SENATE

Wednesday, March 09, 2005

The Senate met at 1.30 p.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Howard Chin Lee for the period March 09, to March 16, 2005.

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. MAGNA WILLIAMS-SMITH

WHEREAS Senator Howard Chin Lee is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MAGNA WILLIAMS-SMITH, to be temporarily a Member of the Senate, with immediate effect from the afternoon of March 09, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Howard Chin Lee.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 9th day of March, 2005."

OATH OF ALLEGIANCE

Sen. Magna Williams-Smith took and subscribed the Oath of Allegiance as required by law.

BREACH OF PRIVILEGES

Mr. Vice-President: Hon. Senators, at yesterday's sitting of the Senate, Sen. Prof. Ramesh Deosaran sought leave in accordance with the provisions of Standing Order No. 26(2) to raise a matter of privilege. Leave was granted and I indicated that I would give my ruling at today's sitting.

In his submission, Sen. Prof. Deosaran advised that on January 12, 2005 he received correspondence dated January 05, 2005 from Dr. Phillip Ayoung-Chee, which contained several insults, threats to his physical safety and a warning that, should Sen. Prof. Deosaran visit the San Fernando Hospital while the said doctor was on the premises he would suffer that doctor's full "wrath and rot" and would be embarrassed in public.

Sen. Prof. Deosaran also stated that the correspondence bore the doctor's name and address. Sen. Prof. Deosaran believes that this letter is directly related to a statement made in the Senate on November 30, 2004 during the debate on the decentralization of one of the Regional Health Authorities and that the letter is an attempt to intimidate him in the performance of his duties as a Member of this honourable Senate.

Hon. Senators, I have read the alleged correspondence referred to. I have also read the submission of Sen. Prof. Deosaran. It is now my duty, in accordance with Standing Order No. 26(4), to decide whether a *prima facie* case of breach of privilege has been made out.

Members of Parliament in Trinidad and Tobago like their counterparts in parliaments of the world, in the course of parliamentary proceedings, are protected by parliamentary privileges. I quote directly from the Constitution, which provides in section 55:

"(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Senate and House of Representatives, there shall be freedom of speech in the Senate and House of Representatives.

(2) No civil or criminal proceedings may be instituted against any member of either House for words spoken before, or written in a report to, the House of which he is a member or in which he has a right of audience

> under section 62 or a committee thereof or any joint committee or meeting of the Senate and House of Representatives or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise; or for the publication by or under the authority of either House of any report, paper, votes or proceedings."

Hon. Senators, these privileges and immunities are accorded to Members of Parliament in order to provide them with the protection they need to enable them to fulfil their duties without fear of reprisals. And so, it is a matter of law that a Senator, speaking in the course of proceedings in the Senate, enjoys absolute freedom of speech. This privilege, together with a number of others with which I trust you are all familiar, is not granted to parliamentarians simply in order to confer on them any benefits which are not enjoyed by their fellow citizens. They are given to the parliamentarians only in order to enable them to perform their duties without let or hindrance. It is therefore not a privilege in any personal sense outside the ambit of a Senator's normal parliamentary duties and responsibilities.

Therefore, Members of Parliament are protected from molestation when they are pursuing or as a consequence of pursuing their legitimate parliamentary activities. The types of molestation from which Senators have a right to be protected include: threats, intimidation, harassment, bribery, and physical distraction or obstruction while performing his or her parliamentary duties.

It has been authoritatively said that laws are meaningless unless there is the power to enforce them by imposing penalties on those who break them. Historically, in addition to relying on the courts, our Parliament is vested with its own penal jurisdiction. Arguable then, should the allegations put forward to this Senate by Sen. Prof. Deosaran be proven, the action by the doctor in question would amount to an interference with a Senator's privilege and contempt of this Senate. As a consequence the Senate must act.

A parliament or legislature is empowered to adjudicate and punish those who commit or breach its privileges. This power, which Parliament shares with the courts, has been described as the keynote of parliamentary privileges. The main principle that underlies such powers is that a House of Parliament must possess the ability to protect the actions of its Members in the course of their legitimate duties in parliaments. Without such protection, individual Members would be severely handicapped in performing their parliamentary functions and the authority of the House itself as a forum for expressing the anxieties of citizens would be correspondingly diminished.

In many jurisdictions, including the House of Commons of the United Kingdom, parliaments do not rely on the courts to impose penalties on those who break them but exercise their own penal jurisdictions.

Hon. Senators, the power to deal with matters of contempt also resides with the Parliament of Trinidad and Tobago by virtue also of section 55 of the Constitution, which in 55(3) states:

> "In other respects, the powers, privileges and immunities of each House and of the members and the committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this Constitution and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution."

However, hon. Senators, Mays on Parliamentary Practice says:

> "Conduct, including the use of words does not constitute an offence unless it amounts or is intended or likely to amount to an improper interference with the free exercise by a House of its authority or functions or with the free performance by a Member of the Member's duties as a Member."

Sen. Prof. Deosaran believes that the faxed letter was intended to do just that. This is what has to be determined and in view of the seriousness of the matter, I consider this matter warrants proper investigation. In the circumstances, therefore, I rule *prima facie* a sufficient case of breach of privilege has been established and I refer the matter to the Committee of Privileges of the Senate for investigation and report.

VENTURE CAPITAL (AMDT.) BILL (NO. 2)

Special Select Committee Report (Presentation)

The Attorney General (Sen. The Hon. John Jeremie): Mr. Vice-President, I beg to present the following report:

> Report of the Special Select Committee of the Senate appointed to consider and report on a Bill to amend the Venture Capital Act (No. 2), 2004, in accordance with the provisions of Standings Order 51(2).

ORAL ANSWERS TO QUESTIONS

Piarco International Runway Project (Client Representative)

38. Sen. Wade Mark asked the hon. Minister of Works and Transport:

A. Could the Minister state the name of the client representative on the Piarco International Airport Runway Project?

B. Could the Minister further provide this Senate with the qualifications of the client representative?

The Minister of Works and Transport (Hon. Franklin Khan): Thank you very much, Mr. Vice-President. Once again I rise to reply to question 38 as posed by Sen. Wade Mark, and to advise this honourable Senate that in response to (A), there is no entity defined as client representative in the contract for the Piarco International Runway Overlay Project with Jusamco Pavers Limited.

The Government of Trinidad and Tobago is represented by the "Employers Representatives", which is defined in the contract as an officer attached to the Airports Authority of Trinidad and Tobago (AATT) and an officer attached to the Ministry of Works and Transport, appointed by and responsible to the employer and who shall carry out such duties and exercise such authority as may be delegated to them.

The names of the Employers Representatives are as follows:

Leo Frederick	Deputy General Manager; Estate Planning and Business Development of the Airports Authority of Trinidad and Tobago.
Mr. Dexter Demas	Duty Manager, Airports Authority of Trinidad and Tobago.
Mr. Rudin Austin	Deputy Permanent Secretary, Ministry of Works and Transport.
Mr. Gerald Collins	Civil Engineer II, Highways Division, Ministry of Works and Transport.

In response to (B), Mr. Vice-President, Mr. Austin is a qualified engineer with a BSc in Civil Engineering, a Diploma in Hydraulic Engineering and a Diploma in Public Administration.

Mr. Frederick is also a qualified engineer with a BSc in Mechanical Engineering and has a Masters in Business Administration.

Mr. Collins is a qualified engineer with a BSc in Civil Engineering.

Mr. Demas is trained in the area of aviation management with a Diploma in Airport Management and in Airport Certification.

Thank you very much, Mr. Vice-President.

Purchase of New Vehicle
(Her Excellency, Mrs. Glenda Morean-Phillip)

43. Sen. Wade Mark asked the hon. Minister of Foreign Affairs:

(a) Could the Minister inform the Senate whether any new vehicles have been purchased by the Government of the Republic of Trinidad and Tobago for use by the Trinidad and Tobago High Commission in London, since the assumption of duty of Her Excellency, Mrs. Glenda Morean-Phillip?

(b) If the answer to (a) is in the affirmative, could the Minister state:

(i) the make and models of the vehicles that have been purchased;

(ii) the cost of each vehicle; and

(iii) the specific purpose for which each vehicle is to be used?

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Mr. Vice-President, in December 2001, the High Commission of Trinidad and Tobago in London put forward a case for the purchase of a Mercedes-Benz S Class motor vehicle as the vehicle best suited to meet the needs of the High Commission. This is the typical standard and quality of vehicle used by the large majority of diplomatic missions in London as their flag cars. This is the model that was acquired by the High Commission in April 2004.

The cost of the vehicle was Euros 79,227.25. The vehicle is used as the flag car of the High Commission. Like in all other Missions, it is the official means of transport of the Head of Mission, who is the High Commissioner or, under the Vienna Convention on Diplomatic Relations, the person who is in charge of the High Commission in the absence of the Head of Mission.

Sen. R. Montano: Mr. Vice-President, could the Minister say what model "S Class" is? Is it a 200, a 500, a 600?

Sen. The Hon. K. Gift: Mr. Vice-President, that minute detail was not provided but I imagine that it does not make much difference.

Sen. R. Montano: Mr. Vice-President, is the Minister aware that there is a big difference between S 500 and S 280, and the difference relates to engine size and to cost?

Is the Minister also aware that the interior luxury of S 320 is very similar to the interior luxury of S 500 but that S 500 is the more expensive version? The

question was: What make and model has been bought? The Minister, with respect, has not quite answered the question, he just said S Class. Anybody who knows about class knows that S Class has a whole range. It is not a minute detail.

Mr. Vice-President, I asked the Minister if he was aware and he has not answered. I asked about two questions, which he has not answered.

Mr. Vice-President: Minister of Foreign Affairs, do you have an answer?

Sen. The Hon. K. Gift: Mr. Vice-President, I am prepared to repeat what I said earlier, which is a description that tells that the car is a Mercedes-Benz S Class motor vehicle, which the Mission in London considered the best suited for the use of the High Commissioner and that it is the typical quality and standard of the vehicle used by a large majority of diplomatic missions in London as their flag cars.

Thank you.

Sen. Mark: Mr. Vice-President, I was extremely [*Inaudible*] and this question was approved by the hon. President. I asked for "the make"—not just the S Class—the make of the vehicle. In other words, as the hon. [*Crosstalk*]

Mr. Vice-President: Please, Senators! Senator, if you asked for the make—

Sen. Mark: And the model.

Mr. Vice-President: Hon. Minister, could you get that model and provide it for the Senator, please?

Sen. R. Montano: Mr. Vice-President, can the Minister therefore confirm that our information is correct, that is to say, it is the top of the line in the S Class range; the S 500, with the AMG Kit fully loaded? In other words, would the Minister please confirm that what they have bought was the most expensive Mercedes-Benz S Class model?

Sen. The Hon. K. Gift: Mr. Vice-President, I can confirm no such thing.

Sen. Mark: Mr. Vice-President, could the hon. Minister indicate to this Senate how many vehicles or, whether the only vehicle that was purchased between the period when the High Commissioner was recently appointed, to the present time, was just one vehicle? How many vehicles were purchased by the High Commission since the appointment of Her Excellency to the Mission in London?

Sen. The Hon. K. Gift: Mr. Vice-President, the information which is in the possession of the Ministry of Foreign Affairs is that one vehicle was purchased; the one just described in my response.

I thank you.

Sen. R. Montano: Could the Minister also confirm that our information is correct, that is to say that this vehicle has come with global satellite position system? Could he please tell us how much extra that cost?

Sen. Dumas: Standard for that class. "Is a box cart you want de woman to drive or what?"

Mr. Vice-President: Could you confirm that, Mr. Minister?

Sen. Dumas: Do you want the woman to represent Trinidad and Tobago in a box cart? [*Crosstalk*]

Sen. Mark: Are you in a position to confirm?

Sen. Dumas: Nonsense!

Sen. Mark: This is not PNM money, you know.

Sen. The Hon. K. Gift: Mr. Vice-President, may I say—

Sen. Mark: And it is not the Minister of Foreign Affairs money.

Sen. The Hon. K. Gift: Mr. Vice-President, may I say that I regard this as almost a non-question. I can also add that the vehicle has heating and air conditioning.

Thank you. [*Laughter*]

Sen. Mark: Mr. Vice-President, that is contempt of the Parliament.

Mr. Vice-President: Sen. Mark, please! The Minister has responded. Could we go to the next question, please?

Sen. Mark: Mr. Vice-President, another supplemental question, please?

Mr. Vice-President: No, I am not allowing anymore on this. Please, Sen. Mark.

Sen. Mark: Mr. Vice-President, I view the response of the Minister as contemptuous to you and your office. It is a matter for the Committee of Privileges.

High Commissioner to the United Kingdom (Repairs to official residence)

44. **Sen. Wade Mark** asked the hon. Minister of Foreign Affairs:

With respect to the repairs being carried out on the official residence of the High Commissioner of the Republic of Trinidad and Tobago to the United Kingdom, could the Minister provide the Senate with:

(i) a complete list of the repairs being undertaken;

(ii) a detailed breakdown of the cost of such repairs; and

(iii) the details of the terms and conditions of the agreement governing the entire repair and refurbishing process presently being undertaken?

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Mr. Vice-President, the list of repairs to the official residence of the High Commissioner was informed by three main considerations; the first was that following the purchase of the official residence in May of 1969, which is some 35/36 years ago, no major maintenance of the building was performed, except the replacement of the roof. This resulted in general dilapidation throughout the building and the High Commission in London consistently reminded that there was need for a comprehensive rehabilitation of the residence.

The second factor was the report of an independent electrical contractor, dated February 07, 2003, which called for the rewiring of the residence as a matter of urgency. In their conclusion, the contractor stated and I quote:

"It is our opinion that the electrical installation throughout the building is in a deplorable, and in certain areas, a dangerous state as detailed above and directly contravenes the IEE Regulations, 16th Edition.

It is therefore our recommendation that the whole electrical installation needs to be overhauled or to be replaced, where necessary, as a matter of urgency.

We respectfully suggest that any further repair works are stopped as this will be a false economy as the installation would certainly fall shortly thereafter. Generally speaking, if any contractor carries out repairs to the existing electrical installations under the IEE Regulations, 16th Edition, the contractor is legally bound to bring all circuits installation up to the legal boundaries as set out in the above regulations."

The third consideration was the security of the residence.

"The security issues in the 1960s when the property was acquired are almost totally unrelated to the security preoccupation at the present time. The Chief Architect, who visited the property on Saturday 08, November 2003, confirmed the need for remedial action. The Chief Architect's report was accompanied by slides showing water-damaged falling ceiling finishes; water-damaged ceilings from bathrooms above; moisture-damaged finishes; cracked and peeling wall finishes; cracked ceilings, peeling and falling ceilings.

In addition, it also showed inadequate preparation areas; non-functioning...congested kitchen space."

The lists of all repairs and the costs have been circulated to Members of the Senate.

2.00 p.m.

Sen. Mark: I have not been given a copy.

Sen. The Hon. K. Gift: While I continue, it will be in circulation in a matter of time.

Sen. Mark: It is not here.

Mr. Vice-President: Have copies of the document been circulated?

Sen. The Hon. K. Gift: That was my impression, Mr. Vice-President. [*Crosstalk*]

Sen. The Hon. K. Gift: If the Chamber is in agreement I can have copies of the version I have here made and circulated to the Senate.

Sen. Mark: I would have liked to have the particular document.

Sen. Dr. Saith: Mr. Vice-President, there has obviously been some miscommunication. I suggest either we defer the question to a little later or have it at the next sitting, when the document will be made available, whichever the Senator prefers. We could take this later in the proceedings after the document has been circulated or we could do it at the next sitting, whatever he wishes.

Sen. Mark: Mr. Vice-President, I would like to suggest that the document be made available to all Senators before 3.00 p.m. and maybe, at some time subsequent to that, you can allow the question and answer to continue. I agree with Sen. Dr. Saith that we should deal with it a little later on in the proceedings.

Sen. Dr. Saith: I agree that we circulate it and we take it in when we close the sitting this evening.

Sen. Mark: Why must we take it when we close the sitting?

Mr. Vice-President: Hon. Senators, the suggestion is that the question be withheld until later in the proceedings. What is the will of the Senate?

The answer to the document we are talking about will be circulated, and we are going to revisit it at a later stage in the proceedings.

Sen. Dr. Saith: Mr. Vice-President, I am not sure that we have one voice. I think there are three leaders who are giving different—[*Crosstalk*]

Sen. W. Mark: Mr. Vice-President, will you guide us as to when it is going to be continued. Will it be before the tea time? If it is just open—the Minister has suggested at the close of the session and I object to that.

Mr. Vice-President: I would look at the procedure and I will definitely take it sometime before that.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Market and Opinion Research International (Contracts*)*

8. Could the Minister of Public Administration and Information provide the Senate with copies of all contracts between Market and Opinion Research International (MORI) and the Government of Trinidad and Tobago for the period 2002—2005?

Vide end of sitting for written answer.

PESTICIDES AND TOXIC CHEMICALS (AMDT.) BILL (N0. 2)

House of Representatives Amendments

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move,

That the House of Representatives amendment to the Pesticides and Toxic Chemicals (Amdt.) Bill (No. 2) 2004 listed in Appendix I be now considered.

Question proposed.

Question put and agreed to.

Clause 8.

House of Representatives amendment read as follows:

Insert after the word "Veterinary" the word "Surgeons."

Sen. Dr. Saith: Mr. Vice-President, I beg to move that this Senate doth agree with the House of Representatives in the said amendment. As I understand, it is merely a clarification to the clause.

Question proposed.

Sen. Mark: Mr. Vice-President, from my enquiries it is purely an editorial error, so we would not have any objection to the proposed amendment as suggested by the hon. Leader of Government Business.

Question put and agreed to.

CARIBBEAN COURT OF JUSTICE BILL

[Second Day]

Order read for resuming adjourned debate on question [March 08, 2005]:

That the Bill be now read a second time.

Question again proposed.

Sen. Wade Mark: Mr. Vice-President, in putting this Bill into some perspective, I would like to begin by addressing the evolution, the historical progress, and where and why we are here today.

Mr. Vice-President, the graveyard of history is littered with the bones, skulls and other remains of the working class and working people who were slaughtered and glittered by glib and smooth talking political leaders, who used deception and deceit to capture and to win their confidence, imagination and goodwill, but who, ultimately, emerged as tin god dictators and fascist rulers. This has been the history of many nations and civilizations. The Caribbean region is no exception. Here, unlike the Attorney General, we have farcical independence because today in the Republic of Trinidad and Tobago, multinational corporations, transnational corporations and powerful and mighty conglomerates rule the economy, polity and the entire society. In other words, these entities are in charge and are in effective control of our lives and not the law lords that are located in London.

For the masses of people, independence means little or nothing. Sovereignty in a globally inter-connected and highly communicative world—civilization has been largely eroded and undermined. The working masses are literally modern economic slaves devouring whatever little crumbs that may, from time to time, fall off the master's table.

Mr. Vice-President, injustice continues to rule and reign in our civilization. Inequality and institutionalized discrimination continue to hold full sway. Poverty, unemployment, poor health care facilities and an irrelevant education apparatus like an albatross continue to weigh heavily around the necks of our people. Yet, we are fed a diet of misinformation, deception and deceit from a regime that has enveloped its vicious tentacles like a dangerous octopus squeezing the very lives of our masses and population.

This is the state of play as we debate this particular Bill before us, yet we are being called, if not summoned, by a notorious People's National Movement (PNM) regime to lend support to a Bill that reeks of illegality, unconstitutionality and virtual madness. We shall demonstrate the implications of this imposition of what might appear to be a simple and innocent piece of legislation. Not so, Mr. Vice-President. This legislation is neither simple nor is it innocent. Indeed, if anything, it is profoundly dangerous for the region and its people and in this instance, for the people of the Republic of Trinidad and Tobago. This legislation, apart from requiring a specified constitutional majority for passage, puts virtually into the hands of politicians, Heads of Governments in the Caribbean cabal, absolute, comprehensive and unlimited power and control over judges of the Caribbean Court of Justice. Not only do these politicians determine the judges' terms and conditions of employment, which I shall refer to shortly, they also influence and determine the tenure of security of these judges.

The Caribbean Court of Justice, even in its present original jurisdiction, will turn out to be a political tool in the hands of politicians, a virtual plaything in the hands of the leaders of this region whose record on promoting and safeguarding human rights and fundamental freedoms of the peoples of this region leave a lot to be desired.

The leaders are not concerned about people's power. They are only concerned about staying in power. They want to stay in power and this is what this Bill is about, to perpetuate the reign of "tin god" dictators in this region. Once again the masses have no choice but to rely on the wisdom and judgment of close to 200 years of a tried, tested and proven institution called the Judicial Committee of the Privy Council.

These law lords recently saved the masses in Jamaica from the possible imposition of a political and constitutional dictatorship. The law lords have now become the salvation of the people of this region because we can no longer depend on these so-called leaders who lead the region at this time.

In fact, the Judicial Committee of the Privy Council represents the buffer between the masses on the one hand and a marauding band of potential oppressors, dictators, and power hungry megalomaniacs. Ol' talk is cheap, and may even be free. Terms like "independence" and "sovereignty" mean nothing to the people essentially.

Mr. Vice-President, when you have in a country like ours with close to 50 per cent of the people living on less than US $12 a day, what does independence mean? What does sovereignty mean to these people, as the Attorney General attempted to allude to in his presentation?

We in this Senate have a responsibility and a duty to safeguard at all costs, and by any and every means available to us, the rights and freedoms of the citizens of this Republic.

I would like to proceed to disaggregate and meticulously dissect this monstrous piece of legislation which we on this side shall dismantle and demolish, and we will do that with calculated patience. We are in no rush. We shall take no prisoners in this debate. All the spurious arguments that have been advanced, we shall expose and demolish. In spite of all the attempted fancy footworks of a macabre dance put on by the Attorney General yesterday it will not detain us. We cannot, must not, and will not support dangerous legislation in this Parliament, which seeks to undermine, to compromise and entrench provisions in our Constitution in favour of some so-called agreement that was signed and never brought to this Parliament for deliberation and/or discussion; that was signed by a cabal of so-called Caribbean leaders at the expense of the people of this nation.

Mr. Vice-President, this particular matter that is before us, I want to deal with it swiftly but patiently because I have limited time.

I want to let you know that while we speak about justice in glib terms—and the Attorney General tells this Parliament that this is a symbol of independence, that is, the so-called Caribbean Court of Justice, and we must rally on the side of the Government to give support to this institution. We have an Attorney General in this country who is supposed to be the guardian of our Constitution and he is in breach of our Constitution on a daily basis in this land.

Mr. Vice-President, if you had any doubts in your mind—

Sen. D. Montano: Mr. Vice-President, on a point of order. The Member has presented not a shred of evidence to suggest that. He is maligning–

Sen. W. Mark: He is not allowing me.

Mr. Vice-President: Sen. Mark, I would ask you to discontinue that line of argument. Please do not ascribe any improper motives.

Sen. W. Mark: Mr. Vice-President, we have been asked by the Attorney General of this country, in this Parliament, to lend support to a measure that he says would constitute a symbol of our independence.

In today's *Express* the headline is: "Duprey wins". When you read the story and the comments of the Attorney General of this country where it is talking about justice—I made the point yesterday or sometime ago, that justice

transcends nationalism, sovereignty and independence. People have died in struggles and battles for justice in the world, and when one sees injustices taking place in one's country and there is an Attorney General seeking to gain one's support to perpetuate the injustices, I have no choice but to draw to one's attention the evil of this regime.

Sen. D. Montano: Mr. Vice-President, nothing has been suggested anywhere that the Attorney General is seeking to perpetuate an injustice. The statement of itself is outrageous! I do not know where this Senator thinks he is going, but he must desist.

Sen. W. Mark: Mr. Vice-President, if you would allow me, in today's *Express*—we are talking about the Caribbean Court of Justice. We are talking about a move by this Government to abolish appeals to the High Court in trade matters. We are talking about a government that is seeking not to allow trade matters to reach the Privy Council. It will reach and stop at the Caribbean Court of Justice. That is what this Bill is about. This is an attempt by a government to abolish appeals via trade matters to the High Court, and I will demonstrate that the High Court can only refer matters when they are about to make a judgment for determination by the Caribbean Court of Justice that will have the final say in these matters. It will no longer be your right as a citizen of this country to go from the High Court and then to the Court of Appeal and then to the Judicial Committee of the Privy Council. That is the point I am making. This is injustice!

Mr. Vice-President, when I speak about the issue I have no personal problem with the Attorney General, Mr. John Jeremie. When my colleague gets a bit warm under the collar, I am not in any personality contest. I cast no aspersions. I am dealing with facts.

Mr. Vice-President, we have said over and over that the Anti-corruption Investigative Bureau under the control of the Office of the Attorney General is illegal, unconstitutional and unlawful.

Sen. Jeremie: It is inaccurate to describe the anti-corruption squad as being under the control of the Attorney General. As I have pointed out to you on several occasions, Sen. Mark, the Anti-corruption Bureau is comprised of police officers who report directly to the Commissioner of Police. The Bureau relies for resources only on the Office of the Attorney General. This has been so since the Hon. Ramesh Lawrence Maharaj.

Sen. W. Mark: I do not want to hear him on that. He has repeated that position over and over.

Mr. Vice-President: Sen. Mark, could we just temper down. If you know that this has been pointed out to you a number of times—

Sen. W. Mark: I do not believe it. He can point it out but I do not believe it. Mr. Vice-President, may I invite you to look at page 3 of today's *Express*, and if you had any shred of doubt in your mind as to the person who is in charge of the Anti-corruption Bureau of this country, you would see it here today. It was not the Commissioner of Police talking about these raids that took place. The press did not talk to the Commissioner of Police. Do you know whom the press spoke to as it relates to the Anti-corruption Investigation Bureau? The press spoke to the Attorney General. Here is what the Attorney General said in today's newspaper. He, the Attorney General, big man in charge of the Anti-corruption Bureau disapproved—this is what the press is saying he said—

> "…of the method used by the police in conducting the searches and offered to return the documents but on the understanding that the State would search again for the same documents but this time do it properly."

This is the Attorney General speaking here. This is not the Commissioner of Police speaking here. [*Crosstalk*]

Mr. Vice-President: Sen. Mark, you are quoting a report. Please say this is what is reported. Do not say this is the Attorney General speaking.

Sen. W. Mark: This is what is reported:

> "…Jeremie said the State intends to hold on to the documents because they are related to ongoing criminal investigation."

But even more than this, it is reported by the Trinidad *Express*, dated 8th March 2005—they are trying to distract me, I am addressing you—

> "And as a result of the outcome of the lawsuit, Jeremie said he intends to offer guidelines...".

Mr. Vice-President, I want to repeat this for your ears, and the ears of every Member of this honourable Senate, the Attorney General, John Jeremie is reported to have said in the *Express* that, "he intends to offer guidelines to the Police Service as to how such searches are to be properly conducted in the future." This is what is reported here. Is the Member objecting to it?

Sen. Jeremie: The hon. Senator is misleading the Senate. It is the job of the Attorney General to give constitutional advice and to protect the rights of individuals. So that guidelines to the police are a part of my constitutional remit insofar as if the police breach the individual rights of citizens.

Sen. W. Mark: Mr. Vice-President, I bring this to your attention because this—we are going to explore all our legal options. We will take this to the International Human Rights Commission. This is human rights abuse by the Attorney General, and the Government, by extension.

Mr. Vice-President, I bring these matters to your attention because we are dealing with a very important matter that will ultimately impact on the very lives, liberties and freedoms of the peoples of the region. This is what this Bill is about. I want to tell you what our concerns are apart from the one I mentioned.

Mr. Vice-President, let me indicate to you what is at stake in this particular Bill. The Attorney General is a good individual, but he is just in the wrong party. [*Crosstalk*] I did not say I want him in ours. I want him to go back to the university and lecture. Let me proceed.

The issue we are faced with here is the security of tenure of judges. I think that is the issue we are dealing with in this Bill before us. Judges have been appointed to this Caribbean Court of Justice. The President of the Caribbean Court of Justice, as you know, was the former Chief Justice of this country, and there are others who have been appointed.

2.30 p.m.

Mr. Vice-President, the importance of the Privy Council's judgment in this matter lies in the fact that the Caribbean governments, through an agreement to establish the Caribbean Court of Justice (CCJ), have identified, in many provisions of this particular agreement, how, for example, the court would be constituted. It tells you also how a judge can be removed and how the President of the Caribbean Court of Justice can be removed. Do you know how a president can be removed? Imagine we are talking about independence and the hon. Attorney General talks about establishing elaborate mechanisms to avoid political interference. Where are these elaborate mechanisms?

Mr. Vice-President, if you are the President of the Industrial Court and the heads of government do not like your rulings, they meet in a cabal called the Heads of Government Conference and 75 per cent of them, based on the rulings you are giving, can take a decision. They can come up with some basis, say, that your rulings amount to misbehaviour in public office. We are talking about 75 politicians; not members of the Judicial Committee of the Privy Council; not independent personalities appointed on some commission in the region; but 75 per cent of the politicians meeting at the Heads of Caricom Governments Conference

can take a decision to remove the President of the Caribbean Court of Justice. And they are telling me that they have established elaborate mechanisms to avoid political interference?

Where is the protection for these judges in the Bill that we are being called upon today to support? There is no protection for them. This is why we say that this Caribbean Court of Justice, even in its original jurisdiction, will become a political tool of the PNM and other ruling parties which form the heads of government when Caricom meets. The issue is: Where is the security of tenure when it comes to the judges who have been appointed to the Caribbean Court of Justice?

Mr. Vice-President, I also draw to your attention that, apart from the lack of security of tenure for these judges, there is a situation where their terms and conditions, their salaries and allowances are determined, not by an independent Caribbean salaries review commission, but their terms and conditions, salaries and allowances are determined by politicians.

If you look at Appendix II, page 42 of this Bill, you would see who determines the salaries, the allowances and the terms and conditions of judges. Politicians determine that—the heads of government. And they are telling this Parliament that these judges are independent of the politicians, while politicians are determining their terms and conditions of work and when they are removed? That is not independence.

Mr. Vice-President, I will go further to let you know the kind of devious activity by this regime to impose this particular institution on the backs of the population of Trinidad and Tobago. I refer you to Article 32, page 37 of the agreement. This is what the Law Lords of the Privy Council had problems with. Right now, there is entrenched in section 137 of the Constitution of Trinidad and Tobago, our judges tenure of security and no politician can meet and take a decision to remove those judges except on certain grounds, like inability to perform their duties, infirmity or misbehaviour in public office. However, in this particular agreement, someone can bring about an amendment, which I will demonstrate shortly.

Under section 136 of the Constitution, with respect to the judges in the courts of this country:

> "(6) The salary and allowances payable to the holder of any office to which subsection (1) and subsections (3) to (11) apply or an office referred to in subsections (13) to (16) and his other terms of service shall not be altered to his disadvantage after his appointment…"

Mr. Vice-President, it is mandatory that once you are appointed a judge in the courts of this country, no one can alter your terms and conditions of employment. It is an entrenched right of judges in these courts to do their work without looking behind their backs. This is what the Government is doing under this Bill before us. They want judges to look behind their backs.

Mr. Vice-President, I will tell you why. I refer you to Article 32, page 37 of the agreement. This is what the agreement says:

"This Agreement may be amended by the Contracting Parties."

Mr. Vice-President, do you understand what is happening? They say that this agreement, involving all the articles, all the terms and conditions of employment, all the rights of judges, can be amended by the contracting parties. It goes on to say:

> "Every amendment shall be subject to ratification by the Contracting Parties in accordance with their respective constitutional procedures and entered into force one month after the date on which the last Instrument…"

It goes on.

How can you attempt to convince this Parliament and this Senate that this Bill is a simple one towards completing our independence? How can we complete our independence, when judges and the Judiciary, constituting the last bulwark and bastion of our democracy under the CCJ as an original court of jurisdiction, can be removed at the whims and fancies of politicians? This is demonstrated in Article 32, page 37, where they can easily amend this agreement and change judges' terms and conditions of employment if they do not like their ruling. This is what we object to.

We cannot support legislation that will give the politicians direct control of our judges. It is entrenched in our Constitution today. In the agreement that we are debating today, it is easily amended by the heads of government once they agree. It may be a simple majority or a special majority. That is one of the areas, Mr. Vice-President, that we cannot support. We cannot support the dilution of our judges and we shall not participate in any activity that brings our judges into disrepute or compromises their independence.

Mr. Vice-President, I want to draw your attention to Article 5 of the Bill before us. Before I go to that, I want to deal with the amendments that we have before us as well. If we look at clause 6(4), it states in the amendment:

> "Where a court or tribunal is seized of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court or tribunal shall, if it considers that a decision on the question is necessary to enable it to deliver judgment..."

Before you can deliver a judgment on the interpretation of the Caribbean Single Market and Economy (CSME) Treaty, you have to refer that question to the Caribbean Court of Justice for determination. Right now, as we speak, I can take a matter to the High Court, if I have a trade dispute with someone in Barbados and my matter, after it is heard in the High Court under the Constitution, I can take it to the Court of Appeal. If I lose at the Court of Appeal, I can take my matter to the Privy Council.

This Bill is now saying: Listen, you can only stop at the High Court and if the judge is about to make a decision on your matter, he is compelled under this legislation to refer the judgment before he takes it to the Caribbean Court of Justice, and it is the Caribbean Court of Justice that will determine the outcome of the matter. There is no appeal when you reach the Caribbean Court of Justice. So they are taking away my fundamental rights—provisions that are entrenched in our Constitution, where I can go from the High Court to the Court of Appeal to the Privy Council—and they are telling me that the court in its original jurisdiction can only take matters up to the High Court and then we have to go to the Caribbean Court of Justice. That constitutes a violation of the Constitution of our country and this Bill requires a special constitutional majority to become law in the Republic of Trinidad and Tobago.

Mr. Vice-President, I want to draw your attention to a particular clause in the Bill that is disturbing to us. Under clause 5(1), it is stated that:

> "…the Court, in the exercise of its original jurisdiction, shall be constituted by not less than three Judges and in every case, the number shall be an uneven number."

It goes on:

> "(2) The original jurisdiction of the Court may be exercised by a sole judge appointed in accordance with the Agreement."

If we go to this so-called Caribbean Court of Justice, you and I, if we have a trade dispute and there is an interpretation problem, one judge hears your matter or mine. It is said here that the decision of a sole judge may be reviewed by a panel comprising not more than five Judges and may be varied or discharged.

However, when we go to clause 8 of the Bill, it says further:

"(1) An application under section 5(3) for the revision of a judgment of the Court…"

Remember, you went before a sole judge. The sole judge took a decision on the matter. You cannot appeal that judgment. The only grounds we have for appeal under this particular original jurisdiction, which is under the control of the CCJ, are as follows:

"(a) there is the discovery of some fact of such nature as to be a decisive factor;

(b) …when the judgment was given, unknown to the Court and to the party applying for the revision; and

(c) the ignorance regarding the fact was not due to negligence on the part of the applicant."

So, Mr. Vice-President, a trade dispute before the Caribbean Court of Justice can only be appealed on one ground and we feel, obviously, that there are no other grounds for appeal. So, we have dictatorship at the court level.

We are vesting in a final court of appeal, which is the Caribbean Court of Justice, the power of original jurisdiction, in the hands of a single judge with whom there may be no right of appeal. This is an extremely dangerous development. How can a sole judge in the Caribbean Court of Justice have the right to determine your matter? When he determines your matter and you appeal it, if you happen to satisfy the grounds in clause 8(1)(a), (b) and (c), that is the end of the matter. This, to my mind, is a very dangerous development.

Mr. Vice-President, I am sure you are aware that there are Supreme Courts in India, the United States, Canada and Malaysia. I have never heard a court being established with only an original jurisdiction. That is unheard of. We are spending US $200 million to establish a court with the responsibilities for only original jurisdiction because the vast majority of people in the Caribbean have rejected the CCJ as their final Court of Appeal.

Dominica has rejected it. Jamaica has rejected it. St. Vincent, the hon. Ralph Gonsalves, the good friend of our Prime Minister, has rejected it. He is keeping the Privy Council as his country's final Court of Appeal. Belize has rejected it. Antigua and Barbuda has rejected it. The Bahamas has rejected it. Montserrat has rejected it. The Turks and Caicos Islands and the Cayman Islands have both rejected the CCJ.

We are going to have a court with a budget of US $200 million and the cases that would be going before that court would be few and limited. We are wasting time. This Caribbean Court of Justice, only in original jurisdiction, is a waste of taxpayers' money.

The former Chief Justice, who will be the President of that court, will be receiving some US $60,000 per month for doing what? That is the information I have. If the hon. Attorney General could correct me, I would be happy. We understand that the President of the Caribbean Court of Justice would be receiving US $60,000 per month. That is the kind of thing we are dealing with.

Sen. Jeremie: Mr. Vice-President, I rise, on the invitation of Sen. Mark, to correct him. That statement is untrue. The President of the Caribbean Court of Justice is not and will not be in receipt of a salary anywhere in the vicinity of US $60,000.

Sen. W. Mark: Well, could you tell us how much?

Sen. Jeremie: I do not know the figure. The figures are fixed by the Regional Judicial and Legal Service Commission. It has nothing to do with the politicians, but it is nowhere near US $60,000 per month.

Sen. W. Mark: Mr. Vice-President, as I said, I have been informed that it is US $60,000 per month. Until the Attorney General is able to provide you and this Senate with concrete information on the figure, I maintain that the information I have is US $60,000 per month for the President of the Caribbean Court of Justice.

Sen. Dr. Saith: What is the source of your information?

Sen. W. Mark: What is the source of yours? I have been informed.

Mr. Vice-President, I will tell you what that matter is in spite of all that we have been told by the Attorney General. Before the judgment came out, the Attorney General of our country made a statement that was published in the newspaper, saying that government was going to intervene in the Jamaican appeal before the Privy Council. I do not know if it took place, but at the end of the day, the Jamaican government lost the matter. What was alarming is that there were criticisms coming left, right and centre and the Attorney General of this country, in an article in the *Saturday Express* indicated that the Privy Council's ruling would have no impact on Trinidad and Tobago because we are isolated from the Privy Council and its decisions.

Whilst our Attorney General was telling our country, men and women, that the Privy Council's judgment would have no impact, hear what the hon. Prime Minister of Jamaica was telling the Caribbean people. He said, in the *Newsday* dated Sunday, February 06, 2005, page 8:

> "Patterson and his advisors have already determined that the ruling has implications regionally.
>
> '…what has been said about the Court with its original jurisdiction is not confined to Jamaica, but will apply to all countries that have a similar constitutional system to our own.'"

So the Jamaican government is saying that the judgment of the Privy Council will have Caribbean-wide implications, but we are being told by our Attorney General—and what is even more alarming is that we had the President of the CCJ, Mr. Michael de la Bastide, in a newspaper report—I do not have the date, but I can always get the date for you—the headline is "de la Bastide—Privy Council ruling no threat to CCJ".

So, we have a situation where the President of the CCJ, who is supposed to be impartial, dancing to the beat of the Attorney General. The Attorney General says it has no impact and the President of the CCJ supports him.

Mr. Vice-President: Hon. Senators, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. S. Baksh*]

Question put and agreed to.

Sen. W. Mark: Mr. Vice-President, this is going to be an expensive proposition and the Attorney General is aware of it. I have information—I want the Attorney General to deny this information—that the court was first to be located in the Winsure Building. They have now taken a decision to move it to the Hadeed Building on Henry Street.

I understand that furniture is being purchased. Mr. Vice-President, can you believe that a piece of furniture, I have been informed, is being purchased at the price of US $6,000? I understand that this is an expensive proposition that is taking place. A lot of waste is taking place in setting up this court and I want the Attorney General to investigate this because his Ministry has approved the

Hadeed Building. That building was supposed to be given to the DPP. The DPP is now squatting and that is the prosecution arm of this State. They have the DPP squatting and they are now putting the CCJ in the building earmarked for the DPP. We understand why they are in so much trouble today. He does not have the facilities to function properly.

I would like the Attorney General to investigate this matter. What is the cost of housing the CCJ in its original jurisdiction in this building on Henry Street? We understand that hundreds of thousands of US dollars are being used to house this particular agency at taxpayers' expense. We have problems with that. I call on the Attorney General to investigate it.

Sen. Jeremie: On a point of order. Sen. Mark is misleading the House once again. The agreement to house the court was made by the former Prime Minister Basdeo Panday. He permitted us to [*Inaudible*].

Sen. W. Mark: Mr. President, on a point of order, he is taking up my time. That is not a point of order.

Mr. Vice-President: Please, Sen. Mark, just continue.

Sen. W. Mark: He is trying to take my time.

Mr. Vice-President, look at clause 18 in the amendment. It says:

> "Any assessed contribution payable by Trinidad and Tobago in respect of the Court and the Commission, pursuant to Article XXVIII of the Agreement, shall be charged on and paid from the Consolidated Fund."

Is this applicable to all Caribbean countries? The legislation that is being passed for original jurisdiction, I would like to know from the Attorney General whether those pieces of legislation contain this provision.

We are being told that we are giving 30 per cent of the overall contribution of the money to run the CCJ. That is the combined contribution of all the OECS countries, including Guyana and Suriname. We are going to fund a criminal court that will not have appellate jurisdiction. We are only dealing with a few trade matters that our courts can deal with. We have already set aside US $200 million to start the fund through the Caribbean Development Bank.

Sen. Jeremie: Mr. Vice-President, on a point of order. I keep hearing this US $200 million. I do not know if my friend is double-counting, but the last time anyone is aware of, the trust fund stood at US $100 million, as set up by Prime Minister Basdeo Panday.

Sen. W. Mark: Well, I am corrected. It is US $100 million. The point is that the Caribbean Court of Justice, in its original jurisdiction, is a waste of taxpayers' money. I am saying, apart from being a waste of taxpayers' money, it is unconstitutional and illegal in its present framework.

I call on the Attorney General to withdraw this Bill because it is removing—and I repeat this for your edification and at least consolidation—this Bill is removing the jurisdiction of the High Court of our country. It is removing the jurisdiction of the Court of Appeal of our country. It is removing the jurisdiction of the Privy Council and vesting this power in the hands of a single judge—a single judge—from whose judgment there may be no appeal.

3.00 p.m.

Mr. Vice-President, as I indicated, matters of an appeal nature are circumscribed in the legislation only on a ground of fact. Any other ground, you are dead; you are lost. Therefore, you cannot take the power away from entrenched provisions in our Constitution and put it into the hands of an exclusive agency called the Caribbean Court of Justice, without the relevant and necessary constitutional changes. The Government cannot do that, in spite of the fact that this particular matter is going to be limited in its original jurisdiction. We cannot support this measure before this Parliament.

I want to warn the Government, if they pass this legislation, we will take it to the relevant courts of this country to set it aside, because this matter is unconstitutional and we want to warn them about it. We call on the Government to withdraw this measure before us.

In closing my contribution on this very important matter, I want you to know that the law lords on page 11 of this particular judgment spoke to the issue of what is called "governmental misbehaviour". In the context of governmental misbehaviour, we have to be very careful that we do not put into the hands of an executive, a power that can be abused. It is in this context we have made it very clear that the UNC will not be in a position, given the present configuration of the legislation, to lend support. The court, in its original jurisdiction requires a special majority because it is going to impact on our jurisdiction. It is going to impact on the judges of the High Court and the Appeal Court and it will deny persons the right to go to the Privy Council, which is currently entrenched in our Constitution. Any amendment to entrenched provisions in our Constitution requires a three-fifths majority. It is very, very dangerous for our Attorney General, who is the guardian of our Constitution, to come to this Parliament and hoodwink us into

believing that this Bill requires a mere simple majority, when they are going to be undermining the High Court, the Court of Appeal and the Privy Council of this country, in terms of the final Court of Appeal. On that particular note— [*Interruption*]

Sen. Dr. Saith: Before you take your seat Senator, are you aware that your party and your colleagues in the other place supported the Bill?

Sen. W. Mark: My colleagues in the other place? There are no records to show that the UNC supported this Bill. There is no record in the Lower House—I searched myself—to show that the UNC supported this Bill in the other place. We did not support the Bill in the other place and we do not support the Bill in this place. As far as we are concerned, we advised this Government that it is treading on dangerous waters. The Government is treading on dangerous grounds. If this Bill is passed, like the Anti-terrorism Bill to come, we have warned them, those Bills will end up in the Privy Council and the law lords that they want us to remove will have to save this country from this dictatorship and tyranny that is seeking to impose its will on the masses of people of Trinidad and Tobago. I thank you very much, Mr. Vice-President.

Sen. Prof. Ramesh Deosaran: Thank you very much, Mr. Vice-President. Yesterday we had the privilege of listening to the hon. Attorney General carrying out what is, in my view, an historic mission on behalf of the country and the Caribbean, in trying to pave the way for the Caribbean Court of Justice, at present in its original jurisdiction. Let me say at the outset, I think I echo the sentiments of a vast number of this country's citizens, that it is very unfortunate that a matter so important as this one; so complex with so many serious implications for the well-being of this country and those other countries which intend to subscribe to the CCJ, that we should find ourselves in such fragmented circumstances, in such a divisive context, as I said, with a matter of such great importance. This certainly is not to cast blame on either side, because if you trace the genesis of this particular piece of legislation you would see a contribution from the previous regime, up to a point on a matter now being continued by the existing Government.

I do not wish to get into the position now adopted by the Opposition. I think that will be counterproductive. I would like to examine what the Attorney General said, look at the relevant legislation and give you my view which, I feel is coming from somebody outside the legal profession. I believe I see the Bill from that perspective as a Bill about law as much as it is about politics. Furthermore, in the

articulate manner in which the Attorney General delivered his presentation, he made several challenges to the judgment of the Privy Council, Judgment 41/2004. He therefore, introduced the option we still have, of using the Caribbean Court of Justice as an appellate jurisdiction.

Mr. Vice-President, I wish one of these days we could spend as much time as we are spending now on the Caribbean Court of Justice, on the many problems affecting the administration of justice, primarily those in the Magistrates' Courts. There is good reason for my saying so because the response that the national community in this country and the communities in other Caribbean countries would give to this piece of legislation would be derived from the level of confidence they have in the entire administration of justice and, may I also add, under politicians who govern us. That is inescapable. In other words, we cannot ignore what is happening at the ground-level system of justice and jump high in the sky and speak confidently about the Caribbean Court of Justice. It would look as if it is a lopsided system of justice that we are heading into the Caribbean.

Mr. Vice-President, as I said, I am coming as on outsider. For example, I have to ask myself what is the magic about the Privy Council, or I should say the Judicial Committee of the Privy Council. I recall the Privy Council 500 years ago did not start as a court of law. It started when the monarch, as a sovereign head, gathered friends, family and some landowners around him to give advice, and law was not the exclusive domain of their jurisdiction. To cut a long story short, the institution of the Privy Council and in particular the Judicial Committee of the Privy Council germinated and evolved under peculiar, historical circumstances and traditions. When we jump spontaneously to accept it in all its forms and implications, we have to be careful that we are not ignoring what are some of our own peculiarities which would indicate to us perhaps, a different way forward. What is the different way forward? I have some views on that, which I will enunciate in a short while.

Be that as it may, the Judicial Committee of the Privy Council got its life, originally in 1833, by a Judicial Committee Act. My main point is, where are we today with the Judicial Committee of the Privy Council? There was a journey in English history that we should appreciate—those of us who have the opportunity to do so—to understand that we should not just jump into an arrangement which merely replicates that of the Privy Council. I think we need to go beyond the theory of law and look at the evidence which has been facing the Caribbean and this country, in terms of what do we need after the Court of Appeal, or whether we need anything at all.

The major premise in the public domain for establishing the Caribbean Court of Justice, one of the major planks, seems to be on the question of sovereignty. I believe, from the evidence so far and for several years now, across the Caribbean, but more particularly, recently, we seem to be using the concept of sovereignty as a matter of convenience. Sometimes we say that sovereignty has to be more elastic, in terms of globalization and international security, but sometimes we hug it very tightly when it seems to suit our political purpose. I think in this case, in my respectful view, too much is made of this question of sovereignty, as a justification for establishing the Caribbean Court of Justice, because I will ask: where is this Caribbean sovereignty, when you have no political union across the Caribbean? Sovereignty for what and in what context? Individual states can claim sovereignty, but this court is not about individual states; this court is about the Caribbean Court of Justice. To me, the sovereignty argument pales in the face of what really exists. To be more precise, I will show you the perpetual contradictions within the Caribbean, when it comes to using sovereignty as an argument for the Caribbean Court of Justice.

Briefly, I refer to a speech which Prime Minister Patterson of Jamaica made to his country on February 13, 2005. He made a strong case for sovereignty and that we must have our own courts, we must govern ourselves and we must look after our own business as a sign of maturity. Of course, we all know the rhetoric that goes with that particular position. When you look halfway down his speech, he starts to speak about crime and the ineptness of his government to deal with crime. I quote briefly to affirm what I am saying. We are very contradictory in pursuing this matter of the Caribbean Court of Justice; in this case, the argument for sovereignty. Here you are saying you want sovereignty established and it is a cherished commodity in the sense that we must govern ourselves, we can do things for ourselves, and bring home our jurisdiction from the Privy Council, but in terms of dealing with problems that are local, in the case of Jamaica, the gentleman has to go to Scotland Yard and bring in a high official to help them run the Jamaican constabulary. He said:

> "In March, a senior officer from Scotland Yard will be seconded as a member of the commissioning ranks of the JCF."

I made a brief mention of this. I would not elaborate to go beyond the boundary. This is a repetition across the Caribbean. Where is the sovereignty, when the challenge faces us in doing things for ourselves? Is it just an abstraction that we are floating with; to have a replicate in a Naipaulian sense, just taking something from abroad without considering the complexities and planting it down here and saying that is an expression of sovereignty?

I am not satisfied with the argument for establishing the Caribbean Court of Justice. It should be framed on different arguments. This is where the shortcoming exists. There has been no evidence, in terms of how many cases have gone to the Privy Council from Caribbean courts. There have been no arguments about how many cases have succeeded and how many have not succeeded from one party or the other, but it is as if we reflexibly accept the Caribbean Court of Justice as a replacement for the Privy Council, without having any arguments for bringing in the Caribbean Court of Justice. I find that intellectually lazy, politically naive and it does not give a good impression of how the Caribbean Governments are moving ahead with this particular matter. It takes too much for granted.

Caribbean politicians, those who govern, in my view, are too presumptuous. If you ask people outside about the Caribbean Court of Justice—I have been doing that—they know very little. That might not be important. The public knows very little about many things, except in this case. It is an extremely expensive exercise for the taxpayers.

The Barbadian Attorney General, Ms. Mia Mottley, told us that a poll that was run by a Barbadian outfit found that 84 per cent of the people across the Caribbean wanted the Caribbean Court of Justice established. That, to me is a phenomenal result. There is no name. I do not know which pollster. This is based in Barbados. [*Interruption*] When you are spending taxpayers' money, it must be accompanied by a certain confidence by the population in how this money is spent; either through the initiation of the project, or in terms of accounting for the project. When the psychological research centre did its poll, in terms of how much confidence one has in the criminal justice system, only 40 per cent said they have any confidence in the criminal justice system and a similar number said in the administration of justice. These are the vehicles we need: popular support, not 100 per cent, but demonstrably substantial support to move these new initiatives, as in the case of the Caribbean Court of Justice, which we really do not have. That is what is worrying me. This has to do with politics as it has to do with law. This is where the politics come in, through popular confidence or not.

The Attorney General referred to Justice Telford George's quotation, which was a very interesting quotation. He said a man says he is independent but he still lives in his parents' house. He was trying to make the case for sovereignty as an expression of our independence, in bringing in the Caribbean Court of Justice to replace the Privy Council. The implication here is that public confidence is highly questionable in that transformation. Even though you have your own house, it might be in a crime-ridden environment and you might find that your parents'

house is much better to live in. People prefer to live where there is comfort and security. Even if you live in your parents' house, I think it is a better deal than living in your own house, where you are at risk.

Further than that, my earlier point is that there is so much division about this issue. Since we are speaking about houses we have to remember as well that a house divided against itself will not stand. I think we need more consensus about this issue before we go forward, not merely for the politics, but because of the heavy expenditures it seems to be putting on the taxpayers of this country and the other countries which subscribe to it at present. We know a number of other countries; I do not have to list them. I wish the Attorney General would tell us frankly and straightforwardly which other countries do not subscribe to the Caribbean Court of Justice at the present time, especially since it is quite true, as far as I understand, that this country will foot 30 per cent of the cost of establishing the Caribbean Court of Justice. We have contextual issues to deal with. I think the Attorney General, in the same erudite manner he started off, should continue the debate in his conclusion by clarifying these particular issues.

It is a pity, Mr. Vice-President, that we have to be debating an institution which is not yet formed and legally established where persons have been appointed to positions. To me, from where I stand, as an outsider, I find that extremely presumptuous. Apart from the principle of the whole thing, what we have done—perhaps unwittingly and through no fault of the Attorney General's and perhaps, unexpectedly—given the Privy Council's judgment, is to put these appointed judicial officers including the one appointed to be Chief Justice, under severe public embarrassment. We are speaking about the institution to which they have been appointed and they might very well take it personally; where it is not personal at all. I am uncomfortable because I know Justice Rolston Nelson quite well. He is a very competent judge. I am not comfortable making these remarks when some of us are quite fortunate to know some of these judges who are now appointed to that Bench. It seems as if, speaking about the context as an outsider, we have created certain conditions that could lead to embarrassment for these judges of great repute who have been, in my view, prematurely appointed to this institution. It is as if we have put the cart before the horse.

I wish Caribbean Governments, those which are so involved, should have shown some more restraint and vision, especially in the Jamaican case, where their constitutional arrangements were not as proper as they should have been, in terms of the decisions that the Executive made and which the Privy Council rebuked. It does raise a very serious issue and Caribbean people ought to know

this. This is not an institution for lawyers and judges. One gets the feeling sometimes—This is an institution for the people. I think we are forgetting that issue. This is not one for esoteric exchanges and intellectual contests to see who is brighter than whom. That is why I say I am speaking as an outsider. I do not get the feeling that the sentiments and the wide interest of the public are being considered as we are rushing forward with haste. This is not how the Privy Council was formed to begin with. I am not saying that we should spend 500 years, as might have happened, to establish the Judicial Committee of the Privy Council as England did. Certainly, we do not form these institutions overnight. It is not accra you are making or fish and chips. It is not a fast food thing that we are doing here. I have seen too many instances in the Caribbean where decisions are taken and after great expense we had to review many of them.

I am merely throwing out this note of caution, because it seems to me, from where I stand, that is what should have happened. If sovereignty was such a serious issue, we should have had the political maturity amongst our leaders, through the appropriate mechanism, if they wanted so badly a Caribbean Court of Justice, to establish political union and a political federation. You cannot have, comfortably and properly run, a Caribbean Court of Justice without a strong political union. I will give you one reason. It has to do with the independence of the judges appointed to the Caribbean Court of Justice.

If you look at the Bill, on page 17 you would see that clause 6 states:

> "The President shall be appointed or removed by the qualified majority vote of three-quarters of the Contracting Parties on the recommendation of the Commission."

That is one example. "Contracting Parties" mean, of course, governments and Heads of Government. That is really putting the political directorate in two parallel routes. There is a political role to play and seemingly they have brought into play, a judicial role, almost. That duality is in itself, in principle—as an outsider I venture to say, in terms of constitutional principle, it is not something that should be encouraged. The reason for this, understandably so, however, is that we have no political structure with an independent head such as this country has or a political union could have had at the top, who would be impartial. We have to play a sort of political hide and seek, where you see the politicians now, and the next clause you do not see them, using the commission as leverage and the tribunal as an excuse and the thing goes up and down from the Heads of Government through the tribunal to the commission and it comes back up. This

see-saw is a very untidy arrangement, the reason, understandably so, is that you have no political union that could accommodate an improved insulation of these judges by having at the top a President, so to speak.

Mr. Vice-President, we would find that the independence of the Judiciary in the country enjoys greater independence than what is proposed for the Caribbean Court of Justice. That is an anomaly. As I said, what is the alternative?

We have been put in this dilemma because we have put the cart before the horse. There is some impatience to establish this Caribbean Court of Justice. If we were very serious about sovereignty, rather than spouting all the rhetoric over the years about the Caribbean playing its role in the wider world, I think there would have been firmer steps towards a political union. I know where the sympathies of this country's Prime Minister lie. I would therefore encourage him to relax on this Caribbean Court of Justice matter and have a wider consultation, to seek political union and then insert the Caribbean Court of Justice in the logical way with proper independence afforded the Judiciary. To do otherwise, as Sen. Mark rightly pointed out, will be to invoke all kinds of suspicions. Even if there is no malice and an occasion arises to remove a President of the CCJ or a judge, a lot of suspicion will arise because of the political presence in the process.

Just briefly, I want to refer to a book written by a friend who has, I must admit, mixed political fortunes. The book is written by Dr. Francis Alexis, entitled *Changing Caribbean Constitutions*. It is a good point to note, especially in the present circumstances, that among the countries in the Caribbean, this country has the most independent Judiciary, in terms of the Constitution. We have to admit that. In fact, the point was made—except that they have certain traditions of restraint—that our judges have a greater independence than the ones in England. It is something we should be proud and satisfied about. I know there might be need for an amendment here and there, but that is another point. It is good to know, according to Dr. Alexis, as he says—he was dealing with the Guyana case:

> "The situation in which a politician decides whether a judge can stay on is not peculiar to Guyana. It is the same elsewhere in the Caribbean, except Trinidad and Tobago…,"

He went on, I think, in a very commendable way, to let his readers know that this country has a very independent Judiciary. I am not seeing this in the Bill for the Caribbean Court of Justice.

I am trying to explain two things, why the dilemma and also to fault the Caribbean Governments for not moving forward properly; both constitutionally and with respect to the respective electorate towards a political union. You cannot put an establishment such as the Caribbean Court of Justice outside a political union. You would have these anomalies and several others, if you examine the Bill. Perhaps, I am yet to be made to understand something that I am missing here.

Further than that point, I think we have put the judges we have appointed so far in an invidious position. If you look at page 22 again, under Article IX, Tenure of office of Judges, clause 5 states:

> "…the President shall be removed from office by the Heads of Government on the recommendation of the Commission, if the question of the removal of the President has been referred by the Heads of Government to a tribunal and the tribunal has advised the Commission that the President ought to be removed from office for inability or misbehaviour referred to in paragraph 4."

Not in an identical vein clause 6 states:

> "If at least three Heads of Government in the case of the President jointly represent to the other Heads of Government, or if the Commission decides in the case of any other Judge, that the question of removing the President or the Judge from office ought to be investigated, then—"

It outlines the step.

We begin to see the political dragon being awakened and roaming through the corridors of the Judiciary, to me, quite unhappily. Perhaps, there is an answer for this. Whatever the answer is, it will still be into the limited framework which I mentioned. The absence of a political union makes these regulations necessary, but to me unbecoming. Some of these provisions are unnecessary evils in the circumstances. What is the way out?

Mr. Vice-President, I do not think we can have an improved system of justice, whether through the Caribbean Court of Justice or any of the respective states, without having a significant paradigm shift in what we consider the administration of justice.

Why do we feel we must have something similar to the Privy Council? It will take much more time for me or anybody else to elucidate on that particular issue, I know that. It is an issue that should have occupied the minds of Caribbean thinkers on governments and politicians, when the Privy Council presented the

opportunity in its judgment 41/2004. I will refer to that particular session shortly. It has been asked by several Indian scholars. I do not have the paper here. With respect to the Privy Council's judgment, on page 10, I wish to refer to something that was said. They were dealing with Dr. Barnett's submission and tried to put it in a context against those of the other side. The Privy Council said:

> "As already recorded, Dr. Barnett for the appellants accepted in argument that section 110 of the Constitution, providing for appeal to the Privy Council, could have been repealed by the votes of a majority of all the members of each House, since section 110 is not entrenched…"

This is a statement I want to note for my own purpose.

> "The result would have been to constitute the Court of Appeal as the ultimate appellate tribunal in and for Jamaica. Supreme judicial authority would then rest with a body whose constitutional position is buttressed by safeguards carefully designed to protect the process of appointment to the court and the exercise by the court of its jurisdiction against the possibility of executive pressure or interference."

I am making that reference for, to me, what is a very important reason as the way forward for Caribbean jurisprudence. Too many things in the Judiciary and the administration of justice have been taken on faith. I could enunciate a number of them, starting with the jury system, but it is time that we take a more reasoned approach to not only what we need, but the evidence to suggest what different things we need other than something resembling the Privy Council.

Before I submit a suggestion, I want to refer to what happens when a paradigm has to change. The paradigm that the legal profession uses and what our Caribbean jurisprudence uses, is not only flawed by the number of problems it faces—trial delays, dilapidated and inefficient Magistrates' Courts, adjournments, lawyers clashing over time management and a host of problems—no number of judges or magistrates or persons in the DPP's office will solve those systemic problems because the paradigm has outlived its usefulness. That is why I said we need some improved, scholarly attention to these issues, starting from people who lecture in law schools and do research. We need to examine the paradigm.

There is a classic book which, in the literature of scientific development, is called *The Structure of Scientific Revolution* by Thomas Kuhn. He made the point that paradigms are kept limping, wounded and devastated because those who are inside the paradigm cannot see outside the box. He cited a number of examples

that it is people from outside the paradigm of physics and medicine, or who came new to physics, that discovered things like X-ray and penicillin. That is a very significant point. Therefore, we need some more examination of Caribbean jurisprudence, including what happens in Trinidad and Tobago.

One suggestion I would make is what Guyana did when they got republican status and divorced themselves from the Privy Council. It was a remarkable accomplishment. They had their appeal court as their final appellate court and the judges, from Justice Haynes to Toby, were remarkable judges, by their judgments and insights and the satisfaction the public had of those judgments. The question I am therefore posing is this: why do we need a level above the Appeal Court, when you have a person properly trained and appointed as a magistrate, when that person with experience and seasoned in judgments, know the people and the nuances of the law, moves up, as in the High Court, with further experience, brilliance, integrity and character, all the things which the Caribbean Court of Justice stated as criteria? That person then moves to the Appeal Court. Why do you need another level over that person to test his or her judgments? Is that not a duplicity that is too onerous, both on the administration of justice and on the taxpayer, especially when you consider from the Caribbean that just fewer than 25 appeals go to the Privy Council, as they might very well go to the Caribbean Court of Justice when it is established in its appellate jurisdiction? This, I submit, will require some further thinking, but the idea, to me, of doing away with any appeal level after our Appeal Court, is something that merits further attention.

Worse yet, if the Caribbean Court of Justice will now see after matters of original jurisdiction, we can therefore expect that even fewer cases might go to the Caribbean Court of Justice, but costing us the same amount as if we had both original and appellate jurisdiction. I have seen no amendment coming, in terms of if you do not have the appellate jurisdiction, the judges will get less money because there will be less work. I see no such thing. What are we dealing with here? Are we dealing with an abstraction? The whole thing looks like a ghost in the dark, until some clarification does come before us.

My preference, after considering the Bill, as an outsider I must say, is to review the whole thing. Send it back to the drawing board at the Heads of Government, establish a trade court to deal with matters from the Single Market and Economy. We have no single economy yet. It is mainly a market that is struggling to establish itself. There will not be much work. If there is much work, set up a trade court; not with judges who have experience in criminal law, but judges who have the appropriate expertise in international trade in the relevant

treaty, WTO, GATT and all the treaties with which we need to be familiar, including our own treaty, the Treaty of Chaguaramas. Then you would have a respectable, reputable trade court, and live with your Court of Appeal as your final appellate court. The evidence, to me, is not convincing, that you need an appeal layer above the appeal court, for many reasons, some of which I merely alluded to, but which could do with some expansion in the interest of saving public expenditure and judicial time.

There has been a discussion on the cost. I think it is very embarrassing to be talking about judges' salaries in the context where they have already been appointed. Why could we not have waited until the court is properly established, as is normally done in public administration, and then put people in the positions? I want to know and the public would want to know, are these people going to be paid and when will they begin to be paid? I have a report from the *Trinidad Guardian* of May 28, 2004 where it lists the benefits that a judge will get. I am quoting. If I am to be corrected, I welcome the correction. This is what the people have read.

"Lucrative benefits

The CCJ Web site states that a CCJ judge will be entitled to:

- Tax-free annual salary US $120,000.
- Housing (rent-free, fully-furnished, super-grade residence or an allowance of US $30,000 annually)."

I pause and again ask the question: will this be just for the original jurisdiction and now and again trade dispute, or will this be given only when both jurisdictions are formalized? Original and appellate, this is a lot of money. They deserve it, but at the same time we are asking for the propriety of the expenditure.

"● Entertainment expenses.

- Subsistence allowance of US $200 for each day on which they are on official duty in a country other than T&T.
- Transportation (provision of an official vehicle, fully maintained by the court; a chauffeur whose wages will be paid by the CCJ.)
- Telephone and Internet facilities (paid for by the CCJ)
- Travel grant (of US $8,500 at the end of every two years for a judge and spouse).
- Vacation leave (not less than 42 days…"

They are on vacation all now. Maybe they are counting the 42 days, so they will not take it when they are actually hired. It is embarrassing, but the public ought to know the implications of moving forward, especially since I am submitting an alternative for serious consideration by Caribbean Governments. If only such consideration should be preceded by some further analysis of why do you need another level in its appellate jurisdiction.

Guyana has had the experience. They are now coming into the Caribbean Court of Justice, I do not know with what kind of justification they would have told their people. I understand that there is a great amount of uneasiness by Guyana entering the CCJ, having had the experience. It was quite good with their appeal court being their final appellate jurisdiction. I am not finished with the benefits.

"● Pension/gratuity; library allowance (US $2,000 annually)

● Medical benefits (free drugs and medical attention for judge, spouse, children under 18 at health institutions approved by the T&T Government. In exceptional cases, medical attention in a country other than T&T may be approved by the regional JLSC.)

● Education grant for the judge's children, including step or adopted children..."

I do not know what they are anticipating here. It looks queasy. It is not a comfortable position for an Attorney General to be in, facing this legislation in such circumstances. That is why I say the Heads of Government should have been more thoughtful in the manner in which they proceeded, especially with the Privy Council's response in Judgment 41/2005.

The Privy Council gave us a gift on a platter, in terms of telling the Jamaican people what they could have done with their appeal court and that it would be properly protected and insulated from political interference. We should have chosen that alternative.

Mr. Vice-President: Hon. Senators, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. Prof. R. Deosaran: As I come to the end, there are issues I would not want to delve too much into; some of them would obviously require further research. As some points of departure, and if we really want to exercise our

sovereignty, we should have sovereignty of creative thinking and a free exchange of ideas. We have some good scholars in the Caribbean, Cave Hill, Mona and St. Augustine, who can throw their minds towards these alternatives, without rushing forward. I think the mistake will be too expensive. This present circumstance gives us an opportunity to do something really relevant and testament to our sovereignty.

Alongside the suggestion that I made, the Caribbean Court of Justice, if it does succeed, in its appellate jurisdiction, will not bring the kind of justice the Caribbean needs at this time. It is when our Magistrates' Courts become more efficient with proper facilities for magistrates' staff and members of the public, then that will be justice. When there is no backlog, not 10 or 15 postponements, witnesses and complainants do not have to return 10 or 20 times to have a case properly completed, then that will be justice for the people, not the CCJ in the present structure. When aggrieved citizens can have their complaints not dismissed in court, because the police have not appeared, because witnesses cannot be found, then we must ask: is that justice? How will the Caribbean Court of Justice change all this? The paradigm is wrong. We have to review that. That is the trial process. Lawyers cross-examined witnesses for five days. The man will drop down dead! He will get so tired after five days of cross-examination, he will say anything you want him to say just to get off the cross-examination chair. We need to change all these things.

The legal profession, as some of us know, is the most conservative profession in the world. If you bring a change before them they will scream in all different directions. Change is like poison to the legal profession, but the time has come for them to be very sincere about the business and re-examine the paradigm in which they have found themselves. The public is suffering. In the few instances I mentioned about the Magistrates' Courts, witnesses cannot appear, police not appearing and cases are dismissed, how will the Caribbean Court of Justice help all of this at such great expense? The public is suffering double jeopardy. They are paying for inefficiency, repeatedly.

Mr. Vice-President, in my view, I believe we should not rush hastily with the Caribbean Court of Justice. I am not too confident that my view will prevail, but out of an obligation in the capacity in which I sit as an Independent Senator, I have to give my views. I do not have my eyes on the next election, so I can speak in the way that I speak and I hope that it can, perhaps, ring a bell or two in the interest of the public.

Thank you, Mr. Vice-President.

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Mr. Vice-President, yesterday afternoon my colleague, the Attorney General, Sen. The Hon. John Jeremie, in presenting this Bill, I thought, did an excellent job, in terms of rationalizing the justification for the Bill. I believe that not much is left to be said, in terms of understanding the rationale for the presentation of the Bill before us today. He touched on such salient points as political adulthood, we might even call it political manhood, sovereignty, independence et cetera.

This brought back to memory certain experiences many years ago when we were just independent. It was a time when we were seeking to establish ourselves in the international community and seeking to become members in many organizations, among them the Inter-American system. At that time, since we were unknown factors, so to speak, as recently freed colonies of Great Britain and, therefore, the Inter-American institutions, to which we were aspiring to belong, treated us as such. As a country, we did have all the attributes: We were sovereign, independent and had a defined, geographic space. We had a stable and democratic government in place. But, there was one condition, a major criterion, which was being asked of us, to belong to the international community. That was, as I recall at the meeting of Heads of State at Punta Del Este, Uruguay, many years ago, when the membership of the newly independent Caricom countries was being considered, that our entry or admission into these organizations had to be signed by the Head of State.

Our Head of State, at the time, was none other than Her Majesty the Queen, Queen of England and all her other realms and territories but, in her own individual and sovereign right, we had chosen her to be Trinidad and Tobago's Queen.

It was then that we saw the embarrassment of having a foreign queen as Head of State and, indeed, the stipulation that they further expanded on us was that a Head of State of a newly accessing country should reside in the country of application. We did not have her Majesty the Queen residing in Trinidad and Tobago, so you saw the dilemma; indeed, the profound embarrassment which we were facing. We had a flag. We had an anthem. We had a stable, sovereign government and we also had a queen, albeit a queen who, to the rest of the Americas, was not palatable or acceptable because she did not reside in Trinidad and Tobago. She was not a national of Trinidad and Tobago.

4.00 p.m.

Mr. Vice-President, I can well understand the situation that has come back to us, maybe some 30 years, after that fact. We still seem to be grappling with the question as to whether we are fit and ready to exercise a certain independence, as my colleague, Attorney General, John Jeremie stated yesterday. I believe that this is a very serious matter.

One colleague on the other side suggested that maybe the governments have moved to fast. The logic would lead us to believe that if it were possible, we would turn back the clock, but I am afraid that while you can stop the watch, you cannot stop the time—time ticks on; time marches on.

Presently, we are faced with a fait accompli where institutions are conceived and conceptualized by sovereign heads. In the case of Trinidad and Tobago, we had given across successive governments our total support for the establishment of the Caribbean Court of Justice (CCJ). So this is a commitment.

Now, as a matter of foreign policy—which is really what this is about—agreements entered into ought to be taken very seriously. The credibility of a government rests on the capacity of that government—whether at the time of taking a responsibility and entering into an obligation or whether they are in Opposition, as the case is right now, to be able to live up to the obligations and expectations of the international community. We cannot turn the clock back.

Indeed, I believe that if we are not careful, any government which only endorses initiatives when it is in power would pose a serious problem for its return to power, because the international community would be saying, well, you cannot trust these fellows' resolutions and agreements when they are in office; and we cannot count on them to hold the line if the situation were to change. So this is perhaps the situations that we are facing here.

Our colleague, the Independent Senator, raised the question as to what countries within Caricom have decided that they are not yet ready for the CCJ. I believe that at the appropriate time, the Attorney General will respond adequately to that question.

Mr. Vice-President, I would like to view that matter from another perspective, and the perspective would be: What countries since independence have abandoned the Privy Council as their court of final appeal? I think that this is very interesting, and our colleagues in this Senate should get an idea of what countries they are. The list is very impressive.

In the case of Canada, the criminal appeals device was abandoned in 1933, and the civil appeals were abandoned in 1949; in the case of the Republic of Ireland, they disengaged from the Privy Council in 1933; in the case of Myanmar, which is formerly Burma, they did this in 1948; in the case of India in 1949; Pakistan followed on in 1950; the Maldives in 1960; Ghana followed suit in 1960 as well; and so did Cyprus in 1960. Mr. Vice-President, the list goes on. I think I would take you to the end. Sierra Leone in 1961; Western Samoa in 1961; Uganda in 1962; Nigeria in 1963; Malta in 1964; Tanzania in 1964; Zambia in 1964; Kenya in 1965; Malawi in 1965; Zimbabwe in 1965; Guyana in 1966; Botswana in 1966; Lesotho in 1966; Swaziland in 1968; Nauru in 1968; Tonga in 1970; Sri Lanka, formerly Ceylon, in 1971; Papua New Guinea in 1975; Seychelles in 1976; Solomon Islands in 1978; Vanuatu in 1980; Malaysia in 1982; Australia in 1986; Fiji in 1987; Hong Kong in 1997, the Gambia in 1998; and the last to be added to that list is New Zealand, which did that fairly recently.

Indeed, while we give the impression that we are locked into and wedded to the Privy Council, and we seem to be afraid to take that giant leap forward which would be an endorsement, or what you might call a representation of our political manhood, I believe that we ought to step up to the table and make the decisions.

In another situation, for the record, I would just like to make reference to a keynote address given by none other that our illustrious Secretary General of Caricom, Dr. Edwin Carrington, who does pioneering work for the region. In a keynote address to the Caribbean Public Services Association (CPSA) in Port of Spain, on August 12, 2001, our illustrious Secretary General called attention to the following, and I would like to quote this directly. He told his audience:

> "…the Caribbean Court of Justice is expected to replace the Judicial Committee of the Privy Council. And it is in regard to the discharge of this function that perceptions of the Court in the Caribbean Community are either uninformed, inadequately informed, or misinformed. I believe that it is useful for me to address some of these perceptions, especially in a gathering such as this and at this juncture in our Region's development."

Dr. Carrington went on:

> "First of all, to test your knowledge of our history, I wish to draw your attention to the following statement. I quote:

> 'Thinking men…believe that the Judicial Committee has served its turn and is now out of joint with the conditions of the times. Latterly, the character of the appeals have varied very much and have involved questions of complex legal range and jurisprudence which are altogether different from the principles in force in England.'"

Having made that statement, Secretary General, Dr. Carrington, teases his audience. He said:

> "Ladies and Gentlemen, I challenge any of you to identify that statement; I challenge you even further to identify its source, and I defy any of you (unless I have told you this story already) to identify the date of that statement."

He responded:

> "That statement is an extract from an editorial of a Caribbean newspaper—the Jamaican *Daily Gleaner* of 6 March 1901—one hundred years, five months and six days ago—claiming that the Privy Council is 'out of joint' with the conditions of the times. Those times were a hundred years ago. I wonder what it is like today! What does that say to those who seem to think that the call for a final Caribbean Court is some hurriedly made-up scheme by some modern-day, hanging-happy Attorneys-General who wish to get rid of the Privy Council!"

Mr. Vice-President, I pause to say that this is very serious food for thought. Indeed, it will be correct to say that other Caribbean countries expressed that same sentiment a long time ago. In Jamaica, as early as 1978, the Opposition there was calling for an introduction of a Caribbean Court of Justice as the supreme body of the region, and that call was also repeated and reiterated by other bodies like the Eastern Caribbean Council of Attorneys. I believe there is evidence to show that, more recently, other governments have been making the same plea.

We are saying that the time has come for some introspection. I believe that we have come of age; I believe that we have developed the political adulthood to deal with our matters; and I do not believe that we need to trouble ourselves and to worry too much as to the dispensation of justice if we were to be deciding on that for ourselves.

Mr. Vice-President, I beg to end here. [*Desk thumping*]

Sen. Dr. Jennifer Kernahan: Mr. Vice-President, thank you for giving me the opportunity to speak on the Bill to implement the Agreement Establishing the Caribbean Court of Justice in its original jurisdiction and for related matters.

Mr. Vice-President, the former speaker, the Foreign Affairs Minister, enunciated a list of countries that have dispensed with the Privy Council, but what the Minister neglected to tell us was that in many of those countries, there are serious political problems: problems of violence; problems of tribal war; and even genocide, in some of those countries that he mentioned. Therefore, it is not sufficient to name a list of countries that have abolished the Privy Council, and supposedly imply that we should do the same, because every country has its own political realities; and they have to deal with their realities and examine their realities in order to decide what is best for them.

Mr. Vice-President, this Bill has been touted by our hon. Attorney General as being necessary and vital for us in Trinidad and Tobago, in the context of our becoming an independent and sovereign people. This has been proclaimed as a prerequisite for the achievement of that sublime state, supposedly where we would finally have a house of our own.

I am happy that the Attorney General has laid this question of a house of our own at the table, albeit a bit late—35 years after the question of independence and sovereignty was laid squarely at the feet of the political directorate in 1970, when we were met with blows and jail. Mr. Vice-President, but better late than never, and the Attorney General is now talking about sovereignty, independence and a house of our own.

When we talk of sovereignty, independence and the administration of justice, supposedly, we are talking in the context of how we deliver justice to the masses of our people. This is a challenge that we are faced with; this is a challenge that we continue to face; and this is a challenge that we have not been able to overcome, even as we speak in the year 2005.

Mr. Vice-President, how do you ensure delivery of justice for the masses of the poor, the dispossessed and the underdog among us, and for those without wealth, power and access to economic resources? These are the questions that have been on the agenda since the abolition of slavery. How do you bring into the mainstream of the administration of justice, people who are culturally and socially challenged and, in a sense, do not even know how to access this justice? They do not have the educational background, the cultural background and the wherewithal to access justice.

So, Mr. Vice-President, how do you deal with the whole question of the illiterate, the marginalized, the uneducated and the uninformed? How are we going to bring them into the mainstream of the justice system? Is it that a

multiplicity of legislation is going to do this for us? How does this Bill fit into that enormous challenge that we have faced over the years? This question of bringing the mainstream of the poor, marginalized and dispossessed into the ambit of the dispensation of justice has been at the heart and core of every important, social and political event in this country over the last 150 years. There has been the cry for justice and equality, and we still have major challenges with respect to this matter. We are moving on but, as Prof. Ramesh Deosaran said, we are moving on without dealing with the core of the issue; without dealing at the grassroots level; and without finding a formula or mechanism to deliver justice at the most grassroots level of our society. Mr. Vice-President, we are building a house made of straw.

We have to answer serious questions. Sen. Prof. Deosaran put it within the framework of shifting the paradigm, but we are yet to answer: what are the fundamentals that we have to build and deliver, in order to ensure that the delivery of justice to the masses of the people is really a valid institution.

It has been said by a former Attorney General, Mr. Ramesh Lawrence Maharaj, that the objective of the legislature is to strengthen the rights of the people, and to ensure a more open, transparent and accountable system of government, and greater access to justice would be granted to the people.

Mr. Vice-President, I submit that the people themselves also have to be strengthened culturally, socially and politically in order to access these rights that are granted to them. There is no doubt that this whole question of the delivery of justice has been elusive—an exercise in frustration for the great majority of our people.

I am certain that our Attorney General, who longs for his own house, is conscious of the fact that unless our collective Caribbean houses are made of bricks and not of straw, that there is a big bad wolf which is poised to huff, puff and blow our collective houses down. [*Desk thumping*]

Mr. Vice-President, I was horrified, as I listened incredulously to the news this morning on the radio. There was a story which said that the United States of America has declared that if a certain prime minister is elected in a fair, democratic election due soon in Suriname, that democratically elected government would not be acceptable to the government of the United States of America, and there would be serious repercussions. Mr. Vice-President, this is a Caricom sister country, and this statement was made by the government of the United States of America.

Mr. Vice-President, I am certain that the Attorney General, who is our newfound champion of sovereignty and independence, was livid when he heard that statement—that blatant and vicious attack on our Caricom sister, and their democratic right to elect a leader of their choice. [*Laughter*] [*Desk thumping*] I am certain that he was outraged.

Sen. Mark: He has not spoken.

Sen. Dr. J. Kernahan: Mr. Vice-President, I am certain that our hon. Attorney General, who is concerned with our house and our sovereignty, has already proposed to his Minister of Foreign Affairs that his Government declare an unswerving commitment to the rule of law and democracy and the sovereignty of our Caricom neighbours. [*Desk thumping*] I am certain that our Attorney General, our newfound champion of democracy and sovereignty, is prepared to publicly denounce any interference in our internal affairs by the United States of America. I am certain of that.

Sen. Mark: Yes, we hope that he will be prepared to do it.

Sen. Dr. J. Kernahan: He is very serious about sovereignty and having his own house. If you have your own house, you have to be able to run your own house. Nobody can tell you who should be the mother or who should be the father, and if you should put out your children, whether you should take them back. We are ably represented in this matter.

Mr. Vice-President, as our grandparents used to say, when your neighbour's house is on fire, wet yours, because we can well find ourselves in the same situation. The United States of America could make a pronouncement that if Patrick Manning is elected in the next general election, his government will not be acceptable to them. Will that be acceptable to the Attorney General? We can find ourselves in a situation where the government of the United States of America could make a pronouncement that if Basdeo Panday remains political leader of the UNC, our party and our government will not be acceptable to them. Would this be acceptable to our people? This is a very serious issue. We have to deal with this matter now and we have to make our pronouncements.

Mr. Vice-President, what is happening here, is really, that the concept of sovereignty, independence, the rule of law and justice—in this era of globalization—are fast becoming political acronyms; they are becoming obsolete and old fashioned; they are regarded as the remnants of the vocabulary of the 1950s and 1960s; and the glorious anti-colonial struggles that peoples all over the world raged against, the colonial powers.

The political language of globalization and, by extension, the fascist Third World governments, are only too happy to join the bandwagon of globalization with all its implications for continued and renewed exploitation of our people. The language of globalization involves phrases such as "regime change" and "unacceptable regimes". We have to sensitize our people if we are serious about sovereignty and independence, because this new language is unacceptable to us. We have to decide our own affairs; we have to run our own affairs; and we will decide when there should be a regime change and whether a regime is acceptable or not.

Mr. Vice-President, in this whole new era of globalization and, by extension, the oppression of our peoples, it is in this context that we have Bills like this coming before this honourable Senate. This Bill, which purports to establish the CCJ, among other things, purports that the politicians of our regions—the Heads of Governments—can appoint and dismiss the President of the Caribbean Court of Justice—I think Sen. Prof. Deosaran mentioned that point—in its original jurisdiction and, eventually, the Government also wants this CCJ to be a court of the appellate jurisdiction.

What is happening is that we are being asked as a Caribbean people to relinquish the last bulwark against political dictatorship in the Caribbean. This is what we are being asked to do in this Bill. This is the bottom line. We are being asked to relinquish the last bastion that we have against total political dictatorship under the guise of sovereignty, independence and the fact that other countries have done it and so forth. Mr. Vice-President, many countries that have gone that route are facing the dire consequences of civil war in their countries.

This Bill is before us today because this Government is concerned with the consolidation in Trinidad and Tobago of political power, which it pretends to cover with all this glitz and glamour associated with the trappings of the establishment of the CCJ. What is amazing to all right-thinking persons in this society is that while they are concerned with the glitz and glamour and trappings of the CCJ—they are asking us to relinquish any rights of appeal against a political dictatorship—the Government continues to be horrifyingly indifferent to the imminent collapse of the confidence of the people of this country in the justice system and the dispensation of justice.

Mr. Vice-President, the CCJ purports to be a court of original jurisdiction for matters of trade, investment and for the facilitation of business, entrepreneurs and so forth. In a particular context, that will be fine. I am sure that you will agree with me that there can be no trade, no investment, no production or no

productivity if the justice system is falling apart, as it is in Trinidad and Tobago as we speak. Despite the clamours of all the stakeholders in this country in the criminal justice system, this government seems to be oblivious of the fact that there is a total collapse of the system.

Mr. Vice-President, I want to quote from Chief Justice Sharma's address in the Supreme Court at the opening of the 2003—2004 Law Term. He said:

> "What passes for justice in those Magistrates' Courts is, in my opinion, a serious blot on the administration of justice. It is a stinging indictment on every arm of the state. The Magistracy has been frozen in time, and that time is some forty years ago, precious little has changed except, of course, that litigation in these courts have risen to such an extent that it renders the present system useless."

Mr. Vice-President: Hon. Senator, I will have to ask you to continue your contribution right after the tea break. We are going to take the tea break now and we will return to the Chamber at 5.00 p.m. The Senate is now suspended for tea.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Dr. J. Kernahan: Mr. Vice-President, thank you. I would like to quote from a newspaper report in the Trinidad *Express* newspaper dated January 06, 2004. The headline is: "Lawyers want Sando court condemned":

> "Attorneys protesting the crumbling San Fernando Magistrates Court intend contacting the Public Health Inspectorate to investigate and officially condemn the courthouse as uninhabitable.
>
> Lawyers stayed away from court yesterday in a show of disgust similar to last Friday's absence."

This article went on to say that the: "Spokesperson for the group Chateram Sinanan said:

> "…there was need for more courts and derided the non-functioning toilets, leaking roof, broken ceiling, pigeon droppings and the stench from the overcrowded cell block section in the courthouse basement, Sinanan said lawyers 'are also in touch with the Magistrates Association, the police, and the Public Service Association because all have members who operate out of this court..."

Mr. Vice-President, there were other reports of the poor working conditions in the Magistrates' Courts. I refer now to another report of August 16, 2003 in the *Trinidad Guardian* newspaper headlined: "Sando court staff stays away again". Mr. Vice-President, this is important because the Magistrates' Court handles the bulk of the litigation in this country.

I would like to quote again from the address of the honourable Chief Justice, at the opening of the 2003—2004 Law Term. This is what he said with respect to the Magistrates' Court and its importance and implication for the administration of justice in this country to the ordinary people. I quote:

> "We must bear in mind that magistrates handle the bulk of the litigation in this country. They deal with all sorts of matters on a daily basis with all manner of litigants.
>
> Each Magistrate has an average list of 100 cases. By the time he or she has dealt with applications of one sort or another, performing in these conditions he becomes short-tempered. And who bears the brunt of this? The litigants, of course, many of whom might be mothers who have come to court, perhaps for the fifth, sixth or seventh time, and who may have left their children unattended or have had to make some other personal and financial sacrifices in order to attend court. Who cares? Is this how these people, many of them living below or on the poverty line, are to be treated when they seek justice?"

Mr. Vice-President, this is the Chief Justice of this country. I could not have put it better myself. The importance of this goes to the heart of the delivery of justice in this country; to the breakdown of that delivery; and to the consequences which we are experiencing in this country because of the delivery of that justice which I will elaborate on as I go along.

The Attorney General has spoken a lot about sovereignty and the issue of breaking with our colonial masters as a justification for the abolition of the Privy Council. I would also like to quote from the Chief Justice on the issue of sovereignty and let us see how we can relate this to what we are experiencing in this country today. I quote:

> "The sovereignty of a nation, I submit, is not to be defined by reference to its economic power, nor by the might of its armed forces, nor by the role it plays in international affairs. True sovereignty lies and can only be complete when a nation has self-respect, unswerving loyalty and patriotism. Acknowledgement of its heroes. To these I would add respect and faith in its people and institutions to control its own destiny."

Mr. Vice-President, if we are truly to become a sovereign independent nation, we have to look at the factors outlined by the honourable Chief Justice. We have to look at loyalty and patriotism; and have respect and faith in the people and the institutions and, by extension, equitable administration of justice to the ordinary people in this country.

So, when we have the situation in the Magistrates' Court, as outlined by the Chief Justice, and where justice is denied to the poorest people; the most dispossessed people, then how can we speak of sovereignty; how can we speak of independence? The people and the confidence in these institutions are the basis for sovereignty and independence. If you do not have that then you have nothing, and you are building a house with straw.

Mr. Vice-President, apart from the total collapse, despite nearly $100 billion that was spent over the last three years on infrastructure at the Magistrates' Courts, we have seen a concerted, vicious and desperate attack on the independence of the Judiciary in this country. The erosion of the independence of the Judiciary has been in the national spotlight over the last few weeks. We have seen the Chief Justice of this country exposed to the most shameful, embarrassing and humiliating scrutiny by all sorts of persons who, according to the local saying, "just wash yuh foot and yuh jump in."

We are very much aware that the judges and the regional commission are not going to fall from the sky for the establishment of the CCJ. They are going to come from the criminal justice system of the Caribbean countries in this region. If we sit by and contemplate without protest, the undermining of the independence of the Judiciary in our individual countries—and as we have seen in our own country in Trinidad and Tobago over the last few weeks. Our political leader said that spectacle that we have witnessed is an attack on all judges. If we are to tolerate the further undermining of the confidence of our people in the criminal justice system and the undermining of the independence of the Judiciary, then we are going to see that same phenomenon move on and this is going to be translated at the regional level. What guarantees do we have, that what happens at the local level is not going to manifest itself at a regional level? What guarantees do we have? This is a serious concern.

Mr. Vice-President, we are terrified by this move under these circumstances and by this particular regime, to abolish any appeals outside of the CCJ for this particular reason. We have seen what could happen to one of the highest offices in the land. What can I expect as an ordinary citizen? What can the man on the street expect as an ordinary citizen?

Mr. Vice-President, I am saying that the judges of the CCJ are not going to fall from the skies. If their independence and autonomy are undermined at the local level, we have very serious reservations that this is not going to be duplicated and replicated at the level of the CCJ. This is not something that is as far-fetched as they would like to have us believe. In article 9 of this Bill, which deals with the tenure of offices of judges, we are alerted in clause 6. I quote:

> "If at least three Heads of Government in the case of the President jointly represent to the other Heads of Government, or if the Commission decides in the case of any other Judge, that the question of removing the President or the Judge from office ought to be investigated, then—
>
> (a) the Heads of Government or the Commission shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Heads of Government or the Commission, as the case may be, after such consultations as may be considered expedient, from among persons who hold or have held office as a Judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth, or in a State exercising civil law jurisprudence common to Contracting Parties, or a court having jurisdiction in appeals from any such court;"

Mr. Vice-President, in other words, this is saying that the President of the CCJ may be removed although having tenure for at least seven years. This is another problem that we have with this Bill. The tenure of judges is an important cornerstone of the administration of justice, because it removes any fear, or any discretion on any other political entity with respect to the removal of a judge. The judge is free to pursue his office and conduct his business as he sees fit without any fear of being removed for any particular decision that might not be in congruence with what is expected of him, or what he may think that is expected of him.

Mr. Vice-President, in this case, the President of the CCJ can be removed if three political heads get together and decide that they want a judge to go because of X or Y reason. This would be very easy, because these three heads, with the agreement of the other members, actually appoint the tribunal that sits to hear the case. I am not confident that this provision in this Bill is conducive to making judges immune from the vagaries of the political directorate.

5.15 p.m.

Mr. Vice-President, we have heard a lot of talk this afternoon about removing ourselves from our colonial masters, but I was going through the judgments by the Privy Council with respect to the Jamaican Caribbean Court of Justice case. One of the things the Privy Council said in that judgment—not to quote exactly, but as far as I recollect—is that the importance of the Privy Council or the importance of the Judicial Committee of the Privy Council for a lot of jurisdiction is distance, which these judges have with respect to the machinations and the political climate of the areas in which they adjudicate. Not just the distance from all these influences and so on, but the security of tenure which these judges have in their positions, makes them immune from any undue influence for one decision or another.

The Privy Council has said that security of tenure for judges is an important cornerstone in the administration of justice in any jurisdiction. If you have a situation where the President of the Caribbean Court of Justice does not have that distance or immunity based on security of tenure, any Monday morning three Heads of Government can get together and institute proceedings to remove the President of the Caribbean Court of Justice. This does not auger well for the administration of justice at that level, and this is a serious concern that I think was expressed also by Sen. Prof. Deosaran in his contribution.

The question of the role of the Commission in the removal of any judge in this Caribbean Court of Justice seems to be almost an afterthought, and, obviously, the main movers and shakers in the whole process of the removal of the President of the Caribbean Court of Justice will be political. We have had our own experience of the ease with which holders of high office can be humbled, humiliated and embarrassed in this country, and it makes us very skeptical of the path which this Government has embarked on, to remove our source of redress which presently is constituted in the Privy Council.

The importance of the immunity of judges from the political process was emphasized by a person who is now the Chief Justice of Canada. I would like to quote this learned judge. This is also in the document that I am reading from now, the *Opening of the 2003—2004 Law Term*. This particular judge was quoted in this document and I think that what she said here is extremely relevant to us with respect to how we view the political potential for political manipulation of judges at what purports to be the highest Court of Appeal for the Caribbean. I quote:

> "The necessary concomitant of the increasing insistence on human rights and the new social face of the law is an independent judiciary, ready and able to review a wide range of government action. While the legislative and executive

branches of government have an important role to play in supporting human rights, the difficult burden of interpreting the rights and maintaining them even in the face of governmental intransigence if need be rests on the shoulders of the courts."

Mr. Vice-President, this pronouncement has wide implications for us at this time, because what she is saying here, is that the court at this time is faced with an ever-widening role to play in supporting and defending human rights. The United National Congress introduced the Judicial Review Act. This Act makes it easy for any person in our society to appeal any decision made by any institution in this society with which he or she is not in agreement.

So, these questions of rights and so on, that historically might not have reached the court, due to innovative and new laws that have been introduced by our Government, have made, in our particular context, the role of judges even more crucial in interpreting and supporting the human rights issues that may come before the courts.

The Chief Justice of Canada said this is a difficult burden which involves interpreting these rights and maintaining them, even in the face of intransigence of the political powers, the Government of the day; and this is a burden that the courts now carry. As Prof. Ramesh Deosaran said, this whole issue of administration of justice is not only to do with judges and lawyers, and so on, at the highest levels, the regional levels, it has to do with how this would be translated into justice for ordinary people. You are seeing a trend in this country where people now are using the laws that we have put on the statute books to challenge any perceived abuses of their human, social and economic rights. They are using the courts to challenge and pursue their rights.

So when we make changes to our courts and we bring legislation that will undermine the immunity before this Parliament, the independence and the distance of our judges from political interference, we are coming back to where we started. These laws that have been advanced will be of no avail, if the judges are subject to political interference, and the Judiciary is being undermined. So, as we say in Trinidad and Tobago—when we pass this type of legislation—we are spinning top in mud. What we have here really is a vulgar grab for the consolidation of political power on the part of Caribbean governments led by this particular regime, and it is unacceptable given the burden that the courts and the judges are asked to carry in this modern era.

I would beg to submit that our problem in 2005 is not the question of cutting judicial ties with our formal colonial masters, our major problem at this point and the major threats to our sovereignty and our independence are the deepened and even more vicious economic enslavement that is being perpetrated on these islands and in Third World countries, by our neo colonial masters, these are the ones we have to watch out for, Mr. Vice-President. The colonial masters are no threat to us anymore, we have moved way past that. The PNM is, as usual, 30 years behind time. We are now faced with the threat of globalization and neo colonialism in the form of the IMF, the World Bank, the Washington consensus, which has pauperized thousands and thousands of our citizens and reduced this country to rubble. We have seen vast unemployment, the breakdown of family life, social and political dislocation. These are the problems that we have to deal with, our neo colonial masters.

So when they talk about breaking with colonialism, the people of this country have gone way past that, we recognize what are the new challenges that we face at this time, when we look at what we are being asked to sign at the level of the World Trade Organization (WTO) in terms of food security.

Mr. Vice-President: Hon. Senators, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. S. Baksh*]

Question put and agreed to.

Sen. Dr. J. Kernahan: Mr. Vice-President, we are experiencing in this country—because of our neo colonial masters—a breakdown of the cultural, social and political resistance to the penetration of our society by the powerful forces of communication—BET, and so on—which are influencing our youth into a particular culture, into a particular way of life, a particular set of values and so on.

While this Government is obsessed at the level of the Caribbean Court of Justice trying to enforce its political consolidation, domination and ascendancy over the Judiciary, on the ground, we have an alternative system of justice which has emerged in this country. Chief Justice Sharma alluded to that in a newspaper article, where he said that if we do not deal with the whole system of the breakdown of the infrastructure and Judiciary and the services of the delivery of justice, we would find people taking the law into their own hands; and so said, so done. Because we have seen over the last three years, especially, the

establishment and proliferation of an alternative system of justice in this country, whether we like it or not. The major organization which has promoted this alternative justice system has had close and intimate links with the present Government.

Inevitably, in order to fill the void and the deficiencies of the delivery of justice, we have this organization, the Jamaat-al-Muslimeen, sprung up as an organization which would dispense instant justice. You have a problem with your neighbour, you have a problem with somebody who owes you money, and you cannot collect it, you go to them, they would beat up the person or whatever, and they would get you your money. People have been using that alternative justice system, because the administration of justice—as so eloquently outlined by Chief Justice Sharma—failed the people of this country. It failed the poorest, the most dispossessed, the people most unable to access justice.

What has happened, is that with the proliferation of guns and drugs and so on in our country, this alternative justice system has progressed beyond the level of that organization which initiated it. Therefore you find that every young man with a gun, is now seeking his own justice, he is his own alternative justice system. He has a problem with a rival gang leader, he walks up to him, broad daylight, shoots him in the head. There are hundreds of guns in the hands of these young men who are at the lowest level—culturally, politically and educationally—in our society, and they are dispensing justice according to their own standards, according to their own likes. They are judge, jury and executioner, and they are dispensing this justice in broad daylight, in full view of our population that is aghast at the situation, helpless in this situation.

What is happening here, is that the criminal justice system depends on witnesses coming forward to testify in trials. This is an integral part of the criminal justice system and the delivery of justice. But at this time—2005, in Trinidad and Tobago—you do not get any witnesses coming forward to testify against anybody, because they know that they would have to make their Will, because they would be dead men. There is no witness protection programme and people are refusing to come forward to testify.

That is why these members of the alternative justice system in this country can walk up to people in broad daylight, without masks, shoot them in the head, and walk off, because they are certain that no witnesses are going to come forward to testify, because there is no protection. This is a serious problem that we are having. If the criminal justice system breaks down at the level of the grassroots in this country, then

we are building, as I said, a house of straw, we are building a house without foundation, because judges are going to be intimidated by gang members, the lawyers are going to be intimidated by gang members and people who have gangs and who can intimidate them, even from the prisons. We know for a fact that prison officers are often threatened in order to bring in drugs and so on into the prison system; they are actually threatened by the prisoners. Nobody is safe.

The criminal justice system has broken down in this country. It is crumbling around our ears and this Government is oblivious to the pain and suffering being caused by this breakdown. They are actually financing people who are perpetrators of this. The whole of Maloney, Cocorite, any given gang member, you just pick them out of a hat and they are going home with about $15,000 or $16,000 every fortnight, because they are members of ghost gangs, and all these sorts of things. They are actually being financed to have their guns and terrorize the population. What do you think would happen eventually, when the justice is no longer able to operate in this country, because of guns and terrorism by the criminal elements?

How will a Caribbean Court of Justice—even with the best of intentions— operate, if you have judges coming out of a system where they are totally terrorized; one, by the political directive; and, two, by the criminal element? What are you building? Where are we going? What are we doing this afternoon with this Caribbean Court of Justice Bill? We are putting on make-up and perfume on a rotting corpse. The criminal justice system in this country is a rotting corpse and we are trying to put on make-up and perfume, and make it look like we have something. We have nothing; this Government has lost control of this country. The Minister of National Security should resign.

I am reliably informed that in this country in 2005, in Laventille, young women are being dragged into deserted areas by gangs of young boys with guns and are being gang raped. I heard on the radio yesterday for International Women's Day, Nafeesa Mohammed of the PNM, talking about the sort of gang rapes and instability that is happening in these countries like Haiti. Does she not know that this is happening here right under our very noses? Right in these depressed communities, ordinary people are in total fear for their lives on a daily basis. It is falling apart and it is being helped and pushed along those lines by this regime, and they are doing nothing to stop it, but they are talking about establishing a Caribbean Court of Justice.

These judges do not operate in a vacuum, they do not operate in the sky, they operate out of a local situation, they live here. They do not live in the communities, but they have to drive, they have to go to court, they have to face the criminals and they are at risk of intimidation. When you have a society that has more guns in the hands of the criminal element than possibly in the hands of the police, mainly because sometimes the corrupt element of the police force are actually channelling guns into the hands of the criminal element—the facts speak for themselves, the murder rate speaks for itself, the fear and terror speak for themselves, the kidnappings speak for themselves; I am not making up anything here. I am saying, this afternoon, that there can be no justice in this society where the fundamental human rights are ignored.

One of our fundamental human rights, which is in jeopardy in this country, is our right to life and security of our families. This is being jeopardized under this regime. The right to shelter, to employment, all these are fundamental human rights. You cannot talk about a justice system without the recognition and the delivery of fundamental human rights. In this context, sovereignty for the ordinary person is an abstraction. How can you talk about sovereignty and independence to a man who is unemployed and who is not even sovereign in his house? He is unable to provide for his family, he is unable to secure his family, he is unable to secure his children from the madness that is going on around him. How do you speak of sovereignty and independence to these people who are jeopardized at that level?

This Government has to get serious, it has to come clean, it has to break its ties with the criminal element, because we cannot speak of putting layers and layers of bureaucracy—I am talking about increased administration of justice—when we have the problems of gun running, drug smuggling, crooked law enforcement officers in the bowels of the criminal justice system. This is a cancer in the bowels of the system, and it must be excised from the system, for anything that we do here to make sense. I would like to close by quoting from the Chief Justice again. Sen. Prof. Deosoran spoke of the way forward and the Chief Justice in his address at the opening of the 2003—2004 Law Term, also felt and spoke to the social and political implications of the deficiencies of the administration of justice. I would like to quote extensively from his address on these questions, not just the points that I have made here this afternoon.

I quote:

"As a starter, the Judiciary intends to embark upon a programme to educate the public about its Constitutional position, its role and function in society. It is to be expected that during the course of this exercise judges and magistrates will be free to tell members of the public what problems they are having in the Judiciary and their suggested solutions. The judges and magistrates, after all, exercise awesome powers over the lives of our citizens and they have a right to know if justice is not being delivered efficiently what are the reasons."

Mr. Vice-President, this is a radical suggestion by the Chief Justice and I believe these radical suggestions and so on, are the basis of the persecution that has been unleashed on the Chief Justice and it is important on the way forward. He says:

"The conventional reticence too of the Chief Justice may also have to be reviewed. Just as the Prime Minister sometimes addresses publicly, the gravity of the situation in the Country or any event of importance, so too should the Chief Justice have access to a similar facility to address the public about serious problems confronting the administration of justice."

This shows that there are responsible, serious people in our society at the highest levels, who are concerned about the social, political implications, the undermining of the Judiciary, the lack of administration of justice to our peoples, and they have solutions and for that reason they are being persecuted.

I thank you.

ORAL ANSWER TO QUESTION

High Commissioner to the United Kingdom (Repairs to official residence)

Mr. Vice-President: Hon. Senators, during question time, I advised the House that I would permit Sen. Mark to look at the response as being circulated by Sen. Gift and in the event that he would have any supplemental questions, he would ask them later in the proceedings. I propose to do that now. Sen. Mark, do you have any questions?

Sen. Mark: Yes, Sir, I have a few questions.

Hon. Senator: He is not finished.

Mr. Vice-President: Okay, Sen. Gift, you will wind up that answer, please. Sen. Mark, I notice the enthusiasm with which you said a few. Please note that we do not have indefinite time on this.

Sen. The Hon. K. Gift: Thank you, Mr. Vice-President. As I was saying earlier, the detailed breakdown of the works has been circulated and indeed I think it is so transparent that I doubt whether there would be any queries raised on it.

Sen. R. Montano: Doubt again, we have a lot of questions on it.

Sen. The Hon. K. Gift: I think all the necessary safeguards were put in place by the High Commission in London to make sure that government moneys are properly spent. This is not a personal property, it belongs to the State and therefore it is incumbent on the State to make sure that the conditions of its assets are well kept and well preserved. With that, I do not think there is anything further to add at this stage. I thank you.

Sen. Mark: His contribution was almost inaudible, I could not have heard him, I know he is so embarrassed about this development. Mr. Vice-President, through you, could the hon. Minister indicate to this Senate whether this is the final total for the repair of her Excellency's residence in London? Is this the full and final estimated cost—£775,546? Is that the final and complete estimated total for the repair of the residence of her Excellency in London, High Commissioner Glenda Morean-Phillips?

Sen. The Hon. K. Gift: Mr. Vice-President, it seems as though Sen. Mark wishes to personalize—unnecessarily—the occupancy of this house. The property belongs to the State and indeed— [*Crosstalk*]—let me reassure him, there is only one stage more of the works to be done and this is the final figure that we have before us here. [*Crosstalk*]

Sen. Mark: Can I ask the hon. Minister of Foreign Affairs, when he said there is one final stage in the work process, can he tell this honourable Senate, what is this final stage and what is the estimated value of the final stage? Mr. Vice-President, through you, as the hon. Minister is about to respond, can he indicate to us whether I am reading correctly where a swimming pool, in fact, cost the equivalent of TT $1.6 million or £135,325?

5.45 p.m.

Sen. Mark: Mr. Vice-President, I would like to ask the hon. Minister of Foreign Affairs, whether he is aware that this cost is equivalent to an Olympic swimming pool in this country.

Sen. Dumas: Ridiculous! [*Crosstalk*]

Sen. Jeremie: Mr. Vice-President, on a point of order. Under Standing Order 17—

Hon. Senator: Standing Order what?

Sen. Jeremie: —17(h): "A question shall not solicit the expression of an opinion, on the solution of an abstract legal question, or of a hypothetical proposition." [*Interruption*]

Mr. Vice-President: Senators, please, we have not had that; let us not go there, please.

Sen. Mark: He is supposed to be in charge of the Anti-Corruption Unit, and he is covering up for corruption.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Sir, I am guided.

Mr. Vice-President: Mr. Attorney General, could you please repeat your point of order?

Sen. Jeremie: Mr. Vice-President, the point is, my colleague, Sen. Gift, is being asked a question about an Olympic size swimming pool, and these questions, he obviously will not have in his knowledge. The question is farcical. The Standing Order is 17(1)(h). The question is out of order. [*Interruption*]

Mr. Vice-President: Sen. Mark, I have to support the Attorney General's point of order. The question you are asking really does not bear on this.

Sen. Mark: Mr. Vice-President, through you—

Mr. Vice-President: Could you please—[*Interruption*]

Sen. Mark: "Okay, Mr. Vice-President, ah gone, ah gone."

Mr. Vice-President: If you rephrase the question—a rose by any other name would smell the same way.

Sen. Mark: Mr. Vice-President, through you, may I ask the hon. Minister of Foreign Affairs, whether he can indicate to this honourable Parliament, if the Government of Trinidad and Tobago is satisfied with the value—the moneys that have been expended amounting to £135,000 equivalent, for the construction of a swimming pool. Is the Government happy, with the value—in terms of money—given the expenditure that is involved?

Sen. D. Montano: Mr. Vice-President, on a point of order. Again, that calls for an opinion.

Mr. Vice-President: I decided to allow five minutes for question time, and I am now at six minutes. I am going to permit just one more question.

Sen. R. Montano: Mr. Vice-President, you know, I have many questions. Would the Minister please explain why the residence needs a telephone system costing more than TT $20,000? I refer to item 9.1 for £1,880. There are other things that I needed to ask, for example, a ground floor toilet costing almost TT $338,000. There are lots of other things that need to be asked.

Sen. Seepersad-Bachan: For one toilet?

Sen. D. Montano: Mr. Vice-President, on a point of order. Standing Order 17(d) and (f); we are entering into the realm of a debate. Clearly, this is not the forum for that. We have had enough of this nonsense. [*Crosstalk*]

Sen. Mark: They are corrupt; a bunch of corrupt people.

Mr. Vice-President: Hon. Senators, again, I am afraid that the point of order is correct. We are getting into a big discussion and debate on this report. If you have any other questions about the report, could you please file them in the proper way?

Sen. R. Montano: Mr. Vice-President, I only want to ask if the Minister is sure that there would be no kickbacks.

Mr. Vice-President: Sen. R. Montano.

Sen. R. Montano: Are there any kickbacks? [*Laughter*]

Mr. Vice-President: Okay, as I advised, if you have any other questions on this matter, please file those questions. I am going to move to the next person in the debate.

Sen. Seetahal: Well, actually, I had a question. I do not know if that covers us. We did not get a chance to ask any questions. [*Laughter*] [*Interruption*]

Mr. Vice-President: I permitted one last question. I am afraid that I cannot do that, Sen. Seetahal.

Sen. Seetahal: Well the question is—Oh, I thought you said you were giving me one question.

Hon. Senators: No.

Mr. Vice-President: I cannot.

Sen. Seetahal: Well, that is not fair.

Mr. Vice-President: Sen. Mark, I recognize Sen. Mary King. [*Interruption*]

CARIBBEAN COURT OF JUSTICE BILL

Sen. Mary King: Mr. Vice-President, thank you very much. The Bill before us is really the introduction of a dispute settlement instrument to support the movement of Caricom into the Caricom Single Market and Economy (CSME). To do this, we are establishing the Caribbean Court of Justice (CCJ) in its original jurisdiction and related matters, that is, dispute settlement as it relates to investment and trade under the Revised Treaty of Chaguaramas which established the CSME. Although this is the primary function of this Bill, as an aside, I just want to point out that in two sections of this Bill: in the Explanatory Note, we have three references to the appellate court, which I believe would be deleted; and we have as well in the First Schedule, Article XXV, a reference to the appellate court. So, it really does not fit into this Bill that we are debating today.

Mr. Vice-President, two major markets—the World Trade Organization and the European Union—have also set up such dispute settlement instruments. The European Union has done it through having a Parliament which sits above the settlement court. The World Trade Organization has a dispute process, which is something like what we are implementing today.

In spite of some of the difficulties which some states in the region have had with the CCJ, as it pertains to the appellate court—meaning their highest national court—we have actually seen that 12 members have signed on to the appellate court—the full original and appellate court—and 11 members have ratified it, so, at this moment, we are a little behind.

Sen. Jeremie: That is the agreement. As I understand it, in relation to domestic legislation, Barbados is completely ready; Suriname, as well as Guyana, is going to access the court in its final jurisdiction. Those are countries which are completely ready.

Sen. M. King: Thank you very much for the clarification. I am saying that we are a little behind, if not a large bit behind. One of the fundamental difficulties that I have with the CSME, and I have already discussed it in this Senate, is that since 1989, when we established the first Treaty—all of this still has to be put into operation, and I am anxious that we get on with doing it in a proper fashion.

The Revised Treaty of Chaguaramas does recognize a series of technical objectives. It talks about the enhanced level of international competitiveness; and it talks about enhanced functional cooperation. I have seen nothing in the Bill which deals with us as a community, as a people, and I am wondering if even today, the public out there is aware that we are debating this in the Senate today. It seems that we are not having enough activity in public discussion and education. So, from the Bill before us, the CSME is trying to create a unified economic space, that we as a people have to manage, and part of this job will be done through the CCJ. We are trying to do this, and still hope to cling to our full national sovereignty which indeed, will be violated once this Bill is passed.

Mr. Vice-President, when the European Union (EU) was inaugurating its single market, it introduced the concept of an internal market, an area without internal borders. They had the free movement of goods; the free movement of persons; and the free movement of capital. In order to do this, the EU Community Legislative System was established to encourage the adoption of the measures that were needed for the completion of the single market. Mr. Vice-President, on the other hand, we have not made that political transition that is very necessary, given the commitments that we have undertaken as a country to create the CSME; to create a single market; and to create a single economy. I do hope that we can honour these commitments through discretionary inter-governmental cooperation, subject to the kind of debate, of course, that we are having today on the subject.

We have failed to achieve any major milestone, with respect to the total movement of people, the movement of services or capital, even anything fundamental in macroeconomic coordination, or in fiscal harmonization, or in monetary integration. So we still have a lot of work to do.

This was also the experience of the European Parliament at one time in its history. On reading the history of the development of the EU, in one of its reports it stated: stagnation in the achievement of the common market was largely attributed to the choice of detailed legislative harmonization, as the method of removing obstacles of national technical regulations, when even harmonization itself was very difficult to achieve.

So, Mr. Vice-President, I think this is the position that we are finding ourselves in today with the CCJ—the single currency, the free movement of people, a regional capital market, et cetera. Caricom is attempting to move to the CSME, but it is keeping some of the concepts, or rather most of the concepts of the old common markets of yesteryear.

The CCJ is one example that we must put in place, but we must all be aware that it does breach national sovereignty. For example, the Schedules attached to the Bill, can only be amended by the contracting parties, and not by this Parliament. This is referred to in section 19(1), as it refers to amendments to the Schedules. So, the amendments to the Schedules can be done outside of the Parliament, so in that way we have already given up some of our national sovereignty.

Yes, the CCJ is necessary, because without it the national courts of the member countries would not be competent to interpret and apply the Revised Treaty. Further, there is a concern that the decisions across the region may not be consistent. Hence, with the court, the CCJ, we are attempting to inject the anomaly of a necessary aspect of super-nationality into the plan; into governmental mode of cooperation. This is only one example of what is really necessary. We also need to have regional security, and we need to put on the table, a regional policy for financial services. I think, very soon, we will have to be looking seriously at a regional policy of the environment within the Caribbean Basin.

Mr. Vice-President, if we are serious about the CSME, we will have to take a page out of the book of the EU, vis-à-vis the European Parliament. The court will remain solely a dispute settlement instrument, where section 19(1) gives the Government the power to virtually legislate on our behalf at the CSME, via negative resolution of Parliament. I think we did not get enough debate publicly on those issues before today.

Mr. Vice-President, I would like to compare what we are trying to do, as against the World Trade Organization (WTO) dispute settlement understanding, which evolved out of the General Agreement on Tariffs and Trade (GATT). The WTO dispute settlement understanding attempts to get the parties of the dispute to settle differences out of court. Article XXIII of the First Schedule of this Bill states:

> "(1) Each Contracting Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes."

It continues:

> "(2) To this end, each Contracting Party shall provide appropriate procedures to ensure observance of agreements..."

Mr. Vice-President, when one considers of the 314 complaints which were brought before the WTO as at September last year, less than half of them actually got to the first stage of the panel, given that they had so many out-of-court settlement procedures. This is actually encouraged by the WTO.

So, the question I would put to the Minister is: What are the procedures that we have put in place to manage and encourage this alternative dispute resolution as called for in the First Schedule? The WTO has included the setting up of an ad hoc panel of experts. This is established by the Director General of the WTO to be used on a case by case basis, if the dispute is not resolved within a particular or a reasonable time frame.

In our case, Mr. Vice-President, the initial panel of the CCJ in its original jurisdiction is "constituted by not less than three Judges and in every case, the number shall be an uneven number". They tell us that in clause 5(1), and in clause 5(2) it goes on to say:

> "The original jurisdiction of the Court may be exercised by a sole judge appointed in accordance with the Agreement."

And clause 5(3) says that:

> "The decision of a sole judge may…be reviewed by a panel of not more than five Judges..."

So, I have a concern at this stage with the complement of judges of the CCJ, which consists of a President, and not more than nine judges. It states that at least three of these judges must possess the expertise in international law, including international trade law.

According to Article IV of the First Schedule, as a dispute resolution panel is drawn from a fixed number of judges of whom only three, according to the regulation, may have some skills in international trade law, this would appear to me to be inefficient, as compared to the WTO's approach, where all the members of the panel must be experts in the related fields of any dispute.

The story is told that the Federal Communications Council (FCC) of the United States had been taken to court and ruled against for attempting to include opportunity costs, as real business costs. That is something that every student of Economics 101 is very well aware of, but this point escaped the esteemed judges. So, I have a concern with the expertise that may be available to us, particularly for trade disputes.

The WTO also allows the right of appeal which can be exercised by any disputant after the first level. The first level report is final. The WTO, therefore, established an appellate body consisting of seven judges, and from the seven judges, a division of any three is selected to handle each appeal based on the report of the expert panel and, of course, any other information that may come to hand. Although three judges will actually debate on the issue, in actual practice, all members of the panel actually read the report. So, the report then of this appellate body is automatically adopted, and it is then final as it has been read by every member and a decision taken by at least three members.

In our case, a disputant can appeal only under certain approved conditions according to clause 8(1). Clause 8(1) tells us:

"(a) there is the discovery of some fact of such nature as to be a decisive factor;

(b) the fact was, when the judgment was given, unknown to the Court and to the party applying for the revision; and

(c) the ignorance regarding the fact was not due to negligence on the part of the applicant."

The appeal then can only take place if the court expressly records the existence of the new facts. This, to me, appears a little harsh, when one considers that in the first instance, the panel may not be fully staffed by experts in the related field. What is worse, this is also so, if the decision at the very first stage had been taken by a sole judge. This is certainly not the optimum position for any revision, or any person going before the court.

Mr. Vice-President, given the unofficial abdication of our sovereignty, I am not sure if I can ask for an amendment here, but I am far from happy with the conditions for appeal or revision of the judgment.

The WTO applies only to complainants of one country on the actions of another, that is, a person or a company cannot lodge any complaints on a government. It is worth noting that this is not so even under North American Free Trade Agreement (NAFTA), in which a firm can challenge a legislative decision by a government, under the NAFTA dispute resolution process. This has actually happened to us in the region when Mexico was trying to protect its environment, and a United States corporation wanted to expand a hazardous landfill. This expansion was refused by the Mexican government. They refused to give them a permit and the corporation took it to the NAFTA Court, and Mexico lost the case. The Mexican government had to pay the United States corporation $17 million in compensation.

Under clause 7(1), our CCJ also allows, with the special leave of the court, a person or firm to appear in proceedings before the court, in particular, where the court has found that in the interest of justice, the person is allowed to espouse the claim. Hence, my question: In regional trade liberalization, would it be possible for a Trinidadian corporation to sue the Government, take it to the local court and lose—say even because of local environmental legislation—but they could take it to the CCJ and win? The rules of trade do not acknowledge the local legislation. I am wondering what is our position in a case like that. For example, the suit could be related to the construction of a plant or a factory that violates local environmental laws. This is a very important issue which I do not think we have addressed in the current Bill.

In fact, one of the shortcomings of the WTO dispute settlement system is said to be its pro-liberal trade approaches, as opposed to any other alternative; even when important government goals are at stake. Now, recently, this has been recognized by the WTO, and they are including a country's national special interests, when looking at the application of trade rules. So we have to be cognizant of the issue and, again, look back at these problems.

Mr. Vice-President, my final question relates to Article XII, and it states that the CCJ is concerned with issues whose resolution involves questions concerning the interpretation or application of the CSME Treaty. In such WTO hearings, these are done in private, but they have recommendations before it today, that the first level panel and the appellate body, where it is required, will be heard in public. This can be waived, of course, for sufficient cause.

The Bill before us is silent on this issue. With respect to the CCJ, can we assume that the CCJ proceedings will all be in public, or will it be only under certain conditions?

Mr. Vice-President, the Bill before us is, indeed, a clumsy attempt to pass over some of our sovereignty to the CSME but, yet, hold on to it through debates such as this one. I also contend, like the Attorney General did in his opening statement, that the time for action is long gone, and we must strive more to bring about further development of our Caribbean Community, and further development of the original and appellate courts.

I thank you very much. [*Desk thumping*]

Sen. Dana S. Seetahal: Mr. Vice-President, thank you very much. It has been said right here in this Senate today, that the Bill before us is an emasculated version of what was meant to be an Act establishing the Caribbean Court of Justice fully, that is, in both its appellate and its original jurisdictions.

One of my colleagues said—not on the Independent Bench—that in its original jurisdiction, the CCJ is a waste of taxpayers' money. Mr. Vice-President, when I saw this amended Bill I really came to the point of view that what is the point of having this with just an original jurisdiction, just to deal with the CSME, when many persons in this country do not know anything about that. We have been talking about the CCJ so long, and we really want to have a final court of justice to mean something. Having said that, I have to say that having thought it over and discussed it with others that it is my view, that even in its emasculated form—I mean, substantially emasculated; practically cut up—I think we need to support it because it is a step in the right direction.

6.15 p.m.

Why I say this, Mr. Vice-President, is that some 87 years ago, I think it was in 1918, the *Jamaican Gleaner* ran an editorial in which it said that the time for establishing our final Court of Justice in the Caribbean is now. Since then, years and years, we have been saying this, moreso when we became independent and the Faculty of Law was established in 1972, and the law school three years afterwards, to provide for the training of Caribbean lawyers because we envisaged that we would have our own appellate court soon enough.

Every year I was in the faculty and the law school, and we had these big debates on whether we were ready for the Privy Council, whether the time for it is now, and more lately, when are we going to have the abolition of the Privy Council for the CCJ. Not whether we are ready for the Privy Council, sorry. I mean, whether we are ready for the CCJ and whether we have passed the Privy Council.

So there has been this debate and we have had persons like the late Telford Georges giving his opinion in 1988 at a Law Association dinner. He gave a long speech on why, and he was then Chief Justice in an African country—I cannot remember which one—and that country had already abolished the Privy Council and he was giving all the reasons why, and many of us then empathized and agreed with him. Yet, time and again we have gone back. We have reached a position and then we have made three or five steps backwards saying that we cannot do it now. And as one of my colleagues said to me earlier on: Yes I agree, but why rush it? How can we talk about rushing it when we have been talking about it for 80-plus years?

Mr. Vice-President, of the 48 countries that form the Commonwealth and had the Privy Council originally as the final Court of Appeal, 10 or 11 of the remaining 14 countries that still maintain the Privy Council as the final court are from the Caribbean. So we are like the Isle of Man and Guam and countries like that which are the remnants.

Last year, New Zealand's law society went through the same debate that we have now about the expense, the quality of judges, whether there were enough judges to fill our courts and so forth. They went through this, there was a lot of wringing of hands, and eventually they agreed and passed legislation to have their own final Court of Appeal. Yet, we in the Caribbean are the largest body still retaining this colonial tie, this hanging on to the apron strings as it were. We may ask why. Is it that we do not have the qualified people? Is it that we have such political interference in our Judiciary? What is the problem?

The point is, many of us in the legal profession thought—and many of us who wanted to see the navel string cut—that in 2000 when the then government talked about signing the agreement, and about the desirability of having the Caribbean Court of Justice located in Trinidad and Tobago that this was a big thing. We looked forward to it, and in 2001 I was part of a panel in which the then Attorney General participated and sounded praises of having our own CCJ.

The then government, which now forms the Opposition, signed the treaty—which is appended to this Bill and which has not changed—to establish the Caribbean Court of Justice. All the issues in terms of the appointment of judges, everything—

PROCEDURAL MOTION

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move that the Senate continue sitting until the completion of the debate on this Bill.

Question put.

Sen. Mark: Division!

The Senate divided: Ayes 17 Noes 10

AYES

Saith, Hon. Dr. L.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Enill, Hon. C.

Gift, Hon. K.

Manning, Hon. H.

Abdul-Hamid, Hon. M.

Kangaloo, Hon. C.

Sahadeo, Hon. C.

Ramroop, Hon. S.

Hackshaw-Marslin, Mrs. J.

Williams-Smith, Mrs. M.

King, Mrs. M.

Seetahal, Miss D.

Anmolsingh-Mahabir, Mrs. P.

Dumas, Hon. R.

NOES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Augustus, R.

McKenzie, Dr. E.

Ramchand, Prof. K.

Deosaran, Prof. R.

Khan, Bro. N.

Question agreed to.

Mr. Vice-President: Hon. Senators, the result of the division is 17 for and 10 against. The Senate will continue to sit.

Sen. Seetahal, please continue.

CARIBBEAN COURT OF JUSTICE BILL

Sen. D. Seetahal: Thank you very much, Mr. Vice-President, and colleagues.

Mr. Vice-President, I was saying that the then agreement was signed with the same articles that it now contains which relate to the appointment of judges and everyone else. And I have not heard any reason given why there is a change by the then government, the now Opposition, in terms of the support for the Caribbean Court of Justice. I have not heard any valid reasons for that. I have not—

Sen. Mark: You have not heard that? I made many points on that.

Sen. D. Seetahal: I have not heard. Mr. Vice-President, I would like to continue uninterrupted. I have not heard any valid reasons. In 2000—2001, there was a strong push for the abolition of the Privy Council when it was thought it was hindering the carrying out of the death penalty, and for replacing it with the Caribbean Court of Justice. It is my view that the question of abolishing the Privy Council and establishing a final appellate court should not be made a political football, and it is also my view that this is what is happening here.

Sen. Mark: Who is making it a political football?

Sen. D. Seetahal: And it is not, in my view—[*Interruption*] Mr. Vice-President, if I may say, I will not be intimidated by what is my point of view. I have my point of view and I will say what it is. [*Desk thumping*] I have heard no valid reason for any shift in position. That is my final word in respect of that and the agreement, as I said, remains the same.

Sen. Mark: When you attack the Opposition, I will attack you.

Sen. D. Seetahal: In respect of—[*Interruption*] Mr. Vice-President, I think that if anybody makes threats to me, I demand the protection of the Senate.

Sen. Mark: [*Crosstalk*]

Mr. Vice-President: Hon. Senators, Sen. Mark—[*Interruption*] Sen. Mark, will you please desist from the interruptions?

Sen. Mark: She must desist from attacking…[*Inaudible*]

Mr. Vice-President: She did not—[*Interruption*] Hon. Senator, please. All Sen. Seetahal said is that she heard no valid reason for a change in position. That is not an attack. That is not an attack on the Opposition.

Sen. Mark: We view it as an attack…[*Inaudible*]

Mr. Vice-President: Sen. Mark, please be warned. Do not interrupt the Senator's contribution.

Sen. Seetahal, please continue.

Sen. D. Seetahal: Thank you, Mr. Vice-President. As I was saying and I will repeat, I have heard no valid reason for any shift in our position by the then government, now the Opposition. Continuing with my contribution, the arguments for the abolition of the Privy Council and the replacement of that appellate body by the CCJ have been many and there have also been many arguments by other bodies as to why that should not happen. It has been said that the Privy Council is free. That argument has been demolished by persons.

There was a very learned debate in the Jamaican Senate by both sides giving reasoned arguments as to why there should not be an abolition of the Privy Council and why there should be. That argument was demolished by proof that access to the Privy Council was to so few, and the financial burden was borne by the governments of the region in having to provide for persons who were indigent. So that was one thing. It was also asked if we think that we have a cadre of judges who can sit on the Caribbean Court of Justice as a final Court of Appeal. Do we have the kind of judges to match the eminence of the Privy Council judges?

Mr. Vice-President, we have High Courts and Courts of Appeal staffed by regional judges. It seems to me, by that argument, we are saying that these judges are okay for lower and middle management, but not when it comes to the upper executive. We still want the British judges to tell us what we are about. And this is so even while the British judges themselves say cut the apron string.

In 2001, Lord Browne-Wilkinson said the ultimate Court of Appeal of a State should be in that State, staffed by citizens of that State and not by outsiders. This is what one of the judges in the current Privy Council that some of us want to retain, and we still retain, said. Leave us.

In 2003, Lord Hoffman came to a dinner of the Law Association and gave a speech to about 200 lawyers attending in which he said that the final tie or the final hold back, as it were, in our sovereignty is this tie to the Privy Council and we should remove it. This is Lord Hoffman who has been respected in the region for saying to his fellow privy councillors in 2000 that they had adopted a doctrinal position and have allowed it to influence their judgments in relation to the death penalty.

This is the same Privy Council that in 2000 shifted from a previous position in 1998 to talk about access to the advisory committee on mercy. They changed from a position in 1998 to a different position in 2000—2001 because of the possibility of implementing the death penalty. There have been many such variants.

In 2003, the Privy Council said in Parkinson *v* Roodal that the death penalty was not mandatory. In 2004, we know that that position shifted in Matthews. So the point is that these judges are not infallible. Our judges are not infallible by any means. We have judges who may not give good judgments and that will happen, you have that even in England. You have Lord Hoffman sitting in a case where he had an interest, he was the Chairman of Amnesty International and he sat in the Pinochet matter and gave a judgment which his fellow judges had to overturn by saying there was an appearance of bias.

The point is, Mr. Vice-President, that we have—and will always have if we look hard enough—reasons for saying that our judges are not good enough. The same thing happens in England with the Privy Council. Everywhere you have human frailty and we have to make a decision. I thought that we had made that decision in 2000 to cut that final link and to be responsible for ourselves. Many of us thought so.

When I started law more than 25 years ago, we had been talking, we talked about it then, and every year we looked forward to this but it has not happened and for that reason, even though we have this emasculated version of the Caribbean Court of Justice, I think it is a step in the right direction. If we take that one step, eventually we will take the giant step to be responsible for ourselves.

In relation to the constitutionality of this Bill, it is of concern and it must be of concern that the Privy Council is still the final Court of Appeal. In the Independent Jamaican Council for Human Rights case, it was found that the three Acts: Act 19 of 2004 which amended the Jamaica Adjudica Appellate Act which allowed the DPP to appeal to the Privy Council; Act No. 20 of 2004, which deleted the Privy Council and replaced it with the Caribbean Court of Justice in the Constitution, which is the abolition of the Privy Council; and Act No. 21 of 2004 which gave effect to the agreement, just like ours, establishing the CCJ as both the appellate court and the court of original jurisdiction.

It was held in that case that, of course, these Acts were unconstitutional because they were not passed with any degree of entrenchment—neither of the two forms of entrenchment provided for in Jamaica; the deeply entrenched provisions, or the entrenched provisions.

The issue in that case, however, was whether the substitution of the Caribbean Court of Justice as the final Court of Appeal could be done by ordinary legislation. No question really dealt with the original jurisdiction. So on the face of it, it would seem that if you are talking about a court only with original jurisdiction, there would be no question of constitutionality.

However, there were two areas of concern raised by Sen. Mark which I do think need to be addressed now, or when the matter goes to court. They are in relation to clauses 6(1) and 8(3), that is where the Court in its original jurisdiction will have original jurisdiction to deal with referrals from national courts or tribunals, and that again is referred to in clause 6(4) where you are talking about a question dealing with the interpretation of the treaty being removed to the Caribbean Court of Justice, and clause 8, which deals with the restrictions on matters in terms of the referral that you can only deal with these kinds of limited issues.

The question would arise, I think, that if you have a question removed from a local court to the CCJ and then the CCJ remains its final determinant on that issue, whether that could be said to impinge upon the jurisdiction of the High Court and, therefore, if it does, can it be said to be unconstitutional? That would be an issue that would have to be considered.

I do not have the answer and I do not think any of us has the answer for that, but that was not an issue addressed in the Independent Council case. And even though on the face of it, that case talks about the unconstitutionality of legislation replacing the CCJ as the final appellate court, I think States would have to look at that and determine whether or not that piece of legislation just dealing with the original jurisdiction would need that majority.

My final word on this is that if we refuse as a region or as a country, we still are prepared to grimly hang on to a Privy Council which has shown clearly that it is prepared to change interpretation of our laws to suit its own doctrinal beliefs. As a Privy Council Judge, Lord Hoffman said that his fellow Judges were prepared to change and shift their interpretation of the law especially in relation to

the death penalty and accessing the Mercy Committee because of doctrinal beliefs. And Lord Stein said in 1999, he does not see why he, who opposed the death penalty, should be called upon to decide on death penalty issues. He said that quite categorically.

If we are prepared to grimly hang on to this kind of Privy Council, then it would seem to me we are just like those persons who were afraid to abolish slavery because they did not think the slaves were ready for it, that they would never be ready for it, because they were so accustomed to being told what to do by their masters, then we would indeed still have a slave mentality.

Thank you, Mr. Vice-President.

The Minister in the Office of the Prime Minister (Social Services Delivery) (Sen. The Hon. Christine Kangaloo): Mr. Vice-President, I too stand to lend support to the Bill before the Senate today, and as I stand here, the first reason I feel we should lend support to this Bill is a minor point, but one I should articulate, and that is because of our treaty obligations.

We signed a treaty, and having done that, we really should be moving forward in good faith to implement the powers of it. And if one were to have regard to the Vienna Convention and the law of treaties, it is actually an offence in international law if, having signed something, we choose not to pass it or proceed with the legislation. So in terms of preserving our international reputation we should be moving forward with this Bill and setting up the Caribbean Court of Justice.

Mr. Vice-President, when it comes to our reputation internationally, I feel that we should seek, as far as possible, to maintain that reputation and to have a good reputation in the international community and this is one way where we as a Government can seek to do that. This is something over which we have control by complying with the provisions of the treaty, and it is surprising to me, or ironic I should say, that there are other areas over which we have no control and the Opposition will create a whole debate.

We have no control for example, when international reporters for newspapers like the *Los Angeles Times* write about the crime situation in this country. We have no control over what they can do, but we have control in this particular regard; we have control in safeguarding the reputation of our country in the international arena.

The second reason I say we should support this Bill before us is because of the history involving the Caribbean Court of Justice, and the hon. Attorney General, in starting off the debate gave some of the history with respect to all the events leading up to this moment. Sen. Seetahal has also spoken about the history when she went as far back as 1901 when the *Jamaican Gleaner* newspaper talked about replacing the Privy Council with a regional court, and Mr. Vice-President, just permit me to go through that history once again.

In 1947, the idea of a regional court was again floated when the Colonial Government of the Commonwealth Caribbean met in Barbados. In 1970 at the Sixth Heads of Government Conference in Jamaica, the Jamaican delegation tabled a proposal for a regional court and this issue of the regional court attracted the attention of the Organization of Commonwealth Caribbean Bar Association (OCCBA) which established a representative committee to consider and report on the establishment of a regional court to replace the Privy Council. This organization, the OCCBA, presented its report in 1972 when it suggested the establishment of a regional court with both original and appellate jurisdiction, the original jurisdiction to deal with issues arising out of regional treaties.

Mr. Vice-President, at the Eighth Heads of Government Conference, it considered a paper which contained a proposal by the delegation of Trinidad and Tobago for the establishment of a Caribbean Court of Appeal as a final appellate court for member states of the Caribbean countries. Having considered Trinidad and Tobago's proposal, the conference directed that the Attorneys General of member states study the matter and also consider the feasibility of providing a mechanism for settling disputes between member states arising out of regional treaty obligations.

So as a result of this and the paper that was presented by the Trinidad and Tobago delegation, the Caricom Secretariat prepared a draft Inter-Governmental Agreement on a Caribbean Court of Appeal which was then considered by the Conference of Heads of Government at its Eleventh meeting in Jamaica in 1991. It was that draft agreement that has formed the basis of the agreement establishing the Caribbean Court of Justice. And as Duke E. Pollard wrote in a book *The Caribbean Court of Justice—Closing the Circle of Independence* on page 4 he says:

> "…it is clear that the Proposal of the Delegation of Trinidad and Tobago at the Eighth Meeting of Conference provided the catalyst for the draft Inter-Governmental Agreement which was the basis of the present Agreement Establishing the Caribbean Court of Justice."

Mr. Vice-President, having heard the part and the role that Trinidad and Tobago has played in moving this process forward, I humbly submit that we should be moving to accept the Bill before this Parliament.

The third reason I say that we should support the Bill is, of course, the fostering of regional economic integration; and Sen. King spoke about it in what she told the Senate this evening. In providing a forum for the domestic resolution of dispute which involved Caricom and the Caricom Single Market and Economy (CSME), we will really be cementing our regional and economic relationships and it would be based on indigenous rules which would assist in strengthening our economic ties. You will have the effect of cross border disputes being resolved quickly and efficiently. Because of this, you would be able to attract investment because there will be certainty of trade.

Mr. Vice-President, just as Europe and the rest of the world are moving towards their regional and economic integration, so must we in the Caricom. Therefore, this court is critical for fulfilling our regional ambitions at economic integration.

Having outlined what I feel are the three main reasons why we must support this Bill that is before us, I now want to point out the strengths of the agreement. What I have been hearing from the Opposition this evening was talk about the Bill going to perpetuate the reign of tin board dictators; it is a monstrous piece of legislation; and we intend to dismantle and demolish—I do not know what; it puts in the hands of politicians total and absolute power over judges; and the legislation is dangerous for the people of Trinidad and Tobago.

Mr. Vice-President, I challenge anyone here to show me in what we have before us where this is happening, and I specifically want us to go Article by Article in this Bill to look at the composition of the Regional Judicial and Legal Service Commission and I ask: Where is this dangerous move that we are hearing about?

6.45 p.m.

Mr. Vice-President, I submit that if you look at the method of appointment of judges to this Caribbean Court of Justice, you see a move to insulate the appointees from any sort of political interference. With your leave, I will just go through the Articles one by one, the Composition of the Regional Judicial and Legal Services Commission that is contained in Article V. It talks about the Regional Judicial and Legal Services Commission being comprised of:

"(a) the President…

(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…

(d) the Chairman of a Public Service Commission of a Contracting Party…

(e) two persons from civil society nominated jointly by the Secretary-General of the Community and the Director General of the OECS…

(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."

Where in this Article do you see anybody being appointed by a political person? You will see that the body is comprised of academics; that the Regional Judicial and Legal Services Commission is comprised of persons from civil society. Sen. Dr. Kernahan spoke about this not being only about lawyers and judges, but you actually see where an effort is made to incorporate civil society in the body that is going to be responsible for appointing the judges.

Where are the political appointments in this? I compare that even to what we have in our Judicial and Legal Services Commission in Trinidad and Tobago under the Constitution, which is also seeking to insulate judges from political interference. When you look at that and you compare the two different bodies, you will see that the one setting up the CCJ, making the appointments, is far superior. It is ironic, again, to hear Members of the Opposition talk about the fact that you are putting in the hands of politicians, total and absolute power over judges of the court. It is the same Members of the Opposition who are saying, hold on to the Privy Council at any cost, and I ask them if they understand how Members of the Privy Council are appointed. Members of the Privy Council are appointed by the Queen on the advice of the Prime Minister, but we must hold on to the Privy Council.

Sen. Seepersad-Bachan: The Queen is not related to us here—

Sen. The Hon. C. Kangaloo: Mr. Vice-President, you can compare the Regional Judicial and Legal Services Commission and the composition of that commission and how they are going to be appointing the judges with what obtains in other countries. I have told you about the Privy Council that we want to hold on to at all costs. In Australia, judges are appointed by the Governor-General on the advice of ministers. In Canada, judges are appointed by the Governor-General on the advice of Cabinet. In Germany, you have each House of Federal Parliament electing half of the judges. In Italy, you have some of the judges being appointed by Parliament and others by other institutions. In South Africa, you have a Judicial Services Commission, of which a Minister of Justice is a member and it includes the Chief Justice; it has six members of a National Assembly, including three from the opposition parties.

So here you have a court that is seeking to insulate its judges from any kind of political interference and you see that just from looking at the composition of the Regional Judicial and Legal Services Commission that is making the appointments. I ask again, where is the threat of political interference?

When I listened to what the Opposition Members were saying, again they were talking about removal of—again, this political interference line and how you will remove the judges. I again refer Members to Article IV of the Agreement and Article IV has to be read in tandem with Article IX. Article IV says quite clearly:

> "6. The President shall be appointed or removed by the qualified majority vote of three-quarters of the Contracting Parties on the recommendation of the Commission.
>
> 7. The Judges of the Court, other than the President, shall be appointed or removed by a majority vote of all of the members of the Commission."

The commission that I have just taken pains to explain to the Members of this honourable Senate, has no political appointments at all. And if you read Article IX, it talks about the system that has to be put in place if you want to discipline a judge. If you go through the sections of Article IX you will see the insulation that is being given to the judges of the court.

On the issue of appointment of judges, I just want to make the point that in England, at present, they are going through a process of reforming their judicial system and they are actually now moving to create a Judicial Appointments Commission to bolster judicial independence. So the irony here is just mind-

boggling, when we are talking about holding on to the Privy Council, to the English system, when in England they are now moving towards sweeping reforms and to introduce an independent body to bolster judicial independence, and we have it here before us and we are scoffing at it, because we are saying that we prefer to have members of the Privy Council decide whatever has to happen in our courts. Is that not ironic? Completely ironic, I would say.

The other point I wish to make has to do with the insulation of the Court and it has to do with the trust fund that has been established and which also, by its establishment, seeks to insulate, indirectly, the court from any kind of political interference. If you would just permit me to read from the *Caribbean Court of Justice*—I have referred to it already—*Closing the Circle of Independence*. At page 55 of this text, the writer says, and I quote:

> "The institutional arrangements devised for the financing of the Caribbean Court of Justice are likely to make this institution the envy of judicial institutions the world over in terms of the financial independence it is likely to enjoy."

Mr. Vice-President, listen to those words and you will see that every effort has been made—We are hearing about, "you will remove funding". But a system has been put in place with the trust fund so that you will have the money revolving so that this court can be financed in perpetuity. That is the purpose of the trust fund.

The trust fund, as I understand it, is administered by an independent board of trustees, people representing the business and labour disciplines. That is the board that would administer the trust fund—again, no political interference. So once again, I have to point out that as much as possible has been done to create a court that will make us proud in this region. It is a sad day that we have not been able to abolish the Privy Council but I think we are moving in a positive direction to establish the Caribbean Court of Justice and I hope that it will receive the support of the Members of this House.

Just moving back to what I was saying about insulation from political interference, you will recall that I spoke about the fact that the method of appointment through the Regional Judicial and Legal Services Commission is one that is seeking to insulate the judges from any kind of political control. I also want to point out that this court is an international court and it compares again, quite favourably, with other international courts where the members are appointed by governments and there is more of a likelihood, then, for political appointments than in the Caribbean Court of Justice.

So you have the International Court of Justice; you have the Court of Justice of the Common Market for Eastern and Southern Africa; the Court of Justice of the Andean Community, all of these representative courts whose representatives are nominated by the governments. So here, again, there is a move away from any kind of political interference to preserve the integrity of this court. I therefore hope that this would persuade those who have any doubt about the ability of this court to function independently in this jurisdiction.

Someone raised the point: Why are you making all these appointments now? Remember that the judges are being appointed on a staggered basis because there is work to be done. The rules of court have to be established. Remember you are dealing with a region; you have different bodies of law; you have the common law; the civil law, so you have to work out the rules of court and all of that infrastructural work is being put in place. That is why you have the judges being appointed now. We cannot wait until the last minute for all the regions to put things in place. We have to start doing the work now so that the court can be operational as soon as possible.

Again, I think it was Sen. Prof. Deosaran who said that the judges in our local jurisdiction enjoy more security than those appointed under the Caribbean Court of Justice. I hope from what I have said he is seeing that this is not so; that extra efforts have been made to insulate the judges of the Caribbean Court of Justice.

Someone else spoke—I am not sure who it is—about the need for information and you would see in the *Business Express* of today's date, March 09, 2005, this article which states: "CSME survival depends on CCJ." And you had an economist talking to a seminar for professionals that was held last week. So the information is being disseminated to all the various bodies. It is an ongoing process and this is showing that efforts are being made to inform the public as to what the Caribbean Court of Justice and the CSME would be about.

With those brief words, I hope that I have allayed some of the misgivings about this court. I certainly believe that we are moving in the right direction. We have not gone as fast as we should, but I think in highlighting the history—this has been around since 1901; we are now in the year 2005 and as we say, "closing the circle of independence", it is not as if we can wait anymore. It has been long in coming there. There have been a lot of papers on it and Trinidad and Tobago, because of the role that it has played, I would say that we are ready for this and I would ask that we support the Bill.

I thank you. [*Desk thumping*]

Sen. Sadiq Baksh: Mr. Vice-President, as I rise to join in the debate to implement the Agreement establishing the Caribbean Court of Justice in its original jurisdiction and for related matters, I want to assure the distinguished Senator, Christine Kangaloo, that her impassioned plea for support on this matter did not go unheeded in terms of the points that she raised, but I would like to advise the Senator that I recognize that she cannot control what is published in the *LA Times*. In fact, none of us could, and I do not think any one of us wants those articles to continue to be published around the world. But we do have control over crime in Trinidad and Tobago; we do have control over kidnappings in Trinidad and Tobago [*Desk thumping*] [*Interruption*] and it is an area that needs urgent attention and the hon. Senator will do well to listen.

I want to assure him that many times we are pained to take what appear to be decisions contrary to our actions in the past. I have heard Senators on both the Government side and the Independent Benches with very rational reasons for the Caribbean Court of Justice to move forward, not only the CCJ, but many other matters. And week after week we come here and oppose each other on matters that we would ordinarily agree on, but because of mistrust for each other and sometimes to satisfy supporters, sometimes to score political points, we adopt certain positions that really do not contribute to making the Caribbean Court of Justice or other legislation better.

I want to assure this honourable Senate that in the case of the Caribbean Court of Justice, the party to which I belong and the government of which I am proud to have been a part, worked hard, yes, for the establishment of unity within the region, and the Caribbean Single Market and Economy is a dream of every Caribbean citizen, and many of them put in the hard work necessary to make that dream a reality, as quoted by the hon. Attorney General in a very concise way. We know that, but we must recognize that whereas the policy direction of the then government that I was part of coincides with that of the present administration, it is the system and the mechanisms that we need to put in place to satisfy all that is necessary to ensure that the Caribbean Single Market and Economy is administered the way we wanted it to be administered.

Sen. Prof. Ramesh Deosaran made what I thought to be the most important point in the entire debate and I want to concur that since the matters, in the first instance, to be decided upon by the Caribbean Court of Justice will be the interpretation of the Treaty of Chaguaramas, the issues that will arise from it, especially the trade issues, the interpretation of the Treaty and the assurance that disputes will be inevitable once you are trying to enforce a treaty, we need to

ensure that we have an effective dispute resolution mechanism, and the court, as proposed, does not have the necessary human capital to ensure that those issues are well articulated.

I will quote later on a number of issues relating to the selection, not necessarily whether they are fair or unfair, but you will see later on that most of the commissioners who will select judges are lawyers and all the judges are lawyers, and you are going to deal with issues relating to trade; dealing with rules of origin, with issues in terms of the interpretation of the Treaty to ensure that all laws are observed.

Later, I will get on to the length of time that we have become accustomed to, just to get a simple judgment in any court in Trinidad and Tobago. The inordinate time that these judgments take to be arrived at, is something that could cause a lot of problems in the future. What is even worse is that we are dealing with the Caribbean Court of Justice at a time when our country continues to move from crisis to crisis and it appears that some of those crises are of our own making. We need to take a serious look at where we are, where we want to be, how fast we are moving to get there and what are the mechanisms that we are putting in place.

I quote from a document presented by Anand Ramlogan, Attorney-at-Law, entitled, *A Collection of Thoughts*, on September 12, 2003. I quote from an article in it from Bernard Coard:

> "For nearly twelve months now, I have been hearing that certain specific senior lawyers and judges within the CARICOM region have been approached—or tipped—to be members of the Caribbean Court of Justice or CCJ. Each time I received this information I was torn between dismissing it out of hand as idle gossip and rumour, and taking it seriously, because of the sources from which I was hearing this."

And this is a man in jail.

> "As the rumours became more persistent, and the same names kept popping up from more than one source, I began to take this matter more seriously. Yet I was puzzled by one thing: how could anyone know who the judges of the yet-to-be established court would be, given that no mechanisms had yet (even now!) been actually established (as distinct from being outlined in the Treaty) for selecting the CCJ's judges? What, then, was/is going on? What did (does) these strong tips, or rumours, mean? Is it just another case of

wild speculation, or is there more to this thing than meets the eye? What if the names I have been hearing turn out to be indeed the persons (ultimately) formally appointed to be judges of this new—and highest—court of the region?

This line of inquiry led me to become truly interested in discovering HOW these judges were to be appointed, AND BY WHOM. What precisely does the treaty setting up the CCJ signed by CARICOM'S member states say about the way in which these judges are to be appointed? After all, the answer to this question is of considerable importance to each and every CARICOM citizen, since the judges of this court will be the final arbiters of the life and death, loss of liberty or freedom of the citizen, and loss of people's property or protection from its seizure. All depending on how these judges rule. All new Caribbean Case law would be made by these judges; they would constitute the final court on all matters."

Mr. Vice-President, we know that is not the case at this time. It continues:

"One of the great attractions of the Privy Council for most if not all CARICOM citizens has been that its judges are not appointed by, nor can they be dismissed, or even promoted (or denied promotion) by the region's politicians (directly or indirectly). The lack of any possibility of political influence on the Privy Council judges has been one of its strongest appeals to Caribbean people. CARICOM Heads of Government recognized this fear…" [*Interruption*]

Bernard did extensive studies. He had the time. I continue:

"and therefore sought to allay it (and thus remove doubts about the credibility of the CCJ) by devising a mechanism for the appointment of judges to the CCJ which would remove as far as possible the region's politicians from involvement or control over this process. While this is a welcome, even laudable stand on the part of the Heads, ironically, the mechanism they have put in place, under the CCJ's treaty, is gravely defective, I submit, and is almost certain to lead to scandals, perhaps as great as if the politicians were directly involved in appointing the judges. Why do I say this? What is the evidence for this (on the surface) alarming prediction? Well, let us begin by examining closely the mechanism set out in the treaty for the appointment of the final arbiters of Caribbean citizens' lives: The judges of the about-to-be established CCJ…

The CCJ will initially comprise of a President and up to nine other judges…The number of its judges can, however, be increased in the future upon the recommendation of the Regional Judicial and Legal Services Commission…Every one of these judges will come—quite understandably—from the ranks of the legal profession. Every judge of the court is required to have been a judge for at least five years, or someone teaching or practising law for at least fifteen years…The President of the court is appointed by (and dismissed by) the vote of at least three-quarters of the member states, upon the recommendation of the Commission. [Article IV, paragraph 6]. All the other judges of the CCJ are directly appointed (or removed) by the Commission on the basis of a simple majority vote of all the members of the Commission…It is clear, then, that the Commission is the critical institution in the appointment of all the judges of the court. What, then, is the composition of the Commission, and how are its members appointed?"

Mr. Vice-President, that is a critical matter.

"The Commission (i.e., the Regional Judicial and Legal Services Commission) will comprise of eleven (11) persons, selected in the following manner:

i. The President of the Court, who shall be the Chairman of the Commission;

ii. Two persons nominated jointly by the Organization of Commonwealth Caribbean Bar Associations (OCCBA) and the Organization of Eastern Caribbean States' (OECS) Bar Association;

iii. The Chairperson of the Judicial and Legal Services Commission of a member state; with each member state's chairperson being selected in rotation for a three-year period;

iv. The Chairperson of the Public Service Commission of a member state, with each member state's PSC Chairperson being selected in rotation for a three year period;

v. Two persons from civil society nominated jointly by the Secretary General of the Community and Director General of the OECS for a period of three years following consultations with regional non-governmental organizations;

vi. Two distinguished jurists nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, the Deans of Faculties of Law of any of the contracting parties and the Chairman of the Council of Legal Education;

vii. Two persons nominated jointly by the Bar or Law Associations of the contracting parties."

Mr. Vice-President, a careful study of the system of selecting these persons will show that the 11 commissioners which will in turn appoint the judges and the President will show the following:

"1. At least eight of the eleven Commissioners must either be lawyers by definition, or are highly likely to be lawyers; and only three, at most, are likely to be drawn from other professions and walks of life in Caribbean society. Even those three may be lawyers."

Therefore you could have a case where you have all 11 members being lawyers adjudicating on matters of trade. As a businessman, a person participating in trade within the region, when you are dealing with related issues in terms of rules of origin, the manufacturing process, the development of products, infringement of copyrights, similar types of trademarks, all those issues will come into play which, in fact, would need the type of industrial involvement, manufacturing and otherwise, to adjudicate on matters. So we basically have a court of trade and business but having all lawyers alone. We need to really look at this in a very analytical way.

We must recognize that the Caribbean Court of Justice is not about judges, it is about the people of the region. It is to ensure that we are able to resolve matters that will arise out of the Treaty of Chaguaramas to the satisfaction of all parties. It would be a titanic disaster to anchor the future of the judicial system and the CCJ on these mechanisms because it will not satisfy the requirements for what we want and what we envisage as a people, for the region, for the development of a single economy, for the development of a single market, for the peace, prosperity and security of our people. It will, in fact, be a recipe for disaster if we do not set in place the mechanisms to ensure just, fair and equal treatment for every citizen. Whether you live in Cedros or Chaguaramas; whether you live in Kingston or Georgetown, we must feel that the members of the CCJ will be *au courant* with what is taking place.

Mr. Vice-President, if you have products leaving New Amsterdam and you have products leaving LABIDCO in La Brea—the future port of Trinidad and Tobago—we must feel satisfied that we have the people in place who would be able to adjudicate on those matters.

What is even worse, and I continue to quote:

> "Given all the circumstances, those selected to membership of the Commission are likely to be from the most senior ranks of the legal profession."

We cannot allow this situation to be a closed club. It cannot be a situation that could encourage professional incest. What would happen, you would be setting in place a situation where there could be a potential for conflict of interest. That is an important situation, you know. I continue to quote:

> "What all the above analysis demonstrates is that senior lawyers and judges (i.e., the Bar and Law Associations and Judges and Law Faculty Deans, etc.) are decisively involved in the selection of senior lawyers and judges (for membership of the Commission), who will then select and appoint…senior lawyers and judges to be the judges of the soon-to-be operational CCJ! And all of this with little or no serious involvement or participation of the region's public, whether as individual citizens (whose fundamental rights will be in these persons' hands) or as members of the hundreds of organizations in the region (Trade Union, Business, Church, Media, Sporting, Cultural, Community-based, and Professional Bodies—other than lawyers!—and so on) which collectively comprises the region's 'Civil Society'.
>
> What is very disturbing about the whole manner of the appointment of CCJ judges is the considerable potential for conflict of interest."

Where you scratch my back and I scratch yours. It is a small society and we need to look at this.

While we are doing all of this, I am not satisfied that the citizenry, not only of Trinidad and Tobago, but the region, are familiar enough with all the issues taking place with the establishment of the Caribbean Court of Justice. I went around asking a few people about the Caribbean Court of Justice and they did not have a clue as to what it was all about. I know that the Government set up a CSME Secretariat and they are trying their best to disseminate information in Trinidad and Tobago, but it is just not reaching the people. There were all sorts of discussions taking place, but it has not yet caught the interest of people. You

might well find, though, one of the things that assisted the information about the CCJ was the problem that developed in Trinidad and Tobago with our own Chief Justice, in that people started to assimilate what was taking place with the Chief Justice and the CCJ in terms of the controversy. And you know controversy will attract people to start to listen to what is taking place. It is unfortunate, but that is how it is, and that added to the situation in which you have people having more and more doubts about the Caribbean Court of Justice and the potential for interference in the selection of the judges and in the way the court will operate.

Based on what we have heard today and based on what came about from the appeal that went to the Privy Council, the Privy Council Appeal No. 41 of 2004, in fact, pointed out some very important issues that we should take note of. We should take note of the judgment, and I quote from the Privy Council Appeal No. 41 of 2004, delivered on February 03, 2005. It is not a dated document. When it came up for the reading in this House two weeks ago, the Leader of Government Business gracefully postponed it for today based on the judgment of the Privy Council, and I am sure that having studied it—and we also studied it—we felt that the judgment opened a new avenue for people to look at, in that, it pointed out quite clearly that some of the issues raised in Jamaica would be related to Trinidad and Tobago based on having the constitutional majority in the House, that is, having a two-thirds majority to pass the Caribbean Court of Justice Bill.

I quote from the judgment at page 10:

> "As already recorded, Dr. Barnett for the appellants accepted in argument that section 110 of the Constitution, providing for appeal to the Privy Council, could have been repealed by the votes of a majority of all the members of each House, since section 110 is not entrenched. The result would have been to constitute the Court of Appeal as the ultimate appellate tribunal in and for Jamaica. Supreme judicial authority would then rest with a body whose constitutional position is buttressed by safeguards carefully designed to protect the process of appointment to the court and the exercise by the court of its jurisdiction against the possibility of executive pressure or interference. Thus repeal of section 110, without more, would not weaken the protection which the Constitution set out to guarantee for the benefit not of the courts themselves, but of the people of Jamaica."

That is an important point. The CCJ that we are now debating is not about judges; it is about people. It is specifically about trade within the region under the treaty. It continues:

> "What was constitutionally objectionable, Dr. Barnett submitted, was to establish a new court to which appeals from the Court of Appeal would lie when the new court would enjoy none of the entrenched protection afforded by the Constitution to the Supreme Court and the Court of Appeal and when the parliamentary procedure followed was not that mandated by the Constitution for amendment of an entrenched provision."

Mr. Vice-President, it would leave us no alternative but to do that. If we as a party do not do that, then as an individual business person who feels that he would ordinarily have had the opportunity to go through all the processes in Trinidad and Tobago and then go, ultimately, to the Privy Council and now finds himself in a position where he cannot do so—he would have had his constitutional rights infringed, in terms of taking it straight up to the Privy Council—has to be satisfied with the Caribbean Court of Justice in its form before us as the final court. The first day we have an issue like that, it will then go to the Privy Council. So if we, as a party do not do that, then you would find a business person having to do that, then we would come back to say, we could have done it and you did not take notice.

Sen. Mark: We will take it to the Privy Council. Pass it tonight. You will not get our support.

Sen. S. Baksh: Mr. Vice-President, this is a mistrust that has developed over the years and I submit to all of us that we take notice and do what is best for the region.

I thank you very much. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I thank you for the opportunity to speak briefly in this reduced debate. I call it a reduced debate because it is not a debate about whether the Caribbean Court of Justice should replace the Privy Council as our ultimate appellate court. I look forward to taking part in such a national debate in Parliament and wish it could be broadcast live, because you know I do not like things being decided by Cabinet and then coming here to be rubber-stamped, and I do not like Heads of Government making agreements and then coming here for them to be rubber-stamped. There should be an understanding that agreements signed by Heads of Governments have to come to the respective Parliaments to be debated and possibly modified. [*Desk thumping*]

So today's debate is a debate to implement the Agreement establishing the Caribbean Court of Justice in its original jurisdiction, and I had better say, "and for related matters" because I want to leave a little opening for some irrelevancies. But it really is the original jurisdiction.

Sen. Dumas: You would not behave like Mark.

Sen. Prof. K. Ramchand: I am cool. I am not looking for votes, and I do not have to explain to anybody if I change my mind or do not change my mind.

So I want to agree with the suggestion by Sen. Mary King, that there are certain corrections to be made in the Explanatory Note and on page 29, Article VIII.

I was very impressed by the learned and technical presentation of the hon. Attorney General. My cultivated bias against extraordinary influence by consultants and so-called experts from other places led me to favour his argument about independence and freeing ourselves from a state of colonial dependence and, of course, I am susceptible to images. The point was well driven home by his earthy image of a big man, playing big man but still living in his mother's house.

But at one time in the hon. Attorney General's presentation I was minded to raise the "blue book" and ask him to stop talking about the Caribbean Court of Justice as an appellate court; talk to us about it in its original jurisdiction. But the Senate is not like that. We have leeway and I was very interested in what he was saying. But I have to point out that as cool, rational, technical and professional as it was—I suppose that is what made it such a wonderful rhetorical performance—he made use of emotions and ideas relating to the Caribbean Court of Justice as an appellate court and he played upon my feelings about not wanting the Privy Council and almost persuaded me to support the Bill as it stands.

But this really was a debate on what, by his own admission, is an emasculated Caribbean Court of Justice. The rhetoric was so strong that a lot of people took him on and started arguing about the appellate function. A powerful man, Mr. Vice-President. But while he was speaking, certain questions came to my mind and the first one was: If there were no prospects or hopes of the Caribbean Court of Justice ever adding onto itself an appellate function, would the Government have proceeded with legislation to establish the court as a court of original jurisdiction? It is a question.

The second question: How have trade or Caricom disputes been settled in the past and how are they being settled even now when there is no Caribbean Court of Justice? The third question is: What new disputes do we anticipate may arise as a result of the establishment of the CSME, and will these disputes be so different in kind that they cannot be handled by the existing mechanisms? So what, in other words, is the argument for the necessity to establish the Caribbean Court of Justice as a court of original jurisdiction to deal with CSME and Caricom matters? I suppose it would help if we could get numbers of cases or disputes that have risen in the past and how many went to the Privy Council, and so on.

I would have liked the Attorney General to focus on some of these questions, but I am sure answers would come later on. But it is my belief that unless we can show that establishing the Caribbean Court of Justice in its original jurisdiction now, would be worth the cost of establishing, maintaining and servicing—unless it can be shown that it is worth it—it might be advisable to have second thoughts. And I suppose one argument against what I am saying is if it could be shown that establishing the Caribbean Court of Justice in its original jurisdiction now would necessarily and certainly lead to its elaboration into an appellate court also; if it could be shown that this is truly a step towards the appellate function—if you could show that it is necessarily so—then I might be persuaded to say, "Okay, we will take strain for two or three years".

Sen. Dr. Saith: I thank the hon. Senator and I would hate him to proceed on it. The court, in fact, is already going to be the appellate court for Barbados, for Guyana, and I am told Suriname. Because of what is happening here, we cannot make it our appellate court, but the court, in fact, will be hearing matters of an appellate nature for three countries and there would be more coming on as time goes by. So it has already moved forward in that respect.

Sen. Jeremie: The court came into being when in 2000 the then government signed the instrument of ratification. Now the Agreement establishing the court contemplates that the Caribbean Court of Justice would exercise both an original and appellate jurisdiction in relation to all of the parties to the Agreement. It so happens that although we made the commitment as a State in 2000 to seat the court, that in itself was a concession given to the Government of Trinidad and Tobago, because we said we would bring the court on in both its final appeal jurisdiction and its original jurisdiction. Barbados was competing with us but they allowed us to seat the court because we said we would bring it in both jurisdictions. That was in 2000. Circumstances have changed. There is no need for me to go into that. We all know what those circumstances are.

But the point is that the Government is only now able to bring it in its original jurisdiction. That is not to say that Barbados has not kept faith to its commitment and our other Caricom brothers and sisters have not similarly kept faith. So it is hoped, although we can give no guarantee, that we will come on in our final jurisdiction as circumstances permit. They do not permit at the present time.

Sen. Prof. K. Ramchand: Thank you very much. That is what I am saying, it really is a bit awkward, at the very least. It could be argued, as the Attorney General has just hinted, that we have made commitments and we have put up money and that the credibility of the nation in the eyes of the world and the rest of the region is at stake. We made these commitments. Now, I do not think that is as powerful an argument as it seems. Jamaica walked away from the Federation; Trinidad and Tobago walked away saying: One from 10 leaves nought. People have broken off engagements and men and women have obtained divorces. So you cannot say, that does not mean you cannot un-sign. And if you un-sign people cannot laugh at you and say, you don not know what you want. [*Interruption*] I am just saying that it is not an absolute argument—

Sen. Jeremie: Yes, but do not do it. As a state we do not operate like that.

Sen. Prof. K. Ramchand: Yes, indeed, I am saying that you could say you want to keep your commitments and I am just saying that there is no law of nature or law of logic or the history of human affairs that shows that people who make commitments cannot break the commitments, or people who sign cannot un-sign.

Well, it is a general position. I am very interested in logic, and so on, so I am just taking that logically; the fact that you make a commitment does not mean that you have to keep the commitment. There could be circumstances that force you. Even about the money, some people could ask, "Is it a good idea?" Even if you say, "Well, look at how much money we would waste if we back out now", you have to ask, "Am I going there to send good money after bad?" Because it may all turn out to be a waste in the end. It is possible—again I am only asking questions. Before we proceed we have to ask whether it is not reasonable to confess that our commitments and our fidelity were pledged to a Caribbean Court of Justice with original jurisdiction and an appellate jurisdiction, but because of our inability to get support to pass the necessary legislation forces us, regretfully, to let the matter rest for now.

I am not saying that is what you have to do; I am saying that you could think about that. But as I see it, the only justification for proceeding, is hope; hope that this is a step towards the appellate function, a temporary stage in the emergence of a dual Caribbean Court of Justice. But wherein lies this hope? Are we hoping to change the opinion of those who oppose the appellate function?

7.45 p.m.

Mr. Vice-President, I suppose you could hope because one side changed its mind once, but I am not sure that you can bank on that. You may be able to hope that once the court is established in its original jurisdiction, we can mount an educational and informational programme and show people why it is necessary to go further. This would be a work of time and a work of persuasion—not a work of advertising—a work of serious education and that is an option that is available.

Another source of hope—I know it is a common thing that many people would be thinking about—would be that you could win an election and gain a suitable majority but I would not like to see a thing like this established simply because one has the electoral power to do it, especially when electoral power can be based on all kinds of things that may not represent what people are thinking. This is an issue that people really have to think their way into. It cannot be decided just because one has the majority. Many things that we decide just because we have the majority should not be decided in that way. It is not the principled way of proceeding.

Mr. Vice-President, I do not intend to oppose the Bill to establish the court in its original jurisdiction but I have all kinds of problems. I can suggest the problems, which I have already hinted: Is it worth it if that is all it is going to be? Does this step necessarily lead to the second function?

Mr. Vice-President, if we back down, where would we be as regards settling trade disputes? Would we be able to fall back on the existing mechanisms, even though the other countries have the court?

Sen. Jeremie: Thank you, Senator. As I understand it, the dispute resolution mechanism at present is the Council of Trade and Economic Development (COTED), that is the Ministers of Trade. You may recall that last year when we had a difficulty with Barbados, certain tariffs were imposed on Trinidad products. The Caribbean Court of Justice was not in existence at the time. COTED is the body, which is established pursuant to the Revised Treaty, to take care of matters in the interim but the West Indian Commission urged the establishment of the Caribbean Court of Justice as the institution which will replace COTED. Pursuant to that we have gone ahead—it has taken some time—and this is why we are here today. It would be impossible for Trinidad to be in COTED if the rest of the Caricom is in the Caribbean Court of Justice.

Sen. R. Montano: I did not understand that.

Sen. Prof. K. Ramchand: I will give way if the Attorney General wants to explain.

Mr. Vice-President, the question going through my mind is: If we were to back down, how awkward or impossible would it be for us if we get into a trade dispute with people who have the court? How would we settle our disputes? What kind of mess would we be in?

Sen. Jeremie: The mechanisms do not contemplate the continued existence of COTED. COTED is a transitional institution that will fall by the wayside. My colleague, the Minister of Foreign Affairs, might be able to help me but, as I understand it, the Caribbean Court of Justice will replace COTED. It is a transitional mechanism.

Sen. Prof. K. Ramchand: Mr. Vice-President, I am giving way because I think we should find a way of getting Parliament to work like this: you say something and somebody wants to say something—you should have give and take. I know I am biting into my own time and I am running the risk of losing continuity but I really feel this is how our Parliament should operate. I am committed to the cause of really "parleying" in Parliament.

Mr. Vice-President, notwithstanding what I have been told, I listened with interest to Sen. Prof. Deosaran's suggestion about a trade court. I do not really know what a trade court is but in my mind I am saying that we have built up a body of precedents and experience in Caricom trade about how to deal with different kinds of disputes. The time might well have come for us to pull all that experience together and devise some regulations or even make laws and have a trade court administering those laws. As we progress in getting the CSME on the road, so will that trade court evolve to the point where, at some stage, we would say we are ready to establish the Caribbean Court of Justice in its original jurisdiction. That is just an idea that came out, a trade court evolving in tandem with the establishment of and people's conviction about the CSME.

I do not think we can take it for granted that CSME is going to come about in a short time. If there is a chance of that we have to consider whether the whole region should carry the burden of the court while we are still evolving. I do not know what they do in legal circles but I thought the purpose of a court was to administer and interpret laws. It seems to me if we get the court now, the court will not only have to administer and interpret laws, it will have to make the laws.

Mr. Vice-President, I am just talking about the logistics of the things that interest me and they tend to support my argument that perhaps some of the things we have heard; some of the things we have begun to think about might even justify a position of "take time to think". I do not really think we have been thinking about a court like this since 1908 or 1918. It was not we who thought about it in 1947. We are only now really starting thinking about it. We could make a tenuous point that it is 80 years that we have been thinking about it but by the same token we were thinking about federation for 200 years, too. But it is not really true.

I think this is a very expensive and complicated proposition. It may well be that we would benefit a lot from the fact that we are doing it in stages. I have to end with the thing that really undermines me when I think of the Caribbean Court of Justice in both its original jurisdiction and its appellate function. I am not sure that these independent governments and separate economies are really serious about, or have even begun to imagine, what a single market and single economy means. I am not sure that they know what that means. If they knew what it meant and the implications of that for tighter political integration, I am not sure if they understand it all, that they would want to go there. I am afraid that when we set up all these things one of them might say: No. We are really independent. The same sovereignty that we are talking about, each of them would come now and say: No boy, our sovereignty is compromised by this thing.

Mr. Vice-President, there are more questions and speculations than anything else. I am willing to support the Bill but I just wanted to put on record the reservations I have.

Thank you.

Mr. Vice-President: Hon. Senators, even though we do not have much more time here, it is time for the dinner break. We are going to take dinner now and return at half past eight. The Senate is now suspended for dinner.

7.57 p.m.: *Sitting suspended.*

8.30 p.m.: *Sitting resumed.*

Sen. Roy Augustus: Thank you very much, Mr. Vice-President, for permitting me this brief intervention. I want to let you know that a couple of my colleagues have been ribbing me, expecting me to deal with other related matters and I will not disappoint them. Actually, I did not intend to speak this evening but I am tempted so to do, to just remark on a few things that were mentioned during the course of the debate and to probably touch on some things that were said by the presenter of the Bill, the Attorney General.

First of all, let me indicate that my position, in terms of the Caribbean Court of Justice, in its pure form as an appellate court, was always one of anti—at that time and at this time. I have not, in any way, changed my position. I just want to make that very clear. For a number of reasons, I feel that we are not ready as yet. I will touch on a couple of those reasons. I know it has been mooted quite a bit during the course of the debate and I am speaking about—Sen. Seetahal raised it—the question of the quality of available judges, or, the availability of quality judges.

Mr. Vice-President, that has always been my personal argument against—at this time or then—the establishment of a Caribbean Court of Justice as the final court. I am not saying that we do not have people of high intellectual capacity in our region—I will never say so—my worry is that I do not think that the people of that particularly high intellectual quality make themselves available to the Bench. Those of you—it is not really for me to pronounce on the legal profession—who are professionals in that field may want to correct me later. I always find, looking particularly at the local scenario, that the best legal minds hardly ever go across to the Bench. I have always found this. Well, I have been hearing that the best political minds do not go into politics, that some of them are on the Independent Benches—Is that what I am hearing? [*Laughter*] So that has always been a problem of mine and it will continue to be a problem.

The second point—and I am only going to make two points as far as that is concerned—I always say that the distance of the Privy Council geographically, sociologically and psychologically, increases its objectivity in determining matters. Until I am satisfied that we have taken our people to a particular point—I do not want to use the word "maturity" because I do not think that is the correct word—where our perception of those in authority could be one of trust, then we will have difficulties in accepting decisions of a Caribbean Court of Justice, as it was originally defined. That is why my position remains constant. My personal position was that then and it still is now.

I keep looking back because I really wanted to begin by saying that while I spend most of my working time among people who are involved in football, I do not bring my ball to the politics, so that when I put forward my position they do not come together; it is not political football; it is just a question of making the argument that I believe in. I am satisfied when I sit with my colleagues that my colleagues do make their points on the basis of their commitment to the ideas that we have discussed. Mr. Vice-President, not everybody makes points the same way. We have to appreciate that when we are in a gathering as heterogeneous as this one is, everybody has a way of delivering, and we listen to it.

Mr. Vice-President, I listened with rapt attention to the Attorney General when he delivered yesterday evening and, like Sen. Prof. Ramchand, I felt good to hear a Trinidadian, a Fatima boy, say that the Privy Council is wrong. I wanted to hear his arguments because, like Sen. Prof. Ramchand, as I said earlier, I am certain that we have quality and that we can argue with the best of them.

Mr. Vice-President, I listened carefully to what, to me, was the thrust of his argument, in that the Privy Council was arguing that because the Acts in Jamaica tended to remove some of the entrenched rights, which Jamaican courts already had and which the CCJ would not have provided, that that is the reason they made the decision which they did. His argument was that the Privy Council itself did not have that protection. I understood that clearly. My thoughts then while listening to him—I am not disputing the strength of his argument—was that when the Constitutions of these countries were being written in the late ’50s and the early ’60s and they were framing these particular clauses, those acute intellectual minds dealt with our society, as it was then, and they put built-in mechanisms within these Constitutions—these bodies of rules—to ensure that they responded to the needs, the feelings and the sentiments of the people. They did not think it fit, at that time, to have to guard against the appointments to the Privy Council. Why? Why? It is my humble suggestion that they relied, for guidance, on what had to have been their opinion of the historical track record of the Privy Council over the large number of years, as a result of which they had confidence in the continuation of the Privy Council in the conditions under which they existed. They had trust, Mr. Vice-President, which is very, very, very important when you are dealing with these matters.

Mr. Vice-President, that is why when I go back to the *Hansard* of 1987 and the then Leader of the Opposition pointed out to the then Prime Minister that he would not have supported the CCJ because he did not trust him, I understood what he said. I would not have agreed with the Leader of the Opposition then but today I understand that he was right; you could not trust him. The point I am making is that it is a question of trust and that must guide us.

Now, here we are developing; heading into a direction—it is not a new direction because, as Sen. Seetahal indicated, we have been developing; we have been talking about this for years—she went back to 1901 and so on—and not moving, just talking about it. I disagreed with her when she said you could not talk about haste now because we have been talking about it all the time. We had been talking about it but we had not really been moving and we have been thinking. We have now started to move, and I agree with Sen. Prof. Deosaran, we

are probably moving too quickly and not ensuring that we have tied up all the loose ends so that we are clear in our minds as to where we are going. I think people want to get that full independence, which we seem to think is not yet fully ours because certain things are missing, one of which is that we do not fully control our Judiciary in terms of having to go to the higher courts—the colonials, as people keep calling them. I will come to that in a short while.

Mr. Vice-President, if we have to go there, we have to be sure in getting there of what we are doing. I keep referring to Sen. Seetahal who argued, on the one hand, that this Bill is really emasculated and that her original reaction was to think that it was too expensive. I still think it is too expensive to go with the emasculated Bill as it is. Mr. Vice-President, I, and the Attorney General himself consider it totally emasculated, and my good friend and colleague, Prof. Deosaran, also argued: Should we spend all that money on a court with such limited jurisdiction? The argument has been put forward that it is a step and, therefore, we are going to spend the same amount of money that we were going to spend on the whole house, on the step, in the hope that we could build the whole house. But then we are accustomed to spending a lot of money to repair houses. [*Desk thumping*] So we can spend a lot of money on that step.

8.45 p.m.

But seriously, if we want to go there, it is not only a question of saying that the Opposition is not supporting us to get the majority that is needed to deal with the Bills that will affect our rights in the Constitution. It is not only that. What they have to do is convince the Opposition that they are preparing the people in the country to operate with trust in the organization or institution that they want to build for them. You do not put the institution and hope that there is trust and there is confidence. I am saying if we are going there we have to do it in a number of ways. We have to begin preparing all the legal documents and what have you; they have to begin preparing the instruments, you have to put your minds to work to ensure you have all the "t's" crossed and the "i's" dotted, but you have also got to carry your people with you. [*Desk thumping*]

Nobody has taken the time to ask the people whether they want to go. I heard Sen. Prof. Deosaran talk about a poll that was conducted—I do not know where and by whom, but it says 84 per cent of the Caribbean is in favour of the Caribbean Court of Justice. The report came from Barbados but I do not know who conducted the poll, I do not know where he conducted it, but I cannot just take what is purported to be the results of a poll that I do not know much about; what kind of scientific method was used. I am not accepting that. I would like to

know whether this Government, or any other Government, or whether Governments throughout the Caribbean have told their people in any kind of systematic way after first educating them about what they are doing, or even their Parliaments—I agree with you—educating them about what they are doing because if they do not do that they run the risk of a collapse similar to what took place in the early 1960s.

I do not know that any party—and I do not want to talk for the whole Caribbean—in Trinidad which has used the issue of the Caribbean Court of Justice (CCJ) as one of its major issues or planks in any election campaign. Have they asked any of us, whether it be you or me, the public, during the fights for their votes and tried to educate them about the CCJ and used it as a major plank so that you can, with good conscience, accept that they were asked and they said yes? Have they? It is not too late for the education and it is not going to be too late whenever we go to the polls again, whenever, but they cannot leave the people behind while they are moving on.

Mr. Vice-President, I spoke about the question of trust and I want to emphasize by using a particular—and I want to be very careful, I am not a legal mind. There is no doubt that there is a perception in our society and I am talking about Trinidad, that one cannot always trust that everything, whether it be at the judicial level or Government level, and I am not talking about the PNM or UNC, NAR or anybody, but there is a feeling in the society that once they are there they get into cabals and make their decisions and, therefore, in many instances they do not trust them. And we are now going to give them another institution which they will not trust.

I just want to advance that I read a particular deposition or whatever it is called, and the only way that people could believe that what is contained therein is true is because they have the perception in their mind—the only way they believe this Commissioner of Police could behave like that is because they have these perceptions in their minds that certain organizations and certain governing bodies do, in fact, behave like that. I know the Commissioner of Police well and I will stand by him. I do not think that deposition or affidavit is correct at all and I hope I am not sub judice yet. I have not seen anybody jump up on that side yet. [*Interruption*]

Sen. Dr. Saith: I do not know what you are talking about.

Sen. R. Augustus: You see why we do not trust them, a public document my friend does not know about. Have you stopped reading? It is because we have a society that is not trusting of authority and I want to be very respectful—stop me

if I am stepping out, Mr. Vice-President. Even here, earlier this afternoon, we could not have asked as many questions as we wanted because a report was brought at the wrong time, not through our fault. If it were brought at the right time by the people who had to bring it, then we would have been able to ask so many questions at the most appropriate time. But whether it was deliberate or not, what do they leave us to believe? What is the perception that they expect from this side? And that is what happens throughout the country. And they are seeking to give them another institution before they prepare them properly for receiving it. My argument is that the people must be brought in line with what they are going to do if they are going to do it. I cannot support it unless and until they start to bring the people in line.

Mr. Vice-President, I was indicating earlier, that my position on this is consistent with what it was then and what it is now. I do read history. I am not a historian and many of my thoughts are influenced by our history, by history, but I never let it govern my decision-making. I never, therefore, think that because somebody down the road did not want to move out of slavery because they were not prepared for it, that will inform or govern my decision or anybody else's decision here. If you take a decision now that the people have not been prepared for where you want to go, that is a conscious decision made against a factual background. It has absolutely nothing to do with who was a slave long ago. I was never a slave.

There is the other aspect of the thing that I keep hearing about, abolishing the Privy Council. Why do we have to use terms like "abolish"? I prefer to use terms like "replace" because sometimes when I hear these—it has been said on both sides [*Interruption*] I always like to hear so that if there is a need for a response I will try my best. To me, we must always be positive. When I was talking about preparing, I was taking about having something that will be replaced. The objective must not be to just abolish because it is not good, it is colonial and so forth. Even though we should cut the navel strings, get rid of these colonial things, that is the argument I am hearing. But how Calder Hart, who is not a local, is in charge of so much of our business?

Calder Hart is not a Trinidadian but he is in charge of so much of our business. Calder Hart is not a Trinidadian but he is in charge of half of our construction industry, plus. How come—I do not like double standards. You cannot tell me get rid of the Privy Council because it is foreign. I would have no problem when it would be eventually replaced. But do not tell me get rid of it when you continue to use the very foreign people that you are condemning us for

wanting to keep in a particular time frame. For instance, if we have cut off these foreigners, how come you have an English professor. There are so many people here who could run polls but we bring people from England to run polls. I do not even remember the name. How come the very colonials handed over a police force to us which we converted to a police service and which probably we did not handle well, that we have to bring in the Americans to do it for us? How come?

I have no problem with Giuliani coming. I do not even have a problem with these people coming because I believe we live in a global village and we must accept best practices. I am trying to demonstrate the deception and the hypocrisy—and you tell me we are still living in a colonial world because we are keeping the Privy Council? How come the President of the same Caribbean Court of Justice recently accepted an appointment to this same Privy Council? I do not understand these things—somebody tell me—the just appointed President of the CCJ and that thing which is so anathema, which is poison, which is a bad word, he accepted. How come when there are high profile criminal matters it is a Queen's Counsel from the colonial bastion that we would bring here? [*Desk thumping*] How come the Prime Minister goes to America, sits in a meeting with Condoleezza Rice and then the President of America passes in, sees them, goes in and chats with him and then says: "Go back to Haiti and see about it", and he comes down and tells us he is going to see about Haiti. Why does the President of America have to send him—and we are talking about colonialism. That is colonialism, the big "massa".

Mr. Vice-President, I am saying do not put forward that all those things are bad words and then use them. Do not! I agree that the time will come and the time must come when—[*Interruption*] I do not know if you plan to be there forever but you will not be. Understand that.

Mr. Vice-President, nobody has convinced me as yet that this country and this CCJ thing—we could be wasting time here. This CCJ thing is not sure to reach too far. So far I understand that two countries signed and I heard about a third today, Suriname. I do not know whether they have come in as yet but I know about two countries. I know there is at least one country in the Caribbean and there may be more, where you must have a referendum—I am not talking of Jamaica, another one, before the CCJ can replace the Privy Council—and already I understand because the people are doing their informal polls on the ground, because of the kinds of judgments that they have gotten in the last decade or so from the Privy Council as against their own local bodies, that the people are not minded to

separate as yet. Maybe, those people have not been prepared. The point is, are we spending time on something that we are not ready for as yet, that may not even come through?

Mr. Vice-President, I will tell you while we are spending hours here debating this thing, one chive in the market is $4.00 and I would not go to other prices because we know of the other high prices. Let us debate on how to deal with that. Let us debate how to deal with the crime in the city, and do not tell me anything about passing Bill to change the police service. That is not how to deal with crime. What did you say? We are wasting money on the "strike squad." [*Interruption*] I got the question. I do not know if the Government of Trinidad and Tobago has given us any money for the "Strike Squad" as yet, because it does not exist at the moment. Right now we have "Soca Warriors." You are still living in the past.

Mr. Vice-President, we could be wasting valuable hours here and this indecent haste to run this thing through even as emasculated as it is, let us do it, the rest will come after, I cannot be part of. Thank you very much, Mr. Vice-President.

Sen. Brother Noble A. Khan: Thank you, Mr. Vice-President, for allowing me to share my views on what is before us, the Caribbean Court of Justice Bill, 2004, an Act to implement the Agreement establishing the Caribbean Court of Justice in its original jurisdiction and for related matters.

As I see it, this is an extremely important exercise. It brings us closer to what I see as a Caribbean people seeking to bring about what they had hoped for, for generations, a closer linkage of themselves and at times illusive.

I am sure one will remember there were previous attempts to bring us together but one will surely have understood the reasons wherefore those linkages that one had sought to forge, were never materialized as early as one would have liked it. My mind goes back even to pre-Columbus times with the original people, and later on when the colonials came having a British West Indies, a French West Indies, a Dutch West Indies, but one knows, all this was imposed on us. And when we assumed our own leadership, our own responsibilities, even if this was purely a figment of one's imagination, when one thinks in terms of true independence that, in itself, had its problems. But today we are on the road and we have before us this Bill.

Let me say that our learned Attorney General, in his very erudite address, mentioned firstly—I do recall, many of our colleagues mentioned some, and there are some that I would like to take out—the question of the model that we follow

where the structure for Government is based on the Legislature, the Executive, the Judiciary and what has been said to be ideal so far and what has given rise to the concept of the separation of powers leading up to the independence of the Judiciary. I think that academia has very often been dealing with this subject and the question of true separation of powers still remains high on the debating forum. This is before us too.

There have been experiences during the 1960s or thereabout, where some of the developed nations have moved towards what has been referred to as a group of countries coming together, and there has been what has been referred to as the Benelux experience in Europe, leading up to what is there today, and they too, are going through experiences of bringing countries that apparently are on the fringe within that structure.

The hope of our people even very early as mentioned before was for our people to come together and as mentioned too, we have gone some way about this. What has struck me on this road to progress was that even with the destruction of those hopes and expectations in the 1960s and the emergence of what has been referred to as many independent countries, with various forms of governments, but having with it a common heritage, particularly of the English speaking Commonwealth in the Caribbean area, are the ties that link us to the British model and this continues even today. We have seen that the Privy Council, even in our own country when we became independent, remained a high priority insofar that to change or to remove any matter with respect to the Privy Council requires a certain percentage of votes that we are all aware of.

I always like to think of justice as something very important. If there is one thing that civilization has advanced, if there is any advancement, it is because of justice. And one may say that justice and fairness are needful and even that they are indispensable if we are to protect the State and develop—very important. And we have before us this law.

Our learned Attorney General, and I found it very distasteful, as brilliant as his exponent—of what he said to my mind. Because as a Caribbean person, I think in terms of really building something and participating in something of which we could be proud. To have said that this Bill that is before us has been emasculated and here we have it before us without any attempt being made even before to address the question of making it more virile, we have it. I know there might be reasons why he may have done that but, I find it as I said, very, very distasteful.

I think one of the reasons he had said that, the question of the emasculation, was because of the whole question of the excising of that part that dealt with the Privy Council and its role. To some extent, therefore, we have a document that seeks to address questions that were not generally set out and so what I may term as a very watered down thing before us.

I feel it is possible that the questions that are being addressed before us could be dealt with in a different manner. We are thinking in terms of trade and the question of addressing trade through this law, but what trade? The invisible one? And I speak about the invisible trade that forms such an important aspect of our community, the Caribbean Community. And the invisible trade I am speaking of are the illicit ones. Our countries—the Caribbean area—lie at crossroads at which much activity takes place. We hear about money laundering in the millions and billions. One hears about drug movements from just next door. If one were to go on top of this building on a clear day I think one could see the mainland and even illicit liquor coming out of Europe, in some of the smaller islands that find their way around. Is this what we are going to address in trade? What trade are we speaking of?

The problems that will arise: the question of our gas, which we hope as a Caribbean people to share. What problems do we see arising out of that as a nation-to-nation as the case might be? The bauxite—it will be a nation-to-nation agreement I expect, of course, with the permission of the multi-or transnationals that command both the gas and the bauxite. Where else again? The sugarcane that we use and which we have seen the death of in our own Trinidad and Tobago; this is at national level. Would this law address those questions?

What about the trade that takes place among our small islands particularly with the small industries? Some goods come to us from St. Vincent. None comes to us from Grenada now, I think, because of the recent hurricane. What about these areas? Would these laws address that or are there other mechanisms we can source to deal with it? Or is it because of a facade of something that we see, which is the Privy Council? I have said before on the question of justice to say that it is British or English or what have you—justice to my mind is something that transcends space and time. [*Desk thumping*] And to speak about excising the Privy Council or any one of the systems, it might just be facetious in that we are dealing with something that is imbedded in us over time and a hate is built against it. From the time that emerges within us the essence of justice is tarnished.

My mind goes to—and for that reason being human and no one is exempted from that—a quotation from one of our Holy Scriptures, the literal translation of it in the original language: "Alai salaaho bay ak kamill haa kay meen."(He, not God the best of judges?). It might appear to be rhetoric; it is from that source that we would get the flow of justice.

Trinidad is a country of hearsay, and many things that you may hear sound true. I understand that even in Great Britain, in one of the great Inns of Court, there is in an inner sanctum, the words of some of the great lawmakers of the world. I understand Moses' name is there as a great lawgiver; Manu the great Vedic lawmaker; Mohammed, upon whom be peace and others. These are some of the names. People have told me that. I do not know if it is so. I am not a lawyer and I do not belong to any of the Inns.

9.15 p.m.

The point I am making here is that the concept of justice itself is one that emerges out of us—at least this is my internalizing of it. To say where it exists is something we should cherish and try to put into our lives. That being as it is, one may think that the elements of courts in our own lands—I fast-forward into the courts of our own lands. Some have said that cases and courts are popular these days. One only has to look at the papers, the TV, listen to the radio and it seems that they are part of the trappings of sovereignty.

Now we see attempts being made for the creation of more courts. If we were to take what the hon. Attorney General has said, eunuchoid or castrated as they may be, being foisted upon us, they are still becoming popular. Even when we became independent in the first instance, now we are at the stage of altering them, if we were to borrow a praedial term.

Perhaps some may say that the question of if we are going international or regional or what-have-you, there will be a curtailment or erosion of independence within the country as such, but that is by the way.

As we move forward, the whole question of if it is correct at this time—some of our colleagues made mention of that. I always like to think that life is like a journey and no one waits on anyone on that journey so that what is before us might be the trappings of the journey. One will have to think, too, of being equipped for that journey, the objectives and goals at the end of the line. The road and the sun are important aspects when we think in terms of nation building. If today we are thinking as a Caribbean people, bringing something, even we here in

our country, a Caribbean people who, as leaders and lawmakers are totally committed to them, one would think that, what I have always said, there should be elements of cooperation, collaboration and participation. Is there not a connectivity between ourselves as leaders and those whom we lead? Is it then a question of the shepherd being for the flock or the flock for the shepherd? If we do not maintain that connectivity that we know exists today, we just have to step out there, meet any of the young people and we would see what I am speaking about.

If you were to mention this element of what is before us, I do not feel that we have reached into the society enough with something that is as important as patriots as what we are about even between ourselves and this contract we have committed between ourselves and our people to deal with this law before us.

One gets the impression that even if we cannot go this way, we can shift. That might be a style, but I hope that in trying to build that confidence among ourselves as a people, we should square with your people. Though we might be leaders here and been to universities, law courts and what have you, I doubt the accumulated knowledge here could ever match the accumulated knowledge of the people outside and for them not to participate in that, I would think is a betrayal and an injustice.

With respect to what is before us, I honestly feel that we should definitely—if we have not done it, there is still room to reach out and share with the people and let them know what it is about. There may be time constraints and agreements between governments, but what is taking place here—and we always like to think in terms of ourselves as leaders in the Caribbean, that is Trinidad and Tobago.

I have not had many connections to the other islands. I have been to Jamaica for a little while; passed through Barbados, been to Grenada and Tobago for a little while and what I feel about all these people I met—I met people from the other islands, too. For a year we were together as young Caribbean people and there was a bonding that I do not think death will separate us as people from the Caribbean.

There is a general feeling, within the islands, too, that there is need for this form of communication, and though we may go through the mechanism of forming what I refer to as "democratic governments", where one feels that because one has passed or won an election, it gives us certain rights, or being here gives us certain rights, one would think that the more cherished right would be one of humility, reaching out and service; not of arrogance, high-handedness and trying to push things down people's throats.

This might be the style of the bigger countries of the North in dealing with us. This law that is before us has implications for those big powers of the North. I remember in Barbados, some years ago, a former president from the North called West Indian people together to share thoughts. The thing that struck me out of that whole era was a statement that came out: "You cannot be in my backyard and doing things I do not like." It might be just another strategy of all of us coming together for better control. One gets that feeling when we think in terms of all these international monetary agreements and economic linkages that are taking place.

Repeatedly, I have talked here about the need for reaching out into the area — we are dealing with trade—and the law is before us dealing with trade and justice. How are we going to address this? I never got the feeling that maybe our thinkers and our people in position to do it are addressing these questions. I know that they are tough questions. I, myself, did precious little to advise or share in that insofar as the systems we have. The question of bringing these judicial systems into play, though we might want to kick out the Privy Council or shift it around, one wonders if the easy way—very often we see the young people on the computer pull up something and say cut and paste—if we are not following that styling.

These are some of the things that emerge out of the exercise before us and which occupy my mind. I know it is late and I am sure that there are others who would like to make their contribution, too. These are some of the thoughts that I share.

I think that from the earliest time, my parents' generation with which I have a connection, had a hope of a Caribbean people and some of us still continue that and we transfer that to the younger generation. It is a noble thing to follow and worthy of pursuing, but it should be done with an element of dignity. We do not have to tell people that we brought an emasculated document to them. We are vibrant, young and strong. You cannot insult us like that.

These are messages that will go out. I am verbalizing it, but it transfers. They talk it through the vibes, in the unverbal language, so we must be very careful. It is good to know that some of these things come out. It will show in all of us the purity that is not there. These are questions we should address. I strongly urge in this exercise that though we are dealing with law, there are spin-offs in it.

I know, and I pay tribute to them, that there are ministries that make a great effort to reach out to the people. It is not my style to call people's names, but I think in terms of the Ministry of Community Development, the Ministry of

Gender Affairs and Culture and the Ministry of Education. There may be others. I am sure about these three and they are high priority in my book. If we can watch some of the styling in these areas, and blend them together in the reach-out exercise, much will be achieved. It is very difficult for me—maybe after we hear the response to what is before us—to give the support. I think I could have if there was in a better way and better reached out and this was the final. If there is no communication with which it is supposed to affect most, it is very difficult so to do.

I thank you, Mr. Vice-President, for affording me this opportunity to address you.

Sen. Robin Montano: Mr. Vice-President, my contribution this evening is going to be divided into several areas. The first area that I wish to deal with is: Why are we spending this money at this time? If I could, on the Caribbean Court of Justice (CCJ), I would give you an analogy. You have a motorcar and it is a good car, but you need a new engine, you need new tyres and the car could do with a paint job. What are you going to do? You have money so that you can afford the new engine and tyres so that the car can run, or you have money to paint the car; but you do not have enough money for both—at least you say you do not. Which makes more sense? Do you paint the car and leave it parked so that everybody says how nice it looks, or do you fix the engine, get new tyres, get the car running and then and only then, do a paint job?

In my analogy, the paint job is the Caribbean Court of Justice; the engine is the heart of the judicial system that affects the people of this country the most, that is the Magistrates' Court. The tyres are the High Court. We have a situation in the Magistrates' Court where approximately half a million cases a year are attempting to pass through. Of course, they are getting bottle-necked. There are magistrates who are overworked, overburdened and underpaid. There are magistrates sitting in "clerked-out" buildings with no air conditioning, fans that do not work and holding bays for prisoners that are really worse than pig pens.

We have a system that is absolutely awful. Indeed, I have here an article by Anand Ramlogan that appeared in the *Sunday Guardian* dated April 14, 2002. His article was headed "Confidence in The Justice System". He says here:

> "The Magistrates' Courts throughout the various districts are largely responsible for dispensing justice to the bulk of people in the middle and lower levels of our social pyramid. It deals with (among other things) petty civil matters (any claim below $15,000), bail, restraining orders against

domestic violence, maintenance, custody, trafficking offences and a wide range of minor and serious criminal offences. Apart from the dire need for improvement in the physical infrastructure…there is a lot of room for improvement in the procedures and administration of the court itself."

He went on to talk about his first visit to the Magistrates' Court being an absolute shocker.

"I was 15 years old and was summoned to give evidence as a state witness in an assault case. I was so nervous I did not sleep the night before. It was my first time in court and by dawn I had accumulated a neat stock of grand ideas of the majestic court. Boy, was I in for a rude awakening!

I was shocked to be confronted by the sad sight of a sweating Magistrate (fully clothed in jacket and tie) on a hot day trying to do battle against the heat, with an old noisy, rickety fan in a small, smelly courtroom.

The fan was clearly there for cosmetic purposes; its conspicuous focus on the seat of justice somehow helped distinguish it from the rest of the drab courtroom. It was of great ornamental value and had a proud role to play in the layout of the dingy courtroom."

Sen. Dr. Saith: What is the relevance?

Sen. R. Montano: The relevance is that we are dealing with the Caribbean Court of Justice. The relevance is that we are looking to spend $100 million on the Caribbean Court of Justice; the relevance is that we ought to be spending this money on the Magistrates' Court first. That is the relevance.

"There was a cage in the middle of the court. There were human prisoners—"

Sen. Dr. Saith: Mr. Vice-President, on a point of order, I can understand the relevance of all that, but I cannot understand the relevance of Mr. Anand Ramlogan reminiscing about his childhood as being relevant to the matter under discussion.

Sen. R. Montano: Mr. Vice-President, what I am doing—

Mr. Vice-President: Sen. R. Montano, with respect to the fact that it is this late and we are into a serious debate, I would really prefer if you refer to the article, but to read about his experience as a child, goes a bit far.

Sen. R. Montano: Mr. Vice-President, with the greatest of respect, the lateness of the hour ought to have nothing to do with my curtailing my contribution. That is the first thing. The second thing is, if the Government wishes

to adjourn the debate and have me carry on my contribution at another time, that is fine, but the relevance of this article and why I am reading all this is because when I have finished reading it, I will say that nothing has changed since Mr. Ramlogan was 15 years old. [*Interruption*] He has the choice. He can either go home or he can adjourn the Senate. [*Mr. Vice-President stands*]

Mr. Vice-President: Sen. R. Montano! [*Interruption*]

Sen. R. Montano: Sorry, Mr. Vice-President, I did not see you. [*Interruption*]

Mr. Vice-President: Sen. Mark! We are going to keep it more civil than this. [*Interruption*] Please continue with your contribution and stay to the point, please.

Sen. R. Montano: Mr. Vice-President, this was what I was trying to do. We were talking about the Magistrates' Court when Mr. Ramlogan was 15 years old; we are talking about the Magistrates' Court, which has not changed one iota and is the same today as it was then. We are talking about the $100 million that we could spend instead on the Magistrates' Court. That is the point.

> "There was a cage in the middle of the court. There were human prisoners in it. A foul nauseating odor came from this cage. I remember thinking that I would not even put my dog in there. The prisoners were very noisy (court had not yet started) and calling out to their friends, relatives and attorneys to try and make contact."

Sen. Dr. Saith: Mr. Vice-President, I again rise on a point of order. [*Interruption*] Yes. I do not know see the relevance of reading that. [*Interruption*] No, he is not. Well, I have made my point of order. I ask the Vice-President to rule.

Mr. Vice-President: Sen. Montano, is that article much longer? [*Laughter*] Please continue.

Sen. R. Montano: It goes on:

> "The next two hours were spent calling and adjourning various cases. It seemed so routine and ritualistic for the court staff but yet each case was of importance to the people involved…The entire process was inconsiderate and lacked human sensitivity. The poor man's journey for justice in the Magistrates' Court was a marathon one. He loses a day's work without pay each time he has to attend court. So do his witnesses."

He says it is not the magistrate's fault and he uses words that I used a little while ago.

"They are overburdened, over worked and underpaid. The system is collapsing under the sheer weight and volume of cases and they are desperately trying to cope."

I believe that Mr. Ramlogan is about 35 years old, so we have a system that in approximately 20 years—in fact longer than that—has not changed; has come under increasing pressure and has come into a situation where cases literally cannot be heard.

I have a client right now whom I am representing in a very small case, a question of forfeiture of bail. The case has been called eight or nine times and on each occasion it has been adjourned because the court has been unable to hear me. It has been going on now for about 14 or 15 months. That is just a little example.

In talking with other practitioners, they also have a problem. Many people give up in disgust. They have a case and they want to prosecute it, eventually they get fed up and they do not bother to go any more. Justice is not served. They give up on the person whom they want prosecuted for assaulting them or beating them as the case may be. The system is not coping and yet, here we are putting the paint job on the car, when the car cannot run. Why? Why are we spending US $100 million when the system is not working? I understand that we only have 10 or 15 cases a year going to the Privy Council from this country. If that many go, it is a lot. Why are we spending that? It really does not make sense.

If I could just touch on the issue of "UNC was all for this when UNC was in power and now UNC has changed its mind". We are not the only ones who change our minds from time to time, and as my colleague Sen. Augustus said, it boils down to a matter of trust.

Indeed, I remember in or about 1987, the then Prime Minister Ray Robinson, before he became President Arthur Robinson, began to talk about the Caribbean Court of Justice and the then Leader of the Opposition, Patrick Manning, opposed it completely. Later on, many years had passed, and in a different incarnation, now Prime Minister Patrick Manning, when he was asked about this change by one of the UNC MPs in a debate here, he said that several things had changed and, amongst other things, the People's National Movement had met, reviewed its position and felt that, having reviewed its position, it was now in a position to support it.

I do not have a problem with that. I do not have a problem with a man looking back on his action yesterday, last week or a year ago and saying, "I think that I should change my mind on this because of this, that or the other." However, if

persons on the other side could change their minds, why can we not? Why is it one law for the goose and another for the gander? Why is it that when we review our position, we are pilloried, but when they review their position, it is all right? It is not fair. It is not right and, in fact, it is hypocritical as my friend, Sen. Augustus said.

The truth is if you look at, I believe that it is Article XXXIX of the Treaty, you will see it says:

"RESERVATIONS

A reservation may be entered to Article XXV of this Agreement with the consent of the Contracting Parties."

Article XXV deals with the appellate jurisdiction of the court. I know because I was told by the Leader of the Opposition that he had had this particular provision put in because, as far as he was concerned, when he signed the draft treaty, certain things had to happen and he was going forward with it, but that he had reservations and they had not been sorted out sufficiently. Things had to be thought out a little more and so this clause was put there specifically for that purpose. Now what is wrong with that? Answer, nothing.

We are being told that we supported this. Yes we did. Let me just say something else so that people would understand where we are coming from. There is no body—[*Interruption*] Do you have a problem? [*Interruption*] Mr. Vice-President, I know that I am not allowed to call people "donkey" and so I would not, but I will say that I have heard donkeys make more sense than that.

Let me go on to say that we on this side [*Interruption*] Mr. Vice-President, I would like some protection.

Mr. Vice-President: Order!

Sen. R. Montano: Thank you. As I was saying, Mr. Vice-President, before I was so rudely interrupted, we on this side support the idea of a Caribbean Court of Justice, in principle. We support the idea of the abolition of the Privy Council, in principle. We believe, as Caribbean people, that this goal is one to be desired; it is one to be moved toward and it is one that all of us should be working out how best to do.

9.45 p.m.

Our problem, Mr. Vice-President, is not with the goal. Our problem is with what we have going on with this Bill. I will point out to you, in a little while, how this Bill does require a special majority. I will demonstrate it to you in a while,

whether you like it or not that is a fact. I know that at the end of the day, the Government has the numbers and this Bill will be passed with a simple majority in its present form. That is all right. At least tomorrow, when this matter does end up in the courts, do not say that you were not warned. Do not say that you did not have proper advice. Do not say that you did not know, because tonight we are going to tell you.

Mr. Vice-President, as I said, the problem is, what is going on, that is to say with the actual contents of this Bill. The problem is this Bill as drafted is dangerous. The problem is that the time is not right to spend US $100 million on the Caribbean Court of Justice, when the Government is not fixing the Magistrates' Courts.

If I may, with your leave, because the hon. Attorney General referred to the case of the Independent Jamaica Council for Human Rights and others with the Hon. Syringa Marshall-Burnnett and the Attorney General of Jamaica, which has been commonly referred to in this debate and which I will refer to as the Privy Council case. In this Privy Council case the Attorney General said the right of appeal to the Privy Council was not an entrenched position and it was accepted by all that this right could be repealed by a simple majority vote. The problem is that the Attorney General did not tell the whole story. The point is that it is only by examining the Privy Council case in detail that one can understand it.

On page two of the judgment the law lords said:

> "This is an appeal of obvious constitutional importance, and two matters should be clearly stated at the outset. First, Dr. Lloyd Barnett, speaking for all the appellants, roundly accepted that there could have been no objection to legislation supported by a majority of members of each House of Parliament which simply abolished the right of appeal to Her Majesty in Council and no more."

This is what the Attorney General was referring to. It continues:

> "Thus the argument is not whether the Parliament of Jamaica had power to achieve the object it sought to achieve but whether the procedural means of achieving it followed the procedure required by the Constitution."

That is the point that the Attorney General did not stress on.

The law lords then went on to examine the Caribbean Court of Justice Act, Act 21 of 2004. The Act is clearly quite similar to the Bill we are discussing

tonight. They referred to section 5(1) and (2) in the judgment. That is identical in its wording to clause 19 of our Bill. It states:

> "Where any amendment to the Agreement is ratified by the Contracting Parties, the Minister may, upon the coming into force of that amendment, by order amend the Schedule by including therein the amendment so ratified."

With the exception of two words in clause 19(1), the wording is identical. It is clear that we are dealing with an identical Bill.

The Privy Council begins to get very interesting when, on page 4, they start to discuss how the President of the Court is to be appointed in paragraph 7. It states:

> "The President of the Court is to be appointed or removed by the qualified majority vote of three-quarters of the contracting parties on the recommendation of the Regional Judicial and Legal Services Commission."

I will call it the Regional JLSC.

> "The Judges of the CCJ other than the President are to be appointed or removed by a majority vote of all the members of the Commission (article IV, paras 6 and 7). The Commission is to comprise the President of the CCJ as chairman, and ten members selected or nominated by specified professional, academic and public bodies."

The law lords go on and set it up. They talked about how they are appointed and the removal.

Page 6 discussed the question of removing the President or any other judge. It states:

> "The original and appellate jurisdictions of the CCJ are prescribed in some detail. Subject to the Agreement and with the approval of Conference of Heads of Government of Member States of the Caribbean Community, the Commission are to determine the terms and conditions and other benefits of the President and other members of the Court, which may not be altered to their disadvantage during their tenure of office… Reference should lastly be made to Article XXXII:"

I would be talking more about this in a little while. They spoke about Article XXXII of the treaty and that the amendment may be amended by the contracting parties.

At page 7 the law lords said:

"While it is true, as Lord Diplock explained in *Hinds v The Queen…"*

That was the famous Jamaican gun case.

> "that certain…assumptions underlie constitutions drafted on what he called the Westminster model, it is also true that when the people of Jamaica adopted their Constitution as an independent nation in 1962 they made certain very significant departures from the constitutional practice of the United Kingdom."

They quoted the relevant sections in the Jamaican Constitution, which is identical to our own, which states:

> "'if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.'
>
> Thus the Constitution and not, as in the United Kingdom, Parliament is…to be sovereign."

The same as in our country.

> "To alter some provisions of the Constitution, which may be described as 'deeply entrenched', section 49(3) and (4) of the Constitution require that the bill…"

[*Interruption*]

Hon. Senator: What is the point?

Sen. R. Montano: You will get it in a little while. The point is with very few changes, the relevant parts of the Constitution of Jamaica are identical to the relevant provisions relating to the security of tenure of judges here in Trinidad and Tobago.

The law lords go on to say:

> "The result would have been to constitute the Court of Appeal…"

In other words, they had accepted that the Privy Council could be removed. This is what the Attorney General did not read, at page 10.

> "The result would have been to constitute the Court of Appeal as the ultimate appellate tribunal in and for Jamaica. Supreme judicial authority would then rest with a body whose constitutional position is buttressed by safeguards carefully designed to protect the process of appointment to the court and the exercise by the court of its jurisdiction against the possibility of executive pressure or interference. Thus repeal of section 110, without more, would not weaken the protection which the Constitution set out to guarantee for the

> benefit not of the courts themselves, but of the people of Jamaica. What was constitutionally objectionable, Dr Barnett submitted, was to establish a new court to which appeals from the Court of Appeal would lie when the new court would enjoy none of the entrenched protection afforded by the Constitution to the Supreme Court and the Court of Appeal…"

[*Interruption*]

Sen. Sahadeo: Mr. Vice-President, under section 32(6), I am afraid the Senator continues to read. I do not think there is any specific relevance.

Sen. R. Montano: I am quoting from a document.

Sen. Sahadeo: Relevance. On a point of order, I think we have said time and again, it is a late hour. He has his time, but he could at least be relevant.

Mr. Vice-President: Sen. R. Monatano, I know you are quoting from a document, but the quotations are in fact very long. Could you please just use the gist of the quotations?

Sen. R. Montano: Mr. Vice-President, I would try to shorten them. The problem is this—[*Interruption*] I have a lot to say. [*Interruption*] If you keep quiet and listen you might learn something.

Mr. Vice-President: Senators, please!

Sen. R. Montano: The Privy Council goes on:

> "It was no answer to point to the safeguards contained in the CCJ Agreement, since these enjoyed no constitutional protection in Jamaica and could in any event be amended by agreement of the parties to the Agreement followed by ratification, both of them executive acts taking effect in Jamaican law on no more than affirmative resolution."

I will come to that in a little while when I point out that what the Government wants to do here is by negative resolution.

I will shorten the quotations. I want to point this out to you. The Privy Council said:

> "In answering this question the test is not whether the protection provided by the CCJ Agreement is stronger or weaker than that…"

This answers what Sen. Kangaloo was saying a while ago. Continuing:

> "In answering this question the test is not whether the protection provided by the CCJ Agreement is stronger or weaker than that which existed before but whether, in substance, it is different, for if it is different the effect of the legislation is to alter, within the all-embracing definition in section 49(9)(b), the regime established by Chapter VII."

The Privy Council goes on. This will be my last quote:

> "The risk that the governments of the contracting states might amend the CCJ Agreement so as to weaken its independence is, it may be hoped, fanciful. But an important function of a constitution is to give protection against governmental misbehaviour, and the three Acts give rise to a risk which did not exist in the same way before."

The Privy Council goes on to say how it is impossible to have severance of the Acts, the provisions and the original jurisdiction from the appellate jurisdiction.

Sen. Seetahal said that she had heard no valid arguments as to why we should not abolish the Privy Council. I have with me an article by Dr. Fenton Ramsahoye, written and dated July 2003. I know that I am quoting a lot tonight, but it is necessary. If you do not have the facts and figures, you will not understand. Dr. Ramsahoye says in his article:

> "The record of intervention over the last seven years is revealing to show the extent it has been obliged to intervene in appeals from the Court of Appeal of Trinidad and Tobago.
>
> 1996
>
> Four Appeals were heard. Three were allowed. One was dismissed."

He goes on through the years. I would not quote them all.

Hon. Senators: Quote them!

Sen. R. Montano: You want all of them? Very well.

> "1997
>
> In this year Five Appeals were heard. Four were dismissed. One was allowed.
>
> 1998
>
> In this year Nine Appeals were heard. Six were allowed. Three were dismissed.

1999

Nineteen Appeals were heard. Nine were allowed, Ten dismissed. Two of those allowed were remitted.

2000

Nine appeals were heard. Seven were allowed. Of these, One was allowed in part. Two were dismissed.

2001

Seven Appeals were heard. Six were allowed. One was dismissed.

2002

Ten Appeals were heard. Seven were allowed. Of these, One was remitted. Three were dismissed.

2003

At least Eight Appeals have been heard. Four have been allowed and Four dismissed but these statistics are not up to date.

The record of the Court of Appeal shows that there have been too many interventions. Seventy-one Appeals were heard between 1996 and 2003. Of these Forty have been allowed. This is a bad record for a Court of Appeal and shows the standard is poor. An intervention in above twenty-five per cent (25%) of cases is wholly unsatisfactory. The position is serious when it is considered that not all persons who are aggrieved enter appeals to the Privy Council for one reason or another. Yet the figure of seventy-one appeals for Trinidad and Tobago in the same period compares with fifty-seven for Jamaica."

In this article, Dr. Ramsahoye argues that experience with respect to abolition of appeals to the Privy Council has shown—he is speaking from personal experience; the experience of Guyana. It continues:

"1. Property values immediately fall and there is anxiety to export money.

2. Investors lose interest because their investments are considered to be unsafe…

3. Corruption takes hold of every aspect of the legal system and those who can afford it purchase justice like a commodity."

He argued in 2003 and it is still the case in March 2005, that the Caribbean Court of Justice is being established in secret. We have told this Government on many occasions if it wants something, for example the Caribbean Court of Justice, sit and talk with us. We said so on the Police Bills and the Kidnapping Bills. We said so on another—[*Interruption*]

Sen. Dumas: We do not talk to terrorists.

Sen. R. Montano: We do not talk to Abu Bakr, you all do.

Sen. Seepersad-Bachan: That is on the record.

Sen. R. Montano: That is on the record.

Sen. Mark: That is on the record, "Stretch".

Sen. R. Montano: That is on the record, so do not talk to me about terrorists.

Sen. Seepersad-Bachan: "That is on the record, how much all yuh hire dem to win the marginal seats."

Sen. R. Montano: In any case, we have said it many times on a number of issues. If you want something that requires our—

Mr. Vice-President: Hon. Senators, the point has been made time and time again about the lateness, could we please keep the crosstalk out.

Sen. R. Montano: As I was saying—[*Interruption*]

Sen. Mark: Danny you sleeping the whole evening!

Sen. D. Montano: It is so important, I am hanging on every single word.

Mr. Vice-President: Hon. Senators, since I requested that we keep the crosstalk out, Sen. R. Montano has not been able to say a word. Could we please get back to the Bill, seriously?

Sen. R. Montano: We have said and I will say it again, if the Government wants our support on an issue talk to us, but talk to us meaningfully. We are ready, willing and able to support and will support any measure in which we are convinced that it will benefit the people of Trinidad and Tobago. We cannot say it more plainly than that. We would oppose every single measure where we feel that the freedoms, rights and liberties of the citizenry of this country are under threat. It is as simple as that. As far as I am concerned, tonight my opposition to this Bill is not on party politics. My opposition to this Bill is on a genuine concern and a genuine fear.

If I might, you must understand that basically what the Privy Council has said in its judgment is that judicial officers must be independent. The Privy Council in its ruling has pointed, through the appointment and removal of judges—we have all heard about it tonight, I do not need to go through it again—and has said: "This is going to change things. This does not give you the security that you have."

The Agreement establishing the Caribbean Court of Justice has not distinguished between the original and appellate jurisdiction as set out in the articles on where the Privy Council ruled that there could not be severance. What is the problem here and why do I say that this Bill requires a special majority? For one thing, private citizens can access the court. Look at Articles XVIII, XIX and XXIV. Article XVIII states:

> "Should a Member State, the Community or a person consider that it has a substantial interest of a legal nature…"

Article XIX states:

> "The Court shall have the power to prescribe if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a Party."

Article XXIV speaks of a *locus standi* of private entities. It states:

> "Nationals of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where—..."

In other words, it is not only an international law tribunal, but this is a tribunal that can in fact affect the rights of the citizens of this country. When you look at clause 3 of the Bill, it states:

> "The articles of the Agreement in so far as they relate to access to the Court and related proceedings and Rules of Court, shall have the force of law in Trinidad and Tobago."

Look at these Articles.

Article XXVI, page 32 states:

"Enforcement of Orders of the Court

(b) the Court has power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction."

What is important about that? A superior court of record in this country can fine a person for contempt or can imprison that person. What the Government is doing by this Article is that it is giving the Caribbean Court of Justice the power to order any person to attend. They can fine that person and they can lock him up. We are now doing this, without reference to the Constitution. Here is the court whose judicial officers do not have the entrenched protection that judges have under our Constitution. If you want to give—

In the Jamaica gun case of *Hinds v The Queen*, the Privy Council said if you want to give a court power to commit for contempt, then you have to bring it through the front door; you do not bring it in through backdoor legislation. That is the point. That is a very important point. It does not matter that it is an international tribunal when you have judges who the Privy Council says do not enjoy the same security.

If you look at Article XXXII, it states:

"Amendment

1. This Agreement may be amended by the Contracting Parties.
2. Every amendment shall be subject to ratification by the Contracting Parties in accordance with their respective constitutional procedures and shall enter into force one month after the date on which the last Instrument of ratification or accession is deposited…"

In other words, you can now go and you can amend this.

Mr. Vice-President: Hon. Senators, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. S. Baksh*]

Question put and greed to.

Sen. R. Montano: I am so sorry that this evening even in jest, on such a serious matter, the Government seeks to try and stifle my voice. What a pity!

We now have a situation where what is effectively a Schedule to an Act can be amended at any time and subject only to a negative resolution of Parliament; not even an affirmative resolution. At least, in the Jamaica Bill they had "subject to affirmative resolution". Here, what do we have? We have "subject to a negative resolution". In essence, the Government can amend the Act by amending the Agreement and not bring the matter to Parliament, which, of course, cannot do anything because we cannot deal with it unless there is a negative resolution. We will have a devil of a time. It is going to be very difficult.

Mr. Vice-President, the Attorney General said today in his—

Sen. Prof. Ramchand: I wonder if the Senator could explain whether this: "every amendment shall be subject to ratification by the contracting parties", means each of the contracting parties? Can it be done separately?

Sen. Seepersad-Bachan: That is the Executive.

Sen. R. Montano: It means by the Executive, not Parliament. That is the point I am trying to make. This, effectively, is saying to the Parliament of this country, as to the other countries: "look we do not want to have to go through the hassle and the real pain of having to listen to you talk. We are not going to have to bother with you. We are just going to do it, after all Parliament is irrelevant. We are the Government and we are not listening to anybody. We are just going to do it." That is the problem. It is either we believe in our democratic processes, we are supporters of the parliamentary system, or we are not. This particular measure is anti-democratic and anti-good governance. That is the problem; not even by an affirmative resolution. Why? Give me a good reason for that. The answer is you cannot.

Just to turn to something that the Attorney General said today in response to a statement by Sen. Mark. I wrote down the words, but if I have it wrong, please correct me. He said: "It is the job of the Attorney General to give advice to the police". I was astonished when I heard that statement because I thought to myself surely—

Sen. Jeremie: If I did say—I cannot remember exactly what words I used, but the remarks I made were in response to Sen. Mark's reading of an article in which I was said to have issued certain guidelines. I said I am the guardian of the Constitution and I protect the rights. Under the Constitution I have a duty to protect the rights of the citizens and if I see that the police are infringing on the rights of the citizens, it is my job to write the Commissioner of Police and tell him stop infringing on the rights of citizens. That is my job. It is in my remit.

Sen. R. Montano: I am glad for that explanation because I would have thought that was your job and your job was to give advice to the Cabinet and not to the police. In any event, I still have a problem. Part of my problem is that you effectively have—if you were to interfere with the police like that you have—

Sen. Jeremie: If you would allow me.

Sen. R. Montano: Can I finish and then I will allow you?

Sen. Jeremie: You are making a statement which I want to clarify.

Sen. R. Montano: I have approximately five minutes left and you can clarify it in your reply, or if I have time I will give way. I would have thought that in this particular area, an Attorney General must be extremely careful because at the end of the day, in our system, an Attorney General is a politician. The particular case that Sen. Mark was referring to must have been very embarrassing for the Government and the police had very serious constitutional implications which, I dare say, we will discuss at another time. I am personally more than a little concerned about any Attorney General appearing to interfere with the police in this manner.

Sen. Jeremie: Would you give way? As I understand it, the role of the Attorney General is not simply to provide advice to the Cabinet and the Government. The role of the Attorney General is to act on behalf of the citizens at large and to protect. You are the respondent in relation to all constitutional motions. I defend the rights established under the Constitution. If I see that the police are engaged in a practice which is destructive of rights, it is my duty to point out to them that they are engaged in a practice which is destructive of the rights of citizens. I make no apology for that. I am not interfering with the police.

Sen. R. Montano: The point is that all sorts of questions arise from that statement. Questions arise as to how the Duprey case got so far. It is only when all the affidavits had been filed this came through. Why did you not intervene before?

Sen. Jeremie: The case went nowhere. I settled the matter.

Sen. R. Monatno: Not before all the affidavits had been filed. There is another case on the identical point, so we wait to see how you deal with that one. Questions arise. What has happened to the investigation of LABIDCO? What about the Chief Justice affair? Is the DPP now going to resign? He ought to, after all of this confusion and everything else that the country has been put through. Prof. Naraynsingh—

Sen. Jeremie: On a point of order. Standing Order 35(8) states that the conduct of persons engaged in the administration of justice shall not be raised except on a substantive motion.

Sen. R. Montano: I accept that, but it does stop me from calling—I will say in a vacuum that I call for the DPP's resignation. I cannot say anymore but I am calling for his resignation. Figure out why.

Mr. Vice-President, I do not—[*Interruption*] Regrettably I do not have time. I wanted to refer to an article in the *Jamaica Observer.* I wanted to read it. It said: "Forget about the CCJ, Mr. Patterson." It showed arguments in Jamaica that are identical to the arguments here. It shows how people are concerned. The author of the article is pointing out, why not go to the people. What many Senators this afternoon said is, "why not go to the people?" Why are we rushing this thing through? Why is it appearing to us that the Prime Minister wants to strut on the Caribbean stage as the godfather of the Caribbean using our money to promote himself? That is how it appears. That is what many people are saying. Why is he doing this? Why is he bringing this Caribbean Court of Justice—[*Interruption*]

Mr. Vice-President: Senators, please! Sen. R. Montano has a brief moment. Let us not take anymore of his time.

Sen. R. Montano: I figure I have lost approximately 10 minutes. The point of the matter is that there is too much wrong with this Bill. The Bill requires a special majority. It did not get it downstairs and it is not going to get it up here. The Government will get a simple majority. As the late Hector McClean said: "The Opposition shall have its say and the Government shall have its way on matters that require a simple majority." They have been warned. They have been told and they understand—[*Interruption*] Yes, it is a threat. It is a threat when you are proven to be wrong in a court of law, we are going to say: we told you so. You are wrong! The court of law will probably be the Privy Council that they want to abolish.

Thank you very much, Mr. Vice-President.

Sen. Parvatee Anmolsingh-Mahabir: Mr. Vice-President, I thank you for the opportunity to contribute to determining the way forward in coming to terms with the intricate, legal complexities which have developed in relation to the implementation and functioning of the Caribbean Court of Justice.

Cabinet has presented us with a fait accompli legislation in the Caribbean Court of Justice Bill, but I would like to appeal to the Government and the Legislature to make haste slowly, *festina lente,* in implementing the Caribbean Court of Justice Bill, at the very least, between the date of the passing of this Bill and the date of proclamation.

While I am of the opinion that there is need for a Caribbean Court of Justice, when I take into consideration, issues raised by some of the previous speakers, I believe that this Bill may not only have been emasculated but may also be prematurely brought before us. The question that needs to be answered is: Having regard to the latest judgment of the Privy Council dated February 03, 2005, does this Bill to establish and implement the original jurisdiction of the Caribbean Court of Justice also need to be passed by the requisite two-thirds majority?.

A lot of legal advice has been offered to the State's parties with respect to the implementation of the Caribbean Court of Justice Agreement, but some of these advisors have been appointed already to the Bench of the Caribbean Court of Justice. Some say that the Caribbean Court of Justice, in its present function, if not in form, will also replace the High Court and Appeal Court of Trinidad and Tobago in matters related to interpretation and application of the Revised Treaty of Chaguaramas, the CSME and related matters, since it exercises compulsory and exclusive jurisdiction. Perhaps the hon. Attorney General may wish to enlighten us further on that.

Mr. Vice-President, the implementation difficulties that would have arisen with respect to the Caribbean Court of Justice once again bring into focus the so-called law-creating capacity of Cabinet in respect of signing, ratifying and incorporating international agreements into local law. All the law relating to the Revised Treaty of Chaguaramas, the CSME, et cetera, has been contracted via the backdoor. Parliament is the only constitutionally recognized law-creating institution. While in the United Kingdom, Parliament is the supreme authority, in Trinidad and Tobago it is the written 1976 Constitution that takes precedence over Parliament. Parliament must adhere rigidly to its provisions, failing which laws can be declared null and void.

Two contingency-response protocols have been adopted by the intercessional meeting of the Heads of Government Conference that met in Paramaribo recently to amend the CCJ Agreement in respect of the original jurisdiction of the Caribbean Court of Justice. These Agreements should have been factored into the Bill that has been presented to us today and this House brought up to date on these developments. The procedures used to bring into being these protocols—namely

the protocol to the Revised Treaty of Chaguaramas regarding the relationship between the provisions on the original jurisdiction of the Caribbean Court of Justice and the Constitutions of the state parties and the new protocol on the tenure of judges—leave a lot to be desired.

Mr. Vice-President, the Heads of Government Conference has usurped the role of the contracting parties of the Revised Treaty and the Caribbean Court of Justice Agreement and approved the protocols, when the conference would appear to have no locus standi in the matter and represent another effort to paper over the cracks that surfaced on the bumpy road to a Caribbean Court of Justice and the community law-determining mechanism. It is my view that information on the Revised Treaty and the Caribbean Court of Justice amending protocol should have been made readily available to all Senators to assist us to consider this Bill adequately and comprehensively.

The hon. Attorney General can correct me if I am wrong. At the conference, two agreements that are not yet enforced and effected were amended.

Sen. Jeremie: They were protocols signed at the Heads of Government Conference in Suriname but the protocols were signed to allow a reduced quorum of judges to make rules. That is precisely because the original agreement envisaged the rule-making power to be exercised by five judges. The court is being brought into effect in a staggered fashion. We have been pushing back the date of inauguration. There are only three judges in place and there is one protocol which allows for the creation of rules of court by those three judges. That is supposed to lower overheads in the meantime, in terms of the start-up costs of the court.

The other protocol took into account the Privy Council's decision. It merely said and in the case of Jamaica it made a special case for Jamaica to come into the court as and when it saw—It is worded in terms of no contracting state shall be forced to do anything within its own domestic laws, which will be inconsistent with the treaty obligations. That is essentially what the protocols were about.

Sen. P. Anmolsingh-Mahabir: Thank you, hon. Attorney General. I was wondering whether the Heads of Government were authorized by the citizenry to do that.

Sen. Jeremie: Of course. The agreement is a treaty which can be amended by the agreement of all the contracting parties. The Heads of Government are the ultimate organ, which is the representative of the contracting parties. They were fully empowered to make the amendments to the treaty, which they did. They

were minor amendments which were being considered by the various organs, which had been in existence for the last 11 years to bring the court into existence. The Legal Affairs Committee and the Prep. Committee considered these amendments and approved them to the Heads for ratification. It was simply signed after due consideration.

Sen. P. Anmolsingh-Mahabir: Thank you for enlightening me on that matter.

Although it has been mentioned before, I too must make the observation that there appears to be an undue haste in accessing the US $100 million available at the CDB to capitalize the Caribbean Court of Justice Trust Fund even though the agreement has not received the requisite ratification to trigger entry in the threshold. [*Interruption*] Are you going to ratify that?

Sen. Jeremie: Would you give way again? There is really no undue haste. There is a meeting of the Board of Governors in Barbados tomorrow. The Government of Trinidad and Tobago has been saddled with the obligation as the State host to the Caribbean Court of Justice, with the start-up cost and we would well like to get rid of having to meet the cost of the organization as quickly as possible and to have that cost shared by the region as a whole. If the legislation is passed in Trinidad and Tobago today, then that condition precedent is removed and the fund will flow to the Caribbean Court of Justice and the Government of Trinidad and Tobago will be reimbursed for its expenditure in relation to the court. There is no undue haste.

Sen. P. Anmolsingh-Mahabir: Thank you again for enlightening us.

Finally, the legal hurdles that have plagued the implementation and incorporation of the Caribbean Court of Justice Agreement within the constitutional framework of the community have underlined the need for the adoption of a new political culture of inclusion at the regional level; one that is non-adversarial and one that is bipartisan.

Mr. Vice-President, we cannot afford to carry over the hostile nature of our domestic politics to the regional forum. Representatives of the various Oppositions of the region should have been invited to the opening of the new community secretariat building in Georgetown. The Opposition ought to be included in the new regional politics of inclusion, including the establishment of a Standing Committee of Leaders of Opposition. This would make for continuity and consistency of positions geared to avoid disruptive policies. This approach would also demonstrate genuine attempts at real integration and not imposing

structures from a top-down approach that characterize the demise of the 1961 Federation.

I thank you.

Sen. Carolyn Seepersad-Bachan: Thank you, Mr. Vice-President. I would not be as long. However, I thank you for the opportunity to participate in this, I think, a very important Bill, the Caribbean Court of Justice. I listened this afternoon to some of the comments that were being made. I know a lot has been said from our side. There are a couple of them that I really want to highlight which came from the Government Bench.

The first one I want to deal with is one made by the Attorney General. I am not a learned attorney and I do not profess to be anyone who has any great legal mind, but I want to give it from a perspective of a layperson. When the Attorney General mentioned—I know throughout the evening everyone has been complaining because the Opposition has been quoting extensively from the Privy Council's ruling on this matter, in the case of the Attorney General of Jamaica and the Privy Council. The reason for that is after reading this particular ruling it struck a chord. There are so many areas that we did not think about before. I keep hearing about the abolishment of the Privy Council, but this is exactly why we should not be in such a haste to move in that direction because there is still a lot for us to learn. This is one example coming out of this ruling.

I want to start with what the Attorney General mentioned. He talked at length about the Privy Council ruling. He went into detail as to why the Privy Council ruling was not relevant because in that particular case it was dealing with the appellate jurisdiction and we are no longer dealing with the appellate jurisdiction but the original, and that we have an entrenched provision and we were taking the correct steps where we needed the constitutional majority. This is what I understood from him. However, he mentioned, and I quote:

> "When that new court, the Caribbean Court of Justice, would enjoy none of the constitutionally entrenched protection given to the Jamaican Supreme Court and the Court of Appeal, we accept that Privy Council decision, insofar as it says that it cannot be appealed. All that we add is that the Privy Council is not entrenched in Jamaica. Not only that but the right of appeal to the Privy Council is not entrenched in Jamaica."

I think what I saw was the Privy Council making the point about whether the Privy Council was entrenched in the Constitution or not, it helped to deal with—I want to go back although Sen. R. Montano quoted it. I want to quote again from

that paragraph. I will start midway. The Privy Council ruling spoke about its role. In its role it is saying yes, we know we were not entrenched in the Constitution, however:

> "…Nor was it any answer to point out that the right of appeal to the Privy Council was not entrenched in the Constitution, since that was an existing right, the independence of the Privy Council and its imperviousness to local pressure had never been in doubt and it was not clear how the framers of the Constitution could have entrenched the independence…"

Sen. Kangaloo went on to make the point about the independence of the Caribbean Court of Justice. She said to look at the Privy Council and that Her Majesty appoints the Lords of the Privy Council. When we decided to keep the Privy Council as that final court of appeal, it is because the Privy Council is so far removed from us and it increases the level of objectivity. It is not a "Mr. Manning" that is appointing those lords. It is not a "Mr. Jeremie" that will be appointing judges. That cannot be nonsense, Sen. Kangaloo, because that is exactly what we are trying to deal with. Mr. Vice-President, we are dealing with a region where we are talking about small islands, where everybody knows each other. We are talking about 1.2 million people in an island. We already have a perception that there is a lot of interference and a lack of independence. When we deal with the Privy Council, it is deemed to be independent. This is what I think the Privy Council was saying in its ruling; it is so far removed, it did not need to be entrenched. This is why it went on to say it is the substance of the law that must be regarded and not the form. The first time I read this it struck me. I understood the point being made as to why. I understood the fears of the people in Trinidad and Tobago and other Caribbean islands as to why they will not want to remove the Privy Council.

Mr. Vice-President, having made that point, I want to deal with what Sen. Kangaloo spoke about. With respect to the issue of the independence of the Caribbean Court of Justice, she said we went into all the well-established mechanisms to ensure that there is the independence of the CCJ. Do you know what I do not understand? [*Interruption*] I will come to that, Sen. Dr. Saith. Give me a minute, I will get there, Sen. Dr. Saith, have patience. When we are talking about the independence—I listened to her talk about the European Union.

I stood in this Senate two days before Christmas Eve when we hastily rushed the Revised Treaty of Chaguaramas. Again, that was another Bill, we felt, that should have gone out to the people. We needed to debate more at length because it affected all peoples of the Caribbean. Again the reason for that is, yes we

understand. I want to make this point. The UNC while in government and in Opposition supported the concept of a single economy and a CCJ. It is not about if we do not support it or not, but it is how it is being implemented. That is our problem.

The Senator drew examples of the European Union. Yes, in our global context we want to borrow the concept from the European Union where we have a single trading bloc. In the global context we have many of those taking place. We will be foolish not to get ourselves in the region into a bloc. We will also be foolish not to develop our own jurisprudence that we would one day be able to effectively run a Caribbean Court of Justice.

10.45 p.m.

Mr. Vice-President, they keep saying that Mr. Panday signed the agreement for the Caricom Single Market and Economy (CSME) and Mr. Panday signed the Agreement for the Caribbean Court of Justice; but Mr. Panday signed into the concepts of those agreements. I made that point when we were discussing the CSME. It was a Treaty; it was an Agreement. What we are dealing with now is the legislation to give effect to these Agreements. We are dealing with implementation, the mechanisms and the institutional framework. [*Desk thumping*] That is what we are dealing with. We have no problem with the Treaty per se, but how we are giving effect to the Treaty, and how we want to accomplish the objectives of the Treaty.

The European Union has a Treaty. [*Interruption*] Sen. Kangaloo, we signed the Agreements. I am not saying that we did not sign the Agreements and that we are not committed to those Agreements. Mr. Vice-President, the European Union has a Treaty, and if you look at the evolution of the European Union, it is the coming together of the executives to form the commission, which is the executing arm. There is a European Parliament which was elected by 450 million citizens. So the people govern the European Union; the people have the say; and the people go out and elect the members of the European Parliament. The European Parliament has the power to overturn the executive. The executive comprises nominees from the governments of the various countries. So, by extension, the Parliament becomes the supreme power and the Parliament can overturn those decisions.

I heard Sen. Anmolsingh-Mahabir making the point that probably we need integration by involving the Opposition Leader. Sen. Anmolsingh-Mahabir, do you know why? We have not recognized, within this situation, that there is need

for a Caribbean Parliament, a regional body to represent the people; that will respect the various Parliaments. Presently, what we are doing is marginalizing the parliaments. The Executive is taking the decisions; and the Cabinets are taking the decisions. They go to these meetings—whether it is a Conference of Heads of Government or Committee of Attorney's General, or a Committee of Trade Ministers, et cetera—and they have all the executionary power. They have now bestowed unto themselves a legislative power. So the Parliaments are now being marginalized in the regions and we will have no say. Where is the governance? The governance is being further removed every day from the people. This is what is so important.

Mr. Vice-President, another issue that struck me in the Privy Council's ruling is that we keep talking about saving face and saving international image, but more important than saving face and saving international image is the will of the people. [*Interruption*] Do not tell me anything about credibility. We can do a lot more.

Sen. D. Montano: That is why we are on this side and you are on that side.

Sen. C. Seepersad-Bachan: We are on this side because you all employed Abu Bakr to intimidate voters. That is why we are on this side, and you are frustrating the will of the people. That is what happened. [*Interruption*]

Mr. Vice-President: Sen. Seepersad-Bachan, you were going very well until you lost your cool.

Sen. Mark: It is D. Montano, Sir.

Mr. Vice-President: Sen. D. Montano had withdrawn by that time.

Sen. Mark: Yes, Sir.

Mr. Vice-President: Please let us get back to the Bill.

Sen. C. Seepersad-Bachan: Mr. Vice-President, everything that I have said is now part of the public record. That is why I said it. I am not one to stand here and accuse anybody of anything. Note that this is now on public record. I want everyone here to take note of that.

Sen. Mark: Yes, they stole the election.

Sen. C. Seepersad-Bachan: It is now on public record, so do not run away from it. Admit it and accept it now—

Sen. Dr. Kernahan: And ask for forgiveness.

Sen. Mark: Seek repentance.

Sen. Dr. Kernahan: Repent and pray. [*Laughter*]

Sen. C. Seepersad-Bachan: You sit on that side, so you have to take responsibility for it. Mr. Vice-President, I was on the point with respect to the international image of this country—saving face, and international agreements and credibility—but there are many other things that we could do to save face; and there are other things that can boost our international image which we are not doing. We have spoken at length on that matter in this House—whether we want to deal with crime, or whether we want to deal with the public image, or whether we want to deal with the factors that are favourable for foreign investments—and all those issues are there. Do not come now and tell me that this is the only reason that we want to pass the Caribbean Court of Justice Bill, and that we want to save face; we want to save credibility. More important than saving face and saving international image is the will of the people. [*Desk thumping*] We keep forgetting that. We are heading towards a dictatorship. That is what we have been saying all the time. We have a galloping dictatorship, and it is throughout the region. Senator, do you have a question? [*Interruption*] I cannot hear you.

Mr. Vice-President, the point I want to make is that very hastily, fast and furiously, Parliaments of the region are becoming rubber stamps. I think that point has been made by several speakers here this evening. The Government is so obsessed with staying in power that they are not interested anymore in the will of the people. You know, that is because we have that kind of institutional framework in place—the European Parliament, et cetera—and we can now move to the European Court of Justice. Sen. King talked about that matter in terms of how it was appointed. I would not bore you with that matter, because I know that it is late in the evening.

Mr. Vice-President, one of the matters that Sen. Kangaloo also talked about was the matter of the appointment of the judges to the CCJ. They have set up this independent mechanism called the Regional Judicial and Legal Services Commission. She said that if you go to Italy, the Parliament can appoint members. The Senator mentioned another country—I did not get the name of the country—and that the Opposition in that country appoints members as well.

Mr. Vice-President, this is where I got very confused when I listened to the other side. I thought that represented more independence than the one that we are talking about here in the CCJ. The CCJ is by appointment by the contracting parties. Here it is, you are talking about the Italian Parliament being able to appoint judges. In the United States Congress, before you can appoint judges to the bench, they must come before the Congress. That is what led to the

independence; and you are saying governance by the people. The people are the ones making the decision. If we make the wrong decisions here, we will have to account to the people outside there and our constituents. Mr. Vice-President, that is why it is like that.

Mr. Vice-President, when we make this comparison with the United Kingdom—okay, Her Majesty and the Prime Minister make all these appointments—I want them to understand that in the United Kingdom Parliament, in the House of Commons, there are many Backbenchers who can participate. Our problem here is that in both Houses we have both Benches made up of Cabinet Ministers. There is really no way for them to separate their executive power from their legislative power. There is always that overlap. This is why, in my humble view; I think that we are running into the problems that we are running into today. Probably, they need all these Cabinet Ministers but, at the end of the day, there is not enough room on the Bench for all of these Cabinet Ministers, because there are not enough Backbenchers so that Members of Parliament can participate meaningfully in debates.

It struck me today, for the first time, that what Sen. Kangaloo said with respect to what we view as separation of powers, was coming across as a confusing message all the time. Probably that is their understanding of separation of powers. When we talk about the separation of powers and independence, we do not talk about the Executive being able to go and run to a meeting in the Caribbean and say, I want this judge or I want this President, or the Ministers of Trade getting together and saying that they will do this or they will do that and forget the Parliament, and then come after and say that when they get a chance they will pass it, because they have the majority in any event. There is where we differ. Their traditions are different; and their conventions are different.

Although we are supposed to be operating under the Westminster model, the problem is that the ethics and the traditions and the conventions that govern in that House are different from what obtains in our society, and for our level of governance. That is probably why we are hearing all these confused notions every day.

One of the other issues that came through very clear in the Privy Council ruling—the Privy Council is the final body, but there is a golden thread that runs through this judgment—is the undermining of people's rights. The Privy Council was concerned about the people; it was concerned about the protection of the rights of citizens. Sen. Robin Montano referred to this matter extensively, and throughout this judgment there were several sections where he talked about government misbehaviour.

Senators on the other side must remember that they will not be there forever; we will not be here as well, but the time will come when other people will sit here and other people will sit there—the next generation. We must understand that when we pass legislation like this that we do not allow for government misbehaviour. [*Interruption*]

Mr. Vice-President, that is why this judgment is so important. When I read this judgment it was for the concern of the protection of the rights of citizens. I thought that what the Privy Council was saying throughout—there was a subliminal message in there—is probably timely for us as a signal to rethink how we are moving in the region. It is still very commendable that we want to move in the direction we want to move in. The Attorney General gave a very good opening argument about what we want to be—a good patriotic and so forth. All those things are ideal but it is how we are going to get there.

In response to that matter, I want to make a point, because I heard a lot about whether or not we are ready for the CCJ and whether or not we have the cadre of judges. One Senator raised the issue as to whether or not we have the cadre of judges to staff the CCJ and the answer is no. Do you know why? Look at how many—and Sen. R. Montano raised the issue with Dr. Fenton Ramsahoye—cases that go before the Privy Council. When I had to pull this judgment, I went on the Privy Council website, and most of the appeals on that website came from Caribbean countries, especially Trinidad and Tobago. There was just one appeal from one country here and another country there. I know that there are countries which have abolished their appeals to the Privy Council. I know that Australia also did that recently. If you look at the history over the last ten years, you will see several appeals from the Caribbean. The majority of cases came from the region. Sen. R. Montano gave us the statistics from Dr. Fenton Ramsahoye's report, which showed the number of appeals which were allowed and the number of appeals which were dismissed, and that is a telling a story by itself. In fact, that is why people are fearful of the removal of the Privy Council.

Mr. Vice-President, in this same case with the Jamaican Attorney General and the Privy Council ruling, just imagine, it was contrary to the ruling of the Jamaican Court of Appeal. [*Interruption*] Sen. Dr. Saith, do you want to ask a question?

Sen. Dr. Saith: I want to ask you if you believe that in this Bill we are abolishing the Privy Council tonight.

Sen. C. Seepersad-Bachan: No, Sen. Dr. Saith. We have to discuss it because

this is the ultimate goal of this court. The Attorney General talked on this matter; many of your own people talked on this matter. We are responding to the issues that were raised in the debate.

Sen. Dr. Saith: So, you would agree that this is not before us at this time, and to do what you think that we have to do, is to come back with another Bill?

Sen. C. Seepersad-Bachan: Yes, Sen. Dr. Saith.

Sen. Dr. Saith: Okay.

Sen. C. Seepersad-Bachan: Mr. Vice-President, in a debate, I have to respond to the issues that were raised. I think that is the spirit of a debate. I am responding to what the Attorney General talked about. The Attorney General talked about the Privy Council's ruling; Sen. Kangaloo talked about the issue of independence; and other Senators raised the issue as to why the Opposition has changed its mind about the removal of the Privy Council. That is what I am responding to. So, please, allow me to respond. If the Attorney General did not raise these issues, we were not going to respond to them.

Sen. Dr. Saith: But your other colleagues responded.

Sen. Yuille-Williams: Quite well.

Sen. C. Seepersad-Bachan: Dr. Fenton Ramsahoye's report showed the reason why, at this point in time, there is the perception out there that people still want that right of appeal to the Privy Council.

Mr. Vice-President, in terms of the legislation giving effect to the agreements, they said the CCJ fell out of this. When Mr. Panday signed on to it, he made it very clear that they had to consult with the people; and there must be dialogue. That was the reason. I want to remind them that they had the Treaty of Chaguaramas which was never put into effect. I do not understand why, suddenly, they are so worried that we are not putting this agreement into effect. That Treaty never went into effect and that was signed many years ago. However, we have the Revised Treaty of Chaguaramas; we have the agreement for the CCJ. My point is that if we do not put the mechanisms and the institutional framework in place to operate and to give effect to these agreements in accordance with the will of the people, there is where we will fail.

There was an article written—I forgot to bring it with me—by an Opposition Member in one of our Caricom countries, and that person said that the CCJ is like a Trojan horse. He was talking about the issue of the right of the people. He said

that if we think about it, what we are actually doing is setting up, across the region, this autocratic system where we are giving executive dictatorship to the Caribbean governments. That is what we must be very careful about. There is no involvement of the people.

Mr. Vice-President, you see, when we talk about this CCJ— an agreement was signed three or four years ago—we have to understand as time goes by, we have to evolve with time. In trying to accomplish our objectives, we must be with the times and we must be relevant. Again, what is missing from here is that the court is not about the people. The court is about how many judges we want to appoint; and how many lawyers would be able to access this court. Nowhere are we dealing with the persons who would be accessing this court. Think about them! They are the small businessmen who would be trying to access this court, and who would be engaged in trade across Caricom countries.

Mr. Vice-President, it is a well-established fact now that when we are dealing with trade disputes, there are so many other issues that will come to bear in this particular court. Sen. King made the point with the World Trade Organization (WTO) and where there are panels of experts. These experts are the ones who will govern, determine and adjudicate, et cetera, and that has been a common trend throughout. Even when we are trying to deal with a simple corporate matter in terms of alternative dispute resolutions, you will find that a lot of the time it is not that we want to go to lawyers, but we want to seek persons who have had a vast amount of experience in the area—either in trade or in the particular area that we need to determine.

Mr. Vice-President, Sen. King mentioned the environment. The environment is not the only purview of lawyers where you have expertise in that area. If we are dealing with communications, there are now people who can relate to those matters and settle disputes.

We are talking about opening up our telecommunication sector, but the region is opening its telecommunication sector, so when there are disputes, what is going to happen? Are we going to sit and wait for some judges to determine these disputes? There may be judges who may not necessarily have that technical expertise. Again, this is something that must be considered when we are looking at this matter. We are not saying that we want a long, drawn-out process. In cases like the WTO, they end up with panels of experts who can, at least, be able to take a preliminary case and then make a determination before going on further. I have not really heard anything on that matter.

In talking to a couple of colleagues, including Sen. Seetahal, one of the issues that were raised was that even in this agreement there should be some accommodation for the appointment of judges—not necessarily lawyers, but persons with a particular specific expertise who can assist in the judgment. This is happening now; this is the new trend as we move forward and I would expect that you will say, okay, I need someone who is very experienced in environmental law; I need someone who has had the opportunity to determine matters and to arbitrate in these areas.

Mr. Vice-President, I heard a lot this evening about how many countries have been signing on. I keep hearing about Guyana, Suriname and Barbados. What came to my mind immediately is that in the case of Guyana, they do not access the Privy Council. When Guyana abolished its access to the Privy Council, the first thing that happened to that country was that everyone fled. Businessmen left in droves, et cetera—that was a well-known story of Guyana. That was the first thing that happened. People recognized that they did not have access to a fair justice system.

Mr. Vice-President: The Hon. Senators' speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. W. Mark*]

Question put and agreed to.

Sen. C. Seepersad-Bachan: Mr. Vice-President, I am sure that I would have completed my contribution within my 45 minutes, if I did not have so many interruptions from the other side. People were objecting because they only want to hear what they want to hear. That is one of the problems that we have. We need to listen some more.

Mr. Vice-President, in the case of Guyana, the CCJ represents a level of independence and a higher degree of objectivity in terms of the administration of justice. They have never had that experience. In our case, the move to the CCJ would be in our perception and our view, a reduction in objectivity and a reduction of the level of independence. So you are not really comparing apples with apples. This is something that we need to understand.

The other issue that I want to quickly remind the House about is that we are dealing with the European Union, and the European Union has a Constitution, which is now being passed by the various countries. This has gone out for a referendum in some of the countries. Some countries have already signed on to this and they have agreed to it, so all the treaties will come together as a constitution.

Mr. Vice-President, there could never be that level of independence. I agree with my colleague Sen. Montano, that once the contracting parties have the opportunity to amend the agreement, there is this risk that did not exist before. The risk is that the governments of the contracting states may amend the CCJ agreement so as to weaken its independence. It is hoped that is a fanciful risk, but the importance of a constitution is to give protection against governmental misbehaviour. We feel that this matter gives rise to that risk.

Mr. Vice-President, one last point, and this has to do with clause 6 of the Agreement which deals with the referral. I just want to get some clarification from the Attorney General on that matter. I remember clearly in the Lower House that a point was raised with respect to clause 6. It was mentioned that when a matter is referred by a court to the CCJ, if there would be any appeal on the final judgment, then the matter will come back to our court. This point was also raised here this evening by Sen. Montano and Sen. Mark. The Privy Council would have the right to deal with the issue. That is what you were saying, but my understanding is that the principle of committee should preclude the Privy Council in engaging in a decision when the CCJ has made a conclusive finding.

Mr. Vice-President, that tells me a lot with respect to what we are trying to achieve right now, with respect to this particular matter, even in the court's original jurisdiction. Do we really have that final appeal to the Privy Council?

Mr. Vice-President, I just want to reiterate what some of the Senators have said. I think we need to slow down a bit; give the people a chance and ensure that what we are doing right now is the will of the people. You may sit on your side and say that the Opposition is just trying to keep you back late hours in the night, but I want you to understand that when something like this is passed—the constituents outside there ask this Opposition every day why we are allowing this to happen and that to happen. That is why it is important for us to ensure that our views are expressed and, at least, you have had the opportunity to hear our views. If you do not take them into consideration so be it, but we have expressed our views.

Mr. Vice President, I thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. John Jeremie): Mr. Vice-President, I would like to thank each Member of the Senate who has contributed to the debate. It is a pity that we are not able to find the consensus which I had expressed in my opening remarks. I know that persons have expressed very strong

views, and I do not expect that some of those views would be changed but, at least, I will attempt to deal with the questions that have arisen, in a manner which is faithful to the occasion.

If I could just begin with Sen. Seepersad-Bachan's point, before I forget, on the referral jurisdiction. The first point is that I said that the Jamaican case is entirely without relevance to us. I made that point. The simple reason is that in paragraph two or three of the judgment, the court said that all that it is concerned with is the CCJ in its final appeal jurisdiction. On page 14, the Privy Council says that it remains to consider whether the provision abolishing the right of appeal to the Privy Council may be severed from the other provisions of the three Acts. That assumes that something was constitutional. If you discuss severability, then what you are discussing is the concept that something might be saved and something will go out. The decision of the Privy Council is entirely restricted to the final appeal jurisdiction. That is not what we are engaging here tonight.

In relation to the point in section 6, the referral regime, I raised it. I said that I came with clean hands, and that was an area on which we spent some considerable time. We examined the constitutionality of the referral regime for the reason that even as amended, the clause says that the domestic court must refer to the CCJ for its determination, which is a question involving the Revised Treaty.

Now, the question which arises there is what happens then to the referral to this non-entrenched court. Is that a provision which will pass constitutional muster? We have been advised that the answer to that question is, yes, for the reason in the *Hinds and R*, which is the case that Sen. Montano talked to—the Gun Court Case—the Privy Council was clear to say that there are three kinds of jurisdiction which are characteristics of a supreme court where appellate jurisdiction is vested in a separate court. They are:

1. unlimited original jurisdiction in substantial civil cases;
2. substantial criminal cases; and
3. supervisory jurisdiction over the proceedings of inferior courts.

This is essentially a trade court, so that it falls outside of those three categories, and we think that the referrals regime for that reason passes constitutional muster.

The other point which the Senator raised in relation to the risk is that the contracting parties might amend the CCJ agreements so as to weaken the independence. The Privy Council said that it is hoped that is a fanciful risk. What you have to remember, again, this was said in the context of the final appeal

jurisdiction and not just simply that, but just five or six lines above that, if you had read the judgment, you would have seen that the very Privy Council is saying that the board had no difficulty in accepting, and does not doubt that the CCJ agreement represents a serious and conscientious endeavour to create a new regional court of high quality and complete independence, enjoying all the advantages which a regional court could hope to enjoy.

Now, all of that was said in relation to the final appeal jurisdiction. I say no more on the matter, except to say that the Privy Council itself felt that the issue here in relation to the CCJ, even in its final appeal jurisdiction, was a serious, conscientious attempt to create an independent court with independent mechanisms which do not exist in the United Kingdom.

Mr. Vice-President, Sen. Prof. Deosaran is no longer here, but he asked the question, whether we are ready for the court. I say, yes, for a number of reasons. It is 43 years since Independence and "Independence" means not simply that you have your own Legislature which can debate issues on its own; not simply that you have your own Executive; but also that you have your own separate Judiciary, able to speak, in the language of Sir Telford, in its own judicial house. I know that Sen. Prof. Ramchand said that I was appealing to his emotions on that matter.

I said that the time is long past for us to have our own court. Even without that, it is 11 years since the work of the West Indian Commission. The West Indian Commission was set up to inform us as to how to deepen the integration process. One of the pillars which was suggested would be useful in helping us to deepen this integration process is the establishment of a CCJ in both jurisdictions: its original jurisdiction and in its final appeal jurisdiction. We cannot do it in its final appeal jurisdiction. That was our hope. Our hope was that we would do it in both jurisdictions, but that hope has been frustrated in relation to the final appeal jurisdiction.

We are going ahead in relation to the original jurisdiction, because that is what is open to us; that is what keeps the faith, as best as we can, with out international law and our Treaty commitments.

I harp back to what was done in the year 2000 when the then prime minister, Mr. Panday, opened the Headquarters of the Court on Richmond Street, and said to the Caribbean nations that this would be the seat of the CCJ, and gave an undertaking that the court would be brought in both its original and final appeal jurisdictions. [*Desk thumping*]

Mr. Vice-President, it is true to say that not enough concerted groundwork has been done. That is true. Mr. Panday, himself, recognized that in 2000 when he opened the court. He said the idea of the court had to be sold to the population. Not enough work has been done in that area. The reason for that, I think, is that we do not have a Caribbean parliament to coordinate the public education exercise. So that what happens in one territory is disjointed, and often lags behind what happens in another territory. What happens in Trinidad and Tobago is affected by the reluctance which is perceived to exist in Dominica, at any given point in time. As a consequence of that, the start-up date for this court has gone back several times. This court was supposed to have come on board at least a year ago. The start-up date is now April 16, 2005. The public education drive has been characterized by starts and stops.

There have been attempts in Trinidad and Tobago. For example, six months ago, there was a concerted television public awareness campaign. There was a trip to Tobago made by the President of the Regional Judicial and Legal Services Commission, Sir David Simons; the former attorney general, now principal of the Norman Manley Law School, Keith Sobion; and a couple of other members of the court. The politicians stayed away. I accept that some work has to be done in relation to the public education exercise, but that should not deter us at this stage. This is an institution which is capable of deepening the integration process and which we are committed to making work.

Now, if I can just speak to Sen. Prof. Ramchand's point, I know that I interrupted him several times during the course of his contribution. He asked about the dispute resolution mechanisms under the Revised Treaty and, I think, I answered by saying that what exists now is COTED, but that is limited in scope; it is also limited in terms of its intent. It is intended to last only so long as we do not have a CCJ. The reason is that COTED is essential in putting out fires. So it is solving a trade dispute between Trinidad and Tobago and Barbados and it will solve another dispute as the case arises.

What the CCJ is intended to do is to develop its own jurisprudence and to make that jurisprudence uniform in nature throughout all the territories. Why can something else not work? That is because if there was not COTED, then you would have to fall back on the local courts, and if you fall back on local courts then you have the Treaty objection. The local courts do not interpret treaties. That is a fundamental point. International law is not cognizable in domestic law in your local courts. The reason for the CCJ is, in essence, to interpret the obligations imposed on us and the rights given to us by the CSME.

Now, I should also remind colleagues that at the beginning of the parliamentary year, the Government tabled an ambitious legislative agenda. In relation to Caricom, what the Government wishes to do and what the Government expressed in its legislative agenda was to place Trinidad and Tobago more firmly within the Caricom and within the integration movement. As a matter of fact, the goal is to make Trinidad and Tobago the centre of the integration movement. It is to that end that we have brought legislation on the CSME; the removal of restrictions and now the CCJ. That is part and parcel of an infrastructure which we are building towards a Caribbean nation. I have already spoken to the protocols and I would like to turn to some of the questions raised by Sen. King.

11.30 p.m.

Sen. King asked whether the Caribbean Court of Justice would be conducting its hearings and delivering judgments in its original jurisdiction in camera or in public. Apparently the WTO rules allow for those proceedings. Now, Article 21 of the Agreement allows the Caribbean Court of Justice to make rules for the exercise of its powers. The court is to be an itinerant court, and of course, the rules of the court will determine in what circumstances proceedings are heard in camera.

Sen. King also asked whether any attempt has been made to facilitate the settlement of disputes in what is essentially a trade court, and the answer to that is, yes, and it relates to one of the other pieces of legislation, which I have described earlier, that is the legislation incorporating the Revised Treaty. Article 188 of the Revised Treaty deals with the alternative modes of dispute resolution, such as, using good offices, mediation, conciliation, arbitration and finally adjudication. Trinidad and Tobago has been invited to submit names for the consideration of the panel to be established in relation to mediators.

I think my colleague dealt with the protections given by the Regional Judicial and Legal Services Commission, in respect of the court and had pointed to the part of the judgment to which the Privy Council itself—although they struck down the legislation—recognized that what was in fact an issue, was a serious attempt to make an independent court. Mr. Vice-President, with those few words, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 5 ordered to stand part of the Bill.

Clauses 6—9 (Part III).

Question proposed, That clauses 6 to 9 (Part III) stand part of the Bill.

Sen. Prof. Ramchand: I do not know if the Attorney General answered Sen. Montano's question about 6(1A)(3), referrals from national courts of tribunals.

Sen. Jeremie: Yes Sir, I did. As a matter of fact, I spoke about it in my opening, when I said I came with clean hands. These are the clauses that gave us concerns and I also spoke of it just now.

Question put and agreed to.

Clauses 6 to 9 ordered to stand part of the Bill.

Clauses 10—15 (Part IV).

Question proposed, That clauses 10 to 15 (Part IV) stand part of the Bill.

Sen. D. Montano: Mr. Chairman, according to the amendments I have, that entire part was deleted; clauses 10 to 18 were deleted.

Hon. Senator: You have the wrong thing.

Sen. D. Montano: Clauses 10 to 15, sorry.

Question put and agreed to.

Clauses 10 to 15 ordered to stand part of the Bill.

Clauses 16 and 17 ordered to stand part of the Bill.

Clauses 18 and 19 (Part VI).

Question proposed, That clauses 18 and 19 (Part VI) stand part of the Bill.

Sen. King: Mr. Chairman, I am wondering at this stage if we could suggest an amendment to 19(3), and instead of negative resolution, we have affirmative resolution.

Sen. Prof. Ramchand: I would be happier with that—affirmative.

Sen. Jeremie: The Government has given some thought to that and we are unable to accept the amendment. What I can say is that when it is done by negative resolution you can bring a Motion—[*Crosstalk*] The Bill was drafted at the Caricom legislative drafting facility. We are all in it, together. [*Interruption*] The Jamaican resolution was different because of their constitutional provisions. They took theirs as three and they attempted to abolish the right to appeal. So, I am sorry.

Sen. Prof. Ramchand: The Parliament should have as much respect as the Constitution, so if our Parliament would like affirmative, why can we not have affirmative?

Sen. Mark: Who is in charge? Cabal?

Sen. Jeremie: There is no cabal, Sen. Mark. The point is, we sat and deliberated on it with our Caricom colleagues. We yielded a certain amount of sovereignty in this, I agree, but that is how it is. In relation to my Caricom colleagues, I am happy to do that.

Sen. Prof. Ramchand: What harm does it do if our legislation says affirmative and others say negative? How can it harm them? It does not affect them at all.

Sen. D. Montano: I wonder if Members are not losing sight of the fact that negative resolution does not mean that it is not debated, you know. If you wish to debate it, you can. All you need to do is signal it. It does not mean it is an automatic process.

Sen. Prof. Ramchand: Why do we have to fight for that every time?

Sen. D. Montano: You do not have to fight for it, you just merely have to file a Motion. That is the difference, with a negative resolution, the Member has to file a Motion, that is all.

Sen. Prof. Ramchand: I think you have to explain why you do not want to do the easier thing.

Hon. Senator: We would save parliamentary time if we had uniformity. [*Crosstalk*]

Sen. Prof. Ramchand: No, we cannot have uniformity. Why does Parliament have to consider each thing separately? If we had a West Indian Parliament, I could see where you want it uniformed, but we do not have a West Indian Parliament.

Question put and agreed to.

Clauses 18 and 19 ordered to stand part of the Bill.

First Schedule.

Question proposed, That the First Schedule stand part of the Bill.

Sen. R. Montano: What is the point?

Sen. King: Mr. Chairman, are we not going to delete Article 25, Schedule 1?

Sen. Jeremie: Article 25 applies to the jurisdiction of the court, it does not apply to this Bill. The Schedules represent the agreements which were actually signed by the contracting parties, so they cannot be changed by the Parliament, they have already been signed. There are treaties the Government signed which, as a matter of fact—as a trade court—are arguable. This entire thing could have been done by treaty. It could have been a party to a treaty. [*Crosstalk*] But it is the agreement which was signed by the parties. It does not give the court a power in respect of appeal It is just the agreement which was signed in 2000, by my colleagues on the other side.

Sen. Prof. Ramchand: Now we have to cut and trim, because all we can get through is the original jurisdiction.

Sen. Jeremie: Yes, but the agreement is being annexed to the Bill as a schedule. It is not an operative part of the Bill, it is a schedule. It does not enlarge the powers of the court.

Sen. R. Montano: That is not exactly true. Section 3, the articles of the agreement insofar as they relate to access to the court, and so forth, shall have the force of law in Trinidad and Tobago. So, all of this is becoming law.

Sen. Seepersad-Bachan: It is not because it was an agreement, it is because—

Sen. Jeremie: If you look at the definition in Part 1, section 2, of the agreement. "Agreement" means the agreement establishing the Caribbean Court of Justice signed at Bridgetown, Barbados on February 14, 2001, as amended by the protocol to the agreement establishing so and so. The text of which are set respectively in parts A and B of the First Schedule. This agreement was signed; it is a matter of record that this agreement was signed.

Sen. Prof. Ramchand: We are not ratifying that whole agreement because—

Sen. Jeremie: We have already entered into force—Trinidad and Tobago is in breach of its obligations in international law, by not bringing this court in its final appeal jurisdiction. We are in breach of our international law obligations. [*Crosstalk*]

Sen. R. Montano: This Parliament has the final say, so do not come with that.

Sen. Prof. Ramchand: This Parliament ought to have the final say. [*Crosstalk*] —an Act to implement the agreement establishing the CCJ in its original jurisdiction.

Sen. Jeremie: It is. There are no powers given in the Bill which will give the court a jurisdiction in relation to appeal, it would be unconstitutional. So all that is in the First Schedule, is the agreement as a matter of record, which the parties signed. That is the form of it.

Sen. Prof. Ramchand: So, we are really doing two things. We are doing the Bill and we are doing the agreement?

Sen. Seepersad-Bachan: We are now making the agreement law.

Sen. Jeremie: That is not so.

Sen. Dr. Saith: We are doing the Bill, and as part of the Bill we are attaching the agreement.

Sen. Prof. Ramchand: Mr. Attorney General, let me frighten you now. If we pass this with the appellate section in it, then we are really in breach.

Sen. Jeremie: We are in breach already, we have already signed, ratified, and brought the agreement into force. It is simply being annexed to the Bill. Governments might change but Trinidad and Tobago is bound by this agreement, which we have signed. It is not a question of our ratifying it or entering a reservation; it is too late. [*Crosstalk*]

Question put and agreed to.

First Schedule ordered to stand part of the Bill.

Second Schedule ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment.

Question put.

The Senate divided: Ayes 18 Noes 7

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Enill, Hon. C.

Gift, Hon. K.

Manning, Hon. H.

Abdul-Hamid, Hon. M.

Dumas, Hon. R.

Kangaloo, Hon. C.

Sahadeo, Hon. C.

Ramroop, Sen. S.

Hackshaw, Mrs. M.

Williams-Smith, Mrs. M.

Ramchand, Prof. K.

King, Mrs. M.

Anmolsingh-Mahabir, Sen. P.

NOES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Augustus, R.

Khan, Bro. N.

Question agreed to.

Bill accordingly read the third time and passed.

CHILD WELFARE LEAGUE (INC'N.) BILL

Question put and agreed to, That a bill to provide for the incorporation of the Child Welfare League of Trinidad and Tobago and matters incidental thereto, be now read a second time.

Bill accordingly read a second time.

Bill referred to a special select committee of the Senate appointed by the Vice-President as follows: Sen. Christine Sahadeo, Chairperson; Sen. Mustapha Abdul-Hamid, Member; Sen. Satish Ramroop, Member; Sen. Roy Augustus, Member; Sen. Basharath Ali, Member.

Sen. Mark: Was Sen. Roy Augustus consulted on this matter? Normally, the practice here is that if you are going to appoint a person on any committee, we have to be consulted and we have to indicate exactly who the member is, but nobody consulted us on this matter.

Mr. Vice-President: I am advised that is not the practice with private Bills.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, before I move the adjournment of the House, I just want to thank all the Members of the Senate for the yeoman service given, I think we have all earned our salary today.

Mr. Vice-President, I beg to move that the Senate now adjourn to Tuesday, March 15 at 1.30 p.m., at which time we will deal with the Bill to validate functions exercised by the Director of Surveys and the Bill to amend the National Lotteries Act, Chap. 21:04.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.58 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Market and Opinion Research International (Contracts)

8. Could the Minister of Public Administration and Information provide the Senate with copies of all contracts between Market and Opinion Research International (MORI) and the Government of Trinidad and Tobago for the period 2002—2005?

The following reply was circulated to Members of the Senate:

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): The reply is as follows:

To date, there have been three (3) contracts between Market and Opinion Research International (MORI) and the Government of the Republic of Trinidad and Tobago covering the period March 15, 2002 to September 30, 2005.

However, copies of these contracts cannot be provided since they are commercial contracts, the contents of which are confidential between the two parties.

In addition, hon. Senators should note that information relating to the work of MORI, which is governed by these contracts, has been disclosed to the Senate in responses to questions Nos. 22 and 23 which were posed by Sen. Wade Mark.