

**STATEMENT MADE BY RAMESH LAWRENCE MAHARAJ S.C AT A MEDIA ON SATURDAY  
13<sup>TH</sup> MAY, 2017 AT HIS LAW CHAMBERS IN SAN FERNANDO ON THE ISSUE OF THE  
FUNCTIONS AND DUTIES OF THE JUDICIAL AND LEGAL SERVICE COMMISSION AS  
THEY IMPACT ON RECENT EVENTS**

1. Good morning. Thanks to you members of the media for accepting my invitation to attend to this media conference this morning. I also say good morning to all of my fellow citizens who are listening to this broadcast.
2. The recent appointments made by the Judicial and Legal Service Commission ("JLSC") of Judges to the High Court, the subsequent statements made in respect of those appointments and actions announced to the public which it took against Madam Justice Marcia Ayers-Caesar have serious implications for the independence of the Judiciary, the rule of law and public confidence in the administration of justice. Enquiries have been made of me by members of the media to comment on these matters, those enquiries together with the impact of these matters as stated above have caused me to convene this media conference. It is hoped that after this media conference is published to the national community, my fellow citizens would be able to have a fuller understanding of the issues and would become more aware of the importance of the issues.
3. Madam Justice Marcia Ayers-Caesar had consultation with me in respect of the public statements made by the JLSC and its decisions and/or actions subsequent to her being appointed a Judge. There is therefore the relationship of lawyer and client existing between us in respect of those matters. Having regard to the privilege of lawyer and client communications I cannot disclose to you any such communications made by her to me and further I cannot disclose to you any communications I had with her in respect of these matters.

4. The issues however which arise from the statements and action of the JLSC are so important to the security of tenure of a Judge, the independence of the Judiciary, the rule of law and simply justice of an individual that I feel compelled in my duty to the public to express my views on them. It is a matter of record that during my career as a lawyer and when I was a politician I expressed publically my concerns about the independence of the Judiciary, the rule of law whenever I saw there were threats to these sacred principles.
5. We have seen over the years in our country a progressive decline of public trust, respect and confidence in most of the major institutions of the State, we are fortunate however that the Judiciary is one of our institutions which still enjoy public confidence. It is important therefore that we do not allow the events of the past days to cause the people to abandon their trust and confidence in the Judiciary.
6. I am concerned therefore about the important constitutional and legal principles which are under threat from these events regardless of the individuals who have been involved.
7. The JLSC has the power by Section 111 of the Constitution to make appointments to the office of Judge and to promote Judges to the Court of Appeal. It is also given the power to exercise disciplinary control of Judges and to remove them from Office. In order to remove a Judge there is a special procedure which must be followed in accordance with Section 137 of the Constitution. The members of the JLSC are appointed by the President after consultation with the Leader of the Opposition. It is therefore an independent Service Commission.
8. The JLSC is headed by the Chief Justice who is the Chairman. The other members include the Chairman of the Public Service Commission and three other members appointed by the President. One of those persons appointed must hold the Office of Judge and the two other persons must have legal qualifications (Section 110 (2) of the Constitution). Having regard to the nature of the composition of the JLSC it is

reasonable to presume that the JLSC was guided by the law in discharging its functions and duties in appointing the Chief Magistrate as a Judge.

9. The Chief Justice heads both the administrative and judicial arms of the Judiciary. In addition to being the Chairman of the JLSC, the Chief Justice is in charge of the administration of the Court of Appeal, the High Court, the Magistrates Court, the Coroner's Court and all aspects of court administration in the Judiciary and in the Magistracy. The administrative arm of the Judiciary does not exercise judicial powers. Its powers are limited to administrative functions. The judicial arm of the Judiciary exercises judicial power. The judicial arm of the Judiciary comprises the Judges of the High Court and the Court of Appeal. The Magistrates' Courts and the Coroner's Court also exercise judicial power. The Magistracy is headed by the Chief Magistrate, but the person in charge of the overall administration of the Magistracy is the Chief Justice.
10. It means therefore that having regard to the powers and function of the Office which the Chief Justice holds, he at all times would have access to all information regarding the workload of Magistrates and Judges, their part heard matters and their outstanding judgments. The Chief Justice would have access to the statistical data of cases pending before Magistrates and Judge and it is always open to him as Chief Justice and as Chairman of the JLSC to get, to access or to obtain any information of any outstanding work which the Chief Magistrate had before she was appointed a Judge.
11. The JLSC therefore would have had access to all of the data regarding the outstanding work of the Chief Magistrate before the JLSC appointed the Chief Magistrate a Judge.
12. Further, it is a well established principle of public law that the JLSC as a public authority has a duty in law to fully and sufficiently acquaint itself with relevant information to the decision it intends to make in appointing the Judge. It had a duty

in law to take all reasonable steps to obtain the relevant information of its intended decision in appointing a Judge. It had a duty if it considered that the outstanding workload of the cases of the then Chief Magistrate was relevant to its decision to obtain that information. It would be readily seen from above that the JLSC had all access to this information through the Chief Justice. The duty to obtain this information if it considered it relevant to its decision was the duty of the JLSC. The JLSC was the appointing body of a Judge and the JLSC had to satisfy itself from its records which were available and had a duty if it obtained any other information to verify that other information with its official records.

13. No reasonable person would believe that if the JLSC wanted to get information about the outstanding workload of the then Chief Magistrate it could not get that information from its official records. No reasonable person would also believe that even if it got information from any other source including the then Chief Magistrate that it could not verify that information against its own official records.
14. Further, no reasonable person would believe that the Court Administration Department of the Judiciary which was established for the specific purpose of improving the administration of justice that it would not have a system of receiving and compiling records of part heard matters of Judges and Magistrates. This would be important statistical data which the Chief Justice as Head of the Judiciary would have to see on a regular basis, at least monthly since he is the Head of the Judiciary. The Court Administration Department would have to provide reports to the Chief Justice for the Chief Justice to access the workload of Judges and Magistrates and to determine whether there are excessive delays in the Magistracy or in the Judiciary.
15. The JLSC cannot properly and in law blame a judicial appointee for not doing its duty to acquire relevant information in respect of a decision it intends to take. The JLSC cannot properly in law abdicate its responsibility and surrender its duty of getting relevant information or supplying relevant information for the JLSC where

that information would be part of the official record of the Court Administration Department of the Judiciary.

16. The decisions and/or actions of the JLSC have to be taken into account having regard to the context in which they were made. The Chief Justice as Head of the JLSC after Madam Justice Marcia Ayers-Caesar and the other two Judges were sworn in informed the media of the following among other matters.

- a. He described the selection and appointment process as ***“one of the most rigorous selection process you can find anywhere in the region or Commonwealth”*** (see Guardian Newspaper of the 12<sup>th</sup> April, 2017). He also stated ***“.....we take a lot of trouble to find the best people. We are the only branch of government that has published and publically articulated criteria for appointments.....”***
- b. Among the criteria used, the Chief Justice said ***“candidates were selected based on their professional confidence, integrity, temperament and experience “with professional competence we consider legal training and knowledge, intellectual and analytical ability, mature and objective judgment, communication and organizational skills and interest in developing the law”.***
- c. He went on to say ***“every candidate would have been subjected to a rigorous process. I am surprised that some of them have not changed their minds halfway to the torture we put them through. The fact that they survived and come through that process successful I think it is testaments of the caliber of persons that we have among the bench today”.***
- d. He stated that he was pleased that the all three new judges had decades of previous judicial experience, Ayers-Caesar and Quinlan-Williams who were

Magistrates and Ramcharan, who had served as an Assistant Registrar of the High Court in the past. He said *"That is particularly significant development because the JLSC has heard over the years criticism from magistrates who felt that they had been overlooked for consideration for appointment to what we have termed the "Higher Judiciary" - an expression that I don't like because we are all judicial officers."*

17. Any reasonable person listening to those comments and taking into consideration the position which the Chief Justice took would come to the conclusion that the JLSC made all the necessary enquiries relevant to its decision for the appointment of Madam Justice Marcia Ayers-Caesar and the other Judges and that the JLSC including the Chief Justice was extremely proud of the decision it made in appointing the three Judges.
18. As a matter of fact the public record would show that after Madam Justice Marcia Ayers-Caesar was appointed and sworn in she commenced her judicial duties as a Judge at the San Fernando High Court.
19. I want to express my views on the principle of *functus officio* which from the publications in the media appear to be advocated as a barrier for the Judge completing her part heard matters in the Magistrates' Court. I have not seen any law which prohibited High Court Judge, Madam Justice Marcia Ayers-Caesar after being appointed a Judge, to be able to finish her Magistrates' Court cases. A Judge is higher up in the pecking order than a Magistrate, and therefore as a Judge she would have a higher jurisdiction than a Magistrate and consequently could have continued to complete her part heard cases in the Magistrates' Court if that was required by the JLSC. Madam Justice Marcia Ayers-Caesar had full jurisdiction to complete any of her part heard matters in the Magistrates' Court. I recall a comment from former Chief Justice Michael de la Bastide who is reported to have stated that he does not see any reason why the Judge could not have completed her part heard matters.



20. This is clear, for example suppose there is a very complicated fraud case which must to be dealt with by a Magistrate but there was no suitable Magistrate to do it, why a High Court Judge cannot be appointed to do it, sitting as a Magistrate? He or she would have jurisdiction to do it because the jurisdiction of a Judge is greater than the jurisdiction of a Magistrate.
21. A question which has to be asked therefore is, if the effect of what the JLSC did was to purportedly revoke the appointment of the Judge, why did the JLSC decide to do that? And if it purportedly dismissed the Judge, why it had to do that? In any event, it was open for the JLSC for instance to postpone the date of the appointment of the Judge to take effect until her completed her part heard matters or a period of one month or six weeks could have been fixed for the appointment to take effect.
22. We are talking here about a Judge of the High Court who is appointed and sworn in as a Judge and commenced her duties as a Judge. Can a Judge in those circumstances be removed from Office without the special procedure stated in Section 137 of the Constitution? Assuming but not admitting all that the JLSC has stated, is that sufficient in law to remove a Judge as specified in Section 137 of the Constitution?
23. Further, another question arises, whether a letter of resignation of the Judge prepared by officials at the Hall of Justice for her signature and signed at the Hall of Justice by the Judge could have any legal effect having regard to the facts and circumstances of this matter? Could such a letter of resignation in the circumstances be conclusive in law? Could the JLSC by virtue of this letter have purportedly removed the Judge? These questions certainly show that important questions of the independence of the Judiciary, the enjoyment of security of tenure of a Judge, the rule of law and justice for a Judge arise from the facts and circumstances of this case. As a member of the legal profession, I cannot subscribe to the view that a Judge of the High Court of Trinidad and Tobago in these circumstances can lose the Office of a Judge.

24. We are dealing with a Judge of the High Court, a member of the Judiciary of Trinidad and Tobago who is by law the guardian of the Constitution and the guardian of the rights of the people. A Judge who has been appointed by the President on the recommendation of the JLSC to do justice to all. The Privy Council only this week gave a decision in the Reginald Dumas case in which it held that the Judiciary was the guardian of the Constitution. That decision is a landmark decision. The Privy Council stated in that decision that it was impressed with the judgment of Jamadar JA who gave the judgment in the Court of Appeal. The claim in that case was conceptualised by Mr. Karl Hudson Phillips QC.
25. The judgment of the Privy Council shows that both the Court of Appeal and the Privy Council decided that Judges were the guardians of the Constitution and that any public spirited individual can approach the Court for it to interpret the Constitution in order for the Court to decide whether a public official was violating the Constitution. Mr. Reginald Dumas, a public spirited individual sought an interpretation by the Court whether His Excellency the President contravened the provisions of the Constitution, in making appointments of two persons to the Police Service Commission who did not meet the appointing criteria as specified in the Constitution.
26. The last government and the present government tried to get the Court to decide that it did not have any jurisdiction and that Mr. Dumas did not have a right to access the Court to get the Court to determine the legality of the action of the President. The last government made those submissions to the High Court and to the Court of Appeal and the present government endorsed those submissions and made them at the Privy Council. In the High Court together with Attorneys at Law Elaine Green and Margaret Clerk of Mr. Hudson Phillips Q.C Chambers argued that the government's submissions were erroneous and misconceived. The government however won in the High Court. We appealed the matter to the Court of Appeal and we argued that the decision of the High Court was erroneous in law and that the Court was the guardian of the Constitution and therefore members of the public



must have a right to access the Court as public spirited individuals for the Court to determine whether a public official was violating the Constitution even though the public spirited individual personal rights were not being violated. We submitted therefore that public interest litigation in constitutional law existed because the Court was the guardian of the Constitution. The Court of Appeal reversed the judgment of the High Court.

27. The government however appealed against the Court of Appeal's decision to the Privy Council and this government fought hard in the Privy Council to have the Court of Appeal's decision reversed. I could not go to London to appear in the Privy Council, Attorney at Law Elaine Green went and I arranged for well known Queens Counsel Mr. Peter Knox and his Junior Mr. Robert Strang to appear also and they were successful in persuading the Privy Council that the Court of Appeal's judgment was correct.
28. It is now a decision of the highest Court that a Judge sitting as a Judge sitting in the Supreme Court is the guardian of the Constitution. By that role the Judge is the guardian of the human and fundamental rights of the people and all of the constitutional rights given by the Constitution. Madam Justice Marcia Ayers-Caesar is such a Judge.
29. It is important to note that it is common in this jurisdiction for Judges and Magistrates to have part heard matters over a period of time not completed and Judges to have outstanding reasons for a period of time. Further, the statement made by the JLSC at the end of its press release concerning the then Chief Magistrates' decision on the 22<sup>nd</sup> March, 2017 when she dismissed several cases was not relevant to the issues. Further, this occurred whilst she was a Magistrate and it is not unusual for Magistrates to dismiss prosecutions for want of prosecution or as an abuse of process. In any event the JLSC has not conducted any investigations into these cases and was not in a position to make a proper assessment. It would have been known that adding these events to its press release

the JLSC could have prejudiced the minds of the public against Madam Justice Marcia Ayers-Caesar.

30. It is reasonable therefore to conclude that since Madam Justice Marcia Ayers-Caesar was appointed a Judge there is nothing that has been disclosed so far to prevent her from continuing her functions and duties as a Judge and as a Judge she can complete her part heard matters in the Magistrates' Court. It is my hope that in the interest of the legal profession and the public interest that the JLSC would reconsider its actions and/or decisions in this matter and that good sense would prevail in making the right decision.
31. The circumstances which have arisen however mandate me to express my views on the need for there to be reforms of the selection and appointment process for the appointment and promotion of Judges to the Court of Appeal. There is also an urgent need for the JLSC to be made accountable to the people in its functions and duties.
32. The statements published this week in the Media by the JLSC show that in the selection and appointment process of a Judge the JLSC does not give an opportunity to members of the public to comment upon the proposed appointment and for members of the public to be given an opportunity to make representations in respect of any proposed appointment. It would seem to me that since the JLSC is appointing judges to be the guardians of the Constitution and the rights of the people, it is imperative for the JLSC to have a consultative approach in making decisions to appoint judges. The JLSC therefore ought to announce to the public that in future it would give a right to members of the public, as part of its selection and appointment process of a judge and promotion of a Judge to the Court of Appeal to know the names and particulars of the proposed appointees and for the public to be given an opportunity to make written representations to the JLSC in respect of any proposed appointment. The JLSC ought also to prepare a report on the written representations made to it by the public in respect of any appointment and show in that report that it genuinely considered the representations made by members of

the public. This consultative approach would build public confidence in the appointment and promotion processes of Judges and in the administration of justice.

33. It can only be considered fair for citizens to have a say about the skills, attributes and qualities (both personal and professional) of persons who are being put forward to be Judges. This right of the public having a say in this process would not in any way take away or undermine the power of the JLSC to make appointment which it considers necessary. In respect of the promotion of Judges to the Court of Appeal it is only fair that if a junior Judge is being promoted over a senior Judge, that the senior Judge should know the reason why he or she was denied promotion and the legal profession and the public would also be entitled to know the reason. The absence of reasons so that the legal profession and the public can make their own assessment would generate lack of confidence in the administration of justice.

34. a) In order to show the interest which members of the public have in the appointment of Judges and the promotion of Judges to the Court of Appeal, we can examine briefly what judges do and therefore how they affect the daily lives of people.

b) A judge in the exercise of his power in the hearing and determination of criminal cases can impose terms of imprisonment of individuals, can even to pass the death sentence if the person is convicted of murder can give a person life imprisonment or shorter periods of imprisonment. The powers exercised by a Judge in criminal cases can affect the rights of an individual to liberty, security of a person and even the person's right to life.

c) A Judge in a civil case in the High Court determines, among other things:-

- the contractual rights of individuals;
- land disputes;
- family law matters;

- commercial disputes;
- whether individuals committed torts of negligence and nuisance or whether these torts have been committed against these individuals;
- whether public authorities have violated the principles of public law under the Judicial Review Act;
- whether the State violated the Constitutional rights of individuals such as the right to liberty, the right to enjoyment of property, freedom of press, right to equality of press, freedom of association, many other constitutional rights and many other types of civil cases.

A Judge therefore in the exercise of his/her civil law jurisdiction has the power to make orders which can adversely affect the fundamental and other rights of individuals.

35. Another aspect of the jurisdiction of a Judge is the right of an individual under Section 14 of the Constitution of Trinidad and Tobago. By that section a new right and a new remedy against public officials was given since independence, any individual who alleged that his or her fundamental right guaranteed in the Constitution was violated by the State or was been violating or threatened to violated, the aggrieved individual has the right to file a claim in the High Court for a Judge to decide whether that public official contravened the fundamental human right of the individual. The High Court is given the omnipotent power to decide whether any arm of the State, i.e., the Government, the Parliament or the Judiciary contravened the human and fundamental rights guaranteed in the Constitution. Since the judge would have the power to determine whether an individual right has been violated by the State, this is an additional reason why a member of the public ought to have a say in the appointment and promotion of judges.

36. In conclusion, it cannot be doubted that the independence of the Judiciary is an important safeguard against tyranny and unconstitutional action by public

authorities and therefore it is important that there be a determined effort to ensure that the trust and confidence which the public still has in the administration of justice would not be lost. Thanking you.

