



ARTICLE

Trinidad and Tobago: Court of Appeals Rules Constitution's "Savings Clause" Precludes Court Review of Colonial-Era Sex Offense Provisions

On March 25, 2025, the Trinidad and Tobago [Court of Appeal](#) ruled that a "savings clause" in the country's [Constitution](#) precludes court challenges to pre-Independence laws that violate fundamental rights and freedoms. It thus reversed a [2018 decision](#) by the High Court that found sections 13 and 16 of the 1986 [Sexual Offences Act](#) were unconstitutional to the extent that they criminalized consensual sex between adults, because the 1986 law merely repealed and reenacted a 1925 colonial-era law, and therefore court review was barred by the savings clause.

Background

Trinidad and Tobago's 1976 Constitution, like that of some [other Caribbean countries](#), includes a savings clause that precludes colonial-era laws from being challenged in court, even if they violate rights and freedoms enshrined in the Constitution.

Under section 13 of the 1986 Sexual Offences Act, a person who commits the offense of "buggery" was liable on conviction to imprisonment for 25 years. The act defines buggery as anal intercourse "by a male person with a male person or by a male person with a female person." Section 16 subjected a person who is convicted of the commission of "an act of serious indecency on or towards another," as defined by the act, to imprisonment for a term of five years, but excluded consensual acts committed in private between a male and a female both of whom are at least 16.

A Trinidadian activist, Jason Jones, brought suit seeking a ruling that these provisions were unconstitutional to the extent they applied to consenting adults. The High Court, in its 2018 ruling, agreed with the claimant and ruled that the provisions must be modified to not apply to consenting adults.

Court of Appeals Decision

The majority ruling at the Court of Appeals, which has yet to be published, was [reportedly](#) given by Justices Nolan Beraux and Charmaine Pemberton, with Justice Vashiast Kokaram dissenting.

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Justice Beraux wrote that sections 13 and 16 infringed constitutional rights by discriminating against homosexual men. Despite such infringement, however, he ruled that these provisions could not be repealed by the court. Under the savings clause, section 6(2) of the [Constitution](#), colonial-era laws are protected from legal challenges. Beraux reportedly determined that when the Trinidad and Tobago parliament passed the Sexual Offences Act in 1986, "it repealed and re-enacted parts of the 1925 Offences Against the Person Act, which criminalised buggery and serious indecency."

Although the Court of Appeal maintained the criminal status of acts of buggery and other acts of serious indecency, it reduced the penalty for buggery to that in the 1925 law—from imprisonment of 25 years to five years—and reinstated section 61 of the 1925 law in place of the provisions repealed by the High Court, maintaining the legal prohibition against acts of serious indecency with a penalty of up to two years' imprisonment.

Concurring with Beraux's reasoning, [Justice Pemberton](#) added,

Parliament is ultimately responsible for ensuring that laws reflect the evolving standards of a democratic society. That is their role and function. Any provisions found to be unconstitutional must be taken from the statute books by Parliament through legislative reform and not by judicial overreach.

Following the ruling, Jones [announced plans](#) to appeal the case to the [Privy Council](#).

Ruth Levush, Law Library of Congress
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