

**CHIEF JUSTICE'S REPORT ON THE  
OPENING OF THE GRAND COURT – 3<sup>RD</sup> JANUARY 2007**

**PRELIMINARIES**

The Chief Justice welcomed everyone who attended.

A special thank you was extended to the officiating Minister of Religion, Pastor Thabiti Anyabwile of the Baptist Church, for the inspiring prayer to commence the proceedings

The Chief Justice then welcomed the other distinguished guests – Leader of Government Business, Hon. Kurt Tibbetts; and other Cabinet Ministers; Hon. Arden McLean, Hon. Alden McLaughlin Jr., and Hon. Charles Clifford.

He then extended the invitation to the Hon. Acting Attorney General to move for the opening of the Court; seconded by Mr. Charles Quin, President of the Cayman Islands Law Society; and Mr. Ramon Alberga. (Apologies were made for Mr. Wayne Panton who sent his regret for being unable to attend and for not being able to send a representative of the Bar Association.)

Chief Justice then made comments on the various speeches, before proceeding to present his Report as follows:

## **REPORT**

Often on these occasions the emphasis in our report is placed less on what has been achieved than on what we hope to achieve. For all of us involved in the business of the Administration of Justice this comes as no surprise for there never is time for resting on our laurels.

The adage ‘justice delayed is justice denied’ means that we must constantly be on alert for problems in the system which can create backlogs and delays.

Today I will therefore be commenting on an area where concerns continue to arise.

But before doing so, I think it is right that I should take the time to note if only in passing, that in general things have continued to go well with the Administration of Justice in our jurisdiction.

Comment has kindly been made by Mr. Alberga on the number of decisions and reserved judgments delivered by the judges and the statistics will attest to the continued hard work and dedication of the Magistrates in the disposal of the very large number of cases coming before their Courts.

These are, of course, important indicia of our response to the demands of our jurisdiction.

I must however make special mention of the important work which our Administrative and support staff continue to do without which the end result – the judicial decisions and judgments – could not be as efficiently and timely delivered.

Most of our staff continue to work in the cramped confines of the Court Registry which is still housed on the ground floor of this

building and have continued to do so with a keen sense of responsibility and dedication. I wish publicly to express our appreciation for their efforts.

## **COURT ACCOMMODATIONS**

This leads me naturally to the subject of the Court facilities and the long awaited new building for the housing of the Summary Courts.

All the parcels which will comprise the site for this building have now been acquired and the Government Architect has informed me that he can now turn his attention to developing the final specifications for the building. When this process is complete, the project will be put out to public tender.

The intention is to expand the facility also to include an annex which will house a dedicated Family Court; specially designed to meet the needs of cases involving the family and, especially, the children in need of care or protection.

I can say that I am more optimistic than ever about the progress with this much needed and long awaited project. Two million dollars have been made available to complete the land acquisitions, to procure the surveying and architectural work for the project and now that the Government Architect is available to provide the necessary oversight, a project committee of experienced persons has been convened to work with him to take the project forward.

I expect that by next year this time, there will be something to show for all of this preparatory work.

## **THE WEBSITE AND MODERNISATION OF THE COURT REGISTRY**

As you will by now be aware, our long awaited website is available in its first static phase. It now gives ready access to the public and to the profession to the sort of public information which we hope will be of use and assistance to all users of the Court.

Those of you who have visited the site, will have seen that it also describes the plans for the future when the site will become fully interactive.

It will then have functions for searching of the databases, including the Law Reports and the Laws and, ultimately, for filings and payments online by means of authorised access. These are capabilities which will become streamlined with the JEMS Court Management system which is now fully operational.

As Mr. Alberga observes, the website will then become a very powerful research facility. Indeed, the intention is that it will become the centre-piece for the technological advancement of the administration of the Courts.

I have for some time now been persuaded that our best hope of achieving greater efficiencies within the administration of justice rests with the use of technology. This has been amply demonstrated at Court 5 by the disposal there of very complex commercial, fraud and money laundering cases by the use of

electronic databases, real time court reporting, televideo conferencing and other means.

These and other technological advancements are the way of the future for the trial of all complex cases. The savings of time and costs could be enormous.

Mr. Quin kindly made reference to the work which Mr. Lipscher is doing to assist us in the setting up of a Commercial Division of the Court.

Mr. Lipscher is a very highly regarded consultant in the field of Court Administration and is going about his task in the systematic and methodical manner which is to be expected. He returns to Grand Cayman next month and is expected to present his report at the end of that visit. Before doing so, he will, however, be seeking to meet with the profession to ensure that your views and concerns are fully considered. We ask that you give him your full co-operation.

## **DRUG COURT AND ALTERNATIVE SENTENCING LAWS**

The judiciary welcomes the passage into Law of these measures during the course of last year. These Laws have been anticipated ever since the submission of the Report of the Sentencing Advisory Committee of October 2000 on which they are based.

There remains, however, a good deal of preparatory work to be done before the legislation can start operating.

For instance, the support structure for drug counselling, random drug testing and monitoring must be put in place before the Drug Court can begin its formal intake of participants.

This is notwithstanding that some persons are already being treated through a pilot project which the Magistrates, and in particular Magistrate Ramsay Hale, have been conducting. Through their efforts, there already have been encouraging indications of the true potential of the Drug Court as a rehabilitative tool for offenders who consume illegal drugs.

A training workshop for all the professional participants – the Magistrates, judges, lawyers, drug counselors, probation officers, psycho-therapists, police officers – will be convened in February. It is being organized by Magistrate Hall in conjunction with the chairperson and director Mrs. Julene Banks and Mrs. Catherine Chesnut – of the National Drug Council.

Another example of the preparatory work for the introduction of the new Laws will be the identification and procurement of the equipment for electronic tagging and the monitoring devices to be used.

This will be an important alternative to imprisonment for those offenders who can be monitored in their homes under curfew at nights, but who may be required to maintain employment in the general work force during normal working hours.

Already some of this preparatory work has been done but still there remain significant things to be done before the Laws can be fully

implemented. The Judicial Administration will continue to work with the other agencies of Government and the private sector, especially the Service Clubs, the Churches and the Chamber of Commerce, to lay the necessary foundation for the proper implementation of the Laws.

### **LEGAL AID**

The public expenditure on this subject continues to be a matter of concern and so it is appropriate that I should express the judiciary's views once more.

Mr. Quin has accurately identified the nature of the national collective responsibility to ensure that persons who are charged with offences which could result in the loss of their liberty and who cannot afford to defend themselves, are provided with legal aid by the State. This is a primary and paramount obligation of any democratic and civilized society.

Year after year, this is an obligation which the judiciary attempts to meet by the allocation of the legal aid budget. It is a budget, which can only be regarded as modest when related to the ever increasing number of cases and their growing complexity.

Questions such as: why is it necessary to appoint more than one lawyer in some cases and why is it necessary sometimes to bring in leading counsel from as far away as London are pertinent questions; but the answers are readily apparent.

When persons are charged with the most serious offences such as those which could result in many years of imprisonment, they are entitled to able and experienced counsel to represent them.

Able and experienced though several of our resident criminal attorneys are, they are often not prepared to take on such cases on their own. In this they cannot be too readily criticized: the responsibilities are great and onerous.

Where they are unwilling to act without a leader, it will seldom be appropriate for the Court to insist that they should do so.

As to whether the leaders come from London, Jamaica or elsewhere – that will often be dictated by availability and bearing in mind of course, that we do not have local silks who are prepared or readily available to take on criminal cases. The overseas leaders are required to accept their briefs at exactly the same minimal hourly rates as are paid to local counsel (as Mr. Quin stated – much less than the commercial rates) and the only difference will be the cost of the airfare and accommodations which are also provided only at the minimal economy rates.

All in all, it must be said that given the large number of cases which must be funded, the public can be assured that every dollar of the legal aid budget is properly spent.

That said, there is, nonetheless, need for reform. This, in our view must begin with the Poor Persons Legal Aid Law itself.

As the Law presently stands, and if literally construed, the Courts would be obliged to provide legal aid to any and everyone who wishes to take or defend an action before the Courts. Such a construction would of course lead to absurdity and so by a more purposive view of the Law, the judges, over the years, have been able to contain the expenditure within the reasonable and realistic bounds of the budget. We have done so by way of the Rules which require that all applicants must satisfy a means test, and in civil cases, the clear merits of the case must also be shown.

The first thing that needs to be done is to amend the Law to make all this clear.

Mr. Quin also emphasized the importance of allowing the administration of legal aid to remain with the Courts in order to avoid greater costs of administration and to avoid delay of the criminal cases in particular. I wish to emphasise this and will shortly be providing more expansive views on the matter to the

Law Reform Commission which has undertaken a consideration of the subject of legal aid.

### **CASE DISPOSAL**

While delays in case disposal are a fact of life in every jurisdiction, they can be tolerated only to a very limited extent before they begin to operate as a denial of justice.

The current trends before our criminal courts, in particular the trend with indictments before the Grand Court, indicate that we are in danger of this happening.

One hundred and one (101) new indictments were filed in 2006. 79 indictments were disposed of in 2006, including 41 from 2005; resulting in 68 being carried over into 2007. The largest number ever carried over.

This has regrettably come about despite our attempts at running two Grand Court trials simultaneously. I am obliged to report that this is largely due to the same reasons which were mentioned in

my report at the beginning of 2005: persistent problems with case management as reflected in the fact that many cases are adjourned at short notice or discontinued at short notice because of the absence of witnesses. Often too, cases are adjourned because of the absence or lateness of scientific or other expert evidence. I mentioned in 2005 also that the judges had written to the Attorney General with suggestions for improvement in this regard and I will take the opportunity now to invite the Acting Attorney General (or her designate); the Commissioner of Police (or his designate) as well as members of the private criminal bar to meet with us (separately if necessary) to discuss the matter – all with a view to ensuring that we continue to dispose of the criminal cases in the timely manner which they require. My office will follow-up with the arrangements for our meetings.

In the Summary Court, the number of charges filed rose significantly from the 5,202 filed in 2005 to 8061 in 2006. But these, like the bulk of the 5,202 filed in 2005, involved mainly

ticketing or other traffic offences. There were 6,824 such charges and 1,237 of the more serious kind filed in 2006.

The rate of disposal of cases in the Summary Court is the subject of ongoing analysis complicated by factors such as the multiplicity of charges in some cases and the administration of therapeutic measures by the Magistrates resulting in cases appearing to be pending but which are still before the Court only for the completion of such measures. Examples are driving while intoxicated (DWI) and Domestic Violence cases where offenders are now routinely being required to undergo prescribed treatment or counselling.

On the civil side, there were 438 new cases filed in the Grand Court (as well as 222 divorce cases). In the Summary Court 407 civil cases were filed, reflecting the increase in the civil jurisdiction of that Court.

## **COURT OF APPEAL**

The case load in the Court of Appeal continued in 2006 in keeping with previous years – with 34 criminal and 28 civil appeals filed.

## **CONCLUSION**

In closing, allow me to express our appreciation once more to the Commissioner of Police and his officers for their resplendent turnout and their important expression of support for the Administration of Justice and the Rule of Law in the Cayman Islands.

We also wish for each of you and your families all the very best for the New Year.

I NOW FORMALLY DECLARE OPEN, IN ACCEDING TO THE MOTION, THE BUSINESS OF THE COURTS FOR THE YEAR 2007.

The Court will now adjourn until the taking of the remands this afternoon and I extend the usual invitation to join us for the customary reception.

Hon. Anthony Smellie  
Chief Justice

January 3, 2007