

ADDRESS OF THE CHIEF JUSTICE

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

at the

OPENING OF THE 2001 – 2002 LAW TERM

in the

Supreme Court

at the

Hall of Justice

Knox Street, Port of Spain

on

Monday 17th September 2001

**ADDRESS OF THE HONOURABLE CHIEF JUSTICE, MICHAEL DE LA BASTIDE,
T.C., Q.C., DELIVERED ON MONDAY 11H SEPTEMBER, 2001, ON THE OCCASION
OF THE OPENING OF THE 2001-2002 LAW TERM**

This is the seventh opening of the Law Term over which I have presided as Chief Justice. It is also the last, as I shall reach the age of retirement shortly before the end of this new term. To put an end to the speculation, which seems to have arisen, let me say that I have every intention, God willing, of serving in this office up to the scheduled date of my retirement. I recently re-read my first Opening of Term address given in October 1995. It served to remind me of the optimism and enthusiasm with which I then approached what seemed like a monumental task of eradicating the huge backlog and the inordinate delays that then plagued the legal system. It would be foolish to pretend that the experiences of the last six years have left undiminished my appetite for challenges but there is some comfort to be had in looking back and comparing the state of the court system as it was in 1995, with what it is today.

COMPARISON WITH 1995

Criminal Cases

Let us look first of all at the criminal side of the Supreme Court's jurisdiction. What I said about delays in indictable cases in my 1995 address was this: "According to the evidence adduced by the State in the recent case of *Tokai* ... it is not unusual for committal proceedings to take as long as four years to be completed and a wait of a further eight years between committal and trial is said to be in keeping with the average". I also mentioned that the return made by the prisons known as the Gaol Delivery confirmed that some persons in prison had been awaiting

trial for as long as ten years. Happily such a scandalous situation no longer exists. A person who is prosecuted indictably, is now committed for trial (or discharged) on average within 22 months in non-capital cases and 13 months in capital cases. These periods are still too long and could be substantially reduced by the use of paper committals, that is, the system in which 'the prosecution presents its evidence to the magistrate in the form of written depositions and the magistrate decides on the basis of those depositions whether a prima facie case has been made out without taking any oral evidence. Attempts have been made to introduce this system in Trinidad and Tobago, but frustratingly they have been thwarted by the defective drafting of the relevant provisions. This is a matter to which the Court of Appeal has drawn attention and which can easily be corrected by an appropriate amendment of the law.

The next stage in the criminal process is the preparation of the indictment by the Director of Public Prosecutions. As I mentioned last year, the present Director of Public Prosecutions has had outstanding success in reducing the time taken for the issue of an indictment from a period that used to be measured in years to less than six months on average. This period too could be further shortened if the Director had more professional staff available to assist him, but that is a matter, which is outside my purview. Let me say however, wearing my cap as Chairman of the Judicial and Legal Service Commission, that the problem is not the insufficient number of posts in his department, but the difficulty of getting suitable persons to fill, and remain in, them.

After the indictment has been filed, the next step is the listing of the case for trial followed by the trial itself. A recent innovation is the use of cause list hearings as a preliminary to fixing criminal cases for trial in the High Court. This is a form of case management which involves the fixing by a Judge of a date for trial only after the case has been called before him on a cause list hearing and he has satisfied himself that the trial will be able to proceed on the date

which he fixes, having regard to the availability of witnesses, the arrangements made for the accused to be legally represented, the convenience of counsel and any other relevant factor. There are a number of benefits that flow from this system. For one thing it reduces the incidence of adjournments as not only is there greater likelihood that both sides will be ready to proceed on the date appointed for trial, but the Judge is able to arrange each month's list in such a way as to avoid overcrowding it with cases while ensuring that the Judge is fully occupied during the month. The greater certainty that trials will go on on the dates, or at least in the month, for which they are listed, also saves witnesses and attorneys a great deal of inconvenience.

What then is the average time taken at present between filing of the indictment and the trial? I would like to have been able to produce a precise answer to this question based on reliable statistics. Unfortunately, this is not possible because for several months now we have not had the services of a statistician in the Judiciary. For three years we had the services of a Court Statistician who was employed on contract, but when her contract ended in April, 2001, she was not willing to have it renewed. We asked for the gap to be filled by the appointment of statisticians from within the public service. Two Statistical Officers II were transferred by the Public Service Commission to the Judiciary, but it turned out that both were acting in a higher position i.e. Statistical Officer III in the departments in which they were serving and therefore could not be transferred to the Judiciary, even though, to add insult to injury, the Judiciary was still obliged to pay their salaries. In the interest of peace and harmony, I forego any comment. In the result we were without the services of a statistician during a crucial period of the year. This, I am afraid, has seriously reduced our capacity to report as fully and as accurately as we would have liked on the performance of the Judiciary during the last Law Term. Literally within the last few days, one statistical officer has reported for duty and another is due to report this week. This

no doubt is in response to a personal appeal, which I made to the Director of Personnel Administration. I thank him for his intervention.

The best information available to me indicates that the time, which elapses between the filing of an indictment, and trial is now on average 18 months in non-capital cases and 15 months in capital cases. If we add together the figures I have given, we find that the average time lapse between arrest and trial is now 46 months in the case of non-capital offences and 34 months in the case of capital offences. This is approximately one-third what it was in 1995.

Let me emphasize that I have given average figures, so that there will be cases in which the delay is greater than that stated and others in which it is less.

The Judiciary recognises the need to shorten these periods further, but it cannot do this by itself. What then is needed? I have already mentioned two measures that will assist. One is the effective and widespread use of paper committals and the other (perhaps more difficult to achieve) is to recruit and keep a full complement of staff in the Director of Public Prosecutions' department. So far as the Judiciary is concerned, I can readily identify two measures that need to be taken. One is an increase in the number of High Court Judges so as to enable us to run the requisite number of criminal courts, and the other is an increase in the number of CAT reporters so as to enable us to extend to all criminal courts the service, which they now provide in only a few courts. But these are matters to which I will return later.

Criminal Appeals

To complete the comparison of the criminal justice system as it is at present with what it was in 1995, I turn to appeals in criminal cases. In June 1995, there were 37 murder appeals pending in the Court of Appeal dating as far back as 1988. At present there are 12 murder

appeals pending from the High Court. These with one exception are from convictions recorded within the last six months. The exception is an appeal from a conviction in July 2000, which was originally listed in January this year but has been adjourned four times for reasons beyond the control of the Court of Appeal. In addition there are listed for hearing this month two-murder appeals, which were remitted to the Court of Appeal by the Privy Council earlier this year. If the death penalty is still not being carried out, this is no longer due to any delay in the disposal of cases by the courts.

Turning to Appeals in non-capital cases, in June 1995, there were 123 such appeals pending in the Court of Appeal, some of which went as far back as 1987. At present there are 102 outstanding appeals in non-capital cases, all of which, with the exception of eight filed in 1998, were filed in 1999 or later. The transcript of the judges' summing-up however, is available in only 36 of these. Ten of these 36 are listed for hearing this month and next month, and eight are appeals by the State, which are not being listed pending a decision by the Court of Appeal in a case in which the constitutionality of such appeals has been challenged.

Turning to appeals from magistrates, the improvement since 1995 is even more striking, as appears from the following table of pending appeals in Port-of-Spain, San Fernando and Tobago respectively.

Number of Appeals Pending

| | June 1995 | September 2001 |
|---------------|-----------|----------------|
| Port-of-Spain | 446 | 111 |
| San Fernando | 431 | 82 |
| Tobago | 115 | 8 |

CIVIL CASES – HIGH COURT

I turn now to civil litigation in the High Court. In my 1995 opening of term address I painted a pretty grim picture. The backlog of civil cases represented by the number of cases set down for trial. The average time between the issue of the writ and the obtaining of a decision was then estimated (I think conservatively) to be upwards of seven years. My own experience is that quite a few of the civil cases which reached us in the Court of Appeal had been in existence (one can hardly say 'in progress') for between ten and twenty years. We have, therefore, set ourselves two objectives. One is to eradicate the huge backlog of cases awaiting trial, and the other is to determine new cases coming on the books with reasonable dispatch. The target that has been set for new cases is determination within one year of being set down for trial. I am happy to say that we have made considerable progress towards achieving both objectives. This is reflected in the last report I have received from the Chairman of the Backlog Reduction Committee. This Committee was appointed by me in January 2000. Its Chairman is Mr. Justice Smith and its members comprise Judges, a Master, the Court Executive Administrator, the Deputy Registrar and administrative and support staff. The policy of the Committee has been to list for trial a mixture of old and new cases. 'New' cases are defined as those, which were dealt with in accordance with the Practice Direction issued by me in April 1999, (though not implemented until January, 2000) with regard to the way in which summonses for directions are handled. The new practice requires the Registrar who deals with the summons for directions to intervene much more actively in the conduct of the case and give directions that are effective in making the case ready for trial. The position as reported to me by the Chairman of the Backlog Reduction Committee, is that in July 2001, the new cases that were being put on the cause lists, were set down for trial no earlier than September, 2000, in Port-of-Spain, and January 2001, in

San Fernando. This indicates that our goal of trying cases within one year of being set down is quite achievable. The 'old' cases are considered to be those set down before the Practice Direction to which I have referred, was implemented. Initially, these included cases that were set down as far back as the 1980s. The policy has been to deal with these by putting them on the cause lists in chronological order, that is, starting with the oldest and coming forward. The progress made has far exceeded the Committee's expectation and the 'old' cases being put on the cause lists in July 2001, were set down for trial in July/August, 1996 in Port of Spain, and April 1997, in San Fernando. One can expect therefore that in the not too distant future there will be no 'old' cases at all and all cases will be put on a cause list, if not tried, within a year of being set down for trial. Another indication that the backlog continues to be substantially reduced is that the number of cases determined during the last Law Term (1016) was more than twice the number of cases set down for trial during the same period (437).

The remarkable success we have had in reducing the backlog of civil cases and eradicating delays in civil litigation would not have been possible without the introduction of case management. An element of case management was introduced, by the Practice Direction of April 1999, but the process was considerably deepened by another Practice Direction issued by me at the instance of the Backlog Reduction Committee in October 2000. This directs the cause list Judge to hold something like a pre-trial conference and requires the parties to submit answers to a questionnaire in advance of that conference. It also gives the cause list Judge greater flexibility as regards the orders, which he may make. I hasten to add that there was consultation with attorneys and the Council of the Law Association on both these Practice Directions, and they have been implemented with the support and co-operation of attorneys. There were complaints, however, that there was insufficient time for attorneys to prepare for the cause list

hearing, which takes place in the month following that in which the cause list is published. Accordingly it has been decided to publish warning lists listing the cases, which are likely to be placed on cause lists in two months' time. An important feature of the new regime is that usually the cause list hearing is conducted by the Judge who will try the case.

CIVIL APPEALS

I turn finally to appeals in civil cases. At present there are pending 87 civil appeals in which the complete record has been filed and which are therefore in a position to be heard. In June 1995, the corresponding number was 122. My own observation is that the normal time lapse between the filing and the hearing of a civil appeal is approximately two years. Appeals from interlocutory orders are, however, fast tracked and heard within a matter of months, if not weeks. In fact the Court of Appeal has repeatedly demonstrated its willingness and capacity to hear appeals as expeditiously as the justice of the case requires.

Commentary

I have sought to demonstrate the success that has been achieved in reducing the backlog and eradicating delays in the High Court and the Court of Appeal, not so that anyone may be acclaimed for it, but so that there may be some restoration of public confidence in the legal system. For my part, I applaud those who have contributed to this success. I applaud firstly the Judges, not only for the hard work they put in, but also for devising and initiating the systems, which maximized the return on their efforts. I applaud also the Registrars an overworked and underpaid group of officers, and the clerical staff who did much of the donkeywork involved in physically inspecting files stretching over decades. I applaud the technical and administrative staff who managed and monitored the exercise. I recognise also the support and co-operation

which the attorneys and the Law Association have given to the backlog reduction exercise. If credit has to be given for what has been achieved, these are the people to whom it is due.

There are, however, two things, which must be said. One is that a great deal more could have been achieved and the other is that we still have a long way to go before we can declare ourselves satisfied with the operation of our Court system. I think it is my obligation in this my last Opening of Term address, to identify some of the constraints which have prevented us from achieving more than we have and in so doing also identify the changes that need to be made if the thrust to reform and improve our court system is to be maintained and strengthened.

CONSTRAINTS

The first constraint I would mention is the lack of support and co-operation, which the Department of Court Administration has received from some public officers in the Ministries and Departments of Government with which it must interface. During the last two to three years there have been clear indications that the Judiciary, and more particularly, the Department of Court Administration, has been treated almost as a pariah in certain sections of the administration. Many persons in the upper echelons of the public service know what I am speaking about, although they may be reluctant to admit it. Let me say at once that most public officers have not allowed themselves to be affected by the blacklisting of the Judiciary, but some of them have, and this has served to make the bureaucratic path even stonier for the Judiciary than it should have been, and has led to a great deal of frustration among our staff. We do not ask that Government Ministries and departments give us special treatment. Normal treatment will do.

With regard specifically to the Office of the Attorney General and Ministry of Legal Affairs, I regret that the administrative staff of that Ministry has so far given no sign that they

share the desire for peaceful collaboration with the Judiciary, which the Attorney-General has expressed to me and evinced by some of his actions in the last few months. There are a number of areas - the repair, refurbishment and construction of courthouses is one - in which the Attorney General's staff and mine should confer and collaborate, but regrettably that has not been happening. Instead time and energy, which should be spent on solving problems, are consumed in arguing over who is to blame for their existence. The resumption of a co-operative relationship between the Attorney General's Ministry and the Department of Court Administration would not only assist the Judiciary in improving its performance, but would also make life more agreeable for the staff of both organisations by re-moving an unnecessary source of annoyance.

Another constraint under which the Judiciary has operated which is not unconnected with the first, is a shortage of staff. I am dealing here not with judicial officers, but with administrative, technical and clerical staff. I have already referred to the loss of our Court Statistician and our lack of success in attempts to replace her. We have also lost two key members of our Information Technology Department who were employed on contract. The Systems Administrator resigned with effect from the 19th March 2001, and the Information Technology Specialist resigned with effect from the 31st August 2001. The link I have hinted at between this constraint and the previous one, is that the decision of these three officers to leave the Judiciary may well have been influenced in some measure at least, by the strain and frustration of working in a department under siege.

Apart from loss of staff we have also had great difficulty in obtaining approval for the filling of a number of contract posts, the creation of which was approved by Cabinet when the Department of Court Administration was established. There have, however, been some encouraging developments recently. Firstly, one clear and positive recommendation that the

Mackay Commission of Enquiry made was that Government (and everyone else concerned) should give the Department of Court Administration their full support. Perhaps as a result of that recommendation we have been able to secure Cabinet approval for the following.

1. The appointment (first requested over two years ago) of two persons on contract for a period of two years as Deputy Court Executive Administrators.
2. The appointment of six persons on contract for a period of three years as Area Court Managers (first requested a year ago).
3. The creation of a number of establishment posts to constitute a Human Resource Management Unit and the reappointment on contract for one year of a Human Resource Manager pending the filling of a comparable permanent post of Director, Human Resources.
4. The re-appointment on contract of the Court Executive Administrator, Master Morris-Alleyne for a period of one year.
5. The re-appointment on contract of the Court Protocol and Information Officer, Mr. Michael Lilla, for a period of two years.

These approvals are symptomatic of the healthier relationship which now exists between the Judiciary and the Executive and I am happy to acknowledge the role which the Honourable Prime Minister has played in bring this about.

It is obviously desirable that the posts in the Department of Court Administration, which are now held on contract, should be made posts, in the permanent establishment. One advantage of this is that it will obviate the need for the Judiciary to have to apply to Cabinet for approval each time it wishes to appoint or re-appoint a person to one of these posts. Another advantage is the security of tenure, which the holder of an establishment post enjoys. A third advantage is that appointments to these posts will be made by an independent Service Commission (preferably the Judicial and Legal Service Commission) and this hopefully will preclude any controversy over the selection process.

It is important to recognise that managing the administration of a Judiciary in the twenty-first century is a matter for professionals trained in that particular branch of management known as Court Management. The present holder of the post of Court Executive Administrator happens to be a Master of the High Court, but that is not the reason why she is in that post. She is in that post because of the training in Court Management which she has received from the Institute of Court Management of the National Centre for State Courts located in Williamsburgh, Virginia, U.S.A. and from attendance at various courses and seminars, as well as the experience which she has gained in court management both before and after assuming her present position in 1998. Apart from the special demands made on those responsible for management by the very nature of a Judiciary's functions, the administrative manager of the Judiciary must assume responsibility for departmental planning, the training, motivating and organizing of staff and the revision and improvement of systems. It is possible to see from the Annual Report how these responsibilities have been discharged by our present administration during the last year. It is imperative that the overall responsibility for the administration of the Judiciary should be vested in someone who has the specialised training and experience which that job requires, subject of course to the overall supervision and direction of the Chief Justice and to the exercise by the Registrar and the Chief Magistrate of their statutory functions. It is with respect fatuous to suggest that this responsibility should be given to a Justice of Appeal who almost by definition is by his training, experience, expertise and inclination suited to perform the role of Judge, not that of administrative manager. That would be a classic case of fitting a square peg in 'a round hole.

The third constraint, which the Judiciary has operated under, is the shortage more specifically of court reporters trained in the CAT (Computer Aided Transcription) system. This system enables the transcript of court proceedings to be produced by the morning of the day

following that on which the proceedings took place, or even sooner. The introduction of this system in our Supreme Court has contributed very significantly to the reduction of delays in court proceedings. It has done so in two ways. Firstly, by enabling court proceedings to be conducted at the pace at which people talk without the necessity to stop or slow down to facilitate the recording of what is being said. Secondly, it avoids delays in the preparation of appeal records and so enables appeals to be heard more quickly. But there is an acute shortage of trained CAT reporters locally. In 1996 Cabinet approved the establishment of a CAT unit comprising 31 reporters, 8 scopists and 2 clerical officers. For the past two years we have had only 7 CAT reporters, all employed on contract supported by three verbatim (i.e. short-hand) reporters. As a result only a few courts are served by CAT reporters. Priority is given to the Court of Appeal and to murder trials. The civil courts are not serviced except (where possible) in cases of exceptional importance. The contracts of five of the seven CAT reporters will expire in November this year. If the usual practice is followed, then even if their contracts are renewed, they will all be required to take their vacation leave at the end of their existing contracts. This would mean a virtual suspension of the CAT service. Because of the dearth of locally trained CAT reporters, it is necessary once more to seek Cabinet's approval to hire CAT reporters on contract from the United States of America. A Cabinet Note is being prepared at the moment seeking permission to hire 8 foreign CAT reporters. We hope the provision has been made for this, as requested, in the new budget. In order to attract CAT reporters from the United States, it is necessary to offer them a remuneration package, which amounts to two and one-half times that paid to local CAT reporters. This underlines the need to institute a course of training for CAT reporters in Trinidad and Tobago. The Department of Court Administration has developed a plan for the institution of such a course and intends with the co-operation of the Attorney-

General to put this forward shortly to the Cabinet for approval. The plan provides for the training of 25 persons over a three-year period. The estimated capital cost is approximately \$1.2 million and the annual recurrent expenditure \$800,000.00. The total cost of the proposed course, therefore, would t;>e \$3.6 million. Even allowing for attrition at a fairly high rate, the course should produce at least 15 reporters of suitable quality. By comparison the cost of hiring 8 foreign reporters over a three-year period would be \$6.3 million approximately.

The final constraint I would mention is one to which I have already referred. It is the insufficient number of High Court Judges. The maximum number of High Court Judges, which the law now permits, is 20. But if we are to consolidate and increase the gains we have made in the battle against backlog and delay, the number of courts, which we need to operate at present is 22. Obviously you cannot operate 22 courts with 20 Judges. We have been seeking to bridge the gap by appointing acting judges under a power given by the Constitution, but it has happened more than once that a suitable candidate for a judgeship is not prepared to accept an acting appointment. In any case it is important that the number of Judges should exceed the number of courts so that Judges can be allowed time out of court in which to write their judgments. There has been much criticism of delay by Judges in delivering reserved judgments. It is a problem, which I have sought to address. When we had a Court Statistician I used to get a monthly report of all outstanding judgments in the Court of Appeal and the High Court. This enabled me to issue reminders to Judges where that was appropriate. When we no longer had the assistance of a statistician, I stopped getting these reports. What has become obvious to me is that paradoxically the failure of Judges to give judgments on time, is due not to laziness, but rather to a reluctance to turn away work. This conscientiousness coupled with the fact that Judges have been sitting in Court day in day out, month in month out, has meant that they take on more cases than they can

handle and soon build up a backlog of reserved judgments. I say this not by way of excuse but in order to illustrate the importance of providing each Judge who sits in the civil courts with a break in his court schedule in order to give him time to write his judgments. For this reason too, it is imperative that the law be amended to increase the maximum number of High Court Judges to 25.

Hopefully the Attorney General will now give his unqualified support to the request for this increase, which was first brought to Cabinet in March 2000.

THE MAGISTRACY

I turn now to the Magistracy where the problems are in some respects more intractable than in the Supreme Court. There are, however, grounds for optimism here as well. During the last year steps were taken to integrate the Magistrates more fully into the Judiciary using that term to mean both the body of Judges as well as the Department, which bears that name. One aspect of this was an increase in the number of opportunities provided for judicial education for Magistrates both locally and abroad. A full account of these will be found in the Annual Report. I will mention only two. A joint forum on bail and sentencing was held for Judges and Magistrates at the Crowne Plaza hotel in April 2001. Then in May, for the first time, a weekend retreat for Magistrates was held at the Mount Irvine Hotel. A similar event has been held for Judges annually since '1996. The Magistrates' retreat was a great success. At the end of it the Magistrates constituted themselves into a number of Committees to which were assigned responsibility for specific areas of concern and an election was held - the first for some time - to elect officers of the Magistrates' Association.

The recommendations in the last report of the Salaries Review Commission, which were

recently implemented, left the Magistrates generally no better off, and in some cases worse off, than they had been before. In response to an invitation by the Attorney General we shall be submitting shortly to him a Cabinet Note seeking approval for a fresh referral to the Salaries Review Commission of the Magistrates' terms and conditions. As the Magistrates' case is a special one, its referral to the Salaries Review Commission ought not to be delayed pending the outcome of the Job Evaluation Exercise, which was launched last week in respect of the Judicial and Legal Service.

There have occurred recently incidents in Magistrates' Courts, which illustrate how unpleasant and dangerous the job of a Magistrate can be, and how important it is to take precautions for their security. The Commissioner of Police has pledged his support towards this end.

As promised last year I appointed a Magistracy Review Committee under the chairmanship of Mr. Justice Hamel-Smith. The Committee includes representatives of the Law Association, the Director of Public Prosecutions, the Police and Probation services and the Department of Court Administration. Also, as promised last year, I have assigned to them the task of finding a solution to the problem of adjournments in the Magistrates' Courts. The Committee has been meeting and I look forward to receiving its report.

I must report with regret that our attempt to introduce by way of a pilot scheme an audio digital system of recording evidence in the magistrates' court has been frustrated by bureaucratic delays. The contract to install the system in selected courts has not yet been awarded, and when the current financial year ends on the 30th of this month the funds which were voted for this project, will no longer be available. All we can hope is that they have been included in the new budget, as we requested. As I have repeatedly pointed out, any attempt at reform in the

Magistrates' Courts that does not involve the replacement of the antiquated system of recording evidence in longhand, can aptly be described as "spinning top in mud".

Our request for Cabinet approval of our plan to remove the backlog of notes of evidence required for magisterial appeals in Port-of-Spain by having the clerks dictate their notes into tape recorders and the tapes then used by typists hired on contract to produce the transcripts, remains stalled in circumstances which I explained last year and do not wish to revisit. I am sufficiently encouraged by our recent dealings to hope that the Attorney General may relent and give his support finally to this project as well.

COURT BUILDINGS

One major problem, which I speak about every year, is the condition of some of the buildings, which house Magistrates' Courts. Indeed court buildings have been very much in the news recently. Within the last fortnight the unsatisfactory condition of the Chaguanas courthouse has been highlighted by the refusal of attorneys to work there until it is improved. Previously in July similar action was taken by the Tobago attorneys in relation to the Supreme Court building in Scarborough where the problem was caused by the absence of air-conditioning and an infestation of bats, and subsequently by the steps taken to get rid of the bats. Then in Port of Spain there has been the unsatisfactory situation in which the new wing of the Magistrates' Court in St. Vincent Street remains empty while three Magistrates' Courts continue to sit in extreme discomfort in NIPDEC House.

My policy is not to invite confrontation by public criticism unless no other means is available of remedying an intolerable situation. That is the policy I follow now and was incidentally the one I followed in 1999. In relation to this issue of court buildings, I do not

believe that in present circumstances confrontation is either necessary or helpful and therefore I will seek as far as possible to avoid criticism. Since, however, these are matters which affect the public generally and attorneys in particular, I have a duty to state the facts.

The Port-of-Spain Court

In relation to the new Port of Spain Magistrates' Court, I will attempt to state the facts as neutrally and as succinctly as I can. The new wing was handed over by the contractor to the Attorney General on November 21, 2000.

At a meeting held in June 1999, before construction of the new wing had begun, representatives of the Department of Court Administration ('the DCA') suggested to the Project Manager from NIPDEC and the architect, certain changes to the layout of the four floors of the new wing in order to correct certain deficiencies which were apparent from the plans that had been drawn. As a result revised plans were prepared incorporating the changes suggested by the DCA. There was thereafter no further consultation with the DCA but it appears that its proposals were rejected by the Attorney General. The DCA was not afforded the opportunity of viewing the works while they were in progress and a request for a tour of the new wing made by the DCA on behalf of all primary users of the building by letter dated November 23, 2000, to the Permanent Secretary in the Office of the Attorney-General, received no response. Without any prior notice, an attempt was made to deliver the keys to the new wing to my Administrative Secretary, Mr. Kelly, at 4 p.m. on Friday, 8th December 2000. Mr. Kelly understandably declined to accept them. A further attempt to deliver the keys was made the following day, Saturday, by leaving them with a security guard at the Hall of Justice. Instructions were given for them to be returned. We had received none of the information or documentation, which would

normally be provided to the user upon the transfer to it of a new building. We were therefore in no position to assume responsibility for the building. It was fortunate as it turned out that we declined to do so, for reasons, which will soon emerge. On the 11th December 2000, the Attorney General wrote the Minister of Public Administration, Senator Wade Mark, to whom responsibility for State buildings was then assigned, asking him to take charge of the building. At the same time, the Attorney-General also wrote me advising me of what he had done, and suggesting that I communicate with Minister Mark if I wished to have the keys to the new building. Happily this brought the building under the purview of the Chief Architect. He, with the assistance of the DCA and the other intended users of the building, set about identifying what had to be done in order to enable the Judiciary to take over the building and use it for the purpose for which it was built. In the Chief Architect's opinion the building was not in a fit condition to be used as a courthouse until the remedial works, which he identified, had been carried out. In the first place several statutory approvals, which the law requires, had not been obtained, and as far as I am aware, have still not been obtained. These include approval by the Fire Department, approval by WASA and approval by the City Engineer. Secondly, prisoners could not be safely introduced into the building for a number of reasons, the major one being the inadequacy of the locks on the doors of the cells and many other doors to which the prisoners would have access. Also the location of some of the fittings and the design of others, created a security risk. These deficiencies were pointed out by the police. Thirdly, from a functional point of view there were serious deficiencies in the configuration of the building. The intention is that the new wing, which adjoins the refurbished building, will function in tandem with it as the Port of Spain Magistrates' Court, a single entity. There is, however, no link on the ground floor between the new and the refurbished wings so that to get from one to the other at ground floor level, one has

to leave the building and re-enter. Further, the vault space for keeping the court's records is virtually non-existent. There is also no space provided for stores or for a bailiffs' pound. No provision is made in the new wing for a Registry and the office space available in the refurbished building is hopelessly inadequate. Further, the witness boxes in the new courts are so placed that the clerk who records the evidence will not be able to see the witness who is giving it.

I have given you the bad news, now for the good news. My understanding is that the Attorney-General accepts that substantial remedial works are necessary before the new wing can be used as a court and steps are being taken by him in conjunction with the Minister of Infrastructure, Development and Local Government, Mr. Carlos John, to whom responsibility for State buildings is now assigned, to secure Cabinet approval of funding for these works and thereafter will proceed to have them done as quickly as possible. The Judiciary is, and has at all times been, very anxious to occupy and use the new wing of the St. Vincent Street courthouse. There are still three magistrates' Courts operating in NIPDEC House under the most adverse conditions. I am being constantly pressed by the magistrates who sit in those Courts and their support staff to transfer to the new building. Obviously the attorneys who practice in these courts are also extremely unhappy about the delay in moving out of NIPDEC House. I have explained to a delegation from the Council of the Law Association and separately to the President of the Criminal Bar Association, the reasons for the delay which are entirely beyond my control. I look forward eagerly to the day when magistrates will be able to conduct their courts safely, efficiently and comfortably in the new building.

The Chaguanas Court

So far as the Chaguanas Magistrates' Court is concerned, the complaints of the attorneys

about conditions in that building are well justified. Steps have been taken to have remedial work done as a matter of urgency by the Ministry of Works and hopefully, by now it will have already begun. The Chaguanas Court is one of those which I identified in last year's address as being so old and dilapidated that they ought to be demolished and new buildings erected in their place. The same recommendation in relation to Chaguanas was made in a document submitted by the DCA to the Attorney General for budget purposes in April this year. That document also identified certain areas in the building, which required attention, including the staff toilets, the electrical wiring and the air-conditioning. But there is no doubt that the building was not properly cleaned and maintained, and matters were allowed to go from bad to worse even though almost one-fifth of the total sum voted for the repair and maintenance of buildings and equipment for 22 magistrates courts was spent on Chaguanas alone during the last two years. Hopefully with the appointment of five Area Court Managers pursuant to the approval recently given by Cabinet, such a situation will not again be allowed to develop. I renew my plea, however, for a new courthouse for Chaguanas, as the existing building is to quote our budget document "both inadequate in terms of space and functionally obsolete". I make the same plea also in respect of Siparia and Couva. I have not mentioned San Fernando and Rio Claro simply because I know that the Attorney General is already persuaded of the necessity for new courthouses in both those locations. There have been plans to build a new courthouse in Arima longer than I have been Chief Justice, but to date they have literally not got off the ground.

The Scarborough Court

So far as the Supreme Court building in Scarborough is concerned, that is the responsibility of the Tobago House of Assembly ('the THA'). The bald facts are that the air-

conditioning system in the Supreme Court shut down and was not effectively repaired or replaced for an inordinately long time. Eventually the vendors of the replacement unit were contracted by the THA to install it and did so. Thereafter, there was an attempt by the THA to get rid of the bats, which infested the roof of the building by spraying with chemicals. The effect of this was to leave toxic fumes in the building which I understand even up to today have not totally dissipated. The pollution, however, has been reduced to such a level that the Court of Appeal was able to sit in Tobago in the Supreme Court building without significant discomfort to anyone on two days at the end of August. There still remains a good deal of work to be done on the top floor of the building before it is restored to a satisfactory condition, and it will probably be necessary to re-locate the court and its staff elsewhere in the building pending the carrying out of this work by the THA.

Commentary

It is obvious that the present system under which responsibility for court buildings is split between the Judiciary and the Attorney General's Ministry has not worked well. Under it the Attorney General is responsible for capital works, which includes new buildings and major repairs and refurbishment, while the Judiciary is responsible for maintenance and minor repairs. This division of responsibility is one that is likely to lead to conflict and inefficiency, and has done so. I would suggest that the responsibility, which was given a few years ago to the Attorney General's Ministry for court buildings, should be given to the Judiciary or failing that, returned to the Ministry of Works where it formerly resided.

One lesson which hopefully has been learnt is that when a new courthouse is to be built, it is essential that there should be the fullest consultation with the Department of Court

Administration and the other users of the building at all stages of the exercise, beginning at the pre-design planning stage and continuing throughout the construction up to the hand-over to the Judiciary. This manner of proceeding has been endorsed by the Chief Architect and has been facilitated by the informal establishment of the Court Building Users' Forum which includes representatives of the DCA, the Law Association, the Criminal Bar Association and the police, prison and probation services. Failure to hold such consultation will inevitably result in additional and unnecessary expenditure falling on the shoulders of the taxpayer.

LAW REPORTING

Before concluding there are four topics that I would like to deal with very briefly. The first is the Trinidad and Tobago Law Reports. The first two volumes of these were previously published. They cover 1990 and 1991 to 1992 respectively. The third volume covering the period 1993 to 1995 has now been published and is available for purchase. It is hoped that the same publishers who are located in Jamaica, will be allowed to continue the series of law reports on mutually acceptable terms so as to bring them up to date and continue them on an on-going basis, and also to produce volumes going back to 1970. Jamaica, Barbados, Guyana, the Organisation of Eastern Caribbean States and even the Cayman Islands, all have their own local law reports. We must not be put to shame by our Caricom partners.

NEW RULES OF COURT

I need to say a word about the new Rules, that is, the Civil Proceedings Rules and the Family Proceedings Rules which were made by the Rules Committee in 1998 but have been held in abeyance because of the opposition to them by the Attorney-General and the Law Association.

Last year I reported that it was intended to consult with members of the legal profession on the report of the Advisory Committee, the majority of whom had recommended the bringing into force of the new rules, subject to certain modifications and on a phased basis. I had proposed to the Council of the Law Association that the consultation with attorneys should be held by the Rules Committee and the Council jointly. The Council was to let us have a response to that suggestion. In fact no response has been received from the Council. The Rules Committee for its part has not pursued the matter. One reason is that the Rules Committee has had its hands full drafting the Election Proceedings Rules, a task which should have been undertaken some 34 years ago when the Representation of the People Act was passed. The Rules Committee has a fairly full programme ahead of it as it is required to make rules under the new Judicial Review Act as well as under a number of other Acts, including the Legal Profession Act. It is important however, that the promised consultation on the report of the Advisory Committee should take place. The delay, which has occurred, however, may well have some beneficial effect. For one thing, the counterpart of the new rules has now been in force in England for over two years, so that reports on how they have worked there, are now available. Also, rules substantially in the same form have been introduced since the beginning of this year in the O.E.C.S. countries and it will be instructive to see how they have operated in an environment like theirs, which is closer to our own. I would also mention that Jamaica are in the process of drafting new rules of court in the same mould, using the services of Mr. Greenslade who drafted ours and the O.E.C.S'. As a preliminary to consultation, it is necessary to provide all attorneys who are interested enough to read the report with copies of it, and my impression is that this has not yet been done. Ways must also be found of motivating busy practitioners to read and discuss the report. It is only if a sufficient number of them do so that the Law Association will be in a position to make an

informed decision as to whether in the light of the Advisory Committee's report and other information now available, it should reconsider its position on the new rules.

THE MACKAY COMMISSION'S REPORT

The Mackay Commission of Enquiry submitted its report to the President in October last year. The report was shortly thereafter laid in Parliament by the Prime Minister. The Report, like the Commission's terms of reference, can be divided into two parts. One part concerns ways of improving the machinery of justice and the other concerns the dispute between the Chief Justice and the Attorney General. With regard to the first part of their terms of reference, the Commission made a number of recommendations, some of which are not new. The Attorney General wrote me towards the end of last term inviting my views on the implementation of a number of these recommendations. I have promised to respond to him early in the new term. It was particularly pleasing to see the endorsement, which the Commission gave to the Department of Court Administration and its recommendation that all concerned give it their support.

With regard to the second aspect of their terms of reference, the Commission disappointingly failed to identify and address the issue which was at the heart of the dispute, namely whether under our Constitution the Attorney-General has, or could properly be given, any responsibility for, or control over, the Judiciary. Happily the Commission did go some distance towards affirming the administrative autonomy of the Judiciary although, it did not do so as clearly and as consistently as one would have wished. The Commission found that the Attorney General was not intending or attempting by his words and actions to undermine the independence of the Judiciary. This was hailed initially in the press as a victory for the Attorney General and defeat for the Chief Justice. But, as was later pointed out, what the Commission notably failed to say was whether the words and actions in question did in fact undermine or tend

to undermine judicial independence. This reluctance to deal with thorny issues is in fact typical of the report. Because of its failure to address some of the fundamental issues (as Mr. Justice Georges did) and to give clear and consistent answers to those questions, which it did address, the report was a disappointment. It is not feasible for me on this occasion to make an in depth critique of the report, but I propose to do so before the year is out.

ATTACKS ON JUDGES

The last matter with which I propose to deal is the outrageous public attacks on Judges, both collectively and individually, in which some persons have indulged. It is my duty to express publicly my strong objection, and that of my fellow Judges, to these intemperate and contumelious attacks. The danger of ignoring them is that the impression may be given that they can be repeated with impunity. I wish to re-state for the benefit of those who have broken it, the fundamental principle of law that to attribute bad faith to a Judge is a contempt of Court, unless that allegation is made in the context of disciplinary or criminal proceedings and is supported by evidence. The duty of bringing before the courts for punishment persons, who have been guilty of contempt, lies primarily on the Attorney General. The jurisdiction, which Judges exercise, is given them by the law, which is made by Parliament. The decisions Judges give are supported by reasons, which can be taken apart and criticised by persons affected and their lawyers. These decisions moreover are subject to appeal, usually to the level of the Privy Council. It is therefore not only damaging to the rule of law, but unfair and irrational, for persons who are displeased by judicial decisions, or who anticipate unfavourable decisions, to make accusations of bias against specific judges or against the Judiciary as a whole. Of course, the higher the position held by the person who launches such an attack, the greater the potential damage and therefore the more

serious the offence.

CONCLUSION

I am not ready to say farewell as yet. After all, there still lies ahead of me almost a full term's work. Indeed, I begin this my last term in office with a resurgence of optimism and enthusiasm, as the seas in which the ship of the Judiciary now sails, seem calmer than at any time in the last two and a half years. Let us hope that this continues, as I would dearly like to hand over the ship to its new captain in a safe harbour. When I do take my leave from this high office of Chief Justice, in which I have had the honour to serve, it will be with a mixture of feelings. It will be with gratitude to my fellow Judges and to certain key members of my administrative staff for the support they have given me, and with admiration for the skill and dedication with which they have performed their respective functions. It will be not without some regret for mistakes made and opportunities missed, but also not without some degree of satisfaction at what has been achieved. Above all, it will be with rancour to no one.

The sittings of the Supreme Court will resume tomorrow at 9.a.m.

M. A. de la Bastide, T.C., Q.C.

Chief Justice

17th September 2001.