Attorney(s)-at-law	**Mr. Mohabir Anil Nandlall, SC, MP, Attorney General and Minister of Legal Affairs of Guyana; and Mr. Nigel Ovid Hawke, Solicitor General**
Chambers	**Attorney General's Chambers**
Address	**95 Carmichael Street, North Cummingsburg, Georgetown**
Number	**Tel. No.: 225-3607**
Email	**aglitigationgy@gmail.com**

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
(CONSTITUTIONAL AND ADMINISTRATIVE DIVISION)

2024-HC-DEM-CIV-FDA-104

In The Matter of an Application for Orders of Mandamus, Prohibition and Declarations and in the Matter of the Judicial Review Act Cap 3:06

BETWEEN

SHERLINA NAGEER

Applicant

-AND-

THE ENVIRONMENTAL PROTECTION AGENCY, a body corporate established under the Environmental Protection Act (Cap 20:05)

Respondent

PRINCIPAL SUBMISSIONS ON BEHALF OF THE ATTORNEY GENERAL

1. These submissions are in reply to the Preliminary Skeleton Arguments filed by the Applicant in the substantive proceedings.

2. The Intended Respondent, the Minister of Natural Resources, is represented herein by the Attorney General, who is the principal legal advisor to the

Government of Guyana (hereinafter referred to as "the Government") by virtue of **Article 112 (1)** of the **Constitution of the Cooperative Republic of Guyana, Cap 1:01, Laws of Guyana** (hereinafter referred to as "the Constitution").

3. The Government of Guyana, represented by the Minister of Natural Resources, is a party to "**Petroleum Agreement between the Cooperative Republic of Guyana and Esso Exploration Guyana Limited (**now ExxonMobil Guyana Ltd. (hereinafter "ExxonMobil Guyana")**, CNOOC NEXEN Petroleum Guyana Limited and Hess Guyana Limited**," dated 27th June 2016.

Relevant Facts

4. On 25th January 2024, Sherlina Nageer (hereinafter referred to as "the Applicant"), through her attorneys-at-law, filed these proceedings by way of a Fixed Date Application (hereinafter referred to as "the FDA"). These proceedings pertain to The Environmental Permit granted to Esso and its partners to operate the Phase 2 of the Liza Development Project (hereinafter referred to as "Liza Phase 2").

5. The Minister of Natural Resources was not named as a party in these proceedings.

6. In the FDA, the Applicant asks for several orders. Those Orders include:

"1. ...

A. …

B. …

C. …

D. Where the Agency fails/refuses to provide a copy of the insurance policy or certificate of insurance required to evidence compliance with Condition 12.1 of the Permit on the grounds of the Permit Holder's failure to provide the same, **A DECLARATION THAT the Permit is cancelled** in accordance with Condition 12.3 of the Permit.

E. Where the Agency fails/refuses to provide evidence that the Permit Holder has complied with Condition 12.1 and 12.5 of the Permit on the ground of the Permit Holder's failure to provide the same, **An ORDER OF PROHIBITION prohibiting the Agency from renewing the Permit or issuing a new environmental permit to the Permit Holder** (its successors, assigns and/or Affiliates), until the Agency files with the Court evidence of the insurance, legal agreements/guarantees and

supporting documents mentioned in paragraphs B and B above." [My emphasis]"

7. Considering the above orders, it is an unassailable fact that these proceedings can result in the cancellation of the Environmental Permit, and cessation, even if temporarily, of work at Liza Phase 2.

8. Any such cessation will not only affect ExxonMobil Guyana and its partners, but will also affect the interest of the Government of Guyana. More specifically, if these orders are granted, they can:

    a) affect ExxonMobil Guyana's ability to operate Liza Phase 2, including extracting oil, and generating profits;
    b) trigger arbitration between Guyana and ExxonMobil Guyana related to losses suffered, if any;
    c) negatively impact anticipated revenue, including already budgeted revenue to be generated from Guyana's share of profit oil;
    d) negatively impact infrastructural and other projects which are intended to be financed by revenues from Guyana's share of profit oil;
    e) negatively impact Guyana's economy, by negatively impacting the economic eco-system which depends on the operation of Liza Phase 2.

9. Recognising these possibilities, including the express provision of **section 94** of the **Petroleum Activities Act 2023 (Act No. 17 of 2023) (hereinafter referred to as "the PAA 2023")**, the Attorney General filed a Notice of Application on 15th April 2024, seeking to have the Minister of Natural Resources added as a party to these proceedings, with permission to give evidence, file submissions, and make oral arguments.

10. The Applicant has opposed this Notice of Application, and has filed a Preliminary Skeleton Argument (hereinafter referred to as "Skeleton Arguments"), and an "Affidavit in Reply to the Notice of Application to Intervene by Attorney General (hereinafter referred to as "the Affidavit in Reply").

The Attorney General's Case

11. In these submissions, we ask this this Honourbale Court to find, and will give reasons why it should so find that:

    a. The Minister of Natural Resources, represented by the Attorney General, is entitled, as of statutory right, to be added to these proceedings.

12. Specifically, we submit that:

a. **s. 94** of the **PAA 2023** applies to judicial review proceedings;
b. These proceedings arise out of petroleum operations within the meaning of **s. 94 of the PAA 2023**
c. these proceedings potentially impact the State

S. 94 of the PAA 2023 applies to judicial review proceedings

13. The Applicant argues that **s. 94** of the **PAA** refers to "civil actions" arising out of petroleum actions, and does not refer to judicial review proceedings,[1] and that as a consequence, that section does not apply to these proceedings. By this argument, the Applicant seems to be asserting, incorrectly so, that there is a distinction between civil proceedings, and judicial review proceedings.

14. The Applicant also argues that in any case, these judicial review proceedings do not arise out of petroleum operations. These arguments are clearly misconceived for the following reasons.

The Caribbean Court of Justice has pronounced that civil proceedings include judicial review

15. Perhaps the *coup de gras* to the Applicant's argument that **s. 94** does of the **PAA** not apply to judicial review proceedings, and therefore does not apply to these proceedings are decisions by the Caribbean Court of Justice (CCJ), Guyana's apex court.

16. **Rule 2.02** (1) of the **Supreme Court of Guyana Civil Procedure Rules 2016** (CPR) states that:

> "*These Rules apply to all civil proceedings under the jurisdiction of the Court*".

17. **Part 56** of the **CPR,** along with the **Judicial Review Act 2010 (Act No. 23 of 2010)** (hereinafter referred to as "the JRA") is tiled "Proceedings fir Administrative Orders". Rule 56.01 (1)(a) states that:

> "(1) This Part deals with proceedings for administrative orders where the relief sought is for.
> (a) judicial review under the *Judicial Review Act*, Chapter 3:06…"

[1] See para 26 of Preliminary Skeleton Arguments

18. A rudimentary examination, and consideration of these realities makes it clear that judicial review proceedings under Guyana's rules are civil proceedings. No less than the CCJ was so convinced.

19. In ***The Medical Council of Guyana v. Jose Ocampo Tereba [2018] CCJ 8 (AJ***), the CCJ, considering whether judicial review proceedings were also civil proceedings, said the following ***at para 20***:

> "*...we observe that the CPR provides in rule 2.02(1) that the CPR applies to all civil proceedings under the jurisdiction of the Court and, while not defined in the rules,* ***the expression 'civil proceedings' is a most compendious one, which embraces virtually any civil claim in court (formerly an action or matter) and clearly includes a claim for judicial review***."

20. Even before this decision however, the CCJ, in ***Singh and Singh v AG of Guyana [2012] CCJ 2 (AJ)*** said the following at para 37:

> "[37] … *At this juncture it is necessary to deal with a further point going to the jurisdiction of this Court that was raised by the Attorney General at the very end of the hearing.* ***He raised various issues as to the meaning of "civil proceedings" in ss 6, 7 and 8 of the Caribbean Court of Justice Act****. In the absence of adequate notice to the other side and of forensic argument,* ***the only point needing to be dealt with is that the final order obtained in these Crown side proceedings peculiar to Guyana was obtained in "civil proceedings" or a "civil matter" ... "civil proceedings" or "civil matters" are proceedings or matters that are not criminal matters, so extending to public law or judicial review matters***. [My emphasis]

21. Applying both ***Ocampo*** (supra) and ***Singh and Singh*** (supra), decisions of Guyana's apex court, it is clear that even if the term "any action" in **s. 94** of the **PAA 2023** specifically refers to the term civil proceedings, and there is no evidence that it does, or was intended to, civil proceedings in Guyana include judicial review proceedings. The Applicant's arguments on this point therefore falls away.

22. There are, however, additional reasons which demonstrate the error in this argument.

The term "action" is *nomen generale* including every legal proceeding, including judicial review

23. We submit that the term "action" in **s. 94** of the **PAA 2023** is a term of art which refers to, and which was intended to refer to every form of legal proceeding capable of arising out of **s. 94**, including judicial review proceedings.

24. We further submit that s. **94** of the **PAA 2023** intentionally does not mention, or make distinctions between civil proceeding/civil actions, and judicial review proceedings, because the intention was for the section to refer to both or either.

25. **Section 94** of the **PAA 2023** provides that:

> "*(1) In any action arising out of petroleum operations pursuant to this Act or related legislation, that impacts the State or the interest of a licensee, the Minister and the licensee shall be named as a party as of right.*"

26. It is perhaps useful to note that by using the term "action" in the **PAA 2023**, the drafters of the Act also did not intend to, and in fact did try not make a distinction between civil, and or public actions or proceedings.

27. This is because there was no distinction to be made, and the term "any action" is intended to refer to all types of civil and even criminal proceedings in so far as they satisfy the condition of **s. 94**.

28. These arguments are supported by the Court in **Clarke v Bradlaugh (1881) QBD** 38, which said the following at **p 50**:

> "*…although "action" commonly means a proceeding commenced by writ, yet I am not sure it would not be reasonable (if it could be otherwise inferred that the penalty was intended to go to the Crown) to hold that* ***the word "action" is a sort of nomen generale which includes every sort of legal proceeding****…*

29. We submit that this legal definition of the term "action" should be followed by this Honourable Court in these proceedings.

30. Indeed, in **Benion on Statutory Interpretation, LexisNexis, 7th ed.,** at **section 22.5**, p **537**, the authors said that:

> "*If a word or phrase has a technical meaning in a certain branch of law, and is used in a context dealing with that branch, it is to be given that meaning unless the contrary intention appears*."

31. This assertion was judicially approved in ***Schanka v Employment National (Administration) Pty Ltd [2000] FCA 202 at [13] (Federal Court of Australia)***; and ***Clegg v The State of Western Australia (No 2) [2017] WASCA 30 at [55] (Western Australia Court of Appeal)***.

32. Further, we submit that in the absence of any definition of the term "action" or "any action" in the **PAA 2023** or any related legislation, it must be taken that Parliament intended that the meaning of the term "action" must be the general legal meaning, which would be the meaning stated in ***Clarke*** (supra).

33. This submission is supported by the following excerpt from **Benion on Statutory Interpretation, LexisNexis, 7th ed.,** at **section 22.5**, p **537**:

> "*If legislation uses a technical legal term or expression that is not given a statutory definition, Parliament is taken to have intended it meaning to correspond to its general legal meaning unless the contrary intention appears*."

34. Applying the above authorities, we submit that when the drafters of the **PAA 2023** drafted **s. 94 of the PAA,** they deliberately used a term which they knew refers to, and which they intended to refer to every sort of proceeding, including civil actions (such as judicial review).

The application of the purposive rule and mischief rule

35. We submit that if either the purposive rule, or the mischief rule related to statutory interpretation are applied, the ineluctable conclusion is that **s. 94** of the **PAA 2023** is intended to apply to judicial review proceedings.

36. The **PAA** was passed in **2023**, and according to its long title, it is an act "to repeal and replace the Petroleum (Exploaration and Production) Act Cap 65:04 and the Petroleum (Production) Act Cap 65:05" (hereinafter referred to as "the Antecedents")

37. A perusal of the antecedents will show that no such provision previously existed in the Antecedents. This reality must be coupled with the fact that the Government of Guyana has made application to join several judicial review proceedings related to Guyana's oil and has sector, and has been ruled against by the Courts, including the Court of Appeal of Guyana on almost every occasion. These decisions include: **Gaskin v Minister of Natural Resources 2018-HC-DEM-CIV-FDA-310; Sinnika Henry et al v EPA 2021-HC-DEM-CIV-FDA-94**, and **Vanda Radzik et anor v EPA v Esso Guyana Limited 2023-HC-DEM-CIV-FDA-456**, all of which were judicial review proceedings.

38. Most recently, the Court of Appeal in **EPA v Frederick Collins et al CA No. of 2023** (an appeal of a decision in judicial review proceedings) upholding the decision of the High Court, ruled that the Attorney General should not be made a party to proceedings touching and concerning the oil and has sector.

39. Notably, however, the CCJ, in the recent case ***of AG of Guyana v EPA et al [CCJ Application No. GY/A/CV2024/001***, rejecting arguments that the Attorney General is not an interested party, and could make no useful contributions in those proceedings, overruled the Court of Appeal of Guyana, and has ordered that the Attorney General of Guyana be added as a party to no
40. No. 67 of 2023.

A Purposive Interpretation

41. According to **Benion on Statutory Interpretation, LexisNexis, 7th ed.**, at **p341,** "*an interpreter should have regard to the purpose of an enactment when considering it*." At **p. 342**, the authors say that:

> "***The purpose or object of Parliament in passing an Act is, almost invariably, to provide an appropriate remedy to serve as a cure for the mischief which the act deals. Similarly, the legislative purpose of a particular enactment contained in an Act is to remedy the mischief to which that enactment is directed***.
>
> *Each enactment has its own limited purpose, to be understood within the larger purpose of the Act containing it.*
>
> *General judicial adoption of the term 'purposive construction' is relatively recent, but the concept is not new* — ***the idea that the courts should pay regard to the purpose of a provision led to the resolution in Heydon's Case.' Legislation is still (in almost all cases) about remedying what is thought to be a defect in the law***."

42. In ***Cabell v Markham (1945) 148 F 2d 737 at 739***, the court said:

> "'*Of course, it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else.* ***But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning***." [My emphasis]

43. The words of the authors of ***Benion*** (supra) and the Court in ***Cebell*** (supra) leave no question that the role of a court when engaging in an interpretative exercise is to pay due regard to the purpose of a provision.

44. Commenting on the task which a court engaging in an interpretative exercise has before it, the Learned **Lord Binghham** in ***R (on the application of Quintavalle) v Secretary of State for Health [2003] UKHL 13, [2003] 2 AC 687, [2003] 2 All ER 113 at 8*** said that:

> "***The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life.*** *The court's task, within the permissible bounds of interpretation, is to give effect to Parliaments purpose.* ***So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment***.'

45. Applying ***Quintavalle*** (supra), we submit that in these circumstances, it is the task of this Honourable Court to ascertain and give effect to the true meaning of what Parliament has said in **s. 94 of the PAA 2023**. We submit that the Court must resist the invitation by the Applicant to adopt an approach encourages prolixity, since, in such circumstances draftsmen will feel obliged to provide expressly for every contingency which may arise. Such an attempt would, regrettably, cause this Honourable Court to neglect the purpose which Parliament intended to achieve when it enacted the **PAA**, and **s. 94** more specifically

46. Instead, it is our submission that this Honourable Court should read **s. 94** of the **PAA 2023** in the context of the statute of as a whole, and that the provision should be ready in the historical context of the situation which led to its enactment.

47. As was stated above, the **PAA 2023** repealed its Antecedents, neither of which contained a provision remotely similar to **s. 94** of the **PAA 2023**. Further, the State,

represented by the Attorney General has attempted to be added to multiple judicial review proceedings.

48. In all of these judicial review proceedings, the Honourable High Court, and the Honourable Court of Appeal denied the Attorney General's application to be joined as a party.

49. The basis of the Attorney General's applications in these cases was that the orders sought could negatively impact the State's anticipated revenue, and that the State was therefore an interested party in those proceedings.

50. In both cases, the Applicants resisted the Attorney General's Applications, arguing, among other things, that the Attorney General was not an interested party, would be of no assistance to the Court, and that in any case, anything the Attorney General would argue could be put forward by the EPA.

51. As stated before, the CCJ in the recent case of ***AG of Guyana v EPA et al [CCJ Application No. GY/A/CV2024/001*** was not persuaded by these submissions, and has since ordered that the Attorney General be added as a party in **EPA v Frederick Collins et al CA No. 67 of 2023**.

52. In any case, since the State had, and continue to have having little to no success in its application to join these judicial review proceedings on the basis that it was an interested party, Parliament passed laws which it intended to ensure that the State, represented by the Attorney General, would be added, as of right to any and all judicial review and other civil proceedings touching and concerning the oil and has sector, but particularly, petroleum operations.

53. That law was **s. 94** of the **PAA 2023**. Indeed, this is the historical context of the birth of **s. 94** of the **PAA 2023**, and the dictates of statutory constructions, coupled with precedent binds this Honourable Court to consider this historical context when seeking to ascertain the intention of the drafters of **s. 94** of the **PAA 2023**, and the purpose of that very provision.

54. Indeed, when the Court consults this historical context, the ineluctable conclusion is that **s. 94** of the **PAA 2023** was intended to apply to judicial review proceedings.

55. This is the modern approach to statutory construction. In ***Pollen Estate Trustee Company Ltd v Revenue and Customs Commissioners [2013] EWCA Civ 753 at [24]***, the Court said that:

> "*The modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose*."

Applying the Mischief Rule

56. We submit that an application of the mischief rule to the interpretation of **s. 94** of the **PAA 2023** also leads to the provision applies to judicial review proceedings.

57. In **Benion on Statutory Interpretation, LexisNexis, 7th ed.**, at **p 589,** the authors explain that:

> "*A slightly different use of context and external materials is to ascertain the legal, social or political state of affairs that the legislation is designed to remedy or change. This is traditionally expressed in terms of the mischief that Parliament intended to remedy by passing a statute...*"

58. In **Mayfair Property Co, Re, Bartlett v Mayfair Property Co [1898] 2 Ch 28 at 35**, Lindley MR said that:

> "*In order to properly interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's Case to* ***consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief***."

59. Applying ***Benion*** (supra) and ***Mayfair*** (supra), this Honourable Court is entitled, if not obligated to regard the state of affairs that the legislation was designed to remedy or change, that is, the mischief to be remedied.

60. We humbly submit that this Honourable Court should consider the state of the law when **s. 94** of the **PAA 2023** was passed: the fact that the Antecedents of the **PAA 2023** did not contain a similar provision; the fact that the State's attempts to intervene in similar judicial review proceedings were previously refused by the Court; and the fact that this provision was specifically crafted and engineered to ensure that the State is a party in such judicial review proceedings, whether *ab initio*, or upon a Notice of Application or Motion, where it was not named as a party initially.

61. These considerations make it clear that **s. 94** of **the PAA 2023** must be read to apply to judicial review proceedings, and more specifically, judicial review proceedings which touch and concern petroleum operations and matters incidental thereto.

These proceedings arise out of petroleum operations within the meaning of s. 94 of the PAA

62. Having demonstrated conclusively that **s. 94** of the **PAA 2023** applies to judicial review proceedings, we will show that these judicial review proceedings arise out of petroleum operations pursuant to the **PAA 2023** and related legislation and that these proceedings impact the State.

These proceedings arise out of petroleum operations

A literal interpretation

63. A literal interpretation of all of the relevant provisions involved in these proceedings demonstrate that these are proceedings which arise out of petroleum operations.

64. The Applicant, at **para 40** of her A**ffidavit in Reply to the Notice of Application** by the Minister of Natural Resources (represented by the Attorney General), filed 7th May 2024 contends that the FDA "*arises out of the EP Act, which is not related to petroleum activities specifically, but to environmental protection. Accordingly, the judicial review proceedings herein do not arise out of petroleum activities as described and contemplated by the PAA, but out of the preconditions, namely the Permit, for obtaining authority to commence petroleum operations*.[2]

65. The Applicant's argument is misconceived due to the failure to regard or properly regard all relevant provisions and legislation.

66. Again, **s. 94 (1)** of the **PAA 2023** provides that:

> "(1) In any action **arising out of petroleum operations pursuant to this Act or related legislation** that impacts the State or the interest or a licensee, the Minister and the licensee shall be named as a party as of right." [My emphasis]

67. **S. 94 (1)** of the **PAA 2023** therefore does not, as is claimed by the Applicant, limit its application to petroleum operations pursuant to the **PAA 2023**. Instead, it extends its application to "**related legislation**."

68. It is our submission that the **EP Act**, which the Applicant admits these proceedings arise from, is a related legislation within the meaning of **s. 94 (1)** of the **PAA 2023**.

[2] See para 40 of the Second Affidavit of Sherlina Nageer: Affidavit in Reply to the Affidavit in Support of Notice of Application to Intervene by Attorney-General, filed 7th May 2024

69. Importantly, the **PAA 2023** defines petroleum operation to mean:

> "…exploration, appraisal, development and production operations or any combination of the two or more of such operations, including construction, operation and maintenance of all necessary facilities, plugging and abandonment of wells, safety, **environmental protection**, transportation, storage, sale or disposition or petroleum to the delivery point, site restoration and **any or all other incidental operations or activities as may be necessary and required**."

70. We submit that the matter of ExxonMobil's environmental permit, including the granting of the permit, augmentation of it's contents, and is an "activity" or "operation" which is incidental to ExxonMobil's and the EPA's roles in "environmental protection".

71. Indeed, neither the **Preliminary Skeleton Arguments** or the Second Affidavit of Sherlina Nageer: Affidavit in Reply to the Affidavit in **Support of Notice of Application to Intervene by Attorney-General, filed 7th May 2024** takes proper note, or any note at all, of the words "**or related legislation**" in **s. 94 (1)** of the **PAA 2023**, and "**any or all other incidental operations or activities as may be necessary and required**" in the definition section of the **PAA 2023**.

72. A proper interpretation and application of these provisions demonstrates that **s. 94** of the **PAA 2023** also applies to judicial review proceedings arising out of related legislation, in this case the **EP Act**, where those judicial review proceedings concern petroleum operations.

73. As we have already pointed out, the **PAA 2023** defines petroleum operations to include environmental regulation, and any or all other incidental operations or activities, which we submit must necessarily include the administration of environmental permits.

74. Even the Applicant notes that the **EP Act** is concerned with "environmental protection"[3] (the definition section of the **PAA 2023** uses this exact term to refer to an activity which amounts to a petroleum operation within the meaning of **s. 94** of the **PAA 2023**), and admits that these judicial review proceedings are arise out of "preconditions" to petroleum activities, namely the environmental permit.

[3] See para 40 of the Second Affidavit of Sherlina Nageer: Affidavit in Reply to the Affidavit in Support of Notice of Application to Intervene by Attorney-General, filed 7th May 2024; the PAA 2023 uses the term environmental regulation, which amounts to the same thing

75. It is therefore incontrovertible, having regard to all relevant provisions, that the matters of the granting, enforcing compliance of, and cancelling environmental permits are activities or operations incidental to environmental protection which are petroleum operations under the **PAA 2023**. Consequently, **s. 94** of the **PAA 2023** apply to these proceedings.

76. Additionally, it is noteworthy that these proceedings eek orders which can cancel the existing environmental permit, determine the content of future permits, and postpone the grant of future permits.

77. We submit that these proceedings, in seeking to compel and prohibit the EPA in relation to the exercise of its administrative powers regarding environmental permits related to the Liza Phase 2 Project, can result in the cessation, if only temporarily, of ExxonMobil's operations. The Applicant seeks orders that the environmental permit related to the Liza Phase 2 Project is cancelled, and the prohibition against the renewal this permit until certain steps are taken.

78. **S. 14 (1)** of the **Environmental Protection Act, Cap 20:05, Laws of Guyana** (hereinafter the "EP Act") provides that environmental authorisation[4] is a condition precedent for development consent, and **s. 14 (2)** The **EP Act** provides that:

> ""14 (1)…
>
> (2) Where an environmental authorisation is cancelled or suspended, the development consent issued by the public authority shall be suspended until and unless a new environmental authorisation is issued or the suspension of the environmental authorisation is revoked.":

79. As such, if the orders prayed for are granted, all petroleum operations carried out on the Liza Phase 2 Project, and under the authority of the environmental permit granted for the operation of the Liza Phase 2 Project, will be suspended indefinitely.

80. These proceedings therefore concern the activity of environmental protection, or activities or operations incidental to environmental protection, thereby constituting petroleum operations, and requiring that the Minister of Natural Resources be named as a party, as required by **s. 94** of the **PAA**.

[4] The **EP Act** defines environmental authorisation as an "environmental permit…".

81. We submit that this approach to the interpretation of these various provisions is supported by trite rules of statutory interpretation.

82. In ***Attorney-General v Prince of Hanover [1957] 1 WLR 436 at 460-461***, Viscount Simonds, rejecting the proposition that enacting words were to read in isolation to see whether they were clear and unambiguous, said:

> "*For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context.* ***So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute****, but its preamble,* ***the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy***."

83. All relevant provisions must therefore be read to reveal the true meaning of legislation.

84. Additionally, the Court must be mindful of the mischief which the provision or provisions were enacted to address.

The Mischief Rule

85. In **Benion on Statutory Interpretation, LexisNexis, 7th ed.**, at **p329**, the authors stated that:

> "*Parliament intends an enactment to remedy a particular mischief. It is presumed therefore that Parliament intends the court, in construing the enactment, to endeavour to apply the remedy provided by it in such a way as to suppress that mischief.*"

86. The authors also state that:

> "*The reason for passing an Act is almost invariably to change the existing law so as to remedy a perceived defect in it. That defect is the 'mischief' to which the Act is directed.*"

87. The locus classicus on the mischief rule is ***Heydon's Case (1584) 3 Co Rep 7a***. The authors of **Benion on Statutory Interpretation, LexisNexis, 7th ed.**, at **p330** noted that:

> "*In Heydon's Case, the Barons of the Exchequer resolved as follows:*

'That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

(1) ***what was the common law before the making of the Act****;*
(2) ***what was the mischief and defect for which the common law did not provide****;*
(3) ***what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and***
(4) the true reason of the remedy*,*

and then the office of all the judges is always to make such construction as shall:

(a) ***suppress the mischief and advance the remedy****, and*
(b) ***suppress subtle inventions and evasions for the continuance of the mischief pro privato commodo (for private benefit), and***
'(c) add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico (for the public good)*.'"* [My emphasis]

88. The authors of ***Benion*** (supra) add that "the reference to common law should nowadays be treated as widened to include statute law, and indeed all forms of law.

89. The application of the wisdom in ***Benion*** (supra), and in ***Heydon's Case*** (supra) lay bare the absurdity of the Applicant's arguments.

90. The state of the relevant statutory provisions before **s. 94** of the **PAA** was that there were no express provisions which entitled the State as of right, to be named as a party in proceedings against the oil and gas sector, or to be added as a party to such proceedings when the state was not named as a party;

91. The mischief was that the State, represented by the Attorney General, has had to to rely on the general provisions of **Part 19** of the **CPR** and common law principles to ground application to intervene in such proceedings. Importantly, despite having a clear interest in such proceedings, there has been no predictability, or certainty that the State would be able to participate in these proceedings.

92. To remedy or cure this mischief, Parliament, in passing the **PAA 2023**, included **s. 94 (1)**, which did not feature in the legislation which the PAA repealed, and replaced.

93. The question which must be answered next is how do we know that **s. 94 (1)** of the PAA was intended to be applied to proceedings such as these, where an environmental permit is the target of administrative orders?

94. We submit that the answer lies within the object, or subject of previous or ongoing similar litigation. We examine a few below:

    a. In **Gaskin v Minister of Natural Resources 2018-HC-DEM-CIV-FDA-310**, the Applicants filed judicial review against the State challenging the **petroleum licence** granted to (then) Esso Exploration and Production Guyana Limited (hereinafter referred to as "Esso") etc. While we note that the State was named in these proceedings, it is worth pointing out that these proceedings did not directly arise out of any of the activities define in the **PAA 2023** as petroleum operations.

    b. In **Troy Thomas v EPA 2020-HC-DEM-CIV-FDA-310**, the Applicant filed proceedings against the EPA, the subject matter being an **environmental permit** issued to Esso.

    c. In **Sinnika Henry et al v EPA 2021-HC-DEM-CIV-FDA-94**, the Applicants filed judicial review proceedings against the EPA seeking **orders regarding an environmental permit** issued to Esso. In these proceedings, the Attorney General filed a Notice of Application to be added as a party, but the application was opposed by the Applicant, and eventually denied by the Honourable Chief Justice.

    d. In **Troy Thomas et anor v. Attorney General 2021-HC-DEM-CIV-FDA-742**, the Applicants filed a constitutional motion against the State alleging that by allowing Esso's production operations, the State was violating the fundamental rights of its citizens. Esso was initially named as a party to these proceedings, by the judge ordered that the company be added as a party on the basis that it had a sufficient interest.

    e. In **Danuta Radzik et anor v. EPA and Esso Guyana Limited 2022-HC-DEM-CIV-FDA-1078**, the Applicants challenged the EPA's decision to issue a renewed environmental permit to Esso.

    f. In **Fred Collins et anor v EPA and Esso Guyana Limited 2022-HC-DEM-CIV-FDA-1213**, the Applicants filed judicial review proceedings in relation to **financial assurance** which Esso was required to provide to the EPA. The Attorney General did not attempt to intervene in this matter at the High Court stage, but made an attempt at the level of the Court of Appeal, but was refused.

g. In **Vanda Radzik et anor v EPA v Esso Guyana Limited 2023-HC-DEM-CIV-FDA-456**, the Applicants filed judicial review proceedings against the EPA regarding an **environmental permit issued** by the EPA to undertake a gas to shore project.

h. In Glen Lall v Attorney General of Guyana and Esso Guyana Ltd 2022-HC-DEM-CIV-FDA-47, the Applicant filed judicial review proceedings challenging certain provisions of the Petroleum Agreement 2016 as illegal.

95. This examination of previous proceedings reveals that none of the judicial review proceedings brought in relation to ExxonMobil's operations have arisen out of the specific activities which are defined in the PAA as petroleum activities. They have mostly been in relation to the grant of environmental permits, a petroleum licence, financial assurance, the violation of fundamental rights, and the lawfulness of provisions in the Petroleum Agreement.

96. There were therefore no circumstances which would have prompted Parliament to pass a law **(s. 94** of the **PAA to specifically**) to ensure the State would be added as of right to only those proceedings.

97. Instead, the correct view is that Parliament, in light of the historical context, intended that the State be entitled, as of statutory right, to be named in proceedings, or where it was not named, added to proceedings which involved questions of the lawfulness of environmental permits, petroleum licenses, and the grant, and or cancellation of such permits and licences.

98. Having now discovered the remedy Parliament intended, what should this Honourable Court do next?

99. According to the authors of **Benion on Statutory Interpretation, LexisNexis, 7th ed.**, p **337, "*having identified the michief, and interpreter should make such construction as suppresses the mischief, and advances the remedy. It is to be presumed that Parliament, having identified the mischief with which it proposes to deal, intends the remedy to operate in a way that reasonably be expected to cure the mischief*."**

100. Indeed, when we consider the interpretation proposed by the Applicant (that is, that challenges to environmental permits, and the enforcement of environmental permits are no contemplated by **s. 94** of the **PAA 2023**), this reasoning produces an absurdity.

101. Indeed, there was absolutely no mischief which pre-existed **s. 94 (1)** of the **PAA 2023** which would have necessitated that provision. There is also nothing else

in the historical context of the legislation which explains that that section was inserted into the Act. It is also not unusual that in an Act which was intended to concilidate the laws regulating the petroleum sector, one section deals specifically with a particular matter. In **Benion on Statutory Interpretation, LexisNexis, 7th ed.,** the authors, at p 339, said that "*Where an Act deals with…a number of mischiefs, the relevant provisions of the Act constitute the remedy for each particular mischief*."

102. Therefore, in light of the opposing constructions offered by the Applicant, and in these submissions, we submit that this Honourable Court should choose the interpretation which would bring the mischief into account, and to an end. Support for this argument is found in the at **p. 337** of **Benion on Statutory Interpretation, LexisNexis, 7th ed.,** where the authors say that:

> "*In the consideration of opposing constructions of an enactment in relation to a particular factual situation, bringing the mischief into account may help to decide whether the enactment is intended to be given a wider or narrower construction*."

<u>These proceedings potentially impact the State</u>

103. We submit that if the orders at 1 ((D) and (E) are granted, they will impact the State within the meaning of **s. 94** of the **PAA 2023**.

104. At para 98 or page 12 of the Notice of Application for the Minister of Natural Resources, represented by the Attorney General, to be added to these proceedings, we noted that the Minister of Finance, while making a Budget Speech[5] budget presentation to Parliament said:

> "Mr. Speaker, this year, with three production platforms operationalised, it is projected that there will be 202 lifts of crude oil from the Stabroek Block, 25 of which are estimated for Government. Consequently, earnings from the Government's share of profit oil are estimated at US$2,078.9 million in 2024, while royalty payments for the year are projected at US$319.9 million. Additionally, based on 2023 deposits, an estimated US$1,154.3 million or $240.1 billion can be withdrawn from the NRF in 2024 and transferred to the Consolidated Fund to support the country's development agenda."

105. One of the production platforms referenced is the Liza Phase 2 Project, and we submit that the fact that Guyana expects revenue from production from Liza Phase 2 is enough to demonstrate that Guyana has an interest in these proceedings.

5

106. Importantly, if production is affected due to the cancellation of the related environmental permit, the number of lifts is likely to be reduced, and the resulting earnings are also likely to reduce. Guyana therefore faces loss of earnings, a downward projection of its earnings, and possible reductions in transfers to the Consolidated Fund, and monies with which to support the State's development agenda.

107. At para 12 of the State's Notice of Application for the Minister of Natural Resources to be added as a party, it was averred that "The Government of Guyana's planned expenditure for 2024 is $1.1 trillion, and part of this sum is expected to flow from anticipated revenue from the sale of oil produced from Liza Phase 2. In 2024, approximately US$1.2 billion (G$211,419,600,000) (two hundred and eleven billion, four hundred and nineteen million, six hundred thousand dollars), or almost a quarter of the 2024 budget) of this amount will come from expected revenue from Guyana's share of profit oil and royalties. Through 2027, approximately US$5 billion of expenditure is expected to come from revenue from Exxon's oil projects

108. Though it was not demonstrated what percentage of these funds will come from Liza Phase 2, we made it clear that these numbers are based on the production projections of ExxonMobil's current projects, which includes the Liza Phase 2 development project. This, without more, is enough to demonstrate these proceedings impact the State.

109. The impact to the State is amplified when we consider that if the orders at para 1 (D) and (E) of the FDA are granted, the portion of the State's 2024 budget which is funded by lifts from the Liza Phase 2 Project will be negatively impacted.

110. In the circumstances, it is pellucid that not only does **s. 94** of the **PAA** apply to these proceedings, these proceedings are contemplated by s. 94 of the PAA, so that the Minister of Natural Resources, represented by the Attorney General, is entitled, as of statutory right to be added to these proceedings.

Dated the May, 2024

…….……..……
Chevy Devonish, Senior Legal Advisor, Attorney General's Chambers and Ministry of Legal Affairs