ADDRESS OF THE CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE MICHAEL DE LA BASTIDE, Q.C.

at the

Opening of the 1996 - 1997 *Law Term*

in the

SUPREME COURT

at the

HALL OF JUSTICE

Knox Street, Port-of-Spain

on

MONDAY, 16TH SEPTEMBER 1996

ADDRESS OF THE HONOURABLE CHIEF JUSTICE MICHAEL DE LA BASTIDE DELIVERED ON MONDAY, 16TH SEPTEMBER 1996, ON THE OCCASION OF THE OPENING OF THE 1996-1997 LAW TERM

There are two links which need to be made straightaway with my address at the opening of term last year. One is to remind you (and myself) of the order, which I made at the conclusion of that address that this year's address, should not exceed 50 minutes. I want to assure you that I intend to comply scrupulously with that directive, if only to demonstrate that I am prepared to swallow the medicine I have ventured to prescribe. The other is to note that today is the 16th September and yet we are celebrating (and I hope that term captures your mood) the opening of a new law year. That is because I was able to persuade the Rules Committee, pursuant to an intention which I expressed in last year's address, to reduce the long vacation by 17 days, so that it ended this year on the 15th September instead of the 2nd October as previously. But this only tells half the story, as I would not have felt able to initiate this move without the concurrence of all the judges since their vacation entitlement is tied by Regulation to the Court vacation. They would prefer I am sure to dispense with any fanfare over it, but I think it would be wrong for me to omit mentioning this element of self-sacrifice on the part of the judges. It is only one aspect of the whole-hearted support they have given to the initiatives we have been pursuing during the last 12 months in an effort to increase the productivity of the judicial system.

I would hasten to acknowledge also with appreciation what I perceive to be the legal profession's acquiescence in, if not their positive support for, this initial reduction in the length of the long vacation. I am well aware of how directly and inconveniently this impacts on their personal and professional arrangements.

I am afraid, however, that further sacrifices will be necessary if on the one hand we are to maximise our utilisation of the expensive plant and equipment comprising this Hall of Justice

and the Supreme Court Buildings in San Fernando and Scarborough and their ancillary systems and services, and if on the other hand we are to dispose of the back-log of cases and eradicate the delays, which still threaten the credibility of our Court system.

Nothing has happened to alter the view, which I expressed last year that "the long vacation has become a luxury that we can no longer afford". Quite the contrary. I recently attended the 11th Commonwealth Law Conference in Vancouver. At a meeting held immediately before that Conference, the Canadian Bar Association received and adopted a report submitted by a Task Force, which it had set up in 1995 to inquire into the civil justice system in Canada. One of the recommendations made by that Task Force was that every jurisdiction in which this has not yet occurred should give immediate consideration to the merits of adopting a twelve-month court calendar. As this recommendation implies, in some of the Canadian provinces including Ontario, the long vacation has already been abolished. I was assured on high authority in Vancouver that British Columbia would follow suit by 1998. It should be unnecessary to point out to those who have read the judgments of the Supreme Court of Canada in cases such as *R. v. Askov* 74 DLR (4th) 355 and *R. Morin* [1992] 1 SCR 77, that the sort of delays experienced in criminal cases in this country are unheard of in Canada, and certainly would not be tolerated by the Courts there. If we wish to look for precedent closer to home, I would point out that in Bermuda there is no such thing as a long court vacation.

It is clear what path we must take. There are however arrangements that have to be put in place first. The judges' vacation entitlement must be established independently of, and detached from, the Court vacation. Provision must also be made for judges to have adequate time out of Court to do their research and write their judgments. Therefore, if we are to have a twelve-month court calendar, and we are to maintain the same number of courts, we will need to appoint more

judges.

Before leaving this topic, I must for completeness' sake record that at the same time that the reduction of the long vacation was effected, an amendment of the rules provided for the addition of 3 days to the Court break at Easter, so that now the court is on vacation throughout the week, which commences with Easter Sunday. As a result there are now three terms, rather than two, in each law year.

Last year I was at some pains to alert you to the desperate situation we were in given the huge backlog of cases and the enormous delays being experienced in the determination of cases, both civil and criminal, and I appealed to all who participated in, or had a responsibility for, the work of the courts to join me in a concerted effort to stop the slide of our justice system into the abyss. I am happy to report that my appeal did not fall on deaf ears. For the most part the response has been good, in some quarters excellent, and the results have been encouraging. I would venture to suggest that the downward movement of the system has been arrested, but we still have to push it back up a fairly steep incline to an acceptable level.

Before I deal with statistics, I would like to say something about them. They are an useful, indeed an indispensable, tool for measuring performance, but I am very conscious of the fact that when one is dealing with the dispensing of justice, the quality of the product is infinitely more important than the volume of production. The criterion for judging the performance of a body of judges therefore must contain an element for which statistics have no relevance.

It has been my goal therefore, and that of my fellow judges, to increase the productivity of our Courts without sacrificing the quality of the justice, which we dispense. It is not for me to say whether we have attained it, but that at any rate has been 'our goal.

Having entered that caveat, I turn to the statistics. The most remarkable increase in

productivity has been at the level of the Court of Appeal, and here the figures are truly startling. I am afraid that in order to make last year's figures meaningful, it is necessary to put them in the context of comparable figures for earlier years.

Between October 1995 and July 1996, the Court of Appeal determined a total of 254 *appeals from the High Court,* of which 139 were civil appeals and 115 were criminal. In the previous law year, that is, October 1994 to July 1995, the total number of such appeals determined was 78, with 19 of these being civil and 59. Criminal. Between October, 1993 and July, 1994,46 appeals from the High Court were determined with 4 being civil and 42 criminal. The corresponding figures for the year October 1992 to July 1993 were 39 *appeals* determined, 14 of which were civil and 25 criminal. The number of appeals from the High Court determined by the Court of Appeal last year, therefore, increased by 325 per cent over the previous year.

Turning to appeals from Magistrates, in the 3 law years between October 1992 and July 1995, the Court of Appeal determined a grand total of 95 of these appeals. During the last law year, that is, October 1995 to July 1996, the Court of Appeal heard and determined 892 appeals from magistrates. These appeals were heard by the Court sitting not only in Port-of-Spain, but also in San Fernando and Scarborough. I have not included in these figures appeals heard during the last two long vacations.

A number of factors have contributed to these results. The first is the hard work of the judges of the Court of Appeal. The Court of Appeal lists are fixed by the Clerk of Appeals in consultation with me and I must confess that these lists have been prepared in such a way as to stretch my colleagues' endurance and tolerance to the limit. Their response has been magnificent. Another contributing factor has been the adoption of a new approach by the Court marked by its reluctance to grant requests for adjournments and its preparedness to curtail oral submissions.

This approach is born of an appreciation of the urgent need to utilise fully and productively the scheduled sittings of the Court, and to bring to a final conclusion litigation, which almost invariably has been drawn out over a period of several years.

Thirdly, we have had the co-operation and support of the attorneys. Without this, the results I have reported could not have been achieved. Attorneys may not always have been happy about how the new approach impacted on them or their clients, but generally speaking they understood what we were doing and why, and in the great majority of cases co-operated well.

What then is the situation in the Court of Appeal now with regard to backlog? Happily in the case of appeals from magistrates, there no longer exists anything that might be described as a backlog. In the case of High Court appeals, it will take somewhat longer to achieve that happy position, but the goal is in sight. On the civil side, there is a total of 121 appeals lodged before 1995 in which the record of appeal has been filed and which are to be listed for hearing. On the criminal side the number of appeals filed before 1995 that are still pending is 117, twenty of which are in capital cases. The problem of late in the case of criminal appeals has been to get the transcript of the summing-up and where necessary, the evidence. It is to be hoped that the difficulties, which beset the production of the transcripts in some cases, can be overcome. It was particularly disappointing to have to discontinue the listing of criminal appeals mid-way through July because of the unavailability of these documents.

After the decision of the Privy Council in *Pratt v. Morgan* it was generally believed that there was no constitutional objection to the carrying out of the death sentence provided this was done within five years after conviction. In the recent case of *Guerra* however, the Privy Council have made it clear that this is an erroneous belief founded on a misinterpretation of their judgment in *Pratt u. Morgan.* The Privy Council have pointed out that in *Pratt v. Morgan* they

had set a target date of one year for the hearing of the local appeal in a capital case, with another year being allowed for the further appeal to the Privy Council. It now appears from the judgment in *Guerra* that if these target dates are not met, it may not be possible to carry out the sentence of death. In assessing the practicality of complying with the target set for us by the Privy Council, I have to report that in addition to the twenty appeals filed in murder cases prior to 1995, which are still pending, the Court of Appeal now has pending before it 31 murder appeals filed in 1995 and 27 so far filed in 1996. Last year the appeals determined included 37 capital cases. Should the Court of Appeal return to the policy, which it appears to have adopted at least temporarily in 1993, of devoting virtually all its time to hearing murder appeals? If we neglect non-capital, criminal and civil appeals, there will soon be a formidable backlog in those areas.

On the question of the removal of dead - wood, I had reported last year that there were 1,109 civil appeals in which the record of appeal had not been filed although the time for filing it as provided by the rules or extended by the Court had expired. During the course of last year 679 such appeals were dismissed for want of prosecution, so that at present the number of appeals in which there has been default in the filing of the record of appeal stands at 489, as compared with 1,109 a year ago.

I wish I could report a similar increase in the number of cases determined by the High Court but unfortunately that is not the case, even though I was able to reinstitute in February this year a third Civil Court in ~an Fernando. The total number of civil cases determined by the High Court increased only marginally from 868 in the previous year, 1994 to 1995, to 887 last year. On the criminal side, there was a more significant increase in the number of cases determined, from 311 in the previous year to 413 last year, if you believe the D.P.P's figures, or to 476 last year if you accept the figures provided by the Registry. For myself, I prefer the Registry's

figures. The number of cases in which there has been a committal but as yet no trial, has decreased, albeit only marginally, from 2,651 a year ago to 2,636 at present.

Having studied the records of the times which each Court has actually sat during the last year, I am more than ever satisfied that the root of the problem, is the unacceptably high level of "down time" of Courts, i.e., the amount of time when Courts which are supposed to be sitting, are not sitting, presumably because the matters with which they are supposed to be dealing, have been adjourned or less commonly, settled. I have found it to be not unusual for a sitting judge to spend less than an hour in Court on one-third, or even one-half, of the working days in a month. In some cases the record is even worse. Clearly something has to be done. We cannot continue to waste so profligately the judicial time set aside for the hearing of cases. What is needed is a change not only of system but of culture. I do not propose to go over ground which I traversed last year, but it is obvious that we must follow other Commonwealth jurisdictions in adopting some form of case flow management, with the object of ensuring not only that cases are tried when scheduled, but also that the length of the trial is kept to a minimum. I had promised last year to introduce something of this sort by way of a practice direction, but I have come to appreciate that what is required cannot be accomplished by a practice direction alone, but Will also require the amendment of some of the Rules of the Supreme Court. The amendments contemplated include those, which would require early disclosure of evidence and the substitution of what is written for what is spoken at the trial as far as possible. The question of what amendments are appropriate in our circumstances I have referred to the Rules Committee. I had thought in the meantime to adapt the pre-existing practice for the settling of the Court lists in order to introduce some measure of case management, with a view to ensuring that cases would be ready to be tried when listed and would not be adjourned. Obviously this experiment has not

been a huge success due no doubt in part to the absence of any written guidance as to what is expected of the judge and the attorneys at these pretrial sessions. The frequent failure of counsel to attend has also served to blunt the intended purpose of the exercise.

The problem of adjournments has been even more acute on the criminal side. In the last few months of last term an experiment was tried in one or two criminal Courts whereby the cases intended to be listed in a given month were called in the course of the preceding month, so that it could be ascertained whether there was any impediment to their being heard and realistic dates for hearing could be assigned. Initial reports suggest that this has worked quite well and I would propose to the D.P.P. that we extend this experiment in the coming year.

In the course of the year, I issued two practice directions after consultation with the judges and the Law Association. Both were with a view to saving precious judicial time. The first abolished the practice of reading reserved judgments; the other extended and revised the requirements for the submission of skeleton arguments in the Court of Appeal. In fact throughout last year I have had frequent and fruitful consultation with the President and other officers of the Law Association on a variety of matters. We have ensured the health of our relationship by disagreeing on a number of issues, but I would like to thank the Law Association and its officers for their continuing support and co-operation, as well as for the useful advice, which I have received from them from time to time.

I am happy to record that the Government and the legislature have answered my call for an increase in the number of judges. By an amendment of the Supreme Court of Judicature Act, the maximum number of judges has been increased in the Court of Appeal from six to nine and in the High Court from 16 to 20, exclusive in both cases of the Chief Justice. The problem, which now faces the Judicial and Legal Service Commission, is to fill the vacant positions with

suitable appointees. In the hope that my position on this will not again be distorted, I would like to repeat verbatim the statement which I made in the course of my address last year, and I quote: "We all know there is no shortage of lawyers in private practice in this country with the necessary competence and integrity to make excellent judges". The problem of course is that hardly any of these lawyers feel able to make the financial sacrifice involved in accepting judicial appointment.

In the course of last year, three judges have demitted office; two more will do so by the end of this year. All five are- retired judges who were appointed under the 1988 amendment of the Constitution for fixed periods that have expired or are about to expire. We are grateful to them for their long and dedicated service, but the time has come when we must replace them with persons appointed to fill vacancies on the recently expanded Bench.

Earlier this year three new judges were appointed, Barnes, *J.*, Persad, J. and Kangaloo, J. Today we welcome two new additions to the Bench in the persons of Weekes, J. and Allum, J. Allum J. has been appointed as an acting judge on the understanding that his commitment to serve on the Bench will extend until the end of 1996. The option to renew of course exists. The position is that seventeen of the twenty substantive offices of puisne judge are at present filled, one on a very short-term basis. There are, however, twenty courts to be staffed eleven in Port-of-Spain, eight in San Fernando and one in Tobago. In these circumstances I renew with even greater urgency my call to attorneys who have distinguished themselves in practice to indicate to me their willingness to accept appointment to the Bench.

The Commission is prepared, as the appointment of Allum, J. indicates, to take advantage of a commitment to serve even for a limited time. The Commission is determined to make only such appointments as will serve to strengthen the Bench, and to ensure the maintenance of the

best traditions and highest standards of our judiciary. If in order to do that it proves necessary to extend the judicial catchment area beyond the shores of Trinidad and Tobago, then speaking for myself I would say, so be it. There is good precedent for such a course even since Independence, as the mere mention of names such as Fraser, Malone and Guya Persaud will attest.

After all, even the internationally acclaimed jurist Telford Georges, whom we would like to claim as our own, came to us from Dominica, and made important contributions as Chief Justice in Tanzania and Zimbabwe, and closer to home in the Bahamas.

There are a number of other topics I would like to touch on, but it is not feasible to deal with all, given the time constraint by which I am governed. I will turn briefly to some of them.

Court Reporting

It has not proved possible to extend the CAT (Computer Aided Transcription) service and it is at best doubtful whether we will be able to do so in the coming year. Regrettably, it proved necessary to cancel the contract entered into with a private company for the training of one hundred CAT reporters owing to the protracted delay by the contractor in recruiting trainees and starting training. I expect to discuss with the Attorney General in the near future the putting in place of an alternative scheme of training.

Alternative Dispute Resolution (ADR)

I gave an address in June of this year at the opening of the Dispute Resolution Centre set up by the Trinidad and Tobago Chamber of Industry and Commerce in the course of which I declared my wholehearted support for the introduction of a system of ADR in Trinidad and Tobago.

I also expressed the view that once such a system was seen to be operating with reasonable efficiency, there should be introduced by rules of court and by legislation, if

necessary, incentives for persons in dispute to use that system, and to have recourse to the courts for the determination of their disputes only as a last resort. It is clear from the final version of Lord Woolf's report entitled *Access to Justice,* published in July this year, and from the report of the Canadian Bar's Task Force to which I have referred earlier, that ADR must playa central role in any serious attempt to refurbish a common law system of civil justice.

Law Reporting

In the light of offers received for the production of Trinidad and Tobago law reports both in hard copy and in electronic format on what appear to be reasonably attractive terms, it was decided that it was better to contract out this job rather than undertake it ourselves, as we had originally planned. At the moment, steps are being taken to satisfy the requirements of the tendering regulations so as to permit acceptance of one of the offers that have been received. Hopefully this procedural hurdle will soon be overcome.

The Judiciary and the Media

I would like to see established some better means of communication between the media (particularly the press) and the judiciary. It will be conceded, I hope, that in all dealings with the media, the Chief Justice should be the spokesman for the judiciary. I would like to take this opportunity to invite the media to direct any request they have for information or comment on matters concerning the judiciary or the courts to me through my Administrative Secretary, Mr. Gary Kelly. I will attempt as far as I can to respond to any legitimate request of that sort. I would also expect that the media would use this avenue to check before publication the accuracy of any report, which tends to reflect adversely on a judge or on the way the court system, is operating. I have found that my dealings with the press in particular have consisted very largely of attempts by me to correct inaccurate and unfair reports affecting judges (often it is the

headline which does the damage). It would surely be preferable that I be given the opportunity to make these corrections in advance of publication. I look forward to receiving the response of the media to my suggestion.

The Magistracy

I turn now to the Magistracy. Here again, recruitment is a major problem. In December last the Cabinet helpfully agreed to create 12 additional posts of magistrate. As a result there are now 29 posts of magistrate, but of these nine are unfilled. There are also 13 posts of senior magistrate, of which three are unfilled and two are held by officers now on pre-retirement leave. The Judicial and Legal Service Commission has been experiencing almost as much difficulty in attracting suitable candidates for appointment to the Magistracy as it has in filling vacancies on the High Court Bench. The Commission has concluded that it is necessary to revise the minimum requirement in terms of experience for appointment as magistrate and to make some provision for magistrates to serve beyond the age of 60.

The Night Court has continued to operate successfully at Arima, but the decision of the Cabinet to institute four other Night Courts has not been implemented because of delay in deciding what legislative amendments are needed to permit the appointment of part-time magistrates to staff these Courts, and in determining the terms of service of these magistrates.

The new Scarborough Magistrates' Court was completed and handed over to me last month. It still needs to be furnished, however, before it can be used. I am advised that the courthouse at Tunapuna now under construction, is due for completion in April 1997. The position at Arima is that Cabinet has agreed to the rental of additional space upstairs of the rented premises now being used by the Magistracy, so hopefully files will no longer be stored on an internal staircase as they were when I was there last year. It is also to be hoped that

construction of a. new courthouse in Arima will not be long delayed. In Port-of-Spain, a decision has been taken to relocate six criminal Courts, the Chief Magistrate's Chambers and the library in the old Magistrate's Court building at the corner of St. Vincent and Knox Streets. It is to be hoped that the relocation can soon be accomplished, as the conditions at NIPDEC House are really quite intolerable. In Sangre Grande the building in which the Magistracy is housed is in a deplorable condition. Suitable premises have been identified where the Court is to be temporarily relocated pending the construction of a new Court on a site, which has also been identified. I would also mention, not for the first time, that in Roxborough the building in which the magistrate sits is totally unsuitable for that purpose and alternative accommodation is urgently needed.

I am happy to confirm the impression, which you may have gleaned from certain parts of my address that during the year under review the other two arms of Government the Executive and the Legislature have been quite responsive to the needs of the Judiciary. This is as it should be, but is nevertheless, a cause for satisfaction. In such a situation a large deal of the credit must go to the Attorney General who is the spokesman for the Judiciary in the Cabinet. I have had the fullest co-operation and support from the present Attorney General as well as may I add from his two immediate predecessors with each of whom I have interfaced for comparatively short periods. I confidently anticipate that I will continue to receive his co-operation and support in the year that lies ahead.

I would like to conclude by noticing that we are fast approaching a new millennium. Judges tend by background and temperament to the conservative. One of my goals is to ensure that by the time the millennium arrives, the judiciary, which I have the honour to head, cannot be said to be behind the times even for the twentieth century in its methods and ways of thinking.

This implies that judges must be prepared to keep up with the electronic age, to do their legal research by computer and read the law reports on a C.D.-ROM rather than in a leather-bound volume. But it also means much more than that. It means that we must be prepared to re-examine some of the traditional and possibly out-dated notions we entertain on such fundamental matters as the role of the judge and his relationship with the rest of the society, particularly those sections of it such as the Bar and even other judges with whom he is constantly interacting. What is he entitled to expect from them and what are they entitled to expect of him? Certain essentials do not change, for example, the need for judges to be independent and to be respected. We may need to re-examine however, our ideas of how independence and respect are achieved and maintained. These issues need not be approached on a purely philosophical plane, but also by confronting certain concrete, practical issues. One of them I have already sought to address in the course of this speech, that is, what can the judiciary properly do to avoid being unfairly treated by the media? Take another issue-the televising of Court proceedings. Only ten days ago I saw on Canadian television an actual case being argued before the Supreme Court of Canada. It was well done-with taste and dignity. This does not mean that I am now an advocate of televising Court proceedings in Trinidad and Tobago. I mention it merely as an example of an issue, which may perhaps need to be re-examined in due course, coolly and sensibly, without prejudgment or prejudice.

I would also like to suggest that this may be an appropriate time to take a conscious decision about what type of Judiciary we want to have at the start of the 21st century and to consider realistically how we are going to get it. The World Bank has shown an interest in providing funds for the judicial sector in Trinidad and Tobago as well as in other countries because they appreciate the importance to an economy of an efficiently operated judicial system.

People must realise that even if they never come near a court of law the quality of their lives is greatly affected by what goes on in the courts of the land, and the way in which they operate. I will not at this time attempt to develop more fully the practical steps, which this realisation should indicate. I am prepared for the moment merely to plant the seed, but it is a theme to which I suspect, I may have cause to return. I hope when I do, I shall get a good reception.

I now declare the 1996/1997 Law Term open and adjourn sittings of the Supreme Court to tomorrow at 9 a.m.

M. DE LA BASTIDE
Chief Justice

16th September 1996.