

Sources of Law in Guyana and Legal Method

The Constitution, the statute book, the received common law, the courts, and how to read all four

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September 2026

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Abstract

What you will learn. This lecture maps the sources of law in Guyana in the order a court ranks them: the Constitution as supreme law and how it is altered; Acts of Parliament and subsidiary legislation under the Interpretation and General Clauses Act; the reception of the English common law and equity on 1 January 1917 and the Roman-Dutch rules that survived it, the reason land law still speaks of immovable property and transports; the hierarchy of courts from the magistrate to the Caribbean Court of Justice, and how Privy Council appeals ended in 1970; the doctrine of precedent as the Caribbean Court of Justice has stated it; international law and the treaties in the Fourth Schedule; and the statutory recognition of Amerindian collective rights. It closes with method: how to read a statute, how to read a case, how to cite, and a worked example using *McEwan v Attorney General of Guyana*.

Keywords: sources of law; Guyana; Constitution; Civil Law of Guyana Act; Roman-Dutch law; Caribbean Court of Justice; precedent; statutory interpretation; legal method; OSCOLA

Suggested citation: Naomi Eglantine Christie, 'Sources of Law in Guyana and Legal Method: The Constitution, the statute book, the received common law, the courts, and how to read all four' (2026) Christie Justus Law Research Paper Open Lecture 1 <<https://christiejustuslaw.com/research/>>.

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I. Why we begin with sources

Before any question of Guyanese law can be answered, one has to know which law it belongs to, and where that law came from. The answer has layers, laid down at different times by different hands: a Dutch colonial administration, a British one, the Parliament of an independent republic, and a regional court that sits in Port of Spain. The layers are ranked, and the ranking is itself a rule of law. That ranking is the first thing this lecture teaches. The second is the craft of reading what sits in each layer, which is where most of the marks in a first year are lost.

Keep one organising sentence in mind. The Constitution governs everything; Acts of Parliament govern everything beneath it; subsidiary legislation must stay inside its parent Act; the common law and equity received from England on 1 January 1917 fill the spaces the statutes leave, with a few Roman-Dutch rules preserved by name; the courts declare what all of this means, in a hierarchy that now ends in Port of Spain; and international law enters only through the doors the Constitution and Parliament have opened.

II. The Constitution as supreme law

The present Constitution was enacted by Act No 2 of 1980 and is printed as Chapter 1:01 of the Laws of Guyana.¹ Article 8 is the sentence on which every lecture in public law depends: "This Constitution is the supreme law of Guyana and, if any other law is inconsistent with it, that other law shall, to the extent of the inconsistency, be void."² It does not say the inconsistent law is repealed; it says it is void, and only to the extent of the inconsistency. A court that finds a section unconstitutional strikes the section, not the Act.

Supremacy is protected by the procedure for change. A Bill to alter the Constitution "shall not be passed by the National Assembly unless it is supported at the final voting in the Assembly by the votes of a majority of all the elected members of the Assembly".³ A short list of provisions, among them article 8 itself and article 164, cannot be altered without a referendum; a much longer list requires a referendum unless the Bill has the support of two-thirds of all the elected members.⁴ The supremacy clause is doubly entrenched: it is supreme, and only the electors can move it.

Part 2, Title 1 (articles 138 to 154) is headed "Protection of Fundamental Rights and Freedoms of the Individual".⁵ Article 153 lets a person who alleges that any of articles 138 to 151 "has been, is being, or is likely to be contravened in relation to him or her" apply "to the High Court for redress".⁶ Two further provisions matter for method. Article 39(2) requires that "in the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human

¹ Constitution of the Co-operative Republic of Guyana Act 1980, Act No 2 of 1980; Constitution of the Co-operative Republic of Guyana, Cap 1:01 (Laws of Guyana, revised edition, L.R.O. 1/2012).

² Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 8.

³ *ibid* art 164(1).

⁴ *ibid* art 164(2)(a)–(b) and proviso.

⁵ *ibid* Part 2, Title 1, arts 138–154.

⁶ *ibid* art 153(1).

rights".⁷ And article 152, the savings clause, shields "an existing law" that had effect immediately before the Constitution commenced from being held inconsistent with articles 138 to 149.⁸ Section IX(D) shows what the Caribbean Court of Justice made of it in *McEwan*.

III. Acts of Parliament and subsidiary legislation

The grammar of the statute book is the Interpretation and General Clauses Act, Chapter 2:01, an Act of 1970 consolidating "the law relating to the construction and interpretation of Acts of Parliament, Subsidiary Legislation, applied Laws and Public documents".⁹ Three definitions in section 5 organise everything. An "Act" is any Act of Parliament, and the definition reaches back to include "an Ordinance passed by a legislature of the former Colony of British Guiana", which is why an Ordinance of 1893 sits in the 2022 revised edition as a living Act. "Subsidiary legislation" means "any proclamation, rule, regulation, order, by-law, resolution, notice, notification, direction or other instrument, made under or by virtue of any Act, and having legislative effect". And "written law" is the umbrella: "the constitutional instruments, Acts of Parliament, subsidiary legislation and applied laws".¹⁰

An Act becomes law on a date, and the date is not always the one printed on its cover. The default is publication: "Every Act shall be published in the Gazette and shall come into operation on the date of publication unless it is provided in that Act or some other written law that it shall come into operation on some other date."¹¹ Many Acts displace the default. The Amerindian Act 2006 "shall come into operation on such date as the Minister may by order appoint and the Minister may appoint different dates for different sections".¹² So a student who has read the Act but not the commencement order does not yet know whether the law is in force. Check. Every Act is a public Act of which the courts take judicial notice, and it may be cited by its short title.¹³

Subsidiary legislation is law on a leash: "no subsidiary legislation shall be inconsistent with the provisions of any Act", and an instrument that goes too far is saved only "to the extent to which it is not in excess of that power".¹⁴ Proclamations, rules, regulations, orders and by-laws must be published in the Gazette and come into operation on publication unless otherwise expressly provided.¹⁵ The lesson is constantly forgotten: a regulation is read against its parent Act, and an Act against the Constitution. The Laws are published in revised editions by chapter, marked "L.R.O. 1/2012" or "L.R.O. 1/2022", and the Ministry of Legal Affairs publishes the chapter texts; cite the chapter and section.¹⁶

⁷ *ibid* art 39(2).

⁸ *ibid* art 152(1)(a).

⁹ Interpretation and General Clauses Act, Cap 2:01 (Act No 8 of 1970), long title; the Act came into operation on 23 February 1970.

¹⁰ *ibid* s 5 (definitions of "Act", "subsidiary legislation" and "written law").

¹¹ *ibid* s 15.

¹² Amerindian Act 2006, Act No 6 of 2006, s 1.

¹³ Interpretation and General Clauses Act, Cap 2:01, ss 17–18.

¹⁴ *ibid* s 20(1)(b)–(c).

¹⁵ *ibid* s 21(1).

¹⁶ Ministry of Legal Affairs, 'Laws of Guyana' <<https://mola.gov.gy/laws-of-guyana>> accessed 4 September 2026.

IV. The received common law and the Roman-Dutch inheritance

Guyana was Dutch before it was British, and the law of Essequibo, Demerara and Berbice was Roman-Dutch law, which the British kept for a century. Then, by the Civil Law of Guyana Act, Chapter 6:01, enacted as Act No 15 of 1916 and operating "from and after the 1st January, 1917", the legislature carried out one of the largest single legal transplants in the Commonwealth.¹⁷ The long title says what it did: "An Act to codify certain portions of the Roman-Dutch Law of the State and in other matters to substitute the English Common Law and Principles of Equity, along with certain English Statutory Provisions for the Roman-Dutch Law."¹⁸

Section 3 is the hinge. Paragraph (a) lists the fields, from wills, trusts and suretyship through contract, "torts, or delicts" and family relations to movable and immovable property, and provides that the law of Guyana on all of them, "and the law of Guyana relating to all other matters whatsoever", shall cease to be Roman-Dutch law.¹⁹ Paragraph (b) supplies the replacement: "the common law of Guyana shall be the common law of England as at the date aforesaid including therewith the doctrines of equity as then administered or at any time hereafter administered by the courts of justice in England".²⁰ Notice the two tenses. The common law was received as it stood on 1 January 1917; equity was received as it then stood and as it is "at any time hereafter administered". A modern English decision in equity therefore carries particular weight in Georgetown, while an English decision on the common law is persuasive only.

Then the Act stops, deliberately, at land. "The English common law of real property shall not apply to immovable property in Guyana."²¹ Paragraph (d) instead provides "one common law for both immovable and movable property", applying the English principles of personal property to land, and preserves the Roman-Dutch core in provisos. Immovable property "may be held as heretofore in full ownership, which shall be the only ownership of immovable property recognised by the common law", free of primogeniture and of any "incident attached to land tenure or to estates in lands in England".²² And "the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits a prendre, or real servitudes, and the right of opposition in the case of both transports and mortgages, shall be the law and practice now administered in those matters by the Supreme Court".²³

That is why the vocabulary survived. "Immovable property" in any Act or document ordinarily means "both real property and 'chattels real' as understood by the common law of England, and vice versa", and a Roman-Dutch term is read as the corresponding English term "with any words of qualification required".²⁴ The Deeds Registry Act, in operation since 1 January 1920, fixes the machinery: "No person in whom the title to any immovable property situate in Guyana vests may

¹⁷ Civil Law of Guyana Act, Cap 6:01 (Act No 15 of 1916), s 2(1) ("From and after the 1st January, 1917, hereinafter in this Act referred to as 'the date aforesaid'").

¹⁸ *ibid* long title.

¹⁹ *ibid* s 3(a).

²⁰ *ibid* s 3(b).

²¹ *ibid* s 3(c).

²² *ibid* s 3(d) and proviso (i).

²³ *ibid* s 3(d) proviso (ii).

²⁴ *ibid* s 2(1)–(2).

transfer or mortgage that property except by passing and executing a transport or mortgage thereof before the Court", and every transport "shall vest in the transferee the full and absolute title" subject to statutory claims and registered incumbrances.²⁵ There is no fee simple in Guyana. There is full ownership, passed by transport before a judge, with the opposition procedure to protect those with claims.

Roman-Dutch term	Nearest English idea	Where it lives now
immovable property	real property and chattels real	Civil Law Act, s 2(1)
transport	conveyance of land	Deeds Registry Act, ss 12, 22
hypothec	mortgage	Civil Law Act, s 3(d) proviso (ii)
real servitude	easement or profit	Civil Law Act, s 3(d) proviso (ii)
opposition	objection lodged against a transport or mortgage	Civil Law Act, s 3(d) proviso (ii)

Two smaller survivals complete the picture. Where a right rests on a Roman-Dutch rule "for which there is no equivalent in the English common law", or where English law is unsuitable "owing to any special local conditions", the High Court may give effect to the Roman-Dutch rule "to the extent the High Court deems advisable in the interests of equity".²⁶ Section 4 vests the foreshore, the soil under tidal waters and the sea-bed within territorial waters in the State.²⁷ Section 5 abolished the separate succession rules of the county of Berbice, a reminder that the three colonies had three common laws before 1917.²⁸ The standard study remains Ramsahoye's *The Development of Land Law in British Guiana*.²⁹

V. The courts

Article 123(1) creates "a Supreme Court of Judicature consisting of a Court of Appeal and a High Court", each "a superior court of record".³⁰ The Court of Appeal consists of the Chancellor, who presides, the Chief Justice and the Justices of Appeal; the High Court of the Chief Justice and the Puisne Judges.³¹ Beneath them, the magistrates' courts constituted under the Summary Jurisdiction (Magistrates) Act, an Ordinance of 1893, have jurisdiction "to hear and determine all complaints or informations for summary conviction offences" and "to receive and inquire into all charges of indictable offences", with a civil jurisdiction defined by the Summary Jurisdiction (Petty Debt) Act.³² The High Court holds "all such jurisdiction, authorities and powers ... as belonged or were incident to the Supreme Court of British Guiana immediately before the 26th May, 1966", the day of independence, and hears appeals from magistrates.³³ The Court of Appeal

²⁵ Deeds Registry Act, Cap 5:01, ss 12(1), 22(1); the Act came into operation on 1 January 1920.

²⁶ Civil Law of Guyana Act, Cap 6:01, s 2(3).

²⁷ *ibid* s 4(1).

²⁸ *ibid* s 5(3), (5).

²⁹ Fenton H W Ramsahoye, *The Development of Land Law in British Guiana* (Oceana 1966).

³⁰ Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 123(1)–(2).

³¹ *ibid* arts 124–125.

³² Summary Jurisdiction (Magistrates) Act, Cap 3:05 (Act No 10 of 1893), ss 31, 32(1)(a)–(b).

³³ High Court Act, Cap 3:02 (Act No 10 of 1915), ss 17, 20. On the date of independence see Guyana Independence Act 1966 (UK) c 14 and Guyana Independence Order 1966, SI 1966/575.

Act confers jurisdiction over appeals from the Full Court and from a judge of the High Court, and article 133 gives an appeal as of right on constitutional interpretation and fundamental-rights redress.³⁴

Above the Court of Appeal the story has three chapters. Until 1970 appeals lay to the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council (Termination of Appeals) Act 1970, passed by the National Assembly on 22 June 1970, provided that "the jurisdiction conferred on the Judicial Committee by article 92(4) of the Constitution is hereby abolished", saving only appeals and petitions registered or filed before 1 June 1970.³⁵ From 1970 to 2005 the Court of Appeal of Guyana was the final court.

The third chapter was written first in the Constitution and then in an Act. Article 123(4) empowers Parliament to authorise "any court established or to be established, as the final court of appeal for the Caribbean to be the final court of appeal for Guyana", and article 123(5) allows withdrawal only by a vote of not less than two-thirds of all the elected members.³⁶ Parliament used the power in the Caribbean Court of Justice Act 2004, in operation from 30 November 2004, which gives "the force of law" to the Agreement Establishing the Caribbean Court of Justice "signed at Bridgetown, Barbados, on the 14th day of February 2001".³⁷ The Act declares that "the decisions of the Court shall ... be final"; it grants appeals as of right in civil matters worth one million dollars or more, in matrimonial causes, on constitutional interpretation and on fundamental-rights redress; appeals with the leave of the Court of Appeal on questions of "great general or public importance"; and appeals by special leave of the Court itself "from any decision of the Court of Appeal from any civil or criminal matter".³⁸ Section 26(1) says the thing plainly: "the Caribbean Court of Justice being the final court of appeal for Guyana", all laws, including the Constitution, are to be construed with the modifications necessary to conform to the Act.³⁹ The Court was inaugurated at Queen's Hall, Port of Spain, on 16 April 2005.⁴⁰

Court	Source of jurisdiction	Appeal lies to
Magistrate's court	Summary Jurisdiction (Magistrates) Act, Cap 3:05	High Court (Full Court)
High Court	Constitution, art 123; High Court Act, Cap 3:02	Court of Appeal
Court of Appeal	Constitution, arts 123, 124, 133; Court of Appeal Act, Cap 3:01	Caribbean Court of Justice
Caribbean Court of Justice	Constitution, art 123(4); Caribbean Court of Justice Act, Cap 3:07	none: final

³⁴ Court of Appeal Act, Cap 3:01 (Act No 19 of 1958), s 6(1)–(2); Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 133(1).

³⁵ Judicial Committee of the Privy Council (Termination of Appeals) Act 1970, Act No 14 of 1970, s 2(1)–(2). The article referred to is art 92(4) of the Constitution then in force under the Guyana Independence Order 1966.

³⁶ Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 123(4)–(5).

³⁷ Caribbean Court of Justice Act, Cap 3:07 (Act No 16 of 2004), ss 2 (definition of "Agreement"), 3; the Act came into operation on 30 November 2004.

³⁸ *ibid* ss 4(2), 6, 7, 8.

³⁹ *ibid* s 26(1).

⁴⁰ Caribbean Court of Justice, 'History' <<https://ccj.org/about-the-ccj/history/>> accessed 4 September 2026.

VI. Precedent: who binds whom

The doctrine of precedent is the rule that a court is bound by the ratio decidendi of a decision of a court above it, and ordinarily follows its own previous decisions. In Guyana the statute gives the doctrine a footing at the top: "Judgments of the Court shall be legally binding precedents for parties in proceedings before the Court."⁴¹

The Caribbean Court of Justice explained its approach in *Attorney General v Joseph and Boyce*, an appeal from Barbados decided on 8 November 2006. The Court of Appeal below had followed the Privy Council's decision in *Lewis*, and the CCJ said: "It was right so to do because it was bound by that decision. We, on the other hand, can determine whether *Lewis* should or should not continue to be the law of Barbados."⁴² Decisions of the Judicial Committee made while it was the final court "continue to be binding ... notwithstanding the replacement of the JCPC, until and unless they are overruled by this court".⁴³ And the Court stated its purpose: "The main purpose in establishing this court is to promote the development of a Caribbean jurisprudence, a goal which Caribbean courts are best equipped to pursue", while it would "consider very carefully and respectfully the opinions of the final courts of other Commonwealth countries and particularly, the judgments of the JCPC".⁴⁴

That case concerned Barbados, but the Court applies its rulings across the jurisdictions it serves: in *McEwan*, Barrow JCCJ noted that the Court's decision on the Barbados savings clause in *Nervais* "is equally applicable to the laws and Constitution of Guyana".⁴⁵ So, for a Guyanese court today: decisions of the CCJ bind every court in Guyana; decisions of the Court of Appeal bind the High Court and the magistrates; Privy Council decisions on Guyanese and comparable Caribbean law bind the courts below the CCJ until the CCJ overrules them; and English decisions are persuasive, with the added weight in equity that section 3(b) of the Civil Law Act gives them.⁴⁶

VII. International law as a source

Guyana is a dualist state. A treaty is made by the executive; it becomes part of Guyanese law only when Parliament enacts it. The CCJ put the orthodox position with force in *Joseph and Boyce*: a change to the domestic legal system "can only be effected by the intervention of the legislature, and not by an unincorporated treaty", because "ensuring that the Executive does not, by its treaty-making power, usurp the legislative role of Parliament is a measure designed principally to protect the rights of the individual".⁴⁷

⁴¹ Caribbean Court of Justice Act, Cap 3:07, s 22.

⁴² *Attorney General v Joseph and Boyce* [2006] CCJ 3 (AJ), para 16 (joint judgment of de la Bastide P and Saunders J).

⁴³ *ibid* para 18.

⁴⁴ *ibid*.

⁴⁵ *McEwan v Attorney General of Guyana* [2018] CCJ 30 (AJ), para 145 (Barrow JCCJ), referring to *Nervais v R* [2018] CCJ 19 (AJ).

⁴⁶ Civil Law of Guyana Act, Cap 6:01, s 3(b). See also Court of Appeal Act, Cap 3:01, s 3, which gives the Court of Appeal the powers of the Supreme Court of Judicature in England as at 1 January 1958.

⁴⁷ *Joseph and Boyce* (n 42) paras 76, 127.

The Constitution then opens two doors. The first is article 39(2), already noted. The second is article 154A, inserted in 2003: "every person, as contemplated by the respective international treaties set out in the Fourth Schedule to which Guyana has acceded is entitled to the human rights enshrined in the said international treaties", which "shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of Government"; the State must take reasonable measures "within its available resources" towards their progressive realisation; a person alleging contravention may apply to the Human Rights Commission; and the State may divest itself of a listed treaty only by a two-thirds vote of the elected members.⁴⁸ The Fourth Schedule lists seven instruments: the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture; the Covenant on Economic, Social and Cultural Rights; the Covenant on Civil and Political Rights; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.⁴⁹ Since these rights "do not include any fundamental right under this Constitution", the Schedule creates a second tier of rights beside Title 1, with its own path of enforcement.

Beyond the Schedule, the CCJ has recognised a narrow role for ratified but unincorporated treaties through the doctrine of legitimate expectation, warning that its decision "should not be seen as opening up avenues for the wholesale domestic enforcement of unincorporated treaties".⁵⁰ Open Lecture 2 develops this.

VIII. Amerindian collective rights

Article 149G provides that "Indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life".⁵¹ The detailed law is statutory. The Amerindian Act 2006 is "An Act to provide for the recognition and protection of the collective rights of Amerindian Villages and Communities, the granting of land to Amerindian Villages and Communities and the promotion of good governance within Amerindian Villages and Communities".⁵² Part VI governs grants of communal land: a Village may apply to extend its Village lands, and an Amerindian Community may apply for a grant of State lands if it has existed for at least twenty-five years and comprised at least one hundred and fifty persons for the preceding five years; the Minister must acknowledge within one month and cause an investigation to commence within six months.⁵³ Collective land rights in Guyana are located, applied for and defended through a statute; read it before reaching for any general theory of customary title.

⁴⁸ Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 154A(1), (3), (4), (6) (inserted by Act No 10 of 2003).

⁴⁹ *ibid* Fourth Schedule.

⁵⁰ *Joseph and Boyce* (n 42) paras 107, 118, 131.

⁵¹ Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 149G.

⁵² Amerindian Act 2006, Act No 6 of 2006, long title.

⁵³ *ibid* ss 59–61.

IX. Legal method

A. Reading a statute

Begin with the long title, which states the purpose; the Civil Law Act's long title told us in one sentence what section 3 does in a page. Find the commencement, printed beneath the long title or fixed by section 1, and look for a commencement order where the Act leaves the date to a Minister. Read the definitions knowing that section 4 of the Interpretation and General Clauses Act makes every definition subject to context.⁵⁴ Read the section inside its Part, because the Part heading signals purpose. Then ask what the words ordinarily mean, what mischief the provision was aimed at, and whether your reading produces a result Parliament could have intended. If the provision is penal, add the question the CCJ asked in *McEwan*: does it give "fair notice to citizens of the prohibited conduct"?⁵⁵

B. Reading a case

A judgment answers five questions in order: what happened (the facts), what the court was asked to decide (the issues), what it decided (the holding and the orders), why (the ratio decidendi), and what it said along the way that was not necessary to the decision (obiter dicta). Only the ratio binds. Read the orders at the end first, then the facts, then the reasoning, and notice which judge is speaking, because a concurring judgment may reason differently from the judgment of the court.

C. Citing

These notes follow the Oxford University Standard for Citation of Legal Authorities.⁵⁶ A statute in the revised edition is cited by title, chapter and section: Civil Law of Guyana Act, Cap 6:01, s 3(b). A recent Act is cited by year and number: Amerindian Act 2006, Act No 6 of 2006, s 60. A CCJ case is cited by name, neutral citation and paragraph: *McEwan v Attorney General of Guyana* [2018] CCJ 30 (AJ), para 85. The Constitution is cited by article. Pinpoint always, and quote exactly.

D. A worked example: *McEwan v Attorney General of Guyana*

Facts. On the night of 6 February 2009 four persons who identify as transgender were arrested in Georgetown, held over the weekend without being told why, and on the Monday charged under section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act with wearing female attire in a public place for "an improper purpose"; they pleaded guilty and were fined, and the magistrate told them to go to church.⁵⁷ The provision, from an Ordinance of 1893, made it an offence for a man, in any public way or public place, "for any improper purpose", to appear in female attire,

⁵⁴ Interpretation and General Clauses Act, Cap 2:01, s 4.

⁵⁵ *McEwan* (n 45) para 80.

⁵⁶ *OSCOLA: The Oxford University Standard for Citation of Legal Authorities* (4th edn, Hart 2012).

⁵⁷ *McEwan* (n 45) paras 4–10.

and for a woman likewise in male attire.⁵⁸

Issues. Whether the section violated equality and non-discrimination under article 149; whether it violated freedom of expression under article 146; whether it "offends the rule of law given its vagueness"; whether SASOD had standing; and what should follow from the magistrate's remarks. First, though, the Court had to decide whether article 152 barred the challenge because the section was "an existing law".⁵⁹

Holding and orders. The section was "unconstitutionally vague and, as it stands, fulfils no legitimate purpose", and it "is struck from the Summary Jurisdiction (Offences) Act, Chapter 8:02 of the Laws of Guyana".⁶⁰

Ratio. Read paragraphs 80 to 85 of the judgment of the Court delivered by the President. "A penal statute must meet certain minimum objectives if it is to pass muster as a valid law. It must provide fair notice to citizens of the prohibited conduct. It must not be vaguely worded. It must define the criminal offence with sufficient clarity that ordinary people can understand what conduct is prohibited."⁶¹ Section 153(1)(xlvii) "fails these tests", because no one can say what an improper purpose is or what male or female attire looks like, and "the rule of law requires that legislation which is hopelessly vague must be struck down as unconstitutional".⁶² That is the ratio on vagueness; the holdings on equality and expression are further, independent grounds.

Obiter and concurrences. The account of vagrancy laws and the survey of foreign decisions illuminate the reasoning without being necessary to it.⁶³ Three judges wrote separately; Barrow JCCJ's observation that the savings clause no longer immunises pre-independence laws applies *Nervais* to Guyana, and it is his voice, not the Court's, that you cite when you cite paragraph 145.⁶⁴

Aftermath. Parliament later deleted the paragraph; the 2022 revised edition of Chapter 8:02 prints in its place "[deleted by Act 11 of 2021]".⁶⁵ That is article 8 at work from beginning to end: a court declares the inconsistency void, and the legislature tidies the statute book.

X. Closing

The sources of law in Guyana can be read off the statute book as a history: Dutch, then English, then Guyanese, then Caribbean. Knowing which layer you are standing in is half of legal method. The other half is reading the actual words and citing them so that the next reader can check you. A lawyer who cannot be checked is offering an opinion, not the law. Everything else in your

⁵⁸ Summary Jurisdiction (Offences) Act, Cap 8:02 (Act No 17 of 1893), s 153(1)(xlvii) as it stood before deletion; *McEwan* (n 45) para 13.

⁵⁹ *McEwan* (n 45) paras 28, 35.

⁶⁰ *ibid* paras 85, 147(vi)–(vii).

⁶¹ *ibid* para 80.

⁶² *ibid* paras 81, 84–85.

⁶³ *ibid* paras 33, 79.

⁶⁴ *ibid* para 145. The judgment of the Court is delivered by Saunders PCCJ (paras 1–93); Anderson JCCJ (paras 94–109), Rajnauth-Lee JCCJ (paras 110–131) and Barrow JCCJ (paras 132–146) add separate judgments; the orders are at para 147.

⁶⁵ Summary Jurisdiction (Offences) Act, Cap 8:02 (Laws of Guyana, revised edition, L.R.O. 1/2022), s 153(1)(xlvii), printed as "[deleted by Act 11 of 2021]".

degree rests on that habit, and so, later, will your clients.

Reading list

Primary sources

- Constitution of the Co-operative Republic of Guyana, Cap 1:01 (Act No 2 of 1980), especially arts 8, 39, 123–133, 138–154A, 164 and the Fourth Schedule
- Interpretation and General Clauses Act, Cap 2:01 (Act No 8 of 1970), ss 4–5, 15–21
- Civil Law of Guyana Act, Cap 6:01 (Act No 15 of 1916), ss 2–5
- Deeds Registry Act, Cap 5:01, ss 12, 22
- Court of Appeal Act, Cap 3:01; High Court Act, Cap 3:02; Summary Jurisdiction (Magistrates) Act, Cap 3:05
- Judicial Committee of the Privy Council (Termination of Appeals) Act 1970, Act No 14 of 1970
- Caribbean Court of Justice Act, Cap 3:07 (Act No 16 of 2004), with the Agreement Establishing the Caribbean Court of Justice in its Schedule
- Amerindian Act 2006, Act No 6 of 2006, Parts I and VI
- *Attorney General v Joseph and Boyce* [2006] CCJ 3 (AJ)
- *McEwan v Attorney General of Guyana* [2018] CCJ 30 (AJ)

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Five questions for discussion

1. Article 8 makes an inconsistent law void "to the extent of the inconsistency". Using *McEwan*, explain why the Court struck one paragraph of section 153 rather than the section or the Act, and what Parliament's later deletion adds to the picture. 2. Section 3(b) of the Civil Law of Guyana Act receives the common law of England "as at" 1 January 1917 but equity "as then administered or at any time hereafter administered". What difference should that make to the weight a Guyanese court gives to an English decision decided last year on (a) a contract point and (b) a trust point? 3. Why did the drafters of the 1916 Act refuse to import the English law of real

property, and what would have been lost if they had? Consider full ownership, transport and opposition. 4. In *Joseph and Boyce* the CCJ said Privy Council decisions remain binding "until and unless they are overruled by this court". Trace how that rule operates for a magistrate in Guyana faced with a 1995 Privy Council decision from Jamaica on a statute in the same terms as a Guyanese one. 5. Article 154A(2) provides that the Fourth Schedule rights "do not include any fundamental right under this Constitution". What do you think that sentence is for, and how does it fit with the dualist rule stated in *Joseph and Boyce*?