

Benefits to Trinidad & Tobago of joining the Caribbean Court of Justice *

by

**THE RIGHT HONOURABLE SIR DENNIS BYRON
PRESIDENT
CARIBBEAN COURT OF JUSTICE**



**Trinidad Union Club
Nicholas Tower
63-65 Independence Square
Port of Spain, Trinidad**

Tuesday, 27th November 2012

* This Paper was presented to the Trinidad Union Club by the Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice on Tuesday, 27th November, 2012 at Nicholas Tower, Independence Square, Port of Spain.

Benefits to Trinidad & Tobago of joining the Caribbean Court of Justice

Introduction

Protocols.

I feel honoured and grateful to have been invited by the Trinidad Union Club to be the Guest Speaker here today. I have been asked to speak on the benefits to be gained by Trinidad and Tobago acceding to the Appellate Jurisdiction of the Caribbean Court of Justice (“CCJ”).

In 2001, CARICOM States ratified the Agreement Establishing the Caribbean Court of Justice and brought into force the treaty establishing the Caribbean Community including the CARICOM Single Market and Economy. One of the more important elements of the arrangements is that Caribbean States determined that the CCJ will have an Original Jurisdiction and also be the final appellate court of CARICOM.

The CCJ’s Original and Appellate Jurisdictions are intended to interface smoothly with each other so that the CCJ will constitute the single and the highest judicial guarantee of economic development, social stability and the rule of law within CARICOM. The CCJ Agreement recites the collective conviction of the Contracting CARICOM States that the Court will have a determinative role in the further development of a Caribbean Jurisprudence.

In Trinidad and Tobago, the Prime Minister earlier this year announced that, in effect, Trinidad and Tobago desired to meet its treaty commitment in a staggered manner by first channeling its criminal appeals to the CCJ and in the interim “*monitor the developments taking place in both the JCPC and CCJ including the quality of [those courts] decisions in deciding the [country’s] future course...*”

It is clear therefore that in Trinidad there is the commitment to delink from the JCPC and accede to the CCJ as the final appellate court in due course.

It is in this context that consideration of the benefits to the people of Trinidad and Tobago is appropriate. I discuss this topic easily because I speak as a Privy Councillor, as I was myself appointed as a Member of the Privy Council in 2004. In my view our courts, the CCJ and the JCPC should not be cast as rival courts. It is in the best interests of all to explore ways in which our courts could cooperate as we do with other courts to improve the quality of justice delivery in our region and indeed throughout the Commonwealth and even beyond.

In this your 50th year of Independence, Trinidad and Tobago boasts, rightly, of its pride in standing on its own as a nation having made various outstanding achievements in music, sports, literature, education, theatre and several other arenas. This country is well suited to have its own centers of excellence in the judicial field as well as other arenas. This is therefore a good time to complete the circle of independence and enhance access to justice for all people by having your final matters heard by the region's own court headquartered here in Trinidad.

It was actually regarded by the Right Hon. Telford Georges as a “*compromise of sovereignty*” for us to remain wedded “*to a court which is part of the former colonial hierarchy*”. Trinidad's own Senior Counsel Douglas Mendes has asserted that “*you cannot as an independent nation, call yourself independent if you must go to a foreign court as your final Court of Appeal.*”

Earlier this year, when Prime Minister Persad-Bissessar announced the government's intention to accede to the Appellate Jurisdiction with respect to criminal matters she noted that:

“The Caribbean Court of Justice remains committed in pursuing its enlightened role in Caribbean legal reform in the important area of the criminal law. It is almost axiomatic that the Caribbean Community should have its own final Court of Appeal in all matters; that the West Indies at the highest level of jurisprudence should be West Indian. A century old tradition of erudition and excellence in the

legal profession of the Region leaves no room for hesitancy in our Caribbean region”.

Access to Justice

The former President of the World Bank James Wolfensohn was asked to describe his most rewarding project. He said that he commissioned 60,000 researchers to question poor people around the world about what they wanted the most. What poor people wanted the most was not food, not money, not even clothing. It was justice. This project informed Wolfensohn’s decision that in order to fight poverty and crime, access to justice must be improved. So access to justice is crucial in our region and in this country for issues of social stability and economic development. I submit to you that acceding the Appellate Jurisdiction would enhance access to justice for the people of Trinidad and Tobago and contribute to social stability.

The Caribbean Court of Justice is fully operational and has been for seven years. It has been hearing matters under its Original Jurisdiction, which has been accepted by all the CARICOM Member States. More to the point of this topic, it has been increasingly hearing matters under its Appellate Jurisdiction from Guyana, Barbados and Belize. The volume has been quite significant. Fifty-four (54) appeals and fifty-two (52) applications have already been filed at the CCJ between August 2005 and November 2012. Forty-eight (48) appeals and forty-five (45) applications have been determined.

In the last five years before Barbados abolished appeals to the Privy Council, a total of eight appeals went from Barbados to the Privy Council. In the seven years since Barbados joined the appellate jurisdiction of the CCJ, there have been twenty-five appeals. In other words, there has been an increase of almost 120% in the number of citizens gaining the benefit of a second or final appeal.

With the CCJ there will be considerable relief in expense and complexity. Litigants can retain local lawyers and be present when their cases are being heard.

To those of you who have visited the CCJ you will observe that its courtrooms are high-tech. We use this technology to facilitate parties who reside outside of Trinidad through the use of our video conferencing facilities. Additionally, the CCJ uploads the audio and the video recordings of its hearings of appeals within a matter of hours on its website, providing transparency and access to our proceedings to the public at large.

Developing regional jurists/jurisprudence

In general, the number of Caribbean attorneys appearing before highest courts will inevitably increase when final appeals are heard by the CCJ. Members of the Bar of Trinidad and Tobago would also benefit since citizens would no doubt retain local attorneys in greater numbers to argue before the final court of appeal of their country.

Not only would they gain from heightened professional development and prestige, but they would also have the opportunity to give back. The lawyers who appear before the final court would be better positioned to contribute to the development of the region's jurisprudence and make a mark on the establishment of important precedents that will be relied on regionally and internationally for years to come. The reputation of this country to produce brilliant legal minds is well renowned, having given birth to such luminaries as Sir Hugh Wooding. I would submit that the rest of the Caribbean region ought not to be deprived of the full benefit of Trinidad and Tobago's great legal scholarship which can contribute directly to the advancement of our jurisprudence.

Judicial Independence - Appointment, Removal and Security of Tenure of Judges

The responsibility for the appointment of Judges of the CCJ does not rest with Heads of States or Ministers of Government. Rather, such responsibility is vested in a Regional Judicial and Legal Services Commission ("the Commission"). This Commission has a membership of 11 persons namely:

- The President of the CCJ who is to be the Chairman
- Two persons nominated jointly by OCCBA and the OECS Bar Association
- One Chairman of a Judicial Services Commission (rotating)
- One Chairman of a Public Service Commission of a contracting party (rotating)
- Two persons from civil society nominated jointly by the Secretary-General of CAICOM and the Director-General of the OECS
- Two distinguished jurists nominated jointly by the Deans of the Faculties of Law of contracting parties and the Chairman of the Council of Legal Education
- Two persons nominated jointly by the Bar Associations of the Contracting parties

The Powers of the Commission include selecting the President of the Court and appointing all judges except the President of the Court as well as all officials and employees of the Court and determining their remuneration. In the exercise of those powers specific provisions exist which prohibit the Commission from seeking or receiving instructions from any source external to the Commission.

In making appointments to the office of Judge, the Commission is obliged to have regard to the high moral character and intellectual quality of nominees¹. The Commission is also charged with exercising disciplinary control over the Court's judiciary as well as its officials and employees².

The removal of a Judge from his or her office also lies within the purview of the Commission. Such removal requires a majority vote of all members of the Commission³. However, the circumstances in which a judge may be so removed are confined to his inability to perform the functions of his office, whether arising from illness or any other cause or for misbehavior in accordance with the provisions of Article IX of the Agreement.

¹ Article IV 11. of the Agreement

² Article V 3.(2). of the Agreement

³ Article IV 7 of the Agreement

Turning to the seat of the President, he or she may be removed from office by the Heads of Government. Such removal must however be based on the recommendation of the Commission only where the issue of removal has been referred to a tribunal and the tribunal has advised that the President ought to be removed from office for matters of impropriety or inability to perform the functions of his Office.

The Court has also made a sound start in terms of the adequacy of its complement. The complement of the CCJ is the President and not more than nine other judges, with power to increase the number on the recommendation of the Commission. At present, the complement is the President and six other judges. It is said that a picture is worth a thousand words and the point may be more easily made by comparison. In the United Kingdom for example, the complement of the UK Supreme Court presently comprises the President, nine Lords of Appeal and one Baroness. In the United States, the size of the Court is set by Congress and currently consists of a Chief Justice and eight Associate Justices. Similarly the Canadian Supreme Court consists of a Chief Justice and eight Judges.

Financing of the Caribbean Court of Justice

Throughout the region commentators complain that the administration of justice is not adequately funded. For example in the OECS islands of Antigua and Barbuda and Grenada, the 2012 budgetary allocation for the judiciary was set at \$1,742,688.00 and \$5,885,641 Eastern Caribbean Dollars respectively. With regard to Antigua and Barbuda, this was against a national budget of \$754 million XCD and represented a mere 0.23 percent of the same. As for the island of Grenada, this figure represents 0.58% of the total budget for the stated period. The 2012/2013 Trinidad and Tobago Budget was set at its largest ever at approximately \$57.4 Billion TTD. Out of this sum, approximately \$430 Million TTD was allocated to the judiciary which represented only 0.75% of the total annual budget. Similar trends follow in Jamaica where the 2012/2013 budget statement revealed that, out of a total budget of approximately 6 Trillion JMD, an aggregate of 4,124,753 JMD was allocated to the judiciary. However, this is representative of a mere 0.67% of that territory's total national budget. These figures are certainly inadequate in the sense that a higher proportion of the national revenue should be allocated to justice delivery. In

this regard, pressure should be exerted on our governments to increase their investment in the national judiciaries.

These are the realities which informed the concerns about court funding. However, the CCJ's thoughtful institutional arrangements have nullified the debates on appropriate investment in the administration of justice, and the certainty of funding allocation.

Prior to the establishment of the Court, actuaries calculated that a fund of US\$100,000,000.00 would generate an income that would fund the CCJ in perpetuity. The Member States accepted the advice and established a Trust Fund with a capital base of the said \$100 million. The Fund has been established and is functioning and maintaining the Court.

The Fund is vested in a Board of Trustees drawn mainly from the private sector and civil society, and is completely immune from political influence. The trustees comprise a nominee of CARICOM, a nominee of Vice-Chancellor of UWI, a nominee of the Insurance Association of the Caribbean, a nominee of the Indigenous Banks of the Caribbean, a nominee of the Caribbean Institute of Chartered Accountants, a nominee of the Organisation of Commonwealth Caribbean Bar Association, a nominee of the Heads of Judiciary of CARICOM, a nominee of the Caribbean Association of Industry and Commerce and a nominee of the Caribbean Congress of Labour. This is a completely independent funding arrangement.

There is also specific provision for addressing increases in the resource requirements of the Court when that may occur. In this regard, the Board of Trustees is obligated to review the adequacy of the resources of the Fund not later than two years after the entry into force of the Agreement and thereafter at least once within every succeeding biennium. If upon such a review an inadequacy in resources is found to exist, the Member States are obliged to make additional contributions to the Fund.

The intention of these provisions speaks directly to the financial viability of the Court and its centrality to the organization's efficiency, effectiveness and independence in the performance of its functions. Such innovations have produced significant benefits to this region's justice system and will undoubtedly continue to do so. It is against this background that I call on citizens to acknowledge these advantages and to ensure that they benefit fully from their investment in the Court. It is also my hope that the contribution of the Court in fostering a system of regional economic and social unification will be recognized by all, and that all Member States and, most importantly, the private sector of these Member States will seize the opportunity to benefit from the Court in this respect.

Conclusion

I will conclude here in order to leave time for questions from the floor. Once again, I would like to express my gratitude to the Executive Committee of the Trinidad Union Club for inviting me to speak here today. I hope I have shed some light on the benefits to Trinidad and Tobago for fully acceding to the CCJ's appellate jurisdiction.

Thank you.



The Right Honourable Sir Dennis Byron