



Special Sitting in St. Vincent & the Grenadines

July 20, 2018

Speech delivered by Hon. Mr. Justice Hayton
Judge, Caribbean Court of Justice

Your Excellencies, learned judges and distinguished ladies and gentlemen, good afternoon and welcome to this special sitting of the CCJ. We are here to mark the Hon Justice Adrian Saunders' elevation to the third Presidency of the CCJ in the country where he was born and raised. This affords us the special opportunity to look back and to look forward. We acknowledge the vigorous leadership of two legal giants, the Right Honourable Michael de la Bastide and the Right Honourable Sir Dennis Byron, the first two Presidents of the Court, who have taken the Court to its current position where its judgments are cited by other final courts including the Privy Council. We also look forward to the greater acceptance of the Court's appellate jurisdiction during President Saunders' term of office as the first President to have received his legal education and training exclusively in Caribbean legal institutions.

The Court commenced its jurisdiction in 2005 under President de la Bastide as its President. He provided a fine foundation for the Court providing high quality judgments to produce an impressive track record to encourage CARICOM countries to take on the Court's appellate jurisdiction. He also involved the Court in outreach activities via the Caribbean Academy of Law and Court Administration, the Caribbean Association of Court Technology Users, and the Caribbean Association of Judicial Officers with the Hon Mr Justice Saunders as its first president.

Of the original seven judges in 2005, The Hon Justice Saunders, the Hon Justice Wit and myself remain in office. Little did we expect that 13 years later only four of the States that had signed up to the CCJ's appellate jurisdiction in the 2001 Agreement Establishing the CCJ would have made the CCJ their final court.

The Right Honourable Sir Dennis Byron took over the Presidency in September 2011 and during his Presidency 123 judgments were delivered in the Appellate Jurisdiction and twelve in the Original Jurisdiction. He ended his Presidency with two learned landmark judgments, one upholding the constitutional validity of the two terms limit on the Guyanese Presidency. The other struck down the mandatory death penalty in Barbados, held s 11 of the Constitution to establish an independent right to protection of the law and held s 4 of the Independence Order to enable the courts to modify colonial laws unchanged since Independence if inconsistent with the human rights and freedoms enshrined in the Constitution.

He was, however, very conscious that the Court has three roles to play. In its original jurisdiction in interpreting and applying the Revised Treaty of

Chaguaramas, it has a crucial role essential for the success of the Treaty in underpinning the development of the Caribbean Single Market and Economy. In its appellate jurisdiction it has a very significant role in developing a Caribbean jurisprudence and in interpreting written constitutions that are the blueprint for the rule of law in democratic societies. It has a third role as the apex court in the Caribbean concerned to improve the delivery of justice in the Caribbean, being much better placed to do this than the British Privy Council.

Of special significance is the JURIST Project funded by Can\$20 million and implemented by the CCJ on behalf of Global Affairs Canada and the Conference of Caribbean Heads of Judiciary. The Project is working with the judiciaries in the region to improve court administration and strengthen the ability of the courts and the judiciary to resolve cases fairly and efficiently. Its initiatives include the development of Model Guidelines for the Treatment of Sexual Offences, the setting up of a Sexual Offences Model Court in Antigua & Barbuda, provision of a Criminal Magisterial Bench Book for the Caribbean region, and the provision of mediation training programmes. Sir Dennis Byron has also been directly involved with training attorneys on new Civil Procedure Rules in Guyana and helping with procedures for clearing backlogs of cases before the Grenada High Court and before the Jamaican disciplinary body for attorneys.

Of vital importance has been the CCJ's progression into the era of electronic filing of documents and electronic monitoring of the progress of cases under the CURIA Court Management Suite.

This came about because Sir Dennis was able to persuade some regional governments to put up sufficient money to enable the CCJ to facilitate the creation of APEX, a non-profit-making agency. APEX is dedicated to the provision and delivery of technology-enabled solutions and capacity building systems to support the development and strengthening of Caribbean court eco-systems. APEX has been working closely with Courtechs Inc comprising Caribbean technology experts. With direct input from CCJ judges, Courtechs has created the CURIA Court Management Suite tailored to the needs of Caribbean courts. Software has also been produced to provide efficient management systems for attorneys, for DPP's offices, for the police and the prisons service.

The great merits of the CURIA system were recently revealed in the CCJ's expeditious dealing with an exceptionally urgent application filed after 4pm on a Friday for a Commonwealth citizen to be registered as an elector for the recent election in Barbados. This was dealt with within 48 hours on the following

Sunday afternoon, all the electronically filed documents being available to be read anywhere on laptops or I-phones or Androids, so the Judges and attorneys could read them at home or while in transit.

In the light of all that the CCJ has achieved since 2005, recognised by legal luminaries in chapters in the book, *The Caribbean Court of Justice: the first Ten Years* and also fulsomely recognised by Prime Ministers at the recent swearing in as CCJ President of Justice Adrian Saunders in Jamaica on 4th July, we still have those Prime Ministers stating that it is not a priority to accede to the appellate jurisdiction of the CCJ. Moreover, even where no referendum is needed for such accession Prime Ministers are saying let us leave it to the people to decide.

History, however, reveals that those Prime Ministers who are regarded as great Prime Ministers have been those who led from the front doing what they regarded as being right for their countries to fulfil their destinies as mature independent nations. CARICOM countries' Prime Ministers are actively engaged in the implementation of the Revised Treaty of Chaguaramas which provides the blueprint for the economic development of the Caribbean region so as to improve the living standards of those within the region. The Prime Ministers in the recitals to the Treaty expressly affirmed that the original jurisdiction of the CCJ to interpret and apply the Treaty is essential for the successful operation of the Treaty. As the CCJ has held, in applying and fleshing out the Treaty, the CCJ has scope to create new law, such as a five-year time limit for claims to recover tax unlawfully collected by a State. The Prime Ministers have clearly been happy for such an influential key role to be entrusted to the CCJ.

A further key role is the interpretation of a State's written constitution that is its blueprint for the rule of law buttressing living standards in a democratic State. The late Professor McIntosh endorsed the following statement of Bishop Hoadly, Bishop of Bangor and then of Winchester, "Whoever has an absolute authority to interpret any written laws it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote them."

Should a mature State posing as an independent State really allow the British Privy Council to lay down the law as to the operation of its constitutional machinery and determine what its citizens' fundamental rights and freedoms are under its constitution? Clearly not - and so, in the 2001 Agreement Establishing the CCJ, States agreed that this key role in developing Caribbean jurisprudence should be played by the CCJ. So why the delay? It ought to be a

priority for all political parties to complete the circle of independence for their State.

Similarly, all political parties should appreciate the priority to have a local final court to improve access to justice so that injustices will not be allowed to persist due to financial inability to access the final court. It is surely of great significance that in the last 13 years the CCJ dealt with 54 appeals from the Barbados Court of Appeal whilst in the previous 13 years the Privy Council only dealt with 15 such appeals. This paucity of Privy Council appeals indicates that some injustice may well have prevailed in the Court of Appeal due to a financial inability to access the distant Privy Council.

Many have said that too many political parties are narrowly focused upon staying in power or regaining power and so will do whatever is necessary for that purpose. A cynical commentator has remarked that British colonialism was too successful in generating an inferiority complex in many Caribbean countries, so that British jam, British baked beans and British justice are considered much superior to local equivalents. Therefore, if one party wishes to replace the British Privy Council with the CCJ, the other party may be inclined to prey upon the anxieties and insecurities of the populace by opposing such a move in the hope this will enable it to find favour at the polls with the majority of the electorate, though the answer to this can be found in the words of Bob Marley's Redemption Song, "Emancipate yourselves from mental slavery, None but ourselves can free our minds."

A further point relates to uninformed or misinformed allegations that the CCJ may be prone to corruption and being influenced by politicians. This is rubbish and is as likely as the Pope becoming a cannibal. We CCJ judges, like judges of any other apex court, are the archpriests of the law and to doubt the integrity of this court for the sole reason that its judges are, for the most part, from the Caribbean is utterly non-sensical and reveals a measure of self-depreciation which is unfitting for a region rich with culture, academics and prominent jurists who have served in high positions all over the world. We judges have devoted our lives not to making money as attorneys but to developing the law so that citizens can have fulfilling lives in a democratic society where the rule of law prevails.

We CCJ judges are interviewed, appointed, and removable for cause only, by the very independent Regional Judicial & Legal Services Commission, while the CARICOM States have already paid over the US\$100 million Trust Fund intended

for the financial sustainability of the CCJ. Having paid for the CCJ, it makes no sense for such States not to make full use of it, thereby becoming truly independent States, providing easier access to justice to their citizens, and having the CCJ as the apex court in the heart of the Caribbean, working closely with local judiciaries in order to improve the delivery of justice throughout the region.

After the CCJ has more than proved itself over the last 13 years, can it really justifiably be said that it is not a priority for Caribbean States to replace the Privy Council? Just as fish swim in water, so societies and their citizens fulfil their destinies within a court-monitored rule of law where the last word is with the final court. Should the British Privy Council really continue to have the last word as in colonial times to keep the Caribbean on the right track as it sees fit?

We Judges therefore very much hope that we shall see more States acceding to the appellate jurisdiction during Justice Adrian Saunders' Presidency while the Court further develops its high reputation.

President Saunders, on behalf of the CCJ Bench, congratulations to you on your elevation to the Presidency with much appreciation for the crucial input from your parents and the solid support of your wife, Marilyn, and your two sons, Yuri and Yannek.

Congratulations also to the people of St Vincent & the Grenadines with the ascendancy to the CCJ Presidency of their son of the soil.

Finally, congratulations to the peoples of the Caribbean Community who can be confident that this President of the CCJ, like his illustrious predecessors, will preside with distinction over a court whose judges are devoted to the fair and efficient delivery of justice for Caribbean peoples.