[2019] CCJ 10 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No. GYCV2019/009

GY Civil Appeal No. 26 of 2018

Between

CHRISTOPHER RAM **APPELLANT**

And

THE ATTORNEY GENERAL **RESPONDENTS**

THE LEADER OF THE OPPOSITION

JOSEPH HARMON

GUYANA ELECTIONS COMMISSION

CCJ Appeal No. GYCV2019/010

GY Civil Appeal No. 27 of 2019

Between

BHARRAT JAGDEO **APPELLANT**

In his capacity as Leader of the Opposition

And

THE ATTORNEY GENERAL **RESPONDENTS**

DR BARTON SCOTLAND

JOSEPH HARMON

GUYANA ELECTIONS COMMISSION

CCJ Appeal No. GYCV2019/011

GY Civil Appeal No. 43 of 2019

Between

CHARRANDAS PERSAUD **APPELLANT**

And

COMPTON HERBERT REID **RESPONDENTS**
DR BARTON SCOTLAND
THE ATTORNEY GENERAL
BHARRAT JAGDEO
JOSEPH HARMON
GUYANA ELECTIONS COMMISSION

(Consolidated by order of this Court dated the 29th day of March 2019)

Appearances

Mr Douglas Mendes, SC, Mr Chandrapratesh Satram, Mr Devesh Maharaj, Mr Mohabir Anil Nandlall, Mr Manoj Narayan, Ms Kandace Bharath and Ms Marcia Nadir Sharma; Mr Kamal Ramkarran and Mr Devindra Kissoon; Mr Sanjeev Datadin, Mr Stephen Singh and Mr. Ganesh Hira for the Appellants

Mr Eamon Courtenay, SC, Mr Basil Williams, SC, Mr Nigel Hawke, Ms Iliana Swift and Jerome Rajcoomar; Mr Roysdale Forde; Mr Rex H McKay, SC, Mr Neil Aubrey Boston, SC and Mr Robert H O Corbin, SC; Mr Tariq F Khan, SC for the Respondents

Mr Stanley Marcus, SC and Ms Excellence T Dazzell for the Added Respondent

JUDGMENT
of
The Honourable Justices Saunders, Wit,
Hayton and Rajnauth-Lee

Delivered by The Honourable Mr Justice Saunders, President

and
CONCURRING JUDGMENT
of
The Honourable Mr Justice Wit

and
CONCURRING JUDGMENT
of
The Honourable Mr Justice Anderson

and
CONCURRING JUDGMENT
of
The Honourable Mme Justice Rajnauth-Lee

Delivered on the 18 day of June 2019

JUDGMENT OF THE COURT DELIVERED BY THE HON. MR JUSTICE SAUNDERS, PCCJ

[1] Guyana last held General Elections on 11 May 2015. The list of candidates headed by Mr David Granger secured 33 of the 65 seats in the National Assembly. In keeping with the provisions of the Constitution, Mr Granger was appointed President of the Republic and he duly formed his Cabinet. The list of candidates headed by Mr Bharrat Jagdeo secured the remaining 32 seats and so Mr Jagdeo became the Leader of the Opposition.

[2] Some three and a half years into the life of the administration, Mr Jagdeo moved a motion of no confidence in the Government. All 65 members of the National Assembly were present at the vote on 21 December 2018. They all voted. Unexpectedly, and to the deep displeasure of members on the Government side, Mr Charrandas Persaud, a member whose name was extracted from the Granger list, joined all the Opposition members in voting for the motion. The result was that thirty-three members voted in favour of the motion while thirty-two voted against. The Speaker of the Assembly announced that the motion had been passed and the Clerk issued Resolution 101 to affirm this.

[3] Article 106(6) of the Constitution states that the Cabinet, including the President, shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly "on a vote of confidence." Article 106(7) goes on to state, among other

things, that notwithstanding its defeat, the government shall remain in office and shall hold an election within three months. That three-month period may, however, be extended by a resolution of the Assembly that is supported by not less than two-thirds of the votes of all the elected members.[1]

[4] The Government did not resign following the December 21st vote and no resolution has been passed to prolong its continuance in office. It turned out that Mr Persaud had been for some years a Canadian citizen and the Constitution disqualifies non-Guyanese and dual citizens from being elected to membership of Parliament. The natural course outlined in Articles 106(6) and 106(7) did not occur. Litigation ensued.

[5] Three cases were filed in the High Court concerning whether the motion of no confidence had validly been passed. The first action was commenced on 4 January 2019 by Mr Compton Reid, a private citizen. The respondents were Mr Persaud, Mr Jagdeo, Dr Barton Scotland (the Speaker of the National Assembly), and Mr Joseph Harmon (a Representative of one of the political parties whose members were on Mr Granger's list). Mr Reid claimed, among other things, a declaration that Mr Persaud's vote on the no confidence motion was invalid because of Mr Persaud's dual citizenship at the time of the 2015 elections.

[6] On 7 January 2019, the Attorney General filed proceedings in which Dr Scotland, Mr Jagdeo and Mr Harmon were respondents. The Attorney General contended that the no confidence motion had ***not*** validly been passed because the formula for achieving an 'absolute majority' in the Assembly was at least one half of the Members plus one. Utilising this formula, it was said that 34 votes would be required to pass the motion.

[7] On 8 January, a third action was commenced by Mr Christopher Ram. Mr Ram is a citizen, a Chartered Accountant and Attorney at Law. This suit was brought against the Attorney General, Mr Jagdeo and Mr Harmon. Mr Ram sought declarations that the motion had been properly passed by the 33 votes cast in the Assembly and that national and regional elections were required to be held no later than 21 March 2019 in keeping with the provisions of Article 106(7) of the Constitution.

[1] Article 106(7).

[8] The validity of Mr Persaud's vote, the nature of the majority that is necessary validly to pass a motion of no confidence, the constitutional consequences upon the passage of such a motion, and a range of other questions were posed in the cases filed. Some of these questions implicate constitutional issues of enormous significance going to the heart of the philosophical underpinnings of Guyana's "hybrid" Constitution.[2] For example, issues of the relationship between the parliament and the executive, the validity of the votes of members of the National Assembly who choose to defy the party whip and vote according to their conscience and relatedly, the extent of the obligation of members of the National Assembly to support the List from which their names were extracted and the jurisdiction of the court to rule on claims that a person is disqualified from being a member of the National Assembly. It is to the tremendous credit of Guyana's justice system that the consolidated cases were heard expeditiously, and a full and well-reasoned judgment was delivered on 31 January 2019 by Chief Justice Roxanne George.

[9] The Chief Justice found that the no confidence vote was properly passed with 33 votes. She held that a 'majority of all elected members', in keeping with Article 106(6), was 'simply one above the maximum number of potential opposers.' She further held that while Mr Persaud was disqualified from being elected in the 2015 elections, any challenge to his appointment to the National Assembly had to be made pursuant to the National Assembly (Validity of Elections) Act.[3] As that Act required that such challenge be made within 28 days of the 2015 election, the attempt now to challenge Mr Persaud's appointment was barred as the court lacked jurisdiction. The Chief Justice held further that even if Mr Persaud was disqualified, this circumstance would not affect his vote on the motion of no confidence. This was because Article 165(2) of the Constitution preserved the validity of his participation in the proceedings of the Assembly.

[10] The Court of Appeal agreed with the Chief Justice that Mr Reid's claim was barred by the National Assembly (Validity of Elections) Act and that Mr Persaud's vote was valid based on Article 165(2). A majority, however, agreed with the Attorney General's 'half plus one' formula and found that the no confidence motion required 34 votes in order to be validly passed. Justice Rishi Persaud upheld the Chief Justice's decision in its entirety.

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[2] See 2-034 to 2-037 of Tracy Robinson, Arif Bulkan and Adrian Saunders, Fundamentals of Caribbean Constitutional Law (Sweet & Maxwell 2015).
[3] Cap 1:04.

[11] All the parties had some measure of dissatisfaction with the decision of the Court of Appeal's majority. Messrs Ram, Jagdeo and Persaud ("the Appellants") appealed the majority decision that 33 votes could not carry the motion. The Attorney General, Mr Reid and Mr Harmon (conveniently lumped together as "the Respondents") lodged a cross appeal disputing the unanimous finding as to the lack of jurisdiction of the court to entertain the challenge to Mr Persaud's election to the National Assembly.

[12] The written and oral submissions of counsel in the consolidated cases raise the following questions:

(a) Does Article 106(6) apply to 'No Confidence Motions'?
(b) What is the majority necessary for the passage of a no confidence motion?
(c) Does the Court have jurisdiction to inquire into the issue of Mr Persaud's disqualification from being a member of the National Assembly?
(d) Was Mr Persaud precluded from voting in the manner he did in light of the anti-defection provisions (Art 156(3)) of the Constitution?
(e) Does Article 165(2) of the Constitution preserve the validity of Mr Persaud's vote?
(f) What consequences attend the answers to the above questions?

Does Article 106(6) apply to a No Confidence motion? Is there a difference between a motion of confidence and a motion of no confidence?

[13] As indicated at [3] above, Article 106(6) speaks to the resignation of the Government if it is defeated "*on a vote of confidence*" by the vote of a majority of all the elected members of the National Assembly. The Respondents submit that there is a fundamental difference between a motion of confidence and a motion of no confidence; that the political result of a Government's defeat on these respective motions drastically differ; and that the consequences set out in Article 106(6), which prescribe that the government must resign if it is defeated on a motion of confidence, are inapplicable to those circumstances when the government is defeated on a motion of ***no*** confidence.

[14] In support of these submissions Mr Courtenay SC relied on a Briefing Paper by Richard Kelly titled *Confidence Motions;*[4] a passage from Basu's Commentary on the Indian Constitution;[5] and the text and history of Article 106(6) itself and its relationship to Article 156 of the Constitution. The reference to Kelly's *Confidence Motions* is interesting because Kelly is discussing a core principle of parliamentary democracy as developed in the United Kingdom and as is observed in that and in many other parliamentary democracies. Throughout the course of the proceedings there was much discussion about the uniqueness of Guyana's Constitution. That what Kelly has to say may be relevant to Guyana appears to be an acknowledgment that certain aspects of Guyana's hybrid Constitution are traceable back to its UK parliamentary roots and that in unravelling those aspects one may benefit from an understanding of the history and conventions of Westminster parliamentarianism.

[15] Kelly's briefing paper begins by noting that

> "[i]t is a core convention of the UK constitution that the Government must be able to command the confidence of the House of Commons. The traditional position was that a Government that lost a confidence vote would resign in favour of an alternative administration, or the Prime Minister would request a dissolution from the Queen, triggering a general election…"

[16] The position in the United Kingdom today is different because of the Fixed Term Parliament Act of 2011 but, what Kelly describes as "a core convention of the UK Constitution" is set out as an explicitly stated constitutional imperative in Guyana's Constitution. In Guyana, the Cabinet is accountable to the National Assembly. The Cabinet is collectively responsible to the Parliament. This is specifically stated in Article 106(2). The manner in which effect is given to this core constitutional imperative is by requiring the government at all times to enjoy the confidence of a majority in the National Assembly. If that confidence is demonstrably lacking, the government collapses.[6] One of the unique features of Guyana's Constitution is that it is possible for a List whose members comprise only a minority of members in the National Assembly nonetheless to win the Presidency and hence constitute the Executive authority. The Constitution envisages, however, that such a government's precarious hold on power is conditional upon no express motion of no confidence against it being validly passed by the majority of the members of the National Assembly.

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[4] House of Commons Library, Briefing Paper Number 02873, 14 March 2019.
[5] Dr DurgaDas Basu, Commentary on the Constitution of India (Vol 4, 2008) Art 52 – 128.
[6] See Changing Caribbean Constitutions (2nd Edn), Francis Alexis at 14:50 – 14:51.

[17] Article 106(2) and 106(6) give effect to this fundamental principle of responsible or accountable government. The fact that Article 106(6) speaks of "a motion of confidence" and not *a motion of no confidence* is unimportant. It does not affect the operation of the principle. These are mere linguistic differences denoting different sides of the same coin. Motions of confidence are used strategically, whether initiated by the government or the opposition, to serve their own political ends. In the one case, the aim of the government supporter moving the motion may be to demonstrate Parliament's confidence in the government at a period when the government or the state as a whole is experiencing challenging times. Alternatively, the aim of an opposition supporter may be to embarrass or bring down the government when it is thought that confidence by the Assembly in the government is shaky. Any member of the Assembly is authorised and entitled to move any such motion before the Assembly.[7] Article 106(6) recognises this by not making a distinction between a confidence motion that is usually brought by a member on the government side, and a confidence motion (or more accurately defined as a **no** confidence motion) invariably brought by a member of the opposition. Each of these motions is subsumed under the broad heading "confidence motions."

[18] Kelly's Briefing Paper itself notes that motions of confidence and motions of no confidence are *both* subsumed under the general heading **Forms of Confidence Motions.** The writer states:

> "Broadly speaking, there are three main types of motion which act as test of the House of Commons' confidence in the Government: 'confidence motions' initiated by the Government; 'no confidence motions' initiated by the opposition; and other motions which, because of the particular circumstances, can be regarded as motions of censure or confidence."[8]

[19] The principle that the government must enjoy the confidence of a majority in the National Assembly or Parliament was also embodied in the 1966 Independence Constitution. Article 37(1) of that Constitution, for example, stated:

> "37. (1) If the National Assembly passes a resolution, supported by the votes of a majority of all elected members of the Assembly declaring that it has no confidence in the Government and the Prime Minister does not within seven days of the passing of such a resolution either resign or advise the Governor-General to dissolve Parliament, the Governor General shall revoke the appointment of the Prime Minister."

[7] See Article 171(1).
[8] Supra (n 5), p. 11.

[20] The passage from Basu cited by counsel, far from assisting the Respondents, actually confirms the similarity in consequences of both a successful vote on no confidence and a failure on a vote of confidence. Basu states:

> "Some Constitutions provide for the Government itself seeking a vote of confidence from the popular House of Parliament. It is evident, that if the Government fails to obtain such vote, it would be tantamount to the passing of a vote of no-confidence, and the Government must then resign."[9]

[21] Contrary to what was submitted by counsel, Article 106(6) does not at all hinge on the provisions of the anti-defection regime set out at Article 156. The former, which reflects the principle of responsible government, preceded by a long way the introduction of the anti-defection regime. The latter, which will be discussed later, is separate and distinct from the concept of responsible government. The anti-defection provisions merely seek to prevent a member of the National Assembly from "crossing the floor" or, having been elected on a particular List, to disassociate himself or herself from that List and continue in parliament as an independent member. Article 156 arms the Representative of the List with the power easily to replace a member on the List whose support for the List is uncertain or who has exhibited some behaviour that is unacceptable to the Representative. The anti-defection regime stands on its own.

[22] In all the circumstances, as all the judges in Guyana have also concluded, we disagree that Article 106(6) is inapplicable to the motion of no confidence that was passed in December 2018. We also do not agree that the Leader of the Opposition is disentitled from moving a motion of no confidence in the government.

What is the majority necessary for the passage of the no confidence motion?

[23] One does not have to study law to appreciate that the word "majority" means the greater of two parts. Caribbean Constitutions contain provisions for (a) what one might call a "super" majority, that is a two-thirds or three-fifths or three-fourths majority as the case may be; (b) a "simple" majority; and (c) an "absolute" majority. In this case we are not dealing with a super majority. The issue in question here concerns the other two expressions. It is not difficult to distinguish between a "simple" majority and an "absolute" majority in parliament. The former

[9] Supra (n 4), p.4697.

refers to the majority obtained when the votes of those present and voting are tallied. An absolute majority, on the other hand, refers to a majority of the total number of votes or seats in the Assembly irrespective of the number of members who actually vote. If every member of the Assembly votes Yes or No on a motion, the distinction between "simple" and "absolute" disappears for all practical purposes.

[24] When Article 106(6) speaks to "a majority of all the elected members of the National Assembly", the Constitution makes it clear that a simple majority of those voting will not suffice. The expression in the Article therefore refers to an absolute majority. So, if for example, only 62 members of the Assembly had voted on the December 2018 motion, with 32 voting in favour of the motion and 30 against, the motion would not have carried although those in favour would have received two more votes than those against. The reason for this is that since the Assembly comprises 65 members it is a majority of 65 (and not a majority of 62) that would have been required.

[25] The case of *Kilman v Speaker of Parliament of Vanuatu*[10] was cited by the Respondents. Far from supporting their contentions on this point, *Kilman* illustrates what has just been stated. The words of the Court of Appeal in that case (to the effect that "*the phrase 'an absolute majority of the Members of Parliament', can only mean at least half the Members of Parliament plus one"*) must be seen in the context of the peculiar facts of that case. *Kilman* was a case where the Vanuatu parliament consisted of 52 members. Only 51 voted on a particular motion that required an absolute majority. The result of the vote was 26:25. It was in this context that the court said as is stated above. Twenty-six votes could not carry the motion because what was needed was a majority of 52 and since 52 was an even number, in that specific context that majority could only be obtained via the formula of "*half the Members of Parliament plus one"*

[26] Similarly to no avail is the Anguillan case of *Hughes v Rogers.*[11]In that case the question concerned the number of members necessary to constitute a quorum. The Assembly comprised 11 members. The quorum requirement was two-thirds. Mathematically, two thirds of 11 yields 7.3. The question was whether to constitute the quorum one should round up to 8 or round down to 7 members. The court held that since the concept of a quorum meant the least number possible for the valid transaction of business, one could not round down to 7 as that number

[10] [2011] 4 LRC 656.
[11] Anguilla, Civil Suits Nos. 99 & 101 of 1999, Saunders J, decided January 12, 2000.

would fall below the mandated quorum of 7.3. One should round up to 8 which would satisfy the quorum condition. *Hughes v Rogers,* therefore, has no relevance to the question at hand.

[27] The Guyana Assembly comprises an odd number of persons (i.e. 65). When all the members of the Assembly are present and vote (as was the case here), all that is necessary is to follow the wording of the Constitution and determine whether the motion has garnered "a majority of all the elected members." Such a majority is clearly at least 33 votes. On the 21 December 2018 we would venture to suggest that every member of the Assembly knew this. The Clerk certainly knew it. And so too did the Speaker who announced that the motion had passed. Since the Assembly comprises an odd number, there is no need to imply into the Constitution any formula for defining a majority as being "half plus one". Indeed, as an American judge noted,[12] the '50% plus one rule' leads to illogical results when it is applied to odd numbers. So, for example, it is trite that when a Court of Appeal sits as a panel of three, a majority decision is 2:1. The Chief Justice was therefore right when she adjudged that a majority from among 65 members is a minimum of 33.

Does the Court have jurisdiction to inquire into the issue of Mr Persaud's disqualification from being a member of the National Assembly?

[28] Section 155(1)(a) of the Constitution states:

> "No person shall be qualified for election as a member of the National Assembly who –
> (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state…"

[29] The question here is whether Mr Persaud was "qualified for election." On nomination day for the general elections at which he was elected as a member of the Assembly, Mr Persaud was a citizen of Canada. He had sworn an oath of allegiance to Canada in order to become a citizen of that country. On nomination day he was therefore, by his own act, under an acknowledgment of allegiance to a foreign state. He was accordingly not qualified to be elected as a member of the National Assembly.

[30] Purely as a matter of interest, Mr Persaud's position was not singular. There were other elected members who, like him, were citizens of other countries when they had their names placed on

[12] See: *Wailand v City of Macomb* Circuit Court of the 9th Judicial Circuit, McDonough County, Illinois, 13-MR-46, decided April 26, 2013.

their party's List on nomination day in 2015. Following the imbroglio surrounding the December 21st vote and the filing of the court cases, most or all of these persons have since resigned or been removed from the National Assembly. Mr Persaud fell into that category. He was removed from the National Assembly on 3 January 2019.

[31] The Respondents contend that, as Mr Persaud was not qualified to be elected as a member of the National Assembly, he was therefore not qualified to vote as a member of that body. His vote, it is said, does not count and the court in these proceedings must, in effect, cancel his December 21st vote, have the Speaker do a recount of the valid votes (including, it would seem, the votes of all the other members who have since resigned for this same reason) and order that the motion only garnered 32 votes.

[32] Historically, disputes over the qualification of members to legislative Assemblies were not triable by the courts. These matters were determined in the Assemblies. The case of *Devan Nair v Yong Kuan Teik*[13] noted the shift in the historical approach to the determination of questions relating to contested elections. This was a shift from such matters falling under the purview of "the assembly for which the contested election" was held to being matters which should be "entrusted to the courts."[14] De la Bastide CJ in *Peters and Chaitan v The Attorney General of Trinidad and Tobago,* [15] also took pains to trace that development in Trinidad and Tobago. The only available option in that country for challenging the qualification of someone who was elected was by invoking the jurisdiction conferred upon the courts by the 1962 Constitution and the Representation of the People Act.

[33] Article 163 of the Constitution of Guyana similarly references a specific scheme for addressing questions regarding the qualification of any person to be elected as a member of the National Assembly. The side note to Article 163 informs us that the Article deals with the "Determination of questions as to membership and elections." Article 163(1) vests in the High Court "exclusive jurisdiction to determine any question regarding the qualification of any person to be elected as a member of the National Assembly."[16] The courts must exercise that jurisdiction within a particular framework established by the Constitution itself. Article 163(4) lays down the framework.

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[13] [1967] 2 All ER 34.
[14] ibid, p 36.
[15] (2001) 63 WIR 244.
[16] See Article 163(1)(a).

[34] Unsurprisingly, since we are dealing here with matters concerning the internal affairs of a branch of government, i.e. the parliament, the Constitution authorises that branch to elaborate detailed provisions for the exercise by the court of the court's Article 163 jurisdiction. In the first place, parliament is authorised to make provision with respect to "the circumstances and manner in which and the conditions upon which proceedings for the determination of any question … [arising under Article 163]… may be instituted in the High Court."[17] Parliament may also provide "the consequences of the determination of any such question…"[18] Parliament, not the courts, lays down the practice and procedure in relation to the jurisdiction and powers conferred upon the High Court by the Constitution.[19] In plain terms, what all of this means is that, while the Constitution gives the courts the exclusive jurisdiction to determine questions of the qualification of members of the National Assembly, the courts exercise that jurisdiction strictly in keeping with provisions laid down by Parliament.

[35] Parliament has enacted such provisions. They are contained in the National Assembly (Validity of Elections) Act.[20] Section 3 of that Act reinforces what is foreshadowed in Article 163. Section 3 makes it clear to the court that any questions concerning the qualification of a member to sit in the National Assembly "shall … be determined by it, *in accordance with this Act* (emphasis added)." Other provisions of the Act spell out the precise procedure for instituting any action that references such questions. Every such reference, for example, shall be by a petition.[21] The petition must be presented within 28 days after the results of the election out of which the matter in question on the petition arose are published in the gazette.[22] At the time of presenting the petition, or within 3 days afterwards, the petitioner must provide security for costs in an amount of $1,000.[23] The petitioner must, within a prescribed period not exceeding 5 days after the presentation of the petition, serve notice of the presentation of the petition on the respondent.[24]

[36] Mr Mendes S.C. cited a variety of cases[25] showing that the election petition procedure is intended to be an exclusive one and that the court has no jurisdiction to consider the question of the validity of an election by any other means. This, in fact, is also clearly stated in Rule

[17] See Article 163(4)(a).
[18] See Article 163(4)(b).
[19] See Article 163(4)(c).
[20] Cap. 1:04.
[21] See section 3(2).
[22] See section 5(1).
[23] See sections 7(1) and 7(2).
[24] See section 8.
[25] see for example, *Darren Joseph v Chandler Codrington (ANUHCV 2009/0147),* 30th June 2009 and *Rudolphy v Lightfoot* [1999] HCA 61.

3(1) of the National Assembly (Validity of Elections) Rules expressed to be made pursuant to Article 163. The Rule provides that:

> ***Except by way of an election petition for redress in conformity with the Act, there shall be no reference to the Court of any question regarding the qualifications of any person to be elected as a member of the National Assembly,*** or whether the result of an election may have or has been affected by any unlawful act or omission, or whether the seats in the Assembly have been lawfully allocated, or whether any election the results whereof are declared by the Elections Commission in pursuance of section 99 of the Representation of People Act has been lawfully conducted (emphasis added).

[37] In response to the exclusivity submission of Mr Mendes , the Respondents submitted that since Mr Persaud was elected in breach of a provision of the Constitution, the Court had an inherent power to adjudicate upon the matter, outside of the National Assembly (Validity of Elections) Act.[26] This inherent jurisdiction, they submitted, arises from the fact that Mr Persaud, knowing he was disqualified, not only consented to having his name placed on a List for the 2015 elections but also signed a Statutory Declaration stating that he was aware of the provisions of Articles 53 and 155 of the Constitution which set out the qualifying and disqualifying criteria in relation to election to the National Assembly.

[38] In our view, assumption by the courts of an "inherent power" to interrogate qualifying and disqualifying criteria in relation to election to the National Assembly will constitute overreach on the part of the judiciary. It will evince a trespass by the courts on the affairs of parliament by disregarding the method and manner by which the Constitution specifically requires the courts to determine such questions. As the National Assembly (Validity of Elections) Rules indicate (in the words italicised and bolded at [36] above), the Court has no jurisdiction to determine matters which must be raised by way of an election petition filed otherwise than as prescribed by Parliament. The court cannot take it upon itself, in violation of those Rules, to enlarge its jurisdiction to disqualify a member of the Assembly because the member was aware on nomination day that he was disqualified but nevertheless consented to have his name placed on the List. If parliament desires the court to have such an enlarged jurisdiction, then parliament must so specifically provide. In light of these circumstances the Court, by a majority, refused a request by the Attorney General to allow him to adduce fresh evidence to the effect that Persaud was aware that, as a dual citizen, he was not qualified to be placed on his party's list.

[26] Counsel relied upon the Supreme Court of India decision of *Venkatachalam v Swamickan* 1952 SCR 218.

That evidence, even if admitted and established, would be of no significance to the outcome of these proceedings. Neither Persaud's awareness or another member's lack of such awareness could alter the fact of the court's lack of jurisdiction.

[39] The view that the court's jurisdiction is a restricted one is not novel. It has been long recognised and made clear in cases such as the Guyanese High Court decision of *Gladys Petrie v The Attorney General and others*[27] that the Court's jurisdiction in this regard is not at large and not "inherent." The jurisdiction is derived from the Constitution. The Constitution specifies that this jurisdiction is as ordained by Parliament. What is prescribed by parliament in this regard must strictly be followed by the courts. This means that, for example, the time limitations set out in legislation governing the presentation and progression of an election petition are construed as condition precedents to the validity of the petition.[28] Rawlins CJ explained this in *Ezechial Joseph v Alvin Reynolds*[29] noting that:

> "In keeping with the strict approach, our courts have generally insisted that the provisions in elections legislation must be strictly complied with ... Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirements. Accordingly, the consistent result is that failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form. The jurisprudence in our courts states that time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory. The election court has no power to extend time or allow amendments filed out of time unless election legislation so provides."[30]

[40] There are two important policy reasons for the Constitution denying the court an inherent jurisdiction in this realm and allowing that jurisdiction to be specifically conditioned by rules laid down by parliament. Firstly, as previously indicated, this is a jurisdiction that concerns membership of parliament itself. As an element of the separation of powers, the Constitution recognises that it is Parliament, and not the court under any inherent jurisdiction of the court, that should be at liberty to define the contours of a jurisdiction that peculiarly concerns membership of Parliament. Secondly, as Bollers CJ stressed in *Petrie*, it is in the public's interest that the validity of an election and hence membership of parliament should be quickly determined according to strict rules and procedures that are pre-determined by parliament.[31]

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[27] (1968) 14 WIR 292.
[28] See for example *Payne v Hammond* (Guyana HC, 5 June 1986); Joseph v Codrington (ANUHCV 2009/0147, 30th June 2009; AG v David (GDAHCV 2006/0018, 12th September 2006.
[29] HCVAP 2012/ 14, 31st July 2012.
[30] ibid, [20].
[31] See also Bollers CJ in *Gladys Petrie v The Attorney General and others, spura (n27).*

[41] Under the existing rules prescribed by parliament, therefore, it matters not that the election date has long passed and the information about the member's disqualification did not surface until after the time limits set out by parliament.[32] Nor can a claimant approach the court by a method other than the prescribed election petition.[33] The National Assembly (Validity of Elections) Act provides a complete code for challenging the validity of an election on the ground that a person is not qualified to be elected. The Act provides a 28-day period from the election within which the Respondents could challenge Mr Persaud's election. This time having expired, the court lacked jurisdiction to disqualify Mr Persaud.

[42] In support of the notion that the court was entitled to assume jurisdiction, the Respondents cited the Indian case of *Venkatachalam v Swamickan*.[34] This was a case where, at elections to the Legislative Assembly of Tamil Nadu, Mr Venkatachalam was declared elected. Venkatachalam was not, however, a lawful elector on the relevant electoral rolls and as such could not validly have been elected. In order to be elected, he had, "in blatant and fraudulent manner," impersonated someone else lawfully on the rolls. One year after the date of the election, the losing candidate, Mr Swamickan, discovered the criminal fraud and applied to have Mr Venkatachalam disqualified. Venkatachalam claimed that the court lacked jurisdiction given the passage of time. The Supreme Court disagreed and held that it did have jurisdiction to disqualify him notwithstanding the lapse of time.

[43] The factual background to this Indian case is not on all fours with Mr Persaud's case. The voters in Tamil Nadu had been hoodwinked about the identity of the person whom they thought they were electing. Venkatachalam lacked the most basic qualification for election as, under the relevant law, a person to be elected from an Assembly constituency had to be an elector of that constituency. More importantly, the assumption of jurisdiction by the court in India was hinged on the fact that Article 191 of the Indian Constitution disqualified not only a person for ***being chosen as a member*** of the Legislative Assembly. It went further. It also gave the courts a continuing jurisdiction to disqualify persons ***for being members while so disqualified***. Jurisdiction to disqualify a person, merely for being chosen as a member of the Assembly while disqualified, would have been limited by the appropriate time bars if that person's *election* was what was being challenged. Since in India, however, the jurisdiction of the courts was expressly extended to incorporate the validity of the member's tenure while in the House,

[32] *AG v David* (GDAHCV 2006/0018, 12th September 2006.
[33] See *Dorset v Astaphan* (Claim No. SKBCV 2007/0259).
[34] 1999 (2) SCR 857.

Venkatachalam's case was not susceptible to the bars that would ordinarily attend the calling into question of the election of a disqualified person. By contrast, Guyana's Article 155 grants to the courts a jurisdiction, limited by strict procedures and timelines, to interrogate only qualification for election. The jurisdiction of the Guyana courts does not extend as far as the Indian Article 191. It is limited to any question "regarding the qualifications of any person to be elected as a member of the National Assembly."[35]

[44] The Respondents also argued an alternative limb to the disqualification point. Article 156(1)(d) of the Constitution states that a member must vacate his or her seat in the National Assembly "if circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election as a member thereof by virtue of Article 156." They therefore submitted that Mr Persaud must vacate his seat because of his dual citizenship. Article 156(1)(d) speaks to some supervening event that causes a person to become disqualified while he or she was a member of the Assembly. So, if when the person is a member, s/he acknowledges allegiance to a foreign power or is certified to be insane, to cite two examples, the person is then obliged to vacate the seat.

[45] We do not see the relevance of this Article to the present proceedings. The circumstances occasioning Mr Persaud's disqualification arose before he became a member. But even if Mr Persaud was caught by the Article his vote on 21st December would not thereby be affected. It is a fact that Mr Persaud was recalled and removed from the National Assembly on 3 January 2019, the very day before Mr Reid commenced his claim. Having been recalled and replaced, there is no need now to declare his seat vacant. To argue that his seat was vacant from 2015 because he was disqualified on nomination day and as such, his vote on the 21st December no confidence motion was invalid is a vain attempt to circumvent and render nugatory the provisions of the National Assembly (Validity of Elections) Act.

[46] In all the circumstances the courts of Guyana were right to find that they had no jurisdiction to determine whether Mr Persaud's election was invalid by reason of disqualification.

Was Mr Persaud precluded from voting in the manner he did in light of the anti-defection provisions (Art 156(3)) of the Constitution?

[35] See Rule 3(1) of the National Assembly (Validity of Elections) Act.

[47] Article 156(3) of the Constitution provides that

> "A member of the Assembly elected on a List shall cease to be a member of the Assembly, if –
>
> (a) he or she declares in writing to the Speaker or the Representative of the List from which his or her name was extracted that he or she will not support the List from which his or her name was extracted;
> (b) he or she declares in writing to the speaker or the Representative of the List from which his or her name was extracted, his or her support of another list;
> (c) the Representative of the List from which his or her name was extracted indicates in writing to the Speaker that after meaningful consultation with the Party or the Parties that make up the List that the Party or Parties have lost confidence in that member and the Representative of the List issues a written notice of recall to that member and forwards a copy of that notice to the Speaker."

[48] The Respondents stated that Article 156(3) is an anti-defection provision with two objectives. Firstly, it serves to prevent an elected representative from remaining as a member of parliament after s/he has indicated that s/he no longer wishes to support the List from which his or her name was extracted. Secondly, it is said that Article 156 permits the Representative of the List to recall and replace a member who has lost the confidence of the party or parties that comprise that List. The Respondents drew our attention to South Africa which uses a proportional representation system and which also has anti-defection provisions. In *Re Certification of the Constitution of the Republic of South Africa 1996, ex p Chairperson of the Constitutional Assembly*[36] it was said that "anti-defection provisions … oblige members of a party, who are elected by virtue of the inclusion of their names on the party's list, to remain loyal to that party… [T]his meets the expectation of voters who gave their support to that party."[37]

[49] The Respondents further submitted that Article 156(3) imposes a duty on a member elected on a party's List to declare his/her intention that s/he no longer supports the List before voting contrary to the dictates of his/her party. This requirement, it was said, enables the party's Representative to exercise the power to recall that member and ensures the party's fidelity to the electorate. It was therefore argued that a member who deliberately omits to notify the Speaker or the Party Representative of his loss of confidence in the List and who votes against the party thereby ensuring the party's defeat on a motion of confidence "undermines the

[36] [1996] ZACC 26, 1996 (10) BCLR 1253, 1996 (4) SA 744 (CC), SA CC.
[37] ibid, [18].

constitutional system of the proportional representation system and deliberately evades the purpose behind Article 156(3)." Where a member votes against his party, it was submitted, the effect of Article 156(3) is to disqualify his or her vote. A member ***must*** vote along with his or her party unless the party's whip grants "permission" for a conscience vote.

[50] We do not interpret the Constitution in this manner. The Constitution makes no distinction between a member's participation and vote on a motion of confidence and on any other motion. Carried to its logical extension, these submissions would mean, among other things, that there is no need for political parties in parliament to employ a parliamentary whip at all, and that proposing a vote on parliamentary motions is meaningless because in each case the result is a foregone conclusion.

[51] Fealty to one's party cannot override sworn allegiance to the Constitution and to the people of Guyana. Members of parliament, should they so decide, and as long as they are willing to pay the political price, are not to be denied the freedom to vote according to the dictates of their conscience even in a proportional representation system. This was also made clear in the South African decision of *United Democratic Movement v Speaker of the National Assembly*[38] in which the South African Constitutional Court clarified the remarks in *Re Certification of the Constitution of the Republic of South Africa 1996, ex p Chairperson of the Constitutional Assembly* cited at [48] above. The court noted:

> "[78] The most effective extra-parliamentary mechanism for holding the people's elected representatives accountable, is a general election. It is in this context that this Court said 'it is parties that the electorate votes for, and parties which must be accountable to the electorate'. Also, that a party's unacceptable abandonment of its manifesto is likely to result in electoral defeat. A factor that is relevant to the Speaker's decision-making in relation to a democratically permissible voting procedure is that 'an individual member remains free to follow the dictates of personal conscience' [see *Re Certification of the Constitution of the Republic of South Africa*].
>
> [79] Central to the freedom 'to follow the dictates of personal conscience' is the oath of office. Members are required to swear or affirm faithfulness to the Republic and obedience to the Constitution and laws. Nowhere does the supreme law provide for them to swear allegiance to their political parties, important players though they are in our constitutional scheme. Meaning, in the event of conflict between upholding constitutional values and party loyalty, their irrevocable undertaking to in effect serve the people and do only what is in their best interests must prevail. This is so not only because they were elected through their parties to represent the people, but also to

[38] [2017] ZACC 21.

> enable the people to govern through them, in terms of the Constitution. The requirement that their names be submitted to the Electoral Commission before the elections is crucial. The people vote for a particular party knowing in advance which candidates are on that party's list and whether they can trust them."

[52] Cessation of membership of the National Assembly, as provided for in Article 156, is conditional upon the occurrence of one of the events mentioned in that Article. None of those events actually occurred before the fateful vote on 21 December. There is nothing in Article 156(3) or anywhere else in the Constitution that prohibits any member of the National Assembly (including members extracted from the List whose Representative was appointed as the President) from voting against the Government on any particular measure. Such a vote may well cause the Representative to remove the member from the Assembly, but the latter's prior vote will still be valid. It cannot be recalled and substituted. In these circumstances therefore there is nothing that prevented Mr Persaud from voting in favour of the December 21st motion.

Does Article 165(2) of the Constitution in any event preserve the validity of Mr Persaud's vote?

[53] Article 165(2) of the Constitution provides that

> "The Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after the commencement of this Constitution or after any dissolution of Parliament) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings."

[54] This Article protects proceedings of the Assembly from being invalidated due to the participation or presence of any person who was not entitled to participate in or be present at those proceedings. It would obviously apply where, after voting took place on a motion of no confidence, it is later discovered that a member of the Assembly who was present and who voted on the motion was not entitled to be a member of the Assembly. The Respondents' case is that Mr Persaud was not entitled to vote on the motion of no confidence because of his disqualification at the time of the 2015 election.

[55] Having concluded that the court currently lacks jurisdiction to impeach Mr Persaud's election, there is no real need to ascertain whether Article 165(2) preserves the validity of his vote on the December 21st motion. However, even if the Court had jurisdiction to declare Mr Persaud's

election to the Assembly to be void from the outset, we agree with the courts below that Article 165(2) would preserve the validity of his vote. We are therefore of the view that the National Assembly properly passed a motion of no confidence in the Government on 21 December 2019, and that the provisions of Article 106 (6) and (7) referred to above at [3] were accordingly triggered.

[56] The provisions of Article 106 (6) and (7) are clear on their face. They hardly require further interpretation on the part of the courts. Leading Counsel on both sides, however, have asked us, and the court has agreed to hear further submissions before deciding what consequential orders, if any, should be made by this court in all the circumstances.

CONCURRING JUDGMENT OF THE HON. MR JUSTICE WIT, JCCJ

[57] I concur fully with the President's judgment but would like to add some points that were not stressed as much as I would have wished.

[58] First the majority point. This point received a lot of attention, but I think it was the simplest of them all. The eminent lawyers representing the Government's views, worked their legal magic in the court below and succeeded in persuading the majority of the Court of Appeal that a majority of a total of 65 seats under Article 106(6) of the Constitution must be 34 against 31 instead of 33 against 32. It is very clear, however, that this is not and cannot be right as the President has demonstrated with the solid reasoning in his judgment. The answer to the question "What is a majority in a parliament of 65 members?" could be very short. I would simply use the words of Justice Potter Steward of the US Supreme Court who, defining obscenity, famously stated: "I know it when I see it." In the same vein, I know a majority when I see it; if one side has one vote more than the other, that is a majority, a narrow one but still a majority. And no magic is needed.

[59] Of a more complex and interesting nature, are some of the other issues before this Court:

(a) Does a "vote of confidence" mentioned in Article 106(6) of the Constitution also include a motion of no confidence?

(b) What is the relevance of a member of the National Assembly having dual citizenship both at the time of the elections and afterwards?

(c) What is the effect of the anti-defection provisions in Article 156(3) of the Constitution on a vote by a member of the assembly "against the List from which his or her name was extracted"? Is that vote valid or not?

Does a "vote of confidence" mentioned in Article 106(6) of the Constitution also include a motion of no confidence?

[60] As the President has explained in his judgment, the term "vote of confidence" has both a broad and a narrow, more technical, meaning. The broad meaning includes both the narrow one, a motion of confidence initiated by the Government, and a motion of no confidence by the Opposition. The President concludes that the term used in Article 106(6) has the broader meaning. I agree with that conclusion and its reasoning. To construe the words of a constitutional provision properly, one looks at the legislative history and the structure of the Constitution as a whole.

[61] As far as the legislative history is concerned, there is not much to be found that would give us a clear indication. The Explanatory Memorandum to the Bill which introduced the amendment of Article 106 simply stated:

> "Clause 5 alters article 106 to provide for the resignation of the Cabinet and the President following the defeat of the Government in the National Assembly on a vote of confidence…"

But it does not reveal anything more. However, it is obvious that the amendments of 2000 sought to bring Guyana back from an authoritarian presidential regime to a more democratic one.

[62] As to the Constitution as a whole, I would first point at the fact that in Articles 145 and 146 of the Constitution emphatically states that "except with his own consent, no person shall be *hindered* in the enjoyment of" his (or her) freedom of conscience, including freedom of thought (Article 145), his (or her) freedom of expression, including freedom to hold opinions without interference and to communicate ideas (Article 146) and his or her freedom of assembly and association, in particular to form or belong to political parties. It is against this firm background

of fundamental rights that the scope of Article 106(6) needs to be approached. A constitutional provision that seeks to take away or limit these rights for members of the National Assembly especially with respect to voting and supporting or not supporting the government would need to be very clear and unambiguous for it to take effect. That clarity cannot be found in the words of Article 106(6).

[63] Another way of looking at this is to consider the nature of the constitutional infrastructure of the country. Several Counsel have pointed at the fact that Guyana has a presidential system and not a parliamentary one. Also, it has an electoral system of proportional representation; the people vote nationally, and they vote for a List of a party or parties, not for individual persons. In these aspects, Guyana is different from most of the other states of the Commonwealth Caribbean (although a little like that of its neighbour, Suriname). In fact, it was argued that in a presidential US system, where the president is elected directly by the people, a vote of no confidence to bring down the government led by that same president, would not be a proper mechanism, the less so by votes of members of an assembly who were not personally supported by the people but only happened to be on a List that was so supported.

[64] These arguments are not persuasive. What might be true for a pure presidential system, is in fact not true for a hybrid system as that of Guyana, which consists of a colourful mixture of both presidential and parliamentary ingredients, a truly constitutional pepper pot, if one would wish to call it that way. In a pure presidential system as that of the USA, the president cannot be sent home through a motion of no confidence (although he can be impeached) but neither can the US President dissolve Congress. In Guyana, the president can dissolve the National Assembly and so, from the perspective of the country's constitutional infrastructure, there is no good reason to assume that a majority of the assembly cannot defeat the government, including the president, by a vote of no confidence, the less so where Article 106(2) of the Constitution stipulates that the Cabinet, which includes the president, is responsible to the National Assembly.

[65] Further, the fact that the members of the National Assembly are parliamentarians not because they were individually voted for but because their political party received the votes, does not mean that they cannot vote against their party. This happens in many countries, for example in South Africa, The Netherlands, Suriname, Curaçao and France, just to mention a few, where

the members even switch parties while keeping their seats, although this last feature is no longer possible in Guyana.

What is the relevance of a member of the National Assembly having dual citizenship both at the time of the elections and afterwards?

[66] Article 155(1)(a) of the Constitution makes clear that no person shall be qualified for election as a member of the National Assembly if that person has dual citizenship (which I only use here as shorthand for "a person … who by virtue of his own act is under any acknowledgement of allegiance, obedience or adherence to a foreign power or state"). Although a Guyanese with dual citizenship would not be qualified for election, he could still slip through the cracks and sail through to the Assembly if nobody knew or noticed or bothered to do something about it. To do something about it, requires somebody to petition the High Court in a certain way and within a certain time (normally 28 days after publication of the results of the election in the Gazette). The Constitution allows no other challenge, the jurisdiction of the High Court is exclusive. If the challenge is not done properly, on time or at all, the elected person is deemed to be validly elected. In the eyes of the law that person can no longer be removed from his seat for this reason. Then, removal of the elected person can only happen if his or her party no longer has confidence in him or her, for example because he or she lied about his or her dual citizenship to the party or its leader. Otherwise, one may assume, for what it's worth, there could be a moral duty for such a person to step down, but this would be something beyond the reach of the courts.

[67] All of this is part and parcel of the constitutional infrastructure of Guyana, closely encapsulated in Article 163 of the Constitution and in several provisions of the National Assembly (Validity of Elections) Act promulgated under the aegis of and provisioned by that same Article of the Constitution and for that reason an organic law clothed with constitutional scope and stature. In simple words: the constitutional disqualification here described is not absolute but one of limited scope (especially as no one has argued that the Act contains provisions that are unconstitutional). Moreover, statutes of limitation are well-known devices. Even thieves sometimes escape prison if the State waits too long to bring charges against them, although this does not mean that theft is a good thing. It isn't.

[68] Only when a member of the National Assembly acquires dual citizenship sometime after the election, the member "shall vacate his seat". Article 156(1)(d) puts it this way: "… if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election as a member by virtue of…" Article 155. The circumstances that arise must be such that they **cause** the disqualification. Late discovery of a member's dual citizenship that existed a long time before could perhaps be seen as an arising circumstance, however, it is not the discovery of such a fact that causes the disqualification but only the fact itself. But even so, if the member of the National Assembly acquires dual citizenship after having been elected but refuses to vacate his seat, no legal consequences will ensue unless and until someone properly petitions the High Court in accordance with section 43 of the National Assembly (Validity of Elections) Act. This situation does not occur in this case.

What is the effect of the anti-defection provisions in Article 156(3) of the Constitution on a vote by a member of the assembly "against the List from which his or her name was extracted"? Is that vote valid or not?

[69] Article 156 (1) and (2) mentions when and under what circumstances a member of the National Assembly "shall vacate his seat." Article 156(3), however, stipulates under which circumstances the member of the National Assembly *shall cease to be* a member: if he declares in writing that he (a) will not support his List or (b) will support another List. A third ground (c) was added in 2007: if the Representative of the List from which his or her name was extracted indicates in writing to the Speaker that after meaningful consultation with the Party or Parties that make up the List that the Party or Parties have lost confidence in that member and the representative of that List issues a written notice of recall to that member and forwards a copy of that notice to the Speaker, after which the Speaker shall declare the seat of the member vacant: Article 156(4).

[70] Mr Persaud was recalled and removed from the National Assembly based on this third and last ground. To fully understand the possible legal consequences of the recall procedure, it makes sense to look at the reason why that procedure was introduced in the first place. None of these three grounds have anything to do with voting. The first two existed since 2000 but they clearly required the member to make a declaration in writing. Given the consequences of such a declaration it was not to be expected that members were happy to do so. That expectation proved to be correct when some time before 2007 two members of the National Assembly,

each from one of the two main political parties, left these parties but not the National Assembly. Instead, they kept "their" seat and even formed a third party, the Alliance for Change, interestingly the party to which Mr Persaud belonged. The other two parties did not consider this a good development and worked together to have Article 156(3) amended to prevent such developments from happening again. The whole idea of these recall provisions is therefore to prevent members belonging to a List from "stealing" their seats from their Party. Clearly, the possibility of recall may help to discourage (although not to prevent) members to vote against their list, but this is not the main reason for these provisions. Voting against the party is not even mentioned in the text of these provisions in contradistinction to the Constitution of Bangladesh, for example, where Article 70 states that a person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from his party or "if he votes in Parliament against that party."

[71] Interestingly, the Supreme Court of Bangladesh in a recent judgment said this about the effect of Article 70:

> ".. it has imposed a tight rein on the members of Parliament that they cannot go against their Party line or position on any issue in the Parliament; that they have no freedom to question their Party's stance in the Parliament, even if it is incorrect and flawed; that they cannot vote against their party's decision, that they are indeed hostages in the hands of their party high command… the members must toe the party line…"[39]

[72] In Bangladesh, a vote of a member of Parliament against his party results automatically in removal from Parliament, which is a much stronger provision than Article 156(3) of the Constitution of Guyana. Even in Bangladesh, however, no doctrine exists that a vote against one's party would be an invalid one. To reach that result, an even more drastic provision would be required.

[73] Of course, I realise that those whom we call floor crossers or ship jumpers, or by any other name, do not always have the best of reasons (probably in most cases not) for so doing, so there could be very valid reasons for anti-defection provisions in order to keep the government stable and to ensure continuity of governance. But where these provisions threaten to become too

[39] *Government of Bangladesh and others vs Advocate Asaduzzaman Siddiqui and others*, CIVIL APPEAL NO.06 OF 2017, 3rd July 2017.

strict, they may well lead to strangling whatever democratic fervour is left. It is not easy to find a proper balance between the many countervailing constitutional values that make a democracy. Some would say, a perfect balance is not possible. But in any event, it is better to have an imperfect democracy than a strangled one. That much is required by Article 1 of the Constitution; that Guyana is a democratic sovereign state.

CONCURRING JUDGMENT OF THE HON. MR JUSTICE ANDERSON, JCCJ

[74] The challenge to the motion of 'no confidence' in the Government of Guyana, which was passed on 21 December 2018 in the National Assembly, may be reduced to three basic propositions. (1) The motion was not carried by the requisite majority; (2) The Constitution does not allow for 'no confidence' motions; and (3) Mr Persaud, the member of the Assembly who cast the decisive vote in favour of the motion, was not qualified to sit in the Assembly and hence his vote must be discarded. I am grateful to the learned President for the clarity with which he has developed the background to these propositions thus permitting me simply to make the following brief and incidental remarks.

The requisite majority

[75] The contention that the motion of confidence, carried by a vote of 33-32 in the National Assembly consisting of 65 members, was not carried by an absolute majority, is, for the reasons given by the President, wholly untenable and without merit.

The Constitution and motions of no confidence

[76] I have come to agree that the Constitution does allow for motions of 'no-confidence' and that the Government falls when defeated on such a motion. However, I am far from sanguine that the Constitution is unambiguous on the point and consider that the matter is one which may well merit further consideration by those responsible for proposing constitutional amendment and reform. My disquiet is based on the following.

[77] There is no provision for motions of 'no-confidence' as such in the Constitution of Guyana. Rather, there is provision for 'a vote of confidence.' Article 106(6) ordains that, "The Cabinet

including the President shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly *on a vote of confidence*." Notwithstanding its defeat, Article 106 (7) permits the Government to remain in office but ordains that it, "shall hold an election within three months, or such longer period as the National Assembly shall … by not less than two-thirds of the votes of all the elected members" determine.

[78] It will be seen immediately that the resignation of the Government and the holding of the election within three months, are predicated on the passage of '*a vote of confidence.'* This wording was inserted into the Constitution by an amendment in 2000.[40] Prior thereto, the wording was very different. Article 37(1) of the 1966 Guyana Independence Constitution provided, (as is currently provided by section 37 (4) of the Belize Constitution) for resignation of the Government where a majority of the elected members of the Assembly pass a resolution "*declaring that it has no confidence in the Government.*" The 1966 provision was not included in the 1980 Constitution but reappeared in the terms of Article 106(6) and (7) in the 2000 Constitution just presented.

[79] Authoritative commentary on the United Kingdom House of Commons practice establishes that there are differences between 'confidence motions' initiated by the Government and 'no confidence motions' initiated by the Opposition.[41] While Government initiated 'confidence motions' normally function effectively as dissolution threats, Opposition 'no confidence motions' represent the ultimate expression of the Westminster model of 'parliamentary opposition'; the attempt by an office-seeking Opposition to remove the Government and replace it by itself.[42] In the specific case of the *Fixed-term Parliaments Act 2011* of the United Kingdom[43] strict specificity is required. The motion intended to bring down the Government must be intituled, "That this House has no confidence in Her Majesty's Government." Even if the motion is carried, there is a 14 calendar-day period in which a Government may be confirmed in office by a motion that stipulates "That this House has confidence in Her Majesty's Government."

[80] The foregoing suggests that there might well be a difference between 'confidence' motions and 'no confidence' motions. In some contexts, as in the case of the *UK Fixed-term Parliaments Act 2011*, they are used for different purposes, and the results of their passage differ drastically.

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[40] See Act No. 17 of 2000.
[41] Richard Kelly, House of Commons Library, Briefing Paper Number 02873, 14 March 2019.
[42] ibid.
[43] 2011 c. 14, section 2.

There is no evidence that the framers of the Guyana Constitution were ignorant of these differences when drafting Article 106 (6) and (7). There is therefore some colour to the argument that Guyana made a deliberate decision to move away from making express provision for 'no confidence' motions and the consequences of a successful no confidence motion, to providing for votes of 'confidence' and that Article 106(7) provides for the consequences for the defeat of the government on the latter vote.

[81] The argument that the Guyana Constitution does not provide for motions of 'no confidence' in the sense that term is traditionally used, draws support from the Constitution's robust and unique anti-defection provision. Article 156(3)(a) provides, in part, that a member of the National Assembly elected on a List "shall cease to be a member of the Assembly if he or she declares in writing to the Speaker or to the Representative of the List from which his or her name was extracted that he or she will not support the List from which his or her name was extracted." Article 156 (3) (b) similarly provides that the member of the Assembly shall cease to be a member if the Representative of the List indicates to the Speaker that there has been a loss of confidence in that member. It is manifestly the case that the purpose of these provisions was to guarantee the loyalty of members to the List from which their names were extracted, to prevent members from crossing the floor, and to invest in the Representative of the List the power of recall. Given this constitutional arrangement, it seems remarkably odd that a member may evade the clear implication and purpose of these provisions by simply voting to bring down the Government formed from his or her List, before being recalled and thus avoid being recalled. That seems not only a recipe for encouraging deception and disloyalty. It seems also, more importantly, inconsistent with, and to substantially emasculate the manifest purpose of, the anti-defection provision.

[82] It bears saying that application of Article 156(3) to prevent a member from voting against his or her List would not necessarily render Article 106(6) and (7) redundant. A Government dependent for its majority in the National Assembly on more than one List could fail on a motion of confidence initiated by a member of the 'alliance' or 'coalition' of Lists, so to speak, and thereby trigger the resignation of the Government and the calling of elections. As this can be done without violation of the anti-defection provision, the two sets of articles cannot be said to be necessarily incompatible with each other. To put the matter another way, there might be work for Article 106(6) and (7) to do even if Article 156(3) is interpreted to prevent a member voting against his or her List.

[83] Furthermore, it is not entirely clear that Article 156(3) prohibits any and all votes by a member against a Government formed from the List or Lists from which the member's name is extracted. A not unpersuasive argument made at the hearing before us is that Article 156(3) is to be construed as preventing only those votes where the integrity of the List is threatened. Presumably this would mean votes in respect of which the Representative of the List (or the whip) makes clear that support is required and other votes normally associated with the expression of confidence in the integrity of the List such as the budget, formal motions of confidence in accordance with Article 106(6), or other resolutions in parliament which are expressly regarded as expressions of confidence.

[84] But even on the most literal interpretation of Article 156(3), I am not entirely convinced by the argument that to require a member to vote according to the List from which the member's name is extracted necessarily renders parliamentary debate sterile and farcical. At least not any more so than usually obtains elsewhere in the region. The reality of the matter is that in parliamentary debate in much of our Caribbean, especially in relation to major issues such as the annual budget, Members of Parliament almost invariably defend a common position with partisan ferocity and much less frequently with equanimity and open-mindedness. Our parliamentary debates are not usually occasions for considered introspection and for bipartisan voting based on the merits of the arguments presented. Far from it. The whip is normally in full swing. The Government extols its performance and the Opposition decries that performance. Essentially, the real debate is between the rival parliamentary parties in relation to their respective policies.

[85] Further, I would venture to suggest that there is something to be said for parliamentary continuity, save in the most extreme of circumstances. In our predominantly non-industrialized countries where issues of poverty and under-development are endemic, and where our open economies are vulnerable to destabilizing shocks, including natural disasters, stability is a paramount requirement from our governance arrangements. We have little margin for error or for malingering in advancing the people's business. Consider the facts in this very case. General elections were last held in Guyana on 11 May 2015 and Parliament was officially summoned to meet on 10 June 2015. Under the terms of Article 70 (3) of the Constitution, elections must be held within the next year, that is, by June 2020.[44] At that time the people of Guyana are constitutionally entitled to pass judgment on the stewardship of their Government. The inexplicable disregard by the organs of the State of the constitutional injunction in Article

[44] Note Article 70 (2) of the Constitution which permits the President to dissolve Parliament at any time.

106(7) that elections must be held within *three months* of the passage of a confidence motion means that the country has been mired in a constitutional crisis for the past six months with no clear end in sight. This is exacerbated by the overriding power vested by Article 162(2) of the Constitution in the Elections Commission to postpone the holding of elections because of 'danger or serious hardship.' There is no assurance that this scenario will not be repeated in the future, perhaps not infrequently, perhaps with a Government formed from a different List or combination of Lists. In short, in the context of a highly polarized electorate, governance of the Republic could become paralysed or tenuous, to the peril of the economic and societal advancement of its people.

[86] Nevertheless, notwithstanding the sympathy I have for the argument, I have reluctantly come to the conclusion that the possible implications from the wording of the Article 106(6) and the anti-defection provision in Article 156(3) are not sufficient to support the interpretation that they prohibit a member from voting against his or her List. The Report of the Constitution Reform Commission to the National Assembly dated July 17, 1999 anticipated defeat and resignation of a Government on passage of a vote of confidence. There was nothing in the Report and there is nothing in the Constitution which restricts introduction of 'confidence' motion to members of the Government. The argument that the Leader of the Opposition is not allowed to introduce such a motion is clearly untenable. Article 171(1) expressly provides that, "…*any* member of the Assembly may … propose any motion for debate" and vote in the Assembly. It must therefore be assumed that the Leader of the Opposition as a member of the Assembly can, as was done in the present case, introduce a motion of confidence: *Brantley v Martin.*[45]

[87] Admittedly, the constitutional arrangements in Guyana represent a 'hybrid' between the Westminster parliamentary system and an Executive Presidency. However, in order to overcome the fundamental assumptions associated with motions that relate to expression of confidence in the government of the day, more direct language is required. With the best will in the world, the Court cannot be expected to read into the Constitution fundamental principles that would basically impose fixed parliamentary terms from such sparse juridical materials as the imputations offered by Article 106(6) and Article 156(3).

[45] Claim No. SKBHCV2014/0231 (St Kitts & Nevis), Lanns J (ag).

Disqualification of the Member casting decisive vote

[88] Section 155(1)(a) of the Constitution provides, *inter alia*, that no person shall be qualified for election as a member of the National Assembly, "who … is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state…." It is uncontroversial that this means that a person holding Guyanese nationality is not qualified to be elected a member of the National Assembly if that person is also, voluntarily, a citizen of another State. Accordingly, Guyanese nationals with dual citizenship are not qualified to sit as members of the National Assembly.

[89] It is not disputed that at all material times, Mr Persaud, who voted against his List and whose vote was therefore decisive in carrying the motion of confidence, held dual citizenship with Guyana and Canada. The difficulty for those who argue that Mr Persaud was neither qualified to sit in the National Assembly nor to vote on the confidence motion is that the provisions of Article 163 of the Constitution read in conjunction with the related *National Assembly (Validity of Elections) Act* provide a specific, time-sensitive regime, for challenging that disqualification and that that time had passed prior to Mr Persaud's vote on 21 December 2018. Challenges must be mounted within 28 days from the date of the election but the challenge to Mr Persaud was in fact initiated some three and a half years after the 2015 election and one day after he had been recalled and removed from the National Assembly.

[90] It is customary to cite the decision of Rawlins CJ in *Joseph v Reynolds*[46] that the election court "has no power to extend time or allow amendments filed out of time unless election legislation so provides." There are, indeed, numerous authorities holding or based on the premise that any challenge to the election of a member of parliament must be brought in accordance with the procedure (normally an election petition) and the timelines provided for in the relevant legislation: *Gladys Petrie and Others v The Attorney-General and others;*[47] *Winston Payne v Roy Hammond;*[48] *Rudolphy v Lightfoot;*[49] *Ahmed Kennedy;*[50] *Nair v Telk;*[51] *Elsroy Nathaniel Dorset v GA Dwyer Astaphan and Others;*[52] and *Abraham Dabdoub v Daryl Vaz.*[53]

[46] HCVAP 2012/14, 31 July 2012.
[47] (1968) 14 WIR 292.
[48] (1986) No. 206 Demerara (unreported).
[49] [1999] HCA 61.
[50] [2003] 1 WLR 1320.
[51] [1967] 2 WLR 846.
[52] Claim No. SKBCV 2007/0259.
[53] Claim No. 2007 HCV 03921 (affirmed by the Court of Appeal).

[91] I agree that in the circumstances of this case, the failure to challenge Mr Persaud's election within the specified 28-day period renders his election to the National Assembly unimpeachable. However, I do not agree that the passage of the time specified in the election legislation must invariably render the contested election unassailable. Such an inflexible rule could, with respect, lead to absurd and preposterous results. To illustrate. An inflexible application of the rule would allow a person who is not Guyanese to remain a member of the National Assembly if his or her lack of allegiance was undiscovered for 28 days after his or her election. This would be in clear contravention of the purposes and premises of Articles 155 (1) (a) and 156(1)(c) of the Constitution. To take another example. An inflexible application of the rule would disallow any challenge after 28 days to a member who acquired dual nationality a day before the election; however, a member who became a dual citizen a day after the election could, under Article 156(1)(d), be removed from parliament at any time. It is highly unlikely that the framers of the Constitution intended to disallow all challenges after 28 days, whatever the circumstances, to the election of members having political loyalties and allegiances to, for example, hostile foreign powers.

[92] The Constitution was never meant to be a suicide pact. The Court is above all else the guardian of the Constitution and the guarantors of rule of law. The remedies section of the Constitution gives the Court the widest powers to address constitutional infractions and to uphold constitutional integrity. I concede that the circumstances in which a court is entitled to disregard the procedures and timelines specified in the election legislation in favour of upholding the fundamental tenets of the Constitution regarding eligibility to sit in parliament, are not entirely clear and require further thought. However, I consider that one circumstance where this extraordinary jurisdiction may be warranted is where parliamentary membership was obtained by intentional and fraudulent means. In the accepted vernacular of the law, fraud unravels all. I consider that it would be an unacceptable afront to the Constitution to give its protection to a person who knowingly and fraudulently violated its provisions by embezzling his or her way into parliament knowing full well that he or she was not qualified to sit as a parliamentarian. Support for this view is to be found in the case of *Venkatachalam v Swamickan*[54] where the challenged member had impersonated someone else in order to be elected. Describing his action as a 'fraud to the constitution', the Supreme Court of India said:

[54] Appeal (Civil) 1719 of 1986.

> "The appellant in the present case is certainly disqualified from being a member of the Legislative Assembly of Tamil Nadu. His election, however, was not challenged by filing an election petition under Section 81 of the Act. The Appellant knows he is disqualified. Yet he sits and votes as a member of the Legislative Assembly…
>
> The question that arises for consideration is if in such circumstances the High Court cannot exercise its jurisdiction under Article 226 of the constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly...
>
> In view of the judgment of this Court in the case of *Election Commission of India v. Saka Varikata Rao* AIR (1953) SC 210 it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election… Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief.…Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"

[93] In the present proceedings there were no clear allegations made or proof provided that Mr Persaud knowingly and fraudulently deceived the people and the National Assembly of Guyana in his election to the National Assembly. No other extraordinary grounds were advanced to justify the assumption of jurisdiction to pronounce on the validity of his election. Accordingly, in the circumstances, I agree that the failure to challenge his eligibility to sit within the time specified in the election legislation now renders the challenge unsustainable.

CONCURRING JUDGMENT OF THE HON. MME JUSTICE RAJNAUTH-LEE, JCCJ

[94] I have read the judgment of the Honourable President of the Court, Mr Justice Saunders, and I am fully in agreement with it. I wish to add a few remarks on the system of proportional representation which exists in Guyana and the impact, if any, that that system has on one of the key issues raised before the Court, that is, whether Charrandas Persaud's vote on 21 December 2018 was in violation of Article 156(3)(a) of the Constitution of Guyana and therefore disqualified.

[95] Guyana sets itself apart from the rest of the English-speaking Caribbean as far as its electoral system is concerned. In 1964, British Guiana adopted a system of proportional representation which replaced the "first-past-the-post" electoral system which still exists in the rest of the independent English-speaking Caribbean. An amendment was made to the 1961 Constitution of British Guiana "opening the way for the new system of elections."[55] Justice of Appeal Peter Jamadar of the Court of Appeal of Trinidad and Tobago (an Attorney at Law at the time of the publication) in his book entitled "*The Mechanics of Democracy*" advocating for the introduction of proportional representation to replace the "first-past-the-post" electoral system in his native Trinidad and Tobago argued:

> "Proportional representation as an electoral system demands that the distribution of seats be proportional to the distribution of the popular vote among competing political parties or candidates. It seeks to overcome the distribution imbalances that result from first-past-the-post and majority systems, and to create a representative body that mirrors the distribution of opinion within the electorate. Proportional representation is an ideal that is sought after. There are a number of different formulae in existence, but all are similar in their effect on the conversion of votes into political representation."

[96] Guyana became an independent nation on 26 May 1966 and the 1966 Constitution provided at section 66(1) that:

> "The election of members of the National Assembly shall be conducted by secret ballot in accordance with the system of proportional representation prescribed by the article."

[97] The Elections Regulations 1964[56] which provided for this new electoral system, were made by the Governor and those Regulations were incorporated by revision in 1973 in the Representation of the People Act.[57] Accordingly, an electoral system was introduced whereby electors voted for a List of candidates submitted by one or more political parties in accordance with the Constitution and the Representation of the People Act.[58]

[98] Before us, the point has been made that the electoral system in Guyana only allows for political parties to coalesce for the purpose of attaining control of the Presidency and the Executive Authority prior to the publishing of the Lists of candidates in accordance with the Representation of the People Act. Once electors have voted, Article 160 of the Constitution takes effect and the List with the majority (or in the case of three or more Lists, a plurality) of

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[55] Report of the Constitutional Reform Commission to the National Assembly, 17 July 1999.
[56] No. 24 of 1964.
[57] Cap. 1:03.
[58] See sections 3 and 19 of the Representation of the People Act Cap. 1:03.

the votes wins the Presidency and gains control of the government. There can be no coalition of Lists for the purpose of gaining control of the government after the results of the elections have been published.

[99] Interestingly, this has meant that in Guyana a List of candidates can attain to government although the members of that List do not have a majority of the seats in the National Assembly. This in fact happened in the General Elections of 2011 when the government was run with 32 seats as against 33 seats which had been gained by the two opposing parties, who had faced the polls on separate Lists. In the text "Fundamentals of Caribbean Constitutional Law" by Tracy Robinson, Arif Bulkan and Adrian Saunders, the authors describe the tumultuous parliamentary term which followed the 2011 elections.[59]

[100] Prior to the General Elections of 2015, the two parties that had formerly been in the Opposition, A Partnership for National Unity (APNU) and the Alliance for Change (AFC), signed the Cummingsburg Accord and contested the elections as a coalition. They therefore faced the polls with one List of candidates. They won the General Elections with a majority of 33 seats out of 65 and David Granger was appointed President in keeping with the provisions of Article 177 of the Constitution. The People's Progressive Party/Civic (PPP/C) which had gained 32 seats formed the Opposition. All seemed well within the Government until the 21 December 2018, when Mr Charrandas Persaud (Mr Persaud) an AFC member of the National Assembly on the Government's List, voted with the Opposition on a motion of no confidence in the Government moved by the Leader of the Opposition, Mr Bharrat Jagdeo.

[101] One of the interesting arguments made on behalf of those seeking to strike down the vote of no confidence is that Mr Persaud's vote on 21 December 2018 was contrary to Article 156(3)(a) of the Constitution, and therefore of no effect and disqualified. Article 156(3) was introduced by way of amendment to the Constitution in 2007.[60] Article 156(3) provides:

> "A member of the Assembly elected on a List shall cease to be a member of the Assembly, if –
>
> (a) he or she declares in writing to the Speaker or the Representative of the List from which his or her name was extracted that he or she will not support the List from which his or her name was extracted;

[59] See paragraph 2-037 (Sweet & Maxwell 2015).
[60] The Constitution (Amendment) Act 2007 [No. 22 of 2007].

(b) he or she declares in writing to the Speaker or the Representative of the List from which his or her name was extracted, his or her support of another list;
(c) the Representative of the List from which his or her name was extracted indicates in writing to the Speaker that after meaningful consultation with the Party or the Parties that make up the List that the Party or Parties have lost confidence in that member and the Representative of the List issues a written notice of recall to that member and forwards a copy of that notice to the Speaker."

[102] It is argued on behalf of the Attorney General that having regard to the provisions of Article 156(3), Mr Persaud's vote on 21 December 2018 should not count for the purpose of the no confidence motion. It has been submitted that a vote contrary to Article 156(3)(a) breached the very foundations of the Constitution of Guyana and the system of proportional representation. Indeed, that such a vote betrayed the people of Guyana who had voted for the List from which Mr Persaud's name was extracted. It was submitted that the framers of the Constitution intended that any member of the National Assembly who planned to vote against the List from which his name was extracted was under an obligation to comply with Article 156(3)(a) and to inform the Speaker in writing that he did not intend to support the List. Having failed to comply with Article 156(3)(a), it has been submitted, Mr Persaud's vote must not count.

[103] In a most interesting address, Mr Boston S.C. made oral submissions before us on behalf of Mr Reid. He explored elements of the system of proportional representation that exists in Guyana and submitted that as far as Article 156(3) was concerned, the system of proportional representation in Guyana prohibited a member from voting against the List from which his name was extracted unless the whip was lifted. Since the whip was not lifted on 21 December 2018, it was argued, Mr Persaud's vote breached the Constitution and was invalid.

[104] Mr Mendes S.C. on the other hand submitted that Article 156(3) was not relevant to the events which had taken place either before or after Mr Persaud voted on 21 December 2018. He argued that nothing in Article 156(3) prohibited Mr Persaud, whether on the no confidence motion or on any other measure before the National Assembly, from voting against the List from which his name was extracted.

[105] By Article 156(3), the Constitution has provided a mechanism whereby a member of the National Assembly who has been elected on a List ceases to be a member of that Assembly.

By Article 156(3) (a) and (b), the member ceases to be a member if he declares in writing either to the Speaker or the Representative of the List that he will not support the List from which his name is extracted or that he supports another List. By Article 156(3)(c), the member also ceases to be a member if the Representative of the List informs the Speaker in writing that the Party or Parties that make up the List have lost confidence in that member and he has been recalled.

[106] The key question that arises is whether, not having declared in writing in advance that he did not support the List from which his name was extracted, Mr Persaud could validly vote on the no confidence motion against that List; in other words, whether it was the intention of the framers of the Constitution that such a vote as that of Mr Persaud's on the 21 December 2018 should be disqualified? In my judgment, there is nothing in Article 156(3) or in any provision of the Constitution which leads to the conclusion that the framers of the Constitution had such an intention. In my view, there would have to be an express provision in the Constitution that any vote by a member against the List from which his name was extracted was disqualified. The argument that it is implicit from the provisions of Article 156(3) and the system of proportional representation, that the framers intended this effect, cannot be sustained. Such a drastic consequence would require an express provision within the Constitution itself. The member who votes against his List no doubt risks paying the ultimate political price and can be recalled in accordance with the provisions of the Constitution. We were told that on 3 January 2019, Mr Persaud was indeed recalled and replaced. That is the consequence which the Constitution permits.

[107] I therefore agree with the judgment of Saunders PCCJ that there was nothing which prevented Mr Persaud from voting in favour of the no confidence motion. I also agree that the National Assembly validly passed the motion of no confidence on 21 December 2018, and that the provisions of Article 106 (6) and (7) of the Constitution have been triggered. As we await the further submissions of Counsel on what consequences, if any, should be prescribed by the Court in these appeals, I urge all to bear in mind that the rule of law is an important guiding constitutional principle of a sovereign democratic state like Guyana. The provisions of the Constitution must be upheld in accordance with the rule of law. In the appeal of *The Attorney General of Guyana v Cedric Richardson,*[61] Wit JCCJ wisely made reference to Article 3 of the Inter-American Democratic Charter which reads:

[61] [2018] CCJ 17 (AJ).

> "Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government." [62]

DIRECTIONS

[108] The Court will hear further submissions before deciding what consequential orders, if any, that should be made in all the circumstances.

/s/ A Saunders

The Hon Mr Justice A Saunders (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ D Hayton

The Hon Mr Justice D Hayton

/s/ W Anderson

The Hon Mr Justice W Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

[62] ibid, [113].