



## CHIEF JUSTICE'S CHAMBERS

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May 31, 2017

Mr. Douglas Mende S.C.  
President  
The Law Association of Trinidad and Tobago  
2<sup>nd</sup> Floor, 95 – 97 Frederick Street  
PORT OF SPAIN

Dear Senior

### **RE: Special General Meeting of the Law Association carded for June 1st. 2017**

I am instructed by The Honourable the Chief Justice, Mr. Justice Ivor Archie, to thank you for your letter of May 25th, 2017 and the interest shown by the Law Association as a stakeholder in the administration of justice in the appointment process for High Court Judges and to reply on his behalf. Please note, the Honourable Chief Justice is aware that the contents of this letter may be placed in the public domain and to the extent that some of the matters raised herein may become the subject of litigation he therefore wishes to advise that this letter is issued **without prejudice**.

The Honourable the Chief Justice is confident that the members of the Law Association will be responsible enough to research the relevant legislation independently of this response before coming to a “well-informed” decision.

However, as many of the questions posed appear to be based on a mis-apprehension of roles, responsibilities and reporting lines, I am required to direct your attention to same on his behalf in the hope that it will be of some assistance.

The Judicial and Legal Service Commission (JLSC) does not appoint Supreme Court Judges. The President appoints judges pursuant to section 104 of the constitution. The JLSC appoints persons to the Judicial and Legal Service pursuant to section 111 of the constitution. The office of Puisne Judge is not an office in the Judicial and Legal Service [see in this regard the second schedule to Chap. 6:01 which sets out the judicial offices over which the JLSC exercises its powers of appointment]. This is a subtle but important distinction in the present context particularly in light of Cooper and Balbosa v The DPA [2006] UKPC 37 and the recent decision of the Court of Appeal in The DPA & The Equal Opportunity Commission v The Attorney General, which confirm that persons appointed by the JLSC are not employees of the JLSC. It follows therefore that at no stage in the unfortunate chain of events that occurred has former Chief Magistrate Mrs. Ayers-Caesar ever been an employee of the JLSC.

Two things flow from the above. The first is that although the JLSC has the responsibility to inform His Excellency, the President of the existence of vacancies in the office of Puisne Judge and to make



recommendations for the filling of same, neither the JLSC nor the Chief Justice [in his capacity as administrative head of the Judiciary] has any direct control over the date of appointment. The second is that the JLSC has no authority to conduct 'independent checks' on the workload of a sitting magistrate. As the JLSC has previously indicated, it is the responsibility of every prospective appointee to the office of Puisne Judge to place themselves in a state of readiness to assume office.

Permit me to turn next to the administrative arrangements within the Judiciary. By virtue of Section 15(1) (a) of Chap. 6:01, The Honourable the Chief Justice may exercise 'supervision and control' over Masters, the Chief Magistrate and the Registrar and Marshal. However, such control is restricted to administrative matters and, consistent with the principle of judicial independence, the tracking and disposition of their judicial matters is the individual responsibility of every judicial officer although the Chief Justice may exercise some control over assignments. There is no electronic case management information system in the St. George West Magisterial district. In so far as the High Court and the Magistracy are concerned, the Registrar and Marshal and the Chief Magistrate are the respective custodians of the records and the Chief Justice would not ordinarily interface with any other employees of the Judiciary (nor is he expected to) if he wishes to inquire into the work of the Judiciary pertaining to judicial matters.

There is a statistical unit within the Department of Court Administration but, to address directly the question that appears to be troubling some stakeholders, such reports as are currently being produced are not disaggregated in a manner that would have permitted the Chief Justice to know the pending caseload of the Chief Magistrate. The Judiciary, in the face of severely limited resources, is currently attempting to improve its data gathering and statistical reporting capability but must still rely on manual records in the magistracy. Any reports produced by clerks in the respective districts are checked and 'signed off' by the relevant judicial officer or Senior Magistrate in the district.

With the foregoing in mind, the specific questions that you have asked may now be addressed. For ease of reference your questions are italicized and the responses follow immediately after:

***"1. What did Mrs. Ayers-Caesar say to the Commission in answer to the routine question posed to her at her recruitment interview, namely, when she would be in a position to assume duty, should she be successful?"***

Answer: Candidates were told during the interviews in January 2017 that the JLSC hoped to have the vacant positions filled by Easter. Three months is usually regarded as a reasonable time frame to complete the recruitment process and for candidates to discharge outstanding responsibilities. The JLSC does not recall Mrs. Ayers-Caesar giving any indication that this was an unattainable target. However, The Honourable the Chief Justice feels constrained to comment on the assumption that appears to underlie your question. Any response given at that stage could only have been indicative so that the JLSC could know what to anticipate. Candidates are expected to manage their professional responsibilities sensibly from the time they enter the application process. If a prospective appointment date fixed by the Office of the President turns out to be unrealistic, only the candidate would have that information and it is the candidate's responsibility so to inform the Director of Personnel Administration (DPA) and the Office of the President;

***"2. What information did the office of the DPA ask Mrs. Ayers-Caesar to provide for the purpose of coordinating her swearing in and what information did she provide?"***



Answer: That question is best addressed to the DPA as it is not directly answerable by the Chief Justice. However, the comments in the previous answer are apposite;

**“3. When did the Chief Justice seek the assurance from Mrs. Ayers-Caesar that she would not be leaving behind a body of unfinished work that would negatively impact the Judiciary and her colleagues? What was her response?”**

Answer: The Chief Justice spoke with Mrs. Ayers-Caesar on April 10th, 2017. She assured him that, apart from 3 very short summary trials that were, for reasons outside of her control not amenable to short-term disposition, she only had some paper committals that could easily be disposed of by another magistrate;

**“4. Did the Honorable Chief Justice or the Commission make any independent effort to determine whether Mrs. Ayers-Caesar may be leaving behind a body of unfinished work before the Honorable Chief Justice became aware of disquiet about Mrs. Ayers-Caesar’s imminent elevation?”**

Answer: If what is meant by ‘independent effort’ is whether anyone other than the Chief Magistrate was asked or required to manually search the case sheets and records of the Magistracy for every district in which she had sat [which is the only definitive way of making such a determination], the answer is NO. At the risk of sounding repetitive, the Commission would have had no such power and the Chief Justice, in his administrative role, would have had no reason to deploy scarce judicial resources in such a task as there would have been no reason at that time to doubt Mrs. Ayers-Caesar’s professionalism.

**“5. According to statements in the press attributed to the Honourable Chief Justice as Chairman of the Commission, Mrs. Ayers-Caesar only had paper committals outstanding. Could you please provide the following information:**

- i) Was this based on the list of cases provided by Mrs. Ayers-Caesar which is referred to in the Commission’s press statement?;**
- ii) What steps if any, did the Honorable Chief Justice or the Commission take to verify whether this list was accurate?; and**
- iii) Is it correct that the Honorable Chief Justice is provided with a periodic report giving statistical data on matters listed, in progress and concluded in the Magistracy? If so, can it be determined from that report what matters are part-heard before any particular Magistrate? Was that statistical report consulted in the case of Mrs. Ayers-Caesar?;**

Answer: i) Yes;

- iii) Mrs. Ayers-Caesar was asked to verify and vet the contents of the press statement before it was issued. it was only as as more information came to light that further checks were made;

- iii) See observations at paragraph 5 of this letter.



- “6. In an interview which was published in the press prior to her swearing in, Senator Gerald Ramdeen raised the issue of the state of the part heard list of Mrs. Ayers-Caesar in the Magistracy. Did the Honorable Chief Justice or any member of the JLSC then consider that the matter of her appointment ought to be revisited or deferred until the position was clarified or regularized?”**

**Answer:** The question presupposes that the Honorable Chief Justice read the press article. He did not.

Nor is he aware that any other member of the JLSC did.

- “7. Reports in the press attributed to the Honorable Chief Justice and the Commission indicate that after her resignation as a High Court Judge, Mrs. Ayer-Caesar was “restored” to the Magistracy.**

- i) Did Mrs. Ayers-Caesar resign as Chief Magistrate when she was appointed a judge?;**
- ii) If not, how was her employment determined?;**
- iii) Is there any documentation recording the termination of her employment in the Magistracy?;**
- iv) Has Mrs. Ayers-Caesar been restored as Chief Magistrate or as an ordinary Magistrate?;**
- iv) If as Chief Magistrate, did the Commission give any consideration to the legitimate expectations of other Magistrates who are in line for promotion?;**
- v) Having regard to the admission in her letter of resignation (as reported in the Press) that she failed to make full disclosure to the JLSC in relation to her part-heard matters and to the extent that this may reflect on her honesty or integrity, did the Commission give any consideration as to how this would impact on the issue of fitness for office and public confidence in the administration of justice?;**
- vii) If Mrs. Ayers-Caesar has been restored as a magistrate when is she expected to continue her part heard matters?; and**
- viii) What is to be Mrs. Ayers-Caesar’s position upon the conclusion of her part-heard matters?**

**Answer:** i) No;

- ii) The JLSC is advised by Senior Counsel that upon being sworn to the High Court Bench Mrs. Ayers-Caesar would have been deemed to have vacated office as a magistrate.

iii) See ‘i)’ and ‘ii)’ above;

iv) No;

v) The question no longer arises;



- vi) It did. The Commission also gave consideration to the plight of defendants with unfinished matters and to previous precedent in which magistrates who had been subject to disciplinary action and been sanctioned had been allowed to continue on the bench;
- vii) Alternative arrangements have been made by the Judiciary for the early disposition of her outstanding matters;
- viii) See 'vii)' above

At the time of writing of your letter you may have been unaware that The Honourable Chief Justice had met with relevant stakeholders in an effort to find workable solutions to the challenges posed by the large number of part-heard matters left behind by Mrs. Ayers-Caesar. The Judiciary has adopted the only feasible option currently open to it, which is to reschedule the matters before other magistrates and afford them priority. The Honorable Chief Justice is aware of other suggestions being discussed in the public domain such as the 'discontinuance' of matters and the filing of 'voluntary bills' of indictment but, as you would no doubt appreciate, those initiatives are outside the constitutional remit of The Honourable Chief Justice and require the Director of Public Prosecutions (DPP) to exercise his powers. In that regard, the DPP is not subject to anyone's direction or control. The Judiciary maintains its commitment to work cooperatively with all stakeholders to obtain early and just disposition of all outstanding matters.

I trust that the foregoing will be of assistance.

Sincerely

**Sherlaine Pierre**  
**Administrative Secretary to the Chief Justice**