ADDRESS

of the

CHIEF JUSTICE

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

at the

Opening of the

1998-1999 Law Term

in the

SUPREME COURT

at the

HALL OF JUSTICE

Knox Street, Port-of-Spain

on

WEDNESDAY, 16TH SEPTEMBER, 1998

BEGINNING OF TERM ADDRESS

SEPTEMBER, 1998

When I started out to write this Address I had decided to follow the course which I foreshadowed at last year's opening by delivering a shorter Address and following it up with a written report containing much of the statistical and other information which in past years has been included in the Address. It appears that I lacked the will power, however, to make the necessary cuts and by the time the address was typed it turned out to be somewhat longer than last year's. You will be relieved to hear that I do not intend to read it. It will be published as written, but what I shall do today is to read some parts of it, paraphrase and summarise others and possibly omit some sections altogether. You will pardon me if this results in some loss of continuity, but I am sure you will not mind this if it results in a shorter speech.

I will begin as usual by reporting on the work done by the Court of Appeal and the High Court in the course of the last Law Term.

Court of Appeal

I suppose that in deference to the amount of attention that has been focused on the carrying out of the death penalty, I should begin by reporting that the Court Appeal is meeting comfortably and consistently the target set by the Privy Council of hearing and determining murder appeals within one year from conviction. This target was set by the Privy Council in November, 1993 in the case of *Pratt v. The Attorney General of Jamaica.* In the last complete law term before that decision, that is, October, 1992 to July, 1993, the average time elapsed between conviction and the determination of a murder appeal was five years and seven months. We have come a long way in a relatively short time. There has been no one convicted of murder since the 19th March, 1996, whose appeal has not been heard and determined by the Court of Appeal within one year of his conviction (and when I talk of the appeal being determined, I mean that the Court has not. only announced its decision but given its reasons as well). At **present, there** are no murder appeals pending apart from those which have **been** listed for hearing in the next six weeks.

In the last Law Term the Court of Appeal heard and determined more criminal appeals than in the previous term—141 as compared with 81.

There is no backlog of criminal appeals either from the High Court or from Magistrates, if we consider only those cases in which the Court of Appeal has the documents which it needs in order to hear the appeal. I shall deal later with the backlog of appeals which have been filed, but in which the necessary documentation is not yet available to the Court of Appeal.

Turning now to Civil Appeals, there were only 81 of these heard and determined as compared with 191 in the preceding year.

The reduction in the number of civil appeals heard was the result of a deliberate policy which I adopted in the last six months of the last Law Term, of reducing the number of civil appeals listed each week from five to three. I did so because I recognised that with the best will in the world it was impossible to list fresh cases every day in both Courts without accumulating a backlog of reserved judgments. Another factor was that from time to time during the last year the number of Appeal Court Judges available was depleted by illness. It should he noted that the ninth seat on the Court of Appeal for which the law now provides, has not so far been filled.

There are pending 128 civil appeals filed before 1997. I intend in the coming term to devote more time to the hearing of civil appeals and to wiping off the arrears of reserved judgments in civil appeals.

In response to a request from the Southern Assembly of Lawyers, a Justice of Appeal now sits in San Fernando once a month to hear Chamber applications in appeals that emanate from the South.

Criminal Appeal not ready for Hearing

I turn now to the backlog of criminal appeals that are not ready for hearing. I shall deal firstly with appeals from the High Court. These are all non-capital cases. If you look at the list of non-capital appeals to be heard in October in the West Court, you will see some of them are from convictions recorded in 1998, while others are of much older vintage,

going back as far as 1990. The fact is that the 1998 cases are being listed because in the older cases pending, the summations are still not available. What is involved here is some 65 non-capital appeals filed between 1990 and 1997, 22 of which date back to 1990 and 1991. For a variety of reasons enormous difficulty has been experienced in retrieving the summations in the older cases. It would be pointless to try and assign blame at this stage but the fact is that those who recorded those summations did not transcribe their notes at the time or properly preserve them, and the tape recordings that were made as a backup were not properly identified or indexed and are in some cases unintelligible.

A somewhat similar (but much more serious) situation exists in the case of appeals from magistrates, where the only backlog that exists is one that the Court of Appeal is powerless to do anything about. As promised last year, I have investigated the number of appeals from Magistrates in which either the notes of evidence have not been typed or the Magistrate having been provided with these notes, has not given his reasons. As I suspected, a very disturbing picture has emerged.

As of the 30th June, 1998, there were 580 cases in which appeals have been filed against Magistrates' decisions but the notes of evidence have not yet been typed. In addition, there are 663 appeals in which the notes of evidence have been typed and given to the Magistrate who tried the case, but he has not yet produced his written reasons. One Magistrate alone is responsible for 106 of these cases. Some of these appeals were filed upwards of 10 years ago. The nature and size of the problem having been identified, remedial action must follow.

There are several reasons for the lamentable situation I have just described in relation to appeals from magistrates. One of course is the lack of a proper system of recording and transcribing evidence in the Magistrates' Courts. Others include shortage of staff, lack of equipment and inability to access funds as and when they are required, or sometimes at all.

Imagine that in the situation which I have just described, the Magistracy has purchased four new photocopiers but is afraid to use them without the installation of surge protectors for which funds have not so far been released.

The Problem

But there is a much more fundamental cause for these and many of the other problems which plague the administration of justice. Put simply it is the lack of proper management. Today management has become a science in its own right. It is a function to be undertaken by those who are trained and experienced in that science and in the various technologies which are needed to underpin it. It is totally unrealistic in today's world to expect judicial officers such as the Chief Magistrate, the Registrar and the Chief Justice, in addition to performing their judicial duties, to assume responsibility for the management of a large and complex court system without the assistance of a properly staffed Management team headed by a suitably qualified person. If such a management structure had been in place we would not be experiencing our present difficulties in obtaining the records necessary to enable the Court of Appeal to get on with its work of hearing appeals in criminal cases. If such a management structure had been in place, I venture to suggest we would not have had to curtail and eventually suspend Court sittings last July because the Hall of Justice was without water or air-conditioning for 3 days.

The Solution

I am happy to report that we are now in the process of putting such a management structure in place. We have already secured the co-operation of Cabinet towards this end by the creation and filling on contract of certain new posts. These are the Court Executive Administrator, the Court Statistician, the Protocol and Information Officer and the Manager, Information Technology Systems. We hope with the continuing support of Cabinet to add to these two Deputy Court Executive Administrators, a Human Resources Manager and a Planning Director before the end of this Calendar year. Other posts which it is hoped to create and fill in 1999 include Court Security Manager, Director of Court Library Services, Financial Administrator, Manager, Building, Plant and Equipment, Court Records Manager, Co-ordinator of note-taking services and six area Court Managers, each of whom will be responsible for the day to day management of all the Courts in one of six areas of Trinidad and Tobago. They will serve the Magistracy as well as the Judiciary. The creation of this new department of Court Administration is an important part of the Judicial Sector Reform Project the funding for which is expected to come from a World Bank loan.

The High Court

Turning now to the High Court, I will deal first with the criminal side. I am happy to report that the log-jam of cases awaiting the preparation of indictments by the Director of Public Prosecutions appears to have been largely eradicated. Last year I reported that there were 650 cases which were with the Director of Public Prosecutions awaiting the preparation of an indictment. I am informed that as of the 7th September, 1998, that number has been reduced to 143, the large majority of which (116 cases) are being handled in the San Fernando office of the D.P.P. It has been expressly pointed out to me by the present D.P.P. Mr. Mark Mohammed, that it was during the tenure of his predecessor, Mr. Aldric Benjamin, that there was a dramatic improvement in the speed with which outstanding indictments were filed. Mr. Benjamin must, therefore, be given credit for this turn around. As from November, 1997, the Registrar of the Supreme Court took over from the D.P.P. responsibility for preparing the case lists for the Assize Courts. Nevertheless, owing to a shortage of cases in which indictments had been filed, I was forced to discontinue the Fifth Criminal Court in Port-of-Spain for four months from November, 1997, to February, 1998. This Court resumed sitting in April of 1998, and a Fourth Court has been added since April, 1998, to the three Criminal Courts sitting in San Fernando.

Another problem is presented by the large number of "inactive" cases, that is, those which having been listed and adjourned, have never been relisted or otherwise disposed of. In most of these cases, bench warrants have been issued but not served because the accused have either absconded or died. Efforts have been made to reduce the number of these cases by listing those which can be tried and by the entering of notices of discontinuance when the D.P.P., on reviewing all the circumstances of the case, is satisfied that this course is justified. Last year the Registry counted 486 such cases in Port-of-Spain and 226 in San Fernando. They have now been reduced to 361 in Port-of-Spain and 173 in San Fernando.

The total number of criminal cases determined in the last law year is 814 which represents a healthy increase of 45 per cent over the comparable figure of 560 in the previous year.

I turn now to the civil side of the High Court. One development was the addition of a Fifth Civil Court in Port-of-Spain at the beginning of 1998. This no doubt contributed to the total of 1,977 cases determined in the last Law Term as compared with 1,483 in the preceding Term, an increase of 33 per cent. That figure includes 57 cases determined in Tobago, as compared with 27 in the preceding year. The number of cases determined is about three and one-half times the number of cases set down for trial during the same period. So we continue to erode the backlog. Moreover, we have made considerable progress towards determining the size of that backlog. The laborious exercise begun last year of examining all the files in the Civil Registries in Port-of-Spain, San Fernando and Tobago, was completed. The period covered was from 1st January, 1990 to 31st December, 1997. The exercise disclosed the following picture:

Cases set down for trial, but not yet determined:

In Port-of-Spain … … … …	3,858
In San Fernando… … … …	2,437
In Tobago … … … … …	105

Cases not yet set down for trial but apparently still alive:

In Port-of-Spain … … … …	2,402
In San Fernando… … … …	1,576
In Tobago … … … … …	152

With respect to cases not set down, inquiries were sent out to the attorneys asking about the status of these matters. Response from attorneys however, has not been good. In Port-of-Spain, 1,888 queries were sent to attorneys but only 47 responses were received.

Year after year I report in, some detail on the quantity of work done by the Courts. So far I think I can say that the report cards I have presented have been pretty good—if I were more immodest I would say excellent. It may be said however, but the officious bystander: "Yes well the quantity is good but what about the quality?" The answer would depend largely on an assessment of judgments of the Court of Appeal as that is the body which is meant to correct the errors which first instance judges may be expected, if not entitled, to make from time to time. It would be invidious for me to attempt any such assessment.

That task must perforce be left to others. But those who put some store by statistics may be interested in some that I have obtained from the Registrar of the Privy Council. These relate to the number of appeals which have gone from the Court of Appeal to the Privy Council and the fate they have met there. In order to put these statistics in perspective, I would make two points. Firstly, it has been said, I think, of the House of Lords in England that its decisions are final, not because they are right, but they are right because they are final. The same observation I suppose might be made respectfully in Trinidad and Tobago of the Privy Council's decisions. Secondly, it happens quite frequently particularly in murder appeals, that points which have not been argued in the Court of Appeal are raised for the first time in the Privy Council. Sometimes these succeed. The reason for this has to do with the fact that appellants in these cases are almost always legally aided. Under the existing provisions, the most that can be paid by way of fees to attorneys who accept legal aid briefs in murder cases is $1,500.00. As a result, those who appeal from murder convictions are often represented by inexperienced and sometimes inept counsel. By contrast when the matter reaches the Privy Council; the appellants always seem to have the benefit of experienced and highly competent London counsel. I am aware that amendment of the Legal Aid Legislation is said to be imminent. I fervently hope that it will not be long delayed and that when it comes it will include provision for payment of proper fees to counsel who accept briefs in serious criminal cases, so that those who are legally aided will get adequate representation, and the Courts which try their cases will get the quality of assistance from counsel that they need and are entitled to expect.

Now to the statistics. For the three-year period 1995 to 1997 (both inclusive) there were five civil appeals from Trinidad and Tobago to the Privy Council filed. During the same period one civil appeal was dismissed without a hearing (presumably for want of prosecution), three were dismissed after a hearing and one appeal was allowed. In the first six months of 1998, two civil appeals were registered and the only civil appeal that was heard was dismissed. In the last three and one-half years, therefore, one civil appeal was allowed. On the criminal side, during the same three-year period 1995 to 1997, there was a total of 42 petitions for special leave to appeal. During the same period 32 petitions for special leave to appeal were dismissed and leave refused; there were two cases in which special leave was granted, but the appeal

was subsequently dismissed; there was one case which was remitted to the Court of Appeal for its further consideration; and there were four appeals which were allowed. In the first six months of 1998, there were 30 petitions for special leave to appeal; special leave was refused in nine cases; and one appeal was allowed. So in the last three and one-half years there were five appeals in criminal cases which were allowed by the Privy Council. I cannot vouch for the accuracy of these figures but they have been supplied to me by the Registrar of the Privy Council. I will let them speak for themselves.

The New Rules

The most important, as well as it turned out, the most controversial, development in the justice system last year was the making of New Rules of Court by the Rules Committee. These are contained in the Civil Proceedings Rules and the Family Proceedings Rules, 1998. The controversy over the new rules arose because of the complaints of attorneys that there had been no, or no adequate consultation with them on the far reaching changes which they make. They complained in particular about the unavailability of printed copies of the Rules even after they had been laid in Parliament. The Rules Committee on the other hand contended that there had been consultation with attorneys both the course of the rule-making exercise and previously, and to the extent that attorneys had not considered or commented on the new Rules it was because they had not taken advantage of the invitation and the opportunity which were extended to them to do so. The committee conceded that printed copies of the Rules in their final form were not available when they should have been due to an enforced change in the printing arrangements but maintained that the pith and substance of the Rules were contained in the report of the consultant, Mr. Richard Greenslade, who had drafted them and in the summary of his recommendations, both of which had been published and made available to all interested parties. Their objections were expressed by attorneys both in and out of the meetings of the Law Association and these were widely reported in the Press. The response of the Rules Committee was expressed in rather more modulated terms in a paid ad in the newspapers. I do not propose to take this opportunity to argue further the adequacy of the consultation held with or offered to the legal profession. In the first place I do not want to prolong a dispute that appears to have generated high feelings on the lawyers' side. Secondly,

the dispute hopefully is now academic because the Rules Committee at a meeting held last Friday, decided to amend the new Rules so as to provide for their commencement not on the 1st January, 1999, as now provided, but instead on a date in 1999 to be fixed by the Committee. The Committee is (I will refrain from saying 'again') inviting all members of the legal profession, to give it the benefit of their considered views and recommendations on the new Rules without the constraint imposed by a fixed commencement date. The Committee will thus be able to consider what changes, if any, should be made to the new Rules and also when they should come into force. It continues to be my policy to seek the co-operation of attorneys not confrontation with them.

There is one point, however, that has not yet been made and which in fairness to the Rules Committee I think ought to be made. The programme for the implementation of the new Rules was well-known to the officers of the Law Association months ahead of time. In accordance with that programme, the rules were made by the Rules Committee on the 29th June, 1998, and were laid in the House of Representatives and in the Senate on 17th and 21st July, 1998, respectively and were to come into force on 1st January, 1999. In fact the original commencement date for the new rules was today, the 16th September, 1998, but this was put back to the 1st January, 1999, at a meeting held on 29th April, 1998, at which the President, Vice-President and immediate past Vice-President of the Law Association were present. It was not, however, until the 2nd July, 1998, after the members of the Rules Committee, including the two representatives of the Law Association, had signed the new rules, that for the first time I was notified by way of a letter from the President of the Law Association that objection was being taken to the alleged lack of consultation and to the timing of the programme for the implementation of the new rules. My understanding of the relevant statutory provision, is that the new rules having been made, had to be laid (as they were) as soon as possible thereafter. Hence the importance of the recent decision taken by the Rules Committee to amend the new Rules by altering the commencement date.

My information is the Organisation of Eastern Caribbean States has contracted with the same consultant who drafted our Rules, Mr. Richard Greensladen, to undertake a similar exercise for them commencing this month. The programme which they have projected

involves the completion of his exercise in February, 1999, and the coming into force of their new Rules next September. That timing replicates exactly the one we had embodied in our programme.

I think that I should say something about Mr. Greenslade. He is by profession a solicitor who served as a district Court Judge but is now retired. He is an editor of the *County Court Practice* and has himself written a highly regarded book on the practice of that Court. He assisted Lord Woolf in the preparation of his report on the civil justice system in England, "Access to Justice". His contribution to that report was described by Lord Woolf as "enormously helpful". He was recommended by Lord Woolf as the ideal person to assist us in revising our Rules. Speaking for myself, Mr. Greenslade lived up fully to the full some recommendation he received. I want to make it clear that he was not given *"carte blanche"* in drafting the new Rules. He was provided with the reports and recommendations of those who had previously addressed the reform of our civil procedure and an Ad Hoc Committee was appointed to work with him for the specific purpose of ensuring that the rules he proposed were tailored to local needs and conditions. The draft Rules were also revised and amended by the Rules Committee itself.

I must also say something in defence of the new Rules themselves. The first Rule states the overriding objective in these terms:

"1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes:

(a) ensuring, so far as is practicable that the parties are on an equal footing; and

(b) Saving expense; and

(c) dealing with cases in ways which are proportionate to:—

(i) the amount of money involved;
(ii) the importance of the case;
(iii) the complexity of the issues;
(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.".

In a letter to the President of the Law Association I identified the objectives of the new Rules as being—

" *(a)* to introduce case management;

(b) to shorten the period between the commencement of an action and the trial;

(c) to promote settlements;

(d) to introduce a greater degree of openness in litigation;

(e) to shorten trials;

(f) to control the cost of litigation;

(g) to negative as far as possible the effects of any disparity in financial strength between parties to litigation;

(h) to simplify and standardize civil procedure; *(i)* to cast the rules in clear and simple language.".

I doubt that anyone would take issue with any of these objectives. The question of course is whether the new Rules will conduce to achieving them. They will decrease, not increase, the number of interlocutory applications and this will serve to reduce the cost of litigation. They contain express provisions to control and reduce the level of fees chargeable to a party and to let him know in advance what the amount of these will be. They will therefore, operate to the advantage, not the disadvantage, of the poorer litigant. The fear has also been expressed that the new Rules will favour the large firms of attorneys and drive the small practitioner out of business. My information is that similar fears were expressed in other jurisdictions like Ontario, when similar rules were introduced there, but the experience of sole practitioners there showed them to be groundless. The new rules will certainly favour those attorneys who are efficient and well-organised. But my experience in thirty-three years of practice tells me that the large firms have no monopoly so far as efficiency and organization are concerned. In fact, quite the contrary. In any event, it is unreasonable and unjust to expect clients to subsidize inefficiency

and laziness. The fact is that the new Rules will enable any attorney to complete and therefore to charge for, more matters in any given period of time than is now possible under the existing rules.

It is obviously important for all Attorneys as a first step to familiarise themselves with the new Rules. Copies of the Family Proceedings Rules have been available at the Registry in Port-of-Spain and at the Sub-Registries in San Fernando and Tobago since the 31st July, 1998, at a price of $150.00 per copy. Copies of the Civil Proceedings Rules have been on sale at the Registry in Port-of-Spain and at the Sub-Registry in San Fernando since 6th August, and at the Sub-Registry in Tobago as from 10th August, 1998, at a price of $200.00 per copy. Sales so far have been disappointing.

As of the 11th September, 1998, a total of 118 copies of the Civil Proceedings Rules had been sold and a total of 95 copies of the Family Proceedings Rules had been sold. My understanding is that we have about 1,000 Attorneys practising or entitled to practice in Trinidad and Tobago. The Judiciary has been taking steps to prepare itself for the implementation of the New Rules, and in particular the introduction of Case Management. Thus on the administrative side we have appointed a Rules Implementation Committee which includes representatives of a number of Government departments whose co-operation is important. On the Judicial side—a Master and the Deputy Registrar and three Assistant Registrars have been sent to Ontario to observe at first hand the operation of a system of Case Management similar to that provided by the new Rules. Without prejudice to the Rules Committee's consideration of the submissions which hopefully it will receive from attorneys, it would be prudent for the legal profession to make similar preparations of its own. If the Judiciary can provide any assistance in this exercise, we shall be happy to do so.

Recruitment of Judges

During the last law year, the High Court bench continued to benefit in two ways from the appointment as acting judges of attorneys willing to leave their practice for a few months. Firstly, this enabled us to draw from a wider pool of talented lawyers in order to find the required number of competent judges. Secondly, some of those who came initially for a limited period, found that they would like to stay or return on a permanent basis. I am told that another benefit is that those who

having served return to their practice, do so with new insights bora of their service on the bench. We are grateful to Avory Sinanan, Carol Gobin, Douglas Mendes (still Mr. Justice Mendes) Reggie Armour and Fyard Hosein for their temporary service on the Bench.

Our permanent establishment has been strengthened by the appointments of Mr. Justice Moosai, Mr. Justice Bereaux, Mrs. Justice Yorke-Soo Hon and Mr. Justice Ventour, all of whom had served previously as acting judges.

Tobago must be rightly proud of the appointment of one of their talented sons Mr. Justice Ivor Archie to the High Court Bench. Our gain was the loss of the Cayman Islands where he had been serving as Solicitor General. The most recent judicial appointment is that of Mr. Justice Joseph Tarn who practiced in San Fernando and as far as I am aware was born, bred and educated there.

It is not to be expected that the decisions of the Judicial and Legal Service Commission will find universal approval. The Commission is an independent body which comprises five members. Two are *ex officio,* that is, the Chief Justice who is Chairman, and the Chairman of the Public Service Commission. The three other members are chosen by the President after consultation with the Prime Minister and the Leader of the Opposition. One of these must be a serving or retired Judge and the other two must have 'legal qualifications'. It is the responsibility of this Commission to appoint not only judges and magistrates, but also law officers. Recent experience confirms my own deeply held conviction that it was for good reason that the framers of our Constitution provided for a Commission which was neither controlled by, nor answerable to, anyone holding political office, be it in Government or Opposition.

In the course of last year, two of our Puisne judges retired—Mr. Justice Ramlogan and Mr. Justice Persad-Maharaj. We begin the new term without any acting judges, apart from Mr. Justice Mendes who will be leaving us at the end of this month. The result is that we are two judges short. When there is a judge sitting in Tobago, as there will be in October and November, we have 22 Courts to man, but from October we will have only 20 judges. This imbalance will soon be corrected, but we continue to depend on talented and experienced members of the bar to volunteer their services, on either a temporary or a permanent basis, in order to maintain and enrich the quality of our bench.

I record with pleasure that in the last list of National Awards there was a departure from tradition in that two serving judges were honored by the award of the Chaconia Medal (Gold). I refer to Mr. Justice Sharma and Mr. Justice Ibrahim, the two senior Justices of Appeal. I congratulate them on their well-deserved awards.

The Magistracy

There continues to be a shortage of Magistrates. There are nine posts of Magistrate which are not filled. A sub-committee of the Judicial and Legal Service Commission this week interviewed eight persons who had responded to a notice inviting applications for appointment as magistrate. The fact that in August there were a number of courts in Arima, San Fernando and Port-of-Spain without Magistrates drew unfavourable comment. This came about in the following way. Requests by magistrates to take vacation leave are particularly heavy in July and August when schools are on vacation. This year these requests could not all be accommodated but a number of them were. What created the crisis, however, was that in a space of ten days in August three Senior Magistrates submitted sick leave certificates for a total of 45 days' sick leave. That is not something one can reasonably be expected to plan for.

Since the 26th December, 1997, the Judicial and Legal Service Commission decided to appoint a certain person to fill one of the vacant posits of magistrate. Before such an appointment can be made, however, the Budget Division of the Ministry of Finance must confirm that funds are available to pay the new appointee. On the 13th March, 1998, the Magistracy informed the Budget Division that it had identified funds from its own vote for this purpose. Nevertheless, the necessary confirmation was not provided by the Budget Division until 5th August, 1998. By that time the person to be appointed had got another job and was no longer interested in the appointment. As the man on the priority bus route would say—you think it easy!

I do not know of any good reason why the Judiciary and the Magistracy should not be given the responsibility for spending as and when they deem it necessary the monies which have been voted them by Parliament. The amount of inefficiency which is created by the present system whereby we have to apply for permission to spend the money in our votes, is enormous. Perhaps when the new department of Court Administration of which I have spoken, becomes fully

operational, we shall be able to persuade the Government to entrust us with the responsibility for spending and accounting for the monies which Parliament has authorised us to spend.

Sadly the night court which had operated quite successfully in Arima since July, 1995 came to an end towards the end of 1997. This court had been staffed by full-time Magistrates on a voluntary basis i.e., they received no additional remuneration for sitting in the night court. The time came, however when the Magistrates were no longer prepared to continue to provide this service on a *pro bono* basis. Meantime, Cabinet had agreed to create the post of part-time magistrate for the purpose of staffing the night court in Arima and in a number of other venues. The appropriate statutory amendments were made by the Parliament—or at least so it was thought. For reasons, however, beyond the control of the Chief Magistrate and myself, and which I am sure someone else could explain better than me, the terms and conditions of service of the part-time magistrate have not been settled, so that no appointments to that post can be made. The net result is that night court remains closed.

On a brighter note, the Magistracy at Tunapuna has been re-housed in a spanking new building, the Tunapuna Administrative Complex which includes four well-appointed courts. Sittings commenced in the new Courthouse on the 17th August, 1998. A number of the country courts have been refurbished and made reasonably comfortable. I refer here to the magistrates' courts at Chaguanas, Couva, Rio Claro, Point Fortin, Mayaro, Siparia and Roxborough. Some work has also been done at the San Fernando Magistrate's Court. There has also been extensive renovation of the old Magistrates Court building on St. Vincent Street, Port-of-Spain. I understand that work is scheduled for completion at the end of this month. In fact only yesterday, the sod was turned to start construction of a new wing to be added to that building. The intention is to relocate five criminal courts, the Chief Magistrate's chambers and the library in the refurbished building. These are now housed in totally unsatisfactory conditions at NIPDEC House.

There is also a newly refurbished magistrate's court at Chaguaramas, though there have not been regular sittings of a Magistrate at that venue, and I understand that there are already problems with the plumbing and the wall fans.

I am gratefull to the Attorney-General for his role in bringing about these improvements in the accommodation provided for Magistrates' Courts.

I think that the morale of the magistrates is badly in need of a boost. I have argued repeatedly that their terms and conditions of service need significant improvement. I have endorsed the submissions they have made to the Salaries Review Commission and we anxiously await the report of that body. I also supported the magistrates' request to be paid an Interim monthly allowance comparable with that granted to legal officers in the Attorney General's Department. In April of this year, Cabinet acceded to that request and approved the payment to Magistrates of an Interim Allowance of $3,500.00 per month with effect from 1st January, 1997. The problem has been to find the money to pay it. Funds have been identified and cheques prepared to pay the arrears as from 1st January, 1998, and to continue paying the allowance on a current basis. Hopefully funds will be voted in the forthcoming budget to pay the 1997 arrears.

Judicial Education

I am anxious to see established in Trinidad and Tobago a Judicial Training Institute such as has been established in Jamaica and in the Eastern Caribbean States. With this in mind Mr. Justice Kangaloo and Senior Magistrate Debra Thomas-Felix attended an intensive training course for judicial educators held by the Commonwealth Judicial Education Institute in Helifax, Nova Scotia in June of this year. What I have in mind is an institute which will provide training not only for judges but also for magistrates and court staff.

Last year I spoke of efforts being made by the Commonwealth Judicial Education Institute to secure funding for the establishment of a regional programme of judicial education in the Caribbean. In pursuance of this objective the International Development Bank sent a team to make a diagnostic survey of the judiciaries of the Commonwealth Caribbean and to make recommendations for the establishment of a regional programme of judicial education in the Caribbean. We received this team in October last and await with interest the publication of its report.

In the meantime we held our annual judges retreat in Tobago in May of this year. We had as our visiting speakers Mr. Justice Douglas Coo, one of the pioneers of Case Management in Ontario and Judge Christopher Pitchers, resident Crown Court Judge at Leicester and former Director of Studies of the Judicial Studies Board, who spoke on Sentencing and Fact Finding. We also had the advantage of having with us Mr. Justice Telford Georges who has attended and made a valuable contribution at all our retreats to date. There was also a session on Gender Sensitivity for Judges conducted by a former Director of the Women Affairs Division, Ministry of Community Development, Culture and Women's Affairs. One of the advantages of these retreats is that they provide an opportunity for the Judges to discuss and attempt to reach a common position on various questions of law, practice and policy which arise repeatedly in our Courts.

Law Report

I previously reported that in February, 1997, a contract was awarded for the publication of the first volumes of a series of *Trinidad and Tobago Law Reports.* The contract covers reports of cases decided between 1990 and 1995. We plan to publish these in two volumes, the first of which will cover 1990 to 1992 and the second 1993 to 1995. I am happy to announce that these volumes are expected to be published by the end of 1998. I am grateful to Mr. Justice Hamel-Smith and Mr. Russell Martineau for doing the lion's share of the work of selecting the judgments which were sent to the publishers. We hope to contract next for publication of volumes 3 and 4 covering the years 1996 and 1997 respectively and also for publishing in electronic format selected judgments from the period 1893 to 1956.

Heads of Judiciary Meeting

In July this year, I hosted a meeting of Heads of Judiciary from the independent countries and dependencies of the Commonwealth Caribbean. This is something that I had wanted to do since assuming office. Happily the meeting was an unqualified success. Those attending included the Chief Justices of Jamaica and Barbados and the Chancellor of Guyana. We spent several hours discussing matters of mutual concern and took advantage of the opportunity to cement our personal relationships. It was agreed to make these meetings an annual event and two of the visiting Chief Justices indicated that they would like to host the meetings in 1999 and 2000 respectively, subject to the approval of their Governments.

The Hall of Justice

I referred earlier to the temporary closure in July of the Courts in the Hall of Justice because of the failure of the water supply system in the building. The immediate cause of that situation was the failure within a matter of days of the three pumps responsible for distributing water throughout the building. The failure of those pumps was in turn the result, I am advised, of the corrosion of the galvanised pipes through which water is distributed in the building. The pumps have now been replaced. The galvanised pipes, however, have not. The latter is a large-scale project which will have to be done in stages, but ought not to be long delayed if the new pumps are not to suffer the same fate. The maintenance of the equipment in the Hall of Justice is undertaken by the National Maintenance Training and Security Co. Ltd. ("M.T.S.") under the supervision of a resident engineer provided by the Ministry of Works and Transport. I understand that our relationship with M.T.S. is not, and has not for some time been, the subject of any written contract. A similar situation incidentally exists with regard to the occupation by the Magistracy of NIPDEC House. The relationship of landlord and tenant, which presumably exists between NIPDEC and the Magistracy, is not the subject of any written agreement. This not surprisingly has given rise to some major differences as to the rights and obligations of both parties. Such a situation is one that is unimaginable in the private sector from which I have come. I do not see how it could co-exist with a proper management structure. I have already outlined the plans for correcting the absence of such a structure in the Judiciary and Magistracy.

There is another situation, however, which exists with regard to the equipment in the Hall of Justice which is potentially even more catastrophic. When the Hall of Justice was built, it was provided with two transformers—one being the back-up for the other. One of these transformers went out of commission in 1993, is not repairable, but has not yet been replaced. By now, I am told, the some corrosion of the fins, which caused the loss of refrigerant which brought an end to the useful life of the first transformer, is well advanced on the other transformer. If the same fate befalls that transformer, which I am told can happen at any time, the Hall of Justice will become a dead building, i.e., a building with no electricity and will so remain until a new transformer can be ordered, delivered and installed. Moneys have been voted for the purchase of a new transformer in the last two years at least, but for

various reasons, the necessary preliminaries to the award of a contract to supply it, and in particular the preparation of proper specifications acceptable to the electricity supplier, were never completed. I have threatened and cajoled and these specifications have now been prepared, but a new stumbling block has appeared; because of the imminent of a new financial year beginning on October 1, we cannot get from the Budget Division the confirmation that funds are available which is required by the Central Tenders Board in order to proceed to award a contract. A not dissimilar situation exists with regard to the air-conditioning equipment. I understand that for the proper functioning of this system it is essential to have three cooling towers operating. The Hall of Justice was originally provided with four such towers, again in order to provide a reserve which could be brought into operation if one of the other three failed or required to be shut down for repairs or maintenance.

The fourth tower has for some time been out of service and in need of major repairs. The contract to do these repairs has not yet been awarded.

I have made these disclosures today partly because I think it is the right of the public to know by how thin a thread the continued operation of our Supreme Court hangs, and partly in the hope of instilling a sense of urgency in those on whose actions and decisions the taking of remedial steps depend.

Conclusion

I must acknowledge again that I have received throughout the last year the fullest support and co-operation from the Attorney General. I want to express my appreciation of that. Notwithstanding the differences that emerged with regard to the new Rules, I have throughout the year held frequent and fruitful consultation with the President of the Law Association, particularly with regard to the selection and recruitment of judges. I absolve her from all blame for any wrong decision which the Commission made, however, while the Commission always paid a lot of attention to her suggestions, we did not always follow them. Her work and that of Mr. Rolston Nelson on the Ad Hoc Committee was particularly valuable and much appreciated.

During the year under review, judges have come in for a good deal of criticism from various quarters—from editorial writers,

commentators and columnists, writers of letters to the editor and attorneys. I have no problem with criticism of judges. In fact I welcome such criticism, not because it is usually constructive or helpful or even fair, but because it is one of the few ways in which a judge can properly be held accountable for his decisions and his conduct. Judges perform their function probably with greater transparency than the holder of any other public office. Not only are their decisions public, but they must be prepared to support every decision they make by reasoned argument. Their decisions and their reasons are subject to scrutiny by the parties and their lawyers and by the public to the extent that they are affected by or interested in them. They are also subject to scrutiny and criticism and reversal by a higher court. If they are guilty of misconduct which is sufficiently grave, there is machinery provided by the Constitution for their impeachment. They are therefore accountable to the public including the press who may criticise them, to the superior courts who may reverse them and to the bodies established by the Constitution who may remove them. But they are not accountable in any other way or to anyone else—except of course their Maker and it is important for editorial writers and other commentators to recognise how dangerous it is to reinforce criticisms of judges by appealing to unspecified "powers that be" to take remedial action.

I would also suggest that those who comment on judicial decisions which are currently under review by an appellate court, should exercise some restraint in their use of language. For instance, to describe "as absolutely ridiculous" the contention of a party which has been accepted by a judge of first instance when an appeal from his decision is actually in the course of being heard, is regrettable not because the appeal judges are likely to be affected by such criticism, but because the party whose case is disparaged may not feel as confident about this as say his attorney does; particularly if he is ultimately unsuccessful in the appeal.

Finally I make two appeals to those who criticise us. The first is to make clear what they are complaining about. I was puzzled by a piece written recently by a columnist in a Sunday newspaper. In it he complained of judicial "bizarrity" without any clear indication or what he meant by this new word. More worryingly, he also spoke of a "toxic substance" being added to the judicial brandy, again without any indication of what was the nature of the toxicity or how it manifested itself.

Secondly. I renew my invitation to those persons who still entertain the quaint notion that criticism should be based on full and accurate information, to seek any information which they may be lacking or to check any information which they have received about the judiciary, from and with my Administrative Secretary, Mr. Kelly, or the recently appointed Protocol and Information office — Mr. Lilla. If the nature of the matter warrants it I will make myself available to answer any queries. After all, judges who are meant to dispense justice, are also entitled to receive it.

The guide-lines were set by Lord Atkin in 1936 in the famous case of Ambard *v* The Attorney General when in delivering the judgment of the Privy Council he said:

> "Their Lordships have discussed this case at some length because, in one aspect, it concerns the liberty of the Press, which is no more than the liberty of any member of the public, to criticise temperately and fairly, but freely, any episode in the administration of justice."

We prayed this morning for divine guidance during the year ahead. My special prayer is that the Bench and the Bar will be given the grace to work together with amity and mutual respect towards achieving an expeditious system of justice that is accessible to all.

I now declare the new law term open and adjourn the sitting of the Courts until tomorrow morning at 9.00 o'clock.

M. A. DE LA BASTIDE

Chief Justice

16th September, 1998.