CEREMONIAL OPENING

of the

SUPREME COURT OF JUDICATURE

of the

REPUBLIC OF TRINIDAD & TOBAGO

2008/2009 LAW TERM

TUESDAY 16TH SEPTEMBER 2008

Opening Address of
The Honourable The Chief Justice
Mr. Justice Ivor Archie

Convocation Hall
Hall of Justice

SPEECH FOR OPENING OF 2008/2009 LAW TERM

The Acting President of the Senate, the Speaker of the House of Representatives, President of the Caribbean Court of Justice, Honourable Judges of the Caribbean Court of Justice, Honourable Minister of Legal Affairs, Members of the Diplomatic Corps, President of the Industrial Court, Chairman of the Tax Appeal Board, Chairman of the Environmental Commission, President of the Law Association, former President of the Republic of Trinidad and Tobago Mr. Arthur N. R. Robinson, retired judges and other members of the legal fraternity, members of the media, ladies and gentlemen, good day.

In one of his Independence Day addresses two weeks ago, His Excellency the President stressed the importance of maintaining those institutions and traditions that hold the fabric of our society together and give us a sense of stability and permanence. The opening of the Law Term is one of a very small number of occasions on our yearly calendar at which we come together publicly to mark the rededication and recommissioning of one of our major institutions.

It also provides, along with our annual report and reports to parliamentary committees, an important opportunity for the Judiciary to account publicly to the people of Trinidad and Tobago, who we serve.

It is customary in opening speeches at the commencement of the new Law Term to give a report of the Judiciary's accomplishments during the past year and the plans for the incoming year. And I suppose that there will be those who will demand of me a report on my personal stewardship during the past eight months. I propose to do both but not necessarily in the way one has come to expect.

To get the second matter out of the way first, let me say that I can take little credit for the successes and accomplishments of the past year since, for the most part, they are the result of actions initiated before I assumed office. They are the result of the efforts of an extraordinarily loyal and dedicated staff that operates at times in extremely difficult conditions with hardly a complaint. I wish to publicly acknowledge the efforts of the entire staff of the judiciary and to thank them for their support.

For my part, I have seen my job during the first year of tenure as cementing the vision of the Judiciary in the hearts and minds of every employee, positioning the institution (in terms of its human capital and physical resources) to achieve that vision and motivating each member of this institution to maximize his/her own potential while adding value to the judiciary. For that to happen, we must vision together then work together. I invite you to vision with us for the next hour or so as we share our accomplishments and our vision with you.

In order to provide context for this address may I, at this stage, take a moment to reiterate the Judiciary's vision.
"The Judiciary of Trinidad and Tobago aims to provide an accountable Court system in which timeliness and efficiency are the hallmarks while still protecting integrity, equality and accessibility and attracting public trust and confidence"

Accordingly, this address, like the 2007/2008 annual report, is structured in a manner that relates what we are doing to each of the characteristics identified in our vision statement from a systemic or organizational viewpoint rather than staying strictly with a department by department review. It is therefore largely informed by developments and strategies employed in the Magistracy and the Family Court Pilot Project, as they are the proving grounds for new procedures and technologies that are likely to become standard throughout the judiciary.

It is sometimes said that hindsight is 20:20 vision. As we pursue our development plans in consonance with the national thrust towards developed country status, it is encouraging to take a look back so as to appreciate fully the advances that have been made and to better understand where we are now placed in relation to our articulated vision. Although there is still considerable room for improvement, there has been much meaningful and tangible progress over the years that it is appropriate to celebrate. Permit me therefore to spend a few moments reflecting.

Where We Were [1998]

A decade ago, the Judiciary faced daunting problems. Technology employed in the Courts, by today's standards, was basic. Lists were long and unmanageable. When I joined the judiciary in 1998 many of the civil matters coming up for trial before me in the High Court had been filed in the 1980's. The average time from filing to disposition in the Civil Courts was five to seven years, in the Assizes the

time frame was three to seven years. The Rules of the Supreme Court [1975] were already more than two decades old. Litigation proceeded at a leisurely pace with progress often being dictated by the whim of whichever party had to take the next step or stood to lose more by further delay. The Magistracy also faced crippling case-loads and decaying physical plant.

A World Bank report commissioned in 1996 identified procedural reform, introduction of new technology, increase in and development of the human resource {both judicial and non-judicial}, new physical infrastructure and adequate financing (among other things) as essential to the development of an effective and efficient judiciary.

The report also concluded that, comparatively speaking, fewer resources had been devoted to the Magistracy than to the Supreme Court. The rate of spending on the Judiciary as a percentage of the national budget also compared unfavourably to regionally accepted norms, being approximately 0.8% as opposed to the benchmark 2 – 3 %. I might add that despite increases in the absolute quantum that reflect general price rises, that ratio remains the same today.

That period also saw some significant developments in our internal and external environments. The first was the strategic visioning process that was taking place in the Judiciary to refine and articulate our core mission and vision, thereby giving focus to the judiciary's development thrust. The second was the adoption in England (and around the Commonwealth) of the model of civil procedure reform that has become associated with the name of the original instigator, Lord Woolf. Thus in 1997, the original version of our Civil Procedure Rules [1998], was completed. For various reasons, from which many lessons have been learned, they were not implemented until September 2005. It has always been intended that reform of High Court criminal procedure and the magistracy would also take place, and there have been significant changes, although the progress of fundamental systemic reform has been limited by finite financial and human resource capacity and limited infrastructure.

In 1998, for example, it was proposed that the complement of permanent High Court judges be increased by five (5). This is yet to happen. In the meantime the workload of the courts has increased. Many of the buildings which house courts were several decades old and not purpose built. Some have had to be condemned. Despite these challenges, the judiciary has done a remarkable job in serving the needs of the public. The employment of appropriate technology and the generous contribution of those practitioners and retired judges who have

served as temporary judges have gone a long way and our profound gratitude is owed to them. The successes that have been achieved would not have been possible without the sacrificial and unstinting support of the judicial officers and the administrative and other support staff of this institution and I wish to publicly acknowledge them and express my appreciation on behalf of the judiciary.

May I also take the opportunity at this point to publicly welcome to the bench two new temporary judges who were sworn in only yesterday, Mr. Justice Delzin and Mr. Justice Mon Desir. They have both enjoyed distinguished careers at the bar and the judiciary will no doubt benefit from their willingness to contribute.

Where We Are [2008]

We have come a long way since 1998.
The average time from filing of cases to disposition has now dropped drastically. For matters filed under the new Civil Proceedings Rules, which came into force in September 2005, 64% are now being disposed of within two years [that is down from a five to seven year average]. In the Assizes, 55% of the Criminal indictments are being disposed of within two years. This lower completion rate as compared to the civil jurisdiction is not as bad as it sounds when one considers that, of the 168 indictments disposed of last year, only 11 (or 6.5%) were more than 4 years old. Clearly, however, there is a need for case management and case flow management in the Assizes as well.

Nine hundred and thirty three 'backlog' cases were determined last year and the backlog will be completely eliminated in 2009. While these achievements are very laudable, I must sound a note of caution. This remarkable rate of disposal has been achieved only by dint of a superhuman effort on the part of all concerned. We are beginning to burn out and trial dates are now being pushed further back. It is a pace that cannot be maintained indefinitely without additional help. The arithmetic is beginning to catch up with us. At current filing rates, each civil judge will be required to dispose of roughly 500 cases per year. That is a tall order.

The introduction of Audio Digital Recording technology has speeded up the trial process in the Magistracy and rollout of ADR in the magistrates' courts is due to be completed in this term. Magistrates disposed of 85,036 cases last year, a rate that slightly exceeds the number of filings.

Video conferencing has enabled more efficient case management and saves time and expense for judicial officers, attorneys and litigants alike by reducing unnecessary travel.

The Family Court pilot project has been a resounding success both in terms of the subjective experience of customers as well as the statistical determination rates. Given the nature of family matters [i.e. parties often revert to the Courts as circumstances change], matters are said to be determined at any particular point in time if all the applications filed have been completely dealt with and there are no applications pending. By that measure the latest news is very good!

For example, in the Family High Court, the statistics for the latest available quarter reveal that 49% of filings were determined within 3 months! In the Magisterial jurisdiction, the figure is 59%, down slightly from 66% up to January 2008.

I make particular mention of the Family Court not only because is has now become a model that many other jurisdictions are seeking to emulate, but because its successes have been achieved by the employment of a collaborative approach that I firmly believe is the way forward for the judiciary. One cannot overemphasize the importance of getting all internal and external clients around the same table at the earliest possible stage. These will include members of the legal profession, civil society, ngo's, and relevant executive agencies. Relevant stakeholders also continue to be a part of the accountability and improvement process via the Family Court Monitoring Committee.

The Family Court intake process also provides a direct gateway to other ancillary support services such as mediation, social work intervention (including counseling) and probation.

Our position is that, while the strategic direction and operation of the judiciary must remain under its control, the judiciary is a partner in the administration of justice and exists to serve the public to whom it is ultimately accountable.

Other examples of reform initiatives that have benefitted from this collaborative approach have been the Cabinet appointed Special Criminal Court Committee and the Remand Court Committee. More recently, in May of this year, a multi-agency team from this country visited England and was hosted by the British Crown Prosecutions Service. The team comprised representatives from the Judiciary, the Ministry of the Attorney General and the Ministry of Legal Affairs,

the D.P.P and the Criminal Bar. They were able to study many reform measures that have been successfully introduced in the British Criminal Justice System and their joint report and recommendations now provide a framework for accelerated reform within our own criminal justice sector. Indeed, many of the proposed reforms are achievable within this Law Term.

But there is another type of input that is equally valued and that is the feedback from our ordinary citizens. I was tremendously heartened recently to receive a detailed and thoughtful submission form a group of jurors who had participated in a high profile trial. In it, they detailed their experiences and observations and made very sensible recommendations for changes to our procedures including the management and education of juries. I want to publicly thank them and to assure them and the nation that that submission is one of the documents that will guide our reform efforts and that we will continue to welcome all constructive comment or criticism.

With that in mind, I can now recount some of the more significant achievements/milestones of the past year. As will become apparent, many of the initiatives of the past year were directed, in accordance with our vision statement, towards improving timeliness, efficiency and accessibility.

In each area, I will give a synopsis of our plans for this year. Later on I will address some specific initiatives intended for maximum impact in the short to medium term.

We believe that the sharing of this information, the visible and transparent collaboration with our partners and the actual experience of our customers will go a long way in promoting public trust and confidence.

Magistracy Case Management Pilot:

During the past year, the infrastructure was set down to permit the introduction of case management rules, practices and procedures. The introduction of new technology, revised work flows and processes and new recording and record keeping systems was piloted in San Fernando and Tobago and has already improved efficiency in the following ways:

1. Reduction in the time taken to process cases and to produce the Court's record of proceedings;

2. Immediate access to information thereby improving certainty in scheduling;
3. Standardisation of processes to improve administrative efficiency.

To do:
The Pilot Project will be completed and evaluated and rollout will begin in 2009

Buildings:

Refitting of the Madinah Building in San Fernando has been completed and it is now in use. Point Fortin is nearing completion and will be commissioned before the end of 2008. These two facilities will provide barrier free access, improved security, more effective utilisation of space and modern courtroom technology.

The process of refurbishing existing buildings for the comfort and safety of staff and customers continued with the internal painting of the Chaguanas Magistrates' Court and the old San Fernando Courts. New furniture has also been provided in San Fernando and several other courts are expected to benefit from replacement of old furniture this year. An additional courtroom has also been provided in San Fernando to handle criminal matters.

To Do:

- Refurbishment of existing courts in Couva, Rio Claro and Chaguanas will be completed. The contract for Rio Claro has already been awarded, Couva is at the stage of tender and the Chaguanas design is to be completed soon.
- Renovation of the Credit Union Building in San Fernando is expected to provide additional criminal courts
- Design for the Siparia Magistrates' Court has been completed and construction will begin soon. Delivery of the project is expected within 18 months of the award of the contract.
- Because of the poor response, we have had to retender for the provision of the access ramp for the Hall of Justice. However it is expected that the contract will be awarded and work completed this year
- Elevators in Port of Spain and San Fernando Supreme Court will be replaced.
- Refurbishment on the exterior of the HOJ will be continued.

Technology:

This falls under 3 main heads: -

- Audio Digital Recording – ADR systems have now been introduced in the Sangre Grande and San Fernando Magistrates' courts and expanded in the San Fernando High Court and St. George West Magistrates' District. 31 systems have been purchased for use in the other courts;

To Do:

All of the remaining courts will be outfitted during this term

- Case Management Software – This has been acquired, customized and introduced in 6 courtrooms in the magistracy. Training has been done for staff in the application of these systems and evaluation of impact and suitability of the systems is continuing;

To Do:

Roll out of the completed system will begin in February 2009, with most courts being equipped and systems operational by the end of 2009. The overall court network will be fully operational by the end of the first quarter of 2010.

- Video Conferencing – The use of video-conferencing technology has now been extended to the magistracy. Two systems have been installed, one each in San Fernando and Tobago as part of the pilot project. They allow for testimony to be taken from a remote location, not only in Trinidad and Tobago but also internationally. Discussions have been held with the Prison authorities and preliminary testing of the feasibility of conducting remand matters without the accused having to be transported to Court is being performed. Further discussions will have to be held with the prisons, prosecuting authorities and the bar before this can become routine procedure. In the meantime, all courts have already been connected to the Judiciary's WAN with sufficient bandwidth to accommodate video-conferencing and data communication.

Records Management:

Following the consultant's report, which recommended changes to the current systems of storing and retrieving Court records, Record Supervisors and Officers have been recruited and trained. This has already had a positive impact and

retrieval times have been significantly reduced. In the San Fernando and Tobago magistrates' courts the old system of using case sheets has been replaced with individual case files thereby facilitating easier tracking and more timely retrieval of information.

To Do:

The new procedures will be adopted in the entire court system in tandem with the case management system in the magistrates' courts during the coming year.

The Family Court:

In addition to the redesign of Court Processes that is set out in more detail in the annual report, one priority of the Family Court was customer care and empowerment. Our research revealed that domestic violence and co-parenting were issues needing urgent attention. Accordingly, in conjunction with UNIFEM, the JEI and the Grenada Counseling Clinic, a psycho-educational intervention program geared towards reducing domestic violence was undertaken. It began with men with the objective of helping them to accept responsibility for their own behaviour and choose alternatives to violence. It was later extended to women and children providing support and information, empowering them to make informed choices, to identify abuse and find routes to safety and to refuse to accept blame for abusive behaviour perpetrated on them. Personnel from other agencies were also trained to assist their clients. Among our partners in this venture were:

- Ministry of Social Development
- TTDF
- T&T Police Service
- T&T Prison Service
- Families in Action
- Rape Crisis Society of T&T
- UWI
- Caribbean Nazarene College

Response was overwhelmingly favourable.

The welfare of children when parents separate is, by law, of paramount importance to the Court. Their welfare is heavily dependent on the quality of the relationship between parents or caregivers. The co-parenting program focused

on diminishing negative psychological impact on children by addressing thought patterns that contribute to the quality of the relationship between parents. That program also received very positive feedback from participants.

To Do:

Experience gained from the pilot suggests that some revision of Family Proceedings Rules is necessary and that will be a high priority for the coming year.

We will continue to improve processes and case management software based on lessons learned from the evaluation of the pilot with a view to eventual rollout to the rest of the country. Capacity in some areas will have to be enhanced to deal effectively with the new package of Children's legislation and the Children's Authority

Specialised training will continue with seminars on the taking of evidence of children, the economic consequences of relationship breakdown [this is intended to better equip judicial officers to handle property settlements], domestic violence, settlement conferencing and mediation.

Training:

The judiciary has continued to place great emphasis on training during the past year including the continuing education programs for judicial officers and para-legal training for court staff. A building has been acquired for the purpose of constructing training labs to accommodate staff training in courtroom and registry settings including all of the systems and technology that are being introduced in the real-life courtrooms.

Customer Service:

The judiciary sees the development of a culture of service as essential to the fulfillment of its mission. The reason we exist is to serve the public. Our stated commitment to making accessibility one of our hallmarks requires access to our services to be as user-friendly as possible. In preparation for a renewed focus on customer service, surveys have been done to determine priority areas and a consultant has been engaged to develop training programs for customer service representatives and other staff who interact with the public.

The Judicial Education Institute

In fulfillment of its mandate, the Judicial Education Institute is proud to announce the publication of the general guide to the Civil Proceedings Rules 1998, which will be an invaluable tool to all court users. It will be available for purchase from the Supreme Court Registry offices at a reasonable price from the beginning of October.

To Do:

Some of the courses slated for delivery this year are:

- Developments in Public Law
- Understanding money laundering issues and application of anti money laundering legislation
- Management of complex criminal trials
- The legal implications of DNA evidence
- Para-legal training will continue along with refresher courses for staff in the Civil Proceedings Rules and the Family Proceedings Rules.

<u>Our Strengths and Challenges</u>

The work plan just outlined is only a partial list of what we hope to accomplish this year. In setting our strategic objectives we have had to take a realistic view of our operating environment, our strengths and our challenges. One of our strengths and the thing that is most significant for the future is not so much what we have done but what we have become. There is a changing culture within the judiciary. It is now accepted that everyone, from the Chief Justice to the messenger has a responsibility to access continuing education in the "hard" and "soft" skills that will better equip us to contribute to the accomplishment of our mission while improving the quality of our own lives **and** that there is a concomitant obligation on the part of the judiciary to provide it.

The role of the judicial officer, in keeping with current international trends, is no longer seen as merely the impartial arbiter of a dispute presented to him/her. He/she is also the leader of a team whose responsibility it is, with the support of the administrative staff, to manage a case from filing to disposition with the judicious employment of available resources and in a timely manner to achieve a fair and just result according to law. That is the only way effective case management and case-flow management can be achieved.

A moment's reflection will reveal that this has major implications for the administration of the judiciary [sometimes referred to as "Court Administration"] as distinct from the administration of justice, a broader and more generic concept with which it overlaps and is often unfortunately confused. Listing or assignment of judges, record-keeping, security, selection, management and sequestration of juries, information technology, training and human resource management all impact directly on a judicial officer's ability to deliver justice effectively and impartially, especially having regard to the fact that the state is a party in virtually all criminal litigation and much of the civil litigation that comes before the courts. If one is searching for a physical embodiment of the notion of the "separation of powers" it may be found in an independent Court Administration not answerable to the executive branch.

Therefore, as we position the judiciary for the future in accordance with our stated vision and mission and the national thrust towards developed country status, central to that process is the revision of the internal management structure, which is well underway. The strategic agenda will be set by a core visioning team that is led by judicial officers but incorporates key Court Administration officials. We have identified many of the major environmental constraints and challenges to the accomplishment of our mission. Some of them are systemic, or rather endemic, so far as they relate to the way in which public services have historically been organized and supplied by the state. Included among these are:

- The difficulty in attracting and retaining suitably qualified professionals in all areas at rates of remuneration that bear no realistic resemblance to what their services are worth on the open market. May I say without any trace of embarrassment that this includes judicial officers. Public service inevitably involves willing financial sacrifice, but there is a limit. The changing demographics of the bench in the effort to recruit officers who are at the peak of their physical and intellectual capacity, technologically savvy and willing to embrace change, means that potential recruits come with greater financial responsibilities for mortgages, education of children and the like. This is exacerbated by the fact that the method of calculating judicial pensions dictates that, upon retirement, there is the immediate loss of health benefits and more than one half of one's monthly income in circumstances where one is not permitted to return to the practice of law. There is no index-linking of pensions as in the United Kingdom. Judges who retired before the last few rounds of salary increases, along with their families, are crippled financially by inflation. Unlike parliamentarians, we

are also severely restricted in the types of business ventures and investments in which we can participate so there is little opportunity to supplement income while in office and after demitting. The point has been made repeatedly, and so far in vain, that this is not only a disincentive to qualified candidates but it has serious implications for the independence of judges approaching the end of their tenure. There must never be in reality or in the public perception, any suggestion that a judge might feel pressured not to offend in the hope of receiving some future assignment to supplement his/her income;

- Many of the jobs and functions in the Judiciary are unique to the organization and are shaped by the peculiar demands of Courts and the Procedural rules under which they function. The high turnover of staff in search of personal advancement and promotional opportunities creates a need for constant retraining and the inability to get the 'best fit' in many instances because of the dictates of the Public Service Regulations. The movement of employees both within individual departments and across different sectors in the Public Service must be rationalized. In order to resolve these issues fairly and in the best interest of employees and the Judiciary, we must engage the representative unions, the Ministry of Public Administration, the Chief Personnel Officer, the Director of Personnel Administration and other relevant stakeholders to provide rewarding career options with fair opportunities for all to advance;

- The success of the information technology innovations designed to speed up court proceedings depends heavily upon the availability of persons with specialized skills that never existed before in the Public Service and for which there is no pool of qualified persons available for recruitment. We have therefore been obliged to seek partnerships with educational institutions such as the Hugh Wooding Law School and C.O.S.T A.T.T to offer preparatory certification courses;

- Public sector recruitment and procurement procedures are often laborious and cumbersome, resulting in many lost opportunities and additional expense. Considerable streamlining needs to be done and I firmly believe that this can be achieved with no diminution in accountability. Like most problems this can be solved with mutual understanding through open dialogue;

- Some of the functions now performed by magistrates in particular are either repetitive or should be performed by someone else. In some instances, internal administrative arrangement can be made. Others require legislative reform. Areas of immediate focus include Preliminary Inquiries, Liquor Licensing, Traffic Tickets and Remands. This would free magistrates to better perform their primary function, which is to try summary cases;

- The Criminal landscape has changed dramatically in the past few years. Physical security for witnesses, jurors and court officers is a major concern. It must be vigorously addressed if public confidence in the administration of justice is to be maintained. This is not a job for the judiciary alone.

The foregoing list is not exhaustive but it provides some insight into the challenges that we face. However, I am comforted by the fact that we do not face them alone, but that there is evidence of tangible support and collaboration from several directions. I have already spoken about some of the successful partnership efforts.

Since my assumption of office the Bench/Bar Committee has also been revived. The promise of cooperation extended on behalf of the Law Association at the formal sitting in January of this year has already begun to materialize. Meetings thus far with the Council and President of the Law Association have been cordial and productive and some issues of mutual concern have already been addressed. Attorneys are, as a group, one of the principal users of our Court System and their contribution is essential. We rely on their input, understanding and cooperation for the successful implementation of the many procedural changes that are to come.

So ladies and gentlemen, as we confront the spectre of increasing crime and other social problems, the tale of the judiciary like the tale of the country is, if you would permit a literary allusion, a tale of two cities. It is simultaneously the best and the worst of times because big challenges present big opportunities. They force us to think out of the box which is the only way real transformation is accomplished.

The country that you live in is determined by your perspective, the breadth of your vision and by the audacity of your hope. On the one hand there is the country where many feel that we have failed, that our systems and institutions

are broken beyond repair, that this generation is lost, that we have no answers and are doomed to retreat behind ever thicker bars as criminals roam unchallenged. On the other hand I see a country rich in human and material resources, with a growing consensus that we must and can develop a different way of conversing and doing business, where with full respect for our diversity we move forward in a cooperative spirit. I choose to live in the latter country and it is my mission to ensure that the judiciary looks like that country well before 2020. We will recognize it when we see:

- Purpose designed Court buildings with full litigation support technology built in;
- OSHA compliant Courts whose premises and processes are fully accessible to the physically challenged including the sight and hearing impaired;
- More efficient use of technology including e-filing and virtual courts;
- Effective witness care and protection programs;
- Written performance standards with effective monitoring and control systems for all areas of activity including delivery of judgments;
- Improved accessibility to real-time information on services, schedules and case status for any court in the country through the customer service centres at each court location;
- Simplified procedures for accessing court services especially the petty civil jurisdiction.

In the short term, (i.e. this year) it is expected that those aspirations can find concrete expression in the following, some of which will require legislative change, for which discussion has already begun with relevant stakeholders.

- Elimination of Preliminary Enquiries – The system of preliminary enquiries was inherited from the United Kingdom which has since abandoned it without any sacrifice of fairness or justice. It makes the trial of indictable matters inordinately tedious and expensive and exposes witnesses to risk for longer than is necessary. There really is no need for two bites at the cherry and fairness can be assured by a system of appropriate criminal case management.

- Criminal Case Management – The days of trial, or defence, by ambush are long gone. If the purpose of the trial process is to sift evidence and establish the guilt or innocence of the accused, then that process can only

be enhanced by early disclosure and identification of the relevant issues and the rational management of witnesses and presentation of evidence.

- Witness Care Programs – To the uninitiated, the courtroom environment and the whole trial process may appear to be hostile. Witnesses need to have a place where their concerns can be heard. They need to be kept up to date on the progress of matters and not waste excessive amounts of time waiting to give evidence. They should know what to expect from the court room environment and the trial process.

- Traffic Tickets – Routine ticket violations could be penalized by a system of points culminating in the suspension of driving licences for non-payment of ticket fines or when the points cross a predetermined threshold. I do not claim credit for this as an original idea. Again the technology is available to input the necessary details at the point of citation. Unsuccessful challenge in court might then incur a surcharge.

- Liquor Licencing – In some jurisdictions licence applications are handled by licencing committees or local justices in the relevant local government districts. A similar approach would free magistrates to concentrate on summary trials.

- Extended Period of Remand and Remand by Video Link – There really is no reason for accused persons to be transported to court with the attendant security risks and expenditure of time and money unless their matters are going to be taken forward towards determination. Most routine matters can be addressed using available technology.

Constitutional Reform:

I turn now to a matter that is at the forefront of many minds, that is the issue of constitutional reform. The fact that the executive has initiated a process of review and reform of the constitution is not, by itself, cause for alarm. The present constitution is over 30 years old and the Court of Appeal, in recent times, has had cause to comment on the discomfort occasioned by some of the present provisions. The process of adoption of a new constitution is one of painstaking assembly of a general consensus without which the final document cannot procure the respect and adherence that it must if it is to be an instrument of preservation of order and cohesion.

It is a process that cannot be entrusted to lawyers and politicians alone and the development of a constitution requires the participation of the wider civil society whose aspirations it seeks to distil. Although we are not yet aware of the details of the planned process, consultation has been promised and, as it unfolds, we anticipate and look forward to the broadest solicitation of the views of the population.

In the meantime, as is perfectly proper in a situation where the relationship between the Executive, the Parliament and the Judiciary is up for review, some indication has been given that the views of the judiciary are being sought. Although the precise mechanism is still to be worked out, we welcome this initiative. The separation of powers should not be perceived as a barrier to communication. The inner workings of the judiciary, like those of other institutions, may sometimes appear obscure to those not intimately involved with its operations. We are sometimes perceived as living in ivory towers out of touch with reality. Nothing could be further from the truth. It is our responsibility to educate and inform the public we serve on matters and issues related to the judiciary. In fact, I would be delighted to host other arms of the state to visit with us to gain further insight into what we do and how and why we do it. It is in that spirit of outreach and open communication that I now offer a few observations without in any way seeking to pre-empt the discussions that must inevitably take place between the executive and the judiciary.

Some constitutional theorists liken constitutions to social contracts between the people of a nation and those to whom they entrust the power to govern. We might debate the aptness of the analogy but if anything is clear it is that the need for written laws, contracts and constitutions only arises because human beings cannot always be relied upon to act for the common good. The very need for the existence of a body of laws is an acknowledgement of our frailty and unreliability. And so, whether we are building a house or a nation, although we must proceed with optimism and hope, we should anticipate and prepare for the worst!

At an individual level, there can be nothing more overwhelming or intimidating for any citizen than to be pitted against the power of the state. The fact is, as the volume of litigation before the courts suggests, the state does not always get it right. That is why the entrenched provisions of modern constitutions, and in particular those we refer to as ‘fundamental’, in the sense that all other laws and provisions of the constitution are read subject to them, are the ones that deal with

the protection of the individual against arbitrary action of the state. It is not because we believe that the state intends to act arbitrarily but human experience has taught us that it might.

The judiciary stands between citizens and the state as the arbiter and protector of citizen's rights. But we stand with neither sword nor purse; we have no armies and no independent means of enforcing our orders. The authority and credibility of our courts derive from a common acceptance that respect for and adherence to due process and the rule of law is the only thing that preserves this final bastion and prevents descent into anarchy. Thus the right of the citizen as expressed in the constitution is not merely a right of recourse to the courts but a right to a particular type of process that we describe as 'due process' and to an independent tribunal. Due process and judicial independence are inextricably linked and are essential components of the framework of a functional modern democracy. Judicial independence, therefore, is not to be preserved and does not exist for the benefit of judges, but it is for the protection of every citizen.

Any discussion about the practical achievement of judicial independence must therefore focus, among other things, on arrangements that preserve meaningful control over its processes in the hands of the judiciary. That is part of the foundation of the doctrine of the separation of powers upon which our constitution is premised.

At their meeting at Latimer House in 1998, representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association, agreed on the adoption of a set of Principles and Guidelines, which represent good practice, to govern the relations between the Executive, Parliament and the Judiciary. Commonwealth Heads of Government, including Trinidad and Tobago, subsequently approved these principles. As they relate to the judiciary they address both independence and accountability.

Dealing first with the issue of accountability of judges, the main mechanisms identified were disciplinary proceedings that are limited in scope and conducted by an independent tribunal (and by independent it is assumed to be not under executive control); and legitimate public criticism. For the latter to be informed and productive I would also agree with the recommendation of the Limassol Colloquium of Commonwealth Judicial Officers in 2002 that the publication of periodic reports of its activities should be a practice adopted by all judiciaries.

These statements of principle are in accord with the basic proposition that our ultimate accountability is to the citizenry and they therefore identify direct mechanisms. So far as the expenditure of public funds is concerned, we are also, of course, subject to the various financial laws and regulations that govern such expenditure. What the Latimer House Principles are clear about is that consistent with judicial independence, and I quote:

"Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the Legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary"

Permit me to return to my earlier observations and to reiterate that there are several components of the system of justice for which the judiciary bears no responsibility but the responsibility for running the judiciary is the judiciary's. The administration of justice is not coterminous with the administration of the judiciary.

The principles first enunciated at Latimer House continue to be the subject of refinement and are constantly in focus at international fora. Indeed Judicial Independence will be at the forefront of the agenda when judicial officers gather at the CMJA conference in Capetown next month. There is legitimate ground for debate on the best mechanisms for delivery of capital projects and certain goods and services. Memoranda of understanding, partnership arrangements, joint responsibility and consultation may all be explored and employed as the situation warrants, and we welcome those discussions. But there is a growing international consensus, which we share, that Court Administration should be under the control of judiciaries.

Regionally, that is also the stance adopted by the Heads of Judiciaries at their meeting in June of this year and I quote from the communiqué issued at the end of their deliberations:

"Judiciaries should establish properly resourced offices of Court Administration under the direct control of the judiciary with responsibility for all matters relevant to court administration including finance and budgeting and human resource management and development"

I would not wish anyone to form the impression that this position is prompted by any reluctance to be accountable. Every year, the judiciary has to prepare, submit and defend budget proposals supported by detailed business plans. These are then subject to debate in Parliament and funds voted for the judiciary cannot be used for purposes other than those for which they are approved. The expenditure of those funds is also subject to the scrutiny of the Auditor General. Before moving on from the communiqué I wish to point out that regional heads of judiciary did emphasise that judicial independence and judicial accountability must co-exist and accepted the need to establish standards of ethical conduct for judicial officers, which should be made available to the public, as well as to devise suitable means to deal with inappropriate conduct that fell short of the gravity that would justify removal.

We have already taken action in this regard. The matter was discussed extensively at this year's continuing education seminar, which was addressed by Lord Justice Gage, one of the authors of the United Kingdom code. Small working groups have been convened within the judiciary to develop standards and procedures consistent with the constitutional provisions for the protection of judges. That work is very much on the front burner and we will reconvene early in the new term. This matter should not remain outstanding beyond the end of this term.

Milestones:

It would be remiss of me if, before drawing to a close, I did not note the departure and acknowledge the contribution, of some members of the judiciary family who have left during the past year.

First, of course, is Chief Justice Sharma who retired in January of this year. I would not wish the controversy that marked his last years at the helm to detract from the contribution he made during a long judicial career. During his time on the bench he delivered a number of landmark decisions and his tenure at the helm of the administration of justice featured such milestones as the implementation of the new Rules of the Supreme Court, the introduction of Audio Digital Court Reporting, the acquisition and refurbishment of a number of new judicial facilities and the introduction of the Family Court Pilot Project among others.

His championing of the issue of the modernization of the Magistracy was a clarion call that led all the efforts to bring the administration of justice into the 21st Century. We wish him good health and a long and happy retirement.

Mr. Justice David Myers also retired at the end of July. During his tenure, he brought the meticulous attention to detail, the rigorous analytical mind and the technological savvy developed in the course of his distinguished academic career and commercial litigation practice. In the relatively short time before his retirement he has contributed to the development of our jurisprudence especially in the public law arena. He attacked committee work with enthusiasm and insight and was instrumental in the implementation of several programs, including the employment of judicial research assistants.

After 22 years' service in the judiciary, first as Administrative Secretary to Chief Justice Bernard and then as a Master of the High Court, Master Ralph Doyle has also retired. He has enjoyed the distinction of having decisions that were criticized locally ultimately upheld by the Privy Council and we thank him for his loyal service.

As is inevitable in any family of this size, we have also suffered losses this year through illness and, in some cases, sudden and tragic circumstances. Every passing leaves a void and we continue to extend our condolences and prayers to the families and loved ones of those who have left us.

Finally, I would like to thank all those who have made this morning's proceedings, both the church service and this sitting, successful and inspirational. Thanks first of all to the Dean of the Cathedral Church of the Holy Trinity, the very reverend Fr. Colin Sampson for graciously hosting us once again. To the signal hill alumni choir, thanks for a job well done. I wish to thank the Trinidad and Tobago Defence Force for their scintillating display, which did bring a lift to today's proceedings. Thanks also are due to the members of the inter-religious organization and our particular gratitude is extended to Maulana Dr. Waffie Mohammed for a thought-provoking and inspirational address.

Fellow citizens, I did say at the beginning that this speech might not sound like a traditional address. A small number of persons have had the opportunity to see the text of this speech before it was delivered. One comment was that it reads rather like a CEO's report to the shareholders. That is not accidental. You need to know that the stock is on the upswing. The crew has navigated turbulent seas, but the ship is on course and the crew is focused and able.

As we face with confidence the challenges that this new term will bring we pray that GOD will grant us wisdom and direct our affairs. May we learn to treat each other with compassion and may GOD bless our nation.

I now declare the 2008/2009 Law Term open.

This Court now stands adjourned.