



BERMUDA JUDICIARY

ANNUAL REPORT

20
22



"Quality Judicial Services: A Shared Responsibility"



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The Judiciary acknowledges with gratitude the contributions made to this report by the individuals and organisations who gave us the benefit of their views, expertise and experience.

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Front cover image by Audley Quallo
Compilation and Report editing by Audley Quallo

Printed by the Department of Communication Information, Government of Bermuda

Bermuda Judiciary
Dame Lois Browne-Evans Building
58 Court Street
Hamilton HM 12
Bermuda

www.gov.bm/department/judiciary

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FOREWORD FROM THE CHIEF JUSTICE

The Hon. Mr. Justice Narinder Hargun

Good afternoon, everyone, and welcome to the Special Sitting to commemorate the opening of the New Legal Year, 2023. Special welcome to Her Excellency the Governor, the US Consul General, the Solicitor General, the Director of Public Prosecutions, the Ombudsman, and other distinguished guests and members of our wider legal family.

I extend my special thanks to the National Museum of Bermuda for bringing the Admiralty Oar or Mace which was made for the Bermuda courts in 1697.

I start by acknowledging once again that the day-to-day administration of justice depends upon the collaboration and assistance of a number of agencies. I acknowledge with thanks the assistance given by the Bermuda Bar Council, The Bermuda Police Service, Department of Court Services, the Department of Corrections, the Office of the Director of Public Prosecutions and the Ministry of Legal Affairs & Constitutional Reform.

I also want to acknowledge with thanks the pivotal oversight role performed by Her Excellency the Governor and the members of the Judicial and Legal Services Committee in dealing with judicial appointments and judicial complaints. On this note, the Committee marks the departure of Crystal Swan who was the Executive Officer of Government House, and in turn fulfilled the role of Secretary to the Committee. She is thanked for her flagship service. Equally, Audley Quallo is thanked for his interim support whilst a substantive replacement is sourced.



The publication of the 2022 Annual Report is a step towards accountability by the Judiciary to the public at large.

The Bermuda Judiciary Annual Reports for the years 2020 and 2021 were published without a Special Sitting of this Court due to constraints imposed by the COVID-19 pandemic. The last time there was a Special Sitting to commemorate the New Legal Year was in February 2020. Therefore, I am very pleased to present the Bermuda Judiciary Annual Report for 2022 in person at this Special Sitting of the Court.

Accountability and efficient administration of justice

The International Commission of Jurists in their work titled *“International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors”*, a project supported by the UK Foreign and Commonwealth Office, the authors note that: *“The judicial system in a country is central to the protection of human rights and freedoms. Courts play a major role in ensuring that victims or potential victims of human rights violations obtain effective remedies and protection, that perpetrators of human rights violations are brought to justice and that anyone suspected of criminal offence receives a fair trial according to international standards. The judicial system is an essential check and balance on the other branches of government, ensuring that the laws of the legislative and the acts of the executives comply with international human rights and the rule of law...The existence of independent and impartial tribunals is at the heart of the judicial system that guarantees human rights in full conformity with international human rights law. The Constitution, laws and policies of the country must ensure that the justice system is truly independent from other branches of the State.”*

The independence of the judicial branch and individual judges necessarily implies that the judiciary itself is insulated from any examination of its strengths and weaknesses by an outside body. It is therefore important, both as a matter of principle and for retaining public confidence, that the judiciary gives an account of its performance in discharging its duties to the general public. This Special Sitting and the publication of the 2022 Annual Report is intended to be a step towards that accountability by the judiciary to the public at large. Accountability of the judiciary has a number of meanings and aspects. But for the present purposes I am simply concerned with the efficient administration of justice.

The starting point in measuring efficiency of the judicial process is that we must at least go back to the standards we set for ourselves and achieved prior to the COVID-19 pandemic in March 2021.

In relation to criminal cases pending in the Supreme Court the target standard prior to the COVID-19 pandemic, as noted in the report prepared by Justice Subair Williams, was a trial within a 3-month timeframe from arraignment. That is a very high standard indeed when compared with other Caribbean Commonwealth jurisdictions; and this was achieved in most cases. However, as a result of the COVID-19 pandemic during 2020 and 2021 and Shelter-in-Place legislation, the majority of the 2018 and 2019 indictments remained outstanding and backlogged until April 2022. As at that date there were a total of 60 backlogged indictments, 11 of which were backlogged prior to the start of the COVID-19 pandemic.

I am pleased to report that owing to the tireless efforts of the trial judges in the Criminal Jurisdiction, out of the 60 backlogged indictments that existed on 1 April 2022, 33 indictments were disposed of since that date. As a result, the backlogged trial listings decreased to 27 backlogged indictments from the 60 indictments (for the year spanning 2018 to 2021). This is a reduction of more than 50% of the backlog that existed on 1 April 2022. We expect this trend to continue in the coming year.

In relation to civil cases the speed with which cases are disposed of by the Court is largely dependent upon the steps taken by the parties. However, the Bermuda Guidelines for Judicial Conduct provide that a Judge should deliver a reserved judgment as soon as practicable, and, absent exceptional circumstances justifying a longer period, no later than six weeks after the conclusion of the hearing. I am pleased to report that the judges of the Civil and Commercial Court have in the main met this requirement even during the pendency of the COVID-19 pandemic. Indeed, during the COVID-19 pandemic the Civil and Commercial Courts were able to function nearly as normally as before with the use of technology - particularly the Zoom and WebEx platforms.

It is clear that the advent of COVID-19 pandemic has accelerated the use of technology in courts around the world. The acceptance of technology and the acceptance of remote hearings even in witness trials - particularly in civil and commercial cases has - I believe, changed the landscape for good. It is vital that we learn from our experiences and explore how remote hearings can be improved, as the use of technology is, I believe, here to stay. Remote hearings in the run-of-the-mill procedural hearings lead to efficient use of the limited resources in terms of availability of courts to accommodate other in person hearings.

The use of technology in the courts leads to efficiencies both in terms of cost and speed. We have sought to procure a Case Management System, a system which is intended to be utilised by the Magistrates Courts, the Supreme Court and the Court of Appeal, and design to eliminate reliance on paper files moving between three different court locations. It will also eliminate unnecessary time spent on corresponding with both attorneys and litigants in person in relation to documents incorrectly filed with the court. The Case Management System also allow parties, particularly in commercial cases, to file court papers (pleadings) and pay court fees electronically.

In the Magistrates' Court convictions often include a penalty. The Case Management System records the penalties or fines, obligations, accepts payments, and tracks the outstanding balance. The Case Management System can also manage child support obligations and payments for matters in both the Magistrates Family Court and the Supreme Court.

The use of technology in our Courts, especially the Commercial Court, is of particular relevance in this jurisdiction's efforts to expand and/or retain its share of international business. International business, as the private practitioners know, is highly competitive and driven by well-recognised competitive factors.

The decision in relation to the choice of a particular jurisdiction is made by sophisticated consumers, largely made of corporate lawyers. To them one of the significant competitive factors is the credibility and efficiency of the judicial system of the jurisdiction. The efficiency and use of technology is particularly important in this context as the decision-makers are based in established business centres around the globe. It is noteworthy that other comparable jurisdictions engaged in international business appreciate this fact and have embraced the use of modern technology in their judicial systems.

As noted in the Report from the Registrar, Ms Alexandra Wheatley, I am pleased to note that the Honourable Minister of Finance has confirmed his support to provide funding for the Case Management System and we have commenced to take the necessary steps to complete the procurement process.

In my address at the Special Sitting in February 2020 I suggested that it was vital to the Commercial Court that we continue to listen to and consider the changing needs of the business community. Other commercial courts in other jurisdictions, such as in United Kingdom and the Cayman Islands, have set a formal consultative structure to achieve those goals. At that time, I suggested that the most effective means of ensuring that the Commercial Court is aware of and catering the needs of those who use it is the establishment of the Commercial Court Users committee. The establishment of such a committee was interrupted by the constraints imposed by the COVID-19 pandemic and we intend to implement this initiative in the coming year.

In terms of other obstacles to efficiency, as noted both by Justice Subair Williams and Registrar Wheatley, the lack of designated courtroom facilities for the Court of Appeal, the Supreme Court Matrimonial/Family Division and Criminal Division continues to present significant trial scheduling issues. This has caused disruptions of the listing of the Supreme Court Criminal jury trials as well as the space being allocated for the hearing of the Matrimonial/Family matters having to be listed based on free courtrooms in the DLBE. Furthermore, the increase in applications in the Supreme Court's Civil and Commercial Division has highlighted the need for more court space.

As the Registrar's Report confirms, collaboration between the courts and the Ministry of Public Works continues with the design phase for the renovations to be completed in the DLBE. Completion of these renovations will see the Court of Appeal, all Supreme Courts (save for the Civil and Commercial Courts which will remain in the Government Administration Building) and the Magistrates Courts and services all in one location. With these renovations we will have a dedicated Court of Appeal which will be used for other Supreme Court and Magistrates' Court matters during the period that the Court of Appeal is not sitting.

As the Registrar further confirms, an entire floor of the DLBE is going to be designated as a Unified Family Court. This will see that all Supreme Court and Magistrates' Court matrimonial and family matters being heard in this space.

Independence of the judiciary and financial autonomy

Both the former Chief Justice Kawaley and I have commented upon the need of statutory and/or constitutional amendments in order to enhance the concept of independence of the judiciary. Judicial independence is an evolving concept and has a number of different precepts. One such principle is financial autonomy and the need to have sufficient resources in order to properly discharge its constitutional responsibilities. The International Commission of Jurists state that *“the Judiciary needs adequate resources to discharge its functions appropriately. As one of the three branches of power, the judiciary receives its resources from the national budget, which, in turn, is usually determined by either the legislature or the executive. It is essential that those outlining and approving the State budget take the needs of the judiciary into consideration. Inadequate resources may render the judiciary vulnerable to corruption, which would result in a weakening of its independence and impartiality. In determining the resources allocated to the judiciary, consultation must be held with the judges or groups of judges.”*

The authors go on to refer to various international instruments which recognise the need for the judiciary to receive sufficient funds. For example, the UN Basic Principles established that *“It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.”* The European Charter on the statute for judges stipulates that *“the State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period.”* The Beijing Principles also acknowledge this requirement by stating that *“it is essential that judges be provided with the resources necessary to enable them to perform their functions”*.

The Latimer House Guidelines, which were approved by judges from Commonwealth countries, contain a detailed provision of funding:

“Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the higher standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.”

It is encouraging to note that jurisdictions similar to Bermuda, in terms of size and constitutional status on the international plane, have made constitutional amendments to achieve this goal. Thus, section 107 of the current version of the Cayman Constitution provides that:

“The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Cayman Islands.”

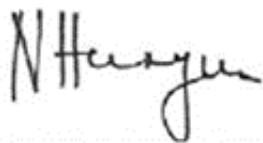
It is to be hoped that similar amendments can be made to the Bermuda Constitution Order 1968 within the foreseeable future.

Acknowledgements

I want to take this opportunity to thank the Registrar, the Assistant Registrar, managers and the staff in the Court of Appeal, the Supreme Court and the Magistracy for their dedicated service during the last year under, at times, stressful conditions. To all judicial officers in the Court of Appeal, The Supreme Court, and the Magistracy. I am grateful to Assistant Justice Southey KC and Assistant Justice Forde KC, both based in London, who have assisted the Bermuda Judiciary in relation to cases where our local jurists were unable to act. I also want to thank the panel of local Assistant Justices who voluntarily sit as Assistant Justices of the Commercial Court for nominal consideration.

I invite you to read the 2022 Annual Report where you will find the main highlights of the last year and short commentaries on various courts and their respective jurisdictions. It is an important document from the point of view of judicial accountability.

And finally, I would like to thank everyone who attended and conclude by formally declaring the 2023 Legal Year to be open!



Narinder K. Hargun
CHIEF JUSTICE

NON C U D D O R T I N

The Bermuda Judiciary is established by the Bermuda Constitution Order 1968 as a separate and independent co-equal branch of the Government. Its task are to adjudicate charges of criminal conduct, resolve disputes, uphold the fundamental rights and freedoms of the individual and preserve and protect the Rule of Law.

The mandate of the Judiciary is to carry out its task fairly, impartially, justly and expediently, and to abide by the requirement of the judicial oath: *“to do right by all manner of people, without fear or favour, affection or ill-will”*.

The Judicial System in Bermuda consists of the Magistrates’ Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council as the final appellate court for Bermuda, which is located in London, UK.

The Court of Appeal Registry and the Supreme Court Registry is responsible for the administration of the Court of Appeal and the Supreme Court, respectively. Both courts are established by the Constitution and the Court of Appeal Act 1964 and the Supreme Court 1905, respectively. Additionally, each court is governed by rules of court: The Rules of the Court of Appeal for Bermuda 1965 and the Rules of the Supreme Court 1985.

The mandate of the administrative arm of the judiciary is to provide the services and support necessary to enable the Judiciary to achieve its mandate and to embody and reflect the spirit of the judicial oath when interacting with members of the public who come into contact with the Courts. The Registrar is the head of the administrative arm and is the Accounting Officer. The post holder also exercises quasi-judicial powers.

There are five Justices of Appeal including the President, five Judges of the Supreme Court including the Chief Justice and five Magistrates inclusive of the Senior Magistrate.

All Judicial Officers are appointed by the Governor on the advice and recommendation of the Judicial & Legal Services Committee. Additionally, judicial officers receive the benefit of training and development through the Bermuda Judicial Training Institute which is chaired by a Judge of the Supreme Court, and whose administration is managed by the Executive Officer of the Institute.



CHAPTER 1: THE JUDICIARY

THE COURT OF APPEAL



The Rt. Hon. Sir Christopher Clarke
President of the Court



The Rt. Hon. Sir
Maurice Kay
Justice of Appeal



The Hon. Mr.
Geoffrey Bell
Justice of Appeal



The Hon. Sir
Anthony Smellie
Justice of Appeal



The Rt. Hon. Dame
Elizabeth Gloster
Justice of Appeal



Ms. Alexandra Wheatley
Registrar of the
Court of Appeal



Mr. Audley Quallo
Administrative Officer
of the Court of Appeal

THE SUPREME COURT



The Hon. Narinder K. Hargun
Chief Justice



The Hon. Ms.
Nicole Stoneham
Puisne Judge



The Hon. Mrs.
Shade Subair Williams
Puisne Judge



The Hon. Mr.
Larry Mussenden
Puisne Judge



The Hon. Mr.
Juan Wolffe
Puisne Judge



Ms. Alexandra Wheatley
Registrar of the
Supreme Court



Mrs. Cratonia Thompson
Assistant Registrar of the
Supreme Court

THE MAGISTRACY



The Wor. Maxanne Anderson, JP
Senior Magistrate



The Wor.
Tyrone Chin, JP
Magistrate



The Wor.
Khamisi Tokunbo, JP
Magistrate



The Wor.
Craig Attridge, JP
Magistrate



The Wor.
Maria Sofianos, JP
Magistrate

THE COURT OF APPEAL

The demand on the members of the Court of Appeal during the 2022 reporting period is a testament to the fact that Covid has now, thankfully, become a thing of the past, and that, at long last, the Courts are returning to normality with a resulting increase in the number of cases before the Court, all with their own unique characteristics. The current scheme of having reading days during sessions enables the Court to spend time digesting the cases and aiming to improve on outputs of judgments. Nevertheless, the size and content of many cases in numerous fields means that the Court will often need to take further careful and prolonged consideration before handing down its judgments. It has now, therefore, become standard that not all the judgments are necessarily handed down in the same session as that in which the submissions in the case were heard.

Some cases which have come before the Court have shown the need for mandatory mediation in family cases, and for alternative dispute resolution services to be available in others. These may avoid sizeable costs in court and legal fees. Making such services available needs to be considered in order to make the best use of the Court's time and to protect the financial interests of litigants.

Several of the cases before us serve as a reminder that Bermuda remains in the competition to attract members of the international business community. Part of that which attracts international business is the assurance of a capable and high-quality judicial service which aims to resolve disputes timeously, fairly and competently. This is what the Court seeks to provide.

The Court has adjudicated on cases concerning considerable quantities of money. However, the services provided by the Court (both judicial and administrative) do not come with financial ease. I am therefore relieved to report that there will be an increase in the Court of Appeal fees following consultation with the Bermuda Bar Council. My gratitude is extended to the conjoined efforts of the Registrar, Ms. Wheatley, and the Court's Clerk, Mr. Quallo, who have devised an appropriate rate increase which I am hopeful will be tabled in the 2023 legislative session.



The Rt. Hon. Sir
Christopher Clarke,
President of the
Court of Appeal

I wish to express my gratitude to my colleagues, each of whom provides sterling service to the Court of Appeal. I also express my gratitude to former Supreme Court Justice Mrs. Charles-Etta Simmons who sat as a member of the Court in June 2022 during the brief period that Dame Elizabeth Gloster was unavailable. Her contribution was most welcomed.

At the end of 2022, we had, sadly, to bid farewell to Sir Maurice Kay who retired upon reaching the age of 80 years. Sir Maurice's judicial appointment in Bermuda commenced on 1 October 2014. Before then, he had enjoyed a distinguished judicial career in England. He was appointed a Recorder in 1988; appointed to the High Court in January 1995; appointed Presiding Judge of the Wales and Chester Circuit in 1996; and Judge of the Administrative Court in 2002. In January 2004 he was appointed as a Lord Justice of Appeal, and in February of the same year he was appointed to the Privy Council. He served as President of the Judicial Studies Board from July 2007 to July 2010 and in May 2010 became the Vice President of the Court of Appeal (Civil Division) in England & Wales. Sir Maurice's invaluable contribution to the jurisprudence of Bermuda, in his succinct style, has left Bermuda's common law in a better place.



**The Rt. Hon. Sir Maurice Kay
Justice of Appeal**



**Newly appointed: Dr. Ian Kawaley
Justice of Appeal**

We thank him greatly for his flagship service, and wish him well in his retirement from Bermuda (he remains on the Court of Appeal of Gibraltar).

We welcome, in his place, Dr Ian Kawaley, former Chief Justice of Bermuda, who will need no introduction to the readers of these words. We look forward very much to his participation in the work of the Court.

Lastly, but by no means least, the Court is indebted to Audley Quallo, Clerk of the Court, for his continued and selfless service. Mr. Quallo has been a stalwart of the Court's administration, and is, to many, the known face of the Court. He has worked tirelessly, often out of hours, and whether in Bermuda or not, in the administration of the Court and the support of its members. He has proved his commitment to Law by providing this full-time service whilst successfully obtaining a Master of Laws degree in this reporting year. I wish to express the profound congratulations of the Court on this milestone achievement and its gratitude for his continued superintendence of our administration in his unique style.

The Rt. Hon. Sir Christopher Clarke
President of the Court of Appeal



THE SUPREME COURT

Civil/Commercial Division

The Civil and Commercial Division has a very wide brief. The civil area may be divided into two halves: (1) deciding cases which concern the relationship between the citizen and the State (public law cases), and (2) deciding cases involving private law rights, mainly disputes between private individuals but sometimes disputes between individuals and the State (general civil or private law).

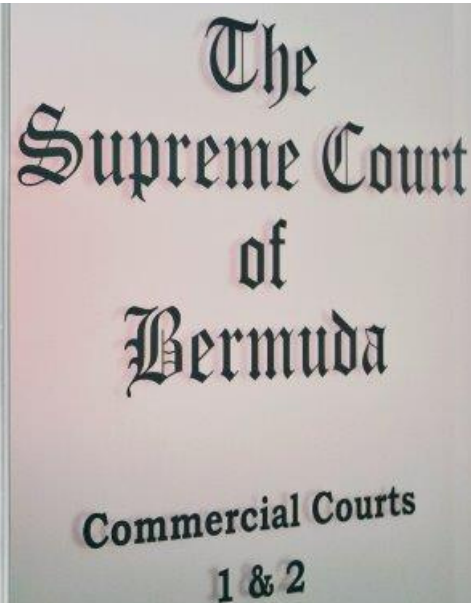
Public cases include cases concerning the Bermuda Constitution or the Human Rights Act, and challenges to the decisions of Ministers or Government Departments. Private law cases may involve employment disputes, landlord and tenant disputes, personal injuries claims and disputes relating to estates or other property cases.

A significant part of the work of the Commercial Court is dealing with disputes between business entities, primarily in the international sector. Bermuda is home to approximately 13,000 international corporate structures. It is also a leading jurisdiction for international trust structures and wealth management. As a result, a significant part of the workload of the Commercial Court reflects the disputes and insolvency proceedings generated by this sector of the Bermudian economy.

Output: The Numbers

A measure of the output of the Civil and Commercial jurisdiction is the number of published or reasoned judgments. The total number of written judgments is down from 94 in 2021 to 86 in 2022. Written judgments in commercial cases are up from the 49 in 2021 to 51 in 2022.

Another and more global measure of the judicial output of the Civil and Commercial Division is the number of orders made. This will include the minority of cases where reasoned judgments are given and the majority of cases where they are not.



In 2022, the figures reveal 664 interlocutory orders were made and 192 final orders were made (a total of 856) in civil and commercial matters. A further 20 orders were made in administrative matters (e.g. admissions to the Bar and appointment of notaries).

In 2021, there were 663 interlocutory orders, 188 final orders and 55 administrative orders.

Another measure of activity in the Civil and Commercial Court is the number of actions commenced within the relevant year. Substantive proceedings are represented by (i) writ of summons filed in the Commercial Court; (ii) originating summons filed in the civil jurisdiction; (iii) writ of summons filed in the civil jurisdiction; (iv) judicial review notices of motion; and (v) partition actions in the civil jurisdiction. In these categories there was negligible decrease in the total number of actions commenced in the 2022 (415) compared with 2021 (417).

Criminal and civil appeals from the Magistrates' Court are also heard in the Civil and Commercial Division. In 2021, the total number of appeals filed were up (from 33 cases to 41 cases). In 2022, 33 appeals were lodged. Of those appeals, 3 were allowed, 3 were dismissed and 3 were abandoned or withdrawn; 26 cases remain pending from 2022.

Table 1: 2017 - 2022 Published Judgments				
2017				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	57	16	14	87
2018				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	49	18	19	86
2019				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	44	13	16	73
2020				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	23	20	12	55
2021				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	49	26	19	94
2022				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	51	17	18	86

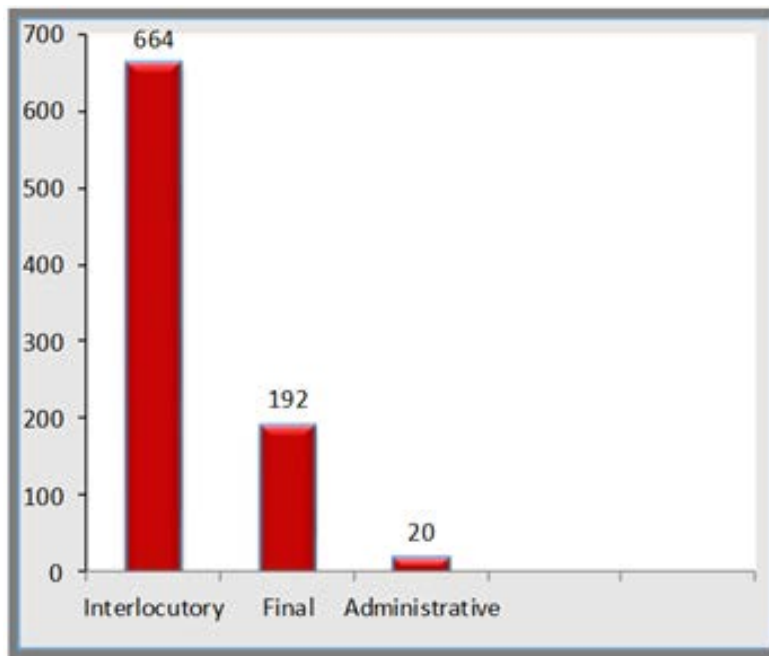


Table 2: Number of orders made

Table 3: New Civil Matters Filed by Subtype 2017-2022											
Year	Total	Commercial	Originating Summons	Call To Bar	Notary Public	Writ of Summons	Judicial Review	Partition	Mental Health	Bankruptcy	Other
2017	478	59	145	45	33	160	20	1	11	4	N/A
2018	447	43	86	22	31	180	29	3	10	4	N/A
2019	503	53	70	43	25	215	11	7	15	1	63
2020	489	90	86	42	11	209	25	5	14	0	7
2021	417	101	78	67	20	106	17	4	15	2	7
2022	415	56	89	71	23	137	14	7	10	1	6

Table 4: CRIMINAL & CIVIL APPEALS FROM MAGISTRATES COURT 2017 - 2022					
Year	Total Filed	Allowed	Dismissed	Abandoned	Cases Pending
2017	79	23	13	7	26
2018	59	4	9	5	41
2019	47	2	6	4	35
2020	33	2	2	6	23
2021	41	11	10	3	17
2022	35	3	3	3	26

During 2022 the Commercial Court heard and determined a wide variety of commercial cases including the following:

- Application for termination of arbitration proceedings pursuant to section 39 of the Arbitration Act 1986 on the grounds of intentional and vexatious delay resulting in prejudice and risk to a fair determination (*Fireminds Operations Limited v Bermuda Investment Advisory Services Limited* [2022] SC (Bda) civ. 16 December 2022).
- Application for the court's blessing of the trustee's decision under the *Public Trustee v Cooper* (category 2) and an application for variation of the trust instrument under section 47 and section 48 of the Trustee Act 1975 (*In the matter of the B Trusts* [2022] SC (Bda) 93 Civ. 9 December 2022).
- Whether change of the governing law of a trust from English law to Bermuda law and an order under section 4 of the Perpetuities and Accumulations Act 2009 this supplying the perpetuities rule to the trust and extending the duration of the trust, results in a resettlement of the trust (*Butterfield Trust (Bermuda) Limited v Matthew Watson* [2022] SC (Bda) 92 civ 29 November 2022).
- Whether the raising of a new issue under section 17(5) of the Segregated Accounts Companies Act 2000 which could and should have been raised earlier in the proceedings amounts to an abuse of process and the proper construction of section 17(5) (*Ivanishvili v Credit Suisse Life (Bermuda) Limited* [2022] SC (Bda) civ 25 July 2022).
- The appropriate test to be applied in considering whether to sanction the scheme of transfer under section 25 of the Insurance Act 1978; whether section 25 applies to a scheme of transfer where the transferee is not registered insurer under the Insurance Act 1978; and whether a scheme under section 25 may extinguish an existing guarantee given by 1/3 party (*In the matter of Amedex Insurance Company (Bermuda) Ltd* [2022] SC (Bda) 48 Com 1 July 2022)
- Purpose trusts- statutory interpretation; whether trusts avoid because of mixed charitable and non-charitable purposes or on grounds of uncertainty; whether funding of trust violated by mistake, undue influence, lack of authority, mental incapacity and/or failure to comply with the requirements for writing; whether Bermuda, British Virgin Islands and a Taiwanese law applies to claims; whether English Statutes of Frauds Act 1677 received into BVI law upon settlement at common law; whether foreign limitation period should be supplied on public policy grounds (*Wong, Wen-Young v Grand View Private Trust Company Limited et al* [2022] SC (Bda) 44 Com 22 June 2022).
- Contractual discretion in Industry Loss Warranty swaps; proper meaning and scope of determinations made "in good faith and commercially reasonable manner" (*Aeolus Re Ltd v CS ILS SICAV-SIF* [2022] SC (Bda) 30 Com 6 May 2022).
- Application to appraise the fair value of shares under section 106(6) of the Companies Act 1981; whether a shareholder who acquired shares after the notice of such amalgamation has the locus standi to make the application; whether such an application an abuse of process; whether fair value to be assessed on an objective or subjective basis (*In the matter of Jardine Strategic Holdings Limited* [2022] SC (Bda) 27 Com 20 April 2022).
- Appointment of parallel liquidators in different jurisdictions; whether such appointments are conducive to the proper operation of the liquidation; whether such appointments are in conformity with the principles of comity and co-operation (*In the matter of Ping An Securities Group (Holdings) Limited* [2022] SC (Bda) 25 Com 8 April 2022).

- Application for general discovery against dissenting shareholders in relation to an appraisal action under section 106 of the Companies act 1981; relevant principles to be applied (Glendina Pty Limited v NKWE Platinum Ltd [2022] SC (Bda) 22 Com 31 March 2022).
- Essential elements of implied misrepresentations; whether the representee must “understand” that the representation is being made in the sense in which he complains in the action; the scope and exception to the double actionability rule as it applies to torts committed outside the jurisdiction; public policy exception and operation of section 34A(1), (2) and(5) of the Limitation Act 1984; scope of the rule in Hollington v Hewthorn; admissibility of statements made to the police and investigative bodies in civil proceedings; whether appropriate to draw adverse inferences due to lack of discovery and failure to call relevant witnesses (Ivanishvili v Credit Suisse Life (Bermuda) Limited [2022] SC (Bda) 19 civ 29 March 2022).
- Principles to be applied in relation to an application for fortification of undertaking as to damages (Griffin Line General Trading LLC v Centaur Ventures Ltd [2022] SC (Bda) 15 civ 22 March 2022).



Criminal Division/Appellate Division

On 28 February 2022 the Hon. Mrs. Justice Charles-Etta Simmons retired from her assignment as the Supervising Judge of the Criminal List, having commenced in the role in January 2016 and having served as a judicial officer for over 20 years. Her service as the Supervising Judge was preceded by the Hon. Mr. Justice Carlisle Greaves, the first judicial officer to have been assigned to the post, aligning with the introduction of Rule 5.1 of the Criminal Procedure Rules 2013.

In March/April 2022 a transformation of the Bench ensued with my allocation to the post of the Supervising Judge and with the welcomed appointment of the Hon. Mr. Justice Juan Wolffe. Further, throughout the course of 2022, Assistant Justice Mr. Mark Pettingill was appointed to sit on the Bench to assist with the disposal of criminal cases.

While I am a full-time member of the Commercial Court Bench, in 2022 I voluntarily committed a significant share of my judicial assignments to the Criminal Division of the Court as the new Supervising Judge. My focus in this regard has been to assist with the clearance of the Criminal Backlog and to continuously carry out the judicial-administrative functions demanded by the role.

The Criminal Backlog as at 1 April 2022

A criminal backlog may be defined as a failure to finally dispose of the vast majority of Indictments within a reasonable time-frame. In many Caribbean Commonwealth jurisdictions, a reasonable timeframe ranges between eighteen months and a two-year period, depending on the resources and objectives of the particular jurisdiction.

In years passing, the Criminal Division was widely reputed for not only steering clear of backlogging but also for its impressive record of maintaining a system under which the average time-frame between the first appearance and a trial was a mere 3 month period. In 2015, when the Hon. Mr. Justice Carlisle Greaves served his final year as the Supervising Judge, there were a total of 42 indictments on the Criminal List. Of that total count, only 4 indictments were carried over into 2016 when the Hon. Mrs. Justice Charles-Etta Simmons was first assigned to serve as the Supervising Judge.



The Hon. Mrs. Justice
Subair Williams,
Supervising Judge of
the Criminal Division

However, the start of a criminal backlog of indictments was foreshadowed in 2016. This was evidenced by the fact that 16 out of 47 indictments carried over from 2016 into 2017. Additionally 1 indictment from 2015 was carried over into 2017. The position regressed in 2017 as 20 out of 48 indictments carried over from 2017 into 2018. Further, 4 indictments from 2016 were carried into 2018.

The backlogging of indictments continued but significantly decreased from 2019 to 2020. This period of improvement was attributable to the number of trials which were being completed by Acting Justice Mr. Juan Wolffe (as he then was) and then Acting Justice Mr. Craig Attridge.

That said, the disposal of cases continued in a direction of backlog. Various factors contributed to development and continuance of the 2016-2020 backlog:

(1) Mr. Justice Carlisle Greaves, who was reputed for handling a high volume of trials within a 3 month-time frame from arraignment, stood down as the Supervising Judge at the close of 2015;

(2) Justice Charles-Etta Simmons, in becoming the Supervising Judge handled a minimal load of trials from 2016 through to her retirement in 2022 (1 trial between 2018 and 2022);

(3) The Court of Appeal's shared occupation of Court #1 in Sessions House was necessitated by the call for the Judiciary to vacate its former Front Street premises (Court #3) on the basis of mold contamination. Prior thereto, Court #3 had been regularly used by the Court of Appeal during their hearing sessions, with minimal disruption to the two jury trial Courtrooms, i.e. DLBE Court #4 and Court #1 in Sessions House. However, since 2017 during the months of April, June and November the Criminal Division has been restrained from running jury trials simultaneously.

(4) The retirement of Mr. Justice Carlisle Greaves from the Supreme Court in July 2019 and the delay in the appointment of The Hon. Mr. Justice Larry Mussenden which came more than one year later on 3 December 2020. Justice Mussenden was appointed to sit in the Criminal Division of the Court. However, a judicial conflict of interest barred him from adjudicating any of the backlogged cases in which the charges were approved while he occupied the post of the Director of Public Prosecutions. As a result, he currently sits in the Court's Civil and Commercial jurisdiction and has not tried any criminal cases to date.

(5) The COVID-19 Pandemic and consequential Shelter-in-Place Legislation which was followed by statutory large group restrictions. The Court rooms had to be equipped with Plaxy-Glass barriers to allow for physical distancing. So, from April 2020 up until 27 September 2021, trials could not be heard in DLBE Court #4 and Court #1 in Sessions House.

The Pandemic having plagued the better part of 2020 and 2021, the majority of the 2018 and 2019 Indictments remained outstanding and backlogged at the stage at which I first joined the Criminal Division of the Court as the Supervising Judge. As at 1 April 2022 there were a total of 60 backlogged Indictments on the criminal list and 8 new (2022) Indictments had been filed. Out of that total backlog of 60 indictments, 11 indictments were backlogged prior to the start of the COVID-19 Pandemic. By 1 April 2022, only 1 out of the 11 pre-Pandemic backlogged cases were disposed. There were, therefore, a remaining 10 pre-Pandemic 2018-2019 backlogged Indictments on the list as at 1 April 2022.



Progress in the Disposal of Cases

Out of the 60 backlogged indictments that existed on 1 April 2022, a total of 33 of those backlogged trial listings were disposed since 1 April 2022. This means that the total portion of the backlogged trial listings decreased from as many as 60 Indictments (for the years spanning 2018-2021) to 27 backlogged Indictments (for the years spanning 2018-2021), i.e more than 50% of the backlog which existed on 1 April 2022 was disposed of by December 2022.

This remarkable dent to the backlog is no doubt attributable to the measures adopted through the Court's firm case management practices, the tireless efforts of the trial judges of the Criminal Bench, and the issuance on Monday 25 April 2022 of the Temporary Discount Policy under Court Circular No. 6 of 2022 (Judicial Consideration of Temporary Increases in Sentencing Discounts for Guilty Pleas in respect of select offences).

Notwithstanding, it is evident that similar measures and commitments will be required to ensure that the backlog carrying into 2023 does not unravel the progress achieved in 2022.

Significant Developments in the Law on Criminal Procedure

On 15 July 2022 new legislative provisions were imported into the Evidence Act 1905 (the "Evidence Act") by Part 5 of the Child Safeguarding (Miscellaneous Amendments) Act 2019 (the "2019 Amendment Act"). This statutory framework provides for the taking of pre-recorded evidence and the application of other forms of special measures in respect of a child complainant or witness in criminal proceedings. Section 42C is entitled "Principles for dealing with a child witness" and opens with the following provision under subsection (1):

"Because a child tends to be vulnerable in dealings with a person in authority, it is the intention that a child who is a witness in a relevant proceeding be given the benefit of special measures when giving the child's evidence."

Simply put, the introduction and usage of these provisions signaled a farewell to the previous standards of practice by which young children were expected personally appear before the Accused and the jury to give their live evidence. The new standard of practice, going forward, is that a child will either give evidence by way of a video recording or by way of an audio visual link.

In the case *R v Maleke Martin* [2022] [not yet reported], per Subair Williams J, the offences involved sexual exploitation of a young person while in a position of trust, contrary to 182B(1)(b) of the Criminal Code and the offence of showing offensive material to a child, contrary to section 182(c) of the Criminal Code. In that case the Court outlined the procedural advancements imported by the 2019 Amendment Act and it invoked various forms of special measures in respect of a child who was 9 years old when the matter was tried and 7 years old when the offences were committed. This was the first reported case in Bermuda in which such special measures had ever been employed.

The most significant special measure implemented for the trial of *R v Martin* [5-9 December 2022] allowed for the taking of pre-recorded evidence from the child complainant. On those arrangements, the child attended my office chambers days prior to the empanelment of a jury to give evidence via a live audiovisual link. In giving the pre-recorded evidence, the child complainant was accompanied by a Court-appointed intermediary. The child's evidence was taken in the presence of the DPP and Counsel for the Defence. The Accused, however, attended the hearing remotely from the adjoining Court (Court #1) while observing the child complainant's evidence on an electronic device. Crucially, the child complainant was not able to see the Accused while giving evidence or at any other point in time during the Court process.

In preparation and in response to this monumental development in the law, the Judicial Training Institute hosted two separate training seminars during which Ms. Lynda Gibbs KC, Mr. Cyrus Larizadeh KC and Mr. Anthony Douglas presented to members of the Judiciary, the Magistracy and the Bar on the examination of child witnesses. Of note, the training seminar featured the Inns of Court College of Advocacy (UK) publication of *The 20 Principles of Questioning (A Guide to the Cross-Examination of Vulnerable People and Children)*.

Continued Challenges

Court Facilities

It has been noted in passing reports that there is a serious need for the Judiciary to have access to two full time jury trial Courtrooms. For many years now, the Court Appeal has necessarily been made to usurp the use of a Supreme Court Criminal Division's Courtroom. This severely reduces the potential output of the Criminal Division as trials cannot be fixed during the months of March, June and November. This is particularly crippling as the low trial activity months are during the traditional holiday periods of July, August and December, mirroring the position in many other jurisdictions. The Judiciary must therefore continue to work with the other branches of Government in a collaborative effort to obtain adequate Court facilities.





Criminal Attorneys

Another age-old issue for note is the limited number of available Criminal Practitioners. As there are a mere handful of senior attorneys at the Criminal Bar who are competent to be instructed on matters listed for trial in the Supreme Court, the coordination of simultaneous trials is of further challenge.

It also warrants mention that the full staffing of Crown Counsel in the Office of the Director of Public Prosecutions is key. In recent times the Court has expressed particular concern for the Crown's untimely service filing of Court 1 Forms which relate to its disclosure of materials relevant to its case against Accused persons.

The Way Forward / Recommendations

- There needs to be a review of the Criminal list to re-assess the matters which need not proceed to trial. This exercise may be encouraged by the re-issuing of another temporary sentence discount policy.
- A full-sweeping vetting exercise has been undertaken to identify the 2022 Indictments which need be prioritized for trial listings between January and December 2024.
- A review of the current Case Management Forms to shorten or consolidate the process may assist in achieving higher levels of compliance by both the Crown and the Defence.
- Strong and effective case management (using the Criminal Case Management Forms) is required to ensure that fixed trials are never or most rarely adjourned on the following grounds:
 - (i) The need to obtain evidence or other material not available at the trial stage;
 - (ii) The need for additional time due to a lack of preparedness;
 - (iii) The need to make additional copies of any material intended to be used or relied on at trial; and
 - (iv) The need to make edits to any documentary, video, or audio evidence.

Case Management hearing(s) should always precede the trial to ensure that all pre-trial applications are heard and determined without avoidable disruption to the trial. This is also the stage at which the Court should make detailed inquiries as to the estimated time periods for the presenting of both the Crown's case and the Defence case. This is an effective anticipatory process.

- The Supervising Judge should continue to meet with DPP and Senior Defence Counsel to discuss any challenges and ways to improve the clearance of the backlog.

A strong note of appreciation and encouragement is owed to the Hon. Mr. Justice Juan Wolffe and Assistant Justice Mr. Mark Pettingill who have shown a real commitment to the clearance of the Criminal Backlog.

I also express my gratitude to the Court Associates and the Court Attendants who more often than noted volunteer their personal time and resources to the trial process which, undeniably, is a jealously demanding and unforgiving creature.

Mrs. Nakita Dyer deserves a very special note of thanks for her under-rewarded but consistent and thorough work product. It is with thanks to Mrs. Dyer that we have strong system of administrative support which is of clear benefit not only to the judiciary but also to the Criminal Bar and to the public.



Mrs. Nakita Dyer
Administrative Officer of the Criminal Division

Finally, it is recognized that any progress and efficiency proudly worn by the Court would not be possible without the strong participation of the DPP, Ms. Cindy Clarke, and the senior practising members of the Defence Bar and the Legal Aid Office who have taken the time and effort to periodically meet with the Court to discuss the ways forward to success.



Appellate Division

The procedural law for the Supreme Court's appellate jurisdiction is primarily governed by the operation of statute. Appeals from criminal matters heard in the Magistrates' Court are heard under the authority of the Criminal Appeals Act 1952 while appeals from civil cases heard in the Magistrates' Court fall under the governance of the Civil Appeals Act 1971. Appeals are also heard from the Family Court, although less frequently than those from the criminal and civil summary Courts.

The scope of work within the appellate jurisdiction of the Supreme has enlarged over passing years with its final appellate powers over statutory tribunals and the like. To list only a few examples, the Supreme Court adjudicates appeals from Ministerial decisions, the Employment Tribunal, the Bermuda Medical Council and the Bermuda Bar Council. This genre of appeal cases usually falls under the procedural framework outlined in Order 55 of the Rules of the Supreme Court 1985, which generally allows for appeals to be heard by way of a full re-hearing upon election of the parties, subject to the exercise of the Overriding Objective and the Court's case management powers.

Appeals disposed of from 2013 to 2018

Between 2013 and 2018 the average number of appeals filed per annum totaled 57. Notably, the volume of appeals increased significantly between 2016 and 2018. The average number of appeals filed per annum between 2013 and 2015 was 45. By contrast, the average number of appeals filed per annum between 2016 and 2018 was 69.

Having regard to that same 6 year period, between 2013 and 2018, an average total of 12-13 considered judgments for appeals were published by the Supreme Court per annum. Paralleling the increase in the number of appeals filed between 2016 and 2018, the out of judgments also increased during that period. In 2016 a total of 16 considered judgments were published in the appellate jurisdiction of the Court. In 2017 a total of 14 considered judgments were delivered and in 2018 there were 19 published judgments put out.

It was also reported that by the end of year for 2018 there were a total 41 appeals under the class of 'pending', carrying into 2019. Notably, 21 of those appeals which were carried over from 2018 into 2019 resulted in disposal by hearing and published judgments for 2019 onwards.

Appeals disposed of from 2019 to 2021

In the 2019 Annual Report it is stated in error that 16 appeal judgments were published. In fact, there were 13 judgments from the Supreme Court's Appellate Division which were published in 2019. Of those 13 published judgments, 5 judgments were delivered on the civil appeals, 7 judgments were for criminal appeals and 1 judgment was published on appeal from the Family Court. Those 13 judgments were delivered between one Puisne Judge (5 judgments from Subair Williams, J) and five Assistant Justices (8 judgments) during a period when Subair Williams, J was on extended leave.

In the 2020 Annual Report it is stated that 12 considered judgments were published. By way of correction, there were 13 published judgments. The slight difference in these figures is likely attributable to the fact that two different rulings were published in respect of one particular appeal. Of those 13 judgments, 3 judgments were delivered on the civil appeals, 8 judgments were handed down for criminal appeals and no judgments were published on appeal from the Family Court. Those 13 judgments were delivered between two Puisne Judges (12 judgments from Subair Williams, J and 1 judgment from Mussenden, J). In 2020, the Court did not engage any Assistant Justices in the Appellate Division.

In 2021 an increased total of 19 judgments were published from the Court's Appellate Division. This was correctly reported in the 2021 Annual Report. Of those 19 published judgments, 8 judgments were delivered on the civil appeals, 10 judgments were for criminal appeals and 1 judgment was published on appeal from the Family Court. Those 19 judgments were delivered between two Puisne Judges (14 judgments from Subair Williams, J and 4 judgments from Mussenden, J) and one Assistant Justice (1 judgment from Elkinson AJ). So, in 2021, the Court minimally employed the Assistant Justices in the Appellate Division.

Key Observations for 2022

For the integrity of this report, I have undertaken to provide a complete list of all of the appeals for which judgments were published from January 2019 to December 2022 [See Appendix 1-3].

In 2022 a total of 18 judgments were published from the Court's Appellate Division. Of those 18 published judgments, 4 judgments were delivered on the civil appeals, 13 judgments were for criminal appeals and 1 judgment was published on appeal from the Family Court. Those 18 judgments were delivered between three Puisne Judges (13 judgments from Subair Williams, J and 2 judgments from Mussenden, J and 1 judgment from Wolffe J) and two Assistant Justices (1 judgment from Elkinson AJ and 1 judgment from Bell AJ).

Projection for 2023

Again, in 2022, the Court minimally engaged the participation of the Assistant Justices in the Appellate Division. However, it is projected that in 2023 we will need to call upon the Assistant Justices for their increased assistance in the Appellate Division. This will become necessary given the increased responsibilities assigned to Subair Williams J in the Criminal Court Division and the Civil and Commercial Court Division.

Acknowledgments

Ms. Nicole Hassell is deserving of acknowledgment for her consistent output in preparing appeal records for submission to the Supreme Court. I would also like to make mention of Ms. Avita O'Connor who served in the registry for over 11 years before having moved on to work in the private sector. Ms. O'Connor regularly assisted me with the administrative preparation and listing of appeals. A sincere note of thanks is also extended to Ms. Gina Astwood who has increasingly assisted with the listing and organization of the appeal files. These preparatory steps are a crucial link in ensuring that appeals do not backlog.



APPENDIX 1

Published Judgments from CRIMINAL APPEALS Heard Between 2018 and 2022

Appeal No. 58 of 2017

X v R [2018] SC (Bda) 49 App; per Kawaley CJ:

Appeal against conviction-sexual exploitation of a young person-intruding on the privacy of a female-sufficiency of evidence of date of commission of alleged offences-adequacy of reasons- Appeal heard 11 June 2018 –Judgment delivered on 19 June 2018

Appeal No. 21 of 2017

Walita Brangman v R [2018] Bda LR 55 per Subair Williams AJ (as she then was):

Appeal against conviction and sentence- Conspiracy to Import a Controlled Drug- Whether trial Counsel was ineffective – Decision whether Accused gives Evidence Counsel’s failure to establish Good Character Evidence - Appeal heard 27 February 2018 and 7 March 2018– Judgment delivered on 2 April 2018 Second Ruling: Reasons for Order for Retrial: heard 26 April 2018 Reasons delivered on 22 May 2018

Appeal No. 53 of 2017

Fiona Miller (Police Sergeant) v Tafari Wilson [2018] SC (Bda) 6 App; per Duncan AJ:

Conspiracy to Import Controlled Drug Cannabis – Sufficiency of findings and reasons for decision- section 83(5) of the Criminal Jurisdiction and Procedure Act 2015- Section 6(1) of the Bermuda Constitution Order 1968 and the right to a reasoned decision - Appeal heard 27 November 2017 –Judgment delivered on 23 January 2018

Appeal No. 58 of 2017

Art Simons v Fiona Miller (Police Sergeant) [2018] SC (Bda) 15 App; per Kawaley CJ:

Appeal against conviction-prison officer-conviction for possession with intent to supply of cannabis and cannabis resin and attempting to import articles into a prison in breach of prison rules-adequacy of judicial findings and reasons-whether substantial miscarriage of justice-whether convictions should be quashed altogether or retrial ought to be ordered power to substitute conviction for lesser offence- Criminal Procedure and Jurisdiction Act 2015, section 83(1)(c)-Criminal Appeal Act 1952, section 18- Appeal heard 12 February 2018 – Judgment delivered on 20 February 2018

Appeal No. 64 of 2017

D.S. (A Young Offender) Fiona Miller (Police Sergeant) [2018] LR Bda 11 App; [2018] LR Bda 42, per Subair Williams AJ (as she then was):

Appeal against Sentence – Unlawfulness of Indeterminate Period of Corrective Training (Young Offenders Act 1950)- Appeal heard 13 December 2017 –Judgment delivered on 19 February 2018 Second Ruling : Costs heard 14 March 2018 Ruling delivered on 9 April 2018

Appeal No. 74 of 2017

Mark Wilson v Fiona Miller (Police Sergeant) [2018] SC (Bda) 34 App per Subair Williams AJ (as she then was):

Appeal against Conviction - Care and Control of a Vehicle while ability to Drive was Impaired - (Section 35AA of the Road Traffic Act 1947) - Uttering Threatening Words (Section 12 of the Summary Offences Act 1926) - Appeal heard 22 March 2018– Reasons for Judgment delivered on 10 April 2018

Appeal No. 9 of 2018

Helder Paulo Vieira v Fiona Miller (Police Sergeant) [2018] SC (Bda) 64 App; per Subair Williams J:

Appeal against Conviction - Jurisdiction of Bermuda Courts for non-inchoate criminal offences – Extra-territoriality -Article 68 of the Air Navigation (Overseas Territories) Order 2001 and Order 2013- Appeal heard 10 and 17 July 2018–Judgment delivered on 15 August 2018

Appeal No. 9 of 2018 (Registry Error in Assignment of Duplicate Case No.)

Fiona Miller (Police Sergeant) v Charles Richardson [2018] SC (Bda) 70 App; per Subair Williams J:

Appeal against Magistrate's Finding of No Case to Answer - Driving without Due Care and Attention (Section 37 of the Road Traffic Act 1947- Appeal heard 22 June 2018 and 2 July 2018 – Judgment delivered on 19 October 2018

Appeal No. 14 of 2018

Ramon Blanchette v Fiona Miller (Police Sergeant) [2019] SC (Bda) 28 App; per Pettingill AJ:

Appeal against sentence – whether manifestly excessive- Appeal heard 26 April 2019 – Reasons for Judgment delivered on 2 May 2019

Appeal No. 16 of 2018

Mandaya Thomas v Fiona Miller (Police Sergeant) [2019] SC (Bda) 15 App; per Subair Williams J:

Appeal against Conviction - Statutory Interpretation - Whether Acetyl Fentanyl is a derivative of Fentanyl and a controlled substance - Construction of Section 3 and Schedule 2(e)(vi) of the Misuse of Drugs Act 1972 – Suspended Sentences- Appeal heard 8 January 2019– Reasons for Judgment delivered on 19 February 2019

Appeal No. 18 of 2018

Fiona Miller (Police Sergeant) v Tafari Wilson [2019] SC (Bda) 15 App; per Subair Williams J:

Prosecution Appeal against Sentence – Governing Principles on Suspended Sentences Conspiracy to Import Controlled Drug Cannabis - Whether Magistrate erred in Suspending Custodial Sentence - Whether the recall of the Respondent into Custody on Appeal is just in all circumstances - Appeal heard 20 and 27 November 2018–Judgment delivered on 10 December 2018

Appeal No. 19 of 2018

George James v Fiona Miller [2018] SC (Bda) 77 App, per Elkinson AJ:

Appeal Against Conviction – Refusal to provide breath sample – Appellant's own determination that his consumption of rum subsequent to the accident was a reasonable excuse to refuse to give a breath sample – Reasonable Excuse under Section 35 C(7) of the Road Traffic Act 1947 – Magistrate to give detailed analysis –Appeal heard 29 August 2018 – Judgment delivered on 29 August 2018

Appeal No. 21 of 2018

Denzil Nelson v Fiona Miller [2019] SC (Bda) 5 App, per Duncan AJ:

Appeal against conviction – Care and Control of a vehicle- Section 35A of the Road Traffic Act 1947 –Appeal heard 8 November 2018 – Judgment delivered on 21 January 2019

Appeal No. 22 of 2018

Natasha York v Fiona Miller (Police Sergeant) [2020] SC (Bda) 44 App, per Subair Williams J:

Appeal against sentence - Whether sentence was harsh and manifestly excessive Importation of Cannabis contrary to section 4(3) of the Misuse of Drugs Act 1972- Appeal heard 1 October 2020 – Judgment delivered on 2 October 2020

Appeal No. 24 of 2018

Justin Maybury v Fiona Miller (Police Sergeant) [2018] Bda LR 103, per Subair Williams J:
Appeal against Conviction - Wounding (section 306(b) of the Criminal Code) -Whether Self-Defence (section 257(1) of the Criminal Code) –Appeal heard 14 November 2018 – Judgment delivered on 22 November 2018

Appeal No. 29 of 2018

Fiona Miller (Police Sergeant) v Coreen Scott [2018] SC (Bda) 77 App, per Elkinson AJ:
Appeal against dismissal of charges– Section 53(1) of the Telecommunications Act 1986 - sending, by means of public telecommunications service, indecent material, namely a video depicting a sexual act–Appeal heard 6 November 2018 – Judgment delivered on 6 November 2018

Appeal No. 30 of 2018

Fiona Miller (Police Sergeant) v Tucker, Clarke and Pearman [2019] SC (Bda) 22 App, per Diel AJ:
Crown’s Appeal against finding of no case to answer –Appeal heard 6 March 2019 – Judgment delivered on 25 March 2019

Appeal No. 37 of 2018

Kadeem Abraham v Fiona Miller (Police Sergeant) [2019] SC (Bda) 23 App, per Elkinson AJ:
Appeal against Conviction – Attempting to convey a cell phone to a prisoner contrary to Section 26(b) of the Prisons Act 1979 – Whether Magistrate complied with the statutory requirements concerning his Judgment in writing – Whether Magistrate erred in allowing the Crown to cross-examine the Appellant on matters that had been ruled subject to public interest immunity –Whether Magistrate reversed the burden of proof or drew adverse inferences from witnesses not called by the Appellant – Whether Magistrate properly assessed the credibility of the Appellant and complied with Section 83(5) of the Criminal Jurisdiction and Procedure Act 2015 –Appeal heard 27 March 2019 – Judgment delivered on 1 April 2019

Appeal No. 40 of 2018

Fiona Miller (Police Sergeant) v JR [2019] SC (Bda) 23 App, per Elkinson AJ:
Appeal against dismissal for want of prosecution –Appeal heard 3 April 2019– Judgment delivered on 3 April 2019

Appeal No. 46 of 2018

Riley Correia v Fiona Miller (Police Sergeant) [2019] SC (Bda) 35 App, per Diel AJ:
Appeal against conviction – whether controlled substances were intended for supply- Appeal heard 17 April 2019– Judgment delivered on 27 May 2019

Appeal No. 11 of 2019

Safiyah Talbot v Fiona Miller (Police Sergeant) [2019] SC (Bda) 9 App, per Subair Williams J:
Appeal against conviction - Failure or Refusal to comply with a demand for a sample of breath for analysis- Section 35C(7) of the Road Traffic Act 1947 - Making a false or misleading statement in giving information which was lawfully demanded -Section 122(2) of the Motor Car Act 1951 - Late Applications for Adjournments- Non-Compliance with Case Management Directions - Appeal heard 9 September 2020 – Judgment delivered on 17 September 2020

Appeal No. 11 of 2019 (Registry Error in Assignment of Duplicate Case No.)
Kenneth Williams v Fiona Miller (Police Sergeant) [2020] CA (Bda) 17 Crim, per Subair Williams J:

Appeal against conviction - Sexual Offences against a Child –Part X (Offences against Morality) of the Criminal Code – Whether Constitutional Rights to a fair trial within a reasonable time were infringed- Judicial Bias – Complaint of material non-disclosure to the Defence- Whether there was a misdirection on the law and facts- Complaint of Magistrate’s Failure to properly consider the Defence Case- Refusal to hear supplemental submissions- Appeal heard 1 July 2020 – Judgment delivered on 28 August 2020- Appeal to the Court of Appeal Allowed

Appeal No. 21 of 2019

Fiona Miller (Police Sergeant) v Mandaya Thomas [2020] SC (Bda) 1 App; per Subair Williams J:

Appeal by prosecution against sentence - Whether sentence is manifestly inadequate- Importation of controlled substance Acetyl Fentanyl contrary to section 4(3) of the Misuse of Drugs Act 1972- Legal principles governing suspended sentences under section 70K of the Criminal Code- Test for interfering with exercise of judicial discretion- Meaning of Basic Sentence- Inapplicability of Section 27B to Acetyl Fentanyl - Appeal Against Sentence: heard 13 November 2019 Judgment delivered on 7 January 2020

Appeal No. 26 of 2019

Harrison Isaac v Fiona Miller (Police Sergeant) [2020] SC (Bda) 41 App; per Subair Williams J:

Appeal against conviction - Use of an unlicensed motor cycle -section 52(2) of the Motor Car Act 1951 - Reliance on a Formal Defect in an Indictment or Information - Appeal against Sentence: heard 19 February 2020 Judgment delivered on 24 September 2020

Appeal No. 27 of 2019

Paul Douglas Martin v Government of the United States of America [2020] SC (Bda) 13 App; per Subair Williams J:

Appeal against Order of Extradition - The Extradition Act 1877 and the Extradition Act 2003 (Overseas Territories) Order 2016 -Relevance and applicability of culpable delay under s.82 Passage of Time provision - (whether extradition would be unjust or oppressive) - Non-Compliance with Court Directions- Appeal heard 10 January 2020 – Judgment delivered on 27 February 2020 Second Ruling: Leave to Appeal to Privy Council: Heard on 9 October 2020 Judgment delivered on 16 October 2020

Appeal No. 31 of 2019

Levince Roberts v Fiona Miller (Police Sergeant) [2020] SC (Bda) 56 App, per Subair Williams J:

Appeal against conviction - Causing grievous bodily harm by driving without due care and attention – Meaning of careless driving - Driving while in a state of sleepiness – Requirement for actus reus of offence to be a voluntary and conscious act- Section 37A of the Road Traffic Act 1947- Appeal heard 30 October 2020 and 25 November 2020 – Judgment delivered on 29 December 2020 – Appeal to the Court of Appeal Dismissed

Appeal No.s 38 and 39 of 2019 (Consolidated)

Howard Ascento v Fiona Miller (Police Sergeant); Howard Ascento v Barry Richards (Police Sergeant); [2021] Bda LR 112, per Subair Williams J:

Breach of a Domestic Violence Protection Order - Appeal against sentence in the Magistrates’ Court- Whether sentence was harsh and manifestly excessive- Relevance of an offender’s previous convictions in sentence proceedings – Whether sentences passed should have been made to be served consecutively or concurrently- Appeal heard 2 July 2020 – Judgment delivered on 3 September 2020

Appeal No. 42 of 2019

Lencia Berkeley v Fiona Miller (Police Sergeant) [2020] SC (Bda) 47 App, per Wolffe J:
Appeal against Conviction – Conspiracy to Import a Controlled Drug – Whether defence of lack of knowledge is applicable to the offence of conspiracy to import a controlled drug-
Appeal heard 6 May 2022 – Judgment delivered on 1 July 2022

Appeal No. 47 of 2019

Fiona Miller (Police Sergeant) v Dennis Webb [2020] SC (Bda) 47 App, per Subair Williams J:
Prosecution’s Appeal against finding of No Case to Answer - Causing grievous bodily harm by driving without due care and attention - Meaning of grievous bodily harm and meaning of careless driving - Sections 37A of the Road Traffic Act 1947- Appeal heard 6 October 2020 – Judgment delivered on 13 October 2020

Appeal No. 48 of 2019

Rose Belboda v Fiona Miller (Police Sergeant) [2021] SC (Bda) 56 App, per Subair Williams J:
Appeal against conviction in the Magistrates’ Court – Physical Abuse of a Senior - Section 3 of the Senior Abuse Register Act 2008- Defence of Provocation – Sections 254 and 255 of the Criminal Code - Appeal heard 9 July 2021 – Judgment delivered on 22 July 2021

Appeal No. 7 of 2020

Fiona Miller (Police Sergeant) v Shayne James [2019] SC (Bda) 21 App, per Subair Williams J:
Crown’s Appeal against Ruling of No Case to Answer– Taking a Vehicle without Consent or lawful authority – Section 342 of the Criminal Code - Robbery –Section 338 of the Criminal Code – Whether the Doctrine of Recent Possession Applies – Fingerprint Evidence- Appeal heard 4 December 2020 – Judgment delivered on 6 January 2021

Appeal No. 8 of 2020

Lauren Davis v Fiona Miller (Police Sergeant) [2020] Bda LR 59, per Subair Williams J:
Appeal against conviction - Whether Dangerous Driving or Careless Driving - Sections 36 and 37 of the Road Traffic Act 1947 - Approach to Sentencing under the Traffic Offences (Penalties) Act 1976 - Appeal heard 24 September 2020 – Judgment delivered on 29 January 2021

Appeal No. 15 of 2020

Robert Smith v Fiona Miller (Police Sergeant) [2021] Bda LR 13, per Subair Williams J:
Appeal against conviction - Whether Dangerous Driving or Careless Driving - Sections 36 and 37 of the Road Traffic Act 1947 - Approach to Sentencing under the Traffic Offences (Penalties) Act 1976 - Appeal heard 24 September 2020 – Judgment delivered on 29 January 2021

Appeal No. 18 of 2020

Jemari Belboda v Fiona Miller (Police Sergeant) [2021] Bda LR 64; per Subair Williams J
Appeal against conviction and sentence- Sexual assault - Sections 323 of the Criminal Code – whether there is an honest belief in consent- Appeal heard 4 March 2022 – Judgment delivered on 23 March 2022

Appeal No. 21 of 2020

Fiona Miller (Police Sergeant) v Latasha Celestine [2019] SC (Bda) 21 App, per Subair Williams J:
Crown’s Appeal against Ruling of No Case to Answer– Careless driving Section 37A of the Road Traffic Act 1947- Appeal heard 17 March 2021 – Judgment delivered on 19 April 2021

Appeal No. 30 of 2020

Michael Richardson v Fiona Miller (Police Sergeant) [2022] SC (Bda) 4 App, per Subair Williams J:

Appeal against Conviction - Failure to comply with a Demand by a Police Officer for a sample of breath for analysis – S. 35C(7) of the Road Traffic Act 1947- Appeal heard 9 December 2021 – Reasons for Judgment delivered on 21 January 2022

Appeal No. 32 of 2020

Dwayne Creary v Fiona Miller (Police Sergeant) [2021] SC (Bda) 61 App, per Subair Williams J:

Appeal against Sentence - Causing grievous bodily harm by driving without due care and attention - Sections 37A of the Road Traffic Act 1947 and the Traffic Offences (Penalties) Act 1976- Appeal heard 9 July 2021 – Judgment delivered on 4 August 2021

Appeal No. 33 of 2020

Fiona Miller (Police Sergeant) v Ryan North [2021] SC (Bda) 59 App, per Subair Williams J:

Appeal against Senior Magistrate's decision to award Costs against the Crown in criminal proceedings – Statutory Framework and Legal Principles applicable to Costs in Criminal Proceedings – Jurisdiction and Powers of the Magistrates' Court to make costs awards - Section 58 of the Criminal Jurisdiction and Procedure Act 2015- Appeal heard 14 July 2021 – Judgment delivered on 2 August 2021

Appeal No.s 26 of 2020 and 27 of 2021 (Consolidated)

Fiona Miller (Police Sergeant) v Troy Woods [2022] SC (Bda) 17 App, per Subair Williams J:

Appeal against sentence in the Magistrates' Court - Whether sentence was manifestly inadequate - Obtaining Property by Deception Section 345(1) of the Criminal Code - Appeal heard 1 November 2021 – Judgment delivered on 23 March 2022

Appeal No. 2 of 2021

Phillion Webb v Fiona Miller (Police Sergeant) [2021] Bda LR 84, per Subair Williams J:

Appeal against conviction and sentence – Dangerous Driving - Sections 36 of the Road Traffic Act 1947 and the Traffic Offences (Penalties) Act 1976- Appeal heard 14 July 2021 – Judgment delivered on 17 September 2021

Appeal No.s 3 and 4 of 2021 (Consolidated)

Rebecca Wallington v Fiona Miller (Police Sergeant) [2021] SC (Bda) 1 App, per Subair Williams J:

Appeal against convictions in the Magistrates' Court Constitutional Rights to a fair trial within a reasonable time Whether Magistrate ought to have recused himself on grounds of Apparent Bias-Appeal heard 13 October 2021 – Judgment delivered on 7 January 2022 Appeal to the Court of Appeal Allowed

Appeal No. 8 of 2021

Ismaila Darrell v Fiona Miller (Police Sergeant) [2021] Bda LR 109, per Subair Williams J:

Appeal against conviction and sentence- Sexual Offences against a Child – Causing or Inducing a Child to Commit an Indecent Act - Sections 196(2) and 196(3)(a) of the Criminal Code (Pre-Amendment) – Indecent Assault against a Child - Section 330(1) of the Criminal Code (Pre-Amendment) - Appeal heard 15 January 2021 – Judgment delivered on 19 January 2021

Appeal No. 15 of 2021

Jamel Simons v Fiona Miller (Police Sergeant) [2022] SC (Bda) 2 App; [2022] SC (Bda) 2 App, per Subair Williams J:

Appeal against conviction and sentence- Sexual assault on a Person under the age of 16- Sections 323 of the Criminal Code – the law on consent- Appeal heard 1 November 2021 – Judgment delivered on 18 January 2022 Second Ruling: Reasons for Order of Remand heard on 21 February 2022 and Ruling delivered on 2 March 2022

Appeal No. 21 of 2021

Raymond Charlton v Fiona Miller (Police Sergeant) [2022] SC (Bda) 99 App, per Subair Williams J:

Application for leave to adduce fresh evidence on appeal against conviction in the Magistrates' Court- Difference between Voluntary and Involuntary Intoxication – Offences of Basic Intent Sexual Assault- Section 323 of the Criminal Code- Intrusion on the privacy of a female – Section 199(2) of the Criminal Code- Appeal heard 15 December 2022 – Judgment delivered on 22 December 2022

Appeal No.s 29 and 30 of 2021

Fiona Miller (Police Sergeant) v Marley Watkins and Adanessa Infante; Marley Watkins v Fiona Miller (Police Sergeant) [2019] SC (Bda) 9 App, per Subair Williams J:

Appeal against Sentence passed in the Magistrates' Court – Section 4A of the Criminal Appeal Act 1952 – Approach to comparing possession of Cannabis with possession of Cannabis Resin for the purpose of Sentencing - Misuse of Drugs Act 1972- Appeal heard 29 October 2021 – Judgment delivered on 21 December 2021

Appeal No. 32 of 2021

Lamont Marshall v Fiona Miller (Police Sergeant) [2022] SC (Bda) 32 App, per Subair Williams J:

Appeal against Sentence in the Magistrates' Court- Road Traffic Offences- Driving Whilst Impaired – Driving Whilst Disqualified – Repeat Offender – R v Goodyear Legal Principles - Appeal heard 13 April 2022 – Judgment delivered on 12 May 2022

Appeal No. 36 of 2021

Sabur Burrows v R [2022] SC (Bda) 39 App, per Elkinson AJ:

Appeal against conviction – Care and control of a vehicle while ability to drive was impaired – section 35AA of the Road Traffic Act 1947- Appeal heard 21 June 2022- Ruling delivered on 23 June 2022

Appeal No. 2 of 2022

Fiona Miller (Police Sergeant) v Damon Edwards [2022] SC (Bda) 87 App, per Subair Williams J:

Crown's Appeal against Magistrate's dismissal for want of prosecution after the close of the Crown's case- Section 4 of the Criminal Appeal Act 1952- Appeal heard 9 November 2022 – Judgment delivered on 15 November 2022

Appeal No. 3 of 2022

Shae Butterfield v Fiona Miller (Police Sergeant) [2022] SC (Bda) 87 App, per Subair Williams J:

Appeal against Conviction in the Magistrates' Court – Possession of Cannabis and Delta-9 Tetrahydrocannabinol with intent to supply – section 6(3) of the Misuse of Drugs Act 1972- Appeal heard 9 November 2022 – Judgment delivered on 16 December 2022

Appeal No. 11 of 2022

Patrick Francis v Fiona Miller (Police Sergeant) [2022] SC (Bda) 86 App, per Subair Williams J:
Appeal against conviction - Exception to Hearsay Rule in rebuttal of allegation of Recent
Fabrication- Burden of Proof – Counsel’s failure to establish Good Character Evidence- Appeal
heard 8 November 2022 – Judgment delivered on 15 November 2022



APPENDIX 2

Published Judgments from CIVIL APPEALS Disposed from 2018 and 2022

Appeal No. 17 of 2017

Toni Martin v Larry Engrissei [2019] SC (Bda) 26 App, per Rihiluoma AJ:

Leave to appeal out of time –Appeal heard 21 March 2019 – Judgment delivered on 5 April 2019

Appeal No. 48 of 2017

Anjula Bean v Christopher Swan & Co. [2018] SC (Bda) 1 App, per Duncan AJ:

Disputed claim for legal fees –Appeal heard 28 November 2017 – Judgment delivered on 5 January 2018

Appeal No. 67 of 2017

Damon Burgess v Janice White [2018] SC (Bda) 47 App, per Duncan AJ:

Purchase of second- hand car- Whether car sold ‘in the course of a business’ under the Sale of Goods Act 1978- Whether a sales receipt bearing the words sold “As is “ means the purchaser accepts all defects in the car-Jurisdiction of Appellate Court –Appeal heard 12 April 2018 – Judgment delivered on 6 June 2018

Appeal No. 5 of 2018

Paulina Fernandez v Gerald Burgess [2018] SC (Bda) 73 App, per Subair Williams J:

Appeal from the Magistrates’ Court – Repudiation of Contract – (Appeal under the Civil Appeals Act 1971) Appeal heard 8 and 13 August 2018 – Judgment delivered on 23 October 2018

Appeal No. 13 of 2018

Dale Lee v Brenda Augustus Spencer [2019] SC (Bda) 43 App; per Pettingill AJ: Landlord Tenant- Appeal heard 15 July 2019 – Reasons for Judgment delivered on 22 July 2019

Appeal No. 17 of 2018

Ellie Leighton et al v CNC Automated Carpentry Limited [2018] SC (Bda) 81 App; per Diel AJ:

Construction agreement – claim for invoices not listed – invoices not signed off by both parties – whether Contractor can claim for invoices - not complying with terms of the agreement – errors in invoicing- Appeal heard 14 November 2018 – Reasons for Judgment delivered on 10 December 2018

Appeal No. 28 of 2018

Martseeyah Baht Jones et al v R [2019] SC (Bda) 6 App, per Subair Williams J:

Appeal against Order of Forfeiture under Section 51 of the Proceeds of Crime Act 1997 –Appeal heard 5 and 14 December 2018 – Judgment delivered on 17 January 2019

Appeal Nos. 54 of 2018 and 01 of 2019 (Consolidated)

Island Construction Ltd v Zane DeSilva [2019] SC (Bda) 45 App, per Subair Williams J:

Appeal against the decision of the Employment Tribunal - Section 25 and 39 of the Employment Act 2000 – Summary Dismissal – (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 16 and 22 July 2019 – Reasons for Judgment delivered on 29 July 2019) Appeal to the Court of Appeal Dismissed

Appeal No. 185 of 2018

CATS Limited v Juliet Wilkinson [2019] SC (Bda) 14 Civ App, per Subair Williams J:

An appeal against the decision of the Employment Tribunal - Section 31 of the Employment Act 2000 – Unfair Dismissal – Principles on Piercing of Corporate Veil (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 23 January 2019 – Reasons delivered on 18 February 2019

Appeal No. 2 of 2019

Nicai Lambert v R [2020] SC (Bda) 53 App, per Subair Williams J:

Appeal against Order of Forfeiture under Section 51 of the Proceeds of Crime Act 1997 – Standard of Proof - Appeal heard 16 and 30 October 2020 – Judgment delivered on 15 December 2020

Appeal Nos. 17 and 18 of 2019 (Consolidated)

Coralisle Group Ltd v Marie-Josée Caesar [2021] Bda LR 24, per Subair Williams J:

Cross-appeals against the decision of the Employment Tribunal - Section 40 of the Employment Act 2000 – Scope of Remedies for Unfair Dismissal – (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 19 January 2021 – Reasons delivered on 23 March 2021

Appeal No. 22 of 2019

Buford Smith v Michael Smith [2021] SC (Bda) 80 App, per Mussenden J:

Appeal against grant of a possession order and refusal to set it aside, Civil Appeals Act 1971 section 14, Meaning of appeal by re-hearing, Bias, Statutory jurisdiction of the Magistrates Court, Natural Justice - Appeal heard 16 and 30 October 2020 – Judgment delivered on 15 December 2020

Appeal No. 29 of 2019

Jeffery Stirling v Minister of Home Affairs [2022] SC (Bda) 47 App, per Subair Williams J:

An appeal against the refusal of the Minister of Home Affairs to develop residential units - Section 61 of the Development and Planning Act 1974 The Bermuda Plan 2008 (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 14 and 21 April 2022- Ruling delivered on 29 June 2022

Appeal No. 32 of 2019

Paul Rodrigues v Kathryn Adams [2020] SC (Bda) 23 App, per Subair Williams J:

Appeal from the Magistrates' Court – Section 3 of the Supply of Services (Implied Terms) Act 2003 – Professional Negligence (Appeal under the Civil Appeals Act 1971) Appeal heard 17 March 2020 – Judgment delivered on 15 April 2020

Appeal No. 33 of 2019

Dr. Asad Qamar v Bermuda Medical Council [2021] Bda LR 10, per Subair Williams J:

An appeal against the refusal of the Medical Council to register the Appellant as a medical practitioner - Section 7 of the Medical Practitioners Act 1950- (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 1-2 December 2020- Ruling delivered on 2 February 2021

Appeal No. 37 of 2019

Robert George Peets v Amber Simons [2021] Bda LR 8, per Subair Williams J:

Appeal from the Magistrates' Court – Misrepresentation under Contract Law – Remoteness of Damage (Appeal under the Civil Appeals Act 1971) Appeal heard 12 November 2020 and 14 January 2021– Judgment delivered on 25 January 2021

Appeal No. 43 of 2019

Earlston Bradshaw v Raynor's Service Station Ltd [2021] Bda LR 8, per Mussenden J:

Employment Act 2000 – Appeal from second Employment Tribunal decision – unfair dismissal – Strike out application of Notice of Appeal pursuant to section 3(8) of the Employment Act (Appeal) Rules 2014 - appeal grounds are vague or general or disclose no reasonable ground of appeal – abuse of process in delay in prosecuting appeal - Appeal heard 16 June 2021– Judgment delivered on 11 August 2021

Appeal No. 45 of 2019

Henry O'Connor v Gilder Furbert [2021] Bda LR 53, per Mussenden J:

Appeal against Magistrate's findings of fact and judgment, Civil Appeals Act 1971 section 14, Meaning of appeal by re-hearing, Receiving further evidence upon questions of fact- Appeal heard 30 June 2021- Judgment delivered on 20 July 2021

Appeal No. 3 of 2020

Keiva Maronie- Durham v Bar Council [2021] SC (Bda) 49 App, per Subair Williams J:

An appeal against the refusal of the Bermuda Bar Council to issue of Fit and Proper Certificate- Section 10E of the Bermuda Bar Act (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 4 and 11 June 2021- Ruling delivered on 30 June 2021

Appeal Nos. 4&5 of 2020 (Consolidated)

Bermuda Bistro at the Beach v Jeremy Paris and Jennifer Lynch [2021] SC (Bda) 76 App, per Elkinson AJ:

Unfair Dismissal - The Employment Act 2000 (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 4 and 11 June 2021- Ruling delivered on 30 June 2021

Appeal No. 16 of 2020

Arthur Hodgson v Kimalene Ingham [2021] SC (Bda) 16 App, per Mussenden J:

Landlord Tenant Appeal heard 21 April 2021- Ruling delivered on 9 May 2022

Appeal No. 10 of 2021

The Athletic Club Limited (In Liquidation) v Cassandra Simmons [2022] SC (Bda) 66 App, per Mussenden J:

Appeal against Decision of Employment Tribunal, Civil Appeals Act 1971 section 14, Meaning of appeal by re-hearing, Receiving further evidence found after Decision issued - Terms of a contract of employment – Redundancy - Severance Allowance Appeal heard 7 July 2021 – Judgment delivered on 21 September 2021

Appeal No. 38 of 2021

Gorham's Limited v David Robinson [2022] SC (Bda) 39 App, per Mussenden J:

Unfair Dismissal - The Employment Act 2000 (Appeal by Rehearing under RSC O. 55/(2)-(7)) Appeal heard 18 April 2022- Ruling delivered on 3 June 2022

Appeal No. 13 of 2022

Curtis Richardson v Margaret Harvey [2022] SC (Bda) 66 App, per Subair Williams J:

Appeal from the Magistrates' Court – Litigants Entitlement to Independent Legal Advice – (Appeal under the Civil Appeals Act 1971) Appeal heard 18 July 2022 – Judgment delivered on 8 September 2022

APPENDIX 3

Published Judgments from FAMILY COURT APPEALS Disposed from 2019 to 2022

Appeal No. 66 of 2017

Husband v Wife [2017] SC (Bda) 32 App, per Subair Williams AJ (as she then was):

Appeal against Dismissal of Application to Revoke Protection Order Timeframe for Application under s.22 of Domestic Violence (Protection Orders) Act 1997 Appeal heard 6 March 2018 – Reasons for Judgment delivered on 9 April 2018

Appeal No. 13 of 2019

KW v CD [2019] SC (Bda) 51 App, per Subair Williams J:

Appeal against Interim Order granting Care and Control and Access to Child - Section 36T of Children Act 1998 (Order where child unlawfully withheld) - Whether the Family Court has a duty to state its findings of facts and Whether it has a duty to provide written reasons for decisions on interim applications - Stay Pending Appeal - Operation of Section 11(1) of the Criminal Appeal Act 1952 - Avoidance of Delay by the Court in making a Determination on the welfare of a Child – Anonymity of appeal Judgments from Family Court proceedings Appeal heard 12 August 2019 – Judgment delivered on 20 August 2019

Appeal No. 23 of 2019

JC v KR et al [2022] SC (Bda) 75 App, per K. Bell AJ:

The Stalking Act 1997, lack of reasons for findings, jurisdiction to make stalking protection orders, conduct amounting to stalking- Appeal heard 8 June 2022 – Judgment delivered on 12 September 2022

Appeal No. 28 of 2020

M v F [2019] SC (Bda) 51 App, per Mussenden J:

Maintenance of Child, Parents not married, Joint financial responsibility – Judicial Bias- Appeal heard 2 March 2021 – Judgment delivered on 5 August 2021



Matrimonial Division

Since the coming into force of the British Overseas Territories Act 2002, Bermudians have had the opportunity to obtain a British citizen passport and thereafter live, work, and access public services in the United Kingdom ('UK') without any immigration restrictions. Although for some families, the decision to exercise such opportunity has sadly disrupted, compromised and, in some cases, effectively ended children's relationships with their biological parent left behind in Bermuda including other familial members.

In a reported decision of the English High Court *VB v TR* [2020] EWHC 877 (Fam), a case concerning an application for the summary return of a Bermudian child taken to the UK without his father's consent, Mr. Justice Mostyn highlighted a lacuna in the UK's child protection regime; specifically the UK's inability to secure the prompt return of a Bermudian child in accordance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the Convention').

The UK, as subscriber to the Convention, incorporated the Convention's provisions into its domestic law, namely The Child Abduction and Custody Act 1985 ('the Act'), to legislate its power, among other things, (i) to promptly return children wrongfully removed to, or retained in any contracting state and (ii) to respect the rights of custody and of access under the law of another contracting state.

In his judgment, Mr. Justice Mostyn most eruditely explained, how Section 28 (1)(C) of the Act permits His Majesty by Order in Council to direct the extension of the provisions of the Act to any colony whilst highlighting that "in fact no such Order has ever been made in relation to Bermuda, in contrast, for example, to the Cayman Islands". "Why is this?" he asked at paragraph 7:-

"The answer is rooted in a colonial anachronism. For the purposes of the Convention British Overseas Territories are treated as being part of the United Kingdom. Just as the Convention does not operate between, England and Wales, on the one hand, and Scotland on the other so it does not operate between the United Kingdom, on the one hand, and British Overseas Territories on the other".



The Hon. Ms. Justice
Stoneham, Head of
the Matrimonial
Jurisdiction

It is important to note that in *VB v TR*, the father did not seek the return of his child pursuant to the Convention. Instead, possessing an existing joint custody and access order of the Bermuda Court, his application was made pursuant to the High Court's inherent jurisdiction. It was therefore necessary for Mr. Justice Mostyn to conduct 'the welfare test' – wherein the welfare of the child is paramount. Thereafter, he concluded “pulling the threads together, I am abundantly satisfied that it would be in {the child's} best interests for him to be returned to Bermuda”.

According to the 2001 UK Census, 2,986 Bermudians (4% of living people born in Bermuda) were residing in the United Kingdom. In 2015 the United Nations, Department of Economic and Social Affairs estimated that there were some 4,602 living people born in Bermuda residing in the United Kingdom.

The Bermuda Department of Statistics 2010 Census acknowledged the limitation of emigration data and the difficulty capturing situations where the entire household has left the island.

Notably, the Department of Child & Family Services, a dedicated team of internationally trained and qualified social workers, retain records of the number of requests received from overseas welfare agencies concerning Bermuda born children. In the year 2022, the Department of Child & Family Services received six (6) requests from various UK Local Authorities indicating that at least six Bermudian children, who emigrated with family members, were either placed into care or otherwise required their involvement. The nature of such requests included prior family history, assessment of family members for possible placements, and welfare checks for children who may come to Bermuda for family visits.

Sadly, the lacuna identified by Mr. Justice Mostyn in *VB v TR* has existed for twenty (20) years with limited data on the aftermath of our migrated children. I unreservedly concur with the learned Judge when, at paragraph 12, he said-

“In my judgement the law needs to be changed as between the United Kingdom and its overseas territories to provide that the 1980 Hague Convention operates between them. It is an embarrassment that if a child were taken from Bermuda to United States of America the Convention would apply, but if the child is brought here it does not”.

We have a duty to protect our children. Where do we go from here?



THE MAGISTRATES' COURT

The Worshipful Maxanne Anderson, JP
Senior Magistrate

Firstly, before I begin I must say that I am honoured to sit in these January assizes as the Senior Magistrate & Coroner – the first female to hold this esteemed post. I am humbled to take on this most noble calling. I would like to thank Her Excellency the Governor Rena Lalgie and the Judicial and Legal Services Committee for their faith in me. It is not lost on me that they have given me the opportunity of being the first female Senior Magistrate of Bermuda and I am deeply appreciative of their steadfast move towards ensuring diversity within the Judiciary. I would also like to thank the Honourable Mr. Justice Juan P. Wolffe for his mentorship & guidance and for leaving a clear path of leadership for me to follow. I wish to congratulate Justice Wolffe on his appointment as Puisne Judge of the Supreme Court.

I also would like to express my sincere gratitude to the Magistracy who are committed to carrying out their duties without fear or favor, with dignity and aplomb. The Worshipful Tyrone Chin, the Worshipful Khamisi Tokunbo, the Worshipful Craig Attridge and the newly minted the Worshipful Maria Sofianos carry out their duties with a clear understanding of their responsibilities which sees each decision weighed carefully with fulsome consideration of all of the key elements that ensure we have a balanced society.

As the Good Book in Matthew 25:40 says - “If you have done it to the least of them, you have done it unto me”; which means that we should act with mercy, love, justice and compassion for those who are less fortunate and in need of care and support. The Magistrates’ Court has operated in this vein. As I am sure that all seated and present today know there are those



The Worshipful
Maxanne Anderson,
JP, Senior Magistrate
of Bermuda and
Coroner

amongst us who find themselves in the throngs of drug addiction or crippled by debilitating mental health problems or shackled by the grip of alcohol addiction. For many years Magistrates simply fined and/or imprisoned those who pled guilty or who were found guilty of drug/alcohol related offense(s) triggered by mental health. Statistics and recidivism rates evidenced that the criminal justice system of enforcing fines and implementation of imprisonment did not work in Bermuda. With the advent of the Criminal Code Amendment Act 2001 (the “Alternatives to Incarceration” legislation) the Magistrates’ Court has been able to put non-traditional Treatment Courts in place to help those who commit offences whilst in the grips of alcohol/drug addiction or mental health challenges:

- Through the Drug Treatment Court by giving the drug addict the opportunity to find rehabilitation through behaviour modification, counselling, offering personal and professional guidance and support and where warranted incarceration;
- Through the introduction of the Mental Health Treatment Court, implemented by the former Senior Magistrate and under my stewardship for the last 7 years, the Magistrates’ Court has contributed to removing the stigma attached to mental illness by providing supporting services including but not limited to: counselling; housing; psychiatric supervision; assistance with substance abuse, medication compliance, financial assistance or employment and various social & economic needs. The Mental Health Treatment Court deals with the offenders’ challenges offering them a clear alternative to incarceration and provides an opportunity to deal with offenders in a holistic manner. However, securing dual diagnosis treatment for people with mental health and cannabis use is unreasonably difficult and continues to be a major challenge.
- Through the Driving Under the Influence Court, also implemented by the former Senior Magistrate and presided over primarily by me with the assistance of the other Magistrates, offenders who have committed the offense of driving on our roads whilst impaired by alcohol/drugs are given the opportunity to receive counselling and coping skills that allow them to understand the connection between alcohol/drug misuse and their offense.



The statistics and the anecdotal evidence clearly shows that the above-mentioned Treatment Courts are making a hugely positive impact in our community. It is gratifying to hear the stories of those who journey through the Treatment Courts and are now living their lives alcohol & drug free and with the tools to address their mental health challenges. Most importantly they have been able to break the chain of incarceration. Furthermore, the statistics show that levels of incarceration have decreased and this can be partly attributed to the efforts of the Magistrates' Court and its stakeholders in meting out noncustodial sentences were deemed appropriate. I would therefore like to thank the following for their continuous assistance and fortitudes: the Department of Court Services - in particular Acting Director Mr. Derrick Flood, the supervisors, case managers & coordinators of the Treatment Court Teams; the Permanent Secretary for the Ministry of Justice and Legal Affairs Mrs. Gina Hurst Maybury; the Court Liaison Officer of MWI Ms. Geraldine Smith; Mr. Roger Parris - coordinator of the Special Development Program of the Department of Parks; Director of the Legal Aid Department Mrs. Susan Moore Williams; Director of Child & Family Services Mr. Alfred Maybury; Magistrates' Court Clerks; the Department of Corrections; the Bermuda Police Service; the Department of Public Prosecutions; the treatment providers: - specifically Mr. Leslie Grant of FOCUS; Ms. Carla Trott of Turning Point; Mrs. Butterfield; the Harbour Light, Men's Treatment Center, Women's Treatment Center & Right Living House teams; and all of our community partners.

It would be remiss of me not to mention our traditional courts, as the saying goes "Justice must not only be done, it must be seen to be done." The Magistrates' Court handles the vast majority of cases in Bermuda.

The Magistrates' Civil Court: the venue where civil disputes are heard. As Senior Magistrate I will ensure that lawyers and litigants in person respect the Court Diary. I will ensure that matters are heard in a timely fashion. Where possible parties in civil actions will be encouraged to resolve their disputes without the need for long contentious and potentially expensive trials. We will ensure that the Civil Court will continue to balance the interest of the parties and where possible, assist those who are overwhelmed with crippling debt to satisfy their financial responsibilities in a manageable and dignified way over a reasonable period of time.

A photograph of a wooden door with the words "COURT 3" in large, raised, light-colored letters. The door has a vertical metal strip on the left side. The wood grain is visible, and the lighting is even.



The Magistrates' Family Court: The family is the bedrock of any society. It is imperative that the decisions made on behalf of our children and families are fair and equitable, especially when the afore-mentioned children and families are in a most vulnerable state.

I will ensure that the Lay Magistrates appointed to the Family Court have a balanced view of motherhood and fatherhood and our country in general.

At present Lay Magistrates are paid a paltry \$50 per day (which amounts to \$6.25 per hour) - this is not acceptable given the complex and delicate nature of the matters which they preside over. I therefore renew a request to increase their daily stipend to an amount which is commensurate with their important duties. My considered suggestion is that it be increased to at least \$150 per day which would be in line with the suggested minimum wage.

The Magistrates' Criminal Court: all criminal matters begin in the Magistrates' Court. The administration of the Criminal Courts is critical to the Rule of Law.

Due to the Covid-19 Restrictions and for health and safety reasons, for a period of time The Magistrates' Courts conducted matters remotely (even during the lockdown periods). We did so because we were acutely aware that "Justice delayed is justice denied". Lawyers were appearing in matters online whilst they sat in their home offices - something that was unprecedented.

When we were able to return to court, we could only do so with limitations and restrictions. The entire Magistrates' Court had to morph and adapt with the Covid-19 environment, however, we never totally ceased hearing matters. And as a result, we (the Magistrates' Court) never amassed a back log of cases. To date, we remain up to date and current with our caseload.

However, I am compelled to mention that we have observed a deterioration in the standards of those who appear in the Court. The Magistrates' Court will take a no-nonsense approach to Lawyers and parties who miss court appearances and/or trials which are adjourned without prior notification/communication with the Court. The failure of Counsel to adequately inform the court of their absences, puts the court diary into disarray - it frustrates complainants and defendants. Unexcused, illegitimate counsel absences cause matters to drone on for long periods of time. The absences lead to huge legal fees.

Also, parties (including counsel) must come to court dressed appropriately. The Court security and officers have been instructed to ensure that persons appearing in court are dressed appropriately. Most recently, I have seen pajamas, short-shorts, undervests, crop tops, flip flops & slides and durags in Court. There must be a basic level of decorum adhered to in the Courts, not only in appearance but also in how one addresses the Court. Therefore, the Magistrates' Court will be vigilant in ensuring that persons who appear in Court conduct themselves in a manner which is consistent with proper Administration of Justice. Going forward into this Legal New Year the Courts will be proactive in carrying out its legal and moral mandate - to this I quote the following:

"It is not possible to be in favor of justice for some people and not be in favor of justice for all people."— Martin Luther King Jr.

Some of us wait for our Politicians, some of us wait for our clergymen, some of us sit on Facebook and complain, other of us shake our fists in the air as we lament the problems of the country. I firmly believe that to whom much is given much is required and that there are still opportunities for us to holistically tackle some of the challenges within our Criminal Justice System through the Alternatives to Incarceration Legislation namely:-

- Juvenile Treatment Court: Juvenile Treatment Court (JTC) will be for youth with substance use disorders and/or mental health diagnosis who come into contact with the juvenile court. It will have a treatment-oriented approach, emphasizing family engagement and will address the substance abuse and co-occurring mental health disorders.
- Domestic Violence Treatment Court: The Domestic Violence Treatment Court (DVTC) will offer a therapeutic treatment alternative to both the offenders and victims.
- Family Drug and Alcohol Court: The Family Drug and Alcohol Court (FDAC) will be specially designed to work with parents who struggle with drug and/or alcohol misuse and mental health problems.
- Probation Review Court: In addition to the Treatment Courts, there are fruitful discussions between the Court and the relevant stakeholders to create a court in which Probation Orders are routinely reviewed so as to encourage compliance by persons who have been placed on probation. Such Probation Review Court (PRC) will enable persons to get back on track and to assist them in addressing their criminogenic & mental health needs, secure employment & housing, and most importantly to be productive members to their community and to their families.

Each of these initiatives will require an expenditure of additional capital and human resources but I will be steadfast in ensuring that they come to fruition. The former Senior Magistrate left huge shoes to fill, but I am up for the challenge.

I would like to take this time to thank the members of the Bermuda Bar who advocate on behalf of their clients on a daily basis in the trenches of the Magistrates' Court. I also want to thank the Hon. Chief Mr. Justice Narinder Hargun and the Justices of the Supreme Court for their support and felicitations. And on behalf of the Magistrates' Court I want to thank the Department of Corrections, the Bermuda Police Service and GET Security Officers for ensuring our safety. Last, but definitely not least, I wish to give my earnest appreciation to the underpaid, under-resourced, understaffed, often underappreciated and frequently verbally abused heroes of the Magistrates' Court – the staff. They are the backbone, the strength and the face of the Magistrates' Court.

I will end by quoting American poet Robert Frost:

*“These woods are lovely, dark and deep,
But I have promises to keep,
And miles to go before I sleep,
And miles to go before I sleep.”*

Thank you.

The Worshipful Maxanne J Anderson
Senior Magistrate & Coroner



The image features the coat of arms of Bermuda, which is a heraldic shield supported by a lion on the left and a unicorn on the right. The shield is topped with a crown and a crest. The motto 'DIEU ET MON DROIT' is inscribed on a ribbon at the base. The entire emblem is enclosed within a circular border that resembles a rope.

CHAPTER 2:
THE JUDICIAL ADMINISTRATION

JUDICIAL ADMINISTRATION

Ms. Alexandra Wheatley
Registrar of the Supreme Court and Court of
Appeal / Taxing Master

The continued theme for 2022 was the highlighting of the dire need for not only modernizing the Courts, but the necessity to be provided with the basic foundation for the Courts to be accessible and run efficiently. This includes both to accommodations and technology.

In order to maintain, and indeed expand, Bermuda's international reputation for providing high quality dispute resolution through our Courts, serious dedication must be made to improve our infrastructure in order to solidify our international reputation. Quite simply, we must do better, but without adequate funding little progress can be made. The Courts cannot ensure members of the public access to fair hearings before an independent and impartial court which is guaranteed by the Bermuda Constitution Order 1968 without being provided the required infrastructure to do so.

The lack of a designated court room for the Court of Appeal as well as insufficient Court space for the Supreme Court Matrimonial/Family Division continue to be problematic. This has caused disruptions to the listing of Supreme Court Criminal jury trials as well as the space being allocated for the hearing of Supreme Court Matrimonial/Family matters having to be listed based on free courtrooms in both the Magistrates' Court and in the Supreme Court #4 which is dedicated as a Criminal Court. Furthermore, the increase in applications in the Supreme Court's Civil and Commercial Division has highlighted the need for more court space.



The Courts cannot ensure members of the public access to fair hearings..without being provided the required infrastructure to do so.

There is some light at the end of the tunnel. Collaboration between the Courts and the Ministry of Public Works continues with the design phase for the renovations to be completed in the Dame Lois Browne-Evans Building (DLBE). Completion of these renovations will see the Court of Appeal, all Supreme Courts (save for the Civil and Commercial Courts which will remain in the Government Administration Building) and the Magistrates' Courts court rooms and services all in one location. With these renovations we will have a dedicated Court of Appeal which will be used for other Supreme Court and Magistrates' Court matters during the periods that the Court of Appeal is not sitting.

Furthermore, and most notably, I am pleased to confirm that an entire floor of the DLBE will be designated as a Unified Family Court. This will see all Supreme Court and Magistrates' Court matrimonial and family matters being heard in this space. We have obtained invaluable feedback from the Family Justice Young People's Board for England and Wales (FJYPB) as how best to make this space less intimidating and more comfortable for children and parties who will be appearing before the courts for family matters. This is an exciting step for Bermuda in addressing the need to ensure our children are being cared for in the best possible way before our courts. A great deal of gratitude is extended to Anthony Douglas, CBE from the UK Foreign & Commonwealth Office who has not only been spearheading the implementation of the process and training for Litigation Guardians, but who has also assisted in providing Bermuda with the connection to the FJYPB.

It has been a long road to get to where we are today on this renovation project, but I am extremely optimistic and pleased with the quality of work being provided by the architects as well as the dedication the Ministry of Public Works continues to provide in completing this project.

The upgrade of the courts' recording system was successfully completed in November 2022 as well as the completion of hardwired Audio/Visual Links in four courtrooms. COVID delayed this project for two years, so we are pleased this has finally been completed. The next step is to have hardwired Audio/Visual Links for all courtrooms. This will be done in stages as only the courtrooms that will remain unaffected by the renovations of the DLBE will be able to be tackled at this time.

As was reported previously, in March 2022, the Courts were advised that the capital funding for the purchase of a court case management system in the 2022/2023 Budget Year was denied by the Government. The Courts' current case management system became obsolete as of May 2022. The Honourable Premier and Minister of Finance confirmed his general support in December 2022 to provide funding for this initiative both within this Fiscal Year and the 2023/2024 Budget Year. This support is most welcome and we look forward to this coming to fruition. We have commenced the compilation of the procurement process for this purchase as well as the drafting of the Courts' Business Processes which are required to ensure that vendors are providing all the functions required for the Courts and other stakeholders. My appreciation is given to the Department of Information and Digital Technologies who are assisting us with these processes.

Efforts to modernize and increase the efficiency of the Courts' administrative and judicial functions must continue in order to uphold our reputation as a top tier jurisdiction. A number of initiatives will need to be undertaken to ensure this is done.

1. Continue and finalize the procurement process for the Courts' replacement case management system in order to identify the best vendor to provide the software. Once Cabinet approval is obtained after the vendor is selected through the procurement process, a strategy for the implementation, phasing and training will be solidified. Amongst many other modernized abilities, the new case management system will enable litigants to file documents electronically and give the ability for court fees to be paid online.

Furthermore, there continues to be a disproportionate amount of time dedicated by our administration in reviewing and correcting the content of applications and supporting documents (even those filed by attorneys). The use of electronic forms will eliminate the room for error which will greatly reduce turnaround times for the issuing of documents. The new case management system will have the ability to produce these forms. Although we have yet to obtain the new case management system, we have commenced the process of the creation of electronic forms for the Probate Division which will be completed and implement before the end of this year.

2. Continuing to work closely with the Ministry of Public Work to push forward with renovations to be completed at DLBE.

3. Subject to obtaining the capital funding from the Government, we wish to provide hardwired Audio/Visual Links in the four remaining courtrooms which will not be impacted by the renovations that will be carried out in the DLBE.

4. As indicated previously, fees for all courts will be increased to be reflective of those found in other competitive jurisdictions, and which resemble a fair market rate for the costs of conducting litigation in Bermuda's Courts. The President of the Court of Appeal, the Chief Justice as well as the former Senior Magistrate have been consulted regarding the draft proposed fees. Members of the Bermuda Bar will be consulted prior to the end of this Budget Year with the hopes of the effective implementation of the increase commencing on 1 April 2023.

5. It had been hoped that time could have been dedicated last year to the updating of current Practice Directions; however, other initiatives did not allow adequate time for this to occur. One Practice Directions which will be issued before the end of this year is in relation to the taxation of Bills of Costs. There is a far greater efficient practice in the UK for taxation which will largely be mirrored, such as allowing taxations under a certain value to be determined on the papers. This will increase the turn-a-around time of these applications which will also ultimately increase the availability of the courts.

With the continued support of the members of the Judiciary as well as that of the members of the Bermuda Bar, I firmly believe we can excel in raising our standards to meet the expectations of Court users.

The Assistant Registrar, Mrs Cratonia Thompson, continues to play an essential role in the day to day operations of the courts. Particularly, as it relates to the Supreme Court's Civil and Commercial Division, where we are currently in the process of an overhaul of all the processes and procedures in order to increase the processing time of filed documents, Mrs Thompson has provided top-tier service in leading the team to carry out this process. Mrs Thompson also continues to provide me with daily, extensive assistance with all matters relating to the Courts, from Human Resources to the Budget. Mrs Thompson's role as Assistant Registrar is critical to the daily running of the Courts and her dedication and ability to work as a team is both instrumental and appreciated.

It cannot go without saying that the staff of the Judicial Department have always played a vital role in ensuring the people of Bermuda obtain their constitutional right of access to justice. Notwithstanding the Courts' continued challenges with the lack of sufficient resources, staff have continued to demonstrate resilience and a team mentality to ensure our services are provided at a high standard. All staff play a crucial role in the daily running of the Courts and for this I give them my utmost appreciation.



Mrs. Cratonia Thompson
Assistant Registrar of
the Supreme Court



The Supreme Court Registry

Probate Division

In 2022 a total of 188 probate applications were filed with the Supreme Court Registry - a 7% increase over 2021. There were fewer caveats filed during the reporting year.

Grants Issued and Stamp Duty Assessed

In 2022, there were 157 Grants issued. Of the Grants issued 31 reported spousal benefit deductions; the lowest amount being \$3,610 and the highest amount being \$9.8 million. Of the Grants issued 89 reported the Primary Family Homestead exemption; the lowest exemption being \$27,000 and the highest being \$2.7 million. Of the Grants issued 55 reported net estates of an amount lower than the statutory taxation exemption in place at the time of the deceased's death and thus there were no stamp duties assessed on those estates. Of the estates that met the threshold for stamp duties assessment, the lowest assessment was \$561.00 and the highest assessment was \$456,209.

2023 Goals

Processing probate applications requires keen and discerning eyes to ensure that the application contains the required Application, Oath, Affidavit of Value and supporting documents (both statutory and as required by the Court's Practice Directions) are correct and in order. This includes verifying that the Oath contains the necessary information to support that the person or entity having a right of priority to make the application is making the application and that the Affidavit of Value accurately states the deceased's assets and that statutory deductions and exemptions are correctly recorded and it requires double-checking "the math" to ensure that agreement with the stamp duty assessment as reported. Those familiar with the process are aware of the communications back and forth requesting amendments and submission of further supporting documentation.

The process is time consuming and contributes to delays that do not best serve the general public. Thus the Registrar and her team are currently in the process of researching a better method for filing documentation in a standardized format and for ensuring that all of the correct supporting documentation is filed on the front end. This will reduce the time it takes for Court staff to review applications and will increase the turnaround time. Stay tuned!



Dee Nelson-Stovell
Manager,
Supreme Court

Table 10: PROBATE APPLICATIONS FILED 2018 - 2022									
Year	Probate	Letters of Admin.	Letters of Admin. with Will Annexed	Certificate in Lieu of Grant (Small Estate)	De Bonis Non	Reseal	Total Appls.	Caveats	Caveat Warning/ Citations/ Orders to View Affidavit of Value or Will
2018	124	40	5	40	1	7	217	34	8
2019	112	25	5	31	2	8	183	45	8
2020	95	13	5	25	4	5	147	39	3
2021	114	31	5	14	0	12	176	47	4
2022	94	45	10	29	1	9	188	28	9
Change	-20	14	5	15	1	-3	12	-19	5
%	-17.5%	45.2%	100.0%	107.1%	-	-25.0%	6.8%	-40.4%	125.0%

Table 10A: STAMP DUTY ASSESSED ON GRANTS ISSUED 2018-2022							
Year	No. of Grants Issued	Total Gross Estate (Bermuda\$)	Primary Homestead Exemption	48(1)(B) Spousal Exemption	Statutory Deductions	Net Value of Estate	Stamp Duty Assessed
2018	95	91,463,813	37,432,244	16,226,920	3,215,068	34,589,582	5,469,968
2019	152	109,101,485	51,912,205	25,916,715	8,994,581	22,277,983	1,688,329
2020	134	101,179,501	48,585,233	24,122,804	8,049,752	21,260,917	1,700,032
2021	128	97,771,018	42,690,083	14,381,733	3,915,738	37,274,805	4,728,732
2022	157	113,393,539	59,763,324	21,828,081	4,047,659	29,641,036	2,386,404

The Supreme Court Registry

Matrimony Division

2021 was the year of technological change with the incorporation of virtual hearings as a platform for court proceedings. We struggled after emerging from the pandemic. However, it has becoming painstakingly obvious that the employment of technology in judicial services is here to stay. While it has had its advantages one cannot overlook some of the disadvantages and disruptions in which technology brings to proceedings. One such disadvantage is the inability of litigants in person to operate video conferencing software which results in non-appearance, or delay in proceedings carrying on.

The use of technology is owing to the lack of infrastructure for the Court. Often the matrimony division is required to source court space to conduct traditional in-person hearings and monthly divorce court. We are pleased by the report of the Registrar on the development of a unified division space which will, it is hoped, ameliorate the issues concerning courtroom availability.

On the staffing front I am pleased that in addition to Ms Edness, who has provided yeoman service to the Matrimony Division, we enthusiastically welcome back to the division Ms. Sharon Swan who ventured off to the private sector, briefly and returned to the Supreme Court in the later part of the year. Both have provided invaluable support to the Matrimony division and are thanked for the services.

Number of divorce petitions filed	Number of female petitioners	Number of male petitioners	Number of Petitioners acting without an attorney	Number of Respondents acting without an attorney	Number of Decree Absolutes
124	81	30	22	60	111



The Magistrates' Court

The Magistrates' Court is multi-jurisdictional having conduct of Civil, Criminal, Traffic and Family matters. There are also the Treatment Courts, such as the Mental Health Court, Drug Treatment Court and the Driving Under the Influence (DUI) Court which continue to reduce recidivism by addressing the drug, alcohol and mental health challenges of offenders.

In 2019 the Senior Magistrate created the Case Management Court which is conducted once a week and is designed to resolve all disclosure, evidential and procedural issues before a matter proceeds to trial. Thus instances whereby a trial would not have proceeded because of such issues have been significantly reduced from previous years.

All cases/hearings are heard by a Magistrate sitting alone, except in the Family Court, where the Magistrate sits with two (2) lay members chosen from a Special Panel. There are no jury trials and all appeals from judgments of the Magistrates' Court are heard by the Supreme Court.

The Magistrates' Court provides funding for the Senior Magistrate, four (4) Magistrates' and acting appointments where necessary. The Magistrates' Court is presided over by the Worshipful Senior Magistrate Maxanne J. Anderson, the Worshipful Tyrone Chin, the Worshipful Khamisi Tokunbo, the Worshipful C. Craig Attridge and the Worshipful Maria Sofianos, all of whom bring a wealth of knowledge and experience to the Magistracy.

The Senior Magistrate has an acting Magistrate roster so as to give opportunities to those in the legal profession to acquire judicial experience and skills which would put them in a position to elevate to the bench.



Effects of the COVID-19 Pandemic on Court Operations

As a result of the global COVID-19 pandemic which commenced in late March 2020, and continued into 2022, the Magistrates' Court had to find workable ways to ensure that the break in court services would not be too drastic. Therefore, Magistrates and the Magistrates' Court staff ensured that the wheels of justice kept revolving through the implementation of the following:

- In-person and remote hearings.
- A comprehensive and robust effort by Magistrates' Court staff during the imposition of governmental precautionary protocols, to contact and/or summons parties whose cases could not be heard and provide them with new return dates after the reopening of Government Offices.

Even though the coronavirus pandemic was ravaging, Magistrates' Court staff, in the interest of justice, continued to attend Court and carry out their duties so that defendants in criminal matters, parties in civil matters, victims in domestic abuse matters, and children in family matters, could still receive justice.

The end result is that both of the Criminal Courts, the Civil Court, both of the Family Courts, Traffic Court, Case Management Court, and all of the Treatment Courts do not have any backlogs and operate as they did pre-COVID-19.

Court Administration

The Magistrates' Court Senior Officers, who fall under the remit of the Court Manager, consist of the Family Support Officer, the Head Bailiff/Deputy Provost General (DPMG) and the Office Manager. They provide support and overall control of personnel, facilities and financial resources of the Magistrates' Court.

The Magistrates' Court Administration Section consists of the Court Manager, Office Manager, Accounting Officer, two (2) Court Associates (formally titled Cashiers) and an Administrative Assistant who are fully responsible for all revenue collected and the payment of all administrative expenses, inclusive of payroll.

While the Cashier's Section collected \$7,283,838 in 2022, which was 17% more than in 2021, they are again to be commended for their ability to adapt to the many precautions that were implemented as a result of the COVID-19 pandemic. As with 2021, the reduction in the number of payments collected is directly attributed to (i) precautionary measures being put in place at the Magistrates' Court at various stages throughout the year, (ii) a reduction in the numbers of persons attending the court to make any type of payment, (iii) the inability of persons being able to pay because of lost employment or reduced income, and (iv) members of the public not attending court because of health and safety concerns.

The administrative team in this Section, are to be commended for their professionalism whilst serving customers, both in person and via the telephone continuing their efforts from 2021. The Court Associates are worth their weight in gold and often carry out their duties with commitment and dedication. Special mention should be made the Cashier's Team which consist of Ms. Deneise Lightbourn – Accounting Officer, Ms. Shondell Borden and Ms. Towona Mahon, all of whom went over and beyond the call of duty and played a vital role in the administration of the Courts. In addition, all of the substantive Court Associates perform relief cashiering duties. They too deserve recognition for their hard work and dedication. It is notable that all of the Court Associates who process the receipt of fees and fines had a phenomenal input accuracy rate of 98%.

Hearings/Case Events

Hearings/Case Events	2018	2019	2020	2021	2022
Mentions	3,602	4,035	3,658	3,499	3,376
Trials	1,399	1,174	966	1,086	862
Case Events	25,040	27,150	18,579	19,815	19,122

Figure 1: Table of 2018 - 2022 Hearings/Case Events

'Mentions' are events for the Magistrate to decide what the next course of action is to be taken i.e. trial, another mention, etc.

'Trials' are hearings between the parties in order for the Magistrate to make a judgment.

'Case Events' includes proceedings such as pleas, legal submissions, sentencing hearings and other types of events that do not fall under Mentions and Trials.

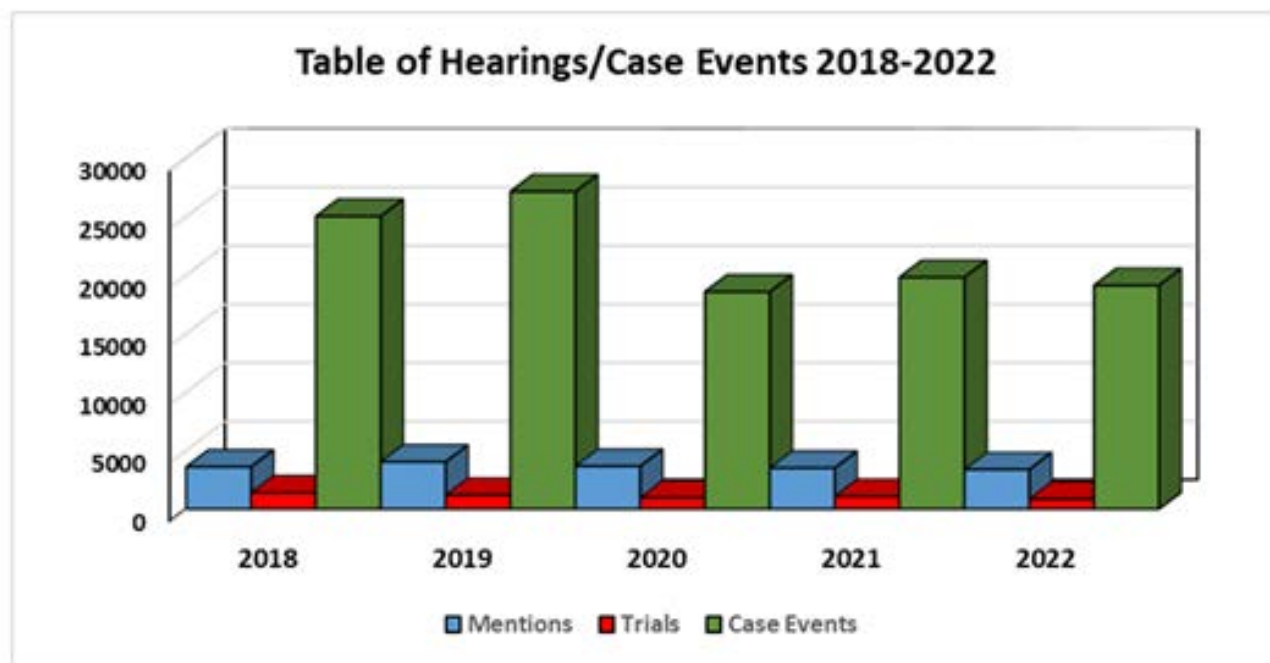


Figure 1A: Chart of 2018 - 2022 Hearings/Case Events

In 2022 the number of Case Events declined by 3.5% as the courts were continuing to reduce the amount of occasions that persons made a physical appearance in the court room (due to the continued presence of the COVID-19 virus).

The Magistrates' Court Civil Division

The administrative arm of the Civil Section is overseen by the Office Manager who has under their remit one (1) Senior Court Associate and two (2) Court Associates.

The Civil Court has returned to pre-COVID-19 pandemic operations and are accepting the filings of all proceedings including eviction proceedings and the recovery of rent arrears. Therefore, the number of new Court filings has increased by 18%.

The Court Associates continued to manage the number of New Civil Documents received in the Magistrates' Court. These documents were received from various entities which include, but are not limited to, Law Firms, Credit Agencies, Person to Person, etc.

Special mention to all of the staff in the administrative arm of the Civil Section as they remained current in respect of the processing and distributing of all New Civil Documents received in 2022.



TOTAL NEW CASES (Filed)	2018	2019	2020	2021	2022
Civil	1,924	2,117	1,067	962	1,134

Figure 2: 2018 - 2022 Table of Total New Civil Court Cases Filed

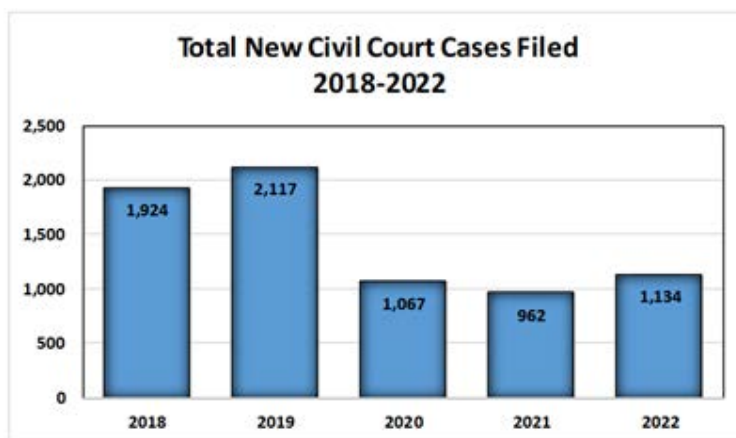


Figure 2A: 2018 – 2022 Chart of Total New Civil Court Cases Filed

The Magistrates' Court

Family Division

There are two (2) Family Courts, each comprised of a Magistrate and two (2) Special Panel Members (male and female), pursuant to the Magistrates' Act 1948.

This Court continues to exercise its jurisdiction in cases involving children who have not yet attained the age of 18 years and children who have continued in full-time education beyond 18 years.

The Special Court Panel

The Family Court is a Special Court which was created to handle the specific needs of children whether born within or outside of marriage, and matters arising in respect of their custody, care, maintenance and violations against the law (juvenile offenders). Of particular note is that the sensitivity and complexity of Family Court matters has increased which requires the Family Court Panel to exercise the utmost judicial care in resolving such matters.

The Special Court Panel had (thirty-five) 35 members serving in 2022 each of whom represent a diverse range of individuals from various walks of life. The Panel Members assist the Magistrates in decision making and their value to the Family Court and its continued success is immeasurable.

We wish to particularly commend those members of the Family Court Special Panel who have been sitting for over twenty (20) years, thereby showing their commitment and dedication to the welfare of the community.

We wish to pay specific tribute to those Panel Members who retired over the past year. We thank them for years of invaluable service and unwavering duty.

Family Court Cases

The number of New Family cases filed saw a monumental increase of 25% in 2022. A major part of this increase is due to the number of Juvenile and Matrimonial cases filed in 2022. Notably there was a 21% reduction in the number of Domestic Violence Protection Orders applications filed in 2022.

Children's Act 1998

In 2022 the number of cases heard under the Children's Act 1998 (Care Orders, Access, Maintenance, Care & Control) increased by 12% in comparison to 2021. The severity and complexities of these cases remained the same.

Family Court Administration

The Family Court is chaired by the Senior Magistrate. The Family and Child Support Section falls under the remit of the Family Support Officer and is generally supervised by the Enforcement Officer. This Section provides administration for two (2) Family Courts and two (2) Family Court Magistrates. The remaining support staff are an Administrative Assistant and three (3) Court Associates.

The Family Support Section continues to assist mothers, fathers and children who come before the Court and who routinely need assistance in resolving rather sensitive and delicate family court issues.

Child Support Payments

The total amount of child support payments received in 2022ior (\$3,231,457) is similar to the amount received in 2021 (\$3,293,921).As with 2021, this shows that although persons may have lost employment or had their incomes reduced due to the COVID-19 pandemic they still put the welfare of their children as a priority.

APPLICABLE LAW	TOTAL FAMILY LAW CASES				
	2017	2018	2019	2020	2021
Adoption Act 1963, Adoption Rules Act	4	16	0	1	5
*Children Act 1998 (Care Orders, Access, Maintenance, Care & Control)	874	836	780	590	569
** Enforcement (All Case Types in Default)	920	909	713	461	488
New Reciprocal Enforcement (Overseas)	0	0	0	0	0
Matrimonial Causes Act 1974	31	15	13	10	6
Domestic Violence Act 1997 (Protection Orders)	66	53	45	64	115
*** Juvenile Cases	51	34	42	52	158
New Cases Filed	147	151	112	149	102
ANNUAL TOTALS	2,093	2,014	1,705	1,327	1,438

Figure 3: Table of Total Family Law Cases 2018-2022

**The Children Act 1998 – This figure includes all cases adjudicated under this Act including applications submitted from the Department of Child and Family Services (DCFS).*

*** Matters in which an enforcement order was made for the collection of child support arrears.*

**** Juvenile Cases – Criminal & Traffic Cases for children who are too young to go to regular court (17 years old & under).*

The Magistrates' Court

Criminal, Traffic and Records Division

The Criminal/Traffic/Records Section falls under the remit of the Office Manager and is supervised by the Records Supervisor. There are two (2) Court Associates designated to this Section who provide case management and court services related to the resolution of criminal, traffic and parking ticket cases as well as manage all Record Requests. Additionally, the Court Associates provide clerking support to the Magistrates and are solely responsible for inputting Demerit Points into the Transport Control Department (TCD) Driver's Vehicle Registration System (DVRS) and the Judicial Enforcement Management System (JEMS).

Unfortunately, we lost our long-term substantive Senior Administrative Assistant Mrs. Nea Williams-Grant in January 2022 who opted to a change of scenery in the Supreme Court Section of the Judicial Department. Additionally, we lost Administrative Assistant (Criminal Section) Dwainisha Richardson in May 2022 to the Department of Public Prosecutions as a result of a professional development opportunity.

The vacant Court Associate post noted in the 2021 Annual Report was successfully filled by Ms. Callisa O'mara in April 2022. The post vacated by Ms. Richardson was filled internally by Ms. Donneisha Butterfield in May 2022. The Senior Administrative Assistant vacancy provided an opportunity within the Magistrates' Court which was filled by Ms. Raneek Furbert in May 2022, initially in a Temporary Relief capacity. After the requisite recruitment process Ms. Furbert was successful in securing the post substantively. She is to be commended for her tenacity and dedication.

Special mention to all of our Court Associates and Supervisors in this Section for their untiring fortitude throughout the past year. This is despite the fact that remnants of the COVID-19 virus continued.



Ms. Raneek Furbert
Senior Administrative Assistant

The number of new Criminal cases/matters filed at the Magistrates' Court decreased by 12% from 594 in 2021 to 419 in 2022.

This was not the case as it relates to the number of new Traffic matters filed which saw a major increase of 59% from 4,323 in 2021 to 6,882 in 2022.

Additionally, the number of Parking cases filed increased by 31% in 2022 - 24,106 when compared to 2021 which had 18,363 matters filed.

Total New Cases (Filed)			
Month	Criminal	Traffic	Parking
Jan	59	404	822
Feb	36	512	1,209
Mar	24	629	1,951
Apr	22	404	2,129
May	25	591	1,354
Jun	37	1,050	2,036
Jul	24	625	1,842
Aug	60	601	2,974
Sep	40	680	2,427
Oct	40	518	2,030
Nov	34	474	2,811
Dec	18	394	2,521
TOTALS:	419	6,882	24,106

Figure 4A: 2022 Table of New Criminal, Traffic and Parking Cases Filed by Month.

TOTAL NEW CASES (Filed)	2018	2019	2020	2021	2022
Criminal	608	435	529	594	419
Traffic	8,497	8,112	4,396	4,323	6,882
Parking	15,668	19,949	19,637	18,363	24,106

Figure 4: Total New Cases Filed with the JEMS system 2018-2022

CRIMINAL & TRAFFIC



Total New Cases (Disposed)			
Month	Criminal	Traffic	Parking
Jan	31	428	547
Feb	37	547	339
Mar	41	426	486
Apr	32	586	403
May	47	604	273
Jun	31	836	799
Jul	18	489	637
Aug	58	666	1,431
Sep	29	548	1,090
Oct	39	617	933
Nov	44	516	748
Dec	25	518	593
TOTALS:	432	6,781	8,279

The total number of Criminal cases disposed of in 2022 increased by 22% to 432 cases when compared to 361 cases disposed in 2021.

This was also the case as it relates to the number of Traffic matters disposed of which saw a major increase from 3,781 in 2021 to 6,781 in 2022.

Additionally, the number of Parking cases disposed of increased from 5,440 in 2021 to 8,279 in 2022.

This marked increase in the number of parking tickets disposed of is most likely due to increased efforts by the Corporation of Hamilton and the Bermuda Police Service to enforce parking regulations. (Figure 5 refers.)

Figure 5A: 2022 Table of New Criminal, Traffic and Parking Cases Disposed by Month.

TOTAL NEW CASES (Disposed)	2018	2019	2020	2021	2022
Criminal	380	356	353	361	432
Traffic	7,713	8,397	3,967	3,781	6,781
Parking	3,514	6,169	2,169	5,440	8,279

Figure 5: Table of Total New Cases Disposed by a Magistrate 2018 – 2022 (Criminal, Traffic & Parking)

Record Requests

In 2022, the Criminal/Traffic/Records Section processed a total of 2,123 Record Requests which is a significant increase of 25% when compared to 2021 (1,697). This is most likely as a result of either an increase in employment vacancies and travel throughout 2022. The requests come from various sources which include, but are not limited to, private citizens, local and overseas employment agencies, private companies, Canadian Immigration, the US Consulate, etc.

It is to be noted that the fee for a Record Request at the Magistrates' Court continues to be disproportionately low at \$10.00 per application, when a similar report from the Bermuda Police Service is \$100.00. We will continue to pursue an increase in this fee.

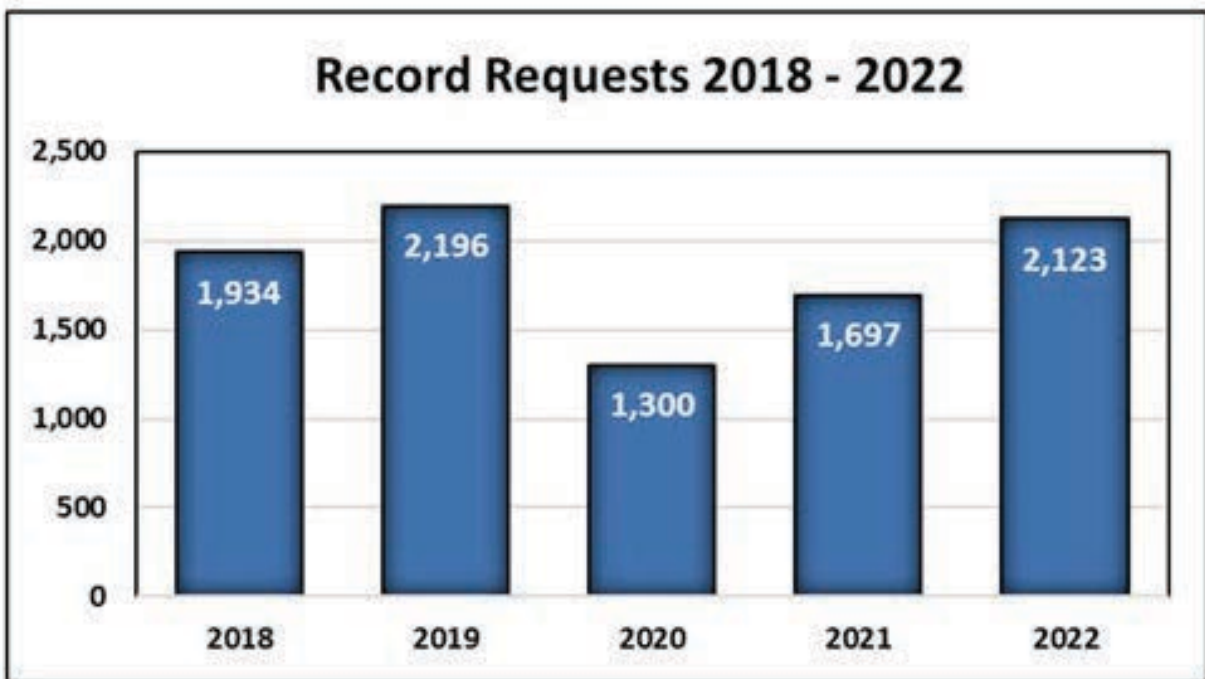


Figure 6: Chart of 2018 – 2022 Record Requests Filed

Top 10 Criminal Offences 2018 - 2022

Offence Code	Offence Description	Offence Count				
		2018	2019	2020	2021	2022
2071	OBTAINING PROPERTY BY DECEPTION		(8) 15	(10) 18		
2010	STEALING (BELOW \$1000)	(1) 99	(1) 59	(6) 36	(2) 74	(3) 30
2156	ASSAULT (ABH)	(2) 64	(2) 46	(4) 40	(7) 30	(8) 18
2300	POSSESSION OF CANNIBIS	(7) 29				
4032	THREATENING BEHAVIOUR/WORDS	(3) 60	(3) 41	(5) 39	(5) 34	(2) 34
2127	BURGLARY (NEW)	(4) 37	(8) 15	(3) 48	(3) 45	(5) 25
2152	ASSAULT (COMMON)	(5) 31	(8) 15	(5) 39	(7) 30	(1) 36
7614	FAIL CARRY SAFTY EQUIPMENT					(6) 22
4026	OFFENSIVE WORDS	(10) 24	(10) 12			
2144	WILFUL DAMAGE GT 60	(6) 30	(5) 20	(7) 23	(8) 27	(7) 19
2091	TAKE VEHICLE AWAY W/O CONSENT		(5) 20			
2316	POSS CANNABIS WITH INTENT		(6) 19			
2392	POSS DRUG EQUIPMENT PREPARE		(7) 17			
2168	ASSUALT ON POLICE					(9) 16
2388	POSS DRUG EQUIPMENT USE	(8) 26				
2364	IMPORT CANNABIS	(9) 25	(10) 12			
4034	TRESPASS PRIVATE PROPERTY	(8) 26	(4) 23		(9) 25	(8) 18
2011	STEALING (ABOVE \$1000)		(7) 17			(10) 14
2169	ASSUALT ON POLICE		(9) 13			
2203	HAVE BLADE/POINTED ARTICLE		(10) 12			(1) 36
2231	SEX ASSAULT		(5) 20		(10) 20	
2284	PROWLING		(10) 12			
2373	IMPORT OTHER DRUGS		(7) 17			
2388	POSS DRUG EQUIPMENT		(5) 20			(9) 16
2524	AFFRAY		(9) 13			
6002	PROCEEDS OF CRIME		(10) 12			
5000	FAIL TO COMPLY W/ORDER TRIBUNAL EMP. ACT			(9) 19		
6220	CURFEW VIOLATION			(2) 44	(4) 40	
6221	OFFENCE AGAINST EMERGENCY POWERS REG.			(9) 19	(1) 97	
7604	MARINE SPEED 100M FERRY REACH			(8) 22		
7605	CREATE WAKE 100M SHORELINE			(1) 53	(6) 32	(3) 30
7649	USE/KEEP UNREGISTERED BOAT			(10) 18		
2173	VIOLENT RESIST ARREST					(10) 14
2612	INTIMIDATION					(9) 16
C0006	COVID BREACH OF CURFEW					(4) 26

Figure 7: Table of Top 10 Criminal Offences 2018 - 2022

The Top 3 Criminal Offences in 2022 are as follows:-

- 1) Assault (Common) and Having a Blade/Pointed Article
- 2) Threatening Behaviour/Words
- 3) Stealing (Below \$1,000) and Creating Wake 100M Shoreline

Assault (Common) has catapulted from No. 7 in the Top 10 Criminal Offences in 2021 to No. 1 in 2022, along with Having a Bladed Article. Threatening Words moved to the No. 2 position in 2022 from No. 5 in 2021. Stealing remains in the Top 3 criminal offences for 2022.



Top 10 Traffic Offences 2018 - 2022

Offence Code	Offence Description	Offence Count				
		2018	2019	2020	2021	2022
3002	SPEEDING	(1)4,405	(1) 3,929	(1) 1,849	(1) 1,915	(1) 3,352
3007	DISOBEY TRAFFIC SIGN	(3) 833	(2) 816	(2) 424	(2) 721	(2) 991
3062	REFUSE BREATH/BLOOD TEST				(9) 60	(10) 62
3013	SEAT BELT NOT FASTENED			(10) 52		
3234	NO DRIVERS LICENSE/PERMIT	(2) 851	(3) 752	(3) 374	(5) 295	(3) 604
3080	NO 3 RD PARTY INSURANCE	(4) 449	(4) 675	(4) 345	(4) 319	
3229	UNLICENSED MOTOR BIKE	(5) 425	(5) 505	(5) 311	(3) 328	(5) 499
3070	DRIVE W/O DUE CARE & ATTENTION	(7) 221	(10) 98	(9) 67	(8) 72	
3058	IMPAIRED DRIVING A MOTOR VEHICLE	(6) 231	(7) 186	(7) 106	(7) 94	(7) 131
3064	EXCESS ALCOHOL MOTOR VEHICLE	(8) 147	(9) 114			(9) 73
3324	DEFECTIVE SAFETY GLASS/TINT				(10) 57	
3228	UNLICENCED MOTOR CAR	(9)142	(6) 319	(6) 136	(6) 135	(6) 226
3414	FAIL EXHIBIT NUMBER PLATE		(8) 126	(8) 71		
3080	NO THIRD PARTY INSURANCE					(4) 508
3190	DRIVER/PASSENGER FAIL TO WEAR HELMET					(8) 89

Figure 8: Table of Top 10 Traffic Offences 2018 - 2022

The Top 3 Traffic Offences for 2022 are as follows:-

1. Speeding
2. Disobeying a Traffic Sign
3. No Driver's License/Permit

Unsurprisingly, Speeding continued to be the most prevalent traffic offence in 2022. Interestingly enough, the initiative of "Operation Vega" instituted by the Bermuda Police Service had an astronomical effect on traffic offence statistics for 2022.





Outstanding Warrants for criminal and traffic offences fall under three (3) categories which are as follows: - **Committals** (issued when a defendant is found or pleads guilty of an offence, does not pay the fine, asks for more time to pay (TTP) and then does not meet that deadline), **Summary Jurisdiction Apprehensions (SJA)** (issued when a defendant has been fined by a Magistrate and has not paid the fine by the prescribed deadline); and **Apprehensions** (issued when defendants do not show up to Court when they are summoned for criminal and traffic offences).

TOTAL OUTSTANDING WARRANTS	2018	2019	2020	2021	2022
Committal	726	637	661	621	633
SJA	3,425	3,172	3,077	3,140	3,261
Apprehension	7,533	6,856	6,834	7,278	7,464

Figure 9: Table of Outstanding Warrants 2018-2022
(Apprehension, Summary Jurisdiction Apprehension (SJA) and Committal)

The number of Committal Warrants increased from 621 in 2021 to 633 in 2022 which represents a 2% increase.

The number of Summary Jurisdiction Apprehension warrants also had a minor increase of 3.9% from 3,140 in 2021 to 3,261 in 2022 and the Apprehension warrants which saw an increase of 2.5% from 7,278 in 2021 to 7,464 in 2022. This is attributable to more concentration on these types of warrants over the Committal warrants.

The total value of the outstanding Warrants is \$2,671,540.02.



Figure 9A: Chart of Outstanding Warrants 2018-2022
(Apprehension, Summary Jurisdiction Apprehension (SJA) and Committal)

Police and Criminal Evidence Act (PACE) Warrants

PACE Warrants 2018-2022	Legislation	2018	2019	2020	2021	2022
Special Procedure Applications	Telephonic	72	50	88	65	43
	Banking	9	9	5	10	13
	Internet	6	10	9	2	-
	Medical	1	1	3	1	-
	Courier	-	-	-	-	-
	Law Firm/Legal	-	-	-	-	-
	Travel Agents/Airlines	1	-	-	-	-
	Dept. of Social Insurance	1	-	-	-	-
	School	-	1	-	-	-
	Covid-19 Emergency Powers	-	-	6	-	-
	Financial	-	-	1	2	-
	Airport	-	-	1	-	-
	Belco Electricity	1	-	-	-	-
	Electronic Taxi App.	1	-	-	1	-
	Hospital (MAWI)	-	1	-	-	-
	Insurance	-	-	-	3	-
	Order of Freezing of Funds		1	4	-	15
Order Release of Seized Cash/Property		1	2	-	7	1
Continued Detention of Seized Cash		31	18	8	14	6
Search Warrants	Misuse of Drugs Act	45	56	37	15	30
	Firearms	10	13	18	7	1
	Sec. 8/Sec. 15 PACE Act	16	12	20	14	14
	Liquor Licence Act 1974	-	-	1	-	-
	Mental Health Sec.71(1)	-	-	1	-	-
	Criminal Code	-	-	-	-	-
	Revenue Act(Customs)	-	-	-	-	-
Production Order (Customs)		-	-	-	-	-
Production Order 'PATI' - Public Access To Information		-	-	-	-	-
TOTAL OF ALL TYPES		196	177	198	128	107

Figure 10: Table of 2018 – 2022 PACE Warrants

The number of PACE Warrants granted in 2022 were less than the number of warrants granted in 2021. This coincides with the decrease in the number of criminal case/matters in 2022.

Coroner's Reports - Causes of Death

The Coroner's Office is managed by the Senior Magistrate who reviewed 131 Coroner's deaths from January – December 2022. There was an increase in some of the metrics as it relates to Coroner's cases. Most notably are the increases in deaths due to Unnatural Causes and the marked decline in deaths due to Road Fatalities.

Overall the total number of Coroner's cases has increased from 103 in 2021 to 131 in 2022 representing a 27 % change. From this, a reasonable inference can be drawn that we as a community are unhealthier and engaged in questionable conduct which leads to our death.

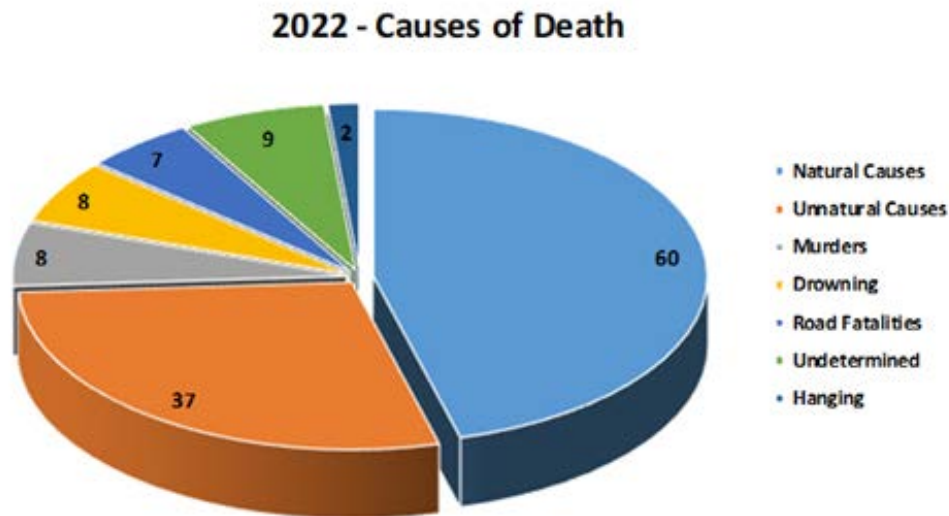


Figure 11A: Chart of Total Causes of Death in Coroners Cases in 2022

Causes of Death	2018	2019	2020	2021	2022
Natural Causes	61	79	60	64	60
Unnatural Causes	12	3	5	8	37
Murders	5	0	6	7	8
Drowning	0	0	0	0	8
Road Fatalities	12	10	7	17	7
Undetermined	0	0	0	0	9
Hanging	0	0	0	0	2
Suicide	2	4	3	2	0
COVID	n/a	n/a	0	5	0
TOTALS	92	96	81	103	131

Figure 11: Table of Causes of Death in Coroners Cases 2018 – 2022

NOTE:-

Unnatural Causes: These cases include Drug Overdoses, Drownings and Accidental Deaths.



Cashier's section

The Cashier's Office is overseen administratively by the Accounting Officer who has two (2) Court Associates (formerly titled Cashiers) under their remit. It is to be noted that all of the substantive Court Associates from the Civil, Criminal and Family Support Sections also perform relief cashiering duties when their colleagues are on any form of leave. As a team they are to be commended for their due diligence collecting over \$7 Million dollars in the Magistrates' Court Section of the Judicial Department over the past year.

Collectively the Cashier's Office received a total of \$7,283,838 in fees and fines in 2022. This represents an overall increase of 17% in fines collected for Criminal, Traffic, Parking and Civil matters in 2022. The Magistrates' Court, as it did in 2021, still takes into consideration the financial circumstances of individuals who have been fined and accordingly the Magistrates' Court have allowed persons to pay off their fines in instalments. Additionally, Magistrates' are making Community Service Orders in lieu of the imposition of fines so that those who are unable to pay fines can give back to society through charity work. Due to the increased inability of persons unable to pay their fines the number of Community Service Orders has drastically increased over the past year.

Cashier's Office Payment Types by \$ Amount					
Payment Types (By \$ Amount)	2018	2019	2020	2021	2022
Civil Payments (Attach of Earnings)	\$ 822,318	\$ 840,416	\$ 653,180	\$ 592,499	\$ 574,780
Civil Fees	\$ 158,990	\$ 167,085	\$ 93,220	\$ 82,075	\$ 79,745
Traffic Fines	\$ 2,247,845	\$ 2,926,651	\$ 1,587,199	\$ 1,282,933	\$ 2,365,335
Parking Fines	\$ 443,625	\$ 523,050	\$ 472,650	\$ 568,425	\$ 645,400
Criminal Fines	\$ 258,584	\$ 172,507	\$ 106,095	\$ 164,206	\$ 151,283
Liquor License Fees	\$ 552,188	\$ 570,631	\$ 718,730	\$ 222,136	\$ 194,500
Misc. Fees (Including Bailiff Fees)	\$ 42,464	\$ 36,612	\$ 22,827	\$ 38,110	\$ 41,339
Family Support	\$ 4,288,809	\$ 3,944,202	\$ 3,356,539	\$ 3,293,921	\$ 3,231,457
TOTAL COLLECTED	\$ 8,814,823	\$ 9,181,154	\$ 7,010,440	\$ 6,244,305	\$ 7,283,838

Figure 12: Table of Cashier's Office Payment Types (By \$ Amount) 2018-2022

Cashier's Office Payment Types by Number					
Payment Types (By Number)	2018	2019	2020	2021	2022
Civil Payments (Attach of Earnings)	3,942	4,590	3,027	2,896	3,153
Civil Fees	4,262	4,422	2,388	2,259	2,217
Traffic Fines	8,136	9,553	4,637	4,035	7,251
Parking Fines	6,089	7,390	6,303	7,638	8,601
Criminal Fines	378	225	230	297	258
Liquor License Fees	520	570	408	101	98
Misc. Fees (Including Bailiff Fees)	2,241	2,546	1,499	1,956	2,356
Family Support	18,860	17,201	13,696	12,730	11,855
TOTAL PAYMENTS PROCESSED	44,428	46,497	32,188	31,912	35,789



BAILIFFS

Bailiff's Section

Bailiffs Paper Service 2022

Throughout 2022, the Bailiffs Section faced many challenges while maintaining a respectful service rate of 95% for the service of processes issued by the Courts in Bermuda. In April, we experienced the untimely death of Bailiff Vernon Young which left the office with three (3) substantive Bailiffs. Although very much shaken by his loss, the remaining Bailiffs successfully prioritized their duties to ensure the effective service of documents for the Courts.

Total Assigned Documents 2022

For the year 2022, a total of 1,755 documents were issued for service of which 1,272 were returned. A further 393 documents that were issued prior to 2022 were also dealt with by the Bailiffs.

Documents: January - December 2022							
Document Types	Assigned Docs 2022	Assigned Docs 2022 Executed	Outstanding Docs Executed	Unable to Locate	Cancelled Withdrawn	Attempts	Total Docs Executed
Committals Applications	337	175	192	0	94	1337	367
Evict Warrants	44	31	1	0	15	112	32
Foreign Documents	19	15	1	4	0	0	16
Judgement Summons	54	47	3	5	2	301	50
Notice of Hearing	120	109	3	11	0	84	112
Ordinary Summons	300	261	3	45	9	739	264
Protection Orders	98	98	0	0	0	136	98
Summons	442	345	1	85	11	683	346
Warrants of Arrest	305	157	187	0	82	1008	344
Writs	25	23	2	1	0	4	25
Other Documents	11	11	0	0	0	9	11
Totals	1755	1272	393	151	213	4413	1665

Service Rate of Assigned Documents 2022	72%
Service Rate of All Documents	95%
Service Rate of Unable to Locate	9%
Rate of Cancellation/Withdrawal	12%

13: Table of the 2022 Monthly Statistics – Bailiffs Actual Paper Service

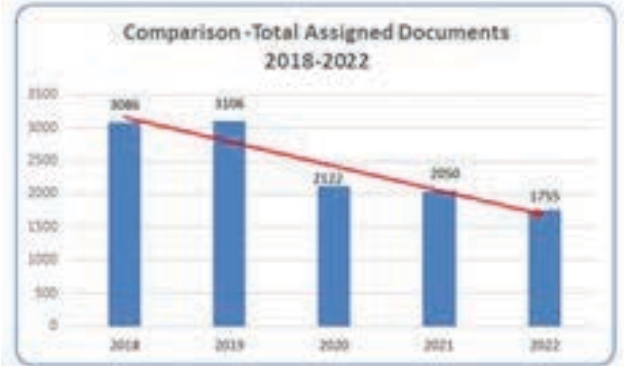
Comparison of Paper Service 2018 – 2022

From 2018 – 2022 there has been a steady decline in the issuing of documents for service by the Bailiffs. In 2018 (3,086) - 2022 (1,755) representing a 43% decrease in the issuing of paper service by the Courts.

Over this timeline, the top three (3) categories of documents have been the Combined Summonses, Committals Applications and Warrants of Arrest. The average service rate of these documents was 89%.

From 2018 – 2022 there has been an increase in the service of DVO's. In 2018 (59) and 2019 (58) documents were issued and served respectively. However, the year 2020 saw a significant spike of 146 DVOs. It is believed that the Shelter in Place during the COVID19 19 pandemic was the deciding factor for this sudden increase. There was also a noticeable increase from 2021 (77) and 2022 (98). All DVO's were successfully returned without due delay.

During 2018 – 2022, the Bailiffs executed a total of 222 evictions and a total of 125 repossessions of properties. The trend for the execution of these types of Orders were declining but there is currently increases in both categories from 2021 – 2022 as seen in the chart below. Over this same period of time, a total of fifty-two (52) Writs of Execution were issued. Twenty six (26) were resolved between the parties, one (1) one resulted in the sale of an asset and leaving a balance of twenty-five (25) outstanding.

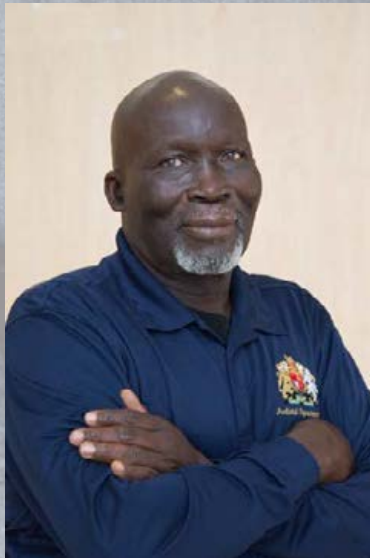




Christopher Terry
Head Bailiff/Deputy Provost Marshal



Donna Millington
Bailiff



Donville Yarde
Bailiff



Veronica Dill
Bailiff

The coat of arms of Bermuda is centered on the page. It features a shield supported by a lion on the left and a unicorn on the right. Above the shield is a crown. The shield is divided into four quadrants, each containing a different symbol. A scroll at the bottom of the shield contains the motto "DIEU ET MON DROIT". The entire coat of arms is enclosed within a circular border with a rope-like texture.

CHAPTER 3:
JUDICIAL & LEGAL SERVICES COMMITTEE

JUDICIAL & LEGAL SERVICES COMMITTEE

The Rt. Hon. Sir Christopher Clarke
Chairman

I am delighted to present the Judicial and Legal Services Committee Annual Report for the 2022 legal year. This report addresses the achievements and overall work of the Committee carried out during the relevant reporting period.

The Committee is pleased to report four judicial appointments which occurred in 2022. These were the appointments of Mrs. Maxanne Anderson JP, the first ever female Senior Magistrate; Magistrate Maria Sofianos, JP, who joins the Magistracy after a successful career as a prosecutor; former Senior Magistrate and now Mr. Justice Juan Wolffe to the Supreme Court Bench; and former Chief Justice Dr Ian Kawaley who now joins the membership of the Court of Appeal for Bermuda.

Each post attracted several applications from persons of high quality and ability. It is a source of some satisfaction to the Committee, and a tribute to Bermuda, that candidates of a high pedigree are interested in serving and maintaining the high standards of Bermuda's judiciary.

One of the functions of the Committee is to maintain accountability and high standards on the part of constitutional office holders within the Judiciary. This is achieved through a complaints protocol which enables court users to file complaints against judicial officers where they believe that a judge has acted in a way which is inconsistent with the standards set in the Guidelines for Judicial Conduct. I am happy to report that complaints against judicial officers are minimal, and in most cases, are resolved at an initial review stage. Some complaints reveal the need to educate members of the public as to what constitutes a genuine complaint within the terms of the Judicial and Legal Services Protocol.



I am happy to report that complaints against judicial officers are minimal and in most cases, are resolved at an initial review stage. Some complaints reveal the need to educate members of the public as to what constitutes a genuine complaint...

I wish to thank Her Excellency the Governor for her continued support, the Minister of Legal Affairs & Constitutional Reform and other cross-sector partners who contribute directly or indirectly to the work of the Committee.

I also wish to thank Ms. Crystal Swan the former Executive Officer of Government House who performed the function of Secretary to the Committee, and Mr. Audley Quallo who has taken up the role on an acting basis.

Lastly, I also express my gratitude to the members of the Committee for the work accomplished.

A handwritten signature in blue ink, appearing to read "C.S.C. Clarke". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke.

Sir Christopher Clarke
Chairman, JLSC

ABOUT THE COMMITTEE

The Judicial and Legal Services Committee (“the Committee”) operates as an independent standing committee like those constitutionally established elsewhere. Its primary function is to advise the Governor in the exercise of his or her powers to appoint persons to hold or act in any of the following constitutionally specified offices:

- The offices of President of the Court of Appeal, Justice of the Court of Appeal, Chief Justice, and Puisne Judge of the Supreme Court.
- Registrar of the Supreme Court and Registrar of the Court of Appeal.
- Senior Magistrate and Magistrate.

The Committee also adjudicates on complaints in accordance with the procedure laid down in the Protocol. In a case of sufficient seriousness which may likely lead to a recommendation for removal, the Committee would recommend to the Governor that a tribunal be appointed to adjudicate the matter.

The overarching aim of the Committee is to promote an accountable and efficient judicial service through competence-based recruitment and disciplinary control.

The Committee proceeds on the basis of the following core principles:

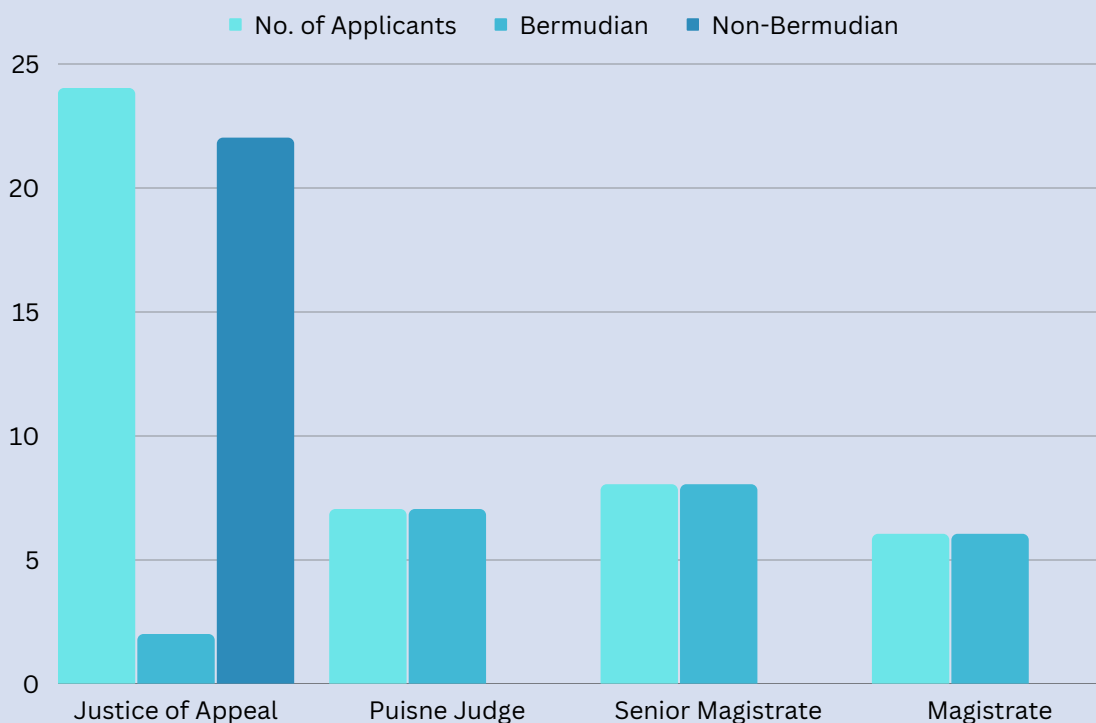
- Independence – The Committee acts independently without any direction or control of any person or authority. The Committee takes decisions that are free from external influence, inducement, pressure, or threats.
- Impartiality – The Committee carries out its functions without fear, favour ill-will, or prejudice. .
- Integrity – The Committee aims to provide a service that reflects best practice and accords with ethical principles.
- Equity – The Committee strives to ensure that all persons receive equal protection under the law, and therefore accords equal treatment to all persons without discrimination based on gender, colour, race, ethnicity, religion, sexual orientation, age, social or economic status, political opinion, or disability.
- Competence and Diligence – The Committee aims to carry out its functions both competently and carefully.



ACTIONS OF THE COMMITTEE 2022

Recruitment of Judicial Officers

The Committee made 4 recommendations to the Governor to fill vacant positions in the judiciary, namely the Offices of Senior Magistrate, Magistrate, Puisne Judge of the Supreme Court and Justice of Appeal. Details of the positions during the year are shown in the table below.



Complaints in respect of Judicial Officers

The Committee received 2 new judicial complaints filed in 2022. This is in addition to 2 judicial complaints carried over from 2021. The Committee resolved 2 complaints in 2022 leaving a balance of 2 complaints outstanding to be addressed in 2023.

It is clear from the content of some complaints that there is a need to improve public awareness of the nature of the complaints system, what kinds of complaints are for the Committee to address and what should be addressed by way of the appellate process. Some complaints are, on analysis, complaints that the judicial officer reached what, in the eyes of the complainant, was a wrong decision. Such a complaint is a matter for an appellate court.

The composition of guidance notes and the re-design of the complaints form will be addressed to make the complaints process and procedure less onerous.



STRATEGIC OBJECTIVES FOR 2023

- To appoint a new Secretary to the Committee and specify his or her responsibilities and functions.
- To review the existing Guidelines for Judicial Conduct and the extent to which they may benefit from amendment in the light of developments in judicial practice and in society generally since they were adopted in 2006.
- To consider what other steps may be appropriate to support the judiciary and the judicial system.

Members of the Committee



**THE RT.HON.SIR
CHRISTOPHER CLARKE**
CHAIRMAN



**THE HON. MR. JUSTICE
NARIDNER HARGUN**
CHIEF JUSTICE



**THE HON. MR. JUSTICE
DAVID JENKINS**
MEMBER



**THE HON. MR. JUSTICE
ADRIAN SAUNDERS**
MEMBER



MR. GEORGE JONES
MEMBER



MS. ARLENE BROCK
MEMBER



MS. MARTHA DISMONT
MEMBER



MR. JAMES JARDINE
MEMBER



MR. AUDLEY QUALLO
ACTING SECRETARY

The image features the coat of arms of Bermuda, which is a heraldic shield supported by a lion and a unicorn. The shield is topped with a crown and a crest. The motto 'DIEU ET MON DROIT' is inscribed on a ribbon at the base. The entire emblem is enclosed within a circular border that resembles a rope.

CHAPTER 4:
JUDICIAL TRAINING INSTITUTE

BERMUDA JUDICIAL TRAINING INSTITUTE

The Hon. Mrs. Justice Shade Subair Williams
Chairperson

The continued education and training of the members of the judiciary and magistracy is a central component of a modern and proficient system of justice. Judicial training is not extraneous to the regular obligations of a judicial officer; it is embedded in the portfolio of judicial work that must be carried out by a judge and a magistrate during the working hours of the work day. This is because ongoing legal education is the bedrock of a competently developing judiciary.

The key objective of the Judicial Training Institute “JTI” is to provide each judicial officer with a thirst and opportunity for ongoing general and specialized training on matters of judging and judicial administration. It is also recognized that the gathering of judicial minds is, in and of itself, an indispensable form of professional nourishment for which no alternative will suffice.

The most visible element of a judge’s role is in the adjudication of Court matters. However, with the benefit of regular and in-depth judicial training, it becomes increasingly evident that the business of judging also entails a prolonged and careful assessment of the short-term and long-term operational needs of the Court system as a whole.

The work required of each judge is to participate, if not manage, significant aspects of the day-to-day administration of their respective Divisions of Court. In addition to the expectation that judicial officers will maintain a knowledge of the law as it continuously develops and evolves, it is essential that the judicial body, in its collective sense and under the direction of the Chief Justice, engage in perennial strategic planning for the Court.



A systemic employment of regular judicial training is not only an endorsement but a mark of constitutional compliance to the judicial oath

A systemic employment of regular judicial training is not only an endorsement but a mark of constitutional compliance to the judicial oath to “...do right to all manner of people after the laws and usages of Bermuda without fear or favour, affection or ill will. So help me God.” As judicial officers, this is what we owe to all litigants, accused persons, witnesses, interested observers and the general public, whose confidence and trust in the administration of justice can only be earned.

The Hon. Mrs. Justice Shade Subair Williams
Chairperson



Members of the Criminal Bar and the practitioners of the Matrimonial and Family Courts were invited to attend. From the Criminal Bar, the DPP, Crown Counsel Ms. Shaunté Simons-Fox and the Acting Senior Legal Aid Counsel, Ms. Elizabeth Christopher attended. Other members of the Bar also appeared.

Opening the seminar, I outlined the new legislation and its effects comparing our statutory framework to the position in other commonwealth jurisdictions and the keynote speaker, Mr. Cyrus Larizadeh KC presented on “Successful Non-confrontational Advocacy for Child Witnesses” and “Vulnerability Issues for all of those in Court including the Well-being of Practitioners”. Justice Stoneham co-presented with Mr. Anthony Douglas on the subject of Litigation Guardians and case management and child-inclusive mediation.

Conference packages containing the notes for the lectured materials were provided to each attendee. As was the case for the previous conference, Attendance Certificates were issued and an entitlement to a CLE credit of 11 hours was made available to each attendee who was also a practising member of the Bermuda Bar Association.



JUDICIAL TRAINING SUMMARY

2021 - 2022



Debi Ray Rivas

Matrimonial, Child & Family Law and Practice Seminar (10 September 2021)

On 10 September 2021 a Zoom session was held for the JTI to host a Matrimonial, Child & Family Law and Practice Seminar. Due to the then ongoing COVID-19 Pandemic, the training session was held remotely via a Zoom Platform to enable the attendance of dozens of judicial officers, comprising judges, magistrates, acting magistrates and Family Court panelists.

The keynote speaker, Mrs. Debi Ray Rivas, Founder & Executive Director of SCARS, addressed the attendees on the prevention of child sexual abuse. Additionally, the Hon. Ms. Justice Nicole Stoneham, provided an overview on the Court's Divorce Jurisdiction and the Registrar, Ms. Alexandra Wheatley, spoke about the judicial remit of the Registrar in matrimonial matters.

Following this conference, I received numerous communications from the attendees who expressed their appreciation for the training experience and conveyed a strong demand for further collaborative Family Court training sessions.



2021 Annual Training (22 October 2021)

Resuming its commitment to hosting an annual training day, on 22 October 2021 a Zoom conference was held for the benefit of all judicial officers. The Hon. Chief Justice, Mr. Narinder Hargun, presented on the subject of drafting judgments and the Hon. Mrs. Justice Charles-Etta Simmons (now retired) provided a narrative on the history of the judiciary. I presented on judicial ethics and health & wellness. A presentation was also given by the Hon. Mr. Justice Larry Mussenden on the need for reform on the remuneration of judicial officers.

JUDICIAL TRAINING SUMMARY

2021 - 2022

Matrimonial, Child & Family Law and Practice Seminar (17 June 2022)

In response to the widespread call for a Part Deux of the 10 September 2021 session, a full day session was held in the Princess Ballroom of the Hamilton Princess on 17 June 2022.

In the stead of Her Excellency the Governor, Ms. Rena Lalgie, the Deputy Governor, Mr. Tomas Oppenheim attended the conference. Also in attendance was Mr. Anthony Douglas of the UK Foreign, Commonwealth and Development Office.

The Hon. Attorney General, Ms. Kathy-Lynn Simmons was invited to attend to present on “Modernizing Matrimonial Law: Matrimonial Causes (Faultless Divorce) Amendment Act 2022”. Regrettably, we were unable to secure her attendance.

In attendance from the Supreme Court was the Hon. Chief Justice, Justice Stoneham, Justice Mussenden and the Registrar. Additionally, the Senior Magistrate, Ms. Maxanne Anderson, Magistrate Mr. Khamisi Tokunbo, Acting Magistrate Deborah Blakeney, Acting Magistrate Aura-Lee Cassidy and a clear majority of the Family Court Panelists attended.

Senior Members of the Criminal Bar were also invited to attend to hear the key-note presentations which were relevant to pending criminal cases involving child witnesses. The DPP, Ms. Cindy Clarke attended together with Senior Defence Counsel Ms. Elizabeth Christopher and the Senior Legal Aid Counsel, Ms. Susan Moore-Williams. Mr. Charles Richardson was also invited to attend.

It should also be noted that Court Experts Dr. Eloise Pitts Crick and Ms. Miriam Shaya-King attended together with members of the Third Sector, namely Ms. Debi Ray-Rivers and Ms. Kelly Hunt, Executive Officer of the Coalition for the Protection of Children.





Our first keynote speaker was Mrs. Martha Dismont, Founder and Former Executive Director of the Family Center and Managing Director of Catalyst Consulting. Mrs. Dismont addressed the conference attendees on “The prevalence of the Young Black Male in the Court system and the responsibility of the collective community”.

Our second keynote speaker was Ms. Lynda Gibbs KC (Hon) Dean of Inns of Court College of Advocacy in England. Ms. Gibbs KC, appearing remotely via Zoom with the benefit of double large screens erected in the conference room, presented on “The Cross-Examining of Child Witnesses- A radical change”. This entailed a detailed outline of the renowned publication “The 20 Principles of Questioning”.

In the afternoon session, Justice Stoneham presented on “Modernizing Matrimonial Law: Matrimonial Causes (Faultless Divorce) Amendment Act 2022” followed by the Registrar’s presentation on “The Road towards a Unified Family Court and its intended benefits.” The final presentation was that of Mr. Alfred Maybury, the Director of the Department of Child & Family Services on “The Benefits and Challenges of Court Reports, Care Orders and Overseas Facilities for Children”.



Conference packages containing the notes for the lectured materials were provided to each attendee. Following this conference, Attendance Certificates were issued and an entitlement to a CLE credit of 5 hours was made available to each attendee who was also a practising member of the Bermuda Bar Association.



**Cyrus Larizadeh KC
Keynote Speaker**

Children in Litigation Proceedings (20-21 September 2022)

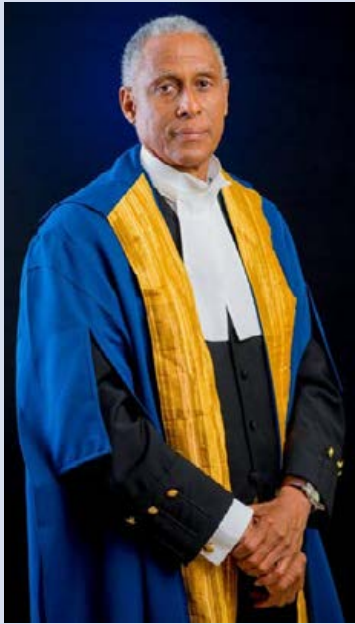
Having attended the above 17 June 2022 Conference at Hamilton Princess, Mr. Anthony Douglas CBE invited the JTI to co-host a further seminar with the UK Foreign, Commonwealth and Development Office. This was desirable because on 15 July 2022 new legislative provisions were imported into the Evidence Act 1905 (the “Evidence Act”) by Part 5 of the Child Safeguarding (Miscellaneous Amendments) Act 2019 (the “2019 Amendment Act”). These monumental amendments introduced a practice of adopting special measures in respect of a child complainant or witness in criminal proceedings. (A detailed outline of these amendments and the impact and use of special measures in criminal cases is provided in my report as the Supervising Judge of the Criminal Division of the Supreme Court.)

This two-day conference was held in No. 1 Court at Sessions House. A closing reception at Government House was to be held, however, owing to the passing of Her Majesty Queen Elizabeth II, Her Excellency the Governor was unable to both attend and host the reception resulting in our pre-approved agenda being necessarily aborted for this conference. Nevertheless, the conference itself proceeded and was well delivered.

All of the judges, magistrates, acting magistrates, Family Court panelists were invited to attend. The Chief Justice and the Registrar attended the opening sessions. (Justice Stoneham and I attended as presenters). From the magistracy, the Senior Magistrate and Magistrate Mr. Tokunbo appeared, together with acting magistrates: Magistrate Ms. Maria Sofianos (then an acting magistrate), Acting Magistrate Ms. Susan Moore-Williams (otherwise the Senior Legal Aid Counsel), Acting Magistrate Ms. Deborah Blakeney, Acting Magistrate Ms. Aura Lee Cassidy, Acting Magistrate Ms. Takiyah Burgess, and Acting Magistrate Ms. Kenlyn Swan. Acting Magistrate Ms. Rachel Barritt attended the closing sessions of the final day. A majority number of the pool of Family Court Panelists was also received.



2022 Annual Training (18 November 2022)



The Hon. Mr. Justice
Adrian Saunders
Keynote Speaker

The 2022 annual training was held in the Dame Lois Browne-Evans Building on 18 November 2022.

Her Excellency the Governor, Ms. Rena Lalgie, graciously hosted the reception for the annual training at Government House which was held on the eve of the conference. Her Excellency also personally appeared for the opening segments of the conference. The Hon. Attorney General, Ms. Kathy-Lynn Simmons offered her regrets as did the Shadow Attorney General, Mr. Scott Pearman. In his stead, Senator Mr. Douglas DeCouto attended.

The Chief Justice, Justice Stoneham, Justice Mussenden, the Registrar, the Assistant Registrar Ms. Cratonia Thompson, Magistrate Chin, Magistrate Attridge and Magistrate Sofianos were all in attendance. Assistant Justices Mr. Delroy Duncan KC, Mr. Mark Diel, Mr. Mark Pettingill also attended. Acting Magistrates were also invited to attend.

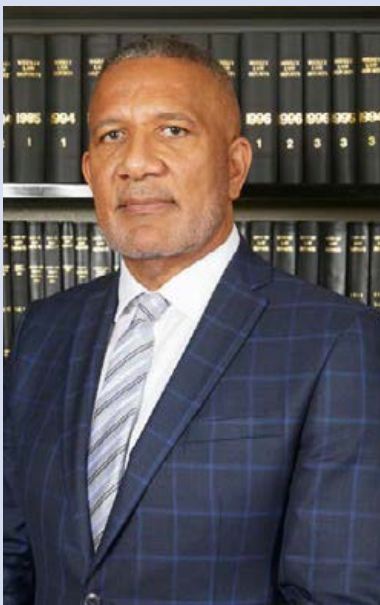
We were honoured by the presence of our keynote speaker, the President of the Caribbean Court of Justice (“CCJ”), the Hon. Mr. Justice Adrian Saunders who traveled to Bermuda from Trinidad. President Saunders provided us with a comprehensive outline of the opening session “Strategic Court Planning / Issues which threaten Judicial Independence”.

The second keynote speaker was the President of the Court of Appeal, Sir Christopher Clarke. Sir Christopher delighted the attendees with a careful outline of the critical points of guidance on “Ensuring fairness in the Courtroom / Decision Making and Judgment Writing”.

The third keynote speaker was the Chairman of the Caribbean Association for Judicial Officers (“CAJO”), the Hon. Mr. Justice Peter Jamadar of the CCJ. Justice Jamadar, who appeared remotely, creatively engaged the attendees as he boldly and thoroughly presented on the uncomfortable truths arising out of his segment on “Diversity and Inclusion in the Administration of Justice”.

Dr. Pinals of the National Center for State Courts, USA presented on the subject of mental health and wellness for judicial officers. This was followed by a closing presentation from me on judicial ethics and courtroom etiquette.

Anti-Money Laundering & Counter-Terrorism Financing Training for 2022



The Justice Training Institute organised training seminars in respect of the efforts for anti-money laundering and terrorism financing (“ML/TF”) in Bermuda.

The Caribbean Financial Action Task Force (“CFATF”) is an organization of states and territories of the Caribbean basin which have agreed to implement common counter-measures against money laundering and terrorism financing (“ML/TF”). Bermuda undergoes regular mutual assessments by CFATF to measure compliance with such measures, the latest report dated 17 January 2020 as part of the CFATF 4th Round Mutual Evaluation Report process. That report found that the Judiciary had received limited ML/TF, restraint and confiscation training and therefore listed as a priority action that periodic ML/TF training be provided to the Judiciary. It sought to ensure that the Judiciary was sufficiently trained in matters relating to restraint and confiscation.

The Judiciary through the Hon. Justice Mussenden worked with the Bermuda National Anti-Money Laundering Committee (NAMLC) Secretariat to devise long term plans for the recommended training for the Judges and Magistrates who play an integral part in the fight against ML/TF.

Following the two training seminars held in June and November 2021, the Judiciary held training seminars in June and November 2022. The June training seminar comprised presentations as follows:

- The BVI ML Laundering Case - Overview of the Illegal Scheme – presented by: Hon. Justice Mussenden
- Restraint orders, corporate insolvency, and victims' litigation: a case study presented by HHJ Hellman.
- Risks and Efforts to Combat ML Across our Borders presented by HM Customs Asst. Collector Amos and SCO Roberts.
- Risks and Efforts to Combat ML in Gaming presented by the Casino Gaming Commission Charmaine Smith, and Marvin Hanna.
- Risks and Efforts to Combat Terrorist Financing in the Bermuda Non-profit Organisations Sector presented by Registry General Registrar General Aubrey Pennyman and Reaia Ball.

The November training seminar comprised presentations as follows:

- The FTX Cryptocurrency Collapse presented by Hon. Justice Mussenden
- Implementing Sanctions presented by Attorney General's Chambers Sanctions Unit Renée Foggo, Head of Financial Sanctions Implementation Unit and Legal Counsel Jaleesa Simons
- An Overview of AML/ATF Supervision in the BMA presented by Director AML and Conduct Chris Brown and Principal, AML Risk Analytics and Policy Brittany Johnson
- The Jamaica Judiciary's Approach to ML presented by Hon. Justice Dale Palmer
- The Jamaica DPP's Office Approach to ML in Jamaica presented by Assistant Director of Public Prosecutions Ms. Channa Ormsby and Deputy Director of Public Prosecutions Ms. Ashtelle Steele.

The general aim of the training seminars was to expose the Judiciary to the many areas of life and business in Bermuda that have and could have a connection to ML/TF.

The training seminars were well attended by the substantive Judges and Magistrates and the November seminar included the acting Magistrates and Assistant Judges. The Judiciary will continue its training mandate going forward to ensure the best application of the law in the AML/TF field as well as ensuring that the Judiciary meets the CFATF standards of expected training.



OVERSEAS CONFERENCES

2021 - 2022

Commonwealth Magistrates & Judges Association 2021

No judicial officer attended any overseas conferences in 2021.

INSOL 9-10 March 2022

On the recommendation of the Chief Justice, I accepted an invitation to speak on Bermuda's insolvency law regime at the 9-10 March 2022 virtual inaugural Caribbean Round Table discussion hosted by INSOL International and The World Bank Group in partnership with the Eastern Caribbean Central Bank. The other jurisdictions represented in this remotely held "Peer to Peer" segment were BVI, Jamaica, Trinidad, Bahamas, St Lucia, Antigua and Cayman Islands.

The Round Table was attended by key stakeholders (public and private) from the English-speaking Caribbean region and Bermuda, representatives of the World Bank Group, ECCB and other international and regional institutions and leading international experts.

The objective of the Round Table was to provide an opportunity for the participants to discuss issues concerning the development of insolvency and turnaround regimes and to build ties and develop professional relationships in the region.

Commonwealth Magistrates & Judges Association 2022

On 4-9 September 2022, the CMJA held its annual conference in Accra, Ghana themed "Access to Justice in a Modern World". The Hon. Mr. Justice Juan Wolffe attended and presented on a family law segment. The Senior Magistrate, Ms. Maxanne Anderson, also attended this conference.



CARICOM Judiciary Heads Meeting: Seeking Common Solutions to Joint Regional Concerns

The Hon Chief Justice attended a two-day biennial conference hosted in the Cayman Islands for judicial heads throughout the CARICOM Region. Among the key outcomes of the recent meeting was a resolution to establish a forum between the regional Heads of Government and the Heads of Judiciaries to arrive at common solutions for "tackling crime and other pressing regional issues that intimately concern the administration of justice". The took place between 28 and 29 July 2022.

Other major outcomes included the sharing of lessons learned from the application of information technology during the COVID-19 pandemic. As part of this focus on technology, conference attendees visited the a courthouse for an on-site joint presentation on the *Curia Suite of Court Applications* in use by the Cayman Courts.

A report on a multi-million-dollar Canadian-Government-funded project, the IMPACT Justice Project, was presented and well received. The overall goal of the IMPACT Justice project is to enhance access to justice via promotion of the drafting of legislation, the use of alternative dispute resolution, and legal training and sensitisation. Other topics included judicial wellness.



Caribbean Association of Judicial Officers (CAJO) - 7th Biennial Conference

I attended the 7th Biennial Conference of CAJO in preparation for Bermuda's hosting of the 8th Biennial Conference (see further below). Also in attendance for this purpose was the Registrar and the JTI's Executive Officer, Mr. Audley Quallo.

Justice Wolffe and the Senior Magistrate Anderson attended as members of the Management Committee of CAJO presenting on "Emerging Issues in Family Law" and "Magistrates and Judges of the Parish Court's Form" for the conference which was themed "Caribbean Judiciaries in a Changing World".



(l-r) Mr. Audley Quallo, Executive Officer of the Bermuda JTI; The Hon. Mrs. Justice Subair Williams, Chairperson of the Bermuda JTI; Ms. Alexandra Wheatley, Registrar of the Supreme Court; The Wor. Maxanne Anderson, JP, Senior Magistrate of Bermuda and Member of the Management Committee of CAJO; The Hon. Mr. Justice Juan Wolffe, Member of the Management Committee of CAJO



GOALS & PLANS

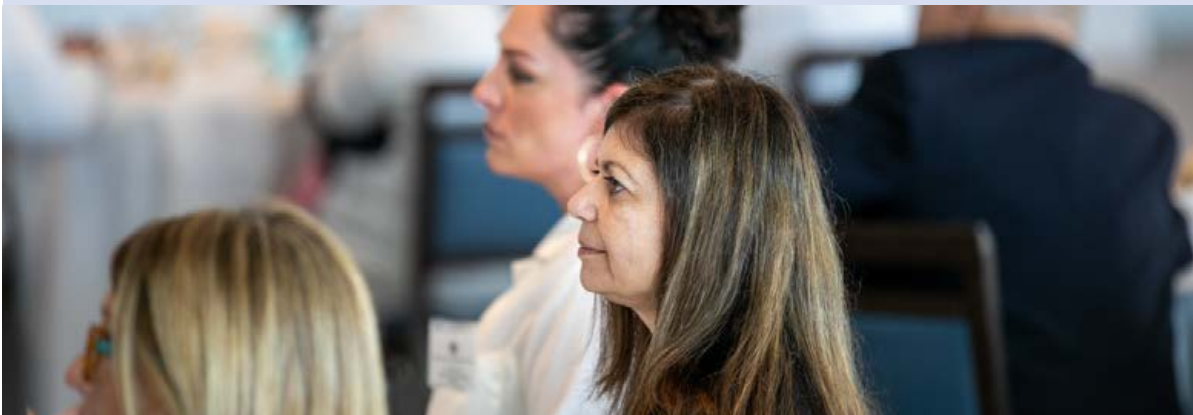
2023-2024

Strategic Court Planning

President Saunders' 18 November 2022 presentation on "Strategic Court Planning..." inspired our judiciary's enthusiasm to engage in the initial phases necessary for the structuring of our own strategic Court planning. It is hoped that the Judicial Training Institute will feature in a Strategic Plan so to operate within our Judicial Branch as a body which is equipped with its own staffing and resources in order to effectively sustain and improve upon the vital services it provides to the judiciary.

The need for certified Judicial Educators

Throughout the various regions of the Commonwealth, it is widely accepted that each jurisdiction should have amongst their body of judicial officers a certified judicial educator. In fact, one might be hard-pressed to identify any modern-day judiciary which is not so equipped. It is hoped that the Bermuda judiciary will within the next two years acquire such a certification at both Supreme Court and Magistrates' Court level.



Training Sessions for 2023

The 2023 annual judicial training day is fixed for **12 October 2023**.

Attendance and participation from the full complement of the judicial officers of the Supreme Court and the magistracy will require the Court calendar to be reserved accordingly.

The JTI, in providing specialized training opportunities, will host half-day seminars for the judicial officers of the Commercial Court and Criminal Court Divisions.

In respect of the Commercial Court seminar, it is intended that the session will be held on **5 May 2023 at 2:30pm**. The Commercial Court calendar will accordingly be reserved for this purpose.

For the Criminal Court training seminar, the session has been fixed for **3 July 2023 at 2:30pm**. The Criminal Court calendar will accordingly be reserved for this purpose.

Training Calendar 2023

There will be two training anti-money laundering / counter-terrorism financing training one in June and one in November. The dates will be 30 June 2023 at 9:30 a.m. and 24 November 2023 at 9:30 a.m. Both training sessions will conclude at 1pm in the afternoon.

For those courses which are open to the Bar, registration details will be made available through the Executive Officer. Once registered seminar packets will be provided ahead of each seminar. We very much look forward to the participation from all interested parties.

Date	Time	Training
5 May 2023	2:30 pm - 4:30 pm	Commercial Court Seminar
30 June 2023	9:30 am - 1pm	AML/TF
3 July 2023	2:30 pm - 4:30 pm	Criminal Court Training Seminar
12 October 2023	Full day	Annual Judicial Training
24 November 2023	9:30 am - 1pm	AML/TF

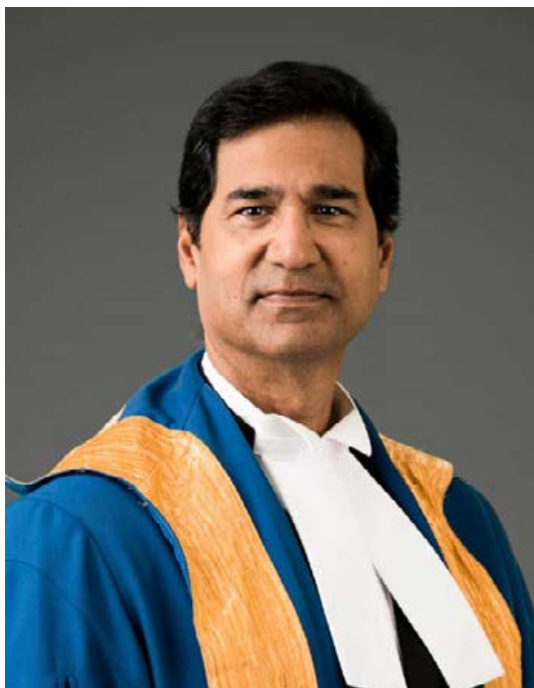


Bermuda is hosting the 8th Biennial Conference of CAJO in 2024

We are most pleased to announce that Bermuda has been selected to be the host country for the 8th Biennial Conference 2024 of CAJO which is to be held over a 3 day period in the fall season of 2024. It is expected that we will be welcoming approximately 150 conference attendees for this most prestigious event.

CAJO's membership is comprised of Chancellors, Chief Justices, Judges, Masters, Registrars, Magistrates, Tribunal Members, Executive Court Administrators and other judicial staff from all across the Caribbean region and beyond.

The Senior Magistrate and Justice Subair Williams are the current members of the Management Committee of CAJO on behalf of Bermuda.



The Hon. Mr. Justice
Peter Jamadar
Chairman of the
Caribbean
Association of
Judicial Officers and
Judge of the
Caribbean Court of
Justice



Acknowledgments

The Honourable Chief Justice, Mr. Narinder Hargun, has provided the JTI with his sweeping support of its endeavours to provide regular training to our judicial officers. Under his direction, Court calendars are mandatorily adjusted to accommodate each judge and magistrate's attendance to full day training seminars throughout each year of structured training. Also under the guidance and endorsement of the Chief Justice, the Registrar has been advocating for the need for increased resources in order to fund the full scope of our collective and individual training needs.

An expression of sincere and profound gratitude is owed to each keynote speaker who undertook the time-consuming research which was readily apparent from the quality of presentations received during the course of the various training seminars. I am not only grateful for their unremunerated time and efforts, but truly honoured by it.

I also wish to acknowledge our appointed judicial officers who committed a significant tranche of time to prepare their presentations for the learning benefit of their colleagues.

I also recognize the extraordinary administrative support we received over the past year in particular. A special note of thanks is owed to Ms. Dee Nelson-Stovell, Ms. Andrea Daniels, Mr. Brian Mello and Ms. Dawn Butterfield.

Lastly, but by no means least, I extend and highlight the profound gratitude owed to our Executive Officer to the JTI, Mr. Audley Quallo. Without the burden of any contractual obligation to assist in the operations of the JTI, Mr. Quallo carried out the continuous tasks required for a successful year of 2022. This entailed an overwhelming volume of conference correspondence, flight and hotel reservations, protocol and ground transportation arrangements, circulation of invitations, preparation for the registration procedures, preparation of conference packages and questionnaires, circulation of post-conference materials, issuance of attendance certificates, preparation of the conference locations, and reporting to the Registrar for budgetary support and execution. These exhausting tasks were carried out tirelessly and without complaint on his part while he simultaneously performed his regular duties in service of the Court of Appeal and its convening sessions which closely coincided with the conference fixtures. For all of this an unreserved recognition of excellence is merited.



Mr. Audley Quallo
Executive Officer, BJTJ



GALLERY

7th Biennial Conference: St. Lucia, West Indies (2022)



Justice Subair Williams (l) and Sir Dennis Byron (r)



Justice Subair Williams and members of the Judiciary for the Commonwealth of the Bahamas



Justice Graham-Allen (former Bermuda DPP) (l) and Justice Subair Williams (r)



Justice Taylor-Alexander (l) and Audley Quallo (r)



(l-r) Dame Janice Pereira, CJ; Justice Bryan Sykes, CJ; Justice Subair Williams



Justice Subair Williams (l) and Senior Magistrate Anderson (r)



Justice Subair Williams and Magistrate Kirsty-Ann Gunn of the Cayman Islands (former Bermuda Crown Prosecutor)

September 2022: Children in Litigation Proceedings



Justice Subair Williams



Pictured: Justice Stoneham



Pictured: Senior Defence Criminal Barrister Elizabeth Christopher



Pictured: Acting Magistrate
Takiyah Burgess



Pictured: Acting Magistrate Leo Mills and Appleby Partner Tammy
Richardson



June 2022: Matrimonial, Child & Family Law and Practice Seminar



Family Court Panelist, Rev. Veronica Outerbridge



Members of the Magistrates' Court Family Court Panel



Acting Magistrate Susan Moore-Williams



Members of the Third Sector - Child Watch Group



(l-r) Elizabeth Christopher; DPP Cindy Clarke, Acting Magistrate Leo Mills



(l-r) Justice Mussen; EO Quallo; and Chief Justice Hargun



Pictured: Magistrate Tokunbo



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