

**SENATE***Wednesday, May 25, 2022*

The Senate met at 1.30 p.m.

**PRAYERS**[MADAM PRESIDENT *in the Chair*]**Miscellaneous Provisions (Local Government Reform) Bill, 2020**

Bill to amend the Municipal Corporations Act, Chap. 25:04, the Burial Grounds Act, Chap. 30:50, the Cremation Act, Chap. 30:51, the Advertisements Regulation Act, Chap. 30:53, the Recreation Grounds and Pastures Act, Chap. 41:01, the Highways Act, Chap. 48:01, the Dogs Act, Chap. 67:54, the Property Taxes Act, Chap. 76:04 and the Planning and Facilitation of Development Act, No. 10 of 2014.

*Motion made:* That the next stage be taken on May 31<sup>st</sup>, 2022. [*Hon. R. Sinanan*]

*Question put and agreed to.*

**PAPERS LAID**

1. Annual Audited Financial Statements of the Deposit Insurance Company for the financial year ended September 30, 2021. [*The Minister of Foreign and Caricom Affairs (Hon. Dr. Amery Browne)*]
2. Trinidad and Tobago Housing Development Corporation (Vesting) (Amendment to the First Schedule) Order, 2022. [*Hon. Dr. A. Browne*]
3. Trinidad and Tobago Housing Development Corporation (Vesting) (Amendment to the First Schedule) (Amendment) Order, 2022. [*Hon. Dr. A. Browne*]

**JOINT SELECT COMMITTEE REPORT****(Presentation)****UNREVISED**

**Sexual Offences (Amdt.) (No. 3) Bill, 2021**

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC):** Madam President, I beg to present the following report:

Second Interim Report of the Special Select Committee of the Senate appointed to consider and report on the Sexual Offences (Amendment) (No. 3) Bill, 2021, Second Session (2021/2022), Twelfth Parliament.

**URGENT QUESTIONS****Buccoo Reef Ferry****(Functioning Elevators)**

**Sen. Wade Mark:** To the Minister of Works and Transport: Can the Minister indicate what measures are being taken to ensure that the elevators on the Buccoo Reef Ferry are functioning?

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):**

Thank you Madam President. NIDCO has a multi-tiered maintenance regime for the elevators. This regime is as follows: Monthly, the elevator is serviced by an external company. Daily, NIDCO has an electrical technical officer who travels with the vessel on every sailing to identify and correct any technical issues with the vessel while it is in operation. For technical issues which cannot be addressed during the sailing, when the vessel is berthed, there is a landside external company engaged to conduct any such repairs.

It is noteworthy that the elevator stopped working on Monday 23<sup>rd</sup>, May 2022. NIDCO was informed of this, and when the vessel returned to port the elevator was repaired and functional on Tuesday 24<sup>th</sup>, May 2022. I thank you.

**Sen. Mark:** Madam President, can I ask through you to the hon. Minister, could he help us identify the name of the external company that is responsible for

addressing technical problems of a maintenance nature, whenever these vessels have challenges?

**Madam President:** Minister.

**Sen. The Hon. R. Sinanan:** Madam President, my information is CIVON Multi-Services Limited, and the landside repairs as Matrix Shipping Management Limited. Thank you.

**Madam President:** Sen. Mark.

**Sen. Mark:** Thank you, Madam President. Madam President, can I ask through you to the hon. Minister whether he is aware of an incident involving an amputee individual who, because of the non-functioning of the said elevator, had to face severe humiliation during a trip on this particular vessel called the Buccoo Reef? Can I ask through you, Madam President, if the Minister is aware?

**Madam President:** Sure. Minister.

**Sen. The Hon. R. Sinanan:** Madam President, NIDCO manages the operations of the ferry, and this incident, the specific that the hon. Senator is asking about, it will not be one of the incidents that would be reported to the Ministry on a daily basis. These are operational matters that are dealt with by the operators of the ferry and by NIDCO.

So a report of this nature, a one-off incident like this—when the vessel would have left one port there was a challenge with one of the elevators, and it was rectified when it berthed at Port of Spain. These specific incidents are not necessarily incidents that will be reported to the Ministry of Works and Transport, because these are dealt with operationally by the management of the ferries. Thank you.

**Madam President:** Next question, Sen. Mark.

**Sen. Mark:** Yes thank you, Madam President.

**Jif Peanut Butter Recall****(Measures to Ensure Health/Safety of Consumers)**

**Sen. Wade Mark:** To the Minister of Trade and Industry: In light of the recall of Jif peanut butter by its producer JM Smucker, can the Minister indicate what measures are being taken to ensure the health and safety of consumers of said product in Trinidad and Tobago?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much, Madam President. Good afternoon to all. This question really falls in the court of the Ministry of Health.

The agent, Hand Arnold Limited, on Saturday 21<sup>st</sup> May, got an online recall notice, that there was recall of these products in the United States. On the night of May 21<sup>st</sup>, that is Saturday again, they also received a supplier notification. On Sunday 22<sup>nd</sup> May, a warehouse audit was done at Hand Arnold and all affected stock isolated in the warehouse. Their sales reps and merchandisers were then despatched into the field at points of sale to isolate the affected stock. On Monday, there was a physical removal of the said isolated stock to the warehouses.

It is material to note that the affected product, Jif Crunchy and Jif Creamy 16-ounce was not in wide circulation at that time. Also, the lot numbers of the affected stock, 12744252 to 2140425 were also issued to all local partners. Also, common signs and symptoms were published, so that any person or parent with a child or adult who may have come down, would know what to do. A website was also published directly to the JM Smucker Company on the recall of the issue. Those are the steps that were taken from Saturday 21<sup>st</sup> May to today.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can I ask through you, Madam President, whether the Minister can categorically assure the population, based on information he has received from the

distributors of this product, that all of these products have been removed from the shelves of Trinidad and Tobago? Can the Minister share with us?

**Madam President:** Sure. Minister.

**Hon. T. Deyalsingh:** The Minister of Health cannot give that assurance. This is a physical stock recall that has to be done by the distributor. I am informed by the distributor that all steps, not only reasonable but above reasonable steps have been made to isolate, identify and physically remove the stocks from the channels of distribution.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can I ask the hon. Minister, based on the information given to him by the company, as we speak at this time in the Parliament, at 1.42 p.m. in the afternoon, can the Minister indicate whether he has received any up-to-date information from the said company as to the outstanding amounts that may not have been isolated at this time? Can I ask through you, Madam President?

**Madam President:** Sure. Minister.

**Hon. T. Deyalsingh:** At this time, in speaking to the agent up to just about 12.30 for this question, the agent has indicated two things. One, that all reasonable and above reasonable steps have been taken to identify and isolate the product. As I said in the body of the answer, the two affected products, Jif Crunchy and Jif Creamy 16-ounce, according to the agent, were not in wide circulation at the time of the recall.

### ANSWERS TO QUESTIONS

**The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne):** Madam President, there are four questions for oral answer on the Order Paper, and the Government is in a position to answer questions 90, 91 and 92, and we have sought a deferral by two weeks for question No.159.

**Madam President:** So question 159 is deferred for two weeks. Sen. Mark.

**Sen. Mark:** Thank you, Madam President.

*The following question stood on the Order Paper in the name of Sen. Amrita Deonarine:*

### **Cryptocurrency Sector**

#### **(Details of)**

**159. Sen. Amrita Deonarine** asked the hon. Minister of Trade and Industry:

In light of a statement made by the Minister on April 27, 2022 which confirmed that the Ministry of Trade and Industry is in the process of reviewing this country's legislative and policy framework to understand the possibilities for a cryptocurrency sector in Trinidad and Tobago, can the Minister state the following:

- (i) a timeline for the development of a policy framework on the matter;
  - (ii) a timeline for the introduction of legislation in Parliament; and
- whether said legislative and policy frameworks will be prepared to facilitate the establishment of a bitcoin-mining farm proposed by companies at the Tamana InTech Park, at a total investment of US\$0.5 billion?

*Question, by leave, deferred.*

### **ORAL ANSWERS TO QUESTIONS**

#### **Investigation into Death of Venezuelan Baby Boy**

##### **(Status of)**

**90. Sen. Wade Mark** asked the hon. Minister of National Security:

In light of the call from the President of Venezuela for an "exhaustive" investigation into all the circumstances surrounding the death of a

Venezuelan baby boy on the high seas on 6th February, 2022, can the Minister indicate when will this investigation be completed?

**The Minister of National Security (Hon. Fitzgerald Hinds):** Thank you very much, Madam President. Investigation into all the circumstances surrounding the unfortunate death of a migrant child within Trinidad and Tobago's territorial waters in February of 2022 are currently ongoing, by both the Trinidad and Tobago Police Service and the Trinidad and Tobago Defence Force.

It is not possible at this time to accurately predict the time frame within which these investigations would be completed. However, I am assured that they are being promptly proceeded with and is expected to be completed as soon as practicable.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can I ask the hon. Minister whether he can share with this honourable Senate whether there is a joint investigation involving the authorities in Venezuela along with the authorities in Trinidad and Tobago to have a thorough investigation into the circumstances surrounding this unfortunate incident?

**Madam President:** Sen. Mark, I would not allow that question based on the answer that had been given.

**Sen. Mark:** Madam President, may I ask the Minister, in light of the severity of this situation, and the call by the President of Venezuela to have this matter exhaustively investigated, can the Minister indicate whether the Government is using all its powers, all its possible tools at its disposal, to have this particular investigation completed as soon as is practically possible?

**Madam President:** Minister.

**Hon. F. Hinds:** Madam President, as I indicated a moment ago, the Trinidad and

Tobago Police Service with all of its resources, and the Trinidad and Tobago Defence Force are engaged in the process of an investigation.

**Sen. Mark:** Can I ask the Minister whether some of the players or actors involved in this incident have been isolated to facilitate an objective investigation into this matter?

**Madam President:** Sen. Mark, that question does not arise.

**Sen. Mark:** Can the Minister indicate whether the mother of the dead child has been called upon, or evidence, information, facts surrounding this incident involving the mother of that child has been the subject thus far of any investigation by the relevant authorities in Trinidad and Tobago?

**Madam President:** Sen. Mark, I will not allow that question either. Next question, Sen. Mark.

### **Trinidad and Tobago Coast Guard**

#### **(Use of force policy)**

**91. Sen. Wade Mark** asked the hon. Minister of National Security:

Given the tragic circumstances involving the death of a baby boy on the high seas as well as the injuries sustained by the child's mother on 6th February 2022, can the Minister outline:

- (i) the use of force policy used by the Coast Guard when engaging migrants in high sea chases; and
- (ii) the measures, if any, to be taken by local authorities to avoid such incidents in the future?

**The Minister of National Security (Hon. Fitzgerald Hinds):** Thank you yet again, Madam President. The actions of the Trinidad and Tobago Coast Guard and the circumstances involving the unfortunate death of a migrant child within Trinidad and Tobago's territorial waters are referenced in a pre-action protocol



letter issued to the Minister of National Security in February 2021, and as such and in consequence, it would be inappropriate for me to comment further in this forum on that matter.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, we are not dealing with “no” pre-action protocol letter. The matter is not properly before the courts.

**Madam President:** Sen. Mark, are you making a statement or are you asking a question?

**Sen. Mark:** No, I am asking you for guidance, Madam President. If this is a sub—

**Madam President:** No, Sen. Mark, ask a question please.

**Sen. Mark:** Yes. Madam President, can the Minister indicate to this honourable Senate what concrete measures or policy measures or guidelines have been issued to the Trinidad and Tobago Coast Guard to avoid a repetition of such an incident which involved the death, the unfortunate death, of another individual, be it infant or be it adult? Have any guidelines been handed down?

**Madam President:** Sen. Mark, that question is not allowed.

**Sen. Mark:** Madam President, can the Minister categorically indicate to this Parliament, whether there is in existence at this time a use of force policy utilized by the Coast Guard when confronting strangers, migrants, on the high seas of Trinidad and Tobago waters?

**Madam President:** Sen. Mark, that question is a repetition of the question that you have posed, and an answer has been given. So, can you ask another question?

**Sen. Mark:** Can I ask the Minister, Madam President, whether the Government intends to issue any new guidelines as it relates to this policy, use of force policy, in the future?

**Madam President:** Sen. Mark, that question also does not arise. You have one

more.

**Sen. Mark:** I am okay, Madam President.

**Madam President:** Next question then.

**NWRHA Doctors  
(Medical Negligence)**

**92. Sen. Wade Mark** asked the hon. Minister of Health:

Given the operation conducted by a team of NWRHA Doctors involving lye which resulted in the patient requiring reconstructive surgery at a cost of USD\$116,000.00, can the Minister indicate whether action will be taken against the said team for medical negligence?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you much, Madam President. It is unfortunate that I am called upon to answer this same question twice in this same Chamber, posed by the same Senator, and I will give the same answer that I gave three weeks ago.

It is well known in the public domain that this matter is before the High Court of Trinidad and Tobago, case No. CV2020—00382. It is, therefore, subjudice and it will therefore be improper to comment further on this matter.

**Sen. Mark:** Madam President, can I ask the hon. Minister, in light of this particular incident, can the Minister advise this honourable Senate whether action has been taken to address this matter as it relates to new guidelines and policy measures at this particular institution, or at all institutions governed or under the direct control of RHAs in Trinidad and Tobago?

**Madam President:** Sen. Mark, based on the answer that has been given I would not allow that question.

**Sen. Mark:** So, Madam President, is the Minister—is there a policy, or can the Minister share with this Parliament whether there is a policy in place to

compensate victims of medical negligence as it relates to operations at the various RHAs?

**Madam President:** Sen. Mark, I will not allow that question.

**Sen. Mark:** Madam President, can I ask the Minister to provide this honourable Senate with an update on the status of the said individual, as it relates to the welfare and health of that individual subsequent to surgery abroad?

**Madam President:** Sen. Mark, I would not allow that question because it does not flow from the question that has been posed.

**Sen. Mark:** Madam President, can the Minister indicate whether the Government intends to offer any sort of compensation to the said individual who has complained about this particular surgery?

**Madam President:** Similarly, Sen. Mark, I will not allow that question.

**1.55 p.m.**

### **SPECIAL SELECT COMMITTEE**

#### **SEXUAL OFFENCES (AMDT.) (NO. 3) BILL, 2021**

**(Extension of)**

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Madam President, having regard to the second interim report of the Special Select Committee of the Senate appointed to consider and report on the Sexual Offences (Amdt.) (No. 3) Bill, 2021 in the Second Session 2021/2022, Twelfth Parliament, I beg to move that the committee be granted an extension to June 30, 2022 to complete its work and submit a final report.

*Question put and agreed to.*

### **RECOGNITION OF THE CARIBBEAN COURT OF JUSTICE**

#### **AS THE FINAL APPELLATE COURT**

**Madam President:** Sen. Vieira.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Vieira, I remind you that you have 45 minutes.

**Sen. Anthony Vieira:** Thank you, Madam President. Madam President, I beg to move the following Motion standing in my name, that the Caribbean Court of Justice be recognized as the final Court of Appeal for Trinidad and Tobago.

*Whereas* in 2001 the States of the Caribbean Community established by agreement (by treaty) the Caribbean Court of Justice (“the Court”), convinced that the Court would have a determinative role in the development of Caribbean jurisdiction steeped in the ethos of the region;

*And whereas* Trinidad and Tobago, having ratified without reservation the agreement establishing the Court, is bound under treaty to refer its appeals to the Court in lieu of continuing to have them heard by the Judicial Committee of the Privy Council;

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

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

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

affordability, relevance and increased access to justice;

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

Madam President, usually I am able to quickly gather my thoughts and prepare my presentations. But I have to confess, this was a difficult Motion for me to prepare. Difficult because I hold strong views on the subject, and it is hard for me to restrain my passions. Difficult because there is so much literature on the CCJ. Believe me, if there is any article out there about the Caribbean Court of Justice, I have read it. The unfortunate result being that I found myself suffering with infoglut. Difficult because of the outstanding eloquence of the legal luminaries who have written on the subject.

If one is not overwhelmed by their erudition, one ends up trying to sound like them, which is problematic for me because I like to value originality. Further, I find myself constrained to quote extensively, if only to avoid being accused of giving a singular personal opinion. And, because the nature of this subject requires supporting views and insights from those who have actually sat on the bench, from those who have had considerable judicial experience.

Let me state from the outset, that nothing in this Motion is intended to insult or denigrate the significant contributions made by the Privy Council and its judges to Trinidad and Tobago over many years. Doing so would be ungracious and ungrateful, and worse, it would be disrespectful of what still is our final court of appeal. And further, while it has tremendous significance for resolving trade disputes, I will not be referring to the CCJ's original jurisdiction as that really is not germane to this Motion, the focus of which is about delinking from the Privy

Council and making the CCJ this country's final appellate jurisdiction.

As much as I would love to, time does not allow me the luxury of analysing the vast amount of statistical and comparative data, showing how the CCJ outperforms the Privy Council on so many levels, ranging from the number and variety of cases being handled, judgements issued, and the legal costs which are so much cheaper. As much as I would love to, I do not have the time to delve into the history leading to the establishment of the CCJ. Though that is a very rich and interesting adventure, reaching back to pre-independence. As much as I would love to, I do not have the time to big-up the innovativeness of the CCJ, which long before COVID was an entirely paperless court, using electronic filings and routinely conducting hearings via video conferencing. I believe the CCJ was the world's first paperless court. Given the compressed time frame, besides dispelling certain misplaced fears, I will confine my focus to four key themes which I hope, whether singly or collectively will persuade hon. Senators that it is high time, it is high time to complete the break with our colonial past in favour of the Caribbean Court of Justice.

**Hon. Senators:** [*Desk thumping*]

**Sen. A. Vieira:** In the words of former Caricom Secretary General, Mr. Edwin Carrington, the CCJ is the court of the Caribbean people, by the Caribbean people, for the Caribbean people. It is the true voice of Caribbean people for vindication of our rights. My key themes on this Motion are:

- The need for appellate judges, especially when making decisions affecting policy, to be in sync with the society they serve;
- The incongruity of a proud Republic such as ours having to rely on a colonial court for resolving its most important legal matters; and

- Trinidad and Tobago's legal and moral obligation under international law to entrench the CCJ as the final court of appeal; and last
- The importance of access to justice.

Now, as a backdrop to these key themes, I would ask hon. Senators to bear in mind the separation of powers principle which recognizes our Constitution as the supreme law. As Senators are aware, while we in this Parliament may make laws, the meaning of those laws, the meaning of that legislation is what the court says it is. And given that any law made by us can be struck down by the Judiciary for contravention of the Constitution, judges involved should have an understanding of the social and political values at stake. Democracy is all about checks and balances, and great pains have been taken in drafting the Constitution as a design system to guard against the Executive having unchecked power.

Each of the three main branches, Parliament, Executive, the Judiciary, must exercise power in its own constitutional sphere while maintaining mutual respect for the corresponding legitimacy of the others. The due exercise of each authority should not be hindered by the agencies responsible for the other two. The need for judges, therefore, to be sensitive to social and political values is very relevant, and especially so, when high constitutional principles are at stake, and when treating with questions of policy. Now, this segues into my first theme which relates to the issue of our constitutional identity, and whether it is appropriate for judges who are far removed from our society to serve as final arbiters without any understanding of our cultural and behavioural norms. In his book, *Caribbean Constitutional Reform: Rethinking the West Indian Polity*, Prof. Simeon McIntosh points out—and, Madam President, with your leave I would like to quote? It is a long quote but it is an important quote. This is what he says:

Our collective identity is created by and perpetrated through a public discourse which consists of the vocabulary, ideologies, symbols, images, memories and myths that have come to form the ways that people think and talk about their political life. And one of the principle modalities of collective decision making in a democratic society by which the Constitution is given reality in the lives of the people, and by which their collective identity is continually defined is that of adjudication. For it is in adjudication that a court apprehends the basic terms of the image of the people's political identity in order to make it real. The instrument of the court's expression is the judicial opinion itself and authoritative political text which supplements the Constitution. This therefore means that the supreme court of a nation as the ultimate interpreter of the Constitution is a defining agent of that people's collective identity. For us that institution is the British Privy Council. It means then that by retaining the British Privy Council as the ultimate interpreter of our Constitution, we have made it a defining agent of our collective identity. This is the single most compelling argument for the Caribbean Court of Justice, for it is an argument from sovereignty, the right of self-definition. If we are to become our own authors we are obliged to make the words of our Constitution our own.

In other words, the development of the law must be rooted in the society in which it is to apply. Former Chief Justice and the first President of the Caribbean Court of Justice, Mr. Michael de la Bastide, he recognized that constitutional interpretation involves the exercise of a powerful judicial discretion which often requires judges to make decisions which are essentially policy decisions, not very different to the kinds of decisions that are made by a democratically elected Parliament. In an article entitled, "The Case for a Caribbean Court of Appeal", he argues that:



In making such decisions a judge is not unearthing some universal verity but is determining what is best for a particular society in the circumstances existing at a certain point in its history.

In Mr. de la Bastide's considered opinion, it is essential. It is essential that appellate judges should have an intimate and first-hand knowledge of the society upon whose behalf their decisions are made. Not only because they will be better informed about the needs of that society, but also because residence in and membership of that society is the most salutary form of accountability. That is at pages 402 and 403, "The Case for a Caribbean Court of Appeal". In an article entitled "The Monarchy, Republicanism and the Privy Council: the Enduring Cry for Freedom", judge and former President of the International Criminal Tribunal for the former Yugoslavia, Mr. Patrick Robinson, describes this issue as "one going to the heart of the identity and self-image of our people".

Now, I am truncating his language at pages 450 and 451.

By far the worst relic of enslavement, indentureship and colonialism is that we have been left with a muddled sense of our identity. Colonialism has left engrained in our psyche the feeling that we are not good enough. That what we look like is not good enough, and that what is foreign, especially if it is white, is better. The Monarchy and the Privy Council comprised of foreigners ignorant of our culture, living thousands of miles away, many of whom have never set foot in this region, and who have precious little in common with our people, are an anachronism that we should not be asked to endure any longer.

This disconnect between the Privy Council and our country, arising from remoteness, was verified by Lord Hoffmann, a member of the Privy Council, in an address to our law association here on the 10<sup>th</sup> of October, 2003, and this is what

Lord Hoffman said:

“It is an extraordinary fact that for nearly nine years I have been a member of the final court of appeal for the independent Republic of Trinidad and Tobago, a confident democracy with its own culture and national values, and this is the first time that I have set foot upon the islands. No one unaware of the historic links between the islands and the United Kingdom would believe it possible.”

Lord Cooke of Thorndon, a New Zealander who sat in the Privy Council for many years, also recognized that direct debate of policy considerations was regular fare in the court, and that since 1986 he converted to the view that development of New Zealand’s legal system required replacement of the Privy Council. In his view judges in the United Kingdom, however eminent and enlightened can only have a superficial acquaintance with New Zealand’s conditions and problems. But I would suggest that the same applies to Trinidad and Tobago. And that quote was taken from *The Commonwealth Lawyer* in an article of April 2003.

Turning now to my second theme which concerns the incongruity of a colonial institution serving as a final appellate court of our autonomous Republic. The Privy Council is a relic of colonial times, set up in 1833, the year slavery was abolished, to hear and determine appeals from the plantations and colonies of Great Britain. It was later codified in our Constitution at the time of Independence as our final court of appeal, in the belief that our legal traditional was still too new to have produced judges with enough experience to sit on a court of final appellate jurisdiction. Well, today that belief is entirely baseless. Today, when of the former colonies only three independent countries still retain a right of appeal to the Privy Council, we have lost step with the rest of the Commonwealth, even though we became Independent over 60 years ago, even though we retained Republican status

46 years ago; you do not have to look very hard to see the irony. Autonomous means independent and self-governing, not controlled by outside forces. Republic means a state in which supreme power is held by the people and their elected representatives, and which has an elected or nominated President rather than a Monarch.

Former Chief Justice, Sir Hugh Wooding expressly identified the link between republicanism and abolishing the right of appeal to the Privy Council. He saw it as incongruous, that we should want to become a republic, and yet look to a monarchical institution for justice from our courts. Unsurprisingly the discontinuance of appeals to the Privy Council was one of the key recommendations of the Wooding Constitution Commission. Former Secretary General of the Commonwealth, Sir Shridath Ramphal, in a public lecture in Port of Spain, warmly waxed on the inherent contradictions, and our unacceptable hesitancy, and I quote:

It is almost axiomatic that the Caribbean Community should have its own final court of appeal in all matters. A century-old tradition of erudition and excellence in the legal profession of the region leaves no room for hesitancy. I am frankly ashamed when I see the small list of Commonwealth countries that still cling to that jurisdiction. Now that we have created our own Caribbean Court of Justice in a manner that has won the respect and admiration of the common law world, it is an act of abysmal contrariety that we have withheld so substantially its appellate jurisdiction in favour of the Privy Council.

You hear him? An act of abysmal contrariety.

We who have sent judges to the International Court of Justice, including, by the way, former President Carmona to the International Criminal Court for

former Yugoslavia, to the presidency of the United Nations Tribunal for the Law of the Sea; we from whose Caribbean shores have sprung in lineal decent

the current Attorneys General of Britain and of the United States. This kind of heritage and hesitancy must be repudiated by action. Action of the kind Belize has taken to embrace their appellate jurisdiction of the CCJ and abolish

appeals to the Privy Council. It is enlightened action taken by way of constitutional amendment. The truth is that the alternative to such action is too

self-destructive to contemplate.

He ends:

If we remain casual and complacent about such anomalies, we will end up making a virtue of them and lose all we have built.

Former Attorney General and Chief Justice of Barbados, Sir David Simmons was equally incensed about the disjuncture the between independence and retention of the right of appeal to the Privy Council. He said at page 266 of *Caribbean Constitutional Reform*:

The independence of the States of the region will not be complete, is not complete, when our Constitutions entrench a foreign tribunal as our final court of appeal. It is inconsistent with independence. It is an affront to our sovereignty and the sovereignty of independent nations. You may say this is an emotional argument. But these psychological considerations are important, and the symbolism is not to be discounted.

Well, given such strong sentiment from the foremost jurist and thinkers of our region, it was not surprising after much thought, after careful deliberation that

Trinidad and Tobago joined with the other Caribbean countries in committing to the establishment of a Caribbean Court of Appeal in substitution for the judicial committee of the Privy Council. And this leads me to my third theme, which concerns the fact that Trinidad and Tobago made that commitment without reservation. We made that commitment in a solemn and binding treaty, yet 21 years later, 21 years later we are still in default. It is sad. It is sad when someone, whether it is a friend or a loved one, fails to keep their word and their commitments. But it is even worse when states default on their commitments.

In international relations, *pacta sunt servanda*, Latin for “agreements must be kept”, is a fundamental principle of law. Under international law every treaty enforced is binding upon the parties to it, and must be performed by them in good faith. That rule is of prime importance to the stability of treaty relations, just as in contracts and agreements of a legal nature in domestic law, the State has a duty to perform its binding obligations. I would submit that this is a matter of fundamental importance. Trinidad and Tobago’s failure to abide by and to fulfil its treaty commitments is disappointing and without justification. Worse, inside this paradox is a dilemma, because the CCJ is situated in Port of Spain, going on 17 years now, since 2005.

I want now to turn to the gap between reality and certain fears and misapprehensions which have been put forward as the reason for hesitancy in establishing the CCJ as our final court of appeal. One was that the CCJ was created to be a hanging court, that judges of the CCJ may be less qualified or vigilant than their counterparts in the Privy Council, and that, oh, there is the risk of political interference, you know, there could be pressure from the Executive. Well, let us look at these fears and apprehensions. The suggestion that the CCJ was created as a device to neutralize the Privy Council’s perceived opposition to the death penalty,

in particular, to circumvent the Privy Council's 1993 decision of Pratt and Morgan. That is just ludicrous. First, it is a matter of record that the CCJ's origin predates the Pratt and Morgan decision. Second, in the Barbadian case of *Boyce and Joseph v the Attorney General*, where the CCJ addressed the same issues as in Pratt and Morgan, the CCJ demonstrated in no uncertain terms, that they are fully prepared to stand up to the regions' governments in defence of fundamental rights.

**2.25 p.m.**

And thirdly, and as the Privy Council has just recently confirmed in the Chandler decision even though capital punishment may be regarded as a cruel and an unusual punishment it is nonetheless constitutionally valid. In Chandler, the Privy Council unreservedly recognizes that it is for Parliament to decide whether the law and capital punishment should be amended or repeal to reflect changes in thinking about fundamental rights and freedoms and to accommodate changes in social and political values. Parliament is the place to settle issues which the ordinary man regards as controversial. As regards the purported concern that CCJ judges may be less vigilant or qualified than their counterparts in the Privy Council, first, as was pointed out by Sir Shridath Ramphal the Caribbean has sent judges and jurists to courts worldwide, many of whom have served with great distinction.

Second, at least three Caribbean judges have sat on the Privy Council: Michael de la Bastide, Sir Dennis Byron, and Dame Joan Sawyer from the Bahamas. And third, as Professor Rose-Marie Belle Antoine, recently appointed principal of UWI, incidentally another institution of Caribbean excellence. She has pointed out:

“...Commonwealth Caribbean practitioners and judges have themselves contributed to the collective wisdom of the Privy Council...This is

especially so in relation to constitutional...matters.”

So if there is an issue here I would say it pertains to the propensity in some quarters to give ill-considered reverence to that which is foreign while rejecting that which is ours. What does this say about our will to self-respect, self-worth, self-esteem, identity? And as regards to the concern that judges of the CCJ would succumb to pressure from the executive, first the record would show that government is often unsuccessful in important matters which come before our courts.

I have been practicing since 1983 and I cannot think of a single case in which it has been suggested that our superior courts have yielded to pressures of any kind. Secondly, CCJ judges are not directly appointed or elected by their member states, rather they are chosen and appointed solely by the Regional Judicial and Legal Services Commission comprising representatives of regional bar associations, civil society and academic institutions, totally independent of political influence. The Commission is insulated from external influences as members are explicitly forbidden from acting other than independently. The majority of the Commission sits *ex officio*, none are politicians.

Further, when judges are selected for appointment to the CCJ no consideration is given to equitable, geographical distribution. They are chosen solely for their individual expertise. Criteria for appointment includes: extensive judicial experience; high moral character; intellectual and analytical ability; sound judgment; integrity and an understanding of people and society. Significantly and most importantly, the CCJ is guaranteed, guaranteed financial autonomy from the regional governments, because the funds that come for running the court have through international financial markets by the Caribbean Development Bank. And those funds have been placed in a trust, managed by a board of trustees. The

manner of judicial appointments and the guaranteed financial autonomy of the court has in fact been commented on by experts throughout the world, experts knowledgeable about the operations of international courts. Hon. Senators you may take comfort in knowing that the CCJ is hailed as a model for the selection of independent, high quality judges.

My fourth theme relates to access to justice. And on the one hand to an expensive court 5,000 miles away and on the other hand to the CCJ which is just literally a couple blocks away and whose fees have been set to accommodate the Caribbean pocket where access to hard currency is often in short supply. Now, having been involved in two commercial matters which went to the Privy Council, I can say I was not impressed. The outcome was not justified by the cost involved. Cost which included the retaining of Privy Council agents, travel and hotel accommodation, none of which was recoverable in taxation. Suffice to say, given the staggering cost involved, unless parties are represented by the lawyers who are acting pro bono, the Privy Council is not accessible to most citizens. As one commentator put it, it is only the wealthy and the wicked who go to the Privy Council.

Now, juxtaposed against that cynical observation is a report from Sir Dennis Byron, former President of the CCJ, in a speech he gave last year at UWI. Now I am truncating the excerpts at pages 7 and 8 where he speaks about expanding access to justice:

“As a judicial body, the CCJ has already embarked upon the task of developing Caribbean jurisprudence by expanding access to it.

...between August 2005 and October 2011...Forty-six (46) appeals and forty (40) applications”—were—“filed”

Of that number:



“Thirty-eight (38) appeals and thirty-nine (39) applications have been determined.

The number of appeals indicates that ordinary folk have additional scope and opportunity to be heard and to obtain justice. An interesting trend is the fact that the number of cases filed exceeds the total of criminal and constitutional cases. In other words, there are more cases filed in which the State is not a party than cases in which the State is. This is an important fact and change from the pattern in the countries which do not have access to the CCJ.

The fact is also clear that the civil litigants at the level of the CCJ are not limited to corporate or wealthy people because a number of civil appeals have been heard in forma pauperis showing that the ordinary citizen has been benefiting from the existence of the CCJ—even—“indigent persons have been accessing the Court.”

Now that is in stark contrast to what obtains at the Privy Council, where most appeals are against convictions for murder and appeals raising constitution issues arising out of the imposition of the death penalty, the number of appeals in civil cases being relatively few.

Now before I start wrapping up it would be remiss not to point out that there are many in the UK who consider it unfair that England already struggling with stretched resources must bear the burden for maintaining the Privy Council on matters which are of no interest to anyone in that country. Further, while they have not complained officially, and in typical understatement, some law Lords have expressed surprise about our unwillingness and reluctance to cut the colonial umbilical cord. Indeed in 2009 Lord Phillips, the then President of the UK Supreme Court, is reported to have said:

“...that he was searching for ways to curb the disproportionate”—amount

of—“time”—the Privy Council dedicates to hearing appeals from the Caribbean.

The writing is on the wall. It is time we move on. Do we need to unceremoniously booted out?

In conclusion let me recap my key points in reverse order. It is unfair to expect the UK to continuing carrying the burden of being our final appellate court. It is time to cut the colonial umbilical cord. In terms of access to justice the CCJ beats the Privy Council hands down. Besides being closer and cheaper, the CCJ's structure and approach makes it a far more inclusive court than the Privy Council. The highest caliber of judges is assured given the carefully worked out criteria and processes for selection of judges to the CCJ.

Further, the Chinese wolves and the financial arrangements in place should negate any perception, every perception of undue political influence. The fear that the CCJ was set up to be a hanging court, but that view just is not grounded in reality. Trinidad and Tobago has a legal obligation under international law to fulfill its treaty commitments. As a Republic it is incongruous that a colonial institution should serve as our final appellate court. To those who believe we are inferior let me say no one can make you feel inferior without your consent. Final courts of appeal have a duty to act in a politically and socially sensitive way. They should have a good understanding of the local situation. Accordingly it is untenable especially when high constitutional principles are at stake and when questions of policy hang in the balance for judges who are the final arbiters to be disconnected from our cultural and behavioral norms and from our social and political values.

Madam President, it is time to stop evidence-resistant thinking and judgment-warping irrationalities. We should not be taking counsel of our affairs—we should not be taking counsel from the naysayers. It is time to square the

incongruities and the contradictions. It is time to take responsibility for our future. What has been need not always be. It is time for Trinidad and Tobago to accede to the CCJ in its appellate jurisdiction so that our civil, criminal and constitutional appeals can be heard by that court, a court I have every confidence is fully up to the task. Madam President, I thank you and I beg to move.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Someone needs to second the Motion.

**Sen. Thompson-Ahje:** Madam President, I beg to second the Motion, reserve my right to speak with courage, conviction and honesty.

*Question proposed.*

**Madam President:** The Attorney General.

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC):** Madam President, I ask your leave firstly to refer to some quotations and ask your leave to allow me to be a poor second to Independent Sen. Anthony Vieira in support of his Motion. I pay tribute to Anthony Vieira, Independent Senator and applaud his very timely Motion brought before this august Chamber—

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:**—the Senate of the Republic of Trinidad and Tobago. Permit me the opportunity, Madam President, to affirm today that within the first week of my assumption in office as Attorney General and Minister of Legal Affairs, Prime Minister Dr. Keith Rowley gave me his unequivocal support for making a main plank of my tenure in office the completion of this country's journey to fulfill its treaty obligations of acceding to the Caribbean Court of Justice as our final Court of Appeal to replace the Judicial Committee of the Privy Council.

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:** Madam President, we signed, we affirmed and we are here in breach. We must move to accomplish that three-quarter vote in the other place and the two-thirds vote in this august Chamber. In that regard as we commence this discussion I am pleased to put on record the remarks of the then Prime Minister, now the Leader of the Opposition, on the 25<sup>th</sup> of April, 2012 in her statement to Parliament signaling her government's intention then to bring before the Parliament legislation to secure the limited abolition of appeals to the Privy Council. And this is what the hon Prime Minister then, now Leader of the Opposition said:

“It may have always been...in the contemplation of the founding fathers, that as our democracy grew from strength to strength and our Judiciary developed its own confidence and expertise that the time would come when we would have to take responsibility...ourselves for the final adjudication of our disputes consonant with the pristine principles of justice and fair play and...say goodbye to the Judicial Committee of the Privy Council as our final Court of Appeal.”

Madam President, I can think of no reason, not rational or otherwise, that could possibly now present any obstacle to the Leader of the Opposition therefore lending her support to the requisite votes to accede the Republic of Trinidad and Tobago to the Caribbean Court of Justice as our final Court of Appeal. Trinidad and Tobago is uniquely positioned to take that final step as a member of the Revised Treaty of Chaguaramas and a signatory to the agreement establishing the Caribbean Court of Justice.

This Republic is after all the seat of the Caribbean Court of Justice, the seat of the Caribbean Court of Justice Trust Fund and has contributed the first President

of the court, the Right Hon. Mr. Justice Michael de la Bastide, Trinity Cross, Queen's Counsel. I embrace with enthusiasm and passion therefore the opportunity to participate in this final journey and thereby to acclaim and to salute this independent sovereign nation of Trinidad and Tobago, peopled by a proud, intelligent, creative, vibrant and diverse peoples among whom to this day we count and pay tribute to our indigenous peoples, the Santa Rosa First Peoples Community. On the subject of the role played by the Judicial Committee of the Privy Council in this history, this country's history, I dare say the Chief, Ricardo Bharath Hernandez of the First Peoples Community might find himself immediately able to agree, I dare say with a touch of quiet irony with the statement of Lord Brougham of the Judicial Committee of the Privy Council who is recorded as stated in 1828 that:

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

Irony, because as I chronicled that statement Chief Hernandez no doubt will recall that his proud First Peoples with their rich history and traditions were after all “discovered” and “civilized” by their former colonizers not least among whom were the British and now have to reside with the final Court of Appeal being that tribunal that promises extremely in adequate redress.

A very relevant historical masthead in this discussion is to remind ourselves that the Judicial Committee of the Privy Council, Madam President, derives its authority over our peoples from what has been referred to as the residuary jurisdiction which the sovereign head of the United Kingdom possess over all

British subjects. It was an important instrument of United Kingdom Government which conducted its work through committees, one of which was, not unremarkably, the committee for trade and foreign plantations to which petitions went from within the British Empire. It is that committee which became the judicial arm of Her Majesty's Empire to be called the Judicial Committee of the Privy Council eventually formally constituted by legislation in 1833.

The 1828 vintage of the judges of the Privy Council themselves declaring the extremely inadequate redress which that institution is equipped to provide is a theme which continues to be repeated. And my colleague, Sen. Vieira, has already reminded us of the statement of Lord Hoffman at the annual dinner of the Law Association in 2003 who acknowledge that:

“...our remoteness from the community has been a handicap...”

In an early speech, Madam President, the Right Hon. Mr. Justice Michael de la Bastide, then at the time still a private practitioner of the Inner Bar of Trinidad and Tobago, made out a compelling case why the decisions of the Privy Council in relation to many of the repeals from the Court of Appeal of Trinidad and Tobago demonstrated that the Privy Council was at odds with the imperatives of a developing independent sovereign nation concerned to script its own path to self-government. I will not dwell on the actual cases some of which I was involved in, but I wish to acknowledge and place on record the continuing relevance today of the recommendations and prescient conclusions of that paper delivered in 1995 and which I endorse entirely for today's discussion with the peoples of Trinidad and Tobago in this august Chamber.

The main thesis of Mr. de la Bastide was stated in these terms:

“I do not recommend that we retain or abolish appeals to the Privy Council depending on whether we like or dislike the decisions which their Lordships

have been handing down... What I do think we should look at is the nature of the issues which a final Court of Appeal, whose jurisdiction is virtually unlimited, is called upon from time to time to decide, as illustrated by these recent cases. When we do that, we see that a number of... cases which have extremely important consequences for the whole community are really policy decisions involving the weighing of competing interests and considerations. The competition is typically between the interest of the individual, whether it is to humanness or fairness or some such consideration, and the interest of the rest of the society to be protected and to have the law of the land enforced.

Neither the common law, which consists really of the principles derived from decided cases, nor statute law”—continued, Mr. de la Bastide—“can provide a clear and certain answer to every question, and the decisions which a final Court of Appeal is called upon to make in order to fill the interstices are sometimes not very different from those made by a democratically elected Parliament.

I would have thought that it was essential for the decision-makers in such cases to have an intimate knowledge acquired at first hand of the society for whom the decision is made. Another aspect of the matter is that while no one suggests that judges should make their decisions by reference to public opinion, it is a salutary form of accountability (if not the only one in practice) for a judge to live in, or at least close to, the society for whom he makes decisions of this kind.”

Mr. Michael de la Bastide was speaking there to the concept of the Caribbean Court of Justice being an apex court. That is to say, the highest judicial court of a sovereign independent country. He was to become the first President of the

Caribbean Court of Justice as my colleague, Sen. Vieira reminds us, inaugurated on the 12<sup>th</sup> of May, 2015, right here at Queen's Hall, Port of Spain.

In his recent memoirs: "*Within The Law*", 2021 and I am privileged to have only this month received from him an autographed copy. He reaffirms his commitment to those convictions and states at 2021, the Right Hon. Mr. Justice Michael de la Bastide:

I must note that one of the major disappointments of my presidency was the failure of Trinidad and Tobago to accept the appellate jurisdiction of the court in place of the Privy Council. It is to me a continuing source of both amazement and grief that the compelling arguments in favour of such a change have not been strong enough to overcome the deep seated fears of the impact of local influence on the judgment of the court.

After 15 years of the court's operation, Mr. Justice de la Bastide continues in his 2021 memoirs:

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

Madam President, there can be no question that the Caribbean Court of Justice is now established with a distinction and quality and character which emphatically moves the discussion away from the earlier concerns about replacing the Privy Council. In both its original and appellate jurisdiction, the court is defining and



developing the concept of Caribbean jurisprudence at its very core imbuing pride among the peoples of the Caribbean community in terms which immediately resonate within and throughout the community. I use the word resonance for the evocative power and simplicity of that word. The court's decisions are being discussed and debated by Caribbean peoples in their daily lives in a manner in which those decisions have never before been addressed, far less discussed in the validating streets of our publics from Kingston in the North through Bridgetown to Port of Spain and across to Belmopan.

In the *Trinidad Cement v Caricom* decision the court pronounced that by signing and revising and ratifying the Revised Treaty and conferring on the score the compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Revised Treaty, the member states transform the erstwhile voluntary arrangements in Caricom into a rule-based system creating and accepting a regional system under the rule of law which the Caribbean Court of Justice now enforces without fear or favour of any government of the region.

In its 2013 *Shanique Myrie* decision, that jurisprudence affirmed a core fundamental of Caribbean people, that is to say, freedom of movement within the Caribbean community. We will recall that that case, *Shanique Myrie v State of Barbados and the State of Jamaica* intervening, involved a young Jamaican national who had been detained in Barbados by immigration nationals on entry subjected to invasive searches and deported to Jamaica. The court granted her declaratory relief and damages against the government of Barbados.

**2.55 p.m.**

In its reasoning, the court reaffirmed the basic presumption that the Barbados Immigration Acts are there to govern the domestic law of the individual

sovereign nation, in that case Barbados. But went on to say:

“...it is the obligation of each State, having consented to the creation of a Community obligation, to ensure that its domestic law, at least in its application, reflects and supports Community law.”

And that community law, Madam President, was the right of every Caribbean citizen, freely and without harassment by public officials impressed with their sense of importance to stop Caribbean persons from exercising that birth right, that is to say, the freedom of movement across the Caribbean.

Equally stamped with pedigree, Madam President, are the decisions of the court in its appellate jurisdiction, not least a decision coming out of Belize, of Marin and Boyce out of Barbados. And we are reminded of other decisions of the Caribbean Court of Justice, the Maya Leaders Alliance case which affirmed the property rights of the First Peoples of Belize, the Maya. And as well—and this is a significant aspect of an apex court which today the Caribbean Court of Justice continues to exercise. That is to say, they continued supervisory role that is being played by the court even now with the case having been decided to assist the parties in working out the consent order entered between them to ensure a transparent participatory and just process.

We are reminded of the Ventose case. That is to say, the case in Barbados which brought home to Caribbean people the realities of the movement of people within the Caribbean, and their protection of legislatively guaranteed rights to vote. In that case, the right of Mr. Ventose, who was a lecturer at the university at the time, to vote in the Barbados election. The Myrie case I have already mentioned, and then there are the cases of Nervais, Severin, McEwan which ensure full protection to constitutionally guaranteed fundamental rights and freedoms especially in the face of abhorrent or aberrant incursions from colonial laws.

One of the—I think and this is my personal thesis and I am happy to find that it is shared by other persons to whom I have enormous respect, one of the most persuasive and perhaps the most diminishing of qualities which has so far prevented us from acceding to the Caribbean Court of Justice, Madam President, I dare say, is a lack of confidence. The current president of the court, the hon. Mr. Justice Adrian Saunders, delivered a lecture in 2020, in 2010, I beg your pardon, entitled “The Fear of Cutting the Umbilical Cord...the Relevance of the Privy Council in Post Independent West Indian Nations”. That was on the 28<sup>th</sup> of January, 2010. He was not yet then the president of the court which he is now. He spoke of many things, but that which resonates still with me was his treatment of that critical human quality, confidence, and I will ask your leave to read a passage from his speech. Quote:

“There are at least two other dimensions to this question of confidence that may be considered. Professor Simeon McIntosh notes that the colonial imperial process - the experience of being colonized - would have planted in the West Indian consciousness a negative perception of self and he quotes the very distinguished Caribbean writer, George Lamming, as stating:

‘[Colonialism] was not a physical cruelty. Indeed, the colonial experience of my generation was almost wholly without violence.’” Not—“...torture, no concentration camp, no mysterious disappearance of hostile natives, no army encamped with orders to kill. The Caribbean endured a different kind of subjugation. It was the terror of the mind, a daily exercise in self-mutilation... This was the breeding ground for every uncertainty of self.”

Mr. Justice Adrian Saunders continues:

“This ‘uncertainty of self’ is often reinforced by comments such as those made recently at Question Time in the House of Lords by Lord Anderson of

Swansea who rendered the opinion that the credibility...”—the very credibility—“...of the...”—Caribbean Court of Justice—“...is enhanced by the fact that a British judge and a Dutch judge serve on it.

The other circumstance that...”—that Mr. Justice Saunders in 2010 that—“...may well be relevant to this question of confidence is that of the changing role of...judge. That role is today very different, far more complex, from what it was in years gone by when the Judicial Committee was in its heyday...”—developing—“...the reputation it has earned. In the past, it would have been easier for the judges of the Judicial Committee to perform adequately the role of a final court of appeal. For a start, the role of Judges rarely went beyond the resolution of a dispute between litigants.

Times have changed. And so has the role of a judge.”

And here we are speaking to the confidence and I am not quoting from Justice Saunders, now. I have interposed to introduce my remarks. We are speaking to the quality of confidence which our people have to have in order to invest trust in the final apex court which will be invested with the confidence to produce decisions for our own good.

Continues Justice Saunders:

“The attributes of competence, learning and experience are not always a sufficient package of skills to ensure an informed response to the extraordinary questions that must today be answered by judges. Resolving disputes is still the primary and most fundamental task of...judiciary but...”—today—“...judges do a whole lot more.”

He quoted from Madam Justice Beverley McLachlin at length, and went on to say—of Canada, that is to say in one of her papers—that Justice McLachlin’s:

“...views are even more apt in relation to judges of final courts...”—that is

to say, apex courts—“...who play a pivotal role in defining and shaping a nation’s jurisprudence. The point is that irrespective of how technically competent judges may be, if the judges who comprise a nation’s final court are entirely detached from an intimate understanding of that nation’s realities, there will always be present a risk, a danger of a disconnect between the jurisprudence they fashion...”—than—“...the needs and aspirations...goals and values of the people for whom the jurisprudence is being fashioned. This is not just true for the Caribbean. It holds good for any other civilization. It is...”—therefore—“...essential that...”—our—“...judges possess deep sensitivity to a broad range of social concerns.”

And when we read the judgments of the Caribbean Court of Justice over their 15 years of experience, we are humbled by the quality of reasoning, by the quality of connection which our judges of the Caribbean Court of Justice have, their understanding of the societies which have spawn them and which they now discharge the duty to, of sitting in adjudication over myriad complex, deep-rooted disputes that matter to every man, woman and child of our Caribbean community. And that is where with the greatest of respect, Madam President, it is so very critical that we have as our apex court of Trinidad and Tobago, a court which is born of us.

Today, two of the members of our Caribbean Court of Justice are a son and a daughter of this country, the Republic of Trinidad and Tobago.

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:** How could we possibly fear that our own supremely and empirically intelligent and fair judicial personalities are unable to deliver to us the justice which we require, and the fair play which is so important to any society. Madam President, some of the statistics that go to show the quality of

the Caribbean Court of Justice with respect to its function as an apex court are very, very important. So that when we look, for instance, at the fact that we now have countries, four countries, in our Caribbean, which are signatories to the appellate jurisdiction of the Caribbean Court of Justice, on the theme of my friend, my learned friend and colleague on the bench, Sen. Vieira, “Access to Justice”.

Barbados—Barbados has seen an almost 418 per cent increase in the number of decisions rendered by its final court in the 18 years since its accession to the Caribbean Court of Justice. Belize has seen 100 per cent increase in the number of judgments handed down by the Caribbean Court of Justice. Dominica has seen 133 per cent increase in the number of judgments handed down by the Caribbean Court of Justice. That speak to access to justice. The fact of the matter is—

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:**—that we can afford. The poor man and woman in the streets of the Caribbean community can afford to get access to the apex court, the Caribbean Court of Justice, their final Court of Appeal. They do not have to sell their homes and to mortgage their children’s homes to buy sterling pound to go to the Privy Council to pronounce on a boundary dispute over the size of a partition drain between one neighbour and the other.

Affordability. One of the factors that has contributed to the marked difference in the number of appeals before an Act and after accession to the Caribbean Court of Justice in those countries that I just spoken about to, is the affordability of accessing the Caribbean Court of Justice’s appellate jurisdiction. The CCJ (Appellate Jurisdiction) Rules makes specific provision to facilitate affordability of access; Rule 10.6, no security for cost or fees in criminal matters; Rule 10.18, in non-criminal appeals persons whose net worth falls below a particular threshold can apply for a waiver of fees and/or for security for cost. Fees

are capped on categories of appeals depending on the nature of the appeal, and fees payable to a party at cap on the basis of percentages of incremental dollar values of the claim.

The court is responsive to the fact that perhaps its most pivotal and important function is to provide the Caribbean peoples access to justice—

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:**—and access which Caribbean people do not have to the judicial committee of the Privy Council. And even when they get there, as the judges of the Privy Council themselves say, they are so far removed that they are unable to do justice on matters that involved deep-seated societal and other community issues.

The law reports are legioned, may it please you, Madam President, with reports—and I am not going to belabour it now. I am not going to bore this august Senate with the details, but the law reports are legioned with reports of the judges of the Privy Council so often saying on issues which have arisen on the appeal before them, that they will defer to the local courts because these are not matters which they feel confident of being able to speak to because the issues involved circumstances of local culture, local history and societal issues. So what do they do? They refer the matters back to the court. So a litigant has gone to the Magistrates' Court, gone to the High Court in one of these islands that has access to the Privy Council, such as Trinidad and Tobago, we get to the Court of Appeal, all at great expense, we get to the Privy Council, and then the Privy Council said this not a matter that I can competently pronounce on so I am sending it back to the court below so that those judges will pronounce. We are self-defeating in our fear of taking that ultimate step.

Trinidad and Tobago has made a substantial investment, Madam Speaker—

Madam President, I beg your pardon, in the investment that it has put into the Caribbean Court of Justice which has its seat here. The Caribbean Court of Justice trust fund has its seat here. The building that is occupied by the Caribbean Court of Justice is afforded by the Government of Trinidad and Tobago. Trinidad's loan which went towards its initial capital outlay has been repaid. Why are we not taking that final step of completing our sovereign independence?

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:** As an apex court, Madam President, the Caribbean Court of Justice is currently involved, across the region, in jurisdictions which are not even those that accede to its appellate jurisdiction, training judges across the Caribbean region. We do not get that from the Privy Council. The Privy Council does not come to the Caribbean and train our judges. Our Caribbean Court of Justice judges are across the region funding themselves to train practitioners, to train other judges, and to equip courts of this region to provide access to judges in the Caribbean.

I share Sen. Vieira's passion, that is probably obvious, and I share with degree of pain. Because as a Caribbean person, proud of being a Caribbean person, I find it difficult to understand and to accept why do we so lack confidence in ourselves to take that final step.

**Hon. Senators:** [*Desk thumping*]

**Sen. The Hon. R. Armour SC:** And I say this cautiously and I say it with respect, Madam President, there is a responsibility on all of us, and by all of us I mean deliberately those of us here in this august Chamber, all of us who belong to institutions of our Republic to discharge our responsibilities in a manner which promotes confidence and trust among our publics, so that we give to them good reason to affirm—the very fact that we discharge our public responsibilities give



them good reason to affirm why they should trust the institution of the Caribbean Court of Justice to become our final Court of Appeal.

So that the responsibility is not just to lay the blame on the fact that we have not taken that final step, but for each and every one of us, Madam President, to so conduct ourselves in a way in which we can hold our heads high and ask members of the public to continue to have confidence in us and our judges who are of the most empirical supreme quality so that we can take that final step. And I will be speaking more on this, Madam President, but I am very happy at this point to entirely endorse and to support the Motion of Independent Sen. Vieira this afternoon. Thank you very much.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Thank you. Thank you, Madam President. Madam President, I rise to make on behalf of the United National Congress, the alternative Government of the Republic of Trinidad and Tobago, my contribution to this Private Members' Motion presented by Sen. Anthony Vieira. And may I say—Madam President, what time do I stop?

**Madam President:** Sorry?

**Sen. W. Mark:** What time do I end?

**Madam President:** If you take your full time at 3.53.

**Sen. W. Mark:** Thank you. Yeah, thank you, Madam President. Madam President, I want to tell the Attorney General when he asked the very pertinent and relevant question why are we not taking this final step to embrace the Caribbean Court of Justice, and I may add to complete, Madam President, what some may call, the cycle of independence sovereignty and nationalism, and I will tell him why. We have no confidence in the People's National Movement Government and I will

demonstrate.

**Hon. Member:** [*Inaudible*]

**Sen. W. Mark:** I am saying that I am responding to the Attorney General who has asked why we are not taking the final step because, Madam President, I suggest that what we are dealing with today is not simply a court. This is not simply about the final court, the appellate court as it is called. This is about democracy, and if you get it wrong, Madam President, you could end up in an autocracy. You could end up facing tyranny, Madam President, and I want to make the distinction, from the word go, between what is called a parliamentary democracy and a constitutional democracy.

Madam President, in a parliamentary democracy like the United Kingdom, Parliament is king, Parliament is supreme. In a constitutional democracy the Constitution is supreme and not the Parliament. The Motion that is before us, let me say from the outset, is misplaced, it is flawed, and it is froth with grave dangers to the very sustenance, maintenance and perpetuation of our challenge and fledging democracy in this country.

The Minister of Trade and Industry is free to talk about patriotism. That is her right. But, Madam President, let us be serious, let us be serious. There is more security of tenure under our Constitution for the judges of the High Court, the judges of the Appeal Court, than there is for the judges of the Caribbean Court of Justice. Madam President, to remove a judge in this country, as you know, a tribunal has to be established if you are dealing with the conduct of a judge. And then the Privy Council, which is the highest court in this land, will make a determination. It is the judges, it is the Privy Council that would do that, Madam President.

You know, Madam President, under the CCJ, the President of the CCJ is

appointed by the Heads of Government under the agreement establishing the CCJ. They are known as contracting parties. Three-quarters of them, three-fourths, will determine if you become the president or you do not become president, and three-quarters can remove you as a president of the court or not. Madam President, how can the people of the Caribbean have confidence in politicians having the right to remove the President of the Caribbean Court of Justice? That is a mockery of our democracy. And you are telling us in Trinidad and Tobago, Madam President, that we must support the Caribbean Court of Justice, when the political influence and political interference is enshrined in an agreement? Madam President, I will show you in my contribution where the Privy Council had to shut down three Bills in 2004 that was brought by the Jamaican Government, of the former Patterson—I think his name was P. J. Patterson—Government. And, Madam President, you know why? Because it violated the Constitution of Jamaica. That is what this thing is about, Madam President.

The question that has to be posed, Madam President, is whether the CCJ in its current form is illegal and unconstitutional? So let us very clear. I am a nationalist, I am a patriot, but I do not trust the system. And I want to make it very clear, I saw in Sen. Vieira's Motion—I think recital No. 2 talks about ratification without reservation. Of course, there was ratification without reservation. But, Madam President, like the former Prime Minister who has gone to the great beyond and may his soul rest in peace, I refer to the former Prime Minister of our country when he was Leader of the Opposition. You know what he told the Parliament?—Patrick Manning, may his soul rest in peace. In 1987 the *Hansard* records on April the 28<sup>th</sup>—go and search it. Find it—you know what he told the Parliament? When ANR Robinson, Prime Minister, was talking about the Caribbean Court of Justice, even though it did not come about at that time, they

were talking about it, having a final Court of Appeal for the Caribbean, and he as a Caribbeanist and an internationalist talked about it. Hear what we were told. *Hansard* records Mr. Patrick Manning, former Prime Minister, admitting, Madam President, that he did not support the Caribbean Court of Justice. Patrick Manning did not support when he was the Leader of the Opposition. And, Madam President, you know why? He did not believe the time was right for it. Well we too, like Patrick, although he has gone on, we too do not believe the time is right for the abolition of the Privy Council.

**3.25 p.m.**

And you know what the former Prime Minister is on record as saying? “We do not trust them.” Madam President, “we do not trust them”, it is in the *Hansard*. So when my colleagues on the other side, Madam President, try to give the impression that the UNC endorsed it, signed off on it—yes, Mr. Panday did it in February of 2001, yes. Who is arguing that? But we were out of power by 2002. If you go to the records of *Hansard* when the former Attorney General was laying those documents back then, he talked about consultation with the people. The PNM came into power in 2002, had no consultation with the people and they rushed to have the CCJ established.

Madam President, we go further today. We are not only calling for consultation with the people, you know, we are saying referendum. We are saying have a referendum and get 75 per cent support because you need 75 per cent support of the House of Representatives which is three-fourths, for this thing to become law in Trinidad and Tobago. Talk to the people, meet the people, consult with the people.

Madam President, I have in my possession, whether we like him, we do not like him but he conducted a survey in 2019, NACTA poll. NACTA, they had a

survey. So when Sen. Vieira and my hon. Attorney General say it is timely to have this here, in 2019, only 17, 1-7 per cent of the population had any confidence in the CCJ. And not to talk about the local Judiciary, it was just about 27 per cent. So people do not have confidence. The problem is trust, political trust. There is none.

When we would have gotten rid of the PNM, maybe the people might reconsider it but we commit ourselves to holding, amending, bringing a new law in the country to have referenda. The reason why “Grenada cyah come, St Lucia cyah come, Antigua and Barbuda cyah come”, St Kitts and Nevis, in their Constitutions, they have to hold referenda. So it is not easy as how it is being made out, that those Caribbean countries do not want to come. The people do not have confidence in the Caribbean Court of Justice, that is why they are not coming, Madam President. They are not coming. So I want to tell Sen. Vieira from the outset we do not support your Motion, we reject your Motion completely. And I want to tell the country they could have faith in us, we will never let you down, we will never let the people down, we will never betray the people.

**Sen. Lyder:** [*Desk thumping*]

**Sen. W. Mark:** Madam President, let me share with you a recent speech given, excerpts rather, by Lady Rose to the Oxford Union published on the Supreme Court of England website where she is commenting on the importance of judges and the role of the court on a whole to a democratic society. A court is a very serious instrument, a serious institution. It is the guardian of the soul of any nation’s democracy. You have the wrong court and the wrong judges who are influenced politically, Madam President, you have problems. How can we support—I cannot understand how an Attorney General can rise here and ask us to support a measure where the Attorney General is aware that the politicians who are heads of governments and contracting parties under the agreement can remove and

appoint the President of the CCJ. How can an Attorney General call on us to support politicians removing a judicial officer who is at the helm of the CCJ? It is like telling me the Cabinet can remove and appoint the Chief Justice. How can that be real? Are we serious? How can foreigners have confidence in investing in a country with the CCJ as its head when the politicians have the right to remove the President of the CCJ?

Madam President, when you talk about the Regional Judicial and Legal Services Commission, according to my research and I can be corrected, these politicians, Prime Ministers, heads of Government, contracted parties, they have a right to appoint six out of the 11 including the President. So you have a Regional Judicial and Legal Services Commission who could appoint judges. But you know who is appointing them? The politicians. How can we have confidence in the Caribbean Court of Justice when politicians are appointing judges to the CCJ, when politicians are appointing the President who is the head of the CCJ, and you want us to support that? We reject that completely.

**Sen. Lyder:** [*Desk thumping*]

**Sen. W. Mark:** I want to give the country the assurance the United National Congress will never, never support the CCJ in its current incarnation. You will never get our support. Never. Who wants to say we are colonialists, they are free, who wants to say we are unpatriotic, they are free. That is their business. We are defending the people, we are defending the people's rights.

**Sen. Lyder:** [*Desk thumping*]

**Sen. W. Mark:** Madam President, imagine our drafters and framers of the Constitution, more than our fundamental rights and freedom under the Bill of rights in sections 4 and 5, they entrenched the Privy Council with a three-fourths majority as the hon. Attorney General told us in the House of Representatives and

two-thirds in the Senate. And you know to alter my fundamental rights, you can get a two-thirds or somewhere a three-fifths. So imagine the framers say, listen, you could even tamper with the citizens' fundamental rights with a two-thirds or a three-fifths. When it comes to removing the Privy Council as the final Court of Appeal, you need three-quarters. Why would they do that? Why would Eric Williams in 1976 when the republican constitution was established, why would he have put that? Why did he not do like Burnham and just disconnect it, discontinued, severed the Privy Council? And the rest is history: fascism, tyranny, anarchy in Burnham's country when he was there. Rights were just tossed all over the place because he abolished the Privy Council and he put his court, the appeal court, as the Supreme Court and all hell broke loose in Guyana. Let us not forget, you know there is an old saying, Madam President, those who forget the mistakes of the past are doomed to repeating them.

Madam President, I was sharing with you earlier the following. Hear what Lady Rose said:

“...societies need judges that they can trust people because people will always get into disputes about things. When people do disagree, it's better for society that they have courts and judges to resolve those disputes peacefully. Otherwise, they are forced to take the law into their own hands - but when we talk about people taking the law into their own hands, what we really mean is that there is no law at all other than that the strong and powerful will prevail over the weak and vulnerable.”

End of quote. Madam President, the issue being raised by this Motion is a fundamental one to our democracy. The question of who judges us is a question which pursuant to the principles of democracy should be properly posed to the people of this Republic. And if my colleague Sen. Vieira has confidence in the

people, my colleague would want to join with me in calling for a referendum and let the people decide. The people had no say in the imposition of the CCJ. This was done by politicians; some of them, because we did not support it. Why? They must tell us. So, Madam President, how can it be posed? I said in two ways: either by mass consultation and/or by referendum.

The difficulty with this Motion before us is its selective nature. Who is calling for this? And I hope that when Sen Vieira winds up his presentation, he can tell us in this Parliament who in Trinidad and Tobago outside of a few in cocktail circles might be calling for this?

**Madam President:** Sen. Mark.

**Sen. W. Mark:** I withdraw that. I withdraw it.

**Madam President:** Yes.

**Sen. W. Mark:** I will withdraw that. Who is calling for this? I believe we have to have a revolutionary overhauling of our current Constitution. One of the first things that we have to deal with if we are serious about abolishing the CCJ—abolishing the Privy Council, rather, and replacing it with the Privy Council, we have to look at our own system of appointment or put it another way, we have to look at our own system for appointing and promoting judges in our own country. That is an area that is crying out for reform. So if the Government is serious about reform, start there. Generate confidence. Will the removal of the Privy Council fix this problem? I do not think so.

So, Madam President, when we look at the contributions of the various entities or contracting parties, we see Trinidad and Tobago contributing 30 per cent. You know, Madam President, I thought that the Attorney General would have told this country and this Parliament how much money have we spent thus far on this court. How much money we have spent? Should we not review the moneys



that we are spending on this court? We do not use it except for regional jurisdiction, Madam President, but we are spending. Is it hundreds of millions? I hope when the Minister of Trade and Industry rises to speak, she can give us a figure, let the country know how much money we have spent on the CCJ since its establishment. It is taxpayers' money, there is need for accountability, nobody is talking about how much we have spent.

Madam President, I want to tell you that if it was not for the Privy Council, the same white people Senator—

**Hon. Senators:** “Ohhhh”. Come on.

**Madam President:** Sen. Mark, please.

**Sen. W. Mark:** [*Inaudible*]

**Madam President:** Please.

**Sen. W. Mark:** But I did—okay, I would not push it. If it was not for the Privy Council, we would not have had today the Equal Opportunity Commission. It went to the High Court, shut down, unconstitutional, illegal, invalid. It went to the Court of Appeal, shut down, unconstitutional, illegal, invalid. And then it went to the Privy Council in London and they say uphold it, uphold it. Today, we have the Equal Opportunity Commission in our country. I just draw that as one example, Madam President, to show you that we “doh” always get it right here, we do not get it right here.

Madam President, do you remember the Maha Sabha radio licence? That too, if you recall, was dismissed at all levels of the local courts: High Court, Court of Appeal. Thank God for the Privy Council. Sat Maharaj died but he got his Radio Jaagriti licence. Sat Maharaj died and he got his TV Jaagriti licence. So when we look at this whole situation that is before us, we have to be serious about what we are about. The hon. Kamla Persad-Bissessar proposed a suggestion sometime in

2012 as the hon. Attorney General alluded to; they rejected it. They rejected it. They wanted all, all. But a proposal was put. Well, we have since reviewed our position. Since that was rejected in 2012, we have reviewed our position. We are committed to retaining civil constitutional and criminal matters at the level of the Privy Council as the final court of appeal so we have reviewed our position.

And I want to tell the Government, we will form the next Government. The UNC will form the next Government. So I want to let you know that.

**Hon. Senators:** [*Desk thumping*]

**Sen. W. Mark:** Yes. Madam President, to show you the disrespect, it is alarming, to say the least, that all our institutions have been literally undermined and compromised and subverted and contaminated in many different ways. And it appears that the only institution that stands between full-fledged totalitarianism, autocracy, tyranny in our country and the people, it appears that we have to put our faith in the Privy Council. We cannot put our faith in the Caribbean Court of Justice where politicians are appointing the President. Cannot do that.

You know, Madam President, I observed silence on the part of the Attorney General as well as Sen. Vieira—

**Madam President:** Sen. Mark, you have five more minutes.

**Sen. Mark:**—as it relates to the Privy Council judgment of 2004 involving the Attorney General of Jamaica and the Independent Jamaica Council for Human Rights. The judgment came down in 2004, it shut down every Bill that was passed in this Parliament, except one, “dais” the one to establish the CCJ. But all the rest, they got through with a simple majority. Did the same thing in Jamaica and the Privy Council shut it down. I want to refer this judgment Privy Council Appeal Number 41 of 2004.

**Madam President:** Sen. Mark, I think Sen. Vieira is asking you if you could just

give way.

**Sen. W. Mark:** Quickly.

**Sen Vieira:** Yes. You asked but I think that you should be aware that they were shut down on procedural grounds, not on the substantive, just to point that out. I will speak about it in my wrapping up.

**Sen. W. Mark:** Well, yeah, procedural grounds. You are correct. I am not arguing that. So why did they get it wrong? Why did the Government get it wrong? I do not know.

Madam President, let me say in the few minutes remaining that I have, we witnessed an ugly debacle, it was like an ugly experience we never experienced in our lives before, when a former Chief Justice was arrested by a police constable in our country and his whole career ruined. That happened in our country, a former Chief Justice. And when the time came with the Mustill commission, for the Attorney General then John Jeremie, and the then Chief Magistrate Nicholas—“wais his name”? “Some—ah forget his name, Madam President.” But the former Chief Magistrate Sherman Mc Nicolls, when it came for them to appear before the Mustill committee, commission, they both refused. We have to be very careful in whose hands you put power in. We have seen the PNM in action in this country abusing Executive power. And when we go to the final court, we must go to people who they are paying? Madam President, I want to tell you, there is an old saying, he who has more corn is able to feed more fowl. “Dais ah saying.”

So, Madam President, we do not support this Motion and we serve notice on the Government if they take God out their thoughts and they bring to this Parliament any law to abolish the Privy Council, it will be rejected totally, completely and comprehensively by the United National Congress.

**Sen. Lyder:** [*Desk thumping*]

**Sen. W. Mark:** “So doh bring no law.” So we reject completely Sen. Vieira’s Motion, we reject completely any attempt to bring any law into this Parliament, any Bill to abolish the Privy Council. We support the Privy Council, its retention at this time.

And, Madam President, all I would say in wrapping up because I know my time is up is that we have to ensure that when we talk about justice and access to justice, we have to ensure, Madam President, that the ordinary people are always involved in this exercise. Madam President, I wish to thank you for allowing me to say these few words on this matter. Thank you very much.

**Hon. Senators:** [*Desk thumping*]

**3.55 p.m.**

**Sen. Hazel Thompson-Ahje:** Thank you, Madam President. I am grateful for the opportunity to speak on this long-awaited Motion of Sen. Vieira's, on an issue on which I too feel strongly. The title of the Motion deserves repetition. It reads:

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

"Shoo fly doh bodder me. Shoo fly doh bodder me. Shoo fly doh bodder me, for I don't need your company." This local variation of an English rhyme is one of the saddest expressions of rejection that any child has had to bear. It has made many a child run to her mother in tears saying: “Mammy, dey doh want tuh play with me.” The mother would then normally say: “Doh worry my child, if dey doh want you with dem doh force yuhself on dem.” The mother is trying to teach self-reliance, independence, and the dignity of the human person, to teach one should not go or remain where one is not wanted, unless one has no shame.

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** A commentator in an article published online on September 24, 2009 in BBCCaribbean.com stated:

“The future of the Privy Council as the final court of appeal for most Caricom member states has been placed into doubt after comments by Britain's top judge.”

The article quoted Lord Nicholas Phillips, the first President of the Supreme Court of the United Kingdom in an interview in the UK *Financial Times* newspaper saying:

“‘in an ideal world’ Commonwealth countries - including those in the Caribbean - would stop using the Privy Council and set up their own final courts of appeal instead...”

Lord Phillips said he personally would like to see the Privy Council's caseload from the Caribbean and other Commonwealth countries reduced.”

In other words, he was saying: “Shoo fly, doh bodder meh.” The concerns expressed by the senior British jurist were viewed by practising lawyer and former St. Kitts/Nevis Governor General, Sir Probyn Inniss as a message to Caribbean and other Commonwealth countries to, and I quote: “Get your house in order and do what you have to do.”

In an interview with Bertram Niles, Sir Probyn stated that while he agreed that here was a clear message for the Caribbean from Lord Phillips' comments, it would take more than what had been said so politely, so diplomatically, to waken Caribbean leaders from their slumber. And we heard today, we heard today about how many leaders are still in their slumber. He said:

“I don't feel that that most people who prefer to go to the Privy Council would fault Caribbean courts, especially the Court of Appeal, for

erudition...”, he said, when asked to compare the capabilities of the CCJ and the Privy Council.”

So here he is, comparing the two courts. And so you cannot fault the Caribbean courts for being erudite. Our judges are erudite.

“It seems”—he said—“to be something deeper, not necessarily affecting the court or its individual members’...

‘It has to do with (the question)...‘do the Caribbean people feel that they have enough confidence in their own institutions?’

‘One has to acknowledge’, he added, ‘that the Caribbean court...has been established, but almost from the beginning it has become the victim of partisan politics.’

The *Financial Times* described the Privy Council created in 1833, interestingly the same year that slavery was abolished, as a creature of Britain's 19th Century colonial pomp.

“The paper says that in the UK, many independent observers say it’s both an ideological stain and a financial drain on the newly-created Supreme Court.”

They resent having to spend that amount of money on us. They resent judges being pulled away from their court matters to deal with our matters.

The article ends with these words:

“One commentator said it was a ‘minor public scandal’ that judges in the country's top court spent almost half their time on business ‘of no interest to anyone in the UK’.”

They do not care. In other words, what they are saying: “Shoo fly, doh bodder me.” Can we not understand that?

Sir David Simmons, former Chief Justice of Barbados, in the role when he was doing the Leo Goodwin Distinguished Visiting Professor lecture at the

Shepard Broad Law Center, of Nova Southeastern University on 13th to 15th October, 2004 said:

“A new...architecture is being designed, and central to the new Commonwealth Caribbean of the twenty-first century will be the Caribbean Court of Justice (CCJ).

...Inauguration of the Court will finally demonstrate the self-confidence of the people of the Member States of Caribbean Community...that we are mature enough to manage and operate our highest judicial institution.”

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** But then, he has not met some of the people in the Parliament here. He has not heard what was said in 2005 in the Parliament, and what was said, the big “mamaguy” of 2012. So let us go ahead. A certain young, and I dare say, talented former Opposition Senator who sat quite near to me in the Parliament, he used to hurl insults to Government Senators in Parliament. “He used tuh say dog eat yuh shame.” Today I adopt his words and ask of those who want us to hold on to the Privy Council, although they have stated unequivocally they want us to lead: “Dog eat yuh shame? Eh?”

The current President of the CCJ, Mr. Justice Adrian Saunders, then Judge of the Caribbean Court of Justice at the 2nd Annual Eugene Dupuch Distinguished Lecture in Nassau, on January 28, 2010 on the relevance of the Privy Council in post-independent West Indian nations characterized this fear as the fear, and you heard it before, of cutting the umbilical cord.

One would have thought that with so many doctors in Parliament and so many Members who are parents, especially mothers and grandmothers, there will be no fear of cutting the umbilical cord. I would have thought by virtue of their collective personal experience, they would have seen a necessity for severing the

umbilical cord. They would have known that cutting the umbilical cord was an essential prerequisite for the independent living of a being or body, whether human, corporate, or judicial.

But alas political decisions, based on emotion and critical thinking, do not coexist or make good bedfellows. They are poles apart. Why is it that the CCJ is not our final Court of Appeal? What has brought about this apparent fear of the CCJ? Perhaps it is not a fear that springs from lack of confidence in our institutions but a more primordial fear. We need to examine it. We need to diagnose it and try to cure it.

The Revised Treaty of Chaguaramas establishing the Caribbean community including the Caricom Single Market and Economy was signed on July 04, 1973 and entered into force on August 01, 1973.

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

Under the Treaty, the Caribbean Court of Justice was established and conferred under Article 211 with compulsory and exclusive jurisdiction to hear and determine disputes regarding the interpretation and application of the Treaty. So this function of the court is known as its original jurisdiction; to interpret what does the treaty say, you know. You know all these things happening between Guyana and Trinidad, the cement and all those things. The Caribbean Court of Justice also has an appellate jurisdiction and it is in that role that it was designed to replace the judicial committee of the Privy Council, to be a final court, or court of last resort for both criminal and civil matters.

Mr. Vice-President, Article 109 of our Republican Constitution, as most Caribbean constitutions, establishes the Judicial Committee of the Privy Council as our final Court of Appeal. The provision is so deeply entrenched in our Constitution that to effect a change would require a three-fourths majority in the



Lower House and a two-thirds majority in the Senate. Without the support of the Opposition any intention of a PNM Government to move forward to accede to the CCJ, in its appellate jurisdiction, is dead in the water, and herein lies the rub.

In 1999, our then Prime Minister Basdeo Panday offered to house the CCJ in Port of Spain. It is situated now on Henry Street in Port of Spain, and the agreement to establish the CCJ was approved by the Heads of Government.

The agreement to establish the Caribbean Court of Justice was signed on February 14, 2001, Valentine's Day, mind you, a day for lovers. "But ah tell yuh, with some people is pure hate." It was signed by the Government of Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, Suriname and, surprise, surprise, Trinidad and Tobago.

You want another surprise? The party in power then was the United National Congress. The Prime Minister at the time who signed on our behalf was Mr. Basdeo Panday. The agreement establishing the Caribbean Court of Justice entered into force on July 23, 2002. Dominica and St. Vincent and the Grenadines signed on February 13, 2003. The Court began operating on July 16, 2005, with former Chief Justice of Trinidad and Tobago Michael de la Bastide as its first president. To date, Barbados, Belize, Guyana and Dominica, have embraced the appellate jurisdiction of the CCJ, and recently St. Lucia announced its intention to accede to the appellate jurisdiction of the court.

Now, the CCJ is a unique institution in several ways. I deal with just two of those features and leave the other aspects to my fellow Senators. The first is the appointment of judges, including the President of the Court. And you know, sometimes when I hear Sen. Mark speaking about certain things, I wonder if we read the same books. He read the same legislation, or what has happened, because the things that I hear him speak about I cannot find it. You know, it is like when

you could not find the part in Shylock you could not find the—you know. What you are going to do about the blood? Sometimes I am really puzzled.

Enhancing the law of international organizations, Sheldon McDonald, Project Coordinator of the Caribbean Court of Justice Preparatory Committee, Caricom published by the Caribbean Law Publishing Company in 2005 stated:

As regard the modalities utilized for appointing the judges and naming the President, it is incontrovertible that the Caribbean Court of Justice is the only international judicial tribunal with an independent mechanism for carrying out these functions, while the Bench of other international tribunals are appointing by Member Governments, either directly or via elections. The CCJ Agreement establishing Article 5, a regional, judicial and legal services commission.

Furthermore, in order to reinforce the court insulation from the political Executive, there are no Government representatives on the Commission, none. Its membership is as follows, the president who shall be the Chairman of the Commission, two persons nominated jointly by the Organization of Commonwealth Bar Association (OCBA), and the Eastern Caribbean States Bar Association. Any politicians there? One Chairman of the Judicial Services Commission of a contracting party selected in rotation in the English alphabetical order for a period of three years, one chairman of a public services commission of a contracting party selected in rotation of the English alphabetical order for a period of three years. “Where de politicians?” Two persons from civil society nominated jointly by the Secretary General of the community and a Director General of the OECS, for a period of three years following consultation with regional non-governmental organizations.

Then you have two distinguished jurists nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, the Deans of the Faculty

of Law of any of the contracting parties, together with the Chairman of the Council of Legal Education and two persons nominated jointly by the Bar or Law Association on the contracting parties. Where are the politicians?

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** The Commission not only appoints the judges, but also determines their salary and allowances, the terms and conditions of service of judges and certain other officials and employees and exercises disciplinary control through a tribunal. The President is appointed or removed by the qualified majority vote of three-quarters of the contracting parties on the recommendation of the Commission. You did not see that part? On the recommendation of the Commission. And I have just stated who the members of the Commission are.

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** Under the agreement: Nine judicial jurists such as law teachers with at least 15 years' experience are eligible to be a judge of the CCJ; the court, although based in Port of Spain and must have a seat, a contracting party is empowered to sit as an itinerant court in the territory of any other contracting party, thus improving access to justice.

Matthew Gayle in his paper *Caribbean Court of Justice or the Judicial Committee of the Privy Council*—a Discussion of Final Appellate Court for the Commonwealth Caribbean states on the question of access to the court:

In terms of cost, accessing the Judicial Committee is significantly more expensive than accessing the CCJ in Port of Spain. Because of this, the majority of appeals will involve firstly the wealthy and relatively wealthy and secondly appellants in capital murder cases who benefit from the pro bono services of lawyers in the UK.

There are many people sometimes who have cases and they would like to go

further with those cases and they just cannot afford it.

I remember as a student, the case of *Hoyte v Kirpalani*, where somebody fell down in the store, you know, and we did not know that they did not go forward on the Privy Council. So when I came down from vacation and I went into the firm, a law firm, you know, that is what they said, they did not go further with the case. What is a slippery substance? You know, that was an important thing to determine but they just—the money that was involved.

So he states further that:

The most compelling argument was one of access to justice, the final appellate court being the preserve of the rich is manifestly unjust. Entrenching the appellate jurisdiction of the CCJ is a sure way to improve access to the region's final court.

Another important aspect of the CCJ is funding. To avoid the embarrassment of deficiency in funding suffered by certain governments not meeting their financial obligation to certain regional institutions. And you remember how many times with UWI? You know how many times governments owing UWI? You know how many times governments owing law school? People cannot function because this Government, you have to be running behind this government: “Yuh ain pay fuh yuh students. Ah next government, yuh ain pay fuh yuh students.” That cannot happen, as far as the CCJ is concerned. Because they set up a trust fund with US \$100 million to be invested in securities that would yield income. So far there is no likelihood of the funds being exhausted in the foreseeable future.

Sir David Simmons expressed the view that the mechanism of the trust fund was truly unique and has safeguarded the independence and sustainability of the court. The CCJ, which has been hailed by many eminent jurists as a success story and whose judgment have stood up to scrutiny has unfortunately come in for

scathing criticisms from the Leader of the Opposition, who can find no merit or positive element in the CCJ or its judges.

During the debate on the Caribbean Court of Justice Bill, she said she did not trust the Government and the Prime Minister and did not believe the time was right for the Caribbean Court of Justice. And I am glad I am here today to hear Sen. Mark express the same sentiments. So between 2005 and despite that statement that we heard this afternoon, from in 2012, there has been no change. She spoke of the cost. She described the CCJ as a Trojan horse, put as a symbol of nationalism, independence and sovereignty. But within the bars of the Caribbean Court of Justice lies the devastation of democracy as we know it.

She said it would not be a Caribbean Court of Justice but would become a “Caribbean Court of Injustice”. What a travesty. “What is the role and function of a court?” she asked. A court has no business with nationalism, sovereignty and independence. The argument about nationalism, sovereignty, and independence is specious. It is in fact a red herring with a strong emotional appeal to distract us from the real purpose, role and function of a final court. Indeed, this argument alone is sufficient to destroy any support, in my view, for the Caribbean Court of Justice

Mr. Vice-President, when I read those words in *Hansard* “I rub meh eyes again and again. Ah say ah need ah new pair ah glasses.” This could not be. I felt so ashamed when I thought that people read these debates on the Internet and the newspapers. She said all we want from a court is justice, nothing less, nothing more. But then it got worse. I quote: I am saying, she said, that their arguments that they are too far away and they do not know what is going on here and are doing nonsense is nonsense. The most compelling argument in favour of keeping the Privy Council is the judicial impartiality and independence that it guarantees. That

is in part a direct result of the geographical location. You hear that?

Now in 2010, Chief Justice Ivor Archie said: Judging is not an exercise conducted in the abstract. History, cultural norms, intent and policy all inform the process. Mr. Vice-President, Lord Hoffman speaking at a Law Association dinner in Trinidad and Tobago in 2003, confessed:

Although the Privy Council has done its best to serve the Caribbean, and I venture to think, has done much to improve the administration of justice, our remoteness from the community has been a handicap.

So here is somebody involved and he is saying it is a handicap and we here, the Opposition Leader, is saying the geographical location is good. He said:

We have been necessarily cautious in doing anything which might be seen as inappropriate in local condition and although the caution may have occasionally saved us from doing the wrong thing, I am sure it has also sometimes inhibited us from doing the right thing.

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** Former Chief Justice de la Bastide and President of the CCJ in his book *Within the Law* says:

I must note that one of the major disappointments of my presidency was the failure of Trinidad and Tobago and Jamaica to accept the appellate jurisdiction of the court in place of the Privy Council. It is to me a continuing source, both of amazement and grief, that the compelling arguments in favour of such a change have not been strong enough to overcome the deep-seated fears of the impact of local influence on the judgment of the court.

After 15 years of the court's operation it is not possible to find any material in the judgment or decisions of the court to provide substantial support for these fears of

local influence. The diversity of the Bench has been questioned but such criticism has been scuttled by the appointments of men and women of various nationalities, backgrounds, and ethnic composition.

Mr. Vice-President, we have had jurists in the Caribbean here who have sat on the Privy Council. We had Mr. Justice Zakar. We had William Douglas. We had Justice Telford Georges, my beloved mentor; Sir Vincent Floissac. We have had so many, Justice de la Bastide. So they are on par. A number of them have been chosen to sit on the Privy Council. Why can they not sit in the Caribbean Court of Justice? That is a mystery to me.

But, Mr. Vice-President, the *pièce de résistance* was the racial argument. The Leader of the Opposition complained bitterly, and I quote:

They hired six judges and not a single one of Indo origin. A court must reflect the composition of the public it serves. How can you sit six judges and not one is of Indian origin?

She cried.

Now Guyana, early o'clock, was in the court, you know, 44 per cent of Indo-Guyanese and no problem. Surinam, 37 per cent of Indo-Surinamese, no problem. I had to put pen to paper for that one. I had to, so I wrote a letter to the editor carried in the newspapers. And I wrote this:

The issue of the absence of judges of East Indian descent from the CCJ raised at the last Sitting of the Senate demands a consideration of the requirements for the composition of the Bench of the CCJ as a whole, rather than merely the question of the qualifications for the appointment of individual judges.

The agreement establishing the Caribbean Court of Justice was signed on behalf of the Republic of Trinidad and Tobago by the then Prime Minister

Mr. Basdeo Panday in 2001. This agreement is the constitutive instrument of the court. Among other things, it sets out the qualifications and criteria for the appointment of judges, as well as requirements for the composition of the Bench.

State parties or other international bodies in creating conventions or agreements to constitute international courts and tribunals have power to include in the instruments the provisions they want.

Nobody forced this on you. You sat there and you agreed to these provisions. Governing documents for international courts and tribunals have varied specifics detailing particular requirements. Thus, the statute of the International Court of the Justice, which I had the pleasure to visit through Justice Shahabuddeen of Guyana. He showed me all around the court and even gave me lunch, it states that every election the electors shall bear in mind, not only that the person be elected should individually possess the qualifications required but also that in the body as a whole, the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

The Rome statute of the International Criminal Court—and we had the pleasure, my students and myself, to visit the ICC courtesy of Justice Henderson. And he showed us around too and treated us so well in his court. We required the selection of judges to take into account the representation of the principal legal systems of the world: equitable geographical representation and a fair representation of female and male judges.

The protocol establishing the African Court on Human and Peoples' Rights also specifies the geographical and gender diversity. Constitutive documents may also require that the Bench should reflect the presence of judges with expertise in matters likely to engage the attention of the court.



The ICC statute urges State parties to take into account the need to include judges with legal expertise on specific issues, including but not limited to violence against women and children, while the governing instrument of the CCJ stipulates that at least three judges should possess expertise in international law, including international trade law.

A concern for racial representation in the body of the CCJ is not reflected in the comprehensive history and analysis of the debate on the CCJ prepared by former Chief Justice Hugh Rawlins, who was also Justice of Appeal of the Eastern Caribbean Supreme Court. It was not an issue that was advanced by the then Attorney General of Trinidad and Tobago, the hon. Ramesh Lawrence Maharaj. He was a member of the preparatory committee on the establishment of the CCJ, where he gave his views on the appointment of judges of the court.

Perhaps Mr. Maharaj whom I consider also an astute politician, was confident that the exceedingly well-crafted provisions of the foundational agreement incidentally now buttressed by the CCJ Judicial Code of Conduct, were conducive to ensuring competence, personal integrity, independence and impartiality in the judges of the CCJ and rendered a consideration such as ethnicity unnecessary.

Remember you had a very experienced person there in Mr. Lalla, you know. And he would not have let something pass if he thought it was important to be included. But what were we looking for? Why is this thing suddenly coming up?

**4.25 p.m.**

Mr. Vice-President, the CCJ in its appellate jurisdiction is an institution whose time has come. It has proven itself time and time again, as a court in which we can justly and justifiably feel a sense of pride. Our judges are of the highest calibre, and can hold their own against any judicial officers in any court anywhere.

**Hon. Senators:** [*Desk thumping*]

**Sen. H. Thompson-Ahye:** Let us embrace our Caribbean institutions. Let us throw off the shackles of colonialism that restrain us and confine us. Let us cut the umbilical cord and break free to complete the circle of our independence. Let them no longer say to us, “Shoo fly, doh bodder me.” We want to say we home in our own house, nobody could put us out, the rent paid up in fact, is not rent you know, mortgage, we paid it off. You will never say to me again, “Shoo fly, doh bodder me.” We want to be able to say we are independent. We are free. And this statement which—I mean is really hurtful, you know, because it was issued 25<sup>th</sup> of April, 2012. That my birthday and I thought I was getting “ah” gift. This statement to the Parliament by the hon. Kamla Persad-Bissessar, SC, MP, Prime Minister of the Republic of Trinidad and Tobago. And she starts up:

“On August 31, 1962, our country threw off the shackles of colonialism and took its rightful place among the community of independent nations of the world.”

All of these very, very pretty words. You know,

“There have been calls for our country to break with the JCPC as other countries with more substantive legal jurisprudence have done.”

So many wonderful words in this statement. You know, and:

“The prevailing and sustained analysis suggested that jurisdiction of JCPC in relation to criminal appeals is a matter of grave concern as it affects the dispensation of criminal justice at a time of high crime in our country.

The Caribbean Court of Justice remains committed in pursuing its enlightened role in Caribbean legal reform in the important area of the criminal law.”

And then Senator comes here this afternoon, and said something—what? Different?

“A century old tradition of erudition and excellence in a legal professional of the Region leaves no room for hesitancy in the Caribbean region.”

This is what was said in 2012. So before—2002 to 2005 was one thing, 2012 and then 2022. What happened? What happened? I mean, you know, it used to be the rhyme “Pass by, mamaguy, but doh buy.” You know, I would hate to think—

“I gave a commitment to our Caricom partners that my government will review our approach to this matter on my return to Port of Spain.”

But she returned to Port of Spain and what happened?

“Having undertaking such a review, and consistent with our approach of caution and gradualism, I am pleased to announce that the Government will be bringing legislation to this Honorable House to secure the abolition of appeals to Privy Council in all criminal matters so that this jurisdiction would then be ceded to the Caribbean Court of Justice.”

This is 2012? This is 2012?

“Mr. Speaker”—she says—“earlier today I had the honour to advise the substantive Chief Justice, the Honourable Justice Ivor Archie, the Acting CJ the Hon. Justice Wendell Kangaloo”—God rest his soul—“and the President of the Law Association, Ms. Dana Seetahal”—God rest her soul too—“on this new direction my government is embarking upon.

We will continue to monitor the developments taking place in both the JCPC and CCJ including the quality of their decisions in deciding the future course of our judicial system.”

And so many people have spoken about the quality of the decisions coming out of the CCJ.

“In so doing”—she said—“the Government affirms its commitment to deepening of the regional integration process and the development of a Caribbean jurisprudence and, views this as a manifestation of that commitment.

The Government of the PP signals a most historic development in the administration of justice in independent Trinidad and Tobago.

These pledges to strengthen our democracy from the core value in the manifesto of the PP. Today we deliver yet again a promise generations to come.”

Mr. Vice-President, I really—I am at a loss. What do I believe? Can I trust these words?

**Mr. Vice-President:** Sen. Ahye, you have five more minutes for your contribution.

**Sen. H. Thompson-Ahye:** And I would like these five minutes for people to think. I will end and invite you to think about where we going as a nation. Where are we going as a West Indian people? We have so many talented people in the Caribbean. There is so much that needs to be done. Why can we not come together, put our heads together and do what is right? Everything has been done to insulate the court from all of these partisanships, you know, and we are just tumbling along and we actually are looking ridiculous. Are we going to continue with “Shoo fly, doh bodder me”? They do not want us, they asking us to leave and we are holding on for dear life. My goodness. Lord, help us all to do better, thank you.

**Hon. Senators:** [*Desk thumping*]

**Mr. Vice-President:** Sen. Lezama-Lee Sing.

**Hon. Senators:** [*Desk thumping*]

**Sen. Laurel Lezama-Lee Sing:** Thank you very much, Mr. Vice-President, for this opportunity to join this debate and to lend my support to this Motion moved by Independent Senator Anthony Vieira. I was delighted to listen to the submissions of our two—three brilliant legal minds here in this Chamber, Sen. Vieira, Sen. Thompson-Ahye and of course, our hon. Attorney General—

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** —who have comprehensively given legal details about the CCJ. It is quite appalling, therefore, and to be quite honest, that almost 21 years after the agreement establishing the Caribbean Court of Justice, Trinidad and Tobago is yet to make the Caribbean Court of Justice its highest criminal, civil and constitutional appellate court.

Mr. Vice-President, there are some critical matters and issues raised in Sen. Vieira's Motion and I must mention them, and I am just quoting pieces from his Motion.

“The development of the Caribbean jurisdiction steeped in the ethos of the region. Trinidad and Tobago having ratified without reservation, the agreement establishing the court...and it is politically unacceptable to have such a foreign tribunal permanently entrenched in their constitutions.”

Mr. Vice-President, a fear that should we not do what is right, these words will haunt us for as long as we remain under the control of the Privy Council.

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** Mr. Vice-President, today's Motion really is about our country's desire for self-determination, and about our sovereignty—

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** —and equally as important, it is about access to justice for all citizens—

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** —wicked, wealthy, and everybody in between. Mr. Vice-President, it is no secret that ironically, I hope not amusingly, but certainly borderline embarrassingly, that the very Privy Council, which we are so keen to revere which Sen. Mark is so keen to revere, has hinted or signalled or clearly stated, its preference for the Caribbean region to relieve itself from the reliance on and subjection to the very Privy Council. Sen. Thompson-Ahye just articulated wonderfully on this issue, and therefore I will add nothing else to say that she is—that the Senator is absolutely correct.

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** Mr. Vice-President, a quick look at the website of the JCPC says, and they are very delighted to state that:

“Did you know?

In the 1920s, which was 100 years ago, it was said that people living on a quarter of the planet”—a quarter of the planet—“could bring their appeals to the JCPC.

Today, a total of 27 Commonwealth countries, UK overseas territories and Crown dependencies uses the JCPC as their final court of appeal.”

Mr. Vice-President, there are approximately 500 members of the Privy Council and the population of the 27 Commonwealth countries overseas territories, in my estimation is approximately one billion people. I do not know how 500 people can service approximately one billion people from different cultures, different norms, different nuances in every corner of the globe. Please make it make sense, Mr. Vice-President.

You know, there is this Calypso that I really, really like. It is by Calypsonian Mistah Shak, it did not make it into Calypso Monarch finals, I was very

disappointed, but it was about 10 years ago, and this song enthralled me. It is a song Mistah Shak sang which was called “Dey Living in the And.” And he was referencing people in Trinidad and Tobago who are neither faithful to Trinidad or Tobago so they living in the and, and Mr. Vice-President, I have a feeling that Sen. Mark and his semi-autonomous Bench over there, they are living in the and. They have no commitment to Trinidad and especially to Tobago, this we know for sure, Mr. Vice-President. You see, Mr. Vice-President, the UNC’s convoluted position tells a dangerous tale about the instability and volatility of their position. It is the UNC, solely the UNC, that is perpetuating fear and undermining the Caribbean Court of Justice.

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** Mr. Vice-President, as I speak to you, as I speak through you, Mr. Vice-President to the people of Trinidad and Tobago, I seek your permission to quote from some articles and documents as I demonstrate the commitment of this Government since the inception of the court, and I will show the Members of this Chamber and the people of Trinidad and Tobago how the UNC has flipped flopped and continues to flip flop on matters of great national importance.

Mr. Vice-President, it is important that I place on the *Hansard* and for the records from now on to eternity, the timeline of the political journey of this discussion from 1999 to present, so that for future debates, it can be found in one place and it will always be known that the People’s National Movement has been in support of the Caribbean Court of Justice.

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** There is a letter to the editor from former PNM General Secretary, former Member of Parliament, former Mayor of Arima, Mr. Ashton Ford. And in this letter, there is a very important line that I wish to share.

“Distorting history or revising it to suit a particular agenda will only gift us the terrible consequences of discord and strife, from which some will attempt to benefit, whilst chaos reigns supreme.”

And so Mr. Vice-President, I begin this political timeline. Sen. Thompson-Ahye clearly established it was former UNC leader and former Prime Minister Basdeo Panday who announced that the Government of Trinidad and Tobago would provide a site to house the court, and the heads of Government approved the establishment of the Caribbean Court of Justice. That was in 1999. Sen. Mark referenced Patrick Manning, the late Patrick Manning, a comment that he would have made in 1987. But in 1987, there was no commitment by the Caribbean Heads of Government at any point in time, so Mr. Manning was free to make those statements. It was not before Caricom for consideration. So that point is completely irrelevant.

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** We know that the agreement establishing the Caribbean Court of Justice was signed on the 14<sup>th</sup> of February 2001. The very Mr. Manning that Sen. Mark referred to, former Prime Minister, in the opening address at the Fourteenth Intersessional Meeting of the Conference of the Heads of Government of Caricom, 14<sup>th</sup> to 15<sup>th</sup> February 2003, which happened in Trinidad and Tobago stated, Mr. Patrick Manning was a PNM Prime Minister just for the records:

“Mr. Secretary General, Heads, may I now formally put on the table Trinidad and Tobago’s intention to enter into discussions with any



Caribbean Country willing to pursue with us the objective of Caribbean Political Integration, our view of what lies before us mandates this but be”—and I skipped some paragraphs and I continue—“but beyond that, distinguished gathering, the Caribbean Court of Justice in the exercise of its appellate jurisdiction, will make for consummation of the true independence of Caricom Member States.”

How much more clearly can we express our support for this?

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** Again, in 2015, the feature addressed by Prime Minister then Prime Minister Manning on the occasion of the inauguration of the CCJ, 16<sup>th</sup> April 2005. And Mr. Manning quoted something from the *Jamaica Gleaner* and I will quote Mr. Manning:

The *Jamaica Gleaner*, as far back as March 6<sup>th</sup> 1901, then 104 years ago, opined has followed: thinking men believe that the Judicial Committee of the Privy Council has served its tune and is now out of joint with the condition of the times.

And that is exactly why we are here debating this Motion presented by Sen. Vieira. And so we move, we fast forward to 2009. In the *Trinidad Guardian*, after former Prime Minister Basdeo Panday offered Trinidad and Tobago as the seat for the Caribbean Court of Justice. He went on to say that:

“The CCJ ‘lacks the required confidence’. We have no confidence in the CCJ and as a consequence, it should be used as an intermediate court and not as the final court of appeal for”—Trinidad and Tobago—“for the time being.”

This is where the dangerous precedent and when we start going down a very, very slippery slope. This is from an article titled “Panday, CCJ lacks confidence” in the Trinidad *Guardian* on Thursday the 8<sup>th</sup> of October 2009.

*BBC Caribbean* would go on in 2010 to say that:

“The UNC under Mr. Basdeo Panday has blocked the parliamentary process to have the CCJ replace the British Privy Council as the country’s final appellate court.”

And ironically, it was Mr. Basdeo Panday, who was Prime Minister who signed the agreement. History, Mr. Vice-President has a very funny and tragic way of repeating itself.

Now I know Sen. Thompson-Ahye would have referenced extensively, a presentation by then UNC Prime Minister, Kamla Persad-Bissessar, on the 25<sup>th</sup> of April 2012. And there are certain parts that I wish to place on the *Hansard* again for the understanding of this population.

“As we celebrate our fiftieth anniversary of independence this year”—this is in 2012—“the time has surely come for us to review our relationship with the Privy Council.

Such review takes into account the critical observations of the community of informed commentators, jurists and institutions for as I have always said that I would listen and then lead.”

Not my words, the words of Kamla Persad-Bissessar. It is also axiomatic—

“It is almost axiomatic that the Caribbean Community should have its own final Court of Appeal in all matters; that the West Indies at the”—very—  
“highest level of jurisprudence should be West Indian.”

Not my words, the words of Kamla Persad-Bissessar, the leader of Sen. Mark’s party.

“A century old tradition of erudition and excellence in the legal profession of the region, leaves no room for hesitancy in the Caribbean Region.”

And so, Mr. Vice-President, now 10 years later, we are approaching our 60<sup>th</sup> anniversary of independence and I ask the UNC, will you have the decency and the honour and the best interest of our nationals to seriously and genuinely review Trinidad and Tobago’s relationship with the Privy Council?

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** Mr. Vice-President, shortly after July 2012, Prime Minister, *Trinidad Guardian*, Tuesday July 10<sup>th</sup>. “Rowley brands PM irresponsible over CCJ.” Rowley, meaning Dr. Keith Rowley the then Opposition Leader.

“It is an embarrassment. That’s how opposition leader Dr. Keith Rowley described the failed attempt by Prime Minister Kamla Persad-Bissessar to have Caricom accept a move by Trinidad and Tobago to a partial ascension of the Caricom Court of Justice for criminal matters.”

So after in April, pronouncing so wonderfully and emphatically that you are supporting the Caribbean Court of Justice, you go to a Caricom Heads of Government meeting, and further embarrass this country by asking, by telling them that you intend to only adopt one part of the court. How is that making sense? How is that fair to the people of Trinidad and Tobago? How is that fair to Caricom, Mr. Vice-President? It is very interesting that Sen. Mark would have referenced the Equal Opportunity Commission or equal opportunities having to go to the Privy Council on the basis of equal opportunities.

In May of 2014, the Right Honorable Sir Denis Byron, President of the Caribbean Court of Justice, delivered an address at the Indian Arrival dinner of the Sanatan Dharma Maha Sabha of Trinidad and Tobago Incorporated Limited, and

this was delivered at the Radisson Hotel on the 23<sup>rd</sup> of May 2014. And the contents of that speech included:

The benefits of the CCJ compared to afar of Privy Council are many. Most important it gives ordinary folk an opportunity to seek final judgment at affordable cost. Appellants will benefit from a quality court of judges who have reached the top of the international legal and judicial professions.

This speech presented was extremely well received, my sources tell me, when presented to the Maha Sabha at that dinner.

Mr. Vice-President. I could continue, I can let you know that when the PNM launched its manifesto in 2015, one journalist asked Dr. Keith Rowley, what would the PNM do insofar as the Caribbean Court of Justice and Dr. Rowley stated, once he formed the Government, and once he is able to get the majority support, he will, in fact pursue the Caribbean Court of justice as the final court for Trinidad and Tobago. That was 2015 ahead of the general election while he was still Opposition Leader. In 2018, the PNM's message went out to say:

“As we have steadfastly done in the past, the PNM stands ready and willing to demonstrate that political maturity to end once and for all our reliance on the Privy Council as our final court of appeal.”

So we have been very consistent. We heard our honourable AG say that when he assumed office in March of this year, within his first week, one of his commitments was to try to bring to life legislation and to make the Caribbean Court of Justice the final court of appeal. And so the PNM has consistently been true to its commitment. However, the PNM cannot do it alone. This requires a constitutional majority and we need the United National Congress to put country first Mr. Vice-President.

In—now, just as our Attorney General has stated that we maintain our position, Sen. Mark, the Leader of the Opposition Bench, I do not know if the bench is semi-autonomous, I really am not sure, because sometimes we get different positions coming. But Sen. Mark first of all stated emphatically and with all the passion and fervour that the UNC will not support the Caribbean Court of Justice. And then two paragraphs down in his contribution, he said they want a 75 per cent referendum. And then three paragraphs further down, he went on to say that they would accept a mass consultation. So, Sen. Mark, if you could confirm with us which one works, we will be willing, I am pretty sure to do—

**Hon. Senators:** [*Desk thumping*]

**Sen. L. Lezama-Lee Sing:** —that to ensure that this is done. As I come towards the end of my contribution, because therein lies my timeline, it is very simple, I needed to put it on the record. Sen. Vieira made a very important point. He said:

Colonialism gives us a muddled sense of our identity.

And then the AG went on to say that—he referred to a residual jurisdiction. And I ask, are we comfortable with this? Are we comfortable with it ourselves? Are we confident are we sufficiently confident in ourselves to adopt the Caribbean Court of Justice? Dr. Eric Williams presented a speech once, March 22<sup>nd</sup> 1961. And it is a very famous quotation from that speech. The title of this speech was “Massa day done” but he talked about

History is full of instances where slave owners restore or try to restore slavery. I know of no instance when the slaves themselves, once emancipated, returned voluntarily to their former chains.

And Mr. Vice-President, I genuinely think that we are being chained. We are not slaves, but we are being chained to old colonial relics. Sen. Mark said that this debate is about democracy. And I quote Eric Williams again, where he says that:

There is hardly a country in the world where dissent is permitted as freely as it is in Trinidad and Tobago. Every little grievance, and discontent is magnified out of all proportions to its intrinsic merit. If that is the price we pay for democracy so be it.

And those are the words of Dr. Eric Williams when he presented “PNM perspectives in the world of the seventies” and 50 years later, still very, very relevant. The PNM was founded on the ideology of self-determination and independence, and we continue to stand firmly on those grounds. And Mr. Vice-President, I therefore, challenge the United National Congress, or I ask the United National Congress, rather, would you be the people who dare to protest against the aspirations of the people of Trinidad and Tobago? Is that what will define the United National Congress? Until then, unfortunately, Mr. Vice-President, unfortunately, Sen. Vieira, until then, their political game will continue and it will be very tedious until they come to their right senses. For a myriad of reasons, Mr. Vice-President, the Caribbean Court of Justice is in fact, the best option for justice for the people of Trinidad and Tobago.

As a legislator, I express my confidence in the Caribbean court of justice. It will never be a stain on me or on this PNM Government, that we have potentially stifled justice and access to justice for the people of Trinidad and Tobago. The enemy is the suppression of the talents of our population, legal and otherwise, and the suppression of self-determination and access to justice. I thank you, Mr. Vice-President.

**Hon. Senators:** [*Desk thumping*]

**Mr. Vice-President:** Sen. Lutchmedial.

**Hon. Senators:** [*Desk thumping*]

**Sen. Jayanti Lutchmedial:** Thank you, Mr. Vice-President. Mr. Vice-President, we are here today to debate a Motion which calls for this Senate to agree that the CCJ be recognized as the final court of appeal for Trinidad and Tobago, and to make amendments to the Constitution so as to give effect to that determination.

Mr. Vice-President, when you evoke emotive language like “sovereignty”, and “a proud Republic”, and that, you know, others being far removed from and foreign to our society and our culture and the habits of this country, when we talk about self-determination, and we bring issues in this debate such as, our self-confidence and our, you know, belief in ourselves as a people, it is very easy to think that this argument that we ought to do away with the Privy Council and adopt the CCJ has merit. But Mr. Vice-President, we must pull away and remove that veneer and examine this issue a lot deeper. There are serious issues affecting the administration of justice in Trinidad and Tobago, and that is where I will root the majority of my argument here today. This rally cry from the intelligentsia and the academics, about self-determination and the need for us to complete the cycle of independence rarely ignores the problems that face us, as a country when it comes to the administration of justice.

**4.55 p.m.**

So, whilst we are here debating today about who we go to, to determine matters—and, you know, I find it—one would not think that we are speaking about persons with so much legal experience when we speak about the Privy Council. It is almost as though it is somebody that has, you know, been imposed upon us and that we do not have confidence in and so on.

Madam President, I want to say—as I welcome you back to the Chair, Madam President—that I have no difficulty with the quality of the decisions coming from the CCJ, but I also have no difficulty with the quality of the decisions

coming from the Privy Council. Who here can point us to a decision of the Privy Council that we felt totally misunderstood, misconstrued, was so far removed from our local circumstances that justice was not done? I cannot think of very many. In fact, I could think of very many cases where they did a better job at applying their minds to local circumstances, and I will talk about one of them that of particular interest to me, and that is the Trinity Cross case, but I will get to that in a short while.

So, you know, I also—someone quoted from Prof. Simeon McIntosh who was my teacher at Cave Hill and I remember then hearing Prof. McIntosh, since then—we are talking about 2003 or thereabouts—talking about that we are subjects of the Crown still, and that we are, you know, because the apex court sits in London and all of that. But, Madam President, are we having the conversations that we need to have about the administration of justice? Because access to justice is not being able to walk up Henry Street to a building. Access to justice is the timely delivery of justice. It is about people having their matters heard before the courts. Access to justice is not where you are located and not having to take a flight to London, but take a maxi-taxi on the PBR to get to Henry Street. That is what access to justice is about.

So, before we build this highway to heaven called the Caribbean Court of Justice, perhaps, we need to fix some of the potholes in the road right in front of us, because the state of our Judiciary, Madam President, is of concern to everyone, not the least of which is the Prime Minister of this country who, quite recently, was quoted in the newspaper about the pace of justice in this country. You have to get things right on a basic level before you could take it to that level and move up. You have to creep before you can walk, and we are not doing a very good job of creeping in this country, Madam President. We are not. We are stumbling.



And, Madam President, the Prime Minister himself has said, with respect to delays in the court system—and I can quote from an article of 9<sup>th</sup> of March, 2022, this year, Madam President, with your kind leave, speaking about:

“...‘hundreds of millions of dollars in resources’”—being allocated to the Judiciary.

“...‘there must be something somewhere else. The delay in the system, the best friend of the person who has to answer a charge in court in TT is Mr Delay, delay, delay.’”

Those are the words of the Prime Minister at a public meeting, Madam President, as reported in the newspaper.

So, when we are talking about, you know, removing ourselves from the Privy Council, I would tell you my experience with matters in the Privy Council, is that they are very efficient. They are quite efficient, not only efficient, but they are very transparent and let me say why and where that transparency comes in. Every single matter being heard before the Privy Council, and even in the United Kingdom when it comes to their Supreme Court and so on, you can see the status of the matter, when it was heard, if the judgment is outstanding.

We have heard complaints, but anecdotally, because the statistics and the list and the names of the matters and so on are not available publicly, but you hear anecdotally and you hear complaints every time we have a Law Association dinner or the opening of the law term and so on, about the length of time for which judgments are outstanding in our local courts, and all of these things affect access to justice. So, if you are really looking at access to justice, before we adopt the final court in this country, I think it is very necessary for us to have a conversation about the number of delays that we have going forward. Madam President, that is something that I want draw your attention to.

The other thing about this and all of the arguments about sovereignty and the delivery of justice and access to justice, I just want to put some context to this here. How many matters end up in the Privy Council? Well, I could tell you it is not a lot. The area of our judicial system, when you look at the courts as being neglected the most, is the poor man's court, the Magistrates' Court where the bulk of matters have to be heard. And the statistics from the Judiciary, the ones that they provide, you know, support that view.

So, for example, the last annual report of the Judiciary that is available is the year 2019 to 2020, available on their website. In 2019 to 2020, the number of matters filed across the magistracy, 79,197; in the High Court, 12,194; and in the Court of Appeal, 498; .44 per cent of all legal matters—not even 1 per cent, not even half of a per cent—reached the Court of Appeal in this country, right here, right up the road there. And we are trying to say that so many people are deprived of going to the Privy Council to have their matters heard, because it is too expensive and out of their reach to go to the Privy Council? Madam President, how many matters you are really talking about? And this is why I come back to say, anybody really interested in democracy, anybody really interested in access to justice, anybody really interested in people being able to get access to justice on an affordable and a timely manner would bring a Motion in this Senate to talk about the endemic delays in our local Judiciary, not about throwing away the Privy Council. Because throwing away the Privy Council would not solve the problem of 89.41 per cent of all matters being filed in the magistracy and the pace of justice—and I will get to that shortly again, because there are statistics about that—the pace of justice that people in those courts experience.

I do not know if anyone who has spoken so far on this debate, on this Motion, has ever spent any considerable time in the Magistrates' Court. I do not

know if they have seen the BRC wire cages that are meant to hold prisoners, which they kick away at times and escape; or if they see courts in places in outside of the cities where the public stands in a shed because there are not enough seats and they wait for entry into a courtroom. Those are the issues affecting access to justice, not the ability to pay £500 and file your matter in the Privy Council.

So, Madam President, when we talk about the pace of justice as well, so access and physical infrastructure as well as the actual infrastructure of the Judiciary is a big problem here that we face. But when we talk about the number of matters that would possibly, right—because, again, we are talking about how many people could access the CCJ if we were to do away with the Privy Council and get the CCJ as our apex court. Of the 498 matters filed in the Court of Appeal for the 2019 to 2020 law term, the clearance rates—sorry. 88 matters filed in civil procedural appeals, 51 determined; substantive matters, civil, 264 filed, 69 determined; magisterial appeals, 88 filed, 26 determined and this is in a particular year. If we have to look at the criminal court, well, it is even more depressing. The total number of pending matters in the Court of Appeal—this is what I wanted to get to, thank you.

And, Madam President, and I will quote for you from page 243 of the Judiciary's Annual Report, 2019 to 2020, captioned: "Managing Change in a Rapidly Evolving Environment". Well, the environment might be evolving and rapidly, but the court certainly is not moving quite rapidly as we need to have it, if we are to really talk about access to justice. Madam President, of all the appeals, the total number of matters pending as at July 31, 2020, in our Court of Appeal, our local apex court—let us call it, the local court that we have here as the highest court of the land—was 4,579 matters pending in the Court of Appeal. How many of them are over three years old? The numbers will shock you, 3,400 of them,

please, Madam President.

**Madam President:** So, Sen. Lutchmedial, I just have to caution you a little bit. The debate is not—the debate is structured on the premise of the CCJ and your contribution is about the local courts, and I have allowed you a significant leeway, but the debate is not where you are heading now. Okay?

**Sen. J. Lutchmedial:** Sorry. Thank you, Madam President. I will make it relevant. The relevance of this is that when people stand here—Members stand here and make contributions about not having confidence in the CCJ, and not having confidence in the administration of justice locally, and as a Caribbean people and so on, this is the context in which that lack of confidence is rooted. I heard the Member that spoke before me talk about it is the UNC that is the sole contributor to undermining confidence in the CCJ. Is the UNC undermining confidence in the CCJ in Antigua? Is the UNC undermining confidence in the CCJ in Grenada, which had two, two times they went to the people with referenda and the people of Grenada rejected it? Do you blame the UNC for that or do you blame these types of statistics? Do you blame these types of experiences? Do you pin that to the fact that 3,400 people—because that is the problem with case numbers, you know. We do not realize that they represent human beings, 3,400 people before the Court of Appeal now, waiting more than three years for justice, perhaps, do not have confidence in a Caribbean Court of Justice. That has nothing to do with the UNC. It has to do with the administration of justice locally.

So, if you want people to have confidence in the administration of justice and have confidence in this country and us as a people to manage our affairs locally, you have to get it right. Get it right here first, at the basic level, at the level that affects the vast majority of people. Because as I have shown you, less than .5 of a per cent of matters filed in any court reached the Court of Appeal. So, what

does that say about the number of people who wish to go beyond the Court of Appeal to the Privy Council or if as Sen. Vieira has proposed, to the CCJ? It is a small amount of people.

Have we seen an avalanche of cases coming from the jurisdictions that have substituted the CCJ for the—substituted, sorry, the Privy Council for the CCJ? No, you have not. And, at the end of the day, how much would that .44 percentage of matters that reached the Court of Appeal—you know, I do not know what is the probability and I do not know how many of them go on to the Privy Council, but let us say it is less than that, do you expect to see a big skyrocketing of cases that will eventually go to the Court of Appeal and ultimately to the CCJ because people know that they could go to the CCJ here and would not have to go to the Privy Council? Do you think—is it the suggestion here, Madam President, that the fact that the ultimate court resides or sits physically in London is the reason why more people do not go to the Court of Appeal here locally, not even .5 per cent of the matters filed in court? I think not.

And so, I want to put that into context so we could understand where all these lofty ideals about sovereignty and self-determination and the cycle of independence and all of that, how many people are actually accessing this and to how many people it is actually important. Because, let me tell you this, the 16,000 samples that are sitting and waiting to be analyzed in the Forensic Science Centre, the people whose cases cannot be heard because of that, I do not think they are too bothered by self-esteem and confidence in our system and all of that. They want justice and they want real justice and real justice is being able to get a timely hearing. Real justice is not whether you have to go Henry Street or London. Real justice is about people not sitting in Remand Yard and languishing for 10 years just to have a preliminary enquiry heard, and then the State saying to them, do not

worry, you are presumed innocent. So, let us put that into context initially.

Sen. Vieira raised the fact about persons who could only afford to go to the Privy Council and so on. Madam President, again, and I heard someone made reference to the case of Chandler that was recently determined by the Privy Council, where the Privy Council said, listen, that is your—you see death penalty, we express no view on that, you know, on whether it is inhumane or whatever it is, but go to your Parliament and fix it. Why do we speak about the Privy Council as though they are so, you know, oppressive and as though they are imposing things upon us? They tell us, all the time, manage your affairs, even when we bring a challenge.

But the case of Chandler, do you think that Mr. Chandler sitting on death row has the means and capacity and ability to retain eminent senior counsel to represent him in the Privy Council? No. A large portion of the matters that go there go pro bono and the others are, from my experience and my reading and my knowledge, sometimes very large commercial law cases. And there is a benefit to that, and the benefit to that is this. When it comes to foreign investment in this country, for example, many investors take comfort that we have one of the strongest commercial courts in the world sitting as the final arbitrator and the final court, you know, final determination as the apex court for this country. It is a sense of comfort to them, because they are removed from local circumstances.

And I heard so much criticism levied here today against the Opposition because of, you know, we have raised concerns about people being too close to local—you know, of judges being close to local circumstances and so on, Madam President. But, Madam President, I think Sen. Mark raised it, the Maha Sabha radio licence, Central Broadcasting Services Limited. That is a matter where two local courts did not recognize the violation of rights and the unfair treatment

against a body that represented the entire almost, well, a large portion of the Hindu community in this country, and they went to the Privy Council and they got justice. It is the experiences of the people in this country when they try to access justice that in which these concerns are grounded. It is not some airy fairy lofty thing that we just make up and we feel people in the Caribbean will not dispense justice to us.

Sen. Thompson-Ahye levied, you know, criticisms against the Opposition Leader for statements made. Those who live it know it. When public servants first started to challenge appointments being made and the power of veto and so and being rooted in unfair treatment and discrimination, they were never successful in the local courts. They always went to the Privy Council to win their matters.

**Hon. Members:** [*Desk thumping*]

**Sen. J. Lutchmedial:** And I mentioned earlier today, the Trinity Cross matter. That is another matter. We are so convinced that the Law Lords in London are so removed from our local circumstances that they do not understand our local circumstances. But I want to make two points. The experience of, I think, anyone who practises in the Privy Council and who understands the way that they operate, is this. When it comes to a question of fact, when it comes to questions of local circumstances, when it comes to things that are cultural or social in nature, they defer to the judges below. And that is exactly what was done in the Trinity Cross judgment, Because Justice of—well, now, Caribbean Court of Justice, Justice Jamadar, as he then was, was the first instance judge and he wrote an outstanding judgment outlining what is proper in a multi-ethnic and multi-racial and multi-religious society, and how persons who are of the Hindu and Muslim faith would feel about the highest award in the land being linked to a cross, both because of the symbol and the word and so on and it is linked to Christianity. And do you know

the Court of Appeal did not agree? The Court of Appeal—although he, I think, ruled that it was saved law—upheld that. The Court of Appeal did not agree that there was any discrimination. Our three local judges who grew up in this multi-ethnic, multi-racial diverse society did not agree, but the Law Lords in London agreed.

**Madam President:** Sen. Lutchmedial, I have to caution you, because some of what you are saying, it is carrying a certain implicit connotation and I think you have to steer clear of that, please.

**Sen. J. Lutchmedial:** Okay, Ma'am. I meant no disrespect and no criticism, but I find that it is something we must take note of and we much have these—you see, these are the facts. It is easy to stand here and, again, have an academic discussion about independence and self-determination and so on, but the facts are borne out that it is the Privy Council in London and Lord Hope who spoke and who referred to the local content in the first instance decision and made the determination. So, how could we criticize the Privy Council and say that their judgments are so not rooted and not grounded in our local circumstances and they are so unaware and far removed? They may be physically far removed, but they are not incompetent. I mean, I listened here today and you would think that it is a whole panel, nine or 11 of them or something I think it is, of incompetent people that are sitting in the Privy Council when you listen to the debate here today because we find that they are so unable to apply their minds to these local circumstances.

And how many local circumstances feature in appeals? Again, the number of matters that reached the Privy Council, even when they get there, they are on very narrow issues of law. The fat is trimmed off even at the Court of Appeal level, because at an appeal level it is very rare, very rare, that even judges in the Court of Appeal interfere with findings of fact. They deal with law, issues of law, and it is



only if a finding of fact is so, you know, unconnected to the issues and to the evidence that you would find the court interfering with a finding of fact by a first instance judge. So, when you get to the Privy Council now, the issues are extremely narrow and very well-defined.

So, the applicability of local circumstances and culture and social and political values and all of that, is really of minimal consequence in most of those matters, please, Madam President. And so, I say again, that all of these issues well, I think that they are being blown out of proportion. I think that they are being heavily emphasized in order to get away from the real issues, and the real issues here, which Sen. Thompson-Ahye, I think, misunderstood—I will give her the benefit and say I think she misunderstood what Sen. Mark said.

Sen. Mark made reference to the appointment of the President of the Caribbean Court of Justice as being done by the heads of government. So, when Sen. Thompson-Ahye repeats over and over about “where the politicians, where the politicians, where the politician”, that is exactly where the politician is. If the heads of government decide out of all the persons nominated by the regional JLSC, who will be the President of the court, that is where the political interference could be. I am not saying there is, but that is where it could be, and then we get to the regional JLSC. Who heads the regional JLSC? The same president appointed by the same politicians. Who are the heads of the State that get together and appointed. Not politicians? So, that argument that Sen. Thompson-Ahye went on for, she went through every single requirement for persons to be appointed on the regional JLSC, but missed that one critical issue, which is that the person sitting on top of the regional JLSC is appointed by the politicians.

**Hon. Members:** [*Desk thumping*]

**Sen. J. Lutchmedial:** Heads of government is a nice word to say a politician. It is

a politician, and no how, which way you spin it, you cannot get away from that. So you know, again, all this national pride and aristocratic arguments and so on, Madam President, it ignores significant developments for the Privy Council. There was a time when I recall having to, you know, have about three vehicles to transport our records of appeal to FedEx in order to get them to the Privy Council. They are doing it all electronically now. COVID had to drag our local Judiciary into the 21<sup>st</sup> Century and develop an electronic filing system which I hope to God they keep otherwise every Friday evening you are sitting in the Judiciary waiting to stamp documents and so on. But the Privy Council had been doing that long before COVID. You filed your electronic record. They are doing hybrid hearings now. You do not even have to go to London. So, all this argument about costs and so on, I admit it may have been a factor for some in the past, but technology is changing all of that now, and that argument has been completely ignored, completely ignored, by what? Talks about the PNM and the UNC, and what the UNC said, and who has confidence and who “doh shoo fly” and all of these things. Let us look at the practical realities of the administration of justice. Matters going to the Privy Council now can be heard faster. I have never heard of any delays in the Privy Council like what we have locally here. I could tell you that much.

I was in a matter the other day, the trial was concluded in November 2019, trial concluded, we got the judgment last month, 2022; first instance judgment. I have never heard of a delay like that in the Privy Council. So, again, if you want to root this argument in access to justice, inefficiency, ineffectiveness and delivery of justice, this is not an argument about pride, national pride. The argument is about the delivery of justice to people. And I make no complaints about whether or not the CCJ is efficient and effective in the delivery of their judgments. I have not, I admit, had the experience of, you know, any sort of administrative challenges with

them. But, I do not know that we could ignore what takes place locally and focus strictly on which one is better because, had I also not had that experience with the Privy Council.

Madam President, just to get into a few more matters, you know, one of the arguments that has been raised over and over—oh, sorry. I wanted to address something about the death penalty argument. Sen. Vieira, I think the word he used was “ludicrous”, about people saying that the argument that the replacement of the Privy Council was meant so that we could have a hanging court. Now, I tried to stay clear because of my personal convictions of any death penalty argument and so on. But, you know it was, again, if people feel that way, perhaps, they have a reason for feeling that way. And in the same article that I spoke about earlier where the Prime Minister spoke about the pace of justice in this country, the Prime Minister spoke about the death penalty and said the British people, those British people are against the death penalty and that is why we cannot impose the death penalty here. So, again, it is not the UNC that is undermining the Caribbean Court of Justice. It is not the UNC that said that they want to hang people and that is why we have it here—oh, I found my article, let me read it. And if I may quote, Madam President, same article carried in the *Newsday*, 9<sup>th</sup> of March, 2022:

“Responding to a question from the audience, he said, ‘We are further away’”—he being of course the Prime Minister they are referring to—  
““from the death penalty than we were. It is not a matter for the government, the government has done what it can. Our highest court of appeal is the Privy Council, and these English ppl don’t support the existence of the death penalty.””

So, if people in the country are complaining and saying that look, the reason why they want to get rid of the Privy Council, because they want a hanging court, this is

why. Not the UNC. This, these kinds of statements, Madam President. So, again, let us ground our arguments in facts. Let us ground our arguments and let us dismiss the arguments and the pros and the cons of the CCJ and the Privy Council; ground those arguments in facts and let us pin everybody's responsibility to them and responsibility for their statements and their views and opinions.

Madam President, one of the critical things about people fearing that a local court—when I say local, regional court—let us say regional court, may be unwilling to stand up to government officials and so on and to remove or to rule against persons who are determined to be powerful, regardless of who is in Government, that is a fear that people have, and that fear has been in existence regardless of who is in Government, because in small societies that is just how it is. People are fearful that they would not get a real independent tribunal when it is that the members sitting in the court are so closely connected and are part of the society. So, that argument about people being far removed, whilst it is used here so far by the Independent and the Government Bench as a criticism, the Law Lords in London being far removed is a comfort to many people who have that fear. Is it a rational fear? I do not know. But there have been cases in the Caribbean, not in Trinidad. So let us not make this a race issue and a political issue and a UNC versus PNM issue.

In St. Kitts, one of the cases that I read a long time ago, it had to do with the Prime Minister, who had been the Prime Minister for I think for umpteen years changing the boundaries—I will remember the name shortly—of constituencies just before an election and a challenge being made to that and it going all the way to the Privy Council. The persons who challenged those—because I think it was very close to an election that it was done—they could not get justice in St. Kitts at the court of first instance. They could not get justice. They did not get a ruling in

their favour at the Court of Appeal, they went to the Privy Council—Brantley. Brantley is the name of the case. And everybody knows the case of Brantley and many people refer to the case of Brantley as an example of when you have that political type of matter before your local courts, that it is sometimes extremely necessary to have a court far removed. That is the reality of Caribbean and small societies, Madam President. It is part of our reality. So that is just one example of why people may feel that way about not having trust and confidence.

**5.25 p.m.**

Madam President, I am not here to take cheap shots and raise issues, but I raised an issue earlier this year or last year, I think it was, about comments being made about conversations between—I thought it was ironic or just coincidental—the mover of this Motion who said that he had spoken via WhatsApp with judges of the Court of Appeal. Now, I have no complaints about that. Okay? You want to—that is fine. Everybody talks to people; I know many people who I worked with who have now been elevated to judicial positions, and so on. But when you make public statements like that, Madam President, can you blame people for not actually having a lot of confidence in the independence of our—or the isolation of our local judicial officers sometimes? I do not have—

**Madam President:** Sen. Lutchmedial, I have to caution you and I am finding that I have to caution you on the same issue. Remember there is a Standing Order, it is 46(8), and I am trying to tell you not to go in that direction because you are coming too close to it and sometimes you are in it. Okay?

**Sen. J. Lutchmedial:** Madam President, I make no criticism of the independence of our judicial officers, just for the record. I make no criticism.

**Madam President:** You are saying that but you are also in your statements, you are implying certain things. So you need to be—align what you are saying with

what you are implying.

**Sen. J. Lutchmedial:** What I am trying to explain and what I am trying—the point I am trying to make is that a perception could be created for John Public; a perception, but I will move on.

The perception there, of course, Madam President—and my final point is this, and I think Sen. Mark referred to it; now, throughout the Caribbean, as we know, there are only four countries that have gone on to the CCJ but the fact is that many other countries have tried and they went by way of the national referendum. We should not be afraid to hear the voice of voters on these issues, and I would challenge Sen. Vieira to amend his Motion—amend his Motion to call upon the Government to amend the law to include a referendum on the issue of whether or not we should move away from the Privy Council. Because if you really believe in democracy, and if you really believe in self-determination, and if you really believe in all of these ideals, and so on, and you believe that the voice of the people is the voice of God, listen to the voice of the people on this issue. Grenada did it, twice. I think Saint Vincent did it and then they eventually passed a law because they do not have the same type of entrenched provisions. Antigua did it and the people voted against it.

In fact, I do not think there has ever been a successful referendum on this issue in the Caribbean. The countries which have gone on to make the CCJ their final Court of Appeal, they did not have that requirement placed in their Constitution. And, Madam President, if it is we are really serious, forget about who signed on and who did not sign on, and who says what and who has what concerns, let the people speak on an issue as important as this. There is a reason why section 109 has that three-quarters majority. There is a reason because you assume that there would be, you know, that type of agreement and consensus on issues that are

so important by the people's representatives. But if you cannot achieve that through a parliamentary Bill, as Jamaica tried to do and, again, the same Privy Council had to tell them, "Well, no, you are wrong", and I think that is what Sen. Vieira was referring to on a procedural issue. The Bill was passed as a simple majority Bill and it ought to have been a special majority Bill because it is important. And we have in our Constitution—I am not sure what Jamaica had, but we have what I call, the "super majority". That "super majority" of a three-quarters shows you the importance of this issue and why the framers of our Constitution did not think it was an issue to be dispensed with lightly.

So of all of the concerns that have been raised, Madam President, I say this, whether people's concerns about moving away from the Privy Council towards the CCJ, are well-founded or not, whether or not the cost factor is such a great determining factor that affects people's access to justice in this country, whether or not we are prepared to sit—to have the CCJ and to move on and to ignore all the other problems to some extent that are affecting our judicial system right now and improving access to justice by means of really addressing the problems that affect the vast majority of people, whether or not we are satisfied with the arrangements as they presently are with respect to the appointment of the President of the Caribbean Court of Justice and the potential for influence or the potential for interference and the Regional Judicial and Legal Services Commission, leave those issues to be determined by the people. Not by whom they vote for in a general election because a general election has a multiplicity of issues. Put the specific issue before the people by way of a referendum and then let it be decided in that way, Madam President. That is true democracy. That is true self-determination, and that is what we in the Opposition stand for, Madam President. I thank you.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Leader of Government Business.

### ADJOURNMENT

**The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne):** Madam President, I beg to move that this House do now adjourn to next week Tuesday, which will be Tuesday the 31<sup>st</sup> of May, 2022.

**Madam President:** Is there a time, Leader of Government Business?

**Sen. Browne:** Madam President, 1.30 p.m. Thank you, Madam President.

**Madam President:** Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Deonarine.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Deonarine.

**Hon. Senators:** [*Desk thumping*]

### Review of Crisis Management and Emergency Response Protocols (State-owned Enterprises and Statutory Authorities)

**Sen. Amrita Deonarine:** Thank you, Madam President. Thank you, Madam President, for the opportunity to raise this matter on the adjournment, the need for the Government to conduct a comprehensive review of the crisis management and emergency response protocols of all state-owned enterprises and statutory authorities in light of the deficiencies underscored by major incidents at T&TEC and Paria Fuel Trading Company in February 2022.

Madam President, our country was faced with two major national emergency incidents in the space of one month, the month of February. We had an island-wide power outage on February 16<sup>th</sup> and then a tragedy at Paria Fuel Trading Company on February 25<sup>th</sup>, involving the loss of lives of four divers. Madam President, before I continue it is important to note that this matter was submitted prior to the publication of the report of the Cabinet-appointed committee to investigate the



island-wide blackout and prior to the commencement of the commission of enquiry into the Paria diving tragedy.

I acknowledge that the work of the commission of enquiry is ongoing, I would like to emphasize that this matter does not seek to pre-empt the findings of the commission of enquiry. This matter is being raised in the context of the occurrence of two major national incidents that have brought into question the preparedness and efficacy of crisis management and emergency responses of state-owned enterprises and statutory authorities in Trinidad and Tobago. And so, Madam President, I see this matter as pertinent and deserving of a response by the Government on its plans to conduct a comprehensive review of the crisis management and emergency response protocols of all state-owned enterprises and statutory authorities.

Madam President, I recognize the move by the Government to conduct independent assessments of both incidents as a starting point but I would like to urge the Government to recognize that these incidents provide a mere warning that we need to look into crisis management and emergency response protocols for all public bodies, because despite a low probability of occurring, these events did occur and what it was able to do was to expose the level of unpreparedness of multiple state-owned enterprises and statutory authorities. Madam President, one thing the pandemic has made us all realize is that we need to be able to deal with multiple crisis at one point in time. COVID-19 has forced us to engage in real time problem-solving to cope with dynamic circumstances that we do not fully understand as they keep evolving and changing.

When we take these events into consideration, all of them, all of them have revealed shortcomings in one way or the other in our ability to manage crisis and respond to emergency. Madam President, in a true crisis emergency no one is in

the position to provide complete or comprehensive answers. A true crisis thus presents us with a humbling and troubling question, “What to do when no one knows what to do?” The fact that no one knows immediately implies that in crisis circumstances our hope and confidence need to be placed in the operation of the appropriate process that are being captured in critical incident response plans, cyber incident response plans, just to name a few, which is exactly what we saw lacking during the restoration process when we had the island-wide blackout.

According to the Cabinet-appointed committee report, the restoration process was curtailed by the lack of a systematic approach or a systematic process which led to many unforced errors. Further, there was the issue of ineffective communication with the public and amongst public bodies involved in the restoration. There was the absence of the involvement of the ODPM. There was also the issue of no one taking up the overall authority as incident commander. What is of critical importance is that in any emergency and crisis response multiple agencies are involved. The overall response must be coordinated, both in terms of communication and pooling of resources to improve the efficiency of the response.

Madam President, the country’s transition to digitalization is even more reason to have a comprehensive review of the crisis management and emergency responses in Trinidad and Tobago. The growing digitalization of critical infrastructure renders it vulnerable as never before. We have to be on the alert for cyberattacks and responding to such with appropriate cyber incident response plans. Many countries have already been vulnerable to assaults on the Supervisory Control and Data Acquisition system—that is the SCADA system—used by power grids, oil pipelines and industrial facilities to monitor and control the operations. As a matter of fact, Madam President, Costa Rica is battling an ongoing cyberattack on its state-owned enterprises as we speak. The number of Costa Rican

institutions hit in the wave of cyberattacks in the past month has crossed 27. Madam President, let alone for our readiness and preparedness in critical incidents response plans, I cannot confidently say that the public sector is sufficiently prepared with appropriate cyber incident response plans given the findings from the island-wide blackout.

So just like politicians say, let us not let this crisis—a good crisis go to waste. Let these incidences, COVID-19, the island-wide blackout and the Paria tragedy prompt the Government to conduct a comprehensive review of the crisis management and emergency response protocols of all state-owned enterprises and statutory authorities. With a comprehensive review and upgrade of all crisis management and emergency response plans, the Government would be able to highlight many deficiencies prior to crisis or emergency occurring and address them accordingly. I thank you, Madam President.

**Madam President:** Minister of National Security.

**Hon. Senators:** [*Desk thumping*]

**The Minister of National Security (Hon. Fitzgerald Hinds):** Thank you very much, Madam President. Madam President, Trinidad and Tobago is exposed to multiple hazards that range from frequent hydro-meteorological events, such as adverse weather, to rare biological hazards, such as COVID-19, with which we are still battling. Based on their severity hazards may result in emergencies or potential disaster situations requiring varying levels of responses. In such circumstances the National Response Framework provides a guide for those agencies that are required to respond to these occurrences. The National Response Framework was developed by the Office of Disaster Preparedness and Management, or the ODPM, to provide guiding principles, a structured approach, designed to delineate roles and responsibilities for agencies that are tasked to respond and manage events from

the smallest incident to the most catastrophic.

The framework therefore provides a guidepost for differing elements of society which may respond either individually or collectively. These may include infrastructure operators, other types of businesses, civil society organizations, communities, municipal corporations, statutory bodies, the Tobago House of Assembly, Ministries and their sub-units, and of course the Cabinet. The National Response Framework utilizes a three-tiered system of incident response. At level one, the responding societal element designated as the lead agency has the capabilities and capacity to manage the emergency, either by utilizing its own resources; obtaining support from its partners or receiving assistance from the state's local authorities. In such circumstances coordination and other managerial functions remain the responsibility of the lead agency unless in instances where a parent entity or state agency with superior jurisdictional authority assumes control of the response.

This may apply in instances where the Trinidad and Tobago Police Service, the fire service may be required to act to save lives or reduce the possibility of damage and destruction. Simultaneously, at a level one response, the ODPM would be monitoring the unfolding situation whilst collecting and sharing information to assist in generating a common operational picture and situational awareness. Additionally, the ODPM assumes control of coordinating the response whenever such a request is received. On the occasions when the resources of the first response agency or agencies prove incapable of resolving the situation and the national level resources are required, the lead agency would request support from the Minister of National Security, or directly from the ODPM, or a more appropriate national level agency. In such instances this is considered a level two response and the National Emergency Operations Centre is activated, either

virtually or in person.

Prior to the power outage that was alluded to a while ago, and the unfortunate incident on the Paria Fuel Trading Limited project, the Government of the Republic of Trinidad and Tobago, through its Office of the Prime Minister, Communications, began the process of reviewing and revising the national crisis communication plan and our communications capabilities. The Office of the Prime Minister, Communications is the entity at the national level that coordinates communications with other government agencies in situations that warrants a national level response to a crisis, complex emergency or disaster. In light of this, the OPM, Communications began a review of the plans of various Ministries with a view to ensuring consistency and interoperability and to identify areas where there may be gaps, as well as areas that require updating.

This revision is aimed at producing a modern, comprehensive and multi-hazard communication plan. This will be in partnership with the ODPM which has responsibility for disaster risk reduction and management at the national level. This additional layer of national resources may also prove insufficient to control the extent of the hazard and its effects. As such, the ODPM or a more appropriate lead agency would recommend to the Minister of National Security that regional or international assistance be sought. This would be considered a level three response, Madam President. Following the power outage incident, a Cabinet-appointed committee, led by Prof. Sharma, investigated and reported comprehensively on the causes of and national response to the island-wide power outage. In addition, the ODPM conducted a national after-action review of the response to the power outage. This latter review was undertaken with full participation by all of the agencies that were involved in managing the power outage.

Madam President, just to remind us, my perusal of that report demonstrated

that a tree would have generated the initial stock and trauma that put the system off and because it required what they call, black starting, where all the systems went down, it required—the report actually says it requires a little more coordination in the black start in order to get the thing going again, and, Madam President, there is where it was at. Consequently, while areas for improvement have been identified and agencies have begun implementing the recommendations made in these two reports, the Government therefore considers that these reviews are sufficient for the time being, however the Government will ensure that the recommendations are shared with all relevant stakeholders and the general public.

As for the ODPM, it will also continue its exercises and drill regimens which it uses to improve joint operations, response capabilities, but also to review and revise the National Response Framework. So let it not be said, Madam President, that Trinidad and Tobago does not have a national response plan or framework; we do, very clearly delineated, and, Madam President, improving all the time, as these systems do, with a view to responding to the kind of emergencies or national circumstances, as I have hitherto described. I thank you very warmly, Madam President.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Mark.

**Telecommunications Authority of Trinidad and Tobago**  
**(Divestment of Shareholding)**

**Sen. Wade Mark:** Thank you, Madam President. Madam President, the matter that I wish to address, deals with the failure of Cable and Wireless Company, CWC, to comply with the condition imposed by the Telecommunications Authority of Trinidad and Tobago to divest and/or sell its 49 per cent shareholding in TSTT. Madam President, sometime in November of 2014, the

Telecommunications Authority of Trinidad and Tobago received an application by Columbus Communications Trinidad Limited, trading as FLOW and Columbus Networks International Trinidad Limited, on November the 26<sup>th</sup> and 27<sup>th</sup>, 2014, respectively, for approval of a change of control resulting from a proposed acquisition of its parent company, Columbus International Incorporated by Cable and Wireless PLC. Madam President, acting under its authority to approve any transfer of control of its concessionaires, by section 22(1) of the Telecommunications Act, and by condition A17 of the concession, the Authority embarked on a very detailed analysis. And I am looking at a media release dated 12<sup>th</sup> of March, 2015, in which the Telecommunications Authority took a decision on the 9<sup>th</sup> of February, 2015, after an in-depth economic and legal analysis. And it is stated on the 9<sup>th</sup> of February, the following:

“Given the existing shareholding of 49% in TSTT by Cable and Wireless (West Indies) Limited (CWWI), a subsidiary company of CWC plc, the Authority found that substantial lessening of competition or adverse effects may reasonably be expected to result from the proposed acquisition of Columbus by CWC and as such, pursuant to section 22(1) (c) of the...Act, the application for change of control was not approved.”

Subsequently, Madam President, the Telecommunications Authority agreed to a conditional arrangement with the Cable and Wireless Company and in that conditional arrangement, there was an agreement. This agreement, Madam President, allowed—and I quote:

“...for the complete divestment of...”—the Cable and Wireless—  
“...shareholding of 49% in TSTT...”

Cable and Wireless was directed by TATT, Madam President, to divest its 49 per cent shareholding and that must be completed within one year of the date of

communication. It was extended in writing by another six months and it was not supposed to exceed 18 months:

“...failing which the Authority shall take such steps as are available to it under law.”

Madam President, we are now in the year 2022, almost eight years later and there has been extension after extension, after extension, after extension. The national interest, the people's interests are being affected, are being harmed, are being hurt, so we would like to get from the Government today whether Cable and Wireless, which is now controlled by Liberty Latin America, and whose parent is Liberty Global, whether that company is taking the Government, TSTT and the people of Trinidad and Tobago for a ride. Why has it taken eight years for Cable and Wireless to divest of its 49 per cent shareholding interest in our company called TSTT and under the shareholder's agreement, Madam President? We have first lein on this matter. If they are going sell—that is Cable and Wireless—they must sell it to the people of Trinidad and Tobago. And thereafter, if we are not interested, they can go on the market, locally or abroad, to get rid of the 49 per cent.

**5.55 p.m.**

Madam President, since then, the Government of Trinidad and Tobago has established what is called a “Cabinet subcommittee” to study the current status of TSTT and to make recommendations on its future. Inclusive among its focus, is whether this company is fit for purpose and to determine what is called—what should be done with it, inclusive of determining its valuation, or a valuation of the company.

Madam President, I find it very highly unusual that in the face of this defiance by Cable & Wireless, that our Government, the Government of Trinidad



and Tobago, would set up a subcommittee of the Cabinet to determine the future of Cable & Wireless. What is going on? Is there something going on that the country does not know?

We understand Michael Lee-Chin, a lead person in that company, is part of this Liberty Global, and is part of this Latin American Liberty, and we want to know if there is some deal taking place behind the scenes to give away TSTT to these people. Why is the Government not addressing Cable & Wireless?

Madam President, in closing, I want to let you know, there is a law that allows TATT to take action against Cable & Wireless. Why has TATT not done so? Why has the Government allowed Cable & Wireless to keep our 49 per cent? It is their shares we know, but under the law they have to sell their shares, and it is eight years now. When are they going to take action to sell their shares? I think that the Government must tell the country what the situation is involving the failure of Cable & Wireless to dispose of their 49 per cent shares, either to the Government and people of T&T., or to some other person outside of T&T or inside T&T.

Madam President, I thank you very much for allowing me to bring this matter to the attention of the Government, and on behalf of the people, we need clarification.

**Madam President:** Minister of Public Utilities.

**The Minister of Public Utilities (Hon. Marvin Gonzales):** Thank you very much, Madam President. I am not surprised that Sen. Mark again is utilizing the Standing Orders and the platform of this Senate to re-introduce and to re-litigate matters concerning the impending restructuring of TSTT.

Again, Madam President, as I have indicated on numerous occasions in this Chamber, the Minister of Public Utilities will not be drawn into any discussion, any public discussion, that has anything to do with the restructuring of the

Telecommunications Services of Trinidad and Tobago.

**Hon. Senators:** [*Desk thumping*]

**Hon. M. Gonzales:** Madam President, let me remind the national population that the Motion filed by Sen. Mark states as follows:

The failure of Cable & Wireless Company to comply with the condition imposed by the Telecommunication Authority of Trinidad and Tobago to divest and sell its 49 per cent shareholding in TSTT.

In preparation for this Motion, I consulted with the Telecommunications Act, Chap. 47:31, the Act that establishes the Telecommunications Authority of Trinidad and Tobago.

Madam President, this Motion should be answered not by the Minister of Public Utilities, because the Telecommunications Authority of Trinidad and Tobago does not fall under the umbrella of the Minister of Public Utilities. Therefore, the national population should not be surprised that Sen. Mark has once again missed the mark.

**Sen. Mark:** I did not.

**Hon. M. Gonzales:** Therefore, I will ask the Senator to rightfully pose his Motion to the Telecommunications Authority. Madam President, assuming that Sen. Mark is correct—assuming—and it is a very dangerous assumption to make that Sen. Mark is right on anything—but assuming that he is correct, if the Telecommunications Authority has laid down conditions for this particular concessionaire, then it is the Telecommunications Authority's responsibility to enforce the conditions under this particular matter.

Therefore, it is not the Minister of Public Utilities to come in this Senate and respond to anything, or any power that has to be exercised by the Telecommunications Authority of Trinidad and Tobago. Thank you, Madam

President.

**Sen. Mark:** We will put it to the Minister of Public Administration.

### **Indian Arrival Day Greetings**

**Madam President:** Hon. Senators, as you all know, we will soon be celebrating Indian Arrival Day, so I now invite Senators to bring the respective greetings.

**Madam President:** Minister in the Office of the Attorney General and Ministry of Legal Affairs.

**The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Renuka Sagrarsingh-Sooklal):** Madam President, Thank you. On the 30<sup>th</sup> May 2022, the Government of the Republic of Trinidad and Tobago will join with all citizens of our beautiful twin-island State in observance and celebration of the arrival of East Indian indentured labourers to our shores over 170 years ago. The existence and vitality of their rich culture, religions, language, and even cuisine, is testament to the resilience of the ancestors of the present Indian diaspora of which I stand here a proud member. Proud to be Hindu, proud to be East Indian. Not ashamed of even the very sindoor, the red marking, which adorns my maang or middle part. Not ashamed of my forefathers' name, that very name which I wear like a badge of honour, even to this day.

For all of this and more, I recognize that I owe a debt of gratitude to my ancestors who were the protectors of my dharma, my rich heritage, culture and tradition. Many of the values that we all inculcate in our daily lives, and even the way we conduct ourselves as a government, is in no short measure an underpinning of strong principles that would have passed from generation to generation, even transcending culture, race and religion. For that very fact, Madam President, Trinidad and Tobago is, and will continue to be, a nation filled with almost every creed and race, yet we exist in harmony as a unified Trinbago people.

It is because of this unification and collective fortitude that the Government and the citizens which we represent are able to withstand and even overcome the many challenges that the global COVID pandemic has brought to us. As a government we expect challenges and even embrace them, because we know our nation and its people come from a long and vibrant history of fortitude and determination that has equipped us with the necessary tools to overcome all that we face.

So as we take time to pay homage to our early East Indian pioneers, and enjoy the many contributions they have made to our modern society, I wish to reflect on the contribution of all ancestral immigrants and people, each facing similar adversity and tremendous hardship, yet able to withstand and preserve their cultural. And so, I wish to extend the Government's gratitude and appreciation to our East Indian ancestors for your sacrifices, courage, social, economic and political contribution to our nation.

In closing, I now turn to the children of the indentured. My brothers and sisters, remember that while we stand as proud East Indians, we are Trinbagonians first. So let us use this diversity to build, not destroy, to unite, not divide, our nation, as there is absolute strength and beauty in this diversity.

Madam President, may God bless our nation. I thank you.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Thank you, Madam President. On the occasion of the 177<sup>th</sup> anniversary of the arrival of East Indians into our blessed country, we in the United National Congress wish to extend our militant solidarity and greetings to all our Indian brothers and sisters on this very important occasion which comes up on Monday.

Madam President, it was on May the 10<sup>th</sup>, 1845, 217 of our East Indian brothers and sisters arrived in Trinidad on the Fatel Razack, and over the whole period of immigration—immigration from 1845 to 1917, a total of 143,939 persons from India came to this island.

We recognize that on this occasion of significant national importance, it marks not only the arrival of a people, but more so to the arrival of another wave of diversity to our shores. That diversity in the composition of our population is the vanguard of our uniqueness of norms, mores and culture as a nation. Diversity is at the core of our value system. As citizens of our country, it represents that quality that we hold sacrosanct to the operations of our country.

Let us all celebrate the lives of the tireless individuals that pioneer this great nation of ours. We should feel a sense of pride in our East Indian ancestors, and reflect on their struggles. The many festivities entrenched in our commitment to multi-cultural, multi-ethnic and multireligious activities, Madam President.

On this coming Indian Arrival Day, let us continue this day of remembrance as well as reflection, and a time for celebration of unity in a sea of diversity. May this celebration promote further cross-cultural understanding and appreciation of all others in our multi-cultural, multi-ethnic and multireligious society.

On behalf of the hon. alternative Prime Minister, Kamla Persad-Bissessar SC, on behalf of the Opposition in this honourable Senate, I join in wishing all our Members of the Parliament of the Senate and their families, and the nation of Trinidad and Tobago, a happy Indian Arrival Day. May God bless our nation.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Deyalsingh.

**Sen. Dr. Varma Deyalsingh:** On February 16, 1845, the Fatel Razack left Calcutta, India with 227 immigrants. Like our South American brothers and sisters

who traversed across the Gulf of Paria looking for a better life, those immigrants came looking for a better life, to earn their keep, to overcome poverty.

Those 227 persons faced hardships along the way, physical hardships, but also there is a condition called *kala pani*, where if a Hindu crosses the sea, the black water, they would feel that they would lose their cycle of reincarnation. So besides having to face a perilous journey, they also had to face that *kala pani*, where they are crossing that black water and they would now—it had a religious sort of conflict and they would have to do certain rituals. So it was difficult for those groups. But they were coming to this land, this promised land, “ah Chinitat” they called it.

In May 1845, 30<sup>th</sup> of May, the first East Indian immigrants stepped foot in Nelson Island, but they were quarantined for two weeks. So, yes, our forefathers know about quarantine. Two weeks they stayed there before they were dispersed into the estates, and 147,000 persons made this trip after, until 1917. They came to keep the cocoa, the sugar plantations viable, to feed the plantocracy class, to feed the capitalists. If Dr. Eric Williams had a second book, *Capitalism and Slavery* should have been now followed up with “Capitalism and Indentureship”, because they had hard times.

They faced oppressive colonial laws. If they missed a day of work, they had to serve two days in jail. They were not allowed to vote, because of their not knowing the English language. So our forefathers did, in fact, face certain prejudices because of their culture, which people looked down at, and because of their social, economic status at the time. But our ancestors have come a long way.

So, initially, they were not accepted, but they have come a long way. So if we look across now, and I looked at the landscape, we have seen East Indians have arrived in this country. They have occupied a lot of positions that we could be

proud of. So from East Indian immigrants, indentureship, persons who came here as paupers—when I looked across and saw our President Noor Hassanali, a Muslim East Indian. We had two East Indian Prime Ministers, Mr. Basdeo Panday, Mrs. Kamla Persad-Bissessar SC, a Hindu Chief Justice, Sat Sharma. Also we look at the fact that we have the President of the Senate and the Vice-President, again deriving from East Indian heritage.

I also look at the Government Bench, and I was proud when I usually see the Minister in the Office of the Attorney General and Legal Affairs with her sindoor. It shows this Hindu would have been scorned years ago, but here she sits. I see the two Ministers of Agriculture, Land and Fisheries, East Indians of different religious faiths. I see the fact that you have the Minister of Works and Transport.

So we have moved from being these indentured labourer families who are now in the national landscape, we have filled all top positions. We have to thank the late Patrick Manning for his magnanimous gesture in giving East Indians this holiday. You see, it shows that it gives us a sense of pride, a feeling that we belong here. Some unfortunate statements were made about recalcitrant minority, but what this holiday gives us is a feeling that we belong, a feeling that all citizens can help us appreciate our presence, our arrival. So I am proud to belong to this nation.

I also must say that I am certainly blessed to be here, and we each must look at the fact that our citizens would be fortunate to be living in this country where people of different races, religions, ethnicities all live in harmony, though they may have come and arrived from different places.

So today in this blessed nation, on behalf of the Independent Bench, I would like to wish this honourable House and citizens of our beautiful land a safe and enjoyable Indian Arrival Day. God bless our nation.

**Madam President:** Hon. Senators, permit to join with the previous speakers in

bringing greetings on the occasion of this country's celebration of Indian Arrival Day.

Hon. Senators, every year at this time many lofty words are spoken, all true, about the tenacity and the discipline of our East Indian forefathers from which there can be no doubt at all Trinidad and Tobago has benefitted tremendously. But these qualities are not the faraway unreachable qualities we might sometime supposed them to be, belonging to some distant age. These are qualities and capacities that are very real and that are innate to every human being.

So this year my wish on the occasion of Indian Arrival Day, is for Trinidad and Tobago to move beyond the public plaudits and the lofty ovations, and instead to rekindle in the private hearts of every woman, of every man and of every child, the tenacity and the discipline that live deep inside each of us.

Enough has been said in other quarters about the challenging road ahead for us as a country. I need say no more about that, but I do believe that our only chance of surviving and of thriving in the face of the challenges before us, is for each of us to reach down and find that tenacity and that discipline that served our forefathers so well, and to apply them to whatever and everything that lies before us. If we do that, then not only will we survive our challenges, but soon enough we will thrive in the midst of them.

In that vein and in that hope, may I extend happy Indian Arrival Day greetings to all Members of the Senate, to the Members of staff of the Parliament of Trinidad and Tobago, and to all of Trinidad and Tobago.

**Hon. Senators:** [*Desk thumping*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.17 p.m.*