

**ADDRESS DELIVERED BY THE HON. MR. JUSTICE
ROGER HAMEL-SMITH, ACTING CHIEF JUSTICE
ON THE OCCASION OF THE CEREMONIAL OPENING
OF THE LAW TERM OF THE SUPREME COURT OF
TRINIDAD & TOBAGO ON MONDAY SEPTEMBER 18, 2006**

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President of the Senate, Honourable Attorney General, Honourable Speaker of the House of Representatives and Mrs. Sinanan, President of the Caribbean Court of Justice, the Right Honourable Mr. Michael de la Bastide and Mrs. de la Bastide, Honourable Judges of the Caribbean Court of Justice, Honourable Minister of Legal Affairs, Members of the Diplomatic Corps, President of the Law Association, Distinguished Guests, members of the legal fraternity, members of the media, ladies and gentlemen.

On July 28, 2006, the President of the Republic of Trinidad and Tobago appointed me to act as Chief Justice pursuant to section 103 of the Constitution. The context of the President's action and of my appointment is well known and needs no amplification.

The effect of this action however, has placed the responsibility on me to open the new law term. In normal circumstances this is an honour and a privilege but at present it is one that I do out of a sense of duty because of its importance, not only in fulfilling a tradition but also because it demonstrates that, regardless of all circumstances, the Judiciary will carry on and do what it is expected to do.

We acknowledge that there may be a sense of disappointment on the part of the people of this country, a sense of having been let down by an institution which over the years has been a last resort to those who sought justice within its walls. This is because we as a people have always looked upon the Judiciary as a beacon of strength, a last bastion of hope to resolve all the differences in the society. However, as several opening of term speeches by past Chief Justices attest, difficulties have engulfed the Judiciary from time to time, both from within and from without. What is important is that the Institution has survived and has emerged even stronger and more resolute in the execution of its mandate. I entertain no doubt that the same will occur this time around.

Rather than reflect negatively, however, upon those issues that have presented themselves in the last year, and which, no doubt, will continue to confront us for some time, it is far more meaningful to find the lessons to be learnt from them.

The Judiciary finds itself in delicate times, when good sense and responsibility call for caution and reticence. In spite of that there have been, from various quarters, suggestions that there are political and ethnic motivations at play. It has

even been said that that there is afoot an attempt to make appointments to the Judiciary in order to move it in a certain political direction.

Nothing could be further from the truth, and I humbly and respectfully request the purveyors of such uninformed sentiments not to use an institution as important as the Judiciary to score political points, for by so doing, wittingly or otherwise, greater damage is done to the institution. It may not be common knowledge, but perhaps it ought to be, that for the past forty-four years appointments to the Judiciary are made by the Judicial and Legal Service Commission. The members of this Commission comprise the Chief Justice as Chairman, two members who are retired judges and another who is from the legal profession. The framers of the Constitution were at pains to ensure that the Commission, like all other Commissions, was free from political interference. Further, the appointments are made according to set published criteria. Accordingly, politics has never entered into the considerations for these appointments and it is irresponsible in the extreme to suggest otherwise.

It has been said that politics is the art of the possible. There are many reasons why that is so but it is not for me to comment on them. That however is not the case with the administration of justice, because there are no ‘interests ‘ in justice other than the interest of the common good. There are no sides other than right and wrong. There are no constituencies to please or appease other than the laws of the land according to the Constitution. Justice is not about popularity. Politics and the administration of justice march to very different drumbeats. It is certainly a truism that “Man’s capacity for justice makes democracy possible.”

When we speak of the independence of the Judiciary we are not only speaking of institutional independence, but also of the individual independence of every Judge in every individual matter that comes before them. It is this individual independence and impartiality that consequently constitute the independence of the Judiciary as a whole. Therefore those who question or doubt the independence of the Judiciary in our system of governance are, perhaps without realising it, making the uninformed assumption that, from all the individual matters referred to the courts from the public domain, it is possible to fashion some collective overriding agenda. This simply is not the case.

We have a long and honourable tradition of standing up for and defending the Constitution on the basis of independence and impartiality and we are confident that our record in this regard speaks for itself so that no one can point to even a single instance where the same was compromised for a political purpose.

The preservation of the public’s confidence in the impartial administration of justice is our most sacred and important duty to our country. In our democratic system of government public trust is earned by way of record and reputation over many years. It is a difficult trust to acquire but one which is easy to lose, particularly in a society such as ours where perception tends to be given more

credence than reality, unless the caretakers of that trust are determined to cherish it, defend it and to protect it. As we begin the new law term, we are resolute in our determination to do so, looking forward, not back.

My mandate, at this time involves continuing the forward thinking vision of the Chief Justice and ensuring, so far as possible, that plans for improving the administration of justice come to fruition. It is certainly an ongoing exercise and, as in any other complex organization, there will always be certain fundamental issues that need to be addressed, some more pressing than others.

The administration has taken a few bold and imaginative steps in the last two years. It embarked on the establishment of a Family Court and introduced the Civil Procedure Rules 1998, to replace the Supreme Court Rules 1975. More about the Family Court in a while. The new rules, the CPR as they are called, were designed to restore public confidence in the civil court process. They certainly changed the way litigation was practised in this country. No longer was it attorney driven; it became court driven over night. They were meant to make civil litigation much easier to access and understand. The changes implemented and required included: systemic changes to the rules, procedures, protocols and practice directions, as well as changes to the infrastructure i.e. to court buildings, court rooms, equipment and technology, to name a few. However, although not explicitly identified or addressed, cultural changes in behaviour, attitudes, values, intentions and goals were equally crucial for the successful implementation of these rules. In the coming year the judiciary will continue to work towards a co-operative, willing and unified effort to sustain those changes.

As with any fundamental change, it takes time to settle in, time to adjust to change. The introduction of those rules required a completely new approach to the way cases progressed through the system and required extensive training, particularly the members of the Judges' teams and the staff manning the registry. With the new rules came the introduction of the Docket system which assigned cases randomly to Judges and required the particular Judge to handle the case from beginning to end. It is what we call the non-bifurcated system as opposed to the bi-furcated system whereby one Judge carries out the case management aspect of the matter and another Judge does the trial.

Reports to date indicate that the system is working as well as one can expect. Yes, there are certain drawbacks but, with the passage of time and careful assessment, these will be overcome. A critical issue of which we must guard against is the tremendous amount of outstanding cases to be heard under the old rules. This is indeed a challenge to the Judiciary and needs to be effectively resolved or else we may find that the progress we all had anticipated under the new rules may be more illusory than real.

It is not an insurmountable task however. From the inception of the new rules it was apparent that a plan had to be devised to deal with these cases. The proposal

was to have temporary Judges appointed to deal with this caseload thereby permitting the permanent Judges to devote full attention to the new cases that flowed into the system, post September 16, 2005. The Chief Justice recognized the dilemma in which we would find ourselves if the old cases were to intermingle with the new. His efforts to bring on board a requisite number of temporary Judges unfortunately did not materialise. Very few suitably qualified attorneys responded to the call. In the end, four appointments alone were made: Justices Aboud and Kokaram from the Bar and Justices Ibrahim and Deyalsingh from a list of retired Judges. While all four have worked unceasingly in the past seven months, two in San Fernando and two in Port of Spain, and have performed admirably, there is a pressing need for at least five more Judges to join the ranks. Justice Kokaram, to whom we are indebted, demitted office in August so the need for additional Judges is more urgent now.

It is quite evident therefore that the setback is the inability of the Judiciary to attract sufficiently qualified temporary Judges. The number of old cases to be determined may be on the high side but when all is said and done it can be cleared with the assistance of five or six temporary Judges operating in Port of Spain and three or four in San Fernando within a matter of two years. We trust that it will not be impossible to find willing and experienced attorneys prepared to give service to their country. But find them we must if we are to avoid being overwhelmed. It may be that we may have to go 'foreign', as we like to say, and seek out attorneys or retired Judges from other parts of the Caribbean. Whatever we do, the task must be addressed at all costs. We would far prefer however to believe that there are locals willing to step forward to address this most pressing need.

Should the hunt prove successful, we are quite confident that many of the other problems will be resolved quite efficiently. Judges in the civil jurisdiction will then be able to focus on the new cases and dispose of them in a timely fashion. In fact, some Judges have found that a number of matters have been resolved at the case management stage and thus avoided the need for a trial. Significantly, one premise of the rules is that only ten to fifteen percent of matters filed should go to trial. In other words, eighty percent or more should be resolved without the need for a trial. That is the ideal and we have a body of Judges who can and will meet that ideal, given the tools and support staff to achieve it.

A monitoring committee was established to oversee the working of the new rules. That committee has worked diligently in the past year to ensure a smooth transition. It has also, from time to time, issued (through the Chief Justice) practice directions and made certain necessary amendments to the rules. In discussions with the Chairman of that committee, it was felt that the time was fast approaching, if not on us already, to hold meetings with attorneys not only from Port of Spain but from San Fernando and Tobago to review the working of these rules. Hopefully, in the coming weeks a meeting between the key players will take place.

I now turn to the Magistracy. So much has been said about it in the past few years that one hesitates to add to the dialogue. Gone are the days when the Magistracy appeared to play second fiddle in the scheme of things in the administration of justice. Today, more than ever before, there is not an institution that is as important to the maintenance of law and order in this country as the Magistracy. We like to say that it is the barometer by which justice is measured. It certainly is. When those courts are functioning effectively law and order will take on a new meaning in this country.

In recent times the perception may be that that little or nothing is being done in these courts. There are courts which are in a deplorable state and there are some in which the clerk is still required to take the evidence in writing. Some complain that funds are short, making it difficult to introduce modern technology in these courts. Nobody is really wrong; there is a bit of truth in all these matters. What we have to appreciate however, is, (i) that Rome was not built in a day; (ii) there are certain courthouses that simply cannot accommodate the modern technology and (iii) there are some which have to be refurbished first in order to accommodate computers and the like.

Rest assured nonetheless, that the administration is working to a structured plan and considerable work has been done and is continuing to be done to lay the foundation for transforming and implementing improvements across the Magistracy. With the passage of time these initiatives will become apparent. All the Courts in St George West (i.e. in Port of Spain) for example, have audio digital recording systems, three court rooms in Scarborough and three in Arima which will be operational by the end of September. Portable solutions are being used at Couva, Roxborough and Charlotteville Magistrates' Courts. Seventeen more systems will be available shortly and installed in the courts in Tunapuna, San Fernando, Chaguanas, Point Fortin and Siparia. Training of transcriptionists is well underway; in fact the first batch of graduates are now on board and a second is about to graduate.

We have set about refurbishing several courthouses; we are customising a building to house the Chaguanas Court and refurbishing two in San Fernando to replace the courthouse there. At Couva Magistrates' Court design work is ongoing to add two additional courtrooms and other court facilities. The existing facility is also about to be refurbished and hopefully completed by July 2007. We have plans for new court facilities in Arima and Sangre Grande.

A major drawback to early determination of cases within these courts has been the listing of between forty and seventy cases or more before a Magistrate on a daily basis. As long as this continues progress in disposing of cases will be severely hampered. Again, we ask that you bear with us but the good news is that a pilot project is about to begin in the Scarborough Magistrate's Court which will transform the way cases proceed to trial. All matters will be 'case managed' until

they are ready for trial. When a case is finally sent up to a magistrate for trial there can be no question of any further adjournment. That is the ideal. With the introduction of the requisite technology it will be possible to trace the footsteps of all cases filed in the Court to ensure that it is trial ready.

We have no doubt that the plan will work well. Again, there are some drawbacks but nothing that we cannot overcome. One difficulty is the legal requirement of having to bring remand persons to court every ten days, whether the matter is ready for trial or not. Ideally, an amendment to the relevant law that extends the period will lessen the problem. In the meantime we are looking at the question of video conferencing between the Magistrate in court and the remand person in prison as a possible alternative. Whatever is done, however, one thing that is certain, is that with trial day certainty, we can no longer hide behind a culture of adjournments. Once this project is tested and works well, and there is no reason to think otherwise, it will be introduced on an incremental basis in other courts throughout Trinidad and Tobago.

These systems are certainly going to expedite the disposal of cases in this jurisdiction but we cannot lose sight of the fact that we have a great number of outstanding cases and an equally great number entering the system annually. And this is the juncture where decisions, important ones, have to be made. We will be fooling ourselves if we think that a computer here and a recording there is going to solve all our problems. They are not.

We need more courts and by extension more Magistrates. As far as the latter is concerned, it will help immeasurably if the terms and conditions of the Magistrate are improved so that we can continue to attract suitably qualified persons.

As regards the need to increase the number of courts it is going to take vision, farsightedness in planning the direction we must go. Any plan may take us up to five years or more to implement but a plan there must be.

Some weeks ago, a team from the Judiciary, together with members of the Assembly of Southern Lawyers, visited the two buildings under refurbishment in San Fernando earmarked for the Magistrates' courts. The existing building is no longer acceptable. Completion of the works is expected by December 2006. It took little to realize however, that this was a temporary measure, given the size of the buildings. I refer to this visit because during the discussions there a suggestion was made- why not, as a long term plan, construct a complex outside the city to accommodate all the magistrates' courts in the area.

Take the concept a step further; why not construct three or four such complexes, one for the District of St. George West, a fairly large district, one for the Eastern Districts to replace the courts say, in Tunapuna, Arima, Sangre Grande and other related courts nearby and one in San Fernando or environs to house all the courts from Point Fortin to Mayaro. Maybe, the area itself to be encompassed may need

some adjustment but the idea is not as farfetched as it may first appear. In this way the several magisterial districts would be centralised in fewer but larger court complexes where all the resources, both human and technological, can be concentrated.

Of course, the immediate reaction would be that persons would have to travel quite a distance to access those courts. They would, but the problem is not insurmountable. A proper and efficient bus service for those in need of transport from the outlying areas to the particular complex is a distinct possibility. With plans afoot to reintroduce the rail system, the idea begins to take shape.

The idea is not a novel one. We have this penchant for things foreign and maybe we can follow the example set in California, USA. Because of the enormous cost involved in the transportation of prisoners to several courts on a daily basis, authorities there have undertaken the construction of one complex to house the several courts that are spread throughout the State. We are similarly circumstanced. The cost of ferrying prisoners alone from the prison to all the outlying districts on a daily basis is already staggering. An alternative to this may be to split districts into smaller units, e.g. St George West can be divided into Diego Martin, Port of Spain, Barataria and San Juan but whatever we do, unless we lessen the caseload placed before a Magistrate on a daily basis the disposal rate will not be an impressive one.

A pressing issue that needs to be addressed is the question of ticket cases. As far back as the year 2000 a recommendation was made to the Commission set up to enquire into the Administration of Justice that ticket cases be removed from the Magistrates' courts and be placed under the direct control of the Transport Authority. It seems to have remained a recommendation. If this idea were implemented, however, it would free up many magistrates from having to deal with 70 to 100 ticket cases on a daily basis where the defendants are willing to pay the fine. He would instead be able to proceed immediately with his regular list.

If the Transport Authority were to arrange with banks throughout the country to collect monies payable under the system (in the same way WASA and TTEC bills are paid), we may find that persons are more inclined to pay the fine sooner rather than later under an order of the court. As the law stands, if one is ticketed for speeding, say, in Mayaro, the ticket has to be paid in that district, whether you live in Tobago or Port of Spain. This is certainly a disincentive to anyone, law abiding citizen or otherwise, with the consequence that a person is hauled before the court only to plead guilty and take up precious judicial time and resources.

With modern technology, case management and with a daily list of 15 to 20 cases Magistrates will take a giant step forward. It is time to begin the journey.

In the criminal jurisdiction of the High Court the light at the end of the tunnel is beginning to glitter. Moves are afoot to ensure that cases in the criminal assizes come up for trial only when they are ready to proceed and not before. A pilot project was implemented in May of this year to deal with these trials. It is quite an ambitious plan because it ensures that no case comes to trial unless the accused is properly represented. It begins in the prison where staff of the Judiciary interview accused persons on remand to determine if an attorney has been retained on their behalf. If none has been then steps are taken to have the Legal Aid Authority retain one. Thereafter, both sides are required to answer a questionnaire that will facilitate the movement towards a trial within a reasonable time.

The project has worked well so far notwithstanding certain drawbacks such as proper staffing. Recruitment of specialist staff for the Judiciary, in whatever quarter, is generally a difficult operation and takes time, sometimes, too much time. Nonetheless, to date there has been a measure of co-operation between bar, bench and staff and this augers well for the continued success of the plan. It is a project like this one that, with the passage of time, begins to build confidence on both sides, prosecutor and attorney alike; confidence on the part of attorneys that the investigations leading up to prosecution are conducted with integrity and fairness and confidence on the part of prosecutors that attorneys conduct the defence with equal integrity and openness. We must always strive for that ideal.

The next step to be undertaken, simultaneously with this project is to explore the question of Criminal Proceedings Rules. The eventual goal is to bring the conduct of criminal trials in line with what obtains in Civil Proceedings and put the control of the pace of criminal proceedings in the hands of the Courts. Having learnt the lessons provided by the attempt to improve the civil courts we will go slowly with full and frank dialogue with all the stakeholders. What has become clear however, and happily so, is that we all have the same aim in mind, a criminal justice system of which we can all be proud.

If and when the system is fully operational, we hope that use will be made of the provisions of the Plea Bargaining Act that will further shorten and hopefully in some cases eliminate a trial altogether. That Act may require some amendment but we trust that this will receive early attention. We have heard much talk about the need for the introduction of DNA legislation. This will certainly be a welcome added dimension to the way in which criminal cases are prosecuted in this country. Even if at first it is difficult to find the expertise to conduct the requisite tests, there is always the possibility of having them done abroad until we can afford our own laboratory.

If you should leave this place today with the impression that there is a degree of optimism on my part, you will forgive me but in the short time between assuming this acting position and the opening of Court there was need to work closely with much of the staff throughout the Hall of Justice. They have worked relentlessly to bring me up to date with as many issues as they possibly could. They must be

complimented for their co-operation; indeed, their professional approach to most things is what stands out.

We tend to take much for granted when things run smoothly but it is only when we become involved that the extent of the effort that is made in every quarter is better appreciated. It is a delight to work with persons who, by and large, exhibit a deep commitment to their work in the interests of the administration of justice. For me to be anything other than optimistic therefore would be to do an injustice to their efforts. I prefer to adopt the approach of Brian Bacon, a management consultant in Australia; rather than harp on what is wrong it is far better to look for what works and how to get more of that. When you do find something that works, understand why it does and replicate it in order to get more of that. I have found a lot that works and works well and whatever the length of my tenure such an approach will be my guide.

It would be remiss of me if I did not commend certain members of staff who refrained from taking steps to highlight certain difficulties. The issue at hand is indeed a pressing one that needs to be resolved quickly. I would beseech the powers that be to be a little more considerate in having them resolved expeditiously. It is my wish however, that in this coming year the staff throughout the Judiciary and Magistracy, including the maintenance and security personnel for whom there is a special place in my heart as only they would know, will find satisfaction and contentment in all that they do.

Truthfulness alone demands that we acknowledge that whatever success we have achieved over the past year in increasing productivity, has been to a large extent attributable to the hard work by the Judges, their support teams, both in the appellate court and in the court below, the staff in the Registry and the co-operation of the legal profession. The same must be said for the Magistrates. It certainly demonstrates that when we all work towards a common goal much can be achieved. We have published the 2005-2006 Annual Report. A mere glimpse will reflect the extent of the effort by all. It gives one a sense of hope for the future.

You will forgive me if the good wine has been kept for last. I refer to the performance of the Family Court in the last year. This is a Court that makes us proud and drives us to emulate its efficiency. This court demonstrates what success is all about when an Institution is properly equipped to carry out its functions. Of the 2215 matters filed in the High Court division of that Court in the last year, 1760 were disposed off. In the Magistrates' division, 4083 matters were filed and 3823 were completed. This is the sort of performance we are aiming at in all the Courts but it takes time to put the necessary technology and staff in place but get there we will.

To those who worked so tirelessly in the past month to make this day a memorable one, we extend our deepest gratitude. Prof. Rambachan, we thank you

for coming such a long way to greet us with your inspiring words of wisdom. To the Inter Religious Organization for making this day meaningful, we thank you for once again organizing the beautiful ceremony in the church. To the Dean of the Trinity Cathedral, the Very Rev. Sampson, we thank you for allowing us to join in prayer at the Cathedral. To the Defence Force, for the impressive parade and march-past; and to all of you who took time off to be here with us, we thank you most sincerely. Last but certainly not least, to the Richmond Street Boys Choir, what a wonderful delight! It certainly demonstrates what talent there is in this country.

Before I close, on behalf of the Judiciary, I wish to pay tribute to the late President, Noor Hassanali, who passed away recently. He served this country not only as President but also as a Judge. He was truly an exemplar, recognised both for his humility and integrity. He led by example and in the end he had won the hearts of everyone in this country. He will be truly missed. The Supreme Court will shortly open a condolence book for the late President.

This address began by referring to the difficulties that the Judiciary has had to face over the last Law Term and will likely continue to face during the current one. For some, these have been a source of many negative emotions. What we need instead is to bring a sense of determination and purpose to how we respond to them. The choices we make will influence to a large extent our destiny. This is as true for each one of us as individuals as it is for our country. It is no less so for the Judiciary.

Within this institution which includes the Magistracy, at every level, there are men and women of integrity and ability who are fully committed to the task ahead, that is, dispensing justice independently, fearlessly and without favour, and providing transparent, effective and equal access to justice to every person in Trinidad and Tobago. That is our commitment and it is one which we are proud to profess.

It may be that wise Judges suspend judgment until the fullness of due process has been completed. There is good reason for this. Premature judgment and utterances often do more harm than good. This is as true for Judges as it is for those who comment on the administration of justice. At all times, we ought to act responsibly as we exercise our rights, particularly the right to freedom of expression, preferably with measured language, cognizant of the damage that may be caused by hasty, uninformed, misleading or reactive utterances.

No one can deny, these are challenging times for the Judiciary and therefore by extension, for the People of this country. There is no doubt in my mind however, that, as in the past, so also now, we shall emerge stronger and wiser. We have the resolve to succeed. We have the confidence that we can succeed. With your support and with the grace of the Almighty we can achieve our goals and fulfill our expectations.

The late Chief Justice Hayatali invariably ended his speech with a short prayer. It may be that he saw the wisdom or the need personally to invoke the Divine, before setting out on a new law term. You will understand therefore if today I follow his example and ask you to be silent within for just a moment:

‘As we embark on this new law term, may we be free from the limitations of yesterday so that today we may be reborn. May we be granted strength, courage and wisdom: show us the light in ourselves and in others so that we may recognise the good that is in everyone. May we be instruments of compassion, healing and justice and may peace influence all that we do’.

I now declare the new law term 2006 - 2007 open. Court is adjourned to tomorrow morning at 9 am.