

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
CONSTITUTIONAL AND ADMINISTRATIVE DIVISION**

2022-HC-DEM-CIV-FDA-902

BETWEEN:

Aubrey C. Norton

Applicant

v



1. **The Attorney General of Guyana**
2. **Patrick Findlay**
3. **Chandra Gajraj**
4. **Dr. Kim Kyte-Thomas**
5. **Imaam Mohamed Ispahani Haniff**
6. **Pandit Hardesh Tewari**
7. **Reverend Wayne C. Bowman**

Respondents

DATES:

July 15, Aug 8, 23, 2022

APPEARANCES:

Mr. Roysdale A. Forde, SC together with Mr. Selwyn A. Pieters for the Applicant.

Mr. Mohabir Anil Nandlall, SC, together with Mr. Nigel Hawke, Ms. Deborah Kumar, Ms. Shoshanna Lall, Mr. Chevy Devonish, Ms. Candiacia Lewis and Mr. Teakaram Singh for the First Named Respondent.

Mr. Darshan Ramdhani QC for the Second Named Respondent.

Mr. C. V. Satram for the Third, Fourth, Fifth, Sixth and Seventh Respondents.

BEFORE: THE HON. MME. JUSTICE ROXANE GEORGE, CHIEF JUSTICE (ag)

JUDGMENT OF THE COURT

Introduction

[1] In this Fixed Date Application (FDA), the applicant, Mr. Aubrey C. Norton ("the applicant"), who is Leader of the Opposition, challenges the appointments by President Irfaan Ali of the following persons: Mr. Patrick Findlay, ("the second respondent") as the Chairman of the Police Service Commission; Ms. Chandra Gajraj, ("the third respondent") as the Chairperson of the Integrity Commission, and Dr. Kim Kyte-Thomas ("the fourth respondent"), Imaam Mohamed Ispahani Haniff ("the fifth respondent"), Pandit Hardesh Tewari ("the sixth respondent") and Reverend Wayne C. Bowman ("the seventh Respondent") as members of the Integrity Commission.

[2] The applicant asserts that the President did not meaningfully consult with him when he appointed the Chairman of the Police Service Commission, as mandated by **art 210(1)(a)**. He further claims that the President did not consult with him in the appointment of the Chairperson and members of the Integrity Commission as required by **s 3 (4) of the Integrity Commission Act, Chapter 26:01**.

[3] In addition, the applicant contends that the Police Service Commission is not constituted in accordance with **art 210** of the **Constitution**. As such, there could not have been the concomitant required consultation pursuant to **art 211(1)** by the Chairman with the other members of this Commission as regards the appointment of an acting Commissioner of Police.

[4] Consequently, the applicant seeks the following reliefs:

a) A Declaration that the appointment of PATRICK FINDLAY, the Second Named Respondent as the Chairman of the Police Service Commission by the President on the 31st day of May 2022, did not occur after meaningful consultation with the Leader of the Opposition as required by Article 210 (1) (a) of the Constitution of Guyana and is illegal, null, void and of no legal effect.

b) A Declaration that the appointment of CHANDRA GAJRAJ, the Third Named Respondent as the Chairman of the Integrity Commission by the President on the 31st

day of May 2022, did not occur after meaningful consultation with the Leader of the Opposition as required by Section 3 (4) of the Integrity Commission Act, Cap. 26:01 and is illegal, null, void, and of no legal effect.

c) A Declaration that the appointments of DR. KIM KYTE-THOMAS, IMAAM MOHAMED ISPAHANI HANIFF, PANDIT HARDESH TEWARI, and REVEREND WAYNE C. BOWMAN, the Fourth to Seventh Named Respondents as Members of the Integrity Commission by the President on the 31st day of May 2022, did not occur after consultation with the Leader of the Opposition as required by Section 3 (4) of the Integrity Commission Act Cap. 26:01 and is illegal, null, void, and of no legal effect.

d) Declarations that the appointments of PATRICK FINDLAY as Chairman of the Police Service Commission, CHANDRA GAJRAJ as Chairperson of the Integrity Commission and DR. KIM KYTE-THOMAS, IMAAM MOHAMED ISPAHANI HANIFF, PANDIT HARDESH TEWARI, and REVEREND WAYNE C. BOWMAN, the Fourth to Seventh Named Respondents as Members of the Integrity Commission by the President on the 31st day of May 2022, were unilateral and contrary to the Constitution and Section 3 (4) of the Integrity Commission Act Cap. 26:01 respectively and are null, void, and of no legal effect;

e) A Declaration that the Consultation initiated by the President and terminated on the 31st day of May 2022, with the unilateral appointment of PATRICK FINDLAY, the Second Named Respondent as Chairman of the Police Service Commission, CHANDRA GAJRAJ, the Third Named Respondent as Chairman of Integrity Commission and Dr. KIM KYTE-THOMAS, IMAAM MOHAMED ISPAHANI HANIFF, PANDIT HARDESH TEWARI, and REVEREND WAYNE C. BOWMAN, the Fourth to Seventh Named Respondents as Members of the Integrity Commission did not afford the Leader of the Opposition a reasonable opportunity to express a considered opinion on the subject of the consultation and consequently is a breach of the Integrity Commission Act and Articles 210 (1) (a) and 232 of the Constitution;

f) A Declaration that PATRICK FINDLAY, the Second Named Respondent cannot lawfully exercise any of the functions, duties, obligations and or powers vested in the Chairman of the Police Service Commission as the said PATRICK FINDLAY, the

second named respondent was not appointed Chairman of the Police Service Commission in accordance with Article 210 (1) (a) and 232 of the Constitution of Guyana;

g) A Declaration that the Police Service Commission is not constituted in accordance with Articles 210 (1) (a) and 232 of the Constitution and consequently the said Police Service Commission cannot be constitutionally and lawfully constituted.

h) A Declaration that the appointment of PATRICK FINDLAY, the Second Named Respondent a Politician and a known and public supporter of the Peoples Progressive Party Civic from which the Government is formed as the Chairman of the Police Service Commission is offensive, repugnant, and subversive of the Constitutional purpose, function, and intendment of the Police Service Commission as established in the Constitution.

i) A Declaration that the President's termination of the Consultation process was arbitrary, unreasonable and unconstitutional.

j) A Declaration that as of the 29th day of June 2022, the Police Service Commission is not constituted in accordance with Article 210 (1)(b) of the Constitution of Guyana as there is no member who is a person appointed to the office of Chairman of the Public Service Commission and who has taken the respective Oaths of Office and has entered into the offices of Chairman of the Public Service and a member of the Police Service Commission.

k) A Declaration that as of the 29th day of June 2022, the Second Named Respondent could not have lawfully consulted with the members of the Police Service Commission on the appointment of an acting Commissioner of Police when there is no member of the Police Service Commission who was appointed to the office of Chairman of the Public Service Commission as required by Articles 210 (1) (b) and 211 (1) of the Constitution.

l) A Declaration that the life of the Public Service Commission and the Chairmanship of the last Chairman of the Public Service Commission expired on the 9th day of August 2021.

m) A Declaration that as at the 29th day of June, 2022 there is no Chairman of the Public Service Commission of Guyana.

- n) *A Declaration that any or the purported consultation between the President and the Second Named Respondent as of the 29th day of June 2022, on the subject of the appointment of an acting Commissioner of Police of Guyana, is unconstitutional, null, void, and of no legal effect.*
- o) *A Declaration that in order for the Police Service Commission to exercise any of the powers, functions, and or duties conferred on it by the Constitution, it is a mandatory requirement that upon the constitution of the Police Service Commission subsequent to the expiration of the life and or term of the appointment of previous members of the Police Service Commission, that a Chairman of the Public Service Commission be so appointed and be made a member of the Police Service Commission.*
- p) *Orders quashing the appointment of PATRICK FINDLAY, CHANDRA GAJRAJ, Dr. KIM KYTE-THOMAS, IMAAM MOHAMED ISPAHANI HANIFF, PANDIT HARDESH TEWARI, and REVEREND WAYNE C. BOWMAN, as the Chairman of the Police Service Commission, Chairman of the Integrity Commission and members of the Integrity Commission respectively.*
- q) *Orders declaring that any or all actions taken by PATRICK FINDLAY, CHANDRA GAJRAJ, Dr. KIM KYTE-THOMAS, IMAAM MOHAMED ISPAHANI HANIFF, PANDIT HARDESH TEWARI, and REVEREND WAYNE C. BOWMAN in their respective positions are null, void, and are of no force and effect.*

[5] In a supplementary affidavit the applicant also asserts that since the Police Service Commission was not constituted, the second respondent as Chairman and the other three appointed members could not function as a duly constituted Commission more so to authorise promotions as evidenced in a Government Order dated July 2, 2022 which was exhibited to this supplementary affidavit.

[6] Flowing from these reliefs there are two main issues to be determined:

- I. whether the appointment of the Chairman of the Police Service Commission, and the Chairperson and the members of the Integrity Commission by the President on the 31st day of May 2022, occurred after meaningful consultation with the Leader of the Opposition as required by

art 210 (1) (a) of the Constitution; and after consultation pursuant to s 3 (4) of the Integrity Commission Act respectively.

- II. whether the Police Service Commission is lawfully and duly constituted in accordance with **art 210(1)**; and whether, if it is not, there could be compliance with **art 211 (1) and (2)** as regards the Chairman of this Commission engaging in consultation with the other members of the Commission as a precursor to the President engaging in meaningful consultation with him in relation to the appointment of an acting Commissioner of Police

ISSUE I: Whether the appointment of the Chairman of the Police Service Commission, and the Chairperson and the members of the Integrity Commission by the President on the 31st day of May 2022, occurred after meaningful consultation with the Leader of the Opposition as required by art 210 (1) (a) of the Constitution; and after consultation pursuant to s 3 (4) of the Integrity Commission Act Cap. 26:01 respectively

Facts and submissions relied on by the parties

[7] Essentially, the applicant and the respondents rely on the same correspondence and sequence of events from the first letter to the applicant dated April 29, 2022 to the last letter sent by the Minister of Parliamentary Affairs and Governance, Ms. Gail Teixeira, (Minister Teixeira) on May 30, 2022, and the appointment of the persons subject of this FDA on May 31, 2022.

[8] The applicant received a letter dated April 29, 2022 from Minister Teixeira headed “*Re: Consultation on several Constitutional Appointments*” in which she stated that the President wished to invite him to a meeting on Friday, May 13th, 2022 at 3:00 pm at the Office of the President “*to consult on several constitutional appointments.*” The letter further indicated: “*if you have any clarifications, I am available and can be contacted by email at ..., or at my personal cell number ... and my office numbers listed herein.*”

[9] On May 9, 2022, the applicant responded to Minister Teixeira’s letter in which he stated:

“There are many constitutional appointments to be made in consultation and meaningful consultation with the Leader of the Opposition. In the circumstances,

your letter is very vague and does not provide detail [sic] information vis a vis which constitutional appointments will be addressed.

You would agree for there to be adequate preparation and useful consultations, at minimum, there is need for me to know the specific appointments to be made, proposed persons to be appointed, inter alia.

In the light of the foregoing, I wish to request more details on the appointments to be made. In addition, there is a need for us to agree on an agenda to guide our consultations.

Please be assured that I stand ready to fulfil the constitutional responsibility of the Leader of the Opposition.”

[10] Minister Teixeira, replied in a letter dated May 11, 2022, in which she identified the Integrity Commission, Judicial Service Commission, Police Service Commission, and the Teaching Service Commission as the entities to be the subject of the consultation. It was indicated that *“With regards to the Police Service Commission, His Excellency President Mohamed Irfaan Ali has received four (4) nominees to the Police Service Commission approved by the National Assembly on April 13th, 2022. In keeping with article 210 (1(c), I wish to inform you that His Excellency President Mohamed Irfaan Ali wishes to indicate his readiness to appoint the four members and further, he is proposing to appoint in accordance with article 210 (1) (a) Bishop Findlay [the second respondent] as the Chairperson of this Commission.”* The letter also disclosed that the third respondent was nominated as Chairperson, while the fourth to seventh respondents were stated to be the nominees for appointment as Members of the Integrity Commission respectively.

[11] This letter further stated that *“The appointment to the Integrity Commission, the Judicial, Police, and Teaching Service Commissions will be the subject of the proposed May 13th, 2022 meeting referred to in my letter of April 29th, 2022.”*

[12] Then by a letter dated May 12, 2022, the applicant responded to the letter of May 11, 2022, in which he restated his commitment to discharging his Constitutional duties and welcomed *“the President’s desire, albeit belated, to discharge his Constitutional*

obligations to engage in consultations as required by law.” After referring to paras (a) and (b) of the definition of consultation and meaningful consultation in **art 232**, he went on to note:

"Your letter dated the 11th day of May 2022, is bereft of any material upon which I can form a considered opinion on the subjects of the proposed consultation. The aforesaid Letter, like your previous Letter, dated the 29th day of April, 2022, is vague, woefully inadequate and is insufficient to significantly advance the consultative process envisioned and provided for in the relevant Constitutional and statutory provisions.

As a consequence, your Letter dated the 11th day of May, 2022, does not contribute to affording the opportunity for meaningful consultation."

[13] Minister Teixeira responded to the aforesaid letter dated May 12, 2022 by letter bearing the same date and *inter alia* she said:

"With regards to article 232 of the Constitution, His Excellency the President has executed his constitutional responsibilities by indicating his readiness to engage you as Leader of Opposition on several constitutional and statutory appointments with a proposed date for the meeting in accordance with article 232 (a) and (b).

Further His Excellency the President has provided you with names of persons as required to the Integrity Commission, the Judicial, Police and Teaching Service Commissions. You have been invited to consult the President on those names of people of good standing in our society for these specific appointments. I have no doubt that most of these names are familiar to you.

*I have noted once again your broad statement that my letter is "bereft of any material upon which you can form a considered opinion". My letter has referred to the relevant statute or articles of the constitution relevant to the specific body the President wishes to consult with you on including the proposed names for each. **I am not sure what more you desire but if you wish further information on the names submitted please contact my office.**" [Emphases mine.]*

[14] At this point, I refer to two aspects of the narrative which occurred after this May 12 letter from Minister Teixeira that are very relevant, though it is unclear why the applicant omitted to mention them in his affidavit, given that he sought to highlight his take on what occurred. These are the May 13, 2022 in-person meeting and the joint statement issued pursuant thereto. Despite this omission, I note that at para 23 of his affidavit in support, the applicant focused on the failure of the President to convene a follow up in-person meeting within one week of this May 13 meeting as agreed.

[15] The information about the in-person meeting and the joint statement was gleaned from the affidavit in defence filed on behalf of the first respondent as deposed by Minister Teixeira. The applicant was invited to the May 13 in-person meeting by the April 29 letter, and this invitation was confirmed by Minister Teixeira in the May 12 letter. This meeting was attended by the President, Mr. Nandlall SC, Attorney-General, and the applicant accompanied by Mr. Roysdale Forde SC. At this meeting, the appointments, subject of this application, were discussed.

[16] Flowing from this meeting, a joint statement was issued, signed by Mr. Nandlall SC, on behalf of the President, and Mr. Forde SC on behalf of the applicant, in which the decisions of the meeting were outlined. The joint statement reads:

“Joint Statement

Meeting between His Excellency Dr. Mohamed Irfaan Ali, President of the Co-operative Republic of Guyana and Leader of the Opposition and Member of Parliament, Mr. Aubrey C. Norton

May 13th, 2022

The Consultations in respect of the appointments of persons to constitutional and statutory commissions, were initiated between His Excellency President Mohamed Irfaan Ali and Leader of the Opposition and Member of Parliament, Mr. Aubrey C. Norton by letter under the hand of the Hon. Gail Teixeira, Minister of Parliamentary Affairs and Governance and Member of Parliament, dated April 29, 2022.

This letter fixed today, the 13th May at 15:00h, for an in person consultation.

Present at the meeting at the Office of the President were His Excellency President Mohamed Irfaan Ali, the Attorney General and Minister of Legal Affairs, the Hon. Mohabir Anil Nandlall, SC. MP., Member of Parliament and the Leader of the

Opposition, Mr. Aubrey C. Norton, Member of Parliament accompanied by Mr. Roysdale Forde SC, Member of Parliament.

Prior to today's meeting, the Leader of the Opposition by letter dated 9th May 2020 [sic], requested details of the appointments to be made.

Minister Teixeira responded on 11th May, 2022 providing the details of the Commissions and the names of the persons who are the subject of the consultations to be appointed to those Commissions.

These are Integrity Commission the Judicial Service Commission, Police Service Commission, and Teaching Service Commission.

The Leader of the Opposition in a letter dated the 12th May, requested further information regarding the names under consideration. On the same day Minister Teixeira responded requesting specificity on the information that is being requested.

At the meeting held today, the Leader of the Opposition clarified that the information that is being requested are the Curriculum Vitae (CV's) of the person under consideration and the President agreed to make those CV's available within two days. It was further agreed that the consultations will be guided by the Constitution and the in-person consultations will resume on a date to be fixed, but within a week.

Sgd. M.A. Nandlall

Hon. Mohabir Anil Nandlall, SC. MP., Attorney General and Minister of Legal Affairs

Sgd. R. Forde

Mr. Roysdale Forde, SC, Member of Parliament"

- [17] In his affidavit in reply, the applicant however contends that this joint statement does not capture the full extent of what was discussed at the in-person meeting in that in addition to the provision of the CVs of the persons to be appointed, he requested "*all other information and materials upon which I can form a considered opinion on the nominees requested.*" He stated that:

"15. The Joint Statement referred to by the Deponent, Gail Teixeira is not a "written record of the consultation" within the meaning of Article 232, but was

an incomplete statement of the discussions at the in-person meeting prepared for the sole purpose of being a Media Release.

...

19. That at no material time during the course of the consultation under question did the President provide to me the basis on which proposals were put forward and upon which the consultation will thereafter be considered; the details of the contention to be adopted by the President and any factors which he considered, discussions of substantial importance in making his decision at the end of the consultation process."

[18] Sometime passed after the in-person meeting and by letter dated May 27, 2022, sent to the applicant, Minister Teixeira stated the following:

"You will recall His Excellency President Mohamed Irfaan Ali invited you to meet him on Friday, May 13th, 2022 to consult on several key appointments in keeping with the Constitution and the Laws of Guyana. This was conveyed in correspondence to you dated Friday April 29, 2022 and delivered to and signed for at Congress Place on May 3rd, 2022, due to the weekend holiday.

You responded in correspondence dated May 9th, 2022 and received on May 10th, 2022, requesting "more details on appointments to be made".

Your letter was answered on May 11th, 2022, wherein the specific statutory and constitutional appointments were identified which H.E President Ali was and still is ready to consult with you on, in compliance with the relevant statutory and constitutional provisions. The statute or articles of the constitution relevant to each specific body were identified including the proposed names for each were provided. These were: the proposed five names for the Integrity Commission; the proposed name for the Judicial Service Commission; the proposed chairperson from amongst the National Assembly's approved four members of the Police Service Commission; and, the proposed three names for the Teaching Service Commission.

You responded on May 12th, 2022, stating that my letter of May 11th, 2002 was "bereft of any material upon which I can form a considered opinion on the subjects of the proposed consultation."

This, too, was responded to on May 12th, 2022 which was delivered to and received at Congress Place. Therein you were reminded that "the circuitous approach you have adopted with regards to a formal invitation to meet with His Excellency the President to consult on important statutory appointments such as the Integrity Commission, an important body regarding integrity in public office, and, three service commissions - Judicial, Police and Teaching - affecting critical appointments, disciplinary matters, etc is disappointing to say the least. This is particularly so with regards to the Judicial Service Commission which expired in September 2017 and has not been appointed for 5 years now, thereby holding up the appointment of Judges.

At the "in-person" meeting of Friday, May 13th, 2022, a request was made by you for the curricula vitae of all the proposed names and those approved by the National Assembly. It was agreed that the CVs requested would be provided to you by Monday, May 16th, 2022.

As agreed, on, the morning of Monday, May 16th, 2022, the curricula vitae of 14 persons were provided to you in keeping with your request; these included the nominee for the Judicial Service Commission and the 4 nominees of the Police Service Commission which were approved unanimously in the Committee of Appointments and by the National Assembly.

You must be aware that Guyana hosted the first Agri-Investment Forum and Expo on May 19th-21st, 2022 which was attended by eight (8) Heads of State along with 400 other dignitaries from across the Caribbean, North America, Europe, and Africa. This massive international event was closely followed by the national and regional celebrations of our 56th Independence Anniversary.

You are hereby invited to meet His Excellency the President on Monday, May 30th, 2022 at 2:00 p.m. at the Office of the President.

However, in the event, you are unable to attend this meeting you may wish to indicate in writing your additional contributions to this consultation."

[19] The applicant responded to the said letter of May 27, 2022, with a letter dated May 30, 2022, in which he stated inter alia:

"I wish to refer to our Joint Statement signed on the 13th May, 2022 which stated that "It was further agreed that the consultation will be guided by the Constitution and the in-person consultation will resume on a date to be fixed, but within a week."

The aforesaid time having expired without the resumption of in-person consultations and without prior communication is testimony to your Government's disregard for agreements it signs and a manifestation of bad faith.

The purported excuses offered in your letter of the 27th day of May, 2022, for not holding the consultation "within a week", that I "must be aware that Guyana hosted the first Agri Investment Forum and Expo on May, 19th- 21st, 2022" and that this was "followed by the national and regional celebrations of 56th Independence Anniversary" are devoid of credibility and disconcerting.

Clearly when the President was making the Agreement he had to know that he had those engagements since they were planned long before our engagement. I hesitate to think that the President made an Agreement while knowing full well that he was unavailable. Such actions are either a manifestation of incompetence or a disregard for his and others constitutional responsibilities. Whatever the cause, it is unacceptable.

Your letter of Friday, 27th day of May, 2022, which extends an invitation from the President to resume in-person Consultation, 30th day of May, 2022, was received late in the evening of the 27th day of May, 2022. That apart, I am unavailable to accept the aforesaid invitation having regard to certain commitments and pressing schedule.

In any event, if my schedule did permit me to attend, I draw to your attention that I am not yet in receipt of the grounds upon which each specific recommendation for appointment is being made. This is necessary if there is to be meaningful consultation in keeping with the Constitution.

The foregoing circumstances persist, despite in my letter of the 12th day of May, 2022, I stated that your letter of the 11th day of May, 2022 was “bereft of any materials upon which I can form a considered opinion on the subjects of the proposed consultation.

... .”

- [20] Minister Teixeira responded by a letter dated May 30, 2022, in which she acknowledged receipt of the applicant’s letter on May 30, 2022. There is a dispute regarding the time that the applicant’s May 30 letter was received which issue I consider to be *de minimis* and therefore irrelevant. In Minister Teixeira’s letter she rejected the applicant’s claim that he was entitled to grounds and or reasons upon which each recommendation for the appointments was made. She however stated that “*the names that are the subject of the consultations are all outstanding Guyanese and in the case of the persons being considered for the Police Service Commission, they have all been unanimously approved by the National Assembly.*” She also reiterated her view that the CVs were the only information requested by the applicant at the May 13 meeting. In these circumstances, the letter ended as follows:

“In the circumstances, I have been instructed to inform you that His Excellency has complied with the letter and spirit of the Constitution and the law regarding the names for the Commissions which are the subject of these engagements.”

- [21] The Third Report of the Committee of Appointments of the National Assembly of Parliament dated December 29, 2021 in relation to the Appointment of Members of the Police Service Commission was tendered by Minister Teixeira. This Committee has as its members representatives from the government and opposition sides of the National Assembly. Therefore, it is a bipartisan committee. The Report reveals that this

Committee discussed the appointment of members to the Police Service Commission based on meaningful consultation with the required entities, and recommended that the second respondent, as well as Mr. Ernest Choo-a-Fat, Mr. Lloyd Mark Conway, and Mr. Hakeem Mohamed be signified as the National Assembly's choice to the President for appointment as members of this Commission.

[22] The Official Report of the National Assembly of Parliament dated April 13, 2022 was also exhibited by Minister Teixeira. It further discloses that after a short exchange, during which it was emphasised that there was consensus in the Committee of Appointments regarding the appointment of the four above named persons nominated to be members of the Police Service Commission, these persons were unanimously approved for appointment by the President. Resolution No. 37 of the National Assembly which approved the Report of the Committee in this regard was also exhibited.

[23] In addition, the Minutes of Proceedings of the 46th Sitting of the National Assembly on April 13, 2022 were exhibited by Minister Teixeira. The Minutes list the applicant as present as a Member of Parliament and Leader of the Opposition. Minister Teixeira had deposed in her affidavit in defence that the applicant had been sworn in and elected as Leader of the Opposition on the said April 13, 2022. The Minutes further reveal that the Report of the Committee of Appointments regarding the appointment of the four nominees for the Police Service Commission was carried unanimously. The record further includes the letter from the Clerk to the National Assembly to the Permanent Secretary, Office of the President, apprising of the appointment made and including Resolution 37. I'll refer to the contents of these Minutes later.

[24] With the applicant declining to attend the meeting on May 30, 2022, on May 31, 2022, the President proceeded to appoint the second respondent as Chairman of the Police Service Commission; and the third respondent to seventh respondents as Chairperson and members of the Integrity Commission respectively. On the said May 31 the appointees took their respective Oaths of Office.

[25] The applicant contends that despite the provision of incomplete information upon which he could have made an informed opinion on the persons proposed, the President unilaterally terminated the consultative process and made these appointments thereby breaching the **Constitution and Integrity Commission Act** respectively.

The First Respondent's Case

[26] In the Affidavit in Defence sworn to by Minister Teixeira, on behalf of the first respondent, it was contended that the President had discharged his Constitutional duty to meaningfully consult the Leader of the Opposition on the appointment of the second respondent. It was also contended that the President had discharged his duty to consult the minority leader as contemplated by the Integrity Commission Act when he appointed the third to seventh respondents as members of the Integrity Commission.

[27] It was advanced that the applicant was in receipt of the CVs of the appointees from May 16, 2022, as requested by him, but that he did not express any objection to any of the nominees of the President, nor did he offer the names of any nominees of his own. The CVs of the second to seventh respondents were produced. However, I must note that I have not considered them as they are not relevant for a determination of the issues in this case. I have treated them merely as evidence that they were in fact sent to the applicant who indeed acknowledged receipt, though as stated, he is contending that he needed more information.

[28] It was thus submitted that the applicant was given ample time to express a considered opinion on the names of the nominees, that is, from May 13 to May 30, 2022.

[29] It was nevertheless submitted that if it were found that the appointments were unlawful due to the consultation not meeting the required threshold, that the *de facto* doctrine should be applied to save their actions from being invalidated.

The Second Respondent's Case

[30] Most of the content of the affidavit filed by the second respondent spoke to how and why he came to be appointed a member of the Police Service Commission. This is irrelevant to the issues to be determined in this case, moreso as his qualifications for such membership are and were a matter for the National Assembly, and are not for the Court to assess. However, what is of relevance is his deposition that the National Assembly approved his appointment as a member of the Police Service Commission and that on May 31, 2022, the President appointed him as a member of the Police Service Commission and the Chair of the said Commission.

The Case for the third to seventh respondents

[31] These respondents did not file an affidavit or affidavits in defence. Counsel for these respondents however filed submissions which were considered by the Court. The submissions emphasised that the facts disclosed that the constitutional and statutory regime had been complied with by the President regarding the appointments of these respondents to the Integrity Commission.

Analysis

[32] It is the interpretation of the effect of the engagements between the applicant and the President as evidenced by the letters, the meeting, and the joint statement, that is really the source of the controversy in this case. Did these engagements amount to meaningful consultation and consultation? Did these engagements demonstrate procedural fairness, and in this regard was the consultation sufficient?

[33] The case advanced by the applicant is that based on **art 210 (1) (a)** of the **Constitution** and **section 3 (4)** of the **Integrity Commission Act**, the President owed a duty to consult with the Opposition Leader and he failed to do so in the required manner. In this regard, the applicant argues that the President did not afford him a reasonable opportunity to express a considered opinion on the subject of the consultation as required by **art 232** of the **Constitution** which provides:

“‘consultation’ or ‘meaningful consultation’ means the person or entity responsible for seeking consultation shall -

- (a) identify the persons or entities to be consulted and specify to them in writing the subject of the consultation and an intended date for the decision on the subject of consultation;*
- (b) ensure that each person or entity to be consulted is afforded a reasonable opportunity to express a considered opinion on the subject of the consultation; and*
- (c) cause to be prepared and archived a written record of the consultation and circulate the decision to each of the persons or entities consulted”*

[34] **Article 210 (1) (a)** of the **Constitution** states:

"210. (1) The Police Service Commission shall consist of -

*(a) a Chairman appointed by the President acting after **meaningful consultation with the Leader of the Opposition** from among members appointed under subparagraph (c);" [Emphasis mine.]*

[35] For the appointment of the Chairman and other members of the Integrity Commission, **s 3 (4) of the Integrity Commission Act** is the main provision, though **ss (1) (2) and (3)** are mentioned for completeness. They stipulate:

"3. (1) There is hereby established a commission to be known as the Integrity Commission which shall consist of a chairman and not less than two nor more than four other members.

(2) The Chairman shall be a person who is or who was, is qualified to be appointed as, a Puisne Judge of the High Court or any other fit and proper person.

(3) The other members shall be appointed from among persons appearing to the President to be qualified as having had experience of, and shown capacity in, law, administration of justice, public administration, social service, finance or accountancy or any other discipline.

(4) The chairman and other members shall be appointed by the President after consultation with the Minority Leader."

[36] What I understand from the above provisions is that the President has a duty to consult with the Opposition Leader or Minority Leader (as the leader of the opposition was formerly called) when appointing the Chairman of the Police Service Commission, and the Chairperson and the members of the Integrity Commission. As regards the Chairman of the Police Service Commission, the duty is derived from the Constitution, while for the Chair and members of the Integrity Commission the duty is derived from the statute.

Duty to Consult

[37] Justice Jamadar, JCCJ in **Air Services Limited et al v The Attorney General, The Ministry of Public Infrastructure and The Guyana Civil Aviation Authority, [2021] CCJ 3 (AJ) GY**, explains the constitutional duty to meaningfully consult thus:

“[35] Consultation in Guyana is thus not merely a common law principle, esteemed as that may be, but a constitutional imperative in furtherance of governance built on ‘broad-based participation in national decision-making. It is a necessity when context mandates it, that demands ‘concerted effort’. The onus is on the State and Public Authorities to initiate its process and ensure that its requirements are satisfactorily met. It is in furtherance of the democratic socialist ideals to which Guyana aspires and is committed.

*[36] What then is consultation? In the context of the democratic socialist constitutional values and imperative discussed above, it is a process that is fundamentally dialogical. The informed and active engagement of relevant stakeholders, as well as the transparent, open, and accessible flow of information is at its heart. This then is the first principle of Guyanese consultation; it is a **dialogical** process. In Guyanese constitutionalism, consultation is also rooted in an ideology of mutuality. It therefore requires sincere receptivity and genuine openness to correctly understand and appreciate other relevant views and suggestions. All such opinions are valued and to be considered. **Mutuality** is hence the second principle of Guyanese consultation.*

*[37] The requirement for broad-based participation in national decision making, can only be realized if all relevant stakeholders are meaningfully included in the dialogical process of consultation. No relevant stakeholder should be excluded from this process, if it is to meet the dictates of this principle. A third principle is consequently **inclusivity**. Further, where reasonably justified and possible (‘appropriate’) given the aims of the undertaking, the means being considered to achieve them, the available resources, and bearing in mind the pertinent opinions of others and relevant stakeholder interests, consultation requires the making of best-interests and common-good changes, culminating ultimately in legitimate*

democratic socialist decisions. It involves a process of weighting and balancing interests. Accommodation, as the willingness of decision makers to change or modify decisions, is thus the fourth principle of Guyanese consultation.

[38] These four foundational principles can lead to some guidelines, not by any means prescriptive, but ones that provide basic pointers for both application and assessment. Thus, in summary, consultation is an inclusive, accommodating, mutually dialogical process which meaningfully involves all relevant stakeholders. ... The standard of review in relation to whether the duty to consult has been triggered is 'correctness'. It is a purely objective standard.

[39] Of course, consultation from a constitutional perspective must also be in alignment with human rights values and rule of law requirements. Thus, consultation must also be carried out in accordance with the rule of law good faith principle. A principle which in the context of consultation encompasses a willingness to share all relevant information, genuinely engage in the process, give real consideration of relevant stakeholders' views and concerns, and to reasonably change and modify initial positions. The principle in the context of consultation also includes values such as transparency, openness, clarity, inclusivity, accountability, and timeliness in relation to both the process and relevant stakeholders. Good faith dealings are a cornerstone of good governance. It thus supports public trust and confidence." [Emphases mine.]

Procedural Fairness

[38] Apart from the constitutional duty to consult, the courts have recognised that the duty to consult is rooted in the principle of fairness or procedural fairness as engendered by the common law. The Court in R (on the application of Moseley) v Haringey London Borough Council [2015] 1 All ER 495 at 505-506 in referring to procedural fairness noted that "[23] A public authority's duty to consult those interested before taking a decision can arise in a variety of ways. Most commonly, as here, the duty is generated by statute. Not infrequently, however, it is generated by the duty cast by the common law upon a public authority to act fairly. ... But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will

inform the manner in which the consultation should be conducted.” And it was held that (p 496):

“A public authority's duty to consult before taking a decision could arise in a variety of ways. Most commonly, the duty was generated by statute. However, not infrequently, it was generated by the duty cast by the common law upon a public authority to act fairly. Irrespective of how the duty to consult had been generated, the same common law duty of procedural fairness would inform the manner in which the consultation should be conducted. The requirements of fairness had to be linked to the purposes of the consultation. The following well-established requirements were essential: (i) consultation had to take place when proposals were still at a formative stage, (ii) sufficient reasons had to be given for any proposal to permit of intelligent consideration and response, (iii) adequate time had to be given for consideration and response, and (iv) the product of consultation had to be conscientiously taken into account in finalising any statutory proposals.”

[39] In **Regina v. Secretary of State for the Home Department, Ex parte Doody** [1994] 1 AC 531, at 560, the House of Lords discussed explained procedural fairness thus:

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates

the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

[40] Chief Justice Bernard, as she then was, in **Re Hanoman (Carl)** (1999) 65 WIR 157 also discussed the principle of procedural fairness in the consultation process and held as follows (at p165):

"However, modern trends indicate that the consultation process embraces more than just affording an opportunity to express views and receive advice. It involves meaningful participation and overall fairness and, although it inevitably involves the exercise of a discretion, inherent in that discretion is the obligation to act fairly and reasonably within the boundaries of the statute authorizing the exercise of the discretion."

[41] Consultation need not be conducted only by way of an oral hearing. **ex p Doody (supra)** establishes that consultation and therefore procedural fairness may be satisfied by allowing written representations without an oral hearing. In this case, the House of Lords considered the rights of prisoners serving life sentences to participate in the process leading to the fixing of the date on which each might be released on licence. The court decided that such a prisoner should be afforded the opportunity to submit, in writing, representations as to the period he should serve for the purposes of retribution and deterrence before the authority set the date of the first review of the prisoner's sentence.

Sufficient Consultation

[42] Justice Jamadar in **Air Services Limited et al** (supra) at para [47] cited **R v Brent London Borough Council ex p Gunning** [1985] 84 LGR 168 in which the principles to be applied in determining whether there was sufficient consultation were outlined to be:

- (i) Consultation when the proposals are still at a formative stage
- (ii) Adequate information on which to respond
- (iii) Adequate time in which to respond
- (iv) Conscientious consideration by an authority to the consultation

[43] Further, in **Moseley**, (supra) the UK Supreme Court endorsed the **Gunning** principles and added two other considerations (p 496):

“In addition, the degree of specificity with which the public authority should conduct its consultation might be influenced by the identity of those whom it was consulting. The demands of fairness were likely to be higher when an authority contemplated depriving someone of an existing benefit or advantage than when the claimant was a bare applicant for a future benefit.”

[44] **Article 232** embodies the procedural fairness principles as outlined in these cases in providing the framework for consultation and meaningful consultation. Although there are these two types of consultation, the requirements, as outlined in this article, for each of these consultative processes are the same. However, the level of consultation would be determined by the facts and circumstances, and thereby the context of the case.

[45] Extrapolating from the decision of Jamadar J in **Air Services Ltd**, in my view, whether mandated by the Constitution, or by statute, or by the application of common law principles of procedural fairness, the consultative regime required by the **art 232** should be followed.

[46] While Mr. Nandall submitted that the President elevated the consultative process under the **Integrity Commission Act** to that required by the **Constitution**, Mr. Forde, on the other hand, submitted that the President had lowered the level of consultation under

the **Constitution**. I am of the view that how the consultation is conducted is contextual (and I will discuss this later), so I hold that in effect the process must be the same, moreso for such an important Commission as the Integrity Commission. Therefore, I have concluded that the consultative process required by the Integrity Commission Act must be guided by prescription of **art 232**.

[47] I further conclude that in Guyana, given that the Constitution provides a framework for consultation in **art 232**, then anyone or entity that has to consult should follow this framework which, as Jamadar J explained, is clearly meant to foster dialogue, mutuality, inclusivity and accommodation. And I would add that the framework is also meant to engender transparency and accountability.

[48] In order to address the applicant's contention that the President failed to meaningfully consult with him on the respective appointments, I now examine the process as revealed in the evidence presented to the Court, bearing in mind the authorities cited above. The applicant highlighted, in particular, the failure to provide him with grounds or reasons for the nominations that would have allowed him a reasonable opportunity to express a considered opinion on the subject of the consultation. He also complains that the President unilaterally ended the consultative process when he made the appointments on May 31, 2022. Given the facts of this case, the following questions pursuant to **art 232 (a)** and **(b)** of the definition of consultation and meaningful consultation are to be answered:

(a) Did the President (i) identify the person to be consulted, (ii) specify to them in writing the subject of the consultation and (iii) specify an intended date for the decision on the subject of consultation?

(b) Did the President ensure that the person to be consulted was afforded a reasonable opportunity to express a considered opinion on the subject of the consultation?

[49] The first limb of the requirement at (a) was clearly met as the applicant as Leader of the Opposition was identified as the person to be consulted. However, the second limb of para (a) was not met in the first instance since the letter of April 29, 2022 did not provide much by way of information regarding the subject of the consultation though it did provide the May 13, 2022 date for a meeting. The applicant's letter of May 9, 2022 correctly pointed out that this April 29 letter was very vague. Mr. Nandlall so

acknowledged. So the April 29 letter could be considered as an “invitation to treat” so to speak, or a preliminary indication that the consultation was about to commence. Indeed, Minister Teixeira so alluded in her affidavit in defence, as did the joint statement.

[50] It is the May 11, 2022 letter sent by Minister Teixeira that provided information on what the subject of the consultation was, that is, consultation on the appointments to the Police Service Commission, Judicial Service Commission, Teaching Service Commission, and Integrity Commission and the President’s nominees. Therefore, I consider that it is this May 11 letter that in effect commenced the consultation process, finding as I do that it conforms with the requirements of the second limb of **para (a)** of the definition of consultation and meaningful consultation. The May 11 letter not only outlined the areas for consultation, but reconfirmed the May 13 in-person meeting, and that it was being convened regarding the appointments to the Commissions identified. The setting of this date for the meeting could be said to satisfy the third limb of para (a). The fact that the meeting did not culminate in a decision does not detract from an inference that it was the date for an engagement that would lead to a decision.

[51] In order to determine whether the requirements of **para (b)** of the **art 232** consultation and meaningful consultation definition have been satisfied, one must consider the totality of the correspondence and engagements. Scrutiny of what transpired is particularly necessary since it is in this regard that the applicant contends there has been such non-compliance as to lead to the appointments made being nullified. His letter of May 12 highlights this.

[52] As noted earlier, the May 13, 2022 in-person meeting between the President and the applicant took place, and a joint statement was issued dated the said May 13. This statement records, as quoted above, the history of the engagement with the applicant to that point, including a reference to the April 29 letter as the initiating process that fixed the meeting date. It records the subject of the consultation and that in response to a recognition that Minister Teixeira had requested clarification on the information requested “*the Leader of the Opposition clarified that the information that is being requested is the curricula vitae (CVs) of the persons under consideration and the President agreed to make those CVs available within two days.*” It was further agreed that the in-person consultation would resume in another meeting within a week. The

evidence discloses that the CVs were provided as requested on May 16 and therefore within the timeframe agreed.

[53] The applicant, however, contends that the joint statement does not reflect the entirety of what he requested at this meeting, and that he requested that more information be provided. He stated in his affidavit in reply that the *“Joint Statement referred to ... is not a ‘written record of the consultation’ within the meaning of Article 232, but was an incomplete statement of the discussions at the in-person meeting prepared for the sole purpose of being a Media Release.”* Be that as it may, it could be construed as a written record of that aspect of the consultation. Though, the fact is that the applicant does not explain in his affidavit what exactly he required or still requires when he deposed that he maintained that he would like *“all other information and materials upon which I can form a considered opinion on the nominees requested.”*

[54] It is noted that the correspondence by the applicant does not detail exactly what other information besides the CVs of the nominees could have been provided. In this respect, Mr. Forde submitted that reasons for the nominees should have been provided and that without such, the applicant could not make an informed decision or offer reasons of his own. Indeed, the applicant in his letter of May 30 alluded to this when he indicated that he was *“not yet in receipt of the grounds upon which each specific recommendation for appointment had been made.”* Prior to May 30, his correspondence simply repeated that the information provided was vague and inadequate, but he did not seek reasons or grounds for the nominations. As quoted earlier, Minister Teixeira’s letter of May 12 indicated she was unsure what more was desired but that her office could have been contacted in relation to the provision of further information on the names submitted. The applicant has provided no evidence that he requested any information and more importantly, any further specific information.

[55] Mr. Forde cited a number of cases including para [46] of the decision of Rajnauth-Lee JCCJ in **Mustapha v AG of Guyana & The Chairman of the Guyana Elections Commission [2019] CCJ 9 (AJ)** in which it was held that the person initiating the consultation must give reasons for their proposals. While I agree with this general principle, in my view, and I pointed this out during the oral arguments, reasons were provided. Minister Teixeira in her letter of May 12 stated that the persons named were

“people of good standing in our society” and that the applicant may have been familiar with their names. In addition, as regards the second respondent, the letter of May 27 highlighted that he would have been one of the four persons approved by the National Assembly for appointment to the Police Service Commission. The May 30 letter by Minister Teixeira again referred to the nominees as being all outstanding Guyanese, and to the unanimous approval of the members of the Police Service Commission by the National Assembly. These statements, in addition to the CVs that were provided, in my view, represent sufficient information and reasons for the nomination of the second to seventh respondents such as to permit the applicant to give an opinion about them.

[56] And as regards the nominees for the Integrity Commission, s 3 (2) and (3) of the **Integrity Commission Act** quoted earlier, provide the professional criteria for nominees. The CVs provided could have been perused by the applicant to see whether they met the statutory criteria, and therefore he could have made a contribution in this regard.

[57] Indeed, I am unclear, and Mr. Forde seemed unable to assist me with what were other possible grounds or reasons that could have been given for nominating the persons over and above that which had been provided unto May 30. So I have concluded that the applicant’s contentions as to not being provided with sufficient information are without merit.

[58] And in relation to the second respondent, there is an added reason why I do not consider that the applicant’s contentions have merit. While it is clear that the appointments process of the members of the Police Service Commission by the National Assembly is separate and apart from the appointment process of the Chairman of the Police Service Commission by the President, the fact remains that a bipartisan committee agreed that the second respondent be recommended for approval by the National Assembly.

[59] The applicant must have understood that pursuant to **art 210**, the nominee for the chairmanship was restricted to the four members who had been approved by the National Assembly. In this regard, the applicant as a Member of Parliament and the Leader of the Opposition, participated in the process that confirmed the committee’s nominees and thereby unanimously approved the appointment of the second respondent to the Police Service Commission. At that point in time, the applicant should have appreciated that the

second respondent could have been nominated by the President for appointment as the Chair. Applying the first additional principle from **Moseley** (supra), the applicant must be taken to be a person who would have been aware of the second respondent's appointment thus influencing the nature of the consultative process and how it could have been viewed by the President as the consulter.

[60] Then, the fact remains that Minister Teixeira extended an invitation by letter dated May 27, 2022 for the applicant to meet with the President on May 30 to continue the consultation. The applicant complains that another in-person meeting did not occur as originally planned. While the applicant may rightly express his regret and annoyance with the postponement of the meeting past the agreed deadline, as noted in the cases, consultation does not mean that it must be by way of meeting.

[61] In the said letter, Minister Teixeira stated that in the event the applicant was unable to attend the meeting he “*may wish to indicate in writing [his] additional contributions to this consultation.*” Therefore, the applicant could have put his concerns or reasons for rejecting or objecting to any of the nominees in writing. I am of the view and hold that by May 27 when the invitation for the second meeting was sent, the applicant would have had enough time to have considered the CVs of the nominees and to indicate whether the applicant agreed that the nominees were persons of such good standing as to be appointed as identified. I am of the view and hold that the applicant had all the necessary information from which he could have formed a considered opinion and communicated same via a letter.

[62] I note that Mr. Forde, in his oral submissions, stated that as regards the appointment of a Chairman of the Police Service Commission, the applicant took the position that he was awaiting further information from the President on which to base his assessment on whether to nominate one of the other three members for the Chairmanship. But I have concluded that given the overall context of appointment of the second respondent as a member of this Commission, and the concern of the applicant as stated in this application, he had enough information and opportunity to advance his reasons for objecting to the second respondent and to recommend another of the appointed members.

[63] The *dicta* of Jamadar JCCJ in **Air Services Limited** provide guidance on the attitudinal lens regarding how consultations should be conducted. While Jamadar, J

observed that the onus is on the State and Public Authorities to initiate the consultation process and ensure that its requirements are satisfactorily met, he further observed that the consultation process requires active engagement, mutuality, sincere receptivity, and genuine openness to correctly understand and appreciate the recommendations. As such, though the onus is primarily on the President to initiate the consultation process and to ensure that requirements, as set out in art 232, are met, there is a corresponding onus on the party being consulted to reciprocate. As we say colloquially, one hand cannot clap.

[64] This is borne out by two cases: **In the matter of an Application by the Essequibo Cricket Board for Writs of Certiorari and Prohibition 2015-HC-CIV-DEM-CM-2 (H Ct)** and **Mayor and Corporation of Port Louis v The Attorney-General of Mauritius [1965] UKPC 17** which I cited in **Jones v The Attorney-General & Hicken, FDA 705/2022**. I quote what I stated in Jones.

“The decision of Chang CJ (ag) in In the matter of an Application by the Essequibo Cricket Board for Writs of Certiorari and Prohibition 2015-HC-CIV-DEM-CM-2 (H Ct) provides a practical approach to treating with the situation where the law provides for consultation but due to no fault of the person mandated to consult, the consultation did not or could not materialise.

In this case, the Guyana Cricket Administration Act, No. 14 of 2014 provided that after meaningful consultation with the West Indies Cricket Board, the Minister of Culture, Youth and Sport was empowered to appoint a Cricket Ombudsman. Before any candidate was identified, the Minister sent a letter to the President of the Board requesting proposals from the Board of the names and contact details of five persons who could be appointed as the Cricket Ombudsman. The letter also indicated a willingness to meet for discussion at a mutually convenient time. The Board did not respond and after three months the Minister proceeded to make an appointment without submitting the name of the appointee to the Board as required by the Act. In these circumstances, the applicant sought orders quashing the appointment on the ground that the Minister had failed to engage in meaningful consultation with the Board in the appointment of the Cricket Ombudsman.

In refusing the orders sought, it was held that while the Minister was duty bound to engage in meaningful consultation, where the person to be consulted refused to engage in the statutorily required consultation, then the purposes of the Act could not be stymied. As such, the Minister could not be faulted for concluding that the Board was not interested in being consulted. Chief Justice Chang reasoned thus:

*'Even though section 17 of the Cricket Administration Act prescribes the holding of meaningful discussion with the West Indies Cricket Board as a procedural condition precedent to the exercise of the Minister's power to appoint, that section did not confer upon the West Indies Cricket Board the power to prevent the exercise of the Minister's power of appointment by the device of refusing to engage in consultation. In other words, the holding of 'meaningful consultation' with the West Indies Cricket Board was not an **absolute** procedural requirement for the exercise of the Minister's power of appointment. 'Meaningful consultation' was a procedural requirement conditional upon the willingness of the West Indies Cricket Board to engage in meaningful consultation. Simply put, 'meaningful consultation' was not an absolute procedural requirement. It was a provisional or conditional procedural requirement. Breach of that procedural requirement could not and did not render the act of appointment invalid when the attitude of the West Indies Cricket Board was not to engage in any consultation with the Minister on the issue of the appointment of the Cricket Ombudsman. Otherwise, the West Indies Cricket Board would have been conferred with a power to stultify the power of appointment conferred by Parliament on the Minister by the adoption of a negative attitude of non-cooperation. The procedural requirement of meaningful co-operation in section 17 of the Cricket Administration Act was not at all absolutely mandatory but was only provisionally mandatory. In the circumstances in which meaningful consultation could not be had due to the negative attitude of non-cooperation adopted by the West Indian Cricket Board, the appointment made by the Minister was not unlawful or a nullity.'*

*Similarly in **Mayor and Corporation of Port Louis v The Attorney-General of Mauritius [1965] UKPC 17**, the Governor in Council was mandated, pursuant to the relevant legislation, to consult with the local authority regarding the alteration of the boundaries of the town of Port Louis. It was held that "the local authority cannot be forced or compelled to advance any views but it would be*

unreasonable if the Governor in Council could be prevented from making a decision because a local authority had no views or did not wish to express or declined to express any views.”

These cases illustrate that while the provisions make it mandatory to engage in consultation, and in the case of art 211, meaningful consultation, where such consultation has not materialized due to no fault of the decision-maker, it does not mean that the decision-maker is precluded from acting.”

[65] If reasons are necessary in the context of a case, then indeed reasons must be given. But I have found that reasons were in fact given in this case, as outlined earlier, in the form of the reference to the nominees being persons of good standing, outstanding Guyanese, the provision of their CVs, albeit in response to a request by the applicant, and the reference to the process of the appointment of the Police Service Commission members by the Committee of Appointments and the National Assembly.

[66] In this vein, the applicant had an obligation to actively engage in the consultative process and to similarly exercise mutuality, sincere receptivity, and genuine openness to correctly understand and appreciate the nominations made by the President. The applicant's obligation upon receiving, as I have found, all the necessary information concerning the appointments, was to indicate his assent or dissent to the nominees recommended by the President. This is to say, he could have given his reasons for not agreeing with the persons proposed. He also could have advanced recommendations of his own. While the entire process as recorded in the joint statement commenced on April 29, it can be said that the consultative process commenced in earnest from May 11 when the specific subject of the consultation was identified. The applicant was given ample opportunity and adequate time to respond. This is to say, from at least May 16, when the CVs were provided, to May 30 the applicant could have made his representations but failed to do so. He never challenged the suitability of any of the nominees put forward by the President.

[67] In this regard, I note that in his affidavit the applicant has expressed concern about the political affiliation of the second respondent. What this reveals is that the applicant had or has some familiarity with the second respondent as suggested by

Minister Teixeira in her letter of May 12. And despite not being given grounds or reasons as he contends, the applicant clearly has a view on the suitability of this respondent for the post of Chairman of the Police Service Commission. The applicant's concern in this regard should therefore have been directed to the President as a reason for not supporting the second respondent's candidature for Chairman. This concern is misdirected to the Court which is not the person or entity to which it should be expressed.

[68] Then I must mention that this issue of the second respondent's political affiliation was brought up before the vote to confirm his and the appointments of the other Police Service Commission members. The Official Report and Minutes of the 46th Sitting of the National Assembly reveal that Opposition Member of Parliament, Mr. Khemraj Ramjattan, referred to the second respondent's political affiliation, when in raising another query about the appointment of the second respondent, he said "Apart from being a candidate for the PPP/C" And again I note that the applicant is recorded as having been present at this sitting. That said, I am not interested in whether or not the second respondent had or has a political affiliation. This is not necessary for a determination of the issues in this case.

[69] Also, since the applicant would or should have been aware of the status of the second respondent since the National Assembly proceedings of which he was a part, and based on the said Report and Minutes of the National Assembly, he must have agreed to forward his name and those of the other three to the President for appointment, then the applicant must be taken to be aware of the bona fides of the second respondent. In effect, the appointment of the members of the Police Service Commission by the President was a *fait accompli*. So, apart from the appointment of the Chairman, their appointments on May 31, 2022 were a formality.

[70] Mr. Forde relied on **Port Louis, Mustapha** and other cases regarding the supply of reasons. But these cases demonstrate that there is no rigid formula regarding the supply of reasons in the context of a consultative process. As I have concluded earlier, the totality of the evidence before the court indicates that reasons were given. There need not be a specific statement that says – 'my reasons or grounds for these nominations are ...'.

[71] Therefore, given the factual circumstances of this case, it should have been for the applicant to respond to the President's nomination of the second respondent who he had confirmed by his vote in the National Assembly. The applicant could and should have furnished, with reasons, his alternative nominee for the Chairmanship from the other three members of the Commission. In this case, the level of consultation, though having to be meaningful, is shaped by these circumstances. In this regard, I agree with Mr. Ramdhani that the grounds or reasons for the appointment of the second respondent must have been established with his approval for appointment by the National Assembly which included the applicant.

[72] Similarly, as regards the Integrity Commission nominees, the applicant should have let his views be known.

[73] Since the applicant did not respond positively to the any of the President's nominees in this case, it means that the applicant rejected them. I find support for my decision that it was then for the applicant to respond with his reasons for such rejection in the reasoning in the CCJ decision of **Mustapha**.¹ And paraphrasing para 27 of the judgment of Rajnauth-Lee JCCJ in this case, the applicant "should only find a nominee unacceptable for some good reason on objective grounds [for one cannot be] permitted, capriciously or whimsically, without proffering a good reason, to reject eligible nominees"

[74] Thus, as demonstrated by the authorities referred to earlier, the process of consultation is contextual and depends on the facts and circumstances. For this reason, also, I again do not agree with Mr. Forde that the consultation process was reduced to a low level. The sequence of events suggests otherwise. As submitted by Mr. Satram, there was full compliance with the **Gunning** principles which Mr. Forde advanced. And here I must mention as I did during the oral submissions, the duty to consult or meaningfully consult is not a process that requires the agreement of the consultee. It is a process that requires respectful engagement.

[75] So in relying on **para 46** of the judgment of Rajnauth-Lee JCCJ in **Mustapha**, the applicant, must appreciate that the principle of participation espoused therein requires a conscious decision to co-operate and actually participate, otherwise the implementation

¹ See paras 51 and 52 of the judgment of Justice Rajnauth-Lee, JCCJ.

of the inclusionary principles of our Constitution as highlighted in this paragraph would not be achieved.

[76] Having regard to the letters between Minister Teixeira and the applicant and all that transpired, I find that the applicant was afforded a reasonable opportunity to express a considered opinion on the subject of the consultation, thereby satisfying the requirement in **art 232 (b)**. Indeed, the adjournment of the meeting of May 13 by the President and the joint statement, showed a willingness to take into consideration the concern expressed by the applicant regarding his request for the CVs. This occurrence, in my view, captured the fourth **Gunning** principle which requires “conscientious consideration by the authority to the consultation”. As such, I have concluded that the principle of procedural fairness was satisfied, and that the consultation was sufficient.

[77] The applicant did not reciprocate as would be required of a consultee. In effect, applying the **Essequibo Cricket Board** and **Port Louis** cases, the applicant ultimately refused to engage and in such circumstances a decision-maker is entitled to proceed. The invitation for a further meeting on May 30 with an alternative of submitting his contribution if he could not attend was not, in my opinion, met with a reasonable response. The invitation to this meeting was a clear indication that the process was moving along. The applicant’s response dealt with matters that were not relevant to, and did not contribute to advancing the consultative process regarding the specific matters that were the subject of the consultation. Applying the **Port Louis** decision, in the absence of a reasonable response, I do not agree that the President had to give him another opportunity to engage. The last paragraph of Minister Texeira’s letter of May 30 in response to the applicant’s declination to engage clearly telegraphed that the President was moving on and going to make a decision as he was entitled to do. The President’s decision to proceed was therefore not unilateral.

[78] Accordingly, I hold that the President has discharged his constitutional duty to meaningfully consult and consult with the Opposition Leader as set out in **art 210 (1) (a)** and defined in **art 232 (a) (b)** of the **Constitution**, and s 3(4) of the **Integrity Commission Act**. I have determined that the President has complied with the letter and spirit of the Constitution and the law regarding the appointments made. As a consequence, I hold that the appointments of the Chairman of the Police Service

Commission, and the Chairperson and members of the Integrity Commission, on May 31, 2022 are constitutional and lawful.

[79] Given my decision, the issue of the application of the *de facto* doctrine does not arise as it would not be relevant.

Issue II: Whether the Police Service Commission is lawfully constituted in accordance with art 210(1); and whether, if it is not, there could be compliance with art 211 (1) and (2) as regards the Chairman of this Commission engaging in consultation with the other members of the Commission as a precursor to the President engaging in meaningful consultation with him in relation to the appointment of an acting Commissioner of Police

Facts and submissions relied on by the applicant and the first respondent

[80] On June 29, 2022, the applicant received a letter from Minister Teixeira under the caption “**Re: Appointment of a person to act in the Office of Commissioner of Police pursuant to Article 211 (2) of the Constitution of the Co-operative Republic of Guyana**” in which she stated *inter alia*:

“Pursuant to Article 211 (2) of the Constitution of Guyana, His Excellency has conducted and concluded meaningful consultation with the Chairperson with the Police Service Commission (PSC). His Excellency is now engaging you in meaningful consultation in respect of the appointment at caption. His Excellency is nominating Mr. Clifton Hicken to act in the Office of Commissioner of Police. I am attaching Mr. Hicken’s Curriculum Vitae (CV) for your easy reference.”

[81] The applicant contends that the Police Service Commission is not constituted in accordance with **art 210 of the Constitution** since **sub article (1) (b)** has not been complied with as a person appointed to the Office of Chairman of the Public Service Commission is not yet a member of the Police Service Commission.

[82] As such, in relation to the notification in Minister Texeira’s letter of June 29, the applicant further contends that the second respondent as Chairman of the Police Service Commission could not have lawfully engaged in any consultation with the other members of the Police Service Commission as required by **art 211 (1) of the Constitution** since the Chairman of the Public Service Commission had not been appointed and this person

is required by the Constitution to be a member of the Police Service Commission. So the President could not meaningfully consult with him pursuant to the **art 211 (1) and (2)** as regards the appointment of Mr. Hicken as acting Commissioner of Police.

[83] So the following have to be considered:

- a. whether the Police Service Commission is lawfully constituted in accordance with **Articles 210 (1) of the Constitution of Guyana;**
- b. whether the second respondent could be said to have properly consulted with the other members of the Commission when the Chair of the Public Service Commission has not been appointed a member such as to allow the President to meaningfully consult with the said second respondent as Chairman of the Police Service Commission, regarding the appointment of Mr. Hicken as acting Commissioner of Police;
- c. if it is found that the Chairman could not have properly consulted with the members of the Commission in the absence of the Chairman of the Public Service Commission, whether the actions of the Chairman in communicating the result of his consultation to the President regarding the appointment of Mr. Hicken as acting Commissioner of Police could be saved; and
- d. depending on the determination of these issues, if there should be any consequential orders.

[84] **Article 211 (1) and (2)** state:

“211 (1) The Commissioner of Police...shall be appointed by the President acting after meaningful consultation with the Leader of the Opposition and Chairperson of the Police Service Commission after the Chairperson has consulted with the other members of the Commission.”

(2) If the office of the Commissioner of Police is vacant or if the holder thereof is for any reason unable to perform the functions of his office, a person may be appointed to act in that office and the provisions of the preceding paragraph shall apply to such an appointment as they apply to the appointment of a person to hold that office; and any person appointed to act in the office of Commissioner of Police shall, subject to the provisions of paragraphs (3) and (4), continue to act until a person

has been appointed to that office and has assumed the functions thereof or, as the case may be, until the holder thereof resumes those functions."[Emphases added]

[85] **Article 137** establishes the Police Service Commission. **Article 210 (1)** which provides for the composition of the Police Service Commission states:

"210. (1) The Police Service Commission shall consist of-

(a) a Chairman appointed by the President acting after meaningful consultation with the Leader of the Opposition from among members appointed under subparagraph (c);

(b) the Chairman of the Public Service Commission;

(c) four members appointed by the President upon nomination by the National Assembly after it has consulted such bodies as appear to it to represent the majority of the Police Force and any other such body it deems fit:

Provided that a person should be disqualified for appointment as a member of the Commission if he is a public officer." [Emphases mine.]

[86] What can be gleaned from **art 210 (1)** is that the Chairman of the Public Service Commission must be a member of the Police Service Commission. There is no dispute that the Chairman of the Public Service Commission has not been appointed to the Police Service Commission. It is the submission of the applicant and Mr. Forde that in order for this Commission to be properly constituted, the Chairman of the Public Service Commission must have been a member, that is, he or she must have taken the oath of office to serve on the Police Service Commission.

[87] On the other hand, Mr. Nandlall submitted that the Commission may act notwithstanding any vacancy in its membership, or the absence of any member and any question for decision by the Commission shall be determined by a majority of the votes of the members of the Commission present and voting at a meeting of the Commission at which a quorum is present. It was further advanced that at all material times, despite the non-appointment of the Chairperson of the Public Service Commission, the Police Service Commission had a quorum.

[88] Mr. Nandlall therefore relied on **art 226 (3) and (4) of the Constitution** and **s 29 (5) of the Interpretation and General Clauses Act, Chapter 2:01**, the latter provision being similar in terms as **art 226 (3)**.

[89] **Article 226 (3) and (4) of the Constitution** provide:

“226(3) A Commission may, subject to the next following paragraph, act notwithstanding any vacancy in its membership or the absence of any member...

(4) Any question for decision by a Commission shall be determined by a majority of the votes of the members of the Commission present and voting at a meeting of the Commission at which a quorum is present and if on any question the votes are equally divided the Chairman or other member presiding shall have a casting vote in addition to his or her original vote.”

[Emphasis added]

[90] Mr. Nandlall cited the Trinidad and Tobago Court of Appeal decision in **Attorney-General of Trinidad and Tobago v Devant Maharaj Civil Appeal No. S. 161 of 2017** in which it was held, applying a similar provision to that of **art 226 (3)**, that the fact that a member of the Judicial and Legal Services Commission had not been appointed when a decision was taken to recommend the appointment of two judges, was not fatal. The Court held that the Commission was empowered to act even if there was a vacancy.

[91] The first respondent’s case, relying on **art 226 (4)**, is also that with four out of the five Commissioners having been appointed, then there was a quorate Commission in place with which the Chairman could have consulted thereby allowing him to engage with the President in meaningful consultation on the appointment of Mr. Hicken.

[92] In countering the submissions on behalf of the first respondent that once the Commission is quorate it can function, it was submitted on behalf of the applicant that this presupposes that Commission is performing functions as a Commission. In this case, it is not the Commission that is performing one of its functions; it is the Chairman who is performing a specific constitutional function which is exercised after consulting with the

other members of the Commission. It was also submitted that failure to appoint a member cannot be considered to amount to a vacancy.

Analysis

[93] It is public knowledge that the life of the previous Police Service Commission came to an end in August 2021. The Report of the Committee of Appointments dated December 29, 2021, and the Minutes of the Sitting of the National Assembly of April 13, 2022 reveal that the process for the constitution of a new commission was undertaken.

[94] The applicant deposed and Minister Teixeira admitted that the life of the Public Service Commission expired on August 9, 2021, and that a Public Service Commission has not been constituted and therefore a Chair of this Commission has not been appointed since then.

[95] Having considered the language of the Constitution, I hold that it is clear that for the Police Service Commission to be properly constituted the Chairman of the Public Service Commission must be a member. The use of the word ‘shall’ in **art 210** as regards the composition of the Commission, in my view, makes the membership of this office holder mandatory. It cannot be that the framers of the Constitution would countenance a situation where from the inception a member is not appointed, but the Commission would be deemed to be constituted. I consider that the **art 226 (3)** ‘savings’ provision presupposes that a Commission was fully constituted, but that a vacancy subsequently arose. I do not accept that **art 210** can be blithely ignored in the constitution of a constitutional Commission after the expiration of the life or term of a previous Commission with a simple response that **art 226 (3)** and **(4)** would apply.

[96] In addition, I am of the view that **art 226 (3)** and **(4)** would apply to the Commission in carrying out its functions. The issue here relates to the function of the Chairman. Apart from a challenge to the promotions gazetted by the Commission as stated in the applicant’s supplementary affidavit, this, in the main, is not a case challenging the actions of the Commission as a Commission. It is a case challenging the action of the Chairman. **Article 226 (3)** and **(4)** would not apply to a challenge to the action or function of the Chairman. So in this context the **Maharaj** case can be distinguished.

[97] In this regard, I agree with the decision of the Western Cape High Court, Cape Town, South Africa in **Premier of the Western Cape Province v The Acting Chairperson Judicial Service Commission and Others Case No: 25467/2009** at para 18 cited by Mr. Forde. The Court held as follows:

“[18] I agree that the absence of at least one member of the JSC was not satisfactorily explained. This was despite the applicant’s invitation to the 1st and 2nd respondents to give a proper explanation in a fourth affidavit (see *Tantoush v Refugee Appeal Board* 2008 (1) SA 232 (T) para 70 and 71). On the face of it, therefore, this objection is good. Mr Maleka argued that the situation was rescued by section 2(5)(a) of the Judicial Services Commission Act which provides that a vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission. This provision only applies once it has been established that there was a vacancy. There is no evidence before us that there was a vacancy. **The evidence on behalf of the 1st and 2nd respondents was simply that the second representative of the advocates’ profession had not yet been appointed which, in my view, is an admission that the JSC was not properly constituted.** I conclude that the second objection to the validity of the proceedings before the JSC is well taken.” [Emphasis mine.]

[98] I have further concluded that whether the Commission had a quorum can only be considered in the context of a fully constituted Commission. This is to say, once the Commission is fully constituted, then the issue of whether there was a quorum in carrying out its functions would arise. Whether there was a quorum or not is however not relevant to the issue to be determined: that is whether the Chairman could have properly carried out his function of consulting the other members of the Commission.

[99] This leads to another more fundamental reason why the Commission must be fully constituted in the context of the consultation the Chairman has to engage in pursuant to **art 211 (1) and (2)**. **Article 211 (1)** requires that the Chairman consult with “**the other members**” of the Commission. In my view, this language does not connote that some of the members could be consulted.

[100] In this regard, I therefore also agree with the submission made by Mr. Forde that the consultation is a function not of the Commission but of the Chairman. And the provision states not that there should be consultation with the Commission, but as highlighted, that there is to be consultation with “*the other members*” of the Commission. While Mr. Nandlall contended that it does not mean consultation with all the members, I am still of the view that all the members must be appointed so that the Chairman would have the opportunity to consult with each of them, whether individually or as a group.

[101] In this context, there must be adherence to the **art 232** framework for consultation by the Chairman just as the correspondence of June 29, 2022 to the applicant sought to commence the process of meaningful consultation regarding the appointment of Mr. Hicken as acting Commissioner of Police. This means that the Chairman should have written to each of the members of the Commission on the subject of the consultation, which in this case would be on the issue of recommending Mr. Hicken to act as Commissioner of Police. The correspondence should have included the intended date for the decision on the subject of consultation. Further, each of the members must have been afforded a reasonable opportunity to express a considered opinion on the subject of the consultation with a written record of the consultation being prepared and archived. Importantly the decision must be circulated to the members who were consulted.

[102] The record keeping as mandated is for transparency and accountability. Thus, the record could be produced in evidence to counter any allegation of impropriety in, or non-adherence to, the consultative process. In this case, if for any reason a member could not be consulted, there would or should be a record of this.

[103] As a result, my conclusion is and I hold that in the absence of the Chairman of the Public Service Commission, the Police Service Commission was not properly constituted.

[104] Given my decision in this regard, there are two consequential issues that must be considered:

- (i) what is the status of the consultation the second respondent is stated to have had with the other members of the Police Service Commission before he would have engaged in meaningful consultation with the President as indicated in the June 29, 2022 letter?

(ii) what is the status of any actions of the Commission as a body, more so as regards the promotions authorised by it?

[105] The first respondent relies on the *de facto* doctrine in submitting that actions taken during what is later found to be an unlawful appointment would be saved. Thus, the second respondent's stated consultation with members of the Police Service Commission and any action taken by this Commission in the exercise of its powers and functions would be validated.

[106] The *de facto* doctrine operates to save or deem valid the acts of an officer or judge even though their appointment is later found to be deficient or invalid. As stated in **Administrative Law by Wade & Forsyth (11th edn) at p 239**: "The logic of annulling all his acts has to yield to the desirability of upholding them where he has acted in the office under a general supposition of his competence to do so. ... This doctrine is firmly based in the public policy of protecting the public's confidence in the administration of justice. It is a well-established exception to the ultra vires rule."

[107] In addition, as stated in **State of Connecticut v Carroll (1871) 37 Conn 449** at pp 471 – 472:

"An officer de facto is one whose acts, though not those of a lawful official, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised."

[108] My short answer to sub-issue (i) is that the second respondent as a properly appointed Chairman, as I have found, could not have properly consulted with the other members of the Police Service Commission as required by **art 211 (1) and (2)** in the absence of one of those members. As such, in the absence of a lawful consultation with the other members of the Commission, as a further consequence, the second respondent could not have properly engaged in the exercise of meaningful consultation with the President in relation to the appointment of Mr. Hicken to act as Commissioner of Police.

[109] The *de facto* doctrine cannot be applied to these circumstances because I have concluded that this consultative function was that of the second respondent as Chairman

(and not that of the Commission) in circumstances where I have found that his appointment was lawful.

[110] However, as regards sub-issue (ii) regarding the action of the Commission – since the evidence suggests that the Commission acted while not properly constituted, I can consider the application of the *de facto* doctrine as explained above. As in the case of **Jones v The Attorney-General & Hicken (supra)**, I have concluded that the *de facto* doctrine can be applied to save the action of the Commission as regards the promotions it authorised. As in the **Jones** case, third party rights are affected and a Court must be careful in arriving at a decision that would affect the rights of others who would not have been heard.

[111] I do appreciate that I have made a distinction in the effects of the outcomes of my findings in this case. In the interests of clarity – that regarding the second respondent is based on my finding that he was constitutionally and therefore lawfully appointed as Chairman. Therefore, there is no action to be saved as a result of an unlawful appointment. Further, no third party rights are affected as no action has been taken. On the facts of this case, it is only the singular issue of the consultation regarding a proposed appointment of an acting Commissioner of Police that is in issue, and from the evidence this consultative process with the applicant is still in the initial stages.

[112] In relation to the Commission on the other hand, based on my conclusion that it is improperly constituted, I have had to consider the effect of this on any actions it would have taken in the belief that it was properly constituted. There is no evidence to suggest that the Commission was not of the view that it was properly constituted, albeit this would be an erroneous view. Hence, a consideration of its actions which, on the evidence presented by the applicant, only relate to the gazetted promotion list.

[113] As in the case of **Jones (supra)**, I am left unaware of any other actions that the Commission might have taken. Thus, it would not be prudent to simply say that all actions are nullified or that the promotions list is nullified but that other actions are saved. As said then, and I repeat now, this would be a most incongruous position to adopt.

[114] This said, there is no claim in this application for the nullification of any of the actions of the Police Service Commission as currently constituted. And I do not consider that I should exercise a discretion to grant such an order on the evidence in this case

under the claim of such further and other relief as the Court deems just, moreso as the Commission is not a party to this application.

[115] However, in the interests of avoiding any unforeseen consequences of my decision that the Police Service Commission is not properly constituted, I apply the *de facto* doctrine to save the actions of the Commission as currently constituted.

Conclusion

[116] Based on the my decision as outlined the following orders are made:

- (1) It is hereby declared that the President discharged his constitutional and statutory duties to meaningfully consult and consult with the applicant as the Leader of the Opposition as contemplated by **articles 211 and 232 of the Constitution of Guyana** and **s 3 (4) of the Integrity Commission Act, Chapter 26:01** respectively, and as a consequence all declarations and other orders sought regarding the appointments of the second to seventh respondents are refused.
- (2) It is hereby declared that in the absence of the appointment of the Chairman of the Public Service Commission to the Police Service Commission, subsequent to the expiration of the life and or term of the appointment of the previous Police Service Commission, the said Police Service Commission is not currently lawfully and duly constituted in accordance with **article 210 of the Constitution of Guyana**.
- (3) As a consequence, it is hereby declared that unto June 29, 2022, the second respondent could not have lawfully consulted with the other members of the Police Service Commission on the appointment of an acting Commissioner of Police in the absence of the appointment of the Chairman of the Public Service Commission as a member of the Police Service Commission pursuant to **article 210 (1) (b) of the Constitution of Guyana**.
- (4) As a consequence, it is hereby declared that any consultation between the President and the second respondent as at June 29, 2022, on the subject of the appointment of an acting Commissioner of Police of Guyana, is null, void, and of no legal effect.

- (5) As a consequence, it is hereby declared that the invitation to the applicant to engage in meaningful consultation in relation to the appointment of Mr. Hicken as acting Commissioner cannot proceed until the second respondent as Chairman of the Police Service Commission can properly consult with the other members of the said Commission as fully constituted pursuant to **article 210 (1) of the Constitution of Guyana** as a precursor to the President engaging in meaningful consultation with him in relation to the appointment of an acting Commissioner of Police.
- (6) It is hereby declared that in order for the Police Service Commission to exercise any of the powers, functions, and or duties conferred on it by the **Constitution of Guyana**, it is a mandatory requirement that upon the constitution of the Police Service Commission subsequent to the expiration of the life and or term of the appointment of the previous Police Service Commission, that a Chairman of the Public Service Commission be appointed and be made a member of the Police Service Commission pursuant to **article 210 (1)(b) of the Constitution of Guyana**.
- (7) As a consequence, for the avoidance of any unforeseen consequences of my decision regarding my finding that there is a deficiency in the Police Service Commission as currently constituted, it is hereby declared that any action of the said Police Service Commission as currently constituted is validated pursuant to the *de facto* doctrine.

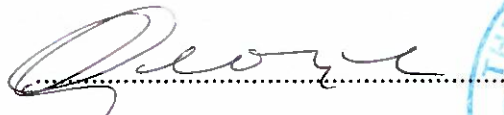
Postscript

[117] I cannot end this judgment without making two observations. It is highly unfortunate that Service Commissions as provided for by the Constitution – the supreme law of the land - have not been reconstituted in a timely manner. This is a disservice to the entities with which they are integrally involved, and therefore to the nation as a whole. Secondly, I must comment that the tone of the engagements between the applicant and Minister Teixeira leaves much to be desired. As Mr. Satram put it – the process became confrontational. Parties to a consultative process must respectfully focus on what the consultation is about and not on peripheral and irrelevant issues. Our Constitution provides the framework, but the duty bearers and actors must conscientiously strive to

- implement it for the good of the nation. In this regard the salutary words of the CCJ in
- both **Mustapha** and **Air Services Ltd** should provide guidance. In particular I quote para 26 of **Mustapha**: that the Constitution “anticipates that [the duty bearers and actors] will conduct themselves in a reasonable and responsible manner, eschew partisanship and seek the best interests of the Republic and the Guyanese people.”

[118] I must thank counsel for all the assistance provided in this case.

[119] Given the important constitutional and statutory issues raised, and my decision on the two issues identified in this Fixed Date Application, I consider that the parties should each bear their own costs.



Roxane George

Chief Justice (ag)

August 23, 2022

