

**Address by the Hon. Sir David A.C. Simmons K.A., B.C.H., Chief Justice,
to a Special Sitting of the Supreme Court to mark the
Commencement of the Legal Year 2009/2010
5 October 2009**

I am delighted to welcome you all to this Special Sitting of the Supreme Court to mark the commencement of the Legal Year 2009-2010. If I have one disappointment, it is that his absence overseas has prevented my immediate predecessor, Sir Denys Williams, from being here to share this occasion with us. He has tendered his regrets.

2. This year must surely be a watershed in the legal history of Barbados and today's ceremony in this building is undoubtedly an historic occasion. After 278 years, the administration of justice in Barbados has severed its links with its colonial past. Its centre of gravity has now shifted to a new building reflecting the majesty of the law in a confident democracy and befitting the third arm of government in post-independence Barbados. Although I shall not understate the significance of this occasion in our nation's legal history, equally, I shall not be so disingenuous as to ignore the past. Historical perspectives are important in an analysis of legal developments.

3. Thus, in this address, I sketch the history of our former headquarters at Coleridge Street. Then I pay tribute to the efforts of those who have brought us to this occasion. Thereafter, the importance and inter-connection between this building, the new Rules of the Supreme Court and the new information technology will be explained to give a brief insight into the value of these new initiatives for the public benefit. Finally, as is usual in an address to mark the opening of the Legal Year, I mention some of the recent successes and setbacks in the administration of justice in the previous year and give a glimpse into my vision for the magistracy in the future.

Coleridge Street

4. So, I begin by looking back briefly at the Law Courts in Coleridge Street. Unfortunately, not much has been documented about the Law Courts at Coleridge Street in the last 278 years. However, I am deeply indebted to Mr. Warren Alleyne, S.C.M., whose brains I picked and who readily placed many valuable documents at my disposal.

5. In 1728 the then governmental authorities demolished the Public Magazine, a building constructed in 1683, in order to provide a single building for the accommodation of the legislature, the law courts and what was called 'the common goal'. By 1730, that single building was completed. It was built by one Thomas Field at a cost of £6000. Despite accommodating legislators and persons involved in judicial business, the building which we have recently vacated at Coleridge Street came to be known as the "Town Hall Gaol". In 1735 statutory permission was granted for the criminal and civil prisoners to join the legislators and those dispensing the laws at the "Town Hall Gaol".

6. This incongruous assemblage of persons in the one building prompted Henry Nelson Coleridge, nephew of Bishop William Hart Coleridge, to make the amusing comment in 1832 that -

"His Majesty's Council, the General Assembly, the judges, the juries, the debtors and the felons, all live together in the same house."

7. In 1837, the legislature and the judiciary were crowded out by the large number of prisoners resident at the Town Hall Gaol. The prisoners remained but the legislature and the judiciary were transferred to a building across Coleridge Street known to its owners as "Codd's House". "Codd's House" was situated where a car park is now located opposite to Central Police Station. Those of you of my vintage and older will recall that "Codd's House" was the home of the Waterworks Department in pre-independence days. When the legislature and the judiciary moved to Codd's House in 1837, that building was re-christened "The New Town Hall".

8. By 1855, a new prison had been built at Glendairy to accommodate 72 prisoners. However, twice as many prisoners still remained at Coleridge Street owing to the limited space at the new prison. But up to 1876, the Town Hall Gaol continued to be used as a prison. It was closed in that year on humanitarian grounds by the Governor, Sir John Pope Hennessy. But it seems that meetings of the House of Assembly were held at Coleridge Street up to 5 May 1874. Since November 1876, only legal and judicial business have been conducted at the former Town Hall Gaol on Coleridge Street.

9. All of us attending this ceremony are aware of the existence of the Registration Office at the Coleridge Street compound beside the courts. The courts and the Registration Office have worked in tandem, of course, since 6 September 1887 when Parliament passed the *Registration Act*. This Act provided for –

“the establishment of a Registration Office, by which all the duties now performed by the Record Branch of the Colonial Secretary’s Department, by the Prothonotary of the Court of Common Pleas, by the Registrar of Solicitors, and by the Clerk of the Crown and Peace, shall all be performed.”

10. In those days, there was a staff of 8 – Registrar, Deputy Registrar, five clerks and a messenger working for a total annual salary of £1175. In 1903, the Registrar’s duties were expanded by amending legislation and the *Registration Office Act, Cap.33* has been the subject of frequent amendment between 1961 and 1990.

11. The year 1956 was one of prolific legislative activity. Parliament passed some 66 pieces of legislation. The *Supreme Court of Judicature Act* was the fifty-sixth Act passed that year on 15 November 1956. With the enactment of the *Supreme Court of Judicature Act*, the High Court assumed the jurisdiction of a plethora of other courts viz. the Court of Common Pleas, the Court of Chancery, the Colonial Court of Vice-Admiralty, the Court of Vice-Admiralty Session, the Court of Error, the Court of Escheat, the Court of Divorce and Matrimonial Causes, the Assistant Court of Appeal and the Court of Oyer and Terminer and

General Gaol Delivery and General Sessions of the Peace. This last Court was conferred with criminal jurisdiction to try felonies and serious misdemeanours, pursuant to an Order-in-Council by Governor Henry Hawley.

12. In 1958, the building at Coleridge Street was designated as the Law Courts. That building which we have just left, is one of the few 18th century buildings in Bridgetown to have survived multiple fires and two great hurricanes of the 19th century. Its Georgian architectural character marks it out as one of the magnificent seven buildings in our capital city. When in the mid nineteen fifties there was need to provide better accommodation for the Registration Office, a new building was designed by Capt. William Tomlin and appended to the main court building to serve as the Registration Office. It has been the site of the Registration Office until today.

13. Between 1986 and 1994, the interior of the Georgian building was renovated and additional courtrooms and judges' Chambers were added to provide separate accommodation for the judges of the Court of Appeal following the creation of a separate Court of Appeal by constitutional amendment in 1990. The increasing volume of litigation between 1986 and 1994 also made it mandatory that interior renovation take place more as an expedient than as a permanent solution. Barbados, in a post-independence era, was still dispensing justice in antiquated and inadequate conditions.

14. The Chambers of the judges of the Court of Appeal have no access to natural light or natural ventilation. They are cramped and the walls bear all the outward and visible signs of dampness. They are unhealthy. Plainly, the time has long passed when the judiciary, as the third arm of government, should be accommodated in a more commodious environment. Over the years the judiciary did not remain silent or unconcerned, even as they discharged their judicial duties.

15. During their tenures as Chief Justice, both Sir William Douglas (1965 to 1986) and Sir Denys Williams (1987 to 2001) made loud and persistent calls for better physical conditions for the judiciary. In Sir William's time, architectural plans for a new building were drawn. The intention was to construct it on the old Codd's House site. But these plans were discarded

because the site was too small. When Mr. Maurice King Q.C. was Attorney-General, he had architectural plans drawn for a new Supreme Court complex at the corner of Country Road and Whitepark Road where public housing units are currently under construction.

16. I recall that, during my years as Attorney-General, Sir Denys Williams twice, at ceremonies to mark the commencement of the Legal Year, called upon me to build a new Supreme Court complex. His pleas did not fall upon deaf ears. It was my view that the Country Road/Whitepark Road site was inadequate and I determined that Barbados should have a new complex housing the judges, the Registration Office and other relevant departments.

17. On 30 November 2001, Professor Henry Fraser, as Public Orator, described me as “exceedingly modest.” I will ask you to pardon me to say a few words about my own role in and contribution to this building. I do so only for the sake of accuracy of the historical record. I persuaded the Cabinet of which I was a member to abandon the Country Road/Whitepark Road site and acquire the site on which this building stands. And while Sir Denys was pleading with me, Mr. David Spink of Gillespie and Steel, architects, was busily modifying and altering the plans and changing the elevations of the plans commissioned by Mr. Maurice King in order to make them sit comfortably on this site.

18. The architects worked steadily during my years as Attorney-General to produce drawings acceptable to government. And by August 2001 when I retired from political life, the drawings for this building were finished. Let me tell the whole truth. I refused to leave politics until I was satisfied that financing was in place with Caribbean Commercial Bank to support the construction of this magnificent edifice and that the directors of the Inter-American Development Bank (IADB) had approved a loan to Barbados of US\$12.5 million for the Justice Improvement Programme which had been developed in 1998/1999.

19. Naturally then, I feel a personal sense of satisfaction, pride and happiness today. And all of us who will use and occupy this building are happy. The judges, the Registrar, all of the staff in the Registration Office, the court process officers, the Community Legal Services

Commission, attorneys-at-law, the police. For far too long we have all carried out our public duties in conditions neither congenial nor conducive to maximum efficiency and productivity.

20. Actual construction began in February 2006 when Hon. Mia Mottley was Attorney-General. Her successors, Hon. Dale Marshall Q.C. and Hon. Freundel Stuart Q.C. have given their unstinting support to ensure the completion of this building. On behalf of all of us, I thank them most sincerely for their efforts.

The New Building and the Administration of Justice

21. What does this building portend for the administration of justice? Francis Bacon did say that “the place of justice is a hallowed place.” However, I suggest that this building alone and, hallowed though it may be, will not bring about the radical transformation of the administration of justice that is necessary to reposition it and make it more responsive to the local, regional and international imperatives of our time. The vision which I had for such transformation was outlined on 4 January 2002 at a Special Sitting of the Supreme Court to mark my assumption of office as Chief Justice. I said then that I had undertaken three initiatives in my former office “which, if continued, would provide the overarching strategic infrastructure for modernisation of the administration of justice”. These three initiatives are interconnected and interdependent. They were:

“(i) the construction of a new Judicial Centre for which architectural drawings had been done and financing identified;

(i) enactment of new Rules of Civil Procedure for which purpose a draft of new Rules had been prepared by Burchett J of Australia; and

(ii) the wide-scale introduction of contemporary technology across the justice sector through the Justice Improvement Programme.”

22. I turn therefore in this part of my address to discuss those three initiatives and others which have been taken. This new building is the single most important component in a package of reforms which I indentified in a Special Sitting of the Supreme Court on 10 February 2006. Provision has been made for an adequate number of courtrooms, separate courts for the conduct of business in Chambers, spacious facilities for the staff of the Registration Office, library, the Master of the High Court, the Community Legal Services Commission, attorneys-at-law, court reporters, jurors, court process officers, probation officers, accused persons, the physically challenged and the general public.

23. The latest state-of-the-art information technology is installed in the courts and in the Registration Office with funding from the Justice Improvement Programme. The technology, Judicial Enforcement Management Systems (JEMS), to be used in the Registration Office and by the judges allows for a multiplicity of functions including -

- data entry
- filing
- diarising events
- collating statistical data
- performing wide-scale search functions
- generating forms and reports
- sharing information with other agencies.

24. That technology will greatly assist in the management of cases and the flow of cases. Our objective is to have actual case files dealt with by judges on-line and, ultimately, to develop paperless courts. In due course, the technology will facilitate *the filing* of cases and documents on-line. But, immediately, the technology is absolutely necessary and central to the successful operation of the new *Rules of the Supreme Court (Civil Procedure) 2008*.

The New Rules of the Supreme Court (Civil Procedure) 2008

25. These Rules came into force on 1 October 2009. As I have said many times before, the new Rules will bring about a radical change in the culture and practice of civil litigation. All cases filed after 1 October 2009 and, where the parties agree, any cases filed prior to that date will be subject to the new Rules. The minimum content of civil procedure is that it should be fair, speedy, affordable, intelligible, efficient and effective. The former Rules did not meet those requirements. That has been the experience of all courts in the Commonwealth which have been wedded to Rules of Court similar to ours of 1982. A divorce from years of tradition was imperative. The new Rules provide a simpler procedural code applicable to civil litigation. Under the new procedure, litigation will be:

- less adversarial
- less mysterious
- less complex
- shorter and more certain as to time-tabling
- more predictable as to costs
- more intelligible to court users including unrepresented litigants

The two important features of the Rules are the management of cases by the Master and the judges of the High Court and the provision of alternative dispute resolution, in particular, mediation. The courts are now empowered by the Rules to refer litigants to mediation and, as I speak, there is a project ongoing to sensitise the judges and train attorneys-at-law and members of the public in the techniques and processes of mediation. The project was launched under the auspices of the Justice Improvement Programme on 15 July 2009.

26. I wish to emphasise that litigation under the new Rules will be judge-driven; not lawyer-driven. Under the old Rules, a case proceeded according to the pace set by the lawyers. Under the new Rules, cases will progress according to a timetable set by the Master or the Judge for the doing of various activities. This new paradigm ought to result in the speedier dispatch of cases than hitherto. I have impressed upon the judges that they will in future be accountable for the speed at which a case progresses. But let me enter a *caveat* here. The new Rules do not

apply to Family Proceedings. I expect that the Family Law Council will develop Rules to provide for management of Family cases.

27. For the benefit of the legal profession, I should also advise that adjournment of cases will be kept to a minimum.

The Overriding Objective of the New Rules

28. All applications and decisions taken by the Master or Judges will in future be determined in the light of the Overriding Objective in Part I of the Rules. It is important that I set out the Overriding Objective in full. Rule 1.1. states:

“(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable,

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to
 - (i) the amount of money involved
 - (ii) the importance of the case;
 - (iii) the complexity of the issues;
 - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”

And Rule 1.2. underlines the policy of the Overriding Objective in these words:

“The court must seek to give effect to the overriding objective when interpreting these Rules or exercising any powers under these Rules.”

It is an all-pervasive point of reference. Everything must be tested against the Overriding Objective.

29. It is critically important, therefore, that judges, attorneys-at-law and litigants keep the Overriding Objective at the forefront of their consciousness.

30. The Rules are based on the 1999 Civil Procedure Rules of England. But they are not a straight copy of their English progenitor. Mr. Justice James Burchett of Australia was brought here in 1999 to produce a draft set of Rules. He did so. Then, in 2002 and 2003 a group of us met at Coleridge Street on Saturday mornings and worked on the draft, line by line, to refine it and adapt it to make it congruent with our needs. Although today is a time of celebration it is also a time when the historical record must pay tribute to those who laboured hard and selflessly to produce new Rules. I therefore thank Justices Colin Williams, deceased, Errol Chase, Peter Williams, LeRoy Inniss and Madam Justice Elneth Kentish; Madam Justice Kaye Goodridge (then Solicitor-General); Messrs. Patterson Cheltenham Q.C., Leslie Haynes Q.C., Adrian King, attorneys-at-law, Ms. Shirley Bell Q.C., Chief Parliamentary Counsel, Professor Gilbert Kodilinye, Madam Justice Sandra Mason (then Registrar), and the Executive Secretary to the Chief Justice, Ms. June Christian. Miss Christian typed every word in her spare time. All of these persons assisted me in producing the final draft and gave selflessly of their time and expertise.

31. I must also express my gratitude to Mrs. Lana Chandler, Director of the Justice Improvement Programme Secretariat, her fellow workers and the Inter-American Development Bank. They have been of immeasurable assistance in providing the funding for the technology, training the judges in case management, and facilitating seminars and workshops for the Bench and Bar on the new Rules.

Training

32. A word about training. Training has been provided for the operation of the new Rules and the new technology. Except for three judges, all the other High Court judges have been given training at the Royal Court of Justice, London, in case management. We hope to give those three judges overseas training next year. In September, all judges received training in the physical use of the new technology. So far as the Registration Office is concerned, two senior officers have been trained at the Royal Institute of Public Administration in London and all of the judges' clerks and other senior staff have received training in Barbados relevant to the Rules and the technology.

33. In addition, seminars and workshops for the Bench and Bar have been organised over the past three years in relation to the Rules. The new Rules and the new technology are revolutionary and strange. I am not so naïve as not to expect that we will have teething problems before settling in to a routine. Accordingly, I ask all concerned to be patient and understanding.

Hours of Business

34. One attribute of this new building is that it will allow for court sittings throughout a day. There are excellent cafeteria facilities on the second floor and a tender has been awarded for the provision of meals. I trust that attorneys-at-law will make the fullest use of the cafeteria in order to maximize the use of court time.

The Library

35. The news is not all good this morning. I have to report that virtually all of the book stock in the library has been lost to the rapid growth of fungus, the result of an unsatisfactory air-conditioning system. On 16 June 2009 we submitted a proposal to the Justice Improvement Programme Secretariat for funding the replacement of a large majority of the book stock. The Secretariat and the Inter-American Development Bank responded magnificently. They agreed to

provide the necessary funding and the international competitive bidding process for the supply of library materials is in train. Unfortunately, since agreeing the proposal, the fungus has become even more aggressive and rampant in the last two months. We have had to close the library to safeguard the health of the library staff and attorneys-at-law. But I have to say that, even after submission of the proposal, more volumes have become infected. We are taking steps, however, to preserve these volumes by appropriate remedial treatment. But it seems to me that the contribution of the Justice Improvement Programme Secretariat will be inadequate to replace the entire book stock and provision will have to be made in the annual Estimates of Expenditure and Revenue to fund the shortfall.

Criminal Cases

36. I turn now to the trial of criminal cases in the High Court. In 2006 the system of Assizes was abolished and replaced with continuous trials in the High Court. At the time of abolition, I explained that such a decision would increase the number of trial days. I am happy to report that, whereas under the system of Assizes we were never able to complete more than 135 cases in any one year, in the year 2008, over 200 cases were completed under the new system but using the traditional two courts.

37. At this new facility, we have facilities to run three criminal courts simultaneously and we should therefore be able to complete even more trials than in 2008. However, before increasing the number of courts trying criminal cases, I think that it would be prudent to make sure that all the systems in this new building are functioning properly and smoothly before experimenting.

38. I think that the time has also come for the abolition of another procedure of long tradition. At the Judicial Retreat 2007, over 100 recommendations were made to tackle the problem of delay in the criminal justice process. One key recommendation for which we shall seek the support of the Attorney-General is the abolition of the preliminary inquiry into indictable offences. I was awaiting the outcome of a case in the Privy Council where an appellant in Antigua challenged the constitutionality of abolition of the preliminary inquiry in

that jurisdiction. The Privy Council gave its decision earlier this year, holding that abolition of the preliminary inquiry does not violate the Constitution. In due course, therefore, I shall be writing to the Hon. Attorney-General to have the necessary statutory amendments made, if he and the Cabinet are agreeable.

The Magistracy

39. I wish next to say a few words about the magistracy. At present, we have a full complement of 10 Magistrates plus the Chief Magistrate. In 2004 the District 'A' Traffic Court was faced with an exceptionally heavy caseload compounded by an increase in lodgments when some 33, 000 cases were lodged as a result of Operation Road Maintenance. On 20 February 2006, I re-assigned 7 Magistrates and made certain changes to their hearing lists in order to make an attack on the 33, 000 cases.

40. I have been advised that those re-assignments have been particularly successful. The cases have been disposed of and cases lodged in 2009 are being adjudicated in 2009. It is not now necessary to explore the setting up of a Night Court.

41. I congratulate the Magistrates on the efficient manner in which they have obliterated the backlog of traffic cases. I give them the assurance that now that the major reforms of civil justice have been completed, the Judicial Council will turn its focus to reform of the operations of the magistrates' courts. I have to hand the results of a consultancy done for us free-of-charge by Mr. Kevin Maguire of the Commonwealth Secretariat. His report will form the basis of reforms at the magisterial level. However, while we discuss and plan for the introduction of reforms in the magistrates' courts, I appeal to the Hon. Attorney-General to give favourable consideration to training additional court reporters to service fully the Supreme Court and the magistrates' courts.

42. Since October 2000, judges in the criminal jurisdiction of the High Court have not been recording evidence *verbatim* in their own handwriting. Computer-aided transcriptionists have been using technology to record the proceedings. We need urgently to rid magistrates of

the tedium of recording evidence in long hand but we also need a project dedicated to train an adequate number of court reporters to fulfil that objective. This is a matter of policy and so I make an appeal to the Hon. Attorney-General accordingly.

43. I make another appeal to the Hon. Attorney-General. For 6 years, I have asked that the post of Chief Magistrate be upgraded and suitably remunerated. It exists in the law as mere verbiage. The absence of proper recognition of this post undermines morale and places an undue burden on the Chief Justice. Moreover, the omission to provide a hierarchical structure for the Magistracy results in the anomaly that it is the only department in the legal and judicial service without appropriate grades reflective of seniority. All Magistrates, including the Chief Magistrate, are on the same level after 5 years' service. That is unsatisfactory.

Conclusion

44. In concluding these remarks, I wish to thank all those who contributed to the delivery of this magnificent edifice. The successive governments of Barbados since 1994; the architects, project managers, contractors, sub-contractors; the Steering Committee appointed by the Cabinet in 2006 to oversee the implementation of the project from the standpoint of the end users; and the workers on the site. I wish to pay public tribute also to the five Registrars since 1994 and their senior staff. I refer especially to Ms. Marie MacCormack Q.C. (as she then was), Ms. Shirley Bell Q.C. (as she then was), Ms. Sandra Mason Q.C. (as she then was), Ms. Maureen Crane-Scott Q.C. (as she then was), and Ms. Marva Clarke. This building has been long in coming but the aphorism "better late than never" has seldom been more appropriate. We who will use this building on a daily basis are deeply and eternally grateful. I think that it is obvious that it would have been impossible to operate either the new Rules or the new technology in the outmoded, dilapidated confines of the building at Coleridge Street.

45. A new era in the administration of justice has been launched today. A building alone does not accurately define a "court". The physical structure merely provides accommodation for those who dispense justice within its walls hearing cases. And let us not forget when we speak of "cases", that we are in fact referring to people – human beings who

come to the building to receive justice. As *Lord Irvine*, a former Lord Chancellor of the United Kingdom has put it:

“Individuals left hanging in the air, hoping for a good outcome, fearing the worst. People whose lives are blighted by the strain of waiting for justice to be delivered.”

46. The public of Barbados now have a complex that is second to none in the Commonwealth Caribbean. The people of Barbados will expect the delivery of justice to be more accessible, speedy, efficient and effective. It is up to us who administer justice in this building not to disappoint their expectations but, rather, to rise to the challenge of delivering a quality of justice that is also second to none. Our traditions of justice in Barbados have been strong and distinguished. In this building, we who work here must continue building a system of justice which defines its justness by the extent to which it enriches and enhances our humanity.
