

2019-HC-DEM-CIV-FDA-29

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

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

BETWEEN:

CHRISTOPHER RAM

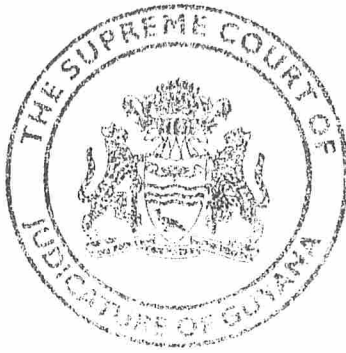
Applicant

v

1. THE ATTORNEY GENERAL

2. THE LEADER OF THE OPPOSITION

Respondents



Jan. 15, 23, 31, 2019.

Mr. Kamal Ramkarran for the applicant.

Mr. Basil Williams SC, Mr. Maxwell Edwards and Mr. Mayo Robertson 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.

CORAM: JUSTICE ROXANE GEORGE

CHIEF JUSTICE (ag)

JUDGMENT OF THE COURT

Introduction and background

1. 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 Members of Parliament (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. 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.

2. There has been much debate and contention since regarding whether Mr. Persaud's vote was valid and therefore whether the division of votes as recorded and confirmed by the Speaker of the National Assembly as Resolution 101 which was also subsequently confirmed by letter to the Party Whips by the Clerk to the National Assembly, permitted the Government to be defeated. There has also been contention regarding whether the requisite majority of votes was cast pursuant to **art 106 (6)** of the Constitution so that the NCM could have been carried.

3. The applicant, Christopher Ram, who is an attorney-at-law, and deposed that he is a citizen of the United Kingdom and registered to vote at elections in Guyana, filed this Fixed Date Application on January 8, 2019 seeking the following Declarations:

- (1) A declaration that on 21 December, 2018, the National Assembly of Guyana properly, validly and lawfully passed a motion on a vote of No Confidence provided for by Article 106(6) of the Constitution, in which the Government was defeated.
- (2) A declaration that the passage of the motion provided for by article 106(6) of the Constitution by the National Assembly on 21 December 2018 requires the resignation of the Cabinet, including the President, with all convenient speed.
- (3) A declaration that, in accordance with Article 106(7) of the Constitution, the Government constituted and comprised of the 33 elected members of the National Assembly coming from the coalition between A Partnership for National Unity and the Alliance for Change, elected at the national and regional elections in 2015, excluding the Cabinet including the President who shall resign with all convenient speed, shall remain in office until after the President takes the oath of office following elections to be held within 90 days of December 21, 2018 or within such extended period as the National Assembly shall determine by resolution supported by not less than two-thirds of the votes of all elected members.
- (4) A declaration that the passage of the motion provided for in article 106(6) of the Constitution by the National Assembly on 21 December, 2018 requires that national and regional elections in Guyana be held no later than March 21, 2019, that date being the ninetieth day from December 21, 2018.

4. The question of whether the NCM was validly passed has been extensively addressed in the matters of **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 **Attorney-General v Dr. Barton Scotland, Speaker of the National Assembly and Mr. Bharat Jagdeo, Leader of the Opposition and Mr. Joseph Harmon, Representative of A Partnership for National Unity**, 2019-HC-Dem-Civ-FDA-22, with the issue of what constitutes a majority of all elected members of the National Assembly being examined and questions answered in the latter. I found in those matters that the NCM was validly passed by a majority of 33:32.

5. I did say when I read this judgment that I would include a synopsis of the arguments and decisions in these cases as regards the validity of the NCM for the completeness of this decision. I do so now.

Synopsis of related applications

6. In the fixed date application filed by Mr. Reid he contended that the Mr. Persaud had violated arts 155 (1)(a) and 156 (3) of the Constitution of Guyana in that he on the date of the NCM was a dual citizen of Guyana and Canada and because he voted against the list he was elected to represent so that his vote was invalid and the NCM was thereby not carried. Reid sought a number of declarations and orders as follows:

- (1) A declaration that Charrandass Persaud is not qualified for election as a member of the National Assembly by virtue of his own act and acknowledgement of allegiance, obedience and adherence to a foreign power to wit, the Sovereign State of Canada, in contravention of Article 155 (1) (a) of the Constitution of Guyana.
- (2) A declaration that Charrandass Persaud, was on the 7th April, 2015 disqualified from being nominated as a member of the National Assembly of the Republic of Guyana.
- (3) A declaration that the nomination of Charrandass Persaud on the 7th April 2015, as a candidate for the APNU+AFC List of Candidates in the Geographic List for Region No. 6, is invalid, null and void and of no legal effect.
- (4) A declaration that Charrandass Persaud is a citizen of Canada and is the holder of a valid Canadian passport No. AC773625 issued by the Government of Canada on the 25th October 2017, which will expire on the 25th October

2022 and was a replacement of the previous passport No. JX818124, which was issued to the second respondent on 29th January 2013 and expired on 29th January 2018.

- (5) A declaration that Charrandass Persaud who was not qualified for election as a member of the National Assembly at the General Elections held on 11th May 2015, was not, on the 21st December 2018, qualified to vote as a member of the National Assembly.
- (6) A declaration that the vote cast by Charrandass Persaud on the 21st December 2018 in the National Assembly in favour of the vote of No Confidence was null, void and of no legal effect.
- (7) A declaration that by reason of the unlawful 'Yes' vote cast by Charrandass Persaud, the No Confidence vote was not passed.
- (8) An order setting aside the order of the Speaker that the No Confidence Motion, Resolution No.101 was passed by the National Assembly on the 21st December, 2018.
- (9) (a) An Order staying the enforcement of Resolution No 101 declared by the Clerk of the National Assembly to have been passed in the National Assembly on December 21st, 2018.
(b) A conservatory order, preserving the status quo ante that the Government remains in office until the hearing and determination of the reliefs sought herein.

7. Then the Attorney General also filed a Fixed Date Application by way of case stated pursuant to Part 61.03 of the Civil Procedure Rules in which he asked the Court to answer the following questions:

- 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 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.

8. However, for the completeness I briefly set out the submissions advanced on behalf of the parties which were similar to those in the above related cases, and give my conclusions thereon.

Was the No Confidence Motion carried?

9. Mr. Ramkarran submitted that the requisite majority to pass the NCM on December 21, 2018 was 33 votes and as such the motion was carried. He stated that the Constitution – art 106 - requires a vote of a majority of all the members of the National Assembly and this was achieved. As regards the issue of Mr. Persaud's dual citizenship and disqualification from being an MP, he submitted that the Constitution saves the proceedings where an unqualified MP participated in such proceedings by virtue of art 165(2). It was also submitted that the de facto doctrine as outlined in *Wade & Forsythe on Administrative Law* (11th edn, 2014 at pp 238 – 241) would apply to the vote of Mr. Persaud. This doctrine it was submitted serves to validate the actions of an official who was not entitled to appointment to a particular position. It was also advanced that the consequence for the participation of an unqualified member in a proceeding of the National Assembly is stated in art 58 of the Constitution which provides for a fine of \$50.00 per day for each day of such participation, and that the procedure for challenging an unqualified elected MP was by way of election petition pursuant to art 163 and the National Assembly (Validity of Elections) Act, Chapter 1:04.

10. Mr. Nandlall supported the submissions made by Mr. Ramkarran that the NCM was validly passed. He relied on his submissions in **Reid** and **AG v Dr. Barton Scotland**. He also submitted that if Mr. Persaud had voted against the NCM, then the issue of the invalidity of his

vote due to dual citizenship would not have arisen. He further submitted that he was not a usurper as he had been extracted and given a seat by the government. As regards the number of votes to pass the NCM, he stated that 33 votes amounted to a majority of the votes of all the members of National Assembly. He posited that if it was that the motion could not have been carried by 33 votes for the opposition, then it similarly could not have been defeated by 33 votes for the government.

11. It was submitted on behalf of the first respondent that he was relying on the submissions made in **AG v Dr. Barton Scotland, Speaker of the National Assembly & Ors** referred to above. In synopsis, it was therefore contended that there was a miscalculation of the majority that was legally required for a NCM pursuant to **art 106(6)**. This sub-article, it was asserted, requires more than a simple majority; it requires an absolute majority which is to be calculated as half of all the elected members of the Assembly plus one. Reliance was placed on the judgment of Sir Denis Byron, P, CJJ in **AG of Guyana v Richardson** (2018) 92 WIR 416 at para 6 where His Honour stated:

“Article 164 regulates the method of altering the Constitution. It entrenches every Article of the Constitution. There are three levels of entrenchment allowing the degree of difficulty in making alterations to be proportionate to the importance of the Article to be changed. Articles enjoying the shallowest level of entrenchment require the votes of an absolute majority of the National Assembly for their alteration. This is described in Article 164 (1) which prescribes that “... 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 the elected members of the Assembly.” This is more difficult than the passage of ordinary legislation which only requires a simple majority, being a majority of those who voted.” (Emphasis mine.)

Applying this *dictum*, more especially that which is emphasised, and the cases of **Hughes v Rogers**, Civil Suits Nos. 99 & 101/1999, Anguilla, and **Kilman v Speaker of Parliament of the Republic of Vanuatu** [2011] 4 LRC 656 it was submitted that the requisite majority for **art 106(6)** would be 34 or more votes, which would be the absolute majority which was required.

12. As regards the issue of dual citizenship, it was submitted that because Mr. Persaud had dual citizenship of Guyana and Canada at the time he voted against the NCM, which dual citizenship disqualified him from being an MP as provided for in **art 155 (1)** of the Constitution,

this meant that his vote was invalid and could not be counted. His vote was also unlawful because he ceased to be an MP when he breached **art 156 (3)** which provides for the resignation or recall of an MP who no longer supports the list from which his name was extracted for a seat in the National Assembly. Therefore, it was asserted that **art 165 (2)** could not be utilised to validate his unlawful vote as he was a usurper and not a de facto participant in the National Assembly. It was submitted that although the NCM proceeding was valid, Mr. Persaud's vote was invalid and illegally cast so it could not be saved by **art 165 (2)**.

13. It is this backdrop of submissions that I made the following findings in granting two of the declarations sought in **Reid v Dr. Barton Scotland & Ors** and refusing the others; and answering the questions posed by the AG in **AG v Dr. Barton Scotland, Speaker of the National Assembly & Ors**. I concluded as follows in **Reid**:

(a) That 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.

(b) That 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.

As regards the answers to the questions posed by the AG, I concluded that:

(i) 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, and that the motion 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. As such I held that the requisite majority of all the elected members of the National Assembly ought not to be 34 votes but is 33 votes.

(ii) I further concluded that as a consequence 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.

(iii) Based on these conclusions which answered the questions asked by the AG, the order prayed for to set aside or nullify the Speaker's Ruling that the No Confidence Motion was carried could not be made. In addition, as a further consequence an order staying the enforcement of Resolution 101 declared by the Clerk of the National Assembly that the No Confidence Motion was carried, could not be made. And further, that 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, was not necessary.

14. As such, the declaration sought at (1) in this application that the NCM was validly passed is granted, that is, that on 21 December, 2018, the National Assembly of Guyana properly, validly and lawfully passed a motion on a vote of No Confidence Motion provided for by **article 106(6)** of the Constitution, in which the Government was defeated.

Considerations regarding the declarations as framed in paras (2), (3) and (4) of this Fixed Date Application

15. I turn now to the other major issue to be determined in this application which speaks the consequences of the December 21, 2018 NCM.

16. Mr. Ramkarran for the applicant, on being invited by this Court to consider that the declarations at (3) and (4) above cannot be granted as worded, sought the Court's indulgence to amend these declarations as sought. In so doing, Mr. Ramkarran acknowledged that the declarations cannot be granted as framed above.

17. The submissions on behalf of the applicant clearly indicate that the claim in (3) that the 'Government' referred to in **art 106(7)** refers to the 33 governmental members of the National Assembly was abandoned. This is because it was argued that the President and the Ministers who constitute Cabinet must resign their functions in Cabinet but retain their offices until elections are held. This issue will be addressed in considering the declaration sought at (2).

18. The declaration requested at (3) also serves to highlight that the question of whether elections must be held no later than the 90th day from December 21, 2018, that day being March 21, 2019, is subject to an extension permitted in the Constitution in accordance with the provisions of **Article 106(7)**. Since the National Assembly may, by resolution supported by at least 2/3 of all elected members of the Assembly, extend that timeline, it would be inappropriate for this Court to make such a declaration as requested in (4) above. In any event, the amended declarations would mean that those sought at (3) and (4) would be the same and would simply amount to declaring that which the Constitution already clearly states.

19. In summary, for the reasons given above, the issues raised in (1), (3) and (4) above are no longer in dispute before this Court. As such, the primary issue left for determination in this application is the effect of the valid passing of a NCM. More specifically, does the passing of the NCM require the resignation of the Cabinet, including the President, with all convenient speed. In this regard it is noted that given the submissions and decisions in the two related matters referred to at [4] above, the submissions in this case focused on the effect of the NCM.

Does the Cabinet, including the President, have to resign with all convenient speed?

20. Mr. Ramkarran submitted that **s. 39** of the **Interpretation and General Clause Act, Cap. 2:01**, provides that, where no time is prescribed or allowed in a written law within which anything shall be done, such thing shall be done with all convenient speed. The first question to be answered here, therefore, is whether in fact no time has been prescribed or allowed for the resignation of the Cabinet, including the President, following the passing of a No Confidence Motion.

21. **Article 106(7)** provides that, notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, unless this time is enlarged by a resolution supported by not less than 2/3 of the votes of all the elected members of the National Assembly, and shall resign after the President takes the oath of office following the election. While there is a timeline provided for in this paragraph, the applicant submits that the timeline is in reference to the offices of the President and the Ministers and not to Cabinet.

22. Mr. Ramkarran further submitted that the President and the Ministers who comprise the Cabinet under the provisions of **Article 106** are to resign their roles in Cabinet, and that Cabinet

therefore ceases to perform its functions. The President and the Ministers, according to the applicant, remain in office much like a caretaker body, like the Government of the United States of America between elections in November and the swearing-in of a new President in January.

23. In terms of how this resignation is to be effected, it was submitted that it is to be done in accordance with **art 229 (1)** of the Constitution, which provides that:

“Any person who is appointed or elected to or otherwise selected for any office established by this Constitution (including any office established under article 100, 124 or 125) may resign from that office and, save as otherwise provided by articles 156(1), 157 and 178(1), shall do so by writing under his or her hand addressed to the person or authority by whom he or she was appointed, elected or selected.”

24. In this regard, it was contended that the Prime Minister and Ministers are to address their resignation from Cabinet to the President who appoints them under **art 106(1)**, while the President is to address his resignation to the Speaker. It was highlighted that the contention is that it is Cabinet and its functions as defined by the Constitution which come to an end, while the President and the Ministers remain as the President and as Ministers.

25. These submissions require an analysis of the provisions in the Constitution concerning the President and the Ministers of Government. In particular, they require an investigation into what, if any, distinction exists between the Cabinet and the Government under **art 106**, and how exactly is the resignation of the persons constituting these bodies to be effected.

26. The office of the President of Guyana is established by **art 89**, which provides that the President shall be the Head of State, the supreme executive authority and the Commander-in-Chief of the armed forces of the Republic. **Article 111(1)** provides that, in the exercise of his or her functions under the Constitution, the President shall act in accordance with his or her own deliberate judgment except in cases where, by this Constitution or by any other law, he or she is required to act in accordance with the advice or on the recommendation of any person or authority.

27. **Article 92** provides that the President continues in office until the person elected to the office of the President in an election assumes office unless, as provided for in **art 178(1)**, he dies, resigns by writing under his or her hand addressed to the Speaker, or ceases to hold office by

virtue of **arts 92** (subsequent elections as mentioned above), **179** (removal on the grounds of incapacity) or **180** (removal for violation of the Constitution or gross misconduct). In respect of the resignation of the President, **art 229** acknowledges that this resignation is otherwise provided for in **art 178(1)**.

28. The office of the Prime Minister and other ministerial offices are established by **art 100**. **Article 101(1)** provides that the President shall appoint an elected member of the National Assembly, who is eligible to be elected as President, to be the Prime Minister. **Article 103(1)** states that “the Prime Minister and every other Vice President shall be a Minister of the Government of Guyana” while **art 103(2)** provides that Vice-Presidents and other Ministers shall be appointed by the President from among persons who are elected members of the National Assembly, or subject to **art 160(3)(a)(vii)** are qualified to be elected as such members.

29. The Prime Minister is “the principal assistant of the President in the discharge of his or her executive functions and leader of Government business in the National Assembly” as provided in **art 101(2)**. Pursuant to **art 107**, the Ministers may be assigned responsibility for any business of the Government of Guyana by the President, including the administration of any department of Government. Resignation of a Minister is provided for in **art 183(3)(a)** which indicates that he or she may resign by writing under his or her hand addressed to the President.

30. The Cabinet is established by **art 106(1)**, and consists of “the President, the Prime Minister, the Vice-Presidents, and such other Ministers as may be appointed to it by the President.” **Article 106(2)** provides that the “Cabinet shall aid and advise the President in the general direction and control of the Government of Guyana and shall be collectively responsible therefor to Parliament.”

31. There is nothing in **art 106** or otherwise that suggests that new offices are created in the formation of Cabinet. The President is part of Cabinet by virtue of being elected to the office of the President. The Prime Minister and the Vice-Presidents are members of Cabinet by virtue of the ministerial offices to which they have been appointed by the President. The other Ministers, though appointed to Cabinet by the President, are so appointed in their ministerial offices, to which they were separately appointed by the President.

32. Cabinet does not appear, therefore, to create any new offices in Government, but simply forms a subset of the governmental offices in order to carry out the functions identified in the Constitution and in other laws. Mr. Nandlall so submitted, further contending that ministers who are not members of the Cabinet would not have to resign from the Cabinet. **Article 106(4)** makes it clear that Cabinet may act notwithstanding any vacancy or absence of members. **Article 106(5)** provides that a Minister who has not been appointed to Cabinet may be invited to Cabinet by the person presiding at a meeting, not necessarily the President or even the Prime Minister, and that person may participate fully in the proceedings as if he or she were a member. This serves to emphasise the fact that there are no ‘offices’ in Cabinet per se. Instead, it is a collection of Ministers within the Government who are brought together to carry out particular duties as the Cabinet.

33. As indicated above, there is no submission before this Court that the President and the Ministers are to resign their offices upon the passage of a NCM. The applicant clearly states in his written submissions that “Nothing suggests that the President or the Ministers resign as President or Ministers. They simply cannot be part of Cabinet which cannot perform its functions once the Government is defeated on a vote of confidence”. **Article 229**, therefore, does not appear to assist the applicant, since it provides for persons to “resign from that office”. If the President and Ministers simply cease to function as Cabinet, but continue in the offices to which they were appointed, **art 229** does not address resignation of the Cabinet.

34. The provisions in relation to the resignation of the President, in **art 178(1)(b)**, and of the Ministers, in **art 183(3)(a)**, also speak to resignation from those offices and not of a particular function or role or the membership of Cabinet. The question remains, therefore, as to the effect of **art 106(6)**. So I now set out **art 106 (6)** and **(7)** 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.)

35. **Article 106(6)** provides that the Cabinet shall resign, while **Article 106(7)**, which is connected to **art 106(6)** by the phrase ‘Notwithstanding its defeat’, provides that the Government (1) shall remain in office, (2) shall hold elections within three months, and (3) shall resign after the President takes the oath of office following the next election. It is clear, then, that the result of the Government being defeated on a vote of confidence by a majority of all the elected members of the National Assembly is twofold: The Cabinet must resign and the Government must resign. The issue is: when are these resignations to take effect.

36. **Article 106(7)** must be interpreted to mean that the Government shall vacate office after the President takes the oath of office following an election. This would be consistent with **arts 178(1)(c)** and **183(3)(c)** which provide that the offices of President and Ministers become vacant on the election of any person to the office of President. No formal resignation by the President and the Ministers would, therefore, be necessary under **art 106(7)**, as the election of the next President would cause their resignation to take immediate effect. This is to say, pursuant to these provisions their resignations would be effected by the operation of law.

Further Submissions

37. After reviewing **art 106(6)** and (7), and the initial submissions, I requested further submissions on whether, if the Government is defeated by a majority of all elected members of the National Assembly on a vote of confidence, the resignation of Cabinet takes immediate effect. The first respondent filed written submissions, which were elaborated on in his oral arguments, while the applicant and the second respondent both made oral submissions.

38. Mr. Ramkarran submitted that, on the question being raised and on reviewing the **art 106**, he adopted the view that the resignation of Cabinet does take immediate effect, contrary to his initial claim that the Cabinet should resign with all convenient speed. In support of this, counsel relied on the use of the word ‘if’ in **art 106(6)**, submitting that this creates a condition which, once obtained, results in the consequence taking effect. A parallel was drawn with such situations in contract and estate law where something comes into effect upon the fulfilment of a condition.

39. Mr. Nandlall also sought to adopt the view that the resignation of the Cabinet takes immediate effect upon the passage of the NCM. He also submitted that, in the event any letter of resignation or similar act is called for, this should be done with all convenient speed. He maintained, though, that this does not mean that if such an act is not done the resignation does not take effect. Mr. Ramkarran, in his reply, also said if some act should be done it should be done promptly, and pointed to **art 229** once more for the form that act should take.

40. The first respondent, on the other hand, answered the question in the negative, contending that the resignation of the Cabinet is concurrent with the resignation of the Government. The first respondent submitted that the timeframe for the resignation of both the Cabinet and Government is provided for in **art 106(7)**, which provides for this to be done after the President takes the oath of office following elections, which are to be held within three months unless extended by the National Assembly.

41. The first respondent argued that any interpretation requiring Cabinet to resign before that time will result in chaos. In this regard, it was claimed that, without a Cabinet, there would be no coordination between the various Ministers of Government. It was submitted applying **Attorney General of Guyana v Richardson** (2018) 92 WIR 416 regarding the construction and interpretation of Constitutions that “upon a purposive construction of art 106 (7) the framers must have intended to avoid a directionless, uncontrolled and uncoordinated Government to be in office even for three months.” It was also queried whether ministers would be in breach of the law if they met to discuss governmental matters. It was argued that the specific identification of the President in **art 106(6)** means that, upon the resignation of Cabinet, the President must also resign his office. It was asserted that the word ‘Notwithstanding’ in **art 106(7)** addresses this inconsistency by making **art 106(6)** subject to **art 106(7)**. This would result in fulfilling the purpose of **art 106(1)** and **(2)** which is that once there is a Government, there must be a Cabinet and that once there is a Parliament there must be a Cabinet.

Analysis of the Submissions

42. In relation to the submissions on behalf of the applicant, this Court accepts that, once the condition of the Government being defeated by a NCM has been met, the consequence must take

effect, that is, Cabinet must resign. I am not convinced, however, that the use of the word ‘if’ *ipso facto* means that this must take immediate effect. The examples given in relation to a promise of money on marriage and the taking of a benefit under a will on the death of a testator are not helpful. The use of the word ‘if’, therefore, does not conclusively indicate that the resignation of cabinet takes immediate effect upon the passage of a NCM.

43. On the other hand, the submissions of the first respondent that resignation of the Cabinet and the Government must be taken together, as there must be a Cabinet to control and direct Government, cannot be sustained. Each member of the Cabinet holds a specific office with roles and functions separate and apart from the functions of Cabinet, which functions are provided for in **art 106(2)**. **Article 106** (which has as its side note ‘The Cabinet’) itself, distinguishes clearly between the Cabinet and the Government.

44. In **art 106(1)**, it can be seen that Cabinet is a subset of the Government, as not all Ministers may be members of the Cabinet. In **art 106(2)**, the Cabinet is said to “aid and advise the President in the general direction and control of the Government of Guyana”. This latter paragraph indicates that, though the Cabinet ‘aids and advises’ the President in the direction and control of the Government, this does not mean that the President cannot act and does not direct and control Government in the absence of the Cabinet. What it means is that if Cabinet resigns, any requirements for the Cabinet to act collectively, in any law, cannot be fulfilled. It would not preclude meetings of ministers though not in the context of the Cabinet as envisioned by the Constitution.

45. I note that **Dr. Francis Alexis** also specifically discussed **art 106(2)** on the role of Cabinet (**‘Changing Caribbean Constitutions** (2nd edn,2015) in para 15.24:

“15.24 ... When the Constitution says the Cabinet will aid and advise the President, who is elected to office by the people, it means that literally. Responsibility for the general direction and control of the Government lies with the President as both Head of State and Head of Government. Advice given by Cabinet to the President in this regard is not binding on him. The President of Guyana, formally has, as Head of State, and actually exercises as Head of Government, the executive authority of the state. He is an executive President, the effective Executive. So, Cabinet is not the effective Executive; rather, Cabinet performs the role of advising the President; the reverse of the function of the Cabinet where there is a titular Head of State.”

There will, therefore, be no resultant chaos as the first respondent contended, especially as the government would continue to function as the executive.

46. In relation to the use of the word ‘notwithstanding’, the case of **C&J Clark Ltd v IRC [1973] 2 All ER 513**, cited by on behalf of the first respondent, does not assist in the interpretation of this word as the case does not discuss this word in any way. Instead, the Court examined the phrase ‘subject to’, and found that these words only have an effect in the case of conflicting or clashing provisions. Further, the court found that “Where there is no clash, the phrase does nothing: if there is collision, the phrase shows what is to prevail.”

47. Here, the words ‘subject to’ are not used. In my opinion, the word ‘notwithstanding’ only serves to clarify that, though a defeat of the Government on a NCM results in the resignation of Cabinet, the President and Ministers may remain in their individual offices after that resignation and until the next President is sworn in. This ensures for the continuity of Government agreed on by all parties to this application as being necessary.

48. The submissions on behalf of the first respondent also seemed to equate the resignation of the Government and/or Cabinet under **art 106** with the dissolution of Parliament under **art 70**. It is evident from **art 106(7)** that the resignation of Cabinet does not result in the dissolution of Parliament. Parliament consists of the President and the National Assembly, as provided for in **art 51**. Both the President and the National Assembly, which may extend the time for elections, are clearly still in existence following the resignation of the Cabinet.

49. It is also clear that the Government, consisting of the President and the Ministers, remain in office until the next President is sworn in. This is so even though, as the first respondent submitted, Parliament must be dissolved prior to the elections. Therefore, the dissolution of Parliament does not affect the offices Ministers of Government; and the resignation of Cabinet does not affect the existence of Parliament. Hence, the submissions for the first respondent in this regard cannot be accepted.

When does the resignation of Cabinet take effect?

50. In **Attorney General of Grenada v The Grenada Bar Association [Ecsc] [2000] ECSC J0221-1**, Byron CJ, as he then was, said at para 6 that:

“the interpretation of every word or phrase of a constitutional provision is derived from the intention of the framers of the Constitution in regard to the meaning that word or phrase should bear. That intention is an inference drawn from the primary meaning of the word and phrase with such modifications as may be necessary to make it concordant with the context of the Constitution. In this regard the context of the Constitution comprises every other word and phrase used in the Constitution as a whole, all the implications there from and all relevant surrounding circumstances which may properly be used as indications of the intention of the framers of the Constitution”.

51. In examining the surrounding words of **art 106(6)** and **106(7)**, the resignation of the Government in **art 106(7)** is said to occur after the President takes the oath of office following the election. When one looks at **art 178(1)(c)**, however, it is seen that the office of the President shall become vacant if the person holding it ceases to hold it by virtue of, *inter alia*, **art 92** which, as stated above, provides that the President continues in office until the person elected to the office of the President in the election assumes office. Likewise, **art 183(3)(c)** provides that the office of any Minister shall become vacant on the election of any person to the office of President pursuant to **Article 177**, by which article a President is elected following an election. Neither in **art 178(1)(c)** nor in **art 183(3)(c)** is there a requirement for a formal resignation by the President or a Minister, which is provided for in **Article 178(1)(b)** and **Article 183(3)(b)**, as the persons holding these offices automatically vacate them upon the election of a President.

52. In order for **art 106(7)** to make sense, therefore, it must be interpreted to mean that the Government shall vacate their offices after the President takes the oath of office following an election. This would be consistent with **Articles 178(1)(c)** and **183(3)(b)** as indicated above. No formal resignation by the President and the Ministers would, therefore, be necessary under **Article 106(7)**, as the election of the next President would cause their resignation to take immediate effect.

53. If the interpretation of these provisions is to be derived from the intention of the framers as to what meaning each word or phrase is to bear, as said by Byron CJ in **AG v Grenada Bar Association** above, **art 106(6)**, which was drafted and inserted together with **Article 106(7)** by **s. 5 of the Constitution (Amendment) Act, No. 17 of 2000**, must be interpreted similarly. This is to say, the words ‘shall resign’ must be interpreted as ‘shall vacate’ upon the occurrence of a particular event. While in the case of the Government in **art 106(7)** that event is the election of the President, in the case of Cabinet in **art 106(6)** that event is the defeat of the Government on a

vote of confidence by a majority of all elected members of the National Assembly. Also, as in the case of the Government in **art 106(7)**, such resignation would require no formal act on the part of the Cabinet, but will take immediate effect upon the occurrence of the event.

54. I have concluded that the submissions on behalf of the first respondent fail to provide any support for the position that the passage of a NCM does not result in the immediate resignation of the Cabinet.

55. I therefore, find that Cabinet is not required to resign with all convenient speed, as the resignation under **art 106(6)** takes immediate effect following the defeat of the Government on a vote of confidence by a majority of all the elected members of the National Assembly. In this case, Cabinet must be taken to have resigned with effect from the evening of December 21, 2018, and all functions or duties provided in any law to be performed specifically by Cabinet must have ceased from that time.

56. Importantly, however, it must be emphasised that the President and the Ministers shall nevertheless continue to perform the functions and duties of their offices until the next President takes the oath of office following the election.

Conclusion

57. Therefore, my conclusions are as follows:

- (i) The declaration sought at para (1) “that on 21 December, 2018, the National Assembly of Guyana properly, validly and lawfully passed a motion on a vote of No Confidence provided for by **art 106(6)** of the Constitution, in which the Government was defeated”, is granted.
- (ii) The declaration sought at (2) cannot be granted as framed in the application because an interpretation of **art 106(7)** does not lend itself to permitting Cabinet to resign with all convenient speed on the occurrence of a successful NCM. In my view, the provision requires that the resignation of the Cabinet takes effect with immediate

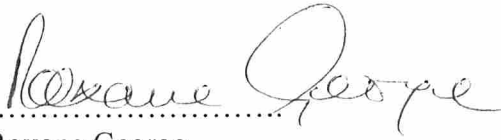
effect on the success of a NCM. Mr. Ramkarran did mention that the Court could amend this prayer.

- (iii) The declarations at paras (3) and (4) cannot be granted as framed in the application. In any event, they both speak to a clear provision in **art 106(6)** of the Constitution that if there is a defeat of the Government on a NCM, 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. As noted earlier, Mr. Ramkarran had sought to have these paragraphs amended.
- (iv) Having reviewed the Civil Procedure Rules, I considered that I would not amend *suo moto* paras 2, 3 and 4 regarding the declarations sought bearing in mind that the issues were essentially legal in nature. Part 8:04 (5)(a) provides that “at the hearing of an FDA the court must (a) proceed to hear and determine the application on the evidence before it.” In my view, this sub-rule tends to suggest that the Court considers what is asked for in the application and if it cannot be granted the Court can decide not to grant the reliefs sought as distinct from amending the application. Hence my conclusion that some of the prayers could not be granted as framed. In any event, arguments commenced based on the prayers for relief as framed and it was on the Court’s invitation that further arguments were entertained regarding an alternative interpretation of art 106(6) in relation to the timeline for the resignation of the Cabinet.

58. This case, though raising similar issues as those in **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 **Attorney-General v Dr. Barton Scotland, Speaker of the National Assembly and Mr. Bharat Jagdeo, Leader of the Opposition and Mr. Joseph Harmon, Representative of A Partnership for National Unity**, 2019-HC-Dem-Civ-FDA-22, has brought to the fore another important constitutional

issue for the judicial interpretation. This augurs well for our democracy. I thank all counsel for their assistance.

Judgment accordingly with no order as to costs.



Roxane George
Chief Justice (ag)
January 31, 2019

