

THE CHIEF JUSTICE'S REPORT
TO THE OPENING OF THE COURTS

16TH JANUARY 2019

The proceedings commenced with Prayers led by Pastor Jeff Jefferson, Ministerial Secretary of the Cayman Islands Conference of Seventh-day Adventists

Salutations were extended to His Excellency the Governor; the Deputy Governor; Honourable Members of Cabinet and the Legislative Assembly; Members of the Judiciary in the galleries, especially for the first time, Justices Martin, Newman and Moses of the Court of Appeal; Mr. Ormond Williams; Chairman of the Judicial and Legal Services Commission; the Deputy Commissioner of Police and other distinguished guests.

Thanks was first of all expressed to Pastor Jeff Jefferson for having led the gathering in prayer.

The Chief Justice then invited the Honourable Acting Attorney General Reshma Sharma to move the motion for the opening of the Court, to be followed and seconded by Mr. Erik Bodden of the Cayman Islands Legal Practitioners' Association (CILPA) and by Mr. Colin Mckie QC on behalf of the editors of the Cayman Islands Law Reports.

THE CHIEF JUSTICE'S REPORT

As in previous years, I begin with reflections on the changes or transitions occurring within the Judiciary and Judicial Administration.

THE JUDICIARY

I thank Madam Attorney for having mentioned the appointments of Justices Birt and Beatson to the Court of Appeal. We extend our welcome to them in their absence.

It is with pleasure that we welcome Justice Cheryl Richards to this, her first sitting at an opening of the Court.

Justice Richards needs no introduction, having served (as Madam Acting Attorney General observed) with great acclaim as Solicitor General and as the Islands' first Director of Public Prosecutions.

As Justice Richards will eventually be taking a leading role on the Criminal Division, it was, of course, necessary that she effected a clean break from her former role as DPP as soon as possible. That said, she will, of course, not be taking any criminal cases with which she was involved as DPP.

Her break from her former office and her appointment to the Court were effected in December and so she is now in her fourth week on the Court, settling in quite nicely into the work on the General Civil and Financial Services Divisions. As she will be a generalist like the rest of us locally based Judges, she will later this year, like several of the rest of her colleagues, become certified as a mediator in preparation for her work on the Family Division as well.

We welcome Justice Richards and wish for her a long, fulfilling and productive career on the bench.

We are pleased also to note that Justice Raj Parker, one of our specialist FSD Judges, is present in Court for this his first attendance at an Opening of the Court.

We are delighted also to note the presence of Justice Quin and Mrs. Quin with us this morning.

We, his colleagues, are bracing ourselves for the eventuality of Justice Quin's formal retirement in June of this year, an event which we, like the rest of Court staff, the profession and very many members of the wider community, would wish to postpone indefinitely.

But Justice Quin has wisely decided to take life at a little slower pace and so will demit office in June – well shy of the retirement age of 70.

The good news though, is that he has accepted appointment to the Panel of Judges who serve from time to time as the need arises.

Justice Quin will therefore be presiding, especially in the Criminal Division, from time to time.

While there will be a more suitable occasion to thank him for his service as a Judge, allow me now simply to say that in his more than 10 years on this Court, Justice Quin has made an immeasurable contribution both in terms of the quality of his judging and his personal instillation in others of a sense of confidence in our courts, as institutions of justice.

And speaking as a colleague, I can say that he enjoys the unquestionable respect and admiration of all his colleagues. Even while he continues to serve as a temporary judge, we will miss his daily presence at court very much – he is indeed deserving of the title – as Madam Attorney observed – as “the world's nicest judge”!

Panel of Temporary Judges

Speaking of the Panel of Temporary judges, I am pleased to note the presence of Justice Phillip St John-Stevens, at what I believe is his first time at an opening of the Court. Justice St John-Stevens has been case managing from England by video-link, a very involved multi-party indictment, which he is now here to conduct as the trial judge. Welcome Judge and thank you for your service.

Due to the retirement from the Panel last year of four of our temporary judges, as you have heard, Justice Aileen Downey, Mr. Simon Russell-Flint QC and Mr. Hugh Southey QC have been recommended by the JLSC and accepted by the Governor as members of the Panel. These judges have not as yet presided here but they will each be rostered to serve at different times in the near future.

The Magistracy

As you have also heard, late last year the JLSC was wise enough to recommend and H.E. the Governor to appoint acting Magistrates Angelyn Hernandez and Philippa McFarlane as permanent Magistrates of the Summary Court.

We welcome them to this their first opening in that capacity, as they continue to make their very significant contributions to the administration of justice.

Theirs were indeed very timely and much needed appointments, as you will gather from my report to come on the business of the Summary Courts.

Transitions within the Administration

Other transitions within the Administration included a number of new appointments – Torri Vernon, as executive officer (Criminal Division);

Shanae Walton-Wilson (as PA to the Clerk of Court), Darren Burlington (as a bailiff) Von Dante Leslie (as part-time bailiff); Monique Brown (as clerical officer) and Susan Bodden (as a marshal).

There were also a number of promotions: Faith Manville (from Grand Court Clerk to Magistrates' PA); Sheron Livingston (a lateral move to the Family Proceedings Unit); Bethany Ebanks (from Cashier to Civil Registry Executive Officer 1) and Julissa Brown (from Filing Assistant to Criminal Registry Executive Officer 1).

Our congratulations and encouragement go out to these officers as they commit themselves to their important work within the Administration.

Interns and Judicial Clerks

Our internship program continued apace last year allowing Melissa Bridgehoman and Kenisha Bodden to gain valuable paid work experience, while they pursue professional or tertiary qualifications.

The Judicial Clerkship program also progressed last year, allowing a number of articulated clerks to undertake a one month period of work with the Judges and Magistrates as part of their formal training. This program which is continuing, commenced in 2017 under the joint auspices of the Legal Advisory Council, the Legal Profession, the AG's Chambers and the Courts. It is an excellent program and we are committed to continue to give it our support.

THE BUSINESS OF THE COURTS

As we turn to report on the work of the Courts, it is from time to time important to reflect upon how we perform as against the established international bench marks.

These are international benchmarks for the administration of justice, which unlike some other benchmarks to which Mdm. Attorney alluded, are guided by objective performance criteria and measurements. Their commitment is to best practices which are aimed at improving the ability of courts to fulfill their missions.

It is in this sense therefore that we take heed of the World Bank's Report on Governance Global Practices; Good Practices for Courts – Helpful Elements for Good Performance and the World Bank's Quality of Judicial Process Indicators¹.

This Report published in 2016, confirmed that an effective and efficient justice system is essential for sustained economic growth. That in a well-functioning, independent, and productive justice system, decisions are taken within a reasonable time and predictably, are effectively enforced, and individual rights, including property rights, are adequately protected. That among other more obvious objectives, the efficiency of the judicial system is important for creating a good business climate, attracting foreign direct investment and supporting economic growth. That research has shown that weak contract enforcement, for example, raises the cost of borrowing and shortens loan maturities. Weak court enforcement systems have also been linked to late payments, which can lead to liquidity issues for companies and increased insolvency.

The 2016 Report also states that since the publication of the World Bank's World Development Report 2005, the importance of well-functioning courts to strengthening the investment climate and ultimately to reducing poverty and boosting shared prosperity, has been brought to the forefront and become internationally recognized. So much so, that indicators of commercial court performance, as well as business community perceptions of trust in the courts, are now a part of the World Bank Group's country-level investment climate assessments and its influential Investment Climate Surveys and Doing Business Reports.

¹ <https://openknowledge.worldbank.org/handle/10986/25101?show=full>.

Court performance has also become a requirement for accession to the European Union and OECD.²

To assist countries to improve commercial court operations and ensure greater accessibility and more efficient delivery of services, the World Bank Report identifies a set of 15 areas of good practice. The 15 good practices are tracked not only to provide a way for courts to assess how well they are performing, but also to identify areas which could benefit from improvements.

When the 15 areas are broken down under their four (4) main headings, it will, I think be seen, that our jurisdiction is either already in substantive compliance or is well on the way to substantive compliance, at least, it must be emphasized, in the field of commercial dispute resolution.

Different concerns continue to attend our ability to dispense justice in the criminal and family divisions, and more on this to come.

The four main headings are:

- (1) court structures and proceedings, including the availability of a specialized commercial court with dedicated judges; a small claims court or simplified procedure for small claims and the availability of pretrial attachment of assets³;
- (2) good practice areas, including electronic case management and pretrial conferences;
- (3) court automation, including e-filing, e-service of process, e-payments and the online publication of judgments; and

² Citing <http://www.oecd.org/legal/accession-process.htm>.

³ Now for instance given statutory expression in Grand Court Law section 11A which allows, inter alia, the grant of interim injunctive relief in aid of foreign proceedings. There is also available the well-established common law Mareva Injunctive remedy.

- (4) Alternate dispute resolution, including judge led mediation or conciliation.

Present day users of our courts will recognize most of these as areas of established practice, including the longstanding automation of our court registries. In the case of e-filing, e-searches, e-service and e-payments; these are services now in the pilot stages and are soon to be activated at different times this year.

The best proof that we are meeting these benchmarks is of course, as you have heard, in the manner of the judiciary's conduct of their cases and their timely delivery of judgments.

By these standards, I think it is fair to say that we are largely in good shape on the commercial and general civil sides. And this is at all levels, including nowadays, the President of the Court of Appeal and his colleagues present with us will be pleased to hear, at the appellate level as well.

Of course, none of this would be possible without adequate resources. It is therefore reassuring to recognize that the Government has expressed an understanding of the importance of providing the resources needed to keep the courts up to the international standards, especially those expected of a sophisticated financial center.

The Court Building project

That observation offers a natural segue into the next topic – our perennial quest for a new court building.

As you will have seen in the press, the Government has acquired the adjacent Scotiabank building for the Courts.

This is an important first step towards the development of modern facilities suitable to meet the needs of the courts, into the foreseeable future.

But those needs are well understood by the Administration and by Government as going beyond the capacity of the Scotiabank building and there are essentially two options identified for the rest of the project.

It would not be appropriate to discuss details at this time, suffice to say that the Outline Business Case, for final Cabinet approval of the entire project, is to be completed by May of this year.

While those plans are being developed, we must make immediate use of the additional space provided by the Scotiabank building of which we took vacant possession last month. As you will hear in more detail when I come to look at case disposals, the backlog of indictments carried over this year, is the largest ever. The first order of business therefore will be the installation of a new modern courtroom.

This courtroom will serve a dual purpose. First, it will be the main courtroom for the Court of Appeal when in criminal session, for which purpose it will also be fitted out with suitable individual judicial chambers and a conference room. This conference room will serve as a jury deliberation room, when the courtroom is in use for its second purpose, as a venue for the trial of serious criminal cases.

Ancillary offices for court staff will also be installed at Scotiabank building, including offices for the Registrar of the Court of Appeal, the Clerk of Courts and the Court Administrator, all on the same floor.

The relocation of these offices will create space on the first floor of this building for a larger Legal Aid Office, including the planned Legal Aid Clinic, an additional conference room for attorneys and clients, a mediation room and to alleviate the confined working area for registry staff.

The need for this to be done urgently cannot be overstated, given not only the backlog of criminal cases but also the fact that already there are 6 sessions, including three Special Sessions, booked for the Court of Appeal this year.

The intention is that when the Court of Appeal sits to hear criminal appeals, it will do so from this new courtroom and this will avoid the disruption of trials in Grand Court 1 and the knock-on disruption of cases in the Summary Courts as well.

When hearing civil or commercial cases on appeal, the Court will, for the time being, continue to sit in Courtroom 6, unless there is need for this new larger courtroom, where the Court of Appeal will eventually be based permanently.

The intention is that the new facilities will be operational by end of April this year.

For the larger courts project, the expectation is that Government will also give the go-ahead sometime shortly after the presentation of the Outline Business Case in May, with procurements to commence for the works to begin as soon as possible thereafter.

The fitting out of the rest of the Scotiabank building will proceed in tandem, to allow for the relocation of all other services when the larger project is complete.

With that bit of positive news, I feel I need not this year dwell so much, as in the past, upon apprehensions about the future.

While we still have a very long way to go, it is appropriate to recognize Government's now tangible commitment to the provision of facilities which have been so badly needed, for far too long.

And so I leave this subject this year on the cautionary note, that while we will soon have another court room for the conduct of criminal trials, we already urgently need at least three more to ensure that the Summary Courts, as well as the Grand Court, can continue to dispense justice in these cases in a timely manner.

Summary Courts

As regards the Summary Courts, the Chief Magistrate has provided her Report on 2018 which once again emphasizes the need for additional court rooms for the Summary Courts. She also comments on the important work of the diversionary courts, including the Drug Rehabilitation Court which last year undertook its first external assessment⁴ with a very successful outcome. As tangible proof of its continued success under the able stewardship of Magistrate Foldats, last year there were 13 graduates who successfully complete the program.

Also last year, the Specialist Domestic Violence Court (SDVC) secured its formal inter-agency commitment by way of a Memorandum of Understanding between the Courts, the Office of the DPP, the Department of Community Rehabilitation and the RCIPS. The main purpose of the MOU, as Mdm. Attorney mentioned, is to provide a protocol for the swift resolution of matters involving victims of domestic violence, with the aim of minimizing risk of violence and ensuring the safety of complainants. The SDVC sits every first and third Friday of the month.

As usual, the Chief Magistrate's Report will be published as an addendum to mine and I commend it to all who may be interested in current events on the Summary Courts.

However, from among the several concerns and difficulties facing the Magistrates in their daily quest to administer timely justice, there is at least one more which I must mention because of its pivotal importance.

This is the perennial shortage of experienced practitioners at the criminal bar. At present, from among a bar, as you have heard, of more than 800, there are only 27 lawyers, of varying levels of experience, who are willing to accept legal aid criminal briefs. While this number has

⁴. Conducted by Mrs. Joan Dacres, Director of the National Drug Council and Dr. Ken-Garfield Douglas, Drug Abuse Epidemiologist and Public Health Specialist. Their report is available on the Judicial website: www.caymanjudicial-legalinfo.ky

increased in recent years beyond the 12 or 15 stalwarts of the past, it is not sufficient to ensure representation for all defendants. The result is that nowadays, the Summary Courts are required all too often to postpone trials because lawyers are engaged either before the Grand Court or, when in session, the Court of Appeal.

As a recent response to this concern, in the case currently on trial court involving 12 defendants, Justice St John-Stevens directed split trials on two indictments instead of on a single indictment. Following on our discussions, among his concerns were that otherwise, the business of the Courts, especially the Summary Court, would have been severely hampered by the unavailability of more than half the criminal bar for the 6 week duration of the trial.

And so, to put the matter bluntly, we need more experienced criminal lawyers – those who can handle the most difficult cases, even while serving as mentors to their juniors.

I will leave the subject for now with the assurance to Mr. Bodden, that his observations on behalf of the Criminal Bar about the Legal Aid System have been noted.

Case disposal

On the subject of case disposal, I begin by reference to the alarmingly high number of outstanding indictments, which, despite the standard time to disposal of six months mentioned by Madam Attorney, are about to overwhelm the system. 147 indictments were carried over from last year. This is the largest number ever carried over and 20 more than the 127 carried over to 2018. The number of indictments concluded, at 71, was about on par with previous years but when taken with the ever increasing numbers which are filed each year, explain the unrelenting increase of the backlog.

The obvious and only answer is to increase the rate of disposal, but this again raises the need for more court rooms, even while we have the judicial capacity to meet the challenge.

As you will see from the Chief Magistrate's Report, there are large backlogs on the criminal side in the Summary Courts also.

Again, this is due to a significant extent to lack of court rooms for trials, as the business in Summary Court is often unavoidably interrupted in deference to the demands of the Grand Court and the Court of Appeal (when in session). Another related factor, as I already mentioned, is the unavailability of the very busy lawyers who, understandably, feel obliged to give precedence to the higher courts.

Case disposal in the other Divisions of the Courts continued at a more acceptable pace, with judgments being delivered in a timely a manner, as you have heard. This too is perhaps in an obverse way, an indication of the impact of a lack of court rooms because that is not a very significant problem on the other divisions, where the hearings are readily taken either in chambers or in the court rooms at Kirk House which are set aside for civil or commercial cases.

Case disposal in the Court of Appeal also continued apace last year. 28 civil/commercial appeals and 23 criminal appeals were filed.

The three special sessions of the Court already set for this year are needed either because of the urgency or complexity of the cases. For instance, this week the Court is in session taking an appeal in an important commercial case and the *AHAB v Saad* appeal is set for a hearing of 4 to 6 weeks in the summer.

There were 4 appeals to the Privy Council.

In the FSD 247 new cases were filed. As usual, the statistics on case disposal and other areas will be published with this Report.

I must also mention specifically the work of the Family Division which continued apace under the leadership of Justice Williams. But it is ever more challenging to dispose of these cases. Last year, 316 Divorce Petitions were filed, the largest number ever filed. Allowing those cases to run the gauntlet of contested trials is seldom in the best interest of the families involved. Mediation is a better alternative to which we are committed.

Criminal Justice and other reforms

At least in passing, it is always important on these occasions to reflect on possible reforms for the improvement of the Administration.

While the CJRC which he chairs was not able to meet regularly last year, Justice Quin advises that it did meet on occasion to advance the work on sentence guidelines reform. We might therefore expect to see within the next month or so, the recommendations for DUI offences – an area for which guidelines are badly needed.

Under the leadership of Justice McMillan, an FSD Users sub-committee was given responsibility for the review of matters relating to practice on cases arising under section 238 of the Companies Law. These are cases in which the Court is called upon to determine fair value for the buyout of minority shareholders. It involves what is for our jurisdiction a new and developing area of practice, and so the profession has called for suitable practice directions

Accordingly, draft practice directions were presented to me by Justice McMillan on behalf of the sub-committee in October, along with a summary of the decided cases.

That summary is already available on the Judicial Website and I have undertaken to turn my attention to the draft PD as soon as possible. I thank Justice McMillan and the members of the sub-committee for their valuable efforts on this initiative.

For the sake of better criminal case management, I must also issue more up to date Practice Directions to replace those issued as long ago as 1998 for Plea and Directions Hearings. With input from the CJRC, the Crown and the Criminal Bar, I expect to be able to publish these by the middle of this year.

On the civil/commercial side, I must announce the resignation of Mr. Hector Robinson QC as a member of the Grand Court Rules and Insolvency Rules Committees.

We thank Mr. Robinson for his valuable service on both Committees and wish him every success in his new and important role as Law Reform Commissioner.

I am pleased to announce that Mrs. Collette Wilkins has agreed to serve as a member of both Committees. Her appointment pursuant to sections 19 of the Grand Court Law and 154 of the Companies Law will be gazetted shortly.

Neither the Grand Court Rules Committee nor the Insolvency Rules Committee managed to meet last year and so now there are urgent items of business in need of attention, including rules for the institution of e-filing, a first draft of which is promised to come soon from our two volunteers, Messrs. Shaun Tracey and Travis Ritch.

Meetings of these Committees will be convened at the earliest time convenient to members.

Judicial outreach and continuing education

In keeping with our now established tradition for continuing education, a Grand Court Lecture for the benefit of the public, the judiciary and the profession will again be delivered this year. Our distinguished guest lecturer will be Sir Scott Baker. Sir Scott who will be known to many of you as a former Justice of Appeal for England and Wales, and notable among his special engagements, for his enquiry as coroner into the death

of Princess Diana. More recently, in a context in which I had the pleasure of getting to work with Sir Scott, he served as President of the Court of Appeal for Bermuda. His lecture on the subject of “*Judging in the 21st century*”, will be delivered on 21 February at 4:30 pm in this court room.

We very much look forward to your attendance.

Still on the subject of continuing education, Justices Dobbs and Chapple have agreed to collaborate and present a program for the members of the Judiciary over the course of two week-ends in May. The topics will cover judgment writing, criminal case management and human rights – areas of interest which were agreed on behalf of the judiciary by the JEC.

While here in May, Justices Dobbs and Chapple have also offered to present lectures for members of the criminal practitioners on advocacy skills, case preparation and case management.

This is an initiative which the Judiciary as a whole strongly supports and is consistent with the kind of encouragement of the local profession mentioned by Mr. Bodden on behalf of CILPA.

We very much hope that the Criminal Bar will avail themselves of this important opportunity about which more will be announced closer to the time.

Condolences

We join in the expression of condolences on the passing of Mr. Arthur Hunter last year. Mr. Hunter was a highly respected and leading practitioner in Cayman for many years. As you heard mentioned, he was a founding member of the Law Society and a pioneer in many other areas, such that it would require more time than is now available to mention them all. I would simply like to add that he was one of the finest persons one could ever hope to know.

In closing, on behalf of all within the Administration, we thank the movers for the kind expressions of support and appreciation for the hard work and dedication of staff.

We wish for everyone in attendance and your families, all the best for 2019.

As ever, we are very appreciative of the symbolic support presented by the officers of the RCIPS on parade and thank the Commissioner for his support and attendance this morning.

I thank the movers of the motion for their informative, insightful and helpful comments. I am pleased to accede to their motion for the Opening of the Courts for the year 2019.

And I remind everyone of the customary invitation to join us in the foyer for refreshments before returning to your busy schedules for the rest of the day.

The court will now adjourn until 2:30 this afternoon.

Hon Anthony Smellie
Chief Justice

19 January 2019

SUMMARY COURT REVIEW FOR 2018

Any reflection on the Summary Court for 2018 must begin with a strong statement of appreciation by the Magistrates for the Hon. Chief Justice Mr. Anthony Smellie, QC; and his outstanding work concerning the Judges Emoluments and Allowances (Amendment) Order, 2018. For the first time in the Cayman Islands, Magistrates have been formally placed on the same terms and references as that of Grand Court Judges. The Hon. Chief Justice has fought long and hard for several years to achieve this reality. The Cayman Islands is now one of the few jurisdictions in this hemisphere with this distinction.

The Summary Court said a reluctant farewell to Acting Magistrate Eileen Nervik, QC who retired from the Magistracy in 2018. The Summary Court owes a particular debt of gratitude to her for her dedicated work in the area of the Coroners Law. She effectively cleared up many outstanding matters and disposed of over 90% of the filed Coroners matters. Additionally, she contributed greatly with her work in the Civil Courts, the Traffic Court and the Family Court, especially in the area of Children matters. She is wished continuing success for the remainder of her practice.

The Summary Court also formally welcomes the elevation of Magistrates Angelyn Hernandez and Philippa McFarlane to the posts of Full-time Magistrates instead of Acting Magistrates. They will continue to function efficiently in all jurisdictions of the Summary Court.

CHALLENGES

During 2018, the Summary Court continued to face challenges. A few matters are highlighted below.

Increase in Matters

The workload of the Summary Court has increased even as the *total* number of Magistrates, Full-time and Acting; has decreased. Courts continue to sit daily in Grand Cayman and once per month for two days in Cayman Brac. During 2018, the Magistrates were inundated with last minute applications in Chambers, both Criminal and Civil.

The work of the Summary Court continues to cover the following areas of law: Criminal; Traffic; Civil; Family and Children. There are specialized Courts for Coroner's Inquests, Youth and recently Domestic Violence. There are also diversionary Courts - the Flagship project being the Drug Rehabilitation Court. There is also a Mental Health Court, a Non-Violence Review Court and a continuing programme for dealing

with offenders charged with Driving While Intoxicated or other alcohol related offences.

CRIMINAL COURTS

The number of Criminal matters which require trials has increased. It is not unusual for the Criminal Trial Diary in one week to feature a three-day trial overlapping a four-day trial, which further overlaps a two-day trial. Thereafter, there are other trials in that same week and all of these need to be put before different tribunals.

Despite the previously voiced concern about the lack of courtroom space and the stated intention to reduce the number of Summary Criminal Courts that sat daily, the reality of the workload has meant that it has been the norm for the daily listing of two Criminal Trial Courts, along with a separate Criminal Mention Court. Increasingly three Criminal Trial Courts have been rostered on a frequent basis.

The reason for this division of labour is the continuing attempt to deal expeditiously with all the matters before the Courts. As the Cayman Islands is a jurisdiction with many transient workers, there is a need to deal with such persons as quickly as possible. This is quite separate and

apart from the persons who are in custody on remand and who require speedy trials.

New Problem for the Criminal Courts

Apart from the daily struggle for courtrooms which has continued to require two Magistrates to share one courtroom, staggering the times that each start, a new problem has arisen.

The Grand Court now has a system whereby Criminal Trial dates are suddenly adjusted whenever another Trial falls through. As a result, practitioners have had to cancel Summary Court Criminal Trials which were previously scheduled, due to being required to appear before the Grand Court.

This is particularly unsettling for Summary Court Criminal Trials which are part-heard and involve persons on remand. It is frequently difficult to reschedule these part-heard matters if more than one represented Defendant is involved. This is because such rescheduling requires the synchronizing of the diaries of several attorneys-at-law, including Crown Counsel. Magistrates have been desperately listing these matters for afternoons, Monday through Friday, in the hope of slowly concluding the matters.

New Specialist Court

The **Specialist Domestic Violence Court (SDVC)** had its first sitting on December 21, 2018.

It was established under a Memorandum of Understanding between the Office of the Director of Public Prosecutions, Judicial Administration, the Department of Community Rehabilitation and the Royal Cayman Islands Police Service. The main purpose of this **specialist court** is to provide a swift resolution of matters for the victims of domestic violence. All of the agencies involved move swiftly from the first complaint of a domestic violence matter, investigation, filing of charges, appearance in court by the Defendant and resolution of the matter whether by plea or trial.

One challenge that has been identified is the lack of Legal Aid for the conduct of Trial for many of the offences charged. This exposes the Complainant to cross-examination by an unrepresented Defendant. The situation is not ideal and could defeat the main objective of these courts.

The SDVC currently sits every first and third Friday in the afternoon. Since inception up to the time of this writing, it has already scheduled and concluded one trial.

TRAFFIC COURT

Along with the several Criminal Courts, Traffic Court sits daily Monday to Thursday except for 4th and 5th Thursdays. Recently both the Crown and the Bench have mooted the possibility of there being two daily Traffic Courts to deal with the increasing work volume. Due to the lack of courtrooms, this idea has been put on hold for now. It is however an indication of how the work in the Traffic Court has increased, especially on Mondays, the designated day for first mentions.

Presently Trial listings for both the Criminal and the Traffic Courts have reached May 2019.

CIVIL MATTERS

Matters arising in the Civil jurisdiction of the Summary Court are listed for Fridays. Civil Trials have now largely been excluded on those days with the exception of third Fridays, because it was the experience of tribunals that the length of the lists on Fridays made it impossible to start and conclude a Civil Trial after all other matters had been dealt with. These lists on Fridays used to include Maintenance and Affiliation (Family Court) matters. It has become the norm to separate the Family Court list and the Civil List every Friday before different Tribunals.

Civil matters listed for Fridays involve a myriad of applications under existing legislation. Civil Trials are now routinely listed for third Fridays when no other civil matter is supposed to be listed. Additionally, fourth and fifth Thursdays are reserved for Civil Trials and no Traffic matters are dealt with on those days. Depending on demand, sometimes a Civil Trial will be listed randomly on other days during the week depending on the availability of courtroom accommodations.

Orders for Protection

Special mention must be made of applications brought under the **Protection from Domestic Violence Law, 2010**. The Orders sought are largely in the nature of injunctions and such applications are usually filed on an emergency basis for an urgent first hearing. Persons defined under the said law as “prescribed persons” can apply on an ex-parte basis for an Order that provides them protection from violence, abuse or harassment and; which gives the Royal Cayman Islands Police Service authority to arrest without warrant; if there is a breach. The initial order is made on an interim basis and thereafter an inter-partes hearing is held.

These matters are sensitive in nature and often contentious. It is sought to try and keep matters, once begun, before the same Tribunal. Magistrates usually list the matters before themselves, between 9:30 AM

to 10:00 AM throughout the week but some matters have been listed for longer trial periods.

Over the years, these applications have increased in number. Recently, the Summary Court has had to review this law as it relates to same-sex partnerships.

CHILDREN MATTERS

With the advent of the Children Law (2012 Revision), children matters which fall under both public law and private law have had to be scheduled in the Summary Court. These are listed at random times throughout the day, divided between different Magistrates. Listings are done as quickly as possible because many of the applications have a level of urgency to them. Several of these matters however require trials which last for a minimum of half a day and sometimes five days. Tribunals presiding in these matters are not available to preside in other Courts.

Applications under the Children Law have only added to the Family jurisdiction of the Summary Court which already deals with Maintenance and Affiliation applications on a weekly basis. Once again,

a strong argument can be made that a separate Family Court which sits full-time needs to be set up. Resources are required to achieve this.

YOUTH COURT

Youth Court matters involve offenders between the ages of 10 and 17 years who have been charged with criminal or traffic offences. These matters are still being dealt with on Friday mornings. On occasion a trial matter may require a special sitting.

CORONER'S INQUESTS

Inquests continue to be scheduled as frequently as possible. Magistrate Hernandez is now primarily in charge of matters falling under the Coroners Law. From time to time, other Magistrates will preside over Inquests.

The Diversionary Courts

A subset of the Criminal Courts are the Diversionary Courts which are discussed below.

Evaluation Report on the Drug Rehabilitation Court (Drug Court)

In its eleventh year of operation, an Evaluation Report on the Drug Rehabilitation Court (Drug Court) was published.

This was prepared by Mrs. Joan West-Dacres, Director of the National Drug Council and Dr. Ken-Garfield Douglas, Drug Abuse Epidemiologist and Public Health Specialist, who has notable experience in this area.

The Evaluation was quite positive. Recommendations were also made by the Evaluators about tools which can be put in place by Judicial Administration; to easily provide the information necessary for future and ongoing evaluations.

As the Adult Drug Court moves from strength to strength. the Chief Magistrate is still interested in establishing a Juvenile Drug Court. Existing programmes are being examined.

Mental Health Court

This Court continues to meet on the third Wednesday afternoon of every month. Its continuing goal is to stabilize the condition of each client.

Meetings have taken place in 2018 between the Courts and other stakeholders towards establishing a proper framework of operation for this Court. The lack of an appropriate treatment facility and other resources remain the main stumbling blocks for this program. In the interim the Crown and the Courts, guided by the professionals in the Mental Health field, are working on getting out draft legislation for the proper operation of this Court.

In 2018, the Magistrates were the beneficiaries of a special talk given by Dr. Marc Lockhart about: the proper meaning of the term “Mental Health”; Mental Health legislation and the work of the Mental Health Commission.

Non-Violence Review Court

As part of the Summary Court’s diversionary programme, Non-Violence Review cases are considered on the second Wednesday morning of each month.

Under the existing system, the participants, male and female, still come from one of two tracks. They either pled guilty and await sentencing; or they denied the charge but at the Crown’s urging, indicated a willingness to attend a diversionary program. Successful completion usually results

in no conviction being recorded against the first group or the charge being left on file or no evidence being offered for the second group.

Participants attend the Men's Non-Violence Programme, the Anger Management Programme or one of the other programmes dedicated to strengthening domestic partnerships. All of these programmes are run by the Department of Community Rehabilitation and the Probation Officers provide monthly reports to the Courts on each individual's status.

These Courts continue to work well, largely due to the input of the Department of Community Rehabilitation.

Driving While Intoxicated (DWI) Programme

Driving While Intoxicated (DWI) Courts still do not exist in the Cayman Islands. There however, continues to be a regime whereby persons convicted of DWI or other alcohol related offences, in the Cayman Islands are referred to a Drunk Driving programme run by the Counseling Centre.

Where these Courts exist in other jurisdictions, they have been the result of government initiatives which include the provision of funding and tax credits. The rules to run these Courts also appear to emanate entirely from legislation.

If the Cayman Islands is to proceed with such courts, huge input from the government is required.

Judicial Clerkships

In 2017, Judicial Administration under the leadership of the Honourable Chief Justice, Mr. A. Smellie, QC; partnered with the Truman Bodden Law School and local law firms to establish a formal programme of Judicial Clerkship for Articled Clerks.

The programme continued in 2018 with clerks each spending four weeks shadowing the judiciary. The programme appears set to expand to taking place over several more months during 2019.

The Summary Court has been pleased to host these persons for one week during each of such months. Each Clerk was presented with an Overview of the various divisions of the Summary Court and a Schedule of their activities for the week which were prepared by the Chief Magistrate. Thereafter, led by various Magistrates, the Clerks attended sessions in several of the jurisdictions of the Summary Court. At the end of the week they were each evaluated for the programme.

The Summary Court was pleased to participate in this programme and looks forward to the attendance of more Judicial Clerks.

Other Challenges faced by the Summary Court.

The majority of the work of the Summary Court still involves Criminal matters. Despite challenges, the emphasis will remain on getting as many Criminal matters completed as soon as possible. Urgent Criminal Trials will continue to get priority listings.

It is desired to schedule more Civil Trials and Inquests. It would be ideal if each of these divisions had a full-time Court sitting throughout the week. However, like the proposed Family Court, until further courtroom resources are made available to the Summary Court, nothing can be done in this area.

Another area of concern is the need for efficient support from Computer Systems. An increased usage of computer systems in the Magistrates' Courts has greatly enhanced the efficiency of these Courts. This still requires improvement.

The Criminal Courts have benefitted from the video-link facilities set up between the courtrooms and HMP Northward. This has reduced the number of prison inmates who have to be transported to the Courts when

their matters are listed for mention. Although the system was down for a while, it is now back up and running.

Some thought must be given to the utilizing of video-link facilities for Trials emanating from the Specialist Domestic Violence Court (SDVC). With the emphasis on protecting the “victim”, this may be one method of protecting the complainant from the vicissitudes of cross-examination by an unrepresented Defendant.

Contested Children and Civil matters have also been in a position to proceed when one of the parties or a witness gave their testimony via Skype or Zoom. As such, matters did not have to be delayed until these persons were in the jurisdiction.

The Criminal and Traffic Courts could still benefit from computers in the courtrooms, allowing them to efficiently set dates for Trial matters based on that which has already been listed. This has long been promised and it is hoped that it will come to fruition in 2019.

CONCLUSION.

It can be seen from the foregoing that extensive use has been made of all of the Magistrates on a regular basis. However, there is still need for an

increase in the courtroom, electronic and other facilities for the Summary Courts, so that service can be improved.

Nova Hall
Chief Magistrate

11th January 2019.

JUDICIAL AND COURT STATISTICS

Cases filed per year	2008	2009	2010[R]	2011[R]	2012	2013	2014	2015	2016	2017	2018
Privy Council	0	0	3	0	2	0	3	4	7	7	4
Court of Appeal											
Criminal	33	28	38	30	27	39	33	28	35	33	23
Civil	16	19	26	16	24	29	24	24	18	28	28
Grand Court											
Summary Ct. Appeals											
Criminal	50	65	85	54	30	20	27	44	37	25	23
Civil	3	0	0	0	0	0	0	0	0	2	0
Indictments	102	70	109	114	139	98	109	108	121	104	88
Indictment (sentence only)											17
Civil (incl. Admiralty)	480	482	408	478	587	446	297	318	250	222	262
FSD (from Nov. 2009)	-	67	280	206	176	157	167	255	225	286	247
Family Matters	215	232	292	271	287	271	286	260	245	290	316
Estate Matters	154	140	129	116	138	135	138	136	171	212	189
Summary Court											
Criminal (incl. Traffic)	9,678	-	-	-	-	-					
Criminal	1506	1228	1301	1290	1260	1579	1591	1641	1451	1342	1243
Traffic	8172	10011	9293	4687	5909	7020	5959	6028	6886	5320	1526
Traffic Tickets*											5925
Youth	178	138	114	92	97	109	98	98	49	90	67
Youth Criminal*											
Youth Traffic *											
Juvenile (now Family)	46	44	50	66	49	23	33	63	53	54	58
Civil	467	430	407	478	347	421	342	318	321	252	242
Maintenance and Affiliation	101	118	124	138	113	108	101	118	142	80	132
Coroner	-	26	33	60	61	51	43	55	55	54	50
Cayman Brac	68	3349	219	147	209	171	122	126	196	97	155
Cayman Brac Criminal*											
Cayman Brac Traffic*											
Mental Health	-	-	-	-	-	-	-	-	25	26	25
Other Services											
Drug Rehab Court											
Applications	78	94	74	60	54	45	41	54	44	54	39
Graduates	0	17	23	15	13	6	10	8	13	14	13
Legal Aid											
Criminal	173	176	187	208	276	370	303	285	242	353	415
Civil	223	156	160	244	281	313	341	232	211	302	209
Attorneys											
Licensed to practice	511	524	541	553	582	657	625	566	541	611	794
Limited Admissions	36	100	121	96	56	63	133	75	70	83	81
General Admissions	92	54	74	57	70	68	132	81	84	70	102
Notaries Public	445	467	467	480	501	543	587	588	622	575	1,050
Justices of the Peace											
Grand Cayman	136	136	136	137	162	166	177	176	179	175	200
Cayman Brac and Little Cayman	28	28	28	28	30	30	30	30	30	28	30