

**ADDRESS OF THE CHIEF JUSTICE, MR. CECIL KELSICK, AT THE
OPENING OF THE 1983 – 1984 LAW TERM IN THE HALL OF JUSTICE,
RED HOUSE, PORT-OF-SPAIN, ON 3 OCTOBER, 1983**

This sitting inaugurates the 22nd and 8th law terms of the Supreme Court of Trinidad and Tobago established respectively by the Independence Constitution of 1962 and by the Republican Constitution of 1976. It is also my first such sitting as Chief Justice and President of the Court of Appeal since my appointment which took effect on March 1, 1983.

On October 4 last, my immediate predecessor, Sir Isaac Hyatali, delivered his last opening address at which he reviewed the major events of the decade during which he presided over this Court. His achievements and those of the Judiciary during his term of office were also adverted to at the sitting on January 28, 1983 of the Full Court at which tribute was paid to him from the Bench and the Bar.

I have with regret to record the passing during the past term of Sir Arthur McShine, a former Chief Justice of this Court, of Mr. Karl de la Bastide, former Court of Appeal Judge, and of Mr. Mitra Sinanan, Q.C., Chairman of the Salaries Review Commission. At a special sitting of the Full Court in respect of Sir Arthur and of the Court of Appeal for the other two deceased, eulogies were delivered on the lives and works of these distinguished members of the profession.

Mr. Justice Noor Hassanali, the senior member of the Court of Appeal, reached the retiring age on August 8, 1983 and, under section 136(2) of the Constitution the President, on my advice, permitted him to continue in office until December 31, 1983 in order to enable him to deliver judgments and to complete proceedings that were commenced before him prior to his attainment of the retiring age. This course became necessary because the Court of Appeal had been functioning with four only of its complement of seven since November last year during which period the Court heard and reserved judgment in appeals of great moment. With four Judges, the Court of Appeal

was able to sit in two divisions only when hearing magisterial and petty civil court appeals, simultaneously in Port-of-Spain and in San Fernando.

Twelve of the fifteen offices of Judges provided for were filled during the past term.

Master Conrad Douglin who was appointed to that office on October 1, 1981, after an attachment abroad to the Royal Courts of Justice in England in July 1980, is due to retire on January 12, 1985; but in order to avail himself of all his entitlement to leave before that date he would have to commence his leave on May 24, 1983. At the request of the Judicial and Legal Service Commission he has been allowed to continue in office until a suitable replacement for him has been found and trained, and he will be compensated for his leave foregone.

Mr. Roland Crawford, Chief Magistrate, was given permission to continue in office after reaching his retiring age until December 31, 1982 so as to complete the preparation of the Report on the Commonwealth Magistrates' Conference held in Port-of-Spain last September. He was succeeded by Mr. Lincoln Dwarika, Deputy Chief Magistrate, who was replaced by Mr. Guyton Loney. Mrs. Gladys Gaffoor, Senior Magistrate, took up her appointment as Deputy Solicitor General on October 1.

There are still several vacancies in the Department of the Attorney General despite the phenomenal surplus of applicants for places in the Law Faculty of the University of the West Indies.

The post of Administrative Secretary to the Chief Justice had been vacant for four years owing to the unavailability of a suitable candidate. The pressing problems of administration since my assumption of duty have limited my time for court work. Fortunately, an appointment to that post has just been made of a previous holder of this office and that of Deputy Registrar. His services, I hope, will be retained by the upgrading of that office.

Justices Des Iles and Warner were elevated from the High Court Bench to the Court of Appeal as from August 1, 1983 and Justices Hosein and Hannays, both of whose close relatives have excelled as practitioners in the law, assumed duties as High Court Judges on October 1, 1983. We welcome all these new appointees to the Court of Appeal and High Court respectively.

The careers of Justices Des Iles and Warner followed similar patterns. After practising as barristers in this jurisdiction they served as magistrates; following that as law officers first in Trinidad and Tobago, then in the Associated States and again in Trinidad and Tobago where they each attained the status of Solicitor General before being appointed to the High Court in which capacity they have served for twelve and six and a half years respectively.

Mr. Justice Hosein was attached to his brother's chambers here for ten years before he migrated to the United Kingdom where he has practised from chambers in Derby, England, for seven years.

Mr Justice Hannays who was called to the Bar in 1954, was in private practice, served as a magistrate, returned to private practice, and then accepted a magistracy in the Bahamas where he acted as a Puisne Judge for the past year.

The present position is that there are still three vacancies in the High Court and in effect two in the Court of Appeal.

The Salaries Review Commission's Report was submitted in December, 1982. It made recommendations for increased salaries and travelling and subsistence allowances to Judges of the Supreme Court. None of the other conditions of service, particularly the housing allowance, was dealt with by the Commission. Cabinet took a decision on this Report by which it accepted the recommendations of the Commission in relation to the Judiciary.

Following representations and protests by members of the Industrial Court and law officers, Cabinet increased the salaries of certain of those officials, which had the side effect of reducing the status of the High Court Judges qua members of the Industrial Court. The matter was taken up by me on behalf of the Judges with Cabinet through the Attorney General and the anomaly was rectified. The difference in the salaries of High Court and Court of Appeal Judges has however been narrowed.

The omission to ameliorate the other Judges' conditions of service is one of the factors which hinders the recruitment of suitable candidates for the Judiciary. One of these is the provision for a Judge to qualify for a full pension equivalent to his retiring salary, as in Jamaica, another is the increase in the percentage of the pension of widows of Judges to that of the Chief Justice's widow.

Of great significance is the absence of a realistic house allowance in lieu of housing of the class provided for in the Judges (Conditions of Service and Allowances) Regulations, hereafter referred to as "the Regulations". The grant of such an allowance would save Government appreciable expenditure in acquiring and repairing houses. It must be remembered that several practitioners have committed themselves to substantial mortgage payments on their homes. Government has not provided a sufficiency of such houses for the prescribed number of Judges. Some Judges are still occupying their own houses, while others have been allocated houses below the grade prescribed. The intention of the makers of the Regulations surely must have been that the provision of such houses should be the norm, as in the governing regulation, and that resort to the alternative should be by way of exception and a temporary expedient.

Of the thirteen members of the Bar whom I interviewed at the request of the Judicial and Legal Service Commission and offered judicial appointments, two only agreed to accept; but on condition that a vacant house of the prescribed category should be allocated to them simultaneously with the receipt of their letters of appointment. These appointments will, hopefully, be made before the end of the year.

The failure to provide housing accommodation or a comparable housing allowance and also proper chambers are major inhibiting factors in obtaining the services of new Judges of the required calibre to fill the above-mentioned vacancies on the Bench.

Until houses are procured and readied for their occupation the two Judges recruited from overseas will be staying at Government's expense at a hotel, and the two prospective Judges who are local practitioners will not be accepting their letters of appointment until that condition is fulfilled and they have finally wound up their practices and arranged to rent out their homes.

In May this year I wrote to the Minister of Finance requesting the provision of eight houses for Judges. Cabinet's decision to allocate two such houses has been received.

Meanwhile, two other houses allocated to the Chief Justice by the Executive under the Regulations for assignment, and in fact assigned by him to Judges of the Supreme Court, are with the express or tacit consent of the Executive and without the approval of the Chief Justice, now occupied by persons who are not Judges. Such a practice can tend to undermine the independence of the Judiciary by hampering the engagement of prospective Judges or creating dissatisfaction among existing Judges, since no firm assurance can be given to such persons that suitable quarters will be available for assignment to him at a future date when they are expected to be vacant.

Relevant in this connection are the remarks made by my predecessor in his address at the opening of the 1981 – 82 law term under the caption "Erosion of Judicial Independence"-

“But the reality of the situation is that in order to exercise properly and with due despatch the judicial power of the State and to discharge its grave responsibility as guardians of the Constitution and the Bill of Rights, it is essential for the Executive to provide the Judiciary with adequate machinery and ample sources of all kinds and at all times, and to do so irrespective of the consequences which any given decision of the Court has or may have on the resources or political image of the Executive.

The stark reality then is that by reason of the total dependence on the Executive for its material and human resources the constitutional independence of the judicial arm is susceptible of erosion by indirect but nevertheless effective means.”

Another housing factor which may have an adverse effect on recruitment and retention of Judges is the insufferable delay, and even neglect, in effecting repairs to existing houses so as to render them habitable, even after occupation by a Judge.

This conduct is only one example of a wider lack of proper respect and status accorded to the Judiciary, that discourages members of the profession from making the financial sacrifice in the acceptance of high judicial office. One has not to look far to compare unfavourably the attitude of officialdom to Judges in our country to that in other countries. In a previous eulogy I have had occasion to advert to the treatment of Judges in at least one large Caribbean territory where due deference is shown not only to the higher but to the lower, Judiciary. To give an example, Judges and their wives in that territory are granted the privilege of using the V.I.P. lounge at the airport as a matter of right and not of grace. This concession which is enjoyed here only by the Chief Justice (not his wife), and by other dignitaries including Ministers of Government, was among the requests of the Judiciary to the Salaries Review Commission. Within the past few weeks a Court of Appeal Judge who, in accordance with his entitlement under the Regulations, was proceeding to attend a Law Conference with his wife was subjected to the indignity of being refused permission for himself and his wife to use the V.I.P. lounge; and when he attempted to contact the relevant head of department he was informed that the former was too busy to speak to him. In the result, the Judge and his wife joined the public queue at the airline counter for departing passengers.

Little wonder that this attitude of top officialdom seeps down to the lower echelons of the public service.

Beginning with our schools and with induction courses for public officers, there seems to be a glaring need to educate the public concerning the provisions of our Constitution relative to the role, status and functions of the holders of specified offices therein

mentioned. They should be reminded of the following constitutional enactments and conventions. The organs of state power are the Executive, the Legislative and the Judiciary. It is the essence of our democratic legal system to ensure that the Judiciary to whom the Constitution has entrusted the protection of our fundamental rights and freedoms should be politically and economically independent.

The Judges should not be overtly or covertly dependent on the arbitrary of discretionary granting or withholding of favours by the Executive. Certain attributes, appurtenances, privileges and honours should attach as of right to the holders of the offices of the President, the Prime Minister and the Chief Justice as well as to the Members of Parliament and Judges respectively who constitute the Executive, Legislative and Judicial arms of the State. With a view to ensuring the Judges' independence, the Constitution has provided for Judges security of tenure. They are appointed by an independent commission and are removable solely by an independent tribunal. It is the duty of the Executive and Parliament to provide for the Judges adequate remuneration (including pensions) and other conditions of service which under the Constitution may not hereafter be altered to a Judge's detriment.

The present and past Executive arms of the Government of Trinidad and Tobago enjoy a commendable record for cooperation and due respect for the independence of the Judiciary. Unfortunately, during the past year the record has been marred by a conflict between the Executive and members of the legal profession who have, to their credit, been aroused from their slumber to protect the publication of statements by the Prime Minister and Attorney General which, (rightly or not) they considered to be an attempt of the Executive to endanger the independence of the Judiciary by veiled threats of reprisal for remarks derogatory of the Executive made by a High Court Judge in the course of a judgment against the State.

Although the Judge's remarks would appear not to affect the substance of his decision, I think it wise and prudent to refrain from expressing any views as to the merits or demerits

of the comments of the Judge and of the Executive's retort, since the judgment is under appeal to the Court of Appeal of which I am the President.

Allied to the personal conditions of service of Judges is the environment in which they operate to dispense justice. The provisions of suitable court accommodation, supporting staff and mechanical aids are indispensable to achieving this objective.

The new Hall of Justice is still a dream of the future. The proposed completion date of the building is the end of 1984 which points to a 1985 opening. A topping off ceremony of the Hall was reported to have taken place on June 21, 1983. The Chief Justice received an invitation on the morning of the ceremony when he was committed to other engagements and did not attend. An invitation was not extended to any other Judge or member of the Judicial Department, including the Registrar, who has been in constant consultation with the architects with regard to the furnishing of the building.

It is not too early to begin planning for and training the requisite technical and other increased staff to man the new Hall of Justice and to service the personnel.

There is a shortage of space both at NIPDEC House and at Trinidad House. The ancient promises to provide additional accommodation for Judges' chambers at NIPDEC House and for the Supreme Court at San Fernando are still to be realised. Meanwhile, Judges have to share chambers and secretaries' offices.

I have made mention of the poor and disappointing response of the Bar to appeals to serve their country and their profession as Judges. It is the civic duty and in large measure the responsibility of the capable and suitably qualified members of the profession to render such service so as to ensure that their families and fellow citizens continue to enjoy the fundamental freedoms including that of earning a respectable living. The public image of members of the profession as being concerned primarily with self-enrichment and only secondarily with providing service commensurate with their rewards still persists.

FUSION

The fusion of the professional should make available a larger reservoir from which to draw our Judges. Fusion was contemplated by all the territories which were signatories to the Agreement establishing the Council of Legal Education (“the Treaty”) that introduced a common system of education and qualification for lawyers. Trinidad and Tobago is the last to implement this implied undertaking. I am assured by the Attorney General that the comments of both branches of the legal profession have at last been received and after clarification of certain matters the required Bill will be introduced into Parliament before the end of the year. This measure should enable proper arrangements to be made to regulate the conduct and discipline of members of the profession. The performance of the Bar Disciplinary Committee has been somewhat disappointing. This then will hopefully be the last opening of term at which the Presidents of two Lawyers’ Associations will address this Court.

There are several channels through which members of the profession can assist in improving the administration of justice. These include serving on the Committees of their professional Associations and consequently on other Committees and Commissions such as the Law Reform Commission, the Rules Committee of the Supreme Court, the Legal Aid and Advisory Committee. They may also do so by offering their services as lecturers at the Law School, by participating in the Legal Aid and Advisory schemes of Government and of the Law School, by accepting students of the Law School for in service training and by contributing to West Indian law journals.

The failure of both branches of the profession, at least the senior members, to take an active interest in their Associations and the welfare of their profession is illustrated by the level of their representation on the Council of Legal Education which governs the Law Schools and issues to lawyers their certificates to practise. As a consequence at the last meeting of the Council in September I was placed in the embarrassing position of feeling obliged to comply with the unanimous request of the members of the Council that a Trinidad and Tobago representative should be the next Chairman of the Council as successor to Dr. Lloyd Barnett of Jamaica who had filled the post with quiet efficiency

for two terms of three years. The two representatives of our profession were too junior to be considered and there was understandable reluctance to appoint a political representative. At this time with the shortage of appellate judges it is an added burden which it will be difficult for me to discharge, but I feel that I can depend on the permanent staff to do most of the work. The chief problem to be resolved is the rental of the Hugh Wooding Law School to be paid to the Government of Trinidad and Tobago but this is in reality a matter for the Heads of Government to resolve, amicably, it is to be hoped.

It has been agreed that, by appropriate amendments to the Treaty, to take effect before the end of 1984 contemporaneously with the end of the term of office of the Director of Legal Education, Mr. Aubrey Fraser, a Principal of each Law School answerable directly to the Council, should replace the Director and Deputy Director and that the seat of the Council, which will be responsible for coordinating a common educational training and examination programme, should rotate between the two Law Schools.

The Treaty will also be altered to permit of an alternative qualification for admission to practise. Barristers and solicitors who qualified in England will be admitted to practise after undergoing to the satisfaction of the Council a six-months course of training organised by the Council.

The magnificent building housing the Hugh Wooding Law School was opened on September 3, 1983 by our Prime Minister when the opening address was given by our Attorney General. The first presentation of graduates at which the Honourable Eugenia Charles, Prime Minister of Dominica will be the principal speaker, takes place on October 8, 1983.

The applications for places at the Hugh Wooding Law School has increased considerably and happily the new building will be able to accommodate the enlarged numbers.

The response of members of the profession to lecture the students has been encouraging and an appeal is made to such persons to honour their obligation to attend regularly.

The Seventh Commonwealth Law Conference took place in Hong Kong from September 18 to 24. Taking advantage of the new regulation 7A, seven Judges attended the Conference which was of a high order in the level of representation, subject matter and discussion. The United Kingdom delegation included the Lord Chancellor, the Chief Justice, the Master of the Rolls and the Lord Advocate of Scotland as well as other members of the Judiciary. The Chief Justices of Australia and New Zealand and of several other Commonwealth countries attended. The Chief Justice of Canada did not, due to indisposition.

The subjects on which papers were written by eminent Judges and Jurists and debated covered a wide field including Criminal and Civil Justice; The Rise in Crime; The Law and the State; Commercial Crime – Cooperation in the Commonwealth; The Use of Computers at Law; Refresher Courses; and The Sort of Lawyer Needed in the Commonwealth. Our Attorney General chaired a session on “The Law and the Press; The Public’s Right to Know” at which the principal speaker was Sir Zelman Cowen, Q.C., a former Governor General of Australia. Two of our Judges, Justices Deyalsingh and Collymore, assisted in the moot for law students in which seven countries competed.

On my way to the Conference, I held discussions with the Chief Justice of Ontario, and other Judges of the Court of Appeal and his Executive Officer, who is an experienced Queen’s Counsel as well as with the Director of the Osgood Law School.

In the Supreme Court of Ontario the Judges are assisted by Legal Cadets, the places for which there is keen competition. This service saves the time of the Judges, expedited the delivery of judgments and provides a valuable instruction for the young lawyers.

In London I visited the office of the Registrar of the Judicial Committee of the Privy Council and later dined with Lord Diplock, a senior member of the Court. Among the

matters discussed was the desirability of raising the financial limit of actions which are appealed as of right. Hong Kong and New Zealand have recently substantially increased this limit.

I was invited by the Chinese Government to visit Peking where I met with the President, and other members, of the Supreme Court and had an informative discussion with them regarding the legal systems of our respective countries. Copies of the Chinese Constitution and other laws were supplied to me. This meeting, may have been opportune, as there are parleys taking place between the United Kingdom and the Chinese Governments for the return to China of Hong Kong whose judicial system is similar to ours.

I have accepted an invitation extended to my wife and myself from the President of the Supreme Court of Venezuela to visit Caracas from October 25 to 28 to attend a gathering of Presidents and Chief Justices of the Supreme Courts of Latin America, the Caribbean, Spain and Portugal in celebration of the Bicentenary of the birth of the Liberator Simon Bolivar.

Papers on the Administration of Justice, the Basic Legal Regimes and Constitutional Control of Public Power in the respective countries will be delivered by the delegates.

COURT STATISTICS

The following is a summary of the Court statistics in the High Court for the last term:

Civil	Port-of-Spain	San F'do	Tobago
Matters filed and listed for hearing	4,681	1,860	181
Actions set down on general list but not listed for hearing (from April 1981 to July 1983)	1,261	219	-
Actions listed and pending	456	426	-
Actions (including motions and summons)			
(1) listed	12,728	6,339	121
(2) determined	3,499	1,766	62
Criminal Matters			
(1) listed	300	134	-
(2) determined	33	22	-

It is evident that the arrears of unheard cases is alarming. To reduce this number additional Judges and Courts are obviously the main solution.

In some Commonwealth countries and in some States of the United States where there is such a backlog of cases retired Judges, who are passed as medically fit for the purpose, are enlisted to assist, part or whole time, in the disposal of certain cases.

Under sections 75(3) and 79(4)(b) of the Independence Constitution qualified persons who had reached the retiring age for Judges could have been appointed temporarily as Puisne Judges or Justices of Appeal. These useful provisions were, for no ascertainable reason, omitted from the 1976 Constitution. Consideration should be given for their restoration.

LEGAL AID

The Legal Aid and Advisory Authority contributes a valuable service. The workload of the Authority has increased appreciably. Cabinet has approved the extension of the matters in which assistance may be given to include Petty Civil Court matters (but excluding those involving liquidated damages of less than \$240.00), and appeals both civil and criminal, to the Judicial Committee of the Privy Council, as well as the enlargement of the qualifying income and capital limits for the grant of aid.

To meet the increased demand on the services of the Authority, Cabinet has agreed to the separation of the positions of Chairman and Director and the addition of staff, including a new post of Solicitor.

The Authority moved into more spacious quarters on July 1, 1983. I have appointed a committee to discuss problems existing in the administration of justice and to provide for its smoother operation. With few exceptions there has been a commitment on the part of practitioners in promoting the service.

LAW REFORM

Four sets of amendments to the Rules of the Supreme Court were passed in 1983. Those affected to Order 86 by Legal Notice No. 26 are complementary to the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981, and the Status of Children Act, 1981. Those set out in Legal Notice No. 29, to the Matrimonial Causes Rules are in aid of the Matrimonial Proceedings and Property (Amendment) Act, 1981, and those in Legal Notice No. 28, relating to bail applications, supplement the Summary Courts (Amendment) Act, 1982.

An important reform in procedure was enacted by Legal Notice No. 27 which replaced Order 53. The new Order 53 has created a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals or other bodies of persons charged with the performance of public acts and duties. At the same time, it eliminated procedural technicalities relating to the machinery of administrative law, mainly by removing procedural differences between the remedies which an applicant was formerly required to select as the most appropriate to his case. It has thus released the former system from its procedural constraints which at times led to technical injustices. Order 53 may therefore be said to constitute a land-mark in the development of administrative law, a new starting point for the growing jurisprudence of law.

It introduces a new procedure called an “Application for Judicial Review” and in this single application, the applicant may apply for any of the prerogative orders, either jointly or in the alternative, without having to select any particular one appropriate to his case.

In appropriate cases, on such an Application the Court is further empowered to grant a declaration or an injunction, or damages; but where such relief is claimed and a prerogative order is not appropriate, the Court has power to order the proceedings to continue as if begun by writ, instead of refusing the application.

The Law Commission has embarked on an ambitious programme spanning thirteen legal topics in civil and criminal law and procedure.

Several Bills have been drafted on a wide range of subjects. Of these the Copyright Bill, 1983, the Publications (Legal Deposits) Bill and the National Folklore Protection Bill, 1983, the Publications (Legal Deposits) Bill and the National Folklore Protection Bill, 1983 have recently been published for public comment.

The promulgation of the Land Law Reform Legislation passed in 1981 has been delayed pending the establishment of a Central Land Registry, the microfilming of deeds and registered documents and the computerisation of records. A text book on the new Land Law is being prepared under the auspices of the Commission.

Within the field of Law Revision the Commission is to publish early in 1984 a Supplement to the Revised Edition of the Laws updating them up to 1980, and work has been commenced on a second supplement to update the said laws up to 1983.

The Bar Association have taken up with me a proposal for consultations between representatives of the Judiciary and of the profession on matters relative to the administration of justice – such as the practice to be followed in granting or withholding ex-parte injunctions. I have initiated discussions with them on the desirability of introducing the practice that Counsel provide the Court with skeleton grounds of appeal as a time-saving device which has been adopted in England and is reported in (1983) 2 All E.R. 34.

I have suggested that a committee of lawyers be appointed to produce a periodical legal digest of decisions of the Courts and of pending and enacted legislation. Consideration may also be given to the holding of seminars for continuing legal education of Judges and practitioners.

On behalf of myself and my fellow Judges I congratulate three members of the legal profession who were deservedly honoured by the Executive at the last Independence Day celebrations. They are two former Justices of Appeal, Messrs. Evan Rees (now the Ombudsman) and Ulric Cross (at present Chairman of the Law Commission) both of whom received the Chaconia Medal (Gold) and Mr. Victor Stollmeyer, a prominent Solicitor (and former West Indies batsman) on whom was conferred the Chaconia Medal (Silver).

The thanks of the Judges are extended to His Excellency the Acting President, Dr. Wahid Ali, and to all of our invitees for their attendance today at the Church Service and at this sitting of the Court; to the Dean of Trinity Cathedral for the use of the Church and for organising the Service; to Pundit Mahadeo Sharma, Iman Hassan Karimullah, the Rt. Rev. Clyde Wilkinson, Justices Hassanali and McMillan and Mrs. Stephanie Daly who participated in the Service and in particular to the Reverend Kingsley Lewis for his inspiring, and thought provoking, sermon; for the message and warning, based on his text from the Prophet Amos to the legal profession and the Government, of their duty to ensure at their peril, the righteousness and justice prevail especially among the less privileged of our nation; to the Commissioner of Police and the members of the Police Force for their impressive parade.

With gratitude I acknowledge the cooperation and assistance I have received from my brother Judges and the staff of the Judiciary and from the members of the legal profession.

I now formally declare the opening of the 1983-1984 Law Term.