

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

15TH JANUARY 2020

The proceedings commenced with Prayers led by Pastor David Woods of the Red Bay Church of God.

Welcome and salutations were extended to His Excellency the Governor; the Deputy Governor Mr Franz Manderson; The Honourable Premier Mr Alden McLaughlin; The Honourable Speaker Mr McKeever Bush; Members of Cabinet and of the Legislative Assembly; Members of the Judiciary in the galleries, the Acting Commissioner of Police; spouses of the judges in attendance, including Mrs Jacqueline Smellie and other distinguished guests.

Thanks were first of all expressed to Pastor Woods for having led the gathering in prayer.

The Chief Justice then invited the Honourable Attorney General Mr Samuel Bulgin QC to move the motion for the opening of the Court, to be followed and seconded by Mr Patrick Moran, Director of Public Prosecutions, then Mr David Collins, President of the Cayman Islands Legal Practitioners' Association (CIPLA), and by Mr Colin Mckie QC on behalf of the consultant editors of the Cayman Islands Law Reports.

As in previous years, the Chief Justice began with reflections on the changes or transitions occurring within the judiciary and staff of the Administration.

THE JUDICIARY

Justice Margaret Ramsay Hale

It is with great pleasure that I welcome Justice Ramsay Hale and mark her presence presiding with us this morning at the opening of the Court. The judge needs no introduction to this gathering. Indeed, this is very much a welcome back to the fold from whence she had but only temporarily departed. On behalf of her colleagues, including if I might say so, especially myself as the one most long acquainted, she is assured that we are delighted to have her back and we look forward to a long collegial relationship of service to the people of these Islands as judges of this Court. And while we sympathize with the people of the Turks and Caicos Islands in their reported sense of loss at her departure from office as their Chief Justice, we can only say that it is too bad that she cannot be in more than one place at the same time. From our point of view this Court which she regards as her home court, is where she belongs!

Justice Ramsay Hale will be one of the five judges who serve on all the divisions of the Grand Court. And she already dealing with her first matter listed this week in the family division.

Justice Charles Quin

At last year's opening, we had the distinct privilege and pleasure, in the presence of Justice Quin, Mrs Quin and their sons, to pay tribute to the

judge on his retirement, for his wonderful service to the courts and the legal profession in the Cayman Islands.

But we were, very sadly, later last year, to mark the passing of our dear friend and colleague.

On this occasion, we remember him and once more give thanks for his tremendous contributions to the administration of justice in this country and for the very fond memories he has left with us of our times together as colleagues on the bench.

Justice Charles Quin will never be forgotten and it was very pleasing to see the same portrait of him which smiles down upon the foyer of the Court gracing the front page of the first edition of the Compass for 2020, a very fitting memorial for all of Cayman.

Sir Edward Zacca

The passing of Sir Edward Zacca was marked on the 12 November by a minute of silence in all the Courts and by the flying of the flag at half-mast that day. These were but symbolic expressions of our appreciation for his many years of service as President of the Court of Appeal and his contributions to the development of jurisprudence in the several jurisdictions of the Commonwealth Caribbean, Bermuda and the Bahamas, in all of which he served.

Today we remember Sir Edward very fondly also for his unfailing courtesy as a judge and colleague and for being the true gentleman that he was.

Sir George Newman

We also very sadly last year, marked the passing of Justice of Appeal, Sir

George Newman.

Justice Newman was throughout the Commonwealth, widely regarded as a pre-eminent public law, constitutional and criminal law jurist. He served on our Court of Appeal for more than 4 years and made a very lasting contribution especially through his lead judgments on behalf of the Court. He was a very kind and caring man and will be fondly remembered by all who had the good fortune to spend time in his presence.

THE BUSINESS OF THE COURTS

At the opening last year, it was with a measure of relief that I announced the acquisition of the Scotia Bank building by Government for the use of the Courts.

Based on assurances which were given, I also announced that by mid-year, we would have commissioned two more long overdue courtrooms in that building, to be dedicated to criminal trials, one of which would serve as the base for the Court of Appeal when in session.

The clear stated priority was to tackle the backlog of criminal indictments.

Despite the fact that this courtroom project would involve simply the reconfiguring and fitting out of internal space within the building, I am obliged to report this has not yet been achieved. In the meantime the Building has been partially occupied to relieve the space shortage for administrative staff, some members of the judiciary, and as facilities for mediation and training of staff.

The fact of the matter is that the Judicial Administration may not undertake the courtroom project without the permission of the Planning

Department, and input of Public Works and Lands and Survey who hold title to all Government buildings. We therefore call upon our colleagues from these other agencies to recognize the urgent need for these courtrooms and not to allow too much red tape to humbug progress. As I will come to explain, we now have the largest number of indictments ever awaiting trial.

As was the position last year, the judges are already rostered to tackle the backlog of indictments but this effort cannot begin without the courtrooms being available. It is of utmost urgency that these two court rooms are available no later than May of this year. So far as the Administration can drive this initiative, we will be engaging a project manager especially to work with the other agencies to have these courtrooms installed by May.

The Summary Courts

As in past years, the chronic lack of courtrooms continues to hamper the work of the Summary Courts also and this problem, along with the unavailability of criminal defence counsel, is the main focus of the Chief Magistrate's Report. As in past years, her Report will be published as an annex to mine.

But here while we continue to struggle with the lack of courtrooms, I wish to underscore the fact the work of the Summary Courts is very much impacted by this situation.

The work of the Summary Courts covers several jurisdictions: the Criminal Courts; Traffic Court; Civil Court; Family Court and Coroners' Court.

Except in Coroners where there is a dedicated Magistrate, the five full-time Magistrates rotate through each jurisdiction in Grand Cayman and take turns presiding monthly for two days at a time in Cayman Brac.

Each Magistrate also handles several Children Law applications, slotting these matters in between their substantive lists early in the morning or during afternoon sessions. The Summary Courts also have specialized courts: Coroner's Court already mentioned and Youth Court, as well as the diversionary Courts – The Drug Rehabilitation Court; Mental Health Court, the Domestic Violence Court and the Non-violence Review Court.

From the Traffic Court, the Magistrates also monitor a continuing program for dealing with offenders charged with Driving While Intoxicated or other alcohol related offences.

Four of the Magistrates are trained mediators and participate weekly with a number of the Grand Court judges in the mediation program, about which more will be said in this Report.

Additionally, throughout the year, the Magistrates are inundated with emergency applications which they hear in Chambers, in both the criminal and civil jurisdictions.

In short, the Magistrates have been working extremely hard and getting through a very large case load. Objective proof of this can be seen from a comparison with the listing of cases as reported at the end of 2012. Then it was reported that the soonest a matter could be listed for trial was July 2013. Today, by comparison, a criminal trial can be listed for trial in March of this year and a trial date for a traffic matter can be obtained in February. If a trial is called for in Cayman Brac, it can be set for the very next monthly sitting.

In other words, despite the chronic difficulties which I will now discuss, the Magistrates have ensured that justice is dispensed in the Summary Courts in an efficient and timely manner.

But it is important in light of recent comments that I explain yet again, the nature of the problem facing these Courts.

Given the large number of cases coming before the Summary Courts, they must convene every day in all their main divisions - criminal, traffic, civil, family and, at least weekly, in coroners. This means that our five full time Magistrates and two acting magistrates need courtrooms on an ongoing basis. Currently, they are forced to rotate sittings throughout the day.

Yet over the years, only one fully equipped courtroom has been regularly available to the Summary Courts –that which is officially designated as Grand Court 2. As a result, when the Court of Appeal sits to hear criminal Appeals and Grand Court 1 (this courtroom) is given over to the Court of Appeal, Grand Court 2 must be used for indictment trials and then becomes unavailable to the Summary Court.

The disruption that this causes to an already fragile listing system should be obvious to everyone and cannot be allowed to continue. After many years of explaining this problem, one is obliged to think that any lingering reservations about the need for dedicated courtrooms for the Summary Courts can only be the result of lack of understanding.

The Government has committed itself to the building of a new Courthouse which will address this problem and the similar needs of the Grand Court and Court of Appeal, into the foreseeable future. This project is of crucial importance to the administration of justice in these Islands and it is imperative that it be allowed to proceed.

Criminal Defence Counsel

The other chronic problem facing the Summary Courts (indeed the Grand Court criminal division as well), is the lack of criminal defence counsel. The fact that from a local resident bar 960 strong, only a small number are willing and qualified to serve the public at the criminal bar. This is an alarming statistic and something must be done to address this deficit.

In the meantime, in Summary Courts, what this means is that the business of the criminal division is entirely dependent upon the availability of a small cadre of lawyers who also appear before the Grand Court and Court of Appeal and when called to appear in those Courts this results in disruption of the Summary Courts.

By way of example, during a single week, that of the 23rd September last, four criminal trials were vacated on the dates of trial in the Summary Courts because Defence counsel were required, at short notice, to appear in matters before the Grand Court. To quote the Chief Magistrate:

“This is particularly unsettling for Summary Court 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 matters”.

Of course, while this disruption in the Summary Courts’ criminal list may be caused to some extent by the priority which is given to the Grand Court and Court of Appeal criminal cases, the solution does not lie in trading off the work in one Court against the work in another; otherwise we would simply be shifting the backlog from one court to the other.

The only solution to this particular problem is that we must attract more competent lawyers to the criminal bar and ensure that there is a more even distribution of the case load among all of them.

This is much easier said than done. Early this year we will be convening a working group with the Criminal Defence Bar to seek an answer.

The family division and mediation

Last year was another extremely busy year for the Family Division of the Grand Court with 297 new divorce proceedings initiated. This was on top of the significant number of new applications filed within existing proceedings.

While these cases are being disposed of in a generally timely manner, there is a growing concern within the judiciary about the escalating costs of family proceedings as well as the disproportionate amount of court time being taken for resolving matrimonial property and child custody issues, matters which reasonable parties should be able to agree upon between themselves.

With these concerns especially in mind, from the start of this year, the existing mediation procedures have been revised to provide more procedural consistency within a streamlined approach. It is hoped that this free dispute resolution service offered by the Courts will assist participants to resolve their family disputes in a cost effective and non-adversarial manner, minimizing the emotional damage caused to families in the breakdown of marriage.

And so, new MIAM Rules have been approved by the Rules Committee and they are supported by a Practice Direction. Mrs Leslie Talbot, a qualified mediator with extensive experience as an attorney and mediator at the Family Bar in Florida, has been engaged to be the mediation officer conducting all of the MIAMs, as well as some of the mediation sessions. There are now 4 certified Judges and 4 certified

Magistrates who will also be conducting mediations on a regular basis on a roster system.

Mrs Talbot is present this morning and I take this occasion to thank her for agreeing to undertake this sensitive and important role as mediation coordinator and to welcome her publicly.

In the same vein, in seeking to address the escalating costs of matrimonial proceedings, a Practice Direction was issued in October requiring parties to file and exchange **costs estimates** in all family proceedings in the Grand Court. These estimates must show the costs incurred to date and future costs likely to be incurred. It is in the interests of the parties that each should be aware, throughout the proceedings, of their actual and potential liability for costs. This information should help those appearing before the Courts to recognize the benefits of alternate dispute resolution, especially mediation, and it should concentrate their minds on what are the real issues to be determined in a proportional and more cost effective manner.

A constructive and very well attended meeting was held with all members of the Family Bar in December to outline the modified mediation program, the costs estimate procedures and to reinforce the expectations of the Family Division concerning compliance with Practice Directions and the governing rules. I am told by Justice Williams who presided, that it was agreed at the meeting that similar quarterly meetings would be hosted by the Family Division with the Family Bar aimed at continuing the improved service given to families upon marital breakdown when they most require assistance from and support by the judicial system.

The Panel of Guardians ad Litem

To support vulnerable children in the community, following an open recruitment campaign and consideration of large numbers of applications received from individuals who commendably wish to serve the community, interviews for appointments to the panel of Guardians ad litem were conducted in December by the GAL Committee comprising of Justice Williams, Ms Shari McField and Mr Rayle Roberts. The Committee will be recommending 9 persons for formal approval by Cabinet and invitation to join the Panel.

Before they begin work, the Guardians will be provided with comprehensive training by an experienced Guardian ad Litem.

Other Justice Reform Initiatives

The **Grand Court Rules Committee** welcomed Mrs Collette Wilkins as a member last year. She was also appointed to the **Insolvency Rules Committee** upon the resignation of Mr Hector Robinson QC. The GCR Committee dealt with two important initiatives last year. The first was the promulgation of new Criminal Case Management Rules for both the Grand and Summary Courts, along with a Practice Direction. The second, as I mentioned earlier, was the promulgation of the new MIAMs Rules and Practice Directions on which the new mediation initiative for the Family cases is based.

In light of the new criminal case management rules, a **team of experts**, identified with the assistance of Justices Dobbs and Chapple, was invited to inspect and report on the ways and means available to all the stakeholders for compliance with the rules. The experts were given a comprehensive mandate which required them to meet with all stakeholders in the criminal justice system. Their remit was to conduct *an assessment of the disclosure aspects of criminal justice procedure, the efficiency of the court administration, court related policing practice, and*

the legal profession and legal aid system in existence and operation. Their inspection took place in November and a comprehensive and insightful report was produced, giving a range of recommendations to improve the management and disposal of criminal cases.

An immediate objective this year will be to convene meetings of all stakeholders to implement these recommendations.

As announced at the opening last year, Justice Segal has agreed to chair the **Insolvency Rules Committee**. As the IRC has not met since Justice Jones, its former chairman retired two years ago, there are now matters requiring its urgent attention and a meeting will soon be convened.

The Criminal Justice Reform Committee (CJRC)

Chaired by Justice Richards, the CJRC continued its work last year and produced comprehensive sentencing guidelines for offences of causing death by driving. The final working draft of these guidelines are in my office for approval and publication and this will be attended to immediately.

The CJRC also started work on the guidelines in the difficult area of sexual offences and I am told that the draft is at an advanced stage. Publication of these guidelines may therefore be reported soon.

Creation of the Online Public Register Platform and other IT initiatives

The right of the public to free access to court information has been recognized for a very long time. That access, while hitherto confined to the physical inspection of the hardcopy Registers at court, is now facilitated by the launch of the Online Public Register Platform, accessible through a portal on the home page of the website.

These online Registers go back to 1995 when the modern Grand Court Rules were promulgated. For the moment, the website access will be “read only” until an appropriate new fee structure to allow downloading and printing access can be agreed with Cabinet. A proposal for the new fees, which we propose to be less than the existing fees because of the saving of administrative costs, will soon be sent to Cabinet.

Also currently included in this online service platform, is access to more than 1,000 of the unreported judgments, the remaining 3,000-4,000 of which will soon be accessible to the public on the platform.

This initiative involved significant work by a dedicated team of people whose efforts will be recognized in a full formal report which will be published on the work of the Courts early this year.

For those in attendance today who may wish to test the platform, the Clerk of Court, Court Administrator and their hardworking team have set up a kiosk in Court Room 2 where you are invited to give it a try.

Also worthy of mention now, is the facility for electronic transfer of funds. This facility is made available, especially to mothers, for maintenance payments. This facility is now available as a result of the work especially of the Chief Financial Officer and two officers of the Court Funds Office, Ms Roseita Ebanks and Ms Jaira Barton, working with the staff of our bank at Royal Bank of Canada.

As the result, I am told that more than 500 clients now receive their weekly, bi-weekly or monthly maintenance payments through this electronic transfer system.

The facility is also available to those who wish to pay traffic ticketing fines to settle the tickets without appearing before the court.

Needless to say, the use of this platform will also result in significant reduction to the administrative costs, time and effort required for the manual processing of maintenance and traffic ticket transactions.

The E-filing and Jury Platform

I am informed that the E-Filing and Jury Management Platform are now fully functional and ready for the start of the pilot program. The firms who have agreed to participate in the E-Filing pilot program are Grant Thornton; Carey Olsen; Ogier; Maples and Calder and Deloitte and they can expect instructions for commencement soon.

Judicial outreach and continuing education

Last year was a very active year for continuing judicial education. Two comprehensive and well attended workshops were presented on subjects ranging from judgment writing, to case management and human rights.

A workshop was also presented for the criminal defence and prosecution Bars on advocacy skills, case preparation and case management and this was also well attended and received.

These workshops were developed and led by Justices Dobbs and Chapple, with support on specific subjects by Justices Henderson, Williams and Kawaley - proof that we have now developed from within our own ranks, a very competent faculty of judicial educators who can, where needed, identify and call upon experts from outside to assist.

The **Judicial Education Committee** was very ably chaired by Justice Mangatal and I note here our thanks for the work she did to get our program off the ground. Following her resignation last year, I am pleased to be able to announce that Justice Kawaley has agreed to chair this

Committee and I am confident that it's important work will be enhanced and continue apace.

The next item for its calendar will be the **Grand Court Distinguished Guest Lecture**, this year to be delivered by Lady Justice Arden of the United Kingdom Supreme Court and Judicial Committee of the Privy Council.

The lecture will be delivered on Wednesday, April 1st, and I am sure that you all will want to attend.

Case disposal

As usual, I will conclude my Report with an overview of case disposal. I will be very brief on this occasion because, as already mentioned, a fuller and more formal report will soon be published, one suitable to mark the turn of the decade.

The statistics from the **Summary Courts** speak for themselves and again underscore the urgent need for dedicated courtrooms for those Courts.

1,292 criminal charges were filed last year, as well as 6,108 traffic tickets.

1,301 criminal charges were disposed of, 919 of those by way of contested trials.

The average number of days from filing to disposition by way of contested trial was 282 or 9 months. While this is longer than should be expected for summary disposition, trials are often adjourned from date to date part heard due to lack of courtrooms or the unavailability of the defence lawyers. The international benchmark of 6 weeks for disposition of Summary Court charges will not be met unless those two chronic problems are resolved.

Traffic ticket offences call for different treatment and as I already mentioned, persons are encouraged to settle these where possible, without a court hearing by payment of the tariffs. Several hundreds of these tickets had nonetheless, to be disposed of by hearings before the Court.

To avoid unnecessary hearings and enhance the process for dealing with ticket offences, the Courts will this year re-engage with the RCIPS for the use of e-ticketing machines. The intention is to allow for the electronic filing of traffic tickets into the Courts JEMS register, immediately as the tickets are issued by the officers on the streets. Persons who wish to simply pay the tariff instead of going to Court may do so. The cases will then be completed, the files will be closed and the RCIPS notified automatically, as soon as that is done.

The benefits of an automated process have been recognized for many years. It will obviously save a great deal of administrative time, effort and costs for both the Courts and the RCIPS. I am pleased that the Commissioner is reported to be as resolved as we are to achieve this and am more confident than ever that implementation will soon be a reality.

In the **Grand Court** 110 new indictments were filed last year, while 111 were disposed of. While this resolved 20 more indictments than were disposed of in 2018, the number carried over from 2019 is, at 108, as I mentioned before, the highest ever.

Many factors impacted upon the rate of disposal. For instance, with the continued limitations on courtroom availability, the appeal in AHAB v SAAD last year required a special session of the Court of Appeal and this resulted in Court 5 being unavailable for criminal trials for the 6 week period of that session.

This, along with the use by the Court of Appeal of Grand Court 1 for criminal appeals during their 3 regular sessions, as well as the emergence of longer and more complex criminal trials in the Grand Court, all impacted the number of trials which could be taken.

And while the lack of criminal defence lawyers was not as disruptive in the Grand Court as in the Summary Courts, trials had to be adjourned on some occasions for that reason.

The **Court of Appeal** had an usually busy year in which 26 criminal and 37 civil/commercial appeals were heard. The latter number was a significant increase over the 28 heard in 2018 and was remarkable also for the complexity of the cases; AHAB v SAAD being the most extreme example.

The Privy Council delivered judgments in two appeals from the Cayman Islands last year. Currently there are three matters pending before the Privy Council from Cayman, including the long awaited decision in *Shanda Games* on important issues of company share valuation.

Conclusion

So in conclusion, the struggle continues. Some seemingly perennial difficulties are yet to be overcome, chief among these being the lack of courtrooms and the generally inadequate and outmoded court infrastructure. The chronic shortage of criminal defence lawyers being another matter of urgent concern. But as you have heard, some tangible progress has been made in important areas and plans are in place or are being developed to deal with the big problems. The reality is that in our jurisdiction like even in others which we would emulate, the administration of justice is always a work in progress.

As we enter a new decade, we invite you to join with the judiciary and court staff in our renewal of effort to improve the administration of justice in these Islands which we all call home.

The Carol Winker Chair

As a final item of business, you will note on your program for today, our intention to install a chair in this Court, in honour and memory of Ms Carol Winker, journalist and court reporter extraordinaire.

Carol Winker attended faithfully and reported on proceedings in our Courts for more than 34 years. She was a consummate professional whose reporting was so reliable and respected that lawyers would cite them to the Court as precedent of decisions, especially on sentencing. They were fondly referred to as the “Winker Reports”.

We believe that her service to the Islands as a journalist should be recognized in the hope also that it will stand as an example for other journalists to come. The reporting of court proceedings is a very important service to the public and it is essential that it be done accurately and fairly. This is the standard to which Carol Winker always aspired.

The chair with a plaque inscribed in her honour is located in the area reserved for the press. In a moment, just before we rise, our Marshal will be called to do the unveiling.

Before the unveiling, as is customary, I ask the Commissioner of Police to convey our thanks to his men and women in uniform for their resplendent turnout on parade -their important symbolic expression of support for the Courts and the administration of justice.

I accede to the motions for the opening of the Court and declare the Courts open for the year 2020.

It only remains for me to extend to all in attendance, our best wishes for the New Year and to invite you to join us as usual in the foyer for refreshments and a chat before you return to work.

[Winker Chair unveiled]

Adjournment.

Hon Anthony Smellie
Chief Justice

15 January 2020