ADDRESS OF THE HONOURABLE CHIEF JUSTICE MICHAEL DE LA BASTIDE DELIVERED ON
MONDAY, 18th SEPTEMBER, 2000 ON THE OCCASION OF THE OPENING OF THE 2000-2001 LAW TERM

I would like to start by putting my audience at ease and assuring you that by contrast with last year's speech this year's Opening of Term address may appear positively boring.

Having given you that comforting assurance, I would like to make some general observations which bear on Opening of Term addresses generally and last year's in particular. My first observation is that if the Judiciary unhappily finds itself at odds with the Executive on some constitutional issue or for that matter any issue, there is nothing it can do to impose its views on the Executive or to make them prevail. It can only hope to persuade, and if persuasion fails, it will find it increasingly difficult over time to maintain its resistance to the Executive's position. One reason for this is that the Judiciary depends so heavily on the approvals which it needs to get from the Executive in order to unlock the Treasury. Normally when a person feels that the Executive is exercising rights and powers in relation to him which it does not truly possess, he can go to the Courts for redress. Paradoxically perhaps, this is a right which the Judiciary may have in law but can only very rarely, if ever, exercise in practice. If then all its attempts at persuasion fail, the Judiciary's only hope when some constitutional or other impasse does arise, is that the Executive may be dissuaded by public opinion from maintaining the position it has adopted. That can only happen if the public is aware of what is going on, but the only occasion on which the Chief Justice may appropriately make the public aware of it, given our conventions, is at the Opening of the Law Term. Now the Opening of the Law Term is on a date fixed by law, the 16th September each year, unless as this year the 16th September falls on a week-end or a public holiday, in which case the Opening takes place on the next working day. The Chief Justice has no control over who is present in the country on that day or who is not, nor can he be blamed for the fact that the opening of term co-incides with other events, be they conferences or other events of perhaps greater national importance, the timing of which is not within his control. It would be quite unreasonable to expect the Chief Justice to alter the contents of his speech because of the occurrence of these other events, or to suggest that he says what he does because of them. I will leave it to you to decide whether these observations have any relevance to last year's speech or for that matter to this year's. To assist you I would only add one simple statement of fact and it is that before expressing my concerns last year over an incipient erosion of judicial independence, I used every means at my disposal to persuade the Executive to remove the cause of my concerns. For this purpose I sought and obtained an audience with His Excellency, the President, and met with and wrote to, the Honourable the Prime Minister, but I was not successful. Since then I have paid other visits to President's House and to Whitehall, but as I implied when I began, I intend as far as my duty permits, to adopt this year a policy of reticence.

At the close of last year's speech I expressed the hope that in a year's time I would be able to report that the ship of the Judiciary had safely navigated through the storm it was experiencing. How I wish that I could report that that had happened! But alas it would

not be true. My brother and sister Judges and I are suffering from what I can best describe as 'battle fatigue'. Be that as it may, I must report that the difference between the Executive and the Judiciary over what is really a single issue, has not yet been resolved. Let me re-state the issue. It is whether given the provisions in our Constitution and the portfolio which has been assigned to him, the Attorney-General has any responsibility for or control over, the administration of the Judiciary. There are a number of related questions on which we also differ. These are: have Attorneys-General in the past ever had this sort of responsibility or control? Would it be proper or permissible under our existing Constitution to give the Attorney-General this sort of responsibility or control? Would it be an erosion of the independence of the Judiciary and the separation of powers? I have re-stated the issue but I do not propose to re-argue it today. I would be failing in my duty, however, if I did not draw your attention to the answers which Mr. Justice Georges gave to these questions in his report entitled "Independence of the Judiciary" dated February 16th 2000.

THE GEORGES' REPORT

Let me first sketch the background to this report. On 3rd November 1999, a special general meeting of the Law Association was held to consider various proposals as to what action should be taken to enquire into the concerns about judicial independence which I had expressed in last year's address. The meeting was said to have been the best attended meeting ever of the Law Association, attracting something in the region of 400 members. A resolution was passed, reportedly by an overwhelming majority of those present, appointing Mr. Justice Georges as a sole independent enquirer sitting in private to examine the concerns relating to the independence of the Judiciary expressed by the Chief Justice at the Opening of Term and to report his findings promptly to the Council of the Law Association with such recommendations as he might see fit to make. The resolution further requested the full co-operation of the Chief Justice and the Attorney-General.

Mr. Justice Georges is, I would suggest, the most respected West Indian jurist living today. He has a most distinguished record of performance, most notably as a puisne Judge and a Judge of Appeal in this country, as Chief Justice of no less than three separate Commonwealth countries and as a professor of law. He is also a member of Her Majesty's Privy Council. It is surprising therefore that his report appears to have made so little impact and evoked so little response, even from the Association which commissioned it. Part of the problem may be that many who have not actually read the report, have been persuaded to score it as a 'draw' on the basis that it found fault with both the Attorney-General and the Chief Justice. Those who have read the report will appreciate that this hardly does it justice.

Let me first deal with the bit that concerns the Chief Justice. In what he describes as a 'comment' made almost as a postcript at the very end of his report, Justice Georges criticised me for using what he termed 'immoderate language' in my speech. I have such respect for Justice Georges that even when I disagree with him I recognise that he is more likely to be right than me. Accordingly I have no intention of challenging Justice Georges' criticism of my language I accept it and am guided by it. Mr. Justice Georges

also went on to say that there was 'no adequate evidence' to support the charge of an attempt to drive me from the bench. May I say that I never directed any part of the submissions I made to Justice Georges to that issue and I am content to put it aside, hopefully for good.

But these were at best peripheral matters. The central subject of the enquiry which Mr. Justice Georges was asked to carry out, was into my complaints that the role which the Attorney-General was assuming in relation to the Judiciary, amounted to an interference with, or a threat to, the independence of the Judiciary, for that was the concern I had expressed. Mr. Justice Georges found unequivocally that the role which the Attorney-General was assuming was not properly his and was unconstitutional and inconsistent both with the independence of the Judiciary and the separation of powers. In his report Mr. Justice Georges dealt with several arguments which the Attorney-General had put forward in the document which he laid in Parliament when he replied to my speech on October 29, 1999, and rejected them all. The following are some of the findings made by Mr. Justice Georges.

1. No responsibility for the Judiciary has been assigned to the Attorney-General as appears from the description of his portfolio published in the Trinidad and Tobago Gazette.

2. It is impossible to construe any Cabinet Minute which delegates powers to the "relevant Minister" as intended to give those powers to the Attorney-General in relation to the Judiciary, as the Judiciary is a separate department, not under any ministerial control.

3. The Attorney-General has no responsibility to Cabinet for the administration of justice. Such a responsibility would connote a degree of control over the operation of the Judiciary, and could not properly be given to him.

4. The Attorney-General has no power to approve or disapprove the release of funds to the Judiciary. The only person who may prevent the Judiciary from having access to the funds which Parliament has voted to it for the purpose for which they have been voted, is the Minister of Finance and he may only do so if in his opinion 'the exigencies of the financial situation' render reduction or suspension of the expenditure necessary. In the words of the report:

"The insistence of the Attorney-General's approval [of overseas travel] is in my view an erosion of the principles of separation of powers and the independence of the Judiciary."

5. The Attorney-General cannot perform the functions that are performed by the Lord Chancellor of England as the Attorney-General is not a judge. Moreover, the Attorney-General's functions are similar to those of the Attorney-General in England "and no one could conceive that that official could exercise any function in relation to the Judiciary". The supervisory and reporting role which the Lord Chancellor performs in England can have no parallel in Trinidad and Tobago."

6. The fact that the Attorney-General has been the channel of communication between the Chief Justice and the Cabinet is a relic of colonialism or in the words of the report "an inheritance from the pre-independence administrative structure." Mr. Justice Georges recommends that in future the channel of communication between the Chief Justice and the Cabinet should be the Prime Minister.

I should mention in passing that before Justice Georges made his enquiry, I had sought the written opinion of a very competent and experienced senior counsel as to whether as a matter of interpretation the term 'relevant Minister' in the Cabinet Minutes by which powers are delegated by Cabinet, can be construed as meaning the Attorney-General in relation to the Judiciary. I have counsel's opinion in which he advises that the Cabinet minutes which contain such a delegation, 'cannot have any application to the Judiciary' and 'cannot be construed as delegating authority to the Attorney-General to do any of the acts and things therein mentioned in relation to the Judiciary.' So his opinion on this issue was the same as Mr. Justice Georges'.

THE MACKAY COMMISSION OF ENQUIRY

Another development which was prompted by last year's speech was the Prime Minister's announcement on the 16th December, 1999, that Cabinet had decided to appoint a Commission of Enquiry under the Commissions of Enquiry Act, to enquire into all aspects of the administration of justice in Trinidad and Tobago. The Prime Minister made it clear that the Commission would deal with the concerns which I had raised as well as concerns over the administration of justice raised by others. On the 29th February, 2000, His Excellency, the President, acting on the advice of Cabinet, appointed this Commission of Enquiry. The Chairman was Lord MacKay of Clashfern, and the other members were Mr. Justice Amissah, a Judge of Appeal in Botswana, and Dr. Singhvi, a distinguished jurist. Among the matters into which the Commissioners were to enquire were "allegations that the Executive is attempting to undermine the independence of the Judiciary". This presumably was intended to be a reference to my speech but it was hardly accurate, as what I had done in my speech was something much more limited and specific, namely to challenge and criticise the assumption of certain powers by the Attorney-General.

The Judiciary co-operated fully with the Commission of Enquiry. The Commissioners came to Trinidad twice, once in April, 2000 when they visited the Hall of Justice and met both with the Judges and with me, and again in June when they sat for 5 days to hear oral submissions and evidence in public sittings that were televised live. I myself submitted a good deal of written material to the Commission and I also appeared before it and was questioned by leading counsel to the Commission Mr. Geoffrey Robertson, Q.C. Other Judges and representatives of the Department of Court Administration submitted memoranda to the Commission and appeared and gave evidence before it. Particulars may be found in the annual report in the section entitled 'Judicial Independence Issues'. The Commission promised that it would make every effort to report before the end of

August, but it obviously has not been able to meet this target. A recent newspaper report suggests that the report will be submitted within the next two weeks. How accurate this is, I do not know.

It is obvious that the Commission must cover the same ground traversed by Mr. Justice Georges. It will be very interesting to see whether it arrives at the same conclusions. If it does, presumably this will mean the end of our difference with the Executive over the role of the Attorney-General. We look forward anxiously to the report.

A CRISIS AVERTED

To return to the metaphor used in last term's address, up to a few days ago it seemed that the storm buffeting the ship of the Judiciary had increased to such intensity that damage to the ship was inevitable. Happily, however, within the last few days there has been a lull in the wind and a break has appeared in the clouds. Let me explain.

All our CAT reporters and the computer specialists in our Information Technology Unit are employed on contract as there are no suitable slots in the public service establishment for them. The contracts of four CAT reporters and four computer specialists having expired, applications were made by Cabinet Notes submitted through the Attorney-General for the approval of Cabinet to renew their contracts. The decisions of Cabinet on these applications, however, were crafted in such a way that approval was given for the hiring on contract of staff for the further periods proposed in the posts held by those whose contracts had expired, but no mention was made of the individuals to be hired under these new contracts. At a certain point it became clear that because the power of selecting persons to be employed on contract had been delegated by Cabinet in June 1999 to the 'relevant Minister', we were being required to apply to the Attorney General as the 'relevant Minister' for permission to re-hire the same persons who had been previously employed (with Cabinet's approval) under the expired contracts. This of course would have involved an acceptance of the Attorney-General as the relevant Minister for the Judiciary and therefore as the person entitled to exercise over it all the powers which had been, or might in future be, delegated by Cabinet to the 'relevant Minister'. It would also have rendered untenable the position which we have maintained, that quite apart from any Cabinet Minute, the Attorney-General has no responsibility for, or control over, the Judiciary. In these circumstances it was quite impossible for us to adopt the procedure which we were being required to adopt as a condition for retaining the contract staff in question. So I wrote to the Prime Minister explaining this to him. I also drew his attention to the serious consequences of losing virtually all of our CAT reporters (the contracts of two other CAT reporters had in the meantime expired) and all the technical staff in charge of our computer operations. I should perhaps have explained for the benefit of non-lawyers that 'CAT' stands for Computer Aided Transcription and that the CAT reporters are responsible for nearly all the verbatim reporting that is done in the High Court and Court of Appeal. I am very pleased to report that the crisis which up to a few days ago appeared imminent, has been averted as a result of the intervention of the Prime Minister who agreed to grant the approvals which were urgently required and to seek Cabinet's ratification subsequently. The granting of these approvals by Cabinet will not involve any abandonment or compromise by the Executive of its position on the

'relevant Minister' issue, for as I pointed out to the Prime Minister in my correspondence with him, a body which delegates a power vested in it, still retains the concurrent right to exercise that power, if it so chooses.

I am hopeful that Cabinet will therefore agree to grant approvals of other kinds, even though authority to do so has also been delegated to the relevant Minister as the effect of insisting that we apply to the Attorney-General as 'relevant Minister' is to put the approval we seek entirely out of reach. This problem has led recently to two law librarians being unable to attend a regional meeting with their colleagues.

At any rate I do not anticipate any further problems of a procedural kind in securing Cabinet approval for the renewal of the contracts of the other members of staff whose contracts have since expired or will soon expire. I thank the Prime Minister for breaking the impasse with regard to the stalled renewals, and express the hope that it foreshadows the resumption of a more cordial and co-operative relationship between the Executive and the Judiciary. This is the break in the clouds of which I spoke.

CONTRACT POSTS IN THE DEPARTMENT OF COURT ADMINISTRATION

Before leaving the topic of contract posts, there are some things which I need to say now because the opening of the next law term may be too late. Apart from the staff employed in the CAT section and the Information Technology Unit there are a number of other persons holding key positions in the Department of Court Administration who are also employed on contract. These include the Human Resource Manager, the Court Statistician, the Protocol and Information Officer, the Planning Director and last but not least, the head of the Department, the Court Executive Administrator. These posts were created and filled with the approval of Cabinet at a time when there was a spirit of co-operation between the Executive and the Judiciary. They brought to the administration of the Judiciary skills which were previously lacking and which we desperately needed. In their case too, there were no suitable posts available in the public service establishment. The classification of new posts tends to be a fairly lengthy procedure. Moreover, the overall plan that had been developed called for some of these new posts when incorporated in the establishment to be subject to the jurisdiction of the Judicial and Legal service Commission. As a result we sought and obtained Cabinet's approval to create the posts I have mentioned initially as contract posts, and they were filled by persons whose selection was approved by Cabinet. The proposed amendment of the Judicial and Legal Service Act which would have brought the permanent replacements of these posts under the Judicial and Legal Service Commission has not been pursued by the Government, so the process of converting from contract to permanent posts is stalled. This has left both the officers who hold these posts as well as the Judiciary itself in a very vulnerable position, the officers because they do not have the security of tenure which is a normal incident of employment in the public service, and the Judiciary because as has recently been demonstrated, it is entirely dependent upon the Executive for the maintenance and the filling of these posts. I am particularly unhappy about this state of affairs because of what I perceive to be a campaign to discredit the whole Department of Court Administration and the Court Executive Administrator in particular. I have not found any basis for the barrage of criticism which has been directed at them. In my view,

the department and its head have both performed most creditably in very difficult circumstances. In fact, I would say that a significant part of the credit for the improvements that have taken place in the administration of justice during my tenure as Chief Justice, must go to them. I hope that no one harbours the intention of dismantling the administrative structure which we have built up by refusing to renew contracts or to fill the several contract posts in the Department which still remain unfilled. I must warn that such a move would put in jeopardy the gains that we have already made, and blight the prospects of further improvements, in the administration of justice. Clearly, the sooner we can with Cabinet's co-operation create and fill the equivalent establishment posts, the better.

EFFECTS OF DISAGREEMENT ON THE ROLE OF THE ATTORNEY-GENERAL

I hope that it will have become clear from what I have said so far that it is greatly in the public interest that the difference between the Executive and the Judiciary as to the role of the Attorney-General should be resolved. I think, however, that I must make this point more clearly by giving two examples of how this difference can frustrate attempts to improve the justice system.

The first has to do with a proposal we made to Cabinet in a Cabinet Note submitted through the Attorney-General for an increase in the maximum number of High Court Judges from 20 to 25. The maximum number of High Court Judges is specified in the Supreme Court of Judicature Act and has been increased from time to time, by amendment of the relevant section, the most recent increase being from 16 to 20 in 1996. A further increase would require another amendment which of course would have to be proposed and supported in the Parliament by the Government. The main reason for increasing the maximum number of High Court Judges is that there is work for at least 22 Courts in Trinidad and Tobago and we have in fact been operating 22 Courts for some time. In order to do so we have been making use of the services of two acting Judges. Acting Judges have been used as a temporary expedient but since we now have suitable candidates available, we would like to replace them with permanent appointees. Secondly, we should have more Judges than courts so that Judges can be given some time out of Court in order to write their reserved judgments. The Attorney-General, however, has refused to support the proposal on the ground that he is not able to assess whether more Judges are needed because I have not provided him with information about reserved judgments. First of all let me say that I have no objection whatever to disclosing information about reserved judgments in terms of the number of such judgments and the length of time they have been reserved. In fact I have provided that information to the MacKay Commission of Enquiry and it is available to the Attorney-General since I have authorised the Commission to pass copies of my memoranda to him. I do object, however, to linking the names of individual judges to the statistics and that is part of the information which the Attorney-General has requested. I also object to being called upon to provide information to the Attorney-General on the footing that he has responsibility for the Judiciary. In any case it is difficult with respect to see what impact information about reserved judgments can have on the proposition that you need at least 22 Judges to run 22 Courts. In effect, what has blocked our proposal for an increase in the statutory

maximum number of Judges is the disagreement between the Attorney-General and the Judiciary as to his role in relation to the Judiciary.

Another request from the Judiciary which was put before Cabinet by the Attorney-General but foundered for lack of his support, was for funds for a project to deal with the backlog of notes of evidence to be typed in appeals from the Port of Spain Magistrate's Court. The project would have involved the clerks who had written the notes of evidence reading them into tape-recording machines and then having the tapes transcribed by outside typists contracted on a job basis. The reason for the Attorney-General's failure to support the project was our refusal to respond to 11 questions to which he required answers. Some of the questions related to the micro-management of the project, e.g.

What would the arrangements be for the note-takers to read their notes into tape-recorders …?
What would be the arrangements for categorising and duplicating the tapes made – what staff will be used?
Who will be supervising whom?
Where will the transcriptionists be located to perform their tasks?
Other questions were premised on the accountability of the Judiciary to the Attorney-General, e.g. when did backlog start accumulating and what are the reasons for such a situation not being brought to the attention of the Attorney-General before?

All the information which it was necessary for Cabinet to have in order to decide whether or not to approve the project, was supplied in the Cabinet Note. For this reason and because the Judiciary could not accept the underlying premise of the questions, we declined to answer them.

In the result the project has not been approved.

These are only two examples of how the difference between the Attorney-General and the Judiciary as to his proper role has resulted in the non-implementation of measures which would have improved the administration of Justice.

THE PERFORMANCE OF THE JUDICIARY IN THE LAST LAW TERM

I am happy to turn now to less controversial matters, namely the performance of the Judiciary during the last law term and the steps that have been taken, and the plans that have been made, for improving that performance. These have been fairly comprehensively reviewed in the Annual Report which I would urge you all to read and to keep for reference purposes.

I take the opportunity of mentioning first a very notable event. It is the publication of a new series of Trinidad and Tobago Law Reports. The last series of local reports was discontinued sometime in the 1950s. Apart from two volumes produced by the late Senator Inskip Julien in the early 1970s, we have had no Trinidad and Tobago Law Reports since then. Two volumes of the new series have been published, the first reports cases decided in 1990 and the second covers the period 1991 to 1992. A third volume

covering the period 1993 to 1995 is expected to be out within a month or two. It is hoped that with the co-operation of the Government the series will be extended forward until it becomes current and also as far back as 1970. These reports are being published by a firm of publishers in Jamaica with whom the Government entered into a contract in 1997. Chief Justices (including myself) have for years talked about the need to revive the local law reports. The fact that it has at long last become a reality is evidence of what can be achieved when the Executive and the Judiciary enjoy a co-operative and harmonious relationship. Let us pray - and work - for a return in that respect to 1997.

I would also like to make mention of the production by the Judges of the Supreme Court of a Draft Code of Judicial Ethics, which has been submitted both to the Attorney-General and to the Law Association for their comments. There was also the publication by the Judicial and Legal Service Commission of a quite detailed exposition of the criteria used in appointing Judges of the High Court and the Court of Appeal respectively and of the procedure followed in deciding on these appointments. This should serve to enhance the transparency of the process.

The Judiciary is conscious of its obligation to make information as freely available as it can to the legal profession and to the general public. One of the things which it has done in this connection is to expand the Judiciary's web site so as to include Court lists, library services information, library material, and information about the Magistracy. The web-site will be further expanded later this year to include an on-line, constantly updated digest of personal injuries awards. For this we are indebted to Mrs. Stephanie Daly who is generously providing the material, as well as to our Library Services Unit and Information Technology Unit. In an effort to inform and assist the general public the Judiciary has produced a public information booklet and guide for non-lawyers on how to obtain a grant of probate. More publications of this sort are planned as is an outreach programme by which information about the Judiciary could be provided to such groups as Sixth Formers.

Another initiative of the Department of Court Administration has been to establish the Court Buildings Users' Forum as a vehicle for meeting on a regular basis with representatives of the primary users of the nation's Courts. The purpose of these meetings is to discuss issues relating to the use and security of court-buildings and their facilities. Those who have been invited to participate in the Forum are representatives of the law officers, the Police, the Prisons and the Probation Services and nominees of the Law Association and the Criminal Bar Association.

The establishment and maintenance of an on-going programme of judicial education which includes Magistrates as well as Judges, is a high priority in the Judiciary's programme. The nucleus of a judicial education committee has in fact been formed and has started functioning. It consists of two Judges and a senior Magistrate who have all attended the Commonwealth Judicial Education Institute's intensive training course for judicial educators in Canada, and the Court Executive Administrator whose training at the National Centre for State Courts in the United States, has equipped her to train non-judicial officers in court administration and case management. Particulars of the various

workshops and seminars that have been attended by Judges and Magistrates in the last year are set out in the Annual Report. We consider it important that there should be held annually a judicial education seminar for magistrates along the lines of the annual Judges' Retreat. Unfortunately funds were not available this year for such an event, but hopefully they can be found next year.

I am relieved of the necessity to report in detail on the performance of the various Courts as all the relevant information is contained in the annual report. The story is told statistically in the section of the report entitled "Volume and Pace of Litigation". I would like to congratulate the Judges of the Supreme Court and the Masters and the Magistrates on what by any standard must be regarded as a very good report card. I will refer specifically to some features of it.

With regard to the volume of civil appeals it is noteworthy that the number of appeals determined has almost doubled. At least part of the explanation for this is that some civil appeals were assigned to the West Court which normally hears only criminal appeals. One notes, however, that on the other side of the equation the number of civil appeals filed has increased by about fifty per cent.

On the criminal side there has been a welcome improvement in the time taken to dispose of indictable matters. Firstly, the Director of Public Prosecutions must be congratulated on reducing the time taken from receipt by him of the depositions to the filing of the indictment to between one and two months. (Not too long ago this period was measured in years rather than in months). After the indictment has been filed the time taken to list matters is now three months and the time taken to dispose of them after trial is nine months to two years in non-capital cases and one year in murder cases. If there is an appeal, then this is heard by the Court of Appeal within six months to a year in the case of murder and in non-capital cases within roughly two years. Our goal is to further reduce these periods.

There is scope for reducing the time taken between arrest and committal by the use of paper committals, that is, on written depositions without the need for any oral evidence to be taken before the committing magistrate. The law provides for these and the Director of Public Prosecutions has recently sought to implement its provisions. In a recent appeal however it was held by the Court of Appeal that the relevant provisions by which paper committals were introduced are badly drafted and as a result they can only be used if a no-case submission is not made on behalf of the accused. One hopes that the statute will soon be amended.

On the civil side of the High Court, we continue to make significant in-roads into the backlog. As mentioned in the annual report I have appointed a 'Backlog Reduction Committee' to find ways and means to speed up the process of eliminating the backlog, and they have had considerable success. This is evident from the fact that while during the last law term 403 new cases were set down for trial, during the same period 2,668 cases which had been set down, were disposed of. So the number of cases awaiting trial was reduced by 2,265. Within the next few days I shall be issuing a Practice Direction

implementing a recommendation which the Backlog Reduction Committee made to me after consultation with representatives of the Law Association and a number of other attorneys with a civil law practice. The effect of this Practice Direction will be to introduce a new regime for dealing with the Cause List, the principal features of which will be (a) whenever possible, the Cause List will be dealt with by the same Judge who will try the cases on it; (b) the parties will be required to file certain documents including a completed questionnaire in order to assist the Cause List Judge in dealing with matters efficiently and (c) the Cause List Judge will be given greater flexibility in the orders which he may make. The purpose of the new Practice Direction is to try and ensure greater certainty of cases being heard on the trial dates fixed and less waste of judicial time.

Turning to the Magistracy, the figures in the report demonstrate the extraordinary volume of business which is handled by the Magistrates' Courts. Thus in the calendar year between the lst August 1999 and the 31st July, 2000, some 59,000 proceedings were started in the Magistrates' Court but this figure is more than matched by the 69,000 cases which were disposed of in those Courts during the same period. This credit balance however must not serve to obscure the obvious weaknesses in the Magistrates' Court system. One of these is the problem of delay in typing notes of evidence in cases in which an appeal is filed. The report discloses that there are over 1,000 appeals from magistrates in which the notes of evidence have not yet been submitted to the Court of Appeal. The root of the problem has long been identified as the primitive system by which notes are recorded in long-hand by the clerk and then at mutually convenient times dictated by him to a typist. The long term solution is the adoption of a better system of recording evidence. To this end the Tenders Board have been asked to invite and assess tenders for the provision of an audio digital system of recording evidence. I have decided to appoint a Magistracy Review Committee to recommend mechanisms for improving the functions of the Magistrates' Courts. This will be a standing committee to which the Chief Justice may assign specific tasks. The first task which I propose to assign to the Committee is that of finding a solution to the problem of adjournments in the Magistrates' Courts. I am grateful to Mr. Justice Hamel-Smith for having agreed to be Chairman of this Committee. I shall be writing to the Director of Public Prosecutions and to the Law Association inviting them to designate representatives to serve on the Committee.

THE NEW RULES OF COURT

I turn now to the new Rules of Court.

People may well be puzzled as to where matters stand with regard to the new Rules of Court, especially in light of the negative resolution which was passed in the House of Representatives on the 28th April, 2000. The first question might well be: what is the legal status of the new Rules at present? The new Rules in their original form were laid in Parliament in 1998 and have never been annulled by any negative resolution. The time for passing such a resolution has long passed. The Rules originally contained a provision that they would come into force on the 1st January, 1999. That provision was amended in 1998 and replaced by a provision that the Rules would come into force on a date to be

fixed by the Rules Committee in 1999. That amended rule was also laid in Parliament and no motion has ever been passed in Parliament to annul it. The time for doing so has also long passed. In July 1999, the Rules Committee resolved that the date on which the Rules would come into force should be the 31st December, 1999. That did not involve any amendment of the Rules and so did not have to be laid in Parliament. It was therefore not liable to be annulled by Parliament. What then is it that has been struck down by the negative resolution of April, 2000? The answer is two sets of amendments of the Rules that were made in 1999. The first set comprised of fairly extensive changes that were made by the Rules Committee after considering the memoranda submitted by the Law Association and the comments of the Judges. The second set of amendments that was annulled, is that which was made by the Rules Committee in order to postpone the coming into force of the Rules beyond 31st December, 1999. This further postponement was decided on by the Rules Committee when it resolved in September, 1999, to appoint an Advisory Committee to consider the arguments which had been raised by those who opposed the introduction of the new Rules and to recommend whether, and when and with what modifications, if any, the new Rules should be implemented. In order to get rid of the commencement date of the 31st December, 1999, the Rules Committee amended the commencement provisions so as to provide that the Rules should come into force on a date to be fixed by the Rules Committee in the year 2000. The negative resolution left untouched the Rules in their pristine form but by cancelling inter alia the amendment which postponed it, the resolution revived the 31st December, 1999, as the commencement date. As this was a result which no one wanted, the Rules Committee has further amended the Rules so as to get rid of that date once more and to provide for the commencement of the Rules on a date to be fixed by the Rules Committee. That date may be any date in the future. This most recent amendment has been submitted to the Attorney-General for laying in Parliament but it has not to my knowledge been laid as yet. Hopefully when it is laid, it will not be considered necessary to negative it, as it serves merely to keep the new Rules in abeyance until a final decision is made with regard to them.

The next question is where do we go from here? We now have the benefit of the report of the Advisory Committee. Information about the Committee and its report can be found in the section of the Annual Report dealing with the Rules Committee. The Committee comprised attorneys and members of the lay public as well as Judges and a Registrar. The majority have recommended the implementation of the new Rules subject to a number of significant modifications which are intended to meet the objections of those who opposed the new Rules. The majority have also recommended a staggered implementation with the Family Proceedings Rules coming into force at least six months before the Civil Proceedings Rules. The Rules Committee wants to canvass the views of the legal profession on the Report and on what in the light of that report should happen now. The Council of the Law Association agrees that its members must be consulted. The Rules Committee has proposed that the Council of the Law Association and itself should undertake this consultation jointly and awaits a final response from the Council to this suggestion. My own view is that the consultation should consist of something more than simply convening a meeting of the Law Association and taking a vote on some resolution put forward. I think it should involve in-depth discussion, sharing of

information and exchange of views and ideas. To be quite blunt, I think we must get attorneys away from the notion that a vote for or against the new Rules, is a vote for or against the Chief Justice.

Hopefully at the end of the consultation there will emerge some clear consensus or at least a predominant view among the legal profession. If it does, I expect that the Rules Committee will try to give effect to it. This is a very important issue, I hope that all attorneys who have a civil practice and even those who don't, will take time to read the Advisory Committee's reports (there is a minority report as well as a majority one) and will consider the matter coolly and dispassionately and discuss it with colleagues before coming to a conclusion. One notes that the OECS will implement rules that are very similar to our new Rules with effect from the 1st January, 2001.

THE MAGISTRACY

I have already in the course of this address referred more than once to the Magistracy, its performance, as well as its problems and how we intend to address them. There are two further topics however, concerning the Magistracy with which I must deal. The first is the justifiable dissatisfaction of magistrates with their conditions of service. The magistrates consider, with justification in my view, that having regard to the importance and difficulty of the functions which they perform, the responsibilities which they shoulder, the hardships which they endure and the danger which they face, they are underpaid. This problem moreover will not be solved if and when the recommendations of the Salaries Review Commission are implemented, for those recommendations would leave magistrates little or no better off than they are at present. What is needed is for the Salaries Review Commission to be asked to revisit the magistrates' terms and conditions and to make new recommendations. May I point out in passing that there is an even more acute need for similar action to be taken in respect of the Registrars of the Supreme Court.

Another major complaint of the magistrates is the lack of security provided for them. The majority of magistrates are required to face on a daily basis some of the most violent criminal elements in our society. They are often threatened and sometimes attacked both in and out of Court. It is imperative that in performing their duties on the bench they should feel safe from retaliation by those who appear before them. If this is to be achieved then personal protection must be provided on a continuous basis to those magistrates at least whose assignments make them likely targets.

The other topic concerning the magistracy with which I cannot avoid dealing is the buildings which house the magistrates' courts. It is with some reluctance that I deal with this topic because it has been the source of much controversy between the Attorney-General and myself and his Ministry and my department during the last year. Part of the problem is that the responsibility for these buildings is split – responsibility for capital works i.e. construction and renovation, is the Attorney-General's, while responsibility for repairs and maintenance is the Judiciary's, and funds are voted accordingly. The main focus of the controversy has been the renovated Magistrates' Court building on St. Vincent Street and the Arima court-house. I do not want to spark a public debate as to

who is to blame, but the fact of the matter is that the commissioning of the renovated Magistrates' Court building in Port of Spain and the remedying of the deplorable conditions that existed and to some extent still exist at the court-house in Arima, called for a degree of co-operation and communication between the Attorney-General's Ministry and the Judiciary that simply was not forthcoming. In the result the magistrates and their staff continue to work in both those locations in physical conditions that are still far from satisfactory. It is to be hoped that the same problem will not bedevil the commissioning of the new wing of the court-house in St. Vincent Street, but I am bound in all honesty to say that so far there is no basis for optimism. I hope that the very neutral way in which I have stated the problem will evoke a positive response. So far as Arima is concerned, the solution really lies in returning the building which is leased to its owners, and siting the Court in a different building preferably a new one, of a more appropriate design and in a more suitable location.

Some of the other magistrates' courts have become so old and dilapidated that what is needed is demolition and rebuilding. This applies to the court-houses in San Fernando, Chaguanas, Couva, Siparia and Rio Claro. A new court house has also long been needed in Roxborough. There are other court houses in which the malfunctioning of the air-conditioning system is so frequent that it presents a serious problem. I refer here particularly to Princes Town and Rio Claro.

CONCLUSION

The last year has not been easy for anyone in the Judiciary. I have refrained from giving chapter and verse, but anyone who reads newspapers, listens to the radio or watches television, will be aware of the tensions which have contributed to the 'battle fatigue' that I mentioned earlier. While it is not only the Judges who are affected by it they are the ones who collectively and individually on occasion, have had to bear the brunt of repeated attacks, the most virulent of which have come at times not from editorial writers and columnists, but from politicians. I want to make it clear that the Judges do not object to criticism. I listened to a speech delivered on the 25th May, 2000, by Mr. Justice Bhagwati, a former Chief Justice of India, who visited Trinidad and Tobago at the invitation of the Attorney-General. The former Chief Justice encouraged the media to criticise judgments and to do so vigorously when they fell short particularly in defence of human rights. There were two conditions, however, which he attached to such criticism. The first was that criticism must be respectful. In this context I should point out that the respect that must be shown, is due to the office of Judge, and not necessarily to its holder. The second condition was that bad faith should not be attributed to a Judge – except of course in the context of criminal or disciplinary proceedings against him. All of us on the bench make mistakes from time to time and when we do, we must expect to be criticised. Indeed, we have come to expect, and must put up, with criticism even when it is undeserved and misguided. I would recommend, however, that those who criticise us should observe the constraints mentioned by Mr. Justice Bhagwati. There is something else that I wish to say to put the criticisms made of our Judiciary in proper perspective. I have worked in these Courts for nearly 40 years and I say with the utmost conviction that our present High Court bench taken collectively is stronger now than it has ever been in my experience. I also wish to record my appreciation of the dedication

to duty and the industry demonstrated by the Judges of the Court of Appeal as well as by the Judges and Masters of the High Court. Singling the Judges and Masters out for this commendation does not mean that I am unmindful of the important, indeed vital, contribution which has been, and continues to be, made by Registrars and Magistrates and members of our Department of Court Administration to whom I have already paid tribute. The performance of the Judiciary in the last law term ought to give the public confidence that the Judiciary will continue to deliver justice to them as efficiently and as expeditiously as they can in the prevailing conditions and as is consistent with the requirements of fairness. The Judiciary is not in a mess, though the same cannot be said of its relationship with the Executive during the period under review.

M.A. de la Bastide, T.C.
Chief Justice

18th September, 2000.