

**SPEECH BY THE HONOURABLE THE CHIEF JUSTICE**  
**FOR THE CEREMONIAL OPENING OF THE 2017/2018**

**LAW TERM**

Your Excellency Mr. Anthony Thomas Aquinas Carmona O.R.T.T.,  
S.C., President of the Republic of Trinidad and Tobago and Mrs.  
Reema Carmona

The Honourable Faris Al Rawi, Attorney General

Other Members of the Cabinet of the Republic of Trinidad and  
Tobago

Mrs. Kamla Persad-Bissessar, S.C., Leader of the Opposition

Your Excellencies Ambassadors and Heads of Mission accredited to  
Trinidad and Tobago

The Right Honourable Sir Charles Denis Byron, President of the  
Caribbean Court of Justice, and Lady Byron

Honourable Justices of Appeal and Judges and Masters of the  
Supreme Court of Trinidad and Tobago

Heads of Religious Bodies

Vice-President of the Senate, Senator the Honourable Nigel De  
Freitas and Mrs. De Freitas

Presidents, Chairpersons and Members of Superior Courts of Record  
Chief of Defence Staff, Commodore Hayden Pritchard;

Mr. Harold Phillip, Acting Commissioner of Police

Commissioner of Prisons Agt. Mr. William Alexander

Chief Fire Officer Mr. Roosevelt Bruce

His Worship Joel Martinez, Mayor of Port of Spain;

His Worship Kazim Hosein, Mayor of San Fernando;

Judges of The Caribbean Court of Justice

Her Worship Mrs. Maria Busby-Earle Caddle, Acting Chief Magistrate  
and other Magistrates

Registrars of the Supreme Court

Members of the Legal Fraternity, the business sector, religious  
organisations and civil society

Other specially invited guests

Members of the Media

Distinguished ladies and gentlemen all.

In keeping with a trend that I wish to continue, I place my expressions of gratitude at the beginning of my address rather than at the end. By doing so I hope to underscore and acknowledge the fact that no significant accomplishment is ever the result of the efforts of any single person and, more important than the recitation of plans and statistics is the appreciation of all our stakeholders, friends and employees who have contributed to the success of today's proceedings and our endeavours during the past year.

My heartfelt thanks therefore go out to:

- Our Bishop Claude Berkeley and to Reverend Williams of the Cathedral Church of the Holy Trinity for graciously hosting us one more time;
- The Morvant Methodist Youth Chorale who inspired us with their renditions and reminded us that there is hope for the future as long as we have young people like that in our midst;
- Our soloist Mr. Raymond Edwards;
- Our very distinguished guest speaker Mr. Gerard Latulippe, for what can only be described as a tour de force and whose reflections and conversations I have come to value over the past few years since we have become acquainted;
- The members of the IRO for their faithful participation as we reflected on the magnitude of our charge in the service of divine worship;
- The Police Service for the polished and professional display that added pizzazz to our celebrations;
- Our judicial officers and support staff, including MTS for their unstinting efforts during the past year and today
- And last but not least, all of you who by your physical presence and attention via electronic media provide welcome support and added meaning to our opening of term activities. For the avoidance of doubt, let me make it clear that this

event is about you - all the people of the nation for whom we exist, who we serve and to whom we are accountable, not just the lawyers, although we welcome those attorneys who have chosen to attend.

The 2016/2017 term has been a challenging one and there is no reason to believe that 2017/2018 will be any different. However, in so far as we create the future that we inhabit by the choices we make, I face it with unbridled optimism in our capacity to overcome and to excel, no matter what comes our way.

In a few weeks time, the budget will be read and, from all indications, every citizen and every institution in Trinidad and Tobago will have to adjust to a new reality that ought to have been obvious to anyone with a discerning mind for quite some time. As an independent arm of State that has always existed with what we consider to be less than our appropriate share of the national budget, the Judiciary has learned to do more with less while continuing to insist that appropriate and constitutionally entrenched arrangements be put in place to ensure continuity and accountability in the discharge of our mandate.

It is with this in mind that our strategic focus and the content of my speeches over the years has been geared towards better service delivery through process reform as we have never had a great deal of money to throw at the challenges we face.

In light of the concerns that occupy the minds of the majority of our citizens, our strategic focus, which is reflected in the theme of this year's opening and annual report "**Resetting the Criminal Justice System**" is therefore most apt.

I am grateful to this morning's speaker, Mr. Latulippe for helping to set the context for my short address this year, which is both a continuation of my conversation with the nation initiated nearly a decade ago and an appeal to all our stakeholders to partner with us in our ongoing journey towards a desirable future state, even as we adjust to new circumstances.

To be clear, what I wish to emphasize as I give account for our stewardship over the past year and share some of the agenda for the new term is that the nation can be assured that we remain stable and focused on our core mission even though the strategic focus may be adjusted from time to time. During the current period, one of our principal strategic foci is one of the most vulnerable sectors of our society, our youth. You will therefore hear reference to one of our more significant achievements, the creation of a Family and Children Division of the Supreme Court that, like everything we do is grounded in an unchanging moral and philosophical paradigm to which we keep returning.

Central to that is the assumption that we have a social contract that can only be discharged in the context of an Independent and Accountable Judiciary.

In tandem with that is a moral construct that sees access to justice as a fundamental human right for all. That philosophy is given written expression in instruments such as the Universal Declarations of Human Rights and the UN Conventions on the Rights of the Child but it must find concrete manifestation in our planning, processes and service delivery. In that regard, though little has been reported before now, I am happy to say that much has been accomplished. While, as a matter of accountability, I must at some point touch on what I consider to be the more mundane statistical reporting, I prefer to spend most of my time sharing what we are doing by way of restructuring for better service delivery.

Many of you may recall references in last year's address to imminent changes. While it is true that some of them have come to pass, I continue to be disappointed at the glacial pace of change in the public sector. It calls for a reflection on cultural competencies on which there has been a fair amount of academic writing in recent years. Having spent most of my working life in the public sector it strikes me that, as a society, we suffer from an implementation deficit that is a manifestation of a "Post Colonial Traumatic Syndrome" that rewards risk-averse management styles.

We are still waiting for permission or validation despite being very adept at planning. A case in point is the realisation of plans for the restructuring of the judiciary for greater efficiency and accountability, which is the subject of a comprehensive report submitted over a year ago and referenced at last year's opening. This is not about money. In fact, the lack of money lends more urgency to its implementation. I cannot attribute the delay to any lack of intent on the part of the executive, which has been very supportive in many other respects, but this is not something the judiciary can simply do on it's own. It requires executive and legislative action. Collectively, we can and must do better instead of surrendering to analysis paralysis in pursuit of perfection. The inherent randomness of the material universe means that, in practice, we live in a world that must be tolerant of margins of error. It is better to get something done 85% right than to strive for the extra 15% and accomplish nothing at all. We can fix it as we go along. That is how the common law has always operated.

Nonetheless, we have managed to advance our agenda in some key areas to which I shall now refer.

***Case Management Information System:***

The CMIS has undergone several iterations and is able to provide robust and economical support for the operation of the Children Court. Even more exciting is the fact that we have interviewed and will soon have our own programmers on board to facilitate expansion and roll-out across the entire judiciary. I cannot overemphasize the importance of this development especially in respect of what it will mean for the magistracy in terms of workflow and performance monitoring and management. The move from manual to electronic systems is a game-changer! One of the reasons that we are unable to produce complete and timely statistics for the magistracy is because we rely on a manual system. We are short of six statistical clerks at the moment because the powers that be, in their wisdom, classified these positions at the level of BOA 1's, thereby compromising our ability to attract , train and retain appropriate staff – an example of why the judiciary, which

best understands its own needs, must have the ability to control its human resource as a necessary adjunct to financial autonomy. It is pointless to talk about performance based management and accountability without the tools and processes necessary to achieve efficiency. A proper CMIS must record and monitor the progress of cases through the Court, produce support documents and workload management reports. As we continue to refine and develop the platform we will be able to integrate financial information including fines and fees as well as facilitate automated information exchange with critical stakeholders. You may recall that the genesis of this initiative was a project arising out of the relationships built with the National Centre for State Courts and the Nigerian Judiciary arising in part from my official travels. The cost of hosting in the cloud is a miserly US\$5000 per year so across the entire judiciary we will be saving millions of dollars in individual licencing fees and maintenance costs since we own the source code and will no longer be subject to vendor fees.

***Juvenile Court Project:***

The Children Court component of the Family and Children division of the High Court is almost ready to go. Judicial officers have been recruited and are currently undergoing training.

Customization work is well advanced on the North and South Buildings and we will be hearing our first case in October. The Inter-Agency and Multi-Agency Protocols have been signed and launched and we are just awaiting finalisation and gazetting of the Children Court Rules on which we have been awaiting comments from the Law Association for over a year.

***UNODC Codes:***

A co-joint exercise as part of the Juvenile Court Project has been the adoption of the UNODC Codes by all stakeholders in the criminal justice system. This laborious and apparently mundane exercise is in fact a major advance that enables us to bring our criminal statistical reporting inline with internationally

acceptable standards by mapping every offence on the statute books to a numerical code. It will enable better record-keeping, management, monitoring and planning. I mention it as an example of the quiet behind the scenes inter-agency cooperation that is taking place to ultimately improve our ability to track and address our crime problem.

***Criminal Procedure Rules:***

Despite initial misgivings in some quarters, the culture change intended by the introduction of the rules is beginning to take root and even bear some fruit. While I have never believed that external endorsement was required, I am happy to note that the structure and philosophy of our rules has now been approved by the Privy Council in the Eastern Caribbean context in the case of *Sexius v The Attorney General* as being consistent with the fundamental rights and freedoms guaranteed by the constitution and at common law. There is no breach of the right to silence or presumption of innocence or any other cherished principles in providing information necessary to progress a case at the appropriate time and in the appropriate manner. I look forward to the cooperation of all our stake-holders as we seek ways to continually improve our processes, including the rules, without any singeing of robes or burning of bridges.

***Court Annexed Mediation:***

While this has been rather long in coming, I am pleased to report that advertisements have finally gone out for mediators and, once we populate the rosters with the cooperation of the Mediation Board we will be on our way.

***Performance Statistics:***

In the final analysis, although this is not the only nor is it necessarily the best way of judging the effectiveness of a judiciary, public perception is influenced by disposition rates. In that regard I must commend the collective effort of our judicial officers and their support staff who have laboured in the

trenches in the face of harsh and misplaced criticism. Disposition rates are up almost across the board and I will simply summarise:

**Court of Appeal (Civil)** – There has been an increase of 35% from 195 in 2015/2016 to 263 in 2016/2017

**Magisterial Appeals** – These were up by 4% to 184

Civil and Magisterial Appeals account for 90% of the Appeal Court's work and so the total of 497 when taking into account Criminal, Family and Petty Civil (excluding non-compliance) was a remarkable achievement particularly in light of the fact that 68.4% of Court of Appeal matters were filed and disposed of within the current law term (in other words within less than one year of filing).

**High Court (Civil)** – Here there was a marginal increase in disposition of CPR matters to 3663, but we should be encouraged by the fact that 76% of those matters were less than 2 years old at the time of disposition. The downside is that filings increased significantly from 4333 to 4779. A cautionary note therefore needs to be sounded here as we continue to struggle with a capacity problem but our experience with the ADR pilots leaves room for optimism.

**High Court (Criminal)** – Here the picture is somewhat more complex. A look at the raw data shows an 8% increase in disposition of criminal indictments over the previous year and the highest total over the past six consecutive law terms. However, it takes 5 years on average to dispose of 70% of matters filed in any given year, which does not compare favourably with civil matters. Moreover disposing of 165 indictments when twice that number was filed reinforces the need for urgent recourse to the alternative mechanisms for disposition that we have been promoting for years. I look forward to the increased use of plea-bargaining and non-jury trials now that the latter is actually on the statute books. By next year this time the impact of this new development should become apparent. For the defense lawyers who are not yet persuaded let me remind you that the preponderance of studies done in common

law jurisdictions show a higher conviction rate with juries. Of course that paradigm leverages forensic in preference to mere oratorical skills.

**Matrimonial** – new divorce filings are down by 17% to 2878, which must be a good thing although decrees nisi were also down by 10%.

**Family Court** – Because of the special configuration of the Family Court, its statistics are reported separately. Total matters determined were up 19% from 2781 to 3300.

**Magistracy** – Instead of reporting incomplete statistics, I shall simply observe that the volume of the work in the magistracy remains daunting and leave the final figures to the annual report, which should be ready in a month or two.

In the interest of keeping the length of this address within digestible limits, I will turn instead to a brief overview of upcoming plans.

#### **UPCOMING PROJECTS**

As I return to the overarching theme of resetting the criminal justice system I must reiterate the the often overlooked point that there can be no justice without proper systems. There are no easy or quick fixes for a morass that has taken several decades to develop. Many of the comments, suggestions and criticisms being noises abroad are not underpinned by any real appreciation of the mechanics required to produce results. Effective reform must be systemic not piecemeal. The burden on the magistracy, which is where over 95% of the population's interface with the criminal justice system takes place must be addressed. I have tried to make the point repeatedly over the years that the disposition of any Court matter is at it's core an information management process. The comfort, profit or even the expectations of lawyers cannot therefore be the primary drivers of reform. All of the reforms that we have pressed for, including draft legislation now before the Parliament is guided, without apology, by that understanding. With that in mind, there are two areas of Court operation that historically have been given insufficient attention that will be

in focus during the coming year. The first is transcription services and the second is the Petty Civil Courts.

**Transcription Services** – Like most Caribbean judiciaries, Trinidad and Tobago has Computer Aided Transcription (CAT) reporters as well as audio digital recording but experiences limited success in timely transcription judiciary wide.

In 1988, Trinidad and Tobago introduced Computer Aided Transcription into the Supreme Court but the Magistrate's Courts were left with long-hand note-taking by members of staff dedicated to this task. This required these notes to be typed oftentimes with the help of the selfsame notetaker having to read the notes to the typist.

In 2002 the International Narcotics and Law Division through the United States Embassy provided a grant to the Judiciary of Trinidad and Tobago to purchase audio digital recording systems which were placed in magistrates' courts. In 2002, a pilot project was established in courtrooms of the St. George West Magistrates' Court with the "For the Record (FTR)" audio digital recording solution. Based on the opportunities presented for increased value by employment of the technology, and the success of the pilot, court leaders decided to implement the audio digital recording system in all courtrooms throughout Trinidad and Tobago. In a survey of users of the audio digital system done in 2007 on the effectiveness of the system, the former Chief Magistrate, Sherman Mc Nicolls indicated that:

"The system is working quite well in the Port of Spain Eighth Magistrates' Court over which I [he] preside, and it has had a tremendous impact upon the time required to complete an enquiry which would have taken six months prior to the introduction of the new system of recording notes of evidence. The average time now required to hear and determine a Preliminary Enquiry matter in a capital charge is six weeks".

He also commented that:

- "Attorneys at Law require a copy of the transcript of the proceedings in a Preliminary Enquiry on a daily basis

depending on the complexity of the matter and the witnesses who are called to testify;

- At the end of all enquires, the record must be transcribed once there is a committal and certified by the Transcriptionists for the Director of Public Prosecutions (DPP);
- If the accused is discharged, the DPP may request the record of proceedings – in such a case the record has to be prepared;
- As a matter of policy, as soon as the Clerk of the Peace receives a Notice of Appeal, the record of a summary trial must be prepared;
- Some summary matters are more complex than others, and as a result Attorneys may request the transcript of the proceedings on a daily basis; and
- The record of an inquest must be prepared at the end of the proceedings for transmission to the DPP.”

The systems have operated well and have proved to be a sustainable effort. Although transcriptionists were introduced into the system, the fact that they used QWERTY keyboards helped little to alleviate the problem. The need for transcription services, to which the then Chief Magistrate referred, continues to exist and has resulted in a definitive failure in the system and a major cause for delay.

A sufficient CAT reporter establishment is not economically sustainable. CAT reporters are expensive to train and the training time is long and it produces few graduates at the prescribed real-time reporting levels of 220 wpm with 95% accuracy.

This has caused the management of the court's case-flow to be inefficient and the pace of litigation to be delayed. It delays the delivery of judgments and the hearing of appeals.

In order to build on the systems of court recording that have been well addressed, it is necessary to provide for speedy and accurate transcript production. Trinidad and Tobago has just recently begun training transcriptionists in digital voice reporting. In

this method, a reporter may capture and transcribe by use of a steno mask or may transcribe by repeating the words captured. The need is for a method to combine the best available capture with the most appropriate form of transcription.

As most of the courts have audio or audio digital recording technology and some CAT reporters and have begun to have digital voice transcriptionists, it is considered that the opportunity arises for capture of the proceedings to be done by audio digital recording and for transcription to be done by a CAT reporter or a digital voice transcriptionist. They will be called upon to do rapid text entry.

There are several advantages of this approach

- Using this system enables greater efficiency by better management of human resources. The court is able to identify the transcripts which are needed immediately, those required the next day and those which may be transcribed more leisurely. In doing so, the court may assign its faster transcription methods to the former and so on.
- CAT Reporters usually require a speed of 220 wpm to be realtime certified and 180 wpm to be court certified. Acquiring this can be extremely difficult with many trainees plateauing at 100, 120, or 140 wpm. While these reporters hitherto could not be employed to write in a court at these speeds, they can in fact be employed as rapid text entry specialists as they write from recordings and are able to slow down the playback speed or replay portions.
- An added advantage to this is that it enables professional reporters to work remotely as they listen to the recording online. In light of the fact that many transcriptionists are women, this provides opportunities for single mothers or other working women to develop a profession while avoiding the strain of day care services. In countries like Trinidad and Tobago, it further allows them to avoid heavy commuter traffic.
- Transcription services need not be on-site and may even be outsourced.

### ***Virtual Small Claims Court with Online Mediation***

Small claims matters are critical to the administration of justice. Small debts and disputes can negatively affect small business and their efficient and economical resolution is particularly important in difficult economic times. Small claims matters and consumer complaints which remain unresolved can easily erode public trust and confidence and lead to societal disharmony and even violence.

Before now, in grappling with rising crime, large commercial issues and relatively undeveloped legal systems, we have sold small claims matters short.

Small claims matters lend themselves easily to mediation. They also are matters in which attorneys are usually not required nor can the expense of retaining one be justified. They also tend to require simple documentary evidence. These factors make them a good introduction to virtual or online courts. These courts limit the time a litigant is required to set aside to address a small claims matter. They also maximize the use of court space resources. Online mediation services can also be of great benefit as they enable quick and easy access to dispute resolution.

In online small claim courts, parties can file online, upload their documentary evidence, file a defence, take up a judgment in default and even interface with a small claims judge online. Even some forms of enforcement may be done online. This is generally more user friendly and can even enable access to a judicial officer outside of regular court hours and at a time more convenient to all. As part of a new initiative to be started this year we will undertake the following activities:

1. Determine the baseline data as to number of petty civil cases per annum, online saturation, number of frequent /regular small claims litigants per district.
2. Determine access methodologies
3. Draft rules
4. Draft mediation standards and rules for online mediation

5. Train online mediators
6. Create an online mediation roster
7. Determine hardware and software needs depending on access methodologies
8. Train staff and stakeholders

Create, disseminate and post public education material

Those are but two examples of the many things that are being done to reposition the judiciary for better service delivery without prohibitive cost. It does require innovative thinking, new skills and competencies, and the discontinuance of positions and processes that no longer serve any useful purpose. I am therefore delighted to welcome on board our new cadre of Judges, Masters, Magistrates and Registrars and a revamped management team led by Master Christie-Anne Morris-Alleyne even as we acknowledge with gratitude the contribution of Ms. Michelle Austin who has been our Court Executive Administrator during the initial transition. She has taken a leave of absence to continue her own personal and professional growth and development but remains very much a part of the family even as she contributes to the Industrial Court.

### ***Transitions***

Unfortunately, not everyone has left us in happy circumstances. In a family of this size, every year is tinged with sadness at the loss of some of our members and as we salute their contributions, we pause to remember Shirla George-Charles, Lena Peters, Ianthe Calliste, Grace Ruiz, Donna Boucaud and our retired Justices Ralph Narine, Basdeo Persad-Maharaj and Sonny Maharaj. Many of us have also lost loved ones and family members and we continue to surround them and the families of the deceased with our love, prayers and support.

### ***Conclusion***

As I conclude, I wish to reassure the nation that the judiciary remains stable and resolute in the discharge of its mandate. It

would be inappropriate for me to refer in detail to matters that are sub-judice but I will say that the magistracy, which continues to deal with tens of thousands of matters each year will get some attention this year. We look forward to the support and constructive input of all our stakeholders as we continue appropriate collaboration with the executive and legislature in service of our beloved nation.

Thank you for your attention and may God bless us all

This court now stands adjourned.