

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

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Application No GYCV2020/002
GY Civil Appeal No 41 of 2020**

BETWEEN

**MOHAMED IRFAAN ALI
BHARRAT JAGDEO**

**APPLICANTS/
INTENDED APPELLANTS**

AND

**ESLYN DAVID
CHIEF ELECTIONS OFFICER
CHAIRMAN OF THE GUYANA ELECTIONS
COMMISSION
THE GUYANA ELECTIONS COMMISSION
THE ATTORNEY GENERAL OF GUYANA
MARK FRANCE
DANIEL JOSH KANHAI
LENNOX SHUMAN
SHAZAAM ALLY
ABEDIN KINDY ALI**

**FIRST RESPONDENT
SECOND RESPONDENT

THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHT RESPONDENT
NINTH RESPONDENT
TENTH RESPONDENT**

AND

**UNITED REPUBLICAN PARTY
JOSEPH HARMON**

INTERVENERS

Before The Honourables

**Mr Justice A Saunders, PCCJ
Mr Justice J Wit, JCCJ
Mme Justice M Rajnauth-Lee, JCCJ
Mr Justice D Barrow, JCCJ
Mr Justice P Jamadar, JCCJ**

Appearances

Mr Douglas Mendes SC, Mr Anil Nandlall, Mr Devindra Kissoon, Mr Sanjeev Datadin, Ms Marcia Nadir Sharma, Ms Theresa Hadad, Mr Rishi Dass and Mr Clay Hackett for the Applicants/Intended Appellants

Mr John Jeremie SC, Mr Roysdale Forde SC, Mr B Mayo Robertson, Mr Keith Scotland, Mr Rondelle Keller and Mr Timothy Affonso for the First Respondent

No Appearance for the Second Respondent

Ms Kim Kyte-Thomas for the Third Respondent

No Appearance for the Fourth Respondent

Mr Justin Simon QC, Mr Basil Williams SC and Mr Nigel Hawke for the Fifth Respondent

Mr Hari Ramkarran SC and Mr Timothy Jonas for the Sixth, Seventh and Eighth Respondents

Mr Kashir A Khan, Mr Mohamed S F G Khan and Mr Kalesh Loakman for the Ninth and Tenth Respondents

Mr Fyard Hosein SC, Mr Devesh Maharaj, Ms Sasha Bridgemohansingh, Mr Aadam Hosein and Mrs Kandace Bharath-Nahous for the Intervener - United Republican Party

Mr Reginald Armour SC and Mr Raphael Ajodhia for the Intervener, Mr Joseph Harmon

JUDGMENT

of

**The Honourable Mr Justice Saunders, President
and the Honourable Justices Wit, Rajnauth-Lee, Barrow and Jamadar**

**Delivered
on the 8th day of July 2020**

Introduction

[1] The election of the President and members of the National Assembly of Guyana are matters of fundamental importance. It is of considerable concern to the people of Guyana that, although General and Regional Elections (“the Elections”) were held as long ago as 2 March 2020, to date, the results of the Elections have not been declared and the President and members of the National Assembly have not been appointed. The Constitution¹ professes the Co-operative Republic of Guyana to be a democratic sovereign State², and elections that are free, fair, transparent and accountable are the lifeblood of a true democracy.

[2] This Court is acutely conscious of the great importance of these proceedings and our own ultimate responsibility to safeguard and uphold the provisions of the Constitution of Guyana and the high constitutional values contained in its Preamble. The Constitution expressly declares that it is the supreme law.³ All arms of state, whether legislative, judicial, or executive, are subject to the normative, enabling, and limiting jurisdictions, powers, and responsibilities that are constitutionally legitimate. These are principles which must inform our deliberations on the central questions that have been placed before us, whether a) this Court has jurisdiction to hear and determine this matter, and if so, whether b) the Court of Appeal rightly assumed and/or acted within the jurisdiction conferred by Article 177 (4) of the Constitution. We determine these issues based on the rule of law, the full extent of the jurisdiction vested in all the courts of Guyana, including this Court, by the Parliament of Guyana and our appreciation of all the relevant applicable constitutional, legislative and legal provisions.

¹ Constitution of the Co-operative Republic of Guyana, Rev Ed 2012, Cap 1:01 of the Laws of Guyana (‘Constitution’)

² Ibid, art 1

³ Ibid, art 8

The Parties to the Proceedings

[3] The Applicants in these proceedings, Mohamed Irfaan Ali and Bharrat Jagdeo, wish to have this Court set aside a decision of the Court of Appeal⁴ (“the Decision”). The Decision was made at the instance of Eslyn David who had applied to that court for certain Orders that shall shortly be spelt out. Messrs Ali and Jagdeo claim that although the Article of the Constitution, under which the Court of Appeal made the Decision (Article 177(4)), expresses that the Court of Appeal’s decision is to be final, this Court must nonetheless step in and set aside the Decision because the Court of Appeal had no jurisdiction to decide it at all and therefore it could not be final.

[4] The Respondents to Ms David’s Application in the Court of Appeal were the Guyana Elections Commission (GECOM), the Chairperson of that body, the Chief Election Officer (who, although served, did not appear before us) and the Attorney General. Both at the Court of Appeal and before this Court, representatives of various political parties were made parties or permitted to join the proceedings.

The Factual Background

[5] The circumstances giving rise to Ms David’s application are all matters of public record. They can therefore be briefly summarised. As previously stated, the Elections were held in Guyana on 2 March 2020. It is unnecessary to describe all the events, including the court proceedings, that took place after polling day. It is sufficient to state that GECOM ultimately decided to recount the votes cast in all ten administrative regions. To facilitate the recount process, GECOM issued an Order which was Gazetted and dated 4 May 2020 as Order, No. 60 of 2020⁵. This Order was amended on 29 May 2020 by Order No. 69 of 2020⁶. Order 60, as

⁴ Decision of the Court of Appeal dated 22 June 2020 in *Eslyn David v Chief Elections Officer*, Civil Appeal No 41 of 2020, 19 June 2020

⁵ ‘Order No 60 of 2020 – The Constitution of Guyana and the Elections Laws (Amendment) Act’ in Guyana, *The Official Gazette (Extraordinary): Legal Supplement - B*, No 60/2020, 4 May 2020.

⁶ ‘Addendum – Order No 60 of 2020 – The Constitution of Guyana and the Election Laws (Amendment) Act’ in Guyana, *The Official Gazette (Extraordinary): Legal Supplement - B*, No 69/2020, 29 May 2020.

amended, will be referred to throughout this judgment simply as “Order 60”. It is set out in full in the Appendix to this judgment.

- [6] In accordance with Order 60, the recount commenced on 6 May 2020 and recounts were subsequently completed for all ten districts on 8 June 2020. The results were recorded on Statements of Recount, as required by Paragraph 7 of Order 60. These Statements were then signed by the person conducting the recount and the representatives of the contesting parties present (among a range of other officials) as required by Paragraph 8 of Order 60. The information contained in these Statements, following the steps more detailed in [39] below, were to serve as the basis of a report from the Chief Election Officer (the CEO). Paragraph 12 of Order 60 required the CEO to tabulate ‘the matrices for the recount of the ten Electoral Districts’ and to submit them to GECOM ‘in a report, together with a summary of the observation reports for each District’. Finally, Paragraph 14 of Order 60 provided for the Commission to make a ‘declaration of the results of the final credible count of the Elections’.
- [7] During the recount process, Mr Joseph Harmon, an Election Agent of the APNU/AFC alliance, wrote several letters to GECOM alleging anomalies, irregularities, voter impersonation and fraud. On 13th June the CEO, Mr Keith Lowenfield, submitted his report. He indicated the votes that were cast for each List of Candidates but drew attention to what he considered to be widespread anomalies/irregularities. Wherever he considered that any ballot box was affected by some irregularity, he took it upon himself to present revised totals that subtracted the *entirety* of the ballots of those boxes from the total votes cast and counted. It was his assessment that ‘the summation of anomalies and instances of voter impersonation identified in [Districts 1 to 10] clearly does not appear to satisfy the criteria of impartiality, fairness and compliance with provisions of the Constitution and the [Representation of the People Act], Cap 1:03’. His opinion was that ‘it cannot be ascertained that the results for [the Districts] meet the standard of fair and credible elections’.

[8] On receiving this report, the GECOM Chairperson, a former Supreme Court Judge, conferred with the GECOM Commissioners. The Chairperson then announced publicly that some of the allegations set out in the CEO's report were serious, but the Commission did not have the machinery to adjudicate them. The Commission, she noted, lacked the powers of a court of law to examine and re-examine witnesses or to procure official documents to determine the truth of the allegations. She pointed out that the Constitution had vested in the High Court an exclusive jurisdiction to determine the legality of an election and the Commission could not arrogate onto itself the power to annul the Elections. In this regard, she cited the judgment of Chief Justice Bollers in *Petrie v The Attorney General*⁷. By letter of 16 June, the Chairperson issued the following directive to the CEO:

Pursuant to Article 177 (2) (b) of the Constitution and Section 96 of the Representation of the People Act, Chapter 1 :03, you are hereby requested to prepare and submit your report by 13:00 hrs. on 18th June, 2020 using the results of the recount for consideration by the Commission.

[9] Section 96 of the Representation of the People Act⁸ provides that:

- (1) The Chief Election Officer shall, after calculating the total number of valid votes of electors which have been cast for each list of candidates, on the basis of votes counted and the information furnished by returning officers under section 84(11), ascertain the result of the election in accordance with sections 97 and 98.
- (2) The Chief Election Officer shall prepare a report manually and in electronic form in terms of section 99 for the benefit of the Commission, which shall be the basis for the Commission to declare and publish the election results under section 99.

[10] Before the CEO could submit his report as directed by GECOM's Chairperson, Ms David filed her Application to the Court of Appeal purporting to invoke that court's exclusive jurisdiction under Article 177(4) of the Constitution.

⁷ [1968] GLR 504, 519

⁸ Representation of the People Act, Rev Ed 2012, Cap 1:04 (Guy)('RPA').

Article 177 of the Constitution

[11] Given its central importance to these proceedings, it is helpful to set out so much of Article 177 as is particularly relevant to this case. That Article addresses the election of the President. It states:

177. (1) Any list of candidates for an election held pursuant to the provisions of article 60 (2) shall designate not more than one of those candidates as a Presidential candidate. An elector voting as such an election in favour of a list shall be deemed to be also voting in favour of the Presidential candidate named in the list.

(2) Where –

(a) ...; or

(b) there are two or more Presidential candidates, if more votes are cast in favour of the list in which a person is designated as Presidential candidate than in favour of any other list,

that Presidential candidate shall be deemed to be elected as President and shall be so declared by the Chairman of the Elections Commission acting only in accordance with the advice of the Chief Election Officer, after such advice has been tendered to the Elections Commission at a duly summoned meeting.

(3) ...

(4) The Court of Appeal shall have exclusive jurisdiction to hear and determine any question as to the validity of an election of a President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution; and any decision of that Court under this paragraph shall be final.

(5) Subject to the provisions of this Constitution, Parliament may make provision for giving effect to the provisions of this Title and, without prejudice to the generality thereof, may make provision –

(a) for the conduct of elections to the office of President; and

- (b) with respect to the persons by whom, the manner in which and the conditions upon which proceedings for the determination of any question such as is mentioned in the preceding paragraph may be instituted in the Court of Appeal,

and, subject to any provisions made under subparagraph (b), provision may be made with respect to the matters referred to therein by rules of court.

- (6) Subject to the provisions of paragraph (4), an instrument which –
 - (a) is expected under the hand of the Chairman of the Elections Commission; and
 - (b) states that a person named in the instrument was declared elected as President at an election held pursuant to the provision of article 60(2),

shall be conclusive evidence that the person so named was so elected and no question as to the validity of the election as the President of the person so named shall be enquired into any court.

The Application made to the Court of Appeal

[12] Ms David's Application to the Court of Appeal outlined that she was seeking Orders that -

- (a) GECOM had failed (or, presumably, was failing) to determine a final credible count and or the credibility of the result of the Elections as required by Order 60;
- (b) The Court should interpret the words 'more votes are cast' in Article 177 (2) (b); and
- (c) The CEO should be restrained from complying with the Direction of the GECOM Chairperson, as set out in the Chairperson's letter of 16 June, without GECOM determining 'the final credible count' and or the credibility of the Elections as required by Order No. 60 of 2020 and s 96 of the Representation of the People Act.

[13] Ms David also specifically indicated in her Application that she was placing before the Court of Appeal for its determination, the following issues, namely:

- (a) Whether GECOM's recount process has affected or altered the meaning of the phrase 'if more votes are cast' in Article 177 (2) (b) 'to the extent that it now means more valid and credible votes cast as contemplated by Order No. 60 of 2020'.
- (b) Whether the CEO is to advise in respect of the Presidential Candidate who has been named on such a list which has received more votes than any other list.
- (c) Whether the CEO can advise GECOM in respect of the Presidential Candidate if GECOM 'abdicates its responsibility to determine the credibility of the Elections'.

[14] Ms David's Application proceeded on the premises that, among other matters, a) Order 60 had the effect of ushering into the carefully constructed constitutional scheme for elections in Guyana 'a new and completely different legal regime'⁹; b) GECOM had 'abdicate[d] its responsibility to determine [the] credibility' of the elections, a responsibility it had undertaken by the terms of Order 60¹⁰ and c) the Chairperson's 16 June directive to the CEO (who by Section 18 of the Elections Laws (Amendment) Act, 2000 is mandated to be subject to the direction and control of the Commission) required the CEO to commit an illegality¹¹.

The Decision of the Court of Appeal

[15] The Court of Appeal heard Ms David's Application on 20 June 2020. That court must be commended for delivering its decision orally on 22 June 2020. In the face of the objections raised by Messrs Ali and Jagdeo, the Court of Appeal, by a

⁹ Eslyn David, 'Written Submissions on Behalf of the Applicant', Submission in *Eslyn David v Chief Elections Officer*, Civil Appeal No 41 of 2020, 19 June 2020 [19] ('Written Submissions to the Court of Appeal').

¹⁰ *ibid* [27], [39] – [40].

¹¹ Written Submissions to the Court of Appeal (n 9) [45].

majority, held that under Article 177(4) it was entitled to entertain the Application. In their reasons delivered orally, Reynolds J took the view that a new election regime had indeed been created by Order 60; that the Constitution established separate elections for members of the National Assembly on the one hand and, on the other hand, the election of the person deemed to be President; and that Order 60 required that both a quantitative and qualitative assessment of the reports and the summary of observations be submitted to the Commission. Gregory JA found that Order 60 had sufficient force to impact the interpretation of the words in Article 177(2)(b) of the Constitution. Both judges concluded that the words in Article 177(2)(b) that referred to ‘more votes are cast’ must be interpreted to mean ‘more valid votes ... cast within the meaning of Order 60’.¹² Although in their written opinions received by the Court on 30 June the words ‘within the meaning of Order 60’ are omitted, Gregory JA nevertheless held that the words ‘if more votes are cast’ are ‘subject to the terms of Order 60’.¹³ Both judges ordered that ‘the words “more votes are cast” in Article 177(2)(b) ... must be interpreted to mean “more valid votes are cast” in relation to the March 2, 2020 Elections’ (emphasis added).¹⁴ It is on the basis of this presumed need for interpretation of the Constitution that the majority assumed jurisdiction in this matter under Article 177(4) of the Constitution.

[16] Persaud JA dissented from his colleagues in the majority. He held that the Court of Appeal did not have jurisdiction to entertain Ms David’s Application. He considered that Parliament had not made any provisions ‘for giving effect to the provisions’ of Article 177(4), as required by Article 177(5). His further opinion was that no genuine question was raised in the Application concerning the validity of the election of the President. The Application was also premature because Article 177(4) contemplates that before it can be triggered there should be an elected President. In any event, the jurisdiction to embark on an evidence-based assessment

¹² See Transcript of Proceedings, *David v Chief Elections Officer* (Guyana CA, Civil Appeal No 41 of 2020, Gregory and Persaud JJA and Reynolds J, 22 June 2020).

¹³ *David v Chief Elections Officer* (Guyana CA, 22 June 2020) [34] (Gregory JA).

¹⁴ *David v Chief Elections Officer* (Guyana CA, 22 June 2020) [37] (Gregory JA); *David v Chief Elections Officer* (Guyana CA, 22 June 2020) [102] (Reynolds J).

of the validity or credibility of an election is exclusively given to the High Court by Article 163 of the Constitution and does not fall within the powers of GECOM.

[17] The Court of Appeal granted a Stay of its judgment for a period of three days. Inexplicably, however, on the day following the delivery of the judgment, and while the stay of proceedings was in effect, the CEO submitted another report to GECOM. Ostensibly basing himself upon the Decision of the Court of Appeal majority, he took it upon himself to invalidate such votes as he considered ought to be invalidated. This new report of his purported to invalidate well over 100,000 votes that had previously been counted and certified as valid votes within the meaning of the Representation of the People Act.

The Application for Special Leave

[18] On 23 June 2020, Messrs Ali and Jagdeo applied to this Court for special leave to appeal the Decision. Additionally, they applied for Interim Orders restraining GECOM from enquiring into the validity or credibility of the tabulated votes or taking any action that would usurp the exclusive jurisdiction of the High Court under Article 163 of the Constitution.

[19] Upon receipt of the Application for Special Leave, but after the CEO had submitted his Report as indicated at [17] above, this Court issued an Order precluding GECOM from taking any steps that would prejudice the outcome of the Application for Special Leave. The Court also held a Case Management Conference on 25 June 2020 in which decisions were taken for the smooth and orderly hearing of all the parties who wished to be heard on the Application for Special Leave. Given the urgency, the Court decided to roll up into a single hearing both the Application for Special Leave and (in the event that the Court considered that Special Leave should be granted) the merits of the appeal itself.

[20] The Court invited the parties to make written and oral submissions on the following issues:

- (i) Whether the Court of Appeal had jurisdiction to entertain Ms David's Application;
- (ii) If the Court of Appeal lacked jurisdiction, what is the consequence in relation to this proposed appeal;
- (iii) If the Court of Appeal rightly assumed jurisdiction, what is the consequence in relation to this proposed appeal; and
- (iv) If the Court of Appeal rightly assumed jurisdiction but they exceeded their jurisdiction, what is the consequence in relation to this proposed appeal.

[21] The multiple sets of submissions received by the Court broadly fell into two camps. There were those supporting the view that Ms David had invoked the Court of Appeal's original jurisdiction under Article 177(4) and that because, under that Article, its decision was final and unappealable, this Court lacked jurisdiction even to consider the Application by Messrs Ali and Jagdeo for Special Leave to appeal. And then there were those that supported the view that Article 177(4) was not in fact triggered by Ms David's Application; that the Court of Appeal's decision was not taken under that Article and that this Court was therefore entitled and required to set it aside and make appropriate consequential Orders.

[22] The Court is exceedingly grateful for the extensive and thoughtful submissions we received. We mean no disrespect to counsel if in this judgment we did not address or single out particular submissions either with which we agreed or disagreed but which we found useful. The first question that must be determined is whether this Court has jurisdiction to entertain this Application for Special Leave.

This Court's Jurisdiction in the Context of Article 177(4)

[23] Article 123(4) of the Constitution gives Parliament the power to 'make such provision as it deems fit authorising any court established or to be established, as the final court of appeal for the Caribbean to be the final court of appeal for Guyana'. In keeping with this Article Parliament enacted the Caribbean Court of

Justice Act¹⁵ (the CCJ Act) rendering the Caribbean Court of Justice (the CCJ) Guyana's apex court.

[24] The CCJ Act implements the Agreement Establishing the CCJ (the Agreement) and gives the Agreement the force of Guyana's domestic law.¹⁶ In this case, it is principally to the CCJ Act that one must turn to determine questions surrounding the jurisdiction of this Court although, as has been seen in other cases,¹⁷ resort to the Agreement may be relevant and necessary in order to clarify ambiguities, rectify errors or otherwise assist in the interpretation of applicable domestic legislation. This means that much of the weighty submissions made to us surrounding supposed international legal implications of the Agreement to this case and applicability of the Vienna Convention on the Law of Treaties¹⁸ are largely mis-placed.

[25] Section 6(c) of the CCJ Act gives to litigants an entitlement to appeal, as of right, decisions of the Court of Appeal in any civil proceedings which involve a question as to the interpretation of the Constitution. Further, section 8 of that Act provides that, 'subject to section 7', an appeal shall lie to this Court from decisions of the Court of Appeal, with the special leave of this Court, from any civil or criminal matter.

[26] The framework for appeals to the CCJ and the wording of the statutory provisions in Guyana are identical to those which are contained in the comparable Barbadian legislation.¹⁹ In *Barbados Rediffusion Service Ltd v Mirchandani*²⁰ (incidentally, the first decision ever rendered by this Court) it was made clear that the apparent words of limitation in section 8, that is, the phrase "Subject to section 7", were not intended in principle to limit the broad jurisdiction of this Court to grant special leave from *any* decision of the Court of Appeal in *any* civil matter. In both the

¹⁵ Caribbean Court of Justice Act, Rev Ed 2012, Cap 3:07 (Guy) ('CCJ Act').

¹⁶ *ibid*, s 3.

¹⁷ See for example *Barbados Rediffusion Service Limited v Mirchandani et al* [2005] CCJ 1 (AJ), (2005) 69 WIR 35.

¹⁸ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

¹⁹ Caribbean Court of Justice Act, Rev Ed 2008, Cap 117 (Bds).

²⁰ See *Mirchandani* (n 17).

Barbados and the Guyana statutes there is a drafting slip²¹. In keeping with the Agreement, the words ‘Subject to section 7’ should really be and must be interpreted to mean, ‘Subject to section 6’. The point is that, on their face, these provisions in the CCJ Act (sections 6(c) and 8) permit this Court jurisdiction to hear appeals from the Court of Appeal as of right in any civil proceedings which involve a question as to the interpretation of the Constitution and/or to grant special leave in an appeal from the Court of Appeal in any civil matter.

[27] Sections 6(c) and 8, however, must be juxtaposed against section 4(3) of the CCJ Act. The latter provision states:

4 (3) Nothing in this Act shall confer jurisdiction on the Court to hear matters in relation to any decision of the Court of Appeal which at the time of entry into force of this Act was declared to be final by any law.

Article 177(4) set out above at [11], is such a law. This was accepted by all parties and this Court has unstinting respect for the finality that it ordains. Yet, Article 177(4) must be read, not in isolation, but contextually, purposefully and harmoniously together with the entirety of the Constitution and, in particular, all of Article 177 and Article 163.

[28] Article 177(4) is a limited, circumscribed carve out of the broad jurisdiction of this Court to grant special leave applications and to entertain and determine appeals from decisions of the Court of Appeal in any civil matter. It contains a finality clause that creates an exception to the legal regime described at [23] to [26] above that generally renders appeals in civil matters capable of reaching this Court. Incidentally, along with that exception, Article 177(4) also affords the Court of Appeal an exclusive but very limited original jurisdiction in relation to elections in Guyana, for it is the High Court that is given exclusive jurisdiction over such elections pursuant to Article 163, as discussed in more detail below. Provisions

²¹ *Mirchandani* (n 17) [31].

such as Article 177(4) are therefore to be strictly construed,²² an exercise which logically and constitutionally ultimately falls to this Court.

- [29] Without a doubt, where the Court of Appeal hears and determines ‘any question as to the validity of an election of a President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution’, there can be no appeal of that determination to this Court. The Court of Appeal’s decision would then be final, unappealable to this Court. That finality, we would add, is not in tension with either the High Court’s or this Court’s jurisdiction.
- [30] But, it must be stressed, it would be an entirely different matter if no question as to the validity of an election of a President was before the Court of Appeal, or, if a question as to the validity of an election of a President was before that court, that question did not depend upon the qualification of any person for election or upon interpretation of the Constitution. *In either case, the Court of Appeal would be in error in assuming jurisdiction to hear and determine that question.* Its determination in that regard could not then be said to have been made “under” Article 177(4) and that Article’s finality clause would therefore be inoperable.
- [31] Worse, the Court of Appeal would likely then be trespassing on the exclusive jurisdiction of the High Court set out at Article 163 of the Constitution.²³ It would also, potentially, be infringing on the jurisdiction of this Court which is entitled ultimately to hear appeals from proceedings that begin in the High Court and which properly fall under Article 163. In short, the Court of Appeal would be acting in such instances in a manner that is contrary to the clause in the Constitution²⁴ that declares its supremacy.

²² See for example, *R v Hughes* [2002] UKPC 12, (2001) 60 WIR 156 [35] (Lord Rodger); *AG v Joseph* [2006] CCI 3 (AJ), (2006) 69 WIR 104 [8] – [12] (Pollard JCCJ) and [2] – [7] (Bernard JCCJ) ; *Thomas v Attorney-General* (1981) 32 WIR 375, 393 - 394; *HMB Holdings Ltd v Cabinet of Antigua and Barbuda* [2007] UKPC 37, (2007) 70 WIR 130 [30]; *Lee v Ashers Baking Co Ltd* [2018] UKSC 49, [2020] AC 413 [88].

²³ Article 163 is referred to in greater detail at [40] below and is set out fully in the Appendix

²⁴ Constitution (n 1), art 8.

- [32] In support of the claim that this Court is not entitled to exercise jurisdiction in these proceedings on account of the finality clause in Article 177(4), counsel for Ms David cited to us a number of authorities. We did not consider these cases helpful. In none of them was there any suggestion that the courts under review lacked jurisdiction, as is a fundamental question before us. In *Dany Sylvie Marie v The Electoral Supervisory Commission*²⁵ for example, in the face of a provision stating that certain decisions of the Mauritius Supreme Court were not to be the subject of appeal, the Privy Council declined jurisdiction to hear an appeal from a decision made by that Supreme Court. To similar effect is *Senanayake v Navaratne*²⁶ where, in the face of a finality clause, the Privy Council declined to entertain an appeal from an election judge from what was then known as Ceylon. In the course of so doing, however, the Privy Council made it quite clear that the election judge was clothed with the jurisdiction to determine the purely procedural issue which came before him. Moreover, the election judge in that case would not have been trespassing on the exclusive jurisdiction of another tribunal if he had wrongly assumed jurisdiction.
- [33] After the oral submissions were made in this case, without the leave of the Court, counsel for Ms David tendered for the Court's consideration the case of *The Superintendent of Her Majesty's Foxhill Prison and Another v Viktor Kozeny*²⁷. The Court considered the case. It was a case from The Bahamas where a judge had granted a detainee's application for a writ of habeas corpus and set aside the detainee's committal. They, at whose instance the man was detained (the detainers), appealed that decision to the Court of Appeal which dismissed the appeal. The detainers then applied to appeal further to the Privy Council. The question for decision was whether the Privy Council possessed jurisdiction to hear an appeal from the Court of Appeal of The Bahamas against an order made in habeas corpus proceedings. The Privy Council judgment traversed at some length 'the ancient and universally recognized constitutional right' that appeals were never entertained

²⁵ [2011] UKPC 45, [2012] 4 LRC 465.

²⁶ [1954] AC 640.

²⁷ [2012] UKPC 10, (2012) 81 WIR 12.

against the discharge of a detainee pursuant to a writ of habeas corpus in a criminal matter, save where the rights of the detainee are removed or altered by an express statutory provision, as was done in England and Wales by section 15 of the Administration of Justice Act 1960. The Privy Council rested its decision to decline jurisdiction both on that basis and, as well, on the ground that no specific statute was enacted granting it such a jurisdiction.

[34] The Court is not persuaded by this authority for two reasons. Firstly, as in *Dany Sylvie Marie* and *Senanayake*, there was no suggestion in *Kozeny* that the courts below had wrongly assumed jurisdiction. Secondly, the court's decision sought to uphold constitutional values. If we were satisfied that the Court of Appeal had rightly exercised its jurisdiction under Article 177(4), we too would have no difficulty refusing to grant Messrs Ali and Jagdeo special leave to appeal. But it is altogether a different matter if the Court of Appeal embarked upon a wrongful exercise of jurisdiction that had the effect of infringing constitutional principles by trespassing on the jurisdiction of the High Court.

[35] As the final Court of Appeal of Guyana, this Court has a responsibility to ensure that there is adherence to the Constitution. Not only is this Court so entitled but it has a solemn duty to assess whether the Court of Appeal, in all the circumstances, rightly assumed jurisdiction to hear Ms David's Application within Article 177(4). Given all that has been stated above and, in particular, the public importance of this case and its significant constitutional implications, and upon a perusal of what was placed before the Court of Appeal (See: [12] – [14] above), we have no hesitation in granting Messrs Ali and Jagdeo special leave to bring these proceedings. We are satisfied that this Court has both the jurisdiction and responsibility to do so. A determination of the merits of their appeal requires us a) to consider the legal and constitutional scheme for elections in Guyana and b) to interrogate more closely the provisions of Article 177.

The Merits of the Appeal

(a) The Electoral System

[36] Guyana boasts a hybrid presidential system.²⁸ The system is based on proportional representation. Parliament consists of the President and the National Assembly.²⁹ When there is an election, the Constitution provides for the casting of a single ballot by an elector. Persons vote for the election of the members of the National Assembly.³⁰ Ballots are cast by eligible electors in favour of lists of candidates vying for seats in the Assembly.³¹ Each elector's single vote may be cast in favour of any of such lists.³² Each list of candidates shall designate not more than one of those candidates as a Presidential candidate.³³ No separate ballot is cast for any Presidential candidate. Up to the time a Presidential candidate is declared to be the President, save that such a person is designated as a Presidential candidate, that person's status is essentially hardly different from that of any other candidate contesting a seat for the National Assembly. An elector voting at the election in favour of a list *is deemed* to be also voting in favour of the Presidential candidate named in the list.³⁴ Thus, an elector's single ballot serves to determine both election of members to the National Assembly and also election of the President.

[37] The Presidential candidate on the list for which more votes have been cast than any other list is deemed to be elected as President, and the Chairman of GECOM must so declare³⁵. Both the allocation of seats in the National Assembly³⁶ and the identification of the successful Presidential candidate³⁷ are determined on the sole basis of votes counted and information furnished by returning officers under the Representation of the People Act.

²⁸ See Tracy S Robinson, Arif Bulkan and Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (Sweet & Maxwell 2015) 112 et seq.

²⁹ Constitution (n 1), art 51.

³⁰ Constitution (n 1), art 60.

³¹ Constitution (n 1), art 160(1)(a).

³² Constitution (n 1), art 160(1)(b).

³³ Constitution (n 1), art 177(1).

³⁴ *ibid.*

³⁵ Constitution (n 1), art 177(2)(b).

³⁶ RPA (n 8), s 96(1).

³⁷ Constitution (n 1), art 177(2).

- [38] Order 60 relates only to the Elections held on 2 March 2020. It was specifically introduced to cater for the various disputes and contentions that arose after polling day. The intention was to provide an open, transparent, and accountable recount of all the votes cast in those elections. The purpose was to assuage the contestations among the various parties, determine ‘a final credible count’, and remove certain difficulties or fill certain gaps in connection with the application of the provisions of the Representation of the People Act. The recount was to be conducted in the presence of representatives of political parties that contested the Elections, advisors to and members of GECOM and a range of other personnel. GECOM was to serve as the final arbiter of issues not resolved at lower levels in the established procedure. The CEO was to supervise the recount process.
- [39] The aim at transparency included a variety of measures. At each “workstation” where counting was to be carried out, there was to be installed a picture of the ballot box depicting the state in which it was delivered to the workstation and an audio feed of the recount process. An audio-visual facility was established in the Tabulation Centre broadcasting live the entire tabulation process. Order 60 carefully set out how the process should unfold. The result of the recount of each ballot box was to be recorded on a Statement of Recount signed by the representatives of each contesting party. The tabulation of the Statements of Recount was to be done at a central tabulation centre in an openly transparent manner. Once all the Statements of Recount were tabulated, the supervisor for tabulation was to ascertain and verify the entries therein and calculate totals, again in the presence of various personnel. This ascertained and verified matrix was to be signed by the District Coordinator for the District and the signed matrix was to be transmitted to the CEO whose responsibility it was to tabulate the matrices of the ten electoral districts and submit to the Commission a report together with a summary of observation reports for each District. GECOM would deliberate on this report and then determine whether it would request the CEO to use the data compiled as the basis for the submission of a report under section 96 of the Representation of the People Act.

[40] The exclusive jurisdiction of the High Court, through Article 163, to determine, among other matters, any question in relation to whether an election has been lawfully conducted or the result affected by any unlawful act or omission³⁸ was naturally unaffected by Order 60. That Article is constitutional in character and it establishes a comprehensive regime for challenges to the election. Paragraph 4 of Article 163 provides that Parliament may make provision for how this jurisdiction of the High Court is to be exercised. Parliament did so by passing the National Assembly (Validity of Elections) Act³⁹ (“the Validity Act”). Among other provisions, the Validity Act provides that the method of questioning the validity of an election is by an election petition⁴⁰, and that this shall be presented within 28 days after the results of the election are published in the Gazette under Section 99 of the Representation Act⁴¹. The Validity Act also provides that, in a trial initiated by an election petition, the High Court can declare that the number of valid votes cast for a list of candidate differs from the number of votes upon which seats in the National Assembly were allocated⁴², and also that the High Court can order a fresh election in whole or in part⁴³. There therefore exists a constitutionally mandated and evidence based open justice process placed under the exclusive jurisdiction of the High Court with a right to appeal, if necessary, to the Court of Appeal and ultimately up to this Court⁴⁴. This process, and utilisation of it, are fundamental to the electoral system, the legitimacy of elections and democratic governance in Guyana.

[41] The jurisdiction conferred by Article 163 is capable of addressing the allegations of irregularities complained of by Mr Harmon and alluded to by the CEO. The Chairperson of GECOM was therefore perfectly entitled and right to take the position that these allegations, if pursued, should be addressed by an election petition filed in the High Court as contemplated by Article 163.⁴⁵ Neither GECOM

³⁸ Constitution (n 1), art 163(1)(b)(ii).

³⁹ National Assembly (Validity of Elections) Act, Rev Ed 2012, Cap. 1:04 (Guy) (‘Validity Act’).

⁴⁰ *ibid* s 3(2).

⁴¹ Validity Act (n 39), s5(1).

⁴² Validity Act (n 39), s 29(2)

⁴³ Validity Act (n 39), s 30(1).

⁴⁴ See Article 163(3) of the Constitution which contains no provision rendering a decision of the Court of Appeal, made under that provision, to be final.

⁴⁵ See *Petrie* (n 6).

nor the Court of Appeal is entitled to trespass on the exclusive jurisdiction of the High Court in this regard. The Chairperson was also right to note that GECOM lacks the legislative authority and the machinery to adjudicate those irregularities.

(b) **Interpreting Article 177**

[42] Article 177 of the Constitution addresses the *deemed* election⁴⁶ of the President. The President is deemed to have been elected because, in the electoral system, an elector's single ballot is really cast in favour of a list of candidates vying for seats in the National Assembly. There is no separate election of a President, as there was when the members of the National Assembly elected the President under the Constitution that pre-dated the 1980 Constitution. Article 177(2)(b) simply states that where there are multiple Presidential candidates, a person is 'deemed to be elected as President' when '*more votes are cast* in favour of the list in which [that person] is designated as Presidential candidate than in favour of any other list'. It is this provision, and in particular the italicised words, that the Court of Appeal majority, influenced by the terms of Order 60, ordered to mean 'more valid votes are cast'. The Court of Appeal majority erred in doing so for the following reasons.

[43] Article 177(4) only affords jurisdiction to the Court of Appeal if the question raised as to the validity of an election of a President *depends upon the qualification of any person for election or the interpretation of the Constitution*. At [12] to [14] above we set out Ms David's complaints and the issues she placed before the Court of Appeal. It is evident that the question(s) she placed before the Court of Appeal did not depend on the qualification of any person for election or on the interpretation of the Constitution. Ms David's complaint was really about the impact of Order 60 and the conduct of GECOM, not about the interpretation of the Constitution. This led the majority on the Court of Appeal to embark upon an exercise of interpreting Order 60 and a consideration of the effect of that Order on the responsibilities of GECOM. In neither instance was there any need or justification for an interpretation of Article 177(2)(b) or any other Article of the Constitution. Article 177(2)(b) has

⁴⁶ See Constitution (n 1), art 177(2)(a).

always said what it meant and meant what it said. There was therefore nothing in Ms David's Application to trigger the Court of Appeal's jurisdiction under Article 177(4).

[44] Counsel for Mr Harmon submitted that the Court of Appeal limited its jurisdiction to interpreting the words of Article 177(2)(b) 'more votes are cast' to mean 'more valid votes are cast', thereby bringing their decision within the purview of Article 177(4). That argument is to no avail. The concept of "valid votes" is well known to the legislative framework governing the electoral process. The concept has a particular meaning in that context. The phrase appears several times in the Representation of the People Act.⁴⁷ As we saw at [9] above, section 96 of that Act, for example, contains that precise phrase. That section calls on the Chief Election Officer to calculate 'the total number of *valid votes* of electors which have been cast for each list of candidates' (emphasis added).

[45] Validity in this context means, and could only mean, those votes that, *ex facie*, are valid. The determination of such validity is a transparent exercise that weeds out of the process, for example, spoiled or rejected ballots.⁴⁸ This is an exercise conducted in the presence of, *inter alia*, the duly appointed candidates and counting agents of contesting parties.⁴⁹ It is after such invalid votes are weeded out that the remaining "valid votes" count towards a determination of not only the members of the National Assembly but, incidentally as well, the various listed Presidential candidates. If the integrity of a ballot, or the manner in which a vote was procured, is questioned beyond this validation exercise, say because of some fundamental irregularity such as those alleged by Mr Harmon, then that would be a matter that *must* be pursued through Article 163 after the elections have been concluded.

[46] At the point in the electoral process where Article 177(2)(b) is reached, there is no further need to reference "valid votes" because, subject to Article 163 (which is triggered by election petition after the election), the relevant validation process has

⁴⁷ See for example, sections 11C, 84, 89, and 94 of the Constitution to name a few.

⁴⁸ See RPA (n 8), s 87, particularly ss (3), (4) and (5).

⁴⁹ See RPA (n 8), s 86(1).

already been completed. It was therefore unnecessary for the Court of Appeal majority to qualify “votes” in Article 177(2)(b) by inserting before it the adjective “valid” and, in any event, they were wrong to do so. Article 177(2)(b) rightly only needed to reference “more votes” and there was no basis for the Court of Appeal to assume jurisdiction to interpret that provision. It is clear that, under the legal infrastructure governing the electoral process, unless and until an election court decides otherwise, the votes already counted as valid votes are incapable of being declared invalid by any person or authority. In this respect, the Guyanese electoral system is not very different from other such systems in other Commonwealth Caribbean countries.

[47] By the unnecessary insertion of the word “valid”, the Court of Appeal impliedly invited the CEO to engage, unilaterally, in a further and unlawful validation exercise unknown to and in clear tension with the existing, constitutionally anchored electoral laws. That further exercise, which the CEO was quick to embrace in breach of the Court of Appeal Stay of proceedings, also had the effect of facilitating a serious trespass on the exclusive jurisdiction of the High Court established by Article 163. The idea that the CEO or GECOM could, in an unaccountable, non-transparent and seemingly arbitrary manner, without the due processes and the legal standards established in Article 163 and in the Validation Act, disenfranchise scores of thousands of electors is entirely inconsistent with the constitutional framework. Whatever allegations of irregularity attended those votes (and we neither agree nor disagree as to the existence of such irregularities) must be adjudged by the High Court under Article 163⁵⁰ as was correctly stated by the Chairperson of GECOM.

[48] It must be appreciated that the precise words used in Article 177(4) actually pre-date the period when the President was deemed to be elected as a result of votes cast for a list of candidates seeking election to the National Assembly. The exact formulation of what is now Article 177(4) was originally inserted as Article 30(13)

⁵⁰ Section 140 of the Representation of the People Act provides, *inter alia*, that questions as to performance by GECOM of its functions are to be enquired into only pursuant to the jurisdiction conferred by the Constitution under Article 163.

in Part II of the Second Schedule of the 1966 Constitution as a proposed amendment to Section 30 which provided for the election of a President in place of a Governor General⁵¹. Article 30 stated that the President was to be elected *by the votes of the members of the National Assembly*,⁵² *who had already been elected to that body*. Article 177(4) therefore was always intended to operate *after* the President had been elected, originally by the National Assembly, or as is now the case, had been deemed and declared to be President. Questions as to the validity of the President's election were never intended to impugn or relate to the validity of ballots cast by electors at the election of members of the National Assembly.

[49] In consequence, we agree with Justice Persaud that, in any event, Ms David's Application to the Court of Appeal was premature. For it to be considered, as we stated in the previous paragraph, Article 177(4) requires that a particular Presidential candidate should have been deemed and declared to have been elected and their election placed in issue.⁵³ An ordinary reading of Article 177 shows that it follows a sequential and logical progression. Paragraph 1 addresses lists of candidates and the deeming of an elector's ballot to be a vote also for the Presidential candidate named in the list. Paragraph 2 indicates the circumstances when a Presidential candidate is deemed and declared to have been elected. Paragraph 3, which is irrelevant to these proceedings, addresses the rare circumstance where there is an equality of votes among lists that garner more votes than any other list. At the conclusion of the process outlined for resolving that rare circumstance, Paragraph 3 requires the GECOM Chairperson to 'declare the Presidential candidate designated in that list to be duly elected as President'. By the time the reader arrives at Paragraph 4, a Presidential candidate has already been deemed and declared to be elected President, and this Paragraph caters for the Court of Appeal answering any question as to the validity of his or her election, provided the question depends on his or her qualification for election or the

⁵¹ When Guyana became a Republic, the entire Article 30 from the Second Schedule, including 30(13), became a part of the Constitution. See Cap. 1:01 of the Laws of Guyana as published in 1973.

⁵² *ibid*, s 30(2), (4) and (8).

⁵³ See *Narayan Khare v The Election Commission of India* [1957] INSC 43, AIR 1957 SC 694, (1957) SCR 1081; *NP Ponnuswami v Returning Officer, Namakkal Constituency* [1952] INSC 2, AIR 1952 SC 64, (1952) SCR 218.

interpretation of the Constitution. This is made even clearer by Paragraph 6 which provides that the validity of the election of such a person can only be challenged in keeping with Paragraph 4.

[50] The case of *Re Eusi Kwayana's Application*⁵⁴ was heard and decided by the Guyana Court of Appeal. A majority in that case declined jurisdiction to treat with an application questioning the validity of the election of the President in circumstances where it was being alleged that there was a defect in the Oath of office that was taken by the President. The case neatly illustrates two features of Article 177(4). Firstly, courts will interpret the Article in a strict, narrow manner. Secondly, the requirement for an election of a President would not cover even a situation where someone had assumed office as President but had not been elected, under the transitional and unique provisions at the time.

[51] For all the above reasons, it is our judgment that the provisions of Article 177(4) were not triggered by Ms David's Application to the Court of Appeal. That court's decision was not and could not have been made under that Article. The finality clause therefore is not applicable.⁵⁵

[52] The Court also notes that an Order issued by GECOM in any particular context can never determine how the Constitution is to be interpreted. It is a matter of elementary constitutional law that if ordinary legislation is in tension with the Constitution, then the courts must give precedence to the words of the Constitution and not the other way around. With respect, the notion that Order 60 could either impact interpretation of the Constitution or create a new election regime at variance with the plain words of the Constitution is constitutionally unacceptable.

Summary and Orders of the Court

[53] It follows from all that is stated above that, under the laws of Guyana, this Court has jurisdiction to hear and determine the Application by Messrs Ali and Jagdeo to

⁵⁴ (1980) 29 WIR 130.

⁵⁵ See *Cetelem SA v Roust Holdings Ltd* [2005] EWCA Civ 618 [22] - [23]; *CGU International Insurance plc v AstraZeneca Insurance Co Ltd* [2006] EWCA Civ 1340, [2007] 1 All ER (Comm) 501; *Aden Refinery Co Ltd v Ugland Management Co Ltd* [1987] QB 650.

set aside the decision of the Court of Appeal. That decision was made without jurisdiction on the part of that Court. It was therefore not final and is of no effect. This Court is entitled and required to declare it invalid. Logically, the report of 23 June issued by the CEO which was based on it is similarly of no effect. It follows that the Appeal of Messrs Ali and Jagdeo succeeds.

[54] We were addressed, with great passion, by some counsel to make a raft of consequential orders relating to the Elections. In this regard it is important to bear in mind that this case is essentially about *jurisdiction*, our jurisdiction, the jurisdiction of the Court of Appeal, and even, implications for the High Court's exclusive jurisdiction under the Constitution.

[55] This Court's jurisdiction has been invoked for the sole purpose of determining whether the Court of Appeal lacked jurisdiction to entertain Ms David's application and to make the order(s) it made. Once we decide that the Court of Appeal's order was made without jurisdiction and should therefore be set aside, there is nothing left upon which we ourselves would possess jurisdiction to make any further orders. To accept counsel's suggestion and proceed down that path would be to engage in an exercise not dis-similar from the one embraced by the Court of Appeal majority and which we have eschewed. It is for GECOM to ensure that the election results are swiftly declared in accordance with the Laws of Guyana. As Guyana's final court, we cannot, however, pretend to be oblivious to events that have transpired since December 2018. Indeed, we have had to pronounce on some of those events.⁵⁶ It has been four months since the Elections were held and the country has been without a Parliament for well over a year. No one in Guyana would regard this as a satisfactory state of affairs. We express the fervent hope that there would quickly be a peaceable restoration of normalcy. Now, the Law must run its course.

⁵⁶ See *Christopher Ram v The Attorney General, The Leader of the Opposition, Joseph Harmon and Guyana Elections Commission; Bharrat Jagdeo v The Attorney General, Dr Barton Scotland, Joseph Harmon and Guyana Elections Commission; Charrandas Persaud v Compton Herbert Reid, Dr Barton Scotland, The Attorney General, Bharrat Jagdeo, Joseph Harmon and Guyana Elections Commission* (consolidated by order of this Court dated the 29th day of March 2019) [2019] CCJ 14 (AJ)

[56] The Court orders that –

- (a) Special leave is granted to the Applicants to appeal the decision of the Court of Appeal dated 22 June 2020;
- (b) The Appeal of the Appellants is allowed; and
- (c) The said decision of the Court of Appeal was made without jurisdiction, is invalid and of no effect.

The Court declares that the report of the Chief Election Officer of 23 June 2020 is similarly of no effect.

The Court shall receive written submissions on Costs on or before 22 July 2020.

/s/ A. Saunders

The Hon Mr Justice A Saunders (President)

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D. Barrow

The Hon Mr Justice D Barrow

/s/ P. Jamadar

The Hon Mr Justice P Jamadar

APPENDIX

Laws of Guyana referenced in the Judgment

The following provisions of the Laws of Guyana are found below:

1. Articles 60, 123, 160, 163 and 177 of the Constitution of the Co-operative Republic of Guyana, Chapter 1:01 of the Laws of Guyana, Revised Edition 2012
2. Article 30(1) – 30(13) of the Constitution of the Co-operative Republic of Guyana, Chapter 1:01 of the Laws of Guyana, Revised Edition 1973
3. Sections 4, 6, 7 and 8 of the Caribbean Court of Justice Act, Chapter 3:07 of the Laws of Guyana, Revised Edition 2012
4. Sections 11, 87, 89, 94 and 96 of the Representation of the People Act, Chapter 1:03 of the Laws of Guyana, Revised Edition 2012
5. Sections 3, 5, 29 and 30 of the National Assembly (Validity of Elections) Act, Chapter 1:04 of the Laws of Guyana, Revised Edition 2012
6. Order No 60 of 2020 – The Constitution of Guyana and the Elections Laws (Amendment) Act’ in Guyana, *The Official Gazette (Extraordinary): Legal Supplement - B*, No 60/2020, 4 May 2020.
7. Addendum – Order No 60 of 2020 – The Constitution of Guyana and the Election Laws (Amendment) Act’ in Guyana, *The Official Gazette (Extraordinary): Legal Supplement - B*, No 69/2020, 29 May 2020.

Constitution of the Co-operative Republic of Guyana – Chapter 1:01

Articles – 60, 123, 160, 163 and 177

- 60.** (1) Election of members of the National Assembly shall be by secret ballot.
- (2) Subject to the provisions of article 160(2), such number of members of the National Assembly as determined by the Assembly, shall be elected in accordance with the system of proportional representation prescribed by article 160(1).
- 123.** (1) There shall be for Guyana a Supreme Court of Judicature consisting of Court of Appeal and a High Court, with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law.
- (2) Each of those Courts shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.
- (3) Parliament may confer on any court any part of the jurisdiction of and any powers conferred on the High Court by this Constitution or any other law.
- (4) Parliament may make such provision as it deems fit authorising any court established or to be established, as the final court of appeal for the Caribbean to be the final court of appeal for Guyana.
- (5) Where a court referred to in paragraph (4) is established and becomes the final Court of Appeal for Guyana, such court shall remain the final Court of Appeal for Guyana, unless Parliament, by a vote of no less than two-thirds of all the elected members of the Assembly, makes provision for Guyana to withdraw from such court.
- 160.** (1) Subject to the provisions of the next following paragraph the system of proportional representation referred to in article 60(2) for the election of such number of members of the National Assembly as shall be determined by the Assembly, shall be as follows –

- (a) votes shall be cast throughout Guyana in favour of lists of candidates;
 - (b) each elector shall have one vote and may cast it in favour of any of the lists; and
 - (c) the seats of the said elected members in the Assembly, as determined under this paragraph, shall be allocated between the lists in such a manner that the proportion that the number of such seats allocated to each list bears to the number of votes cast in favour of that list is as nearly as may be the same for each list, thus minimizing the level of disproportionality between the percentages of votes earned by lists and the percentages of seats allocated to lists in the cases of individual geographical constituencies, if they exist, and of the Assembly taken as a whole.
- (2) Parliament may make provision for the division of Guyana into such number of geographical constituencies, not being more than half the number of the elected members of the Assembly as Parliament may prescribe and for the election in each such constituency of such number of members of the Assembly as Parliament shall, subject to paragraph (4), prescribe; but, if Parliament makes provisions as aforesaid, then –
- (a) a person may stand as a candidate for election in any such geographical constituency only if, in such manner as Parliament may prescribe, he or she has declared that he or she supports, or has otherwise identified himself or herself with one and only one of the lists related to that geographical constituency, not with a list in any other geographical constituency; and not with any lists of another party; and
 - (b) those of the said seats in the Assembly as determined under paragraph (1), for which members are not elected in geographical

constituencies as aforesaid shall be allocated between the contesting parties in accordance with the results of the voting throughout Guyana in favour of the lists of the contesting parties in such a manner that the proportion that the number of seats allocated to each party, when added to the number of members identified with that party's lists elected in the geographical constituencies, bears to the number of votes cast in favour of that party is as nearly as may be the same for each party, thus minimising the level of disproportionality between the percentages of votes earned by parties and the percentages of seats allocated to parties in the Assembly.

- (3) Subject to the provisions of this Constitution, Parliament may make provision -
- (a) (i) for the registration of electors;
 - (ii) for the manner in which lists of candidates shall be prepared, including the provision in a list of the names of a sufficient number of candidates to enable any vacancies to be filled under subparagraph (vii), and which manner shall allow voters to be sure which individuals they are electing to the National Assembly;
 - (iii) for the manner in which the number of seats to be allocated to each list shall be calculated in order to give effect to the provisions of

paragraph (1) or paragraph (2), as the case may be;
 - (iv) for the combination of lists of candidates for the purpose of the allocation of seats (but not for the purpose of voting);

- (v) for the extraction from the lists and declaration of names of the candidates who have been elected, and for such provision for extraction to take into account the proportion that women form of the electorate;
 - (vi) for the manner in which elections of members of the National Assembly shall be held pursuant to the provisions of paragraphs (1) and (2);
 - (vii) for the filling of vacancies among the seats of members of the National Assembly where such vacancies are caused otherwise than by a dissolution of Parliament;
 - (viii) generally for the conduct of elections of members of the National Assembly and for giving effect to the provisions of this Constitution relating thereto;
- (b)
- (i) for the criteria for the participation of political parties in the general election;
 - (ii) for the formulae to be used to translate votes for a contesting party into seats for that party in the National Assembly;
 - (iii) for the minimum number or proportion of female candidates on a party's list and in all party's lists taken together;
 - (iv) for the minimum number or proportion of female candidates on a party's lists for geographical constituencies taken individually or together;
 - (v) for the maximum percentage or the number of geographical constituencies a party can contest in which its lists contain no female candidate.

- (4) The total number of seats in the National Assembly that are derived from geographical constituencies shall be such that the number of seats not derived from geographical constituencies is sufficiently large to correct any overall disproportionalities that might arise from the allocations of seats to geographical constituencies.

163. (1) Subject to the provisions of this article, the High Court shall have exclusive jurisdiction to determine any question –

(a) regarding the qualification of any person to be elected as a member of the National Assembly;

(b) whether –

(i) either generally or in any particular place, an election has been lawfully conducted or the result thereof has been, or may have been, affected by any unlawful act or omission;

(ii) the seats in the Assembly have been lawfully allocated;

(iii) a seat in the Assembly has become vacant; or

(iv) any member of the Assembly is required under the provisions of article 156(2) any of his or her functions as a member thereof;

(c) regarding the filling of a vacant seat in the Assembly; or

(d) whether any person has been validly elected as Speaker of the Assembly from among persons who are not members thereof or having been so elected, has vacated the office of Speaker.

(2) Proceedings for the determination of any question referred to in the preceding paragraph may be instituted by any person (including the Attorney General) and, where such proceedings are instituted by a person other than the Attorney General, the Attorney General if he or she is not a

party thereto may intervene and (if he or she intervenes) may appear or be represented therein.

- (3) An appeal shall lie to the Court of Appeal –
 - (a) from the decision of a Judge of the High Court granting or refusing leave to institute proceedings for the determination of any question referred to in paragraph (1);
 - (b) from the determination by the High Court of any such question, or against any order of the High Court made in consequence of such determination.

- (4) Parliament may make provision with respect to -
 - (a) the circumstances and manner in which and the conditions upon which proceedings for the determination of any question under this article may be instituted in the High Court and an appeal may be brought to the Court of Appeal in respect thereof;
 - (b) the consequences of the determination of any question under this article and the powers of the High Court in relation to the determination of any such question, including (without prejudice to the generality of the foregoing power) provision empowering the High Court to order the holding of a fresh election throughout Guyana or a fresh ballot in any part thereof or the re-allocation of seats in whole or in part; and
 - (c) the practice and procedure of the High Court in relation to the jurisdiction and powers conferred upon it by or under this article and of that Court and the Court of Appeal in relation to appeals to the Court of Appeal under this article, and subject to any provision so made, provision may be made with respect to the matters aforesaid by rules of court.

(5) In this article reference to any person being elected shall be read and construed as a reference to any person being elected under paragraph (2) of article 60 or under article 160(2), as the case may be.

177. (1) Any list of candidates for an election held pursuant to the provisions of article 60 (2) shall designate not more than one of those candidates as a Presidential candidate. An elector voting at such an election in favour of a list shall be deemed to be also voting in favour of the Presidential candidate named in the list.

(2) Where -

(a) there is only one Presidential candidate at the election; or

(b) there are two or more Presidential candidates, if more votes are cast in favour of the list in which a person is designated as Presidential candidate than in favour of any other list,

that Presidential candidate shall be deemed to be elected as President and shall be so declared by the Chairman of the Elections Commission acting only in accordance with the advice of the Chief Election Officer, after such advice has been tendered to the Elections Commission at a duly summoned meeting.

(3) Where no person is elected as President under paragraph (2) and where the votes cast in favour of each list are equal in number, or where the votes cast in favour of each of two or more lists are equal in number but greater than the number of votes cast in favour of any other list, the Chairman of the Elections Commission, acting in the presence of the Chancellor and of the public, shall by lot choose one of the lists in respect of which the votes are equal in either of the circumstances aforesaid and shall declare the Presidential candidate designated in that list to be duly elected as President.

- (4) The Court of Appeal shall have exclusive jurisdiction to hear and determine any question as to the validity of an election of a President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution; and any decision of that Court under this paragraph shall be final.
- (5) Subject to the provisions of this Constitution, Parliament may make provision for giving effect to the provisions of this Title and, without prejudice to the generality thereof, may make provision -
- (a) for the conduct of elections to the office of President; and
 - (b) with respect to the persons by whom, the manner in which and the conditions upon which proceedings for the determination of any question such as is mentioned in the preceding paragraph may be instituted in the Court of Appeal, and, subject to any provisions made under subparagraph (b), provision may be made with respect to the matters referred to therein by rules of court.
- (6) Subject to the provisions of paragraph (4), an instrument which -
- (a) is executed under the hand of the Chairman of the Elections Commission; and
 - (b) states that a person named in the instrument was declared elected as President at an election held pursuant to the provisions of article 60(2),
- shall be conclusive evidence that the person so named was so elected and no question as to the validity of the election as the President of the person so named shall be enquired into any court.

THE CONSTITUTION of GUYANA

May 16, 1966

Part II

CHAPTER IV. THE PRESIDENT

30. (1) There shall be a President of Guyana, who shall be the Head of State and Commander-in-Chief of the Armed Forces of Guyana.
- (2) The President shall be elected by the National Assembly in accordance with this article.
- (3) A person shall not be qualified for election as President unless he is a citizen of Guyana of the age of forty years or upwards, and a person shall be disqualified for election as President if he is disqualified for election as a member of the Assembly by virtue of any provision of Article 60 of this Constitution other than paragraph (1) (e) or of any law enacted in pursuance thereof other than a law enacted in pursuance of paragraph (2) (a) or (c) thereof.
- (4) The President shall be elected by secret ballot at a meeting of the Assembly held for the purpose of electing the President (in this article referred to as an "election meeting"); and each elected member of the Assembly shall be entitled to a single vote in each ballot for the election of the President taken at such a meeting (in this article referred to as a "Presidential ballot").
- (5) An election meeting shall commence on such date (in this article referred to as "the Presidential election date") and at such time as the President shall determine by order published in the Gazette at least twenty-one days before the election date:
- Provided that, where the office of President becomes vacant before a person is elected to hold that office for the next succeeding term, the Presidential election date shall be so determined that the election meeting shall commence during the period of sixty days beginning with the date when the office of President becomes

vacant, but in reckoning the said period of sixty days no account shall be taken of any period commencing with the dissolution of Parliament and ending on the day on which the next following election of members of the Assembly is held.

(6) A person shall not be a candidate for election as President at an election meeting unless he is nominated for election or re-election as the President by a nomination paper which:

(a) is signed by him and by three or more elected members of the Assembly; and

(b) is delivered to the Speaker at least fourteen days before the Presidential election date.

(7) The names of the candidates, together with the names of the persons by whom their nomination papers are signed, shall be published in the Gazette and if they have not been so published at least ten days before the Presidential election date, the election meeting shall be adjourned until the tenth day after the date of such publication unless, on the Presidential election date, the Assembly, by resolution supported by the votes of not less than two thirds of all the elected members thereof, resolves that the meeting shall not be adjourned or shall be adjourned to some other date.

(8) A candidate in a Presidential ballot shall be declared to be elected if, and shall not be declared to be elected unless, he receives the votes of more than half of all the elected members of the Assembly.

(9) If in a Presidential ballot:

(a) there are three or more candidates; and

(b) none of the candidates is elected; and

(c) one of the candidates receives a smaller number of votes than each of the others.

that one of the candidates shall not be a candidate in any subsequent Presidential ballot at the same election meeting.

(10) If in a Presidential ballot:

(a) the conditions specified in subparagraphs (a) and (b) of the preceding paragraph are satisfied, but the condition specified in subparagraph (c) of that paragraph is not; and

(b) two of the candidates each receives the same number of votes and that number is smaller than the number of votes received by the other candidate or each of the other candidates, as the case may be, a ballot shall forthwith be held for the purpose of determining which of the two shall be treated for the purposes of the preceding paragraph as the candidate mentioned in subparagraph (c) thereof; and the candidate who receives the smaller number of the votes cast in that ballot shall be so treated and that paragraph shall apply accordingly.

(11) Where in a ballot taken in pursuance of the preceding paragraph each candidate receives the same number of votes, one of them, as determined by lot, shall be deemed to have received the smaller number of votes.

(12) If in a Presidential ballot no candidate is declared elected, a further Presidential ballot shall be taken at the same election meeting; and an election meeting shall continue until a candidate is declared elected in a Presidential ballot taken at that meeting but may be adjourned from time to time for not more than two days exclusive of the days on which and to which it is adjourned.

(13) The Court of Appeal shall have exclusive jurisdiction to hear and determine any question as to the validity of an election of a President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution; and any decision of that Court under this paragraph shall be final.

Caribbean Court of Justice Act – Chapter 3:07

Sections 4, 6, 7 and 8

4. (1) The Court shall have –
 - (a) original jurisdiction provided for in this Act as is conferred on it in accordance with Part II of the Agreement; and
 - (b) appellate jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part III of the Agreement.
 - (2) The decisions of the Court shall, subject to sections 9(5), (11(5) and 12, be final.
 - (3) Nothing in this Act shall confer jurisdiction on the Court to hear matters in relation to any decision of the Court of Appeal which at the time of entry into force of this Act was declared to be final by any law.
6. An appeal shall lie to the Court from decisions of the Court of Appeal as of right -
- (a) in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than one million dollars or where the appeal involves directly or indirectly a claim or a question respecting property or a right of the aforesaid value;
 - (b) in proceedings for the dissolution or nullification of marriage;
 - (c) in any civil or criminal proceedings which involve a question as to the interpretation of the Constitution;
 - (d) in any proceedings that are concerned with the exercise of the jurisdiction conferred upon the High Court relating to redress for the contravention of the provisions of the Constitution for the protection of fundamental rights; and
 - (e) in respect of any other matter as may be prescribed by law.
7. An appeal shall lie to the Court, with the leave of the Court of Appeal, from a decision of the Court of Appeal -

(a) in any civil proceedings where, in the opinion of the Court of Appeal, the question is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Court; and

(b) in such other cases as may be prescribed by any law.

8. Subject to section 7, an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal from any civil or criminal matter.

Representation of the People Act – Chapter 1:03

Sections – 11, 87, 89, 94 and 96

11. (1) A list of candidates comprising registered voters who are eligible to be members of the National Assembly may be submitted by not less than three hundred and not more than three hundred and thirty persons for national top-up lists, and for each geographical constituency not less than one hundred and fifty and not more than one hundred and seventy-five persons whose names appear at the time of submission on the preliminary list mentioned in section 2(3), whether or not that list has at that date been modified as required by that section and shall be handed together with one copy thereof to the Chief Election Officer by the representative or the deputy representative of the list or by two of the persons named as candidates on the list at the time and place appointed; and the Chief Election Officer shall forthwith cause the copy of the list to be posted in a conspicuous place outside his office.

(2) A list of candidates shall be in Form 2; and the submission shall bear the signature of each person submitting the same together with his name and the serial number of his registration card:

Provided that if any such person is unable to sign his name, his mark, made against his name written by some other person, shall be deemed to be his signature for the purposes of this paragraph but not for the purposes of section 12.

(3) A list of candidates shall set out the names, one below the other in such order as each party may determine of the surnames and other names of at least 42 persons who are qualified to be elected to the National Assembly and who have consented to the inclusion of their names in the list as candidates for election, together with the address and occupation of each such person.

- (4) Each list of candidates shall be accompanied by a statutory declaration, in Form 3, by each person named therein as a candidate of his qualifications and consent, made before a justice of the peace, commissioner of oaths, notary public or other person authorised by law to administer an oath in the place where the declaration is made.
- (5) Each list of candidates shall bear a title selected by the persons by whom it is submitted.
- (6) Subject to section 11B, no person shall be a candidate on more than one list of candidates and no person shall be a signatory to more than one list.
- (7) For the avoidance of doubt it is declared that a person may be a signatory to a list of candidates notwithstanding that he is named therein as a candidate.
- (8) Stamp duty shall not be chargeable on any statutory declaration made for the purposes of this section.
- (9) In the event of the name of the person designated by any list of candidates as a Presidential candidate being deleted pursuant to section 21 from the list-
 - (a) the representative of the list; or
 - (b) if there is no representative or if the representative is unwilling or unable (by reason of absence, illness or any other cause) to act, the deputy representative of the list; or
 - (c) in the case of any such unwillingness or inability on the part of the deputy representative or if there is no deputy representative, a majority of persons named as candidates in the list may designate in writing any such person able and willing to act, who shall forthwith and before election day, by written notice signed by him and delivered to the elections Commission, amend the list by designating any person name remains as a candidate on the list as the Presidential candidate designated by that list.

(10) On receipt of any notice of amendment pursuant to subsection (9), the Elections Commission shall forthwith and before elections day give public notice of the amendment in such manner as it may in all the circumstances deem the most practicable and with effect from the time when such notice is given the new Presidential candidate specified in the notice shall be the Presidential candidate designated by that list.

87. (1) Where a returning officer is required to have a final count of the votes cast for all, or some, of the polling places, he shall in the presence of such of the persons entitled under section 86(1) to be present as attend -

(a) open each ballot box;

(b) take out the ballot papers;

(c) count and record the number of ballot papers taken from each ballot box;

(d) [Repealed by Act No. 30 of 1990].

(e) count the votes recorded for each list of candidates.

(2) In counting the votes the returning officer shall, subject to subsection (3), reject as invalid and not count any ballot paper -

(a) which does not bear the official mark;

(b) which has not been marked for any list of candidates or is void for uncertainty;

(c) on which votes have been given for more than one list of candidates;

(d) on which there is any writing or mark by which the elector can be identified.

(3) A ballot paper on which the vote is marked-

(a) elsewhere than in the proper place;

(b) otherwise than by means of a cross;

(c) by more than one mark;

shall not be rejected solely by reason thereof if -

(i) an intention that the vote shall be for one or other of the lists of candidates clearly appears; and

(ii) the elector is neither identified nor can be identified by the manner in which the ballot paper is marked.

(4) The returning officer shall endorse the word "rejected" on any ballot paper which he may reject as invalid and shall add to the endorsement the words "rejection objected to" if any objection to his decision be made by a duly appointed candidate or a counting agent present during the counting.

(5) The decision of the returning officer as to any question arising in respect of any ballot paper shall be final.

89. (1) Upon the conclusion of the final counting, under section 84, of the votes the returning officer, in the presence of such of the persons entitled under section 86(1) to be present as attend, shall-

(a) seal in separate packets the counted and rejected ballot papers;

(b) verify the ballot papers account given by each presiding officer by comparing it with-

(i) the number of ballot papers recorded under 87(1)(c);

(ii) the unused and spoiled ballot papers in his possession; and

(iii) the record of tendered votes contained in the poll book;

(c) reseal the packets of unused and spoiled ballot papers;

- (d) prepare a written statement as to the result of the verification of the ballot papers account and on request allow any counting agent present to make a copy thereof;
- (e) publicly declare the result of the final counting;
- (f) deliver to the Chief Election Officer a return in writing in respect of the final counting in Form 24 which shall set out the number of-
 - (i) valid votes cast for each list of candidates as aforesaid;
 - (ii) rejected ballot papers together with, in each case, the reason for rejection;
 - (iii) spoiled ballot papers delivered to him;
 - (iv) tendered ballot papers;
 - (v) persons who appear to have voted.

(2) The returning officer shall not open the sealed packets containing tendered ballot papers, marked copies of the official list of electors or part thereof or counterfoils of used ballot papers.

(3) Any counting agent may copy the return made under subsection (1)(f).

94. (1) Upon the conclusion of the counting of the votes under this Part the Chief Election Officer, in the presence of such of the persons entitled under section 91(1) to be present as attend, shall-

- (a) seal in separate packets the counted and rejected ballot papers;
- (b) prepare a written statement as to the result of the verification of the non-resident electors' ballot papers accounts under section 63(3) and on request allow any candidate appointed under section 91 or election agent present to make a copy thereof;

(c) publicly declare the aggregate number of valid votes cast under section 62(1) for each list of candidates;

(d) record, in Form 25, the number of -

(i) valid votes cast as aforesaid for each list of candidates;

(ii) rejected ballot papers together with, in each case, the reason for rejection;

(iii) persons who appear to have voted under Part VII.

(2) Any candidate appointed as aforesaid or election agent may copy the record made under subsection (1)(d).

96. (1) The Chief Election Officer shall, after calculating the total number of valid votes of electors which have been cast for each list of candidates, on the basis of the votes counted and the information furnished by returning officers under section 84 (11), ascertain the result of the election in accordance with sections 97 and 98.

(2) The Chief Election Officer shall prepare a report manually and in electronic form in terms of section 99 for the benefit of the Commission, which shall be the basis for the Commission to declare and publish the election results under section 99.

National Assembly (Validity of Elections) Act – Chapter 1:04

Sections – 3, 5, 29 and 30

3. (1) Any question referred to in article 163(1)(a), (b) and(c) of the Constitution may, in respect of an election referred to in article 60(2) of the Constitution and with a view to securing appropriate remedial order, be referred to the Court and shall thereupon be determined by it, in accordance with this Act.
 - (2) Every such reference shall be by a petition (hereinafter referred to as an election petition) presented to the Court in accordance with this Act.
5. (1) Subject to this section, an election petition shall be presented within twenty-eight days after the results of the election out of which the matter in question on the petition arose are published in the *Gazette* under section 99 of the Representation of the People Act.
 - (2) If the petition questions the effect of the election upon an allegation of a corrupt practice and specifically alleges a payment of money or other reward to have been made by the date referred to in subsection (1) in pursuance or furtherance of the alleged corrupt practice, it may be presented within twenty-eight days after the date of the payment.
 - (3) An election petition questioning the effect of the election upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented -
 - (a) within fourteen days after section 109(1) of the Representation of the People Act has been complied with in relation to the election expenses of the group of candidates comprised in any list mentioned in section 5 with reference to that election petition;
 - (b) if specifically alleging a payment of money or some other act to have been made or done since such compliance, in the pursuance or in furtherance of the alleged illegal practice, within twenty-eight days after the date of the payment or other act:

Provided that when there is an authorised excuse for failing to make an election expenses return or election expenses declaration section 109(1) of the Representation of the People Act shall, for the purposes of this subsection, be deemed to have been complied with on the date of the allowance of the excuse, or, if there was such a failure in two or more respects and the excuse was allowed at different times, on the date of the allowance of the last excuse as defined in section 110(4) of the Representation of the People Act.

- (4) Subsection (3) shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.
 - (5) For the purposes of this section, the allegation that corrupt or illegal practices or illegal payments, employments or hirings were committed in reference to the election and had so extensively prevailed that they may have affected, or have affected, the allocation of seats under section 97 of the Representation of the People Act, shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.
- 29.** (1) Where on an election petition the Court determines that the seats in the National Assembly were not allocated in accordance with section 97 of the Representation of the People Act, the Court shall so declare and may order that the seats be re-allocated in accordance with those provisions and that the membership of the Assembly be redetermined and re-declared in accordance with section 98 of the Representation of the People Act, so, however, that candidates selected thereunder from any list of candidates upon the defective allocation shall, in the order of extraction of their names upon such selection as aforesaid, be entitled to retain their seats in so far as the number of seats re-allocated to that list permits.
- (2) Where on an election petition the Court, on a scrutiny, determines that the number of valid votes cast for any list of candidates differs from the number of votes upon which seats in the National Assembly were allocated to that list, the Court may so declare and thereupon the allocation of seats to that list shall be reviewed by the Commission and, on it appearing to the Commission from such review that any seat

was unlawfully allocated in consequence of such difference, the Commission shall direct the re-allocation of such seat in accordance with section 97 of the Representation of the People Act and in keeping with the number of valid votes cast as aforesaid, whereupon the membership of the Assembly shall be re-determined and re-declare in like manner as if the seat had been so re-allocated under subsection (1).

30. (1) Where it is determined by the Court, being satisfied for the purpose beyond reasonable doubt on an election petition, that any unlawful act or omission (not remediable under section 28 or 29) affected the result of an election which would otherwise have lawfully resulted-

(a) in different placing of the respective lists of candidates in the order of magnitude of the allocations of seats to such lists under section 97 of the Representation of the People Act, or in different placing of any of the lists in that order, from their placing as aforesaid according to the result so affected; or

(b) in more than half the members of the National Assembly being persons whose names appear on any list the seats allocated to which under section 97 of the Representation of the People Act are occupied by not more than half the members of the Assembly according to the result affected as aforesaid;

the Court may, in consequence of such determination, declare the election, or any part thereof if the Court is satisfied that the remainder is conveniently severable and was not affected by such unlawful act or omission, to have been ineffective and may accordingly order a fresh election to be held in whole or part for the purpose of rectifying the said result and give such incidental, ancillary or supplementary directions as the Court deems meet for the purpose of such rectification, including (without prejudice to the generality of the foregoing) the re-allocation of seats in the National Assembly.

(2) Where the Court -

(a) is satisfied beyond reasonable doubt on an election petition that, contrary to law, any votes of persons who are electors belonging to any class were precluded from being cast; and

(b) determines that the result of the election may thereby have been substantially affected;

the Court may order a fresh ballot on the part of that class of electors and may, to the extent deemed meet by the Court, exercise in relation to the election, or its result, any such other powers as are exercisable under subsection (1) in consequence of any determination mentioned therein.

(3) It shall not be a ground for rectification of the result of an election that-

(a) any person purported to have been appointed to exercise powers or perform duties referred to in article 162(1) (b) of the Constitution was not duly appointed;

(b) the names of any persons have been wrongfully omitted from or included in any preliminary list of electors, as modified for the purpose of bringing it into conformity with the appropriate register of electors, unless the Court is satisfied beyond reasonable doubt that such names were omitted or included as aforesaid otherwise than in good faith;

(c) any illegality or irregularity was committed in the compilation or revision of any register of electors unless the Court is satisfied beyond reasonable doubt that such illegality

or irregularity, as the case may be, was committed otherwise than in good faith.

(4) Nothing in subsection (3) shall be construed to authorise the rectification of any such result of an election as is not liable to be rectified apart from that subsection.

(5) The result of an election shall not be impugned on the ground that the application of any elector entitled to vote by proxy so to vote was refused or that the application

of any elector not entitled so to vote was granted; and such refusal and grant shall be deemed not to be procedural irregularities and notwithstanding any of the provisions of this section or the Representation of the People Act no votes shall be deemed invalid by reason thereof.

The Official Gazette (Extraordinary) of Guyana

Georgetown, Monday 4th May, 2020

SUBSIDIARY LEGISLATION -

**Order No. 60 of 2020 - The Constitution of Guyana and the Election Laws
(Amendment)**

MONDAY 4TH MAY, 2020

MADE UNDER THE CONSTITUTION OF GUYANA AND
THE ELECTION LAWS (AMENDMENT) ACT (No. 15 OF 2000)

THIS ORDER IS MADE BY THE ELECTIONS COMMISSION PURSUANT TO ITS
POWERS UNDER ARTICLE 162 OF THE CONSTITUTION OF GUYANA AND
SECTION 22 OF THE ELECTIONS LAWS (AMENDMENT) ACT, NO. 15 OF 2000.

WHEREAS General and Regional Elections were held in Guyana on the 2nd day of March
2020;

AND WHEREAS the declarations of results pursuant to Section 84 (I) of the
Representation of the People Act, Chapter 1 :03, have been made, but requests for recounts
in a number of electoral districts have been rejected, aborted, or held in abeyance and the
report pursuant to Section 96(2) of the Representation of the People Act, Cap 1:03 had
been delivered to the Chairman of the Commission and held in abeyance, and aspects of
the election process have been subjected to legal proceedings;

AND WHEREAS the President and the Leader of the Opposition and all contesting parties
agreed to a CARICOM proposal for a total recount of all electoral districts as a means of
assuaging the contesting parties and determining a final credible count;

AND WHEREAS, in furtherance thereof, on the 3rd day of April 2020, the Guyana Elections Commission made a decision to recount all of the ballots cast in all the Electoral Districts;

AND WHEREAS, in consequence thereof, the Guyana Elections Commission must determine the terms of reference of and modalities for the recount process;

AND WHEREAS, this recount process shall be undertaken, executed and supervised by the Guyana Elections Commission and will be scrutinized by a CARICOM Team appointed by the Chairman of CARICOM and Prime Minister of Barbados. Hereinafter, referred to as the CARICOM Scrutinising Team;

AND WHEREAS the recount process shall be conducted in the presence of representatives of political parties that contested the said elections and observed by International and Local Observers accredited by the Guyana Elections Commission and advisors to the Guyana Elections Commission.

AND WHEREAS the Guyana Elections Commission, in exercise of the authority vested in it under Article 162 of the Constitution and pursuant to Section 22 of the Elections Laws (Amendment) Act, No. 15 of 2000, seeks to remove difficulties connected with the application of the Representation of the People Act, Chapter 1:03, in implementing its decisions relating to the conduct of the aforementioned recount of all ballots cast at the said elections, including the reconciliation of the ballots issued with the ballots cast, destroyed, spoiled, stamped, and as deemed necessary, their counterfoils/stubs; authenticity of the ballots and the number of voters listed and crossed out as having voted; the number of votes cast without ID cards; the number of proxies issued and the number utilized; statistical anomalies; occurrences recorded in the Poll Book.

NOW THIS ORDER DECLARES AS FOLLOWS:

1. The role of the Commission shall include but not limited: -
 - a. To provide overall supervision and guidance to the Secretariat for the conduct of the national recount;

- b. To serve as the final arbiter of issues not resolved at lower levels in the established procedure;
 - c. To provide an order on the national recount that will be gazetted;
 - d. To provide information to the public before, during and at the conclusion of the process;
 - e. To approve and finalise arrangements for observers.
 - f. To determine and declare the final results of the General and Regional Elections 2020.
3. The recount shall be conducted by employees of the Guyana Elections Commission, under the direct supervision of the Chief Election Officer. The following persons are entitled to be present: representatives of political parties that contested the said elections, the CARICOM Scrutinising Team, International and Local Observers accredited by the Guyana Elections Commission, and advisors to the Guyana Elections Commission and members of the Commission.
4. The recount shall commence with the allocation of ten (10) workstations as follows: District 1 - two workstations; District 2 - two workstations; District 3 - three workstations and District 4 - three workstations. The recount for District 4 shall continue at the three (3) workstations assigned to it. The recounts for Districts 5 through 10 shall be conducted based on the completion of, and at the workstations assigned to, Districts 1, 2 and 3.
5. (i) There shall be installed in each workstation a facility which shall capture and broadcast, only, the following:
- (a) A picture of the ballot box depicting the state in which it is delivered to the workstation;

(b) An audio feed of the recount process;

(ii) There shall be installed an audio-visual facility in the Tabulation Center which shall broadcast live the entire tabulation process.

6. Upon arrival of the ballot box at the workstation, it shall be first examined to ascertain that the seals are intact. The contents shall then be emptied, and the election materials examined. Notes shall be taken, and records made in accordance with the requirements of the Ballot Box Checklist. Any observation not catered for in the checklist provided shall be recorded on the Observations Report Form. The Ballot Box Checklist shall be signed by the workstation supervisor. The observations report shall be signed by the supervisor of the workstation and representatives of each contesting party present. A copy of the completed Ballot Box Checklist and the Observations Report shall be given to party representatives.
7. The result of the general and regional recount of each ballot box shall be recorded as provided for on a Statement of Recount upon the completion of the recount of each box.
8. The Statement of Recount shall be signed by the person conducting the recount and by the representative of each contesting party present, in the presence of the CARICOM Scrutinising Team, representatives of political parties that contested the said elections, International and Local Observers accredited by the Guyana Elections Commission, and advisors to the Guyana Elections Commission. These documents shall be lodged with the Chief Election Officer and copies distributed to the signatories thereto, the CARICOM Scrutinising Team and the Chairman and Commissioners.
9. The tabulation of the Statements of Recount generated after the aforementioned action at paragraphs 6 and 7 will be done at a central tabulation centre in the presence of the CARICOM Scrutinising Team, representatives of political parties that contested the said elections, International and Local Observers and advisors to the Guyana Elections Commission as follows: The Statement of Recount shall be projected on a screen to be viewed by all persons present and the information shall be input into a matrix, which

process could be viewed simultaneously by all persons present. Information from this tabulation shall be broadcast periodically.

10. Upon completion of the input of all Statements of Recount for an entire electoral district, the supervisor for tabulation shall ascertain and verify the entries therein and calculate totals for each column therein, in the presence of the CARICOM Scrutinising Team, representatives of political parties that contested the said elections, International and Local Observers accredited by the Guyana Elections Commission and advisors to the Guyana Elections Commission. This ascertained and verified copy of the matrix shall be signed by the District Coordinator for the District and by the designated representative of each contesting party present, in the presence of the CARICOM Scrutinising Team, representatives of political parties that contested the said elections, International and Local Observers accredited by the Guyana Elections Commission and advisors to the Guyana Elections Commission.
11. The signed matrix produced in accordance with the aforementioned at paragraph 9 shall then be transmitted to the Chief Election Officer and copies given to the representatives of political parties that contested the elections, the CARICOM Scrutinising Team and the Chairman and Commissioners and available to the public.
12. The matrices for the recount of the ten (10) Electoral Districts shall then be tabulated by the Chief Election Officer and shall be submitted in a report, together with a summary of the observation reports for each District, to the Commission.
13. The CARICOM Scrutinising Team shall submit a report to the Commission which may include their observations, recommendations, and conclusions.
14. The Commission shall, after deliberating on the report at paragraph 11, determine whether it should request the Chief Elections Officer to use the data compiled in accordance with paragraph 11 as the basis for the submission of a report under section 96 of the Representation of the People Act Cap 1:03.

15. For the avoidance of any doubt, the Chief Election Officer and every person appointed or authorized to perform any act or functions by virtue of this Order, are and shall remain subject to the general supervisory power of the Commission.
16. The foregoing recitals shall form part of this Order. This Order is made in the exercise of the authority vested under Article 162 of the Constitution and pursuant to Section 22 of the Elections Law (Amendment) Act, No. 15 of 2000, by the Guyana Elections Commission as the Commission considers same necessary and expedient for the removal of difficulties which have arisen in respect of the finalization and declaration of results for the General and Regional Elections held on the 2nd March 2020.

_____/s/ Claudette Singh_____
Justice Claudette Singh S.C., C.C.H.
Chairman
Guyana Elections Commission

Dated this 4th day of May 2020.

The Official Gazette (Extraordinary) of Guyana

Georgetown, Monday 29th May, 2020

SUBSIDIARY LEGISLATION –

**Addendum - Order No. 60 of 2020 – The Constitution of Guyana and the Election
Laws (Amendment)**

ADDENDUM

1. Paragraph 2 of the Order is hereby deleted and substituted as follows: “The recount shall commence on Wednesday the 6th day of May 2020 and shall conclude on or before Saturday the 13th day of June 2020. It shall proceed continuously each day, including weekends and holidays, from 08:00hrs to 19:00hrs, at the Arthur Chung Conference Centre.”
2. Paragraph 4 of the order is hereby deleted and substituted as follows:

“The recount shall progress with twelve (12) workstations until its conclusion.”
3. Paragraph 12 of the Order is hereby amended by inserting the words “on or before the 13th day of June 2020”, after the word Commission.
4. Paragraph 14 of the Order is hereby amended to read as follows:

“The Commission shall, after deliberating on the report at paragraph 12, determine whether it should request the Chief Election Officer to use the data compiled in accordance with paragraph 12 as the basis for the submission of a report under section 96 of the Representation of the People Act Cap 1:03, provided that the Commission shall, no later than three (3) days after receiving the report, make the declaration of the results of the final credible count of the elections held on the 2nd day of March 2020.

___/s/ Claudette Singh_____

Justice Claudette Singh S.C., C.C.H.

Chairman

Guyana Elections Commission

Dated this 29th day of May 2020.