

**Chief Justice's Report on the Opening of the Courts  
7<sup>TH</sup> January, 2009.**

Salutations

First a grateful acknowledgement of the inspirational prayer led by Archdeacon Lynch of the Anglican Church. As a member of his congregation, I must also take this opportunity on behalf of the Judiciary to thank him for having always remembered us in his prayers during the recent troubling times we had to encounter. Thank you Archdeacon and I hope you will be able to remain for a bit of fellowship with the present fraternity.

I welcome everyone and thank you all for having taken the time to attend this morning. I note in particular the presence of the Hon. Chief Secretary, Hon. Financial Secretary, and Minister McLean and thank you also for taking time out of your busy schedule to be here.

I also extend a very special welcome to the Acting Commissioner of Police Mr. Smith and Mrs. Smith, not only to these proceedings this morning but also to the Islands, as their time here is still not yet very long, although given the particular challenges facing you immediately, that time may already seem much longer than already spent. I thank you Commissioner for being here and through you, also wish to extend our gratitude for the usual resplendent turn out of your officers and of course, for their guard of honour which is of such symbolic importance.

I now invite the Hon. Attorney General to move for the opening of the Court. He will be followed by Mr Alasdair Robertson on behalf of the President of the Law Society, Mr Jennings and by Mr James Bergstrom, the President of the Caymanian Bar Association. And

then by Mr Colin Mckie to whom Mr Alberga Q. C. has this year temporarily assigned his prescriptive right to address this gathering on the business of the Court and on law reporting in particular.

### Issues for response

We do indeed very much honor the lives of Messrs Warren Conolly, William Walker, Stephen Hall-Jones and Jonathan Tarbotton and in remembrance of them we will observe a moment of silence when the Court stands for adjournment later this morning.

Reference has been made to the available expertise and experience within the profession, for responding to international initiatives which could harm Cayman's interests, and, on behalf of the judiciary, I would wish to endorse those comments. No doubt the other members of Cabinet present, including the Hon. Financial Secretary and the Hon. Minister McLean will be pleased to heed what has been said and will seek to harness the assistance which has been offered.

Both speakers representing the profession have spoken on the need for the long awaited reforms to the Legal Practitioners' Law. The judiciary for our part have not yet commented on the latest draft and it would be helpful before we do so to have some feedback from the Executive through the Hon Attorney General, on the views which the executives might now hold on the policy issues.

## **CHIEF JUSTICE'S REPORT**

It is with reluctance that, as Chief Justice, I observe that there are still aspects of the unfortunate events of the past year about which the Court is obliged to comment.

The regrettable, unlawful and ill-conceived arrest of Justice Henderson remains a subject of sustained public criticism and concern. It is therefore appropriate that the legal profession should demand, as these two speakers have done, full accountability from all persons responsible.

Having regard to the harm which the incident could cause to the public's confidence in the judiciary and in the administration of justice of these Islands; and in the continued absence of a full statement which could finally lay to rest any such concerns, I find that I must now add my voice to the discussion.

My first objective must be to explain and emphasise that the misconduct alleged in the arrest was not and could not have amounted to an offence in the first place. Not only was the arrest therefore unlawful, it was also without any reasonable or proper basis. It is fundamentally important that the public should understand this, otherwise the impression might linger that although misconduct in public office may not be an arrestable offence, some such offence was nonetheless involved.

This is an aspect of the matter which, although authoritatively and conclusively addressed by Justice Cresswell in his first judgment, is at risk of being improperly overlooked in the context of ongoing debate in the media about the matter. I trust that what I just said will serve to finally quell that debate as well as any other misapprehensions about the involvement of the Judiciary in the matter.

The Judiciary's further concern and reason for concern now has to do with public statements made by Mr. Martin Bridger in relation to the publication of the judgments which refused search warrants for the Operation Tempura investigation.

Those judgments, like all judgments of the Court, immediately became public documents in the absence of any application and any order granted to embargo their publication. No such application was made. It seems this failing, if such it was, occurred because of yet another misunderstanding of the law – although it is in essence the same in Cayman as in England - relating to such matters.

Moreover, despite, at his request having been provided by the Clerk of the Courts on the 8<sup>th</sup> October 2008 with a written explanation of the law and circumstances relating to the publication; Mr Bridger, on the 9th day of October 2008, issued a public statement seeking to bring into question what he described as my authorization of the publication of the judgments.

That, it must be said, was neither exemplary nor professional behaviour on the part of a police officer whose sworn duty requires him to respect the Courts and to observe the laws of the land. It was all the more troubling, coming, as it did, from an experienced officer such as Mr Bridger.

It was a matter about which I wrote immediately to H.E. the Governor, registering my concern. I still await a response.

## **The Report on other matters**

I now turn to the report on the usual business of the Courts.

### **Litigation and case disposal**

On the criminal side, the number of new cases arising and the number of cases disposed of in the Grand Court were not vastly different from the numbers in 2007, although there was some improvement overall in the rates of disposal. The statistics show 188 indictments before the Grand Court in 2008, up from 180 in 2007. 106 were disposed of in 2008 compared to 94 in 2007, resulting in 84 pending at year end of 2008, compared to 86 at end of 2007.

The statistics from the Summary Court show a similar result. While the number of criminal charges (excluding traffic charges) rose from 1404 in 2007 to 1506 in 2008, the number of disposals also rose but more encouragingly, from 1013 in 2007 to 1421 in 2008.

I pause here to extend my appreciation to the staff of the Attorney General's Chambers and to counsel, especially of the Criminal Bar for their continued stalwart efforts and to the Magistrates and registry staff, in endorsing what Mr. Bergstrom said about resolving the backlog.

It must be observed however, that despite these results, the sheer number of criminal cases coming before the Courts continue to demand unrelenting response.

On the civil and commercial side, the patterns also roughly followed the year before with 850 such cases filed in the Grand Court in 2008 (compared to 1030 in 2007).

In the Summary Court, civil cases also maintained their numbers, more or less, at 568, compared to 585 in 2007.

Appeals to the Court of Appeal on the civil side continued to decline to an all time low since the recording of these statistics in 1999, to only 16 in 2008.

On the criminal side, the number of appeals to the Court of Appeal, at 50, reflected the annual average number of such appeals.

While these statistics show that the administration of justice continues to maintain its ground, every effort must be made to ensure that we continue to meet acceptable standards for the timely disposal of cases, with appropriate priority given to cases which can affect the liberty of persons.

**[A schedule of Court statistics covering the last ten years is attached]**

### **The Financial Services and other Divisions of the Grand Court**

Mention can conveniently be made here of the plans for a Commercial Division to take charge of the more complex civil cases in the Grand Court. As Mr Bergstrom and Mr Robertson both recognized, some progress was been made over the past year. Draft rules of court have been prepared and are to be finalized, with commencement expected early in the year.

The emphasis will be upon more dedicated and robust case management. This, it is hoped, will be achieved by the assignment of specific cases to specific judges who will be assured of having the time to deal in a more focused manner with these cases from beginning to end. With the assistance of a cadre of acting or pro

tem judges, these cases will come to be managed without the interruption and distraction of judges having to alternate, as in the past, between the commercial and other types of cases from day to day or week to week.

The division will be styled “The Financial Services Division” and there will be 5 other divisions designated for the general civil; criminal; matrimonial/family; admiralty and probate and administration work of the Court.

The plans for the Financial Services Division include the dedication of a cadre of registry staff who will provide judges working in that Division with the necessary administrative support to ensure the more effective management of those complex and often bulky commercial cases.

### **Amendment in 2007 to the Companies Law and new Winding Up Rules**

The amendment to the Companies Law and the new winding up rules enabled by it, are intended to modernize and streamline the Cayman Islands insolvency regime. The commencement of the amending legislation has awaited the creation of the new rules. I am pleased, therefore, to report that those rules have now been produced by the Insolvency Rules Committee, with the able and creative drafting assistance of Andrew Jones QC, one of its members, by virtue of his office as a long standing member of the Grand Court Rules Committee.

There was, of course, extensive consultation with the relevant interest groups, including the legal and accountancy professions.

The Committee believes that the jurisdiction will now have Rules which are specifically designed to meet the practical needs and

which will enhance the ability of our insolvency regime to protect the interests of creditors and contributories alike.

### **Information Technology**

Mention has been made of the Information Technology. There continues to be steady if somewhat slow progress in the development of Information Technology. A suitable search engine application has been obtained and a significant selection of the Laws and Law Reports are now available for free- text searching on the judicial-legal information website. ([www.caymanjudicial-legalinfo.com.ky](http://www.caymanjudicial-legalinfo.com.ky))

The rest of the work to bring these data-bases fully up to date is being done and, in this regard, I take the opportunity to echo the sentiments expressed about the fine and careful work done by our editors and publisher of the Law Reports, and, I should add, by our website consultants.

The Judicial Administration has proposed for some time now that Traffic tickets be written up electronically so that they can be instantaneously transmitted for recording in the Court Registry. The technology to do this is available and is affordable. This initiative would save the great deal of time required for the manual recording of thousands of tickets each year. Even more important, the instantaneous record of the issuance of a ticket, would ensure that when a person attends in advance of a Court date and pays the fine, that event is accurately recorded in relation to the particular ticket and so the risk of payment not being reflected in the court file and the further risk of an unjustified warrant for arrest being issued, would be avoided. This is a matter which I recently discussed with the Hon. Chief Secretary, with the understanding that this initiative will be taken forward.

## **The Drug Rehabilitation Court**

The Drug Rehabilitation Court commenced operations on 9 October 2007, with sittings on Tuesdays and Thursdays each week. These are respectively presided over by Chief Magistrate Ramsey Hale and Magistrate Hall, with the co-ordination between the several support agencies and the DRC managed by Ms. Cathy Chesnut.

Since its inception, the DRC has served as an important step in diverting non-violent offenders with substance abuse problems into treatment and other community-based services. Drug Court participants are required to comply with long-term treatment goals involving frequent court appearances, incentives towards compliance and, of course, sanctions for non-compliance. Upon successful completion of the Programme, charges may be dismissed, or sentences reduced or set aside.

The expected benefits from the DRC Programme include reduction of drug abuse or improved abstinence, reduction in recidivism, and, ultimately, improved quality of life for participants.

According to Court statistics, 116 drug-using offenders have applied to enter the DRC Programme since its inception. Of these applicants, 78 were accepted, 33 were found to be ineligible or unsuitable after screening and 5 withdrew their applications.

There are currently 45 participants remaining in the Programme with the expected graduation early this year of the first batch of 9 who have so far progressed into the final transition phase of the Programme.

**[Attached is a schedule of statistics relating to the DRC]**

## **Legal Aid**

I regret to have to report that the perennial concern over the funding of legal aid persists.

As in the case of the preceding four years, the budget submissions for 2008–2009 were relegated to one half and, not surprisingly, therefore, half way through the fiscal year as occurred in the past, the allocation has been spent. We now face the same crisis we faced last year with our hard-working and dedicated criminal defence bar being owed fees which they can ill-afford to have outstanding.

That sort of treatment will – it should go without saying – only result in these lawyers no longer being willing to undertake legal-aid funded work and so, ultimately, to the detriment of members of the Cayman public who must depend on them for the protection and enforcement of their rights.

Emergency funding will therefore have to be found again this year, to bridge the gap until the further submissions are dealt with by Cabinet and Finance Committee.

Now that the Law Reform Commission, after a very exhaustive survey, has reported that the legal aid system represents good value for money, I trust that the Finance Committee will be more sanguine about its acceptance of the budgetary submissions.

On this subject, it only remains to be said on this occasion, that in light of the Law Reform Commission's recommendations for enhancement of the system, and those mentioned by Mr. Bergstrom, those reforms which have been awaited for so long should be immediately legislated and implemented.

## **The new Courts Building project**

The architectural plans for the project are at an advanced stage with a great deal of attention being paid to the elimination of avoidable costs in the design of the building.

Final approvals have now been obtained and with the tendering for bids for the construction to come, the intention remains to break ground by the beginning of the next fiscal year in July this year.

That concludes the formalities of my report for this year.

In closing, allow me, on behalf of the judiciary and the entire court staff, (including in their absence, the former and present members of the Court of Appeal) to thank you for all the kind sentiments which have been expressed and to reciprocate and to also to wish for you all and for your families, a blessed and productive New Year.

I now declare to be open the Business of the Court for the year 2009. We will stand for a moment of silence as we adjourn until this afternoon.

Hon Anthony Smellie  
Chief Justice