





1 member of the Legislative Assembly. The present petition  
2 seeks the following determinations by this Court:

3 1: That the said Linford A. Pierson was not duly  
4 elected and that his election was void in accordance with  
5 the provisions of Section 56 of the Elections Law  
6 (1995 Revision).

7 2: That the said Berna Thompson-Murphy was duly  
8 elected and ought to have been returned and, therefore,  
9 that the return for the electoral District of George Town  
10 be altered accordingly in accordance with the provisions  
11 of Section 58(2) of the Elections Law (1995 Revision).

12 3: That the Petitioners may have such further or  
13 other relief as may be just.

14 Sections 56 and 58 of the Elections Law are as  
15 follows:

16 56:

17 "If a candidate who has been elected is  
18 certified by the Judge who tried the  
19 election petition questioning the return  
20 or election of such candidate to have been  
21 personally guilty or guilty by his agents  
22 of any corrupt or illegal practice his  
23 election shall be void."

24 58:

25 "(1) Every election petition shall be

1           tried in the same manner as an action in  
2           the Grand Court by a Judge sitting alone.

3           (2) At the conclusion of the trial the  
4           Judge shall determine whether the member  
5           of the Assembly whose return or election  
6           is complained of or any, and what, other  
7           person was duly returned and elected, or  
8           whether the election was void, and shall  
9           certify such determination to the  
10          Governor, and, upon his certificate being  
11          given, such determination shall be final;  
12          and the return shall be confirmed or  
13          altered, or a writ for a new election  
14          issued, as the case may require in  
15          accordance with such determination."

16                   The first of a number of questions of interpretation  
17          with which I must deal is the meaning of "undue  
18          election". That expression is not defined in the Law, but  
19          the following reference to the Australian case Re Surfers'  
20          Paradise Election Petition, which is to be found in the  
21          1975 Queensland Reports at page 114 is pertinent. An  
22          observation of Mr. Justice Dunn on the matter is to be  
23          found in the publication: "Words and Phrases Judicially  
24          Defined, with reference to an enactment similar to our own  
25          to the relevant extent. He said this:

1 "The act contains no definition of the  
2 expression 'undue election', but the words  
3 take their meaning from the history of  
4 disputed elections. An undue election is  
5 one where there has been a departure from  
6 the prescribed method of election or one  
7 in which there has been misbehaviour or  
8 management of a kind which history has  
9 shown may result in the selection of a  
10 candidate otherwise than by the will of  
11 the constituency. The expression does not  
12 apply to an election in which the  
13 prescribed method of election has been  
14 followed, but that method is unlawful."

15 I adopt that passage from the judgment of Mr. Justice  
16 Dunn. It is the will of the constituency which prevails.

17 The allegations against Mr. Pierson are contained in  
18 paragraph 5 of the Election Petition. They are these:

19 \* That the said Linford A. Pierson was  
20 personally guilty of illegal practices at  
21 the said election by making and/or  
22 publishing, before or during the said  
23 election, certain false statements of fact  
24 in relation to the personal character or  
25 conduct of certain candidates at the said

1 election for the purposes of affecting the  
2 return of such and/or other candidates  
3 contrary to the provisions of

4 Section 71(1)(d) of the Elections Law,  
5 (1995 Revision), in that, on the 18th day  
6 of November, 1996, he made and published  
7 at the Democratic Alliance's public  
8 meeting in the George Town Town Hall,  
9 (which was broadcast live over CITN Cayman  
10 Channel 27 television and also  
11 re-broadcast over CITN on the 19th of  
12 November, 1996) the following false  
13 statements of fact:

14 a. 'The Housing Development Corporation  
15 was providing a very useful service to the  
16 people of this country, but Mr. McKeever  
17 Bush chose to sell it to the bank in which  
18 his colleague Mr. Truman Bodden is a  
19 shareholder, a director and an officer.  
20 Was the people's interest being considered  
21 when this sale was made? And the question  
22 tonight is: Who benefited? A more  
23 serious question is: Could this be  
24 regarded as corruption?'

25 b. 'Perhaps Mr. Tom Jefferson could

1 attempt to regain his credibility by  
2 explaining to the public all the  
3 circumstances surrounding his hit-and-run  
4 accident on the West Bay Road. The  
5 question remains: Was Mr. Jefferson  
6 drunk? And secondly: Did he refuse to  
7 take a breathalyzer test?'  
8 c. 'Can you trust a candidate who would  
9 tear her father apart just to be elected?  
10 If she did that to her father, what would  
11 she do to you?' Although the said Berna  
12 Thompson-Murphy was not mentioned by name  
13 in the circumstances of this public  
14 meeting, the person making the statement,  
15 the person being attacked and the George  
16 Town Town Hall as well as the television  
17 audience being addressed, there was no  
18 doubt that the real and the true meaning  
19 of these false statements was intended to  
20 impugn the said Berna Thompson-Murphy and  
21 that this was the real and true meaning  
22 placed upon these false statements by  
23 persons comprising the said audience."  
24 Mrs. Berna Thompson-Murphy and Mr. Truman Bodden were  
25 candidates at the election held on the 20th of November,

1 1996 for the Electoral District of George Town.  
2 Mr. Thomas Jefferson and Mr. McKeeva Bush were candidates  
3 in the Electoral District of West Bay.

4 Section 71(1)(d) of the Elections Law,  
5 (1995 Revision), contravention of which is the expressed  
6 ground of the complaint against Mr. Pierson, provides  
7 that, subject to subsections (2) and (3) of the section,  
8 every person who-

9 "himself or as a director of any body or  
10 association corporate, before or during an  
11 election for the purpose of affecting the  
12 return of a candidate at the election,  
13 makes or publishes any false statement of  
14 fact in relation to the personal character  
15 or conduct of the candidate is guilty of  
16 an illegal practice and liable on summary  
17 conviction before the Magistrate to a fine  
18 of \$500 or to imprisonment for six months  
19 and in addition shall be incapable during  
20 a period of five years from the date of  
21 conviction of being registered as a voter,  
22 or of voting at any election, or of being  
23 a candidate for election to the Assembly  
24 or if elected before his conviction, of  
25 retaining his seat as a Member."

1 It is not alleged that Mr. Pierson did anything  
2 otherwise than personally, so subsection (3) of Section  
3 71, which relates to acts of an agent, is irrelevant.  
4 Subsection (2), however, reads as follows:  
5 "A person charged under subsection (1)(d)  
6 shall not be guilty of an illegal practice  
7 if he can show that he had reasonable  
8 grounds for believing, and did in fact  
9 believe the statement he made to be true."  
10 That subsection is invoked by Mr. Pierson as part of his  
11 defence.

12 The heading to Part V of the Elections Law indicates  
13 that it is concerned with election offences. It is penal  
14 in nature and contains 14 sections. Some are described  
15 marginally as being definitions, others are not. That  
16 seems to me to make no difference. Section 71 as a whole  
17 seems to me to be no less a definition of the kinds of  
18 conduct which constitute offences under that section and  
19 are described generically as illegal practices because the  
20 word "definition" does not appear in relation to it.

21 In any event, the real thrust of the Respondent's  
22 argument, with which I shall deal in more detail later in  
23 this judgment, is not that there is no definition of  
24 illegal practices in the Law, but that the definition is  
25 not one which can be transposed from the penal provisions

1 of Part V to Part IV which deals with election petitions  
2 based on complaints of undue election or undue return of a  
3 member of the Assembly.

4 Before going further into the arguments about that, I  
5 need to give my reasons for the view that an election to  
6 which an election petition relates is an election for the  
7 return of a candidate or candidates for a particular  
8 electoral district as constituted under section 5 of the  
9 Law. Among these are the electoral districts of George  
10 Town and West Bay.

11 Arrangements for elections are described in Part III  
12 of the Law. For the purpose of every election, whether it  
13 be a general election or a by-election, Section 18  
14 provides that the Governor shall issue writs addressed to  
15 the returning officers of the respective electoral  
16 districts for which members are to be returned.  
17 "Election" is defined in Section 2 as meaning: "An  
18 election of a member or members ~~to~~ the Assembly." That  
19 does not really help as some electoral districts return  
20 more than one member.

21 However, the whole tenor of the arrangements for  
22 election set out in Part III of the Law and the provisions  
23 with regard to registration of voters, appointments of  
24 officers and compilation of lists of voters lead to the  
25 view which I have just expressed.

1 Indeed, the petition itself is described as being:

2 "In the matter of the election for the  
3 Electoral District of George Town, held on  
4 the 20th day of November, 1996."

5 Three propositions have been argued on behalf of the  
6 Respondent. They are conveniently summarised as a  
7 conclusion in his written submissions and are these:

8 1: The Election Petition is fatally  
9 flawed and should be dismissed since it  
10 has not alleged any illegal practice of  
11 the type contemplated by Section 56 of the  
12 Elections Law, namely an illegal practice  
13 committed in reference to an election for  
14 the Electoral District of George Town done  
15 for the purpose of promoting or procuring  
16 the election of the Respondent.

17 2: Alternatively, paragraph (2) of the  
18 prayer of the petition should be struck  
19 out since there is no basis in the  
20 petition upon which the Court can  
21 determine that the First Petitioner was  
22 duly elected. If it is found that the  
23 election of the Respondent is void, the  
24 only determination that can be made as a  
25 matter of law is that there must be a new

1 election in which the Respondent is free  
2 to offer his candidacy and contest the  
3 election.

4 3: In any event, the reference to the  
5 alleged false statement of fact against  
6 the Honourable Thomas Jefferson set out in  
7 paragraph 5(b) of the Election Petition  
8 should be struck out since he was not a  
9 candidate in the election for the  
10 Electoral District of George Town within  
11 the meaning of Section 56 of the Elections  
12 Law.

13 The Respondent's argument in support of his first  
14 proposition is that there are two parallel streams of  
15 provisions present in our Elections Law with different  
16 objectives and that this appears to be a unique feature of  
17 the Cayman Elections Law. I was invited to refer  
18 extensively to the Representation of the People Act, 1983,  
19 which applies to the whole of the United Kingdom and  
20 indeed previous legislation from that jurisdiction and  
21 elsewhere as examples of a more common kind of Election  
22 Law where there is one integrated stream of provisions.

23 I accept that Section 71(1)(d) is widely enough  
24 drafted to provide for the conviction of anybody, whether  
25 a candidate or not, who commits an illegal practice by

1 making a false statement of fact in relation to the  
2 personal character or conduct of the candidate, before or  
3 during an election, for the purpose of affecting the  
4 return of a candidate at the election. It would apply to  
5 a news broadcaster, a candidate or other person in one  
6 district who made such a statement in relation to a  
7 candidate in another district for the purpose stated. But  
8 I do not think that it follows at all, that the wide  
9 definition of the offence in Section 71(1)(d) should not  
10 include, for the purpose of grounding a complaint in an  
11 election petition of an undue election the making of a  
12 false statement of fact in relation to the personal  
13 character or conduct of a candidate or candidates in an  
14 election for a particular electoral district by another  
15 candidate in that district.

16 Some weight was attached by counsel for the  
17 Respondent to the expression, "for the purpose of  
18 promoting or procuring the election of any person  
19 thereat", which appears in Section 57 of the Law. That  
20 section deals with the avoidance of an election for  
21 illegal and other practices which have so extensively  
22 prevailed that they may be reasonably supposed to have  
23 affected the election result. That is not this case, and  
24 I do not accept the proposition that the phrase restricts  
25 the ambit of other provisions of Part IV.

1 It is also noteworthy that the consequence of a  
2 finding under Section 57 that the election of the person  
3 concerned shall be void is that he shall be incapable of  
4 being elected to fill the vacancy or any of the vacancies  
5 for which the election was held. That lends some support  
6 to the proposition that the consequence of declaring an  
7 election void is that another election will be held,  
8 rather than that another unsuccessful candidate should  
9 simply step into the breach.

10 It seems to me to be quite clear from the provisions  
11 of Sections 56, 57 and 58 of the Law that a corrupt or  
12 illegal practice can be the subject of complaint in an  
13 election petition, that the Judge's determination and  
14 certification to the Governor can be predicated on a  
15 finding that this was so and that the reference to the  
16 criminal offence of illegal practice in Section 71(1)(d)  
17 was intended by the Legislature to, and in fact does,  
18 express conduct within which a complaint in an election  
19 petition can fall.

20 I was given the benefit of being reminded of many  
21 well known canons of statutory construction in support of  
22 that conclusion by counsel, but I do not think that it is  
23 necessary to refer to them because in my view, there is no  
24 ambiguity. In any event, the presumption that the  
25 legislature did not intend an absurd, unworkable or

1 impracticable result would apply.

2 For these reasons, I refuse the Respondent's  
3 application that the whole Election Petition should be  
4 dismissed.

5 I now turn to the application relating to  
6 paragraph (2) of the prayer of the petition. In this  
7 respect, the Respondent must succeed. What is alleged  
8 against him is that he has been personally guilty of  
9 illegal practices. If a certification to that effect is  
10 made by the Judge, Section 56 expresses the consequence  
11 that his election is void.

12 Section 58(2) provides that it is the duty of the  
13 Judge to:  
14 "...determine whether the member of the  
15 Assembly whose return or election is  
16 complained of or any, and what, other  
17 person was duly returned and elected,  
18 or (my emphasis) whether the election was  
19 void..."

20 The word "or" must there be disjunctive. It is not  
21 open to the Judge to declare the election of one candidate  
22 void on the ground of an illegal practice and declare  
23 another person duly returned and elected.

24 I reach that conclusion not only on what I think is  
25 the correct view of the wording of the Law, but on a

1 public policy consideration. It would be an affront to  
2 the democratic process, even under the circumstances  
3 contemplated in Section 57 of the Law, where it is shown  
4 that the various malpractices referred to in that section  
5 have so extensively prevailed that they may be reasonably  
6 supposed to have affected the result for another candidate  
7 simply to step in as a consequence of the election being  
8 void. A reasonable supposition is no basis for the  
9 entitlement of any person to take his seat in the  
10 Legislative Assembly. A fortiori, that must apply where  
11 it is not sought to show that the result was affected.

12 The consequence must be as submitted on behalf of the  
13 Respondent that if it is found that his election is void,  
14 the only determination that can be made is that there must  
15 be a new election in which the Respondent is free to offer  
16 his candidacy and contest it. There is no disability in  
17 that regard which follows upon a certification of an  
18 illegal practice under Section 56. Avoidance under  
19 Section 57, which does carry disability, is not claimed  
20 and the disabilities under Section 71(1)(d) are  
21 consequence upon a conviction before a magistrate.

22 I now turn to the alleged false statements about  
23 Mr. Thomas Jefferson who was a candidate in the election  
24 for the Electoral District of West Bay. If I am right in  
25 what I have said so far about the way the Elections Law

1 should be interpreted, these are only relevant if they  
2 amount for the purpose of affecting the return of a  
3 candidate at the election held for the George Town  
4 Electoral District to a statement of fact in relation to  
5 the personal character or conduct of the candidate. The  
6 only eligible candidates in that regard today are  
7 Mrs. Thompson-Murphy and Mr. Truman Bodden.

8 In support of his argument that paragraph 5(b) of the  
9 petition relating to Mr. Thomas Jefferson should not be  
10 struck out and indeed in relation to the jurisprudential  
11 history of our own Elections Law generally, Mr. LaMontagne  
12 relied extensively on and read extensively from the case  
13 of the North Division of the County of Louth, 1911, 6,  
14 O'M & H, beginning at page 103. One of the many  
15 allegations in that case was that, there had been a  
16 violation of the Act of 1895 which made it an illegal  
17 practice for any person or the directors of any body or  
18 association or corporation to publish false statements,  
19 subject to the following limitations:

- 20 (1) the publication must be before or  
21 during a Parliamentary election;  
22 (2) it must be for the purpose of  
23 affecting the return of a candidate at  
24 such election;  
25 (3) the false statement must be one of

1 fact;

2 (4) it must relate to the personal  
3 character or conduct of the candidate.

4 The ancestral relationship between this and the more  
5 modern statutes to which I have been referring is  
6 obvious. I go from there to two short passages from the  
7 judgment of Mr. Justice Gibson.

8 The first is at page 158 of the report and is this:

9 "As the Lord Chief Baron observed in  
10 O'Shee's Case, there is no sharp dividing  
11 line separating what is personal from what  
12 is political or otherwise. The real  
13 question is, what is the true meaning of  
14 the letter and the leaflet, considering  
15 the occasion of publication, the persons  
16 publishing, the person attacked, the  
17 readers intended to be addressed."

18 The second extract is this, from page 160:

19 "The Serjeant says that all the statements  
20 of fact as to persons in the letter and in  
21 the leaflet are substantially true.  
22 Whether they are true or not, whether the  
23 relationships are exaggerated or not, is  
24 immaterial so far as they relate to other  
25 persons. The statute only gives relief in

1 respect of false statements directed  
2 against the candidate. The importance of  
3 mis-statements, or inaccuracies as to other  
4 persons depends upon whether they would  
5 strengthen the impression of the reader as  
6 to Mr. Healy's jobbery, and possibly  
7 making the relationship closer, depressing  
8 the lowly origin of Mr. Healy, and other  
9 matters of the kind might increase the  
10 suspicion against Mr. Healy."

11 Mr. LaMontagne asked, what at this stage, which is  
12 strictly for the purposes of the trial of the preliminary  
13 issues without benefit of evidence, is the difference in  
14 principle between that case and the present case where it  
15 has been suggested that Mrs. Thompson-Murphy, Mr. Truman  
16 Bodden and their fellow members of the National Team,  
17 Mr. McKeever Bush and Mr. Jefferson are all bad people in a  
18 speech which concludes with an invitation to voters to  
19 vote for its author and his political friends? The  
20 "impeccable logic" of the matter as put by Mr. LaMontagne  
21 on the basis of what the petition says, the admission that  
22 the words complained of were spoken and the North Louth  
23 case was to say that the members of your political group  
24 are just as bad as you, merely re-enforces the bad things  
25 I am saying about you.

1       So paragraph 5(b), he says, should not be struck out  
2       because a candidate in George Town can make a false  
3       statement which goes to the personal character or conduct  
4       of a candidate in West Bay and still for that reason be at  
5       the receiving end of an election petition in George Town.

6       Mr. LaMontagne acknowledged that he had been unable  
7       to find any case directly on point and that he was relying  
8       on the North Louth case.

9       In the present case, the argument is that statements  
10      about an incident of an entirely personal nature which  
11      took place in 1985 and long before Mr. Jefferson sought  
12      any elected office amount by some process of guilt by  
13      association to statements of fact in relation to the  
14      personal character or conduct of a political colleague in  
15      1996. I think that that argument is bound to fail and  
16      that no amount of evidence could sustain it. It would  
17      tend to prejudice, embarrass or delay the fair trial of  
18      the action and in this connection considerations of public  
19      policy are material.

20      I order that paragraph 5(b) of the petition and,  
21      consequently the words, "and/or other" in the fourth  
22      line of paragraph 5 of the Petition and the words,  
23      "and Tom Jefferson" in the third line of paragraph 3 be  
24      struck out.

25               So, my Order is-

1 1. That the application to strike out the Petition  
2 is dismissed.

3 2. That paragraph 5b of the Petition and paragraph 2  
4 of the prayer of the Petitioners' be struck out.

5 3. That the words, "and Tom Jefferson" in  
6 paragraph 3 and the words "and/or other" in paragraph 5 of  
7 the Petition be struck out.

8 I will hear any observations which counsel wish to  
9 make at this stage with regard to costs.

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*G. E. Harre*

G. E. Harre  
Chief Justice  
6th March 1997

