

**IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF THE
CO-OPERATIVE REPUBLIC OF GUYANA**

**CCJ Appeal No GYCV2024/001
GY Civil Appeal Nos 50 and 61 of 2021**

BETWEEN

**THE ATTORNEY GENERAL OF GUYANA
SARAH BROWNE
VIKASH RAMKISSOON**

APPELLANTS

AND

**CHRISTOPHER JONES
THE SPEAKER OF THE NATIONAL
ASSEMBLY**

FIRST RESPONDENT

SECOND RESPONDENT

**Before: Mr Justice Saunders, President
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Burgess
Mr Justice Jamadar**

Date of Judgment: 30 October 2024

Appearances

Mr Mohabir Anil Nandlall SC, Attorney General, Mr Douglas Mendes SC, Mr Nigel Hawke, Solicitor General, Mr Clay Hackett and Ms Shoshanna Lall, Deputy Solicitor General for the Appellants

Mr Roysdale Forde SC, Mr Selwyn A Pieters, Dr Dexter Todd, Mr Darren Wade and Ms Sasha King for the First Respondent

Mr C V Satram, Mr Mahendra Satram, Mr Manoj Narayan, Mr Ron Motilall and Ms Chandanie Dyal for the Second Respondent

Civil law — Constitutional interpretation — Stare decisis — Appointment of Parliamentary Secretary as non-voting member of National Assembly — Whether the Court of Appeal was bound by its previous decisions — Whether candidates who remain unextracted from successful electoral list are elected members of the National Assembly — Whether the appointments of unextracted candidates as Parliamentary Secretaries are valid — Constitution of Co-operative Republic of Guyana Act, Cap 1:01 arts 186(1) and 232.

SUMMARY

This appeal followed the decision of the Court of Appeal to uphold the High Court's judgment that the appointments of the second and third appellants as Parliamentary Secretaries were invalid. The second appellant, Ms Sarah Browne, and the third appellant, Mr Vikash Ramkissoon, were both named on the list of candidates presented by the People's Progressive Party/Civic ('the PPP/C') for general and regional elections held on 2 March 2020 ('the 2020 elections'). The PPP/C was declared the winner of those elections. They were allocated 33 of the 65 seats in the National Assembly. Ms Browne and Mr Ramkissoon were listed among the candidates put up by the PPP/C. Neither, however, was among the 33 names extracted from the top-up list put forward by the PPP/C to hold seats in the Assembly. Following the elections, the President appointed both Ms Browne and Mr Ramkissoon as Parliamentary Secretaries by an instrument dated 14 September 2020. The President's appointments were made in keeping with art 186 of the Constitution.

The first respondent, Mr Christopher Jones, was dissatisfied with the two presidential appointments. He filed a Fixed Date Application dated 22 December 2020, seeking declarations that Ms Browne and Mr Ramkissoon were not lawful members of the Assembly nor were they lawfully appointed Parliamentary Secretaries. Mr Jones also applied for an order directing the Speaker of the Assembly to prevent the two persons from sitting and/or participating in the business of the Assembly. Mr Jones later clarified, in written submissions to the High Court, that the validity of the appointments was no longer being challenged, but he maintained that Ms Browne and Mr Ramkissoon were not entitled to be members of the Assembly.

The High Court granted the declaration that the two appointees were not lawful members of the National Assembly. The High Court considered itself bound by the decision of the trial judge in *Attorney General of Guyana v Morian*. The reasoning of the trial judge in *Morian* was influenced by that which was set out in the earlier High Court decision of *Trotman v Attorney General*. The Court of Appeal's dismissals of the decisions in *Morian* and *Trotman* respectively were each based on procedural issues rather than the substantive issues adjudicated by the High Court. Notwithstanding, the Court of Appeal in the instant case also considered itself bound by these two decisions and noted that it was for the Caribbean Court of Justice ('CCJ') 'to correct any errors in *Morian*'.

The CCJ therefore considered two main issues: (1) whether the Court of Appeal was bound by the decision of *Morian* and, (2) whether the appointments of Messrs Browne and Ramkissoon were lawful.

Regarding the first issue, the Court noted that the principle of *stare decisis* promotes consistency and predictability in the law. However, while the principle is concerned with both the result and the reasoning behind the result, it is predominantly the latter that forms the basis of the precedent and guides future decision-making. If a Court of Appeal dismisses an appeal, especially on constitutional interpretation, on purely procedural grounds, making no assessment whatsoever of the correctness of the trial judge's reasons for the particular interpretation, a future appellate Court should be very hesitant to consider itself bound essentially by the reasoning of that trial judge. In such an instance it is entirely within the Court of Appeal's remit to evaluate fully the reasoning of the lower court and come to its own conclusion.

The Court considered that the second issue could be resolved by determining who is, and how a person becomes, an elected member of the National Assembly? While art 186 of the Constitution was the main provision in dispute, the Court had regard to other provisions in the Constitution that referred to the terms 'elected member' and 'qualified to be elected'. Such provisions included arts 53, 60, 101, 103, 105, 106, 113, 155, 160 and 232. The Court found that, for names that are on a successful list, *Morian* created two classes of 'elected

members'. One class comprised real elected members whose names were extracted and who therefore could take the oath and sit and vote in the National Assembly and be appointed Ministers or Parliamentary Secretaries. The other class constituted 'elected members' whose names were not extracted and who could not take the oath, had no seat in the Assembly and could not be appointed a Parliamentary Secretary.

Morian's interpretation of the term 'elected member' when applied to certain provisions of the Constitution produced untenable consequences. The Court therefore held that an elected member of the National Assembly is a member whose name is extracted from a successful list. This interpretation allowed for a coherent and consistent application of the term throughout the Constitution. Additionally, this interpretation also aligns with the provisions of the Representation of the People Act.

The appeal is allowed and the orders of the courts below are vacated. This appeal enabled the Court to address a constitutional issue that has posed challenges in the past, making its resolution significantly important to the public. In the circumstances, the Court ordered that each party shall bear their own costs in this court and the courts below.

Cases referred to:

A-G of Guyana v Morian (GY CA, 23 January 2020); *A-G of Guyana v Richardson* [2018] CCJ 17 (AJ) (GY), (2018) 92 WIR 416; *Fields v The State* [2023] CCJ 13 (AJ) BB, [2024] 2 LRC 176; *Morian v A-G of Guyana* GY 2016 HC 4 (CARILAW), (19 February 2016); *Trotman v A-G* GY 2009 CA 5 (CARILAW), (5 February 2009).

Legislation referred to:

Guyana – Constitution of the Co-operative Republic of Guyana Act, Cap 1:01, Representation of the People Act, Cap 1:03.

JUDGMENT

Reasons for Judgment:

Saunders P (Anderson, Rajnauth-Lee, Burgess and Jamadar JJ concurring) [1] – [28]

Disposition [29]

SAUNDERS P:

Introduction

[1] In *Fields v The State*, this Court noted¹ that one of the critical functions of an apex court is to examine precedents set by courts below that have shaped the course of the law and to decide whether they should receive the approbation of the final Court. In *Fields*, we specifically indicated that if:

an apex court were to allow what it regards as a very serious error of law to remain on the record, the final court would be failing in one of its most fundamental duties, that is, the obligation to clarify and improve the coherence of the law....

[2] In this appeal we must decide whether we should allow to remain standing as authoritative law certain judicial statements and reasons that were applied in the earlier decisions of *Trotman v Attorney General*² and in *Attorney General of Guyana v Morian*³. In the instant case, both courts below considered themselves bound by the decision in *Morian* in keeping with the principle of *stare decisis*. The Court of Appeal noted that it was for the Caribbean Court of Justice ‘to correct any errors in *Morian*.’

¹ [2023] CCJ 13 (AJ) BB, [2024] 2 LRC 176 at [49].

² GY 2009 CA 5 (CARILAW), (5 February 2009).

³ (GY CA, 23 January 2020).

Background

- [3] In essence, the point of law in issue revolves around the appointment, whether as a Parliamentary Secretary or as a Minister, of unextracted electoral candidates and the eligibility of such persons to be members of the National Assembly. The issues to be resolved are purely matters of constitutional and legal interpretation.
- [4] The second appellant, Ms Sarah Browne, and the third appellant, Mr Vikash Ramkissoon, were both named on the list of candidates presented by the People's Progressive Party/Civic ('the PPP/C') for general and regional elections held on 2 March 2020 ('the 2020 elections'). The PPP/C was declared the winner of the 2020 elections. They were allocated 33 of the 65 seats in the National Assembly. Ms Browne and Mr Ramkissoon were listed among the candidates on the top-up list put forward by the PPP/C. Neither, however, was among the 33 names extracted from that top-up list to hold seats in the Assembly. Following the elections, the President appointed both Ms Browne and Mr Ramkissoon as Parliamentary Secretaries by an instrument dated 14 September 2020.
- [5] The President's appointments were made in keeping with art 186 of the Constitution. Article 186(1) states that, 'Parliamentary Secretaries may be appointed from among persons who are elected members of the National Assembly *or are qualified to be elected as such members.* (emphasis added).'

Article 186 (3) states that:

A Parliamentary Secretary who was not an elected member of the Assembly at the time of his or her appointment shall (unless he or she becomes such a member) be a member of the Assembly by virtue of holding the office of Parliamentary Secretary but shall not vote in the Assembly.

- [6] The first respondent, Mr Christopher Jones, was dissatisfied with the two presidential appointments. He filed a Fixed Date Application dated 22 December

2020, seeking declarations that a) Ms Browne and Mr Ramkissoon were not lawful members of the Assembly and b) they were not lawfully appointed Parliamentary Secretaries. Mr Jones also applied for an order directing the Speaker of the Assembly to prevent the two persons from sitting and/or participating in the business of the Assembly. Mr Jones later clarified, in written submissions to the High Court, that the validity of the appointments was no longer being challenged, but he maintained that Ms Browne and Mr Ramkissoon were not entitled to be members of the Assembly.

[7] The High Court granted the declaration that the two appointees were not lawful members of the National Assembly. As previously indicated, the court considered itself bound by the decision in *Morian*. The reasoning in *Morian* may well have been influenced by that which was set out in the earlier decision of *Trotman*. It is therefore, necessary to look at this reasoning. Before we do so, however, one must have regard to some of the relevant constitutional and legislative provisions.

[8] At [5] above we have set out the applicable provisions of art 186. Other relevant constitutional provisions include the following articles of the Constitution. We have culled from those articles (and attempted to express in layman's terms) only those aspects of them that we consider to be material to a resolution of this case. They are as follows:

- a. **Article 53** sets out the basic qualifications for election as a member of the National Assembly. The candidate must be a Guyanese citizen aged at least 18 years and be able to speak and read the English language unless incapacitated by blindness or other physical cause;
- b. **Article 60** stipulates that election of members shall be by secret ballot. This article also states that, subject to art 160(2), the election shall be in accordance with a system of proportional representation;
- c. **Article 101** empowers the President to appoint an elected member of the National Assembly to be Prime Minister, provided that a person who is not eligible to be elected as President shall not be eligible for appointment as Prime Minister. So, to take just one

example, a person who has already served two terms as President, is ineligible to be appointed Prime Minister⁴;

- d. **Article 103** states that the Prime Minister and every other Vice-President shall be a Minister. Broadly speaking, Vice-Presidents and other Ministers shall be appointed by the President from among persons who are elected members of the National Assembly or who are qualified to be elected as such members. Not more than four Ministers and two Parliamentary Secretaries shall be appointed from among persons who are qualified to be elected as members of the National Assembly. This Article effectively places a cap on the number of unextracted persons who may be appointed as Ministers or Parliamentary Secretaries.
- e. **Article 105** states that a Minister who was not an elected member of the Assembly at the time of their appointment shall (unless they become such a member) be a member of the Assembly by virtue of holding the office of Minister but shall not vote in the Assembly.
- f. **Article 106** speaks to the establishment of the Cabinet, its composition, its role and the manner in which it functions.
- g. **Article 113** authorises the President to appoint Parliamentary Secretaries to assist the President or Ministers in the discharge of their functions.
- h. **Article 155** sets out a range of circumstances that disqualifies someone from being qualified for election as a member of the National Assembly. These include such circumstances as insanity, allegiance to a foreign power, being sentenced to death or serving a sentence of imprisonment for a period exceeding six months, holding judicial office or other circumstances as may be specified by Parliament.
- i. **Article 160** gives details of the country's unique electoral system of proportional representation in keeping with which, among other things, a candidate for election must support or identify with a particular list. Votes are cast throughout the country not for any particular individual but in favour of rival lists of candidates. A voter casts their single vote in favour of a list. Seats in the National Assembly are then allocated between or among the lists in a proportionate manner according to a set formula. Parliament is authorised to make provision for the registration of electors, for the manner in which lists of candidates shall be prepared, for allocation of seats to each list, for the extraction of names from lists and

⁴ See *A-G of Guyana v Richardson* [2018] CCJ 17 (AJ) (GY), (2018) 92 WIR 416.

generally for the conduct of elections of members of the National Assembly.

- j. **Article 232** defines certain words and phrases used in the Constitution. One of the phrases defined is ‘elected member of the National Assembly’. This is expressed to mean any person elected as a member of the National Assembly pursuant to the provisions of para (2) of art 60 or art 160(2).

The Decisions in *Trotman*, *Morian* and the Courts Below in this Case

[9] Given the above background, it is appropriate now to examine judicial statements made in *Trotman* and in *Morian*. The parties were unable to provide us with the High Court judgment in the *Trotman* case, but the Court of Appeal’s decision in that case was made available. *Trotman* arose, in part, out of the President’s appointment of some 21 persons as Ministers following the 2006 general elections. Wider issues in the case were largely bound up with the authority of the President to convene the National Assembly within a particular time. At any rate, the names of the 21 persons were all on the top-up list of the successful PPP/C, but they were appointed as Ministers *before* there was any official extraction of candidates from the list. It was contended on behalf of the complainants that, as the names of the appointees were not yet extracted (and therefore the persons were not elected - or at least declared - to be members of the National Assembly), it was not lawful for the President to have appointed them as Ministers (emphasis added).

[10] The gist of art 103, the key article of the Constitution that addresses the appointment of Ministers has been set out above at [8]d. The President may appoint any number of *elected members* of the National Assembly as Ministers. The President may also appoint not more than four Ministers and two Parliamentary Secretaries from among persons who are not elected members of the National Assembly but who are qualified to be so elected (emphasis added).

[11] The trial judge in *Trotman* determined that the appointments of the 21 persons were ‘constitutional, proper and valid’ on the dubious premise that all members of a

successful list of candidates contesting elections were elected members of Parliament as defined in art 232. The judgment was appealed.

[12] In the Court of Appeal, Ramson JA apparently did not consider it necessary to treat head-on with the contentious premise upon which the trial judge upheld the appointments. Instead, Ramson JA confined himself to the wider issues thrown up by the case. In the report of the appellate judgment presented to us, it is unclear what view of the matter was taken by a second member of the Court of Appeal panel, Roy JA. The third member of the Bench, Cummings-Edwards JA did confront the issue in question. She rightly took the position that the appointments were premature, but she stated that the irregularity could be cured if the names of those appointed were subsequently extracted from the successful list of candidates, as indeed they were. The Court of Appeal decision was handed down in February 2009.

[13] Seven years later, the case of *Morian* was decided at first instance. In *Morian*, two persons whose names were on a successful top-up list were appointed to ministerial posts. The court proceedings centred on whether these persons had been lawfully appointed given that their names had not been extracted to fill seats in the National Assembly. The trial judge decided that firstly, because the names of the two persons appeared on a successful list, they were automatically to be regarded as elected members. Secondly, according to the judge, there is no provision in the Constitution which allows a Minister who is an elected member of the Assembly but whose name has not been extracted from a successful list of candidates to hold a seat in the Assembly even as a non-voting member. But then the judge went even further. He expressed the view that:⁵

[I]t is legally possible for the President to appoint persons as Ministers from his party's successful list of candidates whose names the representative of the list has not seen it fit to extract to hold seats in the Assembly. After all, the President's power to appoint Ministers is executive in purpose while the

⁵ *Morian v A-G of Guyana* GY 2016 HC 4 (CARILAW), (19 February 2016) at 10 - 11.

representative of the list's power to extract is representative in purpose – the President himself being no part of the National Assembly (in contradistinction to Parliament). In such a case, like the President himself, those Ministers would not be holders of seats in the Assembly.

- [14] The trial judge in *Morian* construed art 160(1)(c) to mean that seats in the Assembly are not allocated to specific persons but rather to the successful list of candidates 'cumulatively'. Because art 160(3)(a)(v) gives Parliament the power to make provisions 'for the extraction from the lists and declaration of names of the candidates who have been elected...', the judge interpreted this to mean that the status of every candidate on a successful list is that of an elected member of the Assembly. The judge buttressed his reasoning by suggesting that since listed candidates whose names have not initially been extracted are eligible for extraction when or if a vacancy arises in the National Assembly, the entirety of the listed persons must at all times be regarded as 'elected members'. The judge determined that art 105 speaks only to those Ministers 'qualified to be elected as members of the Assembly' but who are not 'elected members' of the Assembly at the time of their Ministerial appointments. The judge referred to such persons as 'technocrat ministers'. In other words, if the individual being appointed pursuant to art 105 contested the election so that their name was on a list, and that list was successful, such a person is an elected member and art 105 would not apply to them. However, art 105 would be applicable to an individual whose name never appeared on a list of candidates, or at least a list that achieved a measure of success. According to the judge, such a person, if appointed as a Minister or Parliamentary Secretary, would be a non-elected member of the Assembly without a right to vote. The trial judge's decision was appealed, but the appeal failed on purely procedural grounds. The Court of Appeal was not required to and did not assess or pronounce on the reasoning of the trial judge. As such, the reasoning in *Morian* continues to prevail.
- [15] The High Court, in the instant case, followed the reasoning in *Morian*. The judge felt fortified in so doing because apparently counsel on both sides agreed with the *Morian* doctrine that every candidate on a successful list, whether ultimately

extracted or not, was an elected member of the Assembly. The judge held that due to the PPP/C's success at the 2020 elections, Ms Browne and Mr Ramkissoon were elected members because their names were on the successful PPP/C list presented to the electorate. The judge affirmed the *Morian* doctrine that art 105, which provides for non-elected persons to be appointed as Ministers, has no application to citizens whose names are on a successful list because they are already elected Members of the National Assembly.

[16] The Court of Appeal affirmed the decision of the High Court justifying itself in part by being constrained to follow the interpretation of the term 'elected member of the National Assembly' given by the trial courts in *Trotman* and in *Morian*. The Court of Appeal acknowledged that there were grave difficulties involved in regarding unextracted members of a successful list as elected members of the Assembly. The court took the view, however, that whenever those difficulties arose, they could be cured by artful interpretation.

[17] As to the meaning of 'qualified to be elected' in art 186(1), the Court of Appeal decided that the *Morian* approach adopted by the trial judge was 'more closely aligned with the core principle of proportional representation... [and that] ... qualified members would come from a separate pool of eligible persons who did not contest the election but met the requirements for membership of the Assembly as set out in Article 53.' *Morian* was affirmed and the appeal was dismissed.

Analysis

[18] This case is easily resolved if a clear answer is given to the fundamental question: Who is and how does a person become an elected member of the National Assembly? Before discussing this question, we wish to make some very brief remarks on the issue of *stare decisis* in light of what transpired in this case.

- [19] The principle of *stare decisis* (to stand by things decided) requires courts to follow the precedents established in previous judicial decisions when ruling on similar cases. The principle promotes consistency and predictability in the law. Although the principle is applied both with respect to the result and the reasoning behind the result of the former case, it is predominantly the reasoning that forms the basis of the precedent and guides future decision-making.
- [20] If, without any assessment whatsoever of the correctness of the trial judge's reasons, a Court of Appeal dismisses an appeal on purely procedural grounds, especially in a case in which the trial judge had adjudicated on a matter of constitutional interpretation, a future appellate court should be very hesitant to consider itself bound by the decision of the former appellate court when a new case presents itself with the same constitutional issue for consideration. To regard oneself so bound essentially means being guided by the reasoning of the former trial court and not the former appellate court. In such an instance, it is entirely within the Court of Appeal's remit to lay the principle of *stare decisis* to one side and evaluate fully the substance of the case and come to its own conclusions. Courts of Appeal exist to examine whether a trial judge has erred and, if the judge has, to correct the error. Moreover, even where the principle of *stare decisis* properly constrains the ultimate result of litigation, judges still have a responsibility to air their independent views on contentious issues of the law.

Who is and how Does a Person Become an Elected Member of the National Assembly?

- [21] Breathtaking consequences would ensue if the answer to this question were to be guided by the *Morian* doctrine. It cannot be that, once a list receives a sufficient number of votes as would earn it the allocation of a seat, or a majority of the seats in the Assembly, all persons on that list automatically become elected members of the Assembly, whether or not their names are extracted from the list for membership in the Assembly. Membership of the National Assembly will then not be fixed by

Parliament (as it most certainly currently is) at 65 members⁶, but rather the number will fluctuate arbitrarily depending on how many names have been inserted on the top-up lists of a successful slate. Indeed, we are told by counsel that, in the 2020 elections, the PPP/C presented a list comprising some 116 names.

[22] *Morian* would create two classes of ‘elected members’ whose names are on a successful list. There would be real elected members whose names were extracted and who therefore could take the oath and sit and vote in the National Assembly and be appointed Ministers or Parliamentary Secretaries and be paid a parliamentary salary. And there would be second-class ‘elected members’ whose names were not extracted and who could not take the oath nor a seat in the Assembly and who could not be appointed a Parliamentary Secretary and who would receive no stipend. To complicate matters further, according to *Morian*, an unextracted member could be appointed as a Minister but be excluded from sitting and participating in the Parliament. *Morian* countenances a novel form of discrimination against unextracted persons that is nowhere provided for in and is utterly repugnant to the Constitution.

[23] As the Court of Appeal itself appreciated, the reasoning in *Morian* does not square with the meaning that should be attributed to the phrase the ‘elected members of the National Assembly’ and art 106(6) of the Constitution is a prime example. That article provides 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.’ By no stretch of one’s imagination could it have been envisaged, nor has it ever been contemplated, that unextracted members would be entitled to vote on such a motion.

[24] Similarly, as counsel also submitted, the notion that unextracted candidates whose names are on a successful list are elected members of the Assembly also produces strange consequences in relation to the appointment of, for example, the Prime

⁶ See s 11(a) of the Representation of the People Act, Cap 1:03.

Minister. Article 101(1) provides that the President ‘shall appoint an elected member of the National Assembly to be Prime Minister’. *Morian* would have an unextracted person on a List being eligible to be appointed as Prime Minister and not entitled to sit and participate in the proceedings of and would therefore not be accountable to the National Assembly. This would make a mockery of responsible government.

- [25] What is the appropriate way to analyse this issue? We start with art 232 of the Constitution. That article tells us who is, and how a citizen may become an elected member of the National Assembly. The person must be elected by secret ballot (art 60) in keeping with the electoral system of proportional representation broadly set out in art 160 and more particularly detailed by Parliament in the Representation of the People Act (‘ROPA’). That system does not entitle an elector to cast a vote for any particular candidate. Ballots are cast in secret for a list of candidates. After the ballots are tallied, seats in the Assembly are allocated between or among the lists of the rival parties according to a set proportional representation formula. After it is known how many seats are allocated to a particular list, the list representative extracts a number of names from the list to fill the corresponding number of seats allocated. The extracted persons are only then considered and are declared to be elected members of Parliament.
- [26] Unextracted members are not, while they remain unextracted, elected members of Parliament. They are merely eligible for extraction and, if they are not extracted as a result of a vacancy arising, and provided they remain qualified to sit in the Assembly (in keeping with arts 53 and 155), they too, like any other citizen, are eligible to be appointed among the four Ministers and two Parliamentary Secretaries who may be earmarked for office by the President in keeping with the conjoint effect of arts 103(3), 105 and 186. In that case, they would be entitled to sit in Parliament but, because they are unelected, they would have no right to vote in the Assembly.

[27] All of the provisions of the Constitution are entirely consistent with this analysis. As counsel for the appellants indicated, the ROPA also reflects this approach. So, for example, s 98 of the ROPA provides specifically that, following the allocation of seats to the lists of candidates, the names of candidates are to be extracted from the said lists and the Chief Election Officer ‘shall declare such names, in the order of their extraction ... to be the names of the candidates on such list who have been elected.’ Section 99 provides for the gazetting of election results and expressly distinguishes between the votes cast for the lists of candidates, on the one hand, and, on the other, those persons who as a result of the election have become members of the National Assembly. Section 99A specifically addresses the situation where the seat of a member of the Assembly who was elected becomes vacant and expressly provides for the filling of the vacant seat ‘by the person who is not such an elected member of the Assembly but is qualified for election as, and willing to become, such a member and whose name is taken from the relevant list of candidates by way of further extraction...’. This provision recognises the fact that a person on a list of candidates who is eligible for extraction to fill a vacant post, is not considered to be an elected member until such extraction occurs. The stark reality is that a person whose name is on a top-up list only becomes an elected member of the National Assembly upon extraction.

[28] We agree with counsel for the appellants that Messrs Browne and Ramkissoon were presumptively qualified to be elected as members of the National Assembly since, as candidates on the PPP/C list, they were each required to swear that they were qualified to be so elected⁷ and the respondent adduced no evidence that they were not qualified to be elected.

Disposition and Order

[29] The appeal is allowed and the orders of the courts below are vacated. This appeal enabled the Court to address a constitutional issue that has posed challenges in the

⁷ See Representation of the People Act (ROPA), Cap 1:03 s 11(4) and Form 3.

past, making its resolution significantly important to the public. In the circumstances, each party shall bear their own costs in this court and the courts below.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ A Burgess

Mr Justice Burgess

/s/ P Jamadar

Mr Justice Jamadar