ruling from the local Court of Appeal rejecting that position on constitutional grounds, but Trinidad and Tobago appealed that ruling to the Privy Council.

Herbert Smith Freehills' London office worked with Mr Boodram's local counsel, Mark Seepersad, and barrister Joe Middleton of Doughty Street Chambers, in what was effectively a test case on the legal point.

In its recent judgment (summarised [here](#)), the Privy Council accepted the team's arguments and dismissed the Attorney-General's appeal. It considered that imposing a blanket substitute sentence of life imprisonment would be arbitrary and could amount to cruel and unusual punishment in some cases. As a result, more than 25 years after Mr Boodram's original death sentence, his case will now be remitted for resentencing.

The Privy Council also reversed the Court of Appeal's decision to deny Mr Boodram his costs in the Trinidad courts even though he had succeeded in this important constitutional challenge.

Many other prisoners in a similar position will now also be able to apply for similar resentencing - local counsel reported that "the prison is buzzing".

Jan O'Neill said: *"It is so rewarding to know that the result will force a real systemic change and provide many prisoners with hope of some redress for the past injustices."*

## **Our longstanding involvement with Caribbean death row appeals**

The Boodram case is one of a long line of cases that Herbert Smith Freehills has supported in the Caribbean over three decades. Along with other City law firms, the firm provides free legal representation to prisoners who have faced miscarriages of justice because of systemic failures and inadequate defences.

As well as acting in Privy Council appeals, the firm also supports clients by exploring options before international human rights institutions such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. While some of these institutions are slow-moving, every effort is made to put pressure on the Caribbean judicial systems to make reforms and improve access to justice.

Paula Hodges QC, the firm's Global Head of Arbitration, has championed the initiative since 1989 and was the former coordinator of the London Panel of Death Row Solicitors.

Commenting on the ruling, Paula said: *"I am very proud of the team for achieving this milestone victory which will give the opportunity for all prisoners in Trinidad & Tobago who have been given an automatic life sentence to have their individual circumstances reviewed."*

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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