

## ***Introduction***

It is undeniable that for centuries self-governance has been paramount to the existence of the people of Antigua and Barbuda. The freedom to make choices and collectively to determine their own destiny has been etched in the consciousness of the people and is now, I am sure, a distinctive characteristic of their DNA. The struggles that have brought us thus far must never be discounted because it will always be a defining feature of how we exist in the future.

This evening as we contemplate a very important decision in the history of our Caribbean independence, we must very briefly reflect on the journeys of our forebears; their defiance in the face of adversity and the sacrifice of blood sweat and tears that they endured to imbue us with that light of freedom and those innate qualities of pride and dignity.

## ***Indomitable Spirit***

Their spirits must never be allowed to die but must prevail into eternity. Because it was those indomitable spirits that led to the gruesome killings of four slaves in the 1729 Nathaniel Crump conspiracy. It was rumoured that a plot was afoot to kill Nathaniel Crump and the entire white population of Antigua. Nathaniel Crump was a legislator and the owner of slaves. The conspiracy was reviewed by a judge who sentenced three of the slaves that were owned by Crump to be burnt alive and the other slave to be hanged, drawn and quartered. When a person is hanged drawn and quartered that person is dragged through the streets to the place where he is hanged almost

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to the point of death and then his body cut into four pieces. By imposing such unduly harsh sentences the judge thought that he had made an example of all slaves on the island and that no further attempts would be made to carry out any revolts or plot to kill any of the slave owners. The judge could not have been more wrong because the indomitable spirits of the Antiguan people were very much alive and their freedom, pride and dignity were worth more than their existence on terrible mother earth.

Hence in 1735 the Stony Hill Gully Conspiracy was presumably conceived. That conspiracy involved a plot to kill all the white slave owners on the night that they were to have been celebrating the Coronation of King George 11 at Christopher Dunbar’s residence in St. Johns. It is reported that many of the white slave owners were to have gathered in that house in October 1736 to celebrate and during the celebrations 10 gallon barrels of gunpowder were to have been smuggled into the house and ignited to cause an explosion, which it was anticipated would have killed all the occupants. The explosion was also to serve as a signal to slaves in the surrounding plantations to kill their masters and after having done so, to converge on St. Johns from four different directions. A slave uprising was to follow and their de facto leader, Prince Klaas, who was a very prominent and respected slave was to be installed as the leader of the new black kingdom.

The conspiracy never saw the light of day, mainly because the celebration was delayed by almost three weeks to commemorate the King’s birthday and the mutterings and utterances of other slaves revealed the plot to their slave masters. An investigation was conducted and over 30 slaves were forced to confess that they were

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part of the plot. This investigation led to the dubious convictions of 132 slaves and the ensuing horrible deaths of 88, including the infamous Coquo Tackey (Kwaku Tayki), otherwise known as ‘Court’ but more affectionately referred to as Prince Klaas. Five of the slaves, including Prince Klaas were broken on the wheel. This was done by tying the victim to the spokes of a large wooden wagon wheel that was fastened to the ground at the centre of the wheel and with the wheel being elevated about a foot off the surface of the ground. While the victim lay spread-eagled on that wheel he was beaten by a club until his bones were broken before he was left to die. Seventy seven slaves were burnt at the stake and six of the slaves were hung in iron until they died of hunger and thirst.

The people of Antigua suffered grave consequences in their struggles for freedom. Since 1687 twenty seven of them were burnt to death when they were caught in the Boggy Peak area hiding out after running away from the plantations where they were enslaved. They endured the inhumanity and indignity with amazing resolve but they did fight back when the cruelty from their masters became unbearable.

In 1701 when some of the slaves in Greencastle Estate were deprived of their usual Christmas holiday and made to work for that entire day by their slave owner Samuel Martin, who was also the Speaker of the House, the slaves retaliated by killing him. But there were those who just could not endure the cruelty that was imposed by their slave masters and it is sadly reported that many of them journeyed to Devils Bridge on the North Eastern side of Antigua and threw themselves into the rough waters of the Atlantic Ocean, never to be seen again. Many of the slaves in Antigua rather commit suicide than subject

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themselves to slavery. The forbears of this country cherished their freedom and independence. To them, freedom and independence were goals, the achievement of which sacrifices were required to be made so that others might live with pride and dignity.

Barbuda too had its fair share of historical challenges. In 1741 the cruelty towards slaves by their owners were met with reprisals in the form of damage to property and the slaughtering of animals. Similarly, in 1746 another slave revolt resulted in the assassination of Governor Macknight and the hanging of two slaves, with another slave being left with little choice but to commit suicide. But there was more to come because the indefatigable slaves of Barbuda were not going to be left behind on the emancipation of slavery and even though Barbuda was not mentioned in the Slavery Emancipation Act of 1834, approximately 500 Barbudan slaves freed themselves from slavery following the 1834 slave uprising.

Together and in separate incidents, the people of Antigua and Barbuda have demonstrated by their forebears that freedom is not just a philosophy or a buzz word that excites their emotions but it is also reminiscent of a priceless commodity that is tainted with cruelty and inhumanity in return for the purity and dignity of life.

***Completing the Process of Independence***

The struggles continued from 1632 to 1834 when slavery was abolished. Thereafter, it took 147 years following the emancipation of slavery before Antigua and Barbuda attained its independence from Great Britain but such was achieved without severing ties with the

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Judicial Committee of the Privy Council, which is considered by some as the vestige of colonial rule. The retention of the Privy Council as the final court of appeal attracted the comment from the former Chief Justice of Barbados Sir David Simmonds that;

*“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.”<sup>1</sup>*

The view of Sir David Simmonds was supported by that of Lord Browne-Wilkinson, who in 1999 expressed sentiments to the effect that the Caribbean countries should seek full independence by establishing their own court of final resort. As far back as 1828 Lord Brougham held the view that Britain was too far removed from the realities of the colonies to adequately serve their interests. Lord Wilberforce in 1990, Lord Hoffman in 2003 and Lord Phillips in 2009 have all expressly indicated that the matters arising from the Caribbean are unduly burdensome and that consideration should be given to the Caribbean establishing its own court of final resort. As a matter of fact, in 2009 Lord Phillips suggested that 40% of the UK Supreme Court’s time will be taken up with Privy Council matters and therefore consideration should be given to utilising the services of lower court judges to hear appeals to the Privy Council. The

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<sup>1</sup>Waldron Olutoye *No Reasons For Retaining the Monarchy*, Advocate 23<sup>rd</sup> February, 1997

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implication of that statement is that Caribbean Court of Appeal judges will be allowing appeals to go to the Privy Council to be adjudicated by their equals. Yet most recently Lord Neuberger seems to have a different view to his predecessors, especially in the light of the fact that overtures have been made by him to at least two Caribbean jurisdictions, expressing the view that Caribbean jurisdictions are still welcomed to use the Privy Council as their final court of appeal. There seems to be much confusion at the Privy Council as to the status of Caribbean jurisdictions that utilise its services as their final court of appeal.

***Institutional Framework-CCJ***

This evening we ask ourselves this question, do we really subscribe to the view that retaining the Privy Council is an affront to our sovereignty and the sovereignty of independent nations? Is that statement a reflection of the manner in which Caribbean governments have chosen to regulate and influence the welfare interests of their subjects? In reality, we can safely conclude that Caribbean governments have already established the institutional framework within which the Caribbean Court of Justice (CCJ) is permitted to function at the exclusion of the Privy Council as our final court of appeal. I will now turn to the institutional framework that has been established by the Caribbean governments in their capacity as members of CARICOM.

In 2001, CARICOM member states executed the Revised Treaty of Chaguaramas. This Treaty provided for the establishment of the Caribbean Single Market and Economy which primarily deals with the

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manner in which member countries interact with each other for the purposes of trade and related matters. In that same year the Caribbean Court of Justice (CCJ) was established by an Agreement which came into force on 23<sup>rd</sup> July, 2003. The CCJ was thereafter inaugurated and commenced operations on 16<sup>th</sup> April, 2005.

The Agreement which established the CCJ also established the Regional and Judicial and Legal Services Commissions (RJLSC) but the Agreement which established the Caribbean Court of Justice Trust Fund (CCJTF) was separate and distinct. These Agreements were also executed by member states and legislation was passed to incorporate them into the domestic laws in all the CARICOM countries.

The CCJ was imposed with powers to adjudicate matters falling within its original and appellate jurisdictions. Although the original jurisdiction was automatic, in that the CCJ was the sole arbiter for matters dealing with the interpretation of the Treaty, in its appellate jurisdiction the power to adjudicate as the final court of appeal for civil and criminal matters requires the imprimatur (stamp of approval) of the member states.

The Revised Treaty of Chaguaramas established the CARICOM Single Market Economy (CSME) which encourages freedom of movement of people, goods, capital and services, in order to facilitate trade among member states. Accordingly, all disputes that relate to the application of the Treaty provisions are required to be adjudicated by the CCJ in its original jurisdiction. Insofar as the appellate jurisdiction is concerned, the CCJ also functions as the final court of appeal for civil and criminal matters emanating from Barbados, Guyana, Belize and

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Dominica. Hence, the CCJ has replaced the Privy Council in those jurisdictions. However, whereas in Barbados, for example ordinary legislation was required to be passed to accede to the CCJ in its appellate jurisdiction, Antigua requires the permission and approval of the people by way of a referendum in which two thirds of the persons who will be voting, actually voted in favour of the CCJ. Hence the reason why we are here this evening.

Insofar as the RJLSC is concerned, the Agreement that established the CCJ also gave birth to the RJLSC which is an institution separate and distinct from the CCJ. The RJLSC is authorised to appoint judges and to discipline them if and when the need arises. It is comprised of (a) the President who shall be the Chairman of the Commission;, (b) two persons nominated jointly by the Organisation of the Commonwealth Caribbean Bar Association (OCCBA) and the Organisation of Eastern Caribbean States (OECS) Bar Association, (c) one chairman of the Judicial Services Commission of a Contracting Party selected in rotation in the English alphabetical order for a period of three years, (d) the Chairman of a Public Service Commission of a Contracting Party selected in rotation in the reverse English alphabetical order for a period of three years (e) two persons from civil society nominated jointly by the Secretary-General of the Community and the Director General of the OECS for a period of three years following consultations with regional non-governmental organisations, (f) two distinguished jurists nominated jointly by the



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Dean of the Faculty of Law of the University of the West Indies, the Deans of the Faculties of Law of any of the Contracting Parties and the Chairman of the Council of Legal Education; and, (g) two persons nominated jointly by the Bar or Law Associations of the Contracting Parties. As you would have already gathered the membership of the RJLSC is wide and varied, with reputable persons and organisations holding positions and creating a virtually impregnable insulative mechanism that is devoid of political interference.

The other Institution within the framework is the CCJTF which is managed by a Board of Trustees and imposed with the primary responsibility of financing the CCJ and RJLSC into perpetuity. The Board of Trustees is comprised of persons nominated by (a) The Secretary General, (b) The Vice Chancellor of the University of the West Indies, (c) The President of the Insurance Association of the Caribbean, (d) The Chairman of the Association of Indigenous Banks of the Caribbean, (e) The President of the Caribbean Institute of Chartered Accountants (f) The President of the Organisation of Commonwealth Caribbean Bar Associations, (g) The Chairman of the Conference of Heads of the Judiciary of Members States of the Caribbean Community, (h) The President of the Caribbean Association of Industry and Commerce, (i) and the President of the Caribbean Congress of Labour. The Trustees are responsible for investing the Trust Fund to ensure that it is adequate to finance the CCJ and RJLSC into perpetuity.

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The Trust Fund was established with \$US100m comprising of contributions from CARICOM countries with Antigua and Barbuda contributing \$US2.11m.

Both the RJLSC and the CCJTF are institutions functioning independent of the CCJ and each other. In this way the appointment of judges and the financing of the CCJ cannot be seen as being tainted in any form by political interference. By separating those two institutions from the establishment and functioning of the CCJ the independence of the CCJ is preserved. In essence, the three institutions are insulated from each other with respect to their administrative functions and organisational responsibilities. Hence, allegations of political interference and malicious maunderings about dubious judicial independence are without justification and therefore devoid of merit.

Yet in spite of the existence of an institutional framework that is effectively insulated and functionally independent there are still lingering doubts about the resilience of judicial independence and a great unease about the psychological and emotional maturity of those charged with the responsibility of dispensing justice. But the realities of life in the Caribbean contradict the naysayers, confound those saturated with unwarranted anxieties, afflict those whose confidence may have been wounded by a most unfortunate judicial experience and confuse those who want to believe that the justice that flows like a might stream only emanates from the fountains of the Privy Council.

### ***Caribbean reality***

In fact, and paradoxically in reality, the Caribbean has been amenable to change, the region has effected change, maintained change, managed change and succeeded in implementing change. For example, the CXC replaced the GCE examinations issued by London, Cambridge and Oxford Universities. Even though secondary school children are still permitted to write the GCE subjects, the CXC subjects have now taken centre stage in the secondary schools throughout the Caribbean. Those who were initially and unduly concerned about the recognition given to the CXC examinations nationally, regionally and internationally have now come to realise that their fears and anxieties were quickly allayed as our students are admitted into tertiary institutions internationally on the basis of their CXC results. Many were also uncomfortable when the GCE Advanced levels examinations were replaced in part with the Caribbean Advanced Proficiency Examinations (CAPE) but that discomfort subsided with alacrity and became an evil of the past that is currently not remembered.

Those examples exemplify the growth of the University of the West Indies which was established in 1948 as an external college of the University of London but which in 1962 became a fully-fledged independent university - churning out our sons and daughters, noble in their countenance and happy with their academic achievements. Those graduates pervade the civil service, the judiciary, Heads of governments and are blazing the trail in organisation and

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management within the public and private sectors. They also include three Nobel Laureates. These accomplishments serve to secure our pride and preserve our dignity. A Caribbean institution has arrived and its luminaries and alumni are testament to this Caribbean reality.

In dealing specifically with the law- we don't hear a hue and cry about the quality of the education that is being given at the law schools in the Caribbean that train our sons and daughters, brothers and sisters friends and relatives to become lawyers – then we are satisfied with quality of the education and qualification. We have made so many of those graduates judges and legislators to resolve our disputes, uphold our constitutional provisions and our laws and to regulate our lives but we don't hear a big hue and cry about that - then we must be satisfied with the system of justice under which we exist. No system of justice is perfect and judges are human beings, susceptible not only to making mistakes but also to viewing and interpreting the law differently. That is why our justice system has provided avenues for appeals to a higher court, and empowers the higher court with the authority to review its own ruling. In this way injustices can be minimised and confidence in the system can be elevated.

The only reality that confronts our people is one of trust- but then again is it real or perceived? Not to trust may be real but the basis for such a feeling is contrived. Can we honestly attribute dishonesty, incompetence or corruptive behaviour to our judges of the CCJ? Or is it that we have an innate desire not to trust our own in the face of all evidence to the contrary. We seem to experience difficulties according, not only respect but reposing confidence in our own.

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There may well be justifiable reasons not to trust certain judges or a certain judge but should that distrust extend to every judge irrespective of his or her obvious ability to dispense justice in a fair and equitable manner? The reality is that men and women have at times been hurt by each other but that does not ordinarily affect their abilities to repose trust and confidence in future partners. Surely it won't be proper and reasonable to attribute to every Muslim, the title of terrorist or suicide bomber. In the same way it cannot be fair to attribute the sins of the fathers to their children unless those children have been visited and afflicted with the same transgressions.

The reality is that there are those who are convinced that our judges are not sufficiently mature to confront the political directorate in a fair and independent manner and therefore justice will not be served. There are also those who harbour the feelings that justice will be slow and at times denied, in circumstances where judges adjudicate over matters involving their class mates or church colleagues. Again such a gut feeling is conjecture. It is a feeling of suspicion that cannot be substantiated. It is therefore necessary for those who entertain such thoughts to stop and enquire as to why they are unreasonably held but yet they are promoted with such vigour and gusto, oblivious to the truth or not caring whether or not those gut feelings are justifiably held.

The reality is that the CCJ is well on its way. With seven judges in place and with modern state of the art facilities at their disposal, which can also be used by litigants and their counsels, not only is the CCJ

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signalling that it is ready, it is also making itself easily accessible, available and affordable for Caribbean litigants. Currently only four members of CARICOM have acceded to the CCJ in its appellate jurisdiction, namely, Guyana, Belize, Barbados and Dominica. But in its original jurisdiction the CCJ is playing an extremely important role in the regulation of our lives.

As the sole arbiter for disputes arising from the interpretation and application of the Treaty provisions, the CCJ is well poised to establish the jurisprudence governing how countries and individuals should interact with each other. Trade is an extremely important factor in the economy of every country. It involves buying and selling of goods and services, the transfer of capital to facilitate the trade and the movement of people, who are not only the final consumers of those goods and services but the producers as well.

Therefore, by interpreting the Treaty provisions, the CCJ is empowered to determine the extent and structure of the regulatory framework that dictates the manner in which countries relate to each other and individuals interact with each other and with other countries. Take for example the Shanique Myrie Case. This case involved a young Jamaican lady who visited Barbados and was detained and searched in the most deplorable manner. Her person was violated and her rights as a CARICOM national were severely undermined. As a CARICOM national she had the authority under the Treaty to bring an action against the Barbadian Authorities for the infringement of her rights as a person and a CARICOM national. She

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succeeded and the CCJ awarded her \$US38,000.00 in damages as compensation for the humiliation and the breach of Treaty provisions concerning the freedom of movement of labour. In the meantime the CCJ imposed guidelines on how immigration officers should treat visiting CARICOM nationals and importantly, reminding CARICOM countries of their obligations under the Treaty with respect to freedom of movement by CARICOM nationals, except where they are considered to be undesirables or it is clear that the CARICOM visitor will become a free rider living off the country for his or her survival.

What the Myrie Case has shown is that CARICOM countries will not be permitted to introduce legislation that is inconsistent with the spirit and letter of the Treaty. Essentially, the Treaty provisions prevail over domestic legislation and therefore CARICOM governments are not lawfully empowered to engage in any act or conduct that runs counter to the provisions of the Revised Treaty of Chaguaramas. I will go as far as to add that not even the provisions of the Constitutions of the respective CARICOM countries are permitted to offend the provisions of the Treaty. The primacy of the Treaty subordinates the provisions of CARICOM constitutions- such is the power of international law and international tribunals like the CCJ that are authorised to invoke that power.

In essence the CCJ is an international court in its original jurisdiction. It has the power and authority to interpret and apply the provisions of the Revised Treaty of Chaguaramas in a manner consistent with the spirit of the Treaty and the collective intention of its signatories. Whereas it is strongly argued that international courts, for example, the international court of justice only deals with States, the CCJ and

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its quasi- international authority also adjudicates matters that are brought by natural and juridical persons and which involve the interpretation of the Revised Treaty of Chaguaramas. When one considers that the Treaty regulates the freedom of movement of goods, services, capital and people, all of whom would interact and co-exist at some stage in the CARICOM Single and Market Economy then it is easy to identify the reality of the CCJ in this changing Caribbean environment – an environment in which there is a greater level of interaction for the purposes of business and otherwise. Amidst this level of interaction lies the CCJ, patiently waiting in the wings to resolve any dispute that threatens the letter and intendment of the Treaty of Chaguaramas.

There is no doubting the fact that the responsibility of the CCJ in its original jurisdiction is an important one. It currently functions as a watchdog for a substantial portion of our civil law, since without trade the welfare interests of CARICOM subjects in this globalised world may not be effectively served and the reasons for the establishment of the CSME will no longer have merit. The CCJ in its original jurisdiction is fulfilling its role admirably and with distinction and has shown every promise of doing likewise in the matters over which it has adjudicated in its appellate jurisdiction.

The evidence is clear, the CCJ is growing from strength to strength and the reality is that CARICOM heads of governments must feel justly proud that the decision which was taken in 2001 to establish the CCJ has borne fruits. The politicians have spoken. They have provided the institutional framework and extracted from their respective consolidated funds the money to establish the CCJ, appoint the judges



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and finance its operations - the rest is left to the Caribbean people and at this stage, the people of Antigua and Barbuda in particular to set an example for others to follow.

***The Issue of Trust***

The judges of the CCJ are appropriately qualified, competent, experienced and they understand the manner in which our people exist and are socialised. The main argument against the CCJ is lack of trust, yet we trust our home grown qualified persons to rule us as heads of governments; to represent us as lawyers, to carry out medical surgeries of the most complex and delicate kinds, to teach our children, to fly our planes everyday with us as passengers and to recognise our pastors, priests and ministers as spiritual healers seeking to make our paths right with God.

Let not the sins of a small minority of our forebears visit the consciousness of the descendants. Let us forge ahead in the struggle, with the same independence of mind and determination to maintain our pride and dignity as did Prince Klaas and all the other warriors whose blood was shed for the remission of our tendencies towards jealousy, envy, the act of delation and evil.

The 1729 Nathaniel Crump Conspiracy, the 1736 Stony Hill Gully Conspiracy and the numerous slave revolt conspiracies that are the defining features of our Caribbean struggles as a nation have all been marred by the lack of Trust, the weakening of resolve that suffocated the otherwise brimming confidence and the act of delation which

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resulted from the absence of a commitment to unite in the struggle for greater rewards and a better life. Is the Trust operative a degenerate gene in our socio-political DNA? Shouldn't our historical underpinnings and the sacrifices that were made by our forebears bind us together with a chord that cannot be broken? Let us challenge the feeling of distrust and let it be exposed with authoritative force. Let us dismantle its foundations until we reach the core of its origins. Otherwise let its spark be subjected to the stifled feelings that are best left inside a locked Pandora's Box with a broken key.

***Freedom and Independence***

You are an independent people that seldom compromise what you consider to be rightfully yours. Your history dictates that you should be one of the first out of the running blocks and straddling shoulder to shoulder with Barbados and Guyana to provide advocacy for the CCJ in its appellate jurisdiction. Where is the tenacity of the members of the Antigua Trades and Labour Union who in 1951 stood their ground and demanded an increase in pay? During that struggle it was reported that one of the strikers told the employer that *“You said that you were going to starve us into submission. Nobody shall ever use that remark again. We are not going to work for the balance of the year”* Reports also indicate that the strikers held out living off the meagre spoils of the land and the sea and were ultimately but justly rewarded with an increase in pay. That was not the first time that sugar cane workers and their employers experienced a serious impasse in negotiations over methods of payment. The workers' preference was to be paid by row as opposed to being paid by tonnage and they insisted that they would not cut the cane unless the fields were burnt. This

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resulted in the burning of plantations and the reading of the Riot Act following which three persons were killed after shots were fired to disperse the crowd. The 1918 uprising was another example of the indefatigable nature of Antiguans. It demonstrated the determination and selflessness of those who were intent on fighting for a cause. Antiguans refused to be subjected to freedom that was excessively controlled and conveniently contrived. They obviously cherished their independence and their freedom.

One wonders whether that historical thirst for freedom and that appreciation for independence will relegate the gut feeling about lack of trust to the confines of anonymity and accord recognition and respect to an institution that is borne out of your struggles and which is a reflection of the hopes and dreams of your forbears. Your solidarity, your tried and tested resolve, your relentless struggle for freedom and justice and equality and fairness and most of all, your inherent pride and dignity must be invoked at this most auspicious and momentous period of your history.

You are required to complete the independence for which your forebears fought and died, a struggle that was punctuated by blood sweat and tears and unfortunately defined by gruesome sacrifices. The choice is yours. Would you rather the CCJ or the Judicial Committee of the Privy Council? In the same way that centuries later you are being defined by your own history, so too will your descendants judge you by your actions, your fears, your sacrifices and your courage to fulfil the legacy of your forbears.