



# THE BERMUDA JUDICIARY

## ANNUAL REPORT 2019



The Bermuda Judiciary  
Annual Report  
2019

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

**Bermuda Judiciary Annual Report: 2019**

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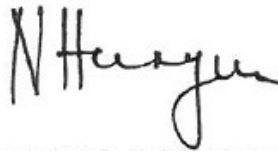
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## FOREWORD

By The Hon. Chief  
Justice of Bermuda  
Narinder Hargun



### **Remarks made by Chief Justice Narinder Hargun at the Special Sitting of the Supreme Court to Celebrate the Opening of the 2020 Legal Year (14 February 2020 at 11:30 a.m., Court #1, Sessions House, Hamilton, Bermuda)**

Good morning everyone and welcome to the Special Sitting to commemorate the opening of the New Legal Year. Special welcome to His Excellency the Governor, the US Consul General, the Honourable Director of Public Prosecutions, Madam Ombudsman, and other distinguished guests and members of our legal community.

I extend my special thanks once again 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, Court Services, the Department of Corrections, the office of the Director of Public Prosecutions and the Ministry of Legal Affairs.

I also want to acknowledge with thanks the pivotal oversight role performed by His Excellency the Governor and the Judicial and Legal Services Committee in dealing with judicial appointments and judicial complaints. The Governor's support in this regard and indeed support of the Judiciary generally is much appreciated. The JLSC is chaired by Sir Christopher Clarke, President of the Court of Appeal. Other ex officio members of the JLSC are the Chief Justice and President of the Bermuda Bar Association, and that nominated members are Sir David Baragwanath, former judge of the New Zealand Court of Appeal, Mr David Jenkins, Chief Justice of Prince Edward Island, Ms Arlene Brock and Ms Martha Dismont, ably assisted by its Executive Secretary, Crystal Swan. I am grateful to them all.

Last year I noted the challenges faced by the Judicial Department in relation to courtrooms for criminal trials and for the Court of Appeal sittings. I mentioned that efficient administration of our criminal justice requires that there be at least two courtrooms which can accommodate jury trials of criminal cases. In addition we require a courtroom and ancillary accommodation for our visiting Court of Appeal, which sits three times a year.

During the last year it was confirmed by the Speaker of the House that in the near future Sessions House would be solely used as accommodation for the Legislature and in particular Court number 1 and ancillary facilities such as sub- registry and the library would no longer be available to the Judicial Department. The timing of any such move remains uncertain. However, we have sought to emphasise to the Public Works Department that any such move should only take place when the Judicial Department has replacement facilities in the Dame Lois Browne Evans building (“DLBE”). We must at a minimum have two jury courtrooms at all times.

In this regard it is worth remembering that over the last 10 years we have been successful in reducing the time in criminal proceedings from first appearance to trial to approximately three months. The loss of Sessions House courtroom and ancillary accommodation without a proper replacement will result in a backlog of criminal cases, which will necessarily result in an accused person spending more time in custody than is the case at this time. We also know from past experience that once a backlog of cases has been established it takes a long time to eliminate such a backlog.

In the long term our goal is to centralise all services provided by the Judiciary, other than the Commercial Courts, in one location. This would ensure more efficient and effective delivery of services. In particular our aim is to house the full complement of services provided by the Criminal Court at the DLBE. We are presently working with the Public Works Department to facilitate this transition and hope that real progress can be made this coming year.

In relation to criminal cases and in particular in relation to criminal appeals I want to highlight an issue raised by the Court of Appeal in a Ruling delivered in the last November session. The Ruling highlights the prevalent practice of seeking adjournments at the last minute of criminal appeals resulting in waste of judicial resources. The Court of Appeal was rightly disturbed that on the first day of the November session there were four applications for adjournments of criminal appeals fixed to be heard the following week.

The President of the Court of Appeal noted that the four cases displayed some disturbing features. These include, according to the President, either an apparent preparedness simply to ignore the mandatory intent of the Court’s orders, or a failure plan matters so as to be able to comply with them; a failure of communication with either the Court or the Crown as to any difficulties producing submissions until a very late stage; a failure to address the question of transcripts on a timely basis; and a failure of adequate communications between counsel when more than one counsel had been involved. Clearly efforts must be made by counsel and the Registry to address these issues.

One concern highlighted by the Court of Appeal was the possible result of the amendment to the Legal Aid Act 1980 which, in practice, has had the practical effect of reducing the number of counsel available to serve which in turn may cause substantial delay in having cases ready to be heard. This is a point also noted by Justice Simmons, the Supervising Judge of the Criminal Division in her annual report. Justice Simmons notes that there were 32 new cases brought before the Supreme Court for arraignment between March and December 2019 and of those cases, 18



persons (representing 56% of the total) were represented by legal aid counsel. All but one defendant was in fact represented by the Senior Legal Aid Counsel. During the reporting period there were only two legal aid defence counsel. We will clearly have to monitor the practical effects of the revised legal aid scheme and its potential for causing delays in the criminal list.

On the Civil and Commercial side, we recognize that the Commercial Court not only serves the local community but is of great importance to our international business community. It is vital that we continue to listen and take into account the changing needs of the business community and consider any suggestions for improving service to our users. Other commercial courts in other jurisdictions, such as in the United Kingdom, have set up formal consultative structures to achieve these goals.

The chief and most effective means of ensuring that the Commercial Court is aware of and catering for the needs of those who use it is the Commercial Court Users Committee. The purpose of such bodies is to provide a direct link between the users of the Commercial Court and the Court itself, for the purposes of improving the service which the Court is able to offer.

I propose to establish a similar committee for the Commercial Court in Bermuda comprising of lawyers who use the Commercial Court and representatives of the international business community. The terms of reference of the Committee should be to consider and keep under review the workings of the Commercial Court and to make recommendations as might be necessary from time to time.

Last year I mentioned that I was pleased to note that in the November 2018 Throne Speech the Government propose to implement a Unified Family and Mediation Centre, a proposal made by the Family Law Reform Committee in 2009 headed by Justice Norma Wade- Miller. As noted in the Annual Report of Justice Stoneham in the past year the Minister of Legal Affairs initiated consultation with the judiciary and magistracy in respect of the appropriate model of a Unified Family Court for our community. It is intended that the Unified Family Court would create a single court system with comprehensive subject matter jurisdiction over all cases involving children and families. It is anticipated that the consultation process will continue into 2020 to include members of the Family Law Bar and other groups committed to justice for families in Bermuda.

Chief Justice Kawaley has in the past spoken about the need for updating the constitutional framework regulating the judiciary. One aspect which requires attention is that of the standing of the Judicial and Legal Services Committee. The concept of an independent body dealing with appointment and disciplinary matters of judicial and legal officers is prevalent in most common law countries. It is a valuable body that provides practical support to the concept of an independent judiciary.

However, in most countries such bodies have statutory and constitutional basis for their existence. In Bermuda the Committee was established by the Governor, His Excellency Mr Fergusson, in November 2013 and lacks any statutory basis, a point which has been taken in recent judicial review proceedings. I would urge that the existence and authority of the JLSC should be underpinned with a statutory basis.

In July last year, Justice Carlisle Greaves retired from the Bermuda Supreme Court bench and took up similar position in his native Barbados. We thank Justice Greaves for his long service of 21 years in the Bermuda courts and for his hard work and efficient management of criminal cases.

In March last year His Excellency the Governor announced the appointment of Mr Larry Mussenden as a Puisne Judge of the Supreme Court. It was expected that Mr Mussenden would take over his new position at the retirement of Justice Greaves in July last year. However, for a number of reasons that has been delayed and Mr Mussenden is expected to take up his new position shortly.

Like Justice Simmons I extend my gratitude to the Senior Magistrate Mr Wolffe and to Magistrate Attridge for their assistance in acting as Puisne Judges on a temporary basis over a far longer period than anticipated.

I want to take this opportunity to thank everyone who works in the Judicial Department, Judges, Magistrates, Registrar, Assistant Registrar, managers and all staff for their dedicated service during the last year under at times trying conditions.

I also want to thank the panel of Assistant Justices who voluntarily sit as Assistant Justices of the Commercial Court for nominal consideration. Their service is particularly useful in circumstances where the assigned judges to the Commercial Court are unable to act for one reason or another. The Assistant Justices I wish to thank are Mr John Riihiluoma, Mr David Kessaram, Mr Jai Pachai, Mr Delroy Duncan, Mr Jeffrey Elkinson, Mr Rod Attride-Stirling and Ms Kiernan Bell. I am especially grateful to Assistant Justice Kiernan Bell who sat for nearly 6 weeks whilst Justice Subair Williams was absent from Court.

I must also acknowledge the valuable assistance provided by Chief Justice Kawaley in presiding over one of the largest cases in trust litigation probably in any jurisdiction. This is significant litigation in the context of our international business. The trial of this action is expected to take place next year and we are grateful to Justice Kawaley to see this litigation to its conclusion.

I invite you to read the 2019 Annual Report where you will find the main highlights of the last legal year and short commentaries on the various courts and their respective jurisdictions.

**And finally, I would like to thank everyone who attended and conclude by formally declaring the 2020 Legal Year to be open!**

**Narinder Hargun CJ  
14 February 2020**

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## REPORT FROM THE REGISTRAR AND TAXING MASTER

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*The secret of change is to focus all of your energy, not on fighting the old, but on building the new.”*

*- Socrates*

### 2019 OVERVIEW

The Judicial Department continues to undergo vast change and challenges. Unfortunately, the Judiciary continued to face immense accommodation and staffing challenges in 2019 which have only deteriorated further since 2018. Whilst it had been expected that the Judiciary would have to vacate Sessions House at some point, the move from Sessions House was thrust upon us unexpectedly which has left the Judiciary in a less than desirable position. The shortage of Supreme Court courtrooms for criminal trials is still problematic, and with the current renovations being carried out at Sessions House, there remains an additional threat insofar as Court #1 not being available for the use of the Court of Appeal. Ultimately, the effect being there would be no courts available for criminal trials held in the Supreme Court during periods when the Court of Appeal is in session.



With much relief, a substantive Assistant Registrar, Ms Cratonia Thompson, commenced on 1 July 2019. It has been an immense reprieve to have Ms Thompson start with the Judiciary. Ms Thompson has brought a new vibrancy and enthusiasm which has tremendously assisted not only the management team, but all members of staff. A fresh face and perspective is always welcomed when looking forward and finding solutions.

The Assistant Registrar and I have continued to work diligently in resolving our troublesome accommodation situation, but with budget constraints and

a shortage of space for a great majority of departments throughout the Government, progress has been meek. The ultimate goal is to have all of the Courts, save for the Civil/Commercial Courts to be housed in Dame Lois Browne-Evans Building (“DLBE”). I understand budgetary funds have been allocated to complete renovations at DLBE for the Judiciary, so there is hope. The timing and completion of such a project is unknown, but the longer the Judiciary does not have suitable and adequate accommodations, it will be the people of Bermuda who will be detrimentally impacted by not having suitable access to legal services, or broader, access to justice.

## **OBJECTIVES FOR 2020**

There must be forward movement. It is unhelpful to all to harp on the challenges the Judiciary has experienced the last number of years. I am motivated to push forward to ensure the Judicial Department provides the best possible service to Bermuda.

1. Reaching a full complement of staff has still continued to be a challenge. Several posts have been vacated due to staff moving abroad, pursuing further education and obtaining employment in the private sector for more appealing salaries and benefits. There are still vacant posts which need to be filled and are currently in the recruitment process which we hope will be finalized soon in order to increase the Judiciary’s efficiency.
2. The relocation of the Court of Appeal and Supreme Court #1 to the DLBE so the majority of the Courts are located in one space rather than being fragmented between 3 or 4 different locations. It is further envisaged that a Unified Family Court will be implemented and housed in DLBE.
3. A budget has been approved for the Courts to obtain an updated audio recording system and audio visual links. The hope is to have this installation completed by mid-2020. This will enable for legislation such as the Evidence (Audio Visual Link) Act 2018 as well as the Child Safeguarding (Miscellaneous Amendments) Act 2019 to come into effect. This will provide the much needed protection for vulnerable witnesses, reduce the cost and human resource of the Department of Corrections having to transport prisoners from their prison facilities on a weekly basis, as well as enables experts to give evidence from overseas (further reducing costs to the public pursue, particularly in criminal trials where the vast majority of defendants are funded by Legal Aid).
4. Regrettably, due to staffing shortages in the Matrimonial and Family division of the Supreme Court, the finalizing of a Litigant in Person Guidebook and the updating of court form templates for litigants in person has been delayed. I aim for this to be completed by mid-2020, if not sooner.
5. Updating templates for court forms for litigants in person in the Civil/Commercial section.
6. Continuing to advocate that all judicially appointed posts are given the same respect and regard as well as comparable remuneration packages despite budgetary constraints.

7. The identification of a much needed and suitable electronic court case management system which will ultimately enable the ability for e-filing in the not too distant future. The hope is that the implementation of a new case management system will also greatly increase the efficiency of the Courts. This project will ultimately hinge upon the approval of Cabinet; the budgetary allocation will not be an easy feat given the costs of such a system is in excess of \$1.5 million.

## **Acknowledgments**

I continue to dedicate a great portion of my time for creating and building relationships not only will all members of the Judiciary but also with all of the administrative staff. I continue to be profoundly grateful to all of the staff of the Judicial Department who continue to demonstrate dedication toward achieving the best results despite these difficult times. Every small part played by everyone one is what I can rely on to continue to move forward notwithstanding the challenges.

I must also thank the members of the Bar as well as the public who have been extremely patient and understanding over the last few years. Whilst there have been a few clashes, ultimately, the empathy given towards the continuing difficulties has been astounding. I am truly appreciative of this and can only hope that everyone can see the efforts being made by the Judiciary and that these efforts will become fruitful in short order.

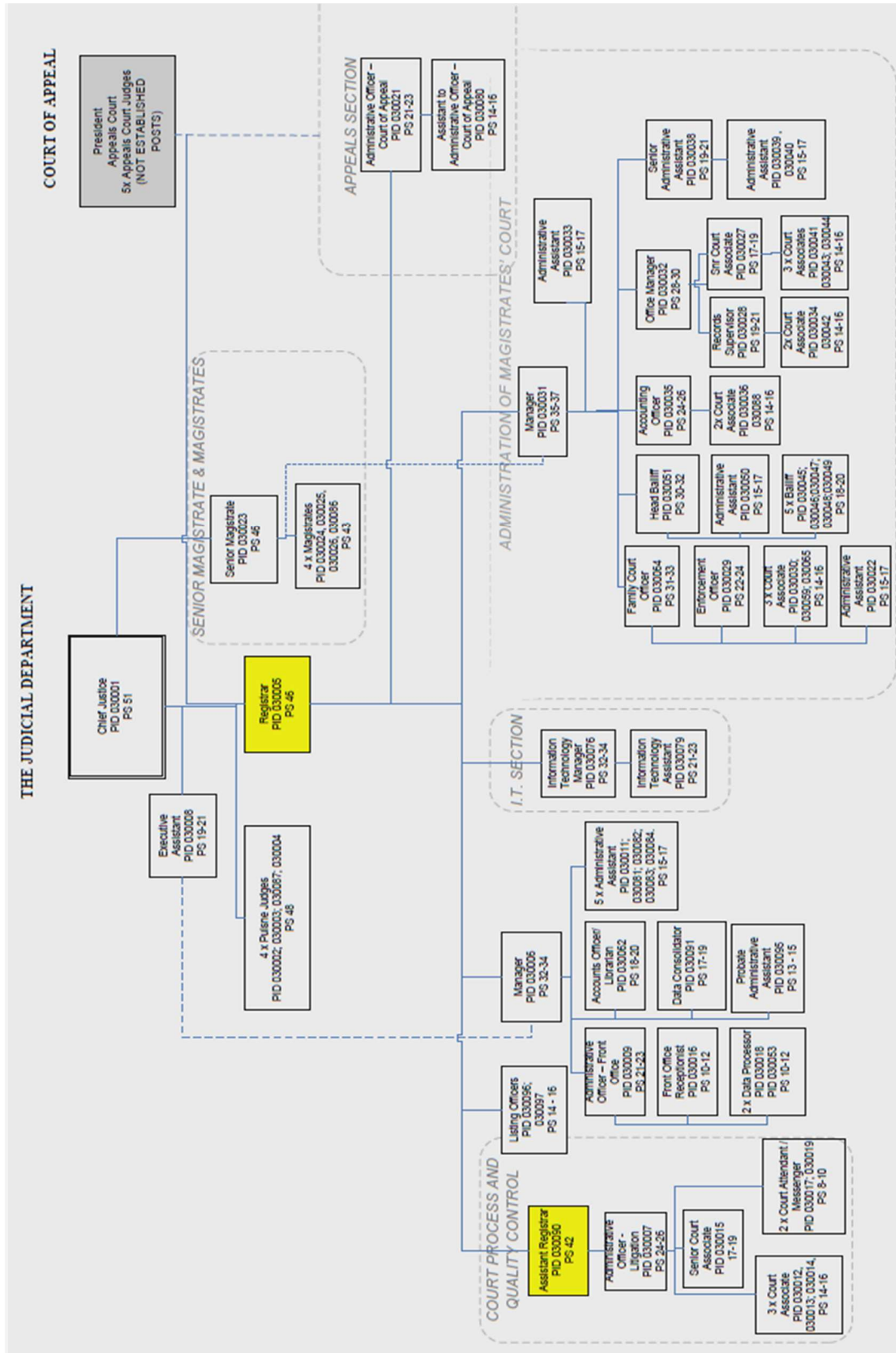
*“Success is the sum of small efforts repeated day in and day out”*

- Robert Collier

**Alexandra Wheatley**  
**REGISTRAR FOR THE COURTS**  
**January 2020**



# COURT OF APPEAL AND SUPREME COURT ORGANIZATIONAL CHART JANUARY 2019



# OVERVIEW OF THE JUDICIARY



- ❖ **The Judiciary** is established by the Constitution as a separate and independent branch of government. Its task is to adjudicate charges of criminal conduct, resolve disputes, uphold the rights and freedoms of the individual and preserve the rule of law.
- ❖ **The Mandate of the Judiciary** is to carry out its task fairly, justly and expeditiously, 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 of Bermuda** consists of the Magistrates’ Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council is the final appellate court in London.
- ❖ **The Supreme Court Registry** is responsible for the administration of the Court of Appeal and the Supreme Court. It is established by the Supreme Court Act 1905 and the Rules of Supreme Court 1985.
- ❖ **The Mandate of the Administration Section of the Judiciary** is to provide the services and support necessary to enable to 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.





*Front Street Hamilton*

# THE COURT OF APPEAL & SUPREME COURT



- ❖ The budget for the Judicial Department for the fiscal year 2019/2020 was \$8,668,475 and is \$8,942,600 for the fiscal year 2020/2021.
- ❖ There were 44 appeals filed in the Court of Appeal in 2017, which was 13 more than 2016, with 18 criminal appeals and 26 civil appeals being disposed of.
- ❖ The total number of civil filings (including calls to the Bar and notary public applications) dropped 3.4% from 2016. Commercial cases filed decreased by 12% while judicial review filings increased by 17.6%.
- ❖ The number of published reasoned judgments remained approximately the same as 2016.
- ❖ The total number of divorce petitions increased by 19 petitions from 2016 to 2017.
- ❖ There was a total of 153 probate applications filed; a decrease of 22% compared to 2016. There were 20 more caveats filed in 2017.

# COURT OF APPEAL & SUPREME COURT: OVERVIEW

## Composition and Sitting Dates

- ❖ The Registrar is the administrative head of the Judicial Department and is the accounting officer.
- ❖ The Court of Appeal is an intermediate Court of Appeal and its principle function is to adjudicate appeals from the Supreme Court of Bermuda which concern matters heard in either is original or appellate jurisdiction. The Court of Appeal comprises two divisions – Criminal and Civil (matrimonial and commercial cases are heard in the Civil Jurisdiction). It is established by the Constitution and the Court of Appeal Act 1964, and its procedure is governed by the Rules of the Court of Appeal for Bermuda. Appeals from the Court of Appeal lie to the Judicial Committee of the Privy Council, and that procedure is governed by the Appeals Act 1911.
- ❖ The Court of Appeal consists of the President of the Court, and four Justices of Appeal. However only three judges sit at a time (which invariably will always include the President as the chairperson of the panel). All judges in the Court of Appeal are regarded as distinguished jurists from other commonwealth jurisdictions.
- ❖ The composition and constitution of the Supreme Court is defined by the Bermuda Constitution and its jurisdiction governed by the Supreme Court Act 1905, and various other laws.
- ❖ The Supreme Court is divided into four jurisdictions: criminal, civil/commercial, divorce and probate.
- ❖ The Court is comprised of five Supreme Court Justices, including the Chief Justice, who hear the following cases:
  - **Civil (general) matters**, where the amount in dispute exceeds \$25,000;
  - **Commercial matters**, such as matter related to disputes concerning the activities of local and international companies and applications related to the restructuring and winding up of companies;
  - **Trust and Probate matters**, concerning the administration of trust or estate assets;
  - **Mental Health applications** appointing receivers to administer the assets of persons suffering from mental disability;

- **Criminal matters** involving serious matters or indictable offences including trials and various pre-trial applications;
- **Appeals** from Magistrates' Court (criminal and civil) and other statutory tribunals;
- **Judicial Review applications** related to administrative decisions of Ministers and other public bodies;
- **Divorce Petitions and ancillary applications** under the Matrimonial Causes Act as well as applications under the Minors Act and Children's' Act; and
- **Call to the Bar** applications.

❖ The Supreme Court is also responsible for:

- Granting **Probate and Letters of Administration** for deceased estates;
- **Bankruptcy** applications;
- **Criminal Injuries Compensation Board** applications;
- **Proceeds of Crime Act** applications;
- Granting **Notarial Certificates** and **Registered Associates** certificates;
- Issuance of **Subpoenas** and **Writs of Possession**; and
- Processing **Foreign Service** documents.

❖ As of January 2019, there are three locations for the Registries of the Supreme Court and the Court of Appeal: **Dame Lois Browne Evans Building, 3<sup>rd</sup> Floor, Government Administration Building, 2<sup>nd</sup> Floor, and Sessions House for the Court of Appeal.**



- ❖ In total, the Registry employs the Chief Justice and currently 3 puisne judges, one Registrar, one Assistant Registrar, 20 substantive and relief staff members with 8 posts currently in the recruitment process to obtain substantive employees.
  
- ❖ The Registry staff are responsible for:
  - ❖ Processing all court documents;
  - ❖ Receiving and processing applications for the grant of Probate or the Administration of intestate estates;
  - ❖ Providing support to the Justices of Appeal, Supreme Court Judges and the Registrar;
  - ❖ Maintaining the resources required for the effective functioning of the Courts;
  - ❖ Listing cases for hearing;
  - ❖ Recording all events which take place during the course of a case;
  - ❖ Maintaining the secure custody and safety of all court records;
  - ❖ Making relevant information available for court users; and
  - ❖ Collecting and accounting for all fees and fines received by the Courts.



# **THE COURT OF APPEAL**

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# COMMENTARY FROM THE PRESIDENT

By The Rt. Hon. Sir Christopher Clarke

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It is a great privilege, honour and pleasure for me to have been appointed as the President of the Court of Appeal. I stand in the shoes of a line of distinguished predecessors, and, in particular, my immediate predecessor, Sir Scott Baker, who occupied the office and fulfilled the role with great distinction over many years.

As will be apparent from later pages of this report we have this year, sadly, lost two of my predecessors – Sir James Astwood and Sir Edward Zacca. At the November session the Judiciary and Bar was able to assemble to mark and record our sorrow at Sir Edward’s passing, and to express our appreciation of his great contribution to the Court of Appeal of Bermuda (amongst others). A picture of the Court in session for that purpose appears later in this report. On a more joyful note, we have been glad to welcome Dame Elizabeth Gloster as a new member of the Court.

The Court has had an eventful year. The number of appeals filed and the number disposed of in 2019 is somewhat less than in earlier years. But those that have been heard have included matters of considerable significance. Details of some of those cases appear later in this report. These include, in the criminal field a case (Trott) where a retrial was ordered because trial counsel had had an undisclosed relationship with the appellant’s girlfriend who was a potential but uncalled witness; and another (Saltus), which concerned the correct form of direction in a case where the accused was said to be either the actual shooter or an assister to the person who was.

In the civil field the Court had to determine (*Human Rights Commission v The Attorney General*) the duties of the Court, Counsel and the Government in respect of litigation guardians, and the appointment of counsel, for children in Family Court proceedings. In another case (WF) the question was whether there should be a stay of the investigation of patients’ files seized from two clinics in relation to an investigation of potential wrongdoing. In another (Athene) the Court had to consider the principles upon which the Bermuda courts should accept or refuse jurisdiction. We also heard in November a case (Grand View) which raises very important questions as to the powers of variation in trust instruments in relation to a very substantial trust.

In the November session the Court was faced with a situation where it had to accede to three out of four applications to adjourn criminal appeals because counsel for the appellants had not filed their submissions in anything like the time required. The Court is, with the assistance of the Bar, taking steps with a view to ensuring that in future the appeal process for criminal appeals functions as smoothly as it can with a view to ensuring that this sort of problem does not arise again.

I should like to express the thanks of the Court for the high quality of many of the advocates who appear before us; and our thanks and appreciation for the good work of Audley Quallo, our Administrative Officer of the Court.

**THE RT. HON. SIR CHRISTOPHER CLARKE**  
**PRESIDENT OF THE COURT OF APPEAL**  
**JANUARY 2020**



# COMPOSITION OF THE COURT



## **The Rt. Hon. Lord President Sir Christopher Clarke**

Sir Christopher was called to the Bar in the Middle Temple in 1969. He became an Attorney of the Turks & Caicos Islands in 1975. He was appointed a Queen's Counsel in 1984 and was elected a Bencher in 1991. He was appointed a Recorder in 1988 and a Member of the Bar Council and a Deputy High Court Judge in 1993. From 1990-2004 he was head of Brick Court Chambers; from 1988 -1991 he was a Councillor of the International Bar Association and from 1993-94 Chairman of the Commercial Law Bar Association. He became a Judge of the Courts of Appeal of Jersey and of Guernsey in 1998, and was from 1998-2004 Counsel to the Bloody Sunday Inquiry. He became a Judge of the High Court (Queen's Bench Division) in 2005, where he sat in the Commercial Court, and a Lord Justice of Appeal in 2013. He was also sworn as a member of Her Majesty's Most Honourable Privy Council. He was appointed a Judge of the Court for Ecclesiastical Causes Reserved in 2015. Sir Christopher was formally appointed to the Bermuda Court of Appeal as a Justice of Appeal on 6 March 2017, upon his retirement from the Court of Appeal of England and Wales and became President in January 2019 succeeding Sir Scott Baker.

He practices in London at Brick Court Chambers as a commercial arbitrator in a wide range of international commercial disputes. He was the Treasurer of the Middle Temple in 2016. He is an Honorary Fellow of Gonville and Caius College, Cambridge.



## **The Rt. Hon. Sir Maurice Kay**

Sir Maurice is a retired English Court of Appeal Judge, and has been a member of the Bermuda Court of Appeal since October 2014. In 1988, he became a Queen's Counsel and was appointed a Recorder. He was appointed to the High Court in 1995, receiving the customary knighthood. Assigned to the Queen's Bench Division, he served on the Employment Appeal Tribunal from June 1995. He was Presiding Judge of the Chester Circuit from 1996 to 1999, and was appointed Judge in Charge of the Administrative Court in 2002. In 2004, he became a Lord Justice of Appeal, and was appointed to the Privy Council the same year. He served as President of the Judicial Studies Board from July 2007 to July 2010, and was Vice-President of the Court of Appeal (Civil Division) for five years. Sir Maurice also currently serves as the President of the Court of Appeal for Gibraltar. He also accepts arbitration appointments via chambers in Manchester.



### **The Hon. Justice Geoffrey Bell, QC**

Justice of Appeal Bell was appointed as a judge of the Supreme Court of Bermuda in 2005 and was designated a Commercial judge upon appointment. He began his career in Bermuda and was a partner and Head of Litigation at Appleby, Spurling & Kempe. He served as President of the Bermuda Bar Association between 1981 and 1984, and was appointed Queen's Counsel in 1992.

After retiring in 2009, he continued to act as an Assistant Justice of the Bermuda Supreme Court and as an Acting Justice of the Court of Appeal for Bermuda. He also served as a Justice of Appeal of the Eastern Caribbean Supreme Court in the British Virgin Islands. In January 2015, he was formally appointed as a Justice of Appeal of the Bermuda Court of Appeal where he continues to serve. Periodically, Justice Bell presides over arbitrations concerning various legal disputes.



### **The Hon. Justice Anthony Smellie, QC**

Justice of Appeal Smellie is the current Chief Justice of the Cayman Islands. He was first called to the Bar in Jamaica as an Attorney-at-Law and went on to serve as the Clerk of the Courts (Westmoreland, Jamaica) from 1976 to 1977. He has served in various positions in the Jamaican Government, such as Assistant Director of Public Prosecution from 1977 to 1983. He taught as an Associate Lecturer at the Norman Manley Law School in Jamaica from 1980 to 1983 before moving to the Cayman Islands.

Justice Smellie was appointed as Queen's Counsel in August 1991 and served as a team member of the Financial Action Task Force (mutual evaluation of United States Legal and Financial Anti-money Laundering Regimes) in 1996. He has also served as the Mutual Legal Assistance Authority (Cayman – United States MLAT) since 1993. He served as Acting Attorney-General of the Cayman Islands from January to November 1992 following which he was appointed as a Judge of the Grand Court where he served from January 1993 to June 1998 when he was then appointed Chief Justice and continues to serve in that office. Justice Smellie was appointed to the Bermuda Court of Appeal in June 2018.



### **The Rt. Hon. Dame Elizabeth Gloster, DBE**

Dame Elizabeth was appointed to the Bermuda Court of Appeal in January 2019. She was called to the Bar by the Inner Temple in 1971 and was appointed Queen’s Counsel in 1989. She was appointed a Judge of the Courts of Appeal (Jersey and Guernsey) in 1993, a Recorder in 1995 and from 1995 sat as a deputy High Court judge in both the Chancery Division and in the Commercial Court. She practiced as a commercial and Chancery QC at One Essex Court from 1991 until 2004, before accepting an appointment as a High Court judge, becoming the first woman to be appointed a judge of the Commercial Court. She was appointed to the Court of Appeal in 2013 and sworn as a member of Her Majesty’s Most Honourable Privy Council. She became the Vice-President of the Civil Division of that Court in 2016. As a Lady Justice, she sat on numerous important commercial and Chancery cases, ranging from capital markets, arbitration, shipping, insurance, tax, and insolvency to LIBOR fixing.

Since retiring from the English Court of Appeal in 2018, Dame Elizabeth has returned to One Essex Court to practise as a full-time international commercial arbitrator. She is also a Judge of the Abu Dhabi Global Market Courts. She was Treasurer of the Inner Temple for 2018 and is an Honorary Fellow of Girton College, Cambridge and Harris Manchester, Oxford. She is Patron of the London Branch of the CI Arb.



## YEAR IN REVIEW

Our review of the preceding year begins with a measure of sadness as we acknowledge the passing of two of our former Presidents of the Court – The Hon. Sir James Astwood, KBE and The Rt. Hon. Sir Edward Zacca, KCMG, OJ, PC.



Sir James was the first black Bermudian to hold the office of Chief Justice in Bermuda. He trained at the University of Toronto and the Inns of Court in London. He maintained an exemplary 17-year legal career in Jamaica, where he went on to become an acting high court judge.

He returned to Bermuda in 1974 where he served two years as the Senior Magistrate, became Solicitor General in 1976 and was appointed Chief Justice the following year. He was knighted in 1982 at Buckingham Palace as a Knight Commander of the Most Excellent Order of the British Empire.

During his time in judicial office, Sir James dealt with landmark cases, such as the epic Sea Containers' civil hearing during the 1980s — and murder trials including Troy Shorter and Chesterfield Johnson. Sir James was appointed to the Court of Appeal in 1994 and later went on to serve as the President of the Court until his retirement in 2003.



Sir Edward Zacca was appointed Chief Justice of Jamaica from 1985 to 1996. During this time he also served a brief

stint as the acting Governor-General of Jamaica when that office was vacant from March to August 1991. In 1992 he became a member of Her Majesty's Most Honourable Privy Council.

Sir Edward was first appointed as Justice of Appeal of the Court of Appeal for Bermuda on 21 October 1996. He became the President of the Court on 1 January 2004, serving up until 2014. He was also President of the Court of Appeal of Turks & Caicos Islands and of the Court of Appeal of the Cayman Islands. He served as President of the Court of Appeal of the Commonwealth of the Bahamas from March 2000 to July 2001. He too was knighted as a Knight Commander of the Order of St. Michael and St. George in 2015.

Both Presidents served with distinction and each has left an indelible print on the jurisprudence in Bermuda. They are saluted for their distinguished legal prowess and for their invaluable

contribution in maintaining Bermuda's legal reputation to the highest order. Their memories will remain always.

*“We anticipate streamlining court processes in 2020 and beyond to allow for efficient, effective and swifter access to justice.”*

### **Housing Arrangements**

This year has not been without challenge both for the administrative operation of the Court and its physical plant. The Court continued to operate in Sessions House during the Court of Appeal sessions throughout the legal year. However, the practice of operating the administrative office separate from the physical location of the court is impracticable and unsustainable.

Justices of Appeal also continue to operate in substandard conditions both in and out of the courtroom. At this stage, it is uncertain how long Sessions House will be available to the Court of Appeal, or what the long-term arrangements will be. However, the current arrangements create a domino effect insofar as it compromises a defendants' right to a speedy trial. When the Court of Appeal is operational, it is required to usurp one of the two criminal trial courtrooms to administrate its business which effectively prohibits the criminal courts from operating its schedule productively. We remain hopeful that an amicable and swift remedy will be implemented to avoid future disruptions to any of the courts.

### **Administrative Efficiency**

We continue to encourage efficiency and expediency in cases before the Court by inviting counsel to agree orders in relation to case management issues. Thus far, this practice has worked well and has decreased the amount of court time used to address ancillary issues. This is largely applicable to civil matters, although we continue to devise an appropriate system for criminal appeals. As we move into a virtual operation in terms of court administration, we continue to encourage counsel to apply this standard of practice going forward. This will promote costs savings as well as reduced time before the courts. We anticipate streamlining court processes in 2020 and beyond to allow for efficient, effective and swifter access to justice.

Case management forms have been drafted and are under review by the President of the Court of Appeal. We anticipate introducing these forms by way of a practice direction to the legal community and wider public in the coming months. It is hoped that these forms will be 'user-friendly' particularly to those litigants in person who attempt to undertake litigation without the assistance of an attorney.

## Compliance with Court Orders

One of the major disruptions to the appeal process has been the repeated breaches of Court orders; whether they are orders issued by the Registrar or the full Court. It has been observed with concern that there has been a compliance with the Court of Appeal. In recent no compunction in accountable not only for orders, but also for their effectively with the Court give notice of their orders of the Court. See [2019] CA (Bda) 14 Crim.



if the parties to a counsel) are not in a position to adhere to the Court's order, then they should make contact with the Court to say so, and to also give the courtesy of notifying the opposing side by expressing that difficulty. The Court will then advise the parties on the procedural steps required. On this subject, litigants and counsel should consult the Rules of the Court of Appeal when in doubt.

growing culture of non-orders imposed by the times, the Court has had holding counsel their breach of the Court's failure to communicate or opposing counsel, to difficulty in adhering to *Tucker et al v The Queen* It is vitally important that proceeding (or their

In the matter of *Tucker et al*, the Court has given an indication that remedies are being explored to curtail this culture of non-compliance, which may include a finding of contempt under the provisions of the Administration of Justice (Contempt of Court) Act 1979. A consultation between the Court and members of the Criminal Bar of the Bermuda Bar Association will take place to address the inadequacies and remedies that can be implemented to minimise further disruption to appeals. Following this consultation, the Bar can expect a Practice Direction in 2020 dealing with appeals which are filed with the Court and the requirement to comply with the Orders of the Court.

## Recognitions



We started the review on a sombre note, however a note of gratitude should be extended to Mrs. Justice Shade Subair Williams for her recent acting stint as a Justice of Appeal in the November 2019 Session. Mrs. Justice Subair Williams formed the panel of judges presiding over *Grand View Private Trust Company Ltd v Wong, Wen-Young (A.K.A. Winston Wong)*, Civil Appeal No 5A of 2019 which involves a trust of considerable value. Mrs. Justice Subair Williams not only made history by becoming Bermuda's youngest puisne judge, but she has also become the youngest judge ever to act on the Court of Appeal bench. She is thanked for her contribution and well wishes are extended to her as she continues in her career within the Bermuda Judiciary.

## **Appeals Overview for 2019**

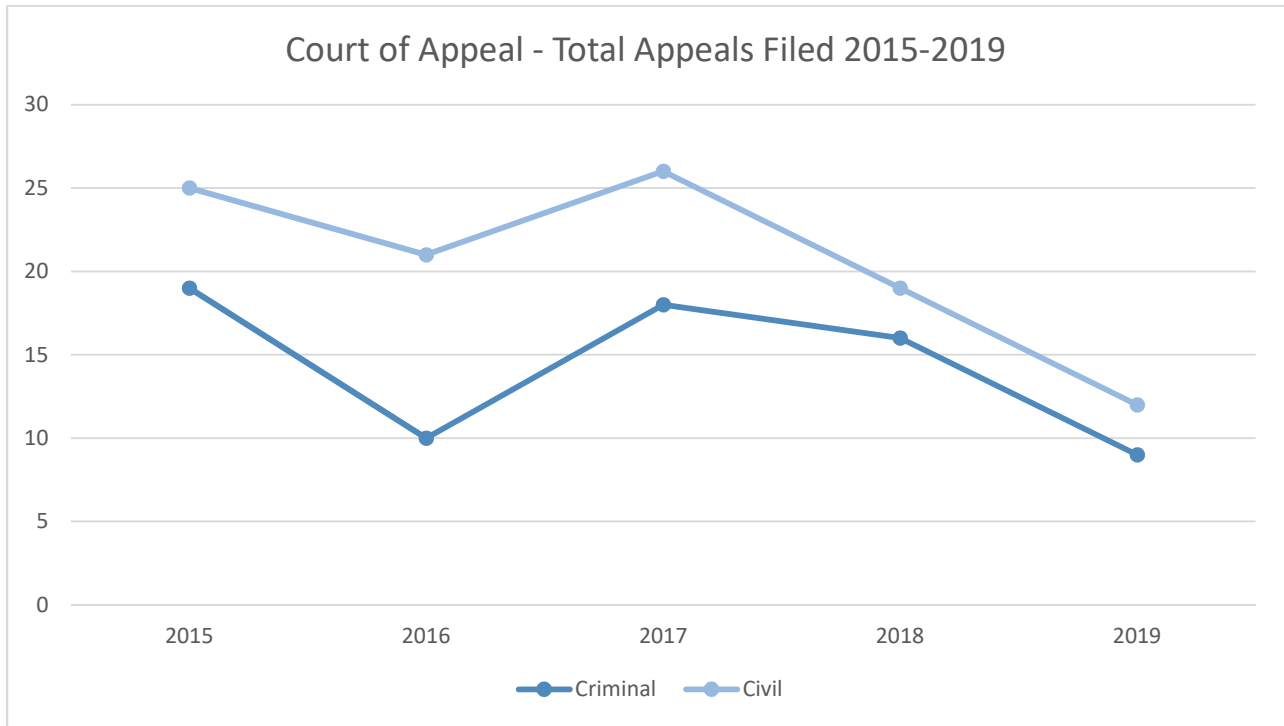
In the 2019 legal year the Court heard a total 16 cases – a combination of civil and criminal matters. Surprisingly, the March session required only 2 weeks for the Court to deal with 4 matters, following the withdrawal and or adjournment of appeals that were fixed to be heard in March 2019. Three criminal matters were adjourned from the November 2019 session and are fixed to be prosecuted in the March 2020 session. The resulting effect of all of this was that the Court has spent a great deal of time in case managing appeals to keep cases on track for prosecution. Additionally and notwithstanding the decrease in total appeals in 2019, the Court remained busy owing to the number of appeals carried over from the preceding legal year, that being a total 7 cases, in addition to hearing some of those appeals that were filed during the 2019 year.

Another anomaly arising out of a review of the statistics for 2019 was the remarkable 43.75% decrease in the total criminal appeals filed between 2018 and 2019. The total number of new filings in 2019 is a decrease of 7 in comparison to the 2 less appeals filed in 2018 from 2017. It is suggested that the current decrease was owing to the operation of only one criminal courtroom, which has now seen a decrease in the amount of criminal trials following, which an appeal might follow in respect of a conviction and/or sentence. This same explanation may apply to the decrease in 2016 from 2015. One may recall that the Supreme Court Registry which housed criminal courtroom No. 3 at Front Street, was closed for considerable time owing to the presence of mould. This resulted in the only criminal courtroom being the one which is located at Sessions House until a contingency plan was sourced and implemented; this resulted in the conversion of Magistrates' Courtroom No. 4 into a Supreme Court criminal trial courtroom.

Civil appeals were also down in 2019 by 36.84%, however, it should be postulated here that the considerations of bringing an appeal in a civil matter differ from those in criminal appeals. One reason may be the marked rise in the number of litigants in person who are appearing before the Courts who come with limited financial resources, and may not be in a position to fund litigation on appeal. Another observation is the growing number of appeals which require leave from the Supreme Court to present a Notice of Appeal to the Court of Appeal. Where the Supreme Court has refused leave, the parties to litigation have to determine if they will renew the application to the Court of Appeal or balance the prospects of failing if renewing the application and the associated risks of attracting a costs order in addition to any costs incurred below.

In concluding the review of the appeal landscape, it is also noted that there was one application for leave to appeal to Her Majesty-in-Council which was refused.

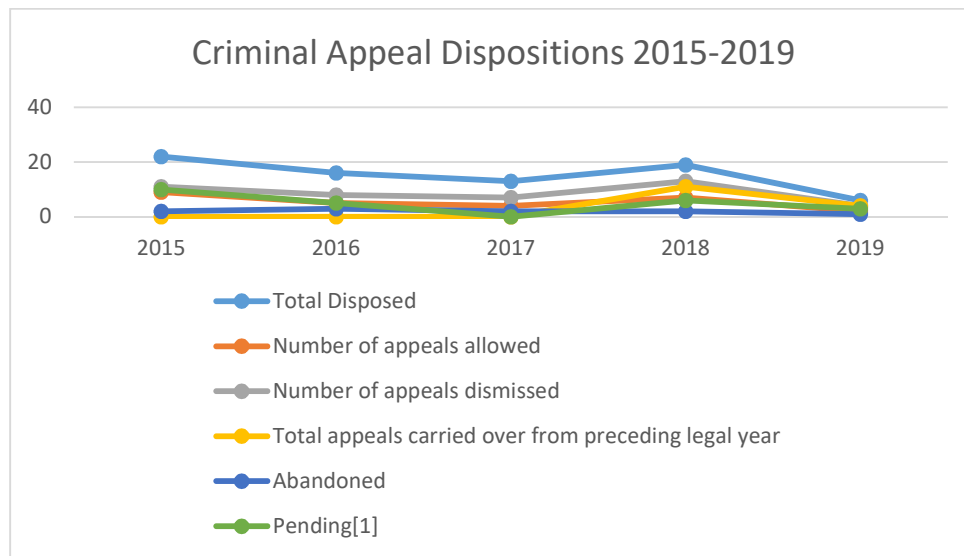
Table 1 : COURT OF APPEAL - TOTAL APPEALS FILED 2015 - 2019			
Year	Grand Total	Criminal	Civil
2015	44	19	25
2016	31	10	21
2017	44	18	26
2018	35	16	19
2019	21	9	12





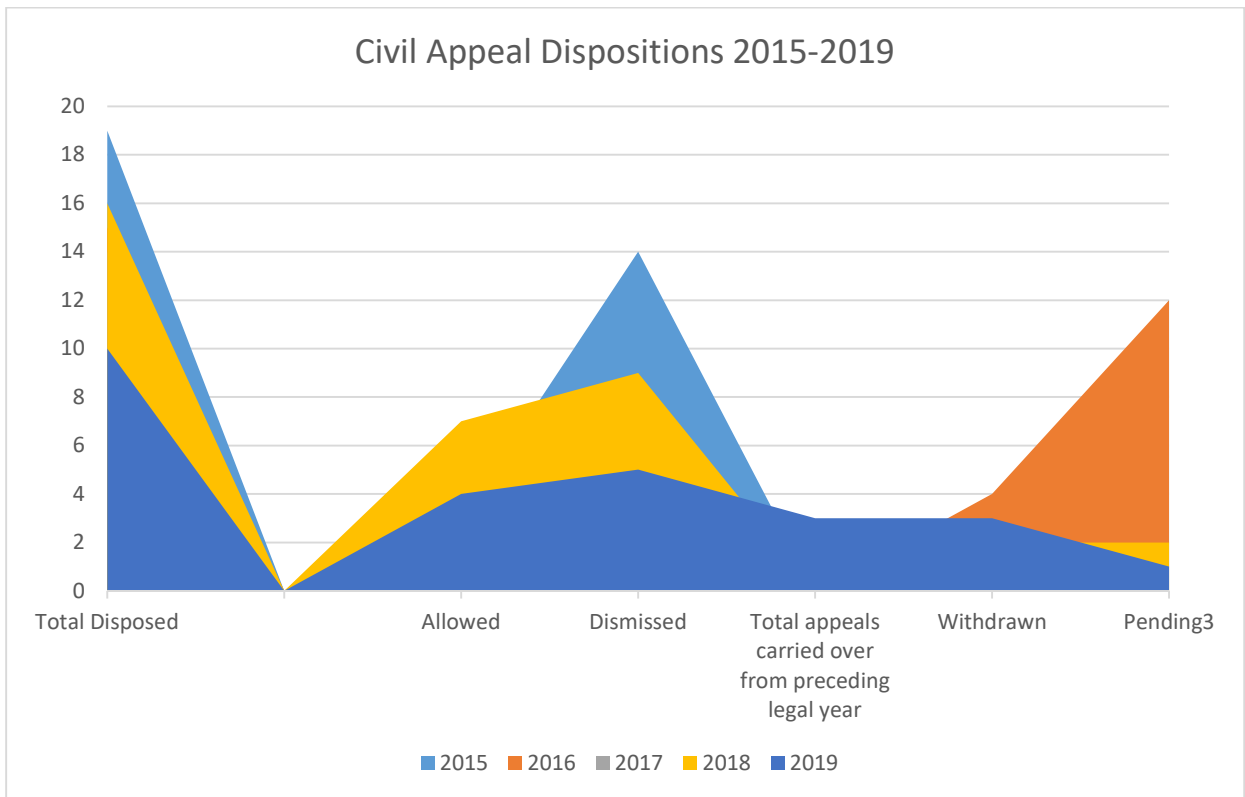
**Table 2:**  
**COURT OF APPEAL - CRIMINAL APPEAL DISPOSITIONS 2015 - 2019**

year	Total Disposed	Number of appeals allowed	Number of appeals dismissed	Total appeals carried over from preceding legal year	Abandoned	Pending <sup>1</sup>
2015	22	9	11	Not measured	2	10
2016	16	5	8	Not measured	3	5
2017	13	4	7	Not measured	2	-
2018	19	7	13	11	2	6
2019	6	2	4	4	1	3



<sup>1</sup> Appeals that were filed in 2019 but were not heard and will be carried over into the 2020 legal year.

Table 3: COURT OF APPEAL - CIVIL APPEAL DISPOSITIONS 2015 - 2019						
Year	Total Disposed	Allowed	Dismissed	Total appeals carried over from preceding legal year	Withdrawn	Pending <sup>3</sup>
2015	19	3	14	Not measured	2	12
2016	15	5	6	Not measured	4	12
2017	14	6	8	Not measured	0	0
2018	16	7	9	Not measured	2	2
2019	10	4	5	3	3	1



## **Financial Summary**

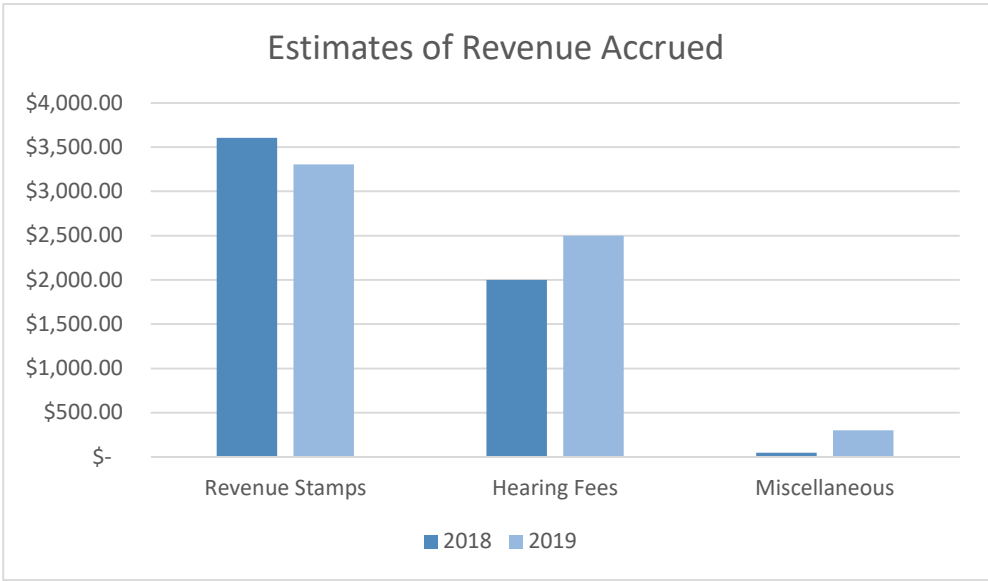
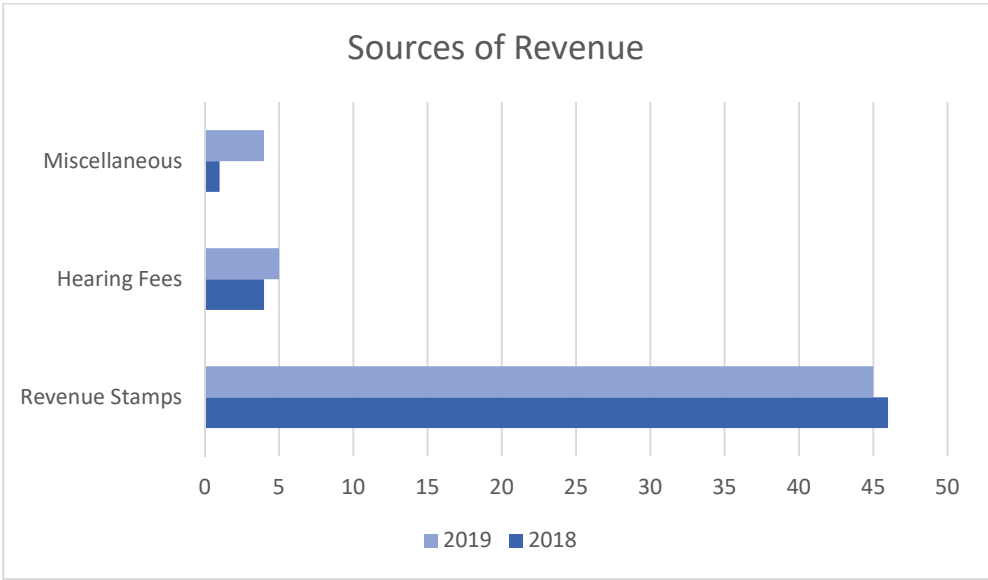
In this year's report, and for the first time, the Court of Appeal has committed to capturing estimates of the revenue accrued from 2018 and in 2019. The data has been compiled based upon the three main revenue streams, namely filings made to the court bearing revenue stamps, hearing fees from civil appeals where the record has been settled and miscellaneous revenue for things such as the purchase of a CD of the CourtSmart audio for a Court of Appeal hearing, or a search praecipe filed to inspect a court file, etc.

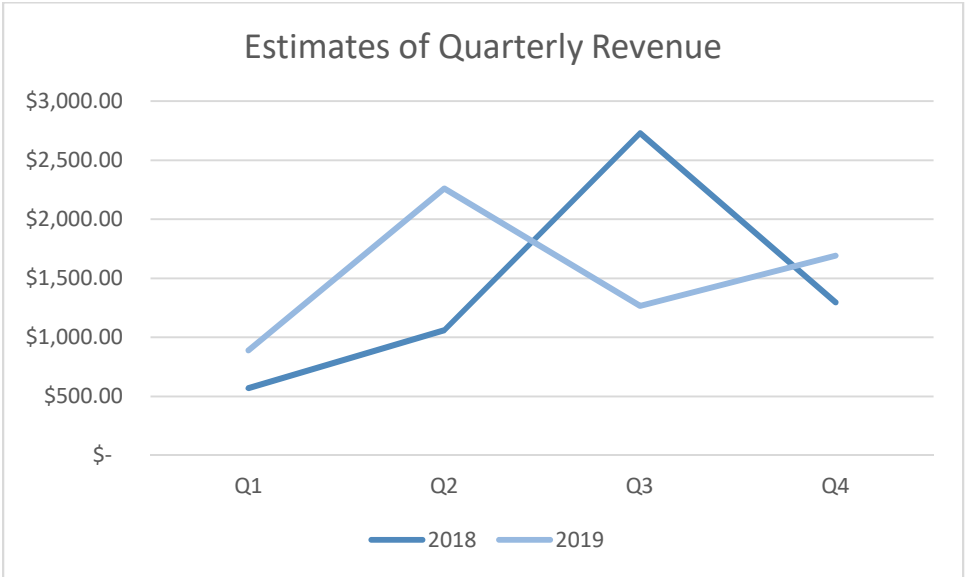
The data captured for the purposes of this summary is expected to see an increase overtime as we move into capturing live data as matters are filed into court, rather than performing a backtrack exercise. This also brings the Court of Appeal into conformity with the lower courts, by producing accounts for the revenue generated and the Magistrates' Court.

Revenue stamps are the highest source of revenue for the Court of Appeal. This is followed by hearing fees from settling the record in civil appeals. Usually, each civil appeal would attract \$500.00 in revenue when settling the record. \$400 represents the hearing fee and \$100 represents the Registrar's fee for settling the record. The term "usually" is employed because this revenue is affected by two occurrences; the first is that if the subject of the appeal relates to an ancillary relief in divorce proceedings, the hearing fee would be \$200.00 rather than \$400.00; the second occurrence is if the appellant has been adjudged as being a "poor person" pursuant to the Rules of Court, then they shall not be liable to pay any of the Court fees prescribed by the Rules of the Court of Appeal, which includes the above hearing fee and settling of record fees. This also includes not having to pay any form of security to prosecute an appeal.

Another consideration is the point of payment. Notwithstanding that 12 appeals were filed in the 2019 Legal Year, this is not indicative that all 12 appeals had their records settled in 2019, which would as a result infer that the Court accrued \$6,000.00 in the Legal Year. Records are usually settled months before the appeal is fixed to be prosecuted, and so, there would be a strong likelihood that the revenue of some appeals would be captured in the subsequent Legal Year.

The revenue trajectory does suggest, however, that strong consideration must be given to the idea of increasing the costs for prosecuting appeals. The fees, which are to be found in the Third Schedule of the Rules of the Court of Appeal, have been stagnant presumably since the enactment of the Rules. An assessment of the current fee structure should be conducted, and a comparison to other commonwealth jurisdictions should be made to ensure that an adequate but fair increase is applied. It is hoped that this exercise can be carried out at some point in 2020.





## **Cases in review**

*Accessing child pornography – extension of time to appeal – leave to appeal against fact alone – criteria for bringing an appeal twice – counsel’s failure to adduce amended grounds of appeal*

### **CALVIN HUNT v THE QUEEN**

The facts of the case were immaterial to what the court had to consider. In summary, there were two applications before the Court, one concerned an extension of time to bring the appeal, and the second being an application for leave to appeal. The Court granted the application for an extension but refused leave.

The appellant entered a not guilty plea on 12 August 2015 followed by a trial in June 2016 and another trial date in February 2017. He was convicted in the Magistrates’ Court on 25 July 2017. The appellant’s trial counsel filed a Notice of Appeal to the Supreme Court which was then followed by three appearances, none of which dealt with the substantive grounds of complaint. During the interim period of those appearances, which spanned between 17 July 2018 and 22 August 2018, on 14 August 2018, the appellant changed his counsel. This caused a further delay in the proceeding of the appeal.

During the appeal proper, the Court summarily dismissed several of the grounds of appeal because they were grounds which were not raised as the subject of complaint with the learned appellate judge in the Supreme Court. The Court took the view that counsel had ample time to apply to file an amended Notice of Appeal pleading those grounds which was not done.

The remaining grounds, which in essence complained that the Magistrate was in error in his factual finding, were also dismissed by the Court. These grounds had been considered by the Supreme Court and the judge dismissed the appeal. Clarke P giving the judgment of the Court, said that “*cases in which the Court of Appeal will allow a second appeal on the facts are rare, and, in my view, this is not one of them.*” The Court was of the view that the Magistrate, who was the arbiter of the facts before him, was entitled to resolve the contentions within evidence in the manner in which he did; and that the judge on appeal in the Supreme Court was entitled to leave the Magistrate’s conviction undisturbed. Accordingly, the application for leave to appeal was dismissed.

*Gun murder - murder by shooting – alleged confession by appellant that he was the shooter – prosecution on the basis of primary, alternatively secondary, liability – evidence of gang involvement - whether directions to the jury were adequate.*

### **TRAVONE SALTUS v THE QUEEN**

Saltus was re-tried between 10 September and 26 September 2018 and convicted for the offences of the murder of Lorenzo Stovell and the use of a firearm in the commission of that offence, following a successful appeal against conviction on 23 March 2018 (“the first appeal”).

In the first appeal, it was determined that the Crown had employed the incorrect mutual legal assistance (“MLA”) procedure in engaging a key witness to have him attend trial and give evidence. As a result of this, the witness was not present in court to give evidence and the trial judge admitted the witness statement of the witness under section 78 of the Police and Criminal Evidence Act 2006. The appellant argued that this essentially allowed the evidence of the witness, who at the time was serving a sentence of imprisonment overseas, to be admitted untested and amounted to unfairness. The Court determined that the judge was in error to admit the statement, which resulted in the appeal being allowed and ordered a retrial.

At the present appeal, the complaint was *inter alia* made that the judge failed to leave for the jury’s consideration a secondary case, which was not raised at the first trial. The first trial only considered whether or not the appellant was the shooter, whereas in the second trial the appellant argued that the issues for determination by the jury were that, if they were not satisfied that he was the shooter, then they should go on to determine if he aided and abetted the shooter. The Court found that there had been errors in the directions of the trial judge in her address to the jury which resulted in the conviction being quashed. A retrial was not ordered and the appellant released.

*Recognition and identification evidence – whether identification carried out in breach of section 3.30 of the Code of Practice should have been excluded – whether a sufficient Turnbull direction was given – adducing fresh alibi evidence – counsel’s alleged failure to follow client’s instruction – requirement of counsel to make an attendance note – admission of two-component particle GSR evidence – jury bias.*

**JAHMICO TROTT v THE QUEEN**

The appellant was convicted for Attempted Murder, Using a firearm to commit an indictable offence; Carrying a firearm with criminal intent; and Handling a firearm. He was sentenced to 25 years’ imprisonment for all counts.

The appellant launched a total six grounds of appeal which all failed with the exception of ground 5. The appellant complained that his trial counsel failed to follow his directions in calling his then girlfriend to attend the trial and give alibi evidence. The appellant says that he later learnt that his trial counsel had previously had a sexual relationship with the appellant’s girlfriend, which had not been disclosed to him, and that this resulted in a conflict of interest. As a result of this ground, the appeal was allowed and the matter was remitted to the Supreme Court for a re-trial.

In deciding the appeal, Clarke P who gave the leading judgment said at paragraph 77 that: *“We have come to the view that, in circumstances where the advice which led to [the witness] not being called was given by a lawyer who, unbeknown to the appellant, had a previous relationship with her, a reasonable observer would take the view that there had been a mis-carriage of justice”.*

*Civil appeal from Magistrates’ Court – application out of time – criteria to be satisfied for leave to be granted*

**TONY MARTIN v LARRY ENGRESSEI**

This appeal came with a lamentable history from the Magistrates’ Court. The appellant was adjudged to have owed the Respondent \$23,925.00 on 9 June 2016. The appellant’s attorney filed for leave to appeal out of time and the learned Magistrate refused leave on 13 September 2017. However, before this hearing, there was a separate hearing before Senior Magistrate on 31 January 2017, more than seven months after the trial, where leave to appeal was also sought. The delay was caused further because the appellant’s counsel sought to

have the judgment set aside. At the conclusion of the appeal, it became apparent that there was confusion as to the procedure governing provisions by which an application for leave to appeal a decision of the Magistrates’ Court should be made and the extension of time to file a notice of intention to appeal. The Court made clear that the relevant procedure is contained in Order 2 Rule 4(2) of the Rules of the Court of Appeal as read with Rule 14 of the Civil Appeal Rules 1971.

Counsel for the appellant accepted that the wrong procedure had in fact been applied and so the Court did not go on to consider the grounds of appeal. The appeal was dismissed.

*Sentences of 12, 11, and 10 years, to run concurrently, for offences of sexual exploitation of a young person and carnal knowledge – whether the sentences were manifestly excessive or wrong in principle – whether leave to appeal against sentence should be given.*

**PERNELL BRANGMAN v THE QUEEN**

The appellant filed a renewed application for leave to appeal to the full Court following the refusal of a Single Judge of the Court of Appeal. He sought to appeal his sentence of 11 years’ imprisonment for offences relating to one count of unlawful carnal knowledge and two counts of sexual exploitation.

In short, the appellant complained that the sentence he received was manifestly excessive and that the judge applied the incorrect starting point for sentencing in respect of the offences. The appellant had only one form of mitigation open to him which was his previous good character. Otherwise, he elected to proceed to trial and was found guilty; the child witness had to recount the incidents complained of, and that the offences charged were prevalent, and the need for the court to send a message deterring future would-be offenders. The appellant also sought to argue that there was an inconsistency in sentences relating to offences of this kind.

The Court assessed the authorities provided and arrived to the conclusion that sentences for offences of this kind must be considered on the individual facts of the case and that the sentencing judge was not in error in his application of the sentencing principles and established authorities. The application was dismissed.

*Children – custody rights – breach by wrongful retention – children raised in Bermuda by father – mother’s application for return to New York, USA under Hague Convention – children objecting to return – father relying on children’s objections under Article 13 to Prevent return – children of age and maturity to require that their objections be taken into account – discretion of court to refuse return – finding that discretion exercised improperly – obligation of Court of Appeal to determine matter promptly in keeping with Article 11 of the Convention*

**RE T AND K (CHILDREN)**

The appeal concerned T, aged 12, and K, aged 10, the daughters of the Appellant and his estranged wife K. T. The appellant and K.T. were married in Bermuda in February 2008 but separated in September 2011. Subsequently in April 2013, T and K were taken by their mother from Bermuda to live in New York where both girls have since resided under her custody and control. This situation came about despite an order of the Supreme Court made upon the application of the appellant, which prohibited the removal of K from Bermuda without the permission of the Court.

In 2018, whilst the children were visiting their father in Bermuda, the appellant received reports from both T and K which alleged incidences concerning both physical and sexual abuse. As a result of these revelations, the appellant did not return the children to their mother. K.T. consequently commenced proceedings in New York, USA under the the Hague Convention on the Civil Aspects of International Child Abduction 1980. That was heard in the Supreme Court for Bermuda where it was ordered that both children must be returned to New York, USA.

The Court of Appeal overturned the Supreme Court’s order, where it was held, *inter alia*, that the childrens’ objections against returning to their mother should have been considered by the learned judge before making an order for their return. The children’s objections were clearly reported in the Social Inquiry Report and were set out in handwritten letters by the girls themselves. The Court adopted the approach taken by Lady Justice Black in *Re N [2015] EWCA Civ 1022*, which should consider (a) that the child objects to being returned, and (b) the child has attained an age and degree of maturity at which it is appropriate to take into account their views.

Accordingly, the Court ordered that the children shall continue to reside in Bermuda in the custody of the appellant at least until a final determination of the arrangements for their custody and care can be made by the courts in Bermuda.

*Disciplinary proceedings – apparent bias – content of requirement of fairness in context – non-delegable duty – doctrine of necessity.*

**DIRECTOR FOR PUBLIC PROSECUTIONS v CINDY CLARKE**

This appeal was largely concerned with the appellant-Director’s (“the Director”) apparent bias in dealing with disciplinary proceedings, where he was also alleged to be the complainant in the dispute. The dispute related to disciplinary proceedings initiated by the Director against the respondent who is Deputy Director. The Director asserted gross misconduct on the part of the Deputy.

The relevant disciplinary procedure, which is set out in the Second Schedule to the Public Service Commission Regulations 2001 (“the Regulations”), requires the head of department (“HOD”) to prepare a written statement of the alleged offence and to give a copy to the officer in question. Additionally, following enquiries by the HOD, a determination is then made as to whether or not the matter would be referred to the Head of the Public Service for disciplinary proceedings, or no further action taken against the officer.

The respondent sought to have the Director recused from further dealing with the matter as HOD as she argued that he was also complainant over the allegations which the Deputy found herself answerable. However, the Court rejected this argument for two reasons: (1) the Director’s powers in the Regulations are non-delegable and are his alone to exercise. In connection with this point the Director could not be seen as making a finding a guilt because that was a matter for the HOPS, if referred. (2) Even if the Court were incorrect on (1), the doctrine of necessity would apply. The appeal was allowed. gross misconduct on the part of the Deputy.



# 2020 SESSION

As per usual, the three scheduled sessions of the Court will take place in the months of March, June and November. Counsel and members of the public are reminded that dates can shift unexpectedly, and so, every effort should be made to block out the dates below, so that you are kept ready and available to proceed with your matter.

MARCH 2020

JUNE 2020

NOVEMBER 2020


2 March to 20 March

1 June to 19 June

2 November to 19 November

## The Court Circulars

Counsel and members of the public are also reminded to adhere to the specific instructions found in the sessional circular which is released prior to the start of every session. It is vitally important that any instructions provided in the circulars are followed to ensure that each session is carried out with little to no issues possible. If you are in doubt as to a procedural requirement, then you are encouraged to make contact with the administrative office for guidance.

  
**The Court of Appeal for Bermuda**

Ref. A/20  
Monday, 29<sup>th</sup> April 2019  
CIRCULAR NO: 9 of 2019  
TO ALL COUNSEL  
COURT OF APPEAL CALENDAR: 3<sup>rd</sup> June 2019 to 21<sup>st</sup> June 2019 SESSION

I enclose herewith a Draft Cause List for the forthcoming session. The Honourable President, The Rt. Hon. Sir Christopher Clarke, has directed that Appellants and Respondents should be prepared to proceed with their appeals on very short notice at any time during the appeal period, and not only on the listed date. This also applies to those on the "Reserve List" as other appeals may collapse. Kindly note Item 2, as it refers to reducing needless duplication of authorities.

Case management for all criminal appeals will be managed through the new Form 32CM. Counsel will receive directions for filing of submissions through these forms shortly. This is done in conjunction with Circular No. 10 of 2019

1. The Draft Cause List constitutes a 'Notice of Hearing' of the upcoming dates to all involved in the appeals, although a formal Notice of Hearing will be issued with the specified date, time and location of the appeal hearing.
2. The session will begin on **Monday, 3<sup>rd</sup> June 2019** and will end on **Friday, 21<sup>st</sup> June 2019**. The President of the Court of Appeal has directed me to say that if there are changes to the list, they will be made for the convenience of the Court and not the convenience of Counsel.
3. Appellants (including anyone acting "In Person") are reminded that they are to observe the *Rules of the Court of Appeal* as well as what is set out in this Circular, and any further orders of the Court, when submitting further applications or documentation.
4. In the matter of submissions, all submissions should:
  - a) be filed in 8 1/2 x 11 format so that they are capable of being filed in hard copy in an ordinary 8 1/2 x 11 file, and
  - b) be paginated. Whilst the use of bullet points is acceptable it is generally better for the paragraphs to have sub-paragraphs numbered (i), (ii), (iii) etc. or (a), (b), (c) etc. so as to avoid the situation where a paragraph has in it, say, ten bullet points. The use of many undifferentiated bullet points, particularly on unpaginated pages, can make it difficult readily to identify in oral submissions the bullet point which is being referred to.
5. In respect of submissions for criminal appeals:
  - a) It is important that references in submissions (e.g. to a particular street or place) can be linked to any photographs or maps in which the street or place appears, as the members of the Court may not be familiar with the scene of the crime.

1



JUDICIAL  
COMMITTEE  
of the PRIVY COUNCIL

**REPORTS  
FROM THE  
PRIVY  
COUNCIL  
2019**

There were seven cases that were appealed from the Court of Appeal for Bermuda to Her Majesty's Most Honourable Privy Council; four of which proceeded in open court and three that were decided on the papers. They are:

1. Jacqui Pearman-DeSilva v The Queen– permission to appeal was refused on 12 June 2019.
2. Wolda Salamma Gardner v The Queen– permission to appeal was refused on 12 June 2019.
3. Sturgeon Central Asia Balanced Fund Ltd. v Capital Partners Securities Co. Ltd. – permission to appeal was refused on 13 February 2019.
4. Barbosa v The Minister of Home Affairs & Anor. [2019] UKPC 41 – the appeal was dismissed on 11 November 2019.
5. East Asia Company Ltd. v PT Satria Tirtatama Energindo [2019] UKPC 30 – the appeal was dismissed on 27 June 2019.
6. Bermuda Bar Council v Walkers (Bermuda) Ltd. [2019] UKPC 25 – The appeal was allowed on 10 June 2019.
7. Mexico Infrastructure Finance LLC v The Corporation of Hamilton [2019] UKPC 2 – the appeal was dismissed on 21 January 2019.

The highlighted Privy Council case for 2019 is that of *The Minister of Home Affairs and another (Respondents) v Barbosa (Appellant) (Bermuda) [2019] UKPC 41* which was presided over by Lord Reed, Lord Lloyd-Jones, Lord Briggs, Lord Kitchin and Lord Sales. In summary, this case deals with a constitutional point affecting rights involving immigration status.

The appellant, Mr Barbosa, was born in Bermuda in 1976. His parents were not Bermudian. Under the British Nationality Act 1948, Mr Barbosa's birth in Bermuda made him a citizen of the United

Kingdom and Colonies. By operation of the British Nationality Act 1981 (“the 1981 Act”), he became a British Dependent Territories citizen in 1983. This citizenship was renamed British Overseas Territories citizenship by the British Overseas Territories Act 2002, which also conferred British citizenship on Mr. Barbosa. Mr. Barbosa has lived in Bermuda continuously since around 2003.

In 2007, he married Christine Barbosa, who was born in the Philippines. In 2013, Mr Barbosa was granted indefinite leave to remain in Bermuda. He was, however, told that he was not able to apply for Bermudian status. Mrs Barbosa’s situation was different: she was first granted indefinite leave to remain in Bermuda and then a certificate of naturalisation as a British Overseas Territories citizen under the 1981 Act. This meant that she was “deemed to belong to Bermuda” under section 11(5) of the Bermudian Constitution.

When these proceedings were commenced, Mr and Mrs Barbosa wished to bring Mrs Barbosa’s niece to Bermuda and adopt her. They were told that the adoption would not be permitted because they were not residents of Bermuda within the meaning of the Adoption of Children Act 2006 (“the 2006 Act”). Mr and Mrs Barbosa began proceedings against the respondents in August 2015, seeking several declarations. The only one of those which was relevant to this appeal is the declaration that was sought by Mr Barbosa that, as a British Overseas Territories citizen, he belonged to Bermuda for the purposes of section 11 of the Constitution and was a resident of Bermuda within the meaning of the 2006 Act.

The Supreme Court of Bermuda found that Mr Barbosa was entitled to the declaration. The respondents successfully appealed to the Court of Appeal of Bermuda, and Mr Barbosa now appeals to the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council humbly advised Her Majesty that the appeal should be dismissed. Lord Kitchin and Lord Sales gave the advice of the Board.

The Reasons are abbreviated accordingly. The Board found that Mr Barbosa does not have a relevant common law or other right which informs the proper interpretation of section 11 of the Bermudian Constitution. The concept of belonging to an overseas territory does not derive from the common law. Instead, it derives from the local constitution or the local legislation of the overseas territory in question. It was further determined that Mr Barbosa cannot appeal to the common law to modify the meaning of the Constitution [25]. Prior to the enactment of the Constitution, rights of abode in Bermuda were attached to Bermudian status. The Constitution did not remove or displace any common law rights or other relevant rights in Bermuda.

Mr Barbosa is both a British Overseas Territories citizen and a British citizen, but neither status gives him a right of abode in Bermuda or a right to be treated as a person who belongs to Bermuda. Those are rights defined by the law of Bermuda, not by a United Kingdom statute. The Board went on to interpret the relevant terms of the Constitution according to the words used and their context. The Constitution embraces the concept of Bermudian status. The rights of persons on whom this status was conferred by the Bermuda Immigration and Protection Act 1956 and the rights of those who acquire this status are preserved and recognised in the Constitution.

The concept of belonging to Bermuda is of importance in the Constitution. It embraces a wider class of persons than those who enjoy Bermudian status and the Constitution confers specific rights on persons within that wider class. There is no definition of the wider class outside the Constitution, and the definition within the Constitution is found in section 11(5). The natural inference from the wording of section 11(5) is that it sets out an exhaustive list of people who belong to Bermuda. Moreover, section 11(5) was understood by the Board in *Minister of Home Affairs v Collins MacDonald Fisher* [1980] AC 319 to be a provision with exhaustive effect.

Finally, section 12 of the Constitution (which concerns protection from discrimination) contains no definition of the concept of belonging to Bermuda. Its drafting strongly suggests that the definition of a person who belongs to Bermuda is found in section 11. The principle under international law that a state cannot deny its nationals a right of entry is well recognised. However, there is no good argument that the interpretation of the Constitution could be modified so as to assist Mr Barbosa in this case. The Board thought that it would be desirable if consideration could be given at some point as to whether this feature of the Constitution should be revised, but that was not a matter for decision in this appeal.

There is no anomaly or inconsistency in the fact that Mr Barbosa is a British Overseas Territories citizen by virtue of having been born in Bermuda, and yet he is not treated as a person who belongs to Bermuda for the purposes of the Constitution. It was finally determined that under the Constitution, Mr Barbosa does not enjoy Bermudian status or belong to Bermuda. Accordingly, it was recommended to Her Majesty that the appeal should be dismissed to which she agreed.



# **THE SUPREME COURT**

# SUPREME COURT: CIVIL, COMMERCIAL AND APPELLATE DIVISION

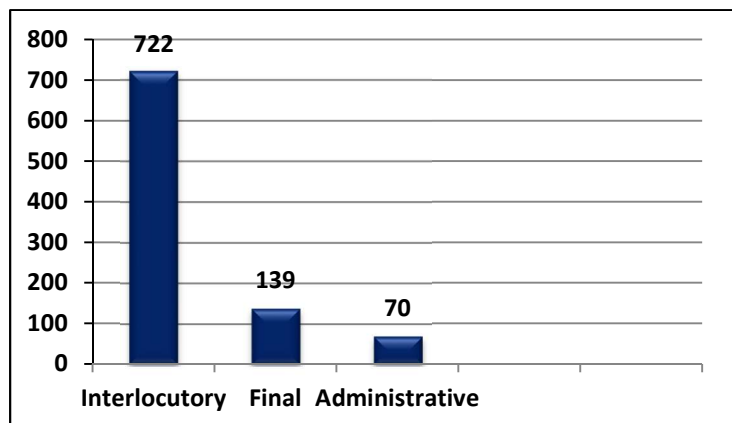
## Year in Review

### Outputs: The Numbers

The output of the Civil and Commercial jurisdiction of the Supreme Court can, in part, be measured by reference to the number of published reasoned judgments.

Year	Civil-Gen	Commercial	Appeal	Total
<b>2015</b>				
<b>Published/Considered Judgments</b>	49	12	11	72
<b>2016</b>				
<b>Published/Considered Judgments</b>	50	19	16	85
<b>2017</b>				
<b>Published/Considered Judgments</b>	57	16	14	87
<b>2018</b>				
<b>Published/Considered Judgments</b>	49	18	19	86
<b>2019</b>				
<b>Published/Considered Judgments</b>	44	13	16	73

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 2018 the figures reveal 737 interlocutory orders were made and 156 final orders were made (a total of 934) in civil and commercial matters. A further 41 orders were made in administrative matters (e.g. admissions to the Bar and appointment of notaries).

In 2019 there were 722 interlocutory orders, 139 final orders and 70 administrative orders. This shows the 2019 output closely correlates with the 2018 output.

### Outputs: The Legal Areas

The Civil and Commercial Division has a very broad jurisdiction. 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. The Commercial Court deals with disputes between business entities, usually with an international business element to it.

**Table 5: New Civil Matters Filed by Subtype 2015-2019**

Year	Total	Commercial	Originating Summons	Call To Bar	Notary Public	Writ of Summons	Judicial Review	Partition	Mental Health	Bankruptcy	Other
2015	513	57	140	52	51	180	12	12	11	10	N/A
2016	495	67	139	34	52	170	17	6	9	1	N/A
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

Criminal and Civil Appeals from Magistrates Court are also heard in the Civil and Commercial Division. In 2019, the total number of appeals filed was down by 20 % (from 59 cases to 47 cases). 11 cases were disposed of, with 2 appeals allowed, 6 appeals dismissed and 4 appeals being abandoned.

**Table 7: CRIMINAL & CIVIL APPEALS FROM MAGISTRATES COURT 2015 - 2019**

<b>Year</b>	<b>Total Filed</b>	<b>Allowed</b>	<b>Dismissed</b>	<b>Abandoned</b>	<b>Cases Pending</b>
<b>2015</b>	39	14	6	8	11
<b>2016</b>	69	17	16	6	30
<b>2017</b>	79	23	13	7	36
<b>2018</b>	59	4	9	5	41
<b>2019</b>	47	2	6	4	35





# SUPREME COURT: CRIMINAL DIVISION

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Justice Charles-Etta Simmons  
Supervising Judge

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## **OVERRIDING OBJECTIVE**

The criminal court's overriding objective is "*to do justice*". The court strives to accomplish this objective by the provision of a fair and efficient trial process.

Several challenges arose during the reporting period that have had a negative effect on the court's efficiency. The greatest challenge is the inadequate physical plant provided to the criminal jurisdiction of the Supreme Court. However we have also been challenged by the extended vacancy in the dedicated Puisne Judge's post intended to fill the compliment of judges in the criminal division. Further we have noted an increase in applications for excusal from jury service made by persons liable to jury service. Additionally we have noted the increase in representation of defendants by Legal Aid counsel as a result of Legal Aid Amendment Act 2018 and the concomitant decrease in representation by other defence counsel.

## **PHYSICAL PLANT**

In the annual report of 2018 I pointed out that the criminal division operated out of two locations; the Criminal Registry, and Criminal Court 1 occupied the ground floor of Sessions House and the other dedicated criminal court, Court 4, located in The Dame Lois Brown Evans Building.

Our occupancy of those premises continued until August 30<sup>th</sup> 2019 when the criminal registry staff quit the Sessions House premises out of concern about the presence of mould, and relocated to the Dame Lois Brown Evans (DLBE) Building on Court Street. There they shared space with the Magistrates Court staff.

Limited use was made of Court 1 in Sessions House for Supreme Court criminal fixtures in the reporting year. The premises were not available to us during the sitting of the Court of Appeal in those premises during the months of March, June and November for a total of nine weeks. Additionally, an air quality assessment report of the premises was carried out and in November it was determined that in the prevailing circumstances the Criminal Registry and staff would not return to Sessions House. Consequently only 6 trials were held in Court 1 during the reporting year.

The renovation of Sessions House was anticipated in the last report. During the reporting year the House of Assembly vacated the upper floor of Sessions House due to poor air quality and pending renovation. Both chambers of the Legislature have been housed elsewhere in non-government premises. We were informed that renovations would be carried out both inside and outside of the premises. It is anticipated that renovations will continue into 2020 and the building is now encased in scaffolding and netting.

No provision was made by the Government in the reporting year to house the Criminal Registry and staff. No premises have been provided for a second criminal trial court. Without adequate provision of alternative space to accommodate a trial court and attendant spaces, a back log of cases, especially those that are ready for trial is expected to be incurred during the next reporting year.

It must be pointed out that there is no space in the DLBE Building as it currently stands to be used as an additional criminal trial courtroom with attendant spaces. However with some internal renovation, space currently occupied by unrelated Government Ministries or Departments could accommodate the Judiciaries physical plant requirements should those spaces be freed up and dedicated to the Judiciary. The DLBE building would then be seen as Bermuda's Hall of Justice.

## **ESTABLISHMENT**

The vacancy in the Puisne Judge post intended to complete the compliment of judges in the criminal division has persisted since His Excellency the Governor made a recommendation for appointment after consultation with the Judicial and Legal Service's Committee. The designate, although accepting the appointment, was not sworn in during the reporting year.

As a result, temporary appointments were made from time to time for Magistrates Juan Wolffe and Craig Attridge both of whom have the requisite experience in criminal law at the Supreme Court level. The appointment of acting judges and assistant justices (although effectively the same) is constrained by certain provisions in the Constitution and the Supreme Court Act.

As a result, forward planning for such appointments was crucial; nonetheless cases have had to be delisted where temporary appointments have not been able to be made to meet trial fixtures in the reporting year. Delays have been experienced in fixing dates for sentence in trials resulting in conviction before a temporary judge as their schedules allow. We did not measure the impact of temporary judges, for example, on the time frames reported on between conviction and sentence in the reporting year as they should shortly be moot.

There is of course a concomitant negative effect on the efficiency of the Magistrates Court when we have relied on the magistrates' availability to fill temporary appointments for Supreme Court criminal matters.

## **JURY SERVICE APPLICATIONS**

The Juror's Act 1971 governs among other things the disqualification, exemption and excusal of persons liable to jury service. I have not before this reporting year provided any measure of the captioned matter (referred to below as applications for non-service). None the less we have noted year over year that the receipt of applications for non-service has been exponential. I have included 4 table which represents the vetting of written applications for non-service as part of our aim of transparency in the criminal trial process and to track the effect that such applications may have on the jury selection process which is a major component in the criminal trial process.

I have noted that in each service period in the reporting year the number of applications for non-service has occupied a considerable amount of time by the Registry staff. Should the trend of increased applications persist there is a risk that the ability of the Court to provide all defendants who choose trial by a jury of their peers with a viable array of potential jurors for a twelve person jury will be severely strained.

In practice the Chief Justice has assigned the vetting of applications for non-service to the Supervising Judge. In carrying out that task I work with a dedicated Registry staff member and through her the police service Court Liaison Officer to ensure that the statutory provision of a jury panel is met at the start of every criminal trial by jury.

In addition to the Supervising Judge disqualifying, exempting or excusing applicants' liable to jury service, a trial judge also has the power to do the same in open court during the jury selection process. The purpose of the Supervising Judge first vetting written applications is to decrease oral applications being made to the trial judge, which has been proven to result in inefficiency in the jury selection process.

When jury summonses are served on persons liable to jury service, there are written instructions informing of the right to apply in writing for disqualification, exemption and excusal. In the written process, proof is often required in the form of provision of medical reports, travel itinerary, or letters from employers for example. The caption "other" in the table refers to incomplete or abandoned applications.

The applications that are made in open court are usually related to economic hardship which consideration does not strictly fit into the provisions of the Juror's Act and therefore have not been applied for or arise spontaneously, and have not been vetted through the written process. These oral applications are not represented in the table provided. I will review the jury instructions with a view to eliminating oral applications, however the reality is that some oral applications are likely to be made despite our best efforts.

## **DISPOSAL OF CASES**

I have not previously reported on or commented on any aspect of the provision of Legal Aid to defendants by the Legal Aid Committee. However, with the coming into operation of the Legal

Aid Amendment Act on the 1<sup>st</sup> of March 2018 and its effect on the provision of defence counsel, we see the potential for such negative impact on the criminal trial schedule that we should report on its impact during the reporting year and track its effect in succeeding reports if fairness or efficiency in the trial process is shown to have been abridged.

The amendment to section 12 of the Legal Aid Act 1980 now requires the Senior Legal Aid Counsel to assign *legal aid counsel* to assisted persons (persons granted a legal aid certificate). Some exceptions are provided for. There were 32 new cases brought before the Supreme Court for arraignment between March and December of 2019. Of those, 18 assisted persons (56%) were represented by legal aid counsel. All but one defendant were in fact represented by the Senior Legal Aid Counsel. During the reporting year there were only 2 legal aid defence counsel.

It is clear beyond peradventure that if 56% of defendants in new cases are all represented by one (or for that matter two) counsel only, that delay in proceeding to trial in those cases is more likely than would be the case if some if not most of those defendants were represented by counsel from outside of the Legal Aid Department. This recent development bears careful scrutiny.

Table 3 records an increase in the average timeframe between a defendant's first appearance and the start of that defendant's trial. The increase in time has almost doubled when compared to 2016 and 2017 as shown in the attached tables. This is a marked departure from our target of 3 months between first appearance and start of trial. This also flies in the face of our international reputation as a model jurisdiction for the disposal of criminal trials (3months average).

Three factors have contributed to our loss of efficiency. There is of course the absence of a second full time dedicated criminal trial judge, and the availability of only one criminal trial court room. In 2018 there were 12 trials held in Court 1, while in 2019 there were only 6.

A very significant contributor to the increase, is a practice that has developed over the reporting year in the Office of the Director of Public Prosecutions of permitting cases to be sent up from the Magistrates' Court when the Prosecution are not in a position to serve the defendant with the minimum disclosure specified in section 3 of the Disclosure and Criminal Reform Act 2015.

As Supervising judge I have been at pains to point out to prosecuting counsel that such cases should not be sent up without the attendant disclosure especially since there is provision for the case to be sent up from the Magistrates Court at a later date once the disclosure has been served on the defence. It should be pointed out that the defence must agree to the sending up on a later date.

The problem is compounded when the Prosecution do not serve the defence with the minimum disclosure until after multiple appearances in Arraignment Court. This practice has resulted in inefficiency and encouraged defence counsel to question the fairness in the process. We will continue to press the Prosecution to make timely service of the minimum disclosure required by law.

Table 3 shows a marginal decrease in the average time frames between requests for sentence reports and sentence hearing. I shall work toward further reduction of this time frame bearing in mind the Court of Appeal's guidance that presentence reports should only be ordered in the most deserving of cases. Our aim as criminal jurisdiction judges in other cases is that sentence should immediately follow conviction or guilty plea, or so soon thereafter as is practicable.

In the reporting year there was a decrease in the receipt of new indictments of 12.5% from those received in 2018. This percentage is consistent with the decrease from 2017 to 2018.

As can be seen from table 1 there was a 30% increase of new indictments being carried over from 2017 to 2018. There has been an increase of 25% of new indictments being carried over from 2018 to 2019. Table 1 shows the number of new indictments carried over from 2019. That amounts to 30.5% of new indictments from 2019 being carried over into 2020.

The increase in new indictments from 2018 and those from 2019 being carried over to the succeeding year can be attributed to lack of a second court room for criminal trials and shortage of a dedicated criminal trial judge.

Further, as is typical, we can expect that there will be some delay in fixing a trial date due to unavailability of counsel. However we anticipate that a substantial portion of cases going forward will be carried into the succeeding year as a result of the amendment to section 12 of the Legal Aid Act restriction on awarding legal aid certificates to non-legal aid defence counsel. This has the potential to seriously affect our efficiency. The Court of Appeal has expressed its concern on the possible effect of the amendment in the case of *Kiari Tucker v Queen Cr App No 6 of 2019* at paragraph 58.

## **Acknowledgments**

I wish to thank the Senior Magistrate for assisting us by providing Magistrates Court courtrooms for criminal matters other than trials on an ad hoc basis through the reporting year.

I extend my deepest gratitude to the Senior Magistrate Mr. Wolffe and to Mr. Attridge for their assistance in filling in as Puisne Judge on a temporary basis over a far longer period than anticipated.

I am eternally grateful to my tireless Administrative Assistant Mrs. Joy Robinson for her patience in dealing with the members of the public that make written applications for non-service, and for ensuring that each trial starts with a properly constituted jury panel.

Last but by no means least, special thanks to the Litigation Manager Mrs Nakita Dyer, Senior Court Associate Miss Erica Simmons and Mrs Joy Robinson for their hard work in compiling the statistics as reported herein and for putting up with my constant interruptions during the conduct of their tasks.

## SUMMARY OF INDICTMENTS LISTED AND DISPOSED OF 2017-2019:

The below tables track Court listing periods as opposed to the periods when the offences  
(allegedly) occurred

<b>MODE OF DISPOSITION (Table 1)</b>			
	2017	2018	2019
<b>TOTAL NUMBER OF NEW INDICTMENTS</b>	48	42	36
<b>TRIAL TOTAL FOR THE YEAR</b>	22	18	15
<b>TRIALS FOR 2 CO-ACCUSED PERSONS</b>	4	1	0
<b>MULTI- DEFENDANT TRIALS (3 OR MORE CO-ACCUSED)</b>	4	1	0
<b>DEFENDANTS ACQUITTED BY JURY</b>	6	11	3
<b>DEFENDANTS CONVICTED BY JURY</b>	21	8	9
<b>DEFS DICHARGED ON FINDING OF NO CASE TO ANSWER</b>	4	0	1
<b>HUNG JURY</b>	1	0	0
<b>MISTRIALS</b>	0	1	2
<b>GUILTY PLEAS</b>	22	11	9
<b>INDICTMENTS QUASHED</b>	0	0	0
<b>NOLLE PROSEQUIS ENTERED IN</b>	6	4	6
<b>INDICTMENTS REMITTED TO MAGISTRATES' COURT</b>	3	3	1
<b>TOTAL NUMBER OF INDICTMENTS CARRIED FORWARD</b>	14	20	25

<b>OFFENCE TYPES (Table 2)</b>			
<b>2017</b>		<b>2018</b>	
<b>MURDER RELATED OFFENCES</b>	<b>7</b>	<b>MURDER RELATED OFFENCES</b>	<b>8</b>
<b>MANSLAUGHTER RELATED OFFENCES</b>	<b>5</b>	<b>MANSLAUGHTER RELATED OFFENCES</b>	<b>2</b>
<b>DRUG RELATED OFFENCES</b>	<b>12</b>	<b>DRUG RELATED OFFENCES</b>	<b>5</b>
<b>MONEY LAUNDERING RELATED OFFENCES</b>	<b>3</b>	<b>MONEY LAUNDERING RELATED OFFENCES</b>	<b>3</b>
<b>FIREARM RELATED OFFENCES</b>	<b>2</b>	<b>FIREARM RELATED OFFENCES</b>	<b>1</b>
<b>SEXUAL RELATED OFFENCES</b>	<b>3</b>	<b>SEXUAL RELATED OFFENCES</b>	<b>10</b>
<b>WOUNDING RELATED OFFENCES</b>	<b>16</b>	<b>WOUNDING RELATED OFFENCES</b>	<b>13</b>
<b>2019</b>			
<b>MURDER RELATED OFFENCES</b>	<b>4</b>		
<b>MANSLAUGHTER RELATED OFFENCES</b>	<b>1</b>		
<b>DRUG RELATED OFFENCES</b>	<b>7</b>		
<b>MONEY LAUNDERING RELATED OFFENCES</b>	<b>8</b>		
<b>FIREARM RELATED OFFENCES</b>	<b>2</b>		
<b>SEXUAL RELATED OFFENCES</b>	<b>4</b>		
<b>WOUNDING RELATED OFFENCES</b>	<b>10</b>		

<b>CASE MANAGEMENT (Table 3)</b>			
<b>2017</b>		<b>2018</b>	
AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	7.5 MTHS	AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	3.5 MTHS
AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE	2.3 MTHS	AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE	2.5 MTHS
AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	40.5 DAYS	AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	43.6 DAYS
<b>2019</b>			
AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	6.5 MTHS		
AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE	2.5 MTHS		
AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	40.0 DAYS		

<b>JURY SERVICE APPLICATIONS FOR 2019 (Table 4)</b>	
<b>2019</b>	
DEFERRALS	227
EXEMPTIONS	11
ECONOMIC HARDSHIPS	11
EXCUSAL	75
JUROR DISQUALIFICATION SECTION 3(2)*	2
EXCUSAL BY JUDGE MEDICAL	4
OTHER	13

\*Reasons for Disqualification from Jury Duty pursuant to Section 3 (2) of the Jurors Act 1971



# SUPREME COURT: FAMILY AND MATRIMONIAL DIVISION

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## Justice Nicole Stoneham

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### Year in Review

There was particular focus in 2019 on collecting formal data in the Family and Matrimonial Division. There were 76 opposite sex divorce petitions filed and 1 same sex divorce petition filed. There were 124 decree absolutes granted in 2019 (this number includes 2016, 2017 and 2018 Decree nisi orders that were not, for some reason or another, made absolute until 2019).

The Matrimonial Causes Act 1974 came into effect in Bermuda on 1<sup>st</sup> December 1974 – some 50 years ago. It is largely based on the Matrimonial Causes Act 1973 (UK) which following recommendations of the Law Commission, consolidated provisions of the MCA 1965, Divorce Reform Act 1969, Matrimonial Proceedings and Property Act 1970 and the Nullity of Marriage Act 1971. Thus the reality of our current matrimonial framework is reflective of a period in time which incentivised one spouse (“the Petitioner”) to make allegations about the other’s conduct. This sets the scene for acrimony and conflict throughout the legal process and afterwards. Understandably, the other spouse (“the Respondent”) is so incensed by the allegations made against them that from that point onward the wrath of the parties often damages the children and any possibility of co-operative parenting. Whilst there were no defended divorces hearing in 2019 there is little doubt that family conflict is damaging to children’s life chances. In 2019 there were 16 orders requesting the preparation of social inquiry/welfare reports and 17 cases in which the parents of children agreed to participate in the mediation process.

Unreasonable behaviour was the most common reason for divorcing in 2019 with 39 wives and 38 husbands petitioning on this fact. The average duration of marriage among couples who divorced in 2019 was 14 years. Two years separation with consent was the relied upon fact in 20 petitions for divorces granted in 2019.

There are a growing number of applications seeking leave to present a petition for divorce months and sometimes days after the marriage ceremony. Section 7 of the Matrimonial Causes Act 1974 precludes persons filing a petition for divorce before three (3) years from the date of the marriage

unless it is established that “the Petitioner has suffered exceptional hardship or the actions of the Respondent show exceptional depravity”. More often than not, the particulars relied on, if true, describe unreasonable behaviour on the part of the Respondent, but are unsupported with any evidence upon which a judge could possibly make an assessment. The consequence it would seem is that persons are held captive in an unhappy marriage for what only could be described as 3 unsatisfactory years of one’s life.

In this regard, Bermuda lags behind the United Kingdom, which 36 years ago introduced the Matrimonial and Family Proceedings Act 1984, which replaced the minimum time interval between the date of marriage and being able to file a petition for divorce from 3 years to 1 year.

It is also worth mentioning that in January 2020, the UK Ministry of Justice introduced in the House of Lords, the Divorce, Dissolution and Separation Bill. This Bill makes a number of changes to the legal requirements for dissolving a marriage by introducing a new option of a joint application for divorce, where the decision is a mutual one relying only on a statement of ‘Irretrievable Breakdown’ instead of attribution of blame for past events within the marriage.

In 2019 there were an increased number of petitions filed in Bermuda by parties to the same marriage seeking its dissolution. This is a clear indication that legislative consideration should be given to permit unhappily married couples to mutually agree to divorce without the necessity of apportioning blame to the other.

### **Achievements & Challenges**

Our 2018 hopes for a unified family court (‘UFC’) were materialized in 2019. The Minister of Legal Affairs, Sen. The Hon. Kathy-Lynn Simmons, JP, initiated consultation with the judiciary and magistracy in respect of the tailoring a Unified Family Court model (“UFC”) appropriate for Bermuda. It is intended that the UFC would create a single court system with comprehensive subject–matter jurisdiction over all cases involving children and families.

Consultation included brainstorming on possible reforms pertaining to divorce, custody, child support, domestic violence, juvenile court, abuse and neglect proceedings, and the case management of such proceedings within the single court system. Non-legal issues impacting families were also explored to better support families to maintain a positive parenting relationship, if possible, during proceedings. It is anticipated that the consultation process will continue into 2020 to include the Chief Justice, members of the Family Law Bar and other industry stakeholders committed to justice for families in Bermuda.

The members of the matrimonial and family bar as well as litigants in person continue to embrace the spirit of collaboration particularly on matters involving the welfare of children. The services of Mrs. Nicole Saunders, Mr. Sijan Caisey and Mrs. Miriam Shaya King must be commended as their holistic approach to producing resolutions tailored to individual families legal, personal, emotional and social needs ensure the safeguarding of the welfare of children as paramount.

2019 was not without challenges. The non-compliance with family financial orders continues to be a significant problem. In 2019 the court exercised its discretion under Section 44A of the Matrimonial Causes Act 1974, in approximately 79 cases directing that the payment of child maintenance orders be made to the Collecting Office of the Magistrates' Court, and as such are enforceable in the same manner as the enforcement of orders under Section 36.1L of the Children Act 1998. Section 36.1L empowers the Magistrates' Court, after giving the person an opportunity to be heard, to require such person to, amongst others, surrender his/her passport.

The numbers of Litigants appearing without the benefit of a lawyer continues to climb. In 2019 there were increased numbers in divorce petitions filed by litigants in person. At the time of writing, data was not available on the numbers of chamber applications made by litigants in person, but the absence of lawyers on a Thursday morning is notable. The consequence is that there is increased demand on the judge to not only draft orders but do so using ordinary language.

## **2020 Goals**

Marriage will always be of vital importance to society. However, it is hoped that in the twenty first century it will be recognized that when the difficult decision is made to divorce the legal process would seek to minimise the conflict particularly for the sake of the children.

The family and matrimonial courts should be places of clarity and hope – not of complexity and process. The rules and forms to obtain a divorce have changed little since the coming into force of the Matrimonial Causes Act 1974. This division welcomes amendments to the Act and Rules, but in the meantime will:-

- Continue to simplify administrative and procedural processes so that the courts are accessible to all, including the right of all children to be represented independently, where necessary.
- Prioritise case management through the use of expanded judicial powers within the registry.
- Make the court more accessible for overseas parties through the use of modern technology.
- Consider the appointment of specialised court-appointed mediators to address financial matters.

# SUPREME COURT: PROBATE DIVISION

## Year in Review

Over the past year a good dent has been made in the backlog and staff continues to diligently address it. In the upcoming year the Assistant Registrar will lend an additional hand to assist in moving things along

As of January 30 2020 there are approximately 90 applications awaiting review and several ongoing applications that have been processed but from whom we are awaiting a response from the estate representative/attorney or for filing of further documentation prior to issue of a Grant.

## Outputs

In 2019 a total of 183 applications were filed, 34 less filings compared with 2018. There were 45 caveats filed in 2019, 11 greater than those filed in 2018.

**Table 10: PROBATE APPLICATIONS FILED 2013-2019**

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
2014	111	32	8	15	3	13	<b>186</b>	48	
2015	100	23	9	19	5	4	<b>160</b>	38	9
2016	93	46	6	19	1	10	<b>175</b>	19	7
2017	81	29	6	24	2	11	<b>153</b>	39	7
2018	124	40	5	40	1	7	<b>217</b>	34	8
2019	112	25	5	31	2	8	<b>183</b>	45	8
<b>Change</b>	-12	-15	0	-9	1	1	-34	11	0
<b>%</b>	-10%	-38%	0%	-23%	100%	14%	-16%	32%	0%

### Grants Issued and Stamp Duty Assessed

In 2019, there were 152 Grants issued, compared to 2018 when 95 Grants were issued. The increase in the number of Grants issued is a result of the on boarding and training of Administrative Assistant in the Probates Department, which once again has 2 staff members – an Administrative Assistant who processes estate applications on a full time basis under the Manager of Supreme Court who processes estate applications on a part time basis.

In 2019 the highest stamp duty assessment for a single estate was \$233,737; the lowest assessment was \$328.

In 2018 the highest stamp duty assessment for a single estate was \$4,521,441 (83% of the total assessment); the lowest assessment was \$26.

In 2019 of the 152 Grants Issued, 112 had no stamp duty assessed as the net estates were of an amount lower than the statutory taxation exemption in place at the time of the deceased's death. In 2018 of the 95 Grants Issued, 66 had no stamp duty assessed as the net estates were of an amount lower than the statutory taxation exemption in place at the time of the deceased's death.

**Table 10A: STAMP DUTY ASSESSED ON GRANTS ISSUED 2017-2019**

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
2017	184	162,140,848	70,222,266	40,851,144	9,906,211	41,166,645	4,331,314
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 Goals**

Staff continues to clear the backlog of applications. Unfortunately, due to the general short-staff situation in other areas of the Supreme Court Registry, we were not able to cross train at least one other staff member in the Court's probates processes. The goal continues to be a return to the standard of an application turnaround time of 4 weeks. In the meantime, on request, staff prioritize applications that are urgent.

Electronic checklists and guidance notes to assist those who prepare probate application documents are currently in the works. We believe this will be helpful, particularly to those new to

the probates process. Greater accuracy in applications will also reduce the amount of time it takes for Registry staff to review an application and supporting documents.



# ESTABLISHMENT LIST

Judicial Department – Court of Appeal and Supreme Court as at 31 January 2020

POST	OFFICER'S NAME
Chief Justice	The Hon. Mr. Narinder Hargun
Puisne Judge	The Hon. Mrs. Charles-Etta Simmons
Puisne Judge	The Hon. Mrs. Shade Subair Williams
Puisne Judge	The Hon. Mrs. Nicole Stoneham
Puisne Judge	VACANT
Registrar of the Courts	Ms. Alexandra Wheatley
Assistant Registrar	Mrs. Cratonia Thompson
Administrative Officer of the Court of Appeal	A. Quallo
Admin. Assistant to Admin. Officer – COA (Relief)	J. Anderson-Lindo
Manager of the Supreme Court	D. Nelson-Stovell
IT Manager	F. Vazquez
IT Assistant	B. Mello
Litigation Manager (Criminal Division)	N. Dyer
Administrative Officer – (Civil Division)	A. O'Connor
Accounts Officer/Librarian	VACANT
Executive Assistant to the Chief Justice	F. Chico
Administrative Assistant (Relief)	K. McCallan
Administrative Assistant	J. Robinson
Administrative Assistant (Relief)	T. Simons-Philip
Administrative Assistant (Relief)	C. Edness
Administrative Assistant	VACANT
Data Consolidator	VACANT
Listing Officer	G. Symonds
Listing Officer	VACANT
Senior Court Associate	E. Simmons
Court Associate	W. Butterfield
Court Associate (Relief)	K. Akininstall
Court Associate	VACANT
Court Associate	VACANT
Customer Service Representative (Relief)	G. Astwood
Data Processor	S. Williams
Data Processor	C. Seymour
Court Attendant/Messenger	V. Simons
Court Attendant/Messenger	G. Trott

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**REPORT OF THE MAGISTRACY OF  
BERMUDA**



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# SENIOR MAGISTRATE'S COMMENTARY

By the Worshipful Senior Magistrate Juan Wolffe, JP

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I would like to take this opportunity to express my heartfelt gratitude to the Magistrates, Acting Magistrates and definitely the staff of the Magistrates' Court for once again carrying out their duties with the utmost professionalism, patience and compassion towards those who interact with the Magistrates' Court. The year 2019 presented the Court with immense challenges and on countless occasions Magistrates, Acting Magistrates and Staff have admirably filled the breach and rose to the occasion.

As I have said on multiple occasions the Magistrates' Court is the "Engine Room of the Justice System" and the Magistrates' Court staff plays an integral role in the Court process. I have no doubt that in 2020 they will continue to exhibit hard work, commitment and dedication towards the proper administration of justice. For that I am profoundly humbled and thankful.

Thank You.

**The Worshipful Juan P. Wolffe**  
**SENIOR MAGISTRATE OF BERMUDA**  
**January 2020**

## **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 pilot-Driving Under the Influence (DUI) Court which continue to reduce recidivism by addressing the drug, alcohol and mental health challenges of offenders. 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**

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 Juan P. Wolffe, the Worshipful Tyrone Chin, the Worshipful Khamisi Tokunbo, the Worshipful Maxanne Anderson and the Worshipful C. Craig Attridge, all of whom bring a wealth of knowledge and experience to the Magistracy

The Senior Magistrate has increased his 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.

## **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, Accounts Officer, two (2) Court Associates (fully titled Cashiers) and an Administrative Assistant who are fully responsible for all revenue collected. They are to be commended as they collected

\$9,181,154 in fees, fines and direct deposits over 2019. This amounted to a 4% increase in revenue collected.

The Court Associates in this Section are to be commended for their professionalism whilst serving customers, both in person and via the telephone. The Court Associates are truly the backbone and face of the Magistrates’ Court and routinely carry out their duties with compassion and patience. Quite often they take on the brunt of customers’ frustrations whom are irate after undergoing various Court proceedings.

## Hearings/Case Events

Hearings/Case Events	2015	2016	2017	2018	2019
Mentions	3,199	2,829	3,295	3,602	4,035
Trials	1,944	1,832	1,717	1,399	1,174
Case Events	26,971	23,292	22,095	25,040	27,150

Figure 1: Table of 2015 - 2019 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 on 2015 – 2019 Hearings/Case Events

In 2019 there was an increase in the number of Mentions 12% and Case Events 8% in the Magistrates’ Court when compared to 2018. It is to be noted that the number of Mentions and Case Events in 2019 are the highest over the past five (5) years. While those types of Hearings increased there was a notable decline in the number of Trials 16%. This is attributable to a continued effort to hold case management hearings which ultimately narrow the issue at trial, streamline the trial process and encourages amicable solutions in matters thereby removing the need to have trials. As shown in Figures 1 and 1A there were over 27,000 Case Events scheduled in Magistrates’ Court in 2019.

## **Civil Court**

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

Between 2015 and 2018 there was a consistent decline in the number of New Civil Cases filed in the Magistrates' Court. However, in 2019 the Civil Court adjudicated 2,117 New Civil Cases filed which is a 9% increase over 2018. This potentially is attributable to the high cost of living in Bermuda and the inability of individuals to meet their expenses, such as rent, utilities and hospital bills.

There has been an increase in the number of landlord and tenant matters. This is primarily due to non-payment of rent and the deterioration of rental properties. It is to be noted that unfortunately many of these cases have had a negative impact on our Seniors who primarily are the landlords, as they are unable to meet their financial obligations and pay for basic necessities, such as food and medication. Subsequently, this lends to one of the key factors why Seniors (Home Owners) across the island are experiencing financial hardship. The reverse side of these types of cases are the tenants who are unable to pay their rents due to continued economic hardship as a result of lost or reduced employment. This is a double edged sword as both parties experience overwhelming frustrations due to their circumstances.

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 2019. It is commendable that there is no backlog in the processing and hearing of Civil cases.

### **Total New Civil Court Cases Filed 2015-2019**

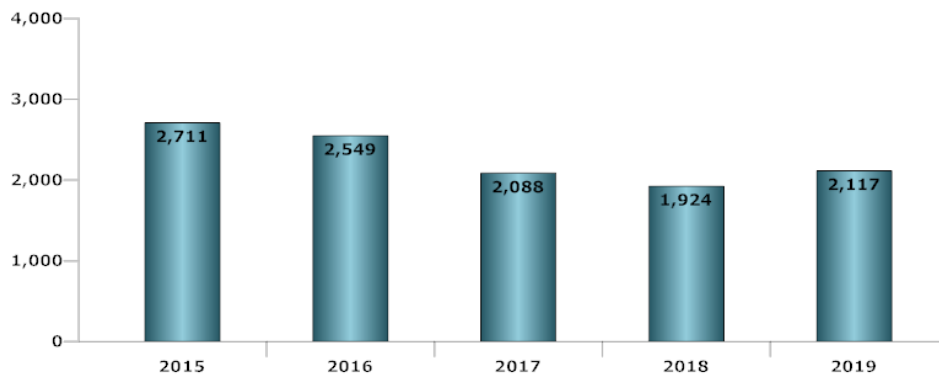


Figure 2: 2015 – 2019 Total New Civil Court Cases Filed

# FAMILY COURTS



## **Family Court**

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).

The Special Court Panel had (fourty-three) 43 members serving in 2019 each of whom represent a diverse range of individuals from various walks of life. The Special Panel Members assist the Magistrates in decision making and their value to the Family Court and its continued success is immeasurable.

## **Family Court Cases**

There was a significant decline of 35% or 112 New Family cases filed in 2019 as opposed to an increase of 19% in the number of Juvenile Cases heard in Family Court. Over the past three (3) years 2017 – 2019 the number of Juvenile cases heard were between 34 – 52 cases, while in 2015 – 2016 there were 115 and 128 cases heard respectively. This reduction maybe due to the lower birth rates but also due to parties seeking alternative dispute resolution, such as mediation.

There has been a steady decline in the number of Domestic Violence Protection Orders (DVPO's) from 2015 – 2019. When comparing 2019 to 2018 there was an 18% decline in DVPO's which may be due to a reduction in the number of Domestic Violence cases reported.

## **Children’s Act 1998**

In 2019 the number of cases heard under the Children’s Act 1998 (Care Orders, Access, Maintenance, Care & Control) decreased by 7% in comparison to 2018 and 12% when compared to 2017 however, the severity and complexity of these cases have increased.

## **Family Court Administration**

The Family and Child Support Section consist of two (2) Family Courts and two (2) Family Court Magistrates. The support staff are managed by the Family Support Officer, who has under their remit an Enforcement Officer, an Administrative Assistant and three (3) Family Court Associates.

Permission was granted to commence employment for five (5) new Court Associates for the Family and Criminal/Traffic/Records Sections of the Magistrates’ Court. Between January and June 2019 the Family and Child Support Section continued to employ Temporary Relief Court Associates however, from late July 2019 there was an addition of three (3) new substantive Court Associates within the Family Court Section. They continue to receive training and are adjusting to the judicial environment well.

In the latter portion of 2019 the Family Support Section commenced an exercise of identifying any Aged Out Files (*Where the child has attained the age of eighteen years old or has completed full-time education*) and have taken the necessary steps to determine whether the case should be brought in front of the Magistrate for closure.



*Family Support Forms*

## **Caseload**

The total Family Court caseload for 2019 is recorded as the lowest number of cases heard over the past five (5) years. There was a total of 1,705 cases heard in Family Court in 2019 which is 18% or 309 cases less than 2018 and 23% or 388 cases lower than in 2017. While there has been a continuous decline in the total number of Family Cases between 2015 and 2019 (*See Figure 3*) there has been a noticeable increase in the severity and complexity of Family matters that come before the Court which require more court time to resolve.

There were no adoption cases heard in Magistrates’ Court in 2019. This is likely attributable to a decrease in the willingness of persons wanting to adopt children.

## **Child Support Payments**

The total amount of Child Support Payments received in 2019 is slightly lower than in 2018. This represents an 8% reduction or \$344,607 as is illustrated in Figure 12. This is consistent with the fact that the number of new cases filed has decreased.

APPLICABLE LAW	TOTAL FAMILY LAW CASES				
	2015	2016	2017	2018	2019
Adoption Act 1963, Adoption Rules Act	17	11	4	16	0
*Children Act 1998 (Care Orders, Access, Maintenance, Care & Control)	757	919	874	836	780
**Enforcement (All Case Types in Default)	1,308	1,011	920	909	713
New Reciprocal Enforcement (Overseas)	1	2	0	0	0
Matrimonial Causes Act 1974	40	33	31	15	13
Domestic Violence Act 1997 (Protection Orders)	67	76	66	53	45
***Juvenile Cases	128	115	51	34	42
New Cases Filed	124	154	147	151	112
<b>ANNUAL TOTALS</b>	<b>2,442</b>	<b>2,321</b>	<b>2,093</b>	<b>2,014</b>	<b>1,705</b>

Figure 3: Table of Total Family Law Cases 2015-2019

*\*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).*

*\*\*Contribution Orders, which are also related to DCFS cases, were not separated in 2014 as this is a possible outcome to a case adjudicated under the Children Act 1998 and not a separate application type.*

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

## **Criminal, Traffic & Records Section**

The Criminal/Traffic/Records Section is managed by the Office Manager and supervised by a Records Supervisor who has two (2) Court Associates under their remit. They 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 in Court No. 1 and No. 2 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).

With the transfer of the two (2) substantive Court Associates from this Section into the Criminal Branch of the Supreme Court there was a need to recruit new Court Associates. As stated earlier, permission was granted to commence recruitment but unfortunately we were unable to fill both posts. As at the end of the calendar year there was one (1) new substantive and one (1) Temporary Relief Court Associate in this Section. The recruitment process will resume until both posts are filled with substantive employees.

Ms. Jearmaine Thomas, Records Supervisor led by Ms. Patrice Rawlings are both to be commended for filling in the breach due to staff shortages.

TOTAL NEW CASES (Filed)	2015	2016	2017	2018	2019
Criminal	610	584	616	608	435
Traffic	9,538	9,736	7,767	8,497	8,112
Parking	4,769	4,519	11,857	15,668	19,949

Figure 4: Total New Cases Filed with the JEMS system 2015-2019

Total New Cases (Filed)			
Month	Criminal	Traffic	Parking
Jan	31	770	1,987
Feb	43	566	1,310
Mar	28	670	957
Apr	33	749	1,024
May	41	810	1,621
Jun	45	815	1,322
Jul	34	836	1,922
Aug	43	950	1,754
Sep	29	589	1,917
Oct	36	617	3,104
Nov	40	407	1,299
Dec	32	333	1,732
<b>TOTALS:</b>	<b>435</b>	<b>8,112</b>	<b>19,949</b>

Figure 4A: 2019 Table of New Criminal, Traffic and Parking Cases Filed by Month.

The number of new Criminal cases/matters filed at the Magistrates' Court declined by 28% from 608 in 2018 to 435 in 2019. This may be attributable to the decreased crime rates which Bermuda is currently experiencing. While there may have been a reduction in the number of cases filed the various types of criminal offences has widened. The Courts have seen an increase in white collar and corruption type offences.

This downward trend continued with the number of new Traffic matters filed which saw a minor decline of 4% from 8,497 in 2018 to 8,112 in 2019.

Alternatively, there was a significant increase of 27% or 4,281 Parking matters filed between 2018 and 2019. This is likely due to the continued enforcement of the TOPA Act 2015 which included an increase in the parking ticket fines.



TOTAL NEW CASES (Disposed)	2015	2016	2017	2018	2019
Criminal	497	407	447	380	356
Traffic	9,002	8,518	6,982	7,713	8,397
Parking	4,110	3,603	2,857	3,514	6,169

Figure 5: Table of Total New Cases Disposed by a Magistrate 2015 – 2019 (Criminal, Traffic & Parking)

Total New Cases (Disposed)			
Month	Criminal	Traffic	Parking
Jan	27	525	214
Feb	49	530	134
Mar	22	771	132
Apr	23	1,078	179
May	22	923	253
Jun	30	829	229
Jul	36	787	484
Aug	35	738	420
Sep	25	525	482
Oct	36	617	3,104
Nov	29	483	234
Dec	22	591	304
<b>TOTALS:</b>	<b>356</b>	<b>8,397</b>	<b>6,169</b>

Figure 5A: 2019 Table of New Criminal, Traffic and Parking Cases Disposed by Month.

applications. In particular, because of the large volume of applications that were being received it resulted in an extension of the turnaround time for applications to be processed from seven (7) to fifteen (15) days. It is to be noted that the increase in the amount of Record Requests received has taken a toll on the Records Supervisor and Court Associates in this Section which is woefully understaffed and under resourced. This team continues to do their best to be efficient and accurate in the dissemination of Record Requests to their customers.

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. There has been extensive communication over the years regarding increasing the fee to at least \$50.00 per application as it has not changed in over 25 years.

The total number of Criminal and Parking cases disposed of decreased by 9% and 2% respectively, but the number of Traffic cases disposed increased by 9% in 2019 when comparing the totals to the 2018 figures. This could be attributable to the lower amount of Criminal cases filed. *(Figure 5 refers.)*

### Record Requests

In 2019, the Criminal/Traffic/Records Section processed a total of 2,196 Record Requests which is an increase of 12% or 262 applications when comparing it to 2018. These requests consist of Criminal and Traffic records from persons who reside in Bermuda. The requests come from various sources which include, but are not limited to, local and overseas Employment Agencies, Private Companies, Canadian Immigration, the US Consulate, etc.

Management reviewed the process and procedure for the completion and return of Record Requests

## Record Requests 2015 - 2019

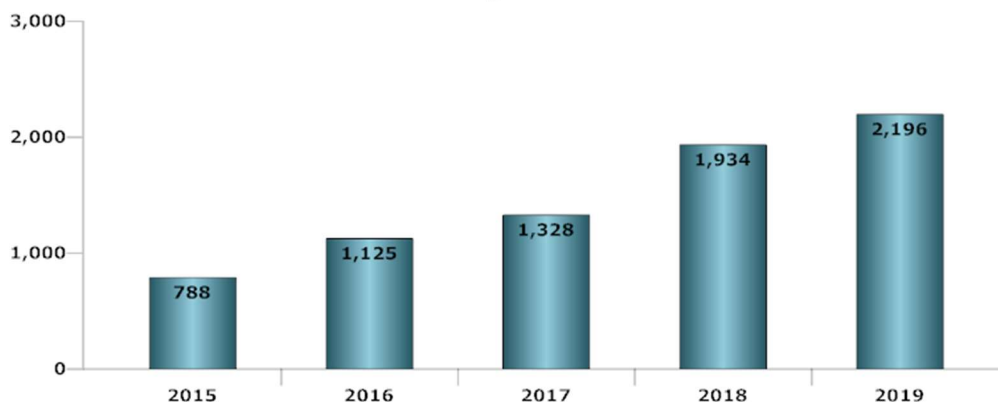


Figure 6: Table of 2015 – 2019 Record Requests

The balance of the employees in the Criminal Section are a Senior Administrative Assistant and an Administrative Assistant. The Senior Administrative Assistant provides administrative support to the Office of the Senior Magistrate which includes performing administrative, secretarial and clerical duties within the Magistrates' Court, including processing Coroner's Reports, PACE Warrants and Liquor and Betting licences. This post has two (2) Administrative Assistants and a Court Associate (Appeals) under their remit. Each of the Administrators is assigned to a Magistrate and provides administrative and clerking support.

As of June 2019 the administration of the Liquor Licensing Authority was moved to the Ministry of Legal Affairs thereby legislatively transferring the Chairmanship from the Senior Magistrate to an individual appointed by the Government. However, the Magistrates' Court still has the responsibility of collecting all of the payments for liquor licensing fees. It is hoped that in the next fiscal year that responsibility too will be assumed by the Ministry of Legal Affairs.

Special mention to the administrative team who continue to carry out their duties with a great deal of efficiency.



Magistrates' Court No. 2

## Top 10 Criminal Offences 2015 – 2019

Offence Code	Offence Description	Offence Count				
		2015	2016	2017	2018	2019
2071	OBTAINING PROPERTY BY DECEPTION	(6) 36		(9) 22		(8) 15
2010	STEALING (BELOW \$1000)	(4) 59	(2) 84	(2) 66	(1) 99	(1) 59
2156	ASSAULT (ABH)	(1) 72	(1) 88	(1) 77	(2) 64	(2) 46
2300	POSSESSION OF CANNIBIS	(3) 60	(3) 68	(3) 63	(7) 29	
4032	THREATENING BEHAVIOUR	(5) 50	(6) 27	(6) 30	(3) 60	(3) 41
2127	BURGLARY (NEW)	(2) 64	(4) 55	(4) 45	(4) 37	(8) 15
2152	ASSAULT (COMMON)	(7) 35	(7) 24	(8) 26	(5) 31	(8) 15
2067	HANDLING /RECEIVING STOLEN GOODS	(8) 34	(10) 21			
4026	OFFENSIVE WORDS	(9) 32	(9) 22	(6) 30	(10) 24	(10) 12
2144	WILFUL DAMAGE GT 60		(5) 29	(5) 35	(6) 30	(5) 20
2091	TAKE VEHICLE AWAY W/O CONSENT	(8) 34				(5) 20
2316	POSS CANNABIS WITH INTENT	(8) 34	(8) 23	(7) 27		(6) 19
2392	POSS DRUG EQUIPMENT PREPARE		(10) 21	(8) 26		(7) 17
6506	DOG UNLICENCE	(10) 29	(9) 22			
2392	POSS DRUG EQUIPMENT USE			(10) 21	(8) 26	
2364	IMPORT CANNABIS				(9) 25	(10) 12
4034	TRESPASS PRIVATE PROPERTY				(8) 26	(4) 23
2011	STEALING (ABOVE \$1000)					(7) 17
2169	ASSAULT ON POLICE					(9) 13
2203	HAVE BLADE/POINTED ARTICLE					(10) 12
2231	SEX ASSAULT					(5) 20
2284	PROWLING					(10) 12
2373	IMPORT OTHER DRUGS					(7) 17
2388	POSS DRUG EQUIPMENT					(5) 20
2524	AFFRAY					(9) 13
6002	PROCEEDS OF CRIME ORDER					(10) 12

Figure 7: Table of Top 10 Criminal Offences 2015 – 2019

The Top 3 Criminal Offences in 2019 are as follows:-

- 1) Stealing (Below \$1000)
- 2) Assault (ABH)
- 3) Threatening Behaviour

There was no change in the order of the Top 3 Criminal Offences in 2019 when compared to 2018. There were 59 cases of Stealing (Below \$1000) in 2019 which represents a 40% decrease over the past year. It is to be noted that our records indicate that there has been a bi-annual spike in this offence during the years 2015 – 2019.

Assault (ABH) is the second highest Criminal offence in 2019. It is considerably lower 39% than the 2018 figures. The number of Assault (ABH) offences recorded in Magistrates' Court in 2019 is the lowest over the past five (5) years. (Figure 7 refers)

Threatening Behaviour continued as the third highest Criminal offence over the past year with 41 cases recorded. This figure is 46% lower than in 2018 but 27% higher than in 2017.

Additional types of offences in 2019 include: Trespassing on Private Property, Wilful Damage, Taking a Vehicle Away w/o Consent, Sexual Assault, Possession of Drug Equipment, Possession of Cannabis with Intent to Supply, Importation of Other Drugs, Possession of Drug Equipment (Prepare), Stealing (Above \$1,000), Burglary (New), Common Assault, Obtaining Property by Deception, Assault on Police, Affray, Offensive Words, Importation of Cannabis, Having a Blade/Pointed Article, Prowling, Offensive Words and Proceeds of Crime Orders.

It is to be noted that the 'Possession of Cannabis offense which held a spot in the Top three (3) over the past four (4) has significantly declined by 34 or 54%. In 2018 Possession of Cannabis, for the first time in four (4) years is not one of the Top 3 Criminal offences. This maybe attributable to the enactment of the decriminalization of marijuana legislation.

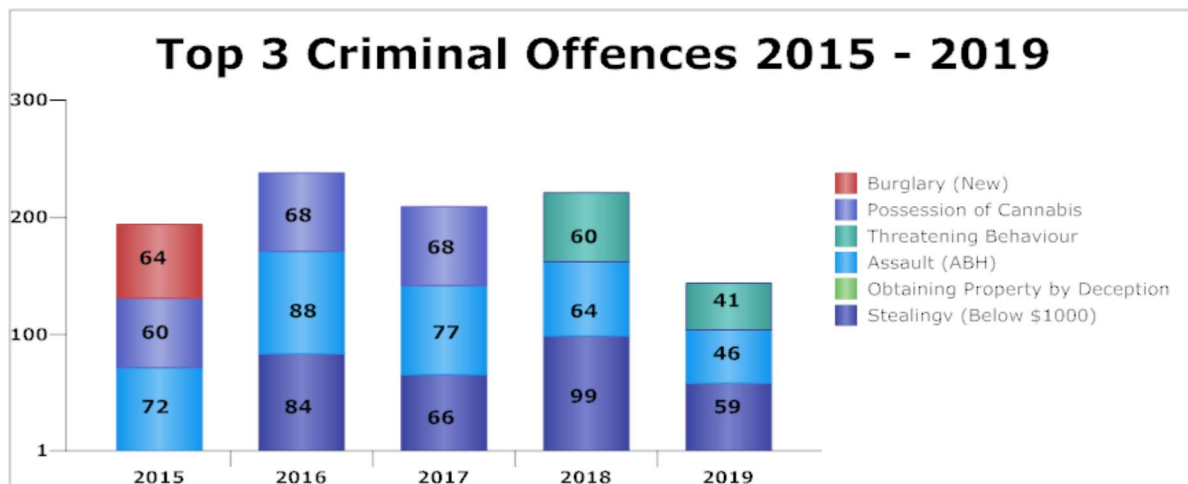


Figure 7A: Table of Top 3 Criminal Offences 2015 – 2019

## Top 10 Traffic Offences 2015 – 2019

Offence Code	Offence Description	Offence Count				
		2015	2016	2017	2018	2019
3002	SPEEDING	(1) 4,043	(1) 4,411	(1) 3,874	(1) 4405	(1) 3929
3007	DISOBEY TRAFFIC SIGN	(2) 1,228	(2) 1,490	(2) 982	(3) 833	(2) 816
3147	USE OF HANDHELD DEVICE WHILST DRIVING	(3) 841	(4) 544			
3013	SEAT BELT NOT FASTENED	(7) 369	(7) 225	(9) 98		
3234	NO DRIVERS LICENSE/PERMIT	(4) 730	(3) 819	(3) 702	(2) 851	(3) 752
3080	NO 3 <sup>RD</sup> PARTY INSURANCE	(5) 473	(5) 468	(4) 411	(4) 449	(4) 675
3229	UNLICENSED MOTOR BIKE	(6) 431	(6) 431	(5) 402	(5) 425	(5) 505
3070	DRIVE W/O DUE CARE & ATTENTION	(9) 177	(8) 162	(6) 317	(7) 221	(10) 98
3058	IMPAIRED DRIVING A MOTOR VEHICLE	(10) 170	(10) 125	(7) 144	(6) 231	(7) 186
3190	FAILURE TO WEAR HELMET					
3228	UNLICENCED MOTOR CAR	(8) 180	(9) 135	(8) 124	(9) 142	(6) 319
3064	FAILURE TO WEAR HELMET			(10) 10	(8) 147	(9) 114
3414	FAIL EXHIBIT NUMBER PLATE					(8) 126

Figure 8: Table of the Top 10 Traffic Offences from 2015 – 2019

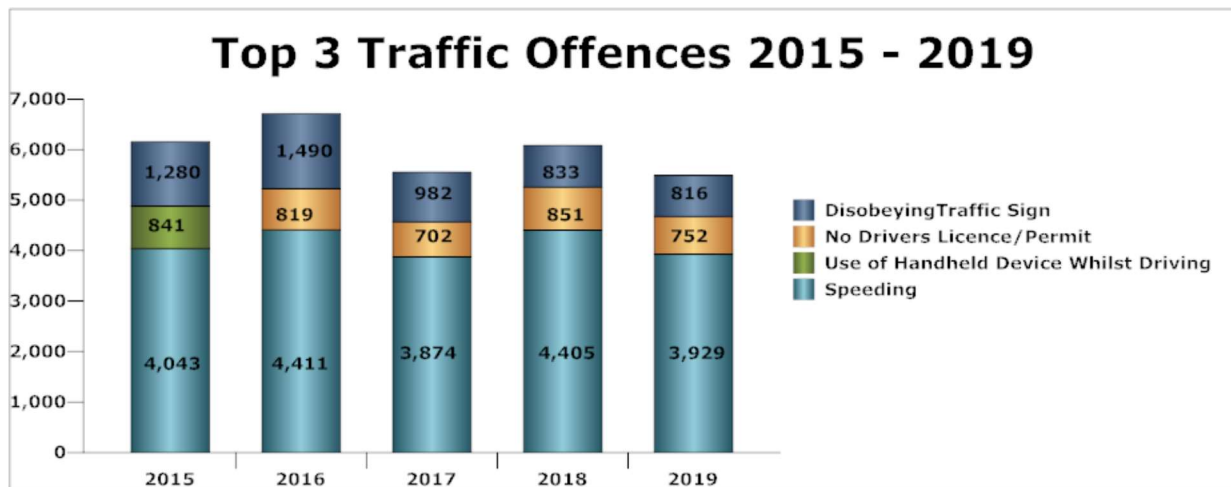


Figure 8A: Table of the Top 3 Traffic Offences from 2015 – 2019

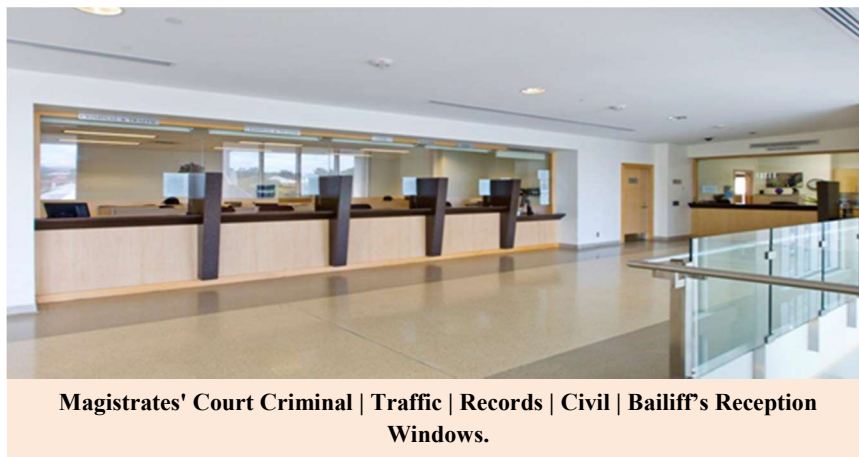
The **Top 3 Traffic Offences for 2019** are as follows:-

1. Speeding
2. Disobeying a Traffic Sign and
3. No Drivers Licence/Permit

The Top three (3) Traffic Offences have remained constant between 2017 and 2019. The ‘Disobeying a Traffic Sign’ and ‘No Driver’s License/Permit’ offences reversed positions again as the second and third highest Traffic Offences respectively. ‘Speeding’ continued as the No. 1 Traffic Offence for the past five (5) years however, there was a notable decline of 12% or 476 offences recorded/cases heard when comparing 2019 with 2018.

The second highest offence of ‘Disobeying a Traffic Sign’ saw a slight decrease of 2% or 17 cases. The third highest Traffic offence is ‘No Driver’s License/Permit’. There was a moderate decline of 13% or 99 cases when comparing the 2019 figure to 2018.

The decrease in the number of Driving While Under the Influence (DUI) offences is likely attributable to the approval of roadside sobriety checkpoints by the Magistracy.



## Warrants

### Outstanding Warrants

After a spike in the number of outstanding warrants in 2018 there was a notable decline of -9% or 1,019 warrants over the past year. This is likely attributable to a decrease in the number of Criminal, Traffic and Family matters that have come before the Courts, but also due to compliance of Court orders by the parties in matters.

Outstanding Warrants for criminal and traffic offences fall under three (3) categories which are as follows: - Committals, Summary Jurisdiction Apprehensions (SJA) and Apprehensions.

The total amount of unpaid fines that have accrued as a result of warrants not being executed saw a nominal reduction of -\$88,746 or -4% as at 31 December, 2019. Interagency collaboration has been beneficial for the execution of warrants. Magistrates have made payment orders so that offenders could pay their fines over a reasonable period of time thereby removing the possibility of incarcerating them for default.

TOTAL OUTSTANDING WARRANTS	2015	2016	2017	2018	2019
Committal	601	738	699	726	637
SJA	3,092	3,196	3,174	3,425	3,172
Apprehension	6,206	6,614	7,050	7,533	6,856

Figure 9: Outstanding Warrants 2015-2019 (Apprehension, Summary Jurisdiction Apprehension (SJA) And Committal)

*NOTE: Committal Warrants are 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.*

*SJA Warrants are issued when a defendant has been fined by a Magistrate and has not paid the fine by the prescribed deadline.*

*Apprehension Warrants are issued when defendants do not show up to Court when they are summoned for criminal and traffic offences.*

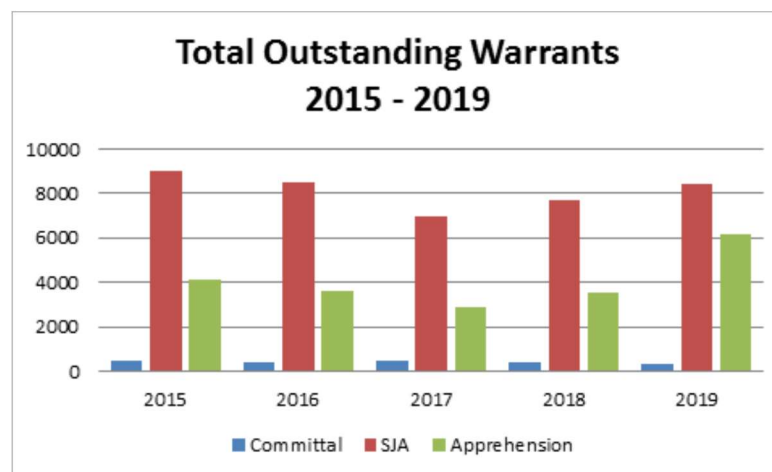


Figure 9A: Outstanding Warrants 2015-2019

## Police and Criminal Evidence Act (PACE) Warrants

PACE Warrants 2015-2019	Legislation	2015	2016	2017	2018	2019
Special Procedure Applications	Telephonic	96	75	56	72	50
	Banking	11	5	7	9	9
	Internet	22	2	5	6	10
	Medical	3	1	2	1	1
	Courier	0	0	0	0	0
	Law Firm/Legal	1	0	1	0	0
	Travel Agents/Airlines	0	2	0	1	0
	Dept. of Social Insurance	0	1	0	1	0
	School	0	0	0	0	1
	Belco Electricity	0	0	0	1	0
	Electronic Taxi App.	0	0	0	1	0
	Hospital (MAWI)	0	0	0	0	1
	Insurance	0	0	0	0	0
Order of Freezing of Funds		0	1	0	1	4
Order Release of Seized Cash/Property		5	7	2	1	2
Continued Detention of Seized Cash		33	95	61	31	18
Search Warrants	Misuse of Drugs Act	65	73	101	45	56
	Firearms	19	41	34	10	13
	Sec. 8/Sec. 15 PACE Act	39	17	21	16	12
	Revenue Act(Customs)	0	2	0	0	0
Production Order (Customs)		1	0	0	0	0
Production Order 'PATI' - Public Access To Information		1	0	0	0	0
<b>TOTAL OF ALL TYPES</b>		<b>296</b>	<b>322</b>	<b>290</b>	<b>196</b>	<b>177</b>

Figure 10: Table of 2015 – 2019 PACE Warrants

The number of PACE Warrants continued on a downward trend since 2015. There were 177 warrants issued or 10% in 2019 when compared to 2018. During the past year warrants for the telephone records declined by 44% which is a record low over the last five (5) years.

Additionally, there were marginal increases of 19% and 23% for the PACE warrants executed as they relate to drug and firearm offences.



## Coroner's Reports/Cases

Causes of Death	2015	2016	2017	2018	2019
Natural Causes	60	59	60	52	76
Unnatural Causes	10	3	6	26	16
Murders	4	7	5	8	0
Drowning	3	3	4	8	1
Road Fatalities	8	11	14	10	8
Undetermined	1	0	1	7	1
Hanging	1	2	3	4	2
Strangulation	0	0	0	0	0
Suspicious	0	0	0	0	0
Unknown	3	3	1	6	2
<b>TOTALS</b>	<b>90</b>	<b>88</b>	<b>94</b>	<b>121</b>	<b>106</b>

Figure 11: Table of Causes of Death in Coroners Cases 2015 – 2019

The Coroner's Office is managed by the Senior Magistrate who reviewed 106 Coroner's deaths from January – December 2019. There was a decline in the total number of Coroner's cases when compared to 2018; however there was an increase in the number of deaths as a result of natural causes. The overall decrease is likely attributable to the noteworthy decrease in the number of murders which stood at '0' for 2019.

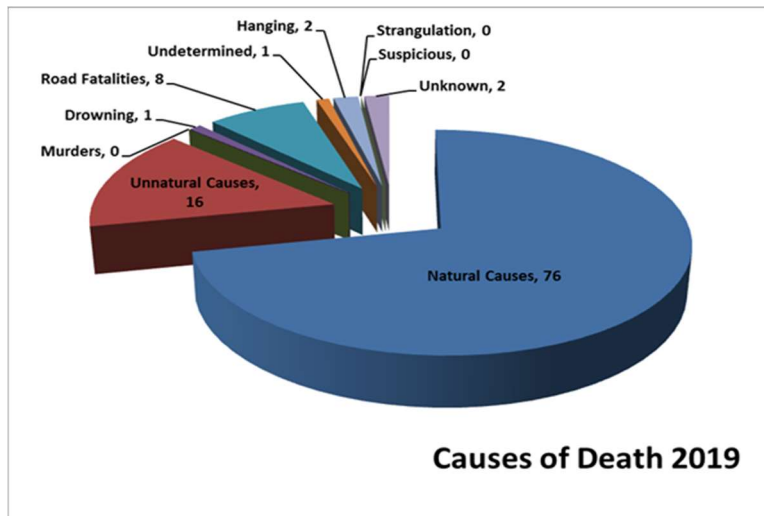


Figure 11A: Table of 2018 Causes of Death in Coroners Cases

## **Cashier's Section**

The Cashier's Office is overseen by the Accounts Officer who has two (2) Court Associates (formerly titled Cashiers) under their remit. Collectively they received a total of \$9,184,154 in fees and fines over the past year. All of the Court Associates are required to perform relief cashiering duties during the substantive employees leave from work. The Accounts Officer along with her two (2) Court Associates was responsible for training eight (8) Court Associates over the past year in these duties. All of them have carried out their duties exceptionally well and immensely enjoy interacting with the Bermudian public.

The Magistrates' Court Cashier's Section collected \$523,050 in Parking fines which is a record high between 2015 – 2019. Unfortunately, all of the revenue collected from parking ticket fines for tickets within the City of Hamilton and the Town of St. George's are paid out to the Corporation of Hamilton and St. George's respectively.

There was a notable increase of 30% or \$678,808 in the amount of revenue collected for Traffic Fines which totalled \$2,926,653. This increase is as a result of Magistrates adopting a more assertive approach to encouraging persons to pay their fines and in many cases allowing them to pay in instalments over a reasonable amount of time.

Additionally, there was a slight increase 2% or \$18,098 in the amount of Civil payments received in Magistrates' Court. It is to be noted that this is the highest amount of Civil payments received over the past five (5) years.

There was a significant decline of 33% in the amount of Criminal Fines collected in 2019. This is \$86,077 less than in 2018 and is likely due to the reduction of crime rates.

*(Figure 11 and 11A refers)*



Payment Types (By \$ Amount)	2015	2016	2017	2018	2019
Civil Payments	\$ 640,222	\$ 653,817	\$ 585,954	\$ 822,318	\$ 840,416
Civil Fees	\$ 207,748	\$ 203,535	\$ 192,315	\$ 158,990	\$ 167,085
Traffic Fines	\$ 2,445,881	\$ 2,116,050	\$ 2,124,033	\$ 2,247,845	\$ 2,926,651
Parking Fines	\$ 209,300	\$ 171,500	\$ 168,825	\$ 443,625	\$ 523,050
Criminal Fines	\$ 181,821	\$ 154,329	\$ 139,569	\$ 258,584	\$ 172,507
Liquor License Fees	\$ 349,405	\$ 349,550	\$ 552,101	\$ 552,188	\$ 570,631
Pedlar's License Fees	\$ 11,610	0	0	0	0
Misc. Fees (Including Bailiffs)	\$ 24,716	\$ 29,326	\$ 41,642	\$ 42,464	\$ 36,612
Family Support	\$ 4,898,084	\$ 4,266,083	\$ 4,582,552	\$ 4,288,809	\$ 3,944,202
<b>TOTAL COLLECTED</b>	<b>\$ 8,968,787</b>	<b>\$ 7,944,190</b>	<b>\$ 8,386,991</b>	<b>\$ 8,814,823</b>	<b>\$ 9,181,154</b>

Figure 12: Cashier's Office Payment Types (By \$ Amount) 2015-2019

Cashier's Office Payment Types by Number					
Payment Types (By Number)	2015	2016	2017	2018	2019
Civil Payment (Attach of Earnings)	3,968	4,909	3,938	3,942	4,590
Civil Fees	5,774	5,632	5,328	4,262	4,422
Traffic Fines	9,627	8,905	7,508	8,136	9,553
Parking Fines	4,185	3,722	3,193	6,089	7,390
Criminal Fines	404	398	382	378	225
Liquor License Fees	487	457	509	520	570
Pedlar's License Fees	129	0	0	0	0
Miscellaneous Fees	850	1,229	1,776	2,241	2,546
Family Support	22,705	25,322	20,097	18,860	17,201
<b>TOTAL PAYMENTS PROCESSED</b>	<b>48,129</b>	<b>50,574</b>	<b>42,731</b>	<b>44,428</b>	<b>46,497</b>

Figure 12A: Cashier's Office Payment Types (By Number) 2015-2019



## **Bailiff's Section**

### **Bailiff's Paper Service 2018**

For the entire year of 2019, the Bailiff's Section operated under strength with four (4) Bailiffs to execute the processes issued by the Courts.

Considering that the office was under staffed, collectively we were successful in maintaining an overall service rate of 86% which is consistent with the previous year's performance. Although this represents a reasonable service rate, a full complement of five (5) Bailiffs could result in a service rate of over 90% which we are striving to maintain on an annual basis.

<b>Documents: January - December 2019</b>						
<b>Document Types</b>	<b>Assigned</b>	<b>Executed Served Etc.</b>	<b>Unable to Locate</b>	<b>Cancelled Withdrawn</b>	<b>Attempts</b>	<b>Outstanding</b>
<b>Committals Applications</b>	915	804	2	169	1477	-58
<b>Evict Warrants</b>	57	33	0	17	41	7
<b>Foreign Documents</b>	35	33	2	0	0	2
<b>Judgement Summons</b>	83	74	4	2	626	7
<b>Notice of Hearing</b>	103	91	7	0	49	12
<b>Ordinary Summons</b>	510	428	17	14	626	68
<b>Protection Orders</b>	59	52	1	7	28	0
<b>Summons</b>	551	465	54	6	360	80
<b>Warrants of Arrest</b>	683	597	6	138	981	-52
<b>Writs</b>	57	54	1	44	5	-41
<b>Other Documents</b>	53	43	1	2	3	8
<b>Totals</b>	<b>3106</b>	<b>2674</b>	<b>95</b>	<b>399</b>	<b>4196</b>	<b>33</b>

<b>Average Rate of Service</b>	<b>86.09%</b>
<b>Average Rate of Unable to Locate</b>	<b>3.06%</b>
<b>Average Cancellation Rate</b>	<b>12.85%</b>

**Figure 13: Table of the 2019 Monthly Statistics – Bailiff's Actual Paper Service**



In 2019, a total of 3,106 documents were issued by the Courts for service which is an increase of twenty (20) documents over the year 2018.

Figure 14 illustrates that the Bailiffs were successful in returning a greater number of Committal Applications 106%, Warrants of Arrest 108% and Writs of Execution 172%.

The majority of the Committal Applications and Warrants of Arrest were executed by the Bailiffs making arrangements for the defendants to appear in Court. This procedure has proven to be more productive in the execution of Civil Orders than the apprehension of individuals.

After an untiring review of the Writs of Execution, several of these cases were withdrawn due to no further requirements for enforcement. Be that as it may, several cases remain ongoing to settle the indebtedness of the Judgment Debtors. There was one case of merit, where a total of \$148,922.10 was seized from the Judgment Debtor’s Investment Accounts after the person had absconded from the jurisdiction.

Documents Types	2015	2016	2017	2018	2019
Ordinary Summons	610	523	465	385	510
Supreme Court Documents	270	210	218	185	200
Family Court Documents	798	892	917	853	732
Committals	1523	1401	1160	794	753
Warrants	414	685	739	461	472
Evictions	29	52	56	57	56
<b>TOTALS</b>	<b>3644</b>	<b>3763</b>	<b>3555</b>	<b>2735</b>	<b>2723</b>

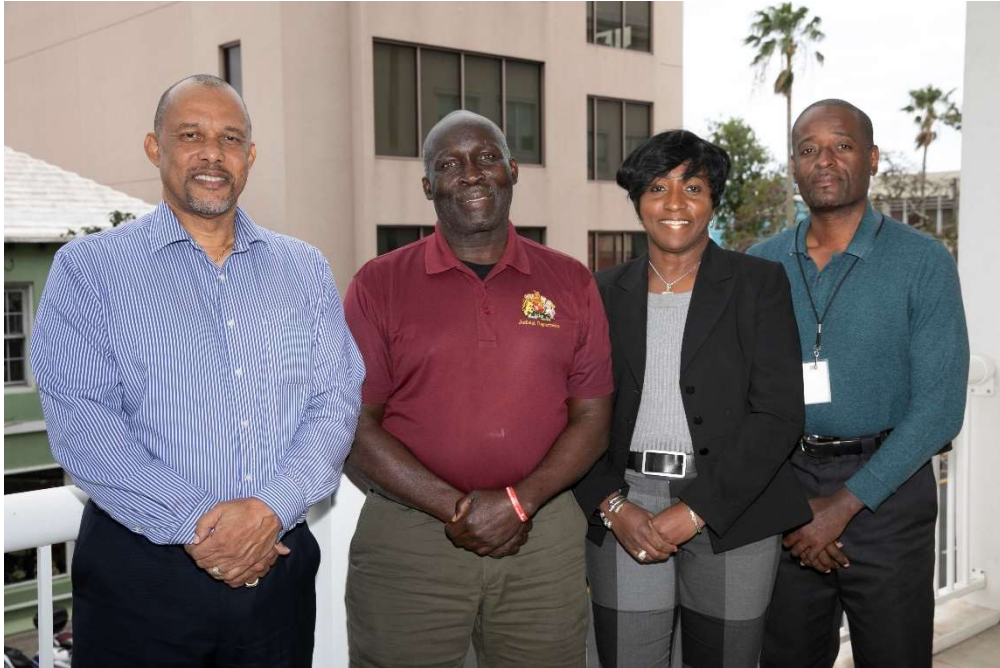
**Figure 13A: Table of 2015 – 2019 Annual Bailiff Document Types Issued for Service**

Figure 13A identifies increases in three (3) of the six (6) Document Types, namely Ordinary Summons Supreme Court Documents and Warrants. Only the Ordinary Summonses had a significant increase of 75% in comparison with 2018. The Bailiffs however, combated this challenge by accomplishing a net service rate of 84% for this document type.

Figure 13A also illustrates data on Evictions which represent the execution of Eviction Warrants issued by the Magistrate’ Court. In addition to this type of enforcement, the Supreme Court issued twenty-three (23) Writs of Possession and therefore a total of seventy-nine (79) eviction cases were issued by the Courts. Fifty-five (55) or 68% of these cases were executed, seventeen (17) were withdrawn and the remaining cases stayed pending further court proceedings.

## Magistrates' Court and Supreme Court Documents

The Magistrates' Court documents are issued by the Civil and Family Courts for service by the Bailiffs while the Supreme Court documents are issued by the Civil, Matrimonial and Commercial Courts.



The Bailiff's Section from left to right: Christopher Terry (Head Bailiff/Deputy Provost Marshal General) | Donville Yarde (Bailiff) | Donna Millington (Bailiff) | Vernon Young (Bailiff). Missing from photo is Veronica Dill (Bailiff).



## 2020 Magistrates' Court Initiatives

- To officially commence the operation of the Driving Under the Influence (DUI) Court whereby offenders will be able to retain their license if they participate in a robust, structured programme that addresses their drinking and driving impulses. By doing so, they are able to continue to be employed and to take care of their families, or to continue to transport their loved ones to school or to the hospital.
- Implementation of a Probation Review and Re-Entry Court so that offenders who are in the community can take advantage of the rehabilitative services being offered, and, so that those who are released from the Westgate Correctional Facility are given a safety net from which they can transition smoothly back into society and thereby reduce their likelihood of reoffending. Unfortunately we were unable to do so in 2019 due to a lack of resources.

### **We will continue to advocate for:**

- “Special measures” legislation that would mandatorily allow vulnerable witnesses such as child victims of sexual abuse to give evidence in a way which is not hampered by intimidation and which does not compound the trauma which they have already suffered.
- Specialized counselling programmes for victims of sexual assault and other victims of crime after the conclusion of the criminal trial so that they may be equipped to adequately deal with any trauma they may have suffered. Such counselling could be extended to the children and family members of those who may have been murdered.
- A web-based online payment system that would allow persons who have committed certain low level traffic offences (such as parking or speeding), or those who wish to pay child support into the Collecting Office, or those who wish to satisfy Judgment Debts, to do so without the need to leave from work or home (such as those who may have physical challenges).

- Functioning and cutting-edge video-link facilities that would allow children and apprehensive witnesses to give evidence away from the Courtroom setting and from the glaring eyes of those who may have victimized them.
- Increased funding for Legal Aid so as to ensure unobstructed access to justice and to ensure that those who are financially unable can still receive proper legal representation.
- Extend the Legal Aid programme to Civil and Family Matters so that those who are crippled with debt and those who are embroiled in contentious child support and child custody matters can know their rights. Indeed, like the Duty Counsel in Plea Court, there should be a Duty Counsel in the Civil and Family Courts.
- Implementation of a digital case management system which would streamline the administrative process of fixing dates for hearings and trials, and which would allow for pleadings and documentary evidence to be easily available to parties in matters.
- Amendment of the archaic 1968 Mental Health Act so that those who have a mental health disorder can receive immediate and comprehensive psychiatric intervention rather than they or their loved ones having to wait until their episodic issues escalate and the person finds themselves within the walls of the Courtroom.





# ESTABLISHMENT LIST

Judicial Department – Magistrates’ Court

As at 31 December, 2019

POST	OFFICER'S NAME
Senior Magistrate	The Wor. Senior Magistrate J. P. Wolffe
Magistrate	The Wor. Magistrate T. Chin
Magistrate	The Wor. Magistrate K. Tokunbo
Magistrate	The Wor. Magistrate M. Anderson
Magistrate	The Wor. Magistrate C. Craig Attridge
Manager	A. Daniels
Family Support Officer	C. Furbert
Head Bailiff/Deputy Provost Marshal General	C. Terry
Office Manager	P. Rawlings
Administrative Assistant (Administration)	VACANT
Enforcement Officer	A. Smith
Records Supervisor	J. Thomas
Accounts Officer	D. Lightbourn
Sen. Admin. Asst. to the Sen. Mag. & to Court No. 1	N. Williams-Grant
Administrative Assistant to Court No. 2	D. Richardson
Administrative Assistant to Court No. 3	D. Cruickshank
Administrative Assistant (Family)	A. Williams
Court Associate (Family)	R. Furbert
Court Associate (Family)	D. James
Court Associate (Family)	S. Lowe
Senior Court Associate (Civil)	C. Breinar
Court Associate (Civil)	M. Rewan-Alves
Court Associate (Civil)	A. Seaman
Court Associate (Appeals)	N. Hassell
Court Associate (Criminal/Traffic)	D. N. Butterfield (Relief)
Court Associate (Criminal/Traffic)	D. Butterfield
Administrative Assistant – (Bailiffs’)	T. Albuoy (Relief)
Bailiff	D. Millington
Bailiff	D. Yarde
Bailiff	V. Dill
Bailiff	V. Young
Bailiff	VACANT
Court Associate (Cashiers)	S. Borden

**Bermuda Judiciary Annual Report: 2019**

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Published 14<sup>th</sup> February 2020.