

**Address of the Chief Justice, Hon. David A.C. Simmons K.A.,
B.C.H.**

**on the occasion of a Special Sitting of the Supreme Court,
October 1, 2002, to mark the Commencement of the
Law Term 2002-2003**

On behalf of the entire judiciary, I welcome you to this Special Sitting of the Supreme Court to mark the commencement of the Law Term 2002/2003.

It has been traditional that the Chief Justice uses this occasion to reflect on matters affecting the administration of justice in the preceding year, and to look forward to the new term. I shall follow that tradition.

However, since the Judicial Council will be publishing its Annual Report for the calendar year 2002 in December of this year, and since that Report will comprehensively cover all of the matters which engaged the attention of the Judicial Council in 2002, I shall confine my remarks to a few select matters which may be of immediate interest.

I begin this report with some tributes. Since October 2001, there have been three retirements from the Bench. Sir Denys Williams retired as Chief Justice on October 10, 2001 having reached the compulsory age of retirement. I have already paid tribute in a similar sitting of this Court to Sir Denys on January 4, 2002 and, upon his retirement, he was a most deserving guest of honour at a luncheon of the Bench and senior members of the Bar at the Sandy Lane Hotel.

However, for the record, let me reiterate that Sir Denys was an outstanding legal scholar, much beloved by the Bar for his exemplification of the best judicial qualities. At the time of his retirement, Sir Denys had been the longest serving judge in the Commonwealth. He gave 34 years of his life to the judicial service of Barbados and all Barbadians owe him a heavy debt of thanks.

On May 16, 2002, Madam Justice Marie MacCormack, retired from her substantive post as a Judge of the High Court. She had served for 31 years in the legal and judicial service of Barbados. She, too, left judicial service in good style. Over 100 female members of the Bar and the Bench hosted a lunch for her. None of us men was allowed to attend and, I am told, that it was not a gender sensitive occasion; it was only the female lawyers of Barbados paying tribute to the first female Registrar and the first female Judge of the Supreme Court of Barbados!

Mr. Emmerson Graham retired as a Magistrate with effect from April 30, 2002. Mr. Graham, who had at sometime been a Probation Officer, brought to bear in his magisterial capacity, a huge understanding of delinquency, and much compassion.

We wish them all a long and healthy retirement.

I take this opportunity formally to welcome to the Bench Madam Justice Elneth Kentish who has succeeded Madame Justice MacCormack.

Madam Justice Kentish had a wide and varied experience as an Attorney-at-Law in the firm of R.G. Mandeville & Co and I have every confidence that she will discharge her judicial duties with the same assiduous commitment and skill that marked her out as an outstanding practitioner.

Her appointment to judicial office is something of an historic occasion. She is a graduate of the first class of the Faculty of Law of the University of the West Indies to have graced the Bench of Barbados.

I also welcome and introduce to you three judges who have joined us on the Bench this morning in acting capacities. Hon. Elliott Belgrave is acting as a Justice of Appeal until October 31st in place of Mr. Justice Waterman who is on leave. Similarly, Madam Justice Kaye Goodridge will be acting as a Judge of the High Court until November 15th vice Hon. Garvey Husbands and Hon. Mr. Justice William Chandler will serve until

October 31st in place of Mr. Justice Sherman Moore. I thank them all for agreeing to serve.

On a note of some sadness, I have to report that since January of this year, the legal profession lost four of its members and we are all the poorer for their passing. Mr. George Brancker died in January and, in quick order thereafter, Messrs. Dorien Taylor, Sylvester Hewitt Q.C. and Melvin Atwell also passed away.

THE JUDICIAL COUNCIL

I turn now to some of the work of the judiciary in the past year. I am pleased to report that the Judicial Council, comprising the entire senior judiciary, the Chief Magistrate, the Solicitor General, the Chief Parliamentary Counsel, Attorneys-at-Law and representatives of the Faculty of Law (past and present), has met regularly during the year. It has considered and taken decisions upon a large number of matters which will be the subject of its Annual Report. I wish to thank all of the members of the Council for their support and enthusiasm during the year.

Before I discuss some of the matters which have engaged our attention during the year, I think it is important that you appreciate and understand the philosophy which has underpinned our deliberations. The present overriding objective of the Judicial Council is a commitment to the steady implementation of a series of reforms over time to ensure that the administration of justice in Barbados is made more responsive to the needs of the society in the twenty-first century and the requirements of the contemporary world environment.

To achieve that ultimate objective, however, there must be short, medium and long term strategies that guide systematic progress. And there must be the acceptance of certain inescapable realities such as financial affordability. We have been keenly aware of the efforts of the executive arm of government to put in place initiatives to drive the reform process and the role of the Council must be to inform, guide, and assist those initiatives.

THREE IMPORTANT INITIATIVES

That comment leads me to make some remarks about three (3) initiatives which are in progress and which will bring the administration of justice into the twenty-first century.

The first is the project for the modernization of the justice sector. Under this project which was approved by the Board of Governors of the Inter-American Development Bank early in August 2001, the Barbados Government has received a loan of US\$12.5 million to support the implementation of state-of-the-art technology system-wide as well as provide training for all involved in the administration of justice – from Judges to Clerks. The Project is underway and we are looking forward to its systematic implementation over the next 4 years. The judiciary is represented on sub-committees of the project and its progress is a regular agenda item of the Judicial Council.

The second initiative is the drafting of new Rules of Civil Procedure. As you may know, a draft set of new Rules was prepared for Barbados by Justice James Burchett of the High Court of Australia, through the aegis of Australian Legal Resources International. A Sub-Committee of the Bench and Bar is currently involved in the refinement of the Draft. We meet on alternate Saturday mornings. It is a tedious but necessary exercise. It requires a line-by-line examination of the Draft.

In all the circumstances, I have to say that we are making good progress to clean up the Draft. And I place on record my thanks to the members of the Sub-Committee for their devotion to the task. Next year I ought to be able to report that a clean Draft is in the hands of every lawyer in Barbados.

The third initiative on which I now comment is the new Judicial Centre. In recent years, the former Chief Justice, Sir Denys Williams, kept calling for the construction of the new Judicial Centre. I was then in a different capacity. I hearkened to his pleas but could only say that the architectural drawings had been completed and, as at August last year, that it had been decided by the Government to fund the new Judicial Centre off-budget.

However, this morning I am the bearer of news that will gladden the hearts of all of us in the administration of justice. The Hon. Attorney General assures me that construction of the Judicial Centre will commence in the current fiscal year. Indeed the Judicial Council received a presentation from the architects, Gillespie and Steele, at our meeting last Thursday and I am also advised that the contract to demolish the site at Whitepark will shortly be let. We are truly happy that all of us engaged in the administration of justice can at last look forward to doing the public's business in a more commodious environment.

The three initiatives which I have just outlined will have their impact upon the administration of justice over the next 4 years. The Justice Modernisation Project with the I.A.D.B. is to run for 4 years. Within that time, however, we ought to be able to enact the new Rules of Civil Procedure. I envisage a date in 2004 for their commencement. And construction of the new Judicial Centre should not exceed two and a half years.

CONTINUING LEGAL EDUCATION AND TRAINING

It is now well accepted in common law jurisdictions that members of the judiciary must be exposed to continuing legal education and training. In 2002 the judiciary of Barbados has shown itself not only receptive to education and training but it has also been proactive and innovative. While we are conscious of the turbulent economic times and the downturn in the economy, we have nevertheless endeavoured to help ourselves. Our self help has been matched by understanding support from others.

Thus, through negotiations with the Association of British and Caribbean Jurists, headquartered in London, I have been able to arrange for an English High Court Judge, Sir Alan Moses, to conduct a seminar on Sentencing for the whole judiciary later this year.

On November 16 and 18, 2002, with the assistance of the Corporate Affairs and Intellectual Property Office, there will be a judicial symposium on Intellectual Property, funded by the World Intellectual Property Organization (W.I.P.O.) and conducted by two judges of international repute – Sir Hugh Laddie of

the High Court of England and Justice Joachim Bornkamm of the Federal Court of Appeal of Germany.

Later in the year we shall inaugurate the Sir Jack Dear Series of Lectures discussing the latest developments in Caribbean Law. My profound thanks go to Dean Andrew Burgess and the academic staff in the Faculty of Law who responded with enthusiasm to my invitation in January to present the lectures. These lectures will be of benefit to both the Bench and the Bar and I appeal to members of the Bar to attend the lectures. Continuing education in the law is as much relevant to the judiciary as it is to the Bar. My experience when I was in private practice was that too few Attorneys-at-Law bought books and legal materials to keep abreast of the changing face of the law.

The six subject areas of the lectures are exceedingly attractive and are germane to the practice of law in the twenty-first century.

Continuing legal education and training require appropriate funding to ensure that the benefits derived therefrom are received by the largest number of judicial officers on a regular and organized basis. On the first day of the Judicial Retreat 2002 – August 8, 2002 – all members of the judiciary developed a programme of continuing legal education and training for the next 3 years. That programme will come to nothing unless it is properly funded by government.

SOME IMMEDIATE REFORMS

I wish to speak now of three reforms which we have either implemented or are about to implement.

(i) Scheduling of Certain Applications

The manner in which the court lists have been organised and published (with all cases on a day set for the same time) results in a great waste of time for Attorneys-at-Law and litigants equally. It is not unusual for such persons to turn up for court at 9.30 a.m. and many of them still be in court in the early afternoon without their case having been called. Many man (woman) hours are lost.

A better way of managing time must be found. The Judicial Council set up two Sub-Committees to examine the situation and to make recommendations. Those Sub-Committees have reported. I shall tell you the essentials of those recommendations.

It is recommended that applications in Chambers and Family matters be listed in time periods according to the anticipated length of hearing. For example:

- (a) The period 9.30 a.m – 10.30 a.m. will be devoted to short, non-contentious or consensual matters;
- (b) The period 10.40 a.m. – 12.30 p.m. will be assigned for other relatively short matters;
- (c) The period 1.00 p.m. – 2.30 p.m. (or completion of the list) will be allocated to the remaining matters which may be contentious.

I shall have to prepare and issue, with the concurrence of the Judicial Council, an appropriate Practice Direction to provide for the new schedules. The Council has therefore agreed that the new schedules should come into effect on January 1, 2003. The co-operation of the Bar will be absolutely critical to the smooth operation of the new listing procedures and I appeal to the Bar to play its part in bringing efficiency to this very important area of litigation.

(ii) Practice Direction Re Criminal Appeals

Speaking of Practice Directions, all practitioners should be aware that Practice Direction No.1 of 2002 dealing with Criminal appeals is now in effect. It was published in the Official Gazette of June 27, 2002.

(iii) Urgent Applications

I have observed that there has been much abuse of Certificates of Urgency in an attempt to galvanise the Court into hearing certain types of case. Attorneys-at-Law seem to be routinely certifying cases which should ordinarily take their places in the lists as urgent applications. The vast majority of Certificates are for family

matters. When the applications are carefully scrutinized, I have found that they may not so much as require an URGENT hearing as an EARLY hearing.

Since February 2002, I have therefore required that all urgent applications be sent to the Chief Justice for his determination of the true nature of the application. Again, I have found that the vast majority of applications are NOT URGENT.

I urge all Attorneys-at-Law not to seek to abuse the procedure and remember that the Chief Justice is performing the role of a sieve to sift out the real from the imagined! I shall continue, even more rigorously, to refuse applications designed purely to circumvent the system and put unusual pressure on an overworked judiciary.

SUPREME COURT JUDGMENTS

For as long as I have been a lawyer – 34 years – there has been a perennial complaint of delay in the delivery of judgments. I am satisfied that things are changing. I had hoped to be able to report that the judgments in all High Court matters completed prior to June 30, 2002 had been delivered. I cannot quite make that claim. But I am advised by the Judges of the High Court that approximately 90% of all judgments outstanding as of that date have been delivered or are in the process of completion. I trust that Attorneys and litigants alike will appreciate that a real effort is being made by the judiciary to work down the backlog of undelivered judgments.

In the Court of Appeal there is still a serious problem with the backlog where the decisions in 25 appeals heard prior to June 30, 2002 are still outstanding. I hope that by December 31, 2002 the majority of those outstanding decisions will be delivered. Part of the reason for this backlog has been a set of unfortunate and unforeseen circumstances which affected the composition and operations of the Court of Appeal in past years. I am satisfied, however, that the problems are being conscientiously tackled.

I trust that you will be pleased to learn that since September, 2002, all judgments of the Supreme Court for the years 2000, 2001 and

2002 (to date) as well as the cases reported in volumes 2 and 13 of the Barbados Law Reports can now be accessed on the Internet at www.barbados.gov.bb/attorneygeneral.

I thank the Law Librarian, Ms. Jacinth Smith, the Librarian in the Office of the Attorney General, Ms. Annette Connell, and Mr. Shawn Collymore of the Data Processing Unit for their commitment to this project. Its realization means that the Courts of Barbados have taken a giant step into the Information Age.

THE VOLUME OF LITIGATION

The volume of first instance litigation (in the High Court and the Magistrates' Courts) has grown relentlessly over the last decade. In 1991, a total of 1,957 civil cases was filed in the High Court. Last year that number was 2,706 - an increase of 38%. And whereas in 1991, total cases lodged in the Magistrates' Court numbered 12,958, last year that total was 18,632 - an increase of 43.7%.

I wish to examine some other figures more closely to draw certain conclusions from them. Let us consider the period 1998 to 2001 starting with the Magistrates' Courts.

(a) The Magistrates' Courts

In 1998, 23,948 cases were lodged in the Magistrates' Courts of this Island. In 1999, that number was 19,243. By the year 2000, it had increased to 20,932. In 2001, some 22,379 cases were lodged. Despite the vast number of cases being lodged, the 7 Magistrates have been disposing of a high degree of the cases with alacrity and a keen sense of public duty. For example, in 1998 they adjudicated 16,452 of the 23,948 cases filed or 68.7%. In 1999 they adjudicated 15,579 of the 19,243, i.e. 80.9%. In 2000 they disposed of 17,301 of the 20,932 (82.6%) and in 2001 they disposed of 18,632 of the 22,379 lodged (i.e. 83.2%). But careful analysis shows that there is an annual backlog of approximately 4,636 un-adjudicated cases. It should be evident that the creation of additional posts of Magistrate would almost certainly allow for the total disposal of all cases lodged in any one year. I trust

that the authorities will give their urgent attention to relieving the existing Magistracy of their continuing burdensome workload.

The situation with traffic cases is very serious. The backlog of adjourned cases is huge and there is evidence that many accused persons are manipulating the system by pleading “Not Guilty” in the knowledge that the adjourned case will not be heard for many months. Those realities demand the creation of additional posts of Magistrate. The traffic situation is not an unexpected phenomenon given the stark increase in the number of vehicles on our roads since 1995. Even though there were 14, 477 traffic cases lodged in the Magistrates’ Courts in 1998, that number decreased in 2000 to 10, 442 but rose again to 12, 161 in 2001. We have to make the system more speedily responsive otherwise, in a manner of speaking, the rule of law will be undermined. I wish to recommend that the greatly underused Court at District ‘D’ be used to adjudicate the traffic cases presently assigned to District ‘A’. The District ‘D’ Court is used on only one day per week. This recommendation will, however, require the appointment of an additional Magistrate.

(b) The High Court

I deal only with civil cases filed in the High Court. In 1998 and 1999 there were some 2, 510 civil cases filed. By 2000, that number had risen to 2, 769. In 2001 there were 2, 706 civil cases filed. This survey does not take into account Assize cases on which High Court Judges also sit. But the sheer volume of cases bespeaks a need for additional judges - at least when the new Judicial Centre is constructed. At the moment this building cannot accommodate any additional judges.

(c) The Court of Appeal

139 appeals were filed in the Court of Appeal in 1998; 124 in 2000 and 120 in 2001. These figures also tell of a heavy workload. And it must be remembered that Court of Appeal judges not only have to read voluminous records of appeal but they have to hear the appeals and render judgments – while the cases keep coming non-stop. The workload again illustrates the need for more Justices of Appeal.

I have merely set out the statistics to indicate the need for additional personnel in the judiciary and to alert the Executive that manpower planning is as essential to the justice sector as to any other sector of government.

THE JURY SYSTEM

I have deliberately left matters concerning the jury until the last. Shortly, the Registrar will read the names of jurors assigned to Court No.3. But before she does so, I feel obliged to mention that we have observed some deficiencies and inefficiencies in the system of trial by jury. The Judicial Council has studied the problems and has proposed solutions, some of which will take effect from this year.

The lists of jurors are in need of revision. Certain persons have been appearing at Assizes almost like hardy annuals, whereas others, though eligible for jury service, have never been chosen. The law prescribes that from time to time the jurors' lists be revised. This year 2002 has been designated as a Jury Revision year and each Magisterial district will be required to publish the names of potential jurors for ultimate scrutiny.

We are also seeking to computerize the compilation of the jury list and work is nearly completed. When completed, there ought to be a better and fairer system in place from which to select persons for jury service. Let me say that jury service is an important public duty and excuse from jury service should only be for overwhelming reasons. It is an opportunity for lay persons to sit in judgment of their peers.

Over the years I have wondered why jurors were not provided with a manual giving them basic information concerning their rights and duties. We are filling what I consider to be a vacuum in jury service with effect from today. Each one of you who has been called to jury service will be issued with a pamphlet headed "Jury Service – Things you should know". I encourage and advise every juror to read it some time today and, certainly before you adjudicate a case. We have written it in a simple, personal style bereft, as far as practicable, of legalese.

Secondly, we will issue each one of you with a notebook. During the trial you may wish to make a note of something that strikes you as important. Whereas, previously, you would have had to commit the point to memory, you will now be able to make your own notation for ease of reference.

I trust that you will all find the important service which you are about to render to your country, a satisfying and fulfilling exercise. I wish you well in your deliberations.

I now invite the Registrar to read the list of persons chosen to serve in Court No.3 where Mr. Justice Inniss presides. Those of you whose names are not read by the Registrar will be assigned to Court No.4 where Mr. Justice Payne will preside. If any of you is unsure of your assignment please speak to the Registrar after I have adjourned this Sitting of the Supreme Court.

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