

[2026] CCJ 11 (AJ) GY

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

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

CCJ Application No GY/A/CV2026/001

GY Civil Appeal No 2025/61-HC-FDA-CAD-DEM-CIV/APL-CIV14/2026

BETWEEN

**NAZAR MOHAMED
AZRUDDIN MOHAMED**

APPLICANTS

AND

**MINISTER OF HOME AFFAIRS, ONEIDGE WALROND
ATTORNEY GENERAL
MAGISTRATE JUDY LATCHMAN**

RESPONDENTS

Before:

**Mr Justice Anderson, President
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Jamadar
Mme Justice Ononaiwu
Mr Justice Eboe-Osuji
Mr Justice Bulkan**

Date of Judgment: 29 July 2026

Appearances

Mr Fyard Hosein SC, Mr Roysdale A Forde SC, Ms Sasha Bridgemohansingh, Mr Siand Dhurjon, Mr Damien Da Silva and Mr Aadam Hosein for the Applicants

Mr Douglas L Mendes SC and Mr Clay J Hackett for the First Respondent

Mr Mohabir Anil Nandlall SC, Attorney General, Mr Nigel O Hawke, Solicitor General, Ms Shoshanna V Lall, Deputy Solicitor General, Ms Dishon Persaud for the Second Respondent

Mr Arudranauth Gossai for the Third Respondent

Practice and procedure – Special leave – Hearing of application for special leave to be treated as hearing of appeal – Extradition proceedings – Natural justice – Procedural fairness – Rule against bias – Presumed bias – Apparent bias – Ministerial decision to issue Authority to Proceed – Whether the Minister was biased – Whether the Attorney General was biased – Whether advice given by the Attorney General invalidated the Authority to Proceed – Fugitive Offenders Act, Cap 10:04.

SUMMARY

General elections were held in the Co-operative Republic of Guyana on 1 September 2025. The Second Applicant, Mr Azruddin Mohamed, was elected as the Leader of the Opposition and was sworn into that office in January 2026. The First Applicant, Mr Nazar Mohamed, is his father.

On 28 October 2025, the Government of Guyana received a request from the Government of the United States of America for the extradition of both Applicants to that country. The request resulted in the Minister of Home Affairs of Guyana (‘the Minister’ or ‘MOHA’) issuing, on 30 October 2025, an Authority to Proceed (‘ATP’) pursuant to s 12 of the Fugitive Offenders Act (‘the Act’ or ‘FOA’), which gave effect to extradition treaty arrangements between Guyana and the United States of America. The ATP signified to the magistrate that the request for extradition had been received and required the magistrate to proceed with extradition proceedings in accordance with the provisions of the Act.

While those extradition proceedings were ongoing, the Applicants brought an action for judicial review in the High Court on 23 December 2025, seeking, inter alia, an order that the ATP was null and void because of bias, both actual and apparent. The Applicants also sought a stay of the extradition proceedings. The alleged bias was said to have arisen from the Minister’s affiliation with the governing political party, the People’s Progressive Party/Civic (‘PPP/C’) in circumstances where the most senior representatives of that

party, including the President, Vice-President, and the Attorney General, had publicly described the Applicants as criminals and in other derogatory terms during the electoral campaign. It was also alleged that the ATP was fatally defective because, prior to issuing it, the Minister had consulted with the Attorney General, who was allegedly biased.

On 4 February 2026, Singh CJ (Ag) ('the Chief Justice'), sitting in the High Court, dismissed the application and refused the stay of the extradition proceedings. The Chief Justice held that in issuing the ATP, the Minister was exercising an executive rather than a judicial function and therefore the rule against bias did not apply to its fullest extent. The Chief Justice also found that the allegations of bias had not been established, since it had not been alleged that the Minister herself made any of the adverse statements against the Applicants, and the expression by her colleagues of disdain for the Applicants could not be attributed to her so as to taint her decision with bias. Costs were awarded to each of the three Respondents to be paid on or before 27 February 2026.

On appeal, the Court of Appeal similarly dismissed the appeal and refused the request for a stay of the extradition proceedings. Like the High Court, the Court of Appeal held that the Minister was exercising an administrative function in issuing the ATP and therefore the issue of bias did not arise. All that was required was for the Minister to address her mind to and comply with the statutory requirements regarding the issuance of the ATP. Notwithstanding the Court of Appeal's determination that the rule against bias did not apply to the challenged decision, that court considered the submissions on bias. The court found there was no direct proprietary, pecuniary or equivalently close personal interest that would warrant automatic disqualification for bias. Additionally, the Court of Appeal found that the fair-minded observer would not conclude that there was apparent bias on the part of the Minister, would appreciate that the ATP was merely a preliminary step in the extradition process, and that the Applicants would have the benefit of all the safeguards against bias provided under the Act. The Court of Appeal also rejected the argument that the Minister and/or the Attorney General should have delegated their statutory functions and powers to issue the ATP either pursuant to the *Carltona* principle or s 27 of the Interpretation and General Clauses Act.

Dissatisfied with the decision of the Court of Appeal, the Applicants sought special leave to appeal to the Caribbean Court of Justice. On 25 March 2026, this Court granted an interim stay of the extradition proceedings and ordered that the hearing of the application for special leave be treated as the hearing of the substantive appeal. The hearing focussed on two central issues, namely:

- (1) whether the Minister and/or the Attorney General was tainted with bias, actual or apparent, such as to tarnish the issuance of the ATP, and, if so,
- (2) whether the law required the Minister and/or the Attorney General to delegate their statutory powers and functions in respect of the issuance of the ATP, in the circumstances.

In a joint decision delivered by Anderson P and Barrow J, their Honours held that the Applicants had met the threshold of arguability needed for the grant of special leave. That is, it was arguable that the court below was wrong to decide that the rule against bias did not apply to the issuance of the ATP.

In adjudicating the appeal, their Honours found that the rule against bias does apply to the ministerial grant of the ATP but that the question of whether there had been a violation of that rule had to be determined by the context in which that question arose. In the instant case, the judges found that the ATP process does not import the full panoply of procedural rights available in judicial proceedings. There was no general right to be heard prior to the issuance of the ATP. There was no requirement for the Minister issuing the ATP to be free from political bias. What was required was for the Minister to engage in a process that allowed for consideration of the factors contemplated by the Act. Their Honours found that the Applicants had not challenged the process that led to the issuance of the ATP save for the allegation that the Minister was politically biased. There was no allegation that the Minister omitted to consider a relevant factor or that she considered an irrelevant one. While the Attorney General, as chief legal adviser to the Government, must necessarily be circumspect in any comment on extradition requests upon which his advice may be

sought, the decision to issue the ATP was statutorily vested in and was, as a matter of fact, exercised by the MOHA with very minimal advice from the Attorney General. In these circumstances, determination of whether the Attorney General was biased served no probative value.

Their Honours expressed the considered view that it should become the practice in our courts, except where it is manifestly clear that the extradition proceedings must fail (as for example, where the ATP was issued by the wrong person), that while challenges to the issuance of the ATP may be brought at any time, such challenges should only be heard after completion of the committal proceedings. This practice would be consistent with the international framework for extradition, encourage prompt performance of extradition treaty obligations, and provide a reasonable balance between the interest of the person whose extradition is requested, and that of the State. This practice would also be in line with the normal judicial processes envisaged by Parliament in, for example, ss 17 and 21 of the Act.

In the opinion of Anderson P and Barrow J, the challenge on grounds of bias having failed, it was not necessary to consider the other ground of appeal concerning whether the Minister and the Attorney General ought to have delegated their statutory powers in the circumstances. However, their Honours expressed grave doubts that there could properly be delegation of the power under the Act to issue the ATP to any person who was not a minister. Additionally, in light of their finding that the issuance of the ATP was not tainted with bias, their Honours similarly found it unnecessary to address the arguments on waiver and the doctrine of necessity raised by the Minister on her cross-appeal.

Rajnauth-Lee, Jamadar and Bulkan JJ delivered a separate opinion on several key aspects of this matter. They were satisfied that the test for special leave was met by the Applicants to the standard of arguability.

On jurisdiction and prematurity, they held that there is no legal basis that prevents the Applicants from commencing these judicial review proceedings to quash the decision of

the MOHA to issue the ATP where bias is alleged in the decision-maker and/or decision-making process. Prematurity does not arise in the circumstances of this case. There is pragmatic good sense to the issue being raised at the earliest stage possible.

On the issue of waiver, they were of the view that it cannot be said that the Applicants were plainly aware of all the relevant facts, or that by their conduct they clearly and unequivocally waived their right to object on the ground of bias. Furthermore, the Applicants did not delay and at the earliest opportunity questioned its lawfulness on the ground of bias.

On the salient issue of bias, they underscored that the rights guaranteed under the Constitution of Guyana permeate the entire extradition process, requiring a heightened standard of scrutiny where implicated. They held that the rule against bias can apply to the issuance of an ATP under s 12 of the FOA and the fair-minded and informed observer (apparent bias) test is the appropriate one.

On the facts, they concluded that there is no appearance of bias established against the MOHA as the decision-maker or by reason of the larger ecosystem in which the Minister operated. However, in relation to the Attorney General, they concluded that there was a real possibility that the Attorney General was biased. Despite this, they were of the view that the Attorney General's apparent bias has not so contaminated the process as to raise a real possibility that the decision of the MOHA to issue the ATP was vitiated by bias.

On delegation, they determined that the doctrine of necessity does not arise in the circumstances of this case, and delegation in relation to both the Attorney General and the Minister is arguably permissible under the General Clauses and Interpretation Act of Guyana.

On costs, they ordered that each party must bear their own costs in this appeal. Their reasons highlighted that these proceedings are situated at the intersection of public law and criminal law, raising issues of considerable public interest. Further, this action is not

frivolous or vexatious, or plainly hopeless, or an abuse of the court's process, and has led to important clarifications on the applicable law.

In conclusion, they highlighted the importance of judicial independence for all courts in Guyana and opined that the public statements by the Vice-President and the Attorney General referencing the existing judicial proceedings can undermine the independence of the Judiciary and have deleterious effects on the administration of justice and the rule of law in Guyana. They are to be denounced.

In a separate opinion of Ononaiwu and Eboe-Osuji JJ delivered by Eboe-Osuji J, they opined that the dismissal of the appeal is borne out by difficulties attending both the substantive content of the complaint of bias, as well as by procedural policy considerations concerning the ripeness of the litigation.

They grant that fairness must attend decisions in public office, and fairness abjures bias. But the law eschews the blinkered view in the appraisal of bias. That appraisal is not done exclusively from the complainant's point of view, registering only his grievances, and disregarding everything else. Bias is assessed from the point of view of the fair-minded, reasonable observer fully informed of all the material facts and circumstances. It means that the complainant's grievance of bias must be appraised through the spectrum of all the facts and circumstances in the given case. While a fair-minded and informed observer should be a man or woman of the world, (s)he is also not to be led astray by 'conspiracy theories' in the absence of credible evidence.

In this case, the approach outlined above thus *requires* account to be taken of *both* the hostile comments that senior Government officials made against the Second Appellant, *and*, all the considerations that bear on the Minister's issuance of the ATP. Foremost in that regard is the question whether the Minister who issued the ATP had a real discretion to decline issuing it. If not, the complaint against the Minister accused of bias becomes largely academic, because no Minister would have free rein to decline issuing the ATP. In that regard, some of the main considerations would include the incidence of external

factors that pressed against the Minister presented with the extradition request received in a case like this. These include not only the sovereign acts of the Requesting State (evidenced by the accompanying indictments and arrest warrants) that culminated in the extradition request that was made; but, also, the incidence of international obligations (arising through extradition treaties or treaties on transnational crimes) implicated in the notion of extradition.

Then again, the fact that the fair-minded and informed observer accepts that the case of bias is fully made out in relation to the issuance of an ATP, does not mean that procedural policy considerations would accept an attack against the ATP as ripe for litigation in every case—outside the judicial proceedings that are an integral part of the extradition process. This is because the extradition process, beginning with the committal proceedings, is amply equipped with precisely the facility of judicial review, to remedy any injustice occasioned by a biased issuance of an ATP. There is no need, as a general proposition, for a separate track of judicial review for the ATP alone. At the inception of the committal proceedings, it is enough for the Requested Person to register an early preliminary objection against the ATP. Thereafter, any appeal or judicial review of the ruling on the preliminary objection attacking the ATP should await the completion of the committal proceedings. It is at the proper time when the challenge to the ATP is ripe for litigation that the fair-minded and informed observer's assessment of bias will be fully brought to bear.

At the appropriate time for the inquiry into bias, the fair-minded and informed observer must consider all the facts and circumstances of the case: including, as in this case, whether the conducts complained against as indicia of bias were gratuitous on the part of those impugned; or whether the impugned conduct was provoked by the complainant, thus depriving him of clean hands in the overall circumstances of the case. On the facts and circumstances of the present case, the Second Appellant does not have clean hands. He provoked verbal attacks against him, by his own earlier attacks against Government officials or his own willing participation in a general brawl of political calumny.

Having regard to the opinions expressed, this Court decides:

- (1) The application for special leave to appeal from the decision of the Court of Appeal is granted.
- (2) The substantive appeal is dismissed.
- (3) The interim stay of the extradition proceedings imposed by this Court on 25 March 2026 is hereby lifted.
- (4) There shall be no order as to costs before this Court.
- (5) The question of costs in the courts below is reserved.

Cases referred to:

AB v Independent Broad-based Anti-Corruption Commission (2024) 278 CLR 300; *Adams v Commissioner of Police* AI 2009 HC 19 (CARILAW), (28 August 2009); *A-G v Dumas* (2017) 90 WIR 507; *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104; *A-G v Trotman* (2016) 87 WIR 380 (GY CA); *A-G of Canada v Badesha* [2017] 2 SCR 127; *A-G of Guyana v Meerza* [2026] CCJ 3 (AJ) GY; *A-G of Guyana v Richardson* (2018) 92 WIR 416; *A-G of Trinidad and Tobago v Mohammed* TT 1985 CA 56 (CARILAW), (11 November 1985); *Ali v David* [2020] CCJ 10 (AJ) GY, (2020) 99 WIR 363; *Bahamas Air Traffic Controllers Union v Government of The Bahamas* BS 2001 SC 23 (CARILAW), (18 April 2001); *Baker v Canada* [1999] 2 SCR 817; *Barbados Rediffusion Service Ltd v Mirchandani (No 1)* [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35; *Barbados Turf Club v Melnyk* [2011] CCJ 14 (AJ) (BB), (2011) 79 WIR 153; *Belize Bank Ltd v A-G of Belize* [2011] UKPC 36, (2011) 80 WIR 97 (BZ); *Bernert v Absa Bank Ltd* [2011] 4 LRC 395; *Bisram v DPP* [2022] CCJ 7 AJ (GY), (2022) 101 WIR 370; *Cadogan v R (No 2)* [2006] CCJ 4 (AJ) (BB), (2006) 69 WIR 249; *Cara Investments Ltd v Ram* [2026] CCJ 5 (AJ) GY; *Carltona Ltd v Commissioner of Works* [1943] 2 All ER 560; *Cartwright v Superintendent of Her Majesty's Prison* [2004] 1 WLR 902; *Case of the SS "Lotus" (Judgment)* [1927] PCIJ Series A No 10; *Chief Justice of Trinidad and Tobago v Law Association of Trinidad and Tobago* [2018] UKPC 23, [2018] 5 LRC 704 (TT); *Clifford v LCW Investments, LLC* [2025] CCJ 17 (AJ) BZ; *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590; *Commissioner of Prisons v Warris* TT 2007 CA 16 (CARILAW), (3 May 2006); *Condron v National Assembly for Wales* [2007] LGR 87; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374; *Davidson v Scottish Ministers (No 2)* 2004 SCLR 991; *de Freitas v Benny* (1975) 27 WIR 318 (TT PC); *Dimes v Proprietors of the Grand Junction Canal* (1852) 3 HLC 759, (1852) 10 ER 301; *Doyle v R* [2011] CCJ 4 (AJ) (BB), (2011) 79 WIR 91; *DPP v*

Clarke (2019) 95 WIR 266; *DPP v Nasralla* [1967] 2 AC 238 (JM PC); *DPP v Okemo* [2022] KESC 33; *Dr Bonham's Case* (1609) 8 Co Rep 113 b, (1609) 77 ER 646; *DSV v DSU* [2026] SGHC 128; *Duke v The Ship 'MT Tradewind Passion'* [2025] CCJ 2 (AJ) GY; *Ebner v Official Trustee in Bankruptcy* [2001] 2 LRC 369; *Ferguson v A-G* (TT CA, 13 December 2007); *Ferguson v Jeremie* TT 2007 HC 78 (CARILAW), (5 April 2007); *Fields v The State* [2023] CCJ 13 (AJ) (BB), (2023) 104 WIR 37; *Franklin v Minister of Town and Country Planning* [1948] AC 87; *Fuller v A-G* [2011] UKPC 23, [2012] 2 LRC 110 (BZ); *Goode Concrete v CRH plc* [2015] 3 IR 493; *Government of the United States v Bowe* [1990] 1 AC 500; *Grandfield Homes (Kenton) Ltd v Chen* [2024] OJ No 1513; *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) (GY), [2022] 2 LRC 491; *Guyana Sugar Corp Inc v Dhanessar* [2015] CCJ 4 (AJ) (GY), GY 2015 CCJ 1 (CARILAW); *Halliburton Co v Chubb Bermuda Insurance Ltd* [2021] AC 1083; *Higgs v Minister of National Security* [2000] 2 AC 228; *Hope v New Guiana Co Ltd* (1976) 26 WIR 233 (GY CA); *Idziak v Canada (Minister of Justice)* [1992] 3 SCR 631; *Imperial Oil Ltd v A-G of Quebec* [2003] 2 SCR 624; *Johnson v Johnson* [2000] 201 CLR 488; *Kendall v Khan* (1979) 26 WIR 433 (GY HC); *King v Director of Prisons* (1992) 47 WIR 210 (GY CA); *Kioa v West* (1985) 159 CLR 550; *Lake v Canada (Minister of Justice)* [2008] 1 SCR 761; *Law Association of Trinidad and Tobago v Chief Justice of Trinidad and Tobago* (TT CA, 22 May 2018); *Lawal v Northern Spirit Ltd* [2004] 1 All ER 187; *Lloyd v McMahon* [1987] AC 625; *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451; *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW); *Marin v A-G of Belize* [2011] CCJ 9 (AJ) (BZ), (2011) 78 WIR 51; *McEwan v A-G* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332; *Meerabux v A-G of Belize* (2005) 66 WIR 113 (BZ PC); *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577; *Minister for Immigration v SZSSJ* (2016) 259 CLR 180; *Mohamed v Minister of Home Affairs Oneidge Walrond* (GY HC, 4 February 2026); *Murphy v Lord Chancellor* [2009] NI 167; *Mustapha v A-G of Guyana* [2019] CCJ 9 (AJ) (GY), (2019) 96 WIR 468; *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178; *O'Reilly v Mackman* [1983] 2 AC 237; *Old St Boniface Residents Association Inc v Winnipeg (City)* [1990] 3 SCR 1170; *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *Overseas Tankships (UK) Ltd v Morts Dock & Engineering Co* [1961] AC 388 (The Wagon Mound); *Polemis and Furness, Withy & Co, Re* [1921] 3 KB 560; *Porter v Magill* [2002] 2 AC 357; *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC); *Public Prosecutor v Pek Lian Guan* [2026] SGHC 62; *R v Abdroikov* [2008] 1 All ER 315; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119; *R v Electricity Commissioners, ex p London Electricity Joint Committee Co Ltd* [1924] 1 KB 171; *R v Gough* [1993] AC 646; *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701; *R v Leicester City Justices, ex p Barrow* [1991] 2 QB 260; *R v London Borough of Camden, ex p Paddock* [1995] COD 130; *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304; *R v Secretary of State for the Home Dept, ex p Doody* [1994] 1 AC 531; *R v Secretary of State for the Home Dept, ex p Norgren* [2000] QB 817; *R v Secretary of State for the Home Dept, ex p Warren* [2003] EWHC 1177 (Admin); *R v Secretary of State for Trade ex p Perestrello* [1981] QB 19; *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256; *R (Al-Hasan) v Secretary of State for the Home Dept* [2005] 1 All ER 927; *R (Good Law Project) v Minister for the Cabinet Office* [2022] 200 Con LR 57; *Ram v A-G of Guyana* [2019] CCJ 10 (AJ) (GY), (2019) 97 WIR 266;

Ramdass v Minister of Finance [2025] UKPC 4 (TT); *Ramsahoye v Linden Mining Enterprises* [2019] CCJ 7 (AJ) (GY), (2019) 96 WIR 425; *Ramsamooj v State of Suriname* [2026] CCJ 2 (OJ); *Ramson v Barker* (1982) 33 WIR 183 (GY CA); *Ridge v Baldwin* [1964] AC 40; *Russell v Duke of Norfolk* [1949] 1 All ER 109; *Sankar v Guyana Rice Development Board* [2019] CCJ 11 (AJ) (GY); *Schmidt, Re* [1987] 1 SCR 500; *State of West Bengal v Pathak* (1998) 5 SCC 513; *Trust Co (Guyana) Ltd v Guyana Securities Council* [2021] CCJ 11 (AJ) GY, (2021) 99 WIR 422; *Tsfayo v United Kingdom* (2006) 48 EHRR 457; *United States v Burns* [2001] 1 SCR 283; *United States v Ferras* [2006] 2 SCR 77; *United States v Latty* [2006] 2 SCR 77; *United States of America v Cobb* [2001] 1 SCR 587; *United States of America v Cotroni* [1989] 1 SCR 1469; *United States of America v Drysdale* [2000] OJ No 214; *United States of America v Dynar* [1997] 2 SCR 462; *United States of America v Kwok* [2001] 1 SCR 532; *United States of America v Sriskandarajah* [2012] 3 SCR 609; *United States of America v Turner* 177 CCC (3d) 397; *Vasiljkovic v Commonwealth of Australia* (2006) 80 ALJR 1399; *Walsh v Ward* [2015] CCJ 14 AJ (BB), (2015) 87 WIR 101; *Warner v A-G of Trinidad and Tobago* [2022] UKPC 48 (TT); *Wewaykum Indian Band v Canada (No 2)* [2003] 2 SCR 259; *Wiseman v Borneman* [1971] AC 297; *Yiacoub v R* [2014] 1 WLR 2996.

Legislation referred to:

The Bahamas – Extradition Act, CAP 96; **Canada** – Canadian Charter of Rights and Freedoms; **Guyana** – Administration of Justice Act 1978, Constitution of the Co-operative Republic of Guyana 1980, Integrity Commission (Amendment of Code of Conduct) Order 2017, Interpretation and General Clauses Act, Cap 2:01, Judicial Review Act, Cap 3:06, Caribbean Court of Justice Act, Cap 3:07, Fugitive Offenders Act, Cap 10:04; **Jamaica** – Extradition Act 1991; **Trinidad and Tobago** – Extradition (Commonwealth and Foreign Territories) Act, Chap 12:04; **United Kingdom** – Bribery Act 2010, Extradition Act 1989, Extradition Act 2003, New Towns Act 1946; **United States of America** – Foreign Corrupt Practices Act 1977, Global Magnitsky Human Rights Accountability Act 2016, Sergei Magnitsky Rule of Law Accountability Act 2012.

Treaties and International Materials referred to:

African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) 43 ILM 5; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123; Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465; UNTS 85; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 222; Convention for the Suppression of Unlawful Seizure of Aircraft (adopted 16 December 1970, entered into force 14 October 1971) 860 UNTS 105; Convention on

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JUDGMENT

Reasons for Judgment:

Anderson P and Barrow J [1] – [109]

Rajnauth-Lee, Jamadar and Bulkan JJ [110]– [344]

Ononaiwu and Eboe-Osuji JJ, delivered by Eboe-Osuji J [345]– [631]

Disposition [632]

ANDERSON P AND BARROW J:

Introduction

- [1] By an urgent application dated 20 March 2026, the Applicants sought special leave from this Court pursuant to s 8 of the Caribbean Court of Justice Act¹ ('CCJ Act') to challenge a judgment of the Court of Appeal of Guyana. That judgment upheld the decision of the High Court that extradition committal proceedings against the Applicants could continue; proceedings which were commenced pursuant to the issuance by the Minister of Home Affairs of an Authority to Proceed ('ATP') requiring the magistrate to proceed with extradition proceedings against the Applicants in accordance with the Fugitive Offenders Act² ('the Act'). Section 12(1) of the Act authorised the Minister to issue the ATP, but s 12(2) prohibited the Minister from doing so, 'if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, ... in accordance with this Act.'
- [2] In judicial review proceedings brought before them, the courts below held that the committal proceedings could continue because the Applicants had not established that in issuing the ATP, the Minister was affected by bias. Before this Court the Applicants sought special leave to appeal that decision. Should such leave be granted, the Applicants invited this Court to treat the hearing for leave as the hearing of the intended appeal and to overturn the finding that bias had not been established. The Applicants also sought a stay of the committal proceedings pending the determination of their special leave application.
- [3] At a Case Management Conference held on 25 March 2026, this Court ordered that the hearing of the application for special leave be treated as the hearing of the substantive appeal and fixed the hearing date for 21 April 2026. Further, this Court granted an interim stay of the extradition proceedings before the court of committal. Those proceedings were stayed until the determination of the special leave application or of the substantive appeal, or further order of this Court.

¹ Cap 3:07.

² Cap10:04.

- [4] The Court has now read and considered the written submissions and heard lengthy and skilful oral arguments from the parties, together with cited statutory, judicial, and other authorities. Counsel on both sides are to be commended for the cogency and erudition of their written and oral arguments which have provided very considerable assistance to the Court in this matter.
- [5] Upon deliberate and mature reflection, the Court has concluded that special leave to appeal ought to be granted, but that the substantive appeal must be dismissed. In consequence, the interim stay of the extradition committal proceedings must be lifted. The following are our reasons for these decisions.

Background

(a) Authority to Proceed with Committal Proceedings

- [6] A request for extradition dated 28 October 2025, was submitted by the Government of the United States of America ('USA') to the Government of the Co-operative Republic of Guyana pursuant to the 1931 Extradition Treaty between the USA and the United Kingdom. That treaty continued to govern the extradition arrangements between the USA and Guyana after Guyana obtained independence from the United Kingdom in 1966. The request was for the Applicants to be extradited to the USA to stand trial on federal indictments. Documents supporting that request were conveyed to the Minister of Home Affairs, the First Respondent in this application.
- [7] On 30 October 2025, the Minister issued the ATP pursuant to s 12 of the Act. Pursuant to the ATP, Principal Magistrate Judy Latchman, the Third Respondent in this application, issued warrants of arrest for the Applicants who were duly arrested and appeared before the Magistrate. They were granted bail pending the hearing and determination of the committal proceedings, which commenced on 6 January 2026. As described earlier, these committal proceedings were stayed

pending the determination by this Court of the lawfulness of the issuance of the ATP.

- [8] The sole ground on which the Applicants sought to challenge the continuation of committal proceedings against them was bias. They alleged that the bias was both actual and apparent. The circumstances which gave rise to that bias, as the Applicants contend, can be stated succinctly.

(b) Circumstances Giving Rise to Alleged Bias

- [9] The Applicants were at one time close associates and supporters of the People's Progressive Party/Civic ('PPP/C') coalition which currently forms the Government of Guyana. A rupture in that relationship occurred after the United States Government imposed sanctions on the Applicants for alleged criminal activities. Those activities were said to include evasion of import and export duty, taxes, and bribery of Governmental officials. The Applicants have never been convicted of these or any other offences under the laws of Guyana or any other country.

- [10] From about June 2024, the Applicants became outspoken and fierce critics of the PPP/C Government. Subsequently, the Second Applicant entered the political fray and formed his own political party, 'We Invest in Nationhood' ('WIN'). He was supported financially by his father, the First Applicant. WIN contested the general election of 1 September 2025, and its list of candidates was successful in gaining 16 seats in Parliament, sufficient to have the Second Applicant appointed as the Leader of the Opposition. He was sworn into that office on 26 January 2026. The First Applicant holds no political office.

- [11] During the election campaign, the current President, Vice-President and Attorney General of Guyana made repeated reference in speeches and interviews to the Applicants' alleged criminal activities. The Applicants were labelled as 'criminals', 'tax frauds', 'dishonest', 'robbers' and 'guilty' of the very offences

which formed the subject of the ATP. The Attorney General, the Second Respondent in this application, is alleged to have stated that the Second Applicant was a ‘criminal’ and that there would be ‘repercussions’ if he was elected to Parliament. The now Minister of Home Affairs was present when some of these statements were made but there is no allegation that she herself made any reference to the Applicants’ alleged criminal activities. The only specific allegation made against her was that she mocked the Second Applicant during one of her campaign speeches. We return to the nature of that ridicule at [99].

Proceedings before the High Court

[12] The proceedings before the High Court were initiated on 23 December 2025, when the Applicants brought an action for judicial review. Among the orders sought were declarations that the issuance of the ATP, the advice from the Second Respondent on the preparation of the ATP, and the issuance of the warrants for the arrest of the Applicants were all in breach of natural justice. Orders of certiorari were sought to quash the ATP and the warrants. Orders of prohibition were requested to prohibit the First and Second Respondents from making any further determination or taking any further step to facilitate the extradition of the Applicants, save and except duly delegating their functions in respect of the extradition pursuant to s 27 of the Interpretation and General Clauses Act,³ the *Carltona* principle, or any other lawful mechanism. A stay of the committal proceedings, costs, and such further relief as the court may see fit, were also sought.

[13] On 4 February 2026, Singh CJ (Ag) (‘the Chief Justice’) dismissed the application and refused the stay of the extradition proceedings. The Chief Justice held that in issuing the ATP the Minister was exercising an executive and not a judicial function and that ‘bias in the judicial sense is not transposed automatically to executive decision-making.’ The Chief Justice also found that the allegations of bias had not been established, since it would be ‘absurd’ to conclude that the fact

³ Cap 2:01.

that the Minister heard her colleagues' expressions of disdain for the Applicants necessarily meant that she was tainted with bias. Costs were awarded to each of the three Respondents to be paid on or before 27 February 2026.

Proceedings before the Court of Appeal

- [14] On 5 February 2026, the Applicants appealed to the Court of Appeal. On 11 February 2026, they again applied for a stay of the extradition proceedings along with an urgent hearing of the appeal along with the other orders they had sought in the High Court. On 16 February 2026, the Court of Appeal expedited the hearing of the appeal but refused the stay of the committal proceedings. Accordingly, those extradition proceedings progressed even while the appeal was pending.
- [15] On 17 March 2026, George-Wiltshire, C (Ag) ('the Chancellor') delivered the unanimous written decision of the Court of Appeal dismissing the appeal. The Notice of Appeal had set out 14 grounds but the court considered that the focus was essentially on two issues: (i) whether the rule against bias applies at all to the Minister's decision to issue the ATP under s 12 of the Act; and (ii) whether having regard to s 27 of the Interpretation and General Clauses Act and the *Carltona* principle, there was any requirement for the Minister to delegate the statutory power conferred on her by the Act, and for the advice in relation to the Act to be delegated to another person other than the Attorney General.
- [16] The court set out the provisions of ss 7, 11 and 12 of the Act and focussed on the central issue of whether bias applies to the issuance of the ATP. The court decided that in the context of the Act, the Minister exercised an administrative function and therefore that the issue of bias did not arise. The court found support for this view in the reasoning of *Franklin v Minister of Town and Country Planning*⁴ in which a Minister at a public meeting prior to the enactment of The New Towns Act gave a speech outlining the need to form new towns to relieve the density of the population of London and the reasons the Stevenage area was well-suited to

⁴ [1948] AC 87.

accommodate such a new town. Following the passage of the Act, the Minister, in the exercise of his duty to designate new towns under the Act, circulated a draft order for the establishment of a new town in the Stevenage area. Objections received by landowners in the Stevenage area to the draft order triggered the Minister's obligation under the Act to appoint a person to hold a public inquiry. After carefully considering the report of that public inquiry and the submissions made to him by all concerned local authorities and parties, the Minister proceeded to make the final order designating a new town in the Stevenage area, the objections notwithstanding. The Applicants in that case challenged the order of the Minister on the ground that the statements made by him at the public meeting prior to the passage of the Act tainted his decision with bias. That challenge was dismissed on the basis that, 'no judicial or quasi-judicial duty was imposed on the Minister in the discharge of his statutory duties, those duties being purely administrative; the only question was whether he had complied with the statutory direction regarding the appointment of a person to hold the public enquiry.'

[17] The Court of Appeal decided that all that was required was for the Minister to address her mind to and comply with the statutory considerations and requirements regarding the issuance of an ATP. There was no evidence that the matters to be considered regarding the issuance of the ATP were not considered by her. The Chancellor further characterised as 'preposterous' the contention that bias was evident in the minimal legal advice provided to the Minister by the Attorney General. There was 'no evidence to support a finding that such advice could be tainted with bias.'

[18] Having determined that bias could not arise, the court nevertheless, for completeness, addressed whether a fair-minded person would consider that there was bias in the issuance of the ATP by the Minister. The court rejected any suggestion that the category of automatic disqualification from *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)*,⁵ which

⁵ [2000] 1 AC 119.

required the existence of a direct proprietary, pecuniary, or equivalently close personal interest in the outcome of the proceedings by the decision-maker, applied on the facts before it. Nothing before the court approached that threshold. The court also considered the learning from *Porter v Magill*⁶ to be useful. The fair-minded and informed observer was a workable analytical reference point, provided that the observer was credited with an understanding of the constitutional role of the Minister, the limited statutory function of an ATP, and the architecture of the Act.

[19] Approaching the submissions against the legal framework in *Porter* and *Pinochet* the court sided with the Chief Justice in rejecting the proposition that ministerial disqualification followed automatically from political opposition between the decision-maker and the person affected. On that reasoning, a person who became aware of similar impending statutory action could insulate himself simply by entering partisan politics or publicly associating himself with the political opposition. That could not be an accurate application of the law. The fair-minded observer would also be cognisant that the ATP was merely a preliminary step and that the magistrate's committal function would have to be discharged and that there were subsequent safeguards in habeas corpus proceedings to protect the rights of the person whose extradition was sought.

[20] On the matter of delegation, the Court of Appeal considered that s 27 of the Interpretation and General Clauses Act, and the *Carltona* principle, were not applicable. While noting the principle that 'the duties imposed upon ministers and powers given to Ministers are normally exercised under the authority of the ministers by responsible officials of the department,'⁷ the Court of Appeal found nothing in the Act that permitted its application to the issuance of the ATP. As to the substitution of another minister to perform the functions under the Act, any appointment by the President of any other minister would most likely be met by

⁶ [2002] 2 AC 357.

⁷ *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 at 563.

the same challenge since the general concern was that the ministers would be biased because they belonged to or were associated with the governing political party. The suggestion by the Applicants that the Director of Public Prosecution ('DPP') would be considered as an independent neutral functionary relied on the majority decision in *DPP v Okemo*.⁸ However, the Court of Appeal noted that that case turned on the constitutional and legislative framework of Kenya. In any event, the court expressed preference for the dissenting opinion in *Okemo* which held that pursuant to the legislation, it was the Attorney General and not the DPP, who should have issued the ATP.

- [21] In the circumstances, the Court of Appeal found 'absolutely no merit' in the appeal, dismissed it, and ordered costs to the first two Respondents. There was no order as to costs in favour of the Third Respondent who played no active role in the appeal other than to keep a watching brief.

Proceedings before the Caribbean Court of Justice ('CCJ')

- [22] The urgent application for special leave before the CCJ dated and filed on 20 March 2026, proposed 15 grounds of appeal. However, as in the courts below, the focal point for these grounds was the existence and implications of bias in the issuance of the ATP. The grounds centred around two central issues, namely, (1) whether the Minister and/or the Attorney General was tainted with bias, actual or apparent, such as to tarnish the issuance of the ATP, and, if so, (2) whether the law required the Minister and/or the Attorney General to delegate their statutory powers and functions in the circumstances.

The Arguments by the Applicants

- [23] The Applicants have consistently maintained in the judicial review proceedings brought by them that the Minister must be presumed to be automatically disqualified from making the decision to issue the ATP and that the informed and

⁸ [2022] KESC 33 (KLR).

fair-minded observer would conclude that there was a real possibility that the Minister was biased when making the decision.

[24] They alleged that presumed bias and automatic disqualification of the Minister because: (i) she was associated with the Government which portrayed them as criminals who were guilty of the very offences for which their extradition was sought; (ii) she stood to benefit from her decision to trigger a process leading to the arrest and extradition of the Government's main political rival; (iii) she had a direct interest in the ATP decision as she stood to suffer political consequences if she refused to issue the ATP; (iv) she had a personal interest in the outcome of her decision as she and the Government stood to benefit from the surrender and extradition of the Applicants which would likely help to suppress dissent of opposing political opinions; (v) she had a personal interest in the outcome of her decision and of the proceedings for extradition by the fact that the extradition of the Applicants would disable the Second Applicant from sitting in Parliament, becoming Leader of the Opposition, and if proceedings or a sentence in the USA lasted beyond five years, being able to contest the PPP/C at the next elections in Guyana. In summary, the Applicants submitted that 'an automatic disqualification of the Minister arose on account of her personal interest by virtue of her position in government, her membership in Parliament and her association with the PPP/C.'⁹

[25] The Applicants allege in the alternative or additionally, that the Minister was infected with apparent bias in the issuance of the ATP. They rely on many of the grounds proffered for presumed bias. In addition, they contend that: (i) the Minister would have the conscious or unconscious bias that she would have disappointed her senior leaders in the government had she not issued the ATP and thereby justified their criticisms; (ii) it would have been in the forefront of the Minister's mind that by not issuing the ATP she would have been subjected to ferocious criticism, sanctions, and demotions; (iii) the Minister was motivated by

⁹ Record of Appeal, 'Notice of Application (Urgent)' [25].

improperly extraneous political considerations to facilitate the extradition process; (iv) she was advised by the Attorney General who had criticised the Applicants in unsavoury and prejudicial terms.

Arguments by the Respondents

- [26] The case for the First Respondent is that given the nature, context, and circumstances in which the decision to issue an ATP is made, the rules of automatic disqualification and apparent bias do not apply. Further, it is claimed, even if those rules did apply, the applicable tests were not satisfied on the facts of this case. Thirdly, the First Respondent claimed that the Applicants had waived their right to object on the ground of bias. Fourthly, the First Respondent argues that the doctrine of necessity applied to save the Minister's decision even if the test of bias had been satisfied.
- [27] The Second Respondent opposed the application for special leave to appeal, relying on the dismissal by the High Court of the Applicants' submissions on bias as 'patently disingenuous,'¹⁰ and the condemnation of the appeal by the Court of Appeal as having 'absolutely no merit.'¹¹ The Second Respondent contended that the Applicants had not shown a realistic prospect of success in demonstrating that there had been an egregious error of law or that the decision resulted in a gross miscarriage of justice. Regarding the substance of the application, the Second Respondent contended that the issuance of the ATP was an administrative function to which the rules of bias did not apply. Neither presumed nor apparent bias was relevant in the factual context of the appeal since political opposition without more did not suffice to disqualify members of the government from participation in the ATP process.
- [28] The Third Respondent sought and received approval from this Court not to enter either written or oral arguments but to retain a watching brief.

¹⁰ *Mohamed v Minister of Home Affairs Oneidge Walrond* (GY HC, 4 February 2026) at 11.

¹¹ *Mohamed v Minister of Home Affairs Oneidge Walrond* (GY CA, 17 March 2026) at [48].

The Cross-Appeal of the First Respondent

[29] The First Respondent filed a notice of cross-appeal on 31 March 2026, to revive the issues of waiver and the doctrine of necessity which were raised but not addressed before the lower courts. The Applicants raised no objection to this course of action. In essence, the Minister of Home Affairs asserts that the Applicants waived any right to object to the issuance of the ATP on the ground of bias via correspondence dated 6 and 13 October 2025 wherein they engaged her and did not object to her exercising her power under s 12 of the Act to issue an ATP. Further, the Minister states that even if the Applicants established bias, the common law doctrine of necessity applied to her issuance of the ATP as the statutory function of issuing the ATP was vested in her.

Issues before the CCJ

[30] This application raises several potential issues for the consideration of the Court. These may be enumerated as follows:

- (i) Whether the Applicants satisfy the test for special leave; and if so,
- (ii) Whether the rule against bias applies to the ministerial grant of the ATP; and if so,
- (iii) Whether the First and/or Second Respondents were tainted with bias, so as to nullify the grant of the ATP; and if so,
- (iv) Whether there could be delegation of the power to authorise the ATP; or
- (v) Whether the doctrine of necessity operated in the circumstances so as to enable the Minister to issue the ATP notwithstanding any potential for bias;
- (vi) Whether the Applicants had waived any issues concerning bias via correspondence dated 6 and 13 October 2025; and

(vii) Whether the concurrent findings by the courts below that there was no evidence of fraud was fatal to the intended appeal.

[31] This sequencing of the issues makes clear that it may not be necessary, for the purpose of deciding this application, to treat equally, or even at all, with each of these issues. Indeed, comprehensive treatment is not necessarily desirable at this stage of the adjudication since superfluous or expansive pronouncements by this Court could be inimical to the integrity of further litigation of this matter in the courts below, and possibly, before this very Court.

[32] Before considering the issues, it is necessary to set out the statutory framework governing and related to the issuance of the ATP.

Statutory Framework

[33] There are three distinct phases to the extradition process. The *first* is the issuance of the ATP. This commences with a request for extradition made under s 9 of the Act. Section 9 provides for the making of a request to the Minister and specifies the documentation that should accompany the request. There is no allegation in this case that there was non-compliance with s 9.

[34] As foreshadowed, s 12 authorises the Minister to issue the ATP. The section provides as follows:

12. (1) On receipt of a request under section 9 the Minister may issue an order in Form 1 (hereinafter referred to as 'authority to proceed') signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.

(2) The Minister shall not issue an authority to proceed if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with this Act.

(3) Subject to this Act, no person shall be dealt with by a magistrate under this Act except in pursuance of an authority to proceed issued by the Minister.

[35] It is evident from s 12(2) that the Minister is required to give some consideration to whether the requirements for lawful extradition have been met by the request and accompanying documentation. Section 8 provides for the general restrictions on extradition of persons from Guyana. There was no complaint in these proceedings that s 8 was not complied with such that the ATP to the Magistrate would be invalidated. But s 12(2) goes further and prohibits the Minister from issuing an authority to proceed if it appears to her that an order for the extradition 'could not' lawfully be made, or 'would not' in fact be made, in accordance with the Act. The Minister must therefore exercise some discretion in weighing whether those factors listed in s 17(2) and s 26, as appropriate, would in fact result in the extradition order not being made. Again, no argument was made before us, or in the courts below, that these statutory provisions were not considered by the Minister.

[36] The *second* phase is judicial and commences with the proceedings for committal before the Magistrate. Section 15 contains the provisions for the committal proceedings. Pertinently, s 15(4) provides:

(4) Where an authority to proceed has been issued in respect of a person arrested as referred to in subsection (1) and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence and is further satisfied, -

- (a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of that court; or
- (b) where the person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody by warrant in Form 6 to await his extradition under this Act, but if the court is not so satisfied or if his committal is so prohibited, the court shall discharge him from custody.

[37] Section 15(4) requires the Magistrate to consider whether the extradition is prohibited by s 8, because s 8 provides for general restrictions on extradition of persons from Guyana. The Magistrate must also consider whether the committal is prohibited by any other provision of the Act.

[38] A further step in the judicial phase is the habeas corpus application. A person committed to custody to await extradition is entitled to make a habeas corpus application. Section 17 provides as follows:

17. (1) A person committed to custody under section 15 (4) may make an application to the High Court for habeas corpus within fifteen days from the day on which the order of committal is made and, on such application, the High Court may, without prejudice to any other jurisdiction of that Court, exercise any of the powers conferred upon it by this Act.

(2) On an application made by any person under subsection (1), the High Court may order the person committed to be discharged from custody if that court is satisfied that by reason of-

- (a) the trivial nature of the offence of which he is accused or was convicted;
- (b) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be;
- (c) the accusation against him being not made in good faith or in the interests of justice; or
- (d) any other sufficient cause,

it would, having regard to all the circumstances, be unjust or oppressive to extradite him.

- [39] Section 21 gives a right of appeal to the Court of Appeal. As far as relevant, s 21(1) provides that:

21. (1) Any person whose extradition is sought, or the Government of any Commonwealth country or treaty territory which is seeking his extradition, if dissatisfied with the decision of the High Court on an application for habeas corpus under section 17 ... may, within fifteen days of the pronouncing of the decision, appeal to the Court of Appeal on any question of law.

- [40] In determining the application for habeas corpus, the High Court and the Court of Appeal must *per force* consider whether extradition is prohibited under s 8. This is because s 8 itself requires that the High Court, where any application is made under s 17(1), and the Court of Appeal, where any question of law arises in any appeal under s 21, must consider the s 8 prohibitions.

- [41] The *third* and final phase is the surrender of the fugitive. This phase consists of the issuance of the warrant by the Minister under s 26 ordering the extradition. As far as relevant, s 26 provides:

26. (1) Where a person is committed to custody under this Act to await his extradition and is not discharged from custody by the High Court on an application for habeas corpus or the Court of Appeal on appeal from the decision of the High Court, the Minister may by warrant in Form 7 order him to be extradited to the Commonwealth country or Treaty territory by or on behalf of which the request for his extradition was made unless the extradition of that person is prohibited by section 8 or this section or the Minister decides under this section to make no such order in his case.

(2) The Minister shall not make an order under this section in the case of any person if it appears to the Minister, on any ground mentioned in section 17 (2), that it would be unjust or oppressive to extradite that person.

- [42] Section 26 contains other provisions prohibiting the Minister from making the extradition order in certain cases and granting a broad discretion whether to grant the extradition order in other cases.

[43] We now turn to consider the issues raised in this application.

(i) **Whether the Applicants Satisfy the Test for Special Leave**

[44] The parties to this application do not disagree to any significant extent on the test for special leave. Rather they disagree on whether the test has been satisfied on the facts of the case. And this disagreement is largely entangled with their dispute on the applicability of the rule against bias to the decision to grant the ATP. It is therefore necessary to avert only briefly to the test for the grant of special leave such that there can be a cogent explanation of the Court's decision that the test has been satisfied.

[45] Section 8 of the CCJ Act gives this Court the widest jurisdiction to hear special leave applications to appeal from decisions of the Court of Appeal. For the application to succeed, the Applicant must persuade this Court that the application is in the public interest in that there is a realistic risk that the challenged decision contains an egregious error of law or that the decision will result in a gross miscarriage of justice: *Cadogan v R (No 2)*,¹² *Doyle v R*,¹³ *Ramsahoye v Linden Mining Enterprises*,¹⁴ *Fields v The State*,¹⁵ *Duke v The Ship 'MT Tradewind Passion'*.¹⁶ The burden is on the applicant to show the likelihood that the decision sought to be appealed is emphatically wrong or would result in a grave miscarriage of justice. These general principles govern the application for grant of special leave and remain applicable even though the application arises out of judicial review proceedings in respect of an underlying criminal matter.

[46] The parties, respectively fortified by a considerable body of judicial decisions, express very divergent views on the important question of whether the rule against bias is applicable to the ministerial decision to issue an ATP under s 12(2) of the

¹² [2006] CCJ 4 (AJ) (BB), (2006) 69 WIR 249.

¹³ [2011] CCJ 4 (AJ) (BB), (2011) 79 WIR 91.

¹⁴ [2019] CCJ 7 (AJ) (GY), (2019) 96 WIR 425 at [58].

¹⁵ [2023] CCJ 13 (AJ) BB, (2023) 104 WIR 37.

¹⁶ [2025] CCJ 2 (AJ) GY.

Act. They are similarly divided on whether under s 27 of the Interpretation and General Clauses Act or the *Carltona* principle, there was any legal authority for the First Respondent to delegate her statutory functions, or for the Second Respondent to delegate his advisory role to someone else. The Applicants framed the matter in the following way in their urgent notice of application:¹⁷

The appeal sought raises far-reaching questions of law and questions of the interpretation of important statutes in our country: whether or not the ATP decision is ‘incapable of attracting any actual, perceived or notional bias’, whether or not the Fugitive Offenders Act indeed bars delegation of the ATP function to another ... It raises a matter of great public importance: whether or not political actors as part of a government whose constant overt statements against a Member of Parliament/Leader of the Opposition and his father declaring that he was guilty of the crimes for which his extradition was sought could lawfully decide whether or not to trigger extradition proceedings and set in motion a process that could put their liberty at stake, lead to their arrest, detention and ejection from Guyana to stand trial in a foreign country.

- [47] The Applicants submitted that the Court of Appeal fell into fundamental error in holding that the issuance of the ATP was an administrative function and that, as such, bias did not arise. They relied on a number of cases to support the contention that the test of bias applied to all decision-makers irrespective of the category of the decision: *Ramdass v Minister of Finance*,¹⁸ *Attorney General of Guyana v Meerza*,¹⁹ *R v Secretary of State for the Environment ex p Kirkstall Valley Campaign Ltd.*²⁰ The Applicants also referred to *Fuller v Attorney General of Belize*,²¹ and *Commissioner of Prisons v Warris*,²² for the proposition that the extradition of a citizen to another country involves a serious invasion of fundamental rights and it was therefore long recognised that the executive acts involved in complying with a request for extradition are subject to legal constraints.

¹⁷ Record of Appeal, ‘Notice of Application (Urgent)’ [58]–[59].

¹⁸ [2025] UKPC 4 (TT).

¹⁹ [2026] CCJ 3 (AJ) GY.

²⁰ [1996] 3 All ER 304.

²¹ [2011] UKPC 23; [2012] 2 LRC 110 (BZ) at [55].

²² TT 2007 CA 16 (CARILAW), (3 May 2006).

[48] The Respondents contended that there is no automatic application of the rule against bias to all decision-making and that whether the rule applied depended on the nature of the decision and the context in which it is made: *Russell v Duke of Norfolk*,²³ *Old St Boniface Residents Association Inc v Winnipeg (City)*.²⁴ A particularly relevant circumstance is that of adjudication; where the decision maker is involved in the resolution of a dispute between parties the rule against bias is more apt to apply: *Franklin v Minister of Town and Country Planning*,²⁵ *Murphy v Lord Chancellor*,²⁶ *Imperial Oil Ltd v Quebec*.²⁷ Where no adjudicative function is involved the rule against bias is less likely to apply: *R (Good Law Project) v Minister for the Cabinet Office*,²⁸ *Wiseman v Borneman*,²⁹ *R v Secretary of State for Trade ex p Perestrello*,³⁰ *DPP v Clarke*,³¹ *Law Association of Trinidad and Tobago ('LATT') v Chief Justice of Trinidad and Tobago*.³² The Respondents conclude that the nature of the statutory context in which the decision was taken to grant the ATP meant that the rule against bias had no part to play.

[49] The parties have clearly deployed a considerable body of authorities supportive, respectively, of the application and non-application of the rule against bias to the issuance of the ATP. A decision on this critical question is of some moment. If the rule against bias applies, then it could result in the automatic disqualification of the biased official from the decision-making process regarding the ATP. In such a circumstance, for the court below to hold that bias plays no role in deciding whether to grant the ATP would necessarily be an egregious error of law that could improperly lead to the extradition of citizens of the Republic to stand trial in a foreign land.

²³ [1949] 1 All ER 109 at 118.

²⁴ [1990] 3 SCR 1170 at 1191.

²⁵ *Franklin* (n 4).

²⁶ [2009] NI 167.

²⁷ [2003] 2 SCR 624.

²⁸ [2022] 200 Con LR 57.

²⁹ [1971] AC 297.

³⁰ [1981] 1 QB 19.

³¹ (2019) 95 WIR 266 (BM CA).

³² (TT CA, 22 May 2018).

[50] In the view of the Court, the significant authorities and the arguments marshalled by the Applicants satisfy the fundamental requirement of arguability ie, that it is arguable there is a realistic possibility that the court below was wrong to decide that the rule against bias did not apply to the ATP. We find particularly useful the Applicants' reliance on *Ramdass*³³ in which the Privy Council permitted the issue of the applicability of the rule against bias in respect of a ministerial decision to establish an investigative committee to be determined at a full appellate hearing. We note, as well, that in *Ferguson v Attorney General of Trinidad and Tobago*,³⁴ the Court of Appeal of Trinidad and Tobago appears to have assumed that the rule against bias applied to the issuance of the ATP. We consider that the Applicants have done enough to earn the right to test their theory of the applicability of the rule against bias in the substantive appeal.

[51] This Court notes that having determined that the rule against bias did not arise, the Court of Appeal 'nevertheless, for completeness, address(ed) whether a fair-minded person would consider that bias arises at all in the issuance of the ATP' by the First Respondent and concluded that no bias had been shown. It was undoubtedly appropriate for the intermediate court to arrive at its decision by an alternative route. However, for the benefit of this and future litigation, this Court must provide clear guidance on the applicability and extent of the rule against bias in the issuance of the ATP.

[52] Accordingly, this Court granted special leave to the Applicants (now 'Appellants') to bring their substantive appeal.

(ii) Whether the Rule against Bias Applies to the Ministerial Grant of the ATP

[53] The rule against bias is an aspect of procedural fairness which is itself a foundational principle of Caribbean public law. Procedural fairness ensures that when the state exercises power over individuals, decisions are made fairly,

³³ *Ramdass* (n 18).

³⁴ (TT CA, 13 December 2007) at [56]–[58].

transparently, and without prejudice. A fundamental principle running through the common law and entrenched in Caribbean constitutions is that every exercise of state power must be attended by procedural fairness. This principle must necessarily apply to the issuance of the ATP which is a quintessential exercise of the power to initiate the machinery of the State to permit the extradition of citizens to a foreign land. The extent of the application of the rule against bias, however, must be determined by the context in which this state power is exercised.

- [54] The common law foundational requirement of procedural fairness – sometimes called *natural justice* – is underpinned by two core elements. One is the hearing rule, which entails the right of a person to be heard before a decision affecting his rights or interests is made. The other is the rule against bias which is the requirement that decision-makers must act impartially.
- [55] The rule against bias component of procedural fairness has deep historical roots. It originated in Roman law reflecting the notion that it is unfair for a person to be the judge of a matter in which he has a personal interest. This limit on adjudicative power entered English common law through the natural law tradition and was crystallised by Sir Edward Coke when he famously restated it in Latin as *nemo iudex in causa sua* ('no one should be a judge in his own cause'). In *Dr Bonham's case*³⁵ in 1609, Sir Edward held that the College of Physicians could not both prosecute and adjudicate a case from which it benefited financially.
- [56] In modern times it has been widely recognised that the rule against bias proscribes: (1) actual bias, where the decision-maker has a personal interest or prejudice; (2) apparent bias, where a reasonable observer might suspect partiality; and (3) institutional bias, where structural arrangements create the clear risk of unfairness. For present purposes, we are concerned only with (1) and (2), that is, actual or apparent bias.

³⁵ (1609) 8 Co Rep 113 b, 77 ER 646.

- [57] Both types were involved in *Dimes v Proprietors of the Grand Junction Canal*³⁶ in which the decision by Lord Chancellor Cottenham in a case involving a canal company was set aside after it emerged that he owned shares in the company. The House of Lords held that any direct pecuniary interest in the outcome of a case, no matter how small, automatically disqualifies a judge from deciding that case. Further, the House considered that quite apart from actual bias, the conduct of the Lord Chancellor also gave rise to the appearance of bias. The current formulation of the test for apparent bias is generally taken to be that stated in *Porter v Magill*,³⁷ namely, whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased.
- [58] These common law principles are reified in the Caribbean constitutional legal order which protects rights implicated in the extradition process. These include the right to liberty³⁸, security of the person³⁹, the right to freedom of movement⁴⁰, as well as the right to respect for one's private and family life. For comparison, the Supreme Court of Canada has consistently held that extradition decisions must comply with the principles of fundamental justice under the Canadian Charter of Rights and Freedoms which encompass procedural fairness and impartial decision-making.⁴¹ The extradition process engages heightened scrutiny, such that any substantive defect in fairness—including actual bias or the appearance of bias—could well invalidate the process.⁴²
- [59] The direct question whether the rule against bias applies to the exercise of ministerial power to grant the ATP allows, therefore, only one answer. It does, since the rule against bias is of general application in public law. The rule against bias is not limited to judicial or quasi-judicial decision-making but applies to all

³⁶ (1852) 3 HLC 759, 10 ER 301.

³⁷ *Porter* (n 6).

³⁸ Constitution of the Co-operative Republic of Guyana Act, Cap 1:01 art 139.

³⁹ *ibid*, art 143.

⁴⁰ *ibid*, art 148.

⁴¹ *United States v Burns* [2001] 1 SCR 283; *Idziak v Canada (Minister of Justice)* [1992] 3 SCR 631; *Lake v Canada (Minister of Justice)* [2008] 1 SCR 761.

⁴² *ibid*.

exercise of state power: See *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd.*⁴³ Ministerial decisions must not be infected by violations of the rules of natural justice. Thus, in the issuance of the ATP, the First Respondent is not and cannot be immune from the sovereign principles embedded in procedural fairness or natural justice, which include the rule against bias. This is simply another way of saying that state power cannot be validly or properly wielded for private interest or preferences.

- [60] An important caveat is necessary, however. In law, the term ‘bias’ spans a wide spectrum and may be personal, pecuniary, official, or implicit. Legislation consistent with the Guyana Constitution may require that certain decisions be made by government officials and this could have an impact on the content and application of the rule. This leads, then, to the fundamental principle, which we examine immediately below, that the rule against bias must be interpreted contextually.

Context for the Application of Procedural Fairness Including the Rule against Bias

- [61] Notwithstanding the omnipresence of the requirement for procedural fairness, including the rule against bias, not every exercise of state power must be attended by the same rigour or full application of the principle. Context is everything. The requirements of procedural fairness, including the rule against bias, vary depending on the circumstances in which it is applied. The standard required in judicial decision-making may be different from that required in ministerial decision-making which may in turn differ from that required in relation to police investigations and the prosecution of charges. As L’Heureux-Dubé J persuasively stated in *Baker v Canada (Minister of Citizenship and Immigration)*⁴⁴:

21. The existence of a duty of fairness ... does not determine what requirements will be applicable in a given set of circumstances. As I wrote

⁴³ *Kirkstall Valley Campaign Ltd* (n 20) at 325.

⁴⁴ [1999] 2 SCR 817 at [21] (citations omitted).

in *Knight v. Indian Head School Division No. 19*, ... ‘the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case’. All of the circumstances must be considered in order to determine the content of the duty of procedural fairness...

- [62] The principle enunciated in 1999 in *Baker v Canada* echoed earlier decisions and has been subsequently affirmed by courts in the Commonwealth. A significant body of case-law to this effect exists in the Caribbean;⁴⁵ United Kingdom;⁴⁶ Australia;⁴⁷ and Singapore.⁴⁸ Courts across the Commonwealth have routinely affirmed that procedural fairness is a flexible, context-dependent concept whose content must reflect the nature of the decision and decision-maker in question.

Application of Rule against Bias in Extradition

- [63] It follows from the foregoing that, as regards extradition, the nature and content of the rule against bias is determined by the nature of the decision-maker and the stage at which the decision is being taken. The point was made with clarity by the Supreme Court of Canada in *United States of America v Dynar*.⁴⁹

128. The principles of fundamental justice guaranteed under s. 7 of the Charter vary according to the context of the proceedings in which they are raised. It is clear that there is no entitlement to the most favourable procedures imaginable... For example, more attenuated levels of procedural safeguards have been held to be appropriate at immigration hearings than would apply in criminal trials... The same approach is equally applicable to an extradition proceeding. While it was stated ... that the committal hearing in the extradition process is ‘certainly judicial in its nature and warrants the application of the full panoply of procedural safeguards’, it was held that the extent and nature of procedural protection

⁴⁵ *A-G v Mohammed* TT 1985 CA 56 (CARILAW), (11 November 1985); *Bahamas Air Traffic Controllers Union v Government of The Commonwealth of the Bahamas* BS 2001 SC 23 (CARILAW), (18 April 2001); *Adams v Commissioner of Police* AI 2009 HC 19 (CARILAW), (28 August 2009).

⁴⁶ *Ridge v Baldwin* [1964] AC 40; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374; *Lloyd v McMahon* [1987] 1 AC 625; *R v Secretary of State for the Home Dept, ex p Doody* [1994] 1 AC 531.

⁴⁷ *Kioa v West* (1985) 159 CLR 550; *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180; *AB v Independent Broad-based Anti-Corruption Commission* (2024) 278 CLR 300.

⁴⁸ *Public Prosecutor v Pek Lian Guan* [2026] SGHC 62; *DSV v DSU* [2026] SGHC 128.

⁴⁹ [1997] 2 SCR 462 (citations omitted).

guaranteed by s. 7 of the *Charter* in an extradition proceeding will depend on the context in which it is claimed....

129. The context and purpose of the extradition hearing will shape the level of procedural protection that is available to a fugitive....

[64] For present purposes, it is useful to consider just two of the categories of decision-making involved in the extradition process traversed earlier: the ministerial and judicial decision-making phases.

(a) *Judicial Decision-making in Extradition Proceedings*

[65] The rule against bias finds its most rigorous application in the judicial decision-making phase of the extradition process. As we have seen, the smallest direct pecuniary interest in the outcome of a case is equated to actual bias and automatically disqualifies a judge.⁵⁰ But apparent bias will also be fatal to the judge's participation in extradition decision-making. In *United States of America v Dynar*⁵¹ the Supreme Court of Canada confirmed that extradition hearings before a judge are judicial proceedings and the rule against bias applies with maximum rigour. Likewise, in *Canada v Schmidt*⁵² the Court stressed that extradition hearings are judicial in character, requiring strict adherence to impartiality.

[66] The most extreme example of strict adherence to impartiality in judicial decision-making in extradition is probably the oft-cited case of *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)*.⁵³ Failure by Lord Hoffman to disclose that he was an unpaid director and chairman of A.I.C. Ltd, a charity wholly controlled by Amnesty International, which was an intervener supporting Pinochet's extraction, sufficed for the House of Lords to set aside its previous ruling on which the Law Lord had sat. The House held that if the absolute impartiality of the judiciary is to be maintained, there must be a rule which

⁵⁰ *Dimes* (n 36).

⁵¹ [1997] 2 SCR 462.

⁵² [1987] 1 SCR 500.

⁵³ *Pinochet Ugarte* (n 5).

automatically disqualified a judge who was involved, whether personally or as a director of a company, in promoting the same causes in the same organisation which was a party to the suit. It thus extended the strict, absolute legal concept of automatic disqualification on grounds of purely financial interests to non-pecuniary interests. Even the appearance of partiality was sufficient to vitiate judicial proceedings where liberty is at stake.

- [67] It should be noted that the rule of automatic disqualification for bias is now under strain. Lord Hope has described the *Pinochet* decision as ‘highly technical’⁵⁴ and Lord Bingham has stated that any extension would be ‘undesirable’.⁵⁵ The automatic disqualification rule has been rejected in Canada,⁵⁶ South Africa,⁵⁷ and Ireland⁵⁸ on the ground that apparent bias was sufficient to ensure that justice was seen to be done. This Court’s attention has been drawn to the severe academic criticism of A Olowofoyeku, ‘The Nemo Judex Rule: The Case Against Automatic Disqualification’⁵⁹ as follows:

...automatic disqualification is draconian, disproportionate and unnecessary. There is nothing that can be achieved by automatic disqualification that cannot be achieved by an application of the real danger/reasonable apprehension test. On the other hand, application of the automatic disqualification rule may well lead to the disqualification of judges in situations wherein a closer inspection of the circumstances would reveal that there was never any realistic possibility of bias.

- [68] However, these criticisms concern the automaticity of disqualification and argue that the informed objective observer provides a better test for debarment from judicial decision-making on the ground of impartiality. They do not detract from the principle that the rule against bias applies in full at the committal, *habeas corpus*, and judicial review stages. Extradition hearings are court proceedings governed by procedural fairness, applied with maximum rigour; a principle

⁵⁴ *Meerabux v A-G of Belize* (2005) 66 WIR 113 (BZ PC) at [21].

⁵⁵ *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at 465.

⁵⁶ *Wewaykum Indian Band v Canada* [2003] 2 SCR 259 at [72]–[73].

⁵⁷ *Bernert v Absa Bank Ltd* [2011] 4 LRC 395 at [52]–[55].

⁵⁸ *Goode Concrete v CRH plc* [2015] 3 IR 493.

⁵⁹ Abimbola A Olowofoyeku, ‘The Nemo Judex Rule: The Case Against Automatic Disqualification’ [2000] PL 456. See, also, *R v Governor of Pentonville Prison, ex p Osman* [1989] 3 All ER 701.

reinforced by comparative authority from final courts of appeal around the Commonwealth.⁶⁰

(b) *Ministerial Decision-making in the Extradition Process*

[69] It has been suggested that the rule against bias does not apply to ministerial decision-making. In the case of *Franklin v Minister of Town and Country Planning*, the Minister was allowed to designate areas for a new town. Objectors challenged the designation order arguing that the Minister had publicly stated that his mind was ‘already made up’ before considering the objections. The House of Lords ruled that the Minister’s duty was purely administrative and therefore that the statutory requirement to hold a public inquiry was merely to ensure the Minister was properly informed, not to subject him to the same strict impartiality standards expected of a court of law. Lord Thankerton stated⁶¹:

My Lords, *I could wish that the use of the word ‘bias’ should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute. As Lord Cranworth L.C. says in *Ranger v. Great Western Ry. Co.* (1): “A judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other. In ordinary cases it is a just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent.” ... But, in the present case, the respondent having no judicial duty, the only question is what the respondent actually did, that is, whether in fact he did genuinely consider the report and the objections.*

[70] It is not necessary to rehash the evolution in the law. Suffice it to say that it is now widely conceded that the law has moved on over the past 78 years and that there is now no longer any attempt to classify decisions as judicial, quasi-judicial,

⁶⁰ *Pinochet Ugarte* (n 5); *United States of America v Cobb* [2001] 1 SCR 587; *United States v Ferras* [2006] 2 SCR 77.

⁶¹ *Franklin* (n 4) at 103–104 (emphasis added).

administrative, or executive for the purpose of determining the applicability of natural justice including the rule against bias. No category of decision-making is truly exempt: *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd*⁶².

- [71] The matter was recently considered at length by the Judicial Committee of the Privy Council in *Ramdass v Minister of Finance* where it was urged that there was a hard and fast principle of law that the rule against bias does not apply to non-adjudicative decisions and was inapplicable as a matter of law to the Minister's decisions in that case. It was further urged that even if the Minister's motives might have been political or self-interested, the fact remained that he merely made a recommendation to set up an investigation and moreover that the investigation team is itself independent and that its independence had not been challenged. The Privy Council disagreed and stated⁶³:

The Board does not accept that the question whether the rule against bias applies in this case is a pure question of law. The rule against bias forms an essential requirement of procedural fairness or natural justice. It is well-established that what procedural fairness requires in any given situation depends on the specific facts and context of the individual case. Moreover, the authorities cited by the appellants make clear that, in deciding whether it is arguable that the rule against bias applies to the decisions that are challenged in this judicial review, the question is not whether those decisions are of a certain type or category – whether judicial, quasi-judicial, or in some looser sense, adjudicative. Rather, the focus is on the facts of the case and the context in which the impugned decisions were taken. None of the cases cited by the appellants establish, as a matter of law, that the rule against bias can never apply in a non-adjudicative context, no matter the facts.

- [72] Respectfully, this is clearly correct. A decision adopted because of the bias of the decision-maker is necessarily a decision for an improper purpose. Public power may only be wielded for proper purposes and not for improper or private purposes. Procedural fairness serves to discipline state power, enhance the legitimacy of public decisions, and protect individual dignity by ensuring that those whose rights

⁶² *Kirkstall Valley Campaign Ltd* (n 20) at 323–324.

⁶³ *Ramdass* (n 18) at [51].

or interests are affected are treated fairly and impartially. A public decision actuated without justification and purely by malice or bias breaches the guarantee of procedural fairness.

- [73] It should be pointed out for perspective, *en passant*, that decision-making regarding prosecutions, the laying of criminal charges, and the launching of investigations has been said to be an obvious area in which the rule against bias does not apply. A leading case often cited for this proposition is *R v Secretary of State for Trade ex p Perestrello* in which a complaint of bias on the ground of a pre-determined decision to launch an investigation, was commented upon by Wolff J in the following terms⁶⁴:

When one considers the functions of those officers, it really is wholly inappropriate to talk about them not being regarded as biased if they are performing their functions properly. *Take this very case – it is, in my view, almost inevitable that before the powers under section 109 are exercised, the officers concerned, and through his officers, the Secretary of State, must regard the situation as one where there are matters to be investigated. They are acting in a policing role. Their function is to see whether their suspicions are justified by what they find, and that being so, it is wholly inappropriate for the case to be approached in the same way as one would approach a person performing a normal judicial role or quasi-judicial role; a situation where the person is making a determination.*

- [74] Also, in *Law Association of Trinidad and Tobago ('LATT') v Chief Justice of Trinidad and Tobago*,⁶⁵ the LATT had resolved to establish a committee to inquire into allegations made against the Chief Justice who brought judicial review proceedings challenging the inquiry on grounds including apparent bias. The Court of Appeal rejected this challenge on the basis that apparent bias did not apply to LATT given that it was not proposing to determine the rights or liabilities of the Chief Justice. The LATT was not a decision-maker in relation to any rights, liabilities, or responsibilities exercisable by the Chief Justice.

⁶⁴ *Perestrello* (n 30) at 35B (emphasis added).

⁶⁵ *LATT* (n 32).

- [75] Comparably, as was stated by the court in *Perestrello*, it would be inappropriate to apply the bias rule to police officers ‘*if they are performing their functions properly*.’⁶⁶ Similarly, in *LATT*, Mendonca JA noted that a prosecutor has no liability to the accused even where the prosecution does not result in a conviction, ‘*unless he acts with malice*.’⁶⁷ The fairness of this approach is reinforced by recalling the point that upon acquittal of a criminal charge the tort of malicious prosecution is always available to a person targeted by the police or prosecutor or investigator because of personal grudge or bias. Accordingly, even in the laying and prosecution of criminal charges and in the commencement or continuation of investigations there is room for the application of the procedural fairness and the rule against bias, albeit *ex post facto*.
- [76] In any event, any inapplicability of the rule against bias to prosecutorial decisions does not operate in the present case because, as several Commonwealth decisions have made clear, ministerial decision-making at the ATP stage is subject to procedural fairness. A good starting place is the older English concept of ‘order to proceed’ under s 7 of the Extradition Act of 1989 (equivalent to authority to proceed). In *R v Secretary of State for the Home Dept, ex p Norgren*⁶⁸ Lord Bingham accepted that the legality of the order could be challenged on judicial review grounds although he ultimately concluded that the Home Secretary was not guilty of procedural unfairness in acting as he did.
- [77] *Norgren* was relied upon in *Warner v Attorney General of Trinidad and Tobago*⁶⁹ to subject the issuance of the ATP to judicial review for procedural fairness. The Privy Council made clear that in ‘considering the requirements of fairness in this case all of [the relevant] factors need to be taken into account’.⁷⁰ As the Attorney General had voluntarily offered the appellant an opportunity to make representations (which was declined), the court ruled that no procedural unfairness had occurred in this specific factual instance. And in *Ferguson v Attorney General*

⁶⁶ *Perestrello* (n 30) at 35B (Woolf J) (emphasis added).

⁶⁷ *LATT* (n 32) at [102] (emphasis added).

⁶⁸ [2000] QB 817.

⁶⁹ [2022] UKPC 43 (TT).

⁷⁰ *ibid* at [92].

*of Trinidad and Tobago*⁷¹ the Trinidadian courts extensively mapped out the ‘due process of law’ required across the entire life cycle of extradition proceedings. It was emphasised that because an extradition request could infringe upon constitutional rights to liberty and freedom of movement, any executive decisions—including the initial evaluation leading to an ATP—fall within the strict bounds of reviewable executive discretion.

[78] Another way of approaching the applicability of bias in the ministerial issuance of the ATP is to consider the levels of permissible judicial scrutiny. In judicial decision-making the rule against bias applies in its purest form as illustrated in the *Pinochet* case and the courts will intervene at the slightest impropriety. Ministerial decision-making is not immune from the need for procedural fairness—including the rule against bias but ministers are political officials accountable to the parliament and must be accorded a wider margin for decision-making by the courts particularly where their decisions do not have a direct effect on rights.

[79] It follows, therefore, that the appropriate question is not whether the rule against bias applies to the ministerial decision to issue the ATP but rather the extent of that application. Having established that procedural fairness including the rule against bias is a flexible and context-dependent concept, the relevant circumstances must be highlighted to determine the degree of applicability of the rule. Several factors may be identified that are important in defining the context for the issuance of the ATP.

(i) *The International Context of Extradition*

[80] The rise of transnational organised crime and terrorism has necessitated multilateral cooperation embodied in such formal global frameworks as the UN Model Law on Extradition, but the backbone of modern international extradition law remains the bilateral treaty. The 1931 Treaty between the United Kingdom and the United States, to which Guyana succeeded after attaining independence

⁷¹ *Ferguson* (n 34). See also various judgments spanning 2008–2011.

from the United Kingdom, embodies the international obligations in respect of extraditions on the contracting parties. Failure by Guyana to perform its obligations under the 1931 Treaty to arrest, detain, and extradite persons in respect of whom its co-contracting state has made the proper request, could result in international state liability.

[81] Unreasonable delay in the performance of obligations under the 1931 Treaty could also signal a breach. The international community has long expressed concern over the chronic delay often encountered in extradition processes. That delay is frequently caused through multiplicity of legal challenges.⁷² Protection of the rights of the accused does not require multiplicity of litigation and courts must be alive to the very real risk that the extradition infrastructure of legislation and institutional procedures can be used simply to delay the process.

[82] Of course, it must not be forgotten that the law applicable in Guyana is the legislation which domesticates the treaty by incorporating it into the national legal order. The FOA should, as far as possible, be interpreted to comply with the Guyana's international obligations under the 1931 Treaty. Any interpretation that frustrates those obligations should, unless the statute clearly requires it, be avoided. In short, judicial construction of the FOA should seek to aid the good faith performance of Guyana's treaty obligation, although in right of the parliamentary power, it is the legislative requirements in the FOA that are imperative and dispositive.

(ii) *Limited Discretion Granted by FOA to the Minister in the Issuance of the ATP*

[83] Although other factors are relevant, such as the maintenance of public confidence, the proper control of the exercise of discretion is an important indicator of the

⁷² United Nations Office on Drugs and Crime (UNODC), 'Report of the Informal Expert Working Group on Effective Extradition Casework Practice' (Vienna 2004).

existence and operation of the rule against bias. The greater the discretion the more numerous the possibilities for the intrusion of bias and the more pressing the necessity to guard against it. Correspondingly, where there is no discretion in the decision-making there is little room for bias to be a factor and correspondingly little scope for the operation of the rule against bias.

[84] Under the FOA many of the functions of the Minister are indeed administrative involving little discretion. But this is not true for all ministerial functions at the ATP stage. As discussed earlier at [34]–[35], s 12(2) plainly locates in the Minister the power not to issue an ATP ‘if it appears to him’ that certain conditions for the extradition ‘could not lawfully be made, or would not in fact be made, in accordance with this Act’. This wording invests the Minister with the responsibility of making a qualitative judgment. It is, admittedly, a limited discretion hemmed in by considerations of, for example, compliance with Guyana’s international obligations and purely administrative functions such as those relating to checking that the requesting state has presented the appropriate documentation. But it is a discretion, nonetheless, in that s 12(2) calls for a subjective assessment of likely statutory effects and possible judicial attitudes.

[85] Mr Mendes for the First Respondent frankly conceded that procedural fairness applied to the ATP process to the extent of requiring, ‘that the Minister carry out her functions genuinely and with an open mind’.⁷³ This involves the Minister having and adhering to a process that allows for the giving of genuine consideration to the relevant factors at the issuance of the ATP stage, particularly, those matters arising from provisions in s 12(2) of the Act (above at [34]–[35]). That process also accounts for both limbs of the procedural fairness requirement: the fair hearing rule and the rule against bias.

⁷³ *Minister of Home Affairs Oneidge Walrond*, ‘Submissions on behalf of the First Respondent’, Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 10 April 2026, [38].

- [86] Perspective as to the limited purpose and effect of the ATP is obtained by referring to s 70 of the English Extradition Act 2003 which has been the subject of several recent amendments. That Act now provides that, in the case of requests from certain territories, if the Secretary of State receives a valid extradition request which is made in the approved way and contains the required information, he *must* issue a certificate and send the request and the certificate to the judge. There are only very limited circumstances (s 70(2)) in which the Secretary of State may refuse to issue the certificate. In the case of requests from other territories, the Secretary of State is removed altogether from the process by s 2 of the Act so that when a warrant is received by the designated authority, it is forwarded directly to the appropriate judge if the formalities required by the section are complied with.
- [87] The Canadian process indicates a similar view of the ATP as authorising an extradition hearing to be held before the court to consider whether an individual should be committed for extradition.⁷⁴ The determination is made by counsel with the Department of Justice Canada on behalf of the Federal Minister of Justice after considering the request and supporting documents. Their function is simply to decide whether to issue the ATP in accordance with the requirements of the applicable extradition treaty, if any, and the Extradition Act.
- [88] It must therefore be accepted that the ATP process attracts some, but does not import the full panoply, of procedural rights available in judicial proceedings. There is no right to be heard; there is no right to a decision-maker free of political bias. There is, however, a right to a process that allows for the proper carrying out of the ministerial function contemplated by the FOA. That is a process for the minister's purview bearing in mind the international and diplomatic context. It will only be challengeable if it is clearly and manifestly a sham or if it 'shocks the conscience'⁷⁵ resulting in an ATP that is fatally defective.

⁷⁴ Department of Justice Canada, 'Extradition in Canada: General Overview of the Canadian Extradition Process' (1 March 2019) <https://www.justice.gc.ca/eng/cj-jp/emla-eej/extradition_eng.pdf> accessed 26 May 2026.

⁷⁵ The 'shock the conscience' test is adopted in related aspects of Canadian extradition law: *Schmidt* (n 52); *United States v Burns* [2001] 1 SCR 283.

(iii) *Political Bias and Actual or Automatic Disqualification*

[89] The legislative context represented by the FOA, has important implications for the rule of automatic disqualification for bias. The common law rule on actual or apparent bias, illustrated in *Pinochet*, has no direct applicability to political bias in the issuance of the ATP. This necessarily follows from the deliberate investiture in a political officeholder by parliament of the power to initiate the extradition process. It would clearly have been within the contemplation of parliament that the minister may well possess political bias against his or her political opponents and in favour of his or her political allies.

[90] Therefore, automatic exclusion from performance of the ministerial function because of political bias would destroy the policy design of the Act. Such exclusion would effectively create classes of persons in respect of whom the Minister is prohibited from exercising the ministerial functions dictated by the Act. Absent a successful challenge to its constitutionality, the provisions and objectives of the Act informed, as far as possible, by the terms of the treaty it was intended to implement, must be upheld by this Court.

(iv) *Context and the Timing of the Challenge*

[91] The ATP is a preliminary step in the extradition process. It is followed by the judicial phase in which there is an adversarial contest regarding whether an extradition order should be granted. There then follows possible habeas corpus proceedings. Finally, there is the surrender phase in which the Minister decides whether the fugitive should be yielded up for extradition. The sequencing of these events provides the context for the examination of the timing of the challenge for procedural fairness, including bias. The ministerial decision to issue the ATP does not itself result in extradition; that very decision is subject to judicial scrutiny when the matter comes before the courts.

[92] The matter was put into perspective in the affidavit of First Respondent, the Minister of Home Affairs, where the following appears at [44]:

... it did not appear to me that I was adjudicating on any dispute. There was not yet put before me any information which contradicted any of my conclusions. The exercise I was performing was more administrative in nature. It involved running through a check list of requirements. I appreciated that the Applicants are free to raise any question whether their extradition is prohibited before the extradition magistrate or the High Court on a habeas corpus application or before the Court of Appeal and eventually before me if it were to happen that the occasion arose for a decision by me under section 26 of the Act. I understand that they would be free at that point to make any submission to me as to why it would be unjust or oppressive to extradite them including on the basis of what is referred to as the *Coltroni* principles.

[93] In *Ferguson v Attorney General of Trinidad and Tobago*⁷⁶ the issue arose as to whether the claimants could immediately challenge the issuance of the ATP or were only entitled to pursue judicial review proceedings after a committal decision of the Chief Magistrate or a decision of the Attorney General to order their extradition. Misgivings in countenancing pre-committal challenges have been expressed in several cases. In *Norgren*⁷⁷ Lord Bingham alluded to issues which in his judgment should not be pronounced upon at the pre-committal stage. The judge referred to the statutory scheme which envisaged that certain challenges should follow and not precede a decision by the magistrate. In *Government of the United States of America v Bowe*⁷⁸ the Privy Council suggested that challenges to preliminary decisions should await the judicial phase. Delivering the unanimous decision of the Judicial Committee, Lord Lowry said:

The way in which the proceedings before the magistrate were interrupted in order that the fugitive might apply to the Supreme Court for orders of certiorari and prohibition has meant that their Lordships' decision in the extradition appeal does not achieve finality, since the evidence against him remains to be heard and considered. Their Lordships here take the opportunity of saying that, generally speaking, the entire case, including all the evidence which the parties wish to adduce, should be presented to

⁷⁶ *Ferguson* (n 34).

⁷⁷ *Norgren* (n 68) at 835.

⁷⁸ (1989) 37 WIR 9 (BS PC) at 28.

the magistrate before either side applies for a prerogative remedy. Only when it is clear that the extradition proceedings must fail (as where the order to proceed is issued by the wrong person) should this practice be varied.

[94] In *Ferguson v Jeremie (Attorney General of Trinidad and Tobago)*,⁷⁹ Bereaux J similarly considered the challenge for bias before conclusion of the committal proceedings to be premature. On appeal Warner JA disagreed, opining that allegations of bias, like allegations of abuse of process, must be taken at the earliest practicable opportunity. The Justice of Appeal nevertheless admonished that allegations of abuse or bias ‘are not to be lightly made.’⁸⁰

[95] Respectfully, there is a great deal to be said for adopting the practice of restricting challenges to the ATP to the normal judicial processes envisaged by Parliament in, for example, ss 17 and 21 of the FOA. Challenges to the ATP and to other decisions during the preliminary stage thus could be brought at any time but would not (except in an exceedingly clear case, as discussed below) be heard until after the conclusion of the committal proceedings.

[96] Those in favour of allowing earlier challenge allude to the risk of unnecessary exposure to the inconvenience of committal proceedings but, respectfully, a similar risk attends every citizen who could at any time be required to answer a criminal charge. Allowing a premature challenge does not remove the need for litigation but merely accelerates when it may be brought. No Guyanese, or indeed Caribbean, citizen has ever been extradited based on an ATP alone. Permitting judicial review challenges at the preliminary stage of the extradition process – which the ATP undoubtedly is – is less about any irremediable harm to the person whose extradition is requested and more about the harm that will likely be caused to the process in unnecessarily delaying the extradition. Furthermore, restricting the judicial challenge to the judicial phase has the additional advantage that in an

⁷⁹ TT 2007 HC 78 (CARILAW), (5 April 2007).

⁸⁰ *Ferguson* (n 34) at [45].

appropriate case, an applicant discharged from committal proceedings, may be able to bring an action for misfeasance in public office⁸¹ (akin to malicious prosecution) where there is evidence that bias or malice caused the decision to issue the ATP.

[97] We are therefore of the considered view that it should become the practice in our courts, except where it is manifestly clear that the extradition proceedings must fail (as in Lord Lowry's example where the order to proceed is issued by the wrong person), that any and all challenges to the issuance of the ATP may be brought at any time but should only be heard after completion of the committal proceedings. This practice would be consistent with the international framework for extradition, encourage prompt performance of extradition treaty obligations, and provide a reasonable balance between the interest of the person whose extradition is requested, and that of the State.

(iii) **Whether the First and/or Second Respondent was Tainted with Bias, so as to Nullify the Grant of the ATP**

[98] As was said earlier, political bias in the ministerial issuance of the ATP, by itself, does not operate to nullify the ATP. Something more is required. An important feature of this appeal is that the Appellants' challenge to the ATP is focussed on the alleged political bias of the minister. The Appellants do not challenge the actual grounds on which the ATP was granted. Nowhere in their affidavit in support of the application to this Court do the Appellants complain that the Minister failed to do the necessary investigation or assessment required by s 12(2) of the Act. As the First Respondent attests in her affidavit in opposition to the grant of leave:

the uncontested evidence demonstrates that in my capacity as the Minister of Home Affairs, I lawfully carried out my statutory functions and responsibilities at the ATP stage and there is no pleading, nor any evidence, that I failed to take into account any relevant consideration which I was

⁸¹ *Marin v A-G of Belize* [2011] CCJ 9 (AJ) (BZ), (2011) 78 WIR 51.

required by law to consider at the ATP stage. Still less is there any basis to suggest that I acted with a closed mind or pre-judgment.⁸²

- [99] The evidence adduced by the Appellants all relates to the adverse comments made by the President, Vice-President, and Attorney General. The Appellants documented at least 35 recorded instances where these ‘three government leaders’ made disparaging and adverse comments suggesting that the Appellants were ‘... guilty of smuggling gold, robbing the country, stealing taxes, fraudulently undervaluing an imported Lamborghini vehicle and evading taxes and that there is evidence and information to substantiate such.’⁸³ There is no evidence or allegation that the First Respondent herself engaged in or even indicated agreement with any of these comments. The only adverse comment attributed to the First Respondent was that on a partisan political platform on 14 August 2025, she had sought to demonstrate how her political opponents would answer important questions poorly by imitating them. She had ridiculed the Second Appellant thus:

So Mr. Mohamed, what are your priorities for agriculture in Guyana?
*[Making a silly facial impression of the Second Applicant looking up
confused with mouth agape] Ahh... Am, am - very shortly? Soon?*⁸⁴

- [100] The submission that the First Respondent was biased was based entirely on the adverse comments made by the ‘three government leaders’ and her political association with them. There was a complete absence of evidence linking the alleged bias to the performance of her statutory function. Indeed, during the hearing before us, in response to the Court’s inquiry, counsel for the Appellants was unable to point to anything that indicated the Appellants may possibly have been affected by the alleged bias on the part of the Minister but urged that this did not matter because the issue was whether there existed such bias as this was sufficient, in itself, to vitiate the ATP.

⁸² Record of Appeal, ‘Affidavit of the Hon Minister of Home Affairs, Oneidge Walrond’, [6(ii)].

⁸³ Record of Appeal, ‘Azruddin Mohamed, Affidavit in Support of Notice of Application’ [56].

⁸⁴ *ibid* [66] (emphasis added).

[101] The preceding discussion establishes that this is clearly not sufficient. To repeat, political bias, by itself, is not sufficient to nullify the issuance of the ATP. At the very least, the Appellants would have had to show that the process which the Act inferentially requires was not only not properly conducted by the Minister. Far from it, the Appellants do not challenge the process by which the Minister came to issue the ATP, but merely her alleged political bias.

[102] The evidence of prejudicial pre-judgment against the Second Respondent is rather more extensive. On 29 July 2025, referring to the fact that the Appellants had been sanctioned by the United States of America, the Second Respondent is recorded to have stated:

It also speaks to non-US companies and non-US persons who can also be sanctioned if they transact business with or are found to be associated with sanctioned companies and sanctioned persons. There's no contention about these things. *So, if a person is to see that, if a sanctioned person is elected to the Parliament, then once you you're elected to the Parliament, you become part of the government.* Because the government of Guyana consists of an executive, a legislature and a judiciary, and once you form part of the governance structure of the country, *there are going to be repercussions. That is a statement of fact. The Guyanese electorate will have to deal with that, and the Guyanese people will have to deal with that, and that is why we are saying this is not a normal competitor. This is a person, if he is elected, will expose the country to harm. He has already been exposing the people associated with him to harm.* Visas have already been revoked. Persons are being questioned at the airports, and that has begun a long time ago. Look how many, how many persons have lost their bank accounts at one commercial bank?

(...) And I am not saying this because I want to interfere with the outcome of any elections. Whoever win the election, *these are the consequences that you will have to face if sanctioned people are elected.*

(...) *He is a threat to the stability of the government.* That is what sanctioned that is the implications and repercussions of being a sanctioned individual, and we have to deal with that reality.⁸⁵

⁸⁵ Ibid [148] (emphasis added).

[103] On 5 August 2025, on a partisan political platform, the Second Respondent delivered himself as follows:

But the person is a criminal already. The person is already wanted by the US government and comrades he has only entered the political race because his lawyers tell him in America that if you run for politics in Guyana, he can make it a little difficult for the US to come and pick you up. (...)

*And comrades, if he ever gets a seat in the parliament, then, as I said, the whole country will be sanctioned. Venezuela is a sanctioned country. Look at what is going on over there. That is what will happen in Guyana.*⁸⁶

[104] The Second Respondent is Attorney General who by virtue of that office is the principal legal adviser to the Government of Guyana.⁸⁷ As such the Second Respondent is under an obligation to conduct himself with circumspection. He cannot properly undermine the presumption of innocence of fellow citizens or give the impression that he has already made up his mind on a matter on which his advice is likely to be sought or his decision is required. More difficult questions would have had to be asked and answered had the Attorney General been the person to decide whether to issue the ATP.

[105] But the Attorney General was not the person to decide to issue the ATP and there is no probative value in attempting to determine any question of bias in relation to him. The decision to issue the ATP was statutorily vested in and was, as a matter of fact, exercised by the Minister of Home Affairs with very minimal advice from the Attorney General. As the Chancellor put it in the court below:

... it cannot be that advice in terms of applicable case law and on an uncomplicated statutory form can be biased. There is no evidence to support a finding that such evidence could be tainted with bias. The ATP form has blank spaces for the name of the requesting state, the name of the fugitive offender, the insertion of the offence against the law of the requesting state and the date.⁸⁸

⁸⁶ *ibid* [149] (emphasis added).

⁸⁷ Constitution Act (n 38) art 112(1) (GY).

⁸⁸ *Mohamed v Minister of Home Affairs* (GY CA, 17 March 2026) at [17].

[106] In these circumstances where there is no challenge to the manner or the grounds on which the Minister advised herself on the issuance of the ATP and where the evidence revealed only nominal advice from the Attorney General, it cannot be said that the decision-making of the Minister was so tainted with bias as to nullify the grant of the ATP.

[107] This ground of appeal must therefore fail.

(iv)–(vii) **The Other Grounds of Appeal**

[108] Having decided that in the issuance of the ATP the rule against bias does not apply to political bias or partiality per se, and that the broader rule against bias is applicable only in the rarest of circumstances, and that these circumstances were not present in this appeal, we do not find it necessary to, and judicial restraint counsels that we should not, consider the other potential issues in this case. Suffice it to say that substantially for the reasons given by the Court of Appeal, we entertain grave doubts that there could properly be delegation of the power to issue the ATP under s 27 of the Interpretation and General Clauses Act to any person who is not a minister. Further, we do not consider the *Carltona* principle, derived from the case of *Carltona Ltd v Commissioner of Works*,⁸⁹ and which permit government officials and civil servants to legally carry out statutory functions on behalf of their minister in the interest of the smooth functioning of government, to have any applicability to the present dispute. We therefore find it superfluous to consider the doctrine of necessity as offered by the First Respondent. Nor, in the circumstances, do we think it necessary or useful to revisit this Court’s established jurisprudence on the doctrine of waiver or this Court’s precedents on overturning concurrent findings of fact.

⁸⁹ *Carltona Ltd* (n 7).

Costs

[109] Rule 17.4 (1) of the CCJ's Appellate Jurisdiction Rules states the familiar rule of civil practice that if the Court decides to make an order for the costs of any proceedings, it shall order the unsuccessful party to pay the costs of the successful party. That is followed by Rule 17.4 (2) which permits the Court to deviate from the usual costs order, and gives the Court a broad discretion to make the successful party pay the costs of the unsuccessful party. The latter is exceptional and entirely understandable depending upon the circumstances of a particular case. In the present appeal we would do so because of the special character of the litigation which, though civil proceedings for judicial review, quite distinctly intersects with the criminal law. We would do so especially in this case where the public interest is significantly benefitted by the fact and merits of the proceedings and the legal issues that have been clarified were of much importance. We also note that the Applicants succeeded in their application for the grant of special leave. Accordingly, we would order that each party bear their own costs in this Court.

RAJNAUTH-LEE, JAMADAR AND BULKAN JJ:

Introduction

*'How we do anything, is very often how we do everything.'*⁹⁰

[110] How we *do* law is as important as the outcomes that the law yields. And how we do law is influenced by our perspectives.⁹¹ International lawyers see things almost by default through the lenses of international law, and UK common law lawyers and judges influenced by Parliamentary sovereignty/supremacy view statutory interpretation largely through that lens. These are systemic, understandable, and necessary orientations – in their contexts. However, Caribbean jurists are

⁹⁰ See Will Durant, *The Story of Philosophy* (Simon & Schuster 1926) 74. '[W]e are what we repeatedly do. Excellence, then is not an act, but a habit.' See also Robert Williams (ed), *The Nicomachean Ethics of Aristotle: Newly translated into English* (Longmans, Green, and Co 1891).

⁹¹ 'We don't see things as they are, we see them as we are.' Anaïs Nin, *Seduction of the Minotaur* (Swallow Press 1961) 124.

compelled otherwise. In Guyana, which is a constitutional democracy, the Constitution is supreme and all laws and governmental actions are subject to its dictates – which include the privileging of fundamental human rights.⁹² This is the only appropriate structural and normative socio-legal interpretative and behavioural orientation in Caribbean democratic states such as Guyana. It constitutes a post-independence democratic disruption of prior colonial legal orders and ushers-in a new encompassing constitutional legal order with chiasmic effects.⁹³

Constitutional Guarantees

[111] In Guyana, the presumption of innocence is constitutionally guaranteed. The primary source is art 144(2)(a) of the Constitution, ‘... every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he or she is proved or has pleaded guilty.’ It is grounded in the more fundamental constitutional guarantee of a fair trial and the even broader protection of law provisions contained in the Constitution.⁹⁴ All are informed by the basic deep structure *grundnorm* of the rule of law.⁹⁵

[112] Furthermore, two constitutional provisions significantly strengthen the presumption of innocence and a right to fundamental fairness through international law, arts 39(2) and 154A.⁹⁶ The former directs that ‘it is the duty of Parliament, the Government, the courts and all other public agencies to be guided’ and ‘pay

⁹² Constitution Act (n 38) art 8 (GY). *Guyana Sugar Corp Inc v Dhanessar* [2015] CCJ 4 (AJ) (GY), GY 2015 CCJ 1 (CARILAW) at [48] (Wit J); *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [41]; *Trust Co (Guyana) Ltd v Guyana Securities Council* [2021] CCJ 11 (AJ) GY, (2021) 99 WIR 422 at [45] (Rajnauth-Lee J); *Commissioner of Police v Alleyne* [2022] CCJ 2 (AJ) BB, [2022] 2 LRC 590 at [23] (Jamadar J); *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36 at [67] (Rajnauth-Lee J). See also *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW) at [27]–[46]; *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) GY, [2022] 2 LRC 491 at [54]–[56], [72]–[79], [82]; *Cara Investments Ltd v Ram* [2026] CCJ 5 (AJ) GY at [118] (Jamadar J). *A-G v Dumas* (2017) 90 WIR 507 (TT) at [103]–[106] (Jamadar JA), upheld by the JCPC.

⁹³ *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW) at [27]. And see, Peter Jamadar, ‘The Hybridization of Administrative Law: Exploring the Caribbean Court of Justice’s ‘Chiasmic’ Jurisprudence’ in Peter L Lindseth and others (eds), *Comparative Administrative Law: New Voices, New Perspectives* (3rd edn, Edward Elgar Publishing Ltd 2026).

⁹⁴ Constitution Act (n 38) art 144 (GY) ‘Provisions to secure the protection of the law’. *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [130]; *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [45]; *Bisram v DPP* [2022] CCJ 7 (AJ) GY, (2022) 101 WIR 370 at [11], [16].

⁹⁵ *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104 at [20] (Wit J); *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [45].

⁹⁶ See Constitution Act (n 38) (GY). Notably, ‘... and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government.’

due regard to' international human rights standards in the discharge of their functions and when interpreting fundamental rights, and the latter incorporates into domestic law the human rights treaties listed in the Fourth Schedule, which includes the International Covenant on Civil and Political Rights ('ICCPR').⁹⁷

[113] These provisions signal more broadly the rights-based ethos of the country's constitutional framework, as expressed also in the Preamble's commitment to the promotion of 'a harmonious community based on democratic values, social justice, fundamental human rights, and the rule of law'. As pithily expressed by Saunders P in *McEwan v Attorney General of Guyana*, 'If one part of the Constitution appears to run up against an individual fundamental right, then, in interpreting the Constitution as a whole, courts should place a premium on affording the citizen his/her enjoyment of the fundamental right, unless there is some overriding public interest.'⁹⁸

[114] *A fortiori*, where any inconsistency arises from an external norm, be it legislation or treaty-based, it is the Constitution – and more particularly the Constitution's fundamental rights regime – that must prevail. Put another way, approaches that disproportionately elevate international law and/or statutory interpretation dictated by mindsets of Parliamentary sovereignty or that lower core constitutional benchmarks are misplaced.⁹⁹ Which is not to say that international benchmarks are irrelevant. As this Court has affirmed on multiple occasions, where it is relevant and possible and particularly in relation to enlarging and enhancing the protection of human rights, domestic laws including constitutional values are to be interpreted having appropriate regard for corresponding international norms.¹⁰⁰

⁹⁷ Article 14(2) of the International Covenant on Civil and Political Rights ('ICCPR') (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171, states: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.'

⁹⁸ *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [41].

⁹⁹ Constitution Act (n 38) art 8 (GY).

¹⁰⁰ *McEwan* (n 98) at [55].

[115] Thus, where innocence is implicated and fundamental rights at risk, as in this appeal, constitutional standards for the protection of the law, appropriately cognisant of corresponding international norms, dictate what are the relevant and applicable principles of fairness, due process and access to justice. In this appeal and in the prevailing circumstances, the Applicants are entitled to the full plenitude and benefits of their rights and protections under the Constitution and law in Guyana, which are to be prioritised.

Getting Priorities Right

[116] The appeal before this Court involves the interpretation and application of laws that exist at the intersection of the international, constitutional and local statutory spheres of the legal order in Guyana. But it also fundamentally interrogates whether the appearance of executive decision-maker and decision-making independence and impartiality is a rule of law prerequisite in extradition proceedings in Guyana.¹⁰¹ A necessary and primary issue is therefore how are these three intersecting legal spheres to be reconciled and which, if any, is to have overarching normative status and primacy. And following this, whether the impartiality and independence of the executive decision-maker at the Authority to Proceed ('ATP') stage of extradition proceedings are subject to judicial review on the basis of alleged deficit, and if so, how is this to be assessed and with what consequences?

[117] Process matters, not only because of the precedential assertion that justice must not only be done but must also be seen to be done,¹⁰² but as well because due process and fundamental fairness (as inherent in the rule of law and the protection of the law) are fundamental constitutional principles that govern the public law

¹⁰¹ Preamble cl 4: 'Forge a system of governance that promotes ... a harmonious community based on democratic values, social justice, fundamental human rights, and the rule of law.'

¹⁰² *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256 at 259 (Hewart CJ).

legal order in Guyana.¹⁰³ Furthermore, in international law, the overarching idea, ideal and expectation of good faith in state relations also extends its application and imperative to relevant procedural obligations.¹⁰⁴ Treaty interpretation, implementation and performance – including procedural requirements, are all subject to the overarching good faith rule and principle.¹⁰⁵ Indeed, it would appear self-evident that bias is antithetical to good faith.

[118] Thus, as a matter of both constitutional and international law, there is an alignment that process matters. However, in Guyana,¹⁰⁶ if there are any inconsistencies with international law, the constitutional principles and values of Guyana prevail (the supremacy–inconsistency principle).¹⁰⁷ Also, whatever international treaty arrangements may exist between the requesting state and Guyana, or elsewhere, the Fugitive Offenders Act (‘FOA’) describes how, in Guyana, the process of extradition is to be lawfully carried out (the sovereignty–legality principle).¹⁰⁸

[119] Given the constitutional status of the supremacy – inconsistency principle and the privileging and prioritising of fundamental rights in the constitutional legal order in Guyana,¹⁰⁹ the following consequences arise: i) where there is tension, between an international treaty obligation and a fundamental constitutional right, the latter prevails, and ii) every local statute (in this instance the FOA) must be read, faithfully, in light of relevant constitutional values, principles and imperatives.¹¹⁰

¹⁰³ Constitution Act (n 38) art 144 (GY). See also, *Higgs v Minister of National Security* (1999) 55 WIR 10 (BS PC) at 22, referring to ‘the ordinary common law concept of due process’ and its implication into the Constitution of The Bahamas as being ‘in accordance with law and general principles of fairness.’ *Meerza* (n 19) at [28].

¹⁰⁴ See Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(2) which requires states to fulfil their obligations in good faith, and the Vienna Convention on the Law of Treaties (‘VCLT’) (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 26 (‘*Pacta Sunt Servanda*’), which establishes good faith as a fundamental rule and obligation governing all state conduct including procedural obligations (and see also VCLT, art 31). And see European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (adopted 10 December 1948, entered into force 3 September 1953) 213 UNTS 221, art 6. In *Tsfayo v United Kingdom* (2006) 48 EHRR 457, the European Court of Human Rights held that to meet art 6 requirements, and where a rights determination turns on an assessment of facts, the issues must be determined by a tribunal independent of the parties.

¹⁰⁵ *Mohamed v Minister of Home Affairs Oneidge Walrond* (GY HC, 4 February 2026) at 2. In the High Court, Singh CJ (Ag), stated in his judgment, that ‘the Request was made pursuant to the 1931 Extradition Treaty between the United States and Great Britain.’ This has not been challenged in this appeal.

¹⁰⁶ As elsewhere in independent Anglo-Caribbean states with written constitutions.

¹⁰⁷ Constitution Act (n 38) art 8 (GY). *Clifford v LCW Investments, LLC* [2025] CCJ 17 (AJ) BZ at [136] (Jamadar J).

¹⁰⁸ Constitution Act (n 38) art 9 (GY). *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) GY, [2022] 2 LRC 491 at [70]–[72].

¹⁰⁹ *Nervais v R* [2018] CCJ 19 (AJ) (BB), (2018) 92 WIR 178 at [39]. *Bisram v DPP* [2022] CCJ 7 AJ (GY), (2022) 101 WIR 370 at [63]–[66]. *Marin v R* [2021] CCJ 6 (AJ) BZ, BZ 2021 CCJ 001 (CARILAW) at [27]. *McEwan* (n 98) at [40]–[41].

¹¹⁰ *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) GY, [2022] 2 LRC 491 at [55]–[56].

And, where there is an intersection between the state's obligations in international law and the fundamental rights of a citizen of Guyana, the rights of the citizen must be both privileged and prioritised in the interpretation and application of the relevant statutory regime – here, again, the FOA¹¹¹

[120] This constitutionally grounded analytical process recognises that, i) fundamental rights are not absolute, as acknowledged by the limitations stated in the Constitution, and ii) in an analysis of whether fundamental rights are implicated and infringed, a balancing and weighting exercise that includes proportionality considerations is generally involved.¹¹² In the case of extradition proceedings, this balancing and weighting exercise is made explicit.¹¹³

[121] However, it is to be noted that these limitations on fundamental rights are also explicitly made subject to the *intra vires* principle. That is, and in the context of extradition proceedings, specifically subject to 'authorization by law'¹¹⁴ and the protection of the law,¹¹⁵ which guarantees an 'independent and impartial' decision maker where, for example, the rights to freedom of movement or liberty are implicated.¹¹⁶

[122] As will be explained in greater detail, the existence of bias in a decision maker at any stage in extradition proceedings potentially vitiates any '*authorisation by law*' and renders any such decision-making arguably *ultra vires* – the fundamental principle of legality.¹¹⁷

[123] Indeed, this Court, very recently, in *Ramsamooj v State of Suriname*,¹¹⁸ held that Community treaty law (under the Revised Treaty of CARICOM) imposes

¹¹¹ Fugitive Offenders Act (n 2).

¹¹² See, for example, Constitution Act (n 38) s 37 (GY), in which, as directive principles, 'the respect for human rights and fundamental freedoms' is noted alongside the 'co-operation among States.' And as well, see s 40(2).

¹¹³ *ibid* arts 139(1)(i), 148(3)(d).

¹¹⁴ *ibid*. See the chapeau to arts 139(1), 148(3).

¹¹⁵ *ibid* art 144(1).

¹¹⁶ *ibid*.

¹¹⁷ *Clifford v LCW Investments, LLC* [2025] CCJ 17 (AJ) BZ at [136]–[138], [191]; *Cara Investments Ltd v Ram* [2026] CCJ 5 (AJ) GY at [119]–[126], [129].

¹¹⁸ [2026] CCJ 2 (OJ).

minimum human rights standards that must attend the exercise by Community nationals of their treaty-based rights. This prioritising of human rights standards found legitimacy in Community law because throughout CARICOM States fundamental human rights are uniformly accepted general principles, evident from the protection of fundamental rights and freedoms of the individual under the constitutions of all CARICOM Member States, among other sources. One would therefore assume that consistent with this approach and from an international law perspective, basic human rights would also attend the State of Guyana's discharge of its international law obligations under the FOA.

Standards for Ministers

- [124] It is noteworthy that in relation to s 12 of the FOA it is a minister who is the primary decision maker in relation to the issuance of an ATP. In this regard, the oath of office taken by a minister¹¹⁹ is in identical terms as that taken by a judge¹²⁰, to wit:¹²¹

I, ..., do hereby solemnly declare that I will bear true faith and allegiance to the People of Guyana, that I will faithfully execute the office of ... *without fear or favour, affection or ill-will* and that in the execution of the functions of that office I will *honour, uphold and preserve the Constitution* of the Co-operative Republic of Guyana.

- [125] Inherent in this oath taken by ministers in Guyana is an assurance of independence, impartiality and integrity and a commitment to constitutional standards in the discharge of ministerial responsibilities. Indeed, the words in italics '*without fear or favour, affection or ill-will*' impute in the first instance that a decision maker must not be influenced by, say, external pressures, popularity, politics or power, and in the second instance must not be swayed by, say, personal likes or dislikes, preferences or aversions, sympathies or prejudices. Basically, in Guyana and in so far as the oath is identical to that taken by a judge and on the face of it – that is,

¹¹⁹ Prescribed by the Constitution Act (n 38) art 114 (GY).

¹²⁰ *ibid* art 132.

¹²¹ *ibid* art 232, First Schedule: Form of Oath (emphasis added).

presumptively, this oath of office demands that a minister as a decision maker must be independent and impartial – unbiased.

[126] Also relevant to the standards expected of ministerial decision-makers and of ministers in general, including the Attorney General ('AG'), is the 2017 gazetted code of conduct for ministers, parliamentarians, and public office holders in Guyana. Article 2 of that code deals with 'Discrimination' and states in mandatory terms: '*No person in public life shall in the course of the performance of his or her official functions discriminate against any other person with respect to (any) official matters*' based on, among other things, '*political opinion*'.¹²² The implications for the standards of independence, impartiality and integrity in the discharge of ministerial decision making is also relevant to the role and functions of the Minister under the FOA and of the AG, as one begins to map constitutional, statutory and ethical contexts.¹²³

[127] In any instance in which a decision is to be made by public officials that potentially impacts, to their detriment, the fundamental rights of persons, an apposite question is always whether the decision-maker must be independent and impartial and if so, the operating standards – whether that decision-maker is acting in a traditional adjudicatory role or in a quasi-adjudicatory role or, as in this instance, in a treaty informed statutory-based executive role that requires the exercise of executive power in the form of fact based discretionary consideration, assessment and determination. The issue is further nuanced where fundamental rights are implicated and in relation to potential criminal proceedings. In these circumstances, the standard ('test') of independence and impartiality is a highly relevant consideration.

[128] The central issue in this appeal is the Applicants' assertion that the effective decision-maker (the Minister of Home Affairs ('the Minister' or 'MOHA')) and

¹²² Integrity Commission (Amendment of Code of Conduct) Order 2017, Ord 2017/10.

¹²³ See also *Condon v National Assembly for Wales* [2007] LGR 87 at [53] (Richards LJ), on the significance of the 'oath of office' and a code of conduct' to the issue of apparent bias in relation to administrative decision makers.

the decision making process taken as a whole were infected by bias against them personally and actually or apparently/implicitly, and therefore the MOHA was incapable of acting in and out of decision-making integrity and/or of making an objectively (reasonable) independent and impartial assessment and decision in relation to the issuance of the ATP under s 12 of the FOA in this matter.

Bias

- [129] Bias in any decision-maker or in a decision-making process is, as a general rule, undemocratic. Bias, again, as a general rule, also goes to status, standing and capacity. That is, a decision maker infected with bias does not have the standing to make the impugned decision; they are rendered legally incompetent and incapacitated by reason of their bias to do so. In this sense, bias has a vitiating effect on decision-making.
- [130] Citizens of Guyana have a legitimate and reasonable expectation that public officers – be they judges or executive decision makers - will act impartially and in and out of integrity. At common law, and in the 1969 cornerstone decision in administrative law, *Metropolitan Properties Co (FGC) Ltd v Lannon*,¹²⁴ the plaintiff, a property company, challenged the decision of a Rent Assessment Committee on the basis that the defendant, a member of the committee, had, as a solicitor, given rent advice to tenants of a close business associate of the plaintiff. The Court of Appeal held that the facts were such as to give the reasonable impression that he was biased even though there was no actual bias on his part. The decision of the committee was quashed and the case remitted to be considered by another assessment committee.
- [131] Lord Denning explained: ‘The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood

¹²⁴ [1969] 1 QB 577.

of bias on his part, then he should not sit. And if he does sit, his decision cannot stand.’¹²⁵ This is what has become known as the ‘real likelihood’ test for apparent (implicit) bias, and it is to be assessed through the eyes of a well-informed ‘right-minded person’ in the society. The *locus classicus* is now *Porter v Magill*.¹²⁶

[132] For Denning and the court, it was irrelevant whether the defendant was in fact biased, because, ‘*Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: “The judge was biased.”*’¹²⁷ In this approach the court reaffirmed the well-established and overarching principle that has, since 1924, assumed legal adage status, that ‘*justice should not only be done, but should manifestly and undoubtedly be seen to be done.*’¹²⁸ This principle is part of the bedrock of a legitimate justice system in a participatory democracy, where public trust and confidence in Justice is necessary for the sustainability of a stable law-abiding society.

[133] Process – due process, fundamental fairness, independence, impartiality and integrity as core values in decision-making – matters. And it matters increasingly when the nature of the decision-making power to be exercised, is to be so exercised in relation to the treatment of an individual, and even more so when that treatment can potentially infringe their fundamental rights. Thus, the standard of scrutiny for the public assurance of decision-maker independence and impartiality is high,

¹²⁵ *ibid* at 599.

¹²⁶ *Porter* (n 6) at 494: ‘*The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.*’ Practically, the ‘fair minded and informed observer’ is a hypothetical, reasonable person in the jurisdiction who is not overly suspicious or naïve and is properly informed of the relevant facts, and a ‘*real possibility of bias*’ requires proof of something more than a mere fanciful suspicion, though there is no requirement to establish actual bias as the focus is on appearance (not on any proof of prejudice). Also see *Lawal v Northern Spirit Ltd* [2004] 1 All ER 187, which was applied in *Ferguson* (n 34) at [49]. Also, *Meerza* (n 19) at [32]; *Walsh v Ward* [2015] CCJ 14 AJ (BB), (2015) 87 WIR 101 at [95].

¹²⁷ *Metropolitan Properties Co* (n 124) at 599 (emphasis added).

¹²⁸ *McCarthy* (n 102) at 259 (emphasis added). This was in essence a judicial review case. In 1923 McCarthy, a motorcyclist, was involved in a road accident which resulted in his prosecution before a magistrates’ court for dangerous driving. Unknown to the defendant and his solicitor, the clerk to the justices was a member of the firm of solicitors acting in a civil claim against the defendant arising out of the accident that had given rise to the prosecution. The clerk retired with the justices, who returned to convict the defendant. On learning of the clerk’s involvement, the defendant applied to have the conviction quashed. The justices swore affidavits stating that they had reached their decision to convict the defendant without consulting their clerk. In quashing the decision, Lord Hewart CJ stated: ‘It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done.’

especially when rights are implicated. Indeed, and more generally, as Lord Hewart CJ explained in *McCarthy*:¹²⁹ ‘Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.’

Why Considerations of Bias Matter

[134] A biased mind or a process infected by bias taints and corrupts the purity and integrity of decision making. It is the antithesis of impartiality, independence, and integrity in decision making. In addition to understandings of automatic disqualification and actual bias, ‘bias’ *per se* is generally understood in the following ways (as is most relevant to the arguments advanced before this Court): a) in adjudicatory settings, ‘(b)ias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the [j]udge (decision-maker) unable to exercise impartiality in a particular case;’¹³⁰ and b) in public law administrative settings where this narrower interpretation sometimes prevails depending on context, it is often formulated as ‘a preconceived opinion or predisposition that prevents a tribunal from exercising its functions impartially.’¹³¹ The similarities are obvious and establish across the board minimum standards.

[135] But that is not the end of the matter. In democratic states, where institutional legitimacy and public trust and confidence in state institutions and officials are valued, there is also c) the well-known *Porter v Magill* test¹³² for apparent or implicit bias (whether a fair-minded and informed observer would see a real possibility of bias). Yet it is precisely this distinction in categories, and an

¹²⁹ *ibid*. It is noteworthy that this decision arose out of a minor collision case where the fine was GBP10 and in which no costs were ordered. Yet the vindication of the rule of law was recognised as sacrosanct.

¹³⁰ *State of West Bengal v Pathak* (1998) 5 SCC 513 at [25].

¹³¹ *Franklin* (n 4). A Minister acting in an administrative capacity under a statute is not necessarily disqualified by ‘bias’ simply because they have expressed prior support for the project (predisposition v predetermination/pre-judgment). The Franklin test may be stated as follows: Can it be reasonably said that the decision-maker has so prejudged or predetermined the issue that s/he has closed their mind and is no longer open to persuasion?

¹³² *Porter* (n 6) at [103]: ‘The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.’

overreliance on either-or dichotomies, that has exercised much legal argumentation and judicial debate in this matter, and which we in this joint opinion interrogate in detail.

[136] Thus, on one side there has been much reliance on the 1948 *Franklin* type administrative decision-making situations (collective policy predisposition cases) as apposite – here the test is ‘bias’ manifesting as predetermination or pre-judgement, that may be generally described as a state of mind that shuts out due and proper consideration – a mind that is closed. Proof of which is required.¹³³ And on the other side is the assertion that the appropriate and applicable standard is the apparent bias fair-minded and informed observer test. Here no proof of actual bias or a closed mind is required – appearances are what matter.

[137] However, and notably, from at least 1963 in *Ridge v Baldwin*¹³⁴, the modern approach to ‘bias’ in administrative settings has been consistently critical of any broadbrush or rigid applications of the narrow *Franklin*¹³⁵ approach. This has become increasingly so especially as the duties of administrative decision makers are now more often understood in the context of and tested by the requirements of modern public administrative law notions of ‘procedural fairness,’ informed by context¹³⁶ and relevant statutory frameworks.¹³⁷ A particularly apt phrase when considering the exercise of executive powers.¹³⁸ Indeed, as Sedley J explained in 1996:¹³⁹ ‘Since *Ridge v Baldwin*, although not without occasional deviations, public law has returned to the broad highway of due process across the full range of justiciable decision-making.’ *A fortiori*, and presumptively so, in this matter also.

¹³³ *Franklin* (n 4) at 103 (Lord Thankerton). ‘In such a case the only ground for challenge must be either (there has been non-compliance with statutory directions) or that his mind was so foreclosed that he gave no genuine consideration to (his statutory duties).’ And, at 104, ‘But, in the present case, the respondent having no judicial duty, the only question is what the respondent actually did, that is whether in fact he did genuinely (discharge his statutorily prescribed duties).’

¹³⁴ *Ridge v Baldwin* [1964] AC 40.

¹³⁵ *Franklin* (n 4).

¹³⁶ *R v Secretary of State for the Home Dept, ex p Doody* [1994] 1 AC 531 at 560D-G (Lord Mustill), as to the meanings and requirements of fairness in administrative law.

¹³⁷ In *Lloyd v McMahon* [1987] 1 AC 625, Lord Bridge noted that what fairness requires also depends on the context of the decision and the statutory framework.

¹³⁸ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 399A-B (Lord Fraser).

¹³⁹ *Kirkstall Valley Campaign Ltd* (n 20) at 324f.

[138] In fact, Commonwealth jurisprudence recognises multiple categories of bias, and not all depend on proving a *Franklin* type closed mind; indeed, most do not. For example, in the jurisprudence on apparent bias which is governed by the *Porter v Magill* test (whether a fair-minded and informed observer would see a real possibility of bias), there is no need to prove actual prejudice or a closed mind. Similarly, in the automatic bias (eg financial or proprietary interest in outcome) situations, disqualification is automatic and there is also no inquiry or need to prove a closed mind.¹⁴⁰ And of course, so also in actual bias cases.¹⁴¹

[139] The Commentary to the Bangalore Principles for Judicial Conduct, helpfully explains a broad-based collective understanding of bias, as follows:¹⁴²

Bias or prejudice has been defined as a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to judicial proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind, an attitude or point of view, which sways or colours judgment and renders a judge unable to exercise his or her functions impartially in a particular case.

[140] Bias may therefore be understood as a state of mind that closes the decision-maker to proper consideration, but it also includes situations where bias is inferred or presumed without proof of such a ‘closed’ state of mind and which also extends to the decision-making process (and not just the decision-maker). Thus, on one side of the contentions is the ‘closed mind’ test and on the other side is the apparent bias fair-minded and informed observer test.

¹⁴⁰ *Pinochet Ugarte* (n 5) at 132G-133C.

¹⁴¹ *R v Gough* [1993] AC 646 at 661G (Lord Goff), ‘if actual bias is proved, that is the end of the case; the person concerned must be disqualified’.

¹⁴² United Nations Office on Drugs and Crime (UNODC), ‘Commentary on the Bangalore Principles of Judicial Conduct’ (2007) para 57. Citing *R v Bertram* [1989] OJ No 2133 (QL), quoted by Cory J in *R v S* [1997] 3 SCR 484 at [106]; <https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf> accessed 4 May 2026.

The Rule of Law and Procedural Fairness

- [141] In *Bisram v DPP* this Court, in a unanimous seven-member panel decision, unequivocally recognised that, ‘we climb a slippery slope were the Court to lend its imprimatur to the disregard of important elements of procedural justice.’¹⁴³
- [142] Decision-maker and decision-making independence and impartiality are inherent in the rule of law and in the sphere of modern public administrative law are now often treated as a part of ‘procedural fairness’. It is important to note that in modern times procedural fairness encompasses and includes what has been more traditionally referred to as natural justice. In this regard, it requires public authorities and decision-makers to follow fair procedures when making decisions that affect individuals' rights, interests, or legitimate expectations and to be free of bias.¹⁴⁴ Moreover, these public law notions when applied in Guyana must also be informed by relevant Guyanese constitutional standards.
- [143] Procedural fairness therefore encompasses two core requirements that rest in reviewable constitutional standards: the right to a fair hearing and the rule against bias.¹⁴⁵ In the realm of public administrative law, the requirements of ‘fairness’ are contextual – dependent on circumstances, statutory frameworks, and the nature of the rights affected. The more that fundamental rights are at risk, the higher the standards of impartiality and independence that are imposed on an administrative decision maker. And the more that the decision implicates an individual, the greater the requirement for meeting the core standards of procedural fairness. As explained, in Guyana, these two core rule of law requirements of an independent and impartial decision-maker also have constitutional underpinnings.¹⁴⁶

¹⁴³ [2022] CCJ 7 (AJ) GY, (2022) 101 WIR 370 at [27] (Saunders P, Wit, Anderson, Rajnauth-Lee, Barrow, Burgess, Jamadar JJ).

¹⁴⁴ *O'Reilly v Mackman* [1983] 2 AC 237 at 279F–G (Lord Diplock), ‘the two fundamental rights accorded ... by the rules of natural justice or fairness, viz, ... and to the absence of personal bias ... on the part of the person by whom the decision falls to be made.’

¹⁴⁵ As derived constitutionally and through the common law from the principles of the rule of law and protection of the law.

¹⁴⁶ Constitution Act (n 38) art 144 (GY). See also Preamble clause 4: ‘Forge a system of governance that promotes ... a harmonious community based on democratic values, social justice, fundamental human rights, and the rule of law.’ *Meerza* (n 19) at [28].

[144] A more recent and well-known administrative law case makes the above point quite appropriately. In *R v Leicester City Justices, ex p Barrow*,¹⁴⁷ Lord Donaldson MR poignantly pointed out: ‘Any unfairness, whether apparent or actual and however inadvertent, strikes at the roots of justice.’ And, of some pertinence to this matter in which the Respondents contend for a very limited review of the MOHA’s discretionary decision-making power in issuing the ATP because of the formal nature of that process, in *R v London Borough of Camden, ex p Paddock*,¹⁴⁸ the point is made that in some instances ‘formality itself is a matter of substance’, and that ‘beyond this class there must be at least a general, though rebuttable, presumption that departures from fair procedure matter.’

[145] It is these intersections and considerations that inform the main issues in this appeal which this joint opinion will interrogate.

The Core Background Facts

[146] The lead opinion sets out in detail the relevant procedural history and facts. This opinion will not repeat these details at this point, and we will deal with them at a later stage as they may be relevant. The factual framework which informs this joint opinion, in summary, is therefore as follows.¹⁴⁹

[147] The First Applicant, Nazar Mohamed, is the father of the Second Applicant, Azruddin Mohamed, who is the Leader of the Opposition in Guyana. The Applicants are the subjects of extradition proceedings before the Magistrate’s Court, which have been stayed pending the conclusion of this appeal.

[148] The extradition proceedings commenced before the Magistrate’s Court in Guyana, following the issuance of an Authority to Proceed (‘ATP’) pursuant to s 12 of the FOA by the First Respondent, the Minister of Home Affairs (‘MOHA’) on 30 October 2025. The Second Respondent is the Attorney General (‘AG’), and the

¹⁴⁷ [1991] 2 QB 260 at 290D–E.

¹⁴⁸ [1995] COD 130.

¹⁴⁹ Extracted from the record of appeal filed in the proceedings before this Court.

Third Respondent is Magistrate Judy Latchman, who is presiding over the extradition proceedings.

[149] The Attorney General and Minister of Legal Affairs of Guyana, the Second Respondent, was reappointed to this position on 13 September 2025, having previously served from August 2020 to September 2025, and initially from 2011 to 2015. His immediate predecessor (who served between Mr Nandlall's 2015 departure and his 2020 return) was Mr Basil Williams, who held the office of AG from 2015 to 2020. Thus, the Second Respondent was the AG of Guyana before, during and after the issuance of the ATP and while statements attributed to him in these proceedings were allegedly made.

[150] On 31 October 2025, the Magistrate issued the warrants for the arrest of the Applicants and the proceedings commenced on that date. Between 31 October and 10 December 2025, the Magistrate dealt with preliminary issues raised by the Applicants. Regarding these preliminary issues, the Applicants filed an application for the Magistrate to refer to the High Court questions as to whether the provisions contained in the Fugitive Offenders Act were constitutional under art 153(3) of the Constitution. In addition, the Second Applicant deposed that the specific question of bias was also raised. It was submitted that the ATP was signed in circumstances of bias in both the AG who offered advice and guidance to the MOHA and the MOHA who was the s 12, FOA decision-maker. They contest the authority of the MOHA to issue the ATP lawfully in those circumstances. On 10 December 2025, the Magistrate determined that these preliminary questions were both frivolous and vexatious.¹⁵⁰

[151] On 23 December 2025, the Applicants filed a Fixed Date Application in the High Court seeking judicial review of the MOHA's decision to issue the ATP. The Applicants have sought to quash the Authority to Proceed on the basis that the

¹⁵⁰ The Magistrate's proceedings do not form part of the record in the instant appeal and there is no filed transcript of what has taken place in those ongoing proceedings.

relevant decision makers were tainted with bias, and to stay the extradition proceedings in the Magistrate's Court. On 14 December, that application was heard in the High Court and on 4 February 2026, it was dismissed. On 5 February 2026, a Notice of Appeal was filed and on 17 March 2026 that appeal was dismissed and the decision of the High Court affirmed. And on 20 March 2026 an application for special leave to appeal the decision of the Court of Appeal was filed in this Court.

[152] Of note are the following, i) there was never any objection or point raised before the High Court or Court of Appeal in these proceedings that this issue of bias was improperly raised before those courts by way of judicial review and 'should' /'could' only be properly raised before the magistrate; ii) the Second Applicant averred (at paragraphs 91 – 96 of his Affidavit in Support of Notice of Application filed 20 March 2026) that his counsel submitted to the Magistrate that the ATP was not lawful as it was signed by a political foe (thereby raising an allegation of bias) and that the Magistrate, on 10 December 2025, dismissed that point as frivolous and vexatious; therefore iii) this point of bias was taken at the stage-two judicial committal phase of these extradition proceedings and these judicial review proceeding commenced after the Magistrate had first considered and dismissed the bias point.

[153] In September 2025, general elections were held in Guyana. On 3 November 2025, the Second Applicant was sworn in as a Member of the National Assembly of Guyana. And on 26 January 2026, he was elected Leader of the Opposition.

The Issues

[154] This joint opinion will address and determine the following issues which arise in this appeal. First, whether it was procedurally appropriate to launch this challenge to the ATP at the current committal stage of the proceedings. Second, did the Applicants waive their right to raise bias in relation to the issuance of the ATP by

the MOHA. Third, if a challenge on the ground of bias can be raised at the judicial stage before the determination of the proceedings, what is the relevant test in the context of the issuance of an ATP by the MOHA.

- [155] Fourth, has apparent bias been established, either on the part of the MOHA as the decision-maker or in relation to the decision-making process, given the role played by the AG as advisor to the MOHA. Fifth, considering s 12 of the FOA and s 27 of the Interpretation Act, does the principle of necessity apply in relation to the issuance of the ATP by the MOHA such that only that office holder (in person) could consider and issue the ATP, precluding delegation. Finally, the issue of special leave will be addressed in light of the preceding analyses.

Disposition

Jurisdiction and Prematurity (to bring judicial review proceedings to challenge bias at the judicial committal ‘stage two’ of extradition proceedings).

- [156] There is no basis in law that suggests that the Applicants could not properly commence these judicial review proceedings to quash the decision of the MOHA to issue the ATP in circumstances in which bias is alleged against the issuing minister. In fact, no objection has been taken on this basis, and rightly so. Not only is there no jurisdictional bar, but in the circumstances of this case this application is not in fact premature. To dispose of this matter on the basis of it being premature can result in a serious miscarriage of justice and would in our opinion amount to an egregious error of law. Indeed, there is a pragmatic good sense to the issue being raised at the earliest stage possible.

Waiver

- [157] It cannot be said that the Applicants were plainly aware of all the relevant facts, or that by their conduct they clearly and unequivocally waived their right to object

on the ground of bias. It is also not without significance that the Applicants did not delay and at the earliest opportunity after learning that the Minister had issued the ATP, questioned its lawfulness on the ground of bias.

Relevant Test for Bias

- [158] We are satisfied that the rights guaranteed under the Constitution of Guyana permeate the entire extradition process. Accordingly, where such rights are implicated, we are of the view that a heightened standard of scrutiny must be applied. In this context, the ‘open mind’ test articulated in *Franklin* is inapplicable. We are of the view that the rule against bias is capable of applying to the issuance of an ATP under s 12 of the FOA and that the fair-minded and informed observer (apparent bias) test is the appropriate one in the circumstances of this case.

Has Apparent Bias been Established?

- [159] We find that there is no appearance of bias established against the MOHA as the decision-maker either personally or by reason of the larger ecosystem in which she operated. Conversely, we are of the view that on an objective evaluation of all the circumstances in this case including the general socio-political background in Guyana, a fair-minded and fully informed Guyanese observer would conclude that there was a real possibility that the Attorney General was biased. However, we find that a fair-minded and informed observer would not conclude that the Attorney General’s apparent bias has so contaminated the process as to raise a real possibility that the decision of the MOHA to issue the ATP was vitiated by bias.

Delegation

- [160] The doctrine of necessity does not arise in the circumstances of this case, and delegation is plainly permissible under the General Clauses and Interpretation Act (the Interpretation Act) of Guyana.

Special Leave

[161] Having regard to the evidence, all relevant contexts, and the written and oral submissions of the parties, we are satisfied that the test for special leave was met by the Applicants to the standard of arguability.

Costs

[162] Each party will bear their own costs in the circumstances of this case.

Index

[163] The following index is intended to facilitate the readers ease in navigating this joint opinion.

- (a) Jurisdiction and prematurity: [164]–[175]
- (b) Waiver: [176]–[189]
- (c) Bias and the issue of an ATP by the Minister pursuant to s 12 of the FOA: [190]–[221]
- (d) General Social Context: [222]–[254]
- (e) Has apparent bias been established: [255]–[325]
- (f) Delegation: [326]–[336]
- (g) Special leave: [337]–[339]
- (h) Costs: [340]
- (i) Conclusion: [341]–[344]

Analysis

Jurisdiction and Prematurity

[164] There is no basis in law that suggests that the Applicants could not commence these judicial review proceedings, at this stage of the extradition proceedings, to quash the decision of the MOHA to issue the ATP in circumstances in which bias is alleged against the issuing minister. In fact, no objection has been taken on this basis, and rightly so.

[165] These are judicial review proceedings. In Guyana they are underpinned by the Judicial Review Act ('JRA') as well as by relevant common law. The impugned decision of the MOHA constitutes both an 'administrative act' and a 'decision' under the JRA.¹⁵¹ The Applicants qualify as entitled to seek this relief by this process as persons adversely affected by the decision of the MOHA.¹⁵² And clearly an allegation of bias falls within several of the grounds enumerated in s 5. Moreover, s 19 of the JRA specifically mandates, disjunctively, a prescriptive requirement for fairness in the exercise of the MOHA's powers under s 12 of the FOA: 'Any person or body in the exercise of an administrative act, to which this Act applies, *shall perform that act in accordance with the principles of natural justice or fairness.*' Finally, and to put matters beyond contention, the JRA prescribes that: 'This Act binds the State.'¹⁵³ There can therefore be no disputing jurisdiction.

[166] But what of prematurity? No party has raised the s 9 alternative remedy JRA bar.¹⁵⁴ Therefore, any general imposition of a 'prematurity bar' would be judicial imposition of a policy outwith the JRA, and in our opinion contrary to relevant constitutional standards, the rule of law, and current normative public law

¹⁵¹ Cap 3:06, s 2.

¹⁵² *ibid* s 4.

¹⁵³ *ibid* s 23.

¹⁵⁴ *ibid* s 9, 'The Court shall not refuse judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision.'

expectations for access to justice.¹⁵⁵ Any such rigid approach would be a most unfortunate development in Caribbean jurisprudence, harkening back to colonial and imperial approaches such as in *DPP v Nasralla*,¹⁵⁶ now long abandoned, and rightly so. Every case is to be considered and determined on its own facts, and bias objections are quintessentially case specific, to be understood and determined in light of Caribbean constitutional values and principles.

[167] In *Ferguson v Jeremie (Attorney General of Trinidad and Tobago)*¹⁵⁷, the Authority to Proceed (‘ATP’) issued by the Attorney General (‘AG, TT’) to initiate the process for the extradition of the claimants was challenged in judicial review proceedings on numerous grounds, including that the Attorney General was biased. The specific ground in relation to bias stated that the Attorney General’s decision was, at the least, vitiated by the appearance of bias given his past conduct towards the claimants and their past public pronouncements on the merits of the extradition request.

[168] The case for the claimants included that they were publicly known supporters of the United National Congress (‘UNC’) which had previously been in power, and they were now being persecuted by the ruling party, the People’s National Movement (‘PNM’) administration. They therefore asserted that the extradition was politically motivated. In the High Court, Bereaux J opined that the judicial review proceedings should have been brought upon completion of the committal hearing before the magistrate, but nevertheless undertook an evaluation based on the *Porter v Magill* test for apparent bias. He was of the opinion that the challenge was premature.

¹⁵⁵ See, for example, *A-G v Dumas* (2017) 90 WIR 507 (TT) at [120]–[127]. At [127] (Jamadar JA; upheld in the Privy Council): ‘... there is very good reason to adopt more relaxed standing rules for constitutional and public interest litigation, especially where it concerns and raises constitutionally related issues of unlawfulness and the observance of the rule of law.’

¹⁵⁶ *DPP v Nasralla* (1967) 10 WIR 299 (JM PC) (Lord Devlin); which posited the interpretation of fundamental rights chapters of Caribbean Constitutions as though they were a written down version of English common law. See also, Lord Diplock in *de Freitas v Benny* (1975) 27 WIR 318 at 244 (TT PC), which assumed that irrespective of what was actually stated in the fundamental rights provisions, there could be no inconsistency with English common law.

¹⁵⁷ *Ferguson v Jeremie* (n 79).

- [169] On appeal, before a very strong, subject matter competent, and unanimous panel (Warner, Archie, Mendonca JJA),¹⁵⁸ Bereaux J's opinion on prematurity was found to be erroneous and was not upheld. We agree with the approach taken by the Court of Appeal and the reasoning on this point in the opinion of Warner JA (a single unanimous judgment).
- [170] Some preliminary procedural sequencing is helpful, in terms of parallels between *Ferguson v Attorney General of Trinidad and Tobago*, and the instant appeal. The request for extradition was made to the Attorney General of Trinidad and Tobago (as per the local Extradition (Commonwealth and Foreign Territories) Act (Extradition Act TT). Following the request, and on 20 July 2006, the AG TT issued to the Chief Magistrate the ATP. The appellants were brought before the Chief Magistrate and released on bail, and the committal proceedings were fixed to commence on 12 October 2006. However, on 3 October 2006, the appellants sought leave to apply for judicial review in respect of the Attorney General of Trinidad and Tobago's decision to issue the ATP.¹⁵⁹ They also challenged the decision of the Chief Magistrate to issue warrants for their arrest. On 5 April 2007 (after a four-day hearing) Bereaux J dismissed the judicial review application.¹⁶⁰
- [171] On the prematurity issue, Warner JA situates the analysis in the context of the Trinidad and Tobago Extradition Act, and notes the following: i) '[p]lainly, extradition has serious implications for the human rights and in particular for the personal liberty, of the person who is the subject of a request for surrender';¹⁶¹ ii) the right balance must be struck between the interests and constitutional rights of the persons subject to extradition proceedings and the needs of international co-operation,¹⁶² and iii) that '[i]n extradition law the court must adopt a balanced

¹⁵⁸ *Ferguson* (n 34).

¹⁵⁹ They also challenged the decision of the Chief Magistrate to issue warrants for their arrest.

¹⁶⁰ In the instant appeal the bias objection was taken at the first opportunity before the magistrate and after the committal proceedings had begun, that is, at the commencement of the judicial committal stage of the extradition proceedings. And it was after the Magistrate had dismissed the bias issue that the current judicial review proceedings were commenced.

¹⁶¹ *Ferguson* (n 34) at [21] (emphasis added), citing with approval Gleeson CJ in *Vasiljkovic v Commonwealth of Australia* (2006) 227 CLR 614 at [32].

¹⁶² *Ferguson* (n 34) at [22], citing with approval Hale LJ and Moses J in *R v Secretary of State for the Home Dept, ex p Warren* [2003] EWHC 1177 (Admin) at [40], [23] respectively.

approach. Throughout extradition law there are two principal threads. First, in exercising powers of extradition courts of law must... be vigilant to protect individuals from the overreaching of their rights by the government. Justice to the individual is always of supreme importance. Secondly, ... it is an imperative of legal policy that extradition law must, wherever possible, be made to work effectively.’¹⁶³

[172] Against this backdrop, which is also apposite in the context of the instant extradition proceedings in Guyana, Warner JA explains that: i) ‘it was the duty of the Court to enquire into a complaint that its process was being abused even in the absence of a complaint, if it had cause to suspect that executive action was exercised irresponsibly’, ii) ‘the extradition judge now has statutory jurisdiction to ensure that the regime’s integrity is not usurped by “extraneous considerations”,’ and specifically in the context of an allegation of bias, ‘iii) an allegation of bias, like the plea of abuse of process, it must be raised at the earliest practicable opportunity.’¹⁶⁴ In light of this, the Court of Appeal ‘declined to determine the appeal on the basis of submissions on the prematurity issue, without adjudicating on the substantive issues raised by the appellants.’¹⁶⁵

[173] Not only is there no jurisdictional bar to when judicial review proceedings can be commenced to challenge the issuance of the ATP on the basis of the decision-maker’s bias or bias in the decision-making process, but in the circumstances of this case this application is not in fact premature. It is raised at an appropriate time and juncture in these proceedings. The allegations cannot be dismissed out of hand as frivolous and vexatious or an abuse of the court’s process. Indeed, as the jurisprudence from the Court of Appeal illustrates in relatively similar circumstances, the issues of bias raised before this Court *prima facie* cross the

¹⁶³ *Ferguson* (n 34) at [24] (emphasis added), citing with approval Lord Steyn (delivering the majority judgment) in *Cartwright v Superintendent of Her Majesty’s Prison* [2004] 64 WIR 1 (PC BS); the Privy Council rendering what it considered to be ‘the modern interpretative approach to extradition legislation’ (Warner JA) in a matter from Bahamas concerning extradition requests made by the United States of America.

¹⁶⁴ *Ferguson* (n 34) at [26], [27].

¹⁶⁵ *ibid* at [27], [28].

thresholds of arguability and realistic prospects of success, and demand serious consideration. In fact, this Court is unanimous that special leave should be granted in this matter.

[174] To dispose of this matter on the basis of it being premature can result in a serious miscarriage of justice and would in our opinion, amount to an egregious error of law. There is pragmatic good sense to the issue being raised at the earliest stage possible. If only because, if there is bias sufficient to vitiate the decision to issue the ATP by this MOHA, the sooner that this is considered and addressed, the more effectively and efficiently can these proceedings be dealt with. This so, in terms of judicial, human, economic, systemic, and social resources, and also in ways that are sensitive to the current social and political exigencies in Guyana around this matter, which cannot avoid its political implications. In the context of this matter, an arguable challenge of decision-maker or decision-making bias, is appropriately dealt with at the earliest opportunity.

[175] Indeed, and as advanced in this appeal, the failure to raise and take a bias objection at the earliest opportunity can result in a waiver of that argument and objection – see immediately below for our discussion on waiver. Thus, to suggest that it is premature in principle to raise bias objections in relation to the issuance of the ATP at the earliest opportunity during the judicial phase of extradition proceedings, would be to create a jurisprudential conundrum, and one that is at odds with the prevailing law on waiver in this area.

Waiver

[176] One of the arguments raised on behalf of the First Respondent was that the Applicants waived their right to object on the ground of bias. In support of this submission, Mr Mendes SC argued that the Applicants were ‘plainly aware’ of all the facts relevant to the issue of bias, namely the public statements made by the various government officials, prior to the issue of the ATP. Moreover, senior

counsel pointed to the fact that before the Minister had taken any action, the Applicants had even written to her twice – first to indicate their intention ‘to participate in the lawful extradition processes’ and the second time to invite her to consider the *Cotroni* principles in considering any extradition request from the US government. Far from objecting to the Minister, counsel argued, the Applicants actually engaged with her as the official responsible for extradition requests under the FOA, and having done so when in possession of evidence that would disqualify her on the ground of bias was sufficient to constitute waiver of their right to object to her dealing with the request.

[177] In response, the Applicants deny that they were in possession of all the facts, or that their correspondence with the Minister amounted to an unequivocal waiver by them of their right to raise an objection. As to the former, the Applicants point to the fact that it was only until after the proceedings commenced that they became aware of the participation by the Attorney General in the MOHA’s decision-making process, which, they claimed, vitiated her decision. Moreover, the Applicants stressed that they raised an objection to the MOHA on the ground of bias at the very first opportunity – which was at the first hearing on 31 October 2025. For these reasons, they submitted, the First Respondent did not discharge the burden of proving waiver.

[178] Since both parties invoked *Locabail (UK) Ltd v Bayfield Properties*¹⁶⁶ in relation to this issue, the test formulated in that case is a good place to start. The judgment of the Court of Appeal, which dealt with five consolidated applications for leave to appeal, was delivered by Lord Bingham CJ, Lord Woolf MR and Sir Richard Scott V-C. On the issue of waiver, the following was said:

...a party with an irresistible right to object to a judge hearing or continuing to hear a case may, as in other cases to which we refer below, waive his right to object. It is however clear that *any waiver must be clear and*

¹⁶⁶ *Locabail Ltd* (n 55).

*unequivocal, and made with full knowledge of all the facts relevant to the decision whether to waive or not.*¹⁶⁷

[179] Further on, they reinforced this standard by explaining:

If, appropriate disclosure having been made by the judge, a party raises no objection to the judge hearing or continuing to hear a case, that party cannot thereafter complain of the matter disclosed as giving rise to a real danger of bias. It would be unjust to the other party and undermine both the reality and the appearance of justice to allow him to do so.¹⁶⁸

[180] In the specific appeal where the question of waiver arose, the facts revealed that the applicant had had several opportunities to object but had done nothing – not after disclosure had been made, or during the hearing, or even after judgment was reserved. It was only when the judgment was handed down three-and-a-half months later and the applicant then learned that she had lost, that the complaint of bias was raised. The court viewed this belated objection as purely strategic and insisted that the law would not allow her ‘to have the best of both worlds’¹⁶⁹ – as in waiting to accept the fruits of judgment if successful but complaining only if not.

[181] This justification for a finding of waiver underpins many of the leading cases on the issue. In *Meerza*,¹⁷⁰ a recent decision of this Court, one of the grounds on which the Attorney General’s claim of bias failed was precisely because the State had been aware of the composition of the arbitration panel from the outset but only objected months after the proceedings had begun. The objection came long after the period for making objections under the governing UNCITRAL rules had expired, but aside from that fact, this Court noted the inherent unfairness in a party waiting to raise a complaint of bias only if the judgment is against it. Doing so may be a strategic move, but it is entirely self-interested and possibly even insincere. Certainly, it frustrates the possibility of corrective action, involves a

¹⁶⁷ *ibid* at [15] (emphasis added).

¹⁶⁸ *ibid* at [26].

¹⁶⁹ *ibid* at [69].

¹⁷⁰ *Meerza* (n 19).

waste of time and expense (since the proceedings are allowed to continue), and is ultimately unfair to those who do participate. This is why courts¹⁷¹ repeatedly refuse to allow allegations of bias to be raised belatedly by applying the doctrine of waiver – provided of course that the party complaining was aware of the facts giving rise to the possibility of bias.

[182] Since a finding of waiver would result in a party losing their right to object even if justified, what becomes important is the level of information possessed by a litigant, as that triggers the obligation to raise the objection of bias. In *Locabail*, a formidable court of appeal laid down that waiver could only apply where the party objecting had ‘full knowledge of all the facts relevant to the decision whether to waive or not’. No attempt to dilute this standard should be countenanced given the finality of its consequences. In a word, therefore, a party must be in possession of *full knowledge of all the relevant facts*, and fail to object at the earliest opportunity, before it can be said that it has lost its right to object.

[183] Applying these principles, the First Respondent has failed to make out a case of waiver by the Applicants. Of singular importance is that it cannot be said that the Applicants ‘plainly knew’ all the material facts relevant to the issue of bias. While the attacks directed at them by the various government officials were publicly made, and repeatedly so, that was only one dimension of the situation. Crucially, as the Applicants point out, they were not aware that the Attorney General – who described them as ‘criminals’ on multiple occasions, even as domestic charges had been filed and were underway – had played an integral role in the process. It was only when the proceedings were launched that the Attorney General disclosed that he had advised the First Respondent on several matters relating to the extradition request.

¹⁷¹ The identical rationale was offered in *Jones v DAS Legal Expenses Insurance Co Ltd* [2004] IRLR 218, cited by the First Respondent, where the court found as ‘striking’ the number of opportunities the litigant in that case had but passed up on to raise an allegation of bias.

[184] More importantly, however, is that the letters relied on by the First Respondent as giving rise to a waiver of their right do not meet the standard of being ‘clear and unequivocal’, as laid down in *Locabail*. The mere fact of engaging with the MOHA to provide their contact information and to request a domestic investigation of the allegations of bribery and other crimes are logical interactions given that this is the Minister whose portfolio encompasses matters of national security including providing oversight of law enforcement.

[185] It does not follow, however, given her proximity to those colleagues who constantly displayed their biases against the Applicants, that the MOHA would have solicited advice from one of them and still felt neutral enough to act on the request. In other words, launching a domestic investigation was squarely within the MOHA’s purview, but that did not mean that she was necessarily compelled to personally act on the request of the US government. Thus, whatever their interactions were with the MOHA, this cannot lead to an inference that they knew she would have personally issued the ATP, for it would have been quite reasonable to think in the circumstances that she might have thought it appropriate to delegate that function to someone else.

[186] In any event, the correspondence from the Applicants’ counsel is quite unequivocal in the other direction – indicating their intention to participate in the ‘lawful’ extradition processes. The letter of 6 October 2025, from Mr Dhurjon to the Second Respondent, in its material part, states as follows:

Please note that my clients have every intention to participate in the lawful extradition processes provided for under the Fugitive Offenders Act, Cap. 10:04 to vindicate themselves therein.¹⁷²

[187] The Applicants’ right to protection of the law would include at a minimum that the procedures deployed in relation to them be untainted by bias, so if it were to turn

¹⁷² Record of Appeal, , ‘Exhibit OW5 - Letter from Dhurjon Chambers Attorneys-at-Law on behalf of Nazar Mohamed and Azruddin Mohamed to Minister of Home Affairs (6 October 2025)’ 464-465.

out that there was substance to their claims, that would undermine the legality of the process. By their own communication, that was not a course agreed to by the Applicants and thus their correspondence is not nor cannot amount to a waiver of bias – quite the opposite in fact, given their express indication of participating only in ‘*lawful* extradition processes’.

[188] Ultimately, it is not without significance that the Applicants did not delay and at the earliest opportunity after learning that the Minister had issued the ATP, questioned its lawfulness on the ground of bias. There was no time wasted here or any strategic delay to gauge whether they might have benefited anyway (seeking, as in *Locabail*, the ‘best of both worlds’¹⁷³); rather, at the very first hearing of the matter, on 31 October 2025, the Applicants through their counsel raised the issue of bias.

[189] On these facts, therefore, it simply cannot be said that the Applicants were plainly aware of all the relevant facts, or that by their conduct they clearly and unequivocally waived their right to object on the ground of bias. For these reasons, we find that the First Respondent failed to establish waiver as alleged.

Bias and the Issue of an ATP by the Minister Pursuant to Section 12 of the FOA

[190] The relevant statutory provision that governs the issue of an ATP is to be found at s 12 of the FOA. An ATP arises from a request to ‘the Minister’ pursuant to s 9 of the FOA, following which ‘the Minister’ may issue an order to a magistrate signifying that a request for extradition has been received and requiring the magistrate to proceed with the extradition hearing.

[191] It is important to note that, whereas s 12(1) of the FOA provides that the Minister ‘may’ issue an authority to proceed (‘ATP’), s 70(1) of the UK Extradition Act

¹⁷³ *Locabail Ltd* (n 55) at [69].

2003 states that the Secretary of State ‘must’, subject to the grounds set out in subsection (2), issue such an authority (described there as a ‘certificate’). This contrast in language is not without significance, but its weight must be evaluated in its proper statutory context. Notably, the earlier UK Fugitive Offenders Act 1967, s 5(3), as well as s 7(4) of the UK Fugitive Offenders Act 1989 employed the permissive formulation ‘may’, thereby indicating that the conferral of a discretion at this stage of the extradition process had long been a feature of the legislative scheme governing extradition within the United Kingdom. In our view, the permissive formulation ‘may’ continues to inform the interpretation of s 12(1) of the FOA.

[192] It is also important to note that ‘the Minister’ is precluded from issuing an ATP where it appears to ‘the Minister’ that an order for the extradition of the person could not lawfully be made, or would not in fact be made, in accordance with the FOA. Although the FOA does not define or identify ‘the Minister’ to whom the function to issue the ATP is conferred, it is common ground that in Guyana, these responsibilities are exercised by the Minister of Home Affairs¹⁷⁴ (‘the MOHA’). For completeness, s 12 is set out in full.

12. (1) On receipt of a request under section 9 the Minister may issue an order in Form 1 (hereinafter referred to as "authority to proceed") signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.

(2) The Minister shall not issue an authority to proceed if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with this Act.

(3) Subject to this Act, no person shall be dealt with by a magistrate under this Act except in pursuance of an authority to proceed issued by the Minister.

¹⁷⁴ *King v Director of Prisons* (1992) 47 WIR 210 (GY CA).

[193] For present purposes, it should be noted that s 7 of the FOA provides that subject to the FOA, a person found in Guyana who is accused of an extraditable offence in any treaty territory (such as the United States of America), may be arrested and returned to that territory in accordance with the provisions of the FOA.

[194] Importantly, s 8 of the FOA stipulates the general restrictions on extradition, and provides as follows:

8. (1) A person shall not be extradited under this Act from Guyana to a Commonwealth country or treaty territory, or be committed to, or held in, custody for the purposes of such extradition, if it appears to the Minister, to the magistrate before whom he is brought in pursuance of a warrant issued under section 13, to the High Court, where an application under section 17 (1) or 19 (1) is made to that court, or to the Court of Appeal, having regard to any question of law arising in any appeal under section 21, that-

(a) the offence of which the person is accused or has been convicted is an offence of a political character;

(b) the request for extradition, though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, tribe, sex, religion, nationality or political opinions; or

(c) he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, tribe, sex, religion, nationality or political opinions.

[195] Further, the relevant provision of the FOA governing a request to ‘the Minister’ for the issuance of an ATP is found at s 9(2). That sub-section provides that a request for the extradition of a person to a treaty territory, where the person is suspected to be in Guyana, may be made to ‘the Minister’ by the persons specified in paragraphs (a) (b) and (c).

[196] The following extract from the Canadian case of *United States of America v Turner*¹⁷⁵ usefully describes an ATP:

The Authority to Proceed, either in its original or amended form as authorized by s.23(2), is therefore the foundation of, and has a controlling influence over, the extradition process, starting with the ministerial decision to seek extradition in the courts, extending to the resolution of the judicial phase of the hearing leading to an order for committal and continuing to the ministerial decision to surrender the person to the requesting state.

In addition to determining parameters of the extradition process, the Authority to Proceed also serves another important function. It gives notice to the person sought of the offence or offences under Canadian law in relation to which the Attorney General will be attempting to adduce evidence to justify a committal order.

[197] The Australian decision of *Vasiljkovic v Commonwealth of Australia*¹⁷⁶ is instructive. At [32] and [34], the High Court (Gleeson CJ) outlined the legislative framework underpinning the Australian Extradition Act 1988, and underscored the gravity of the extradition process, especially its significant implications for human rights, and in particular the personal liberty of the individual concerned. We think this passage of such importance that we will set it out in its entirety.

The Act is framed upon the assumption, which is consistent with international law and practice, and with constitutional theory, that it is the executive branch of government that conducts Australia's foreign relations, enters into treaties and other international arrangements concerning extradition, communicates with foreign governments, and responds to a request by another state to surrender a person who is found in Australia to be dealt with by that other state's criminal justice system, either by granting or refusing the request, or by complying with it subject to conditions. The interference with personal liberty inevitably involved in the process of extradition of an unwilling person requires legislative authority. It is the legislature that gives domestic legal effect to treaties and other arrangements made by the executive branch, and that decides the terms and conditions upon which the process of extradition may take place. In accordance with international practice, the Parliament has given the executive authority, subject to the requirements of the Act, the ultimate discretion, even if all other conditions are satisfied, to decide whether, and

¹⁷⁵ 177 CCC (3d) 397 at [16]–[17].

¹⁷⁶ (2006) 227 CLR 614.

upon what conditions, a person will be surrendered to a requesting state. The judiciary has the role assigned to it by the Act, which is primarily the determination of the eligibility for surrender, and dealing with questions of bail. The judiciary also has the power to enforce compliance by the executive authority with the Constitution, with the Act and with any other applicable laws...

Plainly, extradition has serious implications for the human rights and in particular for the personal liberty, of the person who is the subject of a request for surrender. Those implications are not limited to the case of a person who is an Australian citizen. The interference with the personal liberty involved in detention during the extradition process (if that occurs) and in involuntary delivery to another country and its justice system is not undertaken as a form of punishment. No doubt, to the person involved, some of its practical consequences may be no different from punishment, but the purpose is not punitive. To repeat, the process involves no adjudication of guilt or innocence. It is undertaken for the purpose of enabling such an adjudication to be made in a foreign place, according to foreign law, in circumstances where Australia has no intention itself of bringing the person to trial for the conduct of which the person is accused.

[198] We therefore consider that, when a request for the issuance of an ATP is received, ‘the Minister’ is under a positive duty to take into account the general restrictions on extradition set out in s 8 of the FOA. This includes, for example, whether the request for extradition, though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing the person on account of their race, tribe, sex, religion, nationality or political opinions. Accordingly, ‘the Minister’s’ discretion to issue an ATP is not simply a rubber-stamping exercise. We agree, however, with the submissions advanced on behalf of the MOHA that there is no requirement for her to make a positive finding that an extradition order would be lawful or would be made before proceeding. Even so, if it appears to her that an extradition order would be unlawful or would not be made, she is prohibited from acting.¹⁷⁷

[199] Returning to the question of whether bias can attach to the issuance of an ATP under s 12, we note that s 12(2) incorporates the fundamental principle of

¹⁷⁷ *Minister of Home Affairs Oneidge Walrond*, ‘Submissions on behalf of the First Respondent’, Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 10 April 2026, [33] iii.

lawfulness, which has inherent in it an assumption of an independent and impartial decision-maker and decision-making process.

[200] It was argued on behalf of the MOHA that in such a case as the present where ‘the Minister’ is engaged in the assessment and exercise of a discretionary decision-making statutory power, a lower degree of scrutiny ought to be employed. While it was accepted that the MOHA was not exempt from considering the factors set out in s 8, it was argued on her behalf that the rule against bias did not apply at the ATP stage. In support of this submission, considerable reliance was placed on *Franklin v Minister of Town and Country Planning* and related authorities,¹⁷⁸ which demonstrated that a highly relevant though not determinate consideration was whether the decision-making function was adjudicative in nature. That is to say, whether the decision-maker was engaged in the resolution of a dispute between parties, or in making a decision affecting the rights of anyone, or in making a determination on an issue or question which was binding.¹⁷⁹

[201] In *Franklin*, the English House of Lords held that in considering the report of the person who had conducted a public local inquiry under the New Towns Act 1946, following objections to an order made under that Act, the Minister of Town and Country Planning had no judicial or quasi-judicial duty imposed upon him. Accordingly, considerations of bias in the execution of such a duty were irrelevant, and the sole question was whether the relevant minister had genuinely considered the report and the objections. We understand this to mean that the Minister of Town and Country Planning was required only to approach the decision with an open mind (referred to before us as ‘the open mind test’). Lord Thankerton, delivering the judgment, emphasised the distinction to be drawn in relation to bias. He observed that bias in its proper significance denoted a departure from the standard of even-handed justice which the law required from those who occupied judicial office, or those who were commonly regarded as holding a quasi-judicial office,

¹⁷⁸ *Franklin* (n 4).

¹⁷⁹ See also *Murphy* (n 26) at [47]; *Imperial Oil Ltd v Quebec* (n 27); *Good Law Project* (n 28).

such as arbitrators. The rationale for this was clear: where a decision-maker was required to adjudicate between two or more parties, he must come to this adjudication with an independent mind, free from any inclination or bias towards one side or other.

[202] On the other hand, the Applicants placed reliance on *Ramdass v Minister of Finance*.¹⁸⁰ In *Ramdass*, the Privy Council considered whether the Court of Appeal of Trinidad and Tobago had correctly reversed the decision of the High Court judge, who refused to grant leave to Ms Ramdass to apply for judicial review. The Board, whilst recognising that it was common ground that both the Minister and the Cabinet of Trinidad and Tobago were under a duty to act fairly in exercising their public duties and functions, noted that the question raised by these proceedings was whether that duty extended to an obligation on the Minister and the Cabinet to be free from bias in making the decisions that were challenged by Ms Ramdass. Her case was that the context and the background to the impugned decisions, together with the role assumed by the Minister (with the approval of the Cabinet) in relation to the design and implementation of the investigation into her conduct, and the ongoing role that he would have in relation to it, made it arguable that the steps taken so far were vitiated by the Minister's bias.

[203] In *Ramdass*, Lady Simler, writing for the Board, at [50], set out the submissions advanced on behalf of the Minister and the Cabinet with respect to the ground of bias. Mr Mendes had submitted to the Board that the matters identified by the Court of Appeal were insufficient to give rise to the applicability of the rule against bias since the impugned decisions were neither judicial, quasi-judicial, or adjudicative in nature, and they did not affect, still less determined, the rights of anyone. He contended that there was a hard and fast principle of law that the rule against bias did not apply to non-adjudicative decisions and was inapplicable as a matter of law to the Minister's decisions in this case. Mr Mendes argued further that even if the Minister's motives might have been political or self-interested, the

¹⁸⁰ *Ramdass* (n 18) at [21].

fact remained that he merely made a recommendation to set up an investigation with the terms of reference specified. Moreover, the investigation team was itself independent, and the Respondent had not challenged the appointment or independence of any of its members. This effectively wiped the slate clean, Mr Mendes contended, and the rule against bias could not apply in this situation. Notwithstanding these contentions, Mr Mendes did concede that since bias could not be a proper purpose, if the Respondent's case of bias included an allegation of improper purpose, he could not resist the grant of leave on that ground.

[204] At [51] and [52], Lady Simler underscored that the rule against bias formed an essential requirement of procedural fairness or natural justice. She noted that in deciding whether it was arguable that the rule against bias applied to the decisions challenged in *Ramdass*, the question was not whether those decisions were of a certain type or category – whether judicial, quasi-judicial, or in some looser sense, adjudicative. She emphasised that the focus must remain on the facts of the case and the context in which the impugned decisions were taken. She further observed that the requirements of natural justice certainly applied to acts or decisions which produced legal results that in some way altered the legal position of the complainant to their detriment. She noted, however, that these requirements might also apply in the case of a preliminary stage which might not itself involve immediate legal consequences but might lead to acts or decisions which do. Accordingly, she expressed the Board's view that the protection of procedural fairness might therefore be required throughout a process from the preliminary stage onwards.

[205] It is of great interest to note that in *Ferguson v Attorney General of Trinidad and Tobago*¹⁸¹, discussed above, Warner JA noted at [49] that the law on the issue of bias was settled. It must be underscored that there was no hesitation on the part of the Court of Appeal in finding that the appropriate test on the question of whether bias could attach to the issuance of the ATP by the Attorney General of Trinidad

¹⁸¹ *Ferguson* (n 34).

and Tobago, was whether a fair-minded and informed observer, knowing all the facts would conclude that there was a real possibility of bias (see *Lawal*¹⁸², applying *Porter*¹⁸³).

[206] In *Ferguson*, as noted earlier, the appellants sought leave to apply for judicial review on several grounds including a challenge to the issuance of the ATP by the Attorney General. It was argued by the appellants that the Attorney General's decision to issue the ATP was vitiated by actual or apparent bias in the context of newspaper reports in which certain alleged comments were made by the Attorney General. The appellants further argued that the comments of the Attorney General demonstrated a predisposition and predetermination on his part to adopt an approach unfavourable to the appellants. Bereaux J at first instance had refused leave to the appellants to file judicial review proceedings on the ground of prematurity but had proceeded to consider whether a case was made out on the several grounds raised, including bias.

[207] Before the Court of Appeal, on the issue of bias, the appellants had contended that the Attorney General's comments, seen in the context of his overall political background, and his involvement in both the domestic investigation and prosecution of the appellants, and the civil proceedings against them in the United States, disqualified him from taking the decision to grant the ATP. It is to be noted that under the Extradition (Commonwealth and Foreign Territories) Act of Trinidad and Tobago¹⁸⁴ ('the Extradition Act'), the Attorney General was the functionary authorised to issue the ATP pursuant to s 9(7) of the Extradition Act, a provision similar to s 12(2) of the FOA.

[208] Returning to the fair-minded observer test, Warner JA noted that the fair-minded observer must be assumed to have considered all the facts of the case, and the provisions of the Trinidad and Tobago legislation, as well as the relevant Treaty.

¹⁸² *Lawal v Northern Spirit Ltd* [2004] 1 All ER 187.

¹⁸³ *Porter* (n 6).

¹⁸⁴ Chap 12:04.

That observer must be assumed to have distinguished what was relevant and irrelevant. Coming to the conclusion that the fair-minded observer would not consider it inappropriate for the Attorney General to have liaised with the United States authorities, in the circumstances of the case, Warner JA observed that it was important to consider the Attorney General's statutory mandate. She underscored that the fair-minded observer would have to be satisfied that the request for the ATP conformed with s 9(2) of the Extradition Act.

[209] Warner JA also cited the Canadian decision of *United States of America v Cobb*¹⁸⁵ in which the impugned comments in the media in an extradition case were ascribed to the prosecutor in the United States, who in a television interview stated that those who chose to fight extradition were only making matters worse for themselves. They would serve longer sentences and would be the subject of homosexual rape. The American judge assigned to the case hinted that conspirators who did not co-operate, if found guilty, would get maximum sentences. Based on these comments, the extradition judge refused to order committal of the appellants and stayed the extradition proceedings, even though the US had presented a prima facie case against them.¹⁸⁶

[210] On appeal, the Supreme Court of Canada reinstated the order of the extradition judge to stay the proceedings, which had been set aside by the Court of Appeal. The Supreme Court observed that the issues before them involved a liberty and security interest, and therefore s 7 of the Canadian Charter of Rights and Freedoms¹⁸⁷ was engaged. Moreover, the proceedings must be conducted fairly and must conform with the principle of procedural fairness that governs all judicial proceedings in Canada. The Supreme Court underscored that s 7 permeated the entire extradition process, and was engaged, albeit differently, at both stages of the

¹⁸⁵ [2001] 1 SCR 587.

¹⁸⁶ The Court of Appeal set aside the stay and remitted the matter to the extradition judge, ruling that the extradition judge should not pre-empt the discretion vested in the Minister of Justice to surrender the fugitive in the discharge of Canada's treaty obligations. No such decision has been issued as the Minister has deferred making a decision on surrender pending completion of the appeal against committal.

¹⁸⁷ Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

process. This was therefore a clear and obvious case of an overly adversarial stance which gave rise not only to apparent bias but compromised the integrity of the court of the requesting state and court proceedings there and so gave rise to abuse of process.

- [211] In concluding on the issue of whether bias had been made out against the issuance of the ATP, at [58], Warner JA expressed the view that although the comments of the Attorney General demonstrated overzealousness, the imputed circumstances were not at all of the '*Cobb*' magnitude. Having regard to the Attorney General's function under the Extradition Act and the relevant Treaty, the fair-minded and informed observer would not have concluded that there was actual or apparent bias.
- [212] Also, in another matter involving the same litigants, *Ferguson v Attorney General*, the Court of Appeal of Trinidad and Tobago (a different but equally strong panel comprising Kangaloo, Mendonca, Weekes JJA) reviewed the High Court's refusal of leave to apply for judicial review to challenge the decision of the Attorney General to return the claimants to the US. This application was made after the completion of the committal hearing and the habeas corpus proceedings. Regarding bias, the allegation was that the Attorney General had received advice from an attorney-at-law who acted for the requesting state when the Attorney General made his decision (given to him by statute).
- [213] On these facts, the Court of Appeal found that an arguable ground/prima facie case of apparent bias for the purposes of leave had been established. In its opinion bias would apply even if the decision was of a purely executive or administrative nature. This because, i) the question of bias is of general application in public law and is not limited to judicial or quasi-judicial bodies or proceedings, and ii) in any event, 'the decision of the attorney general which impacts on the liberty of the Appellants should demand the highest standards of rectitude and should not be tainted by bias or the appearance of it.' Also relevant, is that the Court of Appeal

was clear that: ‘It is well established that those who sit in an advisory capacity to an adjudicating body ought not to serve, or appear to serve, an adverse interest,’ and that the relevant test was the *Porter v Magill* fair-minded and informed observer test. Noteworthy, for the circumstances of the appeal before this Court, is the recognition that when it comes to apparent bias advisors are also implicated.

[214] Returning to *Metropolitan Properties Co (FGC) Ltd v Lannon*¹⁸⁸ cited earlier in this opinion, we do not suggest that that case is factually on all fours with the instant matter, as the defendant (Lannon) was both the adjudicator and advice-giver. However, what this case establishes in 1968, is the principle and approach to the effect of apparent bias where (i) there is an obligation on a decision-maker to have reasonable or reasonably justifiable grounds (whether prescribed by statute or not) for making a discretionary decision, and (ii) from the nature of the power to be exercised, especially when it is to be so exercised in relation to the treatment of an individual, one can infer from the content of the duty itself (and not just from the office of the decision-maker) judicial-like elements and/or considerations.

[215] In *Ridge*¹⁸⁹ Lord Reid undertook a comprehensive analysis of the relevant case law including cases that applied the *Franklin* principle, explaining the misunderstanding and misapplication of the 1924 judgment of Atkin LJ in *R v Electricity Commissioners, ex p London Electricity Joint Committee Co (1920) Ltd*.¹⁹⁰

[216] In summary, Lord Reid made several relevant observations¹⁹¹ about applying the principles of procedural fairness to ‘the wider duties imposed on Ministers and other organs of government by modern legislation.’ First, he noted that, as at 1964, ‘we do not have a developed system of administrative law.’ Second, where a decision concerns ‘a single isolated case’ and policy considerations play a part, the

¹⁸⁸ *Metropolitan Properties Co* (n 124).

¹⁸⁹ *Ridge* (n 134).

¹⁹⁰ [1924] 1 KB 171 at 947–949.

¹⁹¹ *Ridge* (n 134) at 71, 72, 76.

question is how the individual concerned should be treated; in such circumstances, it is necessary to ‘observe the essentials of... the principles of [procedural fairness].’ This was to be distinguished from cases in which ‘a minister is considering whether to make a scheme for, say, an important new road.’ Third, the relevant test is whether, and to what extent, the powers being exercised affect the treatment of individuals or property rights. Where they do, those powers may assume the character of ‘powers to be exercised judicially and not ministerially’, a conclusion to be inferred ‘from the nature of the duty itself.’ Here, we use the contemporary language of ‘procedural fairness’, rather than ‘natural justice’, to avoid confusion and to maintain consistency in the use of terminology, since, for all practical purposes in administrative law, the two expressions are the same.

- [217] Thus, *Ridge* reasserts that the public law standards of ‘procedural fairness’ are to be applied broadly to administrative decisions affecting rights and interests; and in doing so critiques an uncritical and inapt application of the narrower approach in *Franklin’s* case.
- [218] We bear in mind the Constitution of the Co-operative Republic of Guyana, in particular the rights enshrined in art 139 (protection of the right to personal liberty) and art 144 (provisions securing protection of the law), as well as the Preambular Clause 4, wherein the people of Guyana resolve to forge a system of governance that promotes concerted effort in order to develop a harmonious community based on democratic values, social justice, fundamental human rights, and the rule of law.
- [219] It has been conceded by the Attorney General that the guarantees under art 144 apply to extradition proceedings, although it was contended that not all art 144 rights may be engaged in every case. We also bear in mind the dicta of the High Court of Australia in *Vasiljkovic*¹⁹² that extradition carries serious implications for the human rights, particularly, for the personal liberty of the person who is the

¹⁹² *Vasiljkovic* (n 176) at [34].

subject of a request for surrender. We would add that this consideration extends to a person in respect of whom an ATP is issued pursuant to s 12(2) of the FOA.

[220] Further, any attempt to resist its application on the basis that the ATP only starts the extradition process is misplaced, insofar as such a critique entirely overlooks the reality that once the process is commenced there are immediate and serious implications for a range of human rights. The ATP is invariably followed by the issuance of a warrant for the arrest of the individual concerned, whose freedom is then put at risk. Indeed, in this case while the Applicants were granted bail, the Vice President sharply criticised the magistrate for doing so.¹⁹³ In addition, a person subject to extradition proceedings will inevitably experience restraints on their ability to move freely in and out of the jurisdiction, as well as the trauma of court proceedings, these being significant restraints on an individual's rights.

[221] In the circumstances, we are satisfied that the rights guaranteed under the Constitution of Guyana permeate the entire extradition process. Accordingly, where such rights are implicated, we are of the view that a heightened standard of scrutiny must be applied. In this context, the 'open mind' test articulated in *Franklin* is inapplicable. We therefore agree that the rule against bias is capable of applying to the issuance of an ATP under s 12 of the FOA and that the fair-minded and informed observer test is appropriate.

General Social Context

*'Who knows what the history of Guyana could have been, had the colonial intervention not taken place. Certainly, concepts of democracy and the power of the people got severely set back under the colonial governance strategies.'*¹⁹⁴

¹⁹³ Record of Appeal, 'Azruddin Mohamed, Affidavit in Support of Notice of Application' [116], and see also the discussion below at [365].

¹⁹⁴ *A-G of Guyana v Richardson* [2018] CCJ 17 (AJ) (GY), (2018) 92 WIR 416 at [33] (Byron P).

[222] The CCJ has recognised that social context is important in decision making.¹⁹⁵ The facts set out in this section are well known to informed citizens of Guyana. For the people of Guyana, these extradition proceedings are at one and the same time both legal proceedings and political unfoldings. Legal for obvious reasons, and political because one of the Applicants is the current leader of the opposition and the other is his father. We consider this general social context narrative a relevant backdrop to the important constitutional standards and processes that this Court is called upon to determine in this appeal. Law, after all, cannot be divorced from social realities if it is to have relevance for real people, in particular societies, at particular points in time. The law must not only make sense for them, but it must also inspire confidence in governance structures, including judicial governance.

[223] No less significantly, the test for bias that we consider applicable is the *fair-minded informed observer* test. For that test to have relevance in a case such as this, it must be applied having regard contextually to a Caribbean fair-minded and informed observer. Given that this notional observer must be presumed to have two characteristics: full knowledge of the material facts and fair-mindedness, it stands to reason that this observer must be localised, in this case, notionally as Guyanese.¹⁹⁶ Indeed, as Kirby J explained about the notional observer in *Johnson v Johnson*,¹⁹⁷ such a person is ‘a reasonable member of the public (who) is neither complacent nor unduly sensitive or suspicious.’ Which begs the rhetorical question: a member of which public?

[224] This narrative is compiled from the observations of this Court in prior decisions, from reputable sociologists, historians, political scientists, and legal academics in the Caribbean, as well as from documents in the public domain, all of which permit judicial notice to be taken of them. Not everyone may agree with all of it, and some

¹⁹⁵ *ibid* at [60], [70], [78]–[84]; *McEwan* (n 98) at [29]–[34].

¹⁹⁶ See also *Belize Bank Ltd v A-G of Belize* (2011) 80 WIR 97 (BZ PC) (Lord Dyson) at [65], [76]. To wit at [76]: ‘The issue is whether the fair-minded and informed Belizean would conclude that there was a real possibility that the Appeal Board would be biased. In determining this question, the Board should recognise that the judges of Belize are better equipped than we are to assess how the fair-minded and informed Belizean would view matters ...’; and compare per Lord Brown at [113].

¹⁹⁷ [2000] 201 CLR 488 at 509. And see also, Lord Steyn in *Lawal* (n 182).

aspects when narrated can be experienced as uncomfortable, but as we say in the Caribbean ‘facts are facts’, and thus, ‘when rain fall sheep and goat have to mix.’¹⁹⁸ Indeed, as this narrative will explain, public trust in the law – especially when it intersects with politics, is of seminal importance in Guyana at this juncture in its history. The actions and interpretations of political offices in executive positions exercising discretionary statutory powers, accordingly and contextually inform a fair-minded and informed Guyanese observer.

[225] To be clear, the fair-minded and informed observer in Guyana would know these facts and circumstances and would in this case, being so aware, consider and sift them for salience and relevance. In the end, even if they are not considered determinative, this does not mean that their due consideration is irrelevant. Indeed, to state them, consider them, and evaluate them, speaks to relevance, irrespective of whether they are ultimately discounted or applied, given the applicable test for bias that we have determined as appropriate.

[226] Guyana, described by University of the West Indies (‘UWI’) Professor Tracy Robinson as ‘the Anglo-Caribbean’s most fragile democracy’,¹⁹⁹ has endured an arguably turbulent history, one dominated by intractable racial divisions. This has in turn spawned both social and political instability, including inter-communal violence at times, leaving an enduring legacy of deep mistrust among the various ethnic groups for and against each other. Equally well-known are the historic roots of this division, which was actively cultivated by foreign powers to further their own economic and geopolitical interests. In this section we sketch, in very general terms, the origins and legacies of this enduring racial discord.

[227] The seeds of racial division were sown at the outset of the arrival of Indians in 1838. Trafficked by the British to supply sugar plantations with cheap labour, Indian indentureship undercut the ability of freed Africans to command a living

¹⁹⁸ Used to describe a reality in which everyone has to share an uncomfortable situation together.

¹⁹⁹ Tracy Robinson, ‘Judicial Leadership in a Divided Society’ in Erin F Delaney and Roasind Dixon (eds), *Elgar Companion to Female Chief Justices in Comparative Perspective* (Edward Elgar Publishing 2026) 361.

wage for their services, and in this an historic mistrust between these two groups was born. As indentureship accelerated over the next century, Indians came to outnumber Africans, and with that originated the latter's fears that this demographic change would herald Indian hegemony and African exclusion.²⁰⁰

[228] However, the severe economic hardships of the early to mid-twentieth century in British Guiana awakened a broad and multi-racial consciousness among the population, leading to vibrant trade union movements and eventually the founding in 1950 of the Peoples Progressive Party ('PPP') by Cheddi Jagan and Forbes Burnham – both highly educated and charismatic professionals. In the first election held after an expanded franchise in April 1953, the PPP secured a landslide victory, winning 18 of the 24 legislative seats.²⁰¹ This grassroots triumph and display of racial unity was not to last.

[229] Barely four months into its term, the British government evicted the democratically elected government by executive order, dispatching troops on the basis of forestalling arson and unrest, though in reality life in the colony was as normal as ever. A state of emergency was declared, assemblies banned, and in a coup d'état from above, the Constitution suspended.²⁰² The declared emergency facilitated suppression of civil liberties, including imprisonment of key political leaders, but the most damaging of imperial machinations was that of engineering the split in the PPP along racialised lines. Burnham departed to found the Peoples National Congress ('PNC') and thereafter each party drew support from the ethnic base of the respective leaders.²⁰³ According to one of Guyana's pre-eminent historians, the rupture between Jagan and Burnham 'was not merely a "divide and rule" tactic; it was an astute exploitation of the seeds of ethnic division...'.²⁰⁴

²⁰⁰ Walter Rodney, *A History of the Guyanese Working People, 1881-1905* (Johns Hopkins University Press 1981) ch 7.

²⁰¹ Cheddi Jagan, *The West on Trial: My fight for Guyana's Freedom* (Hansib Publications Ltd 1997).

²⁰² *ibid.*

²⁰³ Racial insecurities have plagued Guyanese political life ever since, framed by the rallying cry of 'apaan jhat': Deryck R Brown, 'Ethnic Politics and Public Sector Management in Trinidad and Guyana' in Selwyn D Ryan and Ann Marie Bissessar, *Governance in the Caribbean* (SALISES, University of the West Indies 2002) 117. The sentiment has been sufficient to galvanise each of the two major constituencies to vote along racialised lines, irrespective of actual performance in office, in the hope that their own interests (primarily but not exclusively economic) would be prioritised by a government reflecting their ethnicity.

²⁰⁴ Clem Seecharan, 'Whose Freedom at Midnight? Machinations Towards Guyana's Independence, May 1966' (2008) 97(398) *The Round Table* 719, 720.

[230] While the PPP won the next two elections – in 1957 and 1961 – the turbulence did not abate but continued with a nuanced twist. Jagan’s embrace of Marxist ideology and overt admiration for Castro’s successes heavily influenced his agenda that prioritised economic upliftment and social transformation across all dividing lines. Such inclinations were anathema to American and British interests, coming as they did during the height of the Cold War.²⁰⁵ Determined to prevent another Cuba and to forestall further Soviet influence within its hemisphere, the US government, with the support of the British, fomented and underwrote a programme of destabilisation that included strikes and social unrest.²⁰⁶ The latter included riots and even racialised violence, primarily between African and Indian Guyanese.²⁰⁷

[231] Whatever may have been Burnham’s private sensibilities (and history would show he was as ardent an admirer of Cuba and as anti-imperialist as was his rival), he was much more circumspect in his public persona, making him more palatable to both the colonial overlords and the Portuguese constituency which was strongly Catholic and equally apprehensive of communism’s spread in the colony. In his meticulously researched account of this period, American professor of history Stephen Rabe documents the evidence of Central Intelligence Agency’s (‘CIA’) involvement in the colony’s affairs to forestall independence under a PPP government, including its financing of labour unrest, race riots and general civil unrest. In Rabe’s frank appraisal:

By the end of 1962, the Kennedy administration had gone a long way toward accomplishing the U.S. goal of destabilizing the Jagan government. It had damaged the colony’s economy with the February 1962 strikes. It had also helped create a political climate of fear and tension between Indians and blacks. The administration had further found a Guyanese political leader who would seemingly do the U.S. bidding. What the administration needed was to ensure that the United Kingdom not waver from its pledge to remove the Jagan government from office. It would take two more years of covert intervention in British Guiana and constant U.S.

²⁰⁵ *ibid* at 722–725; Lily Ramcharan, *The Cold War in the Third World: Guyana 1953-1989* (1997) 30–45.

²⁰⁶ Stephen G Rabe, *US Intervention in British Guiana: A Cold War Story* (University of North Carolina Press 2005) 75–103.

²⁰⁷ *Report of a Commission of Inquiry into Disturbances in British Guiana in February 1962*, Colonial No 354 (HMSO 1962).

pressure on the United Kingdom for the United States to achieve the dubious distinction of putting Forbes Burnham and the PNC into power.²⁰⁸

[232] Integral to the plan to unseat Jagan was a change in the electoral system from ‘first-past-the-post’ to proportional representation. That finally succeeded in a PPP defeat at the general election in 1964, ushering in a coalition between Burnham’s PNC and the Portuguese-dominated third party, the United Force (‘UF’).²⁰⁹

[233] However, the union with the UF was short-lived, and, according to many political scientists, commentators and academics, elections thereafter – in 1968, 1973, 1980 and 1985 – were successively rigged.²¹⁰ Burnham’s era, albeit visionary in its goals of domestic self-sufficiency and international non-alignment, was marked by economic collapse and increasing totalitarianism.²¹¹ As shelves emptied, foreign exchange dried up, and poverty intensified, the haemorrhaging of Guyanese began in earnest – to North America, the UK, neighbouring Venezuela and Suriname, and any and all of the Caribbean islands. As described by University of Guyana Professors Rudy James and Harold Lutchman, the former being the leading authority on Guyana’s constitutional arrangements, during this period the State deployed the full range of its coercive powers to ensure that the inevitable dissatisfaction would not escalate into any meaningful threat to its survival. This meant the restriction of fundamental rights, particularly those relating to free expression, assembly and association, and political dissent in general, together with the manipulation of the judiciary.²¹²

²⁰⁸ Rabe (n 206) 103.

²⁰⁹ Seecharan (n 204) 725–729.

²¹⁰ Ralph R Premdas, *Ethnic Conflict and Development: The Case of Guyana* (Ashgate Publishing Ltd 1995); Kate Quinn, ‘Colonial Legacies and Post-Colonial Conflicts in Guyana’ in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2017) 10 at 19–20.

²¹¹ Kate Quinn, ‘Colonial Legacies and Post-Colonial Conflicts in Guyana’ in Rosemarijn Hoefte, Matthew L Bishop and Peter Clegg (eds), *Post-Colonial Trajectories in the Caribbean: The Three Guianas* (Routledge 2017) 19–24; see also Andrew Morrison, *Justice: The Struggle for Democracy in Guyana 1952–1992* (Red Thread Women’s Press 1998).

²¹² Rudolph W James and Harold A Lutchman, *Law and the Political Environment in Guyana* (IDS, University of Guyana 1984) 163–165.

- [234] A damaging and enduring outcome of this period was the imposition²¹³ of a constitution in 1980 that inaugurated a new political system, which ushered in a radical break from the Westminster parliamentary model. A semi-presidential system was established in which power was concentrated in the executive, and more particularly in an executive president clothed in monarchical immunities dominating every branch and institution of government.²¹⁴ This was the origin of an authoritarian tradition that would prove impossible to overcome, even after its architects had long departed from the scene.²¹⁵
- [235] To provide only a few examples from caselaw and academic commentary in and about the 1980s, newsprint was restricted ostensibly because of a foreign exchange crisis. Together with State control of the media, both print and radio, this left virtually no space for the circulation of dissent. A constitutional challenge to the denial of newsprint by an opposition-run newspaper failed on account of the Court of Appeal's application of a 'direct impact' test, which protected governmental action based on its (supposed) intent in spite of its actual consequences, however severe.²¹⁶ Opposition rallies were routinely broken up by paid thugs, with participants sometimes charged,²¹⁷ while prominent members of the Opposition were highly surveilled, harassed, and even frustrated in attempts at travelling abroad.²¹⁸ In keeping with totalitarian traditions, a public show of loyalty was imperative, and such was the reach of the State that plainclothes police were routinely dispatched to cinemas to arrest patrons who refused to stand during the National Anthem at the commencement of each show.²¹⁹
- [236] Critical to the maintenance of authoritarianism was the control of the judiciary. As early as 1973, appeals to the Privy Council were abolished, leaving just one layer

²¹³ Rajendra Chandisingh, 'Guyana's New Constitution and the Elections of 1980: A Case of Peoples' Power?' (1982) 15(2) Law and Politics in Africa, Asia and Latin America 145, 158.

²¹⁴ James and Lutchman (n 212).

²¹⁵ Evidence of this exists in the fact that calls for constitutional reform to moderate the power of the presidency and remove Presidential immunities have never succeeded, and these remain intact even after the extensive CRC process of 1999-2002: see discussion below at paras. 241 - 243 and note also *Quinn* (n 211).

²¹⁶ *Hope v New Guiana Co Ltd* (1976) 26 WIR 233 (GY CA).

²¹⁷ *Ramson v Barker* (1982) 33 WIR 183 (GY CA).

²¹⁸ James and Lutchman (n 212) 39.

²¹⁹ *Kendall v Khan* (1979) 26 WIR 433 (GY HC).

of appeals terminating at the Court of Appeal of Guyana.²²⁰ Executive domination²²¹ of the judiciary occurred through direct and indirect methods, beginning with the appointment and promotions process. The creation of the position of Chancellor of the Judiciary, while presented as mere nomenclature, resulted in bypassing and thus the effective demotion of the most senior Judge at the time – Sir Joseph Luckhoo, an Indo-Guyanese and jurist of unimpeachable character.²²² Such machinations inevitably impacted negatively on judicial independence, as documented, for example, by former UN High Commissioner for Human Rights, Bertrand Ramcharan.²²³

[237] Control of the justice system was significantly advanced with the enactment of the Administration of Justice Act in 1978, by which all criminal offences, save for a handful of the most serious, were converted into hybrid offences – that is, triable either on indictment or summarily. Moreover, under the Administration of Justice Act, the election of how an indictable offence would be tried was taken away from the accused person and left to the discretion of the magistrate before whom the initial arraignment would occur. The result of these changes was that the safeguard of jury trials was removed in all but a handful of extreme cases, clearing the way for politically motivated prosecutions against opponents of the government before handpicked magistrates.²²⁴ According to Percy Hintzen and Ralph Premdas, commenting on these developments, ‘...the judicial system became integrated into the regime’s coercive arsenal to be used against political dissidents arrested and charged with trumped-up offences by the loyal security forces.’²²⁵

²²⁰ Constitution (Amendment) Act No 19 of 1973, s 4 (GY).

²²¹ More accurately this was (political) party domination, because of Burnham’s doctrine of party paramountcy, which even resulted in the PNC party flag being flown over the Court of Appeal: Quinn (n 211) 20.

²²² Ralph Ramkarran, ‘Impending Changes in the Judiciary’ *Stabroek News* (Georgetown, 11 October 2015) < <https://www.stabroeknews.com/2015/10/11/sunday/conversation-tree/impending-changes-in-the-judiciary/> > accessed 20 May 2026.

²²³ Bertrand Ramcharan, *The Guyana Court of Appeal: The Challenges of the Rule of Law in a Developing Country* (Cavendish Publishing Ltd 2002).

²²⁴ Percy C Hintzen and Ralph R Premdas, ‘Guyana: Coercion and Control in Political Change’ (1982) 24(3) *Journal of Interamerican Studies & World Affairs* 337, 348–350.

²²⁵ *ibid* 349.

- [238] The ‘state-organised assassination’²²⁶ of Walter Rodney on 13 June 1980, ranks as a particularly low point, though this was only one of the political murders of this period.²²⁷ Rodney, widely regarded as a brilliant historian, visionary thinker and gifted orator,²²⁸ had cut short an illustrious academic career abroad to return to Guyana in the mid-70s. Once there, he founded the Working Peoples Alliance (‘WPA’) along with a cadre of equally principled and courageous Guyanese at home, energising a hitherto desultory Opposition. Rodney was able to do the unthinkable at that time, which was to attract broad, multi-racial support, evidenced by the huge crowds he garnered at his electrifying public rallies. His brutal removal from the scene demonstrated the lengths the regime would go to protect itself, and it had the effect of dampening serious opposition for years.²²⁹
- [239] It was not until Burnham’s unexpected death in 1985 that the repressive climate slowly began to lift, largely due to the approach of his successor, Desmond Hoyte.²³⁰ By the late 1980s when the Soviet Union splintered, the Cold War ended, and Guyana’s strategic importance waned – temporarily at least – it was considered by many no longer in the interest of Western powers to keep the PPP at bay. The convergence of these events led to the freeing up of the environment, enabling the re-birth of a nascent civil society, including the launch of what was to become, arguably, the country’s leading independent daily, the *Stabroek News*, and all this in turn awakened opposition.²³¹ The latter crystallised in and was led by a civic movement called GUARD, largely at the impetus of the Guyana Human

²²⁶ This was the conclusion of the Cheltenham Commission of Inquiry, which presented its Report in 2016: ‘Rodney was Victim of State-organised Killing, PM Burnham had to have Known – Col Finds’ *Stabroek News* (Georgetown, 20 February 2016) < <https://www.stabroeknews.com/2016/02/20/news/guyana/rodney-victim-state-organised-killing-pm-burnham-known-coi-finds/> > accessed 20/07/2026.

²²⁷ The US Department of State’s analysis of this period summarises it as follows: ‘From December 1964 until his death in August 1985, Forbes Burnham ruled Guyana in an increasingly autocratic manner, first as prime minister and later, after the adoption of a new constitution in 1980, as executive president. During that timeframe, elections were viewed in Guyana and abroad as fraudulent. Human rights and civil liberties were suppressed, and two major political assassinations occurred: the Jesuit Priest and journalist Bernard Darke in July 1979, and the distinguished historian and WPA Party leader Walter Rodney in June 1980. Agents of President Burnham are widely believed to have been responsible for both deaths.’ US Department of State (Archived Content), ‘Guyana (05/07)’ < <https://2009-2017.state.gov/outofdate/bgn/guyana/85054.htm> > accessed 20/07/2026.

²²⁸ Note the variety of articles devoted to the 50th anniversary of his magnum opus, written while he was still in his 30s. See for eg, David Scott, *Between Revolution and Repair: How Europe Underdeveloped Africa in a Caribbean Intellectual Tradition* (2023) 27(3) *Small Axe* 66.

²²⁹ Rupert Lewis, *Walter Rodney* (UWI Press 2024); Leo Zeilig, *A Revolutionary for Our Time: The Walter Rodney Story* (Haymarket Books 2022).

²³⁰ Ivelaw L Griffith, ‘Political Change, Democracy, and Human Rights in Guyana’ (1997) 18(2) *Third World Quarterly* 267.

²³¹ Anna Benjamin, *Freedom of Expression and the Birth of Stabroek News* (Guyana Publications Inc 2007) 65–77.

Rights Association, and together with an energetic NGO monitoring electoral issues called the Electoral Assistance Bureau, the momentum towards democracy was sustained.²³² As crucial electoral reforms were gradually enacted, the 1992 general election resulted in a PPP victory, enabling Cheddi Jagan's return to power.

[240] A second consecutive PPP/C electoral victory in December 1997 inflamed longstanding fears held by the African-descended segment of the population of permanent political and economic exclusion and Indian hegemony, leading (not for the first time) to demonstrations, looting, and racialised violence. The unrest only ended after the intervention of representatives of the intergovernmental Caribbean Community ('CARICOM'). The brokered truce, dubbed the 'Herdmanston Accord' after the site of the talks, mandated constitutional reform within a strict time frame and fresh elections immediately after, truncating the PPP/C's term by almost two years.²³³ In light of the country's troubled past, it was clearly the hope that constitutional reform would correct the power asymmetries while introducing more inclusive forms of governance, thereby forestalling future conflagrations.

[241] The Report of the Constitutional Reform Commission ('CRC'), which was presented to the National Assembly in July 1999, proposed detailed recommendations, the majority of which were implemented over the following two years, from 2000–2001, by approximately 10 statutes amending the Constitution.²³⁴ However, Professor James has argued in a detailed analysis that despite a few efforts to establish greater inclusivity in some areas of governance, the bulk of the reforms were palliative – focused on the margins – leaving untouched the constitutional structure of the country with all its systemic enabling tendencies towards authoritarian rule.²³⁵

²³² Ralph R Premdas, 'Guyana: The Critical Elections of 1992 and a Regime Change' (1993) 6(1) Caribbean Affairs 111.

²³³ Hari N Ramkarran, 'Seeking a Democratic Path: Constitutional Reform in Guyana' (2004) 32 Georgia Journal of International & Comparative Law 585, 595–597.

²³⁴ For an overview of the CRC process, see *Richardson* (n 194) at [38]–[41].

²³⁵ R W James, 'The Constitution of Guyana: A Study of its Dysfunctional Application.' (2006) 35-36 Transition Journal 1.

- [242] Indeed, none of the changes coming out of the CRC process interfered with the highly presidentialised nature of Guyana's hybrid constitutional system. Power remained concentrated in an executive President, whose control over Cabinet and the wider executive, including the civilian bureaucracy, was left undiminished. Likewise, Parliament remained subordinate to the presidency in crucial respects.²³⁶ As for the judiciary, public trust apparently remains low, as measured by independent United Nations' mechanisms²³⁷ and local, informed commentators.²³⁸
- [243] Further, in spite of the constitutional changes following the 1999-2001 CRC process, the decade following witnessed continued upheaval. The causes and manifestations were in the perennial social and political divisions,²³⁹ perceptions of state capture of the economy alongside marginalisation of businesses perceived to be independent,²⁴⁰ and a resurgence of racialised violence.²⁴¹ Around this time, University of Guyana political science lecturer and newspaper columnist Freddie Kissoon pioneered the description of Guyana as an 'elected dictatorship',²⁴² which was taken up by prominent academics such as Tarron Khemraj who nuanced the description of Guyana being transformed into an 'elected oligarchy'.²⁴³
- [244] Barely one year after the last of the constitutional reforms were enacted, the country descended once more into a protracted period of racial bloodletting, precipitated by a catastrophic jail break in 2002, and the communal violence it unleashed was on a scale the country had never experienced before.²⁴⁴ A Stabroek

²³⁶ For example, it was still subject to dissolution and prorogation by the President, the President could still frustrate its legislative agenda by returning Bills for re-consideration, and the manner of election remained predicated on the 'List' system, which entrusted to the party leader the power to handpick MPs based on the proportion of the vote won.

²³⁷ Robinson (n 199) 381.

²³⁸ Femi Harris-Smith, 'Burch-Smith Agrees that Justice System on "Verge of Collapse"' *Stabroek News* (Georgetown, 9 July 2023) <<https://www.stabroeknews.com/2023/07/09/news/guyana/burch-smith-agrees-justice-system-on-verge-of-collapse/>> accessed 14 May 2026.

²³⁹ David Hinds, 'Beyond Formal Democracy: The Discourse on Democracy and Governance in the Anglophone Caribbean' (2008) 46 (3) *Commonwealth and Comparative Politics* 388. See also Quinn (n 211) 24–25.

²⁴⁰ Tarron Khemraj and Diana Hinova, 'Elected Oligarchy and Economic Development: The Case of Guyana' (Munich Personal RePEc Archive Paper No 29733, University Library of Munich, Germany, 5 Apr 2011) <https://mpra.ub.uni-muenchen.de/29733/1/MPRA_paper_29733.pdf> accessed 14 May 2026.

²⁴¹ Quinn (n 211) 25–26.

²⁴² Freddie Kissoon, 'The Freddie Kissoon Column ... Antigua and Guyana: Democracy Compared' *Kaieteur News* (Georgetown, 4 August 2008) <<https://kaieteurnews.com/2008/08/04/the-freddie-kissoon-column-antigua-and-guyana-democracy-compared/>> accessed 8 May 2026.

²⁴³ Khemraj and Hinova (n 240).

²⁴⁴ Rishie Thakur, 'Crime, Ethnicity and the Political Impasse in Guyana' (2008-2009) 38–39 *Transition: Journal of The Institute of Development Studies* 78.

News investigation estimated that almost 600 people were killed during this conflict, with three of the most horrific episodes of mass killing occurring in 2008 at Lusignan, Bartica and Lindo Creek.²⁴⁵ The perpetrators included ‘bandits’ on the one hand and law enforcement on the other, the latter strengthened by a so-called ‘phantom squad’ under the leadership of one Roger Khan, an alleged drug kingpin who reputedly had tacit official protection for his vigilante campaign.²⁴⁶ Khan was never charged or prosecuted locally but was eventually arrested in neighbouring Suriname and rendered to the US, where he was tried and convicted of drug trafficking offences.²⁴⁷

[245] In the face of these upheavals, the PPP/C retained its electoral dominance in the noughties, though its share of the vote steadily declined. By 2011 they were only able to secure the Presidency while losing the majority in Parliament, an outcome only possible under the country’s unique constitutional arrangements. This inaugurated yet another turbulent era in governance, for as a minority government the PPP/C was unable to pass legislation or finance spending easily.²⁴⁸ Following the declaration by the parliamentary opposition that they intended to table a no-confidence vote, then President Donald Ramotar pre-emptively prorogued Parliament in November 2014,²⁴⁹ ending their term prematurely, and elections in 2015 delivered an opposition coalition victory.

[246] The victorious party, A Partnership for National Unity (‘APNU’), was made up of a coalition of the PNC along with Rodney’s Working Peoples Alliance (‘WPA’) and the Alliance for Change (‘AFC’), a new party formed by defectors from the PPP, PNC and WPA. APNU’s tenure, however, was to be short-lived, unseated

²⁴⁵ ‘Prison-break Carnage: A Stabroek News Investigation’ (Georgetown, 7 January 2026) <<https://www.stabroeknews.com/2026/01/07/news/guyana/prison-break-carnage/>> accessed 17 May 2026.

²⁴⁶ Quinn (n 211) 25; and ‘Shaheed “Roger” Khan: Drugs, Dirty Money and The Death Squad’ *Stabroek News* (Georgetown, 20 August 2009) <<https://www.stabroeknews.com/2009/08/20/guyana-review/shaheed-%E2%80%98roger%E2%80%99-khan-drugs-dirty-money-and-the-death-squad/>> accessed 14 May 2026; ‘Ghosts of the Phantom Squad’ *The 592 Guardian* (Georgetown, 18 June 2026) <<https://592guardian.com/ghosts-of-the-phantom-squad/>> accessed 14 May 2026.

²⁴⁷ *ibid.*

²⁴⁸ *A-G of Guyana v Trotman* (2016) 87 WIR 380 (GY CA).

²⁴⁹ ‘Ramotar Threatens Early Polls in Face of No-Confidence Vote’ *Stabroek News* (Georgetown, 5 November 2014) <<https://www.stabroeknews.com/2014/11/05/news/guyana/ramotar-threatens-early-polls-face-confidence-vote/>> accessed 18 May 2026; and see Quinn (n 211) 10–11.

after only one term amidst a succession of parliamentary and electoral controversies. Notable among the latter was the prevarication in the selection of a chairperson for the all-important Elections Commission (‘GECOM’),²⁵⁰ the legal battles provoked by a successful vote of no-confidence moved by the Opposition in December 2018,²⁵¹ and the nationwide crisis provoked by a 5-month delay in releasing the results of the general election when they were eventually held in March 2020.²⁵²

[247] Each of those episodes provides an insight into the deep-seated racial divisions of the society and the perceptions of victimhood nursed by each of the main ethnic groups. While at the heart they constitute fundamentally political disputes, such was the inability of the opposing camps to reach common ground that on significant occasions a resolution only became possible through judicial intervention.

[248] Five years later, another general election on 1 September 2025, would see the PPP/C re-elected to yet another five-year term. This time, however, in a seismic shift disrupting the historic duopoly that characterises the country’s politics, the second-named Applicant and leader of the We Invest in Nationhood (‘WIN’) Party secured 16 seats in the election, becoming the Leader of the Opposition. In so doing, he succeeded in unseating the PNC – the second oldest political party in Guyana and the traditional stronghold of the African-dominated segment of the population – as the main opposition party, in what is arguably an unprecedented accomplishment.²⁵³

²⁵⁰ A constitutional impasse that was eventually resolved by this Court in *Mustapha v A-G of Guyana* [2019] CCJ 9 (AJ) (GY), (2019) 96 WIR 468.

²⁵¹ Another political-constitutional stalemate that ended in litigation, resolved once again by this Court in *Ram v A-G of Guyana* [2019] CCJ 10 (AJ) (GY), (2019) 97 WIR 266.

²⁵² The third and most convulsive of the political standoffs between the two parties, also culminating in litigation which was resolved by this Court: *Ali v David* [2020] CCJ 10 (AJ) GY, (2020) 99 WIR 363. For wider context, see Cynthia Barrow-Giles and Ronnie R F Yearwood, ‘CARICOM and the 2020 Unsettled Elections in Guyana: A Failed Political (Legal) Solution?’ (2020) 109(5) *The Round Table* 506.

²⁵³ Prior to the Second Applicant’s historic displacement of an African-dominated party, arguably the only other individual national figure to have commanded such broad, multi-racial support and disrupted the historic duopoly was Walter Rodney.

- [249] From this admittedly bird's eye overview of Guyana's political history, one can draw three well-documented conclusions. The first is the country's history of foreign domination and exploitation. During the colonial period, British Guiana was a site for primary extraction and production, its valuable resources shipped abroad for downstream processing and wealth generation. Economic value was matched by ideological imperatives, resulting in the suppression of local self-determination for as long as the Cold War lasted.²⁵⁴ Today, Guyana enjoys renewed importance with the discovery of extensive offshore oil reserves.²⁵⁵
- [250] The second feature is Guyana's semi-presidential government, which in keeping with theoretical principles²⁵⁶ has predictably produced what many consider to be strongly authoritarian and anti-democratic tendencies and temptations. Nurtured by a mildly reformed constitution which privileges a largely unaccountable executive president atop every other institution of government, the country has, as it appears to external commentators, an internationally benchmarked weak record regarding the protection of fundamental rights. As observed by Tracy Robinson, 'Political crises, their judicialization and challenges to the rule of law have all been endemic in post-independence Guyana.'²⁵⁷
- [251] Finally, the preeminent feature of the country's socio-political context is a longstanding and deep-seated racial division. Mutual suspicion and distrust have not been fully ameliorated by attempted constitutional reform. As noted by various social scientists, under successive administrations allegations of nepotism and conflicts of interest have surfaced in the crucial areas of public procurement, the award of contracts for goods and services, and selection to the most senior positions in the public service.²⁵⁸

²⁵⁴ Percy C Hintzen, *The Costs of Regime Survival: Racial Mobilization, Elite Domination and Control of the State in Guyana and Trinidad* (Cambridge University Press 1989).

²⁵⁵ Guyana remains a site of primary production and foreign exploitation: its timber harvested and exported by Chinese companies, gold and diamonds by Canadian companies, and most recently, its offshore oil reserves by a consortium comprising two American conglomerates (ExxonMobil and Chevron) and China National Offshore Oil Company ('CNOOC/Nexen').

²⁵⁶ Héctor Fix-Fierro and Pedro Salazar-Ugarte, 'Presidentialism' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012) 628–649.

²⁵⁷ Robinson (n 199) 362.

²⁵⁸ Janette Bulkan, 'REDD Letter Days: Entrenching Political Racialization and State Patronage through the Norway-Guyana REDD-Plus Agreement' in (2014) 63(3&4) *Social and Economic Studies* 249; See also Khemraj and Hinova (n 240) and Brown (n 203) 124.

[252] Guyana remains the only country in the Anglophone Caribbean to have experienced extensive and convulsive race riots, first in the early 1960s and then reprised four decades later.²⁵⁹ In the absence of any national process of reconciliation and accounting, each side holds on to its own narrative of injury and injustice,²⁶⁰ what Trinbagonian sociologist Rhoda Reddock has dubbed ‘competing victimhoods’.²⁶¹

[253] Profound inter-generational trauma left by communal violence is currently manifested by enduring mutual distrust.²⁶² One consequence of this can be seen in the inability of successive administrations to agree on matters requiring cooperation, ranging from the filling of standard bureaucratic positions to the most sensitive, consequential ones like those heading the elections commission²⁶³ or the judiciary.²⁶⁴ As Robinson has insightfully noted and explained with regard to the latter, ‘In the politically divisive state, the now institutionalised lack of security of tenure has the extraordinary result that the Chancellor and Chief Justice are asked repeatedly to rule for or against the political groupings responsible for their appointment and retention as judicial leaders.’²⁶⁵

[254] As explained, this general social context is an unavoidable, even if inconvenient, context in these extradition proceedings, given that one of the Applicants is the current leader of the opposition. He is also the leader of a new political movement in Guyana, one that has already achieved significant political gains. Thus, the

²⁵⁹ The conflagrations of the early 1960s led to the ‘ethnic cleansing’ of rural communities – so that whereas historically many villages were racially mixed, following the riots minorities were driven out of villages leaving communities that were exclusively African or Indian in composition.

²⁶⁰ Alissa Trotz (ed), *The Point is to Change the World: Selected Writings of Andaiye* (Pluto Press 2020) 58–75.

²⁶¹ Rhoda Reddock, ‘Competing Victimhoods: A Framework for the Analysis of Post-Colonial Multi-Ethnic Societies’ (2019) 25(6) *Social Identities* 809.

²⁶² David Hinds, ‘We Have Been in a Permanent State of ‘Constitutional Crisis’ Since 1953’ *Stabroek News* (Georgetown, 4 March 2019) < <https://www.stabroeknews.com/2019/03/04/opinion/letters/we-have-been-in-a-permanent-state-of-constitutional-crisis-since-1953/> > accessed 14 May 2026.

²⁶³ The dispute that gave rise to *Mustapha* (n 250).

²⁶⁴ Article 127 of the Constitution Act (GY) requires the agreement of both the President and the Leader of the Opposition to fill the positions of Chancellor and Chief Justice. Since this mechanism was included in 2001, there has never been agreement between the two functionaries and with the resignation of the last substantive holder of the office in 2005, the positions have been filled only on an acting basis.

²⁶⁵ Robinson (n 199) 362–363 (emphasis in original).

allegations of bias made in this case have evoked great concern in Guyana. And this Court has an obligation, in law, to treat with them carefully and comprehensively, and not in dismissive and disregarding ways – whether through avoidance or otherwise. The social-political history of Guyana is one that demonstrates continuities over time marked by a historical democratic fragility,²⁶⁶ yet that arc is also one that is striving for democratic legitimacy, long-lasting socio-political stability, and widespread public trust and participation. This Court is part of this emerging movement of democratic governance, and its obligation is to ensure that it is always grounded in the Constitution, the rule of law, and the emerging and evolving rule of law based legal order in Guyana.

Has Apparent Bias been Established?

Framework for Analysis

[255] A contemporary Anglo-Caribbean formulation of the approach to evaluating the test for apparent bias may be stated as a two stage process as follows:²⁶⁷ first, the court must identify and evaluate all the relevant circumstances said to bear on the allegations of bias; and second, it must then ask whether a fair-minded and informed observer, who views the matter objectively and realistically, would conclude that there is a real/realistic possibility that the decision-maker was biased, consciously or unconsciously, or whether the decision-making process is tainted by bias.²⁶⁸ Apparent bias concerns public trust and confidence in justice, and actual bias does not need to be proven – perception is the important orientation

²⁶⁶ Commenting on the prorogation of Parliament in 2014 by then-President Ramotar leading a PPP/C government, UCL Professor Kate Quinn expressed this point as follows: ‘These events serve as a reminder of the colonial and post-colonial legacies that have shaped political development in Guyana to the present day. Rather than representing a break from tradition, the events of 2014 resonate with powerful echoes of the past, evoking a number of recurrent motifs in Guyana’s political history. These include, for example, subversion of the democratic process, weak adherence to democratic norms, manipulation of the constitution to serve sectional interests, the centralisation of power, intense party political and ethnic division, failure of the ruling party to acquire legitimacy outside its own constituency, the politics of confrontation, and the determinant role of external forces in shaping political outcomes. If the British and American officials critiquing Ramotar’s actions have chosen to overlook their own countries’ role in past constitutional manipulation, these facts have not been forgotten by the Guyanese – much of the coverage of 2014 directly referenced the British suspension of the constitution in 1953.’ Quinn (n 211) 19.

²⁶⁷ See *Ebner v Official Trustee in Bankruptcy* [2001] 2 LRC 369 at [8] (emphasis added): ‘First, it requires the identification of what it is said might lead a judge ... to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits.’

²⁶⁸ The accepted *Porter* (n 6) test, namely: ‘The test for apparent bias is whether, on an objective evaluation, the circumstances would lead a fair-minded and informed observer reasonably to apprehend that there was a real possibility that the tribunal would unfairly consider the case on one party with favour or disfavour.’

and context and circumstances are crucial given the fact-sensitive nature of the inquiry. Thus, the inquiry is objective and not concerned with the subjectivity of the actual decision-maker or litigant.

Who is the Fair-Minded and Informed Observer?

- [256] In *R v Abdroikov*,²⁶⁹ Lord Bingham usefully set out the characteristics of the fair-minded and informed observer:

The characteristics of the fair-minded and informed observer are now well understood: he must adopt a balanced approach and will be taken to be a reasonable member of the public, neither unduly complacent or naïve nor unduly cynical or suspicious: see *Lawal's* case [2004] 1 All ER 187 at [14]; *Johnson v Johnson* [2000] 5 LRC 223 at 243 (para 53).

- [257] From this, we understand that the observer is ‘informed’, meaning that they are i) aware of official and professional duties and responsibilities and traditions of the relevant decision-maker, ii) sensitive to applicable statutory and regulatory contexts and constraints, which would include the legal roles and responsibilities of the decision-maker, iii) mindful of the relevant facts, circumstances, and intersecting influences, and iv) cognisant of existing procedural safeguards and constitutional presumptions. The observer is ‘fair-minded’, so not unduly suspicious/cynical nor complacent/naïve. The observer views the matter realistically, so is aware that bias may operate subconsciously, and hence is alive to unconscious bias and process contamination through converging influences by way of overlapping structures and relationships. And bias must arise as a ‘real possibility’, which means that it must be realistic and not remote, speculative, or *de minimis* (trifling or insignificant). Bias is, in law and for decision-makers and decision-making processes, presumptively compromising.

- [258] Indeed, as the Court of Appeal in this matter stated at [22]:²⁷⁰

²⁶⁹ [2008] 1 All ER 315 at [15].

²⁷⁰ *Mohamed v Minister of Home Affairs, Oneidge Walrond* (GY CA, 17 March 2026).

That said, *Porter* is not without utility here. The fair-minded and informed observer remains a workable analytical reference point, provided that the observer is credited with an understanding of the constitutional position of the MOHA, the limited statutory function of an ATP, and the architecture of the FOA. Such an observer is neither naïve, unduly suspicious, nor cynical and brings to the assessment an appreciation that the ministers are, by their nature, political office-holders who exercise statutory powers in politically charged environments as a matter of ordinary constitutional practice.

How Contamination Might Occur

[259] Precedentially, we think that there are a few cases which shed some special light of how fairly similar situations have been approached in the Caribbean and elsewhere. We bear in mind that no two cases are identical. And that we must be satisfied that there exists a ‘*logical connection between the matter and the feared deviation*’²⁷¹ – that is, there must be credible and cogent direct associative causation or compelling correlation between the decision to issue the ATP and the facts and circumstances that can create the real possibility of an appearance of bias.

[260] In *Meerabux v Attorney-General*,²⁷² a judge of the Supreme Court of Belize challenged his removal proceedings on the basis that the Chairman of the Belize Advisory Council (the disciplinary body) was also a member of the Belize Bar Association, which had laid the complaint. Apparent bias was rejected. Applying *Porter*, it was held that the framers of the Constitution must have contemplated that the chairman, required by s 54(11) to preside, would be a Bar Association member and that complaints would come from that association. Furthermore, on the facts the chairman had no personal or pecuniary interest and was not on the Bar Committee that initiated the complaint. This is a Caribbean case of overlapping and intersecting institutional roles (professional connections/structural association/institutional attribution), and it is also a leading Caribbean authority for the proposition that mere institutional membership and

²⁷¹ *Ebner* (n 267) at [8].

²⁷² (2005) 66 WIR 113 (BZ PC).

intersecting professional associations are not necessarily sufficient. In this regard, *Meerabux* can be contrasted with *Pinochet (No 2)* where Lord Hoffman's extra-judicial association, minor as it might have been seen, was enough to pollute the appearance of impartiality.²⁷³

[261] In *President of the Republic of South Africa v South African Rugby Football Union*,²⁷⁴ there was an application for the recusal of five Justices of the Constitutional Court of South Africa, with collective allegations against the whole bench. The personal and professional strand targeted Chaskalson P (former junior counsel for Mr Mandela in the Rivonia trial and senior counsel on appeal for Mrs Mandela in earlier prosecutions; attendance at the President's son's wedding as one of over 300 invitees; one private dinner some years before). A separate political-association strand was directed at Langa DP, Sachs, and Yacoob JJ. The application against Kriegler J was withdrawn during argument. The Court, sitting *en banc*, unanimously dismissed the application: on the accepted facts the personal and professional connections did not ground a reasonable apprehension of bias, and prior political association is not of itself a ground for recusal unless the subject-matter of the litigation arises from it. This is a case of professional and personal associations, and one in which the '*logical connection between the matter and the feared deviation*'²⁷⁵ was held to be insufficient.

[262] *R v Sussex Justices, ex p McCarthy*,²⁷⁶ which we have already discussed, is a foundational authority on process contamination and the appearance principle. The mere presence of a deputy clerk (who was deemed partisan because of prior conduct and professional relationships), with decision-makers in their retiring room, being available to advise if called upon and though he was never in fact consulted, was considered sufficiently vitiating on the basis of apparent bias.

²⁷³ *Pinochet Ugarte* (n 5).

²⁷⁴ 1999 (4) SA 147 (CC).

²⁷⁵ *Ebner* (n 267) at [8].

²⁷⁶ *McCarthy* (n 102).

- [263] The House of Lords decision in *R (Al-Hasan) v Secretary of State for the Home Dept* is also of useful guidance.²⁷⁷ A deputy prison governor adjudicated a disciplinary charge that the prisoner had refused a squat search. Earlier, the deputy governor had been present when the prison governor had approved the order to conduct such searches. Although the deputy governor had no part in *making* the order, his earlier presence at its approval was held by the House of Lords to give rise to apparent bias on the *Porter v Magill* test. This decision dramatically illustrates the breadth of indirect attribution: mere prior procedural association with an earlier and connected decision can contaminate a subsequent decision-maker and the decision-making process.
- [264] As we have already pointed out above, and as Lord Denning explained in *Metropolitan Properties Co*: ‘The court looks at the impression which would be given to other people. Even if he (the decision-maker) was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit, and if he does sit, his decision cannot stand.’²⁷⁸ This ‘appearance’ can be infected by all the circumstances including that of the mere presence or the actual advisory role of an advisor.
- [265] These and other authorities demonstrate that it is perfectly possible that a decision-maker may not have actually said or done anything themselves that is biased or that gives an appearance of bias directly attributable to them *per se*, but through i) process contamination,²⁷⁹ and/or ii) institutional/structural context attribution,²⁸⁰

²⁷⁷ [2005] 1 All ER 927.

²⁷⁸ (n 124) at 599.

²⁷⁹ *McCarthy* (n 102); *Al-Hasan* (n 277); and *Lawal* (n 182) - The claimant complained of racial discrimination to the employment tribunal. His case was dismissed. When his appeal came before the Employment Appeal Tribunal, it was discovered that senior counsel instructed by the employer had previously sat as a recorder with one of the lay members of the appeal tribunal. The claimant raised an objection on the basis that there was a real possibility of subconscious bias on the part of the lay member. Queen's Counsel appointed as part-time judges of the EAT under s 24 of the Employment Tribunals Act 1996 were not, under the then practice, restricted from appearing as counsel before EAT panels including lay members with whom they had previously sat judicially. The House of Lords allowed the appeal on the systemic point, holding that the practice should be discontinued. A fair-minded and informed observer, aware that the lay members looked to the judge for guidance on the law and could be expected to develop a fairly close relationship of trust and confidence with the judge, would conclude that there was a real possibility of subconscious bias on the part of a lay member required, on the prior judge's later appearance as counsel, to assess his submissions impartially.

²⁸⁰ *Davidson v Scottish Ministers (No 2)* 2004 SCLR 991 - The defendant's application for judicial review and the subsequent appeal were dismissed. He made a further appeal on the ground of apparent bias when he discovered that one of the judges who sat on the first appeal participated in the debates on legislation which was relevant to his case. The appeal succeeded, and the Scottish Ministers appealed. The House of Lords, dismissing the appeal, held that there was a possibility of bias if a fair-minded and informed observer would conclude that the judge was biased in that he would be unable to give an objective judgment. Further, the risk of an apparent

and/or iii) structural association,²⁸¹ and/or iv) personal or professional connections and relationships,²⁸² and/or v) otherwise, the fair-minded and informed observer could conclude that there is a real possibility that the decision-making process could be tainted by bias. As indicated, these tainting influences can overlap. Thus, the entire decisional process and environment – the decisional *ecosystem* as it were – is to be carefully and critically examined for the contamination of procedural fairness, recognising that the perception of bias can be influenced by a myriad of factors, including through advisors, institutional arrangements, and personal or professional associations. These cases reinforce as well how fundamental the ‘appearance principle’ is to the test of apparent bias.

[266] There is another lens through which the analysis may be conducted when scrutinising facts for the appearance of bias. Above, we discussed *how* contamination might occur – whether through process, or institutional structure, or because of personal or professional affiliations, connections or friendships. Also relevant is to *what* bias may attach. We identify two such *contexts* or areas in which contamination might occur. We term these *decision-maker* integrity and *decisional* integrity.

bias would arise where a judge was called to rule judicially on the effect of legislation which he drafted in the parliamentary process. In the instant case, it was clear that the fair-minded and informed observer would conclude that there was a very real possibility of bias. Thus, the appeal would be dismissed. *Belize Bank Ltd v A-G of Belize* [2011] UKPC 36, (2011) 80 WIR 97 (BZ) - Structural challenge to the composition of the statutory Banks and Financial Institutions Appeal Board, whose two non-judicial members were appointed by Belize's Prime Minister/Minister of Finance. The minister had been a vocal critic of the appellant bank before taking office (including as co-counsel in earlier private litigation) and had since made strongly adverse public statements about the diversion of funds underlying the directive on appeal; the government itself was directly interested in the outcome. By a 3:2 majority (Lord Brown and Lord Phillips initially inclined the other way), the Board rejected the challenge. The fair-minded and informed Belizean would take into account the statutory architecture (small candidate pool, judicial chairman, requirement that any majority decision include the chairman, oath of office, and the minister's inability to delegate the appointment), the absence of any imputation against the integrity of the appointees, and Belize's particular circumstances. Lord Dyson added that the Privy Council should be slow to interfere with a Belizean court's assessment of how the fair-minded and informed *Belizean* would view matters. *Yiacoub v R* [2014] 1 WLR 2996 - Presiding Judge of the Senior Judges' Court in the Sovereign Base Areas of Cyprus sat, with two others, in the trial convicting the appellants. He then nominated another Senior Judge to hear the appellants' appeals, which were dismissed. The appellants appealed. The Privy Council, in allowing the appeal, held that the appearance of justice had not sufficiently been done. The Presiding Judge had nominated a judge to hear an appeal from himself, which carried an appearance of lack of independence and impartiality in relation to the process, viewed as a whole, which would impact on an objective informed observer.

²⁸¹ *Ebner* (n 267). In *Ebner*, the trial judge was a contingent beneficiary under, and director of the trustee of, a family trust holding 8,000 to 9,000 shares in a bank which, though not a party, was a creditor of the bankrupt and was funding the proceedings. In *Clenae*, the trial judge inherited 2,400 shares in the defendant bank from his late mother after reserving judgment. In neither case could the outcome affect the value of the shares. The plurality held that no fair-minded lay observer would reasonably apprehend bias, and rejected any free-standing rule of automatic disqualification for direct pecuniary interest. See also *Pinochet Ugarte* (n 5).

²⁸² *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC); *Meerabux* (n 272) and *Pinochet Ugarte* (n 5).

[267] So far as the decision-maker is concerned, the classic prohibition is on someone being a judge in their own cause. As illustrated in the cases discussed above, a decision-maker would therefore be biased where s/he has a financial or proprietary interest in the outcome, where s/he has a close connection to a party in the dispute (whether family member, friend, business associate or some other close relationship), where there is some institutional alignment, or finally where there may have been some prior involvement in the issue in dispute.

[268] Decisional integrity relates to the process, requiring scrutiny as to whether in making the decision anything occurred that brings into question its fairness or integrity. As shown by some of the examples just highlighted, that could happen where a biased adviser provided advice to the decision-maker or was even just present in the room when the decision was being made.

[269] Finally, these considerations have heightened relevance when fundamental rights are involved. As the Court of Appeal of Trinidad and Tobago cautioned, a decision of an administrative officer which impacts on the liberty of an individual, ‘should demand the highest standards of rectitude and should not be tainted by bias or the appearance of it’, and further that ‘those who sit in an advisory capacity to an adjudicating body ought not to serve, or appear to serve, an adverse interest.’²⁸³

Facts Allegedly Pointing to Apparent Bias

[270] We turn now to the facts forming part of the record and which have been alleged to constitute bias, or which may have some relevance to the issue. We have organised them according to three general and distinct categories, namely: (i) statements made publicly about the Applicants, (ii) the timeline of the extradition proceedings, and (iii) the larger political context.

²⁸³ *Ferguson v A-G of Trinidad and Tobago* (TT CA, 17 December 2010) at [35]–[36].

Public Statements

[271] The Applicants raise as evidence of bias statements made by three of the most senior members of the PPP/C government, namely, President Irfaan Ali ('the President'), Vice-President Jagdeo ('the Vice President'), and Attorney General Nandlall ('the Attorney General'). These were supported by audio recordings or links to the events where the statements were made and covered the period from around the beginning of May 2025 until at least the following December.

[272] All the statements about which the Applicants complain came to their attention because they were publicly made by the said officials on multiple occasions, such as political rallies during the election campaign, at weekly press conferences aired nationally, and in the course of interviews by members of the media. These statements and opinions were thus widely covered and broadcast to the nation at large in multiple formats, including television, print, and online.

[273] In the main, the offending statements took several different forms. First, the identified officials variously described the Second Applicant as a 'criminal' and 'crook', and in derogatory terms such as a 'gangster'. Based on what these very senior officials actually said, they had already formed the view that the Second Applicant is a criminal, which they freely communicated to the Guyanese public at large.

[274] For example, at a political rally at Albion in Berbice on 21 July 2025, the President said of the Second Applicant:

This gangster of a man...only have one intention. He rose himself up suddenly, by making people believe that he is charitable when he robbed the country of more than 50 million US dollars in taxes...²⁸⁴

²⁸⁴ Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [72].

- [275] Less than a week later, at another rally in Anna Regina, Essequibo, on the other side of the Coast, the President described the Second Applicant as ‘a crook and criminal of no mean order’.²⁸⁵
- [276] Similar sentiments were expressed by the Vice President and the Attorney General on multiple occasions. For example, on 5 August 2025, at a political rally at Enterprise on the East Coast of Demerara, the Attorney General said of the Second Applicant: ‘But the person is a criminal already...if he ever gets a seat in Parliament, then, as I said, the whole country will be sanctioned.’²⁸⁶
- [277] Second, the same officials referenced the actual subject of the extradition request, citing *specific* crimes and treating the allegations as proven. Thus, for example, the Second Applicant was described as a gold smuggler and as having evaded taxes. On occasion, these officials even stated the specific amounts of taxes allegedly evaded and the penalties attached thereto, while proclaiming the strength of evidence in support of the extradition request. The Vice President, for example, disclosed during a press conference on 10 July 2025, that ‘The United States Ambassador to Guyana said we have a mountain load of evidence to support the sanctions, the OFAC sanctions, when those were announced against the Mohameds.’²⁸⁷
- [278] Beyond these public utterances disclosing the US allegations in relation to tax evasion and treating them as proven fact, the said officials also accused the Second Applicant of other, even more serious crimes, but for which he was never charged. These included offences like drug trafficking (with the Vice President comparing the Second Applicant to the notorious Colombian drug lord, Pablo Escobar), torture, and murder.

²⁸⁵ *ibid* at [73].

²⁸⁶ *ibid* at [149].

²⁸⁷ *ibid* at [70].

- [279] By way of example, on August 12, 2025, the Vice President said at a rally at Mahaica on the East Coast of Demerara: ‘He was accused of by *Reuters* of money laundering, drug trafficking and gold smuggling. He was now recently accused of murdering people, and tonight, the foreign minister in an interview... spoke about the Mohameds going to the Venezuelan embassy frequently.’²⁸⁸ Two days later the Vice President repeated these allegations at another political meeting, complaining that the opposition parties and the media ‘don’t talk about the murder he was accused of or the young guy that he killed or the people that he tortured.’²⁸⁹
- [280] Notably, none of the indictments laid against the Applicants in Florida relate to drug trafficking, murder, torture or any such offences, nor have they ever been charged in Guyana with any such crimes.
- [281] Third, several of these public statements sought to portray the Second Applicant as a national security threat. Again, this was unrelated to the indictments filed in the United States against the pair but form part of an unproven narrative concerning the alleged danger posed by the Applicants so as to justify their extradition. In this vein, the Second Applicant was described by the Vice President as having ties to Venezuela and being a Maduro puppet.
- [282] Finally, the accusations directed at the Applicants by these officials’ included attacks on the judicial process and were seemingly designed to influence the ongoing extradition proceedings. Thus, after the extradition proceedings formally commenced and the Applicants were granted bail pending the hearing, the Vice President at a Press Conference voiced a strong critique of the Magistrate’s conduct of the case, questioning why she granted them bail while accusing the Second Applicant of bribing persons in the judiciary. For example, on 6 November 2025, at his weekly press conference, the Vice President referenced Pablo Escobar and how he compromised and paid off the judiciary, the

²⁸⁸ *ibid* at [76].

²⁸⁹ *ibid* at [77].

police, the army, the media and ministers, becoming untouchable. He continued, 'When individuals who have money, ill-gotten money, believe they can buy out everyone else, including the media. And we have seen it here.'²⁹⁰

[283] The Vice President added, in connection with the Mohameds, 'We are watching the people who are going to not perform their duties because they are compromised... We are watching them carefully.'²⁹¹

[284] While the video of this press conference has since been removed from the Vice President's Facebook page, it was reported in detail by *Newsroom*, an online media outfit. That story has since been taken down as well, but the Applicants tendered into evidence printed copies of an official government release as well as printed copies of reported accounts of the said press conference, which combined confirm the remarks of the Vice President criticising the ongoing judicial proceedings.²⁹²

[285] The Attorney General also joined the Vice President in publicly denigrating the Magistrate's stewardship of the matter, asserting that extradition proceedings are 'simple' and should have been completed in a few days.²⁹³

[286] While many of the impugned statements were uttered on the hustings, a significant number preceded the dissolution of Parliament and continued *after* the election was over. In other words, the excuse of campaigning does not apply because the attacks on the Applicants occurred with regularity over a protracted period in which the general election only occupied one portion.

[287] What is more, these statements attributing guilt to the Applicants were made at a time when domestic charges were pending against them and then continued once

²⁹⁰ *ibid* at [115].

²⁹¹ *ibid* at [116].

²⁹² Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Fixed Date Application' 289-296.

²⁹³ Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [154].

the extradition process had begun. While the President and Vice President could possibly be excused as being excessively zealous during an election campaign, the same latitude cannot be granted to the Attorney General who, as an attorney at law and Minister of Justice, ought to have known the implications of such statements for the Applicants' presumption of innocence and a fair hearing.

Timelines

- [288] One of the facts stressed by the same public officials and indeed noted by our brother Eboe-Osuji J, as foreclosing any underlying political motive in the extradition request, is that the investigation into the Applicants started in 2023, long before the Second Applicant's entry into politics. Indeed, that much is clear from the oft-quoted *Reuters* article. But that fact alone – as to when the investigation commenced – is not conclusive as to a lack of bias, and when considered alongside other aspects of the timeline, some questions arise.
- [289] To begin with, the trajectory taken by the investigation and request is significant. Although an investigation did in fact start some years prior, perhaps as long before as 2023, there appears to have been little or no progress until the Second Applicant's surprising showing at the 1 September 2025, polls. Thereafter, in contrast to the apparent glacial pace of before, once the results of the general election came in and revealed that the Second Applicant had won the second largest bloc of votes to make him the presumptive Leader of the Opposition, the extradition process then proceeded with remarkable dispatch. A question can legitimately arise in the minds of fair-minded and informed Guyanese observers: Was it mere coincidence, happening a month after the general election in which the Second Applicant achieved the historical feat of unseating the PNC candidate as the leader of the opposition, that there is an apparent rush to have these extradition proceedings completed?²⁹⁴

²⁹⁴ The Second Applicant's contention is that since the start of the extradition proceedings, the A-G has made over a dozen public pronouncements in which he has said the extradition is a simple matter which can be completed in a few days and describing the applicants' legal representatives as 'bush lawyers': see also Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [154]-[156].

[290] Closer scrutiny of the timeline raises some further questions. While the election results were officially declared five days after the election on 6 September 2025, there was an unusually long delay before the new Parliament was convened. Constitutionally, once Parliament is dissolved for a general election, it must be convened no more than four months later.²⁹⁵ In this instance, the 12th Parliament was dissolved on 3 July 2025 and the 13th Parliament convened on 3 November 2025.²⁹⁶ While this was four months to the date as required by the Constitution, the election results had become available since 6 September 2025 and no explanation was offered from the incumbent government for the further two month wait from September to November.

[291] Then, after years of investigation into the Mohameds, the formal request for their extradition is dated 28 October 2025 and approved on 30 October 2025 (the evidence is unclear regarding when the Request was received by the MOHA), just days before Parliament was due to be convened on the following Monday, 3 November 2025. Given the delay of two months in convening Parliament after the general election, juxtaposed next to the coincidence of the request coming at the proverbial eleventh hour before then, a question can legitimately arise in the minds of fair-minded and informed Guyanese observers whether the delay in convening Parliament was engineered to facilitate the extradition request (and indeed, this question has circulated in Guyana.)²⁹⁷

[292] The apparent speed with which the request was considered and approved is yet another matter of concern. According to the Applicants, the Request was submitted to the First Respondent sometime between 5 and 7 pm on 30 October 2025, and the ATP issued that same evening.²⁹⁸ The affidavit of the First

²⁹⁵ Constitution Act (n 38) art 69(1) (GY).

²⁹⁶ Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [82].

²⁹⁷ 'President Denies He Delayed Calling Parliament to Thwart Mohamed' *Stabroek News* (Georgetown, 4 November 2025) <<https://www.stabroeknews.com/2025/11/04/news/guyana/president-denies-he-delayed-calling-parliament-to-thwart-mohamed/>> accessed 18 May 2026.

²⁹⁸ Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [80].

Respondent is unclear as to the date when the Request was *received*. Rather, the First Respondent carefully deposes that the bundle of documents received by her from the Permanent Secretary in the Ministry of Foreign Affairs included a Diplomatic Note *dated* 28 October 2025, containing the Request for Extradition.²⁹⁹ The date of the Diplomatic Note, however, is not necessarily the same date on which it was received by the First Respondent, and in the absence of a positive statement from her on this point, this leaves uncontradicted the evidence of the Applicants that the Request was submitted to her on 30 October 2025. A reasonable inference to draw according to the procedural rules related to proof or denial of evidence.

[293] By contrast, the evidence is clear that the ATP was issued on 30 October 2025. The First Respondent deposed³⁰⁰ that her review included consideration of the following:

- (a) the indictment and whether the formalities were satisfied;
- (b) the affidavit of the prosecutor laying out the substance of the case;
- (c) whether there was an Extradition Treaty in force between the two countries and whether the subject of the request constituted extraditable offences
- (d) whether ss 9(2) and (3) of the FOA were satisfied;
- (e) whether any of the prohibitions in section 8 of the FOA applied;
- (f) whether s 8(3) would be breached, and in doing so, the First Respondent consulted and sought the advice of the Attorney General; and
- (g) whether the request was made in good faith.

[294] In light of the volume and variety of matters on which the First Respondent had to consider and satisfy herself, spanning facts, law and policy, along with having to

²⁹⁹ Record of Appeal, 'Affidavit of Oneidge Walrond' [31].

³⁰⁰ *ibid* [32]-[42].

consult with the Attorney General, the question can legitimately arise in the minds of fair-minded and informed Guyanese observers whether all that could have been properly accomplished in such a short window – whether that time period was 2 days (between 28 – 30 October 2025) or mere hours (on 30 October 2025 as alleged by the Applicants). Was there in fact time enough for a proper and thorough consideration of the request, or was it disposed of perfunctorily?

Political Context

[295] The Second Applicant is not an average citizen of Guyana but rather the holder of a high constitutional office, that of Leader of the Opposition. The request for his extradition has unfolded within what is unarguably a highly politicised setting. For that reason, we highlight some elements of the larger political context to assess their relevance, if any, to the issue of bias.

[296] A convenient starting point in this regard concerns the delay in swearing in the Second Applicant as the Leader of the Opposition, which is a matter of public record. As noted in the preceding section, there was already an unexplained delay of two months in convening Parliament following the declaration of the results of the general election. When Parliament was finally convened on 3 November 2025, only the Speaker of the House was elected, and it took another 12 weeks until 26 January 2026, before the required election was held to choose the Leader of the Opposition.

[297] When the Speaker of the House finally announced the date for the election, after a delay of 12 weeks, he launched a severe critique against the Second Applicant that strongly suggested political bias in favour of the ruling party. An Editorial in one of the daily newspapers commented at the time:

In a national address that should have reassured citizens and unified the country, the Speaker of the National Assembly, Manzoor Nadir instead

delivered an assault on democratic norms, attacking the presumptive Leader of the Opposition and insulting international partners who dared to call for constitutional compliance. It is not lost on citizens that for nearly three months, Guyanese were forced to endure deliberate delays in electing a Leader of the Opposition. This followed a separate paralysis of Parliament itself after the September 1, 2025, elections- unprecedented stagnation that crippled legislative oversight and governance. These were not administrative oversights. They were calculated acts of political obstruction that violated the spirit and letter of constitutional responsibility.³⁰¹

[298] This editorial is only one of a proliferation of public commentary at the time which claimed alleged constitutional manipulation involved in delaying the election of the Leader of the Opposition, especially since in the past other government Ministers were sworn in even as they faced criminal charges.³⁰² In other words, a question can legitimately arise in the minds of fair-minded and informed Guyanese observers whether the extended delay in facilitating the election of the Second Respondent as Leader of the Opposition makes up a larger pattern suggesting that the arms and institutions of the State have been arrayed against him. Given that it occurred after the issuance of the ATP, we recognise it is of lesser weight, but not entirely irrelevant as retrospective evidence of the political context at the time the ATP was issued.

[299] As part of the official narrative constructed against the Second Applicant to bring him into public disrepute was, as seen in the previous section, an allegation that he was a ‘Maduro puppet’ and posed a threat to the country’s national security.³⁰³ But no evidence of this was ever presented, nor were any charges (local or foreign) brought against him relating to treasonous activities.

³⁰¹ ‘The Nadir’ *Kaieteur News* (Georgetown, 22 January 2026) <<https://kaieteurnews.com/2026/01/22/the-nadir/>> accessed 18 May 2026.

³⁰² ‘Nadir Remains Incommunicado on Election of Opposition Leader’ *Stabroek News* (Georgetown, 8 November 2025) <<https://www.stabroeknews.com/2025/11/08/news/guyana/nadir-remains-incommunicado-on-election-of-opposition-leader/>> accessed 18 May 2026; ‘President Says Confident Due Process will be Followed for Election of Opposition Leader’ *Stabroek News* (Georgetown, 30 November 2025) <<https://www.stabroeknews.com/2025/11/30/news/guyana/president-says-confident-due-process-will-be-followed-for-election-of-opposition-leader/>> accessed 18 May 2026; ‘Failure of Speaker to Oversee Election of Opposition Leader’ *Stabroek News* (Georgetown, 1 December 2025) <<https://www.stabroeknews.com/2025/12/01/opinion/editorial/failure-of-speaker-to-oversee-election-of-opposition-leader/>> accessed 14 May 2026.

³⁰³ Record of Appeal, ‘Azruddin Mohamed, Affidavit in support of Notice of Application’ [69], [70], [76], [148] and [149].

[300] Despite this, as submitted by the Applicants, it was a narrative that the government expended thousands of dollars to propagate. Tendered as part of their case was a Stabroek News report which revealed that Continental Strategy, a United States lobbying firm retained by the Ministry of Foreign Affairs at a cost of USD50,000 per month to promote trade with Guyana, sent suggested tweets to an American congressman alleging that the Second Applicant was aligned to Maduro – tweets that were subsequently released by the congressman. When questioned by Stabroek News as to the evidence of such links, representatives of Continental Strategy refused to provide any answers.³⁰⁴

[301] Once the story broke regarding the massive sums paid to Continental Strategy, the President was asked repeatedly by the media why the government had hired an American lobbying firm to target a political rival. It appears that no answer was provided to the public.³⁰⁵ Yet, this was a narrative that the administration continued to peddle, even in the absence of evidence, as for example the Vice President himself did at one of his weekly press conferences after the extradition proceedings had commenced.³⁰⁶ A question can therefore legitimately arise in the minds of fair-minded and informed Guyanese observers whether the hiring of an American lobbying firm to target the Applicants with unsubstantiated allegations is another example of the machinery of the State, with all its financial might, being deployed against them.

[302] A further question that may concern a fair minded and informed observer, is whether the Applicants were singled out for prosecution locally. As revealed in the Press Statement released by the United States Treasury Department on 11 June 2024, and tendered in evidence by the First Respondent, sanctions were imposed on the two Applicants along with a former Permanent Secretary (PS) in the Ministry of Home Affairs and at the time of the sanctions, PS in the Ministry of Labour. Moreover, the Press Statement alleged that to perpetuate their activities of

³⁰⁴ Record of Appeal, 'Azruddin Mohamed, Exhibit AM1-16 in support of Affidavit' 589-597.

³⁰⁵ *ibid.*

³⁰⁶ Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Fixed Date Application' 295.

tax evasion, the Applicants ‘engaged in extensive bribery of government officials.’³⁰⁷ However, despite this, the only individuals to face any consequences thus far have been the two Applicants.

[303] Bearing in mind the historical, social and political context (the decisional ecosystem) as outlined earlier, the facts alleged by the Applicants would reasonably raise a plethora of serious concerns – red flags, if you will – for a nominal fair-minded and informed observer as to procedural fairness. We itemise those red flags raised by them as follows:

- (a) How come the formal procedures for the extradition of the Applicants accelerated after the Second Applicant’s surprise showing at the September general election, when an investigation into their activities had started years earlier and sanctions were applied as far back as June 2024?
- (b) Why was the convening of Parliament delayed by two months following the declaration of the results of the September general election?
- (c) Was it sheer coincidence that the request for the ATP arrived on 28 October 2025, shortly before Parliament was set to be convened, and when there was no longer any possibility of constitutionally delaying this event any further?
- (d) How was the MOHA able to properly process and approve the ATP in a couple of days (based on the Record), and on the Applicants’ account, in a mere matter of hours, given the volume of matters that she had to consider and be satisfied of?
- (e) What was the true extent of the advice given by and influence of the Attorney General on the MOHA, in light of the fact that the MOHA is an

³⁰⁷ Record of Appeal, ‘Affidavit of Oneidge Walrond’ 446-447.

attorney herself and ought to have been able to complete a statutory form on her own?

- (f) What was the impact on the MOHA of the prejudicial statements of the Attorney General about the Second Applicant, made before and after the ATP was issued, which consistently described the Applicants as criminals, bearing in mind they are Cabinet colleagues and he functioned as a senior adviser? And, similarly, what was the impact on the MOHA of the prejudicial statements made by the President and Vice President?
- (g) Why did an American lobbying firm retained by the Guyana government at the cost of USD50,000 per month send suggested tweets to a United States congressman ‘for consideration’ in which the Second Applicant is linked to Maduro, and then refuse to disclose the basis for the suggested tweets?
- (h) Even though the allegations of the United States Treasury Department relate specifically to domestic evasion of taxes within Guyana, why did senior members of the Guyana government allege – without evidence – that the Second Applicant is a Maduro puppet?
- (i) Parliament having been eventually convened on 3 November 2025, why was the routine election of the Leader of the Opposition delayed for a further twelve weeks?
- (j) What is the import of the Attorney General’s public statements that extradition proceedings should be wrapped up in days, in light of the delays in convening Parliament and then holding the election for Leader of the Opposition?
- (k) Why were local charges brought only against the Applicants, when sanctions were imposed by the United States Government both on the

Applicants and an identified Permanent Secretary, and according to the official release by the United States Treasury Department, government officials were also implicated?

[304] To summarise, the objective facts here are that once the Second Applicant performed as he did at the election, confounding all expectations, these proceedings to extradite him took on renewed vigour, coming to fruition on the eve of the convening of Parliament. The MOHA, who issued the ATP, was advised by the Attorney General – who in spite of his high constitutional office and as a minister of justice in Guyana, consistently and overtly displayed behaviours and made statements indicative of bias against the Applicants. These were in relation to matters touching allegations of criminality and illegality, including in relation to extradition proceedings originating from the USA.³⁰⁸ Further, other and more senior government officials joined in the attacks, which were buttressed by an expensive social media propaganda campaign. Potentially, these facts are not trifling, or speculative, or remote, but combined they can directly bear upon the issue of procedural fairness, and more specifically that of decision maker and process impartiality.

Analysis

[305] To analyse the facts for bias, we return to the two categories identified above, namely those of decision-maker and decisional integrity.

Decision-maker Integrity

[306] Simply put, there is no evidence on record that the MOHA was herself personally biased. Specifically, there are no compromising statements attributed to her nor is there anything in the way she conducted herself, including while on the hustings, that was improper or inappropriate. It has been mentioned before that the MOHA

³⁰⁸ For example, statements made by the A-G on the 29 July 2025, 5 August 2025, and 10 December 2025.

is an attorney at law, and her professionalism was reflected in how she conducted herself even while campaigning – responsibly and alive to legal and constitutional imperatives.

[307] But we have drawn attention to the potential relevance of the decisional ecosystem as raising other avenues of contamination. In this regard, the question that arises is whether her institutional alignment (with the PPP/C) raises the objective possibility of bias on her part. In other words, given that the MOHA was a member of the Government, and of the Cabinet, and of the same political party as the President, Vice President and Attorney General (the PPP/C), and was advised by the Attorney General specifically on the issuance of the ATP, the question for the fair-minded and fully informed observer is whether the entire decisional process and environment was such that there is a real possibility of contamination of the MOHA.

[308] On the one hand, we bear in mind a multiplicity of factors that, considered as a whole, are, on the face of it, enough to objectively raise serious questions about the appearance of bias. History, social and political context, the chronology of the proceedings, the timeline of the request, the arguable demonstrations of bias by senior PPP-C leaders and by the principal adviser to the decision-maker (Attorney General), the targeting of the Applicants, one of whom is the leader of the opposition and who has achieved electoral popularity, all combine in ways that distinguish this case from that of the extradition of an average person. In short, these circumstances, taken cumulatively, are exceptional.

[309] On the other hand, we start by noting that the MOHA is a minister of government who has sworn an oath to be independent, impartial and fair in the discharge of her duties. As a member of the Cabinet and under the Constitution these institutional structural relationships are contemplated, and within this framework each member of the executive and of Cabinet is expected and takes an oath to discharge their roles and functions ethically and in accordance with constitutional standards.

There exists therefore a presumption of propriety that the MOHA would act accordingly. Further, as *Meerabux* suggests, where institutional relationships are compulsory and constitutionally contemplated, something more is required to displace that presumption of propriety. Here however, there is also no substantiated allegation of a specific pecuniary or personal interest of the MOHA in the outcome of these extradition proceedings, beyond the more general associative political contention that the PPP/C wanted to get rid of a political opponent and threat (in the form of the Second Applicant).

[310] Second, we note the detailed evidence provided by the MOHA as to the process conducted by her in relation to what was, admittedly, the limited role of issuing the ATP.³⁰⁹ By this we do not intend to undermine or contradict all that we have said before as to the importance of the ATP in initiating the process, and wish only make the point that the MOHA has provided actual evidence as to what she did – evidence that remains uncontradicted. Notably, as part of the documentation provided in support of the Request was a Grand Jury indictment of both Applicants. While only an allegation of wrongdoing, that indictment is nonetheless the product of an independent justice system, and so we acknowledge its value at least in support of the request and thus further objective evidence as to the basis on which the MOHA acted.

[311] Third, the multiplicity of factors swirling around the process – historical and contextual – are, on a closer and more rigorous forensic interrogation, evidentially only capable of being seriously categorised as speculative. Here, we do not dismiss the weight of history, or of the coincidences in timeline, or the alleged political machinations directed against a central figure in Opposition politics. However, based on the available evidence on the record in this appeal, these remain forensically as factual coincidences, and in a court of law such coincidences do not tip the scales when measured against uncontradicted evidence.

³⁰⁹ Record of Appeal, ‘Affidavit of Oneidge Walrond’ 441-444.

[312] For these reasons, therefore, we are compelled to conclude that on the *evidence*, a real possibility of bias does not arise by reason of potential contamination of the MOHA by the political ecosystem in which she operated. As far as the *decision-maker* is concerned, we are satisfied that a fair-minded, informed observer would not conclude that she was tainted by bias.

Decisional Integrity

[313] This brings us to the decision-making process. Squarely implicated here is the role of the Attorney General as having a direct input into the issuance of the ATP as an advisor to the MOHA – advisor contamination. It is possible on this basis alone for a fair-minded and informed observer to conclude that there is a real possibility of apparent bias. The authorities support such a possibility. A first principles jurisprudential approach also does so, based both on the fundamental and foundational *R v Sussex Justices, ex p McCarthy* and *Porter v Magill* appearance principle, as well on constitutional grounds of fundamental fairness and rule of law procedural justice.

[314] In resolving this issue, the first inquiry is whether a fair-minded and informed observer would conclude that the Attorney General was biased or demonstrated the appearance of bias in relation to the Applicants and these extradition proceedings. If so, the second inquiry is whether such bias could so contaminate the decision-making process, in the context of all the circumstances discussed above, to the extent that a fair-minded and informed observer would conclude that that there is a real possibility of bias in the decision-making process.

The First Inquiry

[315] On the first inquiry as to whether a fair-minded and informed observer would conclude that the Attorney General was biased or demonstrated the appearance of bias in relation to the Applicants and these extradition proceedings, the following

considerations must be borne in mind: (i) pursuant to art 112(1) of the Constitution, the Attorney General is appointed and carries out important constitutional roles and functions, including being the legal adviser to the Government of Guyana; (ii) the Attorney General continues and functions in office as Attorney General notwithstanding the dissolution of Parliament for the purpose of the holding of elections;³¹⁰ (iii) the Attorney General is an experienced Attorney-at-Law and an experienced AG, being the incumbent prior to the September 2025 general elections and holding on as such until he was re-appointed for his current term; (iv) the public statements made by him and referenced in this opinion, were inescapably made in his capacity as Attorney General, even where they were made on the campaign trail; and (v) the public statements demonstrate that, in the eyes of a fair-minded and informed observer, the Attorney General had formed the conclusion that the Second Applicant was, among other things, a criminal and was already wanted by the US Government³¹¹ - and this in circumstances in which while there were pending charges against the Second Applicant,³¹² there was no indictment filed in the USA,³¹³ and no evidence that the USA had initiated any extradition processes.³¹⁴

[316] We are of the view that, on an objective evaluation of all the circumstances outlined above including the general socio-political background in Guyana, a fair-minded and fully informed Guyanese observer would conclude that there was a real possibility that the Attorney General was biased. The Applicants are constitutionally presumed innocent until proven otherwise and are constitutionally entitled to a fair trial. The Attorney General's remarks run afoul of these constitutional imperatives and are inconsistent with his high constitutional office to uphold and maintain the Constitution and the law in Guyana. All this is

³¹⁰ See Constitution Act (n 38) art 185 (GY).

³¹¹ See, the A-G's statements made on the 5 August 2025, 'But the person is a criminal already. The person is already wanted by the US government and comrades he has only entered the political race because his lawyers tell him in America that if you run for politics in Guyana, he can make it a little difficult for the US to come and pick you up And comrades, if he ever gets a seat in the parliament, then, as I said, the whole country will be sanctioned. Venezuela is a sanctioned country. Look at what is going over there. That is what will happen in Guyana.' Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [149].

³¹² The Second Applicant deposed that charges were first filed against him on 15 May 2025 and then again on 24 October 2025: Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [41]-[42].

³¹³ The USA Grand Jury indictment was only filed on 2 October 2025.

³¹⁴ The Request for extradition was dated 28 October 2025.

exacerbated by the fact that he was aware of the possibility that extradition proceedings could have been initiated against the Applicants. This is more than the ‘overzealousness’ demonstrated by Attorney General Jeremie in *Ferguson’s case*, and the Attorney General’s lack of circumspection crosses the threshold into apparent bias. Furthermore, and in our opinion, even on the narrower *Franklin* type framework for evaluating bias – the existence of a preconceived opinion or predisposition that prevents a decision-maker from exercising their functions impartially (a ‘closed mind’), the Attorney General’s conduct crosses the threshold. And the positive evidentiary proof of this, which is not denied, is on the record in these proceedings.

The Second Inquiry

- [317] On the second inquiry, we consider whether the Attorney General’s bias could so contaminate the decision-making process, in the context of all the circumstances discussed in this opinion, to the extent that a fair-minded and informed observer would conclude that there is a real possibility of bias in the decision-making process in relation to the issuance of the ATP.
- [318] Here the constitutional balancing and weighting exercise, which includes considerations of proportionality, are apt.
- [319] As noted above, the MOHA is a minister of government who has sworn an oath to be independent, impartial and fair in the discharge of her duties. Furthermore, the MOHA is an attorney at law and there is no suggestion of any deficit in competence to process and determine whether the ATP should be issued. Indeed, the MOHA’s unchallenged evidence is that she considered the relevant factors under the FOA.
- [320] There are, however, several critical considerations that will impact the second inquiry, and we bear them all in mind, in particular the jurisprudence, the facts and context of this case, and the presumptions that apply.

- [321] First, we note that this is an exceptional case in the context of apparent bias. First, because these are extradition proceedings, which are *sui generis* – existing at the intersection of international, constitutional, and statutory law.
- [322] Second, the role of the Minister under the FOA in relation to the issuance of an ATP is a relatively circumscribed one. While mindful of Lady Simler’s exposition quoted earlier, and conscious that even at this initial stage an individual’s fundamental rights – including liberty and movement – are immediately implicated, we simultaneously bear in mind that there are competing public interests at stake. Specifically, there exist larger public policy considerations relating to the investigation and prosecution of crime along with respect for Guyana’s international obligations, which cannot be ignored. In this regard, Lord Hope’s caution is apposite:

The quashing of decisions on the ground of apparent bias leads to delay and increased costs and puts at risk the virtue of finality. A balance has to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights between holding and applying the principle and allowing it to run out of control.³¹⁵

- [323] Third, there is nothing in the evidence that contradicts the MOHA’s assertions of the process she employed leading to the approval of the ATP. We recall the authorities that take an uncompromising stance in relation to adviser-contamination, which has been held to contaminate even in the absence of evidence that the adviser played any role in the decision-making process (such as *McCarthy* and *Al-Hasan*). However, in those cases the decision taken was at the final adjudicatory stage, whereas in this case the ATP only started the process. In that limited context, the MOHA’s evidence is enough to withstand the potentially contaminating influence of the Attorney General’s involvement in this specific

³¹⁵ *Davidson v Scottish Ministers (No 2)* 2004 SCLR 991 at [49].

context of extradition proceedings. And this in spite of the general socio-political contexts which also inform this analysis.

[324] On this point, we hasten to underscore that we do not wish to be interpreted as minimising or overlooking the grave import of the Attorney General's conduct and its implications for procedural fairness generally. In a future case, a similarly intemperate adviser may well be found to contaminate the decision-making process. In this case, however, we find that the threshold has not been crossed because of the combination of all the unique circumstances that apply. In short, given the relatively circumscribed role of the MOHA in relation to the ATP along with the actual evidence from the MOHA as to how she arrived at her decision to approve it, we find that the Attorney General's limited role in advising her did not infect the process. In the language of the test, we conclude that a fair-minded and informed observer would not find that the Attorney General's apparent bias has so contaminated the process as to raise *a real and realistic possibility* that the decision of the MOHA to issue the ATP was vitiated by bias.

[325] In closing, we confess to a great deal of anxiety in reaching the latter conclusion. This is unquestionably a borderline case. Given that the central figure of this drama now occupies a critical position in the constitutional and governance structure of the country, we recognise the relevance of all the factors discussed herein – the historical background, the socio-political context, and the process as it unfolded in relation to the extradition request. However, we are simultaneously mindful of the competing legal and international obligations at play, the limited role played by the MOHA thus far, and the unchallenged evidence on the record as to what transpired. The larger considerations give rise to inferences, which cannot displace that evidence in the overall circumstances of this case. And so, after careful deliberation, we conclude that a fair minded and informed observer would not find, in the exceptional circumstances of this case, that the MOHA was biased – either as the decision-maker or in the decision-making process she adopted.

Delegation

- [326] This issue can be disposed of in short measure. The doctrine of necessity does not arise, and delegation is plainly permissible under the General Clauses and Interpretation Act ('the Interpretation Act').³¹⁶
- [327] First, the FOA does not prohibit delegation, either implicitly or explicitly. Second, 'Minister' is not defined in the FOA, and it does not suggest that ATP must be personally issued by a particular Minister (in this instance Oneidge Walrond, as MOHA). Third, Parliament, acting in accordance with the Constitution, could not have intended or contemplated that a Minister who is infected with either presumed and/or apparent bias could be qualified or competent to make a decision to issue an ATP. Fourth, s 27 of the Interpretation Act authorises the delegation of any statutory power exercisable by the relevant Minister.
- [328] Bias, as a general rule, also goes to status, standing and capacity. That is, a decision maker infected with bias does not have the standing to make the impugned decision; they are incompetent and incapacitated by reason of their bias to do so. In such circumstances, delegation to an unbiased and competent decision maker is constitutionally warranted. And a statute must be read and interpreted to reasonably align with this constitutional standard.
- [329] In the instance of the FOA there is no difficulty. First, the Interpretation Act is not insignificantly Cap 2:01 in the legal order in Guyana, signifying its overarching function in relation to all legislation in Guyana. Second, in fact the Interpretation Act predates the FOA, and when Parliament enacted the FOA it is presumed to know and intend the operation of the Interpretation Act in relation to the FOA. It is a foundational statute establishing the construction and interpretation principles that must be used (unless specifically excluded) when interpreting all other

³¹⁶ Cap 2:01.

statutes. That is, every Act of Parliament in Guyana is read subject to the provisions of this Act, unless a specific piece of legislation explicitly states otherwise.³¹⁷

[330] Section 27(1) of the Interpretation Act, provides that:

Where any written law confers any function on the President, *a Minister* or a specified public officer, the President, *the Minister or the specified public officer may, by order, delegate any other public officer to exercise such function on his behalf* and thereupon or from the date specified, the person delegated shall have and may exercise such function. (*emphasis added*)

[331] And s 27(4) explains that ‘[i]n this section “public officer” includes the President, a Minister or a Parliamentary Secretary ...’. Thus, the delegation to a ‘public officer’ contemplated by s 27(1) can be to a Minister or a Parliamentary Secretary or even to the President.

[332] Section 12 of the FOA provides that:

12. (1) On receipt of a request under section 9 *the Minister* may issue an order in Form 1 (hereinafter referred to as "authority to proceed") signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.

(2) *The Minister* shall not issue an authority to proceed if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with this Act.

(3) Subject to this Act, no person shall be dealt with by a magistrate under this Act except in pursuance of an authority to proceed issued by *the Minister*.

[333] Clearly there is no identification in s 12 that ‘the Minister’ must be the MOHA. Even if it is the practice in Guyana, that the MOHA is usually the one to deal with extradition requests, that is not prescribed by law and cannot be deemed to be so.

³¹⁷ *Generalia specialibus non derogant.*

What is contemplated is that a person in the Cabinet of the Executive in Guyana with the status of a ‘Minister’ should ordinarily be the one to deal with extradition requests under s 12 of the FOA. Certainly, it was not, and could never have been, intended that the individual Oneidge Walrond, who happened to be the MOHA at a certain point in time, is singularly the only person who could deal with any s 12 FOA requests. That would be absurd.

[334] As a matter of simple and straightforward statutory interpretation, if the MOHA was incapacitated or incompetent by reason of bias, s 27 of the Interpretation Act allows for another Minister to be appointed to deal with this extradition request. And if all the Ministers in the existing Cabinet were also so infected, another independent and impartial person could be appointed as a Minister for this purpose. And *arguendo*, under s 27, the delegation of the s 12 FOA powers can be made to ‘any other public officer’ as defined. All of which would be in accordance with the law and intention of Parliament and aligned with the Constitution. Indeed, in cases of bias, it would seem that by necessity – because bias goes to status, standing and capacity, delegation is in fact warranted.

[335] Indeed, this analysis is apposite in relation to the role of the Attorney General in this matter, given our analysis above as to the fair-minded and informed observer’s perception of bias. In our opinion, the Attorney General should properly have delegated his advisory role to the MOHA in relation to the issuance of the ATP.

[336] Finally, a word of clarification on *King v Director of Prisons*.³¹⁸ In so far as *that case* has been relied on to suggest, in this case, that the MOHA is ‘*the*’ Minister who alone can deal with extradition requests in Guyana, any such reliance is erroneous. *King’s* case only establishes that the President is responsible for assigning ministerial responsibilities, and if such an assignment is not duly Gazetted (in the Official Gazette), that does not rebut the presumption that the

³¹⁸ *King v Director of Prisons* (1992) 47 WIR 210 (GY CA)

assigned minister was lawfully assigned to discharge the responsibilities associated with that role (applying *omnia praesumuntur rite acta esse*). Under s 12 of the FOA, no specific minister is identified, and so, either the MOHA (in this case) could delegate the relevant responsibility, or the President could assign it to another minister. Any specific assignment of ministerial responsibility cannot override the statutory generality of s 12 of the FOA.

Special Leave

[337] The test for special leave in civil appeals was concretised in *Sankar v Guyana Rice Development Board*,³¹⁹ with references to the dicta of Burgess J and Barrow J in *Ramsahoye v Linden Mining Enterprises*³²⁰ as well as that of Anderson J in *Barbados Turf Club v Melnyk*.³²¹ The opinion and guidance of de la Bastide P in *Barbados Rediffusion Service Ltd v Mirchandani (No 1)*³²² and the two-stage approach articulated, is now considered authoritative. That test is to determine the presence of a special feature, and whether there is a realistic prospect of success. The appearance of an egregious error of law or possible miscarriage of justice are two indicators of a real prospect of success in considering whether the test has been satisfied. The standard to be met is that of arguability.

[338] Having regard to the evidence, all relevant contexts, and the written and oral submissions of the parties, we are satisfied that the test for special leave was met by the Applicants to the standard of arguability.

[339] As the analysis above explains, we are of the view that, in the circumstances of this case: i) waiver does not apply to the issue of bias, ii) bias can properly be raised at the judicial committal stage of extradition proceedings and by way of judicial review, iii) the relevant test for bias, in this case apparent bias, is that of

³¹⁹ [2019] CCJ 11 (AJ) (GY).

³²⁰ [2019] CCJ 7 (AJ) (GY), (2019) 96 WIR 425.

³²¹ [2011] CCJ 14 (AJ) (BB), (2011) 79 WIR 153.

³²² [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35.

the fair minded and informed observer,³²³ and iv) the putative evidence of bias, taken in all relevant contexts, raises real and serious concerns about the impartiality, independence and integrity of both the decision-making process (which included the involvement of the Attorney General) and the decision-maker (MOHA) in relation to the issuance of the ATP. It is arguable that the decision to issue the ATP was tainted by apparent bias. As such, there is a realistic possibility that an egregious error of law or possible miscarriage of justice may have occurred.

Costs

[340] Costs are generally a matter of judicial discretion. We are of the view that each party should bear their own costs before this Court. This is because, i) special leave has been granted, ii) there has been a finding of bias in relation to the primary adviser to the MOHA, iii) there has been no waiver, and iv) delegation was appropriate in relation to the Attorney General and a legal possibility in relation to the MOHA. Moreover, and of great salience, these are public law proceedings by way of judicial review, brought against the State and public officers, that have raised for consideration serious issues of public interest. This appeal also concerns extradition, which is more akin to criminal than to civil proceedings. And so, it lies at the intersection of public law and criminal law. In our opinion, these proceedings were not obviously frivolous or vexatious, or plainly hopeless, or an abuse of the court's process, and have led to important expositions and clarifications of the applicable law.

Conclusion

[341] There is another aspect of this matter that has also concerned us. It involves the public statements by the Vice President and the Attorney General referenced at paragraphs [271] – [287] above, that, in our opinion, could undermine the independence of the Judiciary and have deleterious effects on the administration

³²³ Lord Hope stated the test in this form in *Porter* (n 6) at [103]: 'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.'

of justice in Guyana. Significantly, these comments were made after the request by the USA for the issuance of an ATP as explained above.

[342] The independence of the Judiciary and of its judicial officers is sacrosanct, and any attempts or behaviours that can reasonably be seen to undermine it, whether from external sources or from internal sources, and whether directly or indirectly, violate the rule of law and are to be denounced. Indeed, as this Court pointed out in *Bisram's* case, at [36], through its President and on behalf of the entire seven-panel bench, and in relation to all judicial officers including magistrates:

[A]rt 122A [of the Guyana Constitution] expresses the hallowed, overarching principle of judicial independence, which is described by the Bangalore Principles as a prerequisite to the rule of law and a fundamental guarantee of a fair trial.

[343] And further, at [38]: ‘Article 122A must be interpreted as a safeguard to guarantee the basic independence, integrity and autonomy of *all* courts.’³²⁴

[344] Accordingly, we would make the following order:

- (a) Special leave is granted.
- (b) The appeal is dismissed.
- (c) Each party to bear their own costs.

ONONAIWU AND EBOE-OSUJI JJ, delivered by Eboe-Osuji J:

Introduction

[345] I have read in draft the joint opinions of Anderson P and Barrow J [the ‘Anderson/Barrow Opinion’] and of Rajnauth-Lee, Jamadar and Bulkan JJ [the

³²⁴ *Bisram* (n 143) at [36] and [38]. Emphasis in the original quotation.

‘Rajnauth-Lee/Jamadar/Bulkan Opinion’]. In relation to the application for special leave, I concur with the outcome arrived at in the Anderson/Barrow Opinion and their reasoning for it. On the merits of the appeal, the entire Bench agrees that the appeal should be dismissed. We have followed different reasoning paths to get there. Without a doubt, passionate partisan political interests have evidently dominated the public attention that this case has attracted. This makes it appropriate, in my view, to render a filled out judgment as I do here: engaging relevant aspects of transnational criminal law, bringing into view that necessary global dimension that must be taken into account—especially in a case as fraught as this.

[346] Now, it is important to stress at the outset what this appeal is—and is not—about. It is not about the substantive question whether the Appellants should be extradited to the United States of America. That question is still with the Magistrate in a judicial inquiry still in progress, though now on pause pending this appeal.

[347] The question to be determined now is whether the authorisation to proceed (‘ATP’) issued on 30 October 2025 in this case was vitiated by bias on the part of the First Respondent, the Minister of Home Affairs, who issued it.

[348] As will become evident in the course of this opinion, it is not to be expected, as a practical matter, that the decision of this Court either way on the question now before it will likely prevent the extradition process against the Appellants from proceeding eventually. It may be noted in that regard that the Appellant’s *only* complaint is that the extradition process that has been commenced pursuant to the ATP of 30 October 2025 must be quashed, because that ATP was vitiated by bias. Beyond that, the Appellants do not object in principle to an extradition process against them. Nor do they object in principle against the issuance of an ATP by any official other than either the First Respondent or any of the other officials whose conduct the Appellants complain against as having entangled the First Respondent in a web of bias towards them. Indeed, the Appellants contend, under

a theory of ‘delegation,’ that even a subordinate official in the First Respondent’s department may issue the ATP without the objection that has now been made.³²⁵ Some may find these features of the appeal quite puzzling, wondering why then we are here. And they are some of the defining oddities of this appeal. I shall return to them in due course, especially under the subsection titled ‘Dilatory Objection.’

[349] By way of an overview, Part I of this opinion considers, as a preliminary matter, the implications that the public utterances of senior government officials may have for the ethos of the rule of law and judicial independence. Part II considers whether there is a necessary tension between extradition and the Constitution of Guyana. Parts III and IV review, in the context of extradition practice, the import of efforts, respectively, of the United States and of the broader international community, to tackle transnational criminal conduct, notably corruption and the resulting crime of money laundering. Part V provides an outline of extradition law and practice. Part VI reviews extradition as an obligation of States in international law. Part VII corrals into view the facts and circumstances of the US extradition request in the present case: notably including a prior investigative news report about anticipated sanctions and criminal charges against the Appellants; the eventual sanctions and criminal charges; and the resulting extradition request. Part VIII reviews procedural fairness in the context of the merits of the Appellants’ complaint of bias, particularly in light of the prior conduct of the Second Appellant that is directly linked to the conduct about which the Appellants now complain.

[350] On one final housekeeping detail, the term ‘fugitive’ is often applied to a person requested for extradition. In this opinion, however, I shall use the term ‘Requested Person’ instead.

³²⁵ See N. Mohamed and A. Mohamed, ‘Submissions on behalf of the Applicants/Intended Appellants’, Submission in *Mohamed v Minister of Home Affairs*, GY/A/CV2026/001, 10 April 2026, [42].

Judgment Abstract

[351] This opinion demonstrates—deliberately at much length—the correctness of dismissing the appeal on the merits. The opinion boils down mostly to the following key conclusions.

[352] The Appellants’ case for bias is exclusively based on hostile public comments by three senior Government figures (all of them politicians) about the Second Appellant, on the hustings and elsewhere. In my opinion, dismissal of the appeal is borne out by difficulties attending both the *substantive content* of the complaint of bias, as well as by *procedural policy considerations* concerning the complaint’s ripeness for litigation.

[353] First, the *substantive content*. Fairness must attend decisions in public office. And fairness abjures bias. But the law does not require the appraisal of bias to be considered exclusively from the complainant’s point of view, registering only his grievances, with a blinkered view: such that once the indicia of the complaint are demonstrated, the Court must look no further; and, any decision taken in the conditions of those proven indicia must be overturned, as vitiated by bias. That is the wrong view of the law of bias.

[354] Bias is assessed, instead, from the point of view of *the fair-minded, reasonable observer fully informed of all the material facts and circumstances*. This is the standard of *Porter v Magill*,³²⁶ widely accepted within the Commonwealth as the modern leading authority on the subject. The fair-minded and informed observer is *not* the complainant or his friends or his family or his supporters or his sympathisers or his lawyers. *Nor* is the fair-minded and informed observer the respondent, her friends, her family, her supporters, her sympathisers or her lawyers. The fair-minded and informed observer is, instead, the average member of the public who, emotionally speaking, has no proverbial dog in the fight. There

³²⁶ See *Porter* (n 6) at [103].

is an obvious paradox in appraising bias from the lenses of the complainant's friends, family and political sympathisers, who are tainted in turn with their own bias in favour of the complainant; and, so, too, is the contrary in relation to the respondent.

[355] The fair-minded observer and informed observer is “neither complacent nor unduly sensitive or suspicious”.³²⁷ This means that while a fair-minded and informed observer should be a man or woman who is not naïve, (s)he is also not to be led astray by ‘conspiracy theories’ in the absence of credible evidence.

[356] Since the fair-minded and informed observer is required to be not only impartial and independent, but also fully informed of the facts and circumstances before concluding that a given decision is biased, how then should the fair-minded and informed observer approach the legal assessment of bias? The answer is to place all the indicia of the complaint of bias on one scale of the balance of considerations, and on the other scale must be placed all the facts and circumstances also in play. Alternatively stated, the complainant's grievance of bias must be appraised through the spectrum of all the facts and circumstances in the given case. The fair-minded and informed observer is not free to ignore all the facts and circumstances that bear upon the situation. As the point is so well put in the case law, ‘She is fair-minded, *so she will appreciate that the context forms an important part of the material which she **must** consider before passing judgment.*’³²⁸

[357] In this case, the approach outlined above thus *requires* account to be taken, on the one hand, of the hostile comments that senior Government officials made against the Second Appellant; and, on the other hand, all the considerations that bear on the Minister's issuance of the ATP. Foremost in that regard is the question whether the fair-minded and informed observer would ultimately accept that the Minister

³²⁷ See *Halliburton Co v Chubb Bermuda Insurance Ltd* [2021] AC 1083 at [53].

³²⁸ *ibid* at [52] (bold emphasis added).

who issued the ATP had a real discretion to decline issuing it. Available information does not, in my view, support that conclusion. My view of the available information suggests, rather, that any Minister would still have issued the ATP. That being the case, the complaint against the Minister accused of bias becomes entirely academic, in the sense of a pointless waste of the time of the court called upon to decide the matter, because no Minister would have free rein to decline issuing the ATP. In that regard, some of the main considerations would include the incidence of external factors that pressed against the Minister presented with an extradition request received in a case like this. Such pressure may be likened in effect to the incidence of a crush of rock, debris or earth, rolling down a slope in a landslide. This consideration includes not only the extradition request that was made (and the accompanying indictment and arrest warrants), but also publicly available information about the policies and processes of the US Government, which obviously informed its prosecutorial efforts, culminating in the extradition request. Similarly important are international obligations—arising through extradition treaties or treaties on transnational crimes (entailing extradition obligations)—which inform the Minister’s decision to issue the ATP.

[358] Furthermore, the balance of considerations of bias also requires the fair-minded and informed observer to take full account of the facts and circumstances in play when the Government officials made the hostile comments against the Second Appellant. Were they engaged in gratuitous vilification of the Second Appellant, or only provoked by the Second Appellant’s prior public calumny against them? Or were both sides engaged in a general brawl in which each participant gave as good as he got? Judging from the evidence of even the Second Appellant himself, the Government officials were either responding to the Second Appellant’s prior verbal attacks against them; or, at least, both sides were engaged in a general brawl in the arena of politics, a brawl in which the Second Appellant was a willing participant. That being the case, the Second Appellant did not have clean hands in the events that gave rise to his complaint of bias.

[359] Then again, the fact that the fair-minded and informed observer would agree that the case of bias is fully made out in relation to the issuance of an ATP does not mean that *procedural policy considerations* would admit an attack against the ATP as ripe for litigation in every case—outside the natural judicial proceedings that are an integral part of the extradition process. This is because the extradition process, beginning with the committal proceedings, is amply equipped with precisely the facility of judicial review, to address any injustice occasioned by a biased issuance of an ATP. There is no need, as a general proposition, for a separate track of judicial review for the ATP alone. At the inception of the committal proceedings, it is enough to register an early preliminary objection against the ATP. Thereafter, any necessary challenge of the ATP should await the completion of the committal proceedings. It is at the proper time—that is, when the challenge to the ATP is ripe for litigation—that the fair-minded and informed observer’s assessment of bias will be fully brought to bear.

[360] To be very clear: this is not to say that an objection should not be lodged against the ATP until the completion of the committal proceedings. Quite the contrary, any necessary complaint against the ATP must be registered at the earlier opportunity—as a preliminary objection—before the Magistrate or Judge conducting the committal proceedings. If that objection is overruled at that stage, the committal proceedings should not be paused until an appeal on the ruling is exhausted—as was done in this case. But the ruling should form part of any available appeal or judicial review that may be taken up upon the completion of the committal proceedings.

[361] Finally, I acknowledge that certain provisions of the Fugitive Offenders Act of Guyana—particularly s 12—may contemplate a margin of discretion for the Minister when issuing the ATP. It is also true that bias, properly viewed from the perspective of the fair-minded informed observer, can indeed vitiate the exercise of discretion within that margin. Even so, challenges to the ATP on grounds of bias are to be taken up as part of the committal proceedings as preliminary objections;

but any necessary appeal or judicial review of the ruling on the objection must wait until the completion of the committal proceedings.

[362] The foregoing is the abstract of my main conclusions on the primary questions presented in this case. Subjoined is my full discussion of those conclusions.

Part I. Public Utterances of Senior Government Officials

[363] But I must begin with a preliminary, yet important, matter.

[364] In the Appellants' grievance, founded on hostile public utterances of high Government officials, the main declaimers were President Irfaan Ali, Vice President Bharrat Jadgeo and Attorney General Mohabir Nandlall (the Second Respondent), with claims that the Home Affairs Minister Oneidge Walrond (the First Respondent) bears resulting responsibility for any bias implicated in her colleagues' comments.

[365] In the Second Appellant's affidavit, he specifically deposed that the Attorney General (the Second Respondent) publicly characterised him (ie the Second Appellant) as 'a criminal already,'³²⁹ maintained a running public commentary on the extradition process as part of which the Second Respondent (in one episode) caricatured the Appellants' lawyers as 'bush lawyers,'³³⁰ and suggested that the extradition process taking place in the Magistrate's Court is a simple and uncomplicated matter that should have taken no more than two or three days to complete.³³¹

[366] Understood in its fuller context, the Appellants' complaint regarding the Second Respondent's criticism of the committal proceedings Magistrate was particularly concerning in the compound of circumstances amidst which the Vice President

³²⁹ See, Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [149].

³³⁰ *ibid* at [155].

³³¹ *ibid* at [172].

deployed thinly veiled innuendoes against the Magistrate. In that regard, the Vice President not only warned Guyanese citizens to beware of the development that occurred in Colombia, where Pablo Escobar had bribed the media, the executive and the judiciary,³³² but also criticised the Magistrate for granting bail to the Appellants on a surety of GYD150,000, adding that, ‘We are watching the people who are going to not perform their duties because they are compromised,’ and that, ‘We are watching them carefully.’³³³

[367] In both their written and oral submissions, no counsel appearing on the Respondents’ side of the appeal (including the Attorney General representing himself as the Second Respondent) made any effort to deny this account of the events. In answering questions from the Bench, the Attorney General merely demurred that nothing he said was improper. Yet, he admitted that he did criticise the proceedings in the Magistrates’ Court, because such commentary was part of the general public parley in Guyana at the time.

[368] The essence of the Appellants’ allegations concerning the combined effect of the Vice President’s and the Attorney General’s innuendoes in relation to the Magistrate is that the Attorney General gave wind to the initial balloon of apparent innuendoes that the Vice President had deployed against the Magistrate.

[369] There is, of course, the matter of the Attorney General’s explicit characterisation of the Second Appellant as ‘a criminal already.’³³⁴

[370] Assuming that the utterances *specifically* alleged were in fact made—and noting both that they were not denied and that the Second Respondent confirmed his criticism of the proceedings in the Magistrates’ Court—I am unable to accept the Attorney General’s wholesale demurrer that nothing he said was improper. As leaders of the Bar, there is a special professional responsibility that Attorneys General must bear: to set a tone of restraint and civility within the legal profession,

³³² *ibid* at [115]. See Record of Appeal, ‘Azruddin Mohamed, Affidavit in support of Fixed Date Application – Exhibit D’ 289 – 296.

³³³ *ibid* at [116]. See Record of Appeal, ‘Azruddin Mohamed, Affidavit in support of Fixed Date Application – Exhibit D’ 289 – 296.

³³⁴ *ibid* at [149].

where professional colleagues are not ridiculed for rising to their vocational calling to represent resolutely anyone who may retain their services. But that special responsibility also transcends into national political discourse, especially as regards respect for the rule of law. That responsibility includes upholding the presumption of innocence, which is a cardinal precept of the rule of law. To brand an unconvicted subject of an extradition request as ‘a criminal already’ can then not be a proper comment.

[371] More importantly, the rule of law rests on judicial independence³³⁵ and uncompromising respect for the judiciary. Those values are necessarily weakened when senior members of the executive—in this case the Vice President and the chief legal adviser to the Government—are implicated in conduct that has foreseeable potential to undermine a judge or to put undue political pressure upon the judge to conduct or decide a case in a manner that pleases the Government.

[372] It must particularly be said that any suggestion that the progress of the extradition proceeding in the Magistrates’ Court was uniquely tardy may not be borne out by the general experience in extradition practice. The average law report of extradition cases makes that clear. In a background paper on extradition published on the website of the Council on Foreign Relations (a United States think-tank), the following observation is made in relation to extradition requests by the United States:

How Long Does the Process Take?

Timing varies widely from case to case, but the average extradition involving the United States takes more than a year from request to surrender. Some have taken more than a dozen years, while many cases are closed without a fugitive’s capture.³³⁶

³³⁵ See the UNGA Res 67 ‘Declaration of the High-Level meeting of the General Assembly on the Rule of Law at the National and International Levels’ (19 September 2012) UN Doc A/RES/67/1, [13].

³³⁶ See Jonathan Masters, ‘What is Extradition?’ (Council on Foreign Relations, 8 January 2020) <www.cfr.org/backgrounders/what-extradition> accessed on 14 May 2026.

[373] The record in this appeal contains a special report published by the *Reuters*³³⁷ news agency to which I shall return later. Opinion is expressed in it that Guyana is at the cusp of a level of economic prosperity to be envied in the region and around the world.³³⁸ This should be happy news. In the nature of things, such prospects of prosperity come with special responsibility: to support the rule of law—an idea that is invariably anchored in the independence of the judiciary.³³⁹ It is a good business model: it tells the world that the country is indeed a place where legitimate business of all kinds can be done with confidence and supported by the rule of law.

[374] I hasten to add that my observations here do not go so far as to suggest that the current Government of Guyana had engaged in intentional transgression of judicial independence or the rule of law that it supports. And my pronouncements here must not be cited or used in future to support such an argument. I only remain concerned enough to register these observations on the basis of the uncontradicted evidence of the utterances that were made.

[375] I shall, in due course, return to the question whether the Second Appellant had provoked or participated in a verbal brawl with members of Government, thus provoking them to defend themselves in kind, mindful of the ‘Right of Reply’ recognised in the Inter-American Convention on Human Rights.³⁴⁰ Suffice it to say for now that there is no known principle of law that requires a politician (even those who play directing roles in government) to turn the other cheek when political rivals employ denigratory speech in the contest for power. But even so, any right of reply against calumny must be reasonable and proportionate. For, the

³³⁷ See Record of Appeal, ‘Affidavit in Defence of the Second Named Respondent – Exhibit RB3’ 561. See also See also, Robert J Currie and Laura Ellyson, ‘Extradition and Trial Delays: Recent Developments (and Lessons?) from Canada’ (2018) 2 *Católica Law Review* 77 at 79; and UNODC, ‘Report of Informal Expert Working Group On Effective Extradition Casework Practice’ (n 72) paras 76 to 79.

³³⁸ Record of Appeal, ‘Affidavit in Defence of the Second Named Respondent – Exhibit RB3’ 568.

³³⁹ See UNGA Res 67 (n 335) para 13.

³⁴⁰ As provided in Article 14 of the American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred....

principles of provocation and self-defence do not condone excessive reaction; nor is a plaintiff's contributory negligence a complete defence to the defendant's own negligence. From the unchallenged evidence presented in this case, there is a real concern that the line of proportionality was crossed by the Second Respondent. So, too, by the President and the Vice President—who according to the undenied specific averments of the Second Appellant—variously described the Second Appellant as 'a gangster'³⁴¹ (per President Irfaan Ali), 'a crook and criminal of no mean order'³⁴² (per President Ali), and 'a criminal'³⁴³ (per Vice President Bharrat Jagdeo). I join my colleagues in their negative views of these public utterances.

[376] The concerns about the speech of Government officials in relation to the Appellants in this case are even stronger than a similar feature in *Ferguson v Jeremie*. In an extradition case in which the Attorney General of Trinidad and Tobago was the Minister responsible for issuing the ATP, the Requested Persons in that case alleged that the Attorney General was biased against them, as revealed in several utterances attributed to him in the media. Notwithstanding Bereaux J's finding that there was 'neither actual [n]or apparent bias on the part of the Attorney General in this case,' Bereaux J correctly considered that 'given that he has a discretion to exercise in relation to the return [ie surrender] of the claimants to the United States pursuant to section 16 after committal, the Attorney General should be circumspect in his public statements on the matters involving these claimants or indeed any other person in respect of whom such a discretion will ultimately have to be exercised.'³⁴⁴

Part II. Extradition and the Constitution of Guyana

[377] It is important to stress at the outset that in the protection of human rights and human dignity, modern international law sets the minimum standard of behaviour

³⁴¹ See Record of Appeal, 'Azruddin Mohamed, Affidavit in support of Notice of Application' [72].

³⁴² *ibid* at [73].

³⁴³ *ibid* at [68] citing, Peoples Progressive Party/Civic, 'Press Conference by PPP General Secretary, Dr Bharrat Jagdeo June 12th, 2025' (*YouTube*, 12 June 2025) 1:28:30 < <https://www.youtube.com/watch?v=T1bKhhU2e3U> >. See also [77].

³⁴⁴ *Ferguson v Jeremie* (n 79) at [51].

that States should follow. It is inescapable in the lessons of history and current affairs that the man-made miseries of our humanity have not come from the earnest application of rules of international law as reformed after World War II. They have come rather from selfish claims of fidelity to the idea of ‘sovereignty,’ national constitutions and national law. Indeed, the bills of rights in national constitutions have been inspired by the international law of human rights. It is thus necessary to proceed with care in pronouncements that may encourage the view that in the event of inconsistency between international law and national constitutions or national values, the latter must prevail.

[378] Respectfully, I do not share any view that may encourage the reader of these Opinions to form the impression that there is an inherent risk of tension between extradition, which is rooted in Guyana’s international obligations, and the fundamental human rights protected by the Constitution of Guyana. There is no risk of such tension in the nature of the thing. Quite the contrary, in seeking to protect human rights, the drafters of the Guyanese Constitution were careful to accommodate Guyana’s international cooperation arrangements—with particular reference to extradition and its processes.

[379] First, we may begin by noting that article 32 of the Constitution provides that it is ‘the *joint duty of the State, the society and every citizen to combat and prevent crime* and other violations of the law and to take care of and protect public property.’ [Emphases added.] As we shall see later, the Canadian Supreme Court—in interpreting their own constitutionally protected rights and freedoms in the context of extradition—observed that extradition serves the purpose of combating and preventing crime in Canada. Registering that observation in *USA v Cotroni*, the Canadian Supreme Court said that the ‘importance of extradition for the protection of the Canadian public against crime can scarcely be exaggerated.’³⁴⁵ That protection depends on ‘arrangements that ensure prosecution not only of

³⁴⁵ *United States of America v Cotroni* [1989] 1 SCR 1469 at 1486a.

those who commit crimes while they are physically in Canada and escape abroad, but also of those whose acts abroad have criminal effects in this country. This requires *reciprocal arrangements* with other states seeking similar objectives.’³⁴⁶

[380] Second, amply evident in article 37 of the Guyanese Constitution is the drafter’s desire to strike an appropriate balance between ‘respect for human rights and fundamental freedoms, and co-operation among States,’ in the application of the Constitution.

[381] Third, article 40(2) indicates that ‘the fundamental rights and freedoms of the individual’ are ‘subject to respect for the rights and freedoms of others and for *the public interest.*’ [Emphasis added.] For the avoidance of any doubt in that regard, s 40(2) specifically provides as follows:

The provisions of **Title 1 of Part 2** shall have effect for the purpose of affording protection to the aforesaid fundamental rights and freedoms of the individual *subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.* [Emphasis added.]

[382] Finally, articles 139(1) and 148, located under Title 1 of Part 2, provide that the enjoyment of fundamental rights and freedoms are specifically subject to extradition and its processes. In that regard, article 139, dealing with protection of the right to personal liberty, provides that ‘[n]o person shall be deprived of his personal liberty *save as may be authorised by law*’. [Emphasis added]. And the exceptions for which the law may authorise deprivation of personal liberty include:

- (i) for the purpose of ... effecting the ... **extradition** or other lawful removal of that person from Guyana or for the purpose of restricting that person while he is being conveyed through Guyana in the course of his **extradition** or removal as a convicted prisoner from one country to another. [Emphases added.]

³⁴⁶ *ibid* (emphasis added).

[383] Article 148, for the protection of freedom of movement, similarly accepts that extradition entails a reasonable limitation of that right. Article 148 begins with the basic provision that '[n]o person shall be deprived of his [or her] freedom of movement.' This is explained as entailing five rights: (a) 'the right to move freely throughout Guyana,' (b) '*the right to reside* in any part of Guyana,' (c) 'the right to enter Guyana,' (d) 'the right to leave Guyana,' and, (e) 'immunity from expulsion from Guyana.' I have emphasised 'the right to reside in any part of Guyana' for special attention, because the interpretation of an equivalent right occurring in s 6(1) of the Canadian Charter of Rights and Freedoms, expressed as the right of a Canadian citizen to 'remain' in Canada, has been the subject of methodical pronouncements by the Supreme Court of Canada in extradition cases, notably in *Cotroni*³⁴⁷ and its progeny (discussed below). The Supreme Court of Canada has in that context held that although extradition entails a 'peripheral'³⁴⁸ or 'marginal'³⁴⁹ violation of the right—presumably because extradition is not specifically indicated in s 6(1) as a limitation of the right—extradition is ultimately a reasonable limitation on a Canadian citizen's right to remain in Canada. At a minimum, that direction of jurisprudence affords persuasive authority for the interpretation of the Guyanese Constitution on the same subject.

[384] Better still, in relation to extradition, the text of article 148 of the Guyanese Constitution is, in my view, an obvious textual improvement compared with the text of s 6 of the Canadian Charter of Rights and Freedoms. This is because article 148(3) of the Guyanese Constitution specifically accounts for extradition. It does so in the following terms:

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision—
[...]

³⁴⁷ See *Cotroni* (n 345).

³⁴⁸ *ibid* at 1481*h* and 1490*e*.

³⁴⁹ See *United States of America v Sriskandarajah* [2012] 3 SCR 609 at [9].

(d) for the imposition of restrictions, by order of a court, on the movement ... for the purpose of ensuring that he appears before a court at a later date ... *for proceedings relating to his extradition* or lawful removal from Guyana; [Emphases added.]

[385] All this is to say, Guyana's international cooperation arrangements are adequately accommodated within the Constitution of Guyana. And more specifically, the enjoyment of fundamental rights and freedoms is made subject to extradition directly in the same provisions that protect those rights and freedoms.

Part III. US Government's Global Anti-Corruption Policy

[386] Now, I turn to the main issues in the appeal.

[387] The objective in this part of my opinion is to underscore a set of considerations that the fair-minded and informed observer *must* take into account in inquiring whether there was a real possibility that the Minister's ATP was undermined by bias. Was it rather the case that the considerations highlighted in this part of the opinion formed part of what may be described as the crush of circumstances that would press upon any Guyanese Minister to sign the ATP regardless of the question of bias?

[388] The Appellants' forensic woes undeniably have their direct origins in the foreign policy of the United States Government. The tides of that policy came to engulf the Appellants almost fully during the era of the Biden-Harris Administration. But the story of the policy preceded that administration. It is useful to keep its outlines in mind. For that story, though latent, is part of the substrate of the Appellants' tribulations.

[389] That story helps to frame the inquiry as to whether the complaint of bias against the First Respondent's issuance of the ATP is ultimately pointless, in the sense that no other Minister or official, regardless of the question of bias, would have declined to issue the ATP in light of Guyana's international obligations, which are

correspondingly informed by the global anti-corruption policies and actions of the US Government.

[390] Here, it helps to keep in mind that the reason that proven bias vitiates a decision is because of the possibility that no other legitimate reason could explain the taking of the decision in question. The indicia of bias, suggesting its *mere possibility*, should not overtake other compelling, objectively ascertainable, reasons for a decision, which diminish any impact that bias may realistically have in the making of the decision. This is why the test is not conceived as a free-floating idea in the mind of the declaimer. It is rather anchored in the perspective of a reasonable, fair-minded observer who is fully informed of the facts, the context and the circumstances of the given case. As noted earlier, the operative ‘question,’ as classically stated, is ‘whether the fair-minded and informed observer, having considered the facts, would conclude that there was a *real possibility* that the tribunal was biased.’³⁵⁰ My aim here is to review some of the information that *must* be kept in mind in determining whether the ATP was propelled by bias or by Guyana’s international obligations—to the extent that those international obligations would also harbour the global anti-corruption prosecutorial policies of the US Government.

The Foreign Corrupt Practices Act

[391] The United States Congress passed the Foreign Corrupt Practices Act (FCPA) in 1977.³⁵¹ President Jimmy Carter signed it into law.³⁵² Its aim was to make it unlawful for certain classes of persons and entities to bribe foreign government officials for purposes of obtaining or retaining business.³⁵³ The statute specifically forbids giving anything of value, by using the mail systems or instruments

³⁵⁰ *Porter* (n 6) at [103] (emphasis added).

³⁵¹ See the Foreign Corrupt Practices Act 1977.

³⁵² See Severin Wirz, “‘Bribery Beyond Borders’: How the FCPA Became a Global Anti-Corruption Blueprint” (Corporate Compliance Insights, 2 December 2025) < www.corporatecomplianceinsights.com/bribery-beyond-borders-how-fcpa-became-global-blueprint/ > accessed 14 May 2026.

³⁵³ See ‘Foreign Corrupt Practices Act’ (United States Department of Justice Criminal Division Foreign Corrupt Practices Act Unit) < <https://www.justice.gov/criminal/criminal-fraud/foreign-corrupt-practices-act> > accessed 14 May 2026.

of interstate commerce in the US, to influence the acts of foreign officials. The legislation was designed to enable prosecution of US persons, as well as non-US-based persons and entities that have no connection with the US, except that communications were exchanged using US-based facilities; or that the impugned payments went through a correspondent bank in the US, even though the suspect's own direct bank was based outside the US.³⁵⁴

[392] The US Securities and Exchange Commission maintains a website that shows its own FCPA enforcement actions by each calendar year from 1978 to 2024. The subjects of such enforcement actions number in the hundreds, including both US and foreign persons and entities.³⁵⁵

[393] I note here—purely as an academic aside—that some concerns have been raised about some of the strategies employed to enforce the FCPA and their orientation. Some of these concerns are less troubling than others. For instance, the complaint about extraterritoriality³⁵⁶ of the prosecutions won't travel far. International law doesn't forbid States from exercising national criminal jurisdiction over events occurring beyond their territories.³⁵⁷ What is more, it has become increasingly accepted by authoritative voices in other States that an interconnected world—in which crimes and their effects often transcend national borders—cannot afford 'parochial nationalistic'³⁵⁸ conceptions of criminal jurisdiction. Indeed, international law now fully accepts that a State may (must, in some cases) prosecute or extradite offenders for certain crimes—such as corruption, drug trafficking, money laundering or violent crimes forbidden by international law

³⁵⁴ See 'Foreign Corrupt Practices Act (FCPA)' (Cornell Law School Legal Information Institute) < [www.law.cornell.edu/wex/foreign_corrupt_practices_act_\(fcpa\)](http://www.law.cornell.edu/wex/foreign_corrupt_practices_act_(fcpa)) > accessed 14 May 2026.

³⁵⁵ See 'SEC Enforcement Actions: FCPA Cases' (US Securities and Exchange Commission) < <https://www.sec.gov/about/divisions-offices/division-enforcement/enforcement-topics-initiatives/sec-enforcement-actions-fcpa-cases> > accessed 14 May 2026.

³⁵⁶ Elizabeth Acorn, 'Law and Politics in FCPA Prosecutions of Foreign Corporations' (2021) 17(2) DIREITO GV L Rev 1. See Anthony S Barkov and Anne Cortina Perry, 'American Prosecutorial Imperialism?' (2014) 41 Litig 28; John Ashcroft and John Ratcliffe, 'The Recent and Unusual Evolution of an Expanding FCPA' (2012) 26 Notre Dame JL Ethics & Pub Pol'y 25; Mike Koehler, 'The Facade of FCPA Enforcement' (2009) 41 Geo J Int'l L 907; Frédéric Pierucci and Matthieu Aron, *The American Trap: My Battle to Expose America's Secret Economic War Against the Rest of the World* (Hodder & Stoughton 2020); Charles F Smith and Brittany D Parling, '“American Imperialism”: A Practitioner's Experience with Extraterritorial Enforcement of the FCPA' (2012) Uni of Chi Legal F 237.

³⁵⁷ See *Case of the SS “Lotus”* [1927] PCIJ Series A No 10 at 19.

³⁵⁸ See *Cotroni* (n 345) at 1486, and *Sriskandarajah* (n 349) at [10].

notably war crimes, genocide, torture, crimes against humanity, and so on—on the basis of the alleged offender’s conduct that took place outside the territory.

[394] The more difficult criticisms against the FCPA enforcement strategies are those concerning the question whether and to what extent these prosecutions or threat of them result in collection of large fines that flow into the national coffers of the prosecuting State; and questions surrounding the legitimacy of some of the methods employed in mustering those fines. Often enough, these methods include arrangements—known as Deferred Prosecution Agreements (‘DPAs’) and Non-Prosecution Agreements (‘NPAs’)—according to which persons and entities under suspicion or investigation for corruption agree to pay fines in order to avoid sanctions against them, which would follow upon full blown investigations or indictments. These fines have been criticised on the one hand as merely inconvenient to large corporations who could afford to pay them with no deterrent effect to their proclivity for corrupt practices; and, on the other hand, as particularly concerning for levying and collection without judicial determination of wrongdoing or oversight.³⁵⁹ Once more, I stress that these questions are noted here only in passing; they are not engaged for determination in the present case. So, nothing further needs be said about them.

³⁵⁹ See, United States, Congress, Hearing before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary House of Representatives, *Deferred Prosecution: Should Corporate Settlement Agreements Be Without Guidelines?*, 110th Congress, 2nd Session (11 March 2008) 320 and 324; Gordon Bourjaily, ‘DPA DOA: How and Why Congress Should Bar the Use of Deferred and Non-Prosecution Agreements in Corporate Criminal Prosecutions’ (2015) 52 Harv J on Legis 543 at 547; Frederick T Davis, ‘Judicial Review of Deferred Prosecution Agreements: A Comparative Study’ (2022) 60 Colum J of Transnat’l L 751 at 764; Peter R Reilly, ‘Sweetheart Deals, Deferred Prosecution, and Making a Mockery of the Criminal Justice System: US Corporate DPAs Rejected on Many Fronts’ (2018) 50 Ariz St LJ 1113 at 1123 - 1124; Richard A Epstein, ‘The Deferred Prosecution Racket’ *Wall Street Journal* (New York, 28 November 2006) <www.wsj.com/articles/SB116468395737834160> accessed 14 May 2026; Richard A Epstein, ‘Deferred Prosecution Agreements on Trial: Lessons from the Law of Unconstitutional Conditions’ in Anthony S Barkow, Rachel E Barkow (eds), *Prosecutors in the Boardroom: Using Criminal Law to Regulate Corporate Conduct* (New York University Press 2011) 38; Robert Luskin & Bridget Vuona, ‘Pattern or Paranoia: Do US Prosecutors Enforce the Foreign Corrupt Practices Act Differently based on the Nationality of the Defendant?’ (2026) 63 American Criminal Law Review Online 1 <www.law.georgetown.edu/american-criminal-law-review/acrl-online/volume-63/pattern-or-paranoia-do-u-s-prosecutors-enforce-the-foreign-corrupt-practices-act-differently-based-on-the-nationality-of-the-defendant/> accessed 27 May 2026; Shane Frick, ‘“Ice” Capades: Restitution Orders and the FCPA’ (2013) 12 Rich J Global L & Bus 433 at 435 - 436; and, Heather Diefenbach, ‘FCPA Enforcement Against Foreign Companies: Does America Know Best?’ (2014) 2 Cornell Int’l LJ Online 47.

The Bush and Obama Administrations

- [395] Research suggests that enforcement action under the FCPA was lacklustre until the Administration of President George W Bush came into office.³⁶⁰ On 10 August 2006, his Administration launched its ‘National Strategy to Internationalize Efforts Against Kleptocracy.’ Its declared specific objectives included:

Vigorously Prosecute Foreign Corruption Offenses and Seize Illicitly Acquired Assets. In its continuing efforts against bribery of foreign officials, the United States Government will expand its capacity to investigate and prosecute criminal violations associated with high-level foreign official corruption and related money laundering, as well as to seize the proceeds of such crimes.³⁶¹

- [396] In their own turn, the Obama-Biden Administration continued that effort. A Fact Sheet published by the White House on 24 September 2014, reported the following:

The United States continues to apply the FCPA to prosecute those who pay bribes to foreign officials to obtain business benefits. Since 2009, the United States has resolved criminal cases against more than 50 corporations worldwide with penalties of approximately \$3 billion, and it has convicted more than 50 individuals, including CEOs, CFOs, and other high-level corporate executives, for FCPA and FCPA-related Crimes.³⁶²

- [397] The *Global Magnitsky* Act was to become an important milestone in the efforts of the United States governments to fight corruption abroad.

³⁶⁰ See John Ashcroft and John Ratcliffe ‘The Recent and Unusual Evolution of an Expanding FCPA’ (2012) 26 Notre Dame JL Ethics & Pub Pol’y 25 at 26.

³⁶¹ See, The White House (President George W Bush), ‘Fact Sheet: National Strategy to Internationalize Efforts Against Kleptocracy’ (Press Release, 10 August 2006) <<https://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060810-1.html>> accessed 7 May 2026. Bold emphasis received.

See also, The White House (President Barack Obama), ‘Fact Sheet: The US Global Anticorruption Agenda’ (Press Release, 24 September 2014) <<https://obamawhitehouse.archives.gov/the-press-office/2014/09/24/fact-sheet-us-global-Anticorruption-Agenda>> accessed 7 May 2026.

The Global Magnitsky Act

[398] Sergei Magnitsky, a 38-year-old Russian tax lawyer and auditor, died in Russian prison in November 2009, a year after his arrest. As the story goes, he had documented tax fraud and other acts of corruption by persons allegedly associated with Russian authorities. He was consequently arrested; and he died in detention in controversial circumstances. In his honour, the US Congress passed the Sergei Magnitsky Rule of Law Accountability Act, first in 2012, requiring the US President to identify and impose sanctions on accomplices to the alleged crimes that Mr Magnitsky uncovered and those involved in the violations he and others allegedly suffered in Russia. The sanctions that the US President was authorised to impose included travel bans to the US, visa revocation, asset freezes in the US, and prohibition of US persons and entities from doing business with sanctioned persons. In 2016, the US Congress gave that legislation a global orientation under the eponymous title Global Magnitsky Human Rights Accountability Act, enabling the US President to impose economic sanctions and deny US entry to any foreign person identified as engaging in human rights violation or corruption. The 2016 law was originally scheduled to lapse after six years, but it was reauthorised and made indefinite in April 2022.

[399] For our purposes, it is notable that s 1263(a) of the Global Magnitsky Act 2016 authorises the US President to impose those sanctions ‘with respect to any foreign person’ the President determines, based on credible evidence—

(3) is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or

(4) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (3).³⁶³

The Biden-Harris Anti-Corruption Strategy

[400] Early in the Biden-Harris Administration, President Biden made the fight against corruption a signal element of their Administration's foreign policy. On 3 June 2021, he released a presidential actions memorandum titled: 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest.'³⁶⁴

[401] President Biden's first order of motivation evidently suggested a caring attitude for a corruption-free global order. In that regard he said:

In financial terms alone, the costs of corruption are staggering. It has been estimated that acts of corruption sap between 2 and 5 percent from global gross domestic product. While such costs are not evenly shared worldwide, the abuse of power for private gain, the misappropriation of public assets, bribery, and other forms of corruption impact every country and community. The proceeds of these acts cross national borders and can impact economies and political systems far from their origin. Anonymous shell companies, opaque financial systems, and professional service providers enable the movement and laundering of illicit wealth, including in the United States and other rule of law based democracies.³⁶⁵

[402] Yet, the anchor of concern was ultimately the national interest of the United States. The latter motivation was evident in this observation:

Corruption threatens United States national security, economic equity, global anti-poverty and development efforts, and democracy itself. But by effectively preventing and countering corruption and demonstrating the

³⁶³ See Global Magnitsky Human Rights Accountability Act 2016 s 1263(a).

³⁶⁴ The White House (Joseph R Biden Jr), 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest' (Press Release, 3 June 2021) <<https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>> accessed 5 May 2026.

³⁶⁵ *ibid* 1.

advantages of transparent and accountable governance, we can secure a critical advantage for the United States and other democracies.³⁶⁶

[403] The degree of importance of the anti-corruption policy to US national interest was, perhaps, evident in the title ‘a Core United States National Security Interest’ and in the President’s declaration that ‘[i]n issuing this National Security Study Memorandum, I establish countering corruption as a core United States national security interest.’³⁶⁷ Consequently, he directed three senior aides—ie the Assistant to the President and National Security Advisor, in coordination with the Assistant to the President for Economic Policy and the Assistant to the President for Domestic Policy—to (a) conduct an interagency review process under a National Security Memorandum that dealt with Renewing the National Security Council System; and, then, (b) develop a Presidential strategy for the purpose of ‘significantly bolster[ing] the ability of the United States Government’ to achieve certain objectives, which as a matter of interest in this appeal, included these:

- i. Hold accountable corrupt individuals, transnational criminal organizations, and their facilitators, including by, and where appropriate, identifying, freezing, and recovering stolen assets through increased information sharing and intelligence collection and analysis, criminal or civil enforcement actions, advisories, and sanctions or other authorities, and, where possible and appropriate, returning recovered assets for the benefit of the citizens harmed by corruption; and,
- ii. Work with international partners to counteract strategic corruption by foreign leaders, foreign state-owned or affiliated enterprises, transnational criminal organizations, and other foreign actors and their domestic collaborators, including, by closing loopholes exploited by these actors to interfere in democratic processes in the United States and abroad.

³⁶⁶ *ibid.*

³⁶⁷ *ibid.*

[404] Fifteen agencies were concerned in the interagency review to achieve that significant bolstering of the US abilities for the indicated objectives. The concerned agencies included all the major departments of the executive branch of the US Federal Government. Notably: the Office of the Vice President, the Department of State, the Department of the Treasury, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Office of the Chairman of the Joint Chiefs of Staff, and the National Security Agency.

[405] The interagency review was to be completed within 200 days from 3 June 2021, with a report and recommendations submitted to the President for further direction and action.

[406] Keeping to that timetable, the Biden-Harris White House published its first Strategy on Countering Corruption, in December 2021. The Strategy, in terms, ‘place[d] special emphasis on the transnational dimensions of the challenges posed by corruption, including by recognising the ways in which corrupt actors have used the US financial system and other rule-of-law based systems to launder their ill-gotten gains.’³⁶⁸ The Strategy was organised around five mutually reinforcing pillars of efforts, as follows:

- i. Modernizing, coordinating, and resourcing US Government efforts to fight corruption
- ii. Curbing illicit finance
- iii. Holding corrupt actors accountable
- iv. Preserving and strengthening the multilateral anti-corruption architecture, and,

³⁶⁸ ‘United States Strategy on Countering Corruption: Pursuant to the National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest’ (, December 2021) <<https://bidenwhitehouse.archives.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>> accessed 5 May 2026 at 4 .

- v. Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.³⁶⁹

[407] In relation to strategic Pillar Three—ie Holding Corrupt Actors Accountable—the Biden-Harris Administration committed itself to, amongst other things, ‘decreas[ing] the ability of corrupt actors to launder the proceeds of their activities through global markets,’³⁷⁰ and to ‘hold[ing] accountable those who choose to engage in corruption.’³⁷¹ In that regard, they pledged as follows:

To do so, we will **continue and enhance our strong enforcement efforts ...**, *applying existing laws with vigor and expanding our cooperation with additional jurisdictions*. We will **update the tools available to hold corrupt actors accountable at home and abroad ...**, including by working with the Congress to criminalize the demand side of bribery by foreign public officials. We will **work with partners to create complementary regimes and amplify our efforts ...**, *coordinating and cooperating on tax enforcement, sanctions*, visa restrictions, and other effective authorities and tools. We will **strengthen the ability of foreign partner governments to pursue accountability in a just and equitable manner ...**, enhancing support to international partnerships and transnational initiatives, and working with partners to incentivize and enhance their capacities to pursue reform. And we will **bolster the ability of civil society, media, and private sector actors to prevent corruption and push for accountability ...**, growing collaboration and communication with a wide range of partners.³⁷²

[408] Specific lines of effort for strategic Pillar Three included ‘[c]ontinuing to vigorously pursue the enforcement of foreign bribery cases through the FCPA [Foreign Corrupt Practices Act of 1977], money laundering charges, and forfeitures for promoting corrupt schemes and laundering corruption proceeds as appropriate.’³⁷³ To that end, the Biden-Harris Administration declared their commitment to ‘enhance’ their efforts in the ‘enforcement of anti-money

³⁶⁹ *ibid* 5.

³⁷⁰ *ibid* at 11.

³⁷¹ *ibid* 11-12.

³⁷² *ibid* 12, *italic emphasis added, bold emphasis received*.

³⁷³ *ibid*.

laundering criminal and civil laws,’ including through the work of the Department of Justice in the aggressive prosecution of bribery and other corruption cases.³⁷⁴

[409] Spotlights of the US Government’s anti-corruption efforts at the time included the following cases:

- i. In 2017, the US Government sanctioned Yahya Jammeh, the former Gambian President, using Executive Order 13818 that implemented the Global Magnitsky Act, freezing his US-based assets and imposing US travel ban. In 2020, the investigations of the Department of Justice and other relevant US agencies, together with those of Gambian authorities, resulted in the forfeiture of a multi-million dollar property that Mr Jammeh owned in Maryland.³⁷⁵
- ii. In 2021, the US Government sanctioned three Bulgarian nationals and their network of 64 entities for their alleged extensive roles in corruption in Bulgaria. Those sanctions were complemented by the designation of three other Bulgarian public officials for their alleged involvement in ‘significant corruption.’³⁷⁶
- iii. The FBI’s International Corruption Unit, together with the Department of Justice, established offices overseas to investigate corruption cases. Between 2016 and 2021, those investigations resulted in ‘172 convictions, 20 deferred prosecution agreements, and 13 non-prosecution agreements, and [had] collected US\$18 billion in criminal and civil monetary penalties.’³⁷⁷

[410] A notable plank in the Biden-Harris anti-corruption strategy included support for investigative journalists and other whistleblowers who worked to expose corruption. The Administration’s efforts in that regard included taking measures to

³⁷⁴ See *ibid* 25.

³⁷⁵ *ibid*.

³⁷⁶ *ibid* 27.

³⁷⁷ *ibid* 28.

assist in countering SLAPP lawsuits (meaning strategic lawsuits against public participation).³⁷⁸ These are alleged nuisance litigation that the rich and powerful resort to for the purpose of intimidating, exhausting or punishing those who expose their wrongdoing.

Part IV. Multilateral Action against Money Laundering

[411] As with the discussion in the preceding part of this opinion, the objective in this part is also to underscore a related set of considerations that the fair-minded observer must take into account in the bias inquiry. As the discussion addresses part of Guyana's international obligations, it is, again, part of 'the crush of circumstances' that would press upon any Guyanese Minister to sign the ATP; thus making complaints of bias largely pointless in relation to the particular Minister who actually signed it—despite a residual margin of ministerial discretion, the abuse of which may be litigated within the ambit of the committal proceedings.

[412] A resonant theme in the United States's declared strategies against foreign corruption has been the need to prevent the abuse of the United States's financial institutions and economy to facilitate such criminal conduct or to launder their proceeds. That theme was sufficiently clear in the declared approaches of President George W Bush,³⁷⁹ President Barack Obama,³⁸⁰ and President Joe Biden.³⁸¹ As will be seen below, theirs have not been the only efforts to promote—or take—measures to combat corruption and money laundering. The Bribery Act marks the

³⁷⁸ *ibid* 35.

³⁷⁹ 'At this year's G-8 meeting in St Petersburg, my colleagues joined me in calling for strengthened international efforts to deny kleptocrats access to our financial systems and safe haven in our countries ... Our objective is to defeat high-level public corruption in all its forms and to deny corrupt officials access to the international financial system as a means of defrauding their people and hiding their ill-gotten gains': The White House (President George W Bush), 'President's Statement on Kleptocracy' (Press Release, 10 August 2006) <<https://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060810.html>> accessed 8 May 2026.

³⁸⁰ 'The United States continues to take action to prevent the U.S. legal and financial systems from being exploited by those who engage in, or launder the proceeds of, corruption': The White House (President Barack Obama), 'Fact Sheet: The US Global Anticorruption Agenda' (Press Release, 24 September 2014) <<https://obamawhitehouse.archives.gov/the-press-office/2014/09/24/fact-sheet-us-global-Anticorruption-Agenda>> accessed 8 May 2026.

³⁸¹ 'The United States will continue to evaluate and implement measures as needed to further safeguard our financial system, and will work with likeminded partners and relevant multilateral institutions to do the same. We will make it harder to hide the proceeds of ill-gotten wealth in opaque corporate structures, reduce the ability of individuals involved in corrupt acts to launder funds through anonymous purchases of U.S. real estate, and bolster asset recovery and seizure activities': 'United States Strategy on Countering Corruption' (n 368), 8.

United Kingdom's own efforts in the same vein,³⁸² pursuant to which some notable prosecutions have been undertaken against both foreigners³⁸³ and British nationals.³⁸⁴

[413] Similarly, multilateral efforts have continued in that regard dating back to the 1980s,³⁸⁵ though appreciably inspired by the United States' FCPA of 1977.³⁸⁶

[414] On 31 October 2003, the UN General Assembly adopted the United Nations Convention against Corruption (popularly known as the 'Merida Convention') for the same purposes that animated the anti-corruption strategies of the US Government as reviewed above. Guyana became a party to this treaty on 16 April 2008; the United States joined earlier on 30 October 2006.³⁸⁷

[415] Earlier, on 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime. Popularly known as the 'Palermo Convention,' the aim of the Convention is to combat the phenomenon of a structured group of three or more persons who engage in cross-border criminal activity or who seek to launder the proceeds of such criminal activity. Again, that objective was resonant in the anti-corruption strategies of the US Government reviewed above. Guyana and the US became parties to this treaty one year apart, with Guyana first on 14 September 2004 and US the following year on 3 November 2005.³⁸⁸

[416] A precedent anti-money laundering ('AML') effort at the multilateral level was set

³⁸² See United Kingdom Bribery Act 2010.

³⁸³ See Sam Tobin, 'Nigeria's Ex-oil Minister Alison-Madueke Cleared of All Charges in UK Corruption Trial' *Reuters* (17 June 2026) <www.reuters.com/world/africa/nigerias-ex-oil-minister-alison-madueke-cleared-all-charges-after-uk-corruption-2026-06-17/> accessed 8 May 2026.

³⁸⁴ See 'Bribery Act 2010 Sentence Tracker' Lexis Nexis Practice Notes <www.lexisnexis.co.uk/legal/guidance/bribery-act-2010-case-tracker> accessed on 8 May 2026.

³⁸⁵ See David Scott, 'Money Laundering and International Efforts to Fight It' The World Bank, Note No 48, Public Policy for the Private Sector, May 1995, 2 <<https://documents1.worldbank.org/curated/en/900151468762300572/pdf/multi0page.pdf>> accessed on 8 May 2026.

³⁸⁶ See Severin Wirz, *Bribery Beyond Borders: The Story of the Foreign Corrupt Practices Act* (CCI Press 2025).

³⁸⁷ See United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

³⁸⁸ See United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

by the United Nations in its 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, generally known as the ‘Vienna Convention on Narcotic Drugs.’³⁸⁹ Amongst other things, it obligates its States Parties to criminalise the laundering of money from drug trafficking. And it promotes amongst its States Parties international cooperation both in the investigation and the extradition of drug traffickers and related money launderers. Those States Parties include Guyana and the US, respectively as of 19 March 1993 and 20 February 1990.³⁹⁰

[417] The Financial Action Task Force (‘FATF’), established in 1989, has similarly emerged as a specialised and leading international inter-governmental body that develops and promotes policies and guidelines to protect the global financial system against money laundering. Its ‘Forty Recommendations’ adopted in 1990, comprise a cornerstone of its efforts in that regard, and are accorded great respect.³⁹¹ Guyana and the United States are both members of the FATF Global Network, through the Caribbean Financial Action Task Force (‘CFATF’).³⁹²

[418] The Organisation for Economic Cooperation and Development (‘OECD’) also has a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997.³⁹³ The Organisation of American States has its own Inter-American Convention against Corruption, adopted in 1996.³⁹⁴ So, too, does the Council of Europe have a Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, adopted in 1990.³⁹⁵ As does

³⁸⁹ See United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95.

³⁹⁰ See ‘United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Ch VI’ (United Nations Treaty Collection, Status of Treaties) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=vi-19&chapter=6> accessed 8 May 2026.

³⁹¹ See ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations’ (Financial Action Task Force (FATF) (2012-2025), (October 2025)) <www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf?nocache=true> accessed 8 May 2026.

³⁹² See ‘Caribbean Financial Action Task Force Members’ (CFATF Global Network) <www.fatf-gafi.org/en/countries/global-network/caribbean-financial-action-task-force--cfatf-.html> accessed 8 May 2026.

³⁹³ See Organisation for Economic Co-operation and Development (OECD), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 18 December 1997, entered into force 15 February 1999) 2802 UNTS 225.

³⁹⁴ See Organisation of American States (‘OAS’), Inter-American Convention Against Corruption (adopted 29 March 1996, entered into force 6 March 1997) (1996) 35 ILM 724.

³⁹⁵ See Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (adopted 16 May 2005, entered into force 1 May 2008) 2569 UNTS 91.

the African Union, by virtue of the African Union Convention on Preventing and Combating Corruption, adopted in 2003.³⁹⁶

A Vital Caveat to Laudable Endeavours

- [419] It is necessary to make clear at this juncture that the aim of this contextual information is to account for latent material facts that a fair-minded and informed observer must keep in mind before concluding whether it was bias that motivated the First Respondent's issuance of the ATP on 30 October 2025; or whether the tide of Guyana's international obligations *would* inundate any Minister's decision to issue the ATP, thus making the question of bias merely academic.
- [420] As regards the Biden-Harris Administration's effort to combat corruption within the US and abroad, in particular, I hasten to add that I must not be understood as suggesting that the rest of the world is bound to comply with policies unilaterally proclaimed by the Head of State of any particular nation, however powerful that nation might be. It is a matter of national sovereignty and the equality of States to decide whether to follow a path of foreign policy unilaterally initiated by a peer nation, whether to initiate a rival or countervailing policy, or whether to negotiate a mutually beneficial approach or do something else entirely different.
- [421] Judicial notice may nevertheless be taken of the fact that corruption has ravaged nations across the world and continues to do so—especially those with weaker structures of governance, but not only them. Corruption is often called kleptocracy when the leadership of a nation engages in it. That brand of corruption ranks atop the list of social maladies confronting humanity. Its human costs can be as devastating as the kind of violent crimes against humanity that often arrest international attention. Grand corruption denies adequate funding for public hospitals and public roads, so they become places of untimely death. It affords motive and opportunity for violation of human rights, and the unleashing of civil

³⁹⁶ See African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) 43 ILM 5.

wars and wars of aggression abroad, out of the need to suppress exposure or accountability or to divert attention.³⁹⁷ It impels people to migrate abroad in search of better lives in places where they are often treated with indignity or not wanted at all—and in the transit of which many of the economic migrants lose their lives. The conventional wisdom is that ‘[c]orruption thrives where public institutions are weak or wherever poor governance is prevalent.’³⁹⁸ Yet, the tragic irony is that the global pathology of corruption is aided and abetted by accomplice foreign economies, entities and persons located in countries far, far away from the places where public institutions are traditionally perceived as weak, poor governance is prevalent, and corruption thrives. And therein lies the main transnational dimension of the problem.

[422] There is, therefore, an obvious value in the leadership of any statesman or woman who steps up to lead the fight against global corruption: as long as it is truly altruistic and the resulting forfeitures, asset recoveries and fines are repatriated or otherwise endowed back to the States that are the real victims of graft. Such altruistic leadership is nothing new in international relations. Notably, President William McKinley and his successor, President Theodore Roosevelt, lent early impetus to the creation of a permanent court of international justice, which was eventually established after their times in office.³⁹⁹ President Woodrow Wilson personally led the effort at the Versailles Peace Conference to establish the League of Nations (the first multilateral international organisation in world history) after the First World War.⁴⁰⁰ He did that in the same conference in which he gave lift to an emergent norm that required a Head of State accused of international crimes to be punished before an international criminal tribunal.⁴⁰¹ In their own turn,

³⁹⁷ See Kofi Annan, UN Secretary General, ‘Foreword,’ in United Nations Office on Drugs and Crime (UNODC), *United Nations Convention against Corruption* (2004). See also Chile Eboe-Osuji, ‘Kleptocracy: A Desired Subject of International Criminal Law that is in Dire Need of Prosecution by Universal Jurisdiction’ in Evelyn Ankumah and Edward Kwakwa (ed), *African Perspectives on International Criminal Justice* (Africa Legal Aid, 2005) 121.

³⁹⁸ See Organisation for Economic Co-operation and Development (OECD), *No Longer Business as Usual: Fighting Bribery and Corruption* (OECD Publishing 2000) 3.

³⁹⁹ See Chile Eboe-Osuji, ‘Revisiting the Role of International Courts as Agencies of World Peace: Towards a Needed Culture of Judicial Resolution of Disputes’ (2025) 63 *Colum J Transnat’l L* 583 at 601-608.

⁴⁰⁰ See Chile Eboe-Osuji, *End of Immunity: Holding Leaders Accountable for Aggression, Genocide, War Crimes, and Crimes against Humanity* (Prometheus Books, 2024) at 36.

⁴⁰¹ *ibid* 65 and 152-166.

President Franklin D Roosevelt and his successor, President Harry S Truman, not only led the efforts to create the United Nations (succeeding the League of Nations), they also lent their weight to the consolidation of the norm of international criminal punishment (including of Heads of State) accused of committing international crimes.⁴⁰²

[423] The hope has been expressed that the scourge of grand corruption should be made an international crime of universal jurisdiction—ie a crime over which all nations should have jurisdiction to prosecute regardless of the place of the crime.⁴⁰³ Therefore, no criticism would be proper against any national leader that initiates such a global effort against corruption.

[424] All that is well and good as those hopes and histories go. It remains the case, however, that any resulting criminal charge of corruption *must* follow the due process of the law. Where such a charge involves a request for the extradition of the accused for trial in a foreign jurisdiction, the process must follow the applicable law of extradition and other principles of law that guide and control the process. The understood rules of sovereignty entitle no nation to arrest and surrender a subject to another nation merely for the asking. That consideration must not be compromised. On that point, I wholly concur with the Rajnauth-Lee/Jamadar/Bulkan Opinion, notwithstanding my view that there is no real risk of that concern in the present case.

Part V. The Extradition Process: A Very Brief Outline

[425] In this segment, I shall briefly discuss the extradition process. It is an important discussion as with the discussions in Parts III and IV of this Opinion: an understanding of the extradition process helps to inform the fair-minded observer about the international obligation that extradition entails for nations including

⁴⁰² *ibid* ch 9 and 10 generally.

⁴⁰³ See Chile Eboe-Osuji, 'Kleptocracy: A Desired Subject of International Criminal Law that is in Dire Need of Prosecution by Universal Jurisdiction' in Evelyn Ankumah and Edward Kwakwa (ed), *African Perspectives on International Criminal Justice* (Africa Legal Aid, 2005) at 121.

Guyana. That obligation will allow the fair-minded observer to see whether the Minister had real freedom to decline signing the ATP upon receipt of an extradition request. In other words, it allows us to see whether the Minister's decision to issue the ATP was merely or mostly administrative in view of the judicial proceedings already reserved as part of the extradition process; thus, making any violation of an applicable procedural fairness norm an error that should generally be pursued only within those reserved judicial proceedings, rather than as a separate track of litigation.

[426] I pause to say at this juncture that I concur with the view that the issuance of the ATP is subject to judicial review. The difference of opinion lies in my respectful view—also shared by Anderson P and Barrow J—that the extradition process is amply equipped to afford precisely that judicial review. There is, therefore, no need to reserve a separate express lane of judicial review for the ATP alone. All that is necessary for the Requested Person to do at the commencement of the committal proceedings is to register a preliminary objection against an impugned ATP, but then wait until the conclusion of the committal proceedings for any necessary appeal or judicial review—including any appeal of the ruling on the preliminary objection.

[427] The importance that States attach to extradition is succinctly summarised by the Government of Australia in their statement of a rationale that applies to every country:

Why do we need extradition?

Australia needs to ensure that criminals cannot evade justice simply by crossing borders. This requires an effective extradition regime that includes appropriate safeguards.

Australia's extradition relationships with other countries exist to enable Australia to ensure the effective administration of criminal justice in this country. Australia's extradition relationships also enable us to cooperate with partner countries to combat crime and prevent Australia from

becoming a refuge and safe haven for persons accused of serious crimes in other countries.⁴⁰⁴

[428] It is obvious from the foregoing explanation of the importance of extradition that States have mutual interest in acceding to the extradition requests from other States: the Requested State may in future need to make an extradition request of its own. ‘The extradition process,’ observed the Supreme Court of Canada in that regard, ‘is founded on principles of “*reciprocity, comity* and respect for differences in other jurisdictions.”’⁴⁰⁵

[429] The practice of extradition around the world is not uniform. But, for purposes of this opinion, a brief outline can be traced along a discernible pattern within the Commonwealth legal system.

[430] Extradition can be described, in bare outlines, as the enforced transfer of a person from one State to a second State to face the demands of criminal justice in the second State. Such demands of justice are limited to the requirement to stand criminal trial or to serve the sentence upon conviction following a criminal trial. As such, extradition is very different from deportation or expulsion or other forms of enforced transfer of a person from one State to another. What extradition shares with these other methods is the feature of enforced transfer. Extradition is an enforced transfer because it is done against the volition of the Requested Person: but he can obviate extradition by voluntarily surrendering himself to the State interested in bringing him to justice.

[431] That brings us to a very important feature of extradition—the process. Extradition is heavily process dependent. The general practice within the Commonwealth legal system is that the extradition process engages certain vital roles for both the executive—with certain exceptions—and the judiciary. The judiciary, in its part, plays a central role in the process—without exception. The role of the judiciary is

⁴⁰⁴ Australian Government, Attorney-General’s Department, ‘Fact Sheet: Overview of the Extradition Process’ <www.ag.gov.au/sites/default/files/2020-03/Factsheet-overview-of-the-extradition-process.pdf> accessed 14 May 2026.

⁴⁰⁵ See *A-G of Canada v Badesha* [2017] 2 SCR 127 at [35] (emphasis added).

to ensure that the rights of the subject of extradition are protected, that the laws regarding extradition are obeyed, and that extradition is not arbitrary or abusive or unduly oppressive. The Canadian Supreme Court put the point well enough in their observation that ‘extradition practices have been tailored as much as possible for the protection of the liberty of the individual.’⁴⁰⁶

[432] Generally speaking, there are three phases in the extradition process. Two of those phases are inevitable and the third only a likelihood at best. They are (i) the executive phase, (ii) the judicial phase, and (iii) possibly (or at best likely) further executive phase. Evidently, the executive plays a role at two of the three phases. At the first phase, the executive role involves receiving the request for extradition, then submitting it to the judiciary for a hearing in the absence of any discernible reason in the law that warrants against submitting the request to the judiciary. The second phase involves a judicial inquiry into the lawfulness of the extradition. And the third phase possibly—at best likely—reengages the executive. I say ‘possibly or likely at best’ because the role of the executive at the third phase depends on the outcome of the judicial phase. If the judiciary finds a reason to disallow the extradition, then that is the end of the road for the extradition quest. The Requested Person will be released. But if the judiciary gives the green light to the extradition, then the executive will be re-engaged to make the final discretionary decision to surrender the Requested Person to the Requesting State.

[433] An important practical consideration to keep in mind at all times is that States don’t make extradition requests lightly. Extradition requests are driven by a real interest in having the subject of the request transferred to the Requesting State to face the demands of criminal justice. That real interest is sufficiently obvious in a case where the Requested Person is wanted in the Requesting State to return and serve his sentence following a conviction. That the Requesting State had expended efforts, time, human and economic resources in the criminal trial that resulted in the conviction are telling factors that underscore their interest in making the

⁴⁰⁶ *Cotroni* (n 345) at 1490d. See also *Badesha* (n 405) at [37].

extradition request. In varying degrees, those practical factors are also present in cases where the Requested Person is wanted to appear and stand trial in the Requesting State. This is because in such cases, the Requesting State would also have expended effort and resources and investigation—even empanelling a grand jury as is the case in the United States—in the process that culminated in the indictment usually attached to the request for extradition. Hence, a request for extradition is a sovereign act of State of serious import. In international relations, Requested States are expected to treat it as such, not as a flighty foray at the domain of other States.

[434] It is in the manner of such serious import that the executive submits the request for extradition to the judiciary—in the absence of a compelling reason in law to decline moving the process forward to the judiciary. The executive makes that submission to the judiciary by issuing a document known in some States (such as Guyana, Trinidad and Tobago, Canada, and Nigeria) as ‘authority to proceed’ (ATP). In other States, the same document may be termed an ‘order to proceed’ or ‘certificate.’ In many jurisdictions, the authority to proceed *only* serves to ‘signify’ to the judiciary that the State has received an extradition request in respect of which the judiciary must conduct the hearing. The central issue in this appeal requires us to keep this in mind. The sense of the ATP as *signifying* to the judiciary the necessity to conduct a hearing into an extradition request (a sovereign act of a treaty partner), which the forum State has received is evident in the extradition legislation of a number of Commonwealth countries, notably, Guyana,⁴⁰⁷ Trinidad and Tobago,⁴⁰⁸ and Nigeria.⁴⁰⁹

[435] As mentioned earlier, the role of the judiciary is a vital and inevitable part of the extradition process. Again, the central issue in this case requires us to keep this in mind. It is not an overstatement to reiterate that the judicial inquiry is the main frame or centre piece of the extradition process. Indeed, in some jurisdictions

⁴⁰⁷ See the Fugitive Offenders Act (n 2), s 12(1).

⁴⁰⁸ See the Extradition (Commonwealth and Foreign Territories) Act, Chap 12:04, s 9(3) (TT)

⁴⁰⁹ See of the Nigeria Extradition Act, Cap E25, s 6(2).

around the world, the role of the executive (described earlier as the first phase) in the extradition process has been reduced to the vanishing point, in order to accentuate the role of the judiciary. Amongst the members of the European Union, for instance, the traditional form of extradition has been replaced by an intra-EU mutual legal assistance arrangement known as the European Arrest Warrant process. Viewed as the '[j]udicialisation' of even the surrender phase⁴¹⁰ of the extradition process, the arrangement has been described as follows:

[T]he new surrender procedure has been removed from the executive and placed in the hands of the judiciary. Both the issuing and executing authorities are considered to be the judicial authorities that are competent to issue or execute a European arrest warrant by virtue of the law of the issuing or executing member State.⁴¹¹

- [436] Other States, notably some States within the Commonwealth, operate between themselves a simplified form of mutual arrangement known as the 'Backing of Warrants' scheme. According to that scheme, an arrest warrant issued by a judge in one State receives judicial certification in the second State and is given the same force in the second State as with any other arrest warrant issued by a local judge of the second State.⁴¹²
- [437] The judicial process of extradition necessarily begins with the basic hearing described earlier. It is colloquially called the 'committal' hearing, because its essence is to determine whether the Requested Person may be extradited, in which case he must be *committed* to detention pending his eventual surrender to the Requesting State at the discretion of the Minister at the phase described earlier as the third phase.
- [438] The general practice within the Commonwealth is that the judicial process continues (at the option of the Requested Person) to a different stage known as the

⁴¹⁰ The surrender phase of the extradition process is the part of the process during which the executive is left with the discretion to surrender the Requested Person to the Requesting State after the judicial inquiry, if the judicial inquiry determines that the Requested Person may be extradited.

⁴¹¹ United Nations Office on Drugs and Crime (UNODC), 'Manual on Mutual Legal Assistance and Extradition' (2012) 20.

⁴¹² UNODC, 'Report of Informal Expert Working Group on Effective Extradition Casework Practice' (n 72) para 60.

habeas corpus proceeding—if the primary judicial hearing results in the committal of the Requested Person. It is generally the case that the *habeas corpus* proceeding takes place before a superior court judge, if the committal hearing took place before a Magistrate. The extradition process contemplates even further judicial proceedings beyond the *habeas corpus* proceeding, because the result of that proceeding can be appealed to the Court of Appeal, and possibly higher to the apex court of the jurisdiction (generally with leave of the court).

[439] In Canada, where the committal hearing takes place before a superior court, Parliament has simplified the extradition process by eliminating the *habeas corpus* facility as a separate judicial proceeding. The old *habeas corpus* facility has now been essentially merged with the committal hearing,⁴¹³ with only one channel of appeal to the Court of Appeal.⁴¹⁴

[440] At any rate, the judicial process as described above—entailing a committal hearing, a *habeas corpus* proceeding and appeal(s)—is a standard feature of every extradition process in Commonwealth countries.

[441] At these judicial proceedings, starting with the committal proceedings, the Requested Person can represent himself or bring his own lawyers. The Requested Person will be free to mount every available challenge he sees fit to mount. Those challenges may include a preliminary objection against the issuance of the ATP. More substantively, the challenges may be made on grounds of any of the standard objections or bars to extradition. Primarily, these include non-existence of an extradition treaty between the Requested and the Requesting States; and, non-compliance with an existing extradition treaty, such as whether the offence in question is an extraditable offence in the sense both of dual criminality requirement (meaning that the conduct in question must be a crime in both the Requested and the Requesting States) and minimum gravity requirement (meaning

⁴¹³ See *United States of America v Kwok* [2001] 1 SCR 532 at [39].

⁴¹⁴ *ibid* at [81].

that the offence must be punishable by a stipulated minimum sentence in both States).

[442] Other grounds on which extradition may be challenged at the judicial inquiry include these:

- i. that the offence for which the Requested Person is sought is of a political character
- ii. that the real purpose of the extradition is persecution because of race, ethnicity, sex, religion, nationality, political opinion or that the Requested Person might be prejudiced upon extradition for those reasons
- iii. exposure to double jeopardy in the sense that the Requested Person has been tried or convicted (and punished) in the past for essentially the same conduct
- iv. absence of specialty arrangements (meaning an assurance that the Requested Person may not without the consent of the Requested State be tried in the Requesting State for any other offences beyond those specially contemplated by the extradition request)
- v. absence of an arrangement precluding relay extradition to a third State (meaning extradition of the Requested Person from the Requesting State to a third State at any time after his extradition from the Requested State); and
- vi. objection to relay extradition from the Requested State (in the sense that the Requested Person is on the territory of the Requested State by reason of his prior extradition from another State under an arrangement that prohibited such further extradition).

[443] Naturally, it will be within the general discretion of the committal judge to expand the scope of the hearing and entertain miscellaneous complaints⁴¹⁵ against the legality of the extradition. In any event, the Requested Person is assured of a further opportunity—as shown below—to raise additional complaints against extradition.

[444] Where the committal proceeding results in a positive finding in favour of the extradition request, and the Requested Person has been committed to detention awaiting eventual surrender, he may, as mentioned earlier, bring a *habeas corpus* proceeding to challenge his committal. As typified by s 17(2) of the Guyanese Fugitive Offenders Act, that challenge is founded on grounds that ‘all the circumstances’ of the case, when taken into account, would make it ‘unjust or oppressive to extradite him.’ In Guyana and Jamaica, the reasons for the challenge may be these:

- (a) the trivial nature of the offence of which he is accused or was convicted;
- (b) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be;
- (c) the accusation against him being not made in good faith or in the interests of justice; or
- (d) any other sufficient cause.⁴¹⁶

[445] Such ‘other sufficient cause’ may include questions about compliance with the constitutionality of the extradition (if the Magistrate was precluded from entertaining that question) or applicable human rights law—since extradition treaties characteristically require that extradition must comply with the laws of the Requested State. Physical or mental condition may be an available ground of challenge—if the court within its discretion might consider that the physical or

⁴¹⁵ *ibid* at [15], [74], [84] and [100].

⁴¹⁶ See Fugitive Offenders Act (n 2), s 17(2) and the Trinidad and Tobago Extradition Act (n 184), s 13(3). See also The Bahamas Extradition Act, CAP 96, s 11 (3) and the Jamaica Extradition Act 1991.

mental condition of the Requested Person would make it unjust, oppressive or inhumane to extradite him at all or in the meantime.

[446] The outcomes of the foregoing inquiries are, in turn, subject to further review before a higher court—if either the Requested Person or the Government feels a need to engage that additional inquiry. And, as noted earlier, further appeals can be made to the highest appellate court of the jurisdiction in question—with leave.

[447] It is thus clear from the foregoing outlines that judicial inquiry exists as a vital feature—indeed the main beam—of the extradition process, for purposes of ensuring that an extradition is not legally flawed for ‘any ... sufficient cause.’⁴¹⁷

[448] Alas, the amplitude of the judicial dimension of the extradition process has been notoriously implicated in complaints about delays in the process.⁴¹⁸ That phenomenon has led a United Nations expert working group to recommend as follows:

In order to achieve judicial economy and accelerate the extradition process, the [Expert Working Group] accordingly recommends that, without prejudicing the fundamental right to review or appeal by the person sought, or effectiveness of judicial review:

- States in which appeal and review can be brought in the above ways should seek to simplify the procedure by limiting the number of appeals which may be sought within the extradition process and the number of courts (e.g. federal or state) in which such appeals may be brought; and
- wherever possible and consistent with its basic constitutional principles, States should adopt a single appeal mechanism for extradition casework to review all appropriate factual and legal issues, while eliminating repeated and partial reviews.⁴¹⁹

⁴¹⁷ See Fugitive Offenders Act (n 2), s 17(2).

⁴¹⁸ See generally, Robert J Currie and Laura Ellyson, ‘Extradition and Trial Delays: Recent Developments (and Lessons?) from Canada’ (2018) 2 *Católica Law Review* 77.

⁴¹⁹ UNODC, ‘Report of Informal Expert Working Group On Effective Extradition Casework Practice’ (n 72) [79].

[449] A pressing question does arise. And, in my view, it is central to this case. If the scope of judicial interventions within the existing extradition process is already large and inherently all-encompassing in the ability of the Requested Person to litigate within it any issue concerning violations of vital elements of the rule of law, does the protection of the rights of the Requested Person need a further broadening of that judicial footprint, by carving out a separate avenue of litigation concerning the ATP? I think not.

Part VI. Extradition: a Matter of Obligation in International Law

Treaties as the Fundamental Legal Basis for the Extradition Process

[450] As should be clear by now, the direct legal basis for the extradition process is national law. But national law doesn't operate alone in that regard. It operates to give impetus to a more fundamental basis for extradition. That more fundamental basis is international law—specifically treaty law.

[451] The impetus that national law gives to international law in extradition practice may be explained as follows. Some legal systems require national legislation to implement—or 'domesticate'—an international treaty within the national legal order. That requirement is a function of a doctrine in international law known as 'dualism.' That doctrine—where it operates—holds that treaties do not as such apply directly within the national legal order. A national statute is required for such direct operation. The dualist doctrine is generally followed in Commonwealth countries. This is contrasted with the alternative doctrine known as 'monism,' which accepts that an international treaty can have a direct force within the national legal order.

[452] The general phenomenon of extradition statutes within the Commonwealth countries is explained by the dualist outlook. Such legislation is meant to implement the nations' extradition treaties. The treaties that form the fundamental basis for the extradition process can be bilateral treaties or multilateral treaties.

[453] During the colonial era, extradition treaties that the British Government concluded with other nations also governed extradition from or to the colonies of the British Empire.⁴²⁰ But this would depend on the specific text of those treaties, which must be read with great care to see if they truly apply to a former colony. The implementing series of national legislation included the Extradition Act of 1870 as amended from time to time.⁴²¹ On attainment of independence, some of the former British colonies concluded their own extradition treaties while others retained the pre-independence extradition treaties,⁴²² whilst adopting their own national legislation.

[454] Bilateral extradition treaties can vary in their terms from treaty to treaty, although they will often reflect the general practice of States: such as the requirement of double criminality, the rejection of extradition request to try a political offence, the rejection of a request if there is a risk of persecution, the requirement of specialty arrangement, the prevention of relay extradition, etc.

[455] In order to encourage similarity (if not uniformity) of features amongst bilateral treaties, the United Nations General Assembly adopted the Model Treaty on Extradition in 1990, updated from time to time to keep pace with modern trends.⁴²³ The Model Treaty is also a framework United Nations instrument that aims to give general guidance to States in their extradition practices especially when applying certain multilateral treaties—such as the (Vienna) Convention on Narcotic Drugs, the (Merida) Convention on Corruption and the (Palermo) Convention on Transnational Organised Crime, and a plethora of multilateral treaties that proscribe certain odious acts of violence.⁴²⁴ It should be noted that the Model Treaty on Extradition is not itself a multilateral treaty.

⁴²⁰ Robert E Clute, 'Law and Practice in Commonwealth Extradition' (1959) 8 Am J of Comp L 15, 16.

⁴²¹ *ibid*, 18.

⁴²² *ibid*, 16 – 18.

⁴²³ See UNGA Res 45, 'Model Treaty on Extradition' (14 December 1990) UN Doc A/RES/45/116.

⁴²⁴ They include Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3; the Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984,

[456] There are, however, some extradition treaties that are truly multilateral as such. Mostly regional, they include the European Convention on Extradition (1957), the Inter-American Convention on Extradition (1981), the Convention on Extradition of the Economic Community of West African States (1994), and the Protocol on Extradition of the Southern African Development Community (2002).

[457] In addition to such made-for-purpose multilateral treaties on extradition, there are also extradition obligations contained in almost all the multilateral treaties that the international community has adopted to combat international crimes and transnational crimes, including, as noted above, the (Vienna) Convention on Narcotic Drugs, the (Merida) Convention on Corruption and the (Palermo) Convention on Transnational Organised Crime and the many multilateral treaties that proscribe violent crimes of concern to the international community. As noted elsewhere in this opinion, Guyana and the United States are parties to all these treaties.

The Transnational Crime of Money Laundering

[458] Many of those treaties mentioned above—notably the Vienna Convention, the Merida Convention, and the Palermo Convention—also target the crime of money laundering.

entered into force 26 June 1987) 1465 UNTS 85; International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243; the Convention for the Suppression of Unlawful Seizure of Aircraft (adopted 16 December 1970, entered into force 14 October 1971) 860 UNTS 105; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; the International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197; the Convention on the Protection and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted 14 December 1973, entered into force 20 February 1977) 1035 UNTS 167; the International Convention against the Taking of Hostages (adopted 17 December 1979, entered into force 3 June 1983) 1316 UNTS 205; the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 222; the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (adopted 10 March 1988, entered into force 1 March 1992) 1670 UNTS 305; the International Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256; and, the International Convention for the Suppression of Acts of Nuclear Terrorism (adopted 13 April 2005, entered into force 7 July 2007) 2445 UNTS 89.

[459] Money laundering is the process of cycling pecuniary proceeds of crime into the legitimate economy, in order to erase their illicit origins. A classic example is using money made from, say, drug trafficking to buy a rental property, a road haulage company or shares in a publicly traded company. The crime of money laundering thus entails dissimulation or transformation of proceeds of crime—the purchase of the rental property, the road haulage company, or the shares in a publicly traded company.

[460] As the crime is about transforming pecuniary proceeds of a criminal activity through the churning magma of the legitimate economy, the crime of money laundering generally requires a ‘predicate offence’— ie the primary conduct that was criminal and which elementally generated the pecuniary proceeds that needed transformation.

The Convention against Corruption

[461] Notably article 15 of the UN Convention against Corruption (the Merida Convention) requires its States Parties to use their criminal law to proscribe the bribery of national public officials.⁴²⁵ But in a self-standing anti-money laundering (‘AML’) regime, article 23(1) requires States Parties to use their criminal law to proscribe money laundering generally. In that regard, article 23(2) requires States to apply the AML regime ‘to the widest range of predicate offences.’⁴²⁶ The result is that money laundering, which States are required to proscribe and prosecute in their national jurisdictions as a distinct transnational crime, can result from any predicate conduct within a very wide range of other conduct proscribed as criminal. At any rate, States Parties to the Palermo Convention are required to

⁴²⁵ According to article 15 of the UN Convention against Corruption (n 387):

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

⁴²⁶ See the UN Convention against Corruption (n 387), art 23(2)(a).

‘include as predicate offences *at a minimum a comprehensive range* of criminal offences established in accordance with this Convention.’⁴²⁷ Notably, in some instances, the Convention imposes an outright obligation on States Parties to criminalise certain conduct⁴²⁸; while requiring them to ‘consider’ criminalisation in other instances.⁴²⁹ Arguably, the minimum obligation to ‘consider’ criminalisation in those other instances is an international recognition of the criminality of the conduct, which States Parties are thus entitled to criminalise.

[462] According to article 44 of the Convention, an offence recognised under the Convention qualifies as an extradition crime, if it is a crime in both the Requested State and Requesting State;⁴³⁰ without prejudice to the freedom of a State (allowed by national law) to extradite a Requested Person on the basis of a Convention crime that has not been recognised as a crime in the national laws of the Requested State.⁴³¹ Additionally, Convention crimes are to be deemed to be included in extradition treaties between States Parties to the Convention, and are required to be include in all bilateral future extradition treaties to be negotiated by the States Parties to the Convention.⁴³² In the absence of such bilateral treaties, the Convention itself may then be the basis of extradition requests regarding any of the offences recognised under the Convention.⁴³³

⁴²⁷ *ibid*, art 23(2)(b) (emphasis added).

⁴²⁸ The conduct which States are required to criminalise outright are these: the offering or the giving of bribe to a national public official for the benefit of the official or a third party (art 15(1)(a)); the solicitation or acceptance of bribe by national public official for himself or a third party (art 15(1)(b)); the offering or the giving of bribe to a foreign public official or an official of an international organisation for the benefit of the official or a third party (art 16(1)); the embezzlement, misappropriation or other diversion public funds, property other valuable assets (art 17); money laundering (art 23); obstruction of justice in the investigation or prosecution of offences recognised under the Convention (art 25).

⁴²⁹ States are required to ‘consider’ criminalising the following conduct: solicitation and acceptance of bribe by foreign public official or official of an international organisation for the benefit of the official or a third party (art 16(2)); influence peddling (art 18); abuse of functions for private benefit (art 19); illicit enrichment, meaning significant increase in the assets of a public official in ways that are not reasonably explained by his or her lawful income (art 20); bribery in the private sector (art 21); embezzlement in the private sector (art 22); concealment or continued retention of property known to its holder to have been generated by any of the offences established under the Convention (art 24).

⁴³⁰ See art 44(1).

⁴³¹ See art 44(2).

⁴³² See art 44(4).

⁴³³ See art 44(5).

The Palermo Convention

[463] The Convention against Transnational Organized Crime (the Palermo Convention), for its part, was adopted to combat *serious crimes* that are both transnational in nature and involve an *organised criminal group*.⁴³⁴ A ‘serious crime’ is defined as punishable by a prison term of up to four years⁴³⁵; and, an ‘organised criminal group’ is defined as ‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.’⁴³⁶ Consequently, the Convention created obligations upon States Parties in relation to the following specific offences:

- i. conspiracy to commit a serious crime for the purpose of a financial or other benefit, and (if required by national law) one of the parties to the conspiracy does something either in furtherance of that conspiracy or involving an organised criminal group⁴³⁷
- ii. intentional active participation in the activities of an organised criminal group generally or in relation to the commission of a particular crime⁴³⁸
- iii. organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group⁴³⁹
- iv. laundering the proceeds of crime—outlined along similar lines as in the AML provisions of the (Merida) Convention against Corruption⁴⁴⁰ (as seen earlier)

⁴³⁴ See Convention against Transnational Organized Crime (n 388), art 3.

⁴³⁵ See article 2(b).

⁴³⁶ See *ibid*, art 2(a).

⁴³⁷ See *ibid*, art 5(1)(a)(i).

⁴³⁸ See *ibid*, art 5(1)(a)(ii).

⁴³⁹ See *ibid*, art 5(1)(b).

⁴⁴⁰ See *ibid*, art 6.

- v. corruption of a public official;⁴⁴¹ and
- vi. obstruction of justice: defined as interfering with criminal proceedings in relation to any of the foregoing offences, through use of force, threats, intimidation, promises or bribes to witnesses, law enforcement officials or judges.⁴⁴²

The OECD Anti-Bribery Convention

[464] The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions also eponymously proscribes bribery of foreign public officials,⁴⁴³ and contemplates the offence as a predicate offence for purposes of AML laws.⁴⁴⁴

[465] What is more, the Convention (like the Merida Convention reviewed above) requires any offence recognised in it to be made an extraditable offence, and which must be included as such in all bilateral extradition treaties to be negotiated by the States Parties to the Convention. And in the absence of such bilateral treaties, the Convention itself may then be the basis of extradition requests regarding the crime of bribery of foreign public officials.⁴⁴⁵

The FATF Recommendations

[466] There is an apparent congruency between the Financial Action Task Force ('FATF') Recommendations and the common principle in the Merida Convention and the Palermo Convention requiring States to apply the AML provisions of those treaties to 'the widest range of predicate offences.'⁴⁴⁶

⁴⁴¹ See *ibid*, art 8.

⁴⁴² See *ibid*, art 23.

⁴⁴³ See OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (n 393), art 1.

⁴⁴⁴ *ibid*, art 7.

⁴⁴⁵ See *ibid*, art 10.

⁴⁴⁶ See the UN Convention against Corruption (n 387), art 23(2)(a), and the Palermo Convention (n 388), art 6(2)(a).

[467] Notably, the FATF Recommendation 3 provides: ‘Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to *all serious offences*, with a view to including *the widest range of predicate offences*.’⁴⁴⁷

[468] In its Interpretive Note to Recommendation 3, the FATF reiterated that countries ‘should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.’⁴⁴⁸ According to the Interpretive Note, predicate offences may be described in one of four ways: (i) by reference to all offences, (ii) by reference to a threshold linked to either a category of serious offences or the penalty of imprisonment applicable to the predicate offence, (iii) by reference to a list of predicate offences, or (iv) by a combination of all three approaches.⁴⁴⁹ Where the threshold approach is employed, the predicate offences should include at a minimum ‘all offences that fall within the category of serious offences’ under the national law or those that ‘are punishable by a maximum penalty of more than one year’s imprisonment’;⁴⁵⁰ or a minimum penalty of more than six months for States that operate a penal system based on a minimum threshold of prison sentence.⁴⁵¹ Again, the effect of this is to give a very broad range to the kinds of conduct that can, as predicate offences, anchor a charge of money laundering.

[469] The approach of affording a very wide range to the kinds of conduct that can serve as predicate offences to money laundering charges is evident in the variety of conduct listed as designated categories of offences to which the FATF Recommendations on AML apply. They include the following offences:

⁴⁴⁷ See, The FATF Recommendations (n 391), 12 (emphases added).

⁴⁴⁸ See The FATF Recommendations (n 391) 38, and also, FATF Interpretive Note to Recommendation 3, [2].

⁴⁴⁹ *ibid.*

⁴⁵⁰ *ibid.*, [3].

⁴⁵¹ *ibid.*

- i. participation in an organised criminal group and racketeering
- ii. terrorism, including terrorist financing
- iii. trafficking in human beings and migrant smuggling
- iv. sexual exploitation, including sexual exploitation of children
- v. illicit trafficking in narcotic drugs and psychotropic substances
- vi. illicit arms trafficking
- vii. illicit trafficking in stolen and other goods
- viii. corruption and bribery
- ix. fraud
- x. counterfeiting currency
- xi. counterfeiting and piracy of products
- xii. environmental crime (for example, criminal harvesting, extraction or trafficking of protected species of wild fauna and flora, precious metals and stones, other natural resources, or waste)
- xiii. murder, grievous bodily injury
- xiv. kidnapping, illegal restraint and hostage-taking
- xv. robbery or theft
- xvi. smuggling; (including in relation to customs and excise duties and taxes)
- xvii. tax crimes (related to direct taxes and indirect taxes)
- xviii. extortion
- xix. forgery
- xx. piracy, and,
- xxi. insider trading and market manipulation.⁴⁵²

⁴⁵² See The FATF Recommendations, General Glossary (n 391), 128-129.

[470] Notably, both the AML multilateral conventions and the FATF Recommendations tend to suggest that though the extant offence be money laundering, the predicate offence that anchors the money laundering charge need not be of any particular character—as long as it is considered a *serious offence* in both the Requesting State and the Requested State. Hence, a money laundering charge in State A may be validated by a predicate offence in State B that was in the nature of a violent crime (such as terrorism, murder, kidnapping, sexual exploitation, etc), a fraudulent crime (such as forgery, counterfeiting of currency or products, etc), or a white-collar crime (such as bribery, smuggling in the sense of evasion of customs duties, tax evasion, insider trading or market manipulation, etc).

[471] Regarding property to be treated as proceeds of crime, the FATF considers that AML should ‘extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.’⁴⁵³ What is more, in proving that property is ‘the proceeds of crime, it should not be necessary that a person be convicted of the predicate offence.’⁴⁵⁴

Obligation to Extradite

[472] All the multilateral instruments mentioned above indicate that extradition is, as a general rule, a matter of international obligation in relation to money laundering—taking into account the generally accepted principles of extradition law. That general rule of obligation is subject to the provisions of the concerned treaty, the specific terms of which must be respected. The Palermo Convention, in particular, gives that indication.⁴⁵⁵ So, too, does the Merida Convention;⁴⁵⁶ as do the FATF Recommendations.⁴⁵⁷

⁴⁵³ See The FATF Recommendations, Interpretive Note To Recommendation 3 (Money Laundering Offence) (n 391), 38 para [4].

⁴⁵⁴ *ibid.*

⁴⁵⁵ See, art 16.

⁴⁵⁶ See, art 44.

⁴⁵⁷ See The FATF Recommendations (n 391), Recommendation 39.

[473] That indication similarly appears in the UN Model Treaty on Extradition, though only a framework instrument and not an actual multilateral treaty, as well as in the actual multilateral treaties on extradition. The very first article in the Model Treaty on Extradition notably speaks to that ‘obligation to extradite’ under that heading:

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.⁴⁵⁸

[474] Similarly, in the European Convention on Extradition, the very first provision states as follows:

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.⁴⁵⁹

[475] The same provisions occur in article 1 of the Inter-American Convention on Extradition in terms that the Parties ‘bind themselves,’⁴⁶⁰ in article 2 of the ECOWAS Convention on Extradition in terms that the States Parties ‘undertake,’⁴⁶¹ and in article 2 of the SADC Protocol on Extradition in terms that each State Party ‘agrees’ to extradite.⁴⁶²

[476] *Aut Dedere aut Judicare*

The discussion that I interject here and in the next subsection is made necessary by the fact that in a letter to the Minister dated 13 October 2025, Nigel Hughes, a lawyer for the Appellants registered an expectation that the Appellants ‘enjoy all the rights and benefits conferred [...] by the Constitution of Guyana and expect that they will enjoy no less favorable treatment as citizens of Guyana in relation

⁴⁵⁸ See UN Model Treaty on Extradition (n 423), art 1.

⁴⁵⁹ See European Convention on Extradition (adopted 13 December 1957, entered into force 18 April 1960) 1161 UNTS 450, art 1.

⁴⁶⁰ See the Inter-American Convention on Extradition (adopted 25 February 1981, entered into force 28 March 1992) 1752 UNTS 190.

⁴⁶¹ See Economic Community of West African States (ECOWAS) Convention on Extradition (adopted 6 August 1994) A/P.1/8/94.

⁴⁶² See Southern African Development Community (SADC) Protocol on Extradition (adopted 3 October 2002, entered into force 1 September 2006) 3158 UNTS 145.

to allegations of criminal conduct which are said to have been committed in Guyana and not in any foreign jurisdiction.⁴⁶³ In that regard, Mr Hughes observed that ‘Guyana is a sovereign independent state with robust national law enforcement agencies capable of investigating and prosecuting breaches of its laws.’⁴⁶⁴ In the context of these proceedings, the Appellants have made submissions to this effect.⁴⁶⁵ Whether or not all the crimes alleged in this case were committed exclusively within Guyana does not detract from the broader normative discussion engaged now. As noted earlier, the obligation to extradite is subject to the specific terms of the indicated treaty. That proposition implicitly accommodates the choice that many of the multilateral treaties on transnational crime present to the States Parties: a choice of the alternative obligations to extradite or prosecute in lieu of extradition. Experts in transnational criminal law often render those alternative obligations in the Latin expression *aut dedere aut judicare*.⁴⁶⁶ That obligation is adequately accounted for in terms such as these.

[477] Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.⁴⁶⁷

[478] That alternative choice of obligations receives its highest value in States whose national laws may not allow the extradition of their own citizens for prosecution in foreign States.⁴⁶⁸

⁴⁶³ See Record of Appeal, ‘Letter from Mr Nigel Hughes to the First Respondent, dated 13 October 2025’ 344.

⁴⁶⁴ *ibid* 343.

⁴⁶⁵ See Record of Appeal, ‘Submissions for the Applicants/Intended Appellants’ 2415 – 2416, especially concerning ‘the *Cotroni* factors.’ See also Record of Appeal, ‘Azruddin Mohamed, Affidavit in Support of Notice of Application’ [124], [125].

⁴⁶⁶ See International Law Commission (ILC), ‘Final Report: Working Group on the Obligation to Extradite or Prosecute (*aut dedere aut judicare*)’ (5 June 2014) UN Doc A/CN.4/L.844.

⁴⁶⁷ See UN Convention against Corruption (n 387), art 42(4). See also the Palermo Convention (n 388), art 15(4).

⁴⁶⁸ See UN Convention against Corruption (n 387), art 42(3). See also the Palermo Convention (n 388), art 15(3).

Forum Conveniens

[479] Even in States where the national laws permit extradition of citizens, the alternative obligations to extradite or to prosecute ultimately engage the question concerning when it may be appropriate to prosecute the Requested Person in the Requested State, rather than extradite him to be prosecuted in the Requesting State.

[480] That question has received heightened attention in Canadian case law, in light of the right to ‘enter, *remain in* and leave’ Canada (emphasis added)—a right recognised for Canadian citizens under s 6(1) of the Canadian Charter of Rights and Freedoms. For that reason, the Canadian jurisprudence is a veritable crucible for the *aut dedere aut judicare* doctrine.

[481] In the Canadian context, the subject is of elevated importance given, first, the specificity of the constitutional right of a citizen to ‘remain in’ Canada. Human rights instruments do not uniformly state the contemplated right in those terms⁴⁶⁹—notwithstanding the basal assumption that no civic attribute better grounds the essence of citizenship than the right to enter and *remain in* one’s own country. Secondly, the citizen’s right to remain in Canada is not directly qualified in s 6(1) of the Charter, as it is both in article 148 of the Constitution of Guyana and in article 22 of the American Convention on Human Rights.⁴⁷⁰ Given that no limitation is directly built into s 6, it becomes easy to consider, as Canadian judges typically do, that extradition is an apparent or *prima facie* violation—albeit ‘peripheral’⁴⁷¹ or ‘marginal’⁴⁷²—of a citizen’s constitutionally protected right to remain in Canada. As observed earlier, article 148 of the Constitution of Guyana

⁴⁶⁹ Notably, art 12 of the ICCPR (n 97) explicitly recognises for everyone lawfully in a country the right to move freely in the country and to choose one’s own residence therein, with everyone having a right to leave any country including one’s own. But it doesn’t recognise the right to remain in any country including one’s own.

⁴⁷⁰ According to art 22 of the American Convention on Human Rights:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. ...
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

⁴⁷¹ See *Cotroni* (n 345) at 1481*h* and 1490*e*

⁴⁷² See *Sriskandarajah* (n 349) at [9].

is a textual improvement in that regard, contrasted with s 6(1) of the Canadian Charter. This is because reasonable legal limitations on the right of residence are directly recognised in article 148 of the Guyanese Constitution. And above that, article 148(3) recognises specifically that extradition and its related processes are a manner of those reasonable limitations.

[482] However, the legal propriety of extradition, gauged against the right to remain in Canada and be prosecuted there for an extradition crime, has received specific analysis under the general limitations clause of s 1 of the Canadian Charter of Rights and Freedoms. It provides: ‘The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’ It is on the plains of that provision that any constitutional imperative to prosecute at home rather than extradite has been considered. And the Canadian Supreme Court has consistently held that extradition ‘can generally be justified’ in a free and democratic society as a reasonable limitation of a Canadian citizen’s right to remain in Canada.⁴⁷³

[483] The leading authority is *United States of America v Cotroni*.⁴⁷⁴ Writing for the majority of the Court, LaForest J fully internalised into Canadian constitutional law the transnational ethos and objectives of international cooperation in battling the constantly evolving problem of criminality, and the value of extradition in that regard. In a passage that deserves quoting at length, he said:

The investigation, prosecution and suppression of crime for the protection of the citizen and the maintenance of peace and public order is *an important goal of all organized societies. The pursuit of that goal cannot realistically be confined within national boundaries.* That has long been the case, but it is increasingly evident today. *Modern communications have shrunk the world and made McLuhan’s global village a reality. The only respect paid by the international criminal community to national boundaries is when these can serve as a means*

⁴⁷³ See *Lake v Canada (Minister of Justice)* [2008] 1 SCR 761 at [37].

⁴⁷⁴ See *Cotroni* (n 345) at 1490d.

*to frustrate the efforts of law enforcement and judicial authorities. The trafficking in drugs, with which we are here concerned, is an international enterprise and requires effective tools of international cooperation for its investigation, prosecution and suppression. Extradition is an important and well-established tool for effecting this cooperation.*⁴⁷⁵

- [484] From that premise, LaForest J considered that the protection of the Canadian society from pervasive criminality that defies national borders could not then be an insular endeavour for Canada. The importance of the extradition facility in that endeavour cannot be overstated. As he put it:

The importance of extradition for the protection of the Canadian public against crime can scarcely be exaggerated. To afford that protection, there must be arrangements that ensure prosecution not only of those who commit crimes while they are physically in Canada and escape abroad, but also of those whose acts abroad have criminal effects in this country. This requires *reciprocal arrangements* with other states seeking similar objectives.⁴⁷⁶

- [485] LaForest J took care to eschew ‘parochial and nationalistic concepts of community,’ whilst emphasising a vision of modern nations as members of an ‘emerging world community from which not only benefits but responsibilities flow.’⁴⁷⁷ In that regard, he considered that Canadians ‘should not be indifferent to the protection of the public in other countries.’⁴⁷⁸ For, ‘[i]n a shrinking world, we are all our brother’s keepers. In the criminal arena this is underlined by the international cooperative schemes that have been developed among national law enforcement bodies.’⁴⁷⁹ Beneath the theological overtones of the sentiment, the good sense of the basic message is unassailable. UN Secretary General Kofi Annan was later to drive home that message as a matter of international

⁴⁷⁵ *ibid* at 1485*f* (emphasis added).

⁴⁷⁶ *ibid* at 1486*a* (emphasis added).

⁴⁷⁷ *ibid* at 1486*e*.

⁴⁷⁸ *ibid* at 1486*f*.

⁴⁷⁹ *ibid* at 1486*g*.

cooperation to ‘help citizens everywhere in their often bitter struggle for safety and dignity in their homes and communities.’⁴⁸⁰

[486] Given that shared interest which individual States and the global community have in the battle against the evolving ‘scourge of crime as a global problem,’⁴⁸¹ given the need to deny safe haven to criminals at any rate, and given the need to ensure that those accused of crimes are prosecuted fairly; the ‘overriding’⁴⁸² consideration in the contest of propriety of local prosecution, contrasted with extradition, becomes ‘effective prosecution and the suppression of crime’ as ‘social objective[s] of a pressing and substantial nature.’⁴⁸³ It is ‘imperative today that [those objectives] be pursued on the international level as well as on the national plane.’⁴⁸⁴ That objective is effectively undermined, LaForest J maintained, in any formula which insists that the Requested Person must always be tried in the Requested State merely because the possibility exists.⁴⁸⁵

[487] It was against that background that the Supreme Court of Canada came to adopt a set of twelve non-exhaustive factors—known as the *Cotroni* factors—to assess the comparative propriety in particular cases for extradition and domestic prosecution. The factors include these:

- i. where was the impact of the offence felt or likely to have been felt
- ii. which jurisdiction has the greater interest in prosecuting the offence
- iii. which police force played the major role in the development of the case
- iv. which jurisdiction has laid charges

⁴⁸⁰ Kofi Annan, UN Secretary General, ‘Foreword,’ in United Nations Office on Drugs and Crime (UNODC), *United Nations Convention against Corruption* (2004), iv.

⁴⁸¹ *ibid*, iii.

⁴⁸² *Cotroni* (n 345) at 1499f.

⁴⁸³ *ibid* at 1499c.

⁴⁸⁴ *ibid*.

⁴⁸⁵ *ibid* at 1499f.

- v. which jurisdiction has the most comprehensive case
- vi. which jurisdiction is ready to proceed to trial
- vii. where is the evidence located
- viii. whether the evidence is mobile
- ix. the number of accused involved and whether they can be gathered together in one place for trial
- x. in what jurisdiction were most of the acts in furtherance of the crime committed
- xi. the nationality and residence of the accused, and,
- xii. the severity of the sentence the accused is likely to receive in each jurisdiction.⁴⁸⁶

[488] LaForest J was careful to note that an examination of the factors listed above would lead to the conclusion that a foreign jurisdiction ‘may still be the most effective place,’ for a variety of reasons, to prosecute the Requested Person, notwithstanding that he ‘may not have personally performed any act in the foreign jurisdiction in furtherance of the crime with which he is charged.’⁴⁸⁷

[489] The judgment of the majority of the Canadian Supreme Court in *Cotroni* has since been repeatedly and unanimously restated by that Court in successive judgments, notably *Kwok v United States of America*,⁴⁸⁸ *Lake v Canada (Minister of Justice)*,⁴⁸⁹ *United States of America v Sriskandarajah*,⁴⁹⁰ and, *Attorney General of Canada v Badesha*.⁴⁹¹

[490] Whilst reiterating the *Cotroni* factors in *Lake*, the Court considered that all the factors need not be given equal weight in every case; that none of the factors is

⁴⁸⁶ *ibid* at 1498 – 1499.

⁴⁸⁷ *ibid* at 1499a.

⁴⁸⁸ *Kwok* (n 413).

⁴⁸⁹ *Lake* (n 470).

⁴⁹⁰ *Sriskandarajah* (n 349).

⁴⁹¹ *Badesha* (n 405).

weightier than others in every case; and, that in a particular case, any of the factors can assume the greater (hence determinative) weight in light of the facts and circumstances of that case. As LeBel J put it for the Court:

Nothing in *Cotroni* suggests that these factors should be given equal weight or precludes a conclusion that a single factor is determinative in a particular case. The list merely identifies some of the factors that will tend to favour either extradition or prosecution in Canada. To instruct prosecutorial authorities on how to decide whether to prosecute would deprive the concept of prosecutorial discretion of all meaning. The responsibility for deciding which factors are determinative lies with the authorities themselves; the list serves simply to highlight the relevant factors. The exercise of prosecutorial discretion will be interfered with in only the clearest of cases, such as where there is evidence of bad faith or improper motives. Absent such evidence, the infringement of an individual's s 6(1) mobility rights upon surrender will not be unjustified merely because the Minister has decided, rather than prosecuting the individual in Canada, to defer to the foreign authorities seeking extradition.⁴⁹²

[491] In *Sriskandarajah*, the Supreme Court distilled six overarching principles that have emerged in the case law since. They are as follows:

- i. Extradition constitutes a marginal limitation of the citizen's right to remain in Canada⁴⁹³
- ii. Consequent on the first principle, extradition will be generally permissible under the general limitation clause (s 1 of the Charter) as a reasonable limitation of a citizen's right to remain in Canada⁴⁹⁴
- iii. The Minister's discretion to extradite or to prosecute in Canada is a necessary condition for the effective enforcement of the criminal law, and it attracts a high degree of deference⁴⁹⁵

⁴⁹² *Lake* (n 470) at [30].

⁴⁹³ *Sriskandarajah* (n 349) at [9].

⁴⁹⁴ *ibid* at [10].

⁴⁹⁵ *ibid* at [11].

- iv. Ministerial discretion to extradite is not unfettered. In its exercise, due regard and weight must be given to the citizen's Charter right to remain in Canada, when considering whether to prosecute domestically or to surrender the Requested Person to foreign prosecution, taking the *Cotroni* factors into consideration⁴⁹⁶
- v. No single *Cotroni* factor is dispositive. Nor must they all be given equal weight. An extradition request may succeed on the basis of one factor that the Minister finds determinative in a particular case. 'The pertinence and significance of the '*Cotroni* factors' may vary from case to case',⁴⁹⁷ and
- vi. Whether prosecution in Canada is a realistic option is only one factor that must be considered. It is not the determinative factor in the Minister's assessment.⁴⁹⁸

A Slight Reservation

[492] The overall trend in the *Cotroni* line of case law is eminently sensible, particularly as regards the need for international cooperation to combat the global scourge of criminality. There is, however, a level of fiction in that line of jurisprudence, regarding the recurring proposition that the Minister deserves a 'high degree of deference' in the foreign relations aspects of his or her extradition role, because of his or her 'superior expertise' in international relations and foreign affairs⁴⁹⁹—even when the exercise of those roles engage questions of violation of constitutional rights⁵⁰⁰ and possibly international human rights law.

[493] I am less than sanguine that the proposition is wholly sustainable when subjected to serious scrutiny. It is not self-evident that the knowledge necessary to do justice in all its exacting dimensions in a particular case is truly inaccessible to the average

⁴⁹⁶ *ibid* at [12].

⁴⁹⁷ *ibid* at [13].

⁴⁹⁸ *ibid* at [14].

⁴⁹⁹ *ibid* at [11].

⁵⁰⁰ See, for instance, *Lake* (n 470) at [41]; *Badesha* (n 405) at [39].

judge with the usual effort required in every case in which the judge is not an obvious expert in the subject matter of the dispute. For one thing, the ‘Minister’ referred to in the *Cotroni* progeny of cases is not even the Foreign Affairs Minister. It is the Minister of Justice (in some other jurisdictions such as Guyana it could be the Minister of Home Affairs). It is not assured that the Minister of Justice is more of an expert (in foreign affairs or international law) than the Justice presiding over an extradition proceeding or an appeal therefrom. Secondly, even if the Minister’s portfolio is one of foreign affairs, much of the norms at issue will likely be legal norms, attendant upon questions of fact. They may of course entail norms of international law, especially concerning the nation’s treaty obligations. But those are necessarily questions of fact or law for the most part. I am confident that the average national judge can decide them competently with appropriate legal submissions, legal research, and, as necessary, *amicus curiae* assistance. Indeed, many national judges studied international law. But in the event that a judge seised of an extradition matter is unfamiliar with international law, (s)he would be in no worse position than a judge seised of a dispute that sounds in private international law, requiring the judge to take foreign national law into account. In those cases, expert ‘evidence’ is usually admitted to inform the judge on the foreign national law. It should be possible for a national judge to invite *amicus curiae*, as needed, to assist the Court with a question of international law, instead of deferring to the Minister as the ‘superior expert.’

Pacta sunt Servanda

- [494] Since the obligation to extradite Requested Persons to Requesting States, for effective prosecution, is rooted in treaties—bilateral or multilateral or both—it becomes necessary to bring into full view the value of what the International Law Commission described as ‘the fundamental principle of the law of treaties.’⁵⁰¹ It is the principle of good faith, often rendered in the Latin maxim *pacta sunt servanda*.

⁵⁰¹ International Law Commission (ILC), ‘Draft Articles on the Law of Treaties with Commentaries’ [1966] II YBILC 211, [1].

It is codified in article 26 of the Vienna Convention on the Law of Treaties in these plain terms: ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith.’

[495] Such is the value of the obligation to perform treaty undertakings in good faith that international law does not allow a State to invoke the requirements of its internal law as a justification for reneging on a treaty obligation⁵⁰²—provided the State entered into that treaty willingly in circumstances that did not manifestly show that those who expressed its consent to the treaty lacked the authority to do so.⁵⁰³

[496] In relation to extradition treaties, the effect of the *pacta sunt servanda* principle is that international law requires a State to perform its obligations to extradite a Requested Person—in accordance with both the terms of the concerned treaty or treaties and generally accepted principles of extradition law.

The Role of the Executive upon Receiving an Extradition Request

[497] In light of the obligation of States to perform in good faith the commitments they have undertaken in bilateral extradition treaties or in multilateral treaties against transnational criminal conduct, it is not surprising that the judicial role in the extradition process is increasingly displacing the ministerial role in what has been described as ‘judicialisation’ of the process.⁵⁰⁴ This is in the sense that the executive branch is all but required to trigger the judicial phase of the extradition process upon the receipt of an extradition request—with only a marginal discretion to refrain from making that submission. A clear example of that trend is to be found in the modern English practice described in *Halsbury’s Laws of England* as follows:

⁵⁰² See the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 27.

⁵⁰³ *ibid*, art 46.

⁵⁰⁴ UNODC, *Manual on Mutual Legal Assistance and Extradition* (n 411), 20.

Unlike extraditions involving category 1 territories [this refers to EU countries and Gibraltar], where the extradition process is *entirely judicial*, the procedure for extradition to category 2 territories [this refers to territories other than EU countries and Gibraltar, with whom the UK has extradition treaties] contains both judicial and administrative elements. The process begins with the issuing of an extradition request by the requesting territory. Provided the request is made in the approved way and contains the required information about the requested person and the conduct in respect of which his extradition is requested, the Secretary of State *must* (subject to considerations of refugee status and competing extradition requests) *issue a certificate and send it and the request to a judge*, who may issue a warrant for the person's arrest. Once the person has been arrested he must be brought before the judge and informed of the contents of the request, and unless he consents to his extradition an extradition hearing will then be held.⁵⁰⁵

[498] Indeed, the general rule in the United Kingdom which, as a minimum, requires that the Secretary of State 'must' issue a certificate, compelling the extradition hearing to proceed, upon his or her receipt of a valid request for the extradition of a person to a category 2 territory, is in the very language of s 70 of the UK Extradition Act 2003. There are, of course, grounds—specifically set out in the statute—on which the Secretary of State 'may refuse' to issue the certificate. That, of course, would require the Secretary of State to state what those grounds of refusal are. And barring those specific grounds, the judicial phase 'must' be triggered.

Section 12 of the Fugitive Offenders Act of Guyana

[499] In my view, the foregoing considerations and general extradition practice should inform the interpretation of s 12 of the Fugitive Offenders Act of Guyana, which governs the issuance of the ATP in Guyana. The result is that the Minister's discretion to decline issuing the ATP, so that the judicial inquiry will proceed, is significantly reduced. That reduction in the Minister's discretion has the effect of

⁵⁰⁵ See *Halsbury's Laws of England* (5th edn, 2021) vol 47, para [605] (emphasis added).

reducing in turn the scope for litigation for breach of procedural fairness in relation to the issuance of the ATP—as separate litigation that may be launched outside the frame of the judicial process that is commenced by the ATP. Section 12 provides as follows:

- (1) On receipt of a request under section 9 the Minister may issue an order in Form 1 (hereinafter referred to as “authority to proceed”) signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.
- (2) The Minister shall not issue an authority to proceed if it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with this Act.
- (3) Subject to this Act, no person shall be dealt with by a magistrate under this Act except in pursuance of an authority to proceed issued by the Minister.

[500] Although s 12(1) of the Fugitive Offenders Act is not couched in the same language that the Minister ‘must’ issue an authority to proceed to the judicial inquiry, as is the case with s 70 of the UK Extradition Act of 2003, it seems to me, still, that s 12(1) reasonably invites that construction. This is because an extradition request is based on a bilateral or multilateral treaty that contemplates an obligation to extradite or prosecute (taking into account the helpful principles enunciated by the Canadian Supreme Court in the *Cotroni* progeny of cases considered amply in this opinion). This approach is secured against concerns of injustice, by the consideration that any such concerns will be addressed as part of the judicial proceedings commenced by the ATP.

[501] Considerations of international law and practice germane to extradition fully warrant that approach. Those considerations may begin with—but are not limited to—the fact that every multilateral and bilateral treaty that bears upon extradition contemplates an *obligation* to extradite or prosecute those accused of the treaty

crimes. It is so with multilateral treaties and instruments that proscribe money laundering as criminal conduct, such as the Palermo Convention (art 16), the Merida Convention (art 44), the OECD Anti-Bribery Convention (art 10), and the FATF Recommendation 39. That is also the case with specific multilateral treaties and instruments that deal with extradition as a distinct subject of international relations: notably the UN Model Treaty on Extradition (article 1), the Inter-American Convention on Extradition (art 1), the ECOWAS Convention on Extradition (art 2), the European Convention on Extradition (art 1), and the SADC Protocol on Extradition (art 2).

[502] The united signal of these instruments makes it difficult to avoid the imperatives of the duty of good faith in the performance of treaties concerning extradition—not only in the terms of the instruments in question, but also by virtue of the principle of good faith (*pacta sunt servanda*) now codified in art 26 of the Vienna Convention on the Law of Treaties (as seen earlier).

[503] Given the combination of considerations, the overall effect of which is that the Minister must transmit an extradition request to the judiciary for a hearing and judicial clearance before any extradition can be made, any discernible impropriety that taints the Minister's transmission of the request to the judiciary (through an ATP) must, for all practical purposes, be considered an impropriety at the level of issuance of the ATP, which can be addressed within the purview of the judicial proceedings. In this regard, it helps to keep in mind that the Minister did not originate the chain of events that needed a resolution by way of an extradition hearing. That chain of events was originated by an extradition request—a solemn sovereign act of a foreign State that must be based on a bilateral or a multilateral treaty which international law requires to be performed. Furthermore, the generally accepted principles of extradition practice require, as already reiterated, that no extradition can take place by way of surrender of the Requested Person without the clearing decision of the judiciary, following an inquiry in which the Requested Person is given a fair hearing, and the taking into account of all legal considerations that may militate against the extradition.

[504] This construction does not, it must be reiterated, mean that a Requested Person must be extradited in every case in which an extradition request has been made. It only means that judicial inquiries must be conducted, at various levels, to fully consider the lawfulness of extradition in the given circumstances. Such judicial inquiries must be trusted in their ability to disallow the extradition of a person where such extradition would be repugnant to what the law and justice would consider proper.

[505] In *Cotroni*, the Supreme Court of Canada held that the Canadian constitution affords a citizen protection against an extradition, where the Minister's exercise of the 'discretion' to extradite is contaminated by improper or arbitrary motive.⁵⁰⁶ In my view, that principle—not unique to Canadian law—affords a confident basis of remedy for complaints of bias (and other breaches of procedural fairness) in the exercise of a material ministerial *decision* made in the context of the extradition process.

[506] Notwithstanding the foregoing observations, I acknowledge that in the specific context of Guyana, certain provisions of the Fugitive Offenders Act of Guyana—particularly s 12—may contemplate a margin of discretion for the Minister when issuing the ATP. It is also true that bias, properly viewed from the perspective of the fair-minded informed observer, can indeed vitiate the exercise of discretion within that margin. Even so, challenges to the ATP on grounds of bias are to be taken up by way of preliminary objections to the committal proceedings, but with any necessary judicial review or appeal of the rulings abiding the completion of the committal proceedings.

⁵⁰⁶ *Cotroni* (n 345) at 1497 – 1498.

Part VII. US Investigations, Sanctions and Indictment of the Appellants

[507] As indicated elsewhere in this opinion, the determinant test for bias is the point of view of a fair-minded informed observer. Having considered the standard legal considerations that bear on any Minister called upon to sign an ATP, especially in the particular circumstances of this case that engage the question whether the Minister truly had a discretion than to sign the ATP, we will now turn our attention to the facts and circumstances of this case: to see whether principles of substantive justice would accept the Appellant's claim of bias, as seen from the viewpoint of the fair-minded and informed observer.

Reuters Special Report

[508] On 14 July 2023, *Reuters* news organisation published a '*Reuters Special Report*' under the by-line of two investigative journalists, Sabrina Valle and Gram Slattery.⁵⁰⁷ It informed the reading public that the Appellants 'face a criminal investigation and possible US sanction.'⁵⁰⁸ Although the piece took care to inform that the Appellants 'deny any wrongdoing,'⁵⁰⁹ it nevertheless minced no words in alleging that the Appellants were 'being investigated by the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Department of Homeland Security and other US agencies, on suspicions of smuggling Colombian cocaine and illegally mined Venezuelan gold to the United States, Europe and the Middle East, according to the five sources with knowledge of the probe. The Mohameds are also suspected of laundering money for drug traffickers and criminals, including sanctioned Russian nationals operating in the region, according to one of the intelligence reports.'⁵¹⁰

⁵⁰⁷ See Record of Appeal, 561.

⁵⁰⁸ *ibid.*

⁵⁰⁹ *ibid.*, 562.

⁵¹⁰ *ibid.*

- [509] In addition to the report’s focused allegations against the Appellants, another focus of the report concerned the alleged warning that the US authorities ‘repeatedly’ gave to Exxon (the petroleum multinational company) to beware of doing business with the Appellants, in light of the criminal investigations being conducted by US authorities in relation to the Appellants, ‘on suspicions of money laundering, drug trafficking and gold smuggling.’⁵¹¹ Exxon, according to the report, is the company at the vanguard of the discovery and extraction of massive newfound petroleum reserves within Guyana’s territorial waters; and as such had entered into an estimated USD300-million logistics base support construction project with a consortium comprising the Appellants amongst others.⁵¹²
- [510] The authors of the *Reuters* piece repeatedly claimed that their report informing that the US Government was considering the imposition of sanctions against the Appellants was informed, in turn, by an indicated number of multiple ‘sources and ... additional people familiar with the matter.’⁵¹³

The US Announcement of Sanctions against the Appellants

- [511] On 11 June 2024, the US Department of the Treasury, Office of Foreign Assets Control (OFAC) publicly announced sanctions against the Appellants, together with the entities they control—Mohamed’s Enterprise, Hadi’s World and Team Mohamed’s Racing Team—‘for their roles in public corruption in Guyana.’⁵¹⁴ An obvious forensic aim for inculcating these aggregate entities may be to enable the forfeiture of assets and properties in enterprise names. It may also be for the requirement of group criminality proscribed in international instruments proscribing transnational organised crime. But any such forensic value would, of course, be a matter for litigation and judicial determination in due course.

⁵¹¹ *ibid*, 561.

⁵¹² *ibid*, 567.

⁵¹³ *ibid* 561.

⁵¹⁴ See Record of Appeal, ‘Affidavit in Defence of the Second Named Respondent – Exhibit RB3 - ‘US Department of the Treasury, Treasury Targets Corruption Network in Guyana’ 555.

[512] Also sanctioned, as their alleged accomplice, was a former Permanent Secretary in the Ministry of Home Affairs and (at the time of the sanctions) a current Permanent Secretary in the Ministry of Labour.⁵¹⁵ The allegations against them included ‘direct and recurring bribery payments to Guyanese government officials to ensure favourable treatment in criminal and civil matters that would otherwise suggest their involvement in illegal criminal activity,’⁵¹⁶ tax fraud,⁵¹⁷ insider dealing,⁵¹⁸ and, misappropriation.⁵¹⁹ The sanctions were declared to be pursuant to the *Global Magnitsky Act*.⁵²⁰

[513] The announcement further alleged, amongst other things, that the First Appellant ‘Nazar Mohamed founded Mohamed’s Enterprise in Guyana before expanding to the United States as a moneychanger and transitioned into gold trading, growing Mohamed’s Enterprise into one of Guyana’s largest gold exporters. In time, Azruddin Mohamed ultimately took over Mohamed’s Enterprise, which also now does business as “Confidential Cambio.”’⁵²¹

[514] The US Department of State published a summarised version of the same announcement on the same day.⁵²² The next day, 12 June 2024, the US Homeland Security Investigations, New York, followed suit with its own announcement.⁵²³

The US Indictment, Forfeitures and Arrest Warrants against the Appellants

[515] On 2 October 2025, a Grand Jury indictment was filed against the Appellants, in the United States District Court for the Southern District of Florida. In the nature of things, the indictment unleashed a legal action of the criminal kind against the Appellants before that Court.

⁵¹⁵ *ibid*, 555 and 557.

⁵¹⁶ *ibid*, 556.

⁵¹⁷ *ibid*.

⁵¹⁸ *ibid*, 557.

⁵¹⁹ *ibid*.

⁵²⁰ *ibid*, 555 and 558.

⁵²¹ *ibid*, 556.

⁵²² See US Department of State, ‘Imposing Sanctions on Corrupt Actors in Guyana,’ (Press Release, 11 June 2024) <<https://2021-2025.state.gov/imposing-sanctions-on-corrupt-actors-in-guyana/>> accessed 8 May 2026.

⁵²³ See US Immigration and Customs Enforcement, ‘HSI New York Joins Department of Treasury in Announcing Sanctions Against Corruption Network in Guyana,’ (Press Release, 12 June 2024) <www.ice.gov/news/releases/hsi-new-york-joins-department-treasury-announcing-sanctions-against-corruption> accessed 8 May 2026.

[516] The occasioning investigation, it appears, was an interagency effort of five (5) federal agencies of the United States Government: the Homeland Security Investigations, the Internal Revenue Service, the US Marshals Service, the US Department of State Diplomatic Security Service, and the US Customs and Border Protection.

[517] The indictment outlines the charges against the Appellants as including:

- (i) conspiracy to commit mail and wire fraud
- (ii) mail fraud
- (iii) conspiracy to commit money laundering, and,
- (iv) wire fraud.

[518] These charges are laid out in 11 counts of conduct spanning the period from 2017 to 2024 ('the relevant period'), during which it is alleged that the Appellants committed these offences through a company called 'Mohamed's Enterprise.' The First Appellant (Nazar Mohamed) is said to own 90 per cent of Mohamed's Enterprise, while the Second Appellant (Azruddin Mohamed) owns 10 per cent. The business of Mohamed's Enterprise included the sale and export of gold from Guyana to buyers primarily in Miami and Dubai.

Summary of the Charges' Particulars

[519] *Conspiracy to commit mail and wire fraud (Count 1)*: The particulars of the charge in relation to conspiracy to commit mail and wire fraud include the allegation that the purpose of the conspiracy was for the Appellants to enrich themselves unlawfully and defraud the Government of Guyana in connection with taxes and royalties on the sale and export of gold. The Appellants, it is alleged, fraudulently re-used Guyana customs declarations and seals on gold shipments sent through Miami to create a false impression that Mohamed's Enterprise had paid taxes and royalties, when no such payment had in fact been made. Over the relevant period, it is alleged, the Appellants exported at least 10,000 kg of gold without paying the

requisite taxes and royalties, causing a loss to the Guyanese authorities of approximately USD50 million.

[520] *Wire fraud (Counts 2-5)*: These three (3) counts of wire fraud relate to the First Appellant (Nazar Mohamed) only. They are primarily based on approximately four (4) emails he allegedly sent to a company in Miami on 5 October 2021, 9 November 2021, 20 January 2023 and 21 February 2023. With the same goal, it is alleged, of unlawfully enriching himself by falsely representing that taxes owed had been paid, each email requested shipment of six boxes containing approximately 165 kilograms of gold through Miami to a buyer in Dubai.

[521] *Mail fraud (Counts 6 – 9)*: These three (3) counts of mail fraud relate to the Second Appellant (Azruddin Mohamed) only. They are based on shipments he allegedly made on 13 January 2021, 28 December 2021, 23 April 2022, and 10 June 2023. Each shipment was done through a company with offices in Miami. Each of the four shipments allegedly originated in Dubai and ended in Miami and consisted of six empty wooden boxes containing seals of the Guyana Revenue Authority ('GRA') and the Guyana Gold Board ('GGB').

[522] *Conspiracy to Commit Money Laundering (Count 10)*: The alleged purpose of this conspiracy was for both Appellants to enrich themselves unlawfully: by engaging in a scheme to defraud the government of Guyana in connection with taxes and royalties owed on the sale and export of gold, paying bribes to Guyanese government officials, and making and causing to be made international wire transfers between Guyana and the United States in furtherance of the scheme.

[523] *Mail fraud (Count 11)*: This charge of mail fraud relates to Second Appellant only. It is alleged that in the period 6 October 2020 – 8 December 2020, intending to defraud the Guyanese Government of taxes and duties owed by him on his purchase of a Lamborghini Aventador (model year 2020), which was shipped to him from Miami, he fraudulently submitted false invoice to the GRA regarding the

true value of the motor car. It is alleged that he acquired the car for approximately USD680,000 but then submitted the false invoice to convey the false impression that the car's purchase price was USD75,300 only. By doing this, he allegedly avoided paying to the GRA over USD1 million in taxes, because the GRA charges a tax of over 100 per cent on motor vehicles of this kind.

- [524] *Forfeiture Claims:* The indictment also seeks forfeiture against the accused, in the event of conviction. The prosecution seeks forfeiture of the Appellants' real or personal property in the United States of America, which allegedly constitutes or is derived from the proceeds of the alleged offences. The property subject to forfeiture includes a shipment containing approximately USD5.3 million in gold bars shipped from Guyana by Mohamed's Enterprise and seized at the Miami International Airport on 11 June 2024.

The US Arrest Warrants

- [525] Further to the charges indicated above, amended arrest warrants were issued by the United States District Court for the Southern District of Florida on 23 October 2025.

Evidence in Support of the US Indictment and Arrest Warrants

- [526] The US indictment and arrest warrants for the Appellants, which were attached to the US extradition request, came under the cover of an affidavit sworn by a prosecutor named Michael Berger, an Assistant United States Attorney with the US Department of Justice in the Southern District of Florida. He is the prosecution counsel who prepared the Record of Evidence for use in the intended prosecution of the Appellants. He avers that for purposes of the extradition request, he provided the synopses of only so much evidence as is necessary to establish a *prima facie* case of the charges listed in the indictment; and, that at the criminal trial, the United

States prosecutors will adduce other available evidence, notably, the testimony of law enforcement officers, certain Guyanese Government officials, an exotic car sales consultant, and individuals involved in shipping goods to and from Guyana.

[527] Mr Berger summarised the witness statements. The gist of those witnesses' anticipated evidence—further synopsised for the needs of this opinion—are as follows:

Witness [1] will testify that the Appellants shipped gold to a Miami-based company under an arrangement that involved payment of USD10,000 bribe for every shipment of gold for which the applicable customs duties were payable to the GRA.

Witness [2] will testify to first-hand knowledge of an arrangement made by the Appellants to avoid full payment of taxes to GRA for shipment of gold from Guyana. The arrangement entailed payment of taxes on only one shipment out of every two during the period of 2017 to 2024.

Witness [3] will testify to first hand familiarity with the operations of a Miami-based company who received on behalf of the Appellants shipments of empty wooden boxes from Dubai-based gold shippers.

Witness [4] will introduce records from a logistics company based in Miami, showing that the Appellants shipped over 100 'empty wooden boxes' and 'wooden boxes' from Dubai to Miami during the period from 2019 to 2024. The witness will also introduce evidence showing that a shipment of gold belonging to the Appellants and valued at USD5.3 million was seized at Miami International Airport.

Witness [5] will introduce US Customs and Border Protection ('CBP') Records showing transits of gold shipments through Miami on behalf of

the Appellants during the period of 2019 to 2023. The same US Customs officer will also introduce CBP records showing that the value of the Lamborghini which was shipped to the Second Appellant was approximately USD680,000.

Witness [6] will testify to direct involvement in the Second Appellant's Lamborghini purchase in the US. That witness will testify that the Second Appellant paid approximately USD680,000 for the car and not the USD75,000 that the Second Appellant declared to the GRA as the purchase price for the car.

Part VIII. The Appellants' Case of Bias

[528] It is in the light of the foregoing facts and circumstances that the Appellants' allegation of bias must be considered.

[529] I have written at length above, engaging aspects of the case that I consider helpful for a fuller understanding of the outcome. But I shall spare the reader further discussion on the principles of law concerning the question of bias and procedural fairness at large. This is because the facts and circumstances of this case do not truly engage the allegation of bias, as will soon become clear.

[530] I am however constrained to differ with a certain analytical approach taken by my colleagues in relation to the question of procedural fairness.

Procedural Fairness and the Authority to Proceed

[531] That procedural fairness should also control the issuance of the ATP is an unproblematic proposition. Fairness must attend decisions in public office. And fairness abjures bias. But, as explained earlier, bias is appraised from the point of view of the fair-minded fully informed observer—not from the blinkered viewpoints of disputing parties and their sympathisers.

[532] There is, however, a need to keep the salience of procedural fairness in its proper context: to avoid too focused an attention on the principle, as an isolated juristic precept that works differently in the context of administrative decision making in general. The downside of such an isolated approach is that appropriate functional value may not be given to the attendant qualifier—reiterated time and again in recent case law—that the operation of procedural fairness in relation to administrative decision making must depend ‘on a number of factors including the terms of the statute pursuant to which the body operates, the nature of the particular function of which it is seized and the type of decision it is called upon to make.’⁵²⁴

[533] That qualifier is repeated in recent case law, but often in ways that can be confusing. The difficulty begins with the repudiation (quite rightly) of the old categorical view that complaints pertaining to procedural fairness are exclusively reserved for the judicial function and wholly precluded from purely administrative decision making. Procedural fairness is thus presented as an equal opportunity norm that applies to both the judicial process and non-judicial process. But then, in further discussions of the application of the rule to administrative functions, analysis reverts to the drawing of a distinction between administrative and judicial functions. The material circularity in that analytical approach is obvious in the following dictum:

The appellant’s reasoning thus treats the Minister, for all intents and purposes, like a member of the judiciary, whose personal interest in a case would make him apparently biased in the eyes of an objective and properly informed third party. This line of argument overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker’s activities and the nature of its functions ...⁵²⁵

⁵²⁴ See *Old St Boniface Residents Association Inc* (n 24) at 1191f. See also *Russell* (n 23) at 118.

⁵²⁵ *Imperial Oil* (n 27) at [31].

[534] It is perhaps easier to approach the analysis differently. That is by recognising that all that is being said is this. Whilst the old judicial-based test has now been rejected and procedural fairness is now also an accepted requirement in the sphere of administrative decision-making, the new view does not truly make procedural fairness a norm that applies to administrative decision-making in the same way that it does to the judicial. Hence, the qualifier that the ‘factors including the terms of the statute ..., the nature of the ... function ... and the type of decision’, etc, will determine whether and to what extent procedural fairness norm applies to administrative decision-making.

[535] The normative effect of that qualifier is to make procedural fairness an alloyed concept in the context of administrative decision-making. The precept is an alloy because it no longer operates in the radical form that it does in the context of a judicial decision. There is, instead, a *different version* of procedural fairness norm that operates to administrative decision-making. It is in that sense a qualified version of the original norm. It must also be understood that the blended norm that applies to administrative decision-making doesn’t always operate in degrees. It can operate in a compendious way, depending on the case or its subject matter.

[536] Here, we must keep firmly in mind that the ATP is issued in the context of the extradition process. That context inevitably involves the judicial process (the committal proceedings, *habeas corpus* proceedings and eventual appeals). That context is precisely what is contemplated by the principle that ‘factors including the terms of the statute ..., the nature of the ... function ... and the type of decision,’ etc, will determine whether and to what extent the procedural fairness norm applies to the ATP. The judicial process is a standard and defining feature of the extradition process. That feature doesn’t vary from case to case. That feature necessarily gives normative direction to any complaint of breach of procedural fairness in relation to the ATP.

[537] To be clear, the point here is not that misprisions in the issuance of the ATP are protected against legal challenge. It is rather that it is unnecessary—and should not be permissible as a matter of judicial policy—to split the issues into fragments and litigate them as such in the name of pursuing remedies available under the rule of law. Those who must pursue remedies under the rule of law, in the context of extradition proceedings, are not deprived of those remedies when all available issues are litigated once and for all at the completion of the committal stage or at the *habeas corpus* stage, as the case may be. As indicated earlier, what is required is that any pressing preliminary objection against the ATP is to be lodged at the commencement of the committal proceedings: but any necessary appeal or judicial review of a negative ruling on such an objection must wait until the completion of the committal proceedings.

[538] Recently in *Grandfield Homes (Kenton) Ltd v Chen*, the Court of Appeal for Ontario recalled the judicial policy referred to above, by disallowing a plaintiff's strategic approach to litigation, on grounds that the approach would result in bifurcation of issues and result in 'unnecessary multiplicity of proceedings.' As the Court put it:

Allowing the bifurcation of the issue of damages gives rise to an *unnecessary multiplicity of proceedings*. *Proceeding in this way squanders scarce judicial resources and prejudices the efficient and due administration of justice*. While the bifurcation of issues may, in some cases, be a sensible way to proceed, *there was no reason why the issue of damages could not be determined in one proceeding in this case*.⁵²⁶

[539] The Anderson/Barrow Opinion recognises the inexpediency of fragmentary litigation of issues that can arise in the extradition process, when, say, an ATP is challenged in separate *lites*, rather than await the outcome of the committal proceeding for an omnibus litigation of all the available issues once and for all. I fully concur with the Anderson/Barrow Opinion that, as a matter of policy, challenges to ATPs should abide the conclusion of the committal proceedings and

⁵²⁶ *Grandfield Homes (Kenton) Ltd v Chen* [2024] OJ No 1513 at [18].

be taken up, as necessary, in any overall review or appeal of those proceedings. I am not persuaded by any contrary reasoning to allow isolated challenges to the ATP in that regard, in the name of ‘access to justice.’ Access to justice is not a capillary amenity, easily obstructed by any other valid—let alone familiar—facility that aids the administration of justice in other important respects. There is no obstruction whatsoever of access to justice, where a Requested Person would be free to challenge the issuance of the ATP by way of a preliminary objection to the committal proceedings, but then wait until the end of the committal proceedings for any judicial review or appeal of the ruling on the preliminary objection.

[540] The invocation of *DPP v Nasralla*⁵²⁷ does not alter this analysis. *Nasralla* was a case where the plea of *autrefois acquit* would have entirely barred a subsequent retrial on a manslaughter charge, because the jury which acquitted him of murder in the earlier trial was unable to come to a unanimous verdict on the charge of manslaughter. Clearly, in that scenario, the purpose of the *autrefois acquit* plea against the charge of manslaughter was to foreclose *any* retrial of the charge of manslaughter. The policy that requires a Requested Person to *include* any available challenge of the ATP as part of any further judicial proceeding resulting from the committal proceedings does not foreclose the challenge of the ATP. It permits it to be made at a later stage.

[541] Indeed, the projected advantages of challenges to the ATP taken before the conclusion of the committal proceedings may only be illusory. This is in the sense that the Requested Person may be denied a future plea of issue estoppel, in the event that the committal proceedings did not result in a greenlight to the extradition. It is for that reason that astute defence counsel generally do not attack indictments at the preliminary stage of a criminal case. They wait until the conclusion of the trial, so that any attack against the judicial process would have a greater prospect of anchoring the issue estoppel.

⁵²⁷ *DPP v Nasralla* [1967] 2 AC 238 (JM PC).

[542] The Appellants contend that it is right to isolate the ATP and challenge its issuance as a preliminary matter because it is ‘foundation upon which extradition proceedings are based’⁵²⁸ or ‘the foundational platform of a lawful extradition process.’⁵²⁹ Some of my colleagues are evidently persuaded by that argument. I am not.

[543] That contention is inescapably reliant on the notorious *post hoc ergo propter hoc* fallacy that has been long rejected in common law legal reasoning, through the theories of causation in the law. Although those theories come in a dizzying variety of formulations in an extensive forest of literature, it is sufficiently clear, nevertheless, that a foremost matter of liability or responsibility for injurious conduct ‘involves the question whether, or to what extent, the defendant should have to answer for the consequences which his conduct has actually helped to produce. There must be a reasonable connection between the harm threatened and the harm done.’⁵³⁰

[544] The discussion doesn’t require us now to re-engage the reasonable causal connection analysis conducted in the good old *Wagon Mound (No 1)* case⁵³¹ and the earlier *Re Polemis*⁵³² that it overthrew. It is enough to recall, for our purposes, that public policy requires, as a practical matter, that ‘some limitation must be placed upon legal responsibility, because the consequences of an act theoretically stretch into infinity.’⁵³³ The task then is ‘to select those factors which are of sufficient significance to justify the imposition of liability and to draw a boundary along the line of consequences beyond which the injured party must either shoulder the loss himself or seek reparation from another source.’⁵³⁴ In his instructive work on the law of torts, Professor John Fleming correctly considered

⁵²⁸ See Nazar Mohamed and Azruddin Mohamed, ‘Submissions for the Appellants’, Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 23 February 2026, [15].

⁵²⁹ *ibid*, [16].

⁵³⁰ See John G Fleming, *The Law of Torts* (5th edn, Law Book Co 1977) 179.

⁵³¹ *Overseas Tankships (UK) Ltd v Morts Dock & Engineering Co* [1961] AC 388 (*The Wagon Mound No 1*).

⁵³² *Re Polemis and Furness, Withy & Co* [1921] 3 KB 560.

⁵³³ Fleming (n 527), 179.

⁵³⁴ *ibid*.

that the inquiry in this respect ‘presents a much larger *area of choice* in which *legal policy* and *accepted value judgments* **must be the final arbiter** of what balance to strike between the claim to full reparation for the loss suffered by an innocent victim of another’s culpable activity and the grievous burden that would be imposed on human activity if a wrongdoer were held to answer for all the consequences of his default.’⁵³⁵

[545] That inquiry introduces the notion of ‘causally relevant factors’ into the framework of analysis. It means that in order to attribute legal responsibility for a particular injury, it is necessary to ascertain whether the defendant’s blameworthy conduct was ‘a causally relevant factor’ in relation to the particular injury of the claimant. The technique helps to draw that needed boundary line between factors that are merely part of the overall conditions comprising the incident and the factors that are truly material to the claimant’s unhappy fate. The demarcation is necessary because ‘[e]very event or occurrence is the result of many conditions which are jointly sufficient to produce it. This complex set of conditions includes all antecedents, active or passive, creative or receptive, which were factors actually involved in producing the consequence.’⁵³⁶ The range of conditions ‘embraces both “causes” and what are commonly called *mere* causal “conditions”...’⁵³⁷ A particular condition may or may not qualify as ‘a causally relevant factor’ depending on ‘whether it was *necessary* to complete a set of conditions jointly *sufficient* to account for the given occurrence. Hence, the traditional pre-occupation with “necessary” condition or “*causa sine qua non*” as the touchstone of causality.’⁵³⁸

[546] Fleming was later to explain causal relevance in this accessible way: ‘There may well be a hundred and one causes of a certain occurrence, in the sense of all the conditions that make up a set sufficient to produce it, but for legal purposes we

⁵³⁵ *ibid* (emphases added).

⁵³⁶ *ibid*, 180.

⁵³⁷ *ibid* (emphasis added).

⁵³⁸ *ibid* (emphasis received).

may well be satisfied with merely establishing that the defendant's contribution was one of these.⁵³⁹

[547] To cut a quite long story short, Fleming's example that a 'doctor's delay in attending a patient is causally irrelevant if the latter was in any event beyond all help'⁵⁴⁰ is a helpful analogue in the inquiry whether a particular Minister's issuance of the ATP is causally relevant to the Requested Person's extradition. This is in the sense that the incidence of actual extradition comprises a compost of contributory conditions that would include all the following factors, any of which can break the chain of causation relative to the extradition:

- i. the Requested State had entered into a treaty (bilateral or multilateral) including a duty only to extradite, or a duty to either extradite or prosecute
- ii. the Requesting State conducted criminal investigations
- iii. the Requesting State issued an indictment
- iv. the Requesting State issued an arrest warrant
- v. the Requesting State presented an extradition request to the Requested State
- vi. the Requested State administratively received the extradition request
- vii. following receipt of the extradition request, the Minister issued an ATP
- viii. following the issuance of an ATP, a judicial inquiry was conducted
- ix. the judicial inquiry resulted in a judicial clearance of the extradition

⁵³⁹ Fleming (n 527), 106.

⁵⁴⁰ *ibid*, 180.

- x. the Requested Person launched an unsuccessful *habeas corpus* application against his committal
- xi. the Requested Person launched an unsuccessful appeal against the outcome of the unsuccessful *habeas corpus* application, and
- xii. the Minister finally surrendered the Requested Person (we must keep in mind that the Minister might have exercised a residual discretion not to surrender, as the UK Secretary of State eventually did in the *Pinochet* case).

[548] Notably left out of that calculation are the questions whether the Requested Person had engaged in any conduct that exposed him to the criminal investigation that resulted in the extradition request; and, whether counsel representing him could have been more effective in the conduct of the judicial proceedings. It is unnecessary to add those further complicating factors in the equation, to appreciate that the Minister's issuance of the ATP in an extradition-worthy case is in the larger scheme of things truly irrelevant as a causal factor in the extradition of the Requested Person. Hence, my colleagues' procedural fairness focus on the ATP is disproportionate, relative to the ATP's real value in occasioning the extradition.

[549] Finally, I do not see that the authorities relied on by the Appellants to support their urge of the procedural fairness point do engage the nuanced—yet defining—difference that the judicial proceedings make in the extradition process. *Ramdass*,⁵⁴¹ for instance, speaks correctly to its own facts and to cases with similar features. *Ramdass* does not assist analysis in relation to allegations of bias as vitiating the issuance of an ATP. The more appropriate case is *Jack Warner's* case.⁵⁴² I shall return to these cases later. For now, I must attend to the facts and circumstances of the case as they shed light on the Appellants' claim of bias.

⁵⁴¹ *Ramdass* (n 18).

⁵⁴² *Warner* (n 69).

The Appellants' Case of Bias

[550] As already noted, the Appellants' complaint of bias is founded exclusively on aspersions of criminal conduct that the President, the Vice President and the Attorney General (the Second Respondent) cast on the Second Appellant. But the Appellants' theory of bias is that the legal fault of those aspersions must be attributed vicariously to the Minister of Home Affairs (the First Respondent) who actually signed the ATP that allowed the committal hearing to commence. The Appellants complain that the aspersions revealed a baleful mindset towards them; and it must be presumed that the Minister was in thrall to that mindset of her colleagues when she issued the ATP, notwithstanding that she cast no similar aspersions herself against the Appellants.

[551] In my view, the case for bias is beset with steep obstacles from multiple directions. In that regard, I agree with the Anderson/Barrow Opinion.

[552] It is accepted by all sides that the 'Minister' upon whom the mandate falls to issue the ATP, as provided by s 12 of the Fugitive Offenders Act, is the Minister of Home Affairs (the First Respondent).

[553] According to the records, the US request for the extradition of the Appellants was made on 28 October 2025, as dated.⁵⁴³ Two days later, on 30 October 2025, the Minister of Home Affairs (the First Respondent) issued the ATP, authorising the extradition hearing.⁵⁴⁴

The Velocity of the Issuance of the ATP

[554] I shall deal with the matter of those public pronouncements. But, before that, I must deal with the Appellants' corollary argument that the speed of the First Respondent's issuance of the ATP bolsters the complaint of bias, because she

⁵⁴³ See Record of Appeal, 271.

⁵⁴⁴ See Record of Appeal, 531.

issued the ATP with undue haste following the US Government's extradition request. I am not persuaded.

[555] To begin with, the record suggests, as indicated earlier, that the extradition request was made on 28 October 2025⁵⁴⁵ and the First Respondent issued the ATP on 30 October 2025.⁵⁴⁶ The First Respondent swore an affidavit to that effect, referring to the dates on both the US Government's extradition request⁵⁴⁷ and her own ATP.⁵⁴⁸ The Appellants allege that the First Respondent received the extradition request on 30 October 2025 and issued the ATP on the same date—within two hours.⁵⁴⁹ But the Appellants tendered no evidence in support of that allegation. *Ei qui affirmat incumbit probatio* represents a well-known legal maxim: meaning the obligation of proof of an allegation lies on the alleging party.

[556] Then again, as will soon become clear, it would make no difference, in my view, if there was indeed evidence that the First Respondent issued the ATP within two hours of receiving the extradition request.

[557] The Respondents have not denied their preparedness to cooperate promptly with the US Government in their measures against the Appellants. As the Second Respondent put it:

In June 2024, the Office of Foreign Assets Control (OFAC) imposed sanctions on the Applicants. The Government of Guyana immediately pledged its cooperation to the relevant United States law enforcement agencies on the Mutual Assistance on Criminal Matters platforms.⁵⁵⁰

[558] It has been observed that requests for extradition, as a matter of 'practice,' are often made 'following consultations between the appropriate authorities in the two

⁵⁴⁵ See Record of Appeal, 'Note Verbale of the Embassy of the United States of America, Georgetown, Guyana, dated 28 October 2025', 271.

⁵⁴⁶ See Record of Appeal, 'Authority to Proceed, issued by Oneidge Walrond, Minister of Home Affairs, dated 30 October 2025', 531.

⁵⁴⁷ See Record of Appeal, 'Affidavit of Oneidge Walrond' [31].

⁵⁴⁸ *ibid*, [43].

⁵⁴⁹ See Nazar Mohamed and Azruddin Mohamed, 'Submissions for the Appellants', Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 23 February 2026, [32.iv].

⁵⁵⁰ See *Attorney General, Hon Mohabir Anil Nandlall SC*, 'Submissions on behalf of the Second named Respondent' Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 4 March 2026, [15].

countries.’⁵⁵¹ Notably, the UN Office of Drugs and Crime (UNODC)—the quotidian agency in charge of the UN’s international cooperation efforts in criminal matters—recommends that method as a best practice. As observed in their *Manual on Mutual Legal Assistance and Extradition*, ‘the importance of early and constant communication between States throughout the mutual legal assistance and extradition process is stressed repeatedly throughout.’⁵⁵² Regarding the earliest time to engage in such communication, States are encouraged to ‘communicate informally before making the request’ for extradition, in the event that the location of the person of interest is known.⁵⁵³ Such informal communication ahead of the formal request would, amongst other things, facilitate knowledge of the local requirements and proper channels of speedy communication and transmission of information.⁵⁵⁴ Indeed, transmission of ‘draft requests to one’s counterpart in the Requested State before finalising and transmitting the official request is also highly recommended’ in order to ‘minimize delays.’⁵⁵⁵

[559] Since the essence of such early communication is for purposes of speedy processing of the extradition requests, there is very little that is remarkable about the Minister issuing an ATP with rapidity once the formal request was received. This doesn’t preclude that speed of signing of the ATP may really be explained by bad faith than speed. But clear evidence of such bad faith is required to rebut the presumption of regularity enshrined in the maxim *omina praesumuntur rite esse act*. And where such evidence is available, the attendant complaint can be made in the round of the judicial inquiry. No such evidence has been adduced against the Minister’s signing of the ATP soon after receiving the extradition request.

[560] Significantly, the Appellants’ complaint that the velocity of the issuance of the ATP was more suggestive of bias than efficiency is eventually undermined, in my view,

⁵⁵¹ *Cotroni* at (n 345) at 1498e. See also, 1473 – 1474.

⁵⁵² UNODC, *Manual on Mutual Legal Assistance and Extradition* (n 411), 3.

⁵⁵³ *ibid*, 101.

⁵⁵⁴ *ibid*.

⁵⁵⁵ UNODC, ‘Report of Informal Expert Working Group On Effective Extradition Casework Practice’ (n 72), [96].

by a letter from his counsel, S A Dhrujon, dated 6 October 2025, authored weeks before the making of the extradition request dated 28 October 2025. The letter informs that the Appellants ‘have observed a purported indictment filed against them in the United States of America on behalf of the American government indicting them with the commission of eleven (11) offences.’⁵⁵⁶ That being so, Mr Dhrujon offered that the Appellants ‘have every intention to participate in the lawful extradition processes provided for under the Fugitive Offenders Act, Cap. 10:04 to vindicate themselves therein. To this end my clients intend to surrender to the authorities *whensoever* the relevant formal processes, i.e. the necessary warrant(s), whether provisional or otherwise, and/or *the authority to proceed*, are executed.’⁵⁵⁷

[561] It was thus clear that not only the Respondents, but also the Appellants were anticipating the extradition request at least weeks before it was made and were getting ready to spring into action upon its receipt. In those circumstances, it would be obvious that the extradition hearing, which Mr Dhrujon’s letter fully anticipated, would commence with the issuance of the ATP—at any moment. And they were ready for it ‘whensoever’ it was issued.

[562] Aside from the allegation of bias, the Appellants point to no substantive errors or omissions on the face of the ATP or in the circumstances of its issuance. That gap in the Appellants’ case was a matter of pointed inquiry during the hearing.⁵⁵⁸ Hence, speed doesn’t readily translate to sin.

[563] Above all, it may be observed at this juncture that this particular Minister of Home Affairs (the First Respondent) should, in my view, be presumed with confidence to know how to read and apply statutory provisions. She was already a lawyer of unordinary legal education and experience when she assumed her portfolio as the

⁵⁵⁶ See Record of Appeal, 464.

⁵⁵⁷ *ibid* (emphasis added).

⁵⁵⁸ See, for instance, Caribbean Court of Justice, ‘Hearing of the Application - N Mohamed and A Mohamed v Min of Home Affairs, O Walrond, O Walrond and others’ (*YouTube*, 21 April 2026) 24:25 <<https://www.youtube.com/watch?v=8BMmXhGNIF8>> accessed 31 May 2026.

Minister of Home Affairs—27 years after her call to the Bar. Beyond her Bachelor of Laws degree and her bar admission course, she also studied for and obtained a Master of Laws degree. Her professional experience as a lawyer includes private legal practice, corporate secretary, Government legal advisor and service as a Magistrate for seven years.⁵⁵⁹

[564] On reviewing the record in this case, I am satisfied that she did carefully advert her mind to the considerations that the Fugitive Offenders Act—especially ss 8, 9, 12, and 26—required of her before issuing the ATP. In that regard, the record of this case contains her affidavit dated 12 January 2026, in which she accounts in twelve (mostly long) paragraphs⁵⁶⁰ what she considered before issuing the ATP. That account systematically addresses the discrete provisions of the Fugitive Offenders Act that bear on her issuance of the ATP. There is no evidence tendered or argument made to contradict that account.

[565] Here, I pause to agree with the observations in the Anderson/Barrow Opinion regarding the role of the Second Respondent (the Attorney-General). Indeed, but for my findings later on ‘clean hands,’ I would also concur with my colleagues on the Rajnauth-Lee/Jamadar/Bulkan Opinion regarding their findings of bias against the Second Respondent. Specifically, I concur with the findings in both Opinions to the effect that the Second Respondent’s legal advice had little or no bearing on the decision of the First Respondent in issuing the ATP. Specifically, the First Respondent deposed to that legal advice in the following words:

With regard to the matters referred to in section 8(3) of the Act, I noted Article 7 of the Treaty and I consulted with the Honourable Attorney General who directed my attention to the decision of the Court of Appeal in *King v Director of Prisons* (1992) 47 WIR 210. I was satisfied that the state of the relevant laws of Guyana and the treaty with the United States of America would not allow the First and Second Applicants to be further extradited from the United States to any other country nor allow them to

⁵⁵⁹ See Record of Appeal, ‘Affidavit of the Hon. Minister of Home Affairs, Oneidge Walrond’, [4]–[9].

⁵⁶⁰ *ibid*, [31]–[43].

be tried for any other offence, and that accordingly, the prohibition under section 8(3)(a) and (b) was not an issue.⁵⁶¹

[566] Where the Requested Person has reasonable grounds to believe that the Minister omitted to take a material consideration into account in her decision to issue the ATP, it is open to the Requested Person to urge the Minister to reconsider her decision on that ground. Failing that, or if it has become procedurally inconvenient to reconsider the issuance of the ATP, the matter may be litigated during the judicial phase of the process.

[567] It is, of course, not beyond the realms of possibility that aspects of the Minister's assessment may be open to question, challenge or reproach, beyond mere technical omissions. Such question, challenge or reproach may well include a complaint that the taint of bias—borne out by credible evidence—had contaminated the decision to issue the ATP. The availability of the committal hearing and *habeas corpus* proceedings entails literal double assurance that any dubious act or omission on the part of the Minister in issuing the ATP would be safely captured in that two-pronged net of protection for the Requested Person.

The Case of Bias regarding the First Appellant

[568] I now consider in substance whether the facts and circumstances in this case truly bear out the allegation of bias, which is rooted squarely in the public pronouncements of senior Government officials against the Second Appellant.

[569] The exercise in this part of the opinion requires tracing the factual source of that complaint of bias. But before that, I must, first, deal with a certain submission of Mr Mendes SC and Mr Hackett (counsel for the First Respondent), which narrows the range of the complaint of bias. As they put it in paragraph 7 of their written submissions:

⁵⁶¹ *ibid*, [41].

While the source of the claimed bias is clear in relation to the Second Appellant who is now the Leader of the Opposition, it is impossible to make the same claims in relation to the First Appellant who is merely a financial supporter of his son's political party.

[570] The point is that the Government officials complained against as biased did not engage in hostile public commentary against the First Appellant as they did against the Second Appellant. As mentioned later, this feature of the case may carry implications in other respects.

[571] Mr Mendes and Mr Hackett's point in this regard was not contradicted by either an opposing submission of the Appellants or by any information on the record of the case. That deficiency is not overcome by the rather unorthodox litigation approach in which only the Second Appellant submitted an affidavit in the case, purporting it to be on behalf of both himself and the First Appellant.⁵⁶² It is no matter that he then goes on to tell the story of bias predominantly from his perspective.

[572] In the circumstances, there is no basis in fact to consider any complaint of bias in respect of the First Appellant. The case for bias thus fails in relation to him.

The Case of Bias regarding the Second Appellant

The Problem of Attribution and the Question of Necessity

[573] The complaint of bias against the First Respondent is not rooted in the evidence of much that she said that was particularly concerning against the Appellants. Notably, the Second Appellant alleged that the First Respondent 'cannot deny knowledge as a chief pillar of her political party and government's very election campaign was to target and speak of me at all of their rallies, many in which she was present and *partook whilst herself* and the said three government leaders and

⁵⁶² See 'Record of Appeal, 'Azruddin Mohamed, Affidavit in Support of Notice of Application', 21–52, [2]

others *spoke prejudicially and/or negatively of myself and my father*.⁵⁶³ But the Second Appellant presented no evidence of what the First Respondent actually said against him, besides her speech at a political rally on 14 August 2025, during which she parodied three political rivals of Dr Irfaan Ali for the post of President. She mocked how they would react to questions from peer world leaders about agriculture in Guyana, were any of them to be elected President. The third rival whom she so parodied was the Second Appellant. A review of that evidence shows that her performance in that regard, as political campaigns go, was entirely benign in relation to the Second Appellant.⁵⁶⁴

- [574] The case of the Appellants proceeds on the ambitious argument that it is right to attribute to the First Respondent the comments of her Government associates, thus finding her biased, because she ‘cannot deny knowledge’ of the campaign of hostile commentary that her associates directed against the Second Appellant.⁵⁶⁵ In that regard, counsel for the Appellants submitted as follows:

These were not isolated statements but formed part of a pattern of sustained and deliberate vilification on the part of the leaders of the PPP, of which the MOHA [ie the 1st Respondent] was a senior member. She was fully aware, (indeed was witness to), the PPP’s public position on the Mohammeds—and from any *realistic perspective*, would have been associated with them when issuing the ATP, even without the obvious taint of the AG’s direct participation.⁵⁶⁶

- [575] What counsel meant by ‘realistic perspective’ was explained by an understanding of ‘apparent bias’ rendered in terms that ‘the ATP would have been vitiated by *apparent bias*: as a high-ranking member of the PPP, the MOHA would from any *realistic perspective* be closely associated with its leaders’ public views and expected to ‘toe the party line’.⁵⁶⁷

⁵⁶³ *ibid*, [61].

⁵⁶⁴ See, Peoples Progressive Party/Civic, ‘Elections 2025: PPP/C Grand Public meeting at Alexander Village’ (YouTube, 14 August 2025) 1:00:55 <https://youtu.be/wneCbi_h74E> accessed 25 May 2026, and referred to in Record of Appeal, ‘Azruddin Mohamed, Affidavit in Support of Notice of Application’, filed 20 March 2026, [66].

⁵⁶⁵ See Record of Appeal, ‘Azruddin Mohamed, Affidavit in Support of Notice of Application’ filed 20 March 2026 [61].

⁵⁶⁶ See Nazar Mohamed and Azruddin Mohamed, ‘Submissions for the Appellants’, Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 23 February 2026, [31] (emphasis added).

⁵⁶⁷ *ibid*, [40].

[576] The recently concluded FIFA season now reminded many of impressive footballers like Maradona, Messi, Okocha, Ronaldinho, and, of Pele, who often scored brilliant goals at the end of dazzling dribbles. Legal principles are not readily dribbled in quite the same way.

[577] Whatever be the merits of the Appellants' theory of vicarious responsibility for bias, that theory is eventually snared by considerations of necessity. That issue preoccupied the hearing. As the Appellants would have it, the 'realistic perspective' of 'apparent bias' is that a fair-minded and reasonable member of the public would expect a Minister who is a 'high-ranking member of the PPP' to 'toe the party line.' Some of my colleagues have similarly reasoned that the 'decisional ecosystem' within which the ATP was signed would also entail that problem. If so, it then becomes conceptually difficult to see how a fair-minded and reasonable member of the public would not similarly make that imputation against any other member or functionary answerable to senior figures of the PPP who won the election to run the Government when the ATP was (or would be) signed.

[578] In other words, the 'realistic perspective,' in my view, is that there is no argument of vicarious responsibility made against the First Respondent in her issuance of the ATP, which cannot, in turn, be made against any other member or functionary of the Government of President Ali, Vice President Jagdeo and the Second Respondent. For that reason, that theory fails, since someone must issue the ATP in any circumstance in which everyone is contaminated by reason of bias.

A Desiderative Complaint

[579] As noted earlier, the Appellants contend that another official should have been left with the decision to issue the ATP.

[580] That argument assumes, of course, that there is a valid case of bias. On that assumption, the Appellants offered no theory whatsoever, as pointed out earlier,

about any possible basis on which the First Respondent or any other official other than her might have declined to issue the ATP.

[581] Equity has looked at substance long before this case came along. It can't stop now. The Appellants' allegation of bias was purely technical and was all-encompassing in that way. This is in the sense that Mr Hosein SC was unable to indicate, despite repeated questions from the Bench, any substantive failing on the part of the First Respondent in relation to her issuance of the ATP.⁵⁶⁸ All that mattered, he argued, was that the First Respondent was biased. That position is strikingly desiderative. It is especially so in a case in which nets of theory were woven at length—to drape upon the First Respondent the fault of statements that were not factually hers but those of her colleagues in Government.

[582] Bias—where made out—does not vitiate a decision *ab initio*. This is because waiver or necessity may excuse proven bias. The most that proven bias does to a decision is render it voidable. And the very concept of voidability makes it wiser for the complainant to have a back-up plan. Voidability comes with no guarantee of nullification of a decision. The particular facts and the overall context of a given case may sustain the decision.

[583] Bias may vitiate a decision when the decision maker enjoys a margin of play that may materially affect the outcome. That is the case with decisions of judicial tribunal. But it isn't only with judicial decisions that bias may vitiate a decision. That result is certainly possible in decisions of non-judicial character.

[584] In his oral arguments, Mr Hosein SC (for the Appellants) placed much reliance on the recent judgment of the UK Privy Council in *Ramdass v Minister of Finance of Trinidad and Tobago*.⁵⁶⁹ It is certainly a case of non-judicial character. But that case does not assist Mr Hosein. In cases like that, bias may understandably vitiate the decision. It is important, however, to keep the facts and circumstances of that

⁵⁶⁸ See, for instance, Caribbean Court of Justice, 'Hearing of the Application—N Mohamed and A Mohamed v Min of Home Affairs, O Walrond and others' (n 555).

⁵⁶⁹ *Ramdass* (n 18).

case in mind. Ramdass was the Auditor-General of Trinidad and Tobago. She entered an observation in her audit report to the effect that she could not verify an out-of-time revision that the Minister of Finance sought to make to his own earlier underreporting of the Government's revenue. Displeased with the Auditor-General's refusal to remove that note of caution, the Minister sought and obtained Cabinet approval to commission an investigation team with terms of reference that included inquiring into the Auditor-General's work on the audit report, with the possibility of removing the Auditor-General from office. Material amongst the circumstances of the case were that the investigation which the Minister wanted to conduct was not a standard part of the audit process, the Minister was the initiator and prime mover of the idea of commissioning the investigation in this particular case, he designed its terms of reference, he determined the remuneration of the investigation team, and the investigation team was to report to him. In those circumstances, it was clear that the Minister had a large margin of play in the intended investigation. That margin of play began with the fact of the decision as to whether or not to *initiate* the investigation (a process that was not standard) and including the fact that the investigation team's terms of reference were evidently initiated by the Minister, as well as that the Minister was the authority to whom the investigation team reported. In short, the idea of the investigation team was a unique event, and the Minister was both the origin and the endpoint of it.

[585] None of those defining features of the *Ramdass* case is present in the case now under appeal. Notably, the ATP is a necessary feature of the extradition process. The Minister has little to no margin of play in its issuing. It is largely driven by a tide of circumstances—what I described earlier as a ‘crush of factors’—that are beyond the control of the Minister. These include the fact that she received a request for extradition; the request was based on a treaty (bilateral or multilateral) that carries obligations under international law; the request was propelled by a criminal investigation by a foreign State, a resulting indictment, and arrest warrant from the Requesting State; etc. In those circumstances, the Minister is under a virtual obligation to transmit the extradition request to the judiciary. The only way

to effect that transmittal is by issuing the ATP—to ‘signify’ to the judiciary that the State has received an extradition request which the judiciary must inquire into to determine extraditability. As the Fugitive Offenders Act of Guyana provides in terms similar to its counterpart legislation in Trinidad and Tobago and in Nigeria:

On receipt of a request ... the Minister may issue an order in Form 1 (hereinafter referred to as “authority to proceed”) signifying to a magistrate that the request for the extradition of the person mentioned in the order has been received and requiring the magistrate to proceed with the case in accordance with the provisions of this Act.

[586] That sense of the provision is consistent with the general rule of obligation, indicated earlier, which recognised in virtually all international conventions on extradition treaties. And it must also be recalled that the purpose of extradition statutes is to codify into domestic law the ‘international obligations’ of States to surrender Requested Persons in the manner agreed upon by States.⁵⁷⁰ That general rule of obligation requires a State to extradite the Requested Person upon receipt of a request, unless there is an affirmative bar to extradition. The modern approach to construing extradition statutes receives one of its clearest statements in s 11(1) of the Extradition Act of New Zealand: ‘If there is an extradition treaty in force between New Zealand and an extradition country, the provisions of this Act must be construed to give effect to the treaty.’ Speaking to the different interests that must be taken into account in the application of the Canadian legislation on extradition, a Minister of Justice once said this:

The appeal and review process should be expedient but permit a fair hearing. The division of functions between the judiciary and the minister must be clearly respected. *Our international obligations to our extradition treaty partners to return offenders must also be respected.*⁵⁷¹

[587] Such obligations of States to extradite speak to the principle of *pacta sunt servanda*, an obligation (codified in article 26 of the Vienna Convention on the

⁵⁷⁰ See *Kwok* (n 413) at [27].

⁵⁷¹ *ibid* at [41] (emphasis added).

Law of Treaties) on all treaty parties to perform in good faith the duties imposed by that treaty.

[588] That being the case, the complaint of bias against the Minister who issued an ATP becomes a complaint devoid of content. Mere bias is academic in that context. It doesn't automatically make the ATP void.

[589] In this connection, I concur with the Anderson/Barrow Opinion that the Appellants must identify with an air of reality that an alleged bias might have affected the outcome in the circumstances. This is specifically keeping in mind that subjects of extradition requests are never at the mercy of the Minister who issues an ATP. As already amply explained, there is inevitably a judicial inquiry that must follow the issuance of the ATP. The entire purpose of that inquiry is to ensure that the extradition is consistent with the law and that the Requested Person is not treated oppressively.

[590] There is persuasive case law that 'clearly' draws 'a close analogy between an Authority to Proceed and an indictment in a domestic criminal proceeding.'⁵⁷² There is also persuasive case law that declines ranging invocation of bias and procedural fairness to indictments, short of circumstances of malice.⁵⁷³ Notably, in *Chief Justice of Trinidad and Tobago v Law Association of Trinidad and Tobago*, the Privy Council recognised that there is *enormous variance* between decisions that determine rights and those that merely trigger inquiries into allegations of wrongdoing. As they put it:

It is apparent that the standards of fairness required *vary enormously* according to the type of decision in question. *Doody* was concerned with the minimum time which a prisoner serving a mandatory sentence of life imprisonment would have to serve before being considered for release on

⁵⁷² See *Turner* (n 175) at [18]. See also *United States of America v Drysdale* [2000] OJ No 214 at [51].

⁵⁷³ See *Perestrello* (n 30) at 35; *LATT* (n 32) at [102] and [103] (Mendonca CJ (Ag)), and at [93] and [94] (Jamadar JA). See also *Chief Justice of Trinidad and Tobago v Law Association of Trinidad and Tobago* [2018] UKPC 23, [2018] 5 LRC 704 (TT) at [39].

licence. That is a very different matter from a decision whether or not to make a complaint to the Prime Minister.⁵⁷⁴

[591] The significance of that *enormous variance* in the relative contexts of decisions that determine rights and those that don't becomes apparent in relation to the issuance of an ATP. In *Warner v Attorney General of Trinidad and Tobago*—an extradition case—the Privy Council observed that at the judicial inquiry, the Government and the Requested Person enjoy equal standing.⁵⁷⁵ Indeed, in that case, the Privy Council considered that the requirements of procedural fairness stand on different footing between extradition cases and those cases where 'a person directly affected ... had no opportunity to evaluate or contest the reasons for the denial of entitlement.'⁵⁷⁶ The difference is that in extradition cases, 'the determination of the entitlement' is by the court: 'It is the court which determines the requirements of fairness and the Attorney General, like any other participant in the proceedings, is bound by those determinations.'⁵⁷⁷

[592] For reasons indicated earlier, there is no risk of injustice in a policy that (a) precludes a separate track of litigation against the issuance of the ATP, (b) requires any such litigation to be made by way of a preliminary objection at the commencement of the committal proceedings, and (c) reserves any necessary appeal or judicial review of the ruling to be taken up at the conclusion of the committal proceedings.

The Problem of Clean Hands

[593] The Second Appellant's complaint of bias is founded on a theory of 'unrelenting persecution'⁵⁷⁸ on the hinted grounds of political opinion. The Appellants' own evidence alone, in my view, doesn't bear out the claim.

⁵⁷⁴ *Chief Justice of Trinidad and Tobago v Law Association of Trinidad and Tobago* [2018] UKPC 23, [2018] 5 LRC 704 (TT), at [39] (emphasis added).

⁵⁷⁵ See *Warner* (n 69) at [89].

⁵⁷⁶ *ibid.*

⁵⁷⁷ *ibid.*

⁵⁷⁸ See Record of Appeal, 'Affidavit in Defence of the Second Named Respondent', [58].

- [594] On the facts, it is not disputed that senior members of the Government—notably the President, the Vice President and the Attorney General—directed negative commentary at the Second Appellants, alleging or suggesting that he had engaged in criminal activity by virtue of sanctions and indictment against him by the US Government.
- [595] But there is much more to the story than that. There is a buildup to the story, which is equally important.
- [596] The major milestones to that buildup include these. First, on 14 July 2023, the *Reuters* news agency published a lengthy investigative piece titled ‘US probing Exxon contractor in Guyana for smuggling drugs, gold.’⁵⁷⁹ With a focus on the business relationship between Exxon the oil conglomerate and the Appellants, the piece contained unvarnished allegations that the Appellants had been under criminal investigation by the US Government, in consequence of which US Government sanctions or worse were expected against the Appellants.
- [597] At the time, the piece gave no hint of any rift between the Appellants and the Government of Guyana. That is a significant detail. From all indications, there was no rift at the time. Quite the contrary, the piece repeatedly asserted in the present tense in July 2023 that the Appellants ‘have close ties with Guyana’s president and some cabinet members.’⁵⁸⁰ Thus making them useful business associates of foreign firms seeking to do business in the economically ascendant Guyana.⁵⁸¹ Such high connections in Government, according to the report, were implicit in the account that the Appellants were known supporters of the Government. The following quote from the piece is emblematic of the suggestion as made by the authors:

The father, 70-year-old Nazar Mohamed, has long been close to the family of Guyana’s president, Irfaan Ali, who came to power in 2020, according to three people familiar with their relationship. One of the

⁵⁷⁹ See Record of Appeal, 561.

⁵⁸⁰ *ibid.*

⁵⁸¹ *ibid.*, 566.

intelligence reports reviewed by *Reuters* said the Mohameds donated heavily to Ali's 2020 presidential campaign and provided logistical support. The Mohameds have since regularly attended government-sponsored events, including an overseas trade mission, the report said.⁵⁸²

[598] Although the piece reported that the First Appellant 'said he and his son "do not have any political influence that could be helpful to Exxon Mobil" in securing approvals and permits to drill off Guyana's coast,'⁵⁸³ he nevertheless admitted in a video statement (seemingly made in March 2025) that he had supported the 'PPP [People's Progressive Party, the political party of the current Government] all my life,' and expressing consternation at the current hostility from the Government towards him and the Second Appellant.⁵⁸⁴

[599] What is the importance of the detail concerning the relationship between the Appellants and the Government as of the time of the *Reuters* report? It puts into sharp relief the question of when the rift occurred and the forensic circumstances and implications of that rift as regards the allegation of bias. That rift and its consequences are, in my view, directly material to the question of legitimacy of the complaint of bias, given the factual antecedents of that allegation.

[600] The First Respondent spoke to that once close relationship, and explained the rift as follows:

The Appellants were at one time close associates and supporters of the PPP (Civic) coalition. A rift in that relationship developed after the United States Government imposed sanctions on the Appellants for alleged criminal activities. Those activities were described as including evasion of import and export duty taxes and bribery of Government officials. Eventually, the Second Appellant entered into the political fray of his own accord, supported financially by the First Appellant, his father, and contested the general election in 2025 on a separate list of candidates. His list was successful in gaining 16 seats

⁵⁸² *ibid.*

⁵⁸³ *ibid.*

⁵⁸⁴ See Credible Sources, (*Facebook*, 4 March 2025) 3:30 - 4:30 <www.facebook.com/watch/?v=625408657129137>. See also HGPTV (Channel 16 Cable 67), 'Nazar Mohammed Breaks Nine-Month Silence After US Sanctions' (*YouTube*, 6 March 2025) <www.youtube.com/watch?v=77Hn1mR_QuE&t=127s>.

in Parliament, sufficient to have him appointed as the leader of the Opposition. The First Appellant does not hold any political office.⁵⁸⁵

[601] The Second Respondent similarly spoke to the relationship and its breakdown, even more extensively. According to him, upon the US Government's announcement of sanctions against the Appellants in June 2024, the Government of Guyana immediately pledged cooperation with the US Government's law enforcement agencies through the platforms of Mutual Assistance on Criminal Matters.⁵⁸⁶ The US Government 'sanctions were issued at a time when the Applicants' political allegiance to the governing party was beyond question,' he informed⁵⁸⁷

[602] But as a result of the sanctions announcement against the Appellants, the Guyanese Government began disengaging from the Applicants and their businesses,⁵⁸⁸ in a process that lasted until the end of 2024.⁵⁸⁹

[603] 'All this time,' said the Second Respondent, 'the Applicants remained supporters and, by their own public statements, alleged financiers of the governing PPP/C. In short, if at all, politics was of any moment, the Applicants were self-professed supporters of the governing party,'⁵⁹⁰ and did not publicly criticise the Government.⁵⁹¹ 'By this time, it was already in the public domain that an extradition request was imminent.'⁵⁹²

[604] According to the Second Respondent, it was only at about January 2025 that the Second Appellant started criticizing the Government of Guyana publicly.⁵⁹³ And on 26 May 2025, following the President's announcement of the date of national

⁵⁸⁵ See *Minister of Home Affairs Oneidge Walrond*, 'Submissions on behalf of the First Respondent', Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 10 April 2026, [4].

⁵⁸⁶ See *Attorney General, Hon Mohabir Anil Nandlall SC*, 'Submissions on behalf of the Second named Respondent' Submission in *Mohamed v Minister of Home Affairs, Oneidge Walrond*, GY/A/CV2026/001, 4 March 2026, [15].

⁵⁸⁷ *ibid*, [21].

⁵⁸⁸ *ibid*.

⁵⁸⁹ *ibid*, [18].

⁵⁹⁰ *ibid*, [17].

⁵⁹¹ *ibid*, [18].

⁵⁹² *ibid*.

⁵⁹³ *ibid*.

elections, the Second Appellant announced his intention to run for political office.⁵⁹⁴

[605] It is common ground between the two sides that the Second Appellant did embark on a course of high profile public criticism of the Government. If there is any disagreement as to that fact, it is only as to the date when he started doing so. The Second Respondent puts that date at about January 2025. The Second Appellant relates it back to June 2024.

[606] In my view, that difference in dates is immaterial to the forensic importance of the conduct. All that matters is that he did start criticising the Government ‘*fiercely*’ for ‘*corruption*’ and maladministration, at a date which the evidence shows to have been no earlier than June 2024—the same month that the US Government announced sanctions against the Appellants. It is not necessary in that regard to dwell on the fact that it was reasonable, at the commencement of these criticisms, to expect indictment(s) and extradition request(s) from the US Government concerning the alleged crimes in respect of which the sanctions had been announced.

[607] As the Second Appellant put it in his affidavit:

26. Myself and my father—especially myself—have been *outspoken* in our *fierce* political criticism of the PPP, the government, its President, Vice President and Attorney General and all of its leaders, including the First Respondent, Ms. Oneidge Walrond, *from about June, 2024* to date. [Emphasis added.]

27. No other individual in the country has opposed the government so effectively and with such popularity *from June, 2024* to date apart from myself. [Emphasis added.]

28. I have caused to be uploaded *scores of videos* on the ‘Team Mohamed’s’ account and page on the Facebook social media platform accessible at the webpage hyperlink ... [Emphasis added.]

⁵⁹⁴ *ibid.*

29. In the *vast majority of these videos* on the Team Mohamed's and WIN accounts *I am captured on video expressing my political views and stern condemnation of the corruption and misadministration* of the PPP, the government, its President, Vice President and Attorney General and all of its leaders, including the First Respondent, Ms. Oneidge Walrond from about June, 2024 to date. [Emphasis added.]

[...]

32. Each said video uploaded on the Team Mohamed's page containing the *aforesaid mentioned government and PPP criticism* has been viewed between 200,000 (two hundred thousand) to over 800,000 (eight hundred thousand) – the latter figure being around the known population of Guyana. [Emphasis added.]

[...]

38. *On or about 11th June, 2024* the United States of America Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned myself and my father (as well Mohamed's Enterprise, Hadi's World and Team Mohamed's Racing Team, entities owned or controlled by us) for our alleged corruption in Guyana, among other things. [Emphasis added.]

[608] By his very own words, then, the Second Appellant had engaged in extensive high profile criticism of members of the Government of Guyana. He accused them not only of maladministration, but also—significantly—of 'corruption.' It must be noted, as already seen in this opinion, that corruption is a criminal conduct. At least one multilateral convention—the Merida Convention—speaks to that effect, let alone normative policies of the US Government, as we have seen, dating back to the administrations of President Bush, President Obama and President Biden.

[609] Apparently, the Second Appellant saw nothing amiss, in the circumstances of this case, with his own allegation of corruption—a criminal conduct—against the leaders of the Guyanese Government. Yet, he saw only 'an unrelenting governmental policy of persecution against [him] and [his] father'⁵⁹⁵ in the Government's reciprocal allegations against him—at about the same time as he

⁵⁹⁵ See Record of Appeal, 'Affidavit in Defence of the Second Named Respondent', [58].

had commenced his own high profile, fierce and extensive criticism of the Government for corruption and maladministration. As he put it:

From June, 2024 to date, the leaders at the highest levels of the sitting government including but not limited to the President of Guyana, Dr Irfaan Ali, the Vice President of Guyana, Mr. Bharrat Jagdeo and the Attorney General, Mr. Anil Nandlall, SC (the Second Respondent) ('the said three government leaders') have publicly expressed hostility, contempt and disdain for me and my father largely on account of our differing political views and associations.⁵⁹⁶

[610] The Second Appellant does not identify any instance in which the Government officials cast any aspersion against him during the month of June 2024, when he said his own *fierce* attack against the Government commenced. From his affidavit, all the instances that he identified of Government officials making negative comments against him were from June 2025⁵⁹⁷—about one year *after* he had started his own attacks.

[611] This complaint falls well short of its mark, as a basis of allegation of bias such as renders the ATP voidable. From the Second Appellant's own account, it does not appear that the Government officials' negative characterisations against him were gratuitous characterisations against a meek dove.

[612] Some may consider it revealing that the Government officials in question made no aggressive comments against the First Appellant—although he is the Second Appellant's father, business bwana, and presumptive chief financial backer of the Second Appellant's political drive. Is the Government officials' forbearance against hostile public commentary in relation to the First Appellant explained by the fact that he did not himself engage in public attacks against the Government, although he too had shared in the pains of the reversal of economic fortunes occasioned to the Appellants following the US sanctions? But that question need not detain us, because the Second Appellant has admitted in his own words that he

⁵⁹⁶ *ibid*, [48].

⁵⁹⁷ *ibid*, [63] to [77].

emerged in June 2024 as the foremost critic of the Government, alleging corruption and maladministration against them; and has not implicated the First Appellant as also engaged in that conduct.

[613] It is a familiar principle that he who comes to equity must come with clean hands. The Second Appellant did not come to the cause with clean hands.

[614] In embarking upon a robust campaign of branding the Government as ‘corrupt’ beginning (by his own admission) in June 2024, the Second Appellant was, as it were, throwing proverbial stones with vigour from a glass house. It was, indeed, a two-storey glass house built for him by the *Reuters* news agency which published a piece against him and the First Appellants one year earlier (alleging criminal conduct against him), and by the US Government which publicised sanctions against them in mid-June 2024 (also alleging criminal conduct against the Appellants). It was entirely foreseeable that those earlier developments afforded the Government ready missiles with which to return verbal fire against him in the battlefield of electoral politics, given the ‘Right of Reply’ which article 14 of the American Convention on Human Rights recognises for them.

[615] I hasten to add, of course, that where there is credible reason or evidence to reproach corruption in government and mobilise nonviolent political action—even through the ballot box—to root it out, it must be a civic duty to do so.

[616] However, from the evidence presented by the Appellants themselves, I am not persuaded that the storyline in this case follows a narrative path so plainly altruistic as the story of an underdog embarked upon a fierce campaign against high corruption in Government. Not long ago, the Appellants were strong supporters of the Government in power and close to it. But a rift occurred after the Government began denying them their familiar privileges of commerce. That reversal of fortunes was as a direct result of publicly available information that the United States Government had their sights negatively set on the Appellants, and that

indictments and an extradition request were imminent. It was clearly only *after* that development—not *before*—that the Second Appellant’s anti-corruption political campaign ensued against the Government.

[617] The Second Appellant’s anti-corruption campaign had the explicit purpose of wresting the country’s political power from the current Government in order to wield that power himself. It is enough to observe that he tried to use aggressive allegations of corruption—which is an allegation of criminal conduct—and mismanagement to dislodge the Government from power. But the Government used similarly aggressive verbal tactics against him to stay put. He either provoked, or participated in, the war of words he is now using as a basis of an allegation of bias. From the evidence presented, I am not persuaded that there is a strong case of persecution and bias such as vitiates the ATP. He does not complain of bias with clean hands.

The Importance of Clean Hands in Complaints of Bias

[618] The doctrine of clean hands has a stand-alone value in the administration of justice. It is enough to compromise a complaint.

[619] Regarding a complaint of bias, the doctrine of clean hands has a further value. It prevents manipulative claims of bias: where a party in judicial proceedings engages in uncompelled contumacious conduct towards the judge trying the case and then seizes upon the judge’s reaction as grounds for a claim of bias against the judge. The same manipulation of bias can occur where a person engages in unbidden provocative conduct against a government official in anticipation of an important decision that falls to the official to make concerning that person.

[620] I am of the view that a claim of bias is unsustainable, as a general rule, by a complainant who, in anticipation of a pending decision, deliberately provoked the

decision-maker into a corresponding reaction that is relied upon as the basis of the claim. My indication of a general rule recognises that there may be a cogent exception, notably in a case where the decision maker reacted excessively, clearly putting in real doubt his ability to bring the balanced mind to bear in the making of the anticipated decision.

- [621] The circumstances of this case fall within the general rule, as there is no evidence that the exception is in any way implicated in the First Respondent's issuance of the ATP.

A Dilatory Objection

- [622] Finally, there is the practical matter mentioned at the outset of this opinion. The Appellants' objection is not absolute against any extradition process against them. Their only objection is against the extradition process thus far commenced against them, on grounds that it was commenced pursuant to an ATP the issuance of which was tainted by bias. Notably, the Appellants have no objection in principle against the issuance of the ATP by someone else within the Ministry of Home Affairs, as long as it is not the First Respondent. The difficulty confronting that position from the perspective of necessity has already been adumbrated.

- [623] But there is an obvious difficulty of dilatory litigation that the objection entails. In that regard, it is not to be expected that the decision of this Court upholding the Appellants' objection will prevent an eventual extradition process against them, given that such a decision will foreseeably result in the ATP being reissued by another official for the extradition process to proceed.

- [624] It may be noted that international cooperation in criminal matters—as regards mutual legal assistance ('MLA') and extradition—has preoccupied the United Nations for some time now. It has been part of the UN agenda to integrate crime prevention and criminal justice into the Organisation's programmes of action, as part of its mandate both to address social and economic challenges that citizens

face around the world and to promote the rule of law at the national and international levels.

[625] The UN's programme of action in this respect is organised through the United Nations Commission on Crime Prevention and Criminal Justice ('UNCCPCJ') established as a functional commission of the Economic and Social Council ('ECOSOC')⁵⁹⁸ at the request of United Nations General Assembly ('UNGA'). In that request made at its 77th plenary meeting on 18 December 1991, mandating the ECOSOC to create 'an effective United Nations crime prevention and criminal justice programme,'⁵⁹⁹ the UNGA was notably '[a]larmed' by a minimum of two phenomena. The first was 'the scope of criminality and [...] the dangers posed to the welfare of all nations by the rising incidence of crime generally and by the many forms of criminal activity that have international dimensions.'⁶⁰⁰ The second was 'the high cost of crime in both human and material terms, especially in its new and transnational forms, and aware of the effects of crime both on States and on individual victims.'⁶⁰¹ The UNGA thus recognised 'that criminality is a major concern of all nations and that it calls for *a concerted response from the international community* aimed at preventing crime and recidivism, improving the functioning of criminal justice and law enforcement, and increasing respect for individual rights.'⁶⁰² Consequently, the UNGA recognised that the 'need to promote and intensify international cooperation in crime prevention and criminal justice' was 'urgent.'⁶⁰³

[626] Broadly speaking, the UNCCPCJ primarily aims to improve international action to combat national and transnational crime, as well as the efficiency and fairness

⁵⁹⁸ See Establishment of the Commission on Crime Prevention and Criminal Justice (adopted 6 February 1992) ECOSOC resolution 1992/1.

⁵⁹⁹ See Creation of an effective United Nations crime prevention and criminal justice programme (adopted 18 December 1991) UNGA Res 46/152.

⁶⁰⁰ *ibid.*

⁶⁰¹ *ibid.*

⁶⁰² *ibid.* (emphasis added).

⁶⁰³ *ibid.*

of criminal justice administration systems. In that regard, the UNCCPCJ also acts as a clearing house of relevant expertise, experiences and information.⁶⁰⁴

[627] As part of this work, the UNCCPCJ has been holding quinquennial congresses called the United Nations Congress on Crime Prevention and Criminal Justice—a forum carried over from the work of the predecessor body of the UNCCPCJ since 1955.⁶⁰⁵

[628] As noted earlier, the operational arm of the UN in the discharge of its crime prevention and criminal justice mandate is the UN Office on Drugs and Crime (UNODC). Its work in that connection is mostly framed by three multilateral treaties that I have mentioned earlier in the opinion—the (Vienna) Convention on Illicit Drugs and Psychotropic Substances, the (Palermo) Convention on Transnational Organised Crime, and the (Merida) Convention against Corruption.

[629] As part of that work, UNODC commissioned an expert working group (EWG) in 2004, to undertake a study and report on casework on effective extradition practices across nations, for purposes of distilling best practices and recommendations that could be disseminated. A resonant concern of the EWG is the delay that is often encountered in extradition processes, occasioned especially through tactical multiplication of legal challenges.⁶⁰⁶ Nothing about that concern militates against the protection of the legal rights of persons sought for extradition to Requesting States. The point rather is that the protection of Requested Persons' rights does not require multiplication of litigation.⁶⁰⁷ Although some economically well-resourced States have taken to legislative amendments to achieve the needed streamlining,⁶⁰⁸ there is nothing at all that prevents the adoption of a judicial policy

⁶⁰⁴ See 'The Commission on Crime Prevention and Criminal Justice' <www.unodc.org/unodc/en/commissions/CCPCJ/index.html> accessed 27 May 2026.

⁶⁰⁵ See 'United Nations Congress on Crime Prevention and Criminal Justice' <www.unodc.org/unodc/en/crimecongress/about.html> accessed 27 May 2026.

⁶⁰⁶ UNODC, 'Report of Informal Expert Working Group on Effective Extradition Casework Practice' (n 72), [76] to [79].

⁶⁰⁷ *ibid*, paras [77] – [79].

⁶⁰⁸ For instance, Canada which has now abolished a separate *habeas corpus* procedure that used to be routinely available as part of the extradition process. See *Kwok* (n 413) at [39] and [78]. See also UK Extradition Act (n xx), ss 103 – 116 which now provide for a single avenue of appeal.

to streamline (or further streamline) legal challenges, whenever it is possible to do so.

[630] In my view, it is possible to do that as regards challenges to ATPs. They should not be taken as a separate legal process. Any necessary complaint in relation to them should be made in the round of the extradition hearings or the eventual *habeas corpus* applications.

Conclusion

[631] For the foregoing reasons, I concur with my colleagues that leave should be granted; but that the appeal on the merits must be dismissed. The parties are to bear their own costs in this appeal.

Disposition

[632] This Court:

- (a) Grants special leave to the Applicants to bring their appeal.
- (b) Dismisses the appeal.
- (c) Lifts the interim stay on the extradition committal proceedings.
- (d) Orders there shall be no order as to costs before this Court.
- (e) Orders costs in the courts below reserved.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji

/s/ A Bulkan

Mr Justice Bulkan