



CARIBBEAN COURT OF JUSTICE

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MEDIA RELEASE

(For immediate release)

No. [44:2018]
[12 November 2018]

CCJ DECLARES GUYANA'S CROSS-DRESSING LAW UNCONSTITUTIONAL

Port of Spain, Trinidad. The Caribbean Court of Justice (CCJ) ruled that a law in Guyana, which makes it a criminal offence for a man or a woman to appear in a public place while dressed in clothing of the opposite sex for an “improper purpose”, is unconstitutional. The law, Section 153(1)(xlvi) of the Summary Jurisdiction (Offences) Act, is to be struck from the laws of Guyana. The case of *Quincy McEwan, Seon Clarke, Joseph Fraser, Seyon Persaud and the Society Against Sexual Orientation Discrimination (SASOD) v The Attorney General of Guyana* began with the arrest of the appellants in February 2009.

Four of the appellants, who identify as transgender persons, were arrested, convicted and punished for cross-dressing in public. At the time of arrest, McEwan was dressed in a pink shirt and a pair of tights and Clarke was wearing slippers and a skirt. A few hours later, Fraser and Persaud were also arrested by the police and taken to the Brickdam Police Station. At the time, they were dressed in skirts and were wearing wigs.

While in custody, Fraser requested legal counsel, medical attention, a telephone call and that the police take a statement. However, those requests were not granted. McEwan, Clarke, Fraser and Persaud spent the entire weekend in police custody and they did not receive any explanation as to why they had been arrested and detained. They first learned of the charges, of loitering and wearing female attire in a public place for “an improper purpose”, when they were taken to the Georgetown Magistrate’s Court on Monday 9th February 2009.

They all pleaded guilty to the cross-dressing charge and McEwan, Clarke and Persaud were fined GY\$7,500 and Fraser was fined GY\$19,500. Upon imposing the sentence, the Magistrate told them that they must go to church and give their lives to Jesus Christ and advised them that they were confused about their sexuality.

In conjunction with the Society Against Sexual Orientation Discrimination (SASOD), proceedings were brought in the High Court of Guyana challenging this law on several grounds, including that it is discriminatory and inconsistent with the Constitution of Guyana.

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However, both the High Court and the Court of Appeal in Guyana denied the constitutional challenges. The appellants took their case to the CCJ arguing that the law violated their constitutional rights to equality and non-discrimination and freedom of expression, thereby offending the rule of law.

The Court first examined the historical context surrounding law, which was enacted in Guyana in 1893, as part of the vagrancy laws of the post-emancipation era. The panel, comprising of the Honourable President Mr. Justice Saunders and Justices Wit, Anderson, Rajnauth-Lee and Barrow, agreed that this law was from a different time and no longer served any legitimate purpose in Guyana. The Hon. Mr. Justice Saunders reiterated, “Law and society are dynamic, not static. A Constitution must be read as a whole. Courts should be astute to avoid hindrances that would deter them from interpreting the Constitution in a manner faithful to its essence and its underlying spirit. If one part of the Constitution appears to run up against an individual fundamental right, then, in interpreting the Constitution as a whole, courts should place a premium on affording the citizen his/her enjoyment of the fundamental right, unless there is some overriding public interest”. It was also noted that Guyana’s Constitution protects its people from discrimination and states that no one is to be treated in a discriminatory manner by any public office or authority.

The Court held that the law was also unconstitutionally vague, violated the appellants’ right to protection of the law and was contrary to the rule of law. A majority of the judges, President Saunders and Justices Wit and Barrow, also upheld the appeal on the basis that the law resulted in transgendered and gender non-conforming persons being treated unfavourably by criminalising their gender expression and gender identity. The Honourable Mr. Justice Anderson in his judgment commented that the law wrongly sought to criminalise a person’s state of mind as there is no test to determine what is an “improper purpose”. Mme. Justice Rajnauth-Lee’s opinion focussed on the vagueness of the law in question.

The CCJ also found that the remarks made by the Magistrate, immediately after sentencing the appellants and while the Magistrate was still sitting, were inappropriate. According to the Court, “judicial officers may not use the bench to proselytise, whether before, during or after the conclusion of court proceedings. Secularism is one of the cornerstones upon which the Republic of Guyana rests.”

The Court ordered that Section 153(1)(xlvii) be struck from the laws of Guyana and that costs are to be awarded to the appellants in the appeal before the CCJ and in the courts below. The full judgment of the Court and a judgment summary are available on the CCJ’s website at www.ccj.org.

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