



SENATOR THE HONOURABLE DONNA COX
MINISTER OF SOCIAL DEVELOPMENT AND FAMILY SERVICES

**PRIVATE MEMBERS' MOTION
BROUGHT BY SENATOR ANTHONY VIEIRA**

**FOR THE CARIBBEAN COURT OF JUSTICE TO BE
RECOGNIZED AS THE FINAL APPELLATE COURT
OF TRINIDAD AND TOBAGO**

June 28, 2022

Madam President, it is indeed an honour for me to make a brief intervention on a motion that is as timely as it is important. I wish especially to congratulate Senator Vieira both on the crafting of his motion and on his willingness to challenge the members of this Chamber, and the wider society by extension, to look deeper at the ways in which we can continue to grow as a body politic and emerge with a greater sense of self-worth and self-determination. Similarly, I would like to thank our own Attorney General and fellow Senators on this side, and on the Independent bench, who have collectively demonstrated an understanding of the truest meaning of sovereignty and independence.

Madam President, having listened intently to the entirety of this debate, and even re-reading the Hansard, I would like to narrow the parameters of my own contribution to an area which I believe requires further explanation of the composition of the membership and validity of the Regional Judicial and Legal Services Commission, appointed as it represents a broad spectrum of Caribbean life and civil society and, its eminent persons.

In so doing Madam President, I would like to recall the precise wording of Senator Vieira's motion, if only because it is easy, in the cut and thrust of the debate, to forget the reason why we are gathered here. In his citations, Senator noted that:

“Whereas the unique and varied legal matters which arise in the Caribbean are far removed and foreign to the society, culture and habits of the Judicial Committee of the Privy Council, a sentiment echoed by Privy Council judges and senior British legal figures;

And whereas almost all Commonwealth States outside the Caribbean as well as four CARICOM states, have since delinked from the Privy Council, recognizing that it goes against the sovereignty of independent nations, and is therefore politically unacceptable, to have such a foreign tribunal permanently entrenched in their Constitutions as their final appellate Court;

And whereas this is an appropriate time for Trinidad and Tobago to accede to the Court in its appellate jurisdiction, so that the Country’s civil, criminal and constitutional appeals can be heard by the Court, which will also serve this Country’s democratic and developmental objectives regarding affordability, relevance and increased access to justice;

Be it resolved that this Senate agrees that the Caribbean Court of Justice be recognized as the final Court of Appeal for Trinidad and Tobago and that the appropriate amendments be made to alter the Constitution of Trinidad and Tobago so as to entrench the court as its final court of appeal.

Madam President, there are several quotations cited by both Senator Vieira and the Honourable Attorney General Reginald Armour which have stayed with me, if only because they go to the heart of the matter before us, and more specifically to the core of my own thesis, that **the Regional Judicial Legal Service Commission, appointed as it is to represent a broad spectrum of Caribbean life and civil society and, its eminent persons, is the best representation of who we are as a collective people, is the best signal of how far we have journeyed on this road to judicial independence, and is perhaps one of the strongest testimonies of how CARICOM ought to function.**

Madam President, I want to adopt the words of former CARICOM Secretary General, Mr. Edwin Carrington who, among others have opined that the Caribbean Court of Justice is the court of the Caribbean people, by the Caribbean people, for the Caribbean people, and that it is the true voice of Caribbean people for vindication of our rights.

Madam President, in his opening salvo for this debate, Senator Mark sought to reduce a debate of such seismic importance, by declaring the reasoning for the Opposition's refusal to support the motion to be their lack of confidence in the People's National Movement.

But Madam President, this motion is not about whether Senator Mark and UNC has confidence in the PNM, because on that basis alone, they will never support any legislation that comes to this House.

This motion is about what is best for Trinidad and Tobago. This is not a PNM motion, this is not a UNC motion, this is not even a Senator Vieira motion, this is a Trinidad and Tobago motion. This is a motion about how confident we are in our own self-determination. This is a motion borne out of the fact that we have been forged from the love of liberty, in the fires of hope and prayer, possessing boundless faith in our destiny, as an independent, sovereign, republic, determined to stand head and shoulders with all the other nations who have removed all vestiges of their colonial pasts, including retention of the Privy Council.

It is painful, Madam President, when it takes a former President of the International Criminal Tribunal for Yugoslavia, one Mr. Patrick Robinson, to say to us that *“By far the worst relic of enslavement, indentureship, and colonialism is that we have been left with a muddled sense of our identity. Colonialism has left engrained in our psyche the feeling that we are not good enough. That what we look like is not good enough, and that what is foreign... is better. The Monarchy and the Privy Council comprised of foreigners ignorant of our culture, living thousands of miles away, many of whom have never set foot in this region, and who have precious little in common with our people, are an anachronism that we should not be asked to endure any longer.”*

I agree wholeheartedly with this statement made by Mr. Patrick Robinson. We, the people of Trinidad and Tobago, should not be asked to endure the Privy Council as our final court of appeal any longer.

Madam President, there is an irony in the fact that even the UK does not permit overseas judges to adjudicate on their own domestic matters yet this 45-year old Republic of Trinidad and Tobago still sends our appeals to the Judicial Committee of the Privy Council in the UK.

Madam President, I want to ask my colleagues on the Opposition bench:

- if they possess any apprehension about the quality of the judgements handed down by the CCJ?
- if they have knowledge of anyone appointed to the bench of the CCJ, being unqualified to hold such a position?
- whether the Court's first president, the eminent legal luminary and former Chief Justice Michael de la Bastide was unworthy of that position?
- I want to ask my colleagues on the Opposition Bench whether they believe that current member of the Bench, and former Independent Senator Elton Prescott SC, is unworthy of his position?

Madam President, these are all pertinent questions to which they must respond, because to simply cast aspersions on the judges of the CCJ as being politically appointed, and therefore unable to provide justice that is fair and equitable, is to continuously fly in the face of all logic and reason.

Madam President, what then are the facts concerning the appointment of the judges of the Caribbean Court of Justice, what is the process by which they are appointed, and who are the members who currently comprise the Bench?

The Heads of Government of -

- Antigua and Barbuda
- Barbados
- Belize
- Grenada
- Guyana
- Haiti
- Jamaica
- Montserrat
- St. Kitts and Nevis
- St. Lucia
- Suriname and
- Trinidad and Tobago
- Dominica
- St. Vincent and the Grenadines.

All signed the agreement establishing the Caribbean Court of Justice in 2001, with the exception of Dominica and St. Vincent and the Grenadines who signed the agreement on 15th February, 2003.

The Agreement stated that “THE CONTRACTING PARTIES, CONVINCED that the Caribbean Court of Justice, (hereinafter referred to as "the Court"), will have a determinative role in the further development of Caribbean jurisprudence through the judicial process;

CONVINCED ALSO of the desirability of entrenching the Court in their national Constitutions;

AWARE that the establishment of the Court is a further step in the deepening of the regional integration process;

RECOGNISING the sovereignty of Members of the Caribbean Community; HEREBY AGREE that a “Commission” which also means the Regional Judicial and Legal Services Commission would be established by Article V (1) of the agreement. The composition of the Commission as set out in Article V (1) of the Agreement is as follows:

- a). the President who shall be the Chairman of the Commission;
- b). two persons nominated jointly by the Organisation of the Commonwealth Caribbean Bar Association (OCCBA) and the Organisation of Eastern Caribbean States (OECS) Bar Association;
- c). one Chairman of the Judicial Services Commission of a Contracting Party selected in rotation in the English alphabetical order for a period of three years;

- d). the Chairman of a Public Service Commission of a Contracting Party selected in rotation in the reverse English alphabetical order for a period of three years;
- e). two persons from civil society nominated jointly by the Secretary-General of the Community and the Director General of the OECS for a period of three years following consultations with regional non-governmental organisations;
- f). two distinguished jurists nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, the Deans of the Faculties of Law of any of the Contracting Parties and the Chairman of the Council of Legal Education; and
- g). two persons nominated jointly by the Bar or Law Associations of the Contracting Parties.

Madam President, in much the same way as our local Judicial and Legal Services Commission operates, the Regional Commission is completely insulated from external influences as members are explicitly forbidden from acting other than independently. The manner of selection for the commission is objective and ensures that only a certain caliber of individuals are able to hold office. The majority of the Commission sits *ex officio*, and none are or have ever been politicians and they represent a wide cross section of the Caribbean region.

Further, when judges are selected for appointment to the CCJ the question of geographical or even ethnic distribution is given absolutely no consideration, as these are not determining factors in the dispensation of justice. Rather, these eminent regional jurists are chosen solely on the basis of their individual judicial expertise. Criteria for appointment therefore includes: extensive judicial experience; high moral character; intellectual and analytical ability; sound judgment; integrity and an understanding of people and society.

Madam President, the current Commissioners are:

1. the Hon. Mr. Justice Adrian Saunders (Chairman);
2. Mr. Byron St. Michael Hylton OJ QC (Deputy Chairman);
3. Mr. Delano Bart QC;
4. Ms. E. Ann Henry QC;
5. Hon. Mr. Justice Bryan Sykes OJ CD;
6. Mr. Michael Somersall DSM;
7. Mrs. Susan Branker Greene MSc;
8. Mr. Brian Glasgow FCCA MSc;
9. Hon. Mr. Justice C. Dennis Morrison OJ CD QC;
10. Mrs. Jacqueline Samuels-Brown QC, and
11. Mr. Elton Prescott SC.

Madam President, since its inception, several outstanding Trinbagonians either have sat on, or currently are sitting on the Commission, including its very first president, the Honourable Mr. Justice Michael de la Bastide, TC, as well as

- i. Mr. Kenneth Lalla, SC
- ii. Ambassador Christopher R. Thomas, CMT, D Laws
- iii. Ms. Gloria Gray, B.Sc, M.Sc
- iv. Mr. Allan Alexander, SC
- v. Mr. Martin Daly, SC and
- vi. Mr. Elton Prescott SC who is a current member.

Madam President, none of the persons mentioned as past or present Caribbean Court of Justice judges were directly appointed or elected by their member states or contracting parties as they are otherwise referred. Instead, after a rigorous vetting process, they are chosen and appointed solely by the Regional Judicial and Legal Services Commission comprising, as I have outlined, representatives of regional bar associations, civil society and academic institutions, totally independent of political influence. These appointments are for a period of three years.

Madam President, this manner of judicial appointments and the guaranteed financial autonomy of the court have in fact been commented on by experts throughout the world, experts knowledgeable about the operations of international courts, and as both Senator Vieira and the Attorney General have averred, the CCJ is hailed internationally as a model for the selection of independent, high quality judges.

Madam President, it must have been tremendously painful and unnerving for Mr. Justice de la Bastide, the first President of the Court, to be forced to include in his 2021 memoirs, a rebuttal of the lame excuse we have heard from members of the Opposition bench, about political influence in the appointment of the judges.

In those memoirs, quoted by the Attorney General, the Court's first President lamented: *"It is not possible to find any material in the judgments or decisions of the court to provide substantial support for those fears of local influence. The diversity of the Bench has been questioned but such criticism has been scuttled by the appointment of men and women of various nationalities, backgrounds and ethnic composition. Surely the quality of the judgments delivered by the court as well as that of the men and women appointed to the court demonstrates that there is no substance in the argument advanced for the non-participation in the appellate jurisdiction of the court."*

Madam President, the men and women appointed to the Regional Judicial and Legal Services Commission in the past served the people of the Caribbean region without fear, favour, malice or ill-will and the current members continue to emulate this legacy of serving with distinction. I therefore join with all my colleagues on this side, as well as the Independent Senators in giving my unequivocal support, for the entirety of Senator Vieira's motion.

It is my fervent hope, and indeed my prayer, that my colleagues on the Opposition bench would open their eyes to the new day that will dawn when they finally believe the people of this great Republic and indeed, the wider region, are eminently capable of completely managing our affairs.

Madam President, we are one Caribbean, one people.

I thank you.