

**ADDRESS BY THE HONOURABLE THE CHIEF JUSTICE, MR JUSTICE IVOR ARCHIE**  
**AT THE OPENING OF THE 2011/2012 LAW TERM, HALL OF JUSTICE, KNOX**  
**STREET, PORT OF SPAIN, ON THE 16<sup>TH</sup> DAY OF SEPTEMBER 2011**

- Your Excellency, Mr. Timothy Hamel-Smith, Ag. President of the Republic of Trinidad and Tobago;
- Honourable Prime Minister of the Republic of Trinidad and Tobago, Honourable Kamla Persad –Bissessar and Dr. Bissessar
- Honourable Senator Lyndira Oudit, Ag. President of the Senate;
- Honourable Mr. Wade Mark Speaker of the House of Representatives;
- Senator the Honourable Anand Ramlogan, Attorney General; Honourable Herbert Volney, Minister of Justice, Honourable Prakash Ramadhar, Minister of Legal Affairs; Honourable Carolyn Seepersad –Bachan, Minister of Public Administration; Senator the Honourable Brigadier John Sandy, Minister of National Security
- Members of the Diplomatic Corps
- Hon Keith Rowley, Leader of the Opposition
- Assembly man Hilton Sandy, Deputy Chief Secretary, Tobago House of Assembly

- The Right Honourable Sir Charles Michael Dennis Byron, President of the Caribbean Court of Justice and Lady Norma Virgen Byron
- Honourable Judges of the Caribbean Court of Justice; Members of the Judiciary of Trinidad and Tobago;
- Members of the Tax Appeal Board; Members of the Industrial Court; Members of the Environmental Commission and Chairman of The Equal Opportunities Commission
- Members of the Senate, the House of Representatives, the Legal Fraternity, the protective services, the media, other dignitaries, ladies and gentlemen, brothers and sisters.

Welcome to the formal sitting of the Supreme Court to mark the opening of the 2011 – 2012 Law Term. Before I deliver my prepared text I would like to say how delighted we are to have both the Acting President and the Honourable Prime Minister here with us. It has been some time since we have had a sitting Prime Minister join us and her presence today at what must be a particularly taxing time for her underscores the cordial and collaborative atmosphere that has characterized our interactions this past year. The occasions when the holders of the three highest offices gather in one place for an event of national significance are rare, and it is important symbolically that we do so at a time when, more than ever, our nation needs to come together. It provides me with a unique opportunity and responsibility to continue my conversation with the nation since the judiciary as one of the arms of the state holds a critical role in our governance structure.

We are at a cross-road and what I have to offer today is not just a speech, nor is it a lecture. It is, in part, a cry from the heart for a country that I love and to which I am deeply committed. Please receive it in the spirit in which it is offered.

On August 31<sup>st</sup> 1962, Act No. 12 of 1962 came into force establishing a new Supreme Court of Judicature of Trinidad and Tobago, in accordance with the provisions of the Constitution. The new Court was birthed to serve a newly minted Independent nation. Our aspirations towards nationhood bespoke a confidence that we could at least rule ourselves politically, though we could not and have not for five decades been able to trust ourselves enough to be our own judges, at least in the final analysis. After nearly 50 years of independence, it is to that issue of trust that I return today, because I fear that if we do not address it, we are in danger of disintegration.

Birthdays and anniversaries are regarded as important events because they provide an opportunity to pause, reflect, take stock and refocus for the future. In the life of an individual, a 50<sup>th</sup> anniversary is particularly significant because one is expected by then to have achieved a certain level of maturity, to have evolved a clear sense of self and, depending on one's field of endeavor, to be able to point to a substantial body of life work that represents a positive contribution to the collective welfare. No less is true of a nation and its institutions although, in an historical context, 50 years is not such a long time for a newly independent country.

It is important, however, for us to ask the question whether the promises and hope that attended the first raising of our national flag have been largely fulfilled or betrayed. I am 51 years old, an independence child, I have grown up with this nation and shared its adolescent pangs and its painful existential quest for meaning, for a place in the sun. And so it pains me to report that what I see and feel around me is an atmosphere of growing cynicism and distrust, even amongst the younger generation, who are our future hope – and who can blame them!

What happened to us? Over the last 50 years, we have too often placed politics above statesmanship, personalities before principles and yes, family and tribe before the nation. We have lost our broader sense of community. In perceiving each other as enemies, or at least rivals for our country's rich heritage, we have attacked and denigrated each other at the expense of those offices and institutions that are

meant to provide the connecting tissue of our national corpus, and therefore should be held above the fray. If we don't respect each other then how can we sustain respect and trust for our national offices and institutions, every single one of which has come under attack over the years. Today I want to invite us as a nation to do some self-examination because I believe Trinidad and Tobago that we are better than that! We have to do better than that! We have no choice. We must take pride in our heritage and understand where we came from but please understand that there is no mother Africa, India, Europe, China or Lebanon to return to. Let us not romanticize the past or be in denial about present realities in those places. We are children of the Caribbean and we have to stay right here and fix it! If Trinidad and Tobago is a boat, ah go stay on it, sink or float!

Now, I know our propensity for mischief in Trinidad and Tobago. So, lest there be any in the recounting or interpretation of this address, let me be clear that that nothing I have to say today is intended to cast blame in any particular direction. Like you, I feel the pain of this nation and this is a rallying cry to all of us. My only desire is to be constructive.

We are in the midst of a declared state of emergency. That is a fact. Any debate at this stage about whether we should be or not will not take us forward. But every crisis provides both the opportunity and the impetus for fundamental change. We would not have gotten into this mess if we didn't, collectively, make some wrong choices. We will not get out of it by doing business as usual. It is up to us to use any temporary respite or breathing space that the current situation allows us to look beyond the immediate imperatives and to reflect and refocus. We must ask ourselves what sort of society do we want to build? What are our core values? Where are the virtues of discipline and tolerance that we espouse? Is mere tolerance enough as a watchword or must we revisit our national motto? After all I can tolerate what I despise. When is compassion going to return to our vocabulary and our interactions?

Unity is built on mutual respect and compassion, only then can we truly embrace and affirm each other. And what about those of us who are leaders? What is our responsibility when we are privileged to hold positions of authority? Or as we were challenged to ask by the late Dr. Pat Bishop in her poignant address to us just last year – “What is it for?”

Those of us who hold public office, including myself, delude ourselves if we think people will still believe or trust us simply because of the office we hold or because we tell them we are acting in their best interest. It is important for us to understand this as we seek to grapple with the breakdown in mutual trust and respect and the consequences that have flowed from that. We may define our challenge as one of demonstrating legitimacy! I locate this discussion in an opening of term speech not because I wish to be political or controversial, far from it! I do so because unless we understand the context in which we hold office, and the reasons why we do what we do and how we do it we will only make things worse. Without that understanding there is no way any of us can speak meaningfully about our mission and our areas of accountability. Let me repeat, we must all take responsibility for where we are and for the solutions to our challenges. So I will talk about statistics and programs in a while but permit me to talk first about a vision.

In my 2008 opening speech, I sought to articulate a vision, to share with you the choice I made in choosing to live here and in accepting the position of Chief Justice. It bears repeating. It is still apt. I haven't changed my mind. I want you to walk with me. See if you agree: *“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 we have already agreed 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.”*

We are committed as a nation in the words of our national anthem, to the forging of a society where every creed and race finds an equal place. In other words, we want a just and equitable society. The constitution, which must be the starting point, especially for a judiciary, speaks to a notion of equity that goes beyond a superficial equality that may be imposed by the counting of heads. That approach can only unleash a perpetual round of tit for tat that rends the fabric of society. And who is to say which perception of historical imbalance is more accurate? Lasting balance and stability can only be grounded in the rule of law. That is why we have a judiciary and adherence to the rule of law is the only hope for this nation. And we have to ask like Dr. Bishop, what is the rule of law for? It is for preserving community. It is grounded in the notion of a shared humanity and ethical principles that arise from that premise. We must create systems, institutions and a national culture that eschew nepotism, and provide equality of access to the opportunities that our national patrimony affords us. In the words of the preamble to our constitution, we are a people that:

*“ respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;*

*have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;”*

The implications of such language are profound because it ties the legitimacy of our national organs and institutions, whether it is the

government of the day, the parliament or the courts, to their ability to deliver justice in that broader sense. It is also premised on the notion that the “justice system” should be proactive (or preventative) and not merely reactive. It also means that the judiciary is central to, but not the only component of ‘the justice system’. That is why I have stressed the need for partnership and collaboration across the justice sector, while respecting appropriate boundaries. One of the best definitions of “justice” that I can find is the 2007 Nuremburg Declaration:

*‘ “**Justice**” is understood as meaning accountability and fairness in the protection and vindication of rights, and the prevention and redress of wrongs.*

*Justice must be administered by institutions and mechanisms that enjoy legitimacy, comply with the rule of law and are consistent with international human rights standards. Justice combines elements of criminal justice, truth-seeking, reparations and institutional reform as well as the fair distribution of, and access to, public goods, and equity within society at large’*

So far as judiciaries are concerned, the plan of action developed at the Nairobi forum in 2005 as a follow-up to the Latimer House declaration succinctly encapsulates our understanding of our mission (I am paraphrasing slightly):

*The formal structures of justice, high costs, and the culture of delays, and physical distances from courts limit the effective participation of the people, especially the poor in accessing justice. In the context of the need for alternatives to formal procedures, [We] need to construct new ways of pursuing a human rights vision of justice due to the failure of the old formal approach to guarantee effective access to justice. There [is] a need to incorporate procedures and institutions into the mainstream judicial system that guarantee better access to justice”*

The notion of access for all continues to drive us in the judiciary. Indeed it may be argued that “access to justice” is the most fundamental of all human rights, since those rights articulated in the constitution are of no value to those who have no effective means of securing their vindication. The core value of access to justice is therefore at the centre of our vision which as you may know by now is :

*“.. 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”*

The commitment to accessibility has profound implications for the way in which every organ of the state sees its role and, in the context of a rapidly evolving technological environment, forces us to move beyond our traditional province in the provision of services. In other words, we must become a high-performance, professional organization. And yes, we have to think of ourselves as being in a service industry because it reminds us that we have competition. People do have choices. A cutlass or a gang-leader who will collect a debt for a fee are also alternative dispute resolution mechanisms! So timeliness, efficiency, and attracting public trust and confidence are not just feel-good objectives. They are our *raison d’etre*. The alternative is societal degradation and chaos. It is only by demonstrating an attitude of service that we can rebuild trust.

Trust is important in strained economic times when we ask citizens to endure hardship. Trust is important for effective policing otherwise citizens will not cooperate and share information. Undoubtedly there are times when vigorous action must be taken in the face of a real threat, there can be no gainsaying that, but an effective justice system must ultimately rely on the trust of our citizens. So when you see reference in my speeches or the annual report to our efforts to build a “*high performance, professional organization*”, that is what we are talking about. That is the vision.

I feel that it is important to have this discussion because I don’t believe my accounting to the nation should be just about statistics. Numbers are important,

after all, the work must be done but you can read that stuff in the report. We have been placing significant emphasis in recent times on that part of our vision that speaks to attracting public trust and confidence. So if you do not see drastic change in some of the numbers presented or even some of the anticipated visible accomplishments in terms of physical plant, it does not mean that the transformation process has stalled. I have to share one bit of good news though. After many hiccups, installation of the ramp and lift at the front of the Hall of Justice to provide access for the physically challenged is almost complete. The lift has been installed and is being tested. I had hoped to surprise you today with a fully functional access point but, this is T&T, what can I say?

The focus this past year and continuing has been on the articulation and dissemination of our core values through face-to-face meetings at court locations throughout the country and the strengthening of our internal governance environment. The re-engineering of our core processes has continued with new performance measures and benchmarks developed from a discussion of those values and our vision. This has in turn influenced the kind of data our statistical department is capturing because we now have a new system of management reporting for effective decision-making and corrective action. You will see some of it reflected in the way the reporting of performance statistics in the annual report continues to evolve.

In reporting on progress over the past year, I would like to acknowledge the valuable collaboration that has come out of the convening of the inter-ministerial committee for the justice sector. I salute the Honorable Prime Minister for having the vision to be open to a new approach and her willingness to facilitate active dialogue between the executive and judicial arms of the State. Having the Ministers with relevant input to the administration of justice meet periodically with the Chief Justice is proving to be invaluable in the co-ordination of policies. This does not in any way undermine the independence of the judiciary, which would not countenance any arbitrary imposition, but it ensures that the support infrastructure and critical inputs to our processes can be planned and sourced on a more rational

and timely basis. A lot of work is being done at the level of the Permanent Secretaries and senior technocrats to ensure that the policies that each arm articulates are translated into effective action. To that end, sub-committees for Accommodation and Process and Technology have been given specific mandates to focus on high priority areas. One of those is the establishment of an information technology platform for the sharing and processing of information among justice sector agencies. So, just to give one example, tracing of newly arrested persons and the vetting of deeds presented for the securing of bail will soon be a nearly instantaneous process.

The process and technology sub-committee will also tackle as its next major project, the retooling that will be necessary for the elimination of preliminary inquiries.

### **PERFORMANCE**

Before turning to the performance statistics, I would like to provide some context by recalling the key pillars of the transformation thrust upon which the judiciary has embarked. Last year I indicated that structural reform was being pursued under three broad heads - Core Processes, Development of a Professional Culture and Performance Measurement and Management.

Much attention has been focused during this past year on the structural and cultural changes that would ensure improved transparency and accountability. In that regard, we have now completed the **Judiciary Procurement Policy** –It is generally based on the current framework for procurement in the public sector but takes into consideration added dimensions of procurement risk. The policy provides guidelines for achieving value for money, transparency, accountability and ethics in procurement.

We have also developed and adopted a **Court Administration Unit Code of Ethics** – The Code of Ethics provides guidelines for the conduct of CAU Officers by defining acceptable standards and providing a frame of reference for professional behaviour and responsibilities. It is directly linked to the performance target of engendering public trust and confidence.

For the first time, all procedures in the civil registries have been documented in the form of a **Desk Manual**, which is available to staff in soft and hard copy. This is an invaluable training tool that also facilitates improved consistency of service and assists in the development of information management software and management reports. I am also pleased to announce that the Judicial Education Institute has now evolved from pilot status and we are in the process of recruiting a program director. We expect to complete the filling of the established posts during the coming year. This will allow the JEI to fulfill its mandate as a fully-fledged education institute.

In the area of professional development, training has continued for judges, magistrates, registrars and judicial research assistants in areas as diverse as the use of technology to enhance courtroom performance, matrimonial property settlement and legal reasoning and writing. A fuller account of training activities is set out in the annual report. The Judicial Education Institute has also responded to the demand for more consistency in sentencing by producing a sentencing handbook, which is already being extensively used by judges and practitioners.

In the area of Court Procedures, there are major changes that have been in the planning stages and will be rolled-out in the coming year. The most significant will be the elimination of Preliminary Inquiries. Draft legislation has been prepared after extensive consultation and I am assured that it will be brought to parliament within a few weeks. This is expected to bring a major transformation to the criminal litigation landscape. The best available statistics show that, at present, it takes 5 ½ years on average for an indictable matter to move from the stage of the laying of the information to the filing of an indictment in the High Court. Historically, this has been due, in part, to a lack of resources, but it has exposed witnesses to undue risk and eroded the quality of testimony and delivery of justice as a whole by the mere fact of delay. We confidently expect that, with the employment of the criminal case management rules that have been proposed, the average age of indictable matters in the system will fall drastically, thereby ensuring speedier justice. It will also have a knock-on effect at the level of the magistrates' courts. At the moment, in the magistrates' courts, the disposition to filing ratio (which is the ration of matters

completed in any given period to the number of matters filed) is close to 1.0. As some of the workload is reduced it is expected that magistrates will be able to devote more time to summary trials, thereby reducing the average time to completion.

On the Civil Litigation side, we continue to retool in accordance with the philosophy of the Civil Procedure Rules. It has always been the case that the Rules are predicated on the assumption that only a minority of matters will actually go to trial. Every reasonable effort therefore must be made to resolve matters justly at an earlier stage. Arising from the success of last year's mediation pilot, we now propose a staged approach as standard for most types of matters. Mediation by a certified mediator, followed, if necessary, by a judicial settlement conference conducted by a judge and only if that is unsuccessful, by a trial.

Mediation and judicial settlement are both forms of facilitated negotiation that are designed to save the time and drain on resources incurred by a trial. Mediation encourages the parties, through the input of a third party to focus on resolving the disagreement rather than proving or disproving the evidence for or against either party. It allows the parties to craft a solution for themselves rather than having to accept a solution imposed by the court. The consistent experience internationally is that when mediation is a standard part of the dispute resolution landscape, between 45% to 70% of matters are settled by mediation. That accords with our experience in the pilot. To this end, the judiciary, which is an approved mediation agency under the Mediation Act, has recently trained a number of judicial officers in mediation, not necessarily to have them function in that role, but to provide a deeper understanding of and sensitivity to the process and to supplement their case management skills. Court annexed mediation should become routine with the assistance of an approved panel of certified mediators.

Judicial Settlement conferencing is a more robust form of facilitative negotiation where a judge, who will not try the case if it does get that far, may render his opinion on the merits of the case or issues in the case. There is an opportunity to

shine the harsh light of reality for the misguided litigant and bring an end to the illusion that the adjudicative process will necessarily vindicate their perceived rights or entitlements. There will be further discussion with the Law Association before implementation. However, I am pleased to note that there now appears to be agreement in principle that masters should assume a more prominent role in civil case management, at least in the simpler or more routine matters. This will allow judges to devote more time to trials. These changes are necessary because it is physically impossible to try every matter that is filed. All modern court systems are organized and resourced on the assumption that most of the matters filed will not require a full trial.

I must pause here to commend the two acting Masters Ms. Margaret Mohammed and Mrs. Martha Alexander, who by dint of hard work and competent management have managed to eliminate a substantial logjam in the Masters' Courts. Where matters were previously being fixed for 2014, we are now up to date and I congratulate them for this accomplishment.

One other change now being contemplated is the expansion of the jurisdiction of the Summary Courts in civil matters. The current limit of \$15,000 for Petty Civil matters was set many years ago and is no longer realistic. The cost of pursuing small claims in the High Court can be prohibitive. The fact is that more than half of the debt collection and breach of contract matters filed in the High Court are in respect of sums between \$15,000 and \$50,000. Discussions are underway with a view to assessing the full impact of an increase of the statutory limit to \$50,000 on the workload of the magistrates and the resources of the magistrates' courts.

I spoke earlier about the need to be proactive and to respond to the realities of our external environment. You will see during the coming year, the introduction, on an experimental basis, of the first drug treatment court. This is a type of intervention that will address the needs of a clientele who interface with the justice system because of an offence committed but for whom the underlying problem is a drug

addiction. It is also a very good example of what can be achieved through constructive collaboration.

The judiciary is concerned about the increased number of persons coming before the courts on drug related offences, or who may have committed offences to feed a drug habit. We are also aware of the goals of this country's National Anti Drug Plan, which are consonant with the Judiciary's desire to develop alternatives to incarceration for offenders who are amenable to a different type of intervention. The CARICOM Secretariat and the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States, (OAS), have already undertaken a significant body of work in that area.

The Judiciary therefore participated in discussions with the Secretary for Multi-Dimensional Security of the OAS on the implementation of Drug Treatment Courts in Trinidad and Tobago. This has resulted in the creation of training opportunities for members of the Judiciary and other critical partners whose services will be integral to the formation, implementation and maintenance of these courts. Accordingly, I have given a commitment to undertake the establishment of one drug treatment court as a pilot during the first quarter of next year.

A training workshop, supported by CICAD and facilitated by a number of drug treatment court professionals from Canada, the United Kingdom, The United States of America and Jamaica is planned for next month, and will include participants from all partner agencies.

No one should believe that this is by any means an abdication of our responsibility to deal firmly with criminal behavior. Nor is it to be construed as a mere "slap on the wrist" or "soft touch" approach on drug related issues. Graduates of the drug courts have to work very hard to not only maintain their sobriety, but also to meet the other demands which are placed on them. It is not an easy path, but it is a developmental one, through which persons with drug problems can be supported to change their behaviours. Experience in the hemisphere, and particularly in Jamaica, which also has a significant drug problem, has shown that this approach ultimately

leads to a significant reduction in the number of repeat offenders, and a resultant decrease in the numbers of prisoners and persons appearing before the courts. This in turn will save a considerable amount of money that could be redirected to other programmes. Of greater importance is the fact that, it will save lives, as it returns healthy persons to the community, who are able to function in a harmonious and supportive manner in their families and, by extension, their communities. The judiciary looks forward to the support of the policy makers, and critical partner agencies in undertaking this programme.

### **STATISTICS**

I now turn to a brief overview of the performance statistics. At the level of the Court of Appeal, disposition remained constant although filings were up by 8%. OF the matters dealt with, 58% were determined in the same year of filing and 73% were less than 2 years old at the time of disposition.

In the High Court Civil jurisdiction, the determination to filing ratio for CPR matters has remained steady at 0.9 even though filings decreased by about 10% to 4935. That suggests that the judges are now at saturation point in terms of their ability to conduct more trials. It underscores the need for the alternative resolution mechanisms that I have mentioned. To put it starkly, if every matter went to trial, each judge would have to do over 400 trials per year, a clear impossibility. The good news is that justice is not as slow as some perceive. The new rules and the strict adherence to timelines have had a salutary effect on the pace of justice. 76% of matters are now being disposed of within 2 years of filing, 58% in less than 1 year. That is a remarkable turn around from what previously obtained and I wish to publicly commend our hard-working judges for this accomplishment. It remains my firm view that this has been achieved without any diminution in the quality of justice. The Rules Committee continues to monitor the effect of the rules and has responded to concerns by relaxing its strictures in some areas such as the prohibition of amendments after the first case management conference. As far as the much-criticized relief from sanctions regime (as applied by the Court of Appeal) is

concerned, we feel that, on balance, it still serves a useful purpose. The fact is that these applications occur in only a small minority of cases and they are not inevitably refused either at the High Court or Court of Appeal level. The regime is strict, but not completely inflexible. If any practitioner finds themselves before the Courts with this type of application on a regular basis then they should examine the way their practice is organized.

In the criminal jurisdiction the need for criminal case management at the High Court level is underscored by the dramatic increase in indictments filed from 132 in 2009/2010 to 279 in 2010/2011 – a more than 100% increase. We were able to record a 26% increase in dispositions but there is a clear need for intervention. A sub-committee of the inter-ministerial justice committee is now giving careful attention to the process reform and resourcing requirements necessary to meet the demands of speedy justice in the context of the current crime environment.

The Family Court continues to be a success with throughput and customer satisfaction ratings remaining high. This Court is a model of expedition and timeliness with 87% of matters in the High Court jurisdiction having a first hearing within 12 weeks and 86% determined within a year. The corresponding figures for the magisterial jurisdiction are 100% and 83% respectively.

### **The Magistracy**

There were 104,155 new cases filed last year, up from 89,416 the year before. Dispositions were up from 88,907 to 95,071 an increase of 7%. I would like to say a special word of appreciation to those hardworking magistrates who are keeping the system afloat in the face of sometimes very harsh conditions. Conditions in many of the courts remain far from ideal, and efforts will be redoubled to roll out the planned improvements to physical plant and courtroom technology.

In commenting on the performance of the courts, I must stress that the accomplishments of the judicial officers would never be possible without the support of a committed and hard-working staff who deserve public acclaim for

helping to keep the ship afloat. Having said that, I must once again make a plea for urgent reform of public sector human resource management, not just in terms of remuneration but also in the decentralization of many HR functions, rationalization of job evaluation, movement and disciplinary policies and procedures, without which Public Sector management will remain extraordinarily challenging.

I am not for one moment suggesting that pay is not important. I know that this is not unique to the justice sector, but it is becoming more and more difficult to attract and retain top talent to the judiciary as we seek to increase our numbers to meet anticipated needs. That is not to say that the current bench is sub-par, quite the contrary! In my view, this is collectively the most talented bench in our history. Indeed most of us will have taken a cut in income to serve the country and would have accepted that responding to the call for national service would entail a degree of personal sacrifice. By the same token, however, judicial officers would have had a reasonable expectation that their compensation package would be reviewed at regular intervals to keep pace with economic realities and the fact that the demographic of the bench has changed. Most of us are still in the process of educating children and servicing mortgages. We have not had any increase in basic salary since 2005. This is particularly grievous since pension benefits (unlike in the Public Service) are computed on the basis of basic salary alone and not on the aggregate of basic salary plus allowances. We are now over due for review.

I am encouraged by the fact that the Prime Minister has expressed her concern that the judges be fairly and adequately compensated. I know that there are other negotiations currently engaging her government's attention and accept as genuine her assurance that we will not be forgotten. As we know, however, once the Prime Minister has done her part by advising His Excellency, the President to trigger the process of review, it then goes to the Salaries Review Commission (SRC). The SRC, which is an independent body under the constitution, must do its work! The last time we made submissions to the SRC we requested an audience to address in a constructive manner the grave and actionable injustice that was being perpetrated against us, particularly in the area of housing, supported as you would expect of

lawyers, by surveys and documentary evidence. We were not even afforded the courtesy of a positive reply or any explanation or justification for why, in its report, our representations were simply ignored. The fact that judges are not prone to marching and striking does not mean we should be expected to sit and accept whatever the SRC chooses to dole out without any meaningful discussion. It is meant to be a discussion, not a petition! We are entitled to the benefit of due process and good industrial relations practice just like any other citizens. This time, we expect to be treated with more respect. A word to the wise.....

Unto more pleasant matters.....

### **TRIBUTES**

It is customary, before concluding the opening of term address, to pay tribute to those who have retired or otherwise moved on during the course of the preceding year. For the sake of brevity in my address, because its difficult to single out some and not include everyone, we have devoted a section of the annual report to that purpose. However, I cannot fail to record our gratitude once again to Justices Carlton Best and Madame Justice Amrika Tiwary-Reddy who have both served this country with distinction in several capacities. We wish them both a long and fruitful retirement. Congratulations and thank you also go to Ms. Donna Boucaud, whose name has become synonymous with the Family Court. Her leadership through the formative years, from its inception, has been truly invaluable. She leaves us on a scholarship to pursue a Master's Degree and we wish her success and abundant blessing.

Thanks go out to the very Reverend Colin Sampson, dean of the cathedral church of the Holy Trinity for hosting our opening service once again. I also want to thank our co-adjutor Bishop the Right Reverend Claude Berkeley for his insightful and inspiring address. To the Marionettes Chorale, our sincere appreciation for your enhancement of the worship service. We gather in the cathedral for prayer and that responsibility was handled as usual by the IRO, thaks to the President and members. To all the judiciary and MTS staff and other service providers who worked tirelessly

to make today's ceremonies a reality, thank you as well. And of course let us not forget the members of the media.

In keeping with our commitment to timeliness and expedition, I must refrain from taxing your patience and politeness much further. However, I cannot end without a final word about our current state of affairs.

### **CURRENT STATE OF AFFAIRS**

Fellow citizens. I find myself addressing you in extraordinary circumstances. We are in the midst of a state of emergency. Naturally, that fact, and the reasons for it are the source of many concerns. There is one thing I do not want you to be concerned about. We are not in a situation of armed insurrection, there has been no coup. There is therefore no reason to panic. Contrary to opinions expressed in uninformed circles, the Constitution has not been suspended. As a matter of fact, His Excellency the President has issued a proclamation of a state of emergency pursuant to the constitution. It sounds a little obvious when one states it but clearly, the constitution can't suspend itself! Those provisions of the constitution that protect and preserve fundamental rights have not been suspended or pushed aside. What it does mean is that there is some temporary and limited restriction on the exercise of some of those rights. Section 13 of the constitution makes it clear that any Acts or Regulations passed during a period of public emergency that are inconsistent with the fundamental rights provisions of the constitution shall be effective only so far as they may be reasonably justifiable for the purpose of dealing with the situation that exists during that period. So the exercise of emergency powers is subject to the constitution. In that regard, one may note, for example, that under the Emergency Powers Regulations 2011, regulation 10, the power to stop and search is only exercisable on the basis of reasonable suspicion. We expect that the security forces have a serious job to do and for which they have been granted certain powers. We also all have a right to expect that they will exercise appropriate restraint and only use such coercive measures as are necessary and lawful in any given circumstance. Ultimately, the courts are the arbiter of what is constitutional, and in the case of the

arrest or detention of any person, what is lawful. The judiciary continues to stand ready to perform its constitutional function as it always has. We are committed to maintaining balance and the rule of law. I would not wish for you to entertain any unnecessary doubts or apprehension on that score. Citizens may continue to have access to the courts for the protection and vindication of their rights.

Now is a time for restraint, careful thought, and measured action and response. We only have this last chance to fix this nation. Let us not allow it to slip from our grasp. Let us pray for wisdom for those who have to make the tough and critical decisions that will determine our future, including our judicial officers. May we in our individual lives exhibit balance, compassion and love so that healing may begin.

And may God bless our nation!

This Court now stands adjourned.