

Ref. No. 3 of 2014

Opinion and Guidelines on the Procedure to be Adopted by the National Assembly to Propose Amendments to the 2014 Estimates of Expenditure (No. 2)

Following on the decision given by the Hon. Mr. Justice Ian Chang, C.C.H, S.C. – Chief Justice (ag.) on the 29th January, 2014 in the case of **Attorney General -v- Raphael Trotman, No. 216 - W of 2012 Demerara**, it has become necessary to provide directives through which the National Assembly will proceed to consider the Estimates of Expenditure for 2014 in the Committee of Supply.

As one important arm of the tripartite governance structure of the State of Guyana, the National Assembly cannot be unmindful of the views and opinions of the High Court of the Supreme Court of Judicature, another important arm of the State, when it pronounces on matters that directly, or indirectly, affect the National Assembly. Every effort will be made always to respect the High Court’s opinions; provided that the independence of the National Assembly is not impinged.

In a previous Ruling (No. 3 of 2013), it was stated that there is no “burden or duty” placed on the National Assembly to adopt or enforce rulings of the High Court. This position was essentially repeated in Ruling No. 4 of 2013. However, given the doctrine of comity (mutual respect by one branch of State or another), the National Assembly is always respectful of, and grateful for, opinions and interpretations provided by the High Court from time to time. This is so even in light of the fact that an appeal has been filed in the Court of Appeal against the decision on February 25, 2014. It is of paramount importance that the three branches of State – the Executive, the Legislative and the Judicial, respect each other’s authority and decisions derived therefrom. Anarchy would be the outcome if the custodians of these branches exhibit open disrespect for and hostility towards each other. The citizenry must be spared and protected from this. In the circumstances, and without prejudice to the National Assembly’s right to pursue the appeal and to define its own procedures, every reasonable effort will be made to respect and implement the decision of the High Court.

It should be noted that no stay of execution of the High Court's decision has been applied for. This is simply because I am of the considered opinion that the National Assembly cannot recognise a right in the High Court to fetter or restrict its activities. Implicit in an application for a stay of execution is the belief that the Court's orders and directions are binding on the National Assembly. As such an application for a stay of execution would be unsound and harmful as it would admit to a jurisdiction that is non-existent.

Much care and attention has been exercised in scrutinising the Hon. Chief Justice's decision. It is my considered opinion that despite the views and opinions of the High Court, the decision does not, and indeed cannot, do harm to the National Assembly's procedures for treating with the Estimates of Expenditure. This is so because Article 165 (1) of the Constitution is pellucid in its intention as it states:-

“Subject to the provisions of this Constitution, the National Assembly may regulate its own procedure and may make rules for that purpose.”

No court can interfere with or fetter this right. This right has been universally recognised and upheld even in the High Court of Guyana in the 1963 case of Jagan et al -v- Gajraj. For this reason I utterly reject the notion that the National Assembly can act unlawfully in the exercise of its functions as prescribed above.

In furtherance of this bestowed right the National Assembly has promulgated its own rules and procedures that are known as **“Standing Orders.”** These Standing Orders regulate the practices and procedures to be applied and adhered to for all matters coming before the National Assembly; including of course the review and approval of the Estimates of Expenditure.

Procedures For Budget Appropriation, Approval and Control

Procedurally, the manner in which moneys are approved for withdrawal from the Consolidated Fund is regulated by the Constitution, the Financial Management and Accountability Act, and the Standing Orders of the National Assembly.

Articles 216 and 217 of the Constitution mandate that there shall be a Consolidated Fund into which all revenues shall be deposited, and from which all withdrawals for public expenditure shall be made, and for what purposes.

Section 16 of the Fiscal Management and Accountability Act (FMAA) reinforces these requirements in this manner:-

“There shall be no expenditure of public moneys except in accordance with Article 217 of the Constitution.”

Further, Article 218 of the Constitution states that:-

“The Minister responsible for Finance or any other Minister designated by the President shall cause to be prepared and laid before the National Assembly before or within ninety days after the commencement of each financial year estimates of the revenues and expenditure of Guyana for that year.”

These estimates are presented to the National Assembly through a Motion introduced by the Hon. Minister of Finance on behalf of the Executive, and the National Assembly, in turn, on receipt of the estimates, applies its given rules and procedures for the processing of same.

These rules and procedures have come through the annals of centuries of time; have crystallised; and have been codified in the Independence Constitution of 1966 and every Constitution thereafter.

The time honoured procedure for the handling of the financial estimates of revenues and expenditures (the National Budget) is as follows:-

1. The Hon. Minister of Finance submits to the National Assembly the Estimates of Revenue and Expenditure for a given financial year in satisfaction of Article 218 of the Constitution. This presentation is made in the form of a Motion.
2. The Hon. Minister, on presentation of the estimates, makes a “budget speech” detailing the policy framework within which the estimates of the financial year are being presented. At the end of this speech, the Hon. Minister formally proposes the Motion for the National Assembly to approve the estimates and a debate ensues.
3. This debate is expected to last for a minimum, of five (5) days and is confined to “the financial and economic state of the country and the general principles of Government policy and administration.” (S.O. 71 (2))
4. The National Assembly, from time immemorial, has determined that at the end of the debate, a special committee comprising all members of the House will convene to consider the details of the estimates. This Committee is known as the Committee of Supply. The Committee of Supply is not to be confused with the constitutional body known as the National Assembly.

5. Standing Order 72 establishes the purpose of this Committee as being “to consider the Estimates and Supplementary Estimates of Expenditure submitted to the National Assembly.”
6. The Committee of Supply considers each head of Expenditure, and at this stage, Members are permitted to **propose** amendments to the estimates for their increase or reduction. The right to introduce amendments to increase expenditures is restricted to Ministers acting with Cabinet’s consent. This is in recognition of the strict injunction contained in Article 171 of the Constitution. All proposals for amendments to reduce estimates for expenditure however, can be proposed by any Member of the Assembly. (See S.O. 76)
7. At the end of the consideration of the estimates, the Hon. Minister of Finance reports to the National Assembly that the estimates have been considered in Committee of Supply and approved by the Committee, with or without amendments being proposed, or not approved at all.

It is in the final stage of the procedure set out above that constitutes the nub of the differences between the opposition/majority side of the House, and the Government. The National Assembly relies on Standing Orders 75 and 76 to guide it in the review and approval process of the estimates of expenditure; Standing Orders that have been recognised as legal instruments since the birth of the nation. It should be noted that the right of the National Assembly to “amend” the estimates of Expenditure was highlighted in **Speaker’s Ruling Nos. 2 and 5 of 2012, and No. 4 of 2013 (No. 1)**.

On the other hand the Government relies on and endorses the High Court’s decision as set out in the several salient aspects of the decision below:-

- ***“Clearly, it is the Minister’s estimates or amended estimates which require the approval of the Assembly under Article 218 and this constitutional requirement is necessarily inconsistent with the existence of power in the Assembly to cut and thereby to fix the estimates of expenditure – the purported exercise of which power would necessarily preclude any further need for approval by the Assembly.” (p. 14)***
- ***“It is one thing to say that the Assembly or the Committee of Supply can propose amendments to the estimates. It is quite another thing to say that the Assembly can itself effect those proposed amendments to the estimates. If the Assembly itself were to effect amendments to the estimates, that would be an end to the matter and the issue of the Cabinet accepting or rejecting those amendments would not and cannot arise.” (p. 14)***

- ***“The power of the Assembly to approve (or not to approve) the Minister’s estimates simply means that the Assembly is conferred with a gate-keeping function by the Constitution and does not imply or involve a power to amend or to adjust (cut) the estimates presented by the executive Minister.” (p. 16)***
- ***“The very fact that the Constitution has provided for the approval (and, by necessary implication, non-approval) of the Minister’s estimates of expenditure by the Assembly in Article 218 conduces to the irresistible conclusion that approval cannot be interpreted to mean “to amend” for it would be nonsensical for the Constitution to require the Assembly to approve that which is has itself amended.” (p. 20)***
- ***“In the circumstances, the court sees it fit to declare that the National Assembly through the Committee of Supply has acted unlawfully and unconstitutionally in purporting to reduce or cut the Estimates of Expenditure of the Minister of Finance...” (p. 20)***

In the main, it is not difficult to grasp the reasoning and intentions of the Hon. Chief Justice. However, there are a number of points of departure with his reasoning. The principal disagreement with the Hon. Chief Justice’s observations, is in the strong belief that it is for the National Assembly, and the National Assembly alone, to determine how it will handle any matter it is seised of. The National Assembly must be allowed to settle its own procedure in keeping with the constitutional mandate contained in Article 165, and the protection from interference guaranteed in Article 172 of the Constitution. The National Assembly has determined that a Committee of Supply shall be the means through which it analyses the Estimates of expenditure. This is in keeping with its right to formulate its own procedure in accordance with the provisions of Article 165 of the Constitution.

The Hon. Minister of Finance submits the Estimates for consideration to the Committee of Supply, and the Committee of Supply, when finished, hands them back to the Hon. Minister. It is at these “hand-over/take-over” stages that our difficulty in interpretation arises.

When the Committee of Supply is finished with the Estimates they are handled back to the Hon. Minister of Finance, he then reports to the National Assembly that the Estimates have been scrutinised and

- a) wholly approved; or
- b) approved (with proposals for amendments resulting from line items being reduced or not approved); or
- c) wholly disapproved

Without a doubt, the Estimates remain the Minister’s at all times.

It is critical to note that when the Committee of Supply considers the Estimates and “approves” of them whether after making “amendments”, (that is, through the process of proposing reductions of line items in accordance with Standing Order 76 or by the process of not-approvals of line items), or not, this function neither equates to, nor constitutes, the “approval” function required by the Constitution in Article 218. The approval is only given in the first instance by the Assembly when the Hon. Minister of Finance reports to the plenary of the National Assembly that the Committee of Supply has considered the Estimates and then goes on to ask the National Assembly to **approve** the report of the Committee. The form of words used is:-

“Mr. Speaker, I beg to report that the Committee of Supply considered the Estimates of Expenditure for the financial year...and approved them (or approved them as amended).”

The Speaker then responds:-

“I will now put the motion which is that the National Assembly approves of the Estimates of Expenditure for the financial year...” (Emphasis added)

It is at this stage, and at no other, that the National Assembly fulfils the constitutional function of **approving** the Estimates as provided for in Article 218. The approval of the Estimates by the Committee of Supply cannot be meant to be the approval contemplated by the Constitution because a Committee of the National Assembly has no power or authority to bind the National Assembly.

In view of the above, when the Committee of Supply makes “amendments” to the Estimates, there is, with the greatest of respect, nothing unlawful or unconstitutional about these actions. If indeed the Committee of Supply has made amendments (which are in essence proposals for changes to the Estimates) then it is the duty of the Hon. Minister of Finance to indicate to the National Assembly whether the Government wishes time to consider the “amendments” before the Speaker puts the Motion to the National Assembly for their adoption. The Government is also within its right to either accept the amendments or to reject them *en toto*.

In short, the functions of the Committee of Supply and the National Assembly, as against those of the Minister of Finance (representing the Executive), are not mutually exclusive; though it must be conceded that at times the lines of distinction have become blurred. The National Assembly is ever mindful of the fact that the separation of powers doctrine must be strictly adhered to. In this regard, the words of David G. McGee in his book The Budget Process: A Parliamentary Imperative are worth repeating:

“If a government assumes office it exercises executive power and is entitled to do so as long as it remains in office. If a legislature is dissatisfied with the policy being followed by the executive, it has constitutional power of dismissing it, but not of taking over executive power itself and imposing its own policy. Executives govern through legislatures; legislatures do not themselves govern.”¹

In the circumstances of the above, the guidelines proposed in Appendix A are recommended for your approval.

**Hon. Raphael G. C. Trotman, M.P.
Speaker of the National Assembly**

Dated this 9th day of April, 2014

¹ David A. McGee, *The Budget Process: A Parliamentary Imperative*, (London, Pluto Press), 79

APPENDIX A

PROPOSED GUIDELINES FOR THE CONSIDERATION OF THE 2014 ESTIMATES OF REVENUES AND EXPENDITURE FOR FINANCIAL YEAR 2014

1. The National Assembly will resolve into the Committee of Supply to consider the Estimates. The procedures set out in Standing Orders 72 – 75 shall apply.
2. Where necessary Members will make proposals for amendments to the Estimates.
3. Where a Member(s) wishes to propose the non-approval of any aspect of the Estimates he/she will not be required to give Notice as required by Standing Order 76.
4. A sub-committee of the Committee of Supply will be constituted and which will have no less than seven (7) Members comprising, four members from the Opposition and three (3) Members from the Government, and to be chaired by the Speaker. The purpose of this Committee will be to examine proposals for amendments and to find consensus or agreement where possible, and thereafter to report to the Committee of Supply.
5. At the end of this exercise the Chairman of the Committee will put the question that the Estimates be reported to the National Assembly.
6. The Hon. Minister of Finance will report to the Assembly his Government's opinion on the Estimates if "amended".
7. Ultimately, the Appropriation Bill will be the Hon. Minister's Bill, and not the National Assembly's, and the complaint of the intrusion of the National Assembly into the Executive's domain will be obviated.²
8. The National Assembly will give its approval for the Appropriation Bill to be taken through the three stages that all Bills must journey.³

² Requirement of Article 218 (2) and Section 17 of the Financial Management and Accountability Act (FMAA)

³ This last authorising function of the National Assembly permits the Minister of Finance to make withdrawals from the Consolidated Fund for the sum necessary to meet the Expenditure approved in the Annual Estimates."(S.O.77)

