



CARIBBEAN COURT OF JUSTICE

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CCJ DECLARES THAT AN ELECTED MEMBER OF THE NATIONAL ASSEMBLY IS A MEMBER WHOSE NAME IS EXTRACTED FROM A SUCCESSFUL LIST

Port of Spain, Trinidad and Tobago. On Wednesday, 30 October 2024, the Caribbean Court of Justice (CCJ) in its Appellate Jurisdiction delivered judgment in the appeal *Attorney General v Christopher Jones* [GYCV2024/001]. The CCJ allowed the appeal and overturned the decision of the Court of Appeal of Guyana.

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.

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 this case also considered itself bound by these two decisions and noted that it was for the 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.

In the lead judgment, CCJ President, the Honourable Mr Justice Saunders (with whom the Honourable Justices Anderson, Rajnauth-Lee, Burgess, and Jamadar agreed) addressed the first issue noting that the principle of *stare decisis* promotes consistency and predictability in the law. Therefore, 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 Court allowed the appeal and vacated the orders of the courts below. Each party was ordered to bear their own costs.

The matter was heard by the CCJ President, the Honourable Mr Justice Saunders, and the Honourable Justices Anderson, Rajnauth-Lee, Burgess, and Jamadar. 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 appeared for the Appellants. Mr Roysdale Forde SC, Mr Selwyn A Pieters, Dr Dexter Todd, Mr Darren Wade, and Ms Sasha King appeared for the First Respondent. Mr C. V. Satram, Mr Mahendra Satram, Mr Manoj Narayan, Mr Ron Motilall, and Ms Chandanie Dyal appeared for the Second Respondent.

The CCJ's full decision is available via www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, five states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Guyana, and Saint Lucia. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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