



FREEDOM LAW CHAMBERS

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Radha Persad – Commissioner of Affidavits

27th October 2017

The Honourable Mr. Ganga Singh
Member of Parliament
Chaguanas West
#185 Caroni Savannah Road
CHARLIEVILLE

Dear Mr. Singh,

Re: In the Matter of fixing of elections for the post of Political Leader of the United National Congress for November 26, 2017

Reference is made to the above-captioned matter and to your undated letter in relation thereto, which I have been instructed by the National Executive (“NATEX”) of the United National Congress (“UNC”) to respond to as follows:

1. Whilst your obvious confidence in the Political Leader which is implicit in your desire to have her serve her full term and remain as the elected Political Leader of the UNC for an extra year is commendable, your letter is, unfortunately, fundamentally flawed, significantly misinformed, and contrary to the concept of participatory democracy which is based on elected leadership with the full confidence of the people. In other words, your claim/complaint is baseless, frivolous, vexatious, and without legal merit.
2. On behalf of my client, I have fully examined the issues raised, conducted my own professional analysis, and have also had the benefit of advice from Queen’s Counsel in this

Fiat Justitia Ruat Caelum
“Let Justice Be Done Though The Heavens Fall”

matter and can say without fear of contradiction that your claim/complaint is based on a convoluted interpretation of the Constitution of the UNC (“the Constitution”) and hence is absolutely devoid of legal merit. It is illogical and contrary to the policy and philosophy of the Constitution of any organisation (more importantly, a political party), which contemplates an elected executive and Political Leader based on the principle of “one man, one vote”, for you to condemn the invocation of the very democratic process that produces such elected officials.

3. A purposive and contextual legal analysis of the Constitution leads to the inescapable conclusion that the power to fix a date for a NATEX election and, to fix such date before the current term of the elected officials expires, resides with the NATEX. It is difficult to understand the twisted logic that could yield any other conclusion. The adoption of such a posture is suggestive of a political diffidence and impotence that is not conducive to the growth and development of the UNC as it prepares itself for the next general election which, given the hapless incompetence of the present Rowley Administration, may very well be before their full five (5) year term expires.
4. At the outset, my client denies the allegation, and repeated public utterances, that there is or has been any breach and/or apparent and/or intended breach of Article 18 or any other provision of the Constitution of the UNC in relation to the said proposed election. This contention highlights your grave misunderstanding of the UNC’s Constitution which must be read as a whole.
5. It is axiomatic that a person in public life, especially one with the length of experience in public life such as your good self, is expected to properly research and verify the information which you hold out to be truthful and which form the basis of your conclusions, and to be more responsible in expressing your views. This is particularly easy in the current case whereby the only reference utilised was a single clause of the Constitution, a documents which is fully and freely available online at <http://unctt.org/wp-content/uploads/2013/03/UNC-CONSTITUTION.pdf>, and which should have facilitated easy access, review, and analysis to any interested party.

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6. My client notes as well that you preferred to publicise your views rather than to genuinely seek the clarification as postured in your letter. Should you have done so, you could have averted the unfortunate embarrassment of publicly misleading persons, including former politicians, who have appeared to have accepted wholesale your wrongful interpretation rather than conduct their own research and analysis.
 7. While my client casts no aspersions on the basis of your intent, to be so absolutely wrong is an indictment against legal competence or deliberate misleading both of which are unfortunate as it sought to bring the UNC, its Executive and its Political Leader into disrepute and odium.
 8. Nonetheless, my client is mandated and obligated to correct your misinformation and misrepresentation as circulated in the public domain. If your conclusions are based on a true misunderstanding of the single clause then it is my client's hope that the correction presented herein, would disabuse you of your error.
 9. The decision to hold the NATEX election was taken on the proper and legal basis of the Constitution. You have based your claim/complaint on the wording of Article 18. This however is clearly a misconception on your part, as Article 18 merely fixes the **maximum term** of office. For the avoidance of doubt, Article 18 states as follows:

“The Political Leader shall hold Office for three (3) years. All other elected National Executive Officers shall hold Office for two (2) years. They shall hold Office until successors to their offices have been elected unless they resign or are removed from office prior to the expiry of their tenure or their offices otherwise become vacant for any cause.”

10. The purport of Article 18 is to ensure that the Political Leader remains in office for three (3) years, and that the other Officers remain in office for two (2) years. It secures this position by stating that they shall hold the office until successors to their offices have been elected, unless they resign or are removed or their offices otherwise become vacant. What is clear from that provision is that the said Officers cannot be unceremoniously removed. Your mistaken belief has led you to construe that provision to mean that the Political Leader must hold such office

for the entirety of the three (3) year period, unless certain circumstances described therein arise. This is plainly not the case.

11. The preamble to the Constitution states that ***“in determining the nature and purport of these rules and regulations one must be informed by the aims and objectives of the Organization”***. It is therefore quite clear that the framers of the Constitution, in providing an interpretative guide, intended that the provisions should be read with this ***‘overriding objective’*** in mind.

12. Article 2, sub-paragraphs (i), (vi), (vii) and (viii) provide the relevant aims and objectives which are of moment to the decision to hold the election for the office of Political Leader. They provide as follows:

“(i) To provide and/or ensure good government to the people of Trinidad and Tobago.

(vi) To foster the ethos, substance and processes of democracy in all spheres and aspects of national life and in particular, to promote the unrestricted freedom of citizens to participate in the choice of their representatives and to encourage the implementation of the principles of economic and industrial democracy and the most widespread ownership of economic assets.

(vii) To struggle against any tendency towards authoritarianism, autocracy and dictatorship and to promote a viable diffusion of centres of power and decision-making as a check against the concentration and abuse of power.

(viii) To promote active citizen involvement at all levels of decision-making as the foundation for a participatory democracy and as a prerequisite for self-reliant development.”

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13. Having regard to the aforementioned, allowing the rank and file to vote for their Political Leader, simply cannot be interpreted as anything more than a bold attempt by the Political Leader to consolidate and strengthen the principles of democracy and fairness within the party. The decision of the Political Leader to seek a fresh mandate from the party membership ought to be respected, admired and commended as it affords the membership the opportunity to evaluate the performance of its Political Leader and to express their views in the highest of democratic principles, by voting. Indeed, this very action, of seeking a fresh mandate, facilitates other aspirants including your good self, who may be members interested in contesting the position of Political Leader or other positions on the NATEX. It is highly illogical to conclude that allowing members the opportunity to express their confidence via a democratic election is a violation of any democratic principle.
 14. It is moreover ironic that a complaint would be launched on the basis of a clear desire that the Political Leader remain in office for another year. You would no doubt be happy to note that in the event she is re-elected, your apparent loyalty and support can in fact lead to her extending her mandate for a fresh three-year period. The Political Leader has voluntarily decided, with the approval of the NATEX, to put her leadership up for scrutiny and say, "This is what I've done, judge me on it, decide if you still want me to lead the party". That is the absolute spirit, embodiment, and tenet of democratic rule. That is the essence of a true leader.
 15. In fact, the UNC's ultimate aim is to bring good governance to the people of Trinidad and Tobago. The country is governed by the supreme law of the land, that is, the Constitution of the Republic of Trinidad and Tobago. It is noteworthy that our country's Constitution enables the Prime Minister to call what is termed a "snap" election at any time before the expiry of his term. It is therefore the height of absurdity if the Prime Minister of the country, by virtue of the National Constitution, can put himself up for election at any time, notwithstanding the fact that his term is for five (5) years, and the Political Leader of a political party cannot do so.
 16. Indeed, such a contemplation can only be interpreted as nonsensical, opposed to the principle of democracy, and the promotion of authoritarian rule. It is the irresistible and inescapable inference that the ability to call an election, and allow the members of the Party to decide on
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who its leader ought to be, is representative of the highest degree of democratic principles conceivable. My client is certain that you are familiar with the history of another Political Leader who repeatedly failed to call the NATEX and Leadership elections when they were due, and which was challenged, resulting in the eventual coercion of the Political Leader to abide by the Constitution. It remains commendable therefore that the current Political Leader has held elections consistently, allowing the free will of the party membership to be manifested.

17. In any event, like our National Constitution, the UNC Constitution itself does in fact provide for elections of its Officers before the expiry of the respective terms. This much is evident when Article 12 (iv) (r) is read. It states:

“The National Executive shall meet at least once per month and the quorum for such meeting shall be TWELVE (12) members.

The National Executive shall:-

(r) Propose to the National Congress for its approval the holding of elections for Officers within it notwithstanding that their term has not expired otherwise than in cases of casual vacancy.”

18. By virtue of Article 12 (iii), the Political Leader is an Officer. Further, the decision to have elections for the office of Political Leader in this case does not fall under what would be considered a “casual vacancy”. It is therefore pellucid that the UNC’s Constitution envisages the possibility of holding of elections, before the expiry of the term, for the office of Political Leader. This decision of course would be supported by the aim and objective of the UNC, that is, the promotion of democracy.

19. Article 12 (iv) (r) also cannot be in conflict with Article 18. Article 18 provides for the term of office, which in the case of the Political Leader is for a three (3) year term. Article 12 (iv) (r) on the other hand, in full contemplation of Article 18, provides expressly for an exception to Article 18. It provides for a situation in which “their term has not expired”. It is therefore clear that Article 12 (iv) (r) is meant to be invoked and govern elections when the term described in Article 18 has not expired. The most casual reading of Article 12 (iv) (r) reveals

that the framers of the Constitution made provision in unambiguous language for the holding of elections before the expiration of the specified term of office.

20. Further, the NATEX comprises the Political Leader, Three Deputy Political Leaders, the Chairman, the Deputy Chairman, the Policy and Strategy Officer, the Education Officer, the Research Officer, the Elections Officer, the Treasurer, the Party Organiser, the International Relations Officer, the Chair of the Women's Arm, the Chair of the Youth Arm, and Five elected regional representatives. The NATEX must propose to the National Congress for its approval the holding of an election under Article 12 (iv) (r). It is clear from the wording of the said Article that there is no requirement for approval to come from the National Assembly or the Special National Assembly. It is therefore simply an issue of the NATEX proposing the election to the National Congress. Once the National Congress approves such a decision, the elections may be held.
21. The National Congress is provided for by Article 11 of the Constitution. It is the highest authority in the UNC between National Assemblies. By virtue of Article 13, the National Assembly is the highest authority in the UNC and *inter alia* it elects the Officers of the UNC. It is erroneous therefore to suggest that the Constitution does not enable there to be an election for Political Leader prior to the expiry of any term in office. To come to such an absurd conclusion is to deny the meaning of article 12, which specifically provides for the holding of elections by way of proposal of the NATEX and, nullify the role of the high authority of the National Congress in approving such action.
22. In any event, even if there were thought to be any ambiguity and/or conflict between Articles 12 (iv) (r) and Article 18 of the Constitution, Article 23 provides that any ambiguity may be resolved by the NATEX. It is therefore quite clear that, even if there were any ambiguity, it has been resolved in favour of enabling an election, in accordance with the Constitution.
23. It is diametrically opposed to the principles of democracy and cannot be in line with the spirit of the Party for there to exist a bar on political leaders being able to offer themselves for re-election. The tool of an "early election", which can be proposed by the NATEX, no doubt

provides the UNC with an unprecedented level of accountability, participatory democracy, and scrutiny against potential dictatorial rule.

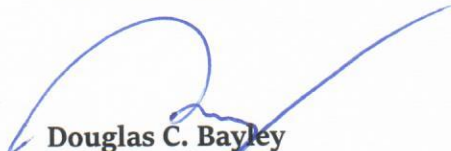
24. Though the Constitution is silent on the procedure for and notice periods governing the holding of elections, it is quite clear that Article 23 gives the power to the NATEX to determine those ambiguities.

In the circumstances, my client rejects your claim/complaint as baseless, frivolous and vexatious. The NATEX has acted in accordance with the Constitution of the UNC in fixing the date of the 26th November 2017 for the purpose of holding an election of Officers of the NATEX, including the Office of Political Leader.

It is my client's hope that you adopt the responsibility inherent in your position as an elected representative, to properly research and verify the validity of the information which you put in the public domain. In this regard, I am instructed that the UNC welcomes the opportunity to clarify any other misunderstandings that you may have so as to prevent any further presentation of misinformation to the general public. Notwithstanding their offer, they stand poised, ready, willing and very able to deal with any legal challenge to the process and look forward to receiving any legal proceedings which you may wish to institute so that it can be expeditiously disposed of.

Please be guided accordingly.

Yours faithfully,



Douglas C. Bayley

Attorney-at-Law

Freedom Law Chambers