



UNITED NATIONAL CONGRESS

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AIDE MEMOIRE

GENERAL ELECTIONS 2020

**THE CONCERNS OF THE UNITED NATIONAL CONGRESS ('UNC')
WHICH REQUIRE A WRITTEN AND PUBLIC RESPONSE FROM
THE ELECTIONS AND BOUNDARIES COMMISSION ('EBC') IN ADVANCE OF THE
FOLLOW-UP MEETING SCHEDULED FOR FRIDAY 31 JULY 2020**

“In my opinion the purposes and functions of parliamentary elections include, but are not limited to, the following: (i) the election of members to the House of Representatives, and (ii) the conducting of such elections according to a process that is duly prescribed by law and not inconsistent with the core constitutional values, common law principles and election laws underpinning Parliamentary elections. Both outcome and process are equally central to the conduct of elections in a representative and participatory democracy such as exists in Trinidad and Tobago. In such elections, due process is based on the core principles of fairness and freedom – that is to say, elections must be and must transparently be seen and known to be ‘free and fair’ to truly constitute a democratic election in Trinidad and Tobago. In addition, such elections must satisfy the constitutional value of integrity.”

Jamadar JA¹

INTRODUCTION

The 2020 General Elections present peculiar legal and logistical challenges for all stakeholders since they are being held during the period of the COVID-19 pandemic, and also during a hurricane season which is forecast to be extremely active. These circumstances will no doubt lead to uncertainties and open up the

¹ CA Nos. S229-234, S235-240 of 2015 – Returning Officers and Terrance Deyalsingh et al v Wayne Munroe and Ors. (dated 22 January 2016)

potential for partisanship by some officials of the Elections and Boundaries Commission ('EBC') under the guise of acting with the very best intentions.

These General Elections follow the General Elections of 2015 where, when dealing with an unexpected development on Polling Day, the shortcomings of and illegality by the EBC were the subject of judicial pronouncement.

All of these factors make the United National Congress less than confident in the impartiality and preparedness of the EBC (as an institution) for these elections. No aspersions however, are cast on any particular individual or individuals in this document.

The level of uncertainty, combined with the equivocal assurances of the EBC on key issues which we had previously raised, demand public and clear statements from the EBC on those issues. While we continue to treat with the EBC in good faith with our very cordial meetings and discussions, **the nature of the undertaking we are all involved in is a public one. Members of the public, including electors, should know both what is discussed and the outcome of these discussions.**

I. SCRUTINY OF NOMINATIONS

A perusal of the Nomination Forms which were approved by your Returning Officers ('ROs') would demonstrate that there were wide and sometimes incomprehensible inconsistencies among them in what they thought was required in order to validate nomination papers.

Some of your RO's refused to validate our candidates' forms in writing (as required by law) because they were not accompanied by letters of nomination and acceptance under the party letterhead. Those RO's were simply ignorant of the legal scope of their duties when certifying nomination papers. They left our candidates in doubt as to whether their forms would have been deemed valid on Nomination Day. The potential for our candidates' nominations to be rejected outright on Nomination Day was therefore very real and open to abuse by partisan RO's.

The results of the scrutiny of nomination papers are alarming to say the least. They demonstrate that some of your RO's do not have a clue about the law and were content to rely on what they thought was settled practice. At least one of them demanded that the proposers on a nomination form be set out in alphabetical order if it was to obtain his approval! This ignorance of the law does not augur well for the upcoming polls.

You would no doubt agree that 'settled practice' has no place in an election which is governed strictly by law. You would also no doubt agree that candidates should not be placed in a position to rely on the verbal assurances of any of your Returning Officers, when the Election Rules require certification of nomination papers to be in writing.

The nomination exercise has demonstrated that there is a need for certainty and written correspondence when stakeholders deal with the EBC as we go forward.

Verbal assurances have their place, but certainly not in a General Election, despite the best of intentions.

2. THE APPEARANCE OF IMPARTIALITY

The EBC in its role in conducting elections must both act and appear to act in a non-partisan, impartial, efficient and transparent manner. The current absence of clear, simultaneous and public channels of communication to all stakeholders breeds suspicion, and the appearance of the EBC and its officials being partisan and biased.

It would appear that the EBC shies away from written correspondence. The EBC website under “Contact Us” amazingly does not contain any email addresses, even though the “Ask the EBC” section of the website invites readers to send an email requesting information on any matter of concern relating to election management issues.²

Unfortunately, there were no clear channels of simultaneous communication of urgent matters to all stakeholders in the 2015 General Elections, where both the PNM and the UNC were uncertain of whether the EBC had extended the time for voting to 7.00 pm due to inclement weather.

Those facts are on the public record in the judgment of the Hon. Mme. Justice M. Dean-Armorer in **Claim No. CV2015-03107 Vasant Bharath v. Terrence Deyalsingh & RO for the Constituency of St. Joseph**³ and the following passages from that judgment will illustrate our cause for concern:

“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.

*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 assigned task or the method which he used to ensure that all stakeholders were informed. **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.**” (emphasis added).*

It is fair to say that the failure of the EBC in issuing clear and simultaneous notices to all stakeholders of an extension in the polling time in 2015 gave a reasonably informed observer the appearance that one side or another could have been given an unfair advantage of earlier notice.

Mrs. Narcis-Scope is now the Chief Election Officer. The UNC trusts that such confusion as happened in 2015 will not reoccur in the upcoming elections.

² <https://www.ebctt.com/ask-the-ebc/>

³ Claim No. CV2015-03107 (unreported) dated 19 August 2016

3. **LAWFUL EXTENSION OF POLLING TIME**

The UNC anticipates that due to the current restrictions on the numbers of persons gathering in a public place and the Ministry of Health guidelines for social distancing, there would be long lines and delays at polling stations across the country. The prospect of inclement weather on Polling Day should also be taken into consideration.

The Election Rules are quite clear on the instances when the Presiding Officer can suspend and/or adjourn the polls. Those instances are limited in Election Rule 56 to where proceedings are interrupted by riot or open violence. They have nothing to do with inclement weather or large numbers of persons waiting to vote.

The EBC is reminded that in **Claim No. CV2015-03107 Vasant Bharath v. Terrence Deyalsingh & RO for the Constituency of St. Joseph** the Honourable Mme. Justice M. Dean-Armorer made a finding that the EBC had breached Rule 27(1) of the Election Rules when it extended the hours of the polls.⁴

The Hon. Chief Justice in delivering the *ex tempore* judgment in the Court of Appeal in **Civil Appeal Nos. S 288, 289 and 291-293 of 2016 – Brent K. Sancho and Ors. v Terrance Deyalsingh and ors.** confirmed that the EBC exceeded its powers when it extended the time for the taking of the poll from 6:00 pm to 7:00 pm due to inclement weather. The Hon. Chief Justice also confirmed in that judgment that the EBC's powers under section 71(11) of the Constitution do not allow it to extend the hours for the taking of the poll so as to meet contingencies such as inclement weather.

The UNC therefore requests an assurance in writing from the EBC that such an occurrence as happened in 2015 shall not reoccur in the upcoming 2020 Elections.

4. **THE POSSIBILITY OF ADJOURNMENT OF POLLING DAY**

The UNC anticipates that there is a high possibility that consideration would be given to adjourning Polling Day due to the rapid rise in reported cases of persons infected with the COVID-19 virus combined with further lockdown measures. The Representation of the People Act at section 34 governs the process of any adjournment of Polling Day. Her Excellency the President must be satisfied that it is expedient to do so by reason of the existence of certain conditions, including the outbreak of infectious disease.

Section 34 of the Representation of the People Act is quite clear that it is for Her Excellency the President to be satisfied that it is expedient to adjourn Polling Day. This necessarily implies that Her Excellency the President has the sole and absolute discretion which she may exercise.

The UNC has been advised by its lawyers that despite the marginal note to section 34 of the Representation of the People Act which reads “*Government authorised to adjourn polling day in the event of*

⁴ Paragraph 179 of the Judgment in **CV2015-03107 Vasant Bharath v. Terrence Deyalsingh & RO for the Constituency of St. Joseph**

emergency”, by virtue of section 80 of the Constitution, Her Excellency the President is empowered to adjourn Polling Day in her own discretion and not on the advice of Cabinet.

The UNC therefore wishes to place the EBC on notice that any attempt by the Government or the Cabinet to advise Her Excellency to adjourn Polling Day would be unlawful and unconstitutional and subject to legal proceedings to vindicate the Rule of Law.

5. THE EXISTING COVID-19 REGULATIONS AND FRUSTRATION OF VOTERS

The existing COVID-19 Regulations⁵ are due to expire on 30 September 2020. These Regulations prohibit the gathering of more than twenty-five (25) persons in a public place. They also subject certain named undertakings such as food establishments, cinemas, theatres, gyms, fitness centres and businesses to the guidelines issued by the Ministry of Health.

Quite notably, the existing COVID-19 Regulations do not mention Polling Stations. This means that as of now, Polling Stations are not subject to any specific guidelines issued by the Ministry of Health, and are for all intents and purposes considered as public places and subject to the twenty-five (25) person limit.

The UNC is understandably alarmed that Regulations promulgated by the Government of the day have the effect of frustrating the exercise of the franchise of electors.

It makes absolutely no sense to limit the amount of persons entering a Polling Station to twenty-five (25) persons, when the extent of a Polling Station necessarily includes not just the building or room, but the curtilage and open space defined for the purposes of determining which electors are present within such station at the close of polls.

At our last meeting on the 10 July 2020, we were assured of that the EBC’s understanding of the extent of a Polling Station includes its previously defined surroundings. At that meeting, there was some suggestion by the EBC of utilising the one hundred (100) yard limit found at section 90 of the Representation of the People Act. That section created an offence of congregating within one hundred (100) yards of a Polling Station.

The one hundred (100) yard limit contemplated by the said section is simply one hundred (100) yards from the outer boundary of a Polling Station. The exact extent of the boundaries of a Polling Station itself is nowhere in the Election Rules referenced to any one hundred (100) yard distance. The specific limits of Polling Stations are discussed below.

Quite simply, the one hundred (100) yard boundary which prohibits unlawful congregation is measured from the outer limit of a Polling Station, and does not define the extent of a Polling Station itself.⁶

⁵ Legal Notice No. 274 – The Public Health [2019 Novel Coronavirus (2019-nCoV) (No. 22) Regulations, 2020]

⁶ See the definition of “polling station” at section 2 of the Representation of the People Act.

The UNC is of the view that it is the duty of the EBC to call upon the Government to immediately make fresh Regulations under the Public Health Ordinance to enable electors to freely exercise their franchise on Polling Day without unnecessary frustration, delay or threat of police prosecution, while at the same time ensuring that the health of the national community is not put at risk.

The UNC is suspicious of any attempts by the Government to mandate that masks be worn by electors in Polling Stations. It is quite possible that the Government may impose this requirement by making Regulations under the Public Health Ordinance shortly before Polling Day. If this is done it would put other Parties at a significant disadvantage since the PNM would have had advanced notice of such requirement and would have stocked up on masks to be distributed to its supporters.

The UNC does not object to the optional wearing of masks at Polling Stations but this should not be a mandatory requirement. If masks are recommended to be worn, the Government should supply an adequate supply of masks at every Polling Station for the use of every elector.

The UNC insists that under Rule 37 of the Election Rules, Presiding Officers **do not have the power in law to refuse to admit any elector to any Polling Station for any reason other than misconduct or failing to obey his lawful orders.** Those lawful orders do not include that the elector wear a mask as a precondition of his entry. The EBC is reminded that the powers of a Presiding Officer to keep order in the Polling Station:

“... shall not be exercised so as to prevent an elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.”⁷

The UNC maintains that there is a constitutional right of every elector to vote. That was confirmed by Jamadar JA (as he then was) at paragraph 31 of his judgment in **CA Nos. S229-234, S235-240 of 2015 – Returning Officers and Terrance Deyalsingh et al v Wayne Munroe and Ors. (dated 22 January 2016)**. That passage is reproduced hereunder for emphasis.

“31. In the context of general elections to appoint members of the House of Representatives, it would be fair to say that the entitlement to vote in a general election is one, if not the ultimate, form of expression of political views in a western styled constitutional representative democracy such as is intended in Trinidad and Tobago. Moreover, that opportunity to vote is also an exercise of freedom of thought and expression. Thus the entitlement to vote, voluntary as it may be, is linked to active participation in national affairs, freedom, the rule of law and to fundamental human rights enshrined in the Constitution, that all together are considered important constitutional values in Trinidad and Tobago. In the context of national elections, these values underpin the central idea that bestows legitimacy to the democratic way of life, which is the consent of the governed.”

⁷ Rule 37(4) of the Election Rules

6. THE SPECIFIC LIMITS OF POLLING STATIONS

Section 2 of the Representation of the People Act defines “polling station” as follows:

“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.”

Election Rule 27(2) provides as follows:

“(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.”

It is therefore critical that if long lines are expected at Polling Stations due to any social distancing measures in effect, all stakeholders including electors should know the precise extent of each Polling Station for the purpose of ascertaining who exactly is within any Polling Station at 6:00 pm on Polling Day.

The UNC therefore requests that the EBC supply to all stakeholders a list of Polling Stations along with a precise description of their initial boundaries and the method used to demark those boundaries for the information of all stakeholders.

The UNC insists that this exercise of determining initial boundaries be done prior to Polling Day since it has no confidence in the judgment of individual Returning Officers to determine any necessary or *ad hoc* enlargements on Polling Day, since Returning Officers may decide not to enlarge, or may not enlarge the boundaries sufficiently.

7. THE NEED FOR ESTABLISHED LINES OF WRITTEN COMMUNICATION BETWEEN STAKEHOLDERS AND THE EBC ON POLLING DAY

The events that transpired on Polling Day in 2015 were unfortunate, since by the EBC’s own evidence in **CV2015-03107 Vasant Bharath v. Terrence Deyalsingh & RO for the Constituency of St. Joseph**, your 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.”*

This would suggest that there were absolutely no written documented emails, letters or faxes, or a hesitation by the EBC as an institution to place on record what exactly transpired in verbal conversations.

The UNC therefore insists that established lines of written communication between stakeholders and the EBC on Polling Day be formulated and notified to all stakeholders well beforehand. The obvious method of verifiable written communication in this day and age is by electronic mail. The UNC does not recommend the use of social messaging such as WhatsApp or Facebook Messenger for those purposes.

The UNC further insists that the names, email addresses and mobile telephone numbers of the Chairman, the Chief Elections Officer, each Returning Officer and each Presiding and Deputy Presiding Officer be provided to every stakeholder for use on Polling Day.

On the last occasion, when we met with the EBC, we were told that there would be a problem providing Presiding Officers with email addresses, since there were only being provided with mobile phones. It is a simple matter to establish email addresses for each of them and to provide internet data packages for their mobile phones. There are currently many unlimited data packages being offered by service providers and there may be no need to establish separate WiFi facilities in Polling Stations if Presiding Officers have mobile internet access.

8. CONCERNS ABOUT PARTICULAR POLLING STATIONS AND OTHER EBC FACILITIES

a) Moruga/Tableland – Office of the Returning Officer is in a commercial complex and there is no sign-in required or security posted to monitor entry and exit. The Returning Officer confirmed that ballot boxes and special electors would be treated at this office. We are concerned about the security of this office.

b) St. Joseph – Polling Stations 1500-01 and 1500-02 are located at the Bamboo Grove Presbyterian Primary School. The front yard is very small and close to the roadway and in the past, has witnessed long cramped lines on Polling Day.

Polling Stations 1470-01, 1470-02 and 1475-01 are located at the Aranguéz Primary Hindu School. The front yard is very small and in the past, has witnessed long cramped lines on Polling Day. Parking is a challenge and the station is on a dead-end street.

c) Chaguanas East – Polling Stations 2826-1, 2826-2, 2831-1 and 2831-2 have all been relocated to Signature Hall, 63 Caparo Valley Brasso Road, Longdenville. Unlike where there were formally located at the Chaguanas North and South Secondary Schools, there is absolutely no parking on the busy Caparo Valley Brasso Road and there is limited parking on the Hall's compound which will not be enough to service four (4) Polling Stations.

Chaguanas East – Polling Stations 2825-1, 2825-2 and 2825-3 have been relocated to T&TEC Tropical Angel Harps Steel Orchestra Compound, Bhandase Street, Corner Southern Main Road, Enterprise. Because of its busy location on a main road, please confirm whether parking would be available on the enclosed premises of the Polling Station.

d) San Juan/Barataria – Polling Divisions 1410, 1411, 1416 and 1420 have been relocated due to reported issues with the El Socorro Central Government Primary School. However, our information is that as of 24 July 2020, this school has never been officially closed by the Ministry of Education. The El Socorro South Government Primary School is expected to now serve 7 Polling Divisions.

The electors in Polling Divisions 1416 and 1420 will now have to traverse in vehicles across the Churchill Roosevelt Highway via the Aranguéz Access Road Overpass to get to the EL Socorro South Primary School and would face a significant amount of traffic and delay. Pedestrians are not allowed to walk on the said overpass and if those electors decide to walk from their respective Polling Divisions, their journey would be over two miles to reach the pedestrian walkover and

then traverse on foot to the Polling Station. If there is heavy rainfall, many electors would be frustrated.

The El Socorro South Government Primary School is comparatively small and accommodates approximately 400 students on a daily basis. It is doubtful that this facility can accommodate the more than 3400 voters from the 7 Polling Divisions, moreso if persons have to observe social distancing.

Polling Divisions 1410 and 1411 has been located to the El Socorro North Government Primary School which will now serve 4 Polling Divisions with a total amount of votes at 2774. That school is comparative small and normally accommodates approximately 350 students on a daily basis. It is doubtful that this facility can accommodate the more than 2700 voters from the 4 Polling Divisions, moreso if persons have to observe social distancing. This Polling Station is in a high vehicular traffic area and there are other Polling Stations in close proximity to it. The roads in the area are very narrow and the police routinely discourage parking on those roads. It is anticipated that voters for this Polling Station will become frustrated and this would be exacerbated if there is heavy rainfall.

- e) Oropouche East – Polling Divisions 3710-01, 3710-02, 3725-01, 3725-02 and 3725-03 are located at the Mohess Road Hindu School. This school serves 5 Polling Stations and approximately 3019 voters. The school is very small and it is doubtful whether this school can accommodate the expected voters if social distancing measures are to be observed.

Polling Divisions 3720 and 4230 are located at the Penal Government Primary School. Those Polling Divisions serves approximately 2235 voters. The area of the school is very small and it is doubtful whether this school can accommodate the expected voters if social distancing measures are to be observed.

Polling Divisions 3794, 3796, 3797, 3798, 3799 and 3800 are located at the Canaan Presbyterian Primary School. This school serves 6 Polling Stations and approximately 3174 voters. The school is very small and it is doubtful whether this school can accommodate the expected voters if social distancing measures are to be observed. In addition, the school is located along the main road where proper parking is not facilitated.

Polling Divisions 3810, 3811, 3812 and 3820 are located at Picton Presbyterian Primary School. This school serves 6 Polling Stations and approximately 3220 voters. The school is very small and it is doubtful whether this school can accommodate the expected voters if social distancing measures are to be observed. It is anticipated that the lines may be very long and along the roadside.

Polling Divisions 3825 is located at the Golconda Community Centre. This location serves 4 Polling Stations and approximately 2407 voters. The location is very small and it is doubtful whether this school can accommodate the expected voters if social distancing measures are to be observed. In addition, proper parking is not available.

Polling Divisions 3870, 3873, 3874, 3882 and 3883 are located at the Southern Academy for Performing Arts. This location serves approximately 3084 voters. Proper parking facility is not facilitated.

- f) La Brea – save for Rousillac Hindu School, Sobo Community Centre, Vessigny Secondary School and Erin Road Presbyterian School, the other locations do not have adequate or any covered space outside for voters who are not inside the respective Polling Stations.
- g) Tunapuna – Polling Division 1625 is located at the St. Benedict's RC School. This location serves 3 Polling Stations. The Polling Stations seem small and there are small uncovered areas around them. In addition, it is anticipated that there will be issues with parking as the compound is small.

Polling Division 1880 is located at the Maracas Presbyterian Primary School. There is limited space within the Polling Stations and adequate parking is unavailable. The present toilets and sinks are inadequate to service persons on Polling Day.

9. OTHER MATTERS

- a) Provision of formatted/numbered lists of electors (Revised List and Supplemental List).
- b) The need to witness a run-through of the operations of a Polling Station in a COVID-19 scenario.
- c) Provision of the List of Special Voters who are in quarantine and their corresponding Polling Stations.
- d) Provision of the List of Special Voters who are prisoners and their corresponding Polling Stations.
- e) An assurance that our representatives will be allowed by either the Commissioner of Police, the Commissioner of Prisons or the Ministry of Health to be present at the several Special Polling Stations, whose precise locations have not yet been provided to us.
- f) The setting of at least one more follow-up meeting with the EBC before Polling Day.

Dated this 28th day of July 2020.



Davendranath Tancoo
General Secretary
United National Congress