Constitutional – No Confidence Vote

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

CIVIL JURISDICTION

2019-HC-DEM-CIV-FDA-22

BETWEEN:

ATTORNEY GENERAL OF GUYANA

Applicant

- and -

1. **DR. BARTON SCOTLAND, Speaker of the National Assembly of** Guyana.

2. **MR. BHARRAT JAGDEO, in his capacity as Leader of the Opposition.**

Respondents

3. MR. JOSEPH HARMON, REPRESENTATIVE OF A PARTNERSHIP FOR NATIONAL UNITY
Added Party

Jan 15, 25, 31, 2019.

Mr. Basil Williams SC, Mr. Maxwell Edwards and Mr. Mayo Robertson for the applicant.

Mr. Rafiq Khan SC, for the first respondent.

Mr. Mohabir A. Nandlall, Mr. C.V. Satram, Mr. Sase Gunraj, Mr. E. Gomes, Mrs. M. Nadir-Sharma, Mr. M. Narayan and Mr. R. Jaigobin for the second respondent .

Mr. Roysdale Forde, Mr. S. Lewis and Ms. O. Joseph for the added party.

CORAM: JUDGE: CHIEF JUSTICE ROXANNE GEORGE

JUDGMENT OF THE COURT

Background and Introduction

1. The Constitution of the Co-operative Republic of Guyana provides in art 51 that:

> "51. There shall be a Parliament of Guyana, which shall consist of the President and the National Assembly."

2. Article 52 of the Constitution provides that the National Assembly shall comprise of such number of members as determined by the Assembly and, subject to the Constitution, in accordance with any law made by Parliament. Section 11A of the Representation of the People Act, Chapter 1:03 provides that the National Assembly is to be comprised of at least 65 Members of Parliament (MPs).
3. The Government of Guyana comprises a coalition made up of A Partnership for National Unity (APNU) and the Alliance for Change (AFC). The current National Assembly is comprised of 65 MPs of which 33 MPs are for the Government and 32 for the Opposition. Mr. Charrandass Persaud was an MP representing the list that formed the government, that is, the APNU+AFC List.
4. The Opposition moved a No Confidence Motion (NCM) in the government which came up for debate on December 21st 2018. At the conclusion of the debate a vote was taken by way of division of the House. Mr. Persaud voted against the government and in favour of the NCM so that the vote was 33 in favour of the motion and 32 against.
5. Mr. Persaud's vote caused much consternation and has led to three applications to this Court of which this is one. The other two are **Compton Herbert Reid v Dr. Barton Scotland, Speaker of the National Assembly, Charrandass Persaud, The Attorney-General, Mr. Bharat Jagdeo, The Leader of the Opposition and Mr. Joseph Harmon, Representative of A Partnership for National Unity**, 2019-HC-Dem-Civ-FDA-19, and **Christopher Ram v The Attorney-General and The Leader of the Opposition** 2019-HC-Dem- Civ- FDA-29.

6. The Attorney General (the AG) filed this Fixed Date Application by way of Case Stated pursuant to **Rule 61.03(1)** of the **Civil Procedure Rules 2016** requesting that the Court answer the following questions as stated in the application:

(a) Whether the Speaker's Ruling that the motion of No Confidence debated in the National Assembly on the 21st day of December, 2018 was carried by a vote of a majority of all the elected members of the National Assembly is unlawful, null and void, being contrary to **Article 106(6)** of the Constitution of the Cooperative Republic of Guyana.

(b) Whether the motion of no confidence motion upon a division vote of 33:32 Members of the National Assembly was validly passed as the requisite majority of all the elected members of the National Assembly pursuant to article 106(6) of the Constitution.

(c) Whether the requisite majority of all the elected members of the National Assembly ought properly to be 34 votes.

(d) Whether the President and all Ministers of Government can remain in office as a majority vote was not duly carried in accordance with article 106(6) of the Constitution.

(e) Whether the Court can make an order setting aside or nullifying the Speaker's Ruling that the No Confidence Motion was carried.

(f) Whether the Court can make an order staying the enforcement of Resolution 101 declared by the Clerk of the National Assembly to have been passed on the 21st of December, 2018 in the National Assembly.

(g) Whether the Court can grant a conservatory order preserving the *status quo ante* that the President and all Ministers of the Government remain in office until the hearing and determination of the questions sought herein.

7. The issues raised in this application, flowing as they do from the same factual basis, are similar to those in the applications filed by Mr. Reid and Mr. Ram. However, while the focus of the other two applications was whether Mr. Persaud was disqualified to vote and the effect this would have on the validity of the NCM proceeding and or the vote thereon, this application focused more on the votes that would be required to carry a NCM.

8. I held in **Reid** that:

i. the evidence was sufficient for a finding that Mr. Persaud held dual citizenship of Guyana and Canada so that the declarations sought at paras 1 and 2 of that application

were granted. The effect of these declarations is that anyone who holds dual citizenship as defined within the parameters of art 155 (1)(a) as discussed cannot lawfully be nominated or elected as an MP. Therefore Mr. Persaud is not qualified for election as an MP for the National Assembly of Guyana and was not so qualified to be nominated on April 7, 2015. However, I concluded that the reliefs sought at paras (3), (5), (6) and (7) spoke to his election as an MP and could only be challenged by a petition pursuant to art 163 and the National Assembly (Validity of Elections) Act, Chapter 1:04. In any event, apart from this jurisdictional issue, these declarations could not have been granted because the NCM proceeding was valid, and despite the breaches of art **155(1)(a)** and **156 (3)** Mr. Persaud's vote was nevertheless validated and therefore saved by **art 165(2)** of the Constitution. The declaration sought at para (4) was refused because it spoke to the facts upon which the challenge was made, that is, that Mr. Persaud is a Canadian citizen who travelled on a Canadian passport.

ii. given my conclusions, the prayers at para 8 for an order setting aside the order of the Speaker that the NCM, Resolution 101 passed by the National Assembly on the 21st December, 2018, and at para 9 for a stay of the enforcement of the said Resolution and a conservatory order preserving the status quo ante that the Government remains in office were all moot and therefore could not be granted.

9. Pursuant to an application by Mr. Joseph Harmon representing A Partnership for National Unity, which is part of the Government, he was added as a party to these proceedings.

10. Mr. Khan on behalf of the Speaker of National Assembly indicated to the Court that the Speaker would abide by the Court's decision. An affidavit in defence filed by the Speaker had so indicated. In this affidavit the Speaker had this to say:

"1. I am the Speaker of the National Assembly and have served in that position since May, 2015.

3. In my capacity of Speaker I am the spokesperson and representative of the National Assembly. I preside over all debates and apply and enforce observance of the Rules, Procedures and Practices of the National Assembly.

4. On 21st December, 2018 I presided over the debate on the no confidence motion by the Leader of the Opposition, the second respondent named herein.

5. At the conclusion of the debate the motion was put and by a collection of voices, as is the accepted practice, the motion was declared lost.

6. On the request by Ms. Gail Texeira a member of the Opposition, a division was called and by a count of votes the result was declared 33 to 32 in favour of the motion.

...

7. I will abide by any order(s) which the Court may make in either or both the fixed date application and the urgent Notice of Application."

Issues raised in addition to the above questions

11. In addition to the questions above, in submissions in support of the invalidity of the NCM, the AG also challenged the validity of the provisions in the Constitution on which the NCM is based, i.e. **art 106(6)** and **106(7)**, submitting that **s 5** of the **Constitution (Amendment) Act, No. 17 of 2000** (Act 17/2000), by which they were inserted into the Constitution, was unconstitutional and therefore of no effect. The AG also raised the question of the constitutionality of Resolution 101.

12. The Added Party, Mr. Harmon belatedly via oral submissions by Mr. Forde, challenged the ability of the second respondent, the Leader of the Opposition, to move a NCM against the Government on the basis of **art 106(6)**, contending that that article only provides for a vote of confidence.

Preliminary Objection: Does this Court have Jurisdiction to hear and determine this application under Part 61 – Case Stated?

13. Firstly, a jurisdictional issue has to be dealt with. Mr. Nandlall on behalf of the second respondent has objected to the use of the procedure under **Part 61** of the **Civil Procedure Rules** (CPR) to bring this application. He submitted that this is an erroneous use of this provision and there is therefore no jurisdiction for the Court to hear and determine the application as filed. **Part 61.01** provides that:

> "Where a Rule, Practice Direction, order or enactment permits an appeal on or referral of a question of law to the Court (including the Full Court), this Part applies and the Court is required to accept the statement of facts as set out by the body or person whose decision is under referral or appeal".

Mr. Nandlall submitted that there is no Rule, Practice Direction, order or enactment which permits a referral of the questions of law posed to this Court by the AG.

14. The questions raised by the AG, as recognised by all parties, require an interpretation of constitutional provisions. As this Court has held in **Marcel Gaskin v the Attorney General et al 2017-HC-DEM-CIV-FDA-160** (unreported) and emphasised in **Zulfikar Mustapha v the Attorney General 2017-HC-DEM-CIV-FDA-1643, art 133(1)** of the Constitution indicates

that the High Court has jurisdiction to determine questions as to the interpretation of the Constitution.

15. The Constitution of Guyana was enacted under the **Constitution of the Co-operative Republic of Guyana Act, Cap. 1:01**, and is a Schedule thereto. **Article 8** of the Constitution declares that the Constitution is the supreme law of Guyana. Likewise, the learned authors of the text '**Fundamentals of Caribbean Constitutional Law**' (Robinson, Bulkan &Saunders J, 2016, para 4-004) acknowledge that the constitution is a law though one that is qualitatively different from ordinary statute law. **Article 232** of the Constitution defines 'law' as including any instrument having the force of law and any unwritten rule of law. **Section 57(3)** of the **Interpretation and General Clauses Act, Cap. 2:01 (Chapter 2:01)** also provides that every Schedule, *inter alia*, shall be construed and have effect as part of the written law. Further, **art 232 (9)** of the Constitution provides that the **Chapter 2:01** applies for the purpose of interpreting the Constitution.

16. In **Part 2:03 (1)** of the CPR, 'enactment' is defined "as the whole or part of a piece of legislation or the whole or part of an instrument or regulation made under a piece of legislation." As an instrument that was enacted by and forming part of an Act of Parliament, the Constitution is an enactment for the purposes of **Part 61.01** of the CPR. **Part 61** itself acknowledges that it includes proceedings brought under the Constitution when it addresses service of an appeal by way of case stated (**Part 61.02(1)(b)**) or of a referral by way of case stated (**Part 61.03(2)**).

17. In **Dumas v AG of Trinidad & Tobago Civ App No. P 218/2014**, Jamadar, JA noted at para 119: "Historically, seeking the public interest, including the observance of the rule of law, was exclusively the responsibility of the Attorney-General. However, we note that in Trinidad and Tobago there is no established tradition of the Attorney General seeking the public interest in these circumstances. Australia, as shown above, follows the tradition and the courts are not prepared to intervene, preferring to leave any change to the legislature. However, in other countries, such as Zambia, Canada and India, even here in the Caribbean, the courts have not been shy to exercise their jurisdiction and power to enlarge the standing rules in the area of public interest constitutional review litigation."

18. The tradition of the AG instituting public interest litigation is not well established in Guyana either but the Court has established that it would not take a restricted view of standing in

cases that are of constitutional importance. (see **Marcel Gaskin v Attorney General of Guyana et al** (supra).)

19. **Part 61.03(2)** provides that where proceedings are brought under the Constitution the Fixed Date Application must be served on the AG, which suggests that the AG is not the party that the CPR anticipate would bring the application. Nevertheless, there is nothing expressly excluding the AG from initiating the referral. The requirement that in relevant cases he be served indicates that he should be a party to such proceedings.

20. I find, therefore, that the procedure provided for in **Part 61** may be used for the determination of the questions raised by the AG as an applicant. I also find that there is nothing expressly excluding the AG from making this application, particularly given his status as the Minister of Legal Affairs and Member of the National Assembly, from which the questions had their genesis as it was the Speaker of the National Assembly who indicated that the questions raised in relation to his ruling that the NCM was carried should be referred to a Court of competent jurisdiction for final determination. The affidavit in support of this FDA quoted the Speaker of the National Assembly as saying the following on January 3rd, 2019 when he was asked to review his ruling on the NCM:

> "I must tell you Honourable Members that the issues which we now face call us to look outside of Parliament to find answers.
>
> ...
>
> Full, final and complete settlement of these issues by a Court of competent jurisdiction will place beyond doubt any questions which may exist and serve to give guidance to the Speaker and to the National Assembly ... ."

21. As such, I have decided that I can and will hear and determine this application as filed. I have so decided despite noting that the referral procedure as set out in Part 61:03 has not been followed.

22. However, since the application has been filed by way of Fixed Date Application, even if the procedure adopted in bringing it pursuant to Part 61;03 is incorrect, I have decided, applying the overriding objective, that the AG should not be non-suited, moreso as constitutional issues have been raised. The second respondent's claim that there is no jurisdiction for this Court to hear and determine this application as a referral by way of case stated is therefore refused.

Is provision for an NCM properly included in the Constitution of Guyana?

23. Before examining the provisions as included in our current Constitution as are relevant to this case, I must address the background to the NCM provision to which I was directed during oral submissions by Mr. Edwards, on behalf of the AG. Mr. Edwards submitted that one has to consider the history of the provision for no confidence motions. At first counsel said that NCMs were not provided for in the Constitution of Guyana. On being challenged by me that the 1966 Constitution so provided, counsel referred to the **Independence Constitution of 1966** (1966 Constitution) in which there was provision in **art. 37(1)** for a NCM. This article states:

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

24. Counsel stated that this provision referred to a NCM in the Prime Minister and therefore this would not have led to, or had the drastic effect of, the defeat of the government, just the resignation of the Prime Minister. This contention cannot be sustained. After the passage of a NCM, there would have been three options available to the Prime Minister under the above provision: (i) resignation within 7 days; (ii) advice to the Governor-General, also within 7 days, to dissolve Parliament; and, (iii) not resigning within 7 days, in which case the Governor-General would have had to revoke his appointment. If Parliament was dissolved, all members of the National Assembly would have had to vacate their seats (art. 61(1)/1966 Constitution). If the Prime Minister resigned, or the Governor-General revoked his appointment, the office of the other Ministers would have also become vacant (art. 37(5)(b)/1966 Constitution). Also, pursuant to art 82/1966 Constitution, if after the Prime Minister either resigned or his appointment was revoked, and the Governor-General considered that there is no prospect of his being able within a reasonable time to appoint to that office a person who could have commanded the support of a majority of the elected members of the National Assembly, he was mandated to dissolve Parliament. In either of those scenarios, the result would have been that the offices of all Ministers would have become vacant and that Parliament would have had to be dissolved. So

pursuant to the 1966 Constitution, on a vote of no confidence in the Prime Minister, it would have led to the defeat of the government.

25. Mr. Edwards then submitted that the framers of the 1980 Constitution deliberately omitted provision for a NCM and that its reappearance by virtue of Act 17/2000 was due to – to his word – "fiddling" - with the Constitution. He said that it was an unacceptable and ill-thought out decision to include it. However, provisions for NCMs are universal and well-known proceedings in democracies, of which Guyana is considered to be one. They provide an avenue to ensure accountability of the government. The Report of the Constitution Reform Commission to the National Assembly dated July 17, 1999, at para 9.6.3.2 specifically recommended the amendment of art 106 as follows:

> "Article 106 – The Cabinet
>
> The following should be included in Article 106: 'the Cabinet shall be collectively responsible to Parliament for the control of the Government of Guyana. It shall be provided that the Cabinet, including the President, who is part and parcel of the Cabinet as provided for in article 106, must resign if the government is defeated by a majority of all the members of the National Assembly on a vote of confidence.'"

The rationale for recommending this amendment along with others regarding the Presidency was given at para 9.6.2.1 as being "generally informed by the need for attenuation of the wide range of powers given to the President by the Constitution."

26. In **'Changing Caribbean Constitutions'** (2nd edn,2015) after noting that provision for 'No confidence resolutions' are well established in Caribbean Constitutions and after specifically highlighting the re-inclusion of such a provision in Guyana by Act 17/2000, **Dr. Francis Alexis** explains the grounds and objectives for such resolutions in para 14.51:

> "14.51 A no confidence resolution is a powerful weapon by which a House with Representatives discharges its mission of keeping the Cabinet collectively responsible to Parliament, really the House; keeping the Government on its toes. Ramdhani J (ag) has said that the motion of no confidence is the mechanism by which the Constitution ensures that the government is accountable to the democratically elected membership of

Parliament, that such a motion is 'the most fundamental rein on executive power that the Constitution has provided' [**Brantley v Martin** No. SKBHCV 2013/0090, 12 Feb 2014]."

27. In a consequential suit to that cited above in **'Changing Caribbean Constitutions'**, **Brantley v Martin** Claim No. SKBHCV2014/0231 (St Kitts & Nevis), Lanns J (ag) citing the Privy Council decision in **Adegbenro v Akintola** [1963] AC 614 had this to say about the reasons for no confidence motions:

> "However guidance can be taken from the case of **Adegbenro v Akintola** [1963] AC 614, wherein the Privy Council found that the very purpose of the no confidence vote in the comparable Westminter context is to ensure that the President of the national executive was accountable to the elected representatives. The electors voted their representatives, but it is the representatives in Parliament who determine who the government is or who is to lead the government. If the elected representatives think the government has failed to represent the interest of the people, then the motion can be moved by the elected representatives. The point is that the government can only continue to be the government if it continues to have the support of the majority of the elected representatives in teh National Assembly. This is the fundamental principle of representative democracy in St. Kitts and Nevis."

Therefore to accede to Mr. Edwards submissions would be to view a NCM as an anathema when it is not. The submissions in this regard have absolutely no merit.

Does Article 106(6) allow for the Opposition Leader to move a NCM?

28. There is another issue that I need to address before proceeding into the substantive matters which must be disposed of sooner rather than later because it is disingenuous and therefore is equally of absolutely no merit as Mr. Edwards' contention. The issue was belatedly raised by Mr. Forde that the court should consider that, since **art 106(6)** does not specifically refer to a NCM, but refers to a vote of confidence, that a NCM cannot be brought in the National Assembly, and more especially cannot be brought by the Leader of the Opposition. No authorities were submitted in support of this submission. To say that this submission is

preposterous is to put it mildly. As Mr. Nandlall answered, a vote of confidence and a vote of no confidence have the same meaning, that is, the representatives in the National Assembly have an opportunity to debate and vote on whether they have confidence in the government to continue in office. If they do, that is if a NCM is defeated, then the Government wins and there is considered to be confidence in the government. If they do not, then the Government is defeated and there is no confidence in the government, which bears the consequences as provided for in the Constitution.

29. Mr. Nandlall indicated to the Court that he would forward some authorities indicating that a vote of confidence can be obtained by the moving of a motion of no confidence, in which authorities, he submitted, the terms are used interchangeably. The examples laid over were from such sources as the Encyclopaedia Brittanica and the BBC website, indicating that, in 1979, then Opposition Leader in the UK House of Commons, Mrs. Margaret Thatcher, had moved for a vote of 'no confidence' against then Prime Minister James Callaghan and his Government, which was carried by 311 votes to 310 to result in the resignation of the Government. The Definition of Vote of Confidence from the Encyclopaedia was also attached, indicating that it is a procedure to remove a government, consisting of the Prime Minister and his Cabinet, from office.

30. While these are historical facts that are not disputed, this Court emphasises that attorneys should be very cautious in the sources exhibited before the Court as authorities. I say this particularly in relation, but not limited, to the use of such sources as Wikipedia for support, which was done in this case. However useful the information may be, it can be given no weight when obtained from a source that can be easily changed and is therefore subject to error. Journalistic reports, even from recognised and reputable agencies, are also not exempt from being inaccurate and unreliable.

31. In relation to the vote of confidence provided for in **art 106(6)**, though, the examples produced by Mr. Nandlall serve to highlight what is already fairly obvious. A vote of confidence must be proposed by a motion, and any Member of the National Assembly may introduce a motion for debate (**art 171(1)**). A no confidence motion is therefore just a type of motion that the Constitution permits by virtue of **art 106(6)**. Thus the Leader of the Opposition as an MP is entitled to introduce a NCM. What it is called is likely only the result of who proposes it, since a government member will call it a vote of confidence while an opposition member would call it a

vote of no confidence. What matters is not what it is called, but its substance, the procedure by which it is brought and the votes obtained on either side. In this case, there is nothing that suggests that the NCM was improperly brought or that anyone was uncertain as to what they were addressing.

32. Dr Francis Alexis in '**Changing Caribbean Constitutions**' under the heading "No Confidence Resolutions" explained these resolutions thus:

> "14.48 Caribbean Constitutions empower the House to pass, variously, a 'resolution ... [of] no confidence in the Government' and a 'resolution ... [of] no confidence in the Prime Minister'. There also may be passed in Barbados and Jamaica a 'resolution ... that the appointment of the Prime Minister ought to be revoked; this really is a resolution of no confidence in the Prime Minister although the term 'confidence' is not used regarding such a resolution. Each of these three resolutions is instituted by a motion in that behalf moved in accordance with the rules of procedure, or the Standing Orders, of the House. All three are varieties of what may be called a no confidence resolution."

33. I also find support for my conclusion in **Brantley v Martin** (supra) where after reviewing a number of authorities, Lanns J (ag) held that "the absence of express words to that effect in section 52(6) [provision for the Governor-General to remove the Prime Minister if a no confidence resolution is passed] does not prevent the existence of a right, by implication, of members of the National Assembly to bring a motion of no confidence and have it debated without due delay, and within a reasonable time."

34. I further find support for my view that these submissions are spurious from **Erskine May Parliamentary Practice** (24th edn, 2011) at p 344 which has this to say under the heading "Confidence Motions":

> "From time to time the Opposition puts down a motion on the paper expressing a lack of confidence in the Government or otherwise criticising its general conduct. By established convention the Government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the Government's view, would have the effect of testing the confidence of the House. In allotting a day for this purpose the Government is entitled to have regard to the exigencies of its own business, but a reasonably early day is invariably found. This convention is founded on the recognised position of the Opposition as a potential government, which guarantees the legitimacy of such an interruption to the normal course of business. For its part the Government has everything to gain by meeting such a direct challenge to its authority at the earliest possible moment."

And in a footnote to the above the following is added:

> "Such motions are, of course, the obverse of motions tabled by the Government expressing confidence in its own policies."

35. As such, Mr. Forde's belated submissions are totally rejected.

Is Section 5 of the Constitution (Amendment) Act 17/2000 unconstitutional?

36. A determination of the effect of s 5 of Act 17/2000 turns on an interpretation of **arts 70(1), (2)** and **106 (6) (7)** of the Constitution. The first three Paragraphs of **art 70** provide -

> "(1) The President may at any time by proclamation prorogue Parliament.
>
> (2) The President may at any time by proclamation dissolve Parliament.
>
> (3) Parliament, unless sooner dissolved, shall continue for five years from the date when the Assembly first meets after any dissolution and shall then stand dissolved.

37. **Section 5** of Act 17/2000 inserted sub-articles 6 and 7 of **art 106,** which provide as follows:

> "(6) The Cabinet, including the President, shall resign if the Government is defeated by the vote of a majority of **all** the elected members of the National Assembly on a vote of confidence.
>
> (7) Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of **all** the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election." (Emphasis mine.)

38. Mr. Edwards for the AG submitted that **art 70,** guarantees an elected government a five year term of office, and that this may only be reduced by legislation that has garnered the support of two-thirds of all elected members of the National Assembly. It was contended that Act 17/2000 does not expressly indicate an intention to alter **art 70** in any way, and could not therefore seek to alter it. He said that **art 70** could not have been amended by the amendment of **art 106,** which does not require a two-thirds majority to be altered. It is Mr. Edwards' position that, though Act 17/2000, including the amendment of **art 106,** was passed by a two-thirds majority, this was merely a coincidence of political bipartisanship that pertained at the time.

39. The first question that arises from the submissions on behalf of the AG is whether **art 70** guarantees a five year term of office. **Article 70(3)** provides that "Parliament, **unless sooner dissolved**, shall continue for five years from the date when the Assembly first meets after any dissolution and shall then stand dissolved." The key phrase in this provision is '***unless sooner dissolved***', whereby the Constitution acknowledges that the five year term may be abridged. One such instance of abridgement is provided for in art 70(2), whereby "the President may at any time by proclamation dissolve Parliament." **Article 70**, therefore, does not guarantee an elected government a 5-year term of office, as it recognises that Parliament may be sooner dissolved. It even provides that the President may dissolve it by proclamation.

40. Such a situation is not foreign to Guyana, or even the current Government. The 2015 elections by which the current Government, including the AG, was elected were held after the term of the previous elected Government was abridged. Though the elections were not held following a vote on a no confidence motion, it was the threat by the then Opposition (the current Government) of such a vote that led first to the prorogation and subsequent dissolution of Parliament by the then President. The then combined opposition held 33 seats in the National Assembly to the government's 32 seats.

41. Mr. Edwards then contended that the phrase 'unless sooner dissolved' must be seen as limited to a dissolution that occurs by the President under **art 70(2)**, which would mean that, unless the President chooses to dissolve Parliament earlier, an elected Parliament will serve a full five year term of office. However, neither **art 70(2)** nor **art 70(3)** places such a limitation on when Parliament may be 'sooner dissolved'.

42. **Article 70(2)** provides that the President may, by proclamation, dissolve Parliament. It does not say that Parliament may only be dissolved by the President. **Article 70** itself identifies another instance by which Parliament may be dissolved, though in relation to a recalled Parliament. This is in **art 70(5)** which provides that a recalled Parliament, unless sooner dissolved, shall again stand dissolved on the day before the day on which the election is held. This sub-article indicates two things. First, there is a means, other than by proclamation by the President, by which Parliament may be dissolved sooner than the expiration of a 5-year term. Second, the holding of a national election may bring Parliament to an end as well. **Article 70(3)**

only provides that Parliament shall continue for five years unless sooner dissolved. It does not limit the means by which Parliament may be sooner dissolved to that provided for in **art 70(2)**.

43. As has long been accepted, and recently reaffirmed in the case of **AG v Richardson** [2018] CCJ 17 (AJ), (2018) 92 WIR 416, (**Richardson**) the nature of a Constitution requires a broad, generous and purposive approach to interpretation. Taking **art 70(3)** to mean that the phrase 'unless sooner dissolved' is restricted to one particular instance i.e. that only the President's decision can lead to a dissolution of Parliament, when no such restriction is included would be contrary to such an interpretation and would be tantamount to reading a provision into the Constitution.

44. Thus, while it is pellucid that Parliament is elected for a term of five years, and that it is dissolved at the end of that five years, it is equally as pellucid that **art 70(3)** makes allowance for instances whereby Parliament may be dissolved sooner than 5 years. There is, therefore, no guaranteed five year term of office for Parliament.

45. Another issue advanced on behalf of the AG in support of the contention that the government is guaranteed a five year term of office is that **s 5** of Act 17/2000 is inconsistent with **art 70**. The first observation that may be made here is that **art 70** is concerned with the prorogation and dissolution of Parliament, which is not addressed by **s 5** of Act 17/2000. While a successful NCM would result in elections being held sooner than 5 years from the date of the previous elections, the defeat of the Government on a vote of confidence does not itself bring about the dissolution of Parliament, though this is clearly a consequential occurrence.

46. Defeat of the Government on a vote of confidence results in the resignation of Cabinet and the holding of earlier elections, but Parliament, constituted of the President and the National Assembly, is not dissolved by it. On the contrary, **art 106(7)** specifically recognises that the Government remains in office and that the National Assembly may still pass a resolution to extend the time for elections, which together indicate that Parliament is not dissolved as a result of the NCM. Instead, it is the holding of elections which will be responsible for the dissolution of the Parliament.

47. In addition, as discussed above, **art 70(3)** contemplates situations in which Parliament may be dissolved sooner than the expiration of the five year term. Hence, a provision in the Constitution that results in this occurring cannot be inconsistent with **Article 70**.

48. The final question arising from the submissions on behalf of the AG on this issue is whether, if there was an amendment of **art 70** by **s 5** of Act 17/2000, such an amendment was validly passed in accordance with **art 164** of the Constitution. Mr. Edwards argued with much vigour and conviction that an amendment act must indicate which article it intends to amend, In this regard, he argued that **art 70** could not be amended by implication, and must therefore have been specifically identified in Act 17/2000 in order to be amended.

49. However, this is clearly contrary to the express ruling of the Caribbean Court of Justice (CCJ) in **Richardson**, (*supra*) where the issue of amendment or alteration by implication was recently addressed. Mr Edwards, for the applicant, endorsed this decision completely and said it should apply *mutatis mutandi* to the case at bar. The CCJ clearly held that an article may be amended by implication even when the legislature did not so intend.

50. The issue before the CCJ in **Richardson** arose out of the said Act 17/2000, where the CCJ was called on to determine, *inter alia*, whether **s 2** of this Act altered **Articles 1** and **9** of the Constitution. I agree with Mr. Edwards that the decision in **Richardson** can apply to this case *mutatis mutandi*, at least in respect of this issue, as the factual scenario is almost identical. Where the CCJ in **Richardson** was concerned with **s 2** of Act 17/2000, this Court is asked to consider the validity of **s 5**. Where in **Richardson** the amendment of **art 90** was under consideration, here the amendment being discussed is to **art 106**. In **Richardson arts 1** and **9** were claimed to be affected, while here **art 70** is said to be affected. In **Richardson**, as here, the article said to be affected was not mentioned anywhere in Act 17/2000.

51. Though neither **art 1** nor **art 9** appear in Act 17/2000, the CCJ said at para [13] that "We have accepted the case law to mean that provisions in a Constitution could be amended by implication even when the legislature did not so intend." As a result, the CCJ then proceeded to investigate whether the amendment to **art 90** also altered **art 1** or **art 9**, concluding that it did not. Likewise, in this case, I recognise that the amendment to **art 106** could have altered **art 70**

by implication, even if the legislature did not so intend. The submissions by Mr. Edwards in this regard are absolutely without merit.

52. It was also argued that any purported amendment of **art 70** would not have been valid as the voting requirement of **art 164** would not have been satisfied.

53. The question what would have been the requirement if there were to be such an amendment therefore requires a closer look at the provisions of **art 164** of the Constitution, which provides, inter alia, that

> (1) Subject to the provisions of paragraphs (2) and (3), a Bill for an Act of Parliament to alter this Constitution shall not be passed by the National Assembly unless it is supported at the final voting in the Assembly by the votes of a majority of all elected members of the Assembly.
> (2) A Bill to alter any of the following provisions of this Constitution, that is to say –
> (a) this article, articles 1, 2, 8, 9, 18, 51, 66, 88, 99 and 111; and
> **(b) articles....70...**
>
> shall not be submitted to the President for his or her assent unless the Bill, not less than two and not more than six months after its passage through the National Assembly, has, in such manner as Parliament may prescribe, been submitted to the vote of the electors qualified to vote in an election qualified to vote in an election and has been approved by a majority of the electors who vote on the Bill:
>
> Provided that if the Bill does not alter any of the provisions mentioned in subparagraph (a) and is supported at the final voting in the Assembly by the votes of not less than two-thirds of **all** the elected members of the Assembly it shall not be necessary to submit the Bill to the vote of the electors. (Emphasis mine.)

54. As a result of the submissions made by Mr. Edwards, it is noted that every provision in the Constitution is entrenched. As the CCJ said in **Richardson** at para [6]:

> "Article 164 regulates the method of altering the Constitution. **It entrenches every article of the Constitution.**" (emphasis mine).

Though the articles not specifically identified in **art 164** are not subject to the two deeper levels of entrenchment, which require a referendum or the votes of two-thirds of all elected members of the Assembly for an alteration to be valid, the other Articles are subject to what the CCJ called the 'shallowest level of entrenchment', i.e. the votes of a majority of all the elected members of

the Assembly. The CCJ nevertheless recognised that this is more difficult than the passage of ordinary legislation which requires a simple majority, being a majority of those who voted, a distinction which I will discuss later in this judgment.

55. In respect of **art 70**, which falls into **art 164(2)(b)**, it is subject to the second level of entrenchment by the proviso quoted above, which means that alteration requires the support at the final voting in the Assembly of two-thirds of all the elected members of the Assembly.

56. Mr. Edwards submitted that though Act 17/2000 was passed by a two-thirds majority, this is wholly immaterial. Counsel argued forcefully that this was just a coincidence of political bipartisanship extant at that time and for that purpose. This Court must reject these submissions as baseless and of absolutely no relevance in law and in respect of the issue to be decided by this Court.

57. The existence of any bipartisanship is, in fact, wholly immaterial to a discussion of the issues at hand. What is relevant is that Act 17/2000 was passed by a two-thirds majority, and that any alteration of **art 70** by that Act would have met the requirement of a two-thirds majority provided for in **art 164**, and would have been valid. There can be no question of coincidence in this regard. However, in contradiction to his submissions regarding implied amendment as discussed above, Mr. Edwards also submitted that **art 70** was not amended and that the insertion of **art 106(6)** and **(7)** was an attempt to do so by a provision that was itself unconstitutional as not having been passed as required by **art 164**. These submissions I find to be equally unmeritorious.

58. But to be clear, I am of the view and emphasise that **art 106 (6)** has not amended **art 70**.

59. Considering all of the arguments on this point, therefore, I have concluded and so hold that **s 5** of Act 17/2000 is not unconstitutional for the reasons given above. **Sub-articles 6** and **7** of **art 106** were therefore properly inserted into the Constitution and are valid. Therefore, if a successful NCM is brought in the National Assembly pursuant to art 106(6), then by operation of law the Cabinet would be required to resign and by virtue of art 106(7), the five year term of the Government would be abridged.

Is the NCM Resolution 101 unconstitutional and not validly passed?

60. Turning now to the constitutionality of the NCM Resolution 101, the AG himself raised this challenge based on two limbs. Firstly, he argued that Resolution 101 is subsidiary legislation as defined in **s 5** of the **Interpretation and General Clauses Act, Chapter 2:01,** and that since pursuant to **s 20** of this Act "subsidiary legislation shall not be inconsistent with the provisions of any Act" it means that the Resolution is inconsistent with **art 70 (3)** such as to curtail or abridge the five year term provided for in the said **art 70(3).** As such, he asserted, the Resolution is thereby null and void as being inconsistent with **art 70(3).** However, having found that **art 70(3)** provides that Parliament may remain in office for five years unless it is sooner dissolved, and that **art 106(6)** and **(7)** validly provide for a NCM, the resignation of Cabinet and the holding of national elections sooner than five years, the Resolution cannot be found to be inconsistent with **art 70(3)** if it is brought and carried in accordance with **art 106(6)** of the Constitution.

61. Section **5** of **Chapter 2:01** provides that "Subsidiary legislation ... means any ... resolution ... made under or by virtue of any Act, and having legislative effect ... ." The Constitution as discussed earlier is a Schedule to and therefore part of an Act. Resolution 101 was brought, voted on and carried by virtue **art 106(6).** This is to say, Resolution 101 has its foundation in **art 106(6)** which I have found to be a valid provision. So I hold that prima facie the Resolution is valid.

What constitutes a majority according to Article 106(6)?

62. This leads to the other limb of the AG's challenge to the validity of Resolution 101, which is that the failure to obtain 34 or more votes breached **art 106(6),** resulting in the certification of the vote for Resolution 101 by 33 Members being unlawful. The AG asserts that one has to apply a combination of the cases of **Hughes v Rogers** Civil Suits Nos. 99 & 101 of 1999 and **Kilman v Speaker of Parliament of the Republic of Vanuatu [2011] 4 LRC 656,**

(**Kilman**) in order to determine what is an absolute majority, that is to say, to determine what is to be the vote of a majority of all the elected members of our 65 member National Assembly. So it was submitted that applying these two cases, one has to determine a half of the 65 elected MPs which would be 32.5. Since one cannot have a half person, this is to be rounded up to the nearest whole number being 33 which would represent half of all the elected members. Having determined that 33 would represent half of all the elected members of the National Assembly, then one is added to make 34 as the required majority of all the elected members of the National Assembly. It was advanced that there was a miscalculation of the majority of all the elected members as required by **art 106(6)**. In order for the government to be defeated on a vote of confidence 34 or more votes of all the elected MPs were required and not 33. Mr. Forde on behalf of Mr. Harmon supports this contention. Thus, it was argued on behalf of these parties that the requisite majority being 34 was not obtained so the NCM of December 21st 2018 was not carried. As such Resolution 101 was not constitutional so the Court could validly inquire into whether this decision of the National Assembly and the ruling of the Speaker of the National Assembly were unlawful, null and void and should be set aside.

63. Mr. Nandlall opposes the formulation advanced on behalf of the AG and Mr. Harmon and contends that a majority of our 65 member National Assembly is 33 members; that 'majority' in **art 106(6)** simply means 'the greater number' of all the elected MPs. He further stated that it would have been the same 33 votes that the government would have relied on to defeat the NCM so the fact that one 'strayed from the flock' cannot make a difference to the number of votes required either way. He said **Hughes v Rogers** can be distinguished as it was not a case that addressed a determination of what is a majority. He therefore contended that the NCM was a valid proceeding with a valid vote of a majority of all the elected members of the National Assembly.

64. I have no doubt that where the National Assembly and the Speaker of the National Assembly have acted in breach of the Constitution that the Court has jurisdiction to enquire into the proceedings of the National Assembly to ensure that the provisions of the Constitution, as the supreme law of the land, are upheld. (See **AG v Trotman & Ors** HCA 216/W 2012 per Chang CJ (ag); **Hughes v Rogers** (*supra*).) As such, in deciding whether there has been a breach of the Constitution as contended, these submissions require a determination of what constitutes a

majority according to **art 106(6)**, which is the basis for the answers to the first three questions asked in the Application, with the remaining questions being consequent upon this determination. As such, I now turn to address the question of what is a majority as provided for in **art 106(6)**.

65. I must however note that I consider that these contentions would have to be in the alternative to those just discussed which advanced that **art 106(6)(7)** were void. This is to say, in order to contend that the requisite votes were not met to satisfy **art 106(6)** means that there is a presumption of the validity of **art 106(6)**.

66. As indicated above, **art 106(6)** provides that the Cabinet, including the President, shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of confidence. The AG and the Added Party as outlined above, have sought to highlight the distinction between the majority referred to in **art 106(6)**, which is said to be an 'absolute majority', and that provided for in **art 168**, which is said to be a 'simple majority'. The second respondent, on the other hand, has focused on the meaning of the word 'majority'.

67. **Article 168(1)** provides that

> "Save as otherwise provided by this Constitution, all questions proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting." (Emphasis mine.)

This is what is commonly referred to as a 'simple majority' as indicated by the CCJ in **Richardson** (See para 6.)

68. **Article 106(6)**, as correctly submitted by Mr. Forde, includes one of those circumstances 'otherwise provided by this Constitution', as the requirement is for a majority of all elected members of the National Assembly which, as the CCJ also indicated in **Richardson**, is an 'absolute majority' (See para 6.). Contrary to the arguments on behalf of the AG, this is not the only place where an absolute majority is required in the Constitution. The CCJ in **Richardson** (para 6) highlighted that it is the requirement in **art 164(1)**, but it is also a requirement in **arts 158(2), 212J(1)** and **212AA(2)**. In addition, **art 179(1)**, which speaks to removal of the President on the grounds of incapacity, and **184(3)**, which speaks to removal of the Leader of the

Opposition, also use the same requirement in respect of all elected governmental and all elected non-governmental members, respectively.

69. While the terms 'simple majority' and 'absolute majority' may be useful in common parlance, for the purposes of interpretation it might be best to focus on the meanings of those terms instead of the terms themselves. That is, instead of asking what constitutes an 'absolute majority', this Court will consider what constitutes a 'majority of all elected members of the National Assembly'. Likewise, instead of comparing that with the requirement of a 'simple majority', this Court will compare it with a 'majority of the members present and voting'. This was also the approach used in **Kilman** the case relied on by the AG and the added party, even though the Constitution of Vanuatu actually included the term 'absolute majority'.

70. In considering the meanings of the terms absolute majority and simple majority, it can be seen that the word 'majority' appears in both. Both the applicant and the second respondent have submitted definitions of the word 'majority' which, I note, are not inconsistent with each other. The written submissions on behalf of the AG state that "The ordinary and legal meaning of a majority is a number greater than half". This is not disputed by the second respondent, whose submissions included the definition of majority from multiple sources confirming that definition in using phrases like 'the greater number'.

71. In my view, the difference lies in what the determination of the majority is based on. In the case of a 'simple majority', the determination of a majority is based on the number of persons present and voting. In the case of an 'absolute majority', the determination of a majority is based on the total number of or all the members elected to the National Assembly. Indeed, as Mr. Forde put it, the voting strengths in relation to these two types of majority are different.

72. There is also no dispute as to what constitutes a majority of members present and voting. The parties agree that this means the greater number of votes cast by those members present and taking part in the vote. Thus, it is agreed that the passing of ordinary legislation by a vote of 33:32 constitutes a majority of those members present and voting, since 33 is the greater number of votes when compared to 32.

73. The dispute lies in whether there is a particular formula that must be utilised in calculating a majority of all the elected members of the National Assembly. The AG and the added party argue that there is, the second respondent to the contrary. In submitting on this point, both of those parties rely on the CCJ decision in **Richardson**, where the CCJ said that the passing of a Bill by a majority of all elected members of the Assembly is "more difficult than the passage of ordinary legislation which only requires a simple majority, being a majority of those who voted". (See para 6.)

74. All the parties also rely on **Kilman**, above, to support their contentions as to the formula to be used. The AG also relied on a definition of 'majority rule' from the **Merriam Webster Dictionary**, which is said to be a political principle providing that a majority usually constituted by fifty percent plus one of an organised group will have the power to make decisions binding upon the whole. In relation to this definition, I find that it is unhelpful as it is a definition of 'majority rule', a term not found anywhere in the constitutional provisions which I am tasked with interpreting. I would therefore be very hesitant to equate 'majority rule' with 'majority' as provided for in any of the articles identified above.

75. I now outline the facts in **Kilman** so as to give context to the decision and my discussion of this case. The Vanuatu Parliament consisted of 52 Members of Parliament (MPs) including the Speaker who had a vote as an elected MP. Parliament debated and voted on a no confidence motion in the Prime Minister, Mr. Kilman, who was the appellant. At the time of the vote, all 52 members were present in the House. When the voting took place, the Speaker abstained. Accordingly, only 51 votes were cast. The result of the poll was 26 votes in favour of the motion and 25 against. The Speaker ruled that the motion was carried. This ruling meant that the Prime Minister and Ministers of Government thereupon ceased to hold office. A new Prime Minister was elected within and hour, with the Speaker voting on this occasion.

76. Mr. Kilman challenged the vote of no confidence and was unsuccessful at first instance whereby the Chief Justice held that the vote was properly carried 26:25. On appeal, it was considered that the narrow point for consideration was whether 26 votes in favour of the motion of no confidence in the Prime Minister amounted to an absolute majority of the members of Parliament as required by s 43 (2) of the Constitution which provides:

> "Parliament may pass a motion of no confidence in the Prime Minister. At least one week's notice of such a motion shall be given to the Speaker and the motion must be signed by one-sixth of the members of the Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected."

77. The Court of Appeal of Vanuatu held that, looking at their Constitution as a whole, the voting requirement stipulated in article 43 (2) could only mean at least half of the members of Parliament plus one. With 52 elected MPs, including the Speaker, the Court of Appeal therefore held that the vote required support from half of 52, which is 26, plus 1, which gives 27.

78. As noted in the facts outlined, the motion actually received the support of 26 members, with 25 voting against it and the Speaker having abstained. The Court of Appeal quoted the words of the Chief Justice where he said that (para 18):

> "33. It is the contention of the Applicant that the meaning to be given to "absolute majority" under Article 43(2) is 'at least one of the half plus one' which is 27 of the total of 52 Members of Parliament.
>
> 34. If that contention is right, then, it must be intended by the Constitutional framers in the interest of stable government which requires an overall or "absolute" majority which means 'one over all rivals combined'. This is consistent with all Vanuatu judgments referred to by counsel for the Applicant on the point.
>
> 35. The present case illustrates the context of a dispute when the votes are close to evenly divided numbers. **Parliament consists of 52 members which is an even number of members**. If 26 members voted for the motion of no confidence, and 26 members voted against the motion, the motion is not passed by a majority of the Members of Parliament within the meaning of Article 43(2) of the Constitution. If the motion receives at least one half plus one, it receives a majority of the members of Parliament. Again this is what the constitutional framers intended in the interest of stable governments." (Emphasis mine.)

79. The Court of Appeal overruled the decision of the Chief Justice, but did not reject as incorrect the interpretation of what constituted an absolute majority, which the Chief Justice also said can only be determined by reference to the number representing all members of Parliament. Despite his reasoning on what would represent the votes of all MPs so as to satisfy the absolute majority required, the Chief Justice utilised another provision of the Constitution to support the

vote of 26:25 so as to find that the NCM was carried. The interpretation of 'absolute majority' given by the Chief Justice was implicitly endorsed by the Court of Appeal, so that "at least half plus one", was 27 of the 52 members, which was held to be consistent with the interpretation of what constituted an 'absolute majority'. This is what the Court said (at para 23):

> " ... We consider that the phrase 'an absolute majority of the members of Parliament' can only mean at least one half the members of Parliament plus one; that is, half of 52, being 26, plus 1 equals 27."

80. The reasoning of the Court of Appeal can be seen as well in their treatment of the argument of the respondents in that case, where the Court said at para [21] that:

> "We can envisage the confusion that is likely to arise if the expression an 'absolute majority of the members of Parliament' means anything other than 27 or more in a Parliament of 52 members. In a Parliament of 52 members where one member abstains from voting, the respondents' argument is that this means that the absolute majority is to be assessed against 51 members of Parliament of which a majority, simple or absolute, is 26".

81. The Court of Appeal held (para 31) that this reasoning of the respondents was flawed, the flaw identified was taking 'absolute majority' to refer to all of the members who voted even if there were abstentions or absences and just a bare quorum was achieved. The Court held that the drafters of their constitution could not have contemplated such a situation as this could result in the Prime Minister being removed by only a handful of members once a quorum is present.

82. It is important to emphasise that the judgment of the Vanuatu Court of Appeal was based entirely on the fact that the Parliament was made up of 52 members, and as such an absolute majority could not have been 26 since if 26 persons had voted against the motion there would have been a tie. Thus, to achieve an absolute majority or a majority of all the MPs, the formula that had to be applied was half plus one, that is a number greater than half.

83. Having considered the reference to the term 'members of Parliament' in different provisions of the Constitution, the Court of Appeal further went onto hold that:

> "34. Nowhere is there the slightest suggestion that 'members of Parliament' means anything other than all those elected being 52 in number.

> 35. For the foregoing reasons, we allow this appeal. We consider that the casting of 26 votes in favour of the motion of no confidence in the Prime Minister did not constitute 'an absolute majority of the members of Parliament'. That would have required 27 or more members to vote in favour of the motion."

84. In our National Assembly, unlike in the Vanuatu Parliament, the total number of MPs is an odd number, i.e. 65. The situation of odd number houses is not unique to Guyana, but not many examples were placed before this Court for consideration.

85. The AG submitted two instances of odd-number bodies where it is claimed the principle of 'at least one half plus one' was used. The first is a document evidencing a no confidence motion in the Kenyan Parliament in 1998, where the Speaker is indicated as having used the formula of 'at least one half plus one'. The Kenyan Parliament was stated to have consisted of 221 members. The document which has the following headings: "Parliamentary Debates October 15, 1998" and "Communication from the Chair, Requirements for the Vote of No Confidence Motion to Pass" reveals that the Speaker of the Kenyan Parliament noted that apart from the requirement of seven days notice for such a motion, it required the votes of the majority of all members. The document records the Speaker as saying:

> "It must be clearly understood that it is the majority of all Members of the House as distinct from those present and voting. As of today, there are 221 Members, excluding ex-officio Members. One half of that is 110.5. Since there is no half Member, I will round it to the nearest whole number which is 111. A majority vote for the purposes of section 59(3) of the Constitution, is therefore 112. The motion will therefore only be carried if 112 of you vote for it. If it does not attain that number, it will be deemed to have failed. The upshot of the foregoing is that at the end of the debate I will immediately direct a Division rather than calling for Acclamation."

No explanation was given by the Speaker as to his basis for utilising this formula, which it is noted was set as the parameter prior to the vote.

86. It must be noted here, that in the NCM moved in our National Assembly, the Speaker found that the motion had been carried by a majority of 33:32. The AG admitted in his oral submissions that no one in the National Assembly at the time, neither the elected members nor

anyone else, indicated to the Speaker prior to the vote that the vote could not be carried by a majority of 33:32. And, when this challenge was raised subsequently, the Speaker declined to recall the vote and considered that the question should be referred to this Court for determination.

87. I consider that it would be inconceivable that I would accept what was said by the Speaker in the Parliament of another jurisdiction over twenty years ago, without any identifiable authority indicated, to overturn a ruling made by the Speaker of our National Assembly, and the validity of which was not doubted at the time either by the Speaker or by any of the elected members of the National Assembly, who were all present for and participated in the NCM, including the applicant as AG.

88. The other instance referred to by the AG is the no confidence motion moved by the Conservative Party in the United Kingdom against the current Prime Minister, Theresa May, in December, 2018. The claim, supported by an exhibit from an article from the BBC News, is that a majority of 159 of the 315 members of her party was required to pass the no confidence motion against her. Once again, no authority, whether the Rules of the Conservative Party or a case interpreting such Rules has been referenced. Instead, this Court is invited to rely on a single journalistic report to find that the entire National Assembly, inclusive of the Speaker and the applicant as AG, fell into error on the evening of December 21, 2018. I robustly refuse this invitation.

89. Instead, I will turn to an actual instance closer to home, that is in our sister CARICOM country of Trinidad and Tobago, in the early 2000s where there was a situation from which a parallel can be drawn. As is seen from the judgment of the Privy Council in **Bobb & anor v Manning** [2006] UKPC 22; [2006] 4 LRC 735, the General Election in Trinidad and Tobago in December, 2001 resulted in two parties each winning 18 of the 36 seats being contested in the 36 constituencies. Therefore, neither Party could claim to command the support of a majority of the members of the House. As a result of the resultant hung parliament, Parliament was dissolved and another election held in October, 2002, with the constituencies being shared 20 to 16 in this instance.

90. The Privy Council noted that, following this occurrence, the House adopted a recommendation of the Elections and Boundaries Commission that the number of constituencies be increased from 36 to 41, an uneven number, in order "To avert or reduce the risks of repetition" [para 9]. Such a move by the House further indicates that a majority is more easily obtained in an odd number house, where there can be no tie if the votes of all members are accounted for. Instead of requiring at least half plus one for a majority, which would have been 19, that is 18+1, of the 36-member House, the House would require 21 for a majority of the 41-member House.

91. It is important to realise that the formula of "at least half plus one" is not inconsistent with the interpretation of "one over all rivals combined". In the Vanuatu Parliament in **Kilman**, one over all rivals combined could not have been 26, as the maximum number of potential opposers could have also been 26 and this would have resulted in a tie. Thus, as the Court of Appeal held, an absolute majority in that case could only mean 27 of the 52, in which case the maximum number of opposers could only be 25. This is to say, half would have been 26, plus one was necessary to secure the majority.

92. As is made evident from the above, the principle is essentially the same in each case, but the formula of at least half plus one is required in the case of even-number houses for it to be properly applied. This is because there is potential for the number of persons voting in favour of something being equal to those voting against it. In odd number houses, there is no such potential when all members participate in the vote, as one side must have at least one more than the other side.

93. It is also very important to make pellucid here that the question is not whether all members vote and what is the absolute majority of that number. The question is **if** all members are to vote what would be the absolute majority of that number. Thus, as the Chief Justice in **Kilman** recognised, an absolute majority is determined by reference to the number representing all members.

94. An interesting point that arose from the arguments in this case is whether, if all members are present and voting, an absolute majority will also be equal to a simple majority. The contention for the AG, citing **Richardson** for support, is that it cannot be the same. Otherwise,

says the AG, the words of the CCJ that an absolute majority is more difficult to obtain than the simple majority would have no effect. The AG thus submits that, while 33 is a simple majority of 65, it cannot be an absolute majority of 65. In my view, this contention is misguided.

~~95.~~ In **Kilman**, an absolute majority was found to be 27 of the 52 members. But if the Speaker had not abstained, resulting in all 52 members voting, since a simple majority is a majority of those present and voting, a simple majority of 52 would have also been 27. This is to say, in a situation where all the elected members are present and voting, a simple majority and an absolute majority would be the same in number. Put another way, a simple majority is dependent not on the total number of members of the Assembly, but on the number of members present and voting.

96. The Court of Appeal in **Kilman** (para 21) recognised this when they looked at art 21(4) of their constitution, which provided that where a quorum of two-thirds is not achieved Parliament may meet three days later when a 'simple majority of members' shall constitute a quorum. The Court said that this might result in the general business of Parliament being conducted by as few as 27 members, recognising that a simple majority of 52, like an absolute majority, is also 27. Further, having achieved a quorum, the vote is then a simple majority of those members voting, meaning that the general business of the house may be conducted by as few as 27 members and legislation may be passed by a simple majority of those of the 27 who vote. This reasoning and example clearly demonstrate the fallacy of the claim by the AG and the added Party that an absolute majority must be more than a simple majority. It was also noted in this decision that a simple majority, being a majority of those present and voting, can nevertheless be a small number once a quorum is achieved.

97. In sum, an absolute majority of 52 members, being a majority of all members whether present or not, would always be 27. In the case of Vanuatu, an absolute majority provision will always require at least 27 votes in favour of a motion for it to pass, while in the case of a simple majority a small number may suffice once a quorum is achieved. Thus, using the Vanuatu example again, if 52 members are present and voting a simple majority is 27, but if only 51 are present and voting, a simple majority is 26. Likewise, if only 27 members are present and voting, a simple majority is 14.

98. Following the above reasoning, it is not difficult to see what the CCJ meant in **Richardson** when it was said that an absolute majority is more difficult to achieve than a simple majority. At para 14.49 of '**Changing Caribbean Constitutions**', Dr. Alexis states that: "If a no confidence motion is to succeed, and thus be passed as a no confidence resolution, it needs the stipulated majority vote in the House. In bicameral Parliaments this vote is that of all the members of the House, an absolute majority; except in two countries [Belize and St. Lucia] where a simple majority suffices." (Emphasis mine.) Thus, Dr. Alexis equates an absolute majority with a requirement of a majority vote of all the members of the House. So it is more difficult because an absolute majority, being a majority of all members of the Assembly, will always be based on the total number of members of the Assembly. In these circumstances, there would be certainty as to the number of votes that are necessary to satisfy a requirement for a vote of a majority of all the elected MPs. The votes required would not vary as could be the case for a simple majority.

99. A simple majority, that is a majority of those members present and voting, may vary as for example: in our 65 member National Assembly, in the case of a requirement for a simple majority, if 63 members were present and voted, 32 votes would constitute a simple majority; if 45 members are present and voting, a majority of those members present and voting would 23; if 55 members are present and voting, a majority of those members present and voting is 28. If all 65 members are present and voting, a simple majority of those members present and voting is 33.

100. However, where there is a requirement, as in **art 106(6)**, for the vote of a majority of all the elected members of the National Assembly, therefore, a majority of all elected members of the National Assembly, in accordance with the principle of "one over all rivals combined", or the greater number, it would be mean that the votes of 33 members would be required. This is so since the maximum number of potential opposers can only be 32.

101. If all 65 members are present, a majority of all the elected members of the National Assembly is 33. Therefore, in the case of a requirement for majority of all elected members of the National Assembly, at least 33 votes must always be obtained to meet that requirement. If 55 members are present, a majority of all elected members of the National Assembly would still be 33. If only 45 members are present, a majority of all elected members of the National Assembly

is still 33. And even if only 33 members are present, a majority of all elected members of the National Assembly is still set at 33. Thus, if there are less than 33 members present, no Bill or motion can be passed if the requirement is for a majority of all elected members of the National Assembly. As I pointed out earlier, this fixed requirement of votes which, as **Kilman** and **Dr. Alexis** confirm, is also referred to as an absolute majority, allows for certainty of the vote that would be required in these circumstances. Indeed, I am of the view that a closer reading of **Kilman** would reveal that it does not assist the applicant; indeed, the judgment nullifies the applicant's contentions.

102. Since the principle to determine the absolute majority can be effectively applied without the necessity for a fraction and rounding up, the principle elucidated in **Hughes v Rogers** (*supra*) in respect of rounding up is not relevant to the determination of an absolute majority in either odd or even number houses. This is to say, **art 106(6)** does not refer to any fraction, or to a requirement for a half of all the elected members to be determined and then an addition of one. To use the language of Saunders J, as he then was, in **Hughes v Rogers**, **art 106(6)** does not provide for a "mathematical formula" for arriving at a majority. It provides for a determination of a majority of all the elected members of the National Assembly. It is **art 106(7)** that requires a fraction in two-thirds of the votes of all the elected members of the National Assembly in order to extend the life of the Government after the passage of a NCM.

103. In **Hughes v Rogers**, Saunders J had to determine how many members constituted a quorum of the House of Assembly of Anguilla. The relevant provision of the Anguilla Constitution, s 52(2), required that a quorum consisted of two-thirds of the members of the Assembly in addition to the person presiding. The Assembly consisted of 11 members so two-thirds of this number was found to be 7 and one-third. Appling established principles, Saunders J rounded up this figure to hold that the Speaker of the Anguilla Assembly was correct in his view that the quorum was 8 members. The issue of what constituted a majority of the National Assembly was not before the Court for consideration.

104. The principle of rounding up was recognised by the Court of Appeal in **Kilman**, but only in relation to those articles in the Vanuatu Constitution that spoke of fractions, for example

where one-sixth of the MPs were required to sign the motion of no confidence to be tabled in the Parliament. (See para 32.)

105. Likewise, this principle of rounding up would have application in provisions of our Constitution that speak of fractions, such as **art 106(7)**, as noted above, where a vote of two-thirds of all the elected members would be necessary to extend the period for the holding of elections after the defeat of a government on a NCM. Thus, while there are provisions in our Constitution where fractions are required and rounding up may be necessary, **art 106(6) of** our Constitution, like art 43(2) of the Vanuatu Constitution, makes no reference to fractions and as such does not require the application of the principle of rounding up as applied in **Hughes v Rogers**. To apply the principles regarding fractions would be to read into or import into art 106(6) a provision or language which it does not have. As such, **Hughes v Rogers** can be distinguished as it is not a case that dealt with a determination of what would constitute a majority or a special majority of the members of the Anguilla House of Assembly.

106. Indeed, one cannot utilise a combination of the decisions in **Hughes v Rogers**, which was about deciding on the result from a fraction of the number of MPs to determine a quorum, and **Kilman**, which spoke to determining what was a majority in an even number Parliament, to import into **art 106(6)** that the total number of MPs, being 65, should be divided half, then the result be rounded up, and then one added in order to determine the required majority.

107. As such, I have concluded that the majority required by **art 106(6)**, being a majority of all elected members of the National Assembly, is at least 33 members.

Can the President and the Ministers of Government can remain in office?

108. As a result of my findings above, I hold that the NCM was carried as the requisite majority was obtained by a vote of 33:32. The President and the Ministers cannot therefore remain in Government beyond the three months within which elections are required to be held in accordance with **art 106(7)**, unless that time is enlarged by the National Assembly in accordance with the requirements of the said **art 106(7)**.

The Other Questions

109. Owing to my findings above, the other questions raised by the applicant are rendered moot and do not need to be addressed in this application, except to say that this Court cannot set aside or nullify a ruling that was validly made in accordance with the provisions of **art 106(6)** of the Constitution, nor can it stay the enforcement of a Resolution validly declared in accordance with the same provision of the Constitution. Such is prohibited as held in a number of cases, e.g. **AG of Guyana v Trotman & Granger** HCA 216/W 2012 .While a court can intervene to enquire about what has occurred in proceedings in the National Assembly, this can only be done if the National Assembly has acted unconstitutionally. This is not the case here. The NCM and the vote taken thereon which resulted in Resolution 101 were not on December 21, 2018 and are not unconstitutional.

Conclusion

110. In conclusion having overruled the preliminary objection and application by the second respondent to strike out this application the answers to the questions posed are as follows:

(a) Whether the Speaker's Ruling that the motion of No Confidence debated in the National Assembly on the 21st day of December, 2018 was carried by a vote of a majority of all the elected members of the National Assembly is unlawful, null and void, being contrary to Article 106(6) of the Constitution of the Cooperative Republic of Guyana.

The answer is that the Ruling of the Speaker that the motion of No Confidence debated in the National Assembly on December 21, 2018 was carried by a vote of a majority of all the elected members of the National Assembly is lawful and valid.

(b) Whether the motion of no confidence upon a division vote of 33:32 Members of the National Assembly was validly passed as the requisite majority of all the elected members of the National Assembly pursuant to article 106(6) of the Constitution.

The answer is that the motion of no confidence upon a division vote of 33:32 Members of the National Assembly was validly passed as the requisite majority pursuant to art 106(6) of the Constitution was obtained.

(c) Whether the requisite majority of all the elected members of the National Assembly ought properly to be 34 votes.

The answer is that the requisite majority of all the elected members of the National Assembly ought not to be 34 votes but is 33 votes.

(d) Whether the President and all Ministers of Government can remain in office as a majority vote was not duly carried in accordance with article 106(6) of the Constitution.

The answer is that the President and all Ministers of Government remain in office pursuant to article 106(7) of the Constitution as the motion was duly carried by a majority vote in accordance with article 106(6) of the Constitution.

(e) Whether the Court can make an order setting aside or nullifying the Speaker's Ruling that the No Confidence Motion was carried.

As a consequence of the answers to the questions at (a), (b), (c) and (d) above, the answer to this question is that an order setting aside or nullifying the Speaker's Ruling that the No Confidence Motion was carried cannot be made.

(f) Whether the Court can make an order staying the enforcement of Resolution 101 declared by the Clerk of the National Assembly to have been passed on the 21st of December, 2018 in the National Assembly.

As a consequence of the answers to the questions at (a), (b), (c) and (d), the answer to this question is that an order staying the enforcement of Resolution 101 declared by the Clerk of the National Assembly that the No Confidence Motion was carried, cannot be made.

(g) Whether the Court can grant a conservatory order preserving the *status quo ante* that the President and all Ministers of the Government remain in office until the hearing and determination of the questions sought herein.

As a consequence of the answers to the questions at (a), (b), (c) and (d), an answer to this question, whether a conservatory order preserving the *status quo ante* that the President and all Ministers of the Government remain in office until the hearing and determination of the questions sought herein, is not necessary.

Additional orders

And it is hereby ordered that the oral application by the AG for a stay of the answers to the questions and for a conservatory order to preserve the *status quo ante* that the President and all Ministers of Government remain in office since an appeal was going to be filed, is hereby refused. I concluded that apart from the point raised by Mr. Nandlall that it would be difficult to contemplate a stay of answers to questions asked, that it would be best if the

appellate court with the benefit of the appeal and the grounds therefor, considered whether a stay and conservatory order should be granted.

And it is hereby further ordered that there is no order as to costs.

Roxane George
Chief Justice (ag)
January 31st 2019