

April 24, 2013.

**Ruling No. 5 of 2013**

**Request of Hon. Carl B. Greenidge, M.P. for the Speaker to Give Approval for the Matter of the Estimates of Expenditures of Entities Mentioned in Article 222 A of the Constitution Not To Be Considered Until the Ministry of Finance Withdraws the Proposal for Appropriation and Submits Same in the Manner Required by the Constitution.**

By way of letter dated April 13, 2013, the Hon. Member Mr. Carl B. Greenidge, M.P., wrote me to point out that the format of the presentation of Estimates for certain constitutional entities was in error. (See letter attached) More specifically, Mr. Greenidge advanced the argument that except for the Ethnic Relations Commission and the Audit Office, the estimates for the Judiciary and other Rights Commissions were not presented as a “block or lump sum allocation”. This, in the opinion of the Hon. Mr. Greenidge, offends the requirements of Articles 222A, 122(2), 151(3), 226(7), 212 9(3) and 226(1) of the Constitution- both in letter and in spirit.

Without hesitation, I state that I agree with the Hon. Member Carl B. Greenidge, M.P., that the framers of these very important Constitutional entities intended that they all would be independent of, and insulated from, political or other direction and/or control. Further, I agree that the Estimates for these entities should be placed as a “lump sum”.

I have noted the assurances given by the Hon. Minister of Finance that these matters remain under active consideration by the Government of Guyana, and that the Government is open to examining new representations to be submitted; this notwithstanding the advice that says that the present format does not “collide” with the constitutional requirements. I note as well that the present format has been accepted by previous Parliaments and that several Members of the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Parliaments are also Members of the 10<sup>th</sup>; and are familiar with the present

format. Further, I am advised that this matter was raised in the inter-party dialogue in 2012 and there is an expectation that it will be carried forth in the Constitution Review Committee.

I turn now to the request made of the Speaker that is contained in the letter as follows:

***“The APNU seeks the approval of the Speaker for this matter to be not considered until the M.O.F. withdraws the proposal for appropriation and submits the request required by the Constitution”.***

Article 218 states:

***“The Minister responsible for Finance or any other Minister designated by the President shall cause to be prepared and laid before the National Assembly before or within ninety (90) days after the commencement of each financial year estimates of the revenues and expenditures of Guyana for that year.”***

I am of the considered opinion that the power granted to the Executive to prepare and “lay” the Estimates of the Revenues and Expenditures of Guyana for any year, are not absolute, but circumscribed, inter alia, by the requirements set out in articles 222A that states:

***“the expenditure of each of the entities shall be financed as a direct charge on the Consolidated Fund, determined as a lump sum by way of an annual subvention approved by the National Assembly after a review and approval of the entity’s annual budget as part of the process of the determination of the National Budget”.***

Following an examination of the Standing Orders of the National Assembly in particular, and the practices, usages and conventions of the House of Commons of Great Britain and other Parliaments generally, I have come to the conclusion that the Speaker of the National Assembly

has no power to determine, instruct, direct, compel, or inform the manner of the content, or format, of the Estimates or Appropriation Bills. However, I did find reference to an instance where the United Kingdom's House of Commons' Speaker declined to propose the question on a Motion that did not satisfy Standing Order No. 48.<sup>1</sup>

The National Assembly may decline to give approval to the appropriations for the entities that are entitled to be financed through a block or lump sum allocation, and which in this instance, are not. The Speaker on the other hand, does not, and should not, have such power. Except in the case of a violation of our Standing Orders, the Speaker is without jurisdiction to act.

## **RULING**

1. The Speaker of the National assembly cannot compel the Government, or the Minister responsible for Finance, to prepare the Estimates and/or requests for appropriations in any particular format;
2. The Speaker of the National Assembly cannot give approval, or express disapproval, for the consideration of the Estimates to be proceeded with; except that there is a clear violation of the Standing Orders. In this case, there is none.
3. The power to decline to consider the estimates and the appropriations to be sought, rests solely within the body of the National Assembly.

---

**Hon. Raphael G. C. Trotman, M.P.,**  
**Speaker of the National Assembly**

---

<sup>1</sup> *Order 48. This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or the National Loans Fund or out of money to be provided by Parliament, or for releasing or compounding any sum of money owing to the Crown, unless recommended from the Crown. See also Erskine May, 23<sup>rd</sup> edition at page 863.*

# ***Carl B. Greenidge, M.P.***

## **APNU Spokesman on Finance, Planning & Development**

109E Barrack St.  
Kingston,  
Demerara,  
Guyana

**Mr Raphael G. C. Trotman, M.P.  
Speaker of the National Assembly  
Speaker's Chambers  
Parliament Office  
Public Buildings  
Brickdam  
Georgetown**

**13<sup>th</sup> April 2013.**

**Mr Speaker,**

In view of the impending consideration of the 2013 Estimates of Expenditure and Revenues on Monday at 2pm, I write on behalf of the APNU to advise of our view that the Estimate, as they pertain to certain entities charged with safeguarding our fundamental rights, are not properly before the House and should therefore be returned to the Cabinet for the necessary amendment.

Put baldly, Art. 222A of the Constitution which is intituled an 'overarching clause in financial autonomy', states that,

*"In order to assure the independence of the entities listed in the Third Schedule -*

*the expenditure of each of the entities shall be financed as a direct charge on the Consolidated Fund, **determined as a lump sum by way of an annual subvention** approved by the National Assembly after a review and approval of the entity's annual budget as a part of the process of the determination of the national budget;".(my caps)*

The entities listed in the 3<sup>rd</sup> Schedule of the Article are:

*The Ethnic Relations Commission*  
*The Human Rights Commission*  
*The Women and Gender Equality Commission*  
*The Indigenous Peoples' Commission*  
*The Rights of the Child Commission*  
*The Judiciary*  
*The Office of the Auditor General.*

Whilst the Estimates before the House request block or lump sum allocations for the ERC and Audit Office, the provisions of the Judiciary are tabled in the same format as are the Budgetary Agencies named in the FM&A Act, which was superceded by the Constitutional amendment of 2005. More specifically, pages 238-244 of the Estimates list Agency 55, the Supreme Court, and seek to have the National Assembly approve the appropriations in detail rather than as a single sum. There is, in other words, no *line* allocated to these items– *'Total Appropriated Current Expenditure'*.

In addition Art 122(2) reads as follows,

*'Subject to the provisions of articles 199 and 201, all courts shall be administratively autonomous and shall be funded by a direct charge upon the Consolidated Fund; and such courts shall operate in accordance with the principles of sound financial and administrative management.'*

The same applies to Art 151 (3).

I should add that in relation to the Rights Commissions, Art. 212G (3) states that,

*'A Commission shall be funded by a direct charge upon the Consolidated Fund and in accordance with Art. 222A.'*

In the case of the Service Commissions, Art. 226 (7) defined them as follows,

*'The expression Commission means the Elections Commission, the Judicial Service Commission, the Public Service Commission, the Teaching Service Commission or the Police Service Commission';*

As far as Art. 212G(3) is concerned,

*'A Commission shall be funded by a direct charge upon the Consolidated Fund in accordance with article 222A.'*

As regards Service Commissions, Art. 226(1) says of their independence,

“save as otherwise provided i this Constitution, in the exercise of its functions, a Commission shall not be subject to the direction or control of any other person or authority”

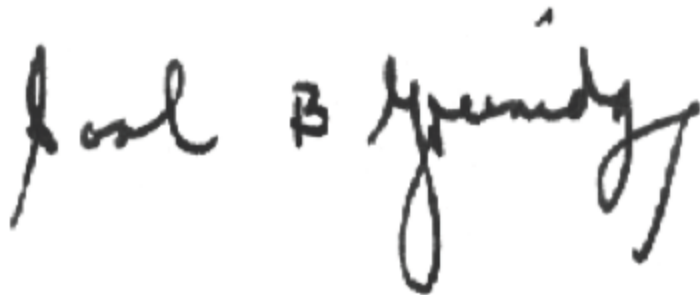
Both Commissions are therefore supposed to be independent and each, e.g. the JSC, should be a direct charge on the Consolidated Fund.

In spite of this, as may be seen from a perusal of the Estimates, pages 398 to 402, none of the Courts and few of the Commissions as defined above (Women, Family, Rights of the Child) are allocated bloc votes as is the ERC. On the other hand, innumerable entities both larger and smaller than the agencies in question (D&I Board \$1,5bn, Guysuco \$1bn) with absolutely no constitutional significance are authorised to receive bloc votes or lump sum allocations.

As observed by me during the debates on the Constitution Amendment Act (2013) and the FM&A Bill (2013), the FM&A Act permits under this arrangement the Financial Secretary to summon and interrogate the Head of the Budget Agency which could conceivably be the Registrar or Chancellor, for example, regarding details of cases that may involve private individuals who may have nothing to do with the MOF, per se. These two arrangements clearly conflict with the concept of financial independence and operational autonomy addressed in the Constitution.

Since the APNU does not wish to disrupt the work of the Assembly unnecessarily, and in view if the intransigence of the MOF and the Cabinet, in the face of past attempts to remedy this long-standing item, the APNU seeks the approval of the Speaker for this matter to be not considered until the MOF withdraws the proposal for appropriation and submits the request in the manner required by the Constitution.

Regards,

A handwritten signature in black ink, appearing to read "Paul B Gyensidy". The signature is written in a cursive, somewhat stylized font.

cc: Mr. S. Isaacs, Clerk National Assembly