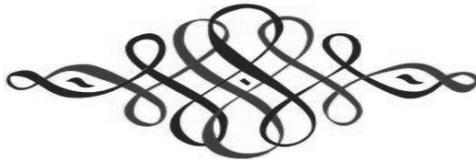


The Benefits to Jamaica and the Caribbean of Full Accession to the Caribbean Court of Justice*

By

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Protocol

Introduction

I thank you very much for braving the inhospitable weather to be here this evening. I consider it a very great honour to have been asked to address you on this occasion and do so with a sense of nostalgia, pride, and excitement. Nostalgia, because my visit to London and our time together this evening brings back so many fond memories of my student days in this City over 25 years ago:- I see the temperature has not changed much in that time. Pride, because I am with my Jamaican and Caribbean people who by virtue of your presence here this evening signal your continued interest in developments in your ancestral homeland. Finally, there is excitement because our time here this evening represents significant possibilities for the advancement of our Caribbean nationhood.

I am very grateful to Her Excellency, the High Commissioner for this opportunity to dialogue with you.

As you would have heard I have honour of being the first Jamaican (and the youngest judge) appointed to the Caribbean Court of Justice. This fact, together with the nature of the audience makes it almost inevitable that I should speak about Court, how it benefits the people of the Caribbean, and how critically important it is that it be supported by full accession by all Member States of the Caribbean Community (“CARICOM”). Any support you can give to this effort would be effective in advancing the notion of a Caribbean identity.

Establishment of the Court

On February 14th 2001, Valentine’s Day, the 14 Member States of CARICOM ratified the Agreement Establishing the Caribbean Court of Justice; this “CCJ Agreement” was brought into force on July 23, 2002; and the Court was inaugurated and became fully operational in April 16, 2006. The Revised Treaty of Chaguaramas Establishing the Community including the CARICOM Single Market and Economy (“CSME”) entered into force on 1st January 2006.

The Jurisdictions of the Court

The CCJ has two jurisdictions. **First**, there is the original jurisdiction, under which the Court hears disputes arising out of the Revised Treaty of Chaguaramas establishing the Caribbean Community including CSME. The Revised Treaty is patterned to a large extent on the European Community, and like the EC, gives rights and imposes obligations on Member States. Unlike the EC treaty, however, the Revised Treaty allows private individuals to bring cases against CARICOM Member States that infringe rights intended to enure to be benefit of those individuals. **Secondly**, there is the appellate jurisdiction in which the CCJ was established to function as the final appellate court of all Contracting Member States in replacement of the Judicial Committee of the Privy Council based here in London.

Allow me to speak first about the original jurisdiction.

Brief overview of the CCJ's Original Jurisdiction

All Contracting Member States have joined the original jurisdiction of the Court without opposition or controversy. In this jurisdiction, the CCJ plays a fundamental role in facilitating the regional integration envisioned by the CSME. As the compulsory and exclusive adjudicator of disputes arising from the Revised Treaty, the CCJ serves to protect the rights and enforce the responsibilities under the Treaty. The Court's judgments ensure uniformity in the interpretation and application of Treaty provisions, and are therefore critical in enabling the legal certainty and predictability which encourage economic growth, social stability and the rule of law.¹

So far, a total of eight cases have been brought in the original jurisdiction, all by private individuals seeking to assert their treaty-given rights. Some of you may be aware of a case brought by a young Jamaican national, Miss Shanique Myrie, against the State of Barbados. This case has been lodged under the original jurisdiction of the Court, as Miss Myrie is claiming that her rights to free movement within the Community guaranteed under the Revised Treaty were

¹ Extracted from a speech by the Rt. Hon. Sir Dennis Byron, PCCJ, 'Strategic Integration – CARICOM and the Caribbean Court', at the 39th Conference of Caribbean Association of Banks Inc. on 15th Nov., 2012, in Jamaica.

violated by Barbadian officials, when she was subjected to an invasive cavity search and refused entry into Barbados in March of 2010. The trial is scheduled to take place in March of this year so I will not speak more about it now; but I simply bring it to your attention to demonstrate that the Court is fully functioning in its original jurisdiction and ordinary Jamaican nationals are able to access the Court to ask questions which are of value to the entire region.

Appellate Jurisdiction of the Court

With regard to the appellate jurisdiction of the Court, three CARICOM countries that have fully acceded and have thus replaced with Privy Council with the CCJ as their final court of appeal: Barbados, Guyana, and Belize.

As with any new Court, it always takes time for litigants to bring cases before it. Compared to other international tribunals, however, the CCJ has been doing well. The European Court of Human Rights only heard **ten (10)** cases in its first ten years. By comparison, in the first seven years of the CCJ, there have been over **sixty (60)** judgments were delivered just in the appellate jurisdiction alone, with more cases still pending. So the trend thus far has been favourable and encouraging.

Access to Justice

The numbers of cases brought and disposed of are not merely figures on paper. They provide a neat sedge way into a discussion of perhaps the most important role that the CCJ has to play; **i.e.**, in facilitating access to justice for the ordinary person in the Caribbean.

It has been reported that some 60,000 researchers were sent by the World Bank to ask millions of people living in poverty around the world what they desired the most. They were astonished to find that the answer was **not** money, nor food, nor shelter. What poor people wanted the most was justice. This highlights the importance of providing access to justice in the fight against poverty and the social ills associated with it.

Through the CCJ, increasing numbers of people from all walks of life have been able to obtain quality justice at the highest level. We can look at the case of Barbados as an example.

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

The CCJ's appellate jurisdiction provides tremendous relief in expense and in the complexity of lodging an appeal. Unlike with the Privy Council, Jamaican and other Caribbean nationals would not have to spend money to apply for and obtain a **visa**, and travel to London in order to be present at the hearing of their own appeal at the CCJ in Trinidad. Additionally, Jamaicans and other Caribbean nationals would not have to pay to hire British solicitors but can give that work to their own local lawyers with whom they may already have an established relationship.

Access to justice is further enhanced by the use of the latest technology at the CCJ. There are audio and video conferencing facilities that are used regularly by the Court to conduct hearings so that litigants and their Counsel are spared the financial burden of travel to Trinidad. 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.

Two of the CCJ's rules in particular also increase access to justice for the ordinary citizen. **The first is the rule which allows for the CCJ to be itinerant.** That is, the Court upon the application of a party can decide to sit in any Contracting CARICOM State outside of Trinidad and Tobago. This has been done in the *Shanique Myrie* case I referred to earlier in which the Court heard the preliminary stage of the case in **Barbados**, in order to decide whether the Claimant could proceed with the suit. We agreed that she could. Now the Claimant asked the Court to move to **Jamaica** for part of the trial in order to hear the witnesses from her side since Ms. Myrie otherwise could not afford the money to bring all her witnesses to Trinidad. The Court granted her application as it would better enable justice to be done by hearing as much of the relevant witnesses and evidence as possible.

The second rule is the one that allows a party to apply for leave to appeal as a poor person.

The Court has already granted leave to appeal under this rule, in particular for one lady from

Guyana who was elderly, blind and poor. She wanted to establish ownership of her small apartment in Georgetown. It is highly unlikely that this lady would have been able to overcome the physical and financial challenges of taking her appeal to the Privy Council.

So the CCJ has been facilitating access to justice for many people, especially in its appellate jurisdiction. A comparison of statistics from Jamaica and Barbados may help to show this.

Between 2008 and 2011, the Jamaican Court of Appeal issued an average of **105 judgments** per year². However, between those same years, roughly **6 judgments**³ on average were delivered in Jamaican cases by the Privy Council. On the other hand, the Barbados Court of Appeal issued just under **16 judgments**⁴ per year on average between 2008 and 2011. The Caribbean Court of Justice, however, issued **4 judgments**⁵ per year in Barbadian cases on average. These figures suggest that over **25%** of litigants in Barbados are now able to appeal to the CCJ, whereas only **5.5%** of the parties from Jamaica have the benefit of a second or final appeal.

Full Independence for Jamaica

I am very conscious that I am speaking to you at a time when some Caribbean governments and the Jamaican Government in particular, are taking active steps to join the CCJ in its appellate jurisdiction. Legislation has already been tabled in Parliament since under the Constitution of Jamaica, there must be an Act of Parliament passed to amend the Constitution.

The debate on the CCJ is not new but, rather, has been going on for over a hundred years. In fact, the beginning of the discussion can be traced right to Jamaica **where the Gleaner newspaper published an editorial in the year 1901 which argued that the Privy Council was out of step** with the times and that serious consideration should be given to establishing a final court for the Caribbean region.⁶ So even back then, there was a growing feeling that the region deserves to be served by a Court with an appreciation for Caribbean values, history, and culture.

² To be precise, 104.5 judgments per year.

³ To be precise, 5.75 judgments per year.

⁴ To be precise, 15.5 judgments per year.

⁵ To be precise, 4.25 judgments per year.

⁶ Duke E. E. Pollard, "The Caribbean Court of Justice: An Innovation in Judicial Institution Building", 2007.

Let us fast forward to today. In 2012 Jamaica celebrated 50 years of Independence from Great Britain. At age 50, Jamaica 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. Well, has not the time come to complete the circle of Independence by abolishing the Privy Council and enhancing access to justice for all Jamaicans through the CCJ?

Just as in the other arenas, Jamaicans have distinguished themselves in the field of law. The reputation of Jamaica to produce brilliant legal minds is well renowned, having given birth to such luminaries as Norman Manley, David Coore, P.J. Patterson, Frank Phipps, Kenneth Rattray, Patrick Robinson, among many others. I would suggest that the rest of the Caribbean region ought not to be deprived of the full benefit of Jamaica's great legal scholarship which can contribute directly to the advancement of Caribbean jurisprudence.

The Right Hon. Telford Georges actually regarded it as "a compromise of sovereignty" for us to remain wedded "to a court which is part of the former colonial hierarchy". Dr Kenny Anthony, Prime Minister of St. Lucia put it this way: "...the Court has always been about the need for all the peoples of CARICOM, to assert their confidence in their integrity, their civilization, and in themselves. No self-respecting nation should allow its sovereignty to be at large."

While we consider the full realisation of our Independence, I understand that the issue of the Court's own independence has been widely discussed. I will address this issue now.

The Independence of the Judges of the CCJ

In some quarters, it seems almost fashionable to suspect that politicians exercise control and authority over the Judges and influence their decision making in given cases. However, we should encourage a discussion and awareness of the CCJ's institutional arrangements as it would become clear that these safeguards shield the Court and the Judges from any political interference.

The CCJ is a unique Court in that its Judges are only appointed after a competitive and rigorously transparent selection process that is free from political control and interference. In fact, scholars all over the world have been heralding the CCJ as an international model court. It is interesting to note that the British Academy funded a research project in 2008 which found

that the selection process of Judges of the CCJ should be used as an international model for identifying judicial candidates of unparalleled calibre.

The main feature of the selection process is an independent and nonpartisan body called the **Regional Judicial and Legal Services Commission**. The Commission comprises 11 persons. The President of the CCJ is Chairman. There are **2 ex officio officers**, the chairman of a Judicial Service Commission and Public Service Commission of a Contracting Member State selected on a predetermined rotating basis for three years each, **2 persons from civil society** nominated jointly by the Secretary General of CARICOM and the Director General of the OECS; **2 persons** nominated jointly by OCCBA and the OECS Bar Associations, **2 persons** nominated jointly by the Regional Law Schools, and **two persons** nominated jointly by the Bar Associations/ law societies of the Contracting Parties. At present, the distinguished **Dr Lloyd Barnett of Jamaica** is the longest serving member of the Commission having been nominated by the Law Schools among the first members of the Commission. It is also interesting to note that no nominations are made by individuals or individual bodies. Nominations are jointly made. I would think that our communities would be assured of the fact that the Commission is constituted in a sensible manner that is not influenced by politicians.

The Commission selects and appoints all Judges and the administrators and staff of the Court. With regard to the **President**, the Commission selects an individual and recommends that person to the Heads of Government who then appoints that person by at least a **75 per cent vote**. This means that the appointment of a President cannot be vetoed by one or two Heads. If the Heads of Government do reject a nominee, they cannot substitute their own. They may only appoint someone who is recommended by the Regional Judicial and Legal Service Commission. These provisions ensure that the selection process is uncontaminated by political interference.

Provisions of the Agreement address the security of tenure of Judges. Removal of Judges from office requires an affirmative recommendation of a tribunal established by the Commission for the purpose. Again, no politicians are involved in this.

In addition, if a Member State wishes to withdraw from the CCJ, it now requires the lapse of **5 years** from the decision to withdraw until it can take effect. Therefore the risk of such a step being taken is minimal, and would not have any impact of the decision- making process of any

Judge.⁷ In addition, the remuneration is good enough to attract suitable candidates; it is fixed and cannot be reduced to the detriment of incumbent Judges.

The Financial Arrangements

The financial arrangements are completely independent of the CARICOM governments. Prior to the establishment of the CCJ, actuaries calculated that the income from a capital sum of US\$100 million could run the Court. The governments have set up a Trust Fund of this amount and the Court is now being run from the proceeds of that sum. Since Jamaica has already fully paid its share for both jurisdictions of the Court, a decision by Jamaica to join the appellate jurisdiction will not cost the country another penny. It is surely time that Jamaicans take advantage of the full benefit of their financial investment by making the CCJ its final Court of appeal.

The Trust Fund is independently administered by a Board of Trustees consisting of (a) The Secretary-General of the Caribbean Community; (b) The Vice-Chancellor of the University of the West Indies; (c) The President of the Insurance Association of the Caribbean; (d) The Chairman of the Association of Indigenous Banks of the Caribbean; (e) The President of the Caribbean Institute of Chartered Accountants; (f) The President of the Organization of Commonwealth Caribbean Bar Associations; (g) The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community; (h) The President of the Caribbean Association of Industry and Commerce; and (i) The President of the Caribbean Congress of Labour or their nominees. Again, I suggest that this is a very high powered and professional body that is totally removed from politics.

Conclusion

I hope that I have shed some light on the benefits to Jamaica and indeed other Caribbean States of fully acceding to the CCJ's appellate jurisdiction. Since 1962, the bulk of all British

⁷ Presentation by the Rt. Hon. Sir Dennis Byron, PCCJ, to the Jamaica Bar Association on 19th May, 2011, UWI Mona, Jamaica.

Commonwealth countries have abolished appeals to the Privy Council and established their own final courts of appeal, some of which have since garnered reputations as first-class institutions. All it took was some strength and a bit of courage for those nations to take the step into full independence. Should Jamaica and our other Caribbean States do the same, I believe that in time the CCJ will surpass its expectations.

I must thank Her Excellency the High Commissioner, again for her gracious invitation, and thank you all ladies and gentlemen for your kind attention.

Thank you...