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Ramlal's ruling on Chancellor/Chief Justice

Outcome due to 'sloppy & ambiguous drafting'

By George Barclay

MASTER'S IN Law (Legislative Drafting) Ms. Jamela Ali had expressed the view that the legislation which states that before something can be done or someone appointed, there must be approval or consent of the opposition will more likely than not lead to a constitutional and political gridlock.

On that occasion, the lawyer who was addressing the Guyana Bar Association Law Conference on "a Review of the Constitutional Reform Process, in 2002, had explained:

"This is because this formula amounts to a form of power sharing and power sharing does not normally produce favourable results, even if the power sharing is disguised in the form of legislation.

"This is more so when it is supported by sloppy and ambiguous drafting. With legislation not being comprehensive, effective and definite, it is not surprising that various interpretations will be given to the provisions and demands will increase", she told her audience.

She added, "Notwithstanding recommendations, it is the duty of competent and qualified draftsmen to offer proper advice, point out flaws in ideas and consequently avoiding unworkable laws that would inevitable create difficulties and open the floodgates to litigation and chaos.

"As an alternative, even if there is a general consensus particularly by the governing party to share power, it is expected that the experts would clearly define the power and make provision for the likely situation when the legislative mechanism produces a non result or a non-meeting of the minds.

"The present situation is particularly disturbing. I had commented earlier that proper advice and drafting were particularly important in a society which was already charged with high political tension and the concomitant well known negative consequences, I repeat it is poor drafting and absence of clarity which encourages those who wish to undermine the rule of law.

"The constitutional reform process has also produced many unrealistic and

unworkable solutions without including alternative mechanisms. This unpalatable brew which has resulted from this process seems to be a recipe for enhancing political affiliation rather than ensuring the paramountcy of competence. What has happened in fact is that, the experts have not anticipated problems that were likely to arise and will continue to arise.

“What the present constitutional reform process has certainly done is to highlight the importance of the skill of legislative drafting. To draft out and paste style is to go to sea without a compass, but to draft without civil litigation experience is not to go to sea at all. It places an unfair burden on the legal profession and the judiciary as very often what we have is a cacophony of misused words and phrases.

“The use of the phrases ‘he or she’ ‘his or her’ five times in one sentence illustrates a lack of awareness of the proper use of gender neutral language. In addition no attempt was made to draft the amendments in simple, clear, accurate and unambiguous language.

Verbosity and tautology were the preferred style”, Miss Ali told the lawyers at the GBALC on April 6, 2002.

When contacted yesterday, Miss Ali told the Guyana Chronicle that the circumstances that prevailed in 2002, in relation to draft persons, are similar to the prevailing circumstances.

The decision by Justice Ramlal which according to a report by President Jagdeo, will be challenged in a Court of Law, read:-

- (1) The spirit and intent of the Constitution does not permit the simultaneous holding of the Offices of Chancellor and Chief Justice and the performance of the functions of the respective offices by the same person.
- (2) the Constitution intends that the Office of Chancellor of the Judiciary and the Office of Chief Justice of the Republic of Guyana are two separate and distinct constitutional offices to be held or the functions thereof performed by two different persons.
- (3) the Constitution does not permit the same person holding the Office of Chief Justice to hold the Office of Chancellor. It does permit the person holding the Office of Chief Justice “to perform the functions of the Office of Chancellor” but while performing the Office of Chancellor that person cannot perform the functions of the Office of the Chief Justice.
- (4) The Constitution does not permit the person holding the Office of Chief Justice to perform the function of the Office of Chief Justice to perform the function of the Office of Chief Justice while performing the functions of the Office of Chancellor of the Judiciary.
- (5) The Constitution does not permit the person performing the function of the Office of Chancellor to perform the functions of the Office of Chief Justice while performing the

Office of Chancellor.

(6) The Constitution does not permit the Office of the Chancellor or person performing the functions of Chancellor and the Office of Chief Justice or person “performing the functions of Chief Justice” to be vested in the same person.

(7) It is further ordered that the Declaration sought that the appointment of the Honourable Chief Justice, Mr. Carl Singh, “to act” or “to perform the functions” of the Office of Chancellor has become unconstitutional by his continuing so “to act” or “to perform the functions” is hereby refused.

(8) The Constitution permits the person performing the functions of Chancellor, Mr. Carl Singh, to continue to do so until a person has been appointed and assume the Office of Chancellor or until he is duly promoted to Chancellor or until he relinquishes that office or until that appointment comes to an end by his death, resignation, retirement or Order of a Court of competent Jurisdiction.

(9) The spirit of the Constitution never envisaged the situation where the parties named in Article 127 (1) would take as long as they already have in either appointing a person to hold the office of Chancellor pursuant to Article 127 (1) or appointing a person to perform the functions of the Office of Chief Justice whilst the substantive Chief Justice is performing the functions of the Office of Chancellor.

(10) the failure to appoint a person to perform the functions of the Office of Chief Justice pursuant to Article 127 (2) of the Constitution, there being no agreement by the parties named in Article 127 (1) to appoint a person to hold the Office of Chancellor, for such prolonged period of time is a violation of Article 122 A (1) of the Constitution by the parties named in Article 127 (1) and of 127 (2) of the Constitution”, Justice William Ramlal had ruled.