IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
CONSTITUTIONAL AND ADMINSTRATIVE DIVISION
PROCEEDING FOR JUDICIAL REVIEW

2018-HC-DEM-CIV-FDA-310

IN THE MATTER OF AN APPLICATION
BY RAMON GASKIN FOR WRITS OF
CERTIORARI AND PROHIBITION

BETWEEN:

RAMON GASKIN

APPLICANT

And

THE MINISTER OF NATURAL RESOURCES
RESPONDENT
And
ESSO EXPLORATION AND PRODUCTION
GUYANA LIMITED;
CNOOC NEXEN PETROLEUM GUYANA LIMITED
And
HESS GUYANA EXPLORATION LIMITED
ADDED RESPONDENTS (INTERVENERS)

SUBMISSIONS IN REPLY ON BEHALF OF THE APPLICANT RAMON GASKIN

Introduction

[1] These submissions are made in reply to the Submissions on behalf of the Respondent filed on 17th January 2019 (the "Respondent's Submissions") and submissions filed on

behalf of the Added Respondents/Interveners on 17th January 2019 (the "Added Respondents/Interveners' Submissions").The Respondent's Submissions repeat misstatements/untruths that were corrected in **paragraph 8** of the Affidavit in Reply by Ramon Gaskin to the Affidavit of Defence of the Respondent ("First Affidavit in Reply") filed by the Applicant on 27th November 2018. This is contrary to an advocate's duty to the court (**paragraph 157** of the Applicant's Submissions of 3rd January 2019 (the "Applicant's Submissions).

[2] The Added Respondents/Interveners' Submissions repeat matters in the Respondent's submissions including the Respondent's errors/ misstatements, which were corrected in the First Affidavit in Reply. In **paragraph 42** the Added Respondents/Interveners repeat the Respondent's claim that the Applicant concedes that there has been full and complete compliance with the requirements of the *EP Act.* This is incorrect.

[3] We refer the Hon. Court to **paragraph 8 (iii)** of the First Affidavit in Reply, which disposes of this untenable claim. The Added Respondents/Interveners' Submissions at times appear to have been cut and pasted from the Respondent's Submissions. (e.g. **paragraphs 82 to 89** of the Respondent's Submissions and **paragraphs 52 to 54** of the Added Respondents/Interveners' Submissions).

[4] If that is so, then such conduct is contrary to the ***Civil Procedure Rules 2016*** (the "CPR") in particular the overriding objective:

> **Rule 1:01(1)**:
> "(1) The overriding objective of these rules is to enable the Court to deal with cases justly.
> "(2) Dealing with cases justly includes,
> ……..
> (e) allotting to the case an appropriate share of the Court's resources while taking into account the need to allot resources to other cases."
>
> **Rule 1:02 (2):**
> **"**It is the duty of the parties and their Attorneys-at-Law to help the Court to further the overriding objective."

[5] It does not assist the Court or further the overriding objective for the Added Respondents/Interveners to parrot/repeat the Respondent's arguments. This conduct has received the highest condemnation from that distinguished judge, Lord Hoffman. ***In re E (a child) (AP) (Appellant) (Northern Ireland)*** [2008] UKHL 66 at para 3 Lord Hoffman with his accustomed clarity and bluntness stated that:

> "An intervention is however of no assistance if it merely repeats points which the appellant or respondent has already made. An intervener will have had sight of their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties." [Our emphasis.] [**TAB 21]**

The proceedings in the Court of Appeal

[6] For reasons best known to themselves, the Respondent and Added Respondents/Interveners have repeated *in terrorem* their version of the history of the proceedings in the Court of Appeal, when in truth and in fact, such proceedings have no relevance whatsoever to this Hon. Court and are really otiose. **Paragraphs** [**10**] to [**12**] of the Added Respondents/Interveners' written submissions are a misrepresentation of what the Court of Appeal stated; they are tendentious and can be put to rest once and for all by Your Honour reading pgs. 3 to 4 and pg. 6 of the Transcript of the Court of Appeal, attached hereto as **TAB 22**. See below.

[7] We note that **paragraph 6** of the Respondent's Submissions and **paragraph 12** of the Added Respondents/Interveners' Submissions present a skewed/inaccurate picture of the Court of Appeal proceedings. We feel obliged to correct this in the interests of justice.

[8] We respectfully draw the attention of the Court to the statements of Khan JA (Ag.) speaking on behalf of the Court of Appeal at the hearing on 28th June 2018:

> "We wish to emphasise that we refrain from making any comments on the reasons for the decision of Justice Holder and that the High Court, which will now determine the matter, should proceed unhindered by any comments this Court may have or by any finding or reasons or conclusions

made by Justice Holder. So the matter will start anew in the High Court."[1]

And further:

"We are not making any findings on Justice Holder's decision or any comments on his decision."[2]

[9] We respectfully inform this Hon. Court that it was the Appellant/Applicant Gaskin who asked that (i) Holder J's decision be set aside, (ii) the Fixed Date Application (the "FDA") be sent for a rehearing, and (iii) the matter be deemed urgent; and this appeal succeeded in its entirety.

[10] However, Mr Luckhoo SC attempted (unsuccessfully) to persuade the Court of Appeal to change their ruling[3] and either to dismiss the appeal or hear the substantive FDA themselves. In referring to other parties, the Court of Appeal was merely explaining to Mr Luckhoo SC that his request was procedurally improper as the Court of Appeal had not had the benefit of the High Court's views on the facts or on such questions as whether other parties should be joined. The Court of Appeal refused Mr Luckhoo SC special leave to appeal.[4] The Court of Appeal also did not hear the application for joinder made on behalf of Esso, Hess and Nexen.

[11] It is inappropriate to argue that the FDA was sent for a rehearing so that Esso, Hess and Nexen could be heard when in fact, (and at the risk of stating the obvious), the Court of Appeal could have dismissed the appeal without hearing Esso, Hess and Nexen whose interests are the same as the Respondent's as they too wish to save the Petroleum Production Licence ("PPL") from being quashed.

[12] In the circumstances, this ought to clarify the proceedings in the Court of Appeal and we would respectfully urge this Hon. Court to now ignore completely what transpired before Holder J and the Court of Appeal.

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[1] Transcript pg. 3 lines 19-22 & pg. 4 lines 1-2.
[2] Pg. 6 lines 18-19.
[3] Conduct which Bulkan JA deprecated as follows, "This is quite unusual, Mr Luckhoo. This is quite unusual." at page 11 of the Transcript, lines 3-4.
[4] Pg. 11 lines 11 to pg. 12 line 8 of the Transcript.

The Added Respondents/Interveners

[13] The Added Respondents/Interveners begin their submissions by asking an obscure and irrelevant question about non-operator joint venture parties. In determining whether the Respondent acted contrary to *section 14* of the ***Environmental Protection Act Cap 20:05*** (the "*EP Act*") the Court is entitled to ignore all discussion by the Added Respondents/Interveners on contracts, licences, operators, non-operators, sole operators, joint venture parties, the *Petroleum Act*, petroleum regulations, the *Environmental Protection (Authorisation) Regulations*, the lengthy description of the behaviour and structure of oil consortia, and opinions on environmental protection and resource development, none of which can affect the meaning of the ***section 14 of the EP Act***. **(pages 3, 4, 5)**. Those matters only serve to obfuscate the core issue that needs to be determined by the Court.

The scheme of environmental protection

[14] The scheme of environmental protection established by the *EP Act* requires a person to obtain an environmental permit before that person is allowed to obtain development consent. This requirement applies to any project, which may significantly affect the environment. We refer this Hon. Court to **paragraphs 41 to 48** of the Applicant's Submissions.

[15] The *EP Act* requires the Environmental Protection Agency ("the Agency" or "the EPA") to approve the person who requires the environmental permit as well as approving the project. This is *incontrovertible*. We respectfully remind the Court of *section 13(2):*

> "The Agency shall not issue an environmental permit unless the Agency is satisfied that-
> (a) the developer can comply with the terms and conditions of the environmental permit; and
> (b) the developer *can pay compensation* for any loss or damage which may arise from the project or breach of any term or condition of the environmental permit." [Our emphasis.]

[16] The Respondent and Added Respondent/Interveners omit to cite or explain this provision in their submissions and therefore fall into material error in interpreting the *EP Act*. This is crucial as in environmental law the PPP ("polluter pays principle") is the benchmark which is applied in the event of pollution; ability to pay is therefore of critical importance as far as the laws are concerned as well as the Agency.

[17] We respectfully remind the Court that *section 14(1)* of the *EP Act* states:

> "A public authority shall not give development consent in any matter where an environmental authorisation is required unless such environmental authorisation has been issued and any development consent given by the public authority shall be subject to the terms of the environmental authorisation issued by the Agency."

[18] It is pellucid that the Minister must ensure that any person applying for development consent has obtained an environmental permit. If the applicant does not have an environmental permit, the Minister is prohibited from granting the development consent to that applicant. *Section 2* of the *EP Act* defines development consent:

> "the decision of the public authority which entitles the developer to proceed with the project."

[19] A person cannot obtain a petroleum production licence (a "PPL") unless that person has first obtained an environmental permit. The Agency issues the environmental permit to the developer for a project. (A developer who obtains a PPL is also a licensee under the PPL; he cannot be anything else.)[5]

[20] The Respondent's case (repeated by the Added Respondents/Interveners) is that an environmental permit is issued for a project and once issued constitutes full compliance with *section 14* of the *EP Act*. **Paragraph 40 on pgs. 12 to 13** of the Respondent's Submissions says,

> "The scope and intent of the category of persons to whom licences may be granted (once the project has been approved) is infinitely wider than the original developer that obtained an environmental permit in respect of a project."

Put simply, if the Agency grants an environmental permit to one person, the Minister may

[5] The Respondent's Submissions misses this obvious point – e.g. paragraph 111

grant a PPL (development consent) to that person and to as many other persons as he likes. All of these other persons are entitled by the PPL (development consent) to carry out the project, which has a significant impact on the environment – even though they do not have an environmental permit. Such persons may be incapable of meeting the requirements for an environmental permit or of carrying out the environmental impact assessment. They may be irresponsible, impecunious and incompetent. They may produce and transport petroleum in such a way that their wells explode, their tankers crash and they swamp the Atlantic Ocean and Caribbean Sea with petroleum thereby exterminating vast quantities of marine and coastal biodiversity. Yet, according to the Respondent, there has been full compliance with the *EP Act* because an environmental permit has been issued **(paragraph 50).** The Respondent submits (at **paragraph 114)**

> "…that in any event the environmental permit obtained in respect of the project fulfils the requirement of the EPA and Petroleum Act by any person subsequently granted a licence whether by grant, transfer of assignment."

Such an argument only has to be stated in order to be rejected.

[21] We respectfully urge this Hon. Court to reject such bizarre submissions. We refer to the presumption against absurd interpretation.[6] We respectfully remind the Court of Oliver LJ's stricture on the abandonment of common sense in ***Exxon Corporation v Exxon Insurance Consultants International Ltd***. [**Tab 20**].

[22] We trust that the absurd effect of the Respondent's contention and the danger it poses to Guyana is sufficient to convince the Court that *section 14 of EP Act* prohibits the Minister from granting a PPL to three persons when only one person has an environmental permit, and to dispose of all arguments and contortions by which the Respondents and Added Respondents/Interveners seek to avoid the legal rule in *section 14*.

[23] The Respondent's contention that a permit is necessary only for a project leads to the further absurd conclusion (**paragraph 27)** that, "…once an environmental permit has

[6] The presumption is embraced in Respondent's Submissions paragraph 50.

been obtained in respect of a project any person who commences such a project cannot be guilty of an offence as an environmental permit would have been acquired in respect of the project." (His emphasis).

[24] *Section 15* of the *EP Act* states:

> "Every person who fails to carry out an environmental impact assessment or who commences a project without obtaining an environmental permit as required under this Act shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule." [Our emphasis.]

[25] It is pellucid that a person must obtain an environmental permit before carrying out a project that may significantly affect the environment. This is an offence of strict liability, which does not require any harm or damage. The Respondent's view is untenable. It seems that the Respondent would have the Court strike down the entire scheme for regulating development through the environmental permitting process under the *EP Act* rather than admit that his purported grant of the PPL breaches *section 14*.

[26] The Respondent's argument is copied into **paragraph 66** of the Added Respondents/Interveners Submissions. ***However, it appears that the deponent Rodney Henson disagrees with the Respondent and with the Added Respondents/Interveners' Submissions.*** **Paragraph 41** of Mr Henson's Affidavit in Defence of Added Respondents, states that Hess and Nexen are prohibited from commencing petroleum operations without an environmental permit. There is also no scope for any person to piggyback on the environmental permit issued to any other person. (**paragraphs 23, 35, 48** Applicant's Submissions).

[27] If an environmental permit was merely issued for a project it would be transferable; it is not. (Applicant's Submissions **paragraphs 60 to 62**). *This disposes of all the Respondent's arguments (repeated by the Added Respondents/Interveners) that assignees and transferees of a licence do not require environmental permits. It would be contrary to the PPP (polluter pays principle) because a man of straw can be an assignee, according to the Respondent and Added Respondents/Interveners.*

[28] *Part IV* of the *EP Act* makes development subject to control by the *EP Act* in order to protect the environment. The Agency's functions include at *section 4(1)(g)*:

> "to ensure that any developmental activity which may cause an adverse effect on the natural environment be assessed before such activity is commenced and that such adverse effect be taken into account in deciding whether should such activity should be authorised."

[29] We refer the Hon. Court to **paragraphs 28 to 31** of the Applicant's Submissions.

[30] The scheme of *the EP Act* prohibits ***every person*** from carrying out a project which may have a significant impact on the environment unless that person has carried out an environmental impact assessment, has obtained approval for the proposed project and has met the requirements for an environmental permit. There is no other meaning that can be extracted from the legislation. The contorted and artificial arguments put forward by the Respondent (and repeated by the Added Respondents/Interveners) contravene the principles of statutory interpretation and the legislative intent (**paragraphs 11 to 14, 52 to 54, 107 to 108** of the Applicant's Submissions**).**

[31] *The scheme of the EP Act requires Esso, Hess and Nexen either to obtain one environmental permit that is issued to all three of them or separate environmental permits issued to each one of them* - **paragraphs 32 to 40** of the Applicant's Submissions. (**Paragraph 67** of the Respondent's Submission conflicts with the Petroleum Agreement which has one Contractor made up of Esso, Hess and Nexen, and not separate contractors.)

[32] The Minister's wide power to grant licences under the *Petroleum Act* is restricted by *section 14* of the *EP Act* to applicants who have an environmental permit and this is reinforced by section 17 of the *Petroleum Act*.[7] The provisions of the *Petroleum Act* (and

[7] Section 17 of the Petroleum Act provides as follows:

Restrictions on exercise of rights by

17. Nothing in this Act shall be construed –

its regulations) must be read subject to the *EP Act* which was passed ten (10) years after the *Petroleum Act*. To the extent that the various interpretations of the *Petroleum Act* advanced by the Respondent (or Added Respondents/Interveners) are inconsistent with the *EP Act, the doctrine of implied repeal would apply* (**paragraphs 81 to 88** Applicant's Submissions.) This disposes of the Respondent's Submissions especially **paragraphs 69 to 78** and the Added Respondents/Interveners arguments that the *Petroleum Act* defines the need for an environmental permit (**paragraph 32). Our point is further buttressed by section 17 of the *Petroleum Act.***

[33] The *Environmental Protection (Authorisation) Regulations* and the behaviour of the Agency are irrelevant to interpretation of the *EP Act.* (Applicant's submissions **paragraphs 58 and 59** and **paragraph 64**.) This disposes of the Respondent's arguments (and their repetition by the Added Respondent/Interveners).

[34] The provisions of a contract cannot affect the interpretation or effect of a statute. Arguments based on provisions of the Petroleum Agreement of 27th June 2016 and/or on the PPL are incapable of altering the meaning of *section 14 of the EP Act* and cannot make lawful the Minister's breach of *section 14*. (Applicant's Submissions **paragraphs 69 to 72.) Paragraph 52** of the Respondent's Submissions is irrelevant as the oil and gas industry (exciting as it is for Guyana) is not a law unto itself but must operate subject to national legislation, including in Guyana, the *EP Act*.

[35] The Respondent does not have the power to incorporate the Esso Permit into the PPL or to bind Hess and Nexen by the Esso Permit. (Applicant's Submissions **paragraphs 98 to 101**.)

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licensee.

(a) where the doing of any act is prohibited by any other written law, as authorising a licensee to do that act; or

(b) where the doing of any act is regulated by any other written law, as authorising a licensee to do that act –

(i) otherwise than in accordance with that written law and any authority referred to in subparagraph (ii), and

(ii) without first obtaining any authority (however described) required under that written law for the doing of the act.

[36] The claim that Esso is sole operator of the Liza Project is untenable, if not preposterous. See p**aragraphs 73 to 80** of the Applicant's Submissions, **paragraphs 62 to 83** of the First Affidavit in Reply, and **paragraph 19** of the Second Affidavit in Reply. Any arrangement by which Esso carries out day to day activities, and Hess and Nexen do not, has no bearing on the meaning of the *EP Act.* As long as the Respondent has granted a PPL to a person who does not have an environmental permit, he has breached *section 14.* (Applicant's Submissions **paragraph 31**). There is no gainsaying that.

[37] **Paragraphs 28 to 32** of the FDA and **paragraphs 91 to 97** of the Applicant's Submissions address joint and several obligations. The Respondent's arguments **(paragraphs 82-89)**, appear to be cut and pasted into p**aragraphs 51 to 55** of the Added Respondents/Interveners' Submissions. These arguments are a 'red herring' - one person cannot fulfil the statutory obligations of another person. The authorities cited may be useful for contractual obligations and debts but are irrelevant for a statutory obligation that a licensee must have an environmental permit. Applied logically the Respondent's (and Added Respondents/Interveners') arguments would mean that if three individuals wish to drive a car, the legal obligation to obtain a driving licence is satisfied if only one of them gets a licence. This is untenable. We note that in their **paragraph 57** the Added Respondents/Interveners have misapplied the simple Latin principle of *reddendo singular singulis.*

Delay

[38] There has been no delay on the part of the Applicant. P**aragraphs 111 to 147** of the Applicant's Submissions and **paragraphs 92 to 103** of the First Affidavit in Reply dispose of the various arguments about delay. The Added Respondents/Interveners' complaint **(paragraph 103)** ignores the fact that every Minister was bound by Cabinet's decision not to release the Petroleum Agreement and the PPL. The Added Respondents would have the Minister violate the doctrine of collective responsibility as well as breaching *section 14.* The complaint is also answered in **paragraph 121** of the Applicant's submissions.

[39] The Applicant filed his FDA promptly. Guyana does not have a time limit for bringing a judicial review claim **(paragraph 111** of the Applicant's Submissions**)** and "The requirement for leave and the concept of delay are therefore foreign to the laws of Guyana." **The *Judicial Review Act Cap 3:06* eschews any concept about delays or leave; it has liberated the courts in Guyana from those shackles and for good reason-- Guyana, thus far, is not a developed society (economically) like the UK and even some Caribbean countries and therefore the law makers did not want to unduly restrict the remedy of judicial review when indigent litigants cannot afford to challenge decisions promptly.** The fatuous claim by the Respondents/Interveners (**paragraph 90** of the Respondent/Interveners' Submissions**)** that the Applicant extrapolates from this that he is at liberty to take as long as he likes is rebutted in the First Affidavit in Reply (**paragraphs 92 to 110). Paragraph 119** of the Applicant's Submissions shows that the Applicant could only act on the actual documents, and not misleading statements from the Respondent. This is not a case of legitimate expectation.

[40] **Paragraphs 145 and 146** of the Applicant's Submissions acknowledge that remedies in judicial review are at the discretion of the court.

[41] ***Section 21 of the Judicial Review Act Cap 3:06*** provides that:

> "The Court may, if it thinks fit, refuse to grant any relief under this Act if it considers that there has been undue delay in making the application for judicial review, and that the grant of the relief sought would cause substantial hardship to, or would substantially prejudice the rights of, any person, or would be detrimental to good administration."

[42] In order to refuse relief the Court must consider that there has been undue delay and must also consider that one of the other conditions applies – substantial hardship, substantial prejudice or detriment to good administration. This is not straightforward as explained by ***Fordham Judicial Review Handbook 6th ed (2012) paragraph 24.3***:

> "It is a first principle of judicial review that remedies are discretionary. One specific basis on which a remedy can be refused in the Court's discretion is where the claimant unduly delayed and granting a remedy

> would cause relevant prejudice or detriment. The Court will need to identify a good and principled reason to exercise its residual discretion by declining a practical and effective remedy to a claimant who has succeeded in showing a public law wrong." [Emphasis added.] [**TAB 23**]

[43] The first condition of undue delay has not been met - **paragraphs 92 to 102** of the First Affidavit in Reply and **paragraphs 111 to 121** of the Applicant's Submissions.

[44] The conditions of substantial hardship, substantial prejudice or detriment to good administration have not been made out. (**Paragraphs 104 to 110** of the First Affidavit in Reply and **Paragraphs 136 and 137** Applicant's Submissions.) There is only a hysterical reference to 'ruinous financial consequences' unsupported by evidence (**paragraph 109** Added Respondents/Interveners' Submissions). If there is any, it is all self-inflicted and does not deserve any judicial sympathy.

[45] Hess and Nexen admit that they cannot exercise their rights under the PPL without committing a criminal offence under *section 15 EP Act.* Therefore the PPL is worthless to Hess and Nexen (Applicant's Submissions **paragraph 142**) and the court is fully entitled to quash it. Esso, as a permit holder, is entitled to apply for a new PPL and should have done so at any time since May 2018 when its lawyers were very much present in the Court of Appeal.

[46] **Paragraph 13** of the Added Respondents/Interveners Submissions contains the following statement: "…the Honourable Chief Justice ruled that as Esso, Hess and Nexen are the holders of the PPL which constitutes valuable property, their property was at risk if the Orders sought by the Applicant on the FDA are granted, and they were entitled under the rules of natural justice to be heard in the proceedings in defence of their property and proprietary rights." This claim by the Added Respondents/Interveners is false. There is no decision of this Hon. Court that the PPL constitutes valuable property, or that such property was at risk or that the rules of natural justice entitled them to be heard in the proceedings in defence of their property and proprietary rights. On the contrary, those arguments were advanced by the Added Respondents/Interveners but they were contested by the Applicant and the Hon. Chief Justice made no such ruling; it is not even

hyperbole. It simply does not exist as a matter of record. On 25th October 2018 the Hon. Chief Justice (Ag) ordered that Esso, Hess and Nexen be joined as added respondents interveners on condition that their costs not be recovered against the applicant Ramon Gaskin.

[47] The contention **(paragraph 107** of the Added Respondents/Interveners Submissions) that the Added Respondents are not at fault is untenable. The Respondent and the Added Respondents/Interveners are not innocent third parties. They are in breach of *section 14* (the Respondent) and *Part IV* of the *EP Act* (the Added Respondents/Interveners). They have provided no reason why they should escape the consequences of their illegal action, particularly when it is in their power to obtain the necessary environmental permits. They seem to be suffering from some form of paranoia.

[48] In exercising its discretion, the Court may also take into account the delay by the Government, its repeated refusals to make the documents available to the public (**paragraph 93** First Affidavit in Reply) and its excessive secretiveness (**paragraphs 129 – 135** Applicant's Submissions**), thereby showing a lack of transparency and accountability, the twin pillars of democracy.**

[49] The Court may take into account the fact that the Liza project is not a completed project but a continuing project estimated to last until 2040 (**paragraph 137** Applicant's Submissions), some 21 years more; the fact that the Added Respondents/Interveners are the authors of their own misfortune (**paragraph 140 and 148)**; the continuing illegality (**paragraph 149)**; contempt or complete disregard for the rule of law demonstrated by the conduct of the Respondent and the Added Respondents/Interveners (**paragraphs 64, 121, 131, 132, 147, 151, 162)**; the failure/refusal of the Respondent and the Added Respondents/Interveners to take steps to comply with the *EP Act* (**paragraph 147, 148**); the failure/refusal of the Respondent to enforce *Article 28 of the Petroleum Agreement* (**paragraph 147)**; the Respondent's conduct in misleading the Court (**paragraph 25** of the First Affidavit in Reply), the conduct of the Added Respondents/Interveners in misleading the Court (**paragraph 161** of the Applicant's Submissions.)

[50] The refusal of a remedy would be detrimental to good administration since it would enable the Respondent and the Added Respondents/Interveners to flout the laws with impunity. The grant of the remedies would benefit Guyana as a whole by clarifying the legal regime for the oil industry and put an end to bad practice by the Respondent in granting development consent to persons who do not have an environmental permit. It would also send a clear message to the world at large that the Courts as guardians of the Constitution and the Laws of Guyana would brook no flouting of the laws especially in an environmental context, for which generations to come must benefit.

[51] The Court is entitled, and even under an obligation, in exercising its discretion, to take into account the grave and serious risk to the people and environment of Guyana and the Caribbean posed by the continuing illegal situation. (Applicant's Submissions **paragraphs 136 to 138**).

[52] The grant of the remedy of Certiorari would not cause substantial hardship to or substantially prejudice the rights of any person but the refusal would mean the continuation of a situation that is fraught with danger (First Affidavit in Reply **paragraphs 16, 19 to 29)** and could impose significant liability for Guyana (**paragraphs 30 to 35.)**

[53] The Respondent has, in a blatant untruth, claimed that he knows nothing of the risks of oil spills (answered in **paragraph 16** of the Affidavit in Reply) and he denies facts that are even admitted by Esso in the Esso EIA (answered in **paragraph 17** of the Affidavit in Reply). The paragraphs to which the Respondent objects at **paragraph 103** are paragraphs which refute his denial of the risks of serious and irreversible harm, including the insolvency and lack of financial resources on the part of Esso, Hess and Nexen which could leave Guyana at risk of paying for damage caused by Esso, Hess and Nexen. The Respondent cannot raise the issue of finance and then object when the Applicant adduces evidence on the financial situation.

[54] These are also factors that the Court may take into account in deciding whether to quash the PPL. We submit that protecting the people and environment of Guyana and the

Caribbean from serious and irreversible harm takes priority over the interests of three companies, especially when the evidence points irresistibly to the conclusion that those companies appear to lack the financial resources to remedy that harm.

Respectfully submitted.

Dated this day of January 2019

SEENATH JAIRAM, SC
Leading **Melinda Janki**,
Of Counsel

TO: The Registrar,

AND TO: **Mr Edward Luckhoo, SC**

AND TO: MESSRS HUGHES, FIELDS, STOBY

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ADDED RESPONDENTS (INTERVENERS)

WRITTEN SUBMISSIONS IN REPLY

ON BEHALF OF THE APPLICANT RAMON GASKIN

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