ADDRESS DELIVERED

BY

THE RIGHT HONOURABLE
MR. JUSTICE MICHAEL DE LA BASTIDE, T.C.

PRESIDENT OF THE CARIBBEAN COURT OF JUSTICE

ON THE OCCASION OF

THE INAUGURATION OF
THE CARIBBEAN COURT OF JUSTICE

SATURDAY 16 APRIL 2005

QUEEN'S HALL

PORT OF SPAIN

TRINIDAD & TOBAGO

PRESIDENT'S ADDRESS

BACKGROUND

Today we celebrate the birth of a new Caribbean institution - the Caribbean Court of Justice. The period of gestation has been protracted - some thirty-five years, in fact, and the birth has not been without complications. It was at a meeting in Jamaica in March 1970, that the Organisation of Commonwealth Caribbean Bar Associations (OCCBA) recognized the need for a regional court of appeal in the Caribbean to replace the Judicial Committee of the Privy Council as the court of last resort. One month later, again in Jamaica, the Commonwealth Caribbean Heads of Government expressed support for the abolition of appeals to the Privy Council and referred the question of establishing a Caribbean court of appeal to a committee of Attorneys-General from the region. At the same time the need was also recognised for a regional court to adjudicate disputes between members of the then proposed Commonwealth Caribbean Economic Community. These then were two fundamental and deeply felt needs - the need for a final court of appeal bedded physically, culturally and jurisprudentially in the region, and the need for a court to adjudicate disputes between members of what has now developed into a single economic entity. The creation of a single institution to fill both these needs is double cause for celebration.

REGIONAL COURTS

Regional Courts are not new to the Caribbean. During the colonial era there was the itinerant West Indian Court of Appeal on which sat the Chief Justices of the colonies which it served, and between 1958 and 1962 the Federal Supreme Court which earned an excellent reputation during its short life. Both of these courts were intermediate courts of appeal from which appeals lay to the Judicial Committee of the Privy Council. Today the independent States that make up the Organization of Eastern Caribbean States share a Supreme Court which provides each member State with a High Court and all of them with a single Court of Appeal from which appeals still lie to the Judicial Committee. Regional courts have some obvious advantages especially for small countries. They enable

countries to pool their resources and expertise and to share costs. They can also provide a bench of Judges which combines familiarity with the region with a degree of detachment from individual members of the regional grouping. Our experience is that regional courts in the Caribbean have had at least a measure of success, both before and after Independence.

CCJ IS UNIQUE

The CCJ, however, is a regional court with a difference. In fact, it is in many respects unique. It is unique first of all because it is really two courts in one, a court of first instance to interpret and apply the revised Treaty of Chaguaramas and an appellate court which offers itself as a replacement for the Judicial Committee of the Privy Council. There has been less controversy over the Court's original jurisdiction. Presumably because the need has been clearly seen to make provision for compulsory adjudication by a tribunal of disputes arising between participants in the CSME. It is also important that the determination of these disputes should be accompanied by authoritative statements by the tribunal as to how the parts of the Treaty which are in dispute, should be interpreted and applied. Nothing would be more disruptive of the CSME than for the same questions of interpretation to receive conflicting answers from the national courts of different member states. It was no doubt for these reasons that the participants in the CSME have clothed the CCJ with sole responsibility for deciding questions concerning the interpretation and application of the revised Treaty and with jurisdiction to decide disputes arising under it.

APPELLATE FUNCTION

Then there is the appellate jurisdiction of the CCJ. This has only been accepted to date by two countries, that is, Barbados and Guyana. Since I first considered the issue as a member of the Wooding Constitution Commission in the early 1970's, I have been convinced of the need to abolish appeals to the Privy Council from Trinidad and Tobago and indeed from the whole of the Caribbean. If my voice is not what it used to be, it may be because I have used it up in my advocacy of that cause. But do not worry - I am not going to make any argument of my own today for the replacement of the Judicial Committee by the Caribbean Court of Justice. All I propose to do is to quote for you the words of two eminent members of the Privy Council, whose pronouncements were separated in point of time by a gap of

175 years. You may think that a point of view which has persisted among Privy Councilors for as long as that is worthy of consideration. The first quotation is from Lord Brougham who was Lord Chancellor of England between 1830 and 1834 and is credited with the remodelling of the Judicial Committee of the Privy Council which was effected by Act of Parliament in 1833. This is what Lord Brougham is quoted as having said in 1828:

> "It is obvious that, from the mere distance of those colonies and the immense variety of matters arising in them, foreign to our habits and beyond the scope of our knowledge, any judicial tribunal in this country must of necessity be an extremely inadequate court of redress".

Let us now fast forward 175 years to the annual dinner of the Law Association of Trinidad and Tobago on the 10th October, 2003, at which Lord Hoffman was the feature speaker. I quote two short passages from his address. The first is:

> "Although the Privy Council has done its best to serve the Caribbean and, I venture to think, has done much to improve the administration of justice in parallel with improvements in the United Kingdom, our remoteness from the community has been a handicap".

The second passage:

> "But my own view is that a court of your own is necessary if you are going to have the full benefit of what a final court can do to transform society in partnership with the other two branches of government".

I make no comment because none is needed. The irony is that some who think that the remoteness of the Privy Council is not a handicap but an advantage, dismiss Lord Hoffman's opinion on the ground of his lack of familiarity with local conditions!

There is one further piece of information that I would leave with you. There are now only three independent countries outside of the Caribbean which still retain a right of appeal to the Privy Council. They are Tuvalu, Kiribati and Mauritius. You may or may not have heard of the first two, but they are chains of small islands in the South Pacific. Tuvalu has a population of 10,000, Kiribati of 103,000. Enough said.

JUDICIAL APPOINTMENTS

There are two other respects in which the CCJ is unique. The first which distinguishes it from other regional or international courts, has to do with the method of appointment of its Judges. The Judges are appointed (and are removable only) by an independent Commission, the Regional Judicial and Legal Services Commission, none of whose members is a politician or the nominee of a politician or chosen by some political process.

So far as the appointment of the President is concerned, the role of the Heads of Government is limited to accepting or rejecting the person recommended by the Commission. All I can say is, that if the Heads of Government who accepted the recommendation of the Commission that I be appointed the first President of the Court, wished to have a President who was, shall we say, pliable, then they made an awful choice – and they must have done so with their eyes wide open!

FUNDING

An even more striking and unusual feature of the Court is the arrangement made for its funding. A fund of approximately US $100 million was raised by the Caribbean Development Bank (the CDB) on the international market. This Fund has now been transferred to a Board of Trustees comprising a number of distinguished and independent persons, including incidentally the Chief Justice of Belize. The Trustees will invest the Fund and the income which it generates will be used to meet the expenses of the Court and the Commission. The result of this arrangement is that the financial obligations undertaken by the members of Caricom are owed to the CDB and any default by them will not affect the funding of the CCJ which will be provided by the Trustees out of moneys and assets under their control. It is by the control which Governments exercise over the amount of money voted annually for the Judiciary and the release and use of moneys so voted, that Governments are in a position to exert great pressure on a Judiciary. The damage which this can cause is not avoided by the Judiciary resisting such pressure if it is applied. The stream of justice may remain unpolluted, but there may well be a price to be paid by the justice system in terms of projects that have to be abandoned, services that cannot be provided, buildings that cannot be built or repaired, expertise that cannot be hired, equipment that cannot be purchased, training that cannot be carried out, all because the Judiciary is denied the funds needed to do these things. The arrangements made for the funding of the Court are

designed to ensure that the Court is not financially dependent on the Governments of the region, and so is not vulnerable to the pressure or the loss of funding which may result from such dependence.

CCJ WELL PROTECTED

I am the last person to minimize the importance of protecting a Court against political influence. What I do maintain, however, is that the CCJ is extraordinarily well protected against such influence and the Heads of Government (some of them now in opposition) who built that protection into the Agreement establishing the Court, are to be commended for it. It is true as the Judicial Committee recently pointed out, that the Agreement may be amended with the consent of all the parties to it. I venture to suggest, however, that the risk that the Heads of a dozen or so Caribbean Governments may be persuaded to participate in a joint enterprise to weaken the independence of the Court which they (or their predecessors in office) have so elaborately protected, is small enough to accept – in the same way that we accept the risk of radical amendment of our Constitutions or the risk involved in having as our final court of appeal a court whose continued existence even we cannot guarantee. In making this assessment of the risk of an amendment which would weaken the protection which the CCJ now enjoys, I rely not so much on the bona fides of political leaders in the Caribbean, present and future, but on public opinion which would render it politically inexpedient for them to adopt such a course and on the requirement of unanimity which history tells us is not easily achieved by Caribbean leaders. The fact that the Judicial Committee was able to express no more than a hope that the risk of such an amendment was 'fanciful', is perhaps a consequence of its lack of familiarity with the region. It seems to me that in assuming that risk we would be merely exchanging one fanciful risk for another.

CONCLUSION

There is good reason therefore, to be optimistic about the future of the CCJ. The establishment of this Court is certainly a landmark event in the history of the Caribbean. The Court has the capacity to make an important contribution to the integration movement in the region and in Lord Hoffman's words to give to the people of the Caribbean 'the full benefit of what a final Court can do to transform society'. To sit as the first Judges of this Court is an opportunity which my fellow Judges and I feel very blessed and honoured to be given. It is also a responsibility

which we accept with humility and a deep sense of obligation to the people of this region.

President

16th APRIL, 2005

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