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

**CIVIL JURISDICTION**

2019-HC-DEM-CIV-FDA-22

BETWEEN

**ATTORNEY GENERAL OF GUYANA**

Applicant

-and-

1. **DR. BARTON SCOTLAND, Speaker of the National Assembly of Guyana**
2. **MR. BHARRAT JAGDEO, in his capacity as Leader of the Opposition.**

Respondents

**SUBMISSIONS ON BEHALF OF THE APPLICANT**

At the 111th Sitting of the National Assembly of the 11th Parliament of Guyana held on Friday 21st December, 2018, the Leader of the Opposition Hon. Bharrat Jagdeo M.P., moved a motion of No Confidence in the Government of Guyana.

The National Assembly debated the Motion of No Confidence on the 21st December 2018. At the time 65 members of Parliament were in the House and voting. Upon voting a claim for division was made and the Clerk of the National Assembly recorded the result of the vote as 33 for the motion of No Confidence and 32 against the motion.

The Clerk of the National Assembly Mr. Sherlock Isaacs, A.A., subsequently signed Resolution No. 101 as passed by the National Assembly on 21st December 2018 which resolved that “That this National Assembly has no confidence in the Government”.

If "validly" passed the consequences inhere in Articles 106 (6) and (7): to wit-

Article 106 (6) of the Constitution of the Cooperative Republic of Guyana requires that “The Cabinet including the President shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of confidence.”

Article 106 (7) provides that “Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election.”

Articles 106 (6) and (7) are to be read together with Articles 61 and 70.

Article 61 provides for an election to be held on such day within three months after every dissolution of Parliament as the President shall appoint by proclamation.

Article 70 (2) provides that the President may at anytime by proclamation dissolve Parliament.

Article 70(3) of the Constitution provides that “Parliament unless sooner dissolved shall continue for 5 years from the date when the Assembly first meets after any dissolution and shall then stand dissolved”.

On a sitting of the National Assembly on January 3, 2019 the Speaker’s ruling and reasons positively reinforced the necessity for intervention by the Court in these circumstances when he opined: “I must tell you Honourable **members that the issues which we now face calls us to look outside of the Parliament to find answers**… **full, final and complete settlement of these issues by a Court of competent jurisdiction will place beyond doubt any questions which may exist and serve to give guidance to the Speaker and the National Assembly”**.

**LEGAL ISSUES ARE AS FOLLOWS: -**

1. **Whether 33 votes in favour of the motion of no-confidence amounted to a majority of all elected members in accordance with Article 106 (6) of the Constitution?**
2. **Whether Resolution 101 is constitutional and effective and passed in accordance with Article 106 (6) of the Constitution?**
3. **Whether section 5 of the Constitution (Amendment) Act, 2000 (No 17/2000) is constitutional and not inconsistent with article 70 of the Constitution.**
4. **Whether the Speaker’s ruling on the vote can be quashed by the Courts?**

**ANSWER**

**JURISDICTION**

It is respectfully submitted that the High Court of Guyana has jurisdiction to entertain this Application. The Court is the guardian and protector of the Constitution.

The High Court of Guyana is imbued and endowed with jurisdiction to craft orders it sees fit and in the interest of justice. Further, in the case of **Collymore v AG 12 W.I.R 5 at p. 9 Wooding CJ** opined that **“I am accordingly in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution.”** The Court has been identified as the guardian of the Constitution and by extension we respectfully submit that it can fashion orders that would protect the sanctity of the provisions of the Constitution in the fulfillment of its mandate as guardian of the Constitution.

Further in the case of **Smith v Mutasa and Another [1990] LRC (Const) 87 Supreme Court of Zimbabwe pronounced** **that: -**

**“Section 3 of the Constitution provided that the Constitution was the supreme law of Zimbabwe and no law could be made which was inconsistent with the Constitution so that the Parliament of Zimbabwe, unlike that of the United Kingdom, could not enjoy privileges, immunities and powers which were inconsistent with the fundamental rights guaranteed by the Constitution. If such a conflict exists, it could be resolved only by the Courts which were, in Zimbabwe, the protectors of the supremacy of the Constitution and acted as interpreters of the Constitution and all legislation.”**

**The aforementioned cases buttress the fact that the High Court is clothed with original jurisdiction to investigate any allege violation of the Constitution of Guyana. It is our respectful submission that this extends to a situation where the speaker of the National Assembly failed to follow the precepts as stipulated by the constitution.**

**Justice of Appeal Fraser in the case of Collymore v. The Attorney General of Trinidad and Tobago (1976) 12 WIR 5** posited:

*“****No one, not even Parliament, can disobey the Constitution with impunity...******But if Parliament fails or neglects to do so and thereby contravenes the expressed provisions of the Constitution any person who alleges that he has been, or that he is, or that he is likely to be prejudiced by such contravention may seek recourse to the High Court and pray its relief****”.*

**The position of jurisdiction of the court to intervene if parliament commits a breach of the constitution was crystalized in the case of**  **Speaker of the Assembly v. Delille 1989**, where the Court of Appeal of South Africa found that speaker had no authority under the Constitution to suspend a member of the House for an additional 15 days under the Constitution of South Africa. The Court as a consequence acknowledged that the respondent was entitled to an order declaring her purported suspension to be void.

**Issue 1: Whether 33 votes in favour of the motion of no-confidence amounted to a majority of all elected members in accordance with Article 106 (6) of the Constitution?;**

It is submitted that there was a miscalculation of the majority of all elected members as required under Article 106 (6) of the Constitution for the Government to be defeated on a vote of no confidence. In order for the Government to be defeated on a vote of confidence 34 or more votes, of all the elected members in favour of the motion was required instead of 33. This assertion is grounded in established Parliamentary precedent and practice and case law in the Commonwealth.

Article 106 (6) of the Constitution of the Cooperative Republic of Guyana provides that “The Cabinet including the President shall resign if the Government is defeated by the vote of a **majority of all the elected members of the National Assembly** on a vote of confidence”.

The Constitutional requirement for voting on a motion of no-confidence is distinct from voting on the passage of legislation and ordinary motions in Parliament. The framers of the Constitution by requiring the vote of a majority of **all** the elected members of the National Assembly have set the requirement as being tantamount to an absolute majority. The passage of legislation and motions outside of article 106 (6) procedurally only requires a vote of those members present and voting. By way of example, Article 168 of the Constitution deals with voting on motions generally and provides that “Save as otherwise provided by this Constitution, all questions proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting. Therefore, it is clear that the intention of Article 106 (6) is that there must be a majority of “**all the elected members of the National Assembly”** as a vote of confidence falls outside the ambit of article 168. This distinction in the voting required rests in the serious legal implications for the National Assembly, and the legal consequences of the vote of confidence as set out in the Constitution of Guyana.

The ordinary and legal meaning of a majority is a number greater than half. According to the Merriam Webster Dictionary (1828), “majority rule” is defined as:

“*a political principle providing that a majority usually constituted by fifty percent* ***plus one*** *of an organized group will have the power to make decisions binding upon the whole.”*

This definition of majority is applied in No Confidence Cases to both even and uneven numbers Parliaments and in the latter case where fractions are involved the rounding up of the fractions require at least a majority of two clear votes.

**In the case of Kilman V Speaker of Parliament of Vanuatu** **[2011] 4 LRC 656 Court of Appeal**

Section 43 (2) of the Vanuatu Consitution, provided inter alia that Parliament could pass a motion of no confidence in the Prime Minister provided it was supported by an absolute majority of the Members of Parliament. All 52 members were present but only 51 voted and the Speaker held the motion carried on a 26:25 vote. The Speaker had abstained. The Speaker’s decision was challenged in the Supreme Court on the ground that 26 votes had not constituted an absolute majority of Members of Parliament. The Chief Justice upheld the Speakers’ decision which was appealed to the Court of Appeal.

The issue was whether the Speaker’s ruling was or was not valid as being in accordance with the provisions of the Constitution.

It was held that the Speaker’s ruling that the motion of no confidence in the Prime Minister was carried by 26 votes was wrong and contrary to the clear terms of the constitution. The motion was lost.

Also that the Prime Minister did not cease to hold office as Prime Minister, and remained Prime Minister. The Ministers likewise remained Ministers.

At P.667 letter h the Court of Appeal stated “We consider that the phrase ‘an absolute majority of the Members of Parliament,’ can only mean at least half the Members of Parliament plus one. That is half of 52, being 26, plus one equals 27.

Further members of Parliament meant all those elected being 52 in number

The rounding up of the fraction formula was the manner of calculation used by the Speaker of the Anguilla House of Assembly in determining matters of quorum as pointed out in the case of **Hughes v Rogers Civil Suits No. 99 & 101 of 1999 High Court of Anguilla January 12, 2000.**  Where: -

The Anguilla House of Assembly had been paralyzed for many months for lack of a quorum. Section 52(2) of the Anguilla Constitution provided:-

“For the purpose of this section a quorum shall consist of two-thirds of the members of the National Assembly in addition to the person presiding”

The Anguilla House of Assembly is comprised of eleven members in addition to the Speaker.

Since two-thirds of eleven members is 7 and one-third, the Speaker interpreted Section 52 (2) to mean that whenever two-thirds resulted in a fraction , as it does now, then the next highest whole number would represent the applicable quorum. The Applicant contended the fraction should be rounded down.

The issue was should the fraction be rounded up or down.

Saunders J, as he then was held that: -

The Speaker was right to take the view, given the current membership, the Anguilla House has a quorum of eight members, in addition to the person presiding.’

According to Saunders J “In 1989 Australia amended the provisions pertaining to their quorum. A quorum of the Australia House of Representatives is now “one-fifth of the whole number of the members….” There are 148 members. The quorum has therefore been set at 30. The argument that the resulting fraction (three-fifths) is more than one half and thus amenable to rounding upwards rather than downwards is futile. The quorum provided for in the original Australia Constitution was one-third of the said 148. Yet, it was never doubted then that the quorum of 49 and one-third should be rounded upwards to 50.

Saunders J, reasoned that the concept of the quorum denotes the idea of the least possible for the valid transaction of business. Rounding down to seven members would not illuminate the relevant constitutional provision. It would undermine it.

An example of a similar case occurred in the Kenyan Parliament, which like Guyana’s Government was faced with a no confidence vote and a Parliament of uneven numbers. In that case the Speaker applied the formula expounded by Saunders J, as he then was, to determine the majority needed to pass the motion. As reported in the Kenya National Assembly Official Record (15th October, 2015) the Speaker of House stated[[1]](#footnote-1)-

“…Members. Before I call Mr. Orengo to move this Motion, I have the following explanation to give the House; Hon. Members, the Motion before the House derives from the provision of Section 58 subsection (3) of the Constitution of Kenya which provides as follows:-

If the National Assembly passes a resolution which is supported by votes of the majority of all the Members of the Assembly, excluding the ex-officio Members, and of which not less than seven days’ notice has been given in accordance with the Standing Orders of the Assembly, declaring that it has no confidence in the Government of Kenya; and the President does not within three days of the passing of that resolution, either resign from his office or dissolve Parliament, Parliament shall stand dissolved on the fourth day following the day on which that resolution was passed.’

The important points to note are that for the Motion to have legal effect:

1. Seven days’ notice must have lapsed between giving of the notice and the passing of the resolution.
2. The Motion must be supported by the votes of the majority of all members.

It must be clearly understood that it is the majority of all Members of the House as distinct from those present and voting. As of today there are 221 Members, excluding ex-officio Members. One half of that is 110.5. Since there is no half Member, I will round it to the nearest whole number which is 111.

A majority vote for the purposes of Section 59(3) of the Constitution, is therefore 112. The motion will therefore only be carried if 112 of you vote for it. If it does not attain that number, it will be deemed to have failed.”

More recently, the Conservative Party applied the same formula when a motion of no confidence was moved against Prime Minister Theresa May in December 2018. The total number of voters were 315 but when divided that number would have been 157.5 and when rounded up the number would be 158. In order for the motion to be carried the majority needed was 159. Although, this was not a motion of the Parliament it still demonstrates how uneven numbers and fractions are to be treated with respect to voting in the case of majorities for no confidence motions.

Accordingly, based on the cases and examples given above the number of votes required for the ‘no confidence motion’ was 34.

In accordance with the Laws of Guyana, the National Assembly comprises 65 members. Mathematically, half of all the elected members of the current National Assembly would result in a fraction of 32.5. That figure should then be rounded up to the next whole number being 33 which would now represent half of the elected members. In accordance with practice, the application of the meaning of majority means that ‘1’ must now be added to ‘33’ to calculate a majority.

Therefore, the majority legally required in Article 106(6) of the Constitution for a vote of no confidence to pass shall be 34 or more of all elected members of the National Assembly.

**Issue 2: Whether Resolution 101 is constitutional and effective and passed in accordance Article 106 (6) of the Constitution?**

It is respectfully submitted that the failure to obtain 34 or more votes breached article 106(6) of the Constitution and was unlawful and the certification by the speaker by issuing Resolution 101 could not be conclusive.

The case of **Smith v Mutasa and Another,** states that **“the punishment was unconstitutional in that it breached s.16 (1) of the constitution which prevented property being compulsorily acquired except on the conditions set out in that section; and further that the suspension of his remuneration being unlawful the certification by the Speaker that the matter was one of Parliamentary privilege could not be conclusive.”**

It is apposite to note that Resolutions of the National Assembly are ‘Subsidiary Legislation’ as defined by section 2 of the Interpretation and General Clauses Act Chapter 2:01 Laws of Guyana.

**It is our respectful submission that the principles of our constitution is sacred and sacrosanct and cannot be discharged by the Parliament itself, the body charged with making laws for peace, order and good government of Guyana. We submit most respectfully that the framers of our constitution could not have intended for a government to be defeated by a majority but rather an absolute majority of all members present. In all the circumstances, this could only be 34 votes in order that the motion be carried.**

Alternatively a question arises whether Resolution 101 being subsidiary legislation can lawfully abridge or curtail the 5 years government term of office provided for in article 70(3).

It is respectfully submitted that Resolution 101 cannot lawfully abridge or curtail the 5 years term of office of the APNU+AFC Government and to the extent that it is inextricable connected with and intertwined with the mandatory requirements of article 106 that the Cabinet and President resign no later than March 31st 2019, it purports to curtail or abridge the APNU+AFC term which constitutionally expires no earlier than May 2020, and to that extent that it has the effect of reducing the 5 years term in terms of article 70(3), it is pro tanto inconsistent with Article 70 (3) and invalid for such inconsistency.

The inconsistency has happened in law because of the following factors viz:

1. Resolution 101 is subsidiary legislation as defined by section 2 of the Interpretation And General Clauses Act. Cap. 2:01 (the Act), Laws of Guyana.
2. Section 20(1)(b) of the Act provides thus: “No subsidiary legislation shall be inconsistent with the provisions of any Act”.
3. Article 70(3) of the Constitution provides thus: “Parliament unless sooner dissolved shall continue for 5 years from the date when the Assembly first meets after any dissolution and shall then stand dissolved”.
4. Article 70(3) falls within the language “the provisions of any Act” since the Constitution which is the schedule to the Constitution of the Cooperative Republic of Guyana Act, Cap. 101 of the Laws of Guyana falls, within the definition of “Act” as defined in section 57 (3) of Cap. 2:01 relevantly thus viz “Every schedule … shall be construed and have effect as part of the written law”.
5. Cap. 2:01 is binding on the state and by section 232(9) of the Constitution applies for the purposes of interpreting the Constitution and in such application has effect as if it formed part of it.

It is respectfully submitted that having regards to the foregoing, this Honourable Court in interpreting article 70(3) in the light of Resolution 101 to determine the legal issue stated, should come to the ineluctable conclusion that the whole beneficent purpose of a motion for a vote of confidence being to curtail a government’s 5 years term, Resolution 101, amounts, in both fact and law to an inconsistency in terms of section 20(1)(b) of Cap 2:01 with article 70(3) and is invalid and of no legal effect for breach of that statutory prohibition or restriction. It is an illegality.

The National Assembly has no legislative capacity to pass a resolution in contravention of section 20(1)(b) of the Interpretation And General Clauses Act Cap.2:01 and Bharrat Jagdeo had no legal capacity to propose the motion.

For this proposition of law reliance is placed on the analogous case of In re an Arbitration between Mahmoud and ISPAHANI (1921) 2 KB 716 and cases cited therein. And just as how in Mahmoud and Ispahani the Court refused to give effect to a contract in breach of the statutory prohibition, so, it is respectfully submitted this court should in its inherent jurisdiction refuse to enforce Resolution 101 by declaring it to be illegal and invalid.

What Bankes, CJ said in Mahmoud and Ispahani is apposite viz “… the Legislature has prohibited this contract and therefore it is a case in which the Court will not lend its aid to the enforcement of the contract” (see at page 724). Resolution 101 is analogous to that contract; the Order, is analogous to section 20(1)(b) of Cap. 2:01, and so the case for non enforcement in this matter is a fortiori stronger.

Lord Ellenborough, CJ in Langton V. Hughes was quite categoric “what is done in contravention of the provision of an Act of Parliament cannot be made the subject matter of an action. Resolution 101 is illegal and void and the latin maxim – ex nihilo nihil fit applies. The Leader of the Opposition cannot say, and is not in law permitted to say to this Court: “Protect me from my own illegality”.

Resolution 101 is therefore inconsistent with and in breach of Article 70(3) of the Constitution and is ultra vires, null and void and without legal effect.

**Issue 3: whether section 5 of the Constitution (Amendment) Act, 2000 (No 17/2000) is constitutional and not inconsistent with article 70 of the Constitution**.

It is respectfully submitted that the framers of the Constitution in article 70(3) having guaranteed an elected government a 5 years term of office which 5 years term is protected by entrenchment by the requirement of 2/3 of all the elected members of the National Assembly voting to reduce that 5 years, could not at the same time have intended that a future Parliament were to be permitted to abridge or curtail the enjoyment of that five years, by introducing into the Constitution via a provision that is not entrenched at all a process called a ‘vote of confidence.’

This provision was completely omitted in 1980 by the framers whereby by a bare simple majority an elected government’s entrenched five years term could to all, practical intents and purposes be reduced to mere months (as there is no time limit after a President is sworn into office before a vote of confidence could be taken).

Inter alia, it is this vulnerability to such drastic impingement on that guaranteed 5 years through the instrumentality of section 5 of that Act which, was in law capable of being amended without a 2/3 majority, that is repugnant to, and inconsistent with the intention of the framers that the 5 years should only, in law be reducable by some future amendment of a provision which requires a 2/3 majority vote for its amendment.

Article 106 via which the 7th Parliament has purported to enable such reduction to the 5 years, is not such a provision. Article 106 is not an entrenched provision in terms of the special procedure for alteration in article 164.

For present purposes it is wholly immaterial that, in point of fact, there was political bipartisanship that caused Act 17/2000 to be passed in fact by a 2/3 majority vote.

It is submitted that that fact of 2/3 majority vote is immaterial to the issue under consideration because the question of interpretation as to what the framers intended is not whether parties may for political convenience (as happened with 17/2000) pass a Bill with 2/3 majority support.

The question is whether bipartisan support, or not, the provision requires 2/3 majority vote for its passage. Article 106 does not require 2/3 majority vote for its alteration.

The case of Hinds V The Queen (1976) 1 All ER 353 in which legislation (ie Gun Court Act, 1974) was declared in part unconstitutional for being in conflict and repugnant to entrenched provisions in the Jamaican Westminister model Constitution relating to the Judiciary provides a useful analogy as to how the principle of entrenchment applies to render section 5 inconsistent with article 70(3) and so void for inconsistency under article 8 of the Constitution.

Lord Diplock delivering the majority judgement made this seminal observation viz “the purpose served by the machinery for entrenchment is to ensure that those provisions that were regarded as important safeguards by the political parties in Jamaica, minority and majority alike,… should not be altered without mature consideration by the Parliament and the consent of a large proportion of its members than the bare majority required for ordinary laws.

So in deciding whether any provision of a law passed by the Parliament of Jamaica as an ordinary law are inconsistent with the Constitution of Jamaica neither the Courts of Jamaica nor their Lordships Board are concerned with the propriety or expediency of the law impugned.

They are concerned solely with whether those provision however reasonable or expedient are of such a character that they conflict with an entrenched provision of the Constitution and so can be validly passed only after the Constitution has been amended by the method laid down by if for altering their entrenched provision. “(see at page 361 e-g).

It is crucial to understand that section 5 was expressly concerned to alter article 106 only and that being its expressed intent, no question can arise as to it having impliedly amended article 70 (3). It purported to do what it was intended to do, and so the question is whether there was any amendment of article 70(3).

It is respectfully submitted that there was none; and that being the legal position, section 5 which purports to enable by its insertion in article 106 of sub-articles (6) and (7) reduction in the 5 years term in office, flies in the face of article 70(3), collides with it and is ipso facto and ipso jure, void for inconsistency (article 8). Legislation being void for repugnancy with the Constitution happened also in the local case of Attorney General V. Mohamed Alli (1987) 41 WIR 176.

**Issue 4: Whether the Speaker’s ruling on the vote can be quashed by the Courts?**

If the vote is contrary to the Constitution the Court can intervene and quash the Speaker’s decision. In the **Kilman** case the Court declared that the vote was void and that Government Ministers were not to resign but remain in office.

In the case of **Hughes v Rogers cited above** Justice Sanders examined several Commonwealth decisions and concluded that:

“A common thread runs through all of these cases. It is this. The Courts are entitled to inquire into the existence and extent of any privilege claimed by the House of Assembly. Moreover, the Courts will intervene where the Parliament, or the Speaker has exceeded its powers, or has claimed for itself powers that it did not have, or has acted in a manner clearly, inconsistent with constitutional provision.”

If a Speaker of a National Assembly acts contrary to the Constitution his decision can be quashed. In this case the vote in Guyana is contrary to Article 106 (6) and must be set aside as being ultra vires and repugnant to the Constitution.

Authority for this proposition that the Speaker ought to act constitutionally is found in the case of **Economic Freedom Fighters and others v. The Speaker of the National Assembly and others [2018] 3LRC, p. 279**. In this case the Court ruled that the Speaker of the National Assembly ruled that in exonerating the President from the report produced by the Public Protector had acted inconsistent with the Constitution. See also the case of **Doctors for Life International v. The Speaker of the National Assemble, (Constitutional Court of South Africa, case No. 12 of 2005, unreported).** In this case the Speaker failed to fulfill the constitutional obligation of the National Assembly to facilitate consultations with the public.

In the case of **Speaker of the Assembly v. Delille 1989**, the Court of Appeal of South Africa found that Speaker had no authority under the Constitution to suspend a member of the House for an additional 15 days under the Constitution of South Africa. The respondent would therefore be entitled to an order declaring her purported suspension to be void.

The golden thread that runs through all the cases is once the Speaker acts in manner contrary to the constitution, the Courts are duty bound to void his decision. This position is also highlighted in the cases of **Democratic Alliance v. Speaker of the National Assembly [2016] ZCC 8 and The Freedom Fighters v. the Speaker of the National Assembly [2018] 3 LRC 279.**

Moreover, the case of **Brantley v Martin and others 2013 unreported ( St. Kitts) the Court determined the issue of the scrutiny of a Constitutional matter in particular the right to a Motion of No Confidence**

**Justice Ramdamhi in his decision concluded:**

**“**The St Kitts and Nevis Constitution, like all other written constitutions styled on the Westminster model, has displaced the common law doctrine of general competence and unqualified supremacy of Parliament. The National Assembly’s right of control over the internal management of its own affairs is a privilege which history has shown, is one which is necessary as being essential to the discharge to its lawful functions**. Accordingly, in a constitutional supremacy, the Assembly is not completely immune from the scrutiny of the court, which has a limited right to intervene to ensure that the Assembly has not acted, or is not acting in a manner inconsistent with any provision of the Constitution.”**

In the **Bahamas Methodist Church v Symmonette (2005) 32 WIR 1** the Court indicated that it can intervene where irreparable harm would be caused. The case concerned the Court’s intervention to review a Bill before its enactment by Parliament.

The vote taken in the Guyana Parliament is an instance in which irreparable harm would be caused and requires the Court’s intervention.

Justice Saunders, as he then was, in the Eastern Caribbean Case of ***Benjamin et al v. Ministry of Information et al, an unreported case from High Court of Anguilla, Suit No. 56 of 1997*** decided on the 7th January, opined:

“ …our democracy rests on three fundamental pillars, the legislature, executive and judiciary. **All must keep within the bounds of the Constitution**. **The judiciary has the task of seeing to it that legislative and executive action does not stray outside those boundaries onto forbidden territory. If that occurs and a citizen withstanding complains, the court declares the trespass and grants appropriate remedies**.”

Finally, in the case of: **In the matter of an Application under and in terms of Articles 17, 35 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka, Rajavarothiam Sampanthan v. The Attorney General**, the Sri Lankan Supreme Court ruled that the President had no constitutional authority to dissolve the Parliament and all persons must act within the set parameters of the Constitution. The ruling was handed down on the 14th December, 2018.

The quintessential fact is that there has been an error in the manner of the calculation of the number of votes needed for a No Confidence Motion, and this error carried over into the purported pronouncement by the Speaker that the vote was carried. The ineluctable conclusion is that the vote was improper and unconstitutional. The Constitution’s ethos and norms must be maintained in order that the Parliament do not act or purport to act in a manner subversive to the Constitution.

Dated 18th day of January, 2019.

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Ms. Deborah Kumar

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**CIVIL JURISDICTION**

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

Respondents

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**SUBMISSIONS ON BEHALF OF THE APPLICANT**

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1. [↑](#footnote-ref-1)