

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015- 03107

**IN THE MATTER OF
THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01**

AND

**IN THE MATTER OF
A PARLIAMENTARY ELECTION PETITION FOR THE CONSTITUENCY OF ST. JOSEPH
HELD ON THE 7TH DAY OF SEPTEMBER, 2015**

AND

IN THE MATTER OF THE ELECTION PROCEEDINGS RULES, 2001

BETWEEN

VASANT VIVEKANAND BHARATH

Petitioner

AND

TERRENCE DEYALSINGH

First Respondent

AND

**THE RETURNING OFFICER FOR THE CONSTITUENCY OF ST. JOSEPH
(DEEMED TO BE A RESPONDENT
BY VIRTUE OF SEC. 107(2) OF THE REPRESENTATION OF THE PEOPLE ACT)**

Second Respondent

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. T. Straker Q.C., Mrs. K. Persad-Bissessar S.S., Mr. A. Ramlogan S.C., Mr. K. Samlal, Ms. J. Lutchmedial, Mr. D. Bailey, Mr. G. Ramdeen appeared on behalf of the Petitioners

Mr. D. Mendes S.C., Mr. J. Jeremie S.C., Mr. R. Nanga, Mr. K. Garcia, Mr. M. Quamina, Ms. Gopaul, Mr. S. De la Bastide, Ms. C. Jules, instructed by Ms. E. Araujo appeared on behalf of the First Respondents

Mr. R. Martineau S.C., Mrs. D. Peake S.C., Mr. R. Heffes-Doon, instructed by Ms. A. Bissessar appeared on behalf of the Second Respondents

JUDGMENT

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Introduction

1. The Republic of Trinidad and Tobago is a Sovereign democratic State¹, in which ***the Constitution*** is the supreme law² and Parliament holds the legislative power for the peace, order and good government for the people of Trinidad and Tobago³. Government derives its legitimacy by the consent and will of the majority of the electorate⁴. Constitutionally, members of the House of Representatives are elected at least every five (5) years by secret ballot and the result of the election is determined by a count of the votes on the basis of first past the post⁵.
2. The process of elections to the House of Representative is set out in minute detail in ***the Representation of the People Act (ROPA), Chapter 2:01***⁶ and is subject to the direction and supervision of the Elections and Boundaries Commission (EBC) which is a statutory body, created by Section 71(1) of ***the Constitution***⁷ and is independent of the direction or control of any person or authority.
3. It was in this constitutional context that the people of the Republic of Trinidad and Tobago went to the polls on the 7th September, 2015 to elect members of the House of Representatives and ultimately a new government.
4. On the day of the polls, the EBC issued a directive that the voting should be extended by one (1) hour because of inclement weather.

¹See Section 1, The Constitution, Ch. 1:01

² See Section 3, The Constitution, Ch. 1:01

³ Section 53 of the Constitution, Ch. 1:01

⁴See the Judgment of Jamadar, JA on the Leave Appeal in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

⁵ See Section 73, The Constitution, Ch. 1:01

⁶ Representation of the People Act, Ch. 2:01

⁷ The Constitution, Ch. 1:01

5. On the 10th September, 2015, the EBC issued the final vote count in respect of the general election⁸, declaring the People's National Movement (PNM) the victorious party⁹.
6. Some eight (8) days later, the Petitioner, the losing candidate for the United National Congress (UNC) in the electoral district of St. Joseph, moved the Court under Section 52 of *the Constitution*¹⁰ to have the election declared invalid. Almost simultaneously, leave was sought by five (5) other losing candidates to file Representation Petitions to have the election in their constituencies declared void. The main contention of these Petitioners was that the extension of the poll by one (1) hour constituted a breach of the election laws of Trinidad and Tobago, that each breach also constituted corrupt practices, for which the election should be invalid.
7. In the course of this judgment, the Court considered the constitutional imperatives of integrity and fairness in the process of Parliamentary elections, as well as the statutory and common law bases upon which Parliamentary elections may be declared invalid.
8. The Court paid special attention to the powers of the EBC and whether powers can be attributed to the EBC by virtue of Section 5(2)(h) of *the Constitution*¹¹.
9. The Court explored the doctrine of substantial compliance in the context of Parliamentary elections and the weight that Courts have given to the expression of the will of the majority before an election is set aside.

⁸ See paragraph 28 of the Affidavit of Mrs. Fern Narcis-Scope filed on the 29th January, 2016

⁹ See paragraph 28 of the Affidavit of Mrs. Fern Narcis-Scope filed on the 29th January, 2016

¹⁰ The Constitution, Ch. 1:01

¹¹ The Constitution, Ch. 1:01

10. The Court also considered the meaning and effect of *the ROPA*¹² which at Section 35(3)¹³, includes a saving provision for elections.

Procedural History

11. On the 18th September, 2015, the Petitioner sought and obtained the Court's leave to present a Representation Petition under Section 52 of *the Representation of the People Act (ROPA)*¹⁴.
12. The First and Second Respondents lodged an appeal against this grant of leave ("the Leave Appeal"). On the 30th November, 2016 the appeals were dismissed by a majority of two to one and the Petition was remitted to be heard by this Court. In the course of his ruling on appeal, Justice of Appeal Jamadar provided guidelines for the determination of the substantive matter.
13. On the 11th December, 2016 this Court gave directions specifying deadlines for filing of affidavits and of notices indicating evidential objections. Deadlines were specified sequentially, directing that affidavits be filed firstly, on behalf of the Petitioner, each of the Respondents and the Petitioner in Reply. Ultimately, directions were given for the filing of Notices indicating evidential objections, which were in fact heard on the 28th April, 2016.
14. In the interim, the Petitioner filed a Notice of Application¹⁵ on the 2nd March, 2016 pursuant to Section 109 of *the ROPA*¹⁶ seeking an order that the specified election documents be delivered to the Registrar of the Supreme Court and be produced by the EBC for the

¹² Representation of the People Act, Ch. 2:01

¹³ See the full text of the Section of Schedule B

¹⁴ Representation of the People Act, Ch. 2:01

¹⁵ The Notice of Application filed on the 2nd March, 2016 and Application for production of documents.

¹⁶ Representation of the People Act, Ch. 2:01

inspection of the Petitioner. The Court gave directions for the filing of Written Submissions in support of and in opposition to the Petitioner's Application for production of documents.

15. On the 23rd May, 2016, the Court heard submissions on the Application for production of documents and recorded an undertaking on behalf of the EBC that it would refrain from destroying the election documents until the hearing and determination of the Petitions.
16. On the 23rd May, 2016, the Court also ruled on the Petitioner's Notice of Application for production of documents and directed that the Petitioner be at liberty to inspect four (4) categories of election documents.
17. Pursuant to the Court's Ruling, the Petitioner inspected the documents and on the 8th June, 2016, the Petitioner filed and served a Notice of Application seeking production of certified copies of two (2) sets of documents:
 - Polling station diaries, and
 - Roving Officers' reports.
18. The latter application was initially heard on 10th June, 2016. Mr. Martineau, learned Senior Counsel for the EBC requested time to consider the Application. On the adjourned date, the 17th June, 2016, Mr. Martineau, S.C. agreed to produce certified copies of the documents but strenuously resisted the Petitioner's Application to have the documents tendered into evidence.
19. The Court heard oral submissions and delivered an extempore ruling granting permission to the Petitioner to file an affidavit exhibiting the documents which were to be produced by the EBC. The Court also gave permission to the Respondents to file affidavits in opposition. The Respondents lodged an appeal against the dates set by the Court for the filing of affidavits in opposition.

20. On the 27th June, 2016, the Court of Appeal heard and ruled on two (2) appeals:
the first was the Petitioner's appeal against the Court's ruling on evidential objections as well as the appeal referred to at the preceding paragraph.
21. The Court of Appeal allowed the appeal against the ruling of this Court as to evidential objections on the grounds of hearsay and evidence which had not been pleaded. In the course of his ruling, Justice of Appeal Mendonça, who also delivered the unanimous ruling of the Court of Appeal, decreed that this Court had construed the Petitioner's case too narrowly. Justice of Appeal Mendonça identified four (4) elements as the core of the Petitioner's case¹⁷.
22. The learned Justice of Appeal ruled as well that this Court was plainly wrong in its decision on objections on the ground of hearsay and also remitted evidential objections on the ground of hearsay to this Court. The Court of Appeal directed however, that the evidential objections be treated as part of the hearing of the trial of the Petition.
23. The Court heard *viva voce* submissions from the 28th June, 2016 to the 12th July, 2016. By their *viva voce* submissions learned Senior Counsel for each party supplemented Skeleton Arguments which had been filed on the 24th June, 2016.
24. Prior to preparing this written judgment, I have examined the evidential objections in light of the direction of the ruling of the Court of Appeal and have reduced my views to a written

¹⁷ The core case was set out at page 65 at lines 22-40 of the Official Transcript for the 27th June, 2016 in the Procedural Appeal CA S-171/2016; CA P-172/2016; CA S-173-75/2016; CA P-198/2016; CA S-199-202/2016: "1) that there is a statutory regime, including a specific time-table for the running of Parliamentary elections that includes a requirement that the poll should be taken between 6:00 a.m. 6:00 p.m. See rule 27(1) of the Elections Rules.

2) the second Respondent illegally extended the time for the taking of the poll from 6:00 a.m. to 7:00 p.m.
3) as a consequence, it is alleged that there was a breach of official duty and this breach had effects and consequences, *inter alia*, because electors and those interested in the course of elections, such as political parties, organise themselves for the purpose of voting with the expectation that the statutory regime and time lines cannot be altered.

4) the aforesaid change in the closing time substantially and materially affected the result of the election."

Ruling entitled “*Ruling on Evidential Objections II*”. This will be delivered together with my decision in the substantive matter.

Facts

25. The facts in this matter are not in dispute. They are set out below and were gleaned from affidavits filed on behalf of each of the three parties. A list of all affidavits may be found in Schedule A to this judgment.
26. The Petitioner, Vasant Bharath, had been a Member of Parliament since 2007. He was a member of the Senate from 2010 to 2015.
27. On the 13th June, 2015, Mrs. Kamla Persad-Bissessar, S.C., then Prime Minister of Trinidad and Tobago decreed that general elections be held on Monday 7th September, 2015. The Petitioner was duly screened and nominated as the UNC Candidate for the electoral district of St. Joseph.
28. On the 23rd July, 2015, an Election Notice was published in respect of the electoral district of St. Joseph in the Trinidad and Tobago Gazette.¹⁸ By this Notice, it was declared that the poll would be taken between 6:00 a.m. and 6:00 p.m. on the 7th September, 2015.
29. The poll opened throughout Trinidad and Tobago at 6:00 a.m. on the 7th September, 2015. At around midday on the 7th September, 2015, many parts of the island of Trinidad experienced bad weather, with heavy showers of rain and flooding in many areas. Weather conditions led to severe traffic gridlocks, thus hampering of mobility of commuters.
30. It was at this time, that members of the EBC were visiting electoral districts throughout the island of Trinidad. It was the evidence of Mrs. Fern Narcis-Scope, Senior Legal Officer of

¹⁸ “VVB3” exhibited to the Affidavit of Vasant Bharath filed on the 22nd September, 2015

the EBC, that members of the EBC were themselves stranded by inclement weather. Having left their officers at 6:00 a.m., members of the EBC were visiting polling stations in different electoral districts. At around midday, they were in the Success Laventille Composite School when heavy raining began. Members of the EBC were prevented from leaving Success Laventille Composite because of the downpour.¹⁹

31. Mrs. Narcis-Scope referred as well to an incident at a polling station in Oropune. One of the tents collapsed due to the water-logged canvas of a tent.²⁰
32. Altogether, the evidence of the Second Respondent confirmed the evidence of the Petitioner in respect of flooded streets and homes, with voters stranded at taxi stands experiencing difficulty in accessing polling stations.²¹
33. It was in this context, that Dr. Masson of the EBC asked Mrs. Narcis-Scope to contact Commissioners Mark Ramkerrysingh and Dr. Noel Kalicharan with a view to extending the voting hour from 6:00 p.m. to 7:00 p.m.
34. It is not disputed that Mrs. Narcis-Scope telephoned Mr. Dominic Hinds, the Manager Corporate Communications and instructed him to prepare a media release. It was the evidence of Mr. Hinds that all media houses were informed of the extension at 5:22 p.m.²²
35. Mrs. Narcis-Scope deposed, as well, that she instructed the Chief Election Officer to take immediate steps to communicate the decision of the EBC to officials, polling officers and stakeholders. Mrs. Narcis-Scope deposed that she confirmed that this was done. There was however, no evidence as to the time at which the Chief Election Officer completed the

¹⁹ See the Affidavit of Mrs. Fern Narcis-Scope filed on the 29th February, 2016 at paragraphs 11 and 12

²⁰ See the Affidavit of Mrs. Fern Narcis Scope filed on the 29th February, 2016 at paragraphs 16.

²¹ See the Affidavit of Mrs. Fern Narcis Scope filed on the 29th February, 2016 at paragraphs 31.

²² See the Affidavit of Mr. Dominic Hinds filed on the 29th February, 2016 at paragraph 8.

assigned task or the method which he used to ensure that all stakeholders were informed.²³

Mrs. Narcis-Scope was therefore unable to testify, with certainty, that candidates or their agents had been notified of the extension in a timely manner or at all.

36. It was the evidence, on behalf of the Petitioner, that by 5:05 p.m. on the 7th September, 2015, the Petitioner and his team began to hear rumours of the extension. They provided evidence of the uncertainty, in the context of an apparently well organised election machinery including mock stations and support staff consisting of polling agents, volunteer drivers and roving officers. Deponents for the Petitioner testified that campaign workers held the expectation that the election machinery would be dismantled upon the close of the polls at 6:00 p.m. Volunteer drivers also organised themselves to make their “*Last search for voters ...their last ‘drag’*”²⁴ between 5:00 p.m. and 6:00 p.m.
37. Interestingly, evidence emanating from the First Respondent confirms that the PNM encountered similar difficulties in terms of uncertainty. It was also their evidence that their election support machinery was organised to shut down at the close of polls at 6:00 p.m. Accordingly, for deponent, Keith Toby, “*It was a daunting task to get things back up and running.*”²⁵
38. The Petitioner provided evidence as to his uncertainty as to the number of persons who were affected by the extension, that is to say, the number of persons who might have voted for him, had they been aware of the extension.

²³ See the Affidavit of Mrs. Fern Narcis Scope filed on the 29th February, 2016 at paragraph 25.

²⁴ See the Affidavit of Mr. Amrit Sooknanan filed on the 29th January, 2016 at paragraphs 6 to 8 as evidence as to the “last drag”.

²⁵ See the Affidavit of Mr. Keith Toby filed on the 29th February, 2016 at paragraph 23.

39. There is however no dispute that the final result was that the Petitioner secured eight thousand, nine hundred and three (8,903)²⁶ votes, and the First Respondent was victorious, having won ten thousand, five hundred and thirty-six (10,536)²⁷ votes. There are twenty-seven thousand, six hundred and fifty-five (27,655) persons, who are registered to vote in the electoral district of St. Joseph.
40. There was a total voter turnout of nineteen thousand, six hundred and forty-eight (19,648) persons, which is seventy-one point five percent (71.05%) of the electorate²⁸, in the electoral district of St. Joseph. The Respondents also provided separate evidence as to the number of persons who voted in the extended hour. The First Respondent relied on short affidavits of polling agents for the PNM. Each deponent indicated the number of persons who voted in the extended time. Their evidence was, however, to the best of their recollection. According to the Respondent's evidence, the number of persons who are estimated to have voted in St. Joseph in the extended time between 6:00 p.m. and 7:00 p.m. was two hundred and twelve (212). The candidate for whom those votes were cast is of course unknown. It is constitutionally sacred information and a principle of election by secret ballot that the Court is prohibited from peering into the ballot box.²⁹
41. Mrs. Fern Naris-Scope for the EBC also provided more conclusive evidence on the basis of the records of the EBC, to which, by her testimony, she had custody and access. Mrs. Narcis-Scope provided this evidence in a table exhibited as "*FNS4*". According to her evidence, a

²⁶ See the affidavit of Mrs. Fern Narcis-Scope filed on behalf of the Second Respondent on the 29th February, 2016 at "F.N.S.3"

²⁷ Ibid

²⁸ See exhibit "F.N.S.3" of the affidavit of Fern Narcis-Scope filed on behalf of the Second Respondent on the 29th February, 2016

²⁹ See *Baxter v. Fear* [2015] EWHC 3136 per Justice Jay at paragraph 27.

total of 119 persons voted in the electoral district of St. Joseph between 6:00 p.m. and 7:00 p.m.

42. This Court considered the discrepancy between the evidence of the First Respondent and that of the Second Respondent. In my view, it is clear that the Second Respondent's evidence in this regard is to be preferred for the reasons which follow.
43. The evidence of the First Respondent as to the number of persons who voted between 6:00 p.m. and 7:00 p.m., was embodied in a host of affidavits, which had been from polling agents, who had been on duty on the 7th September, 2015. These deponents did not pretend that their evidence was conclusive and in many instances, they testified in terms of an upper end figure.³⁰
44. By contrast, Mrs. Fern Narcis-Scope testified that she had both access and custody of all the files at the EBC.³¹ At paragraph 20 of her affidavit, Mrs. Fern Narcis-Scope told the Court that she compiled a record of persons who had voted between 6:00 p.m. and 7:00 p.m. in the five (5) electoral districts, which are the subject of these proceedings.³²
45. Mrs. Narcis-Scope disclosed the source of her information by stating that it had been supplied by the Presiding Officers, who by reason of their duties had personal knowledge of the number of persons who voted between 6:00 p.m. and 7:00 p.m.
46. The information was presented for each electoral district in a table consisting of seven (7) columns. Each polling station was identified by number. The table also provided the number of names on the revised list, number of votes cast, number of valid votes cast,

³⁰ For example, please see the affidavits of Moriba Brooks and Joyer Lopez who deposed respectively that not less than 5 and not less than 10 voted between 6:00 p.m. – 7:00 p.m.

³¹ See paragraph 4 of the Affidavit of Mrs. Fern Narcis-Scope filed herein on 29th February, 2016

³² See paragraph 30 of the Affidavit of Mrs. Fern Narcis-Scope filed herein on 29th February, 2016

number of rejected ballots and the number of votes cast between 6:00 p.m. and 7:00 p.m., on polling day.

47. In my view, this evidence is conclusive and reliable and I accept, as indicated on the table, that in the electoral district of St. Joseph, there were one hundred and nineteen (119) persons who voted between 6:00 p.m. and 7:00 p.m.

1961

48. In 1961, the Supervisor of Elections encountered a similar dilemma apparently requiring the need to extend polling time. In his report dated the 20th July, 1963,³³ the Supervisor of Elections reported that many polling stations had opened later than the stipulated polling time.³⁴ There arose a possibility that persons might be prevented from voting.
49. The Supervisor of Elections reported that a remedy was urgently worked out whereby the boundaries of polling stations were extended, so that persons would be regarded as within the polling station and be permitted to vote after the close of polling time.³⁵
50. The Supervisor of Elections reported that a Cabinet meeting was held in the course of the day and the Electoral (Amendment) Rules of 1961 were passed. Urgent measures were also taken to have government officers act as couriers, in order to notify Returning Officers and Presiding Officers.³⁶
51. At paragraph 189 of his report, the Supervisor of Elections reported that the Amendment facilitated polling to continue late into the night.³⁷

³³ Exhibited as "RBM3" to the Affidavit of Mr. Ravi Balgobin Maharaj filed on behalf of the Petitioner on the 29th January, 2016.

³⁴ Ibid at paragraph 187

³⁵ Ibid at paragraph 187

³⁶ See paragraph 187 of *the Report of the General Elections on 1961*

³⁷ Ibid at paragraph 189

Submissions

52. The Court received Skeleton Arguments from each of the three parties. Learned Senior Counsel for each party supplemented their Skeleton Arguments by their *viva voce* arguments which were heard over a period of two (2) weeks.

Summary of the Submissions for the Petitioner

53. Learned Queen's Counsel, Mr. Straker presented his submissions to the Court by reference to the Petition of Clifton De Coteau³⁸. It was understood however that the submissions were to be applied *mutatis mutandis* to the other four (4) Petitions before this Court.

54. Mr. Straker opened his Skeleton Argument by submitting that *the Election Rules*³⁹ provided a timetable and a precise mechanism for the conduct of elections⁴⁰ and submitted forcefully that, by purporting to extend the poll by one hour, the EBC had acted illegally. By reference to *the Constitution*⁴¹ and to *the ROPA*⁴² learned Queen's Counsel emphasised that voting hours had been fixed by law and could only be changed by a legislative amendment. According to learned Queen's Counsel the underlying rationale for the detailed timetable was to ensure that all voters were treated equally. Voters were therefore required to govern themselves according to the prescribed times stated in Statutory Notice Form 46. A Notice in these terms had been published on the 23rd July, 2015 and was exhibited herein as "VVB3".⁴³

³⁸ CV 2015-03133 Clifton De Coteau v. Dr. Lovell Francis & the Returning Officer for Moruga/Tableland

³⁹ Election Rules Ch. 2:01

⁴⁰ See paragraph 9 of Skeleton Arguments filed on the 24th June, 2016.

⁴¹ The Constitution, Ch. 1:01

⁴² Representation of the People Act, Ch. 2:01

⁴³ See the Affidavit of Mr. Vasant Bharath filed on the 22nd September, 2015.

55. Accordingly, Mr. Straker, Q.C. argued that the EBC could not change the law as to voting hours by *tweets*⁴⁴ or by media release.
56. Mr. Straker, Q.C. underscored his submission by contrasting the subject matter of these Petitions with changes which had been made to voting times in Trinidad and Tobago in 1961. Mr. Straker, Q.C. referred as well to the 2016, ***Brexit Referendum, to the Referendum Act, 2000*** and to ***the Voter Registration Regulations, 2016***.
57. Learned Queen's Counsel referred as well to Section 34 in ***the ROPA***⁴⁵ which permitted changes in voting times, where there were riots or flooding and highlighted the absence of any statutory provision which gave the EBC the power to change voting times. Learned Queen's Counsel contended, with tenacity, that such absence implied that the EBC had no such power.
58. Learned Queen's Counsel addressed the Court on the relevance of Section 35(3) of ***the ROPA***⁴⁶. Mr. Straker, Q.C. drew a distinction⁴⁷ between corrupt practices, election offences and breaches of official duty. Section 35(3)⁴⁷, he contended, could be invoked to save an election, where there was a venial transgression by way of a breach of an official duty.
59. Mr. Straker argued on behalf of the Petitioner, that Section 35(3) of ***the ROPA***⁴⁸ operated to save an election only where there was a breach of an official duty. It was his contention that what occurred on the 7th September, 2015 were not breaches of official duties, but corrupt practices and that Parliament did not contemplate that the House of Representatives would be infected by corrupt practices.

⁴⁴ Messages on Twitter

⁴⁵ Representation of the People Act, Ch. 2:01

⁴⁶ Representation of the People Act, Ch. 2:01

⁴⁷ Representation of the People Act, Ch. 2:01

⁴⁸ Representation of the People Act, Ch. 2:01

60. Learned Queen’s Counsel highlighted the requirement of certainty in the conduct of elections. Mr. Straker, Q.C. referred to the evidence, which had been filed on behalf of the Petitioner and which suggested that there was uncertainty as to how voters responded to the news of the extension of voting hours. The Petitioner, and indeed the Court, could not know how many persons might have voted for the Petitioner had they known of the change in polling times. Learned Queen’s Counsel, concluded his *viva voce* submissions by invoking the words of T.S. Eliot and enquiring what was the overwhelming question.⁴⁹

61. Learned Queen’s Counsel asked the overwhelming question rhetorically in this way:

*“How can one decide these petitions against the Petitioners? How can one do that? The only way, My Lady, that you can do that is by saying no, they were not these corrupt practices; alternatively, the word is corrupt and the practices but I am going to say that Parliament will tolerate an election when corrupt practices are committed [on] multiple occasions in each constituency by election officials.”*⁵⁰

62. Learned Queen’s Counsel submitted that the Court needs to be in a state of certainty that the extension did not materially affect the result and formulated these questions for the Court:

“And then you have to say to yourself, “Well, what about all those people who didn’t do something, didn’t try and turn out to vote because they heard about this?” or “what about all those people who heard about this and thought “I wasn’t going to vote before but I am going to vote now, the Government had made a right mess of this, I better get down there quickly and say something about it.” And so

⁴⁹ See page 48, Official Transcript for the 30th June, 2016 in the Procedural Appeal CA S-171/2016; CA P-172/2016; CA S-173-75/2016; CA P-198/2016; CA S-199-202/2016

⁵⁰ See page 48, Official Transcript for the 30th June, 2016 in the hearing of the substantive petition.

*you have to say, "Can I be sure, can I be certain on the balance of probabilities, can I proceed to say in a state of certainty that those things did not affect the result," and you are left unknowing about a whole raft of matters so that you end up, as I say, with this overwhelming question,"*⁵¹

Submissions for the First Respondent

63. The First Respondent, relied on the Written Skeleton Submissions which had been prepared by Senior and Junior Counsel. The Skeleton Submissions were supplemented by the *viva voce* submissions of learned Senior Counsel, Mr. Mendes.
64. Although Mr. Mendes, S.C. adopted the submissions which had been presented by learned Senior Counsel for the Second Respondent as to the legality of the extension, Mr. Mendes, S.C. assumed for the purpose of his Submissions that the EBC had acted illegally in extending the poll by one hour⁵².
65. By way of both his Skeleton Submission and his verbal presentation, Mr. Mendes, S.C. addressed the Court on the Petitioner's contention, that there had been multiple instances of corrupt practices on the 7th September, 2015.
66. Mr. Mendes, S.C. argued that it was wrong to contend that persons who had voted during the extended polling time were not entitled to vote for the purpose of Section 61(d) of ***the ROPA***⁵³. It was the contention of learned Senior Counsel that the fact of an entitlement to vote was fixed before polling day and that there was a need to distinguish between an entitlement to vote and the manner of voting.

⁵¹ See page 49, Official Transcript for the 30th June, 2016 in the hearing of the substantive petition.

⁵² See paragraph 5 of the First Respondent's Skeleton Submissions

⁵³ Representation of the People Act, Ch. 2:01 (See Schedule B where Section 61(d) is set out)

67. Mr. Mendes, S.C. argued, as well, that the commission of a corrupt practice attracted criminal penalties and that the Court was required to be satisfied beyond reasonable doubt that election officers who facilitated voting during the extended hour, had both the *actus reus* and the *mens rea* associated with the corrupt practice of permitting a person to vote at a polling station when such person was not entitled to do so⁵⁴.
68. Accordingly, Mr. Mendes, S.C. invited the Court to reject the Petitioner’s Submission that the general election, which had been held on the 7th September, 2015, was infected with multiple corrupt practices.
69. Mr. Mendes, S.C. addressed the Court on the consequences of the alleged breach. Learned Senior Counsel referred to the judgment of the Honourable Justice of Appeal Jamadar in CA S 229-240 of 2015 *The Returning Officers v. Wayne Munroe et al* and in particular to the third direction where Jamadar, J.A. directed the Court to consider:
- “(iii) *Whether ...the election held was so irregular and/or outwith the Constitution, the ROPA, The ROPA Election Rules and any other laws and/or improperly conducted, that it did not truly constitute a democratic election ...*”⁵⁵
70. By reference to decided authorities throughout the Commonwealth, Mr. Mendes, S.C. addressed the Court as to the meaning of an election which “*did not truly constitute a democratic election...*”⁵⁶ Mr. Mendes, S.C. contended that the relevant test is derived from

⁵⁴ See Section 61(d), Representation of the People Act, Ch. 2:01 (set out at Schedule B)

⁵⁵ See Page 60 of 60, Paragraph 143 (iii) of the Judgment of Jamadar, J.A. in CA S – 229-240/2015

⁵⁶ See paragraph 12 of the First Respondent’s Skeleton Submissions

the common law and judicial interpretation of the requirement of substantial compliance under the law of the United Kingdom.⁵⁷

71. Mr. Mendes, S.C. relied on tables which were produced in his Skeleton Submissions and contended that the Court ought to test the result of the alleged breach by crediting to the First Respondent all votes in the extended period. The Court could not ascertain whether persons had voted for the First Respondent or for the Petitioner. The Court should therefore assume that all votes between 6:00 p.m. and 7:00 p.m. were in favour of the First Respondent. This figure should then be deducted from the margin by which the First Respondent was victorious. It was the contention of Mr. Mendes, S.C. that invariably, the truncated figure still favoured victory by the First Respondent.

72. Mr. Mendes, S.C. referred to the authority of *Edgell v. Glover*⁵⁸ and submitted that the Courts have emphasised the voiding of an election is a serious matter and should only be done in a clear case. Learned Senior Counsel relied, as well, on *Ted Opitz*⁵⁹. It was his contention on behalf of the First Respondent that the Court was empowered to declare an election void only if it affected the result of the election.

Submissions for the Second Respondent

73. The Second Respondent also relied on Written Skeleton Arguments, as well as, the oral arguments of learned Senior Counsel, Mr. Martineau. Learned Senior Counsel Mrs. Peake had made submissions as to the evidential objections which had been remitted by the Court of Appeal for the reconsideration of this Court.

⁵⁷ See paragraph 12 of the First Respondent's Skeleton Submissions

⁵⁸ *Edgell v. Glover* [2003] EWHC 2566 (QB)

⁵⁹ *Ted Opitz v. Borys Wrzesnewskyj* [2012] 3 S.C.R. 76

74. It was the principal submission of the Second Respondent that there was no breach on the part of the EBC and that the EBC had acted lawfully in extending polling time by one hour.
75. Mrs. Peake, S.C. and Mr. Martineau, learned Senior Counsel for the Second Respondent opened their Skeleton Submissions by referring to the Judgment of Jamadar, J.A. in (“the Leave Appeal”) CA S 229-240 of 2015 *Vasant Bharath v. Terrence Deyalsingh and Others*⁶⁰. Learned Senior Counsel submitted that, in accordance with the decision of the Court of Appeal⁶¹ an election in Trinidad and Tobago could be avoided on one of two grounds:
- The statutory ground set out at Section 35(3) of *the ROPA*⁶²
 - Where the election had not been conducted in substantial compliance with the law.
76. Quoting Jamadar, J.A. in *Vasant Bharath v. Terrence Deyalsingh and Others*⁶³, learned Senior Counsel relied on the guidance given by Jamadar, J.A. for the hearing of these Petitions. Learned Senior Counsel submitted that the Court should ask itself the questions formulated by the learned Justice of Appeal.
77. Learned Senior Counsel directed the Court’s attention to Section 71(12) of *the Constitution*⁶⁴ which provided that the EBC should not be subject to the direction or control of any person or authority⁶⁵.
78. It was their submission that *the Election Rules*⁶⁶ could not and did not provide for every single eventuality and did not purport to provide an exhaustive code.⁶⁷

⁶⁰ CA S 229-240/2015 *Vasant Bharath v. Terrence Deyalsingh and Others* delivered on the 22nd January, 2016

⁶¹ CA S 229-240/2015 *Vasant Bharath v. Terrence Deyalsingh and Others* delivered on the 30th November, 2015

⁶² Representation of the People Act, Ch. 2:01

⁶³ CA S 229-240/2015 *Vasant Bharath v. Terrence Deyalsingh and Others* delivered on the 22nd January, 2016

⁶⁴ The Constitution, Ch. 1:01

⁶⁵ Section 71(12) of the Constitution, Ch. 1:01

⁶⁶ Election Rules Ch. 2:01

⁶⁷ See paragraph 14 of the Skeleton Submissions filed by the Second Respondent on the 24th June, 2016

79. According to learned Senior Counsel, Section 71(11) of *the Constitution*⁶⁸ created a residual discretion in the EBC and in particular conferred a discretion on the EBC to ensure that the election is conducted in such a manner as to ensure that electors have free access to polling stations and that the will of the people is given fair opportunity for expression on election day.⁶⁹
80. Learned Senior Counsel alluded to the constitutional right to vote and submitted that this right was secured on the foundation of the procedural provisions, protected by Section 5(2) (l) of *the Constitution*⁷⁰. In the course of his *viva voce* submissions, learned Senior Counsel, Mr. Martineau cited the Privy Council decision in *AG v. Whiteman*⁷¹; where their Lordships decided that an arrested person enjoyed not only the right to counsel of his choice, but the right to be informed of their right to Counsel.
81. Learned Senior Counsel submitted that *the Election Rules*⁷² required substantial and not literal compliance and cited these cases in support of his submission:
- *Halstead v. Simon*⁷³
 - *Rex rel Dyck Ell*⁷⁴
 - *Re Shaw and Portage La Prairie*⁷⁵

⁶⁸ The Constitution, Ch. 1:01

⁶⁹ See paragraph 15 of the of the Skeleton Submissions filed by the Second Respondent on the 24th June, 2016

⁷⁰ The Constitution, Ch. 1:01

⁷¹ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

⁷² Election Rules Ch. 2:01

⁷³ Halstead v. Simon (1989) 10 ECLSR 198

⁷⁴ Rex rel Dyck v. Ell [1953] 9 WWR 161

⁷⁵ Re Shaw and Portage La Prairie [1911] 20 Manitoba Reports

82. In the course of his verbal submissions, Mr. Martineau, S.C. expanded on the ideas presented in his Skeleton Arguments and cited the Canadian case of *Graham Haig v. Canada*⁷⁶ where Justice Cory stated:

*“Every reasonable effort should be made to enfranchise citizens...”*⁷⁷

83. It was the contention of learned Senior Counsel, Mr. Martineau that it was wrong to look at *the ROPA*⁷⁸ as contemplating every eventuality that could arise on election day and exhorted the Court, to interpret Rule 27 of *the Election Rules*⁷⁹ in a manner which will facilitate the right to vote and not lead to the disenfranchisement of voters.

84. Mr. Martineau, S.C. argued further that Rule 27 of *the Election Rules*⁸⁰ was directory. In summary, Mr. Martineau, S.C. submitted that the EBC was entitled and duty bound to extend the poll in the face of severe flooding which threatened the proper conduct of the election.

85. Learned Senior Counsel addressed the Court as to whether the alleged breach affected the result of the election. Mr. Martineau, S.C. adopted the submissions of Mr. Mendes, S.C. and insisted that the 2015 general election was one election where the Court could positively say that the breaches did not affect the result.

86. By reference to *In the Matter of the Parliamentary Election for Fermanagh and South Tyrone*⁸¹ Mr. Martineau, S.C. urged the Court to avoid looking into the ballot box and that the Court should engage in a simple arithmetical exercise.

⁷⁶ *Graham Haig v. Canada* [1993] 2 RCS 995

⁷⁷ *Graham Haig v. Canada* [1993] 2 RCS 995 page 1048

⁷⁸ Representation of the People Act, Ch. 2:01

⁷⁹ Election Rules Ch. 2:01

⁸⁰ Election Rules Ch. 2:01

⁸¹ *In the Matter of the Parliamentary Election for Fermanagh and South Tyrone*, In the High Court of Justice of Northern Ireland Ref CAR F 3507, delivered on the 15th October, 2001.

87. Mr. Martineau, S.C. argued that the Common Law was ousted as long as a statutory regime was introduced. Learned Senior Counsel proceeded nevertheless, to address the Court on the common law relating to the elections.
88. In determining whether non-compliance should result in invalidity, learned Senior Counsel relied on *Herbert Charles v. JLSC*⁸² and submitted that the Court should ask itself whether it is highly unlikely that Parliament could have intended that an extension of time from 6:00 p.m. to 7:00 p.m. would have resulted in the election being declared void.

Submissions in Reply

89. Mr. Straker, Q.C. presented his reply in the form of a Written Submission, which was supplemented by *viva voce* arguments. Learned Senior Counsel for both Respondents obtained the Court's permission to file short notes, in order to provide comments on the Reply Submissions of Mr. Straker, Q.C.
90. In the course of his Reply, Mr. Straker, Q.C. reinforced submissions which had been made in his principal submission. Learned Queen's Counsel answered the arguments of the Respondents as to the meaning of Section 61(d)⁸³ and in particular as to the meaning in that section of "*entitled to vote...*"
91. Mr. Straker, Q.C. answered submissions on cases which were relied on by the Respondents and underscored that the Petitioner's case was more than whether the poll was materially affected by voting after 6:00 p.m. Relying on the words of Mendonça, J.A. in *The Returning*

⁸² Herbert Charles v. JLSC [2002] UKPC 34

⁸³ Representation of People Act, Ch. 2:01

*Officers v. Bharath and Others*⁸⁴, Mr. Straker, Q.C. submitted that the Petitioner’s case was one of substantial non-compliance with election laws.

92. Mr. Straker, Q.C. introduced one new case, that is to say *Reprotech v. East Sussex CC* [2003] 1 WLR 348.

Issues

93. This Petition has been the subject of appeals to the Court of Appeal on two occasions. On each occasion, their Lordships of Appeal provided guidance to this Court as to the issues which arise for consideration.

94. In the course of his extempore decision on the 30th November, 2015, the Honourable Justice of Appeal Mendonça expressed the view that the analysis under Section 35(3)⁸⁵ included both a quantitative and a qualitative analysis.⁸⁶

95. At page 8 of 11 of his decision, Mendonça, J.A. identified “*the crux*” of the Respondent’s case in this way:

*“The crux of the respondent’s case is not that the poll was materially affected by persons who were not entitled to vote, voting after 6:00 p.m. It is a case of substantial non-compliance with election laws...”*⁸⁷

96. Justice of Appeal Jamadar also provided guidance for the hearing and determination of the Petitions. Justice of Appeal Jamadar had this to say:

“I would therefore dismiss the appeals and direct that the following primary question whether the returned candidates have been validly elected as members of

⁸⁴ C.A. S 229-240 of 2015

⁸⁵ Section 35(3) of the ROPA Ch. 2:01

⁸⁶ See page 6 of 11 of the transcript of the Judgment of Mendonça JA on the 30th November, 2015

⁸⁷ See page 8 of the transcript of the Judgment of Mendonça JA on the 30th November, 2015

the House of Representatives...shall be determined in the Representation Petitions by the Court asking and answering...the following questions within the parameters of the grounds and material facts relied on...

- (i) Whether in the light of the Constitutions, the ROPA, the ROPA Election Rules and any other laws and by reason of any act by a Returning Officer...there have been breaches of official duty in connection with the election or otherwise or of the election rules...*
- (ii) Whether in the light of any such acts and breaches it appears to the Court...that the said acts and breaches did not materially affect the result of the election (sub-section 35(3) ROPA) or otherwise constitute a statutory basis for declaring the election void for example section 149(4), 146, 108...*
- (iii) Whether in light of the Constitution, the ROPA, the ROPA Election Rules and any other laws and by reason of any acts or omission by any Election Officer or any other person or in light of any other material occurrences the election held was so irregular...that it did not truly constitute a democratic election as same is understood in Trinidad and Tobago; and*
- (iv) Whether in the light of the above... it can be said that the election was constitutionally invalid..."*

97. In identifying the issues which now arise for my determination, this Court has considered the directions provided by Mendonça, J.A. and Jamadar, J.A. The salient issues are set out below:

- (i) The first and central issue which has been considered by this Court in this Petition, is whether election officials breached election laws by failing to

close the polls at 6:00 p.m. or whether the extension of the poll was legalised by the directive of the EBC.

- (ii) Should the Court find that there had been breaches, it must be considered whether these also amounted to corrupt practices.
- (iii) Assuming the above questions are answered in the affirmative, the Court must consider whether, as a consequence, the breaches or corrupt practices should result in the election being declared invalid, under the common law as being so irregular as not to constitute an election at all.
- (iv) Whether it appears to the Court that the breaches in question did not materially affect the result of the elections, as contemplated by Section 35(3) of *the ROPA*⁸⁸.

Law and Discussion

Widespread Corrupt Practices

98. It is convenient and appropriate for the Court to consider, at this stage, whether there were, according to the argument of learned Queen's Counsel, Mr. Straker, wide spread corrupt practices.

99. A corrupt practice is a criminal offence, which is created by *the ROPA*⁸⁹. It attracts criminal penalties of fines and imprisonment. It has been held in *R v. Rowe exp. Mainwaring*⁹⁰ that a person, accused of a corrupt practice should only be found guilty if the allegation is proved beyond reasonable doubt.

⁸⁸ Representation of the People Act, Ch. 2:01 (See Schedule B to this Judgment)

⁸⁹ Representation of the People Act, Ch. 2:01

⁹⁰ R. v. Rowe exp. Mainwaring [1992] 1WLR 1059

100. Under *the ROPA*⁹¹, a corrupt practice may be committed by a number of different actors including the candidate, his or her agent or by an election official.

101. At Section 61 of *the ROPA*⁹² one finds a list of acts and omissions for which an election officer could be held guilty of a corrupt practice. At Section 61(d), an election officer is guilty of a corrupt practice where he or she:

“(d) permits any person to vote at a polling station at which he knows or has reasonable cause to believe that such person is not entitled to vote.”

102. Where an election agent commits a corrupt practice, there are more far-reaching consequences than the mere criminal conviction of the individual agent. Where either the elected candidate or his agent has been found guilty of a corrupt practice his election will be held to be void.⁹³

103. Similarly, Section 146(1) provides that the election of a candidate shall be void if on a representation petition, it is shown that corrupt practices for the purpose of promoting or procuring the election of any person have so extensively prevailed that they may reasonably be supposed to have affected the result of the election.

104. I have considered, the submission of learned Queen’s Counsel, Mr. Straker, that the election officers, who permitted voting at their respective polling stations between 6:00 p.m. and 7:00 p.m. on polling day, had committed or could be regarded as having committed corrupt practices.

⁹¹ Representation of the People Act, Ch. 2:01

⁹² Representation of the People Act, Ch. 2:01

⁹³ See Section 148(1) Representation of the People Act, Ch. 2:01

105. I find myself unable to agree with learned Queen's Counsel for the three reasons which follow.
106. The first and primary rule of statutory interpretation requires that the Court place a literal meaning on the words of a statute. When construed literally, Section 61(d) proscribes the grant of permission to vote at an unauthorised place, rather than at an unauthorised time. Accordingly, it would be a corrupt practice to permit a person registered to vote at one polling station to vote at another. However, Section 61(d) does not condemn, as a corrupt practice, permission to a person to vote out of polling time. This may be arguably illegal and contrary to *the Election Rules*⁹⁴, but in my view, it is not a corrupt practice. In this regard, I have accepted the submission of Mr. Martineau, learned Senior Counsel for the Second Respondent on the proper interpretation of Section 61(d) of *the ROPA*⁹⁵.
107. The second reason for holding that there was no corrupt practice in the instant case, is that Section 61(d) requires the existence of a mental element before the Court could find that a corrupt practice had been committed. Accordingly, an election agent may only be found guilty under Section 61(d)⁹⁶ where, permitting someone to vote at the polling station, the election agent knows or has reasonable cause to believe that the person to whom permission is granted is not entitled there to vote.
108. Elementary fairness and the first and primary rule of natural justice would require that an election officer be heard before a finding could be made against him that he held either knowledge or reasonable cause to believe that he was about to commit the criminal offence of a corrupt practice. In these proceedings, however, the election officers, who are reputed

⁹⁴ Election Rules, Ch. 2:01

⁹⁵ Representation of the People Act, Ch. 2:01

⁹⁶ Representation of the People Act, Ch. 2:01

to have committed the corrupt practice have not been identified. The individual election officers at the many polling stations throughout the electoral district of St. Joseph have not been named. They have not been joined in these proceedings and they have certainly been given no opportunity to be heard or to defend themselves. In my view therefore, it would be quintessentially unfair for me to make a finding in these circumstances that corrupt practices had been committed, unless a fair opportunity has been afforded to the election officers to be heard in their defence.

109. Thirdly, in my view the evidence does not support the prevalence of corrupt practices contrary to Section 61(d). The evidence before this Court suggests that the members of the EBC made a *bona fide* decision to extend polling time. This had been based on the genuine concern of the EBC for the rights of voters and they had instructed their election officers to act accordingly. I rely on the words of Redhead J. in *Halstead v. Simon*⁹⁷ in finding that there was no corrupt motive. In these proceedings, as in *Halstead v. Simon*⁹⁸, it is my view and I hold that the extension was made in good faith and one ought not to impute any corrupt motive to the EBC or to the election officers.

Whether there was any Breach of Official Duties

110. I turn now to consider whether there was any breach of *the Election Rules*⁹⁹. Mr. Martineau, Senior Counsel for the Second Respondent, argued persuasively that there had been no illegality on the part of the EBC and by extension, no breach of the Rules on the part of the election officers. In so doing, Mr. Martineau, S.C. relied on Section 71 of *the Constitution*¹⁰⁰

⁹⁷ Halstead v. Simon [1989] 1 OECS Reports 198

⁹⁸ Halstead v. Simon [1989] 1 OECS Reports 198

⁹⁹ Election Rules, Ch. 2:01

¹⁰⁰ The Constitution, Ch. 1:01

and several Canadian authorities where snow storms prevented compliance with election rules.

111. It was Mr. Martineau’s, S.C., contention that by virtue of Section 71¹⁰¹, the EBC had the power to assess weather conditions and to alter voting times in the interest of the rights of voters. This argument was buttressed by the contention that citizens held a constitutional right to vote and that Section 5(2)(h) of *the Constitution*¹⁰², conferred on the EBC procedural power to ensure the protection of the right to vote.

112. Rule 27(1) of *the Election Rules*¹⁰³ provides in these mandatory terms that the poll shall be taken between 6:00 a.m. and 6:00 p.m. on the same day¹⁰⁴.

“Subject to sub-rule (2), the taking of the poll at each polling station shall be between six o’clock in the morning and six o’clock in the afternoon on the same day.”

113. Rule 27(1) is subject to one exception. Where at the close of the poll, electors are within the polling station, the poll may be kept open to enable such electors to cast their votes.¹⁰⁵

114. *The Election Rules*¹⁰⁶ are deemed to have been made under Section 161 of *the ROPA*¹⁰⁷ by the President of Trinidad and Tobago. By Section 35(1) of *the ROPA*¹⁰⁸, the proceedings of elections are required to be conducted in accordance with *the Election Rules*¹⁰⁹.

¹⁰¹ Section 71 of the Constitution, Ch. 1:01

¹⁰² The Constitution, Ch. 1:01

¹⁰³ Election Rules, Ch. 2:01

¹⁰⁴ The full text of Rule 27 is set out at Schedule B to this Judgment

¹⁰⁵ See Rule 27(2) set out at Schedule B to this Judgment

¹⁰⁶ Election Rules, Ch. 2:01

¹⁰⁷ Representation of the People Act, Ch. 2:01

¹⁰⁸ Representation of the People Act, Ch. 2:01

¹⁰⁹ Election Rules, Ch. 2:01

115. In so far as it is undisputed that the polls had been extended by one hour on the 7th September, 2015, it is in my view, clear that there had been a breach of *the Election Rules*¹¹⁰ on the part of the election officers who failed to close the poll as required by Rule 27(1).¹¹¹

116. The question which arises in the context of these proceedings, is whether the extension was rendered lawful because it had been effected upon the directive of the EBC. The answer to this question would be in the affirmative, if the EBC had acted pursuant to a residual curative discretion conferred by Section 71 of *the Constitution*¹¹².

117. The EBC, itself a creature of statute, is established by Section 71(1) of *the Constitution*¹¹³. Subsections (2) to (5) of Section 71 provide for the membership of the EBC, which by Section 71(8) is empowered to regulate its own procedure.

118. The two subsections upon which learned Senior Counsel, Mr. Martineau relies are Section 71(11) and (12). Section 71(11) provides:

“The registration of voters and the conduct of elections...shall be subject to the direction and supervision of the Commission.”

By Section 71(12), the EBC, in the exercise of its functions, is free from the direction and control of any person or authority.

119. I have considered whether Section 71(11) may properly be interpreted as conferring the residual power to supply the solution for unforeseen problems, in respect of which *the Election Rules*¹¹⁴ are silent. Section 34 of *the ROPA*¹¹⁵ provides for measures to be taken

¹¹⁰ Election Rules, Ch. 2:01

¹¹¹ Rule 27(1) of the Election Rules, Ch. 2:01

¹¹² The Constitution, Ch. 1:01

¹¹³ The Constitution, Ch. 1:01

¹¹⁴ Election Rules, Ch. 2:01

¹¹⁵ Representation of the People Act, Ch. 2:01

where flooding or other acts of God occur between the Presidential issue of the Writ and polling day.

120. It was however widely accepted in these proceedings, that both *the ROPA*¹¹⁶ and *the Election Rules*¹¹⁷ provide no guidance to the EBC where emergencies occur on the actual day of the poll.

121. I have no doubt that Section 71(11) confers such power on the EBC. In my view however, the exercise of such residual power must be in accordance with the plain directive of *the ROPA*¹¹⁸ and *the Election Rules*¹¹⁹.

122. In the case of *London & Clydeside Estates Ltd. v. Aberdeen District Council & Another*¹²⁰, their Lordships in the House of Lords held that where Parliament lays down a statutory requirement for the exercise of legal authority, it expects compliance to the minutest detail. Whereas the EBC does not exercise its function subject to the control or direction of any person or authority, it is my view that the EBC must exercise its powers, written or residual, in accordance with the edicts of the written law. Conversely, it is my view that Section 71 does not empower the EBC to alter or to depart from the plain terms of *the Election Rules*¹²¹.

123. It is necessary to consider whether Section 5(2)(h) of *the Constitution*¹²² conferred on the EBC the power or responsibility to extend polling times in order to protect the rights of voters.

¹¹⁶ Representation of the People Act, Ch. 2:01

¹¹⁷ Election Rules, Ch. 2:01

¹¹⁸ Representation of the People Act, Ch. 2:01

¹¹⁹ Election Rules, Ch. 2:01

¹²⁰ *London & Clydeside Estates Ltd. v. Aberdeen District Council & Another*[1980] 1 WLR 182

¹²¹ Election Rules, Ch. 2:01

¹²² The Constitution, Ch. 1:01

124. Section 5(2) of *the Constitution*¹²³, follows the Bill of Rights and Freedoms at Section 4 of *the Constitution*.¹²⁴ Section 5(2) has been authoritatively construed in *Thornhill v. The AG*¹²⁵ as providing further and better particulars of the rights to due process and the protection of the law as enshrined at Section 4(a) and (b) of *the Constitution*¹²⁶.

125. Section 5(2)(h), the last of those further and better particulars, is a catch all subsection, which is directed to curtailing the exercise of legislative power which might purport to deprive the person:

*“...of the right to such procedural provisions as are necessary for the purpose of giving effect to the aforesaid rights and freedoms...”*¹²⁷

126. Section 5(2) (h) became the centre of judicial attention in *AG v. Whiteman*¹²⁸, which, in jurisprudential history was a milestone on the landscape of the law constitutional rights and freedoms in Trinidad and Tobago. In that case, Lord Keith of Kinkel who delivered the judgment on behalf of the Board, held that the arrested person had not only the right to retain and instruct a legal advisor of his choice, but also held the right to be informed of such right.

127. I turn therefore to consider whether the learning in *Whiteman*¹²⁹ could properly absolve the EBC from acting as they did. For that purpose, it is necessary to consider the judgment of Lord Keith of Kinkel in some depth.

¹²³ The Constitution, Ch. 1:01

¹²⁴ Section 4 of the Constitution, Ch. 1:01

¹²⁵ See *Thornhill v. The AG* (1976) 31 WIR 498

¹²⁶ The Constitution, Ch. 1:01

¹²⁷ See *Thornhill v. The AG* (1976) 31 WIR 498

¹²⁸ *The Attorney General of Trinidad and Tobago v. Whiteman* (1991) 39 WIR 397

¹²⁹ *The Attorney General of Trinidad and Tobago v. Whiteman* (1991) 39 WIR 397

AG v. Whiteman¹³⁰

128. As stated, *supra*, their Lordships considered whether an arrested person had a fundamental right to be informed of his right to counsel. His Lordship explained that in the case of an arrested person, the right to retain and instruct a legal advisor of one's choice was capable of being of little value if the arrested person is not informed of his right. It was in situations of this kind that Section 5(2)(h)¹³¹ provided a supportive solution where a "*constitutional right might otherwise be at risk of not being given effect and protection...*"¹³²

129. Lord Keith of Kinkel observed that the arguments, before the Board, revolved around the meaning and significance to be attributed to the words, "*procedural provisions*" in Section 5(2)(h) of *the Constitution*¹³³. His Lordship construed the term "*procedural provisions*" in this way:

*"A procedure is a way of going about things and a provision is something which lays down what that way is to be..."*¹³⁴

On the premise of this definition, his Lordship alluded to paragraph 8(b) of Appendix B of *the Judges Rules*¹³⁵, which requires that an arrested person be informed orally of his rights. This, in his Lordship's authoritative view, was properly to be regarded as a provision, which prescribed a certain procedure.¹³⁶

¹³⁰ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹³¹ Section 5(2)(h) of the Constitution, Ch. 1:01

¹³² The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397 at page 412(e)

¹³³ The Constitution, Ch. 1:01

¹³⁴ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹³⁵ Judges Rules adopted in 1965

¹³⁶ *Ibid* at paragraph 8(6)

130. In order to bring these proceedings under the regime of the decision in *Whiteman*¹³⁷ the Court must be able not only to find the existence of the fundamental right to vote, but to find that the power of the EBC to extend polling time constitutes a procedural provision, without which the right to vote will be of little value.¹³⁸

131. In order that *Whiteman*¹³⁹ might properly be applied to these proceedings, it must therefore be possible to find the existence of:

- a fundamental right to vote
- a procedural provision which confers on the EBC the discretion to extend polling hours to cater for emergencies.

132. I considered whether there is a constitutional right to vote. Learned Senior Counsel, Mr. Martineau cited and relied on *Haig v. AG of Canada*¹⁴⁰ in support of his submission that there exists in Trinidad and Tobago a fundamental right to vote. Unlike the Charter of Rights and Freedom in Canada, our bill of rights at Section 4 of *the Constitution*¹⁴¹ contains no express right or freedom to vote. The right to vote falls to be inferred from the right to join political parties and to express political views. See Section 4(e). It is regarded as one aspect of the freedom of political expression. See *Haig v. AG of Canada*¹⁴².

133. In my view, it is debatable whether there is in fact a fundamental right to vote. However, there was no argument on this issue and I am prepared for the purposes of these proceedings to infer from Section 4(e) of *the Constitution*¹⁴³ that there is a fundamental right to vote.

¹³⁷ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹³⁸ See The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397 at page 412

¹³⁹ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹⁴⁰ Haig v. AG of Canada [1993] SCR 995

¹⁴¹ The Constitution, Ch. 1:01

¹⁴² Haig v. AG of Canada [1993] SCR 995

¹⁴³ The Constitution, Ch. 1:01

134. There is however in my view no evidence of a procedural provision empowering the EBC to extend polling times in contravention to the express provisions of Section 5(1) of *the ROPA*¹⁴⁴ and *the Election Rules*¹⁴⁵.
135. My reasoning was guided by the definition of Lord Keith of Kinkel as to the meaning of a procedural provision¹⁴⁶. I interpret Lord Keith to mean, that a procedural provision is a directive, or rule, which specifies a manner of proceeding.
136. I have examined the evidence before me. I have also examined the statutes and the supporting authorities, I have found no provision which directs or empowers the EBC to extend polling hours in contravention of the express dictates of Rule 27(1) of *the Election Rules*¹⁴⁷.
137. It follows that it is my view that, in these proceedings, there is no procedural provision analogous to the provision to which their Lordships gave effect in *Whiteman*¹⁴⁸. I am therefore of the view that Section 5(2)(h)¹⁴⁹ does not assist the EBC and is not applicable to the matter before me.
138. This Court recognises that Dr. Masson and the members of the EBC acted with genuine concern in the interest of voters and with a view to promoting and not hindering their rights of enfranchisement. This Court recognises as well that the EBC was faced with what appeared to have been an insurmountable problem, and they took quick action as they saw

¹⁴⁴ Representation of the People Act, Ch. 2:01

¹⁴⁵ Election Rules, Ch. 2:01

¹⁴⁶ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹⁴⁷ Election Rules, Ch. 2:01

¹⁴⁸ The Attorney General of Trinidad and Tobago v. Whiteman (1991) 39 WIR 397

¹⁴⁹ Section 5(2)(h) of the Constitution, Ch. 1:01

fit. Learned Senior Counsel for the Second Respondent asked rhetorically what the EBC was supposed to do¹⁵⁰.

139. In my view, this question could easily be answered by recourse to the *Report on the General Elections of 1961*¹⁵¹. This Report is itself a document emanating from the EBC and provides an account of the general election of 1961, when polling continued well into the night. At that time the Supervisor of Elections, had recourse to the Cabinet, which passed and promulgated subsidiary legislation which solved the problem.

140. It certainly does not fall to this Court to say how the EBC ought to act. The 1961 experience is only an example and suggests that the difficulty which the EBC faced was not as insurmountable as it appeared.

141. It follows therefore that it is my view that there were breaches of *the Election Rules*¹⁵² at every polling station, where the election officers failed to close the poll as dictated by Rule 27(1). It is also my view that the directive of the EBC was not justified in law and did not operate vindicate the breaches that were committed.

The Blizzard Cases

142. Learned Senior Counsel, Mr. Martineau relied on three Canadian authorities where polling was affected by snow storms.

143. *Re Shaw and Portage La Prairie*¹⁵³ was decided in 1910. For three days a snow storm had raged over the whole country. The deputy returning officer left home before 9:00 a.m., but

¹⁵⁰ See Page 4 at lines 21-38, Official Transcript for the 8th July, 2016 in the hearing of the substantive petition.

¹⁵¹ See "RBM3" annexed to the Affidavit of Ravi Balgobin Maharaj filed herein on the 29th January, 2016.

¹⁵² Election Rules, Ch. 2:01

¹⁵³ Re Shaw and Portage La Prairie [1911] 20 Manitoba Reports

in spite of all possible speed, he was unable to open the poll until after 10:00 a.m., when it should have been open at 9:00 a.m.

144. Mathers, C.J.K.B. indicated that he was satisfied that the failure to open the poll was not the deliberate act of the official, who made every effort to comply. Mathers, C.J.K.B. held that notwithstanding the irregularity, the election was conducted in accordance with the principles laid down in the Act and the election was not invalidated.

145. In *Rex rel Dyck v. Ell*¹⁵⁴ was decided in 1953. There was a blizzard on election day and the returning officer was unable to reach the poll because of blocked roads. The vehicle of the deputy returning officer got stuck and he had to walk to the polling station, arriving there ten (10) minutes late. At another polling station, the deputy returning officer, finding that yard of the polling station was blocked with deep snow, walked a distance of twelve (12) miles in order to get instructions from the office of the municipal district. As a result the poll was closed up until 10:30 a.m. Sissons, D.C.J. found that the deputy returning officer was not “wilfully and purposely disregarding the provisions of the Act”¹⁵⁵. Sissons, D.C.J., expressed the view that the returning officer was acting conscientiously and in what he considered were the interests of the electors and candidates.¹⁵⁶ The Court held that the irregularity did not invalidate the election.¹⁵⁷

146. The third snow storm case was *Re Mullins and City of Windsor et al*¹⁵⁸. A severe snow storm struck the City of Windsor on the day preceding a municipal election. The city clerk removed ballot boxes to the homes of deputy returning officers, failed to seal ballot boxes

¹⁵⁴ Rex rel Dyck v. Ell [1953] 9 WWR 161

¹⁵⁵ See Rex rel Dyck v. Ell [1953] 9 WWR at 167

¹⁵⁶ See Rex rel Dyck v. Ell [1953] 9 WWR at 167

¹⁵⁷ See Rex rel Dyck v. Ell [1953] 9 WWR at 167

¹⁵⁸ Re Mullins v. City of Windsor et al [1976] 9 OR (2d) 729

and counted ballots at a place other than a polling station. These measures were all contrary with the Municipal Elections Act 1972 (Ont.). It was held on appeal that the irregularity did not affect the result.

147. I have compared the blizzard cases to the proceedings which now engage my attention. The former were all extreme cases of hostile weather conditions. In this way, the officials involved were confronted with more formidable obstacles than those which obtained on the 7th September, 2015. Nevertheless in none of the blizzard cases was there a finding that the supervening event detoxified the irregularities. The Court, in each case, sympathised with the officials, found their act not deliberate or intentional, viewed their actions as in the best interest of the candidates and electors, held that the irregularity did not affect the result of the election. In none of these cases, however was it held that there was no breach because the official had no choice but to act in contravention of the relevant statute.
148. Torrential rains and flooding on the 7th September, 2015, may have impelled the EBC to issue the directive which they did. Nonetheless, the uncontrollable weather conditions did not confer on the EBC the power to direct that the law be broken. The EBC, itself a creature of statute, ought at all times to abide by the clear dictates of the law and ought not to purport to dispense with those dictates even if faced with an apparently insurmountable problem. Accordingly, it is my view and I hold that the extension of the poll on the 7th September, 2015 was illegal and election officers who failed to close the poll at 6:00 p.m. acted in breach of Section 27(1) of *the Election Rules*¹⁵⁹ obedience to which is required by Section 35(1) of *the ROPA*¹⁶⁰.

¹⁵⁹ Election Rules, Ch. 2:01

¹⁶⁰ Representation of the People Act, Ch. 2:01

Consequence of Breach

149. It is therefore my finding that there was undoubtedly a breach of *the Election Rules*¹⁶¹.

Moreover, the breach pervaded the entire district of St. Joseph and indeed the entire island of Trinidad.

150. The Court must therefore decide whether the consequence of such breaches ought, according to law, to operate to invalidate the election of the First Respondent, Terrence Deyalsingh on the 7th September, 2015.

151. The grounds upon which a general election could be invalidated received the authoritative consideration of the Court of Appeal in the Leave Appeal CA No. S 229-240/2015 *Wayne Munroe and Others v. Maxie Cuffie and Others*¹⁶².

152. In the course of his judgment, delivered on the 22nd January, 2016, Justice of Appeal Jamadar expressed the view that there were two (2) streams by which an election to the House of Representatives can be set aside by a representation petition under Section 52 of *the Constitution*¹⁶³. Jamadar, JA, identified these two (2) streams in this way:

“(i) *the common law of Trinidad and Tobago*

(ii) *the statutory enabling provision such as Section 35(3) and 149(4) of the ROPA*¹⁶⁴”

¹⁶¹ Election Rules, Ch. 2:01

¹⁶² CA No. S 229-240/2015 *Wayne Munroe and Others v. Maxie Cuffie and Others* delivered on the 22nd January, 2016

¹⁶³ The Constitution, Ch. 1:01

¹⁶⁴ See paragraph 70 of the Judgment of Jamadar, JA in CA No. S 229-240/2015 *Wayne Munroe and Others v. Maxie Cuffie and Others* delivered on the 22nd January, 2016

153. In arriving at the foregoing conclusion, the learned Justice of Appeal embarked on a journey of examining the jurisprudential underpinning of democratic elections and the grounds upon which they could be set aside. The learned Justice of Appeal also delved into the history of the existing law and considered *the ROPA*¹⁶⁵ from a historical perspective. In the course of *viva voce* submissions in this matter, I had been invited to depart from the conclusion of the Court of Appeal. This invitation was extended on the basis that the application for leave is only provisional and that this Court is not strictly speaking, bound by the findings on the Court of Appeal on the Leave Appeal¹⁶⁶.
154. Even if I found merit in such submission, the reasoning of the Court of Appeal, if not binding on me, must be highly persuasive. It is with great respect that I find such reasoning to be persuasive, not only in the legal sense, but in terms of the ordinary English. It is also with great respect, that I have found the reasoning of Jamadar, JA, to be compelling and in accordance with logic and manifest good sense, both common and esoteric. It is therefore my view, and I hold, that in Trinidad and Tobago there are two (2) streams by which a general election could be invalidated: under the common law and by operation of the enabling provisions of *the ROPA*¹⁶⁷.
155. Under the common law, an election could be vitiated if the Court is satisfied that either of two grounds was present: there was no real electing at all or that the election was not really conducted or subsisting under election laws.¹⁶⁸

¹⁶⁵ Representation of the People Act, Ch. 2:01

¹⁶⁶ CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

¹⁶⁷ Representation of the People Act, Ch. 2:01

¹⁶⁸ See Woodward v. Sarsons quoted at paragraph 76 of the Judgment of Justice Jamadar, JA in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

156. These grounds were explained by Lord Coleridge, CJ by formulating two (2) specific questions. In respect of the first ground Lord Coleridge said:

“As to the first, the tribunal should be so satisfied i.e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer...”¹⁶⁹

157. As to the second ground, that is to say the election was not conducted under subsisting election laws at all, Lord Coleridge formulated the question in this way:

“...the question must be in like manner be, whether the departure from the prescribed method of election is satisfied ...that the election was not an election under the existing law...”

158. Lord Coleridge provided examples of situations which would satisfy each of the grounds, to which he alluded. Examples of the first ground included the instances where the majority of electors were prevented from voting by general corruption or general intimidation or by the unavailability of the materials for voting according to law.¹⁷⁰ Lord Coleridge also included fraudulent counting of votes or false declaration of numbers by returning officers.

159. A stark example of an election which was “no real election” occurred in 1874, in the case of ***The Borough of Hackney***¹⁷¹. In that case, many polling stations had been closed for the entire day. As a result five thousand (5,000) people were unable to vote and that the election was invalidated under Section 13 of the Ballot Act 1872.

¹⁶⁹ Quoted by Jamadar, JA in the Judgment of Justice Jamadar, JA in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016 at paragraph 76

¹⁷⁰ See Woodward v. Sarsons [1875] 10 LRCP 733 at page 743

¹⁷¹ The Borough of Hackney [1874] 2 O'M & H Election Petitions.

160. As to the second ground, Coleridge, L.C.J provided examples of an election not conducted according to law. An example provided by the Learned Lord Chief Justice was where, with the consent of the whole constituency, a candidate was selected by the tossing of a coin. Such election would be by the free will of the people, but not according to law. The learned Lord Chief Justice had this to say:

“...it is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say that either wilfully or erroneously, the election was not carried out under those laws, but under some other method...”¹⁷²

161. At length, the learned Lord Chief Justice circumscribed the power of the Court, to declare an election void, in these words:

“But if in the opinion of the tribunal the election was substantially an election by ballot then no mistakes or misconduct however great in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament.”¹⁷³

Accordingly the learned Lord Chief Justice locked the jurisdictional door where there was a finding of substantial compliance. If there was substantial compliance, the Court would not be justified in declaring the election void.

¹⁷² See *Woodward v. Sarsons* [1875] 10 LRPC 733 at page 744

¹⁷³ See *Woodward v. Sarsons* [1875] 10 LRPC 733 at page 745

Substantial Compliance

162. The power of the Court to declare an election void was considered a hundred years later in ***Morgan v. Simpson***¹⁷⁴, which is regarded as the modern authority on the subject. In that case, the Court of Appeal considered the meaning of substantial compliance in the context of Section 37(1) of ***the Representation of the People Act 1949 (UK)***. Section 37(1) was similar but not identical to Section 35(3) of ***the ROPA***¹⁷⁵ (Trinidad and Tobago). By Section 37(1)(UK), the Court is prohibited from declaring an election void if two (2) factors were present: that the election was conducted so as to be substantially in accordance with the law and there was no effect on the result.¹⁷⁶

163. In ***Morgan v. Simpson***¹⁷⁷, Stephenson, LJ defined substantial compliance by reference to the assessment of the ordinary man. Stephenson, LJ had this to say:

*“For an election to be conducted substantially in accordance with the law there must be a real election by ballot and no such substantial departure from the procedure laid down by Parliament as to make the ordinary man condemn the election as a sham or a travesty of an election by ballot.”*¹⁷⁸

Stephenson, LJ opined as well, that what is substantial is a question of degree.

164. The gauge of the ordinary man reappeared several years later in the OECS case of ***Quinn-Leandro v. Jonas***¹⁷⁹. In that case, Rawlins, C.J. had this to say:

¹⁷⁴ *Morgan v. Simpson* [1975] 1QB 151

¹⁷⁵ Representation of the People Act, Ch. 2:01

¹⁷⁶ Section 37(1), Representation of the People Act, 1949 (UK) provides: “No local government election shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the local elections rules if it appears to the tribunal having cognizance of the question that the election was so conducted as to be substantially in accordance with the law as to elections and that the act or omission did not affect its result.”

¹⁷⁷ *Morgan v. Simpson* [1975] 1QB 151

¹⁷⁸ See *Morgan v. Simpson* [1975] 1QB 151 at 168

¹⁷⁹ *Quinn-Leandro v. Jonas* (2010) 78 WIR 216

“An election court would not invalidate an election on the ground that there was substantial non-compliance with electoral law, pursuant to s. 32(4) of the Representation of the People Act, if the breach of elections procedure stipulated by law was trivial. There had to be such a substantial departure from elections procedure stipulated by law that would cause an ordinary person to condemn the election as a sham or travesty. A considerable departure was required. Accordingly, an election court would usually only invalidate an election on that ground if the judge was really satisfied that the breach was serious.”

165. Throughout the years, there have been myriad authorities which provide guidance as to how the Court ought to interpret and apply the doctrine of substantial compliance. Authorities hail, not only from the United Kingdom, but from the Caribbean and indeed from every part of the commonwealth.
166. In my view, an examination of the authorities suggest that, in assessing whether or not there was substantial compliance, the Court should have regard not only to the number of polling hours but to what was achieved in the given time, that is to say how many persons were permitted to cast their votes.¹⁸⁰
167. The Courts have also placed great weight on whether a majority of voters were disenfranchised. Thus, in the case of *Gunn v. Sharpe*¹⁸¹, the failure of officials to stamp ballot papers constituted substantial non-compliance, since the error disenfranchised more than half of the voters. By contrast, the Court in *Borough of Drogheda*¹⁸² found that there was substantial compliance even where polling stations were opened forty-five (45) minutes

¹⁸⁰ See *Halstead v. Simon* [1981] 1 OESC Law Reports 198

¹⁸¹ *Gunn v. Sharpe* [1974] 2 All ER 1058, where errors were regarded as substantial since more than half the voters were disenfranchised.

¹⁸² *Borough of Drogheda* [1874] 2 OM & H 252

late since not a single voter had been prevented from voting and the whole constituency was polled out.

168. Similarly, in the case of *the Akaroa Election Petition*¹⁸³ the Court of New Zealand held that there was substantial compliance, in spite of the reduced polling time in ten (10) out of eleven (11) polling stations. The Court held that there was no good reason for believing that a majority might have been prevented from voting.
169. The Court also considered authorities relating to alterations in polling times. In *P.K. Atre v. Naravne*¹⁸⁴ the Court refused to set aside the election where voting time had been illegally extended by one and a half hours.
170. In like vein, the Court of Ontario in *Parker v. Gatslop County*¹⁸⁵ ruled that it was the shortening of voting hours, rather than the extension, that will impair the rights of voters.
171. In order to decide whether there was substantial compliance with the election laws of Trinidad and Tobago, I have sought to apply the tests which emerge from the authorities. I have applied the tests laid down in *Woodward v. Sarson*¹⁸⁶ and later in *Morgan v. Simpson*¹⁸⁷. I have also considered the trends which have emerged from less stellar authorities and I have assessed this Petition in the light of those trends.
172. In my view there is no evidence to suggest that the conduct of the election was other than free or fair according to the first *Woodward*¹⁸⁸ test. There was no allegation of intimidation or of the unavailability of election materials such as ballot papers or ink. There was no evidence of trickery, of fraudulent counting of votes or false declaration by election officers.

¹⁸³ The Akaroa Election Petition [1892] 10 NZLR 158

¹⁸⁴ P.K. Atre v. Naravne 1 ELR 364

¹⁸⁵ Parker v. Gatslop County 69 Or. 62 [1914]

¹⁸⁶ Woodward v. Sarsons [1875] 10 LRCP 733

¹⁸⁷ Morgan v. Simpson [1975] 1QB 151

¹⁸⁸ Woodward v. Sarsons [1875] 10 LRCP 733

In my view therefore, the first ground which was identified in *Woodward v. Sarson*¹⁸⁹ is not applicable to these proceedings. More specifically, it is my view and I hold that there is no evidence to suggest that there was no real electing at all.

173. In fairness to the Petitioner, I considered whether the election had been tainted by unfairness by the late and uncertain information which was disseminated about the extension.

174. The evidence emanating from the petitioner was loud and plaintive. The well organised UNC machinery had been thrown into disarray, as party leaders struggled to confirm the rumours they had heard.

175. This of course, would have constituted unfairness if the opposing party enjoyed preferential treatment. The evidence discloses however that the opposing camp had a similarly well-organised machinery and because of the late notification of the extension and the uncertainty, the PNM party organisers themselves abandoned any efforts to attract supporters to make use of the extended time. Accordingly, both parties provided evidence of difficulty of making the last drag.¹⁹⁰

176. In my view, it has not been proved that the electors of the constituency of St. Joseph “*had not a free and fair opportunity of electing the candidate which the majority might prefer*”.¹⁹¹ In fact the electors enjoyed such opportunity unassailed until 6:00 p.m., the statutory close of the poll. They even enjoyed an increased opportunity by the extension.

¹⁸⁹ Woodward v. Sarsons [1875] 10 LRCP 733

¹⁹⁰ See the Affidavit of Mr. Keith Toby filed on the 29th February, 2016 at paragraph 23

¹⁹¹ Woodward v. Sarsons quoted at paragraph 76 of the Judgment of Justice Jamadar, JA in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

The evidence suggests that it was the activists and not the electors who were bedevilled by the angst of not being able to extract as many supporters to maximize the extension in favour of their party.

177. I turn therefore to the second *Woodward*¹⁹² ground and proceed to examine whether the election was not really conducted under subsisting election law, or alternatively whether it is possible to say that, wilfully or erroneously, the election was not carried out under *the Constitution*¹⁹³ and *the ROPA*¹⁹⁴ but by some other method.¹⁹⁵

178. The Court always acts on evidence and makes its findings, having regard to the twin actors of law and evidence.

179. According to the evidence before this Court, there was a breach of only one rule of *the Election Rules*¹⁹⁶, that is to say Rule 27(1). There was not even an allegation that there had been any departure from any other rule or section of *the ROPA*¹⁹⁷.

180. The breach was however multiplied and repeated throughout the electoral district of St. Joseph and in that way, in the words of learned Queen's Counsel, Mr. Straker, the election was plagued by widespread and multiple breaches. It is arguable that this was a great mistake.

181. In my view, however, the widespread occurrence of the same breach does not detract from the fact that there had been compliance with all other aspects of the election laws of Trinidad and Tobago. The process was initiated as required by the issue of the Writ under the hand

¹⁹² *Woodward v. Sarsons* [1875] 10 LRCP 733

¹⁹³ The Constitution, Ch. 1:01

¹⁹⁴ Representation of the People Act, Ch. 2:01

¹⁹⁵ See *Woodward v. Sarsons* [1875] 10 LRCP 733 at page 744

¹⁹⁶ Election Rules, Ch. 2:01

¹⁹⁷ Representation of the People Act, Ch. 2:01

of the President¹⁹⁸. Notification of the time of the election was duly published in the gazette¹⁹⁹. The process of registration appeared to have been seamless. There was no evidence that the ballot was other than secret.

182. Ergo, there was one departure from the election laws of this country and in my view, I am unable to say that the election was carried out by some method other than that prescribed by *the Constitution*²⁰⁰ and *the ROPA*²⁰¹.

183. In my view the ordinary man test, as prescribed by Stephenson LJ is *Morgan v. Simpson*²⁰² would yield the same result. The ordinary man, depending on his political affiliation, may be either elated or disappointed by the final result. In my view, however, the ordinary man in Trinidad and Tobago would recognise that the poll was conducted peacefully throughout the day and that the only obstacle was presented by inclement weather, over which the election laws had no control. My assessment, of the view of the ordinary man, is strengthened by the reflection that the election was challenged in only six (6) of the thirty-nine (39) constituencies in Trinidad, in spite of the fact that the very wide spread multiple breaches took place through the island of Trinidad.

184. From this undisputed fact, I have inferred the electors in thirty-three (33) out of thirty-nine (39) constituencies were satisfied that the election was not a sham or a travesty. Moreover, there is no dispute that there was, in the constituency of St. Joseph, a percentage voter turnout of seventy-one point zero five (71.05%). The electorate was twenty-seven thousand, six hundred and fifty-three (27,653). The total number of votes cast amounted to nineteen

¹⁹⁸ Section 33, Representation of the People Act, Ch. 2:01

¹⁹⁹ Rule 4(1)(a), Election Rules, Ch. 2:01

²⁰⁰ The Constitution, Ch. 1:01

²⁰¹ Representation of the People Act, Ch. 2:01

²⁰² *Morgan v. Simpson* [1975] 1QB 151

thousand, six hundred and forty-eight (19,648) and those in the illegally extended time were one hundred and nineteen (119), a very small percentage of the total number of votes cast. It is therefore clear that the majority of voters had exercised their franchise before the illegal extension. No one was prevented from voting and in accordance with the trend which has emerged from the authorities, I hold that there was substantial compliance with election laws.

185. It is therefore my view and I hold that there was substantial compliance with *the Constitution*²⁰³ and *the ROPA*²⁰⁴, and in the words of Lord Coleridge, CJ, this Court is not justified in declaring the election void under the common law of Parliament.²⁰⁵

Statutory Bases for Invalidity

186. There are two (2) Sections of *the ROPA*²⁰⁶ which address the possibility of invalidity of an election. They are Section 148(1) and Section 35(3). An election may be declared invalid under *the ROPA*²⁰⁷ by recourse to Section 148(1), which is relevant where a candidate or his agent commits a corrupt practice. Accordingly, Section 148(1) is not relevant to these proceedings.

187. The section which has been the centre piece of these proceedings has been Section 35(3). This section falls to be construed as part of the wider Section 35, which is divided into three (3) subsections. Section 35(1) requires that proceedings at an election be conducted in accordance with *the Election Rules*²⁰⁸. Sub-Section (2) is addressed to Returning Officers

²⁰³ The Constitution, Ch. 1:01

²⁰⁴ Representation of the People Act, Ch. 2:01

²⁰⁵ See *Woodward v. Sarsons* [1875] 10 LRPC 733 at page 747

²⁰⁶ Representation of the People Act, Ch. 2:01

²⁰⁷ Representation of the People Act, Ch. 2:01

²⁰⁸ Election Rules, Ch. 2:01

requiring them to do all such acts and things as may be necessary for the effectual conducting of elections. Section 35(3), because of its importance is set out hereunder in full:

“35. (3) No election shall be declared invalid by reason of any act by a Returning Officer or any other person in breach of his official duty in connection with the election or otherwise or of the Election Rules if it appears to the Court having cognisance of the question that the act did not materially affect the result of the election.”

188. Section 35(3)²⁰⁹ does not positively empower the Court to invalidate the election. By its plain and ordinary meaning, it is a saving provision. This subsection prohibits the Court from declaring an election invalid where the Court finds the occurrence at a breach or breaches of an official duty or of *the Election Rules*²¹⁰ and it appears to the Court that the breach *did not* materially affect the result of the election.

189. At the Leave Appeal,²¹¹ both Mendonça, JA and Jamadar, JA who delivered the majority decisions concentrated on the import of Section 35(3) and decided that Section 35(3) spoke to the result of the election in quantitative and qualitative terms. It was not therefore only “*a numbers game*”, the Court should have regard to quality of the election in terms of both process and outcome²¹². Jamadar, J.A. expressed the view that the qualitative aspect goes to

²⁰⁹ Representation of the People Act, Ch. 2:01

²¹⁰ Election Rules, Ch. 2:01

²¹¹ CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

²¹² See paragraph 95 of the Judgment of Jamadar, JA in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016. See too page 6 of 11 of the Judgment of Mendonça, JA

fundamental and substantial legitimacy.²¹³ In my view the qualitative aspect of Section 35(3) addresses the issue of substantial compliance, in respect of which I have already ruled.

190. The quantitative aspect of is easily applied to these proceedings. The numbers are known and are not disputed. They have been reduced to tabular form by Mrs. Fern Narcis-Scope, deponent for the Second Respondent. For the electoral district of St. Joseph, the following numerical data is relevant:

Electorate	27,653
Total No. of Votes	19,648
Percentage Voter Turn Out	71.05%
Votes Cast for the First Respondent	10,536
Votes Cast for the Petitioner	8,903
Votes Cast for the Independent	154
Margin of Victory between the First Respondent and the Petitioner	1,633
Votes Cast between 6:00 p.m. – 7:00 p.m.	119

The figures reflected in this table have been extracted from the evidence of Mrs. Fern Narcis-Scope in her affidavit filed on the 29th February, 2016²¹⁴.

191. Where the Court has known and certain figures at its disposal, the Court may embark on an exercise of simple subtraction. See *Baxter v. Fear* [2015] EWHC 3136.

192. The Court is enjoined from peering into the voting booth and must therefore assume that all votes which were cast in the illegally extended voting hour, had been cast in favour of the First Respondent. This would yield a reduction in the number of votes for the First Respondent by one hundred and nineteen (119). The reduced number of votes in favour of the First Respondent would be ten thousand, four hundred and seventeen (10,417). This

²¹³ See the Judgment of Jamadar, JA in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

²¹⁴ See the Tables exhibited as “FNS 3” and “FNS4”

figure is still greater than the number of votes won by the Petitioner. Accordingly from a purely numerical point of view, the result of the election in the electoral district of St. Joseph was not affected. This is in keeping with the available authorities which suggest that the result is more likely to be affected when there is a small margin of victory. See for example in *Baxter v. Fear*²¹⁵.

193. Learned Queen’s Counsel, Mr. Straker, contended that the Court should look beyond “*the number game*” and have regard to the evidence, which suggests that it was not known how many persons were affected, how many persons who would have been turned out to vote, had they been aware of the extension.

194. In my view, this is asking the Court to embark on an exercise of pure speculation. This was frowned upon in *Baxter v. Fear*²¹⁶ in so far as it leads the Court to consider hypothetically how persons would have voted.

195. Moreover, there was no reason why the supporters of the Petitioner failed to come forward to provide evidence of their dashed hope of taking advantage of the extended poll. This was the view expressed in *the Akaroa Election Petition*²¹⁷ by William, J, in these words:

“We know of no reason why people who have suffered by errors should not have come forward to say so...”

196. Accordingly it appears to me that the breaches which occurred on the 7th September, 2015 did not affect the result of the election from a qualitative perspective. I have also held that there had been substantial compliance with the election laws of Trinidad and Tobago and for that reason, the breaches did not affect the result from a qualitative perspective. It follows

²¹⁵ *Baxter v. Fear* [2015] EWHC 3136

²¹⁶ *Baxter v. Fear* [2015] EWHC 3136

²¹⁷ *The Akaroa Election Petition* [1892] 10 NZLR 158 at page 166

therefore, that there is no juridical basis upon which this Court could declare the election invalid.

Epilogue

197. In the course of his judgment on the Leave Appeal²¹⁸, Justice of Appeal Jamadar alluded to the core constitutional values which underpin the social fabric of Trinidad and Tobago and indeed all Parliamentary democracies. The learned Justice of Appeal identified the entitlement to vote as linked to active participation in national affairs, freedom, the rule of law and to the fundamental rights enshrined in the Constitution.²¹⁹

198. In like vein, Justice Cory, in *Haig v. AG of Canada*²²⁰ declared that all forms of democratic government are founded upon the right to vote. According to Cory, J., the marking of a ballot is the mark of distinction of citizens of the democracy. The learned Judge described this as:

“A proud badge of freedom.”

199. Where the individual elector exercises his or her franchise and engages in the simple act of secretly stamping the ballot paper, his act is merged with the acts of the rest of the electorate to yield the consent of the governed which provides the legitimacy of the government and ultimately redounds to the peace order and prosperity of the entire nation.

²¹⁸ CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

²¹⁹ See paragraph 31 of the Judgment of Jamadar, JA in the Leave Appeal in CA No. S 229-240/2015 Wayne Munroe and Others v. Maxie Cuffie and Others delivered on the 22nd January, 2016

²²⁰ *Haig v. AG of Canada* [1993] 2 SCR 995

200. In the proceedings of this kind, therefore, the Courts throughout the ages have not focussed, as in other cases on the rights of individual litigants, but have sought to give effect to the will of the majority. Representation Petitions, far from being concerned with the welfare of any one person, or group, must be focussed on the will of the majority and ultimately on the welfare of the entire people in this time and in years to come.

201. I have, in these Petitions, strove to hold the balance to protect the will of the majority while ensuring that the patent mistakes have not reduced the election of 2015 to a mere sham. For reasons stated *supra*, it has been my view that the election of 2015 in Trinidad and Tobago were substantially in accordance with the prescribed law and it does not appear to me that the breaches affected the result. It is therefore my view and I hold that the Petition should be and is hereby dismissed.

Dated this 19th day of August, 2016.

M. Dean Armorer
Judge²²¹

²²¹ Ms. Aleema Ameerli & Ms. Khamatie Singh, Judicial Research Counsels I

SCHEDULE A

AFFIDAVITS FILED BY ALL PARTIES

PETITIONER- CV2015-03107

DATE FILED	DEPONENT
18th September, 2015	<ul style="list-style-type: none">• Vasant Vivekanand Bharath• Davendranath Tancoo•
22 nd September, 2015	<ul style="list-style-type: none">• Vasant Vivekanand Bharath• Davendranath Tancoo
29 th January, 2016	<ul style="list-style-type: none">• Allan Karim• Amit Sooknanan• Amrit Sooknanan• Annaroot Sooknanan• Davendranath Tancoo• Reeshma Roopchand- St. Clair• Junior Lakhansingh• Avinash Narine• Vijay Gosyne• Doolarie Sooknanan• Ravi Balgobin Maharaj• Darren Gosine
2 nd March, 2016	<ul style="list-style-type: none">• Kent Samlal
24 th Mach, 2016	<ul style="list-style-type: none">• Surujattan Rambachan• Grenville Ayers• David Anthony Lee• Ravi Raitram• Surujattan Rambachan
1 st April, 2016	<ul style="list-style-type: none">• Kent Samlal

FIRST RESPONDENT-CV2015-03107

DATE OF FILING	DEPONENT
25 th February, 2016	<ul style="list-style-type: none">• Liza Ramrattan Foster• Keyan Pierre• Indira Sanhai• Jaqueline Frederick• Shevon Cottoy• Michele Hewitt• Lana Hendrickson• Anisha Holder• Carol Veronica Gomez• Cherry Ann Hendrickson• Michael Prescott• Jovian Phillip• Ann-Marie Harry• Petronilla Fields• Tara Sita Ramrattan• Michelle Lewis• Krisann Greer• Kimberly R. Joseph• Gloria Butcher• Janice Butcher• Alexandria Martin• Margaret Fraser• Marianne Fraser
29 th February, 2016	<ul style="list-style-type: none">• Erica Gerge• Allyson Smith• Cherry Ann Joseph• Hazel Burke• Heather Andrews• Karen Andrews• Avril Mc Kain• Bryan Neville Peter• Kavana Samuel• Kristal Greer• Marilyn Hernandez• Michael Mitchell• Moriba Brooks• Nicollette Holdip• Rhonda Francis• Rochael Baptiste• Keith Toby

	<ul style="list-style-type: none">• Joyer Lopez• Karla Asa Charles• Germaine Alexander• Terrence Beepath• George Elias
9 th March, 2016	<ul style="list-style-type: none">• Keisha Virgil• Wendy Rocke• Bernice King• Alicia James• Paula Thomas• Patrice Henry• Denise Daniel• Sheran Bruce

SECOND RESPONDENT- CV2015-03107

DATE OF FILING	DEPONENT
28 th September, 2015	<ul style="list-style-type: none">• Garvin Seecharan
29 th February, 2016	<ul style="list-style-type: none">• Garvin Seecharan• Fern Narcis-Scope• Dominic Hinds
9 th March, 2016	<ul style="list-style-type: none">• Fern Narcis-Scope

SCHEDULE B

STATUTE

Act	Section
Constitution of Trinidad and Tobago Chap 2:01	52
	53
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Representation of the People Act Chap 2:01	2
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	149
Election Rules (Representation of the People Act Chap 2:01)	27
	32
	36
	38
Representation of the People Act 1949 UK	37(1)

Constitution Chap 1:01

The relevant sections of the Constitution are set out as follows:

1. Section 52

52. (1) Any question whether—

(a) any person has been validly appointed as a Senator or validly elected as a member of the House of Representatives;

(b) any Senator or member of the House of Representatives has vacated his seat or is required, under the provisions of section 43(3) or section 49(3), to cease to exercise any of his

functions as a Senator or as a member of the House of Representatives; or

(c) any person has been validly elected as Speaker of the House of Representatives from among persons who are not Senators or members of the House of Representatives, shall be determined by the High Court.

(2) Proceedings for the determination of any question referred to in subsection (1) shall not be instituted except with the leave of a Judge of the High Court.

(3) An appeal shall lie to the Court of Appeal from—

(a) the decision of a Judge of the High Court granting or refusing leave to institute proceedings for the determination of any question referred to in subsection (1);(b) the determination by the High Court of any such question.

(4) No appeal shall lie from any decision of the Court of Appeal given in an appeal brought in accordance with subsection (3).

2. Section 53

“53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so, however, that the provisions 67 of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.”

3. Section 69

69. (1) A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the President, acting in accordance with the advice of the Prime Minister, shall appoint.

(2) As soon as practicable after every general election, the President shall proceed under section 40 to the appointment of Senators.

(3) Where a vacancy occurs in the House of Representatives within the first four years of the life of the Parliament a bye-election shall be held to fill such vacancy not later than ninety days from the date of the announcement by the Speaker of the vacancy.”³⁶

4. Section 71

“71. (1) There shall be an Elections and Boundaries Commission for Trinidad and Tobago (in this Part referred to as “the Commission”).

(2) The members of the Commission shall be a Chairman and not less than two nor more than four other members.

(3) The Chairman and other members of the Commission shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition.

(4) A person shall not be qualified to hold office as a member of the Commission who is a Minister, a Parliamentary Secretary, a member of the House of Representatives, a Senator, a temporary member of the Senate, or a public officer

(5) Subject to the provisions of this section, a member of the Commission shall vacate his office—

(a) at the expiration of five years from the date of his appointment, but is eligible for reappointment; or

(b) where any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) Three members of the Commission shall constitute a quorum.

(7) Where there is a quorum, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid even though some person who was not entitled to do so took part therein.

(8) The Commission may regulate its own procedure.

(9) The Commission shall be provided with a staff adequate for the efficient discharge of its functions.

(10) The salaries and allowances of the staff of the Commission shall be a charge on the Consolidated Fund.

(11) The registration of voters and the conduct of elections in every constituency shall be subject to the direction and supervision of the Commission.

(12) In the exercise of its functions under this section the Commission shall not be subject to the direction or control of any other person or authority

Representation of the People Act Chap 2:01

5. Section 2

“2 (1) “election officer” means the Chief Election Officer, the Deputy Chief Election Officer, an Assistant Chief Election Officer, a Returning Officer, an Election Clerk, a Presiding Officer, a Deputy Presiding Officer, a Poll Clerk, a Registration Supervisor, a Registration Officer, an Assistant Registration Officer or a Scrutineer

“polling station” means any enclosed or unenclosed space secured by a Returning Officer for the taking of the votes of electors on polling day and includes any enlargement of the space where the enlargement is deemed necessary or expedient by a Returning Officer;

“elector” means any person who is registered as an elector in a unit register...”

6. Section 3

“3. (1) Subject to section 71 of the Constitution, in the exercise of its functions under the Constitution, the Commission shall exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all Election Officers fairness, impartiality and compliance with this Act.

(2) There shall be a Chief Election Officer who shall, subject to any general or special directions of the Commission, perform such functions and duties and exercise such powers of the Commission in such manner as the Commission may from time to time direct, including any of the following duties:

(a) to make such arrangements and do such things as are necessary for the initiation and maintenance of the unit and central registers in accordance with this Act, and for that purpose to make arrangements for the preparation and issue of the necessary forms and instruments and for the collection and keeping of such records as may be necessary;

(b) to issue to Election Officers such instruction as he may, from time to time, deem necessary to ensure the effective execution of the provisions of this Act; and

(c) to execute and perform all other powers and duties that by this Act or by the Commission are conferred or imposed on him.

(3) Before entering upon his duties under this Act, the Chief Election Officer shall take and subscribe before a Judge an oath in the form set out as Form No. 1 in the Prescribed Forms Rules.

(4) There shall be a Deputy Chief Election Officer who is subject to the authority, direction and control of the Commission, and he shall perform such of the functions and exercise such of the powers of the Chief Election Officer as may be assigned to him by the Commission.

(5) In the absence of the Chief Election Officer or if the office is vacant, the Deputy Chief Election Officer may act in his place and, while so acting, shall possess the like powers and perform the like duties as a Chief Election Officer.

(6) There shall be an Assistant Chief Election Officer who is subject to the authority, direction and control of the Commission, and he shall perform such of the functions and exercise such of the powers of the Chief Election Officer as may be assigned to him by the Commission.

(7) In the absence of the Deputy Chief Election Officer or if the office is vacant, the Assistant Chief Election Officer may act in his place and, while so acting, shall possess the like powers and perform the like duties as a Deputy Chief Election Officer.”

7. Section 11

11. (1) The persons entitled to vote under rule 36 of the Election Rules at an election in an electoral district are electors for that electoral district.

8. Section 33

“33. (1) An election shall be instituted by a writ of election issued by the President under the Seal of the President of the Republic of Trinidad and Tobago addressed to the Returning Officer for the electoral district for which the election is to be held; and every such writ shall be forwarded to the Commission for transmission to the Returning Officer to whom it is addressed.

(2) In the case of a general election, the writs of election for all electoral districts for which the election is to be held shall be dated on the same day and shall fix the date for the nomination of candidates and the date for the taking of the poll.

(3) Every writ of election shall be in the form set out as Form No. 2 in the Prescribed Forms Rules and shall specify—

(a) the day of the nomination of candidates, being not less than fourteen days after the day of issue of the writ;

(b) the day upon which, if necessary, the poll shall be taken, being not less than twenty-one days after nomination day;

(c) the day the writ is returnable to the Commission.

(4) On receipt of the writ, the Returning Officer shall endorse thereon the date of receipt of the writ and shall proceed to hold the election in accordance with the Election Rules.

9. Section 34

“34. (1) Where at any time between the issue of a writ under section 33(1) and the day appointed by the writ for the holding of a poll at any election the President is satisfied that it is expedient to do so by reason of—

(a) the existence of a state of war affecting Trinidad and Tobago;

(b) the declaration of a state of emergency in Trinidad and Tobago or any part thereof by any authority empowered to make such a declaration;

(c) the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or outbreak of infectious disease or other calamity, whether similar to the foregoing or not;

(d) the likelihood that the revised lists of electors for all electoral districts or for any particular electoral district will not be ready before the day appointed for the holding of the poll; or

(e) the likelihood that any essential electoral equipment, supplies or materials will not be available in adequate quantities upon the day appointed for the holding of the poll, the President may by Proclamation adjourn the holding of the poll to some other day specified in the Proclamation being not more than thirty days after the day specified in the writ.

(2) Any Proclamation made pursuant to subsection (1)(b) (c), (d) or (e) may be expressed to apply only to the electoral districts as are specified in the Proclamation, in which event the poll shall be taken in any electoral districts not so specified upon the day appointed in the writ for the holding of the poll.

(3) Where any Proclamation is made under this section, the writs for all the electoral districts to which the Proclamation applies shall be deemed to be amended by substituting for the day specified in the writs for the holding of the poll the day specified in the Proclamation.

(4) Subject to subsection (5), where a Proclamation under this section is made before the day that would have been nomination day if the Proclamation had not been made, or where any Proclamation under this section is made after nomination day on the ground set out in subsection (1)(d), nomination day is hereby adjourned to the day specified in the Proclamation.

(5) If the new nomination day specified under subsection (4) is a Sunday or a public holiday, nomination day is hereby adjourned to the first day, not being a Sunday or public holiday, after the new nomination day.

(6) Where a Proclamation is made under this section after nomination day on a ground other than the ground set out in subsection (1)(d), the adjournment by the Proclamation of the day upon which the poll is taken in no way affects the validity of any nomination validly made upon nomination day; and no other nomination shall be made.

(7) Where a Proclamation is made under this section after nomination day on the ground set out in subsection (1)(d), the adjournment by the Proclamation of the day upon which the poll is to be held does not affect the validity of any nomination made

prior to the Proclamation and that could validly be made on the day to which nomination day was adjourned; and nominations of other persons qualified as candidates for the election in question may be made.”

10. Section 35

“35. (1) The proceedings at an election shall be conducted in accordance with the Election Rules.

(2) Returning Officers at elections shall do all such acts and things as may be necessary for effectually conducting elections in the manner provided by the Election Rules.

(3) No election shall be declared invalid by reason of any act by a Returning Officer or any other person in breach of his official duty in connection with the election or otherwise or of the Election Rules if it appears to the Court having cognisance of the question that the act did not materially affect the result of the election.”

11. Section 40

“40. (1) Not later than five clear days before polling day, a person shall be named by or on behalf of each candidate as the candidate’s election agent, and the name and address of the candidate’s election agent shall be declared in writing by the candidate or some other person on his behalf to the Returning Officer not later than that time.

(2) A candidate may name himself as election agent and thereupon shall, so far as circumstances admit, be subject to this Act both as a candidate and as an election agent, and, except where the context otherwise requires, any

reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

(3) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked.

(4) If whether before, during or after the election the appointment of an election agent is revoked or an election agent dies, another election agent shall be appointed forthwith and his name and address declared in writing by the candidate or some other person on his behalf to the Returning Officer.

(5) Upon the name and address of an election agent being declared to the Returning Officer, the Returning Officer shall forthwith give public notice of that name and address.'

12. Section 52

“52. (1) Within forty-two days after the day on which the result of the election is declared, the election agent of every candidate at the election shall transmit to the Chief Election Officer a true return in the form set out as Form No. 4 in the Prescribed Forms Rules containing, as respects that candidate, a statement of all payments made by the election agent together with all the bills and receipts.

(2) The return shall deal under a separate heading or subheading with any expenses included in the return—

(a) with respect to which a return is required to be made under section 47(3); or

(b) which are on account of the remuneration or expenses of speakers at public meetings.

(3) The return shall also contain with respect to that candidate—

(a) a statement of the amount of personal expenses, if any, paid by the candidate;

(b) a statement of all disputed claims of which the election agent is aware;

(c) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court;

(d) a statement of all money, securities and equivalent of money received by the election agent from the candidate or any other person for the purposes of election expenses incurred or to be incurred, with

a statement of the name of every person from whom they may have been received.

(4) Where the candidate is his own election agent, a statement of all money, securities and equivalent of money paid by the candidate shall be substituted in the return as to election expenses for the statement of money, securities and equivalent of money received by the election agent from the candidate.

(5) Where, after the date at which the return as to election expenses is transmitted, leave is given by the High Court under section 49(3) for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the Chief Election Officer a return of the sums paid in pursuance of the order of leave, accompanied by a copy of the order of the High Court giving the leave; and in default he shall be deemed to have failed to comply with the requirements of this section without the authorised excuse as is mentioned in section 56.”

13. Section 60

“60. (1) A Registration Officer or an Assistant Registration Officer is guilty of a corrupt practice who, wilfully or without reasonable excuse—

(a) omits from a unit register for the registration area or registration unit for which he has been appointed the registration record of any person entitled to have the record entered therein; or

(b) enters in the register the registration record of any person who is not entitled to have the said record entered therein or the registration record of any fictitious or non-existent person.

(2) A Registration Officer or an Assistant Registration Officer is guilty of a corrupt practice who, wilfully or without reasonable excuse—

(a) enters any false or incorrect matter or thing upon a registration record or an identification card in a unit register for the registration area or registration unit for which he has been appointed; or

(b) omits to enter upon a registration record or in any such register, any relevant matter or thing that he knows or reasonably believes to be true.”

14. Section 61

“61. An Election Officer, other than a Registration Officer or Assistant Registration Officer, is guilty of a corrupt practice, who—

(a) makes, in any record, return or other document that he is required to keep or make under this Act, any entry that he knows or has reasonable cause to believe to be false, or does not believe to be true;

(b) permits any person whom he knows or has reasonable cause to believe not to be a physically incapacitated person to vote in the manner provided for the physically incapacitated persons;

(c) refuses to permit any person whom he knows or has reasonable cause to believe to be a physically incapacitated person to vote in the manner provided for the physically incapacitated persons;

(d) except as provided in this Act, permits any person to vote at a polling station at which he knows or has reasonable cause to believe that such person is not entitled to vote;

(e) wilfully prevents any person from voting at a polling station at which he knows or has reasonable cause to believe such person is entitled to vote;

(f) wilfully rejects or refuses to count any ballot that he knows or has reasonable cause to believe is validly cast for any candidate in accordance with this Act; or

(g) wilfully counts any ballot that he knows or has reasonable cause to believe was cast contrary to this Act.”

15. Section 62

“62. (1) An Election Officer required by this Act to take any oath or affirmation who wilfully or negligently fails in any material particular to perform the undertaking made by him in the oath or affirmation is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for twelve months.

(2) (a) If a person to whom this subsection applies, or who is for the time being under a duty to discharge any of the functions of such a person, is, without reasonable cause, guilty

of any act in breach of his official duty, he is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for twelve months.

(b) An action for damages does not lie in respect of the breach of his official duty by any person to whom this subsection applies.

(c) This subsection applies to any Election Officer or any person appointed to perform any duty under this Act in connection with his official duties, and the expression “official duty” is for the purposes of this section to be construed accordingly but does not include duties imposed otherwise than by this Act.

(3) If any Returning Officer wilfully delays, neglects or refuses to return any person who ought to be returned to serve as a member of the House of Representatives, a Municipal Council or the Tobago House of Assembly and if it has been determined on the hearing of a representation petition that the person was entitled to have been so returned, the Returning Officer shall, without prejudice to any civil or criminal liability which he may have incurred thereby, forfeit to the person the sum of twenty-five thousand dollars.”

16. Section 118

“118. (1) At the conclusion of the trial of a representation petition in respect of an appointment to the Senate, the Court shall determine whether the person whose appointment was questioned was validly appointed or not, and shall forthwith certify in writing the determination to the President and to the President of the Senate.

(2) At the conclusion of the trial of a representation petition in respect of an election or return, the Court shall—

(a) determine whether the person whose election or return is questioned, or any and what other person, was duly returned or elected or whether the election was void;

(b) forthwith certify in writing the determination—

(i) in the case of a petition relating to membership of the House of Representatives, to the Speaker;

(ii) in the case of a petition relating to membership of a Municipal Council, to the Minister, to the Town Clerk and to the Chief Executive Officer of the Municipal Council concerned;

(iii) in the case of a petition relating to membership of the Tobago House of Assembly, to the Minister and to the Chief Administrator, Tobago House of Assembly;

(c) where any charge is made in a petition relating to membership of the House of Representatives of any corrupt or illegal practice having been committed at the election, the Court may, in addition to giving a certificate, and at the same time, make a special report to the Speaker as to matters arising in the course of the trial an account of which in the judgment of the Court ought to be submitted to the House of Representatives.

(3) The certified determination of a representation petition by the High Court shall, unless varied by the Court of Appeal, be final to all intents and purposes.

(4) In this section “Minister” means the Minister responsible for Local Government.”

17. Section 146

“146. (1) Where on a representation petition questioning an election or return it is shown that corrupt or illegal practices or illegal payments or hirings committed in reference to an election for the purpose of promoting or procuring the election of any person thereat have so extensively prevailed that they may be reasonably supposed to have affected the result of the election, his election if he has been elected shall be void and he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

(2) An election shall not be liable to be avoided otherwise than under this section by reason of general corruption, bribery, treating or intimidation.”

18. Section 149

“149.(2) If it is shown to the Court by such evidence as to the Court seems sufficient—

(a) that a corrupt or illegal practice committed at an election by the agent of a candidate was committed contrary to the order of the candidate or without his sanction or connivance;

(b) that the candidate took all reasonable means of preventing the commission of corrupt and illegal practices at the election; and

(c) that such notice of the application is given in the electoral district as to the Court seems fit, and in the circumstances it seems to the Court to be just that the candidate should not be subject to any of the consequences under this Act of the act constituting the corrupt or illegal practice, the Court may make an order allowing the act to be an exception from the provisions of this Act making it a corrupt or

illegal practice on the part of the candidate, and thereupon he shall not be subject to any of the consequences under this Act of the act.

Election Rules

19. Rule 27

“27. (1) Subject to subrule (2), the taking of the poll at each polling station shall be between six o’clock in the morning and six o’clock in the afternoon of the same day.

(2) If at the hour of the closing of the poll there are any electors within the polling station who have not cast their votes, the poll shall be kept open a sufficient time to enable them to vote.”

20. Rule 32

“32. The Presiding Officer shall regulate the number of electors to be admitted to his polling station at the same time, and shall exclude all other persons except such of the following persons who he is satisfied have made the declaration required under rule 31:

(a) the candidates and their Election Agents;

(b) the Polling Agents appointed to attend at the polling station;

(c) the Police Officers on duty;

(d) the companions of physically incapacitated electors;

(e) the Chief Election Officer, the Deputy Chief Election Officer, an Assistant Chief Election Officer, a Registration Supervisor, the Returning Officer, the Election Clerk, the Deputy Presiding Officer and the Poll Clerks;

(f) such other persons who are authorised in writing by the Returning Officer with the approval of the Commission.”

21. Rule 36

“36. No person shall be entitled to vote at a polling station for any polling division unless his registration record appears in the unit register of electors for that polling division or his name appears on the revised list of electors for that polling division, or subject to rule 64(2) his name is included on the revised list of electors for that polling station.”

22. Rule 38

“38. (1) Subject to subrule (5), forthwith upon entering a polling station to register his vote at an election, every elector shall hand his identification card to the Poll Clerk who shall thereupon examine the revised list of electors for the polling station.

(3) If the name of the elector is included in the said list, the Poll Clerk shall record on a poll card the consecutive number of the person appearing in the list, and ensure that there is correctly recorded thereon, the name, address and registration number of the person, the name of the electoral district, the number and address of the polling station and the date of the election.

(5) If a prospective voter does not hand an identification card to the Poll Clerk, he shall give his name and address to the Poll Clerk who, if the name of such person is included on the revised list of electors, shall require the person to take an oath in the form set out as Form No. 53 in the Prescribed Forms Rules, and the Poll Clerk shall record upon the poll card which relates to such person the particulars referred to in subrule (3).

(12) If a person’s name does not appear on the revised list of electors, the Poll Clerk shall check the register for the name of that person.”

Representation of the People Act 1949 UK

23. Section 37(1)

“37(1) No local government election shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the local elections rules if it appears to the tribunal having cognizance of the question that the election was so conducted as to be substantially in accordance with the law as to elections and that the act or omission did not affect its result.”

SCHEDULE C

AUTHORITIES RELIED ON BY ALL PARTIES

➤ The following authorities have been referred to in this judgment at the indicated paragraphs.

PETITIONER’S AUTHORITIES

	Authorities for the Petitioner
1.	<i>London and Clydeside v Aberdeen</i> [1980] 1 WLR 182
2.	<i>R (Begum) v Returning Officer for Tower Hamlets</i> [2006] EWCA Civ 733
3.	<i>R (de Beer) v Returning Officer for Harrow</i> [2002] EWHC 67
4..	R v Secretary of State ex parte Hillingdon LBC [1986] All ER 810
5.	<i>The Borough of Hackney</i> (1874) 20 M & H 77
6.	<i>Edgell v Glover</i> [2003] EWHC 2566 (QB)
7.	<i>Considine v Didrichsen and another In the matter of the Representation of the People Act 1983</i> [2004] EWHC 2711 (QB), [2004] All ER (D) 365 (Nov)
8.	<i>Morgan v. Simpson</i> [1975] QB 151
9.	<i>Beryl Baxter v Lawrence Fear, Roger George Marley, Norman David Decent, Tony Williams</i> [2015] EWHC 3136 (QB)
10.	<i>Radix v. Gairy</i> (1978), 25 W.I.R.
11.	<i>Hamilton v. Liburd</i>
12.	<i>R v. Rowe ex parte Mainwaring and Others</i> [1992] 1 WLR 1059
13.	Political Parties, Elections and Referendums Act 2000
14.	European Union Referendum Act of 2015 Chapter 36
15.	European Union Referendum Voter Registration Regulations of 2016
16.	Electoral Law: A Joint Consultation Paper (2014)

FIRST RESPONDENT'S AUTHORITIES

	Authorities for the First Respondent
1.	<i>Radix v. Gairy</i> (1978), 25 W.I.R.
2.	<i>Hamilton v. Liburd</i>
3.	<i>R v. Rowe ex parte Mainwaring and Others</i> [1992] 1 WLR 1059
4.	<i>Russell (Randolph) and Others v. Attorney General of St. Vincent and the Grenadines</i> (1995) 50 WIR 127
5.	<i>Ted Opitz v Borys Wrzesnewskyj</i> [2012] 3 S.C.R 76
6.	<i>Courtauld v. Legh</i> (1869) L.R. Exh. 187
7.	<i>Dickenson v. Fletcher</i> (1873) L.R. 9 C.P. 1
8.	<i>Tuck & Sons v. Priester</i> (1887) 19 Q.B.D 629
9.	<i>Re Stratford Election Petition</i> [1920] GLR 303
10.	<i>Lim Chin Aik v. The Queen</i>
11.	<i>The State v Siddhanath Gangaram</i> 1956 CriLJ 1327
12.	<i>Smith v. East Elloe Rural District Council</i> [1956] A.C. 736
13.	<i>White and Another v South Derbyshire District Council</i> [2012] EWHC 3495 (Admin)
14.	<i>Anthony Theophilus Ribeiro v Kennedy Alphonse Simmonds Civil Appeal No.2 of 1979</i>
15.	<i>The Borough of Bolton</i> (1869)
16.	<i>Borough of Tamworth</i> (1868) 13 OM & H 75
17.	<i>Tannis v. Robertson</i>
18.	<i>Morgan v. Simpson</i> [1975] QB 151
19.	<i>Woodward v. Sarsons</i> [1875] L.R. 10 C.P 733
20.	<i>Herbert Charles v The Judicial and Legal Service Commission et al</i> Privy Council Appeal No. 26 of 2001
21.	<i>Quinn-Leandro v. Jonas</i> (2010) 78 WIR 216
22.	<i>Re Parliamentary Election for Fermanagh and South Tyrone</i> [2001] NIJB 415
23.	<i>Halstead v Simon et Al</i> (1989) OECS L.R. 198
24.	<i>Edgell v Glover</i> [2003] EWHC 2566 (QB)

25.	<i>Fitch v Stephenson and others; In the matter of the Representation of the People Act 1983</i> [2008] All ER (D) 13 (Apr)
26.	<i>Joseph Parry v Mark Brantley</i> HCVAP 2012/003
27.	<i>Borough of Drogheda</i> (1874) 2 OM & H 201
28.	<i>P.K. Atre v Dr. T.R. Naravne and Others</i> 1 E.L.R 364
29.	<i>Pilane v Molomo and Another</i> [1990] BLR 214 (HC)
30.	<i>Parker v Catslop County</i> 69 Or. 62 (1914)
31.	<i>Akaroa Election Petition</i> (1981) 10 N.Z.L.R. 158
32.	<i>Western Maori Election</i> (1909) GLR 595
33.	<i>Parkers Law and Conduct of Elections</i>
34.	<i>Halsbury Laws of England</i>
35.	<i>Corpus Juris Secundum</i>
36.	<i>American Jurisprudence 2nd Edition</i>
37.	<i>Walker's English Legal System</i>

SECOND RESPONDENT'S AUTHORITIES

	Authorities for the Second Respondent
1.	<i>CA No. S229- 234 of 2015, CA No. 235-240 of 2015-</i> Justice of Appeal Jamadar's Judgment
2.	<i>Hipperson v. Newbury District Electoral Registration Officer</i> (1985) QB 1060
3.	<i>Haig v. Attorney General of Canada</i> (1993) 2 SCR 995
4.	<i>Quinn-Leandro v. Jonas</i> (2010) 78 WIR 216
5.	<i>R v. Rowe ex parte Mainwaring</i> [1992] 1 WLR 1059
6.	<i>Murray v Bristol and Ors</i> (1969) 13 WIR 78
7.	<i>Re Parliamentary Election for Fermanagh and South Tyrone</i> [2001] NIJB 415
8.	<i>Morgan v. Simpson</i> [1975] QB 151
9.	<i>Wan Sagar bin Wan Embong v Harun bin Taib & Ors</i> [2008] MLJU330
10.	<i>Woodward v. Sarsons</i> [1875] L.R. 10 C.P 733
11.	<i>Herbert Charles v The Judicial and Legal Service Commission et al</i> Privy Council Appeal No. 26 of 2001
12.	<i>Edgell v Glover</i> [2003] EWHC 2566 (QB)
13.	<i>Gunn v. Sharp</i> [1974] Q.B.808 104
14.	<i>Beryl Baxter v Lawrence Fear, Roger George Marley, Norman David Decent, Tony Williams</i> [2015] EWHC 3136 (QB)
15.	<i>Akaroa Election Petition (1981)</i> 10 N.Z.L.R. 158
16.	<i>Halstead v Simon et Al</i> (1989) OECS L.R. 198
17.	<i>Considine v Didrichsen and another In the Matter of the Representation of the People Act 1983</i> [2004] EWHC 2711(QB), [2004] All ER (D) 365 (Nov)
18.	<i>Dato' Ismail Kamus v Pegawai Pengurus Pilihan Raya</i> [2005] 3 MLJ 193
19.	<i>Kalyan Kumar v Ashutosh LNIND 2011 SC 80</i>
20.	<i>Fitch v Stephenson and others; In the matter of the Representation of the People Act 1983</i> [2008] All ER (D) 13 (Apr)
21.	<i>Shaw and Portage la Prairie R</i> (1911) 20 Manitoba Report 469
22.	<i>R ex rel Dyck v. Ell</i> (1953) 9 WWR 161
23.	<i>Presidential Election Petition No. 1 of 2001</i>
24.	<i>Re Mullins and City of Windsor et all</i> [1976] 9 OR (2d) 729
25.	<i>Clayton's Law of Human Rights</i>
26.	<i>Constitutional Law: Principles and Policies</i>
27.	<i>Parkers Law and Conduct of Elections</i>
28.	<i>Halsbury Laws of England</i>
29.	<i>Roger's On Elections</i>