

ANNUAL REPORT OF THE CHIEF JUSTICE  
DELIVERED ON THE OPENING OF THE GRAND COURT  
9<sup>TH</sup> JANUARY 2008

**PRELIMINARIES**

The Chief Justice extended a heartfelt thanks to everyone for attending. A Special thank you was extended to the officiating Minister of Religion, Pastor Winston Rose of the Church of God, for the able way he interceded in our behalf.

The Chief Justice then welcomed the other distinguished guests – the Speaker of the House, Hon. Edna Moyle; Leader of Government Business, Hon. Kurt Tibbetts; other members of Cabinet, Hon. Attorney General; Hon. George McCarthy; Hon. Alden McLean; Hon. Charles Clifford; Hon. Kenneth Jefferson..

He then invited the Hon. Attorney General to move for the opening of the Grand Court; to be seconded by Mr. Charles Quin, President of the Cayman Islands Law School, and Mr. Ramon Alberga.

(Apologies were made for Mr. Wayne Panton who sent his regret for not being able to attend and for not being able to send a representative of the Bar Association).

The Chief Justice also noted the presence of Mr. Howard Hamilton QC from the Jamaica Bar and invited him to say a few words, after which, in acceding to the motion, he made comments on the various speeches, as follows, before proceeding to present his Report:

### **RESPONSES TO SPEECHES**

#### **To the Honourable Attorney General:**

Thank you for your motion and for your very informative speech. Your comments relating to spurious and unwarranted criticism of the judiciary are timely and appropriate. I do not imagine that any reasonable member of the public would fail to understand the real concern. It is that where public confidence in the integrity of the judiciary is undermined, then the administration of justice is

impaired. Ultimately therefore, it is the public's interest that is harmed and so must be protected to the full measure of the Law.

You have also outlined what can only be described as an impressive legislative programme over the past year and planned for the year to come. We look forward to the usual consultation on the Bills and would value a further opportunity for input on the Legal Practitioner's Bill because of its far-reaching implications recognised both by yourself and the President of the Law Society. We also look forward to the discussions on the various other measures you mention which will be aimed at improving the Criminal Justice System; including early, full and frank disclosure.

You also mentioned Mr. Attorney, a suggestion for the formation of a Court Users group. I would venture to say, even in advance of the formal proposal for its establishment, that it should prove to be a useful thing.

However, I advise that its objectives must be clearly defined and understood, otherwise, it will suffer the malaise that often besets

long-standing committees and will likely just fall away in the way that the group that was established some years ago fell away.

One of the things I would like such a group to consider is how we might better inform the public about the workings of the Court and how we might better respond to genuine public concerns about the resolution of certain types of cases.

I look forward to meeting again to review and improve case management.

**To Mr. Quin**

Thank you for your support of the motion for the opening of the Court and for the contributions made in your speech.

As is customary, I will respond briefly to some of the points raised, as I did in respect of the Attorney General's speech before turning to my Report.

Among the reasons why I believe the judiciary should have another look at the Legal Practitioner's Bill is the point you made about the

possible role of the Legal Advisory Council in the Code of Conduct.

However, I hasten to add, recognizing your advice that there should be no further delay that we would do so in short order.

I wish to express my agreement with the sentiments you expressed about the consultation work which has been done for the setting up of the Commercial Division, a matter about which I will have a bit more to say later on.

I also acknowledge the concerns which have been raised about the unfavourable impact of the New Court Fees Structure upon small claims litigation in particular.

### **LITIGATION AND CASE DISPOSAL**

As activity in litigation last year continued to reflect the trends which have emerged over the past several years, this is a useful topic on which to begin. In short, the statistics continue to show a significant rise year-on-year, in the number of all types of cases coming before the Courts.

This is a trend which the Attorney General also mentioned as observed from the number of files sent to his chambers from the RCIPS.

On the criminal side, there were 1404 cases filed in the Summary Courts (excluding traffic charges which themselves reached a record high of 10605). Remarkably, of the 1404 criminal cases filed, 1013 were disposed of, but with the still significant number of 391 pending at year end.

The trends continued in the Grand Court also with 112 new indictments filed, the largest number ever in a single year. When added to the 68 carried over from previous years, that resulted in 180 indictments before the Grand Court last year. 94 were disposed of in 2007, with 86 carried over to 2008.

This figure of 86 is most telling, as it shows nearly a 30% increase over the 68 carried over from 2006 and therefore an increasing

potential for back logs. And this is notwithstanding that 23 more indictments were disposed of in 2007 (94) than in 2006 (71).

The increase in numbers of cases filed continued on the civil side as well. In the Summary Court, the number was 484, up from 407 in 2006, an increase of 16%.

In the Grand Court 1038 civil cases were filed in 2007, up from 815 in 2006, an increase of 22%.

Notwithstanding these significant increases in the work load and outputs of both the Summary and Grand Courts, it is interesting to note that the numbers of cases going on appeal to the Court of Appeal have not increased but have instead shown a decline, a trend which also continues.

There were 26 criminal and 17 civil appeals to that Court in 2007. What this indicates as a trend, is that in addition to the increasing numbers of cases before the Summary and Grand Courts, those

Courts are also increasingly being regarded as tribunals of final dispensation for the vast majority of people.

Every necessary step must therefore be taken to ensure that those Courts are positioned to continue to meet the challenges which they face.

There is an obvious need to increase the number of judges and magistrates. The present establishment of 3 judges and 3 magistrates has for many years now been stretched to the limits. In fact those of you who are acquainted with the business of the Courts are aware of the fact that over these past years, there has constantly been a fourth acting judge appointed to assist on the Grand Court and a fifth judge's post which was created last year had to be occasionally deployed as well.

The need for a fourth magistrate is now clearly apparent from the increasing number of cases and from the advent of the Drug

Rehabilitation Court which now convenes on Tuesdays and Thursdays each week.

All of this is bound to have a carry-on effect also upon the administrative staff. An immediate example is the need for the appointment of a Registrar and secretarial staff for the Drug Rehab. Court. Despite the obvious need, one reason why these posts cannot all be filled immediately is the lack of space, the next subject on which I will comment below.

Nonetheless, there are now, at the very least, certain steps which must be taken.

Following on attempts to recruit the 4<sup>th</sup> permanent judge last year, the intention is to secure that appointment during the first quarter of this year.

Also, given the increasing demands being placed upon the Summary Court and the need to be prepared for its somewhat more autonomous existence at the new site, it is now necessary to re-

instate the position of Chief Magistrate. The Chief Magistrate will be given direct responsibility for supervision of the administration of that Court and for the development of policy in consultation with the other magistrates and the Chief Justice. To this end, after consultation with His Excellency the Governor, it has been decided that Magistrate Ramsay-Hale will be appointed Chief Magistrate effectively immediately. On behalf of the entire Judicial Administration I extend to her our warmest congratulations. And, on a personal note, perhaps at the same time, I should add my commiserations!

### **COURT BUILDING**

As already mentioned, the necessary additional personnel cannot be engaged unless and until there is space in which they can work. At present there simply is no space available both for a 4<sup>th</sup> judge and a 4<sup>th</sup> magistrate, let alone for their support administrative staff. Conditions in the Registry are already extremely cramped.

It is therefore with an ever increasing sense of urgency that we look forward to the breaking of ground for the new courts building, now anticipated to be in June of this year.

A project committee under the chairmanship of Justice Henderson has been since early last year involved in developing the design criteria. The architectural contract was awarded by the Central Tenders Committee in the latter part of the year. It can now be expected therefore, that the construction contracts will be awarded in time to meet the June deadline for ground-breaking and with completion of the projected expected to be within 12 to 18 months thereafter.

I am now also able to confirm that the project will include a specially designed and dedicated wing at which the business of a Family Court, including the care and protection of children, can be more suitably conducted than at present, as part of the general milieu of court proceedings.

Cabinet has also given approval for the re-location of the Law School to the same site. If this can physically be done, it is to be welcomed because of the natural synergies which can be created at the Courts for the training of students. This would include the creation of a legal aid clinic at which students can gain practical experience while providing valuable pro bono advice and assistance to members of the public. Mr. Quin, although as it is said, there is many a big slip between the up and the lip, I trust you will be present when we finally cut that ribbon and sip the ceremonial champagne to which you alluded earlier.

### **SENTENCING REFORMS**

With the Drug Rehabilitation Court now fully established, attention has been turned to the full implementation of the other initiatives prescribed under the Alternative Sentencing Law and to that end a task force on which the Courts are represented by Mrs. Chesnut and chaired by the Mrs. Echinique-Bowen of the

Department of Community Rehabilitation (formerly Probation and Aftercare); has been convened.

Their most important task will be to find ways to reach out to and include the wider community in the various initiatives for the rehabilitation of offenders.

There are many ways in which this can be done. For several years now the Service Clubs and Churches have declared their willingness and readiness to become involved in rehabilitative and restorative programs. So too have a number of Justices of the Peace and other individuals who are willing to volunteer.

I take this opportunity to inform all who may be interested that they should soon be hearing from us on the Government side about the specific ways in which they might participate in the various programs.

In the meantime, progress has been made by the Chief Secretary's Portfolio for the implementation of Electronic Monitoring. The

contract for the technical support and equipment will be awarded before end of month and some of the personnel who will be responsible for monitoring and reporting have already been engaged.

This will be an important innovation that will allow the Courts to make non-custodial orders in many cases where otherwise custodial orders would be unavoidable.

### **LEGAL AID**

This is another subject of perennial concern about which I believe real progress can now be expected before too long.

Having been given a copy of the draft Review of the Legal Aid System undertaken by the Law Reform Commission and dated 14 December 2007, I will, within the next few days, provide the Commission with a response, including recommendations for reform.

## **INFORMATION TECHNOLOGY**

2008 will see the transformation of the judicial and legal services web-site from its present static state to a fully interactive site on which data base and free text searching will be available. This will include the online version of the CILR, the first phase of which is already on the staging site for testing and will soon be posted on the website proper which, by the way, has experienced over a million hits during its first year of operation. This site clearly demonstrates the potential of the internet – a potential which I am sure the Law Society’s website will soon realise. We must ensure Mr. Quin, that links are created between the two sites.

The J.E.M.S. system that provides technological support for the Registry, is also reported to be functioning well and will ultimately be accessible through the website for the filing of documents and searching of public Court records. Plans for the near future include enabling the public to make on-line payments of fees and fines into Court.

## **COMMERCIAL DIVISION OF THE GRAND COURT**

This brings me naturally to the subject of the creation of a commercial and other divisions of the Court in respect of which the use of information technology will be an essential aspect of modernization. Indeed, I would venture to say that the savings of time and costs that could result require that the use of technology be at the very center of reforms.

At my invitation, a sub-committee comprising some of the more experienced commercial practitioners has prepared draft rules of court for the establishment of a commercial division to be called the Financial Services Division of the Grand Court.

It is my intention to convene a meeting of the Rules Committee to consider these and other proposed drafts of the Rules as soon as possible.

That concludes my report on this occasion. It will be appreciated from this report that the Administration has been responding to

ever increasing challenges presented by ever increasing numbers of cases which must be nonetheless resolved so as to meet the public's entitlement to timely and just dispensation. The future promises only that these challenges will continue to increase.

It is only right therefore, that I should take this opportunity once more to thank all the officers of the Courts for their dedication and hard work in support of the administration of justice and to encourage everyone to remain committed, despite the challenges, to providing these services which are so fundamentally important to the people and to the continued stability of our community.

I also thank the members of the profession, of both the private and public Bars for their co-operation and for the indispensable services which they also provide in the interests of justice. And last, but by no means least, our thanks and appreciation to the men and women of the RCIPS, who remain at the vanguard of our national security.

I wish for everyone and your families, God's blessings for a peaceful and happy 2008.

Hon Anthony Smellie  
Chief Justice

9<sup>th</sup> January 2008