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## \*Richard Clayton KC

Called: 1977 Silk: 2002

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### Practice Overview

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Richard Clayton has extensive experience in conducting Supreme Court and Privy Council appeals. Lord Wilson in *Mohammed v Public Service Commission of Trinidad* [2017] UKPC 31 said “Mr Clayton QC with the charm and skill which is characteristic of him”.

Richard is a commercial litigator/arbitrator and undertakes a wide range of advisory and litigation work (both for and against public bodies) covering tax, community care, data protection, discrimination, environmental, healthcare, human rights, local government (e.g. vires and powers, constitutional issues and governance, elections, finance), public procurement, Privy Council, international work (particularly constitutional work), police actions, tax and regulatory/disciplinary work.

He has extensive experience in conducting Supreme Court and Privy Council appeals. Lord Wilson in *Mohammed v Public Service Commission of Trinidad* [2017] UKPC 31 said, “Mr Clayton QC with the charm and skill which is characteristic of him.”

Chambers Directory 2019 describes Richard as “one of the finest minds at the Bar... an intellectual giant who is an asset to the Bar” and in 2018 said he was “very sharp when it comes to tactics. He is very good at guiding you on what the judge is likely to be thinking, his “command of the subject is almost second to none. He’s thoughtful, approachable, and very client-focused”, “affable and has a mature approach” “calm, reliable and consistent” and “has a very wide knowledge of the law.”

#### Notable and Reported cases

- Administrative & Public Law
  - *X v X* (2021) (CA whether balancing right to privacy against freedom of expression requires identifying parties in private law family proceedings)
  - *R(D) v Tandridge DC* (2021) (representing council in application that claimant breached the Urgent Application procedure and is guilty of material non-disclosure)
  - *Swale BC v Total Sprint* (2021) (defending rate claim for over £500,000)
  - *Re A* (2021) (advising combined authority on various constitutional issues)
  - *R(Hauret) v HMRC* (2021) (EU challenge that loan charge legislation is a disproportionate interference with freedom of movement of capital)
  - *R(Hannah) v Chartered Institute of Taxation* (2021) (whether the Institute is a “public body” and



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fairness lence to Institute's referral of his case to Taxation Disciplinary Board

- R(Zeeman and Murphy) v HMRC (2020)(CA- HRA challenge to loan charge legislation as disproportionate interference with right to property)
- Southwark LBC v Ludgate House (2020) (CA decided that "guardianship schemes" are liable for business rates)
- Hollandwest v HMRC (2019) (injunctions granted to preserve right of access to Court to clarify Supreme Court decision, OWD ltd v HMRC (2019))
- Jones v Teaching Regulation Authority (2019) (whether Secretary of State had power to supplement his statutory procedures by using common law power)
- R (British Homeopathy Association v National Health Service England (2018) (consultation challenge to terminating homeopathy treatment);
- R (Page) v Darlington Borough Council (2018) (closure of library services)
- R(South Yorkshire County Council v Sheffield Combined Authority (2017) (local government reorganisation)
- R (Watch Tower) v Charity Commission (2016) Court of Appeal (judicial review and alternative remedy)
- R (English Bridge Union) v Sports England (2015) (whether Sports England acted unlawfully in refusing to recognise bridge as a sport)
- Kennedy v Charity Commission (2015) (Supreme Court- Freedom of Information, Article 10 and common law rights)

- Human Rights & Civil Liberties

X v X (2021) (CA whether balancing right to privacy against freedom of expression requires identifying parties in private law family proceedings)

Seepersad v AG of Trinidad (2021) (Privy Council decide important case on right to protection of law, holding that it is breached by detaining juveniles in adult prison)

Responsible Development to Abaco v Rt Hon Perry Christie (2021) (Privy Council grant permission to appeal to constitutional challenge to Bahamas security for costs orders in environmental cases)

Hapgood v AG of Anguilla (2021) (AG successfully persuades Privy Council to refuse permission to appeal to alleged contempt is a "criminal cause")

AG of Anguilla v Lake (2021) (Privy Council) (compulsory purchase compensation acting for AG)

R(Zeeman and Murphy) v HMRC (2020)(CA- HRA challenge to loan charge legislation as disproportionate interference with right to property)

Hollandwest v HMRC (2019) injunctions granted to preserve right of access to Court under awaiting FTT hearings for wholesalers seeking HMRC approval under s 88C Alcoholic Liquor Duties Act 1979)

Maharaj v Petroliam Company of Trinidad (2019) (Privy Council)\_ (freedom of information)

A-G of Trinidad v Maharaj (2018) (Privy Council (judicial appointments of Supreme Court judges)

Seepersad v Ayers-Cesar (2018) (interim constitutional remedies – Privy Council)

Central Broadcasting Services v A-G of Trinidad (2018) (damages for breach of freedom of expression – Privy Council)

Mohammed v Public Service Commission of Trinidad (2017) (separation of powers – Privy Council)

Tayo v Charity Commission (2017) (discrimination)

Magyar Helsinki v Hungary (2016) (Art 10 and right of access to official information before Grand Chamber of European Court of Human Rights)

Kennedy v Charity Commission (2015) (Supreme Court- Freedom of Information, Art 10 and common law rights)

- Offshore and International



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Responsible Development to Abaco v Rt Hon Perry Christie (2021) (Privy Council grant permission to appeal to constitutional challenge to Bahamas security for costs orders in environmental cases)  
Boland v Chairman of Board of Inland Revenue (2022) (Privy Council- challenge to promotion system for Field Auditors)  
Seepersad v AG of Trinidad (2021) (Privy Council decide important case on right to protection of law, holding that it is breached by detaining juveniles in adult prison)  
Haggood v AG of Anguilla (2021) (AG successfully persuades Privy Council to refuse permission to appeal to alleged contempt is a “criminal cause”)  
AG of Anguilla v Lake (2021) (Privy Council) (compulsory purchase compensation acting for AG)  
Cassaglia v Stanetto v Gibraltar Heath Authority (2021) (Gibraltar CA considers important issues arising out of first case on Gibraltar’s Bullying at Work Act 2014)  
Allen and Wood v Panorma (2021) (Supreme Court grants permission to appeal its decision that there is a constitutional right to a jury trial in defamation cases to be heard in 2022)  
Garcia v Commissioners of Inquiry (2021) (Court of Appeal defending Commission against judicial review of its inquiry into Las Alturas Towers in Trinidad)  
Hart v v Commissioners of Inquiry (2020) (successfully defend Commission against judicial review of its inquiry into Las Alturas Towers in Trinidad)  
Maharaj v Petrotrin Company of Trinidad (2019) (Privy Council\_ (freedom of information)  
Commissioner of Police for Trinidad v Singh (2019) (Privy Council) (discrimination)  
Garcia v Commissioners of Inquiry (2020) (Trinidad judicial review of Commissioners of inquiry into Las Alturas Towers)  
Gopeesingh v Al Rawi (2019) (Trinidad CA- election bias application against Chief Justice)  
Hart v Commissioners of Inquiry (2018) (Trinidad judicial review of Commissioners of inquiry into Las Alturas Towers)  
A-G of Trinidad v Maharaj (2018) (judicial appointments of Supreme Court judges – Privy Council)  
Seepersad v Ayers-Ceasar (2018) (interim constitutional remedies)  
Central Broadcasting Services v A-G of Trinidad (2018) (damages for breach of freedom of expression – Privy Council)  
Mohammed v Public Service Commission of Trinidad (2017) (separation of powers – Privy Council)  
R v Misick (2014) (8-day hearing before CA in Turks and Caicos)

- Privy Council

Surratt v A-G of Trinidad (No 2) (2009) (damages for breaching constitutional right to protection of the law)  
Panday v Virgil (2008) (representing former Prime Minister of Trinidad in abuse of process complaint following successful bias appeal before Trinidad Court of Appeal)  
Suratt v A-G of Trinidad (2008) (anti-discrimination legislation constitutional, reversing Trinidad CA)  
Toussaint v A-G of St Vincent (2007) (right of access to the court and parliamentary privilege)  
BACONGO v Department of Environment No 2 (2004) (adequacy of environmental impact assessment)  
BACONGO v Department of Environment (2003) (jurisdiction of PC to grant interim injunction in pending appeal)

- European Court of Human Rights

Kennedy v United Kingdom (2017) (freedom of expression and freedom of information)  
Magyar Helsinki Bizottság v Hungary (2017) (Grand Chamber – freedom of expression and freedom of information)  
S v United Kingdom (2009) (Grand Chamber – retention of DNA for individuals arrested but not charged breached Article 8, reversing House of Lords in Marper, 2004)  
Liberty v United Kingdom (2009) (statutory scheme authorising telephone interception to and from UK breached Article 8)

- Supreme Court, House of Lords and Privy Council Appeals



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Responsible Development to Abaco v Rt Hon Perry Christie (2021) (PCI grant permission to appeal to constitutional challenge to Bahamas security for costs orders in environmental cases)  
Boland v Chairman of Board of Inland Revenue (2022) (PC- challenge to promotion system for Field Auditors)  
Seepeersad v AG of Trinidad (2021) (PC decide important case on right to protection of law, holding that it is breached by detaining juveniles in adult prison)  
Hapgood v AG of Anguilla (2021) (AG successfully persuades PC to refuse permission to appeal to alleged contempt is a “criminal cause”)  
AG of Anguilla v Lake (2021) (PC) (compulsory purchase compensation acting for AG)  
Seepersad v Ayers-Cesar (2020) (PC) (whether detaining juveniles in adult prison breaches constitutional rights)  
Maharaj v Petroleum Company of Trinidad (2019) (PC) (freedom of information)  
Commissioner of Police for Trinidad v Singh (2019) (PC) (discrimination)  
A-G of Trinidad v Petrotrin (2019) (PC) (freedom of information)  
The Commissioner of Police for Trinidad v Singh (2019) (discrimination)  
A-G of Trinidad v Maharaj (2018) (PC) (judicial appointments of Supreme Court judges);  
Seepersad v Ayers-Cesar (2018) (PC) (interim constitutional remedies)  
Central Broadcasting Services v A-G of Trinidad (2018) (PC) (damages for breach of freedom of expression)  
Mohammed v Public Service Commission of Trinidad (2017) (PC) (separation of powers)  
Kennedy v Charity Commission (2014) (SC) (Freedom of Information, Art 10 and common law rights)  
Suratt v A-G of Trinidad (No 2) (2009) PC) (damages for breaching constitutional right to protection of the law)  
Panday v Virgil (2008) (PC) (representing former Prime Minister of Trinidad in abuse of process complaint following successful bias appeal before Trinidad Court of Appeal)  
Suratt v A-G of Trinidad (2008) (PC) (anti-discrimination legislation constitutional, reversing Trinidad CA)  
R (Huang) v SSHD (2007) (HL) (important case on proportionality principles)  
Toussaint v A-G of St Vincent (2007) (PC) (right of access to the court and parliamentary privilege)  
R (Greenfield) v SSHD (2005) (HL) (Human Rights Act damages)  
R (Smith) v Parole Board (2005) (HL) (common law fairness, not Articles 5 and 6 ECHR requires oral hearing)  
BACONGO v Department of Environment No 2 (2004) (PC) (adequacy of environmental impact assessment)  
BACONGO v Department of Environment (2003) (PC) (jurisdiction of PC to grant interim injunction in pending appeal)  
A-G v Blake (2001) (HL) (confiscation of advance of royalties on autobiography- common law human rights, restitutionary damages, account);  
R v Chief Constable West Midlands Police (1994) (HL) (public interest immunity)

## Commercial

Richard has experience of all types of complex commercial disputes. He has particular expertise in contractual issues which arise in the public sector including public procurement. Richard undertakes emergency injunction work such as freezing and seizure orders as well as arbitrations. He acts in cases concerning commercial contracts, civil fraud, breaches of directors' duties, insolvency, restitution, shareholders' rights, issues of statutory or contractual construction and public international law.

Current cases include representing a claimant in a \$US 150 m arbitration arising from Qatar, defending damages claim for conspiracy where a strike out/summary judgment claim is pending, acting as an arbitrator in a commercial dispute between a local authority and a private sector care provider, advising in relation to a £7m claim against two banks alleged to be jointly liable with financial advisors for fraud, advising various local authorities in relation to procurement issues, representing a former Minister, an allegedly unlawful cartel arrangements concerning several construction contracts in Trinidad and acting for defendants in a conspiracy claim.

## Public Law and Regulatory

Richard undertakes a wide range of advisory and litigation work (both for and against public bodies) covering community care, data protection, discrimination, environmental, healthcare, human rights, local government (e.g. vires and powers, constitutional issues and governance, elections, finance), public procurement, international work (particularly constitutional work) and regulatory/disciplinary work.



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- Administrative and Public Law
  - Human Rights
  - Local Government

## Offshore and International

Richard is instructed in many high profile cases in Trinidad. He is currently instructed to defend a senator defamation proceeding brought by the Prime Minister and in allegedly unlawful cartel arrangement concerning several construction contracts on behalf of a former Minister.

Richard was the United Kingdom representative to Venice Commission (Council of Europe's advisory body on constitutional law) from 2011 to 2019. The Commission comprises independent experts in the field of constitutional law. Richard was a member of its Executive and Chairman of its Sub-Commission on Working Methods. He worked as a Rapporteur in Opinions concerning conscription and freedom of thought (Armenia), freedom of assembly (Russia), freedom of expression and defamation (Azerbaijan) (Italy) and judicial independence and mediation (Tajikistan), freedom of association and NGOs (Azerbaijan), (Hungary) and Romania and the rule of law crisis in Poland Malta and Slovakia.

## Appointments

- Deputy High Court Judge (2012)
- United Kingdom's representative to Venice Commission (Council of Europe's advisory body on constitutional law) (2011- 2019); Member of Executive and Chairman of Working Methods Sub-Commission;
- Recorder (Crown Court) (2006)
- Bencher, Middle Temple (2009);
- Visiting Professor, University College, London (2015 to date)
- Chairman, Constitutional and Administrative Bar Association (2008-2010);
- Associate Fellow, Centre for Public Law, University of Cambridge since 2001;
- Chairman, Bar Council Committee on Civil Legal Aid 2005-2012;
- Vice Chairman Bar Council Remuneration Committee 2006-2008;
- Bar Council Remuneration Committee 2005 to 2010;
- Bar Council Public Affairs Committee 2006-2007;
- Bar Council International Affairs Committee 2008-2010;
- Bar Council 2004-2007.