National Assembly Debates

PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2006-2007) OF THE NINTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN **Part I of III**

30th Sitting | 14:00h | Thursday 2 August 2007

MEMBERS OF THE NATIONAL ASSEMBLY (71)

Speaker (1)

The Hon Hari N Ramkarran SC, MP
Speaker of the National Assembly
Members of the Government (42)
People's Progressive Party/Civic (41)
The United Force (1)

The Hon Samuel A A Hinds MP
(R# 10 - U Demerara/U Berbice)
Prime Minister and Minister of Public Works and Communications
The Hon Clement J Rohee MP
Minister of Home Affairs
The Hon Shaik K Z Baksh MP
Minister of Education
The Hon Dr Henry B Jeffrey MP
Minister of Foreign Trade and International Cooperation
The Hon Dr Leslie S Ramsammy MP
(R# 6 - E Berbice/Corentyne)
Minister of Health

The Hon Carolyn Rodrigues-Birkett MP
(R# 9 - U Takutu/U Esseq)
Minister of Amerindian Affairs
*The Hon Dr Ashni Singh MP
Minister of Finance
*The Hon S Rudolph Insanally OR, CCH, MP - *(AOL)*
Minister of Foreign Affairs
The Hon Harry Narine Nawbatt MP
Minister of Housing and Water
The Hon Robert M Persaud MP
(R# 6 - E Berbice/Corentyne)
Minister of Agriculture
The Hon Dr Jennifer R A Westford MP
(R#7 - Cuyuni/Mazaruni)
Minister of the Public Service
The Hon Kellawan Lall MP
Minister of Local Government and Regional Development
*The Hon Doodnauth Singh SC, MP
Attorney General and Minister of Legal Affairs
The Hon Dr Frank C S Anthony MP
Minister of Culture, Youth and Sport
The Hon B H Robeson Benn MP
Minister of Transport and Hydraulics
**The Hon Manzoor Nadir MP
Minister of Labour
The Hon Priya D Manickchand MP *(AOL)*
(R# 5 - Mahaica/Berbice)
Minister of Human Services and Social Security
The Hon Dr Desrey Fox MP
Minister in the Ministry of Education
The Hon Bheri S Ramsaran MD, MP
Minister in the Ministry of Health

*Non-elected Minister **Elected Member from TUF

The Hon Jennifer I Webster MP
Minister in the Ministry of Finance
The Hon Manniram Prashad MP
Minister of Tourism, Industry and Commerce
Mr Donald Ramotar MP
The Hon Gail Teixeira MP
Mr Harripersaud Nokta MP
Mrs Indranie Chandarpal MP
Ms Bibi S Shadick MP
(R# 3 – Essequibo Is/W Demerara)
Mr Mohamed Irfaan Ali MP
Mr Albert Atkinson JP, MP
(R# 8 - Potaro/Siparuni)
Mr Komal Chand CCH, JP, MP
(R# 3 - Essiquibo Is/W Demerara)
Mr Bernard C DeSantos SC, MP
(R# 4 - Demerara/Mahaica)
Mrs Shirley V Edwards JP, MP
(R# 4 - Demerara/Mahaica)
Mr Mohamed F Khan JP, MP
(R# 2 - Pomeroon/Supenaam
Mr Odinga N Lumumba MP
Mr Moses V Nagamootoo JP, MP
Mr Mohabir A Nandlall MP
Mr Neendkumar JP, MP
(R# 4 - Demerara/Mahaica)
*** Mr Steve P Ninvalle MP
Parliamentary Secretary
Mr Parmanand P Persaud JP, MP
(R# 2 - Pomeroon/Supenaam)
Mrs Philomena Sahoye-Shury CCH, JP, MP

***Non-elected Member
***Mrs Pauline R Sukhai MP

Parliamentary Secretary
Mr Dharamkumar Seeraj MP
Mr Norman A Whittaker MP
(R# 1 - Barima/Waini)

Members of the Opposition (28)
(i) People's National Congress Reform 1-Guyana (22)

Mr Robert HO Corbin
Leader of the Opposition
Mr Winston S Murray CCH, MP
Mrs Clarissa S Riehl MP
Deputy Speaker, performing duties of Speaker of the Nat. Assembly
Mr E Lance Carberry MP
Chief Whip
Mrs. Deborah J. Backer MP
Mr Anthony Vieira - *(Absent)*
Mr Basil Williams MP - *(AOL)*
Dr George A Norton MP
Mrs Volda A Lawrence MP - *(Absent)*
Mr Keith Scott MP
Miss Amna Ally MP

Mr James K McAllister MP - *(Absent)*
Mr Dave Danny MP
(R# 4 - Demerara/Mahaica)
Mr Aubrey C Norton MP
(R# 4 - Demerara/Mahaica)
Mr Ernest B Elliot MP
(R# 4 - Demerara/Mahaica)
Miss Judith David-Blair MP
(R# 7 - Cuyuni/Mazaruni)

Mr Mervyn Williams MP
(Re# 3 - Essequibo Is/W Demerara)
Ms Africo Selman MP
Dr John Austin MP - *(Absent)*
(R# 6 - East Berbice/Corentyne)
Ms Jennifer Wade MP
(R# 5 - Mahaica/Berbice)

Ms Vanessa Kissoon MP
(R# 10 - U Demerara/U Berbice)
Mr Desmond Fernandes MP
(Region No 1 – Barima/Waini)

(ii) Alliance For Change (5)

Mr Raphael G Trotman MP
Mr Khemraj Ramjattan MP
Mrs Sheila VA Holder MP
Ms Chantalle L Smith MP - *(Absent)*
(R# 4 - Demerara/Mahaica)
Mr David Patterson MP

(iii) Guyana Action Party/Rise Organise and Rebuild (1)

Mr Everall N Franklin MP

OFFICERS

Mr Sherlock E Isaacs
Clerk of the National Assembly
Mrs Lilawatie Coonjah
Deputy Clerk of the National Assembly

PRAYERS

The Clerk reads the Prayer

The Speaker: Thank You. Please be seated.

PRESENTATION OF PAPERS AND REPORTS

1. By the Honourable Minister of Home Affairs

Mr. Speaker, I regret to inform this Honourable House that, due to the fact that this summary continues to be a work in progress, I would not be in a position to present it and therefore ask that it be withdrawn until sometime in the future.

2. By the Honourable Minister of Finance

Mr. Speaker, I beg to present the *Constitutional Offices-Remuneration of Holders-Order No. 17 of 2007.*

The Speaker: Thank you.

INTRODUCTION OF BILLS

First Reading

1. **FOREST BILL NO. 21/2007**

By the Honourable Minister of Agriculture

Mr Speaker, I beg to present my first bill, 2007, Bill 2007 *intituled* an Act to Consolidate and Amend the Laws Relating to Forest Bill No.21/2007, and I move that the Bill be read for the first time.

Second Reading

HIGH COURT (AMENDMENT) BILL 2007, BILL NO. 19/2007

The Speaker: Honourable Members, we can now proceed with the Second Reading of the High Court (Amendment) Bill 2007, Bill No. 19/2007

Honourable Attorney General, Minister of Legal Affairs …

Mr. Corbin …

Mr Robert H O Corbin: Mr. Speaker, I was trying to attract your attention before you called that item for permission to explain to you the PNCR/1G's position on this matter with respect to this Bill, which we believe, if proceeded with, would be a flagrant violation of the rule of law in this country. We have attempted, by letter, and in every possible way, to attract the attention of the Government in an effort to have this matter amicably resolved. We even sought the proper clarification, so that the Constitution could be properly interpreted before this National Assembly proceeds to deliberate on a matter, which we very strongly believe is in violation of the Constitution.

Unfortunately, it appears that good sense could not prevail, and even in an attempt this morning to have this matter adjudicated, there has been no order issued in a manner which would prevent this National Assembly from proceeding. In such circumstances I wish to make it very clear that, so far as the PNCR/1G is concerned; we would not wish to proceed-to participate in a matter, which we believe is in violation of the Constitution, at this particular time. We would not participate further in

this matter, and we hope that, at some point, the court would rule on this matter.

The Speaker: I understand, Mr. Corbin.

Honourable Members…you are leaving?

Mr Robert H O Corbin: Yes.

The Speaker: Thank you very much.

Thank you, Honorable Members as I said we can now proceed with the second reading of the Bill. Hon Attorney General, Minister of Legal Affairs…

Hon Doodnauth Singh: May it please you, Mr. Speaker … Despite the fact that British Guiana was neither a part, nor a member of the West Indies Federation, Section 3 of the 1957 Order in Council vested in the Federal Supreme Court the jurisdiction to hear and determine appeals from the Supreme Court of British Guiana. Further, the 1958 Ordinance, No. 19 of 1958, referred to as the Federal Supreme Court Appeals Ordinance, conferred jurisdiction in the federal Supreme Court of the West Indies to hear and determine appeals from the Supreme Court of British Guiana, which was headed by the Chief Justice.

Section 7.1(a) and (b) ii of the British Guiana Appeals Order in Council, 1957, enable the Chief Justice and any other two other Judges of the Federal Supreme Court to make rules regulating the practice and procedure thereof.

In 1962, when it was deemed necessary to dissolve the Federation of the West Indies, the British Caribbean Court of Appeal Order in Council 1962, Statutory Instrument No. 1086 of 1962, which was made on the 23rd May 1962, established the British Caribbean Court of Appeal. Thus, it was seen that the British Guiana Appeals Order in Council-1957, the Federal Supreme Court Appeals Ordinance-1958, and the Federal Supreme Court Appeals from British Guiana-1959, continued to have full force and effect until the country became independent in 1966. During this entire period, from the formation of the West Indian Court of Appeal in 1919, to independence in 1966, the Chief Justice was the Head of the Judiciary. In 1966, Guyana became an independent country by virtue of the Guyana Independence Act 1966, and the Guyana Independence Order 1966-Statutory Instrument No. 575 of 1966.

The Guyana Independence Order-in-Council, made by Her Majesty in Council on the 16th May 1966, revoked, under schedule 1, a number of orders. In schedule 2, the said Order provided for the Constitution of Guyana. In Chapter 7, reference is made to the provisions relating to the Judicature. In Article 83, the Supreme Court of Judicature was established, and that Supreme Court of Judicature comprised the Court of Appeal and the High Court.

Article 84 stated: *the Judges of the Court of Appeal shall be the Chancellor, who shall be the President of the Court of Appeal, the Chief Justice, and such number of Judges of Appeal as may be prescribed by Parliament.* Article 88 ii (b) empowers the Chancellor to advise the Governor General on the appointment, with the advice of the Judicial Service Commission, to appoint judges to both the High Court and the Court of Appeal. Both Articles 84 and 88 established the preeminence of the position of the Chancellor as head of the Judiciary in place of the position which existed, prior to independence, when the Chief Justice was the Head of the Judiciary. This historical background must be understood and appreciated, with respect to the position of the Chancellor and the Chief Justice. Section 66 of the High Court Act makes provision for the Chief Justice to distribute and assign duties to judges of the High Court. The proposed Amendment, giving supervisory power to the Chancellor, does not provide a mechanism for the Chancellor to give directions to the judges of the High Court. The independence of the Judiciary is maintained.

The Constitutional Provisions dealing with the independence of the Judiciary ensures that judges are independent of each other, and are not subject in the exercise of the judicial functions from any other Judge, including the Chief Justice and the Chancellor. The distribution of matters before the court has been left to the administrative component of the Court. The Legislature,

under Section 66 of the High Court Act, provided this to be an administrative control within the Judiciary, and the involvement of the Chancellor in this process cannot be considered unconstitutional.

The Chancellor is the Head of the Judiciary, despite the fact that there is no expressed provision to that effect. The Chancellor presides as President of the Court of Appeal, within the ambit of Article 124, and the Chief Justice is a member of that Court. The Chancellor takes precedent over all judges of the Supreme Court, including the Chief Justice under Section 35 of the Court of Appeal Act. Further, Article 95 provides that the Chancellor may act as President of Guyana in certain circumstances. In the 1961 Constitution, Article 89 provided for the Chief Justice to be the Chairman of the Judicial Service Commission; whilst under 93 of the 1966 Constitution, the Chancellor replaced the Chief Justice as Chairman of the Commission; whilst Article 198 of the present Constitution maintains the position of the Chancellor as Chairman of the Commission. These provisions highlight the Chancellor's higher status in the hierarchy of the Judiciary over the Chief Justice. In addition, the Chancellor is involved in the administrative business, in that the Rules Committee makes the rules of the High Court; while certain members of the Committee are appointed by the Chancellor. Rules may also include those for the purposes of regulating sittings of the Court and of the Judges in chambers.

In accordance with Section 67, whilst under the provisions of Section 28 of the High Court Act, the Chancellor may direct ordinary and special sittings of the court in its criminal jurisdiction. This Amendment would not only further cement the status of the Chancellor as head of the Judiciary, but would also improve the administration of justice in the public interest. As head of the Judiciary, the proposed amendment would be a statutory expression of a moral and judicial duty to overlook the administrative operations of the Judiciary.

The Chancellor's involvement would improve the standards of conduct and efficiency of judges. This supervision would seek to assist expeditious progress on all matters before the Court. The proposed Amendment would bring to the attention of the Chancellor, shortcomings or deficiencies in the Judiciary, or on the Judicial System; so that recommendations could be proposed for improvements. Under Article 128 i (b) of the Constitution, the Chancellor advises the President whether the state of business of the Court of Appeal, and the High Court, requires the President to act, in accordance with the advice of the Commission to appoint persons to the offices of Justices of Appeal or puissance judges of the High Court.

Mr. Speaker, finally, there is no legal impediment to the enactment of the proposed amendment. The amendment is to a statutory function, and it can be amended by the

parliamentary procedure by which the statute was made. There is no threat to the administration of justice. Any criticisms which may be leveled would be tantamount to a serious allegation that the Chancellor, as head of the Judiciary, and Chief Administrator of justice, would be incapable of upholding the rule of law, and the administration of justice. This would indeed be a serious indictment of the highest judicial officer appointed under the Constitution.

By virtue of the Guyana Independence Adaptation and Modification of Acts Order 1966, which came into operation on the 26th May 1966, provision was made, in Section 36 (a) i, to the effect that the Chancellor should have precedence over all other Judges of the Supreme Court of Judicature. Indeed, this identical provision is mirrored in Section 35 (1) of the present Court of Appeal Act, Chapter 3:01. This is an acknowledgment of the Chancellor as head of the Judiciary, and the amendment seeks to give administrative precedence to the authority of the Chancellor.

To summarize the position-Prior to independence, the Court of Appeal for Guyana was the Chief Justice of the Federal Supreme Court of the West Indies, and the Chief Justice was the head of the judiciary. With the attainment of independence in 1966, the Guyana Court of Appeal was created in place of the Federal Supreme Court. The issue then arose for the identification of the head of the

judiciary. This matter could have been dealt with in one of three ways:

I. Make the Chief Justice the President of the Court.

II. Create the position of the President of the Court of Appeal, as was done in Jamaica, or

III. Create the independent position of a Chancellor.

Mr. Speaker, the government of the day elected to create the post of Chancellor. It was obvious, that with the creation of the post of Chancellor, the question would then arise as to whom would be the head of the judiciary. The government of the day decided to have the Chancellor:

I. Appointed Chairman of the Judicial Service Commission in place of the Chief Justice.

II. The Chancellor was Chairperson of the rules Committee, empowered to appoint members thereof.

III. To recommend to the President if the business of the Court required additional judges.

Perhaps this additional amendment which, we are seeking to put in place today ought to have been enacted in 1966, in which case it would not have been alleged that the government was acting mala fide and with ulterior

motives. Perhaps it might have been felt that enough had been done to establish the Chancellor as head of the Judiciary and the preeminence of the position over the judges, including the Chief Justice. This might have been the view of the Government of the day, which was being led by the Honourable Forbes Burnham, one of Her Majesty's counselors.

This Amendment could very well be described as a tidying-up legislative mechanism, which demonstrates the precedence of the Chancellor over the Chief Justice and other Judges, and, administratively, as the head of the Judiciary. Mr. Speaker, may it please you, in the circumstances, I move that the Bill be read a second time. *[Applause]*

The Speaker: Thank you Honourable Member. Honorable Member, Mr. Anil Nandlall.

Mr. Anil Nandlall: Mr Speaker**,** I rise to lend my support to this Bill that is before this House, and I wish to take this opportunity to applaud and congratulate the Honourable Attorney General, not only for tabling this Bill, but also for his excellent presentation in support of it (*Applause)* Mr. Speaker, I agree with the Honourable Attorney General that this Bill is 47 years late in time, and should have been promulgated since 1966.

Other than the United Kingdom, Guyana is the only country that has the position, in its judicial structure,

known as Chancellor. The Lord Chancellor of England is the head of the British Judiciary. In 1966, with the coming into force of the Independence Constitution, came the establishment, for the first time in the constitutional legal history of Guyana, the Court of Appeal of Guyana, and the office of Chancellor of Judiciary, as President of that Court, and as head of the Guyana judiciary. Hitherto, the head of the Judiciary of Guyana was the Chief Justice, who was then the President of the then Supreme Court of British Guiana, which then consisted of the High Court and the Full Court.

There was no Court of Appeal of Guyana. Appeals then used to go to the Federal Supreme Court, and then the British Caribbean Court of Appeal, and Appeals from those courts went to Her Majesty's Privy Council. That was the hierarchal structure of the judiciary in Guyana, prior to 1966. It was with the establishment of the Court of Appeal that the Office of the Chancellor was created. There is no doubt that, with the addition of a superior court to the intrinsic hierarchy of the judicial structure, the head of that court would become the head of the Guyana judiciary. That was the clear and manifest intention of the framers of the Constitution.

In fact, there is an anecdotal tale behind the creation of the office of the Chancellor, which I wish to share with this Honourable Assembly. Sir, It was public knowledge, then, that Prime Minister Forbes Burnham, whilst he was

in private practice, had a very antagonistic relationship with the then Chief Justice of Guyana, Sir Joseph Luckhoo. When Guyana became independent, rather than promote Chief Justice Luckhoo as head of the Judiciary, Mr. Burnham created a court and an office over and above that of the Chief Justice and appointed, to that office, a judge, who was junior to Justice Luckhoo, Sir Kenneth Stoby; whom he, who was junior to Justice Luckhoo made head of the judiciary; so there was no doubt as to whom would head the judiciary when the office of Chancellorship was created. However, if there is any doubt, I would now enumerate certain legal duties and responsibilities of the Chancellor, which I hope would demonstrate, beyond any rational disputation that the Chancellor is the functional head of the Judiciary. Mr Speaker, I wish to begin with the Magistrate Court. As your Honour is aware, the Magistrate Court is the nadir of the hierarchical structure of the Judiciary. By Section 3 of the Summary Jurisdiction Magistrates Act Chapter 305- Laws of Guyana, it is the Chancellor, not the Chief Justice, Mr. Speaker, but the Chancellor who, by order, has the power to divide Guyana, or any part of Guyana, into Magisterial Districts.

> It is the Chancellor who has the power to constitute any part of Guyana into a Magistrate District

And

it is the Chancellor who has the power to distinguish districts by names and numbers, as he sees fit. The Chancellor also has the power to vary the limits of any of those districts.

Those are not functions that are performable by the Chief Justice, but they are functions that are imposed in the Chancellor; so the Chancellor is the supervisory head of the magistracy.

Section 6 of the Act further provides...and I am speaking, Sir, of the Magistrates Court Act, Section 6 of the Act provides that the presiding officer of the court shall be a magistrate, appointed under this Act, and assigned to that court by the Chancellor; so it is the Chancellor assigns a magistrate to a Magistrate Court-not the Chief Justice.

Section 9 of that Act provides that the Chancellor may assign a magistrate to preside over a particular court(s), or to a court at a particular place(s), in the area to which he is appointed, and may determine the days and hours of the sitting of that court, and the matters or classes of matters with which that

particular court shall deal, and generally have charge of the administration of the system of the court established by the Act.

The Chancellor of the Judiciary is comprehensively the head of the entire magistracy, not the Chief Justice.

Section 12 of the Act further provides that the Chancellor may direct that a particular magistrate shall not adjudicate on a particular cause or matter coming before him, because of the magistrate's personal interest in that cause or matter, or for any other sufficient reason, and shall, in such case, assign another magistrate to adjudicate on that cause, or matter.

Section 21 of that Act further provides that there shall be a Clerk of Court for each district who shall be the Principal Administrative Officer for that Court, and whose office shall be situated in such place as the Chancellor shall specify; so even the appointment of the clerk of the Magistrate Court is a function that the Chancellor performs, not the Chief Justice.

Sir, I have dealt with the Magistrates Court, and I hope that I have demonstrated that the Chancellor is the functional head of the entire magistracy of Guyana. I shall now move to the High Court, with your kind permission. Sir, by Section 3 of the High Court Act, Chapter 302-Laws of Guyana, as amended by Section13 of the Administration of Justice Act 1978-a relatively modern amendment...

1978 was the period of party paramount, sir. It is the Chancellor who has the power to appoint a judge of the High Court to sit in the Court of Appeal as an additional judge.

It is also the Chancellor who permits a judge of the Court of Appeal to come down to the High Court to preside over the High Court as a High Court Judge. These are functions that are not to be performed by the Chief Justice, but by the Chancellor. I am giving all these examples to demonstrate that the Chancellor is the functional head of the Judiciary.

By Section 4 of the High Court Act, it is the Chancellor who determines what device or

impression shall be used as seal of the Supreme Court and how many seals there may be.

Sir, Section 27 of the High Court Act says that it is the Chancellor who has the power to suspend or postpone any sitting of the High Court by publishing a notice in the Gazette.

By Section 30 and 31 of the High Court Act it is the Chancellor who has the power to determine that the High Court may sit at any place, other than the High Court Houses at Georgetown, Demerara; Suddie, Essequibo, and New Amsterdam, Berbice, by publishing a notice in the official Gazette, specifying the place(s) where the sitting(s) of the Court may be held.

By Section 67 of the High Court Act, it is the Chancellor who is the Chairman of the Rules Committee, and who has the power to appoint persons to sit on that Committee.

Under the Constitution of Guyana, it is the Chancellor who is the Chairman of the Judicial Service Commission, and as the Honourable Attorney General explained, it was the Chancellor who replaced the Chief Justice. What could have

been the intentions behind replacing the Chief Justice with the Chancellor, if the intention was not to make the Chancellor the head of the judiciary? What functions does the Judicial Service Commission perform? It performs the very fundamental function of making recommendations to His Excellency the President as to whom may be appointed as judges of the High Court. It is the Chancellor, not the Chief Justice, who plays that integral, procedural role in making appointments of those who may sit in the High Court as Judges.

I now move to the Court of Appeal. By Article 124 of the Constitution the judges of the Court of Appeal shall be the Chancellor, who shall be the President of the Court of Appeal, the Chief Justice, and any other member that may be prescribed by Parliament.

The Chancellor is also the President of the Court of Appeal, and as the President of the Court of Appeal, he performs and superintends over all functions in relation to the management and running of the court; and the Honorable Attorney General dealt admirably with the preeminent role that the Chancellor plays in respect to the Court of

Appeal, in terms of its constitution, as well as its functioning.

Therefore, it is clear that the chancellor is the functional de jury head of the Judiciary. The argument that this Bill seeks to place the Office of the Chief Justice under the dominion of the Chancellor is indeed a very puerile one. The Office of the Chief Justice **is** under the dominion of the Chancellor, and has been so for the last 45 years. All that this Bill seeks to do… *[Interruption: Mr. Ramjattan, I am answering]*…is to correct an anomaly, whereby you had the head of the Judiciary having no administrative control over an important institution under his administrative purview. That is what the Bill seeks to do.

This Bill seeks to repose in the Chancellor the supervisory power and functions, and the power to exercise that supervisory role, over a court that he clearly has dominion over. Mr Speaker, any eminent public lawyer, as your Honour certainly is, would be aware that, in public law, the law does not repose a responsibility without giving one the power to exercise that responsibility. What we have is the anomalous situation where the Chancellor has the responsibility of the judiciary, but has no power over the way business is distributed in the High Court. We have the anomalous legal position of a responsibility, but not the accompanying power to discharge that responsibility. This Bill seeks to correct that anomaly.

The further argument that this Bill seeks to emasculate the Judiciary is also facile, because this Bill does not remove from the office of the Chief Justice any of the functions of that office. It only seeks to make that office responsible to its functional superior. I have heard the arguments made and advanced over and over, that this Bill would emasculate the Office of the Chief Justice. How is that possible? This Bill is not taking away any functions from the Chief Justice that the Chief Justice is now performing. The Chief Justice remains the President of the High Court. The Chief Justice remains responsible for the High Court, but in the discharge of that responsibility, he is now subject to certain directions of his boss.

There has never been a Chief Justice of this country, after 1966, who felt that he was head of the Judiciary. He could not have felt so because, after 1966, the head of the judiciary was always the Office of the Chancellor; so no Chief Justice could have felt that he was the head of the Judiciary. Who the Chief Justice is, is the President of the High Court, and in the discharge of those functions, his powers remain intact. Since the Chief Justice is not the head of the Judiciary, he must be answerable to someone, and this Bill makes him responsible to the Chancellor.

I cannot understand the argument that this Bill seeks to emasculate the Chief Justice, and to suggest that a Chancellor of Guyana would give directions to a Chief Justice that is improper-and directions that would seek to

compromise the independence of the Chief Justice, is an extremely serious allegation to make. It is also an indictment on our highest judicial office; because we are accusing the head of our judiciary of giving directions of a compromising, unlawful and unconstitutional nature to a judge. Neither he nor any other person can do that, in respect of any judge, not only the Chief Justice.

So, not only can the Chancellor not give such directions to the Chief Justice; but no person can give any other judicial functionary such a direction. No Chief Justice worth his salt would accept, and be subject to such a direction. Sir, there is a statement, and there is a saying that, if there is one set of people that we must ever trust in our democracy, it is the judges. In the absence of evidence to the contrary, I would ask that this Assembly repose that trust. We cannot read into things what does not exist.

> In conclusion, this is a simple Bill that has been made unduly controversial by politicians who have advanced all manner and types of skewed political arguments and contentions. . Therefore, I call upon this House to reject those arguments, and to support this Bill. Thank you very much. *Applause…*

The Speaker: Thank you Honourable Member.

Honorable Member, Mr. Ramjattan ...

Mr. Khemraj Ramjattan: Mr Speaker. It is important that the Chief Justice and the Chancellor should have shared the same functions that Mr. Anil Nandlall is talking about. So much is in the hands of the Chancellor already-the seals, the magistracy, and the Presidency of the Court of Appeal. But do you know what? It is essentially going to be a situation whereby they are going to say that all should go into one man's hand.

That is essentially what we have here as the so-called harmony, in keeping with the Court of Appeal of our territories. This is so unacceptable and immoral, and the sinister motive behind it comes out, because it is coming at this point in time … *[Interruption: 'Who is the head of the AFC*? *It is Mr. Trotman and you never said that' "I am the head of the AFC … All of a sudden this is a big thing"]*

The Speaker: Honourable Member Mr. Ramjattan.

Mr. Kemraj Ramjattan: I beg your pardon.

The Speaker: Do not allow any noise that you might be hearing to detract you from your presentation, and if you wish me to silence them, then you may say so.

Mr. Kemraj Ramjattan: I seem to get on better with the heckling. What we do, when it comes to looking at questions like these, is that we look at the motive behind them. There was an election only a few months ago, and they never mentioned changing these powers … *[Interruption who they...* "the PPP/Civic".] They indicated at a Constitutional Reform Commission, some years ago, by their silence on the issue, nothing on the changing of the powers, duties and functions of the Chancellor, as against that of Chief Justice.

And since 1966 when Mr. Burnham created this kind of duality in the Judiciary, it worked, and it worked well. Suddenly, there is an impasse with Mr. Robert Corbin and President Jagdeo - a big impasse as to whom will be placed as Chancellor, and who would be Chief Justice; so effectively, they now obviously want all the powers to be in that person whom they find favour with in relation to holding the chancellorship. This is the sinister motive. They could speak from morning `till noon about the functions of the Chancellor, functions which were mentioned by Mr. Nandlall in Sections 3 and 12 of the High Court.

Whatever was in existence over that period of 20-29 years worked? The fundamental difference between the Alliance for Change, PNCR/1G and the PPP/C; is that two of them were basically allowed to have their favorite as the appointee. It may or may not necessarily be the

person who knows exactly what has to be done. They want their favorites. That is why they are at an impasse. They also want to show the façade of engagement. I remember when Mr. Raphael Trotman and I were called to the Office of the President so as to have constructive engagement, one of the things addressed as the appointment of Chancellor and Chief Justice. They literally sidelined the Alliance for Change, who had lots of advice to give on the issue. That is why we have this dilemma now. They came with a High Court (Amendment) 2005 - they came with one in 2005, and one now in 2007. They changed it around, but it had the same sinister motive. Again there is control freakism. That is what it is. That is another example of it. I want to say that an independent judiciary has certain characteristics about it, and it should be made sacrosanct. It should not be like a yoyo, when there is a favourable Chief Justice, or any other administration has an Honorable Chief Justice; then the powers remain and then if you have a Chancellor, you let it follow him, and when there is no Chancellor supporting you then you go to CCJ. If not, you bring it back down to a favorite in the CJ position. What we are doing here is allowing the political branch in a democracy, West Minister style, to literally give the power to which the majority of that political branch wants to give it to. That is the unacceptability of this thing, because if there is no Chancellor tomorrow, or this Chancellor, whomever they appoint, is not behaving in accordance with their wishes, they would then transfer

to some other judge, the position of Chief Justice again. This Parliament seeks to do it now, and this just goes to show that they have it like a yoyo, while trying to use the pretext that Mr. Nandlall is speaking about; the pretext being, oh yes. But we must understand that the Chancellor is an extremely busy person. He has a lot of responsibilities, all of these functions and to add to it he has to supervise everything, just like the Minister in the Forest Commission Bill.

Under this Bill he has the power to supervise, and give general directions, and everything else. Therefore, if there is an assignment of a case and the Government probably does not like it, they can indicate…by virtue of what the Chief Justice is doing that they do not like-they can ask the Chancellor for the purposes of ensuring that special and general directions be given. That is what is here. I am not being critical of the incumbent Chancellor have, but I am simply saying that when you give this kind of power, subject to any general or special directions of the Chancellor, the Chief Justice has all those powers, it is tantamount to a degutting of the Chief Justice's powers. Which reasonable-thinking mind cannot come to that conclusion? It is but an interference of what was regarded as a settled position. The settled position was always that the Chief Justice has those powers under the High Court Act; and the Chancellor has those other powers under the same High Court Act, along with the Constitution. They were, none-or-less, positions a par with each other,

because both of them are in the Judicial Service Commission. The spokesperson, on behalf of the Judiciary to the Executive branch, as we know, is the Chancellor, and he has so many things to do aside from that.

Why should we now add this if it does not have some sinister motive? Notwithstanding what my learned friend Mr. Nandlall was saying, it would be wrong to say that the Chancellor could direct if the Chief Justice does not do something proper. What this Bill does, is that it creates the possibility and the probability to have that occurrence. That is what that Bill does… It was no there before. Therefore it cannot be said that this Bill does nothing, because it does. It creates the possibility and the probability that it could now occur that the Chief Justice gives a direction which the Chancellor could now override.

If you are saying that was always the position, then why not leave it like that? Why come here with a Bill? It is so illogical to give such an argument, as was just done, both by the Attorney General and Mr. Nandlall. The subject of this Bill, notwithstanding it is just one paragraph, has tremendous effects and consequences on our Judiciary, or at least the possibility and the probability of them all. I want to say that non-judicial forces, those politicians, should not be encroaching into these areas with the regularity or the simplicity, as if it could happen at

anytime … frequency. They must not be able to touch the judiciary like that. Okay, I agree that the Attorney General and Mr. Nandlall are right when they said that the Bill is a statute that would be passed, and an Amendment to it could be passed by virtue of a simple majority. But that is why we have conventions that are inherent in our Constitution. We must not touch these things as lightly as the PPP/C is so doing. You must look at it and ask yourself the questions whether it is going to be unsettling, sacrosanct - settled positions; and whether it is going to make that which was permanent, not withstanding it was created some time ago, and whether it is going to displace certain things. Another question you can ask yourselves is whether it is going to create certain measures of insidiousness and invidiousness.

That is what it does. It displaces ... and the other thing is that it is untimely. It comes at a time when there is an impasse; when there is a situation whereby one person is literally performing the functions of Acting Chancellor and that of Chief Justice. You are pressuring it ... because it is well-known ... I have the utmost respect for the Chief Justice, and probably the incumbent Chancellor, but it is well known … and I am absolutely certain that this Bill would leave a bitter taste in his mouth too. It is appearing as if the PPP/C wants to give him the power, and to have it follow him as he moves up.

I am absolutely certain-knowing how right-thinking he feels, but you would now make it appear as if it is a normal thing. This is what I have been preaching all along, that we must judicialise all of our politics. We must not politicize our judiciary as they have been doing. They are politicizing our judiciary, so the little measure of hope that you have for agreement being made can all come to naught. That is why we are going to have more strife between the two major parties on this issue of judicial appointments, and because of that, we are going to have major problems in the judiciary.

The problems are there right now for all to see. Judicial independence is at risk. One is not saying that everyday the Chancellor might necessarily give the Chief Justice a direction, but is there the risk the possibility and the probability of it occurring. This is a certain threat to the use and control of that institution called the judiciary so that the outcome of decisions of the court could be affected. We know of judges having certain philosophical approaches to their task at hand.

It definitely changes it. We could have a certain decision going one way because of a certain Judge. You know that, because you studied reality and jurisprudence. It has that effect. The effect is that, when there are certain judges doing certain cases then will have a certain judicial outcome. This is what it is. So what you want now is not Chief Justice to assign cases, you want a Chancellor. That

is the whole point behind it. We have the doctrine of separation of powers; we are a West Minster model of democracy. The Judiciary, Executive and Parliament must be independent; but each branch, as a result of the conventions, must not encroach into the others territory.

We are encroaching here, and we are encroaching without a direct mandate. As I said, the Constitutional Reform Commission-you over there, when I was there with you, you never said that you want to change it up. In all the Elections that you have won, you never said to the people that you want to change up Chief Justice. You know, it does not go down nicely. When at the appointment of the present Chief Justice; did it not dawn on you that you should change it then and give the powers to the Chancellor? Why in 2007 you want to give the powers to the Chancellor? What is that? It is extremely unacceptable.

It could be passed, I agree, but convention-and the fact that each Branch of Government should have self restraint, not to touch… it is why I am saying that we should not support it. It has tremendous negative consequences to our judiciary. What it also does, is create the precedence that persons in the political branch of this Legislative Chamber can, at any stage, feel that the power should be taken back from the Chancellor; do so. We do so when we feel that it should be given to some other person. So, if one feels that the Court of Appeal or some

High Court judge should have the power, then one so does.

That is a bad precedence to set. I also want to say a thing or two, because there was public lobbying that this Bill be passed. This lobbying was by the President, who was indicating that he wants to harmonize Guyana's judiciary and judicature to those of the other Caribbean. He apparently does not see the need to harmonize, his legislature as well as to demit office as President, then to return here as Prime Minister. That would be in keeping with all of the rest of the Caribbean territories, but he does not want to do that. He likes the power that he got under the 1980 Constitution. *[Applause]*… He loves that, the power of it; and that is the same thing.

He wants the power, just like Mr. Ramotar. They used to about that. At the last elections, and even the ones before, they approached the electorate and said that they were going to change the powers of the President. They had me doing that, but it was never changed. I am saying so… *[Laughter]*… and it was never in harmony with any of those other Caribbean territories, but you went there and a mandate was gotten from there, but did you get a mandate to change the Chief Justice and Chancellor's powers? Where was that gotten from? That is why I am saying that this majoritarian thing is in their heads, so they could breach conventions.

I want to tell them that the precedent would be better utilized which we used from the positions in England. Master of the roles-the specialize function. It performs certain special functions and that person has certain powers. There are other heads of divisions who have those powers and are not subject to the general directions of the Lord Chancellor, because he already has a lot of work to do. The Lord Chancellor of England has a lot of persons under him who have specialized functions and duties, and they all perform them; because they are all of good quality to the extent that there is no need to have someone over their heads. That is what it is. They are delegated what is specific to them.

But is that what you want? No; you feel this is too risky for a certain Chief Justice to have all those powers if she has to be appointed. That is what they are saying here. It is an important aspect of this matter, where the Chancellor, being given these powers now does, in a sense, untimely as it is, make it unacceptable. It creates a very unhappy situation… *[Interruption: Unhappy how?]*… Although there is no legal impediment yes…but I have said this over and over that our laws do not provide the answers for everything. But we must go back…What is the convention? What do we do in certain situations? The conventions would require that we hesitate and act with caution.

But no, they do not want to act with any amount of caution. Go deep into it. Take it away Degut one position and put it onto the other; then say yes. Then come here to say that we are not really taking it out at all that it was always there. Then why was this Bill brought? ... *[Interruption: To regularize the thing … "to regularize what they are saying was okay all the time?"]* Mr Speaker. again, I want to make this point that the management of the courts and judges' work is clearly an area in which the principle of democratic accountability and judicial independence need to be carefully balanced.

Although we must have democratic accountability, we must also never push it to the point where political authorities; i.e. people who might very well be party to cases; must now want to have an hand in the control of the administration of the court's management of its work. That is what is important. The management of the court work must never be there under the hand of the politicians, with the political authorities over it. It could impact on adjudication, and when this happens, judicial independence would be seriously undermined. We, as parliamentarians…not simply because Mr. Bharrat Jagdeo, or Mr. Donald Ramotar, nor simply because a few of them want this piece of legislation-Parliamentarians-you over there, must make it a central core of the principle of solid parliamentarianism, that you do not try to encroach onto certain other branches of government. It is important that that erosion seen here

today could be stopped when Parliamentarians take control-by of course this self-restraint that I am speaking about. Otherwise you will have parliamentarians and every other majority in Parliament doing things wily nilly. Therefore, we have to understand that there are certain central principles lot of them may not understand this doctrine of separation of powers. It is important that, upon an understanding of it, that we quietly work to stop any President, or any Party leader who wants to get control over the management and control of the courts and its administration.

We have to be especially independent thinking-for the sake of our citizens, and the survival of our constitutionalism, and the justice and liberty that we all strive for. We have to ensure that we guard against erosion of judicial independence. This could happen unwittingly. It could take the form as it is, as lots of people over there apparently do not understand… imperceptibly-very subtlety, and then they start doing it. They then take away that which has stood for such a very long time, ought to continue staying… and not at this untimely hour... The sinister motive shines through.

We need our influencing minds to understand that this thing has gone a little too far. In a sense, we have to uphold that honour and nobility. I want to say again, that let us not politicize our judiciary; rather *let us judicialize our politics. Thank yo*u…*Applause*

The Speaker: Thank you Honourable Member. Honorable Minister, Manzoor Nadir.

Hon. Manzoor Nadir: Thank you Mr. President. Sorry, thank you Mr. Speaker. Sometimes they say a slip of the tongue is no fault of mine. Mr Speaker, when I was asked to speak on this particular subject, I thought that it was going to be a simple debate; in spite of what we have heard in the media about the intent of this simple amendment that has been introduced by the Honourable Attorney General; but as I listened to my colleague on the other side- the Honorable Kemraj Ramjattan, I saw exactly what he was speaking about-how we took a simple amendment, that would benefit the judiciary, and politicize it. In this simple amendment...I think I wrote about six pages of notes on the charges that he has made. He first said that this was never an elections issue, and that PPP/C went out on the campaign trail without mentioning this in its Manifesto. In governance there is no static, and you would not be able to put every single issue of policy and legal change that you would want to make in a Manifesto. The manifesto must be the simple, broad blueprint for governance, and because it is not there, he said that this is untimely, and has a sinister motive.

I am looking at this to see how sinister it is. In fact, when I listened to the Honourable Members, the Attorney General and Mr. Nandlall, it sounded extremely rational.

Not being a lawyer, just a lawmaker of some 15 years, I try to see what political arguments would have been advanced from the other side that would have made this very simple, technical legal amendment so unjustified. Mr. Ramjattan unfortunately, did not convince me that there was so much a sinister and ugly politics in this Amendment to make me change my mind. Instead we heard things like *control freakism,* and I think that he has used that on many other occasions before.

Control freakism-implying that, with the simple amendment, somehow the ruling Party is going to get into the judiciary and in a freakish manner now has total control. This is an administrative arrangement, which regularizes us, as the Honourable Attorney General said, to the pre-1966 position. If listening correctly to the Attorney General, after we became a Republic, our Court of Appeal became our final court in Guyana. When we were independent we could have gone to the United Kingdom. I think is the Privy Council, I am not a lawyer, but I think that was the final Court.

This sacrosanct nature of static judiciary that he is speaking about is not so. We have had a significant change in our judiciary, where the Caribbean Court of Appeal is now our final Court of Appeal. That only happened recently-not a long time ago. Yet he speaks of this sacrosanct nature of these positions in the judiciary. I know about one sacrosanct principle, and that is the

principle of the Government to make laws. That is sacrosanct-the principle of the Government to make laws. He speaks of majority rule as being unacceptable, but that is a sacracent principle. It may not be acceptable for him and some members of the opposition, but there is sacrosanctity about the principle of majority rule; even if that is a majority of one; and that mandate is received by a government. That is democracy; and hat government makes the laws as it sees fit, based on its promises, and based on how it may want to organize its business; including organizing the business of the judiciary. That is a matter for the Government. That is a sacracent matter for the Government. As I understand it, the independence of the judiciary, is that judges are allowed to make their decisions without interference from anyone. They hear the arguments for and against, then they sit, and then the sober judges make their decision without anyone interfering; but how we organize that judiciary has everything to do with the Party in Government, and the Party in government gets a mandate when it goes to the polls.

If the Government governs and makes laws that are unjust, it would become unpopular, and the next time around they would be given the boot, and the sacrosanct nature that we have here today is of a Government having the powers to make laws. This Bill is about lawmaking, not lawbreaking. It is about lawmaking... and we have that right on this side of the House. Therefore, the issues

of control freakism and majority rule as not being acceptable, and the judiciary's position as being sacrosanct in it being cemented the way it is. That argument is a totally convoluted one because what it says is that the Government that has the majority mandate must not govern. That is what it says, that it must not govern; and while our Constitution speaks of meaningful consultation, at the end of the day, the Government of the day has to govern.

We could have meaningful consultation, but meaningful consultation never said that everyone must have consensus. It never said so. I know of one system of governance that speaks to consensus, and I hate that system. It has become a one-party state. If we were all to rule by consensus, and we all sit in a room, then we may as well dissolve this multi-party democracy that we have, to have one set of persons here that subscribe to one party *[Applause] This* is not about the law and how the Constitution is written. In my view, this particular amendment is about governance. It is not about wanting to control the judiciary, or about freakism, but it is about better organizing, as Mr. Nandlall said, of the Judiciary, for greater efficiency.

As the AG said, it is about cementing the status of the Chancellor. In many other areas this confusion would have to be changed. Look at even the University where there is the Vice-Chancellor, Pro-Chancellor,

Chancellor's Chancellor and everything else. Therefore, what we have is not going to be deadlocked, or gridlocked, as predicted. We are not going to have a position where the judiciary is going to be politicized. The Judiciary cannot be politicized. As I listened carefully, the other thing that he spoke of is of judges having their own positions, and of certain Judges holding certain positions that you could predict their decisions.

As we have many lawyers, we have different, and as many Systems for the administration of justice. Every single country you to, there would be one version, or a combination of different versions, in terms of the administration of justice. And the Honorable Member's party is very fond of quoting the American systems. If I know the American system correctly, Presidents nominate judges to the Supreme Court-Judges whom they feel would carry their own ideology-and nothing is wrong with that. That is not what we want here. This only speaks of the Chancellor exercising direct and more administrative responsibility over the Chief Justice.

He also spoke of a democracy with checks and balances and in my view, this simple amendment would put checks and balances in the judiciary; in terms that the Chief Justice now also has a supervisor, cemented in the law, in this simple amendment. So where we talk about ideology and of judges reflecting the views of certain ideologies, I do not think that there is any sacrosanct principle that

says that judges of particular ideologies cannot be nominated to any court. In our situation, it calls for a lot of consultations. He also said that the President did not make any changes. One of the significant limitations on the powers of the President is the agreement with the leader of the Opposition in the appointment of the Chancellor.

This is a significant power that has been given up, and they give no credit for that. It did not happen by one side, and I sat on the opposition at that time, when reviewed the Constitution. It did not happen by one side. It had to have two-thirds. Our Constitution is the laws that are entrenched there by two-thirds, and also by referendum. They are not put there to stay forever. They all can be often changed; but they are put there so that they are not easily changed. Some principles are seen as having so much merit that, to change them, you have to have a certain size of majority, but some politicians want to extend that size of the majority to make decisions right down to 50%, plus a fraction; and Government was never intended to be that way.

If that is done, you would forever have stalemates, impasses, lack of governance, and that same confusion of anarchy that the Honourable Member, Mr. Speaker, spoke of would take hold. Persons would start to do their own thing. What the Honourable Attorney General, and Honorable Member Mr. Nandlall lay out, in terms of the

law-the technical nature of our judiciary, the independence of judges to make decisions; I am very convinced, and thank them for the education in how our laws are administered. All of us could benefit from more clearly defined lines of authority as are now going to be set out in this simple amendment. Therefore, I have great pleasure in supporting the Bill tabled by the Attorney General. Thank you very much. (*Applause)*

The Speaker: Honourable Member Ms. Bibi Shadick.

Ms. Bibi S. Shadick: Mr. Speaker**,** I rise to make my brief contribution to debate on this Bill, which is before this House today. This debate has exploded outside of this House. It is on the television, in the newspapers, and even today in the courts, as I understand. It has developed into a raging controversy-ranging from personalities, as we just heard Honourable Member Mr. Ramjattan say that he-and the person who is going there; and she-the person who is going to become the Chief Justice. It seems that he has a bit more knowledge than we have-and he personalizes the issue, which are sometimes not even relevant to the matter.

I have heard it said here that this Bill is unconstitutional, but the duties of the Chief Justice and the Chancellor are not outlined by the Constitution. The duties are in Acts-the Court of Appeal Act and the High Court Act, and in seeking to do what the Honourable member, Mr. Ramjattan, is accusing us of-managing the courts and the

judges work, is what we are seeking to do. We are seeking to have good management. Mr Speaker, the Supreme Court was established by Article 122 (a) of the Constitution, and Article 123 provides that the Supreme Court consists of the Court of Appeal and the High Court.

Section 35 of the Court of Appeal Act provides that the Chancellor shall have precedence over all judges of the Supreme Court. All this Bill is seeking to do is to have the Chancellor carry out the duties that were assigned to him by virtue of the establishment of the Supreme Court, and by virtue of Section 35 of the Court of Appeal Act. Mr. Speaker, I wonder why it is that Mr. Ramjattan is venting so much and so on. Even the AFC found that they could not have the two heads that they went to the electorate with. They told the electorate that these were equal heads (*Applause)* and the electorate voted for them on that; but then, just after elections, they found that they have to have one head, so they went to a congress and they voted for one head. They realized that you have to have a single person who is responsible, with whom the buck is going to stop. The buck has to stop somewhere. This Government is trying to ensure that the buck stops with the head of the judiciary, which was identified. Perhaps we are looking at history, because, according to what Mr. Nandlall told us, this Chancellor's position was created because of a personality difference between the then Prime Minister, and the Chief Justice, who was head of the judiciary at the time; so in order to

over…[*Interruption: you are politicizing it.* That was personality. That was politics. That was politicizing the judiciary, saying that I would put in my nominee because I do not agree with this man.] Mr Speaker, the people who are in the High Court and the Court of Appeal are all tried and true judges. They have been appointed years ago. No one is taking someone from outside of the judicial system to put that person there. This is a management issue. This does not have to do with personalities, although we on this side keep hearing about the person we are putting. In fact, one view advanced by the Leader of the Opposition is that the President's nominee for the post of Chancellor has a predisposition of leaning in favour of the State; rather than ensuring the rights of citizens in matters that go before him.

Did they stop to consider that perhaps the State had a better case and so the Chancellor had to rule in favour of the person who had the better case? But as long as a judge is going to rule in favour of the State then that judge is biased, according to them. No one bother to give merit to the case anymore. This is what… and I am hearing Attorneys-at-law saying these things. I am a junior Attorney at law, I now come as the saying goes, but Mr. Ramjattan has been in this thing for a very long time before me, and I am disappointed that Attorneys-at-law would take such a stand-that what is being done is the politicizing of the judiciary.

Are you suggesting, or imputing that the Government is going to take a politician and place that person as Chancellor of the judiciary? Because this is what I am interpreting from these arguments that are coming, all that is happening here is that the judiciary has three tiers. There is a Court of Appeal; a High Court, and a magistrate's jurisdiction. The Chancellor is already the President of the Court of Appeal, and he is already responsible for the Magistrate's Court. According to the High Court Act, he is responsible for quite a few things that have been spelt out. What was not spelt out was that he would have been responsible for the distribution of the duties, etc., among the Judges.

All we are trying to do is to spell that out; to make whoever is the Chancellor…and right now I am saying *him* or *her*, because we have a lot of very eminent females judges-him or her, whoever goes as Chancellor to be effectively in supervisory control of what happens in the judiciary. Mr Speaker, I have heard it said here that this Bill would emasculate the Office of the Chief Justice and place it under the dominion of the Chancellor. These were very strong words-*emasculating* and *a Chancellor exercising dominion.* Even the President of this country cannot be accused of exercising dominion over this country. He retracts so many times when persons make representation to him.

We are speaking of a judicial officer... and there is something we Attorneys-at-Law and persons in this country need to know, that the term of our judges as legal officers do not have to end here. Some may go on to the Caribbean Court of Justice. Now if we have judges who are going to make their positions known that they are politically motivated, they have no hope of standing in front of their peers in the rest of the Region and the world. No judge would do that to himself. That is his own reputation and career, and for the Opposition to impute such things about the judges, or the Chancellor of this land is very disappointing and sad. Those are persons who have to administer justice in this land, and those are the persons whom we need to trust to administer justice in a fair manner.

I wonder whether all this vitriol that is coming from the Honourable Member, Mr. Ramjattan, is due to the fact that he now feels emasculated because he is not a co-leader anymore *[Applause]* I am so confused as to why all this vitriol is coming on a simple thing that is seeking to make management...to have somebody at whom the buck stops…*[Interruption: Prakash, when a woman says you feel emasculated it is a bad thing.*…I do not think that the Members of this House have forgotten the Gaunattie Singh fiasco when the two leaders were put to test.*[Laughter]* I suppose all of that has to do with the virtual.

> Mr. Speaker, there is one thing that I know would change with this amendment to the High Court Act. So many Attorneys-at-Law... and I have no doubt that my friend Mr. Ramjattan over there is one of those lawyers who wish to appeal some matter form the High Court, and the matter cannot be heard in the Court of Appeal, because some judge in the High Court has not written a decision after so many years, or that records have not been typed etc. With a single administrative head-

someone who could exercise supervision over what happens, these things may be ironed out, and we may have more timely hearings of appeals, because decisions will be written, and all of that. Someone has to exercise supervision over things that are happening. We are saying that the head of the judiciary is the Chancellor. Therefore, let him be the head. Let him have the authority to be the head of the judiciary. That is all this Bill is seeking to do. With those very few words, I would like to commend this amendment to the High Court Act to this House, and I ask that it be passed. Thank you very much. (*Applause)*

The Speaker: Thank you Honurable Member. Honorable Member, Dr. Leslie Ramsammy.

Hon. Dr. Leslie Ramsammy: Mr. Speaker, given the circumstances this afternoon, I am not going to proceed with what I had planned to talk on. However, in a few minutes, I do want to respond not just to, what has been

said in the House, but also to some of the things that are circulating around. I agree with the Honourable Member Mr. Nandlall and the Attorney General that we have taken a simple Bill that address as an administrative arrangement, so that we could make it more effective, and turned it into a political controversy, and a political football.

You hear all these things about politicizing things, which is precisely what some are trying to do with this simple Bill. I do want to make a reference to the Honourable Member Mr. Ramjattan's reference to the President, and the refusal of this side of the House to support a mechanism for the removal of the presidency and going back to just a Prime Minister as the head of the government. Mr. Ramjattan, Honorable Member, Mr. Raphael Trotman, and others, were all available during the constitutional reform that started a long time ago- first under your Chairmanship, then Mr. DeSantos; then later the Oversight Committee etc.

That was never a major issue, and after consultations around the country it was agreed that we should continue with this present system. The people of this country spoke and the people agreed that this arrangement that we have with the head of the Government being the President is one that we want to continue with; so it is not something that we are trying to escape. This is something that is consistent with what Guyana as a whole would like to

continue with. I am disappointed that aspersions were cast, in terms of the judges. It is time that all of us-as politicians, judges, and so on have our philosophical leanings; but judges are supposed to be trained in the law. Judges are supposed to be persons who are aware of and know the law. They are trained so that they could listen to arguments and then make decisions based on the law. The fact of the matter is that the President does not, in his own deliberate judgment, select anyone to be a judge. Judges in this country are appointed on the recommendation and advice of a Judicial Service Commission. That is the kind of separation of powers and independence that we are seeking to advance.

We would hope in this country that the appointment of judges is of people of good repute, people whom are knowledgeable, and people whom are willing to execute the responsibilities that they have been provided with. I think that it is unfair to the existing judges-I think that it is an insult to the existing judges to say that they would be influenced by the Party in government. Since 1992, if you take all of the judgments made in this country relating to Government, the fact is that the overwhelming majority of decisions that had to do with Government have gone against the Government. That is the truth.

These are facts Mr. Speaker; I have heard the Honourable Member say that he is confident that the acting Chancellor, the Chief Justice, would find this particular

Bill unpalatable. I doubt the way that confidence is derived, but I am also confident that the present acting Chancellor, the present Chief Justice, would find the arrangements that we are trying to put in place, with this amendment; as something that is necessary and something that has to be done. I am totally confident of that. This whole arrangement came about through consultation, and I want to refer to the fact that the President did speak to the Honourable Leader of the Opposition on this matter, and there was an agreement, in spite of all the public things that were being bandied around. The agreement was that the Government would have a briefing with representatives from the opposition. Indeed, consistent with that agreement, the Government arranged a briefing on 25th July. The meeting was at the Presidential Secretariat, and the representatives were the Honourable Member Clarissa Riehl, and I think, the Honourable Member Basil Williams.

It was at that meeting, that reference was made to a letter from Mr. Corbin to the President, which has also been circulated. In this letter additional demands were being made. At the briefing the Government informed the representatives from the People's National Congress Reform-One Guyana that those new demands were not part of the original agreement between the President and Mr. Corbin. The briefing promised by the President was in fact held, and the head of the Presidential Secretariat, Dr. Roger Luncheon, had to make the reference, in

writing, to Mr. Corbin that those new demands wee not a part of the original agreement.

Mr Speaker, the fact is that, as you look at this Bill... I hear this assertion being made that we are removing the power of the Chief Justice to assign judges to cases when in fact, as the Attorney General and I think, Mr. Nandlall also pointed out, this is not so. What the amendment is...and this is normal… is that under the general supervision - …in fact, if I were to cite one example-if the Chancellor, who is responsible for assigning judges to the Court of Appeal, were to select certain judges that he would want to sit in the Court of Appeal; the Chancellor should have the right to say to the Chief Justice that I would need these Judges to participate in the Court of Appeal.

The Honourable Member is saying that he does that now and they have no problem with it, so why do you have a problem with the amendment that regularizes it? We are now regularizing an anomaly. The Honourable Member and others are saying that this anomaly is being taken care of, because the Chancellor now does that; but that they have a problem with putting that in writing. That is what is happening at this time. Mr Speaker, the implication is made that we are interfering with the judiciary. The fact is that this belongs to another era. Mr. Ramjattan has been a part of the crusade in this country to reform the fact that the Government interfered with the judiciary pre-1992.

That has dissipated. That has not happened in this Government. In fact, this Government has consistently, in all its work, tried to create an independent judiciary. That is what we are doing right now, and we are proud, on this side of the House, that we have created a governance model that promotes the independence of the judiciary. (*Applause)* The Honorable Member Nadir pointed to this fact. We, as politicians, now go to the people of this country every five years. That was not the case before, but we do so now. Every five years we go to the people of this country and present our records and programmes and the people of Guyana elected **us** to govern; and we would govern. (*Applause)*

We will govern. We have to look at all of the institutions in this country-whether it is the Elections Commission, the Judicial Service Commission, or the Supreme Court-all of them, to ensure that the administrative arrangement of these institutions to function transparently and accountably are put in place. That is what this Bill is about. (A*pplause)*

> One last point Mr Speaker, I have heard Mr. Ramjattan say that this thing is untimely. It is untimely in the sense that we took too long to make this happen; but he said that this is untimely, because this is the time that the President threw out a suggestion of harmonization within the context of Caricom. The President of this country is not the

only person who spoke of harmonizing these positions. That is not something that has to do with this Bill. That would be something that, if it comes up, must be changed as a constitutional amendment, and then all of us can have our say. That is not what we are speaking about, but every politician, including the President of this country, has a right to raise an issue that he thinks might serve the welfare of the people of this country.

I defend the President's right, and I defend the right of anyone of our citizens who might raise a matter of interest. That has nothing to do with this Bill. When that time comes, we would be prepared to take the arguments not only to the people; but to this National Assembly. We are willing to do our hard work to ensure that-if we believe that is necessary and good for the Judiciary and for the general development and welfare of this country, that we would do so. So Mr. Speaker, I think that this is a very simple Bill that people are making too much about. Therefore, I would urge the National Assembly to pass this Bill this afternoon, so that we could add another building block in improving the effectiveness and efficiency of the judiciary in this country. I thank you… (*Applause)*

The Speaker: Thank you Honourable Member. Honorable Member Mr. Doodnauth Singh…

Hon. Doodnauth Singh: Mr. Speaker, in view of the fact that the Leader of the Opposition brought to the attention of the National Assembly that they had approached the Courts today, and that they expected a ruling in a certain way, perhaps, for my learned friends' consideration, I ought to bring to the attention of the Assembly that the proceedings, which were filed on behalf of the PNCR/1G, sought to challenge the continuation of this legislative process on the ground that they were seeking to prevent the Attorney General from proceeding with the Second Reading of this Bill, on the ground that it was considered unconstitutional.

What is of significance is that my learned friend, Mr. Ramjattan, during his presentation, is an acceptance of the principle that there was nothing unconstitutional in this Bill. (*Applause)* In addition, my learned friend accepted what I had said, that the amendment is to a statutory function, and can be amended by the parliamentary procedure by which the Statute was made. He then suggested that, despite the fact that the statutory amendment that we were seeking to put in place was possible, in the way in which it was being done, that there was a convention-some kind of contention, and I was interested to hear what he was going to say about this convention. Regrettably, my learned friend is seeking to enlighten me, during my short response that the convention to which he was adverting attention is not to interfere with the independence of the judiciary.

I had thought that, during my presentation I had made it placidly clear that nothing in this Bill was seeking to achieve that end. Mr Speaker, I would not get in to the arguments with respect to personalities, neither would I get into argument with respect to the adjudication of judges, based on some kind of philosophy. During my years of practice in Guyana-and throughout the Caribbean, I have recognized, in almost every single case in which I appeared, that the Judge attempts to adjudicate in matters, based on the evidence and the arguments that were presented; so I do not subscribe to the view that political bias, or any other type of bias, influences the end result. The populace and others may wish to judge a decision on that basis, but as a person who has been involved in the legal practice for almost 50 years, I have to say that I am satisfied with the judiciary and the judgments of the courts. I may not have agreed with them, as you yourself may appreciate. In those circumstances, I wish to now move for the Second Reading of the High Court (Amendment) Bill. (*Applause)*

The Speaker: Thank you very much, Honorable Member. Honourable Members, I propose the question that the Bill be read a second time.

The Clerk takes the Division.

Mr. Patterson	No	
Mr. Franklin		Abstain
Mrs. Holder	No	
Mr. Ramjattan	No	
Mr. Trotman	No	
Mr. Whittaker	Yes	
Mr. Seeraj	Yes	
Mrs. Sahoye-Shury	Yes	
Mr. Persaud	No	
Mr. Kumar	Yes	
Mr. Nandlall	Yes	
Mr. Nagamootoo	Yes	
Mr. Lumumba	Yes	
Mr. Khan	Yes	
Mrs. Edwards	Yes	
Mr. DeSantos	Yes	
Mr. Chand	Yes	

Mr. Atkinson	Yes
Mr. Ally	Yes
Ms. Shadick	Yes
Mrs. Chandrapal	Yes
Mr. Nokta	Yes
Ms. Teixeira	Yes
Mr. Ramotar	Yes
Mr. Prasaud	Yes
Dr. Ramsarran	Yes
Dr. Fox	Yes
Mr. Nadir	Yes
Mr. Benn	Yes
Dr. Anthony	Yes
Mr. Lall	Yes
Dr. Westford	Yes
Mr. Robert Persaud	Yes
Mr. Nawbatt	Yes

Mrs. Rodrigue-Birkett Yes

Dr. Rammsamy Yes

Dr. Jeffrey Yes

Mr. Shaik K Z Baskh Yes

Hon. Clement Rohee Yes

Hon. Samuel Hinds Yes

The Speaker: Honourable Members 35 members voted in favour of the motion. Four voted against and one declined. (*Applause)*

Motion put and carried

Bill read the second time.

In Committee

The Speaker: Honourable Members, the Assembly will resolve itself into committee to consider the Bill, clause by clause.

Honourable Members, are they any other amendments to be proposed? I have received no notice.

Clauses 1-2

Question that-

Clauses 1 to 2, stand part of the Bill

Clauses 1 to 2 passed, as printed, and stand part of the Bill

Resumption of Assembly

The Speaker: Honourable Attorney General.

Hon Doodnauth Singh: May it please you, Mr. Speaker... I wish to report that the Bill was considered in Committee, and it was accepted. I now request that the Bill be read the third time.

Motion put and agreed to.

Motion carried.

Bill read the Third time

The Speaker: Thank you Honourable Members. This brings us to the end of our business for today. Honourable Prime Minister.

Hon. Samuel AA Hinds: Mr. Speaker I propose that the House be adjourned until Tuesday 7^{h} August at 14:00H.

The Speaker: The House stands adjourned until Tuesday, 7 August2007, at 14:00h. Thank you very much.

Adjourned Accordingly At 16:00H