

JLSC clears air on Marcia mess

CJ was misled

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Marcia Ayers-Caesar now stands accused of misleading Chief Justice Ivor Archie and members of the Judicial and Legal Service Commission (JLSC) and will not be returning to the bench of the Magistrates' Court any time soon.

Breaking its silence on the raging controversy yesterday, the JLSC, which is headed by Archie, admitted Ayers-Caesar provided the JLSC with a list of outstanding matters. However, it said it was only after the prisoners' riot at the Port-of-Spain Magistrates' Court that an audit conducted by the Acting Chief Magistrate determined that contrary to what they were told by Ayers-Caesar, she actually had over 50 matters outstanding.

The JLSC said had it "been aware of this state of affairs before April 12th, the Office of the President would have been requested to postpone the appointment of Mrs Ayers-Caesar." It noted that two candidates who were ahead of her in the selection process requested and were given time to complete their outstanding matters.

Giving some background, the JLSC said in April of 2016 notices of vacancies to the High Court Bench were published locally and internationally and short-listed candidates were invited to participate in the assessment process. This process involves a face to face interview, written assessment, review of samples of the candidates' written work, submissions by referees and psychometric testing, and was done between January to February 2017. On March 15, 2017, successful candidates were informed of their selection based on the outcome of the process.

The JLSC said during recruitment interviews, candidates are routinely asked when they will be in a position to assume duty and this requires full and frank disclosure from the candidate, as it guides the management of the transition to the office if the applicant is successful.

It said the CJ sought the assurance of both Ayers-Caesar and Avason Quinlan-Williams, who were in the Magistracy at the time of their appointment, that they were not leaving behind work that would negatively impact the Judiciary or their colleagues. The JLSC noted there is no electronic case management in the Magistracy, thus making it impossible for it to check the case files of a successful applicant from the Magistracy.

"Reasonable 'due diligence' is satisfied by seeking an assurance that the appointee has done all that is required with respect to his/her professional obligations to put themselves in readiness to assume duty," the JLSC said.

But on April 9, after he became aware that some disquiet had seeped into the public domain about Ayers-Caesar's pending elevation to the High Court Bench, the JLSC said CJ tried unsuccessfully to reach her by phone. He was only able to do so on April 10 and enquired

whether she had any outstanding part-heard matters. Ayers-Caesar is said to have “assured the Chief Justice that, apart from three short trial matters which for reasons beyond her control could not be completed within a reasonably short time, all she had outstanding a few ‘paper committals’ which could be restarted by another magistrate without incurring undue delay.”

The statement said the CJ also “took the precaution of asking her to provide a written list with short explanations which she did on the evening of April 10.” However, the list, “omitted any information about the nature and seriousness of the offences.”

Having looked at her statement, the CJ is said to have followed up with a telephone conversation in which Ayers-Caesar reiterated she had no other outstanding matters. However, it said after “a sustained chorus of protest arose” from prisoners and attorneys about the hardship and dislocation by her ‘sudden’ elevation” and in response to concerns raised by stakeholders and the media, it asked her to provide an explanation, vet and approve a press release intended to address those concerns.

In light of this, the CJ is said to have asked acting Chief Magistrate Maria Busby Earle-Caddle to conduct an audit to ascertain the true state of affairs. That report, according to the JLSC, “provided evidence that the list of outstanding matters was much larger than he (CJ) had been led to believe and that many of them were quite substantial matters in which several witnesses had already been cross examined.” In fact, it said the total number of Ayers-Caesar’s matters was found to be in excess of 50.

No surety of return to bench

The matter of the new list was raised with Ayers-Caesar and the CJ raised it with other JLSC members at an emergency meeting on April 27. It said at the meeting the JLSC was unanimous in its view that “if the second list represented the true state of affairs, it could seriously erode public confidence in the administration of justice and, by extension, the whole selection process as it was apparent from comments in the public domain that no distinction was being drawn in the minds of many observers between the selection process and Mrs. Ayers-Caesar’s management of her transition to the High Court Bench.”

The JLSC while it considered the situation “sufficiently grave to trigger a disciplinary inquiry,” it was agreed Ayers-Caesar “should be given an opportunity to return to the Magistracy to complete the matters that she had left unfinished.” The JLSC said this was “a viable course of action as a means relieving possible hardship to defendants, victims and other interested parties.”

It added: “No promises were made to Mrs Ayers-Caesar that if she finished her part heard matters, she would be returned to the High Court Bench.”

The statement said on April 28 the CJ “summoned” Ayers-Caesar to a meeting where he reminded her of the importance of accepting personal responsibility for the manner in which events had unfolded and invited her to consider her options. It said Ayers-Caesar decided to resign from the High Court Bench “as a means of acknowledging her default.”

According to the JLSC, Ayers-Caesar was offered the opportunity of publicly explaining why she was resigning before the CJ issued any public statement on behalf of the JLSC. It said the

wording of the press release issued by Ayers-Caesar was approved by her before she signed it.

Subsequent to this, the JLSC said it came to their attention that Ayers-Caesar had gone to the Couva Magistrates' Court on March 22, 2017 and dismissed 16 outstanding cases arising out of at least seven unconnected incidents. The JLSC said while it does not know all the details of the matters the action was "unusual." It said while it gives further consideration to the several issues raised, Ayers-Caesar will not be allowed to preside on the Magisterial Bench.

The JLSC also said it is committed to the review and improvement of the process for selection and appointment of candidates to judicial office and also welcomes constructive suggestions from interested parties for the efficient disposition of the part-heard matters that remain outstanding.

In an immediate reaction to the JLSC statement yesterday, Avory Sinanan SC said it seemed the JLSC was responding to the questions compiled by the 11 senior counsel who met last Friday. The questions were given to Law Association president Douglas Mendes and he was to discuss the matter with his executive and get back to the senior counsel on it.

"It would appear, having regard to the contents of the press release sent by the JLSC, that somehow they got hold of the questions before hand and the release was scripted in a perpetual attempt to answer the questions before hand. It was clearly a pre-emptive manoeuvre on the JLSC's part," Sinanan said.

It was expected that the answers to the questions would be raised at a meeting the law body's members have called for to discuss a vote on no-confidence in the CJ and JLSC.

Controversy's Timeline

April 7: Opposition Senator Gerald Ramdeen calls on Chief Justice Ivor Archie and Judicial and Legal Services Commission (JLSC) members to disclose the criteria used for the appointment of High Court judges.

April 12: Marcia Ayers-Caesar, Kevin Ramcharan and Avason Quinlan-Williams take the oath as judges from President Anthony Carmona.

April 12: Chief Justice Ivor Archie defends the process used by the JLSC for the selection and appointment of judges. He said: "It is important as well that the public knows that anyone who is appointed has been through one of the most rigorous selection processes you can find anywhere in the region or Commonwealth."

April 19: The Judiciary issues a statement addressing rumblings about a void left in the system by the promotion of Ayers-Caesar, saying her departure would not negatively affect the lower court. Court and protocol information officer Alicia Carter-Fisher says what was before Ayers-Caesar were "paper committals."

April 23: Law Association expresses concern about Ayers-Caesar's appointment.

April 24: Ayers-Caesar is warmly welcomed to the bench by attorneys as she made her debut in the San Fernando Third Criminal Court.

April 25: Several inmates, mostly murder accused, had to be removed from the Port-of-Spain Eighth Magistrate's Court after they began shouting and cursing after realising their matters could possibly be restarted due to Ayers-Caesar's elevation to the High Court.

April 27: Ayers-Caesar resigns as a judge, apologising for the effect of her actions on stakeholders.

April 27: CJ Archie says JLSC accepted Ayers-Caesar resignation but will restore her to the Magistracy.

May 4: Lawyers asked to sign a petition expressing loss of confidence in CJ and JLSC.

May 5: 11 senior counsel hold historic meeting expressing alarm at the events surrounding Ayers-Caesar's judicial appointment.

May 5: Law association agrees to hold special general meeting to discuss resolution calling on CJ and JLSC to resign after 63 lawyers sign petition.

May 8: Anand Ramlogan SC writes a pre-action protocol letter to JLSC chairman, CJ Ivor Archie, questioning the legality of JLSC.

May 9: JLSC issues first statement on the public controversy, saying Ayers-Caesar misled the CJ about her case load.