

**ADDRESS DELIVERED BY THE HON. MR. JUSTICE
CLEMENT PHILLIPS, ACTING CHIEF JUSTICE
ON THE OCCASION OF THE CEREMONIAL OPENING
OF THE LAW TERM OF THE SUPREME COURT OF
TRINIDAD & TOBAGO ON MONDAY OCTOBER 4, 1971**

Mr. Attorney, Mr. President of the Bar Association, Mr. President of the Law Society, Members of the Legal Profession, Ladies and Gentlemen:

On the occasion of last year's ceremonial opening of the Law Term of the Supreme Court of Judicature the partial abridgment of the ceremonies was an indication of the fact that the state of the country was not what it had been in previous years. There was then in existence a period of public emergency. This state of affairs came to an end not long after that occasion and it is to be hoped that there will never be a recurrence of anything like it. It is a matter for some gratification that on this occasion there is no need for any curtailment of the regular ceremonial.

The Chief Justice, Sir Arthur McShine, retired on the 11th of May last. Since that date I have been designated to perform the functions of the office in accordance with the provisions of section 79 of the Constitution. The anomalous and unprecedented situation of what appears to be the likelihood of no appointment being made to the office of Chief Justice for an indefinite period raises, in the view of the Judges of the Supreme Court, a national issue of far-reaching importance, the full implications of which it is impossible to foresee. What is certain is that it tends to strike at the very roots of the fundamental principle of the independence of the Judiciary, which is the main pillar of our democratic system of government.

The constitutional basis of this principle is security of tenure in relation to all categories of judicial office, viz: Judge of the High Court, Judge of the Court of Appeal and Chief Justice. It is therefore a matter that causes the Judges grave concern. It is perhaps not necessary to stress that what is in question here is not the appointment of a particular individual, but the non-appointment of anyone to fill the vacant office of Chief Justice of independent Trinidad and Tobago.

I consider it not inappropriate to refer to Sir Arthur McShine's address delivered at last year's opening of the Law Term. He called attention to the great "burden placed upon the judiciary and the magistracy, indeed, upon the whole machinery for the administration of justice in this country." And he continued as follows:-

"At such a time the role which this administration is called upon to fulfil is a vital one and the task of all who serve in this sphere, be he judge, magistrate or member of the staff, is considerable and is harnessed with a great responsibility."

I would deliberately add to this list members of the legal profession. I do so because I am of opinion that at the present time there is particular and urgent need for emphasising not only the essential role played by members of the legal profession in the administration of justice, but also the fact, which is sometimes lost sight of, that the preservation of peace and order through the operation of an efficient system of courts of justice is a necessary pre-requisite to the existence or continuance of a civilised state. As stated by Salmond in his work on Jurisprudence:-

"The administration of justice is the modern and civilised substitute for the primitive practice of primitive practice of private vengeance and self-help."

You will observe that I have departed from the use of the common expression “law and order”. I do so advisedly. I prefer the expression “peace and order” because law is, after all, only a means to an end, and whereas there may be disagreement as to whether a particular law is good or bad, there can be no such divergence of opinion in relation to the promotion and preservation of peace and order and (may I add) love among all sections of the society.

I have therefore considered this occasion appropriate for the purpose of addressing a few remarks to the legal profession as a whole and especially to that branch to which I have the honour to belong. Ladies and gentlemen, I am of the view that the times in which we live are such as to demand the maintenance and strengthening among members of the profession of the traditional links of fellowship which, it appears, have tended to become attenuated with the passage of time and the continuous growth of the roll of legal practitioners. In this connection I venture to make specific reference to barristers-at-law in actual practice, the number of whom has quadrupled over the last thirty years or so. Within recent times the impression appears to have gained currency that there has been some tarnishing of the lustre with which the Bar of Trinidad and Tobago formerly shone.

I propose to raise a few matters which may give you food for thought. For example, answers have to be given to questions like the following: (1) Does the legal profession command the respect and confidence of the public at large? (2) Is there a unified Bar Association interested in and capable of promoting the interests of the profession as well as those of the community as a whole? (3) If the answer to this question is in the

negative, is any serious attempt being made to rectify the situation? (4) Are members of the profession aware of the great influence for good or evil which by precept and example they are able to exert in the life of the community?

And to pass from the general to the particular – I refer to a matter which deserves serious consideration:- Are members of the profession aware that within the not too distant future the requisite qualification for admission into its ranks is likely to be restricted essentially to the acquisition of legal education and training provided within the Caribbean area? Is it appreciated that this state of affairs makes it imperative for early consideration to be given to the question of fusion of the two branches of the profession?

The nature of the questions I have adumbrated is sufficient to illustrate the necessity for a certain amount of soul searching on your part with a view to taking whatever steps you may consider necessary not merely to improve your image but more especially for the purpose of preparing yourselves for the task of finding proper and adequate solutions for the problems that lie ahead. In the context of a steadily developing society that is sensitive to all the influences, whether for good or evil, that are present in the modern world, great indeed is the responsibility which falls upon the lawyer (be he barrister or solicitor) not only in the sphere of the exercise of his vocation but also in respect of the contribution to the well-being of the community which by reason of his training and position he is qualified and expected to make. Please note that in this context the masculine “he” is intended to include the feminine “she”.

On an occasion like the present it is customary for the Chief Justice to give a review of the work done by the courts during the preceding year. Before proceeding to do so I must pay tribute to all those who played a part in the execution of this work – the Judges of the Supreme Court, the magistrates, the staff members of the relevant departments, and last but not least the members of both branches of the legal profession, without whose assistance and co-operation the exercise of judicial functions would be rendered very difficult if not virtually impossible. In publicly expressing my thanks for and appreciation of the contribution made by all those who are in any way concerned with the work of the courts, I desire at the same time to call attention to the fact that there can be no room for smugness or complacency. The upsurge in the incidence of serious crime, which is a phenomenon that is not peculiar to this country, is perhaps the most dramatic (but is merely one) facet of the multitudinous problems connected with the administration of justice. In order to cope adequately with these problems it is necessary for all who are charged with the execution of the tasks appertaining to this noble field of human endeavour to be prepared to gird their loins and put their best foot forward.

In so stating I am of course envisaging the total range of situations that may arise in this field. There is, for instance, little need to stress the paramount necessity for the legal representative to seek to advance the cause of his client fearlessly, honestly and efficiently, and with a full appreciation of the duty he owes not only to his client and himself but also to the Court. One aspect, however, of the administration of justice which there is a tendency constantly to overlook is the question of delay in the hearing and final determination of legal proceedings. It is true that from time to time lip service is paid to

the maxim “justice delayed is justice denied”, but is it not true to say that in the hurly-burly of our daily lives, spent amidst pressures from which none of us can claim exemption, this maxim is often adhered to more in breach than in observance? Are we certain that all of us, whether judge, magistrate or legal practitioner, are making reasonable efforts to cut down the backlog of cases and to see that legal proceedings are determined as expeditiously as possible? Are requests made by counsel for adjournments of cases always necessary, having regard to the convenience of the court, the parties, the witnesses, the availability of other counsel to fill the breach and other relevant circumstances? In this connection I may state immediately that it is my intention in due course to review the question of the hours of sitting of the High Court in order to find out whether it is necessary to make any (and, if so, what) improvements.

There are two other matters which I shall merely mention en passant – not because they are unimportant but partly because reference is habitually made to them from this Bench year after year. They may be described as perennials. They are the questions of law reform and the provision of a proper system of legal aid. The more important reason, however, for my making only a cursory reference to these subjects is that they are pre-eminently matters which fall for consideration by legal practitioners in the discharge of their responsibility not merely to their clients but to the community as a whole. One other subject, which may also be classified as a perennial, is the erection of a new Supreme Court Building to provide proper accommodation for all engaged in the administration of justice as well as a visible symbol of the respect which this country has for the concept of “The Rule of Law”.

One example of a strictly non-political issue that may be regarded as falling peculiarly within the province of the legal practitioner is the question as to whether or not our Evidence Ordinance, Ch.7, No.9, needs amendment for the purpose of specifically excluding the application in Trinidad and Tobago of the provisions of the English Civil Evidence Act, 1968. This question arises as a result of the possibility of a certain construction being put upon section 2 of the Evidence Ordinance, which first came into operation on June 15, 1855. According to the protagonists of this construction the effect of the section is to effectuate the wholesale incorporation into the law of Trinidad and Tobago of the provisions of the Act in question just as, it is said, was the case of the English Evidence Act, 1938, which has now been substantially repealed.

It would be churlish of me not to acknowledge the fact that my reference to this matter has been prompted by my receipt of a letter from a leading member of the Bar who writes (inter alia) as follows:-

“I think everybody is agreed that it is wrong, in the context of our sovereignty, that legislation in Trinidad (and Tobago) should be ‘hooked’ to whatever is the current legislation in England. No doubt, a Law Reform Commission will, in due course, provide substantive legislation on the question of evidence in civil proceedings. It must be a considerable time before such legislation is on the Statute Books. In the interim, I am earnestly of the opinion that the Evidence Act, 1938 (U.K.) should expressly be made to continue to be applicable to all Civil proceedings in Trinidad and Tobago.”

It is desirable to add for the purpose of clarification that it is considered by the writer of the letter and other senior members of the Bar that the provisions of the Civil Evidence Act, 1968, which have been the subject of serious criticism in England, are not suitable for wholesale introduction into this country.

I must make it clear that judges are not expected to give opinions on hypothetical questions, - so that my raising this question must not be considered as giving any support to the interpretation of section 2 of the Evidence Ordinance which is under consideration. Nor, on the other hand, do I intend to imply that it is incorrect. The point is that all such matters are eminently fit for discussion by the members of a vibrant Bar Association.

In presenting a brief review of the work of the Courts during the last year I commence by calling attention to the situation in the High Court. Dealing first with criminal matters – I quote the figures as they have been supplied to me. The number of cases in which persons were committed by magistrates for trial at the Criminal Assizes was as follows:-

(a)	Committals outstanding on September 1, 1970		286
	Distributed as follows:		
	Port- of –Spain	217	
	San Fernando	68	
	Tobago	1	
(b)	Committals made and cases re-listed For trial during the period September 1, 1970 – July 31, 1971		294
	Port-of-Spain	206	
	San Fernando	73	
	Tobago	15	
	making a grand total of		580

Nolle prosequis were entered in 18 cases, so that there was a list of 562 cases to be tried at the Criminal Assizes held during this period. The number of indictments actually disposed of during the same period was 275, the distribution being as follows:

Port-of-Spain	193
San Fernando	71
Tobago	11

To this must be added 5 cases determined at the Tobago Assizes during August 1971. The result is that there is at present a total of at least 282 cases not disposed of. It must, of course, be borne in mind that the figures I have quoted do not take into account committals made during the months of August and September, 1971.

A useful way of viewing the overall picture is to advert to the fact that this number, 282, is only 4 less than the 286 cases outstanding for trial on September 1, 1970. During the legal year immediately preceding that under consideration, according the last report presented by Sir Arthur McShine, the backlog had been reduced from 408 to 256. I am not in a position to state what are the reasons for this seeming drop in performance but it is something which calls for investigation.

As regards civil proceedings in the High Court the position may be summarised as follows.

To deal first with Port-of-Spain –

At the opening of the law term in October, 1970 there were 279 actions entered for hearing on the General List of cases. During the period October 1970 – June 30, 1971, 253 actions were entered – making a grand total of 532. Of this number 220 actions were disposed of – leaving a balance of 312. It is immediately to be observed that no inroads have been made on the backlog of cases pending at the commencement of the term. Instead, there has been an addition of at least 33 cases to the backlog. It is only fair to record, however, that the period under review has witnessed the imposition on the Court of the burden of determining a number of matters of great complexity – to which task the Court addressed itself expeditiously and with a sense of dedication.

As regards the position of civil proceedings in San Fernando the figures present a better picture. At October 1970 there were 199 actions outstanding on the General List. During the period under review 128 actions were added to this List – making a grand total of 327 actions listed for hearing. Of this number 190 were disposed of – leaving a balance of 137 actions. In the case of San Fernando, therefore, the backlog of civil cases has been reduced by 62 from 199 to 137 – a reduction of the order of approximately 31%. The evidence suggests that a special measure of congratulations is due to the legal practitioners of San Fernando.

I turn finally to the Court of Appeal. I have first of all to report that we recently had the pleasure of welcoming as a member of the Court Georges J., formerly Chief Justice of Tanzania, who is unfortunately unable to be present this morning.

At the conclusion of the sittings of the Court in July, 1970, there were 174 appeals listed for hearing, 124 of which originated from the High Court – 97 from its civil and 27 from its criminal jurisdiction. The remaining 50 were appeals against decisions of magistrates in criminal (including quasi-criminal) and petty civil cases. During the period August 1970 – July 31, 1971, 621 appeals were filed. Their composition was as follows:

Criminal appeals from the High Court	79
Civil appeals from the High Court	85
Magisterial appeals (Criminal)	411
Magisterial appeals (Petty Civil)	36
Court Martial appeals	10
	<u>621</u>

The total number of appeals arising for determination was therefore 795. Of this number, 534 have been disposed of as follows:-

Magisterial (Criminal)	346
Magisterial (Petty Civil)	23
High Court (Civil)	59
High Court (Criminal)	101
Court martial appeals withdrawn	5
	<u>534</u>

In five cases the hearing of the appeals has taken place but judgment has not yet been delivered.

It is worthy of observation that the number of appeals disposed of during the year under review is almost identical with the corresponding number for the preceding year.

One important difference, however, is that it appears that the backlog of cases is now on the increase. This is a matter to which it will be necessary to give close attention.

With regard to the magistrates' courts, all that needs to be said is that though the magistrates are making valiant efforts to cope with the ever-increasing volume of work consideration will have to be given to the question of ways in which improvements may be effected. On the 6th of August last I had the honour of formally opening an extension to the Magistrates' Court building at San Fernando, which relieved the deplorable situation of cases having to be heard in the open gallery of the old building. I then said –

“However confident we may be that this state of affairs has not resulted in the dispensation of what is sometimes referred to as ‘palm tree justice’, we can be certain that the amelioration of the conditions under which the magistrates have to work must lead to greater efficiency and despatch in the work of the courts, and thus contribute to greater stability and well-being in the life of the nation”.

I can do no better than reiterate those sentiments on this occasion, with a difference, however, viz:- that I would extend their application so as to include the Judges of the Supreme Court.

We are about to commence a new Law Term which is likely to make ever-increasing demands on the wisdom, judgment and dedication of the Judges, magistrates, legal practitioners and all who are engaged directly or indirectly in the task of the administration of justice.

The times in which we live present great challenges which evoke the best there is in all of us. No longer is it sufficient for legal practitioners to be content merely with making a competent livelihood. It is essential that they should not eschew involvement in various issues which affect the profession to which they belong. It is important that they be always astute to distinguish between right and wrong and endeavour to play the role in society which is expected of them by right-minded citizens.

Ladies and gentlemen, my colleagues and I desire to thank you all for your presence here in such large numbers. We interpret your response to our invitation as symbolic of the assistance and co-operation which we confidently expect to receive from you in the days that lie ahead. If the spirit of goodwill which has traditionally characterised the relations between the Bench and both branches of the legal profession continues to permeate those relations there is every reason to believe that we shall succeed in achieving together all the goals to which we jointly aspire.

I thank you!