



**THE
BERMUDA
JUDICIARY**

**ANNUAL
REPORT
2016**



GOVERNMENT OF BERMUDA

The Bermuda Judiciary Annual Report 2016

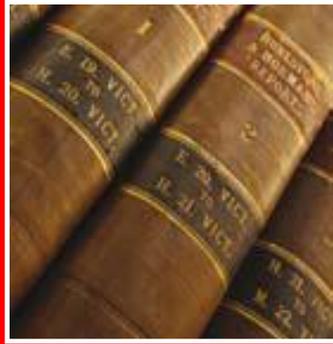


The Judiciary acknowledges with gratitude the contributions made to this report by the individuals and organizations who gave us the benefit of their views, expertise, and experience.

Bermuda Judiciary Annual Report: 2016

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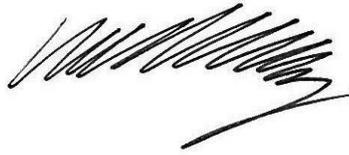
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Foreword

By The Hon. Chief
Justice of Bermuda
Ian Kawaley



Remarks made by Chief Justice Ian RC Kawaley at the Special Sitting of the Supreme Court to Celebrate the Opening of the 2017 Legal Year (27 January 2017 at 3.00pm, Sessions House, Hamilton, Bermuda)

Good afternoon one and all and welcome to this Special Sitting to commemorate the opening of the Legal Year to His Excellency the Governor (making his debut appearance), the Deputy Governor, the Acting Premier, the US Consul General, Members of Parliament, and other distinguished guests and members of the nuclear and extended Legal Family. Special thanks are extended once again to the Bermuda National Museum for bringing the Admiralty Oar or Mace which was made for Bermuda's courts as far back as 1697.

The Judiciary's Modern Mission

Celebrating the 400th anniversary of continuously operating courts in Bermuda last year assisted us to do more than to reflect on the depth and richness of our legal roots. It has also afforded us an opportunity to redefine the Bermudian Judiciary's modern mission in somewhat anxious times when only the hardest of public institutions will weather the potentially dangerous winds of change which lie ahead.

Section 6 of the Bermuda Constitution guarantees a fair hearing before an independent and impartial tribunal. The most important constitutional function that judges perform is in constituting an independent and impartial tribunal in criminal and civil cases. The modern judicial mission may more functionally be defined by reference to the Judicial Oath. Judicial officers are required in adjudicating cases to do right to all manner of people and to uphold a constitutional legal order according to which all litigants are today entitled to be regarded as equal before the law.

And so while ordinary citizens, particularly in economically challenging times, seem increasingly driven towards viewing the world through the narrow lens of "people like them", it is central to the task of the modern Bermudian judge not simply to identify and understand the perspective of every litigant. The judge must also consciously identify and neutralise his or her own subconscious prejudices. However an equally important safeguard against partisan justice is

to ensure that the composition of the Bench is as diverse as possible. Judicial appointment procedures must explicitly take diversity into account.

Performing a modern mission requires modern tools. The constitutional framework regulating the Judiciary is almost 50 years old and needs updating. Magistrates should be accorded the same security of tenure as other judicial officers. Our standing Judicial and Legal Services Committee should be given a constitutional basis. There should be a separate Department of Judicial Administration with an interim step being an inter-departmental Judicial Service Management Committee chaired by the Registrar. This is important to allow administrative policymaking and implementation to take place in an efficient manner. Ideally the Judiciary should be given a dedicated voice in Cabinet as the Attorney-General's true constitutional function, serving as principal legal officer to the Government, is inherently inconsistent with being the voice of the Judiciary.

That said, the support which the Attorney-General and PS Legal Affairs Ms Rosemary Tyrell have lent to the Judiciary is gratefully acknowledged. The invaluable assistance of the Ministry of Public Works and the Ministry of Health in remediating the mould problems at 113 Front Street and the future support of the Ministry of Public Works (in particular the Estates Department) for improvements at 113 Front Street and Sessions House is deeply appreciated as well.

2016 Annual Report

Rather than droning on *ad nauseam* about the work of the Judiciary over the last year, I commend you to read the 2016 Annual Report. You will find there statistics and short commentaries on the various courts and their respective jurisdictions. Justice Simmons ably led the Criminal Trial List and has been gradually adapting to the great modernising reforms to criminal justice recently introduced by the Attorney-General. While Justice Greaves may have bowled less overs last year than he used to, his pace was undiminished. Justice Hellman continued to bring to the Civil and Commercial Jurisdiction the same energy and verve he brings to the Bar Charity Walk in 2016. And while we said farewell to Justice Norma Wade-Miller OBE last year, we welcomed Justice Stoneham who has proudly flown the flag of the Family Jurisdiction. And while we said farewell to veteran Registrar Charlene Scott and Assistant Registrar Peter Miller, we have welcomed new Registrar Shade Subair Williams and Temporary Relief Assistant Registrar Rachael Barritt. The rejuvenating effect of this sudden injection of young blood has already had beneficial effects for the administrative nerve centres of the Judiciary. And while the Magistrates' Bench lost Ms Stoneham, it gained Ms Maxanne Anderson, a safe pair of hands indeed. The Report should now be available online at www.gov.bm/supreme-court.

Equality before the law

Ensuring equal access to the civil justice system is a major post-Global Financial Crisis challenge. It is well recognised that section 6(8) of the Constitution in guaranteeing the right to a fair hearing in civil cases also implicitly guarantees the right of access to the Court. The right to a fair hearing would be purely academic if the civil litigant were prevented from being able to effectively argue his or her case because of obstructive procedural impediments or the unavailability of legal representation in an important and complex case. The ideal of equality before the law is hardly a new concept. The first United States Chief Justice John Jay, directing a jury in a civil case involving litigants of modest means stated in 1794: *“Justice is indiscriminately due to all, without regard to numbers, wealth, or rank.”* Even older is the concept that equality derives from natural law. A West African proverb, not forgotten in the Caribbean, proclaims: *“When the rain falls, it does not fall on one man’s house”*. More recently, however, Lord Thomas, Lord Chief Justice of England & Wales said in September 2015: *“Access to justice matters. It matters because courts and tribunals are the means by which individuals are able assert their rights against others, against the government, for each has equality before the law. An accessible and timely system of dispensing justice is required; otherwise the rights become meaningless.”*

The Judiciary is committed to upholding the modern constitutional principle of equality before the law for all and consigning the pre-1968 notion that citizenship rights only fully belong to the propertied few to the annals of history.

The Judiciary’s work crucially depends on collaborating with other agencies whose assistance I acknowledge, notably Bermuda Bar Council, the Bermuda Police Service, Court Services, Corrections, the DPP’s Office and Ministry of Legal Affairs. I would like to thank the judicial officers, Registrar, Acting Assistant Registrar, Managers and Staff for all their diligent efforts in 2016 and, in particular, for accommodating the upheaval and stress created by the forced evacuation of the Front Street premises in October.

And finally I would like to thank everyone who has attended and conclude by formally declaring the 2017 Legal Year to be formally open!

Report from the Registrar and Taxing Master

Overview

With the passage of 2016 we have seen the end of an era with the retirement of the former Registrar, Charlene Scott, and the former Assistant Registrar, Peter Miller, after in excess of 25 years combined valued service.

Other Registry staff 2016 departures included Sharika Iris-Richardson, Ryan Gaglio, Lynelle Simons, Camille Haley and Joyce Waddell. They will be missed.

In June 2016 I accepted the honour and responsibility of being appointed the new Registrar simultaneously with the welcomed assignment of a new Assistant Registrar, Rachael Barritt, on a temporary relief basis.

Challenges

Staff Shortages

The Assistant Registrar and I have both faced incredible challenges in joining the Registry during the peak of an exodus aggravated by miles of red tape restrictions associated with the Government hiring freeze.

Repeated pleas for an expedited process of approval for the filling of the numerous vacant posts did not meet success in 2016.

The Probate section of the Registry continues to suffer the most as a result of the staff shortages. Under the supervision and guidance of the Assistant Registrar, Dee Nelson Stovell has been over-stretched by having to assume the duties of the vacant Accounts Officer post while processing the probate applications.

Additionally, the administrative support for the Court of Appeal has been severely strained by the simultaneous vacancy of the two positions assigned to support the Court of Appeal. Pending Cabinet's hopefully timely approval of our request to re-fill these positions, the Registry has been forced to borrow and over-stretch other Registry members in order to continue to provide some semblance of these ongoing services.

Once hiring approval is obtained, the need to train new employees in these demanding positions will have to be factored into account when estimating the requisite time period for repair.

(See Annex I of the Supreme Court Organizational chart which illustrates the unfairly arduous impact of the Registry's empty seats).

A note of gratitude is extended to the Attorney General, Hon. Trevor Moniz and the Permanent Secretary, Rosemary Tyrrell, for their ongoing efforts to champion Cabinet's support for the filling of these vacant posts in addition to their support for the creation of a new Probate Officer post and two Court Listing Officer posts.

I thank the President of the Court of Appeal, the Chief Justice and the Puisne Judges for their patience and understanding throughout such a challenging period of staff shortages.

Of course, a colossal thank-you is due to the Assistant Registrar and the Registry staff for their strength and perseverance in pulling together as a team when the pressures and demands of the Registry were most intense despite the gross reduction in employee numbers.

Achievements

New Registry Premises

Having collected the baton from my predecessors, relentless efforts were applied to identifying and highlighting the true extent of the environmental and health risks associated with the former Registry location at 113 Front Street. This led to the public discovery of toxic moulds embedded in areas which included the Registry's file room and exhibits vault room. On 25 October 2016 the Registry staff under my endorsement and support collectively decided to vacate the said premises.

With the remarkable and beyond-the-call-of-duty assistance of Rachael Barritt, Dee Nelson-Stovell, Frank Vasquez, Brian Mello, Rose Wickham, Chrissie Seymour and Erica Simmons, files were effectively transferred and re-organized from 113 Front Street to the new Dame Lois Browne-Evans Building location and to the Commercial Court in the Government Administration Building.

A special thank you is also extended to Permanent Secretary Rosemary Tyrrell who was instrumental in guiding the Judicial Department through the relocation steps needed for the occupation of the Dame Lois Browne-Evans building. Further, I acknowledge all of the efforts of the Magistrates' Court team whose arms were graciously opened in sharing the space they previously enjoyed exclusively.

Another highlight of gratitude is owed to the Ministry of Public Works for the steady assistance received from Bongani Ndlovu's (and team) of the Department of Works and Engineering and Chris Farrow's team of the Department of Public Lands and Buildings in addition to Health and Safety Inspector, Yuri Lightbourne, of the Department of Health.

The Registry has now effectively been reorganized into separate specialized branches which allow for better administrative support and efficiency to each of the Courts. This is particularly the case for Civil and Commercial matters which have been centralized to the Commercial Court building.

Modernisation of Registry Procedures

With modernisation at the forefront of my objectives, reform to Registry procedures in 2016 included:

1. Transition from handwritten and Excel format Court Calendars to individual Microsoft Outlook Court Calendars for each of the Supreme Courts;
2. Implementation of a generic email address for the Supreme Court (supremecourt@gov.bm) enabling the Registrar, Assistant Registrar and selected members of the Registry to have access and supervision over all Court email correspondence;
3. The introduction of standard hearing request forms (Form 27A/2016) for the increased efficiency and speed of listing hearings in the Civil and Commercial Courts;
4. The increase of the hourly guideline rates for taxation hearings to reflect a more current reality and the standardization of the process for contentious taxations (Practice Direction No. 15 of 2016) and
5. The introduction of extensive Case Management Forms for Criminal Cases under the Registrar's Guidance Notes for the standardization of pre-trial case-management reform.

2017 Goals

Increased use of the Registrar's Judicial Powers

It is envisaged that the restructure of Registry operations together with a full complement of staff will allow the Registry to operate efficiently and more independently of the Registrar or the Assistant Registrar's day to day administrative involvement. While these roles have historically focused on more clerical functions, the new age of the Registry will allow the Registrar to more fully perform the wider scope of the Registrar's judicial powers which are akin to a Judge sitting in chambers in the civil jurisdiction of the Court. With the support of the Chief Justice, a collaborative effort between the Registrar, Assistant Registrar and Justice Nicole Stoneham will also be engaged with a view to increasing the judicial remit of the Registrar for Family and Divorce Court matters.

Judicial Appointment of an Assistant Registrar

Efforts are currently underway for Cabinet's approval of an amendment to the Supreme Court Act 1905 granting the post of Assistant Registrar judicial powers to hear and decide the same scope of cases as the Registrar. The Attorney General's support in principle is acknowledged with thanks.

Faster Access to Court Records

A draft Practice Direction was circulated as a Consultation Paper in October 2016 for a more extensive review of how the public's access to Court records may be better administered.

It is intended that a confirmed Practice Direction with new Search Praecipe Forms will be issued in the coming months with the goal of responding to access requests within a much shorter timeframe than that of the past.

Bridging the gap between the administration of the Magistrates' Court and the Supreme Court:

It is my intention to facilitate secondment opportunities between Supreme Court and Magistrates' Court staff to enrich the professional experience of all employees in the Judicial Department. Historically, the separation of the two levels of Court administration have been so distinct that the Magistrates' Court has been somewhat abandoned in the Registrar's traditional focus on the Supreme Court and the Court of Appeal. It is my goal to unify the varying levels of Court administration to the extent that Judges, Magistrates and the general public may eventually be assisted by administrators who are familiar and experienced with the operations of the Judicial system as a whole.

Electronic Cause Book

The impracticalities of the continued reliance on the aging Cause Books and Judgment Books are fully recognized. It is hoped that real progress will be achieved in 2017 towards building an electronic data-base of Cause Book and Judgment Book entries for access online in exchange for an annual subscription fee.

Electronic Court Files

The Judicial Department has obtained approval in principle for the funding of a software program to electronically host documents as part of an effective case management system. The mould contamination of Court files in 2016 and restricted Registry access to such files highlighted the Registry's need to keep electronic Court files. It is our goal to purchase a case management software system which will allow Registry staff and judges to view and update Court files electronically.

Improved Judicial Website

The funding support for an independent website has also been approved in principle. The Registrar's continued collaboration with E-Government and the Department of Communications & Information will be key to building a judicial webpage which has an appearance of better autonomy from the general Government portal (a micro-site). Plans are underway for the purchase of a new website which will have the capacity to host the new electronic services of the future (eg. E-filing; electronic online access to audio recordings of Court hearings and electronic online access to Cause Books and Judgment Books)

New Location for the Court of Appeal

It is intended that the Court of Appeal will no longer sit in Sessions House for the hearing of appeals. Measures and remedial steps have been put in place for the Court of Appeal to relocate to 113 Front Street as their new and long-term location commencing in March 2017.

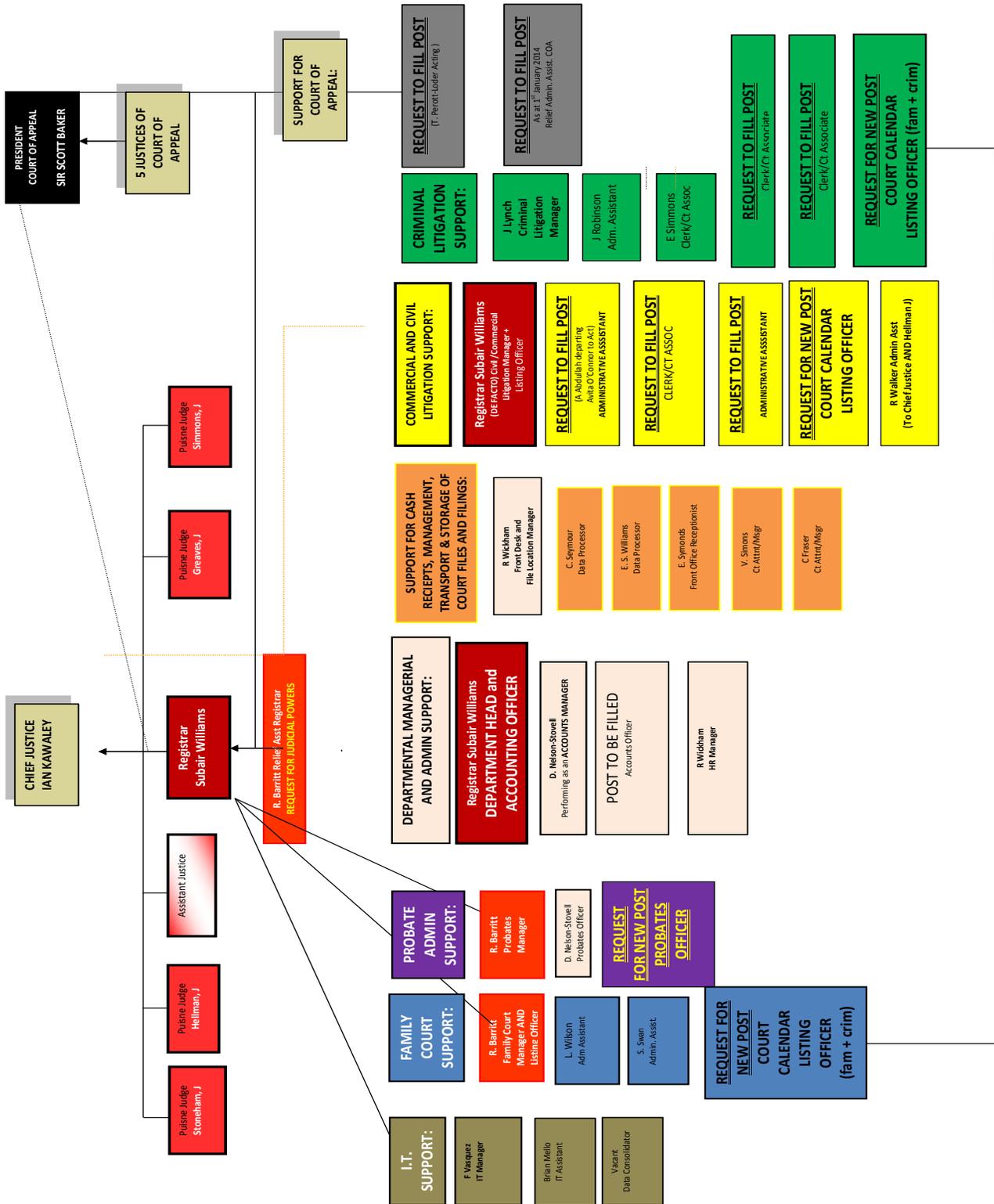
Acknowledgment of Thanks

Much gratitude is owed and given to practising member of the Bermuda Bar Association and to the general public who have been made subject to service abbreviations and delays attributable to the 2016 staff shortages and Registry relocations.

It is intended that 2017 will bear the fruits of the seeds planted in 2016.

SHADE SUBAIR WILLIAMS, REGISTRAR

Court of Appeal and Supreme Court Organizational Chart January 2017



Senior Magistrate Commentary

By the Worship Senior Magistrate Juan Wolffe, JP



Remarks made by the Worship Senior Magistrate Juan Wolffe at the Special Sitting of the Supreme Court to Celebrate the Opening of the judicial new year 2017 (27 January 2017 at 3.00pm, Sessions House , Hamilton, Bermuda)

The Rt. Hon Sir Peter Gross, Lord Justice of Appeal and Senior Presiding Judge for England, in a paper delivered at the Commonwealth Magistrates’ Judges’ Association Annual Conference in September 2016 stated that:

“It is axiomatic that the two primary functions of the State are Defence of the Realm and the provisions of law and justice. If the State succumbs to its external enemies, all is lost. If it does not uphold law and justice, no other rights can be enforced or entitlements enjoyed. Against this background, it is impossible to overestimate the importance of the rule of law and an independent judiciary to our society. Consider for a moment living or doing business in a society where the rule of law does not function.....the Judiciary is the guarantor of the Rule of Law and, as such, its role is crucial. As the third branch of the State, it serves to define the society we are.”

To uphold law and justice, a State must secure necessary institutional structures and resources. It is one thing to make a commitment to separation of powers and the rule of law within written constitutions.....it is another to render that commitment real. Without the provision of an independent judiciary, properly appointed, well-versed in the law, and with security of tenure and salary, there can be no real commitment to either.”

In my addresses during the 2015 and 2016 Judicial New Year Special Sittings I stressed that the independence and impartiality of Magistrates are sacrosanct and non-negotiable, and that the Magistrates’ Court needs adequate resources, both human and capital, so that it may fulfill its mandate of ensuring the proper administration of justice. Regrettably, my pleas have fallen on deaf ears. It wrecks with irony that as Magistrates and as Magistrates’ Court staff that on daily basis in Court we are the guardians of justice but when we return to our Chambers and cubicles that considerable injustice is imposed upon us.

In 2015 I stated that the status of Magistrates and of Magistrates’ Court staff is that of “poor relations”. I am embarrassed to say that two years on our status has deteriorated to one of

“disregarded relations”. Collectively, Magistrates and Magistrates’ Court staff still receive the lowest remuneration of all other legal positions within the government legal structure, and, still the Magistrates’ Court occupy the lower rungs of the priority ladder when funding is budgeted for and when resources allocated. Yet, the Magistrates’ Court, as it has been for many years, is still the “Engine Room of the Legal and Judicial System” and by far we adjudicate upon the highest number of matters on any given day, month, or year.

We thoroughly understand that in the present economic climate that austerity measures must be considered, but as I have previously stated, one cannot and should not put a price on the proper administration of justice nor should it be reduced to a line item on a financial statement. In her paper entitled “Austerity Justice” barrister Nicola Margaret Padfield wrote:

“The negative impact of insufficient funding of the judiciary cannot be overemphasized.....Issues range from recruitment of appropriate staff, both to the bench, and other supporting staff, infrastructural developments, procurement of modern equipment, stationary, standard library and transportation, come to mind. Continuous judicial education cannot be carried out effectively either.....It is not possible to exhaust the impact of austere funding on the judiciary. It is enough to say that only adequate funding and early releases of appropriate budgets to the judiciary can enhance timely, efficient and effective justice delivery. This cannot be compromised. The independence of the judiciary becomes meaningless without financial autonomy. Sufficient funding of the judiciary is imperative to having a good judiciary.”

Despite, and probably in spite of, these threats to the independence of the judiciary the Magistrates’ and Magistrates’ Court staff have and will continue to carry out their duties with aplomb and with the utmost professionalism. Our commitment to the proper administration of justice was unshakeable in 2016 and it will continue to be throughout 2017. Specifically:

- In October 2016 we continued with our push towards a more therapeutic approach to dealing with offenders. With the official opening of our Mental Health Court those who commit offences as a manifestation of a mental health challenge can now lower their risk of re-offending through a structured programme which meaningfully addresses the root cause of their behavior rather than languishing in a jail cell without any treatment. The Mental Health Court team, under the magisterial guidance of The Worshipful Maxanne Anderson, have shown compassion and provided hope to a population of offenders who usually are marginalized by society.
- Drug Treatment Court is still the gem of the criminal justice system. 75% of clients who complete the Drug Treatment Court programme do not use illicit substances and do not commit any further offences. The operation and success of our Drug

Treatment Court has caught the attention of Northern Ireland which has sought our advice, and that of the Department of Court Services, in setting up their Substance Misuse Court.

- In 2017 we, along with the Department of Court Services, will be looking to launch our pilot Driving Under the Influence Court or “DUI Court” which will address the prevalence of alcohol related driving offences by offering offenders a structured programme to effectively deal with their alcohol based issues, thereby reducing the likelihood of them re-offending.
- In 2016 Magistrates and Magistrates’ Court staff met with various government departments which regularly interact with the Magistrates’ Court (such as the Department of Court Services, the Department of Child and Family Services, and the Mid-Atlantic Wellness Institute) so as to make our respective processes and procedures more efficient. We are of the mutual opinion that such meetings not only foster a symbiotic relationship between our departments but ultimately benefits those members of the public who seek redress, relief, and justice from the Magistrates’ Court.
- The Family Courts did not see an overall increase in the number of new matters filed in 2016, however, most telling were increases in the number of matters involving care and supervision orders for our children (a 23% increase) and domestic violence (a 13% increase). These trends may indicate a deterioration in the family unit and the debilitating effects which such deterioration has on the welfare of the children. Therefore, the efforts of The Worshipful Tyrone Chin (Chairman of the Family Court) and Family Court Magistrate The Worshipful Maxanne Anderson have been stretched even more. More so than in previous years they have had to be teachers, social workers, psychologist, surrogate father and mother, and disciplinarians so as to resolve the deep seeded and complex socio-economic issues that they decide upon on a daily basis in the Family Court.
- Our elder statesman The Worshipful Archibald Warner is still steadfastly at work striking the balance between administering justice for victims of crime and rehabilitating offenders. While the number of criminal offences remained virtually unchanged from 2015 the severity of the type of cases heard have increased. The top 3 criminal cases are violent, theft, and drug related, and therefore Magistrate Warner has been called upon on countless occasions to be firm and compassionate.
- As a result of structured but no-nonsense payment plans imposed by The Worshipful Khamisi Tokunbo in Plea Court and Traffic Court the Magistrates’ Court collected

over \$2 million in fines in 2016. It is our position that by allowing individuals to pay fines in reasonable installments reduces the incidences of default (and therefore incarceration) without diminishing the deterrent effect of imposing the fine.

- Due to rampant staff shortages in the Civil Department of the Magistrates' Court we faced difficulties in processing new civil matters. However, through the yeoman efforts of Civil Department staff and the Bailiffs' Office the backlog has been substantially reduced.
- With the immense efforts of Coroner's Officer Sgt. Travis Powell and Administrative Assistant Patricia McCarter coroner's matters are currently up-to-date. However, we will not rest on our laurels as it is our desire in 2017, through discussions with the Registrar General, to reduce the time it takes to obtain death certificates. It is hoped that through these efforts that family members of the deceased can be given some semblance of comfort and closure.
- As part of its public educational component the Magistrates' Court offered ten (10) shadowing opportunities to primary and secondary students, as well as law students, pupils, and newly called barristers. This an initiative that will continue into 2017 along with educational pamphlets being made available to members of the public advising them as to the procedures of Magistrates' Court, their legal rights, and what to expect and how to conduct themselves when appearing before the Magistrates' Court.

I raise the above for a couple of reasons. Firstly, the Magistrates' Court is rarely afforded the opportunity to highlight its monumental work or to set out its relevance to the social, economic, and cultural dynamics of our society. Indeed, the Magistrates' Court is compelled to remain defenseless when unsubstantiated and simply untrue accusations are hurled in its direction or when efforts are being made to diminish or disregard its relevance. Again, the irony is palpable. It is the Magistrates' Court that has conduct over the vast majority of legal matters in Bermuda; it is the Magistrates' Court which collects child support payments so that the welfare of our children can be kept at paramount importance; it is the Magistrates' Court that guides wayward parents in a positive direction which allows them to raise their children in a manner in which they can be proud; it is the Magistrates' Court that gives criminal offenders a second or third chance at becoming law-abiding citizens; and, it is the Magistrates' Court that affords those who are crippled by civil debt to eradicate their indebtedness in a dignified manner.

This leads me to my second reason and it brings me full circle. It is hoped that by highlighting the breadth of the work of the Magistrates' Court, and by detailing the important and crucial role that the Magistrates' Court plays in the social, economic, and cultural fabric of Bermuda that the

dire need for an independent judiciary would be made eminently clear. As the Rt. Hon. The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales said in his speech at the CMJA Conference in September 2015:

“The centrality of justice to our societies and the independence of the judiciary cannot be taken for granted: To all of us the centrality of justice to a State is obvious. The provision of justice is, we all know, a core duty of the State. But that is a view we should not take for granted.....In each of our nations, to a greater or lesser extent, we have to protect it or to fight for it.”

We in the Magistrates’ Court loudly echo those words.

I would conclude by giving kudos to those who really deserve them. I am speaking of the Magistrates’ Court staff. Though they are underpaid, under-resourced, understaffed and often times underappreciated they are truly the back-bone and glue of the Magistrates’ Court. They are on the front lines of justice and they buffer the Magistrates’ from the understandably frustrated and sometimes ungrateful persons who come into the Dame Lois Browne-Evans Building. They will often quell the anxiety of mothers and douse the heat of offenders well before they appear before the Magistrates, thereby making our jobs less difficult. For that, we are eternally grateful to them.

Thank You.

The Worshipful Juan P. Wolffe
Senior Magistrate

VIDEO EVIDENCE IN CIVIL AND CRIMINAL PROCEEDINGS-THE NEED FOR LEGISLATIVE SUPPORT

By The Hon. Chief
Justice of Bermuda
Ian Kawaley



Overview

The courts possess the basic technology to allow video evidence to be taken via Skype. The problem is the lack of legislative powers to enable the Court to direct that evidence be given remotely in circumstances where the parties will not agree. Current criminal legislation limits remote participation of an accused to preliminary hearings where no evidence is being given. There are obviously constitutional fair trial considerations to be taken into account in terms of how far a broader legislative scheme ought to go in the criminal trial context.

Criminal cases

It may be desirable for remote participation via video-link in criminal proceedings in variety of circumstances but without legislative support for such remote participation it may be open to accused persons (in particular) to complain that their fair trial rights have been breached. Obvious examples include:

- where bringing an accused person to court may create a security risk and involve disproportionate public expense in terms of security costs;
- where a witness, such as a child in a sex abuse case, may be intimidated by having to appear physically in court;
- where bringing an overseas expert witness to Bermuda to testify may not be essential for a fair trial and will cause undue public expense.

Civil cases

It is usually feasible to conduct a fair civil hearing or trial with parties and/or witnesses giving evidence via video-link. This has happened on a consensual basis several times but the Court can only direct that this may occur where both parties agree. The legislative power to direct remote participation in the interests of justice is clearly required.

Possible legislation

The following draft legislation was forwarded to the Attorney-General in January 2013 as a possible guide for Parliamentary Counsel (whose job it is to prepare draft legislation). It is substantially based on legislation introduced in New Zealand in 2010 (since amended in minor respects in 2016).

“A BILL ENTITLED THE COURTS (REMOTE PARTICIPATION) ACT 2013

ARRANGMENT OF SECTIONS

1. *Title.*
2. *Commencement.*
3. *Interpretation.*
4. *Act binds Crown.*
5. *General criteria for allowing use of audio visual links.*
6. *Additional criteria for allowing use of audio visual links.*
7. *Use of audio visual links in civil proceedings.*
8. *Use of audio visual links in criminal procedural matters.*
9. *Use of audio visual links in criminal substantive matters.*
10. *Judicial officer may vary or revoke determination.*
11. *Judicial officer may make direction.*
12. *Direction to jury.*
13. *Determining place of hearing.*
14. *Attendance at hearing.*
15. *Documents and other exhibits when person appears at a proceeding by use of AVL*
16. *Relationship with other enactments.*
17. *Rules.*
18. *Repeals*

WHEREAS it is expedient to make provision for the remote participation of parties involved in legal proceedings in the courts of Bermuda:

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Title

1. *This Act may be cited as the Courts (Remote Participation) Act 2013.*

Commencement

2. *This Act shall come into operation on a date to be appointed by the Minister by notice published in the Gazette*

Part 1

Preliminary provisions

Interpretation

3. In this Act, unless the context otherwise requires,—

audio-visual link, or **AVL**, in relation to a participant's appearance at any proceeding, means facilities that enable both audio and visual communication between participants, when some or all of them are not physically present at the place of hearing for all or part of the proceeding

Bermudian court means—

the Supreme Court, the Court of Appeal, or the Magistrates' Court

civil proceedings means any proceedings in a court, other than criminal proceedings

court means any Bermudian court

criminal procedural matter means any matter, in a criminal proceeding, in respect of which no evidence is to be called

criminal substantive matter means any matter, in a criminal proceeding, in respect of which evidence is to be called

Judge means a Judge of any court

judicial officer means a Judge, a Magistrate, or a legally qualified Registrar or Assistant Registrar

Minister means the Minister for the time being responsible for Justice

participant, in relation to a proceeding, means a person who is, in that proceeding, any of the following:

- (a) a party;
- (b) the defendant;
- (c) counsel;
- (d) a witness;
- (e) a member of the jury;
- (f) a judicial officer who is presiding over the proceeding;
- (g) any other person directly involved in the proceeding whom the judicial officer considers appropriate

proceeding means any proceeding in a Bermudian court

Registrar includes a legally qualified Assistant Registrar

witness means a person who gives evidence and is able to be cross-examined in a proceeding.

Act binds the Crown

4. *This Act binds the Crown.*

Part 2

Use of audio-visual links in proceedings

General criteria for allowing use of audio-visual links

5. *A judicial officer must consider the following criteria when he or she is making a determination under this Act whether or not to allow the use of AVL for the appearance of any participant in a proceeding:*
 - (a) *the nature of the proceeding;*
 - (b) *the availability and quality of the technology that is to be used;*
 - (c) *the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—*
 - (i) *the ability to assess the credibility of witnesses and the reliability of evidence presented to the court, and*
 - (ii) *the level of contact with other participants;*
 - (d) *any other relevant matters.*

Additional criteria for allowing use of audio-visual links in criminal proceedings

6. *A judicial officer must also consider, when he or she is required to determine under this Act whether or not to allow the use of AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the technology on the effective maintenance of the right of the defendant to a fair trial, and on his or her rights associated with the hearing, and, in particular,—*
 - (a) *the ability of the defendant—*
 - (i) *to comprehend the proceedings; and*
 - (ii) *to participate effectively in the conduct of his or her defence; and*
 - (iii) *to consult and instruct counsel privately; and*
 - (iv) *to access relevant evidence; and*

- (v) to examine the witnesses for the prosecution; and
- (b) the level of contact the defendant has with other participants; and
- (c) any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and whether that adverse impression may be mitigated.

Use of audio-visual links in civil proceedings

7. (1) AVL may be used in a civil proceeding for the appearance of a participant in the proceeding if a judicial officer determines to allow its use for the appearance of that participant.
 - (2) A judicial officer may make a determination under subsection (1)—
 - (a) on his or her own motion; or
 - (b) on the application of any participant in the proceeding.
 - (3) A determination under subsection (1) must—
 - (a) be made in accordance with the criteria in section 5; and
 - (b) take into account whether or not the parties consent to the use of AVL for the appearance of the participant.

Use of audio-visual links in criminal procedural matters

8. (1) Judicial officers must determine whether to require any one or more of the participants in a criminal procedural matter to use AVL for his or her appearance, if AVL is available for that appearance.
 - (2) A judicial officer may determine not to allow the use of AVL for the appearance of a participant in a criminal procedural matter, despite a previous requirement under subsection (1) made by a judicial officer.
 - (3) A determination under subsection (1) or (2) may be made on the objection of any party to the proceeding or on the motion of the judicial officer.
 - (4) Any determination made under this section must be made in accordance with the criteria in sections 5 and 6.

Use of audio-visual links in criminal substantive matters

9. (1) AVL must not be used in any criminal substantive matter for the appearance of a participant unless a judicial officer determines to allow its use for the appearance of that participant in the proceeding—
 - (a) in accordance with the criteria in sections 5 and 6; and

(b) taking into account whether the parties to the proceeding consent to the use.

(2) Despite subsection (1), AVL must not be used for the appearance of the defendant in a trial that determines his or her guilt or innocence unless the defendant consents to that use.

Judicial officer may vary or revoke determination

10. A judicial officer may at any time vary or revoke a determination to allow the use of AVL for the appearance of a participant if the judicial officer considers that any reason for the determination, with respect to the criteria in section 5, or sections 5 and 6 (as the case may be), no longer applies.

Judicial officer may make direction

11. A judicial officer who makes a determination under this Act in relation to the use of AVL for the appearance of a participant in a proceeding may make a direction in accordance with that determination.

Direction to jury

12. In a proceeding tried with a jury, the Judge may direct the jury that it must not draw any adverse inference against any party to the proceeding because of the use of AVL in the proceeding.

Determining place of hearing

13. The place of hearing of any proceeding in which 1 or more of the participants appears by the use of AVL is the same as if none of the participants in that proceeding were to appear by the use of AVL.

Attendance at hearing

14. (1) A participant who appears at a proceeding, or part of a proceeding, by the use of AVL under this Act is regarded as being present in the place of hearing at the proceeding, or that part of the proceeding, for the duration of that use.

(2) Subsection (1) applies whether or not the participant is in Bermuda.

Documents and other exhibits when person appears at a proceeding by use of AVL

15. A document may be put to or by a person appearing at a proceeding by the use of AVL, or another exhibit may be shown to or by that person,—

(a) by transmitting the document or other exhibit electronically; or

(b) by use of AVL; or

(c) by any other manner that the judicial officer thinks fit.

Relationship with other enactments

16. (1) *The appearance by a participant at a proceeding by the use of AVL to the extent that is authorised by this Act fulfils the corresponding legal requirements in relation to his or her appearance in person at the proceeding under every enactment and rule of court, unless that other enactment or rule of court expressly provides otherwise.*

(2) *If an enactment or rule of court provides for the appearance by a participant at a proceeding by the use of AVL or video link in a court proceeding, then this Act must be read subject to that enactment or rule of court.*

AVL does not affect exercise of judicial officer's powers

17. *To avoid doubt, a judicial officer presiding in a proceeding in which AVL is used has all the powers that he or she would have if the participant appeared in person.*

Rules

18. *The Chief Justice may, make rules of Court—*

- (a) prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made where a person is to appear by the use of AVL;*
- (b) prescribing any method or technology of AVL as one which is suitable for use as AVL under this Act;*
- (c) prescribing forms for the purposes of this Act;*
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.*

Repeals

18. *Section 13A of the Indictable Offences Act 1929 is repealed."*

The Judiciary, four years later somewhat impatiently, awaits some response from the Ministry of Legal Affairs to this seemingly uncontroversial proposal for legislative reform. It is simply designed to modernise court proceedings and to thereby make criminal and civil procedures fairer and more efficient in the public interest.

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 2016/2017 is approximately \$8,160,907 as compared to \$8,197,661 for the fiscal year 2015/2016.
- ❖ There were 31 appeals filed in the Court of Appeal in 2016, which was 13 less than 2015, with 10 criminal appeals and 21 civil appeals being disposed of.
- ❖ There were 47 criminal indictments filed with 18 carried over to 2017 compared to 42 filed with 13 carried over in 2016.
- ❖ The total number of civil filings (including calls to the Bar and notary public applications) dropped 3.5% from 2015. Commercial cases filed increased by 17.5% while judicial review filings increased by 41.6%.
- ❖ The number of published reasoned judgments increased from 72 in 2015 to 85 in 2016 (18% overall), with a rise in civil appeal judgments (up 45%) and Commercial Court judgments (up 58%).
- ❖ The total number of divorce petitions filed remained approximately the same from 2016 to 2015.
- ❖ There was a total of 175 grant applications filed; an increase of 9.5% compared to 2015. There were 19 fewer caveats filed, a decrease of 50%.

Court of Appeal & Supreme Court: Overview

Composition and Sitting Dates

- ❖ The Registrar is the administrative head of the Judiciary, and its 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 in civil and criminal cases. 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.
- ❖ The Court of Appeal consists of the President of the Court, and a panel of four Justices of Appeal, who are all distinguished jurists from 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 criminal, civil, commercial, divorce and family and probate jurisdictions.
- ❖ The Court is comprised of five Supreme Court Justices, 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 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 November 2016, there are two locations for the Registries of the Supreme Court and the Court of Appeal: **Dame Lois Browne Evans Building, 3rd Floor** and **Government Administration Building, 2nd Floor**.



Government Administration Building, 2nd Floor- Civil & Commercial and Court of Appeal Registry

- ❖ In total, the Registry employs 21 staff members with 5 posts currently vacant.
- ❖ 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.



Dame Lois Browne Evans Building, 3rd Floor- Family & Matrimonial and Criminal Registry

Court of Appeal

The current President of the Court of Appeal is the Rt. Hon. Sir T. Scott Baker. The Honourable Justice Patricia Dangor retired from the Court of Appeal on the 23rd March 2016, and Sir Christopher Clarke, QC will begin his tenure as the new Justice to the Court of Appeal of Bermuda with effect from 6 March 2017.

For any particular sitting the Court is constituted by a bench of three, consisting of the President, or the most senior Justice present, and two other Justices of Appeal. In the absence of the full court, certain administrative and interlocutory matters can be dealt with by a judge of the Supreme Court exercising the powers conferred by the Act upon a single Justice of Appeal.

The Registrar of the Supreme Court is also the Registrar of the Court of Appeal, and administrative matters relating to the Court are dealt with in the Registrar's Chambers, which is now located on the 2nd floor of the Government Administration Building.

The Rt. Hon. Sir T. Scott Baker, President

A retired English Court of Appeal Judge, the Rt. Hon. Sir T. Scott Baker has been a member of the Bermuda Court of Appeal since March 2011 and was appointed President of the Court in 2015. He became a Recorder in 1976, and was appointed a Queen's Counsel in 1978. He became a Bencher at Middle Temple in 1985. When appointed as a High Court judge in 1988, he received the customary knighthood, and was allocated to the Family Division. He moved to the Queen's Bench Division in 1993. He was Presiding Judge of the Wales and Chester Circuit from 1991 to 1995, and a member of the Parole Board from 1999 to 2002. He was the Lead Judge of the Administrative Court from 2000 to 2002. In 2002, he became a Lord Justice of the Court of Appeal of England and Wales.

The Rt. Hon. Sir Maurice Kay

A retired English Court of Appeal Judge, the Rt. Hon. Hon. Sir Maurice Kay 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 three years.

The Hon. Justice Geoffrey Bell, QC

Justice Bell was appointed as a judge of the Supreme Court in 2005. 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 became Queen's Counsel in 1992. He was designated one of the Commercial Judges of the Supreme Court in 2006. After retiring in 2009, he continued to act as an Assistant Justice of the Supreme Court of Bermuda and served as a Justice of Appeal of the Eastern Caribbean Supreme Court in the British Virgin Islands. Effective January 2015, he was appointed a Justice of Appeal of the Court of Appeal for Bermuda

The Hon. Justice Desiree Bernard, C.C.H., O.R.

Madam Justice Desiree Bernard was appointed the first female Judge of the Supreme Court of Guyana in 1980 after practising in the civil jurisdiction of the Courts. In 1982 Justice Bernard was selected to sit as a member of the United Nations Committee on the Elimination of Discrimination Against Women, and served as Rapporteur and later Chairperson over a period of twelve years. In 1992, she was appointed the first female Justice of the Court of Appeal, and in 1996 the first female Chief Justice of Guyana. In May 2001 she became Chancellor and Head of the Judiciary, and from 2005 to 2014, she sat on the Caribbean Court of Justice as its sole female Judge. For her services in improving the status of women in Guyana, Justice Bernard was awarded Guyana's third highest honour, the Cacique Crown of Honour, and later, for her services as Head of the Judiciary of Guyana, she was awarded the second highest honour, the Order of Roraima. She was appointed as Justice of Appeal of the Bermuda Court of Appeal effective January 2015.

The Rt. Hon. Sir Christopher Clarke, QC

Sir Christopher was appointed as a QC in 1984, and from 1990 to 2004, he was a Recorder and then from 1993 to 2004, a Deputy High Court Judge. He was also a Judge of the Court of Appeal of Jersey and Guernsey from 1998 to 2004. From 2005 to 2013, he was High Court Judge, sitting in the Commercial Court, and he was appointed as a Lord Justice of Appeal in 2013.

The Court of Appeal sits three times a year, usually for three weeks at a time during the months of March, June and November. The dates are subject to change, depending on the volume of business. The 2017 projected dates are:

- ❖ 6 March 2017 – 24 March 2017
- ❖ 29 May 2017 – 16 June 2017
- ❖ 30 October 2017 – 17 November 2017

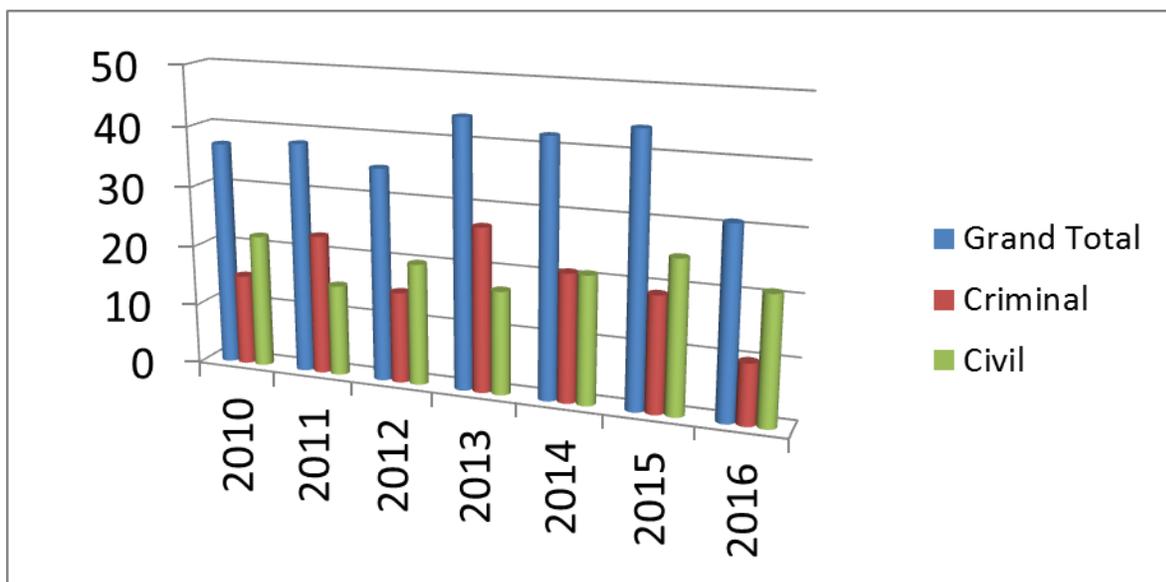
Throughout 2016, the Court of Appeal heard matters in either Courtroom #2 or Courtroom #1 at Sessions House. It is hoped that the Court of Appeal will relocate to the former Supreme Court Registry building at 113 Front Street with matters being heard in former Courtroom #3.

Year in Review

In terms of new filings, the total number of 2016 filings dropped approximately 30% over the previous year. Most notably, the total of criminal appeals filed decreased almost 50% from nineteen to ten filings.

Table 1 : COURT OF APPEAL - TOTAL APPEALS FILED 2010-2016			
Year	Grand Total	Criminal	Civil
2010	37	15	22
2011	38	23	15
2012	35	15	20
2013	44	27	17
2014	42	21	21
2015	44	19	25
2016	31	10	21

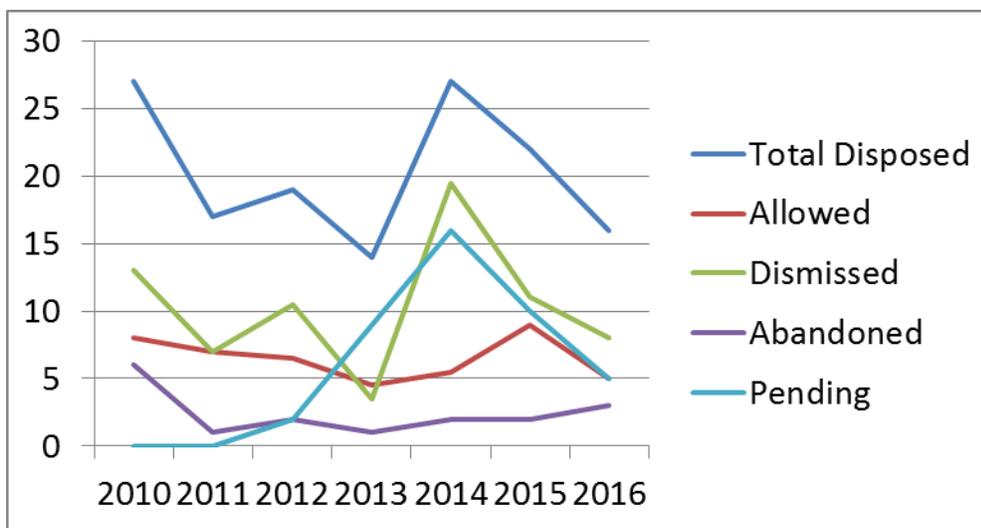
Figure 1: COURT OF APPEAL- TOTAL APPEALS FILED 2010-2016



In 2016, sixteen criminal appeals were disposed of, which included a number of appeals which were pending from 2015. This meant that over 75% of criminal appeals were disposed of, as compared to 62% in 2015. The ability to address this backlog of criminal appeals was a direct result of the decision of the Privy Council in relation to the admissibility of evidence related to gang membership in criminal cases.

Table 2: COURT OF APPEAL - CRIMINAL APPEAL DISPOSITIONS 2010 - 2016					
Year	Total Disposed	Allowed	Dismissed	Abandoned	Pending
2010	27	8	13	6	-
2011	17	7	7	1	-
2012	19	6.5	10.5	2	2
2013	14	4.5	3.5	1	9
2014	27	5.5	19.5	2	16
2015	22	9	11	2	10
2016	16	5	8	3	5

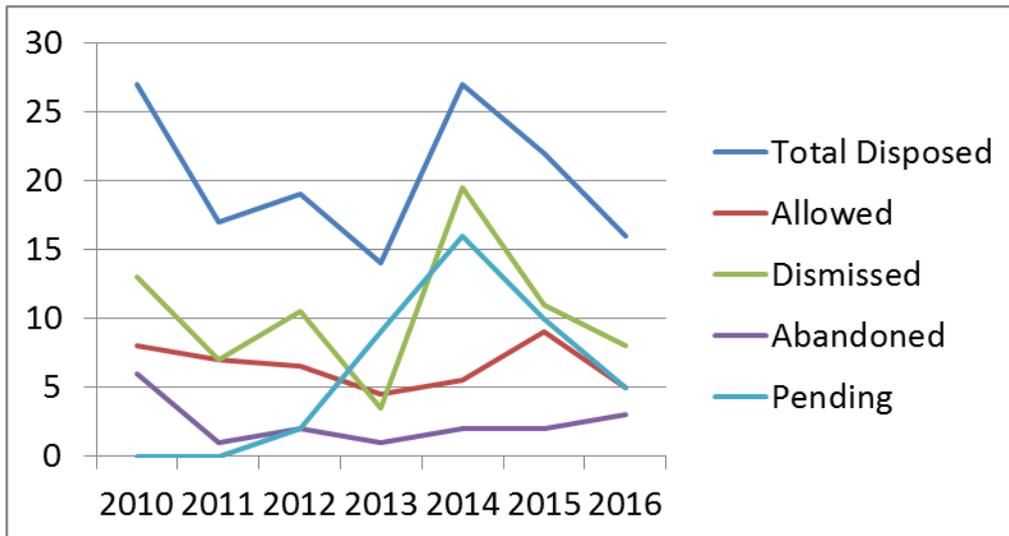
Figure 2: COURT OF APPEAL - CRIMINAL APPEAL DISPOSITIONS 2010-2016



In 2016, fifteen civil appeals were disposed of, which meant that 50% of civil appeals were disposed of in 2016 as compared to 47% in 2015.

Table 3: COURT OF APPEAL - CIVIL APPEAL DISPOSITIONS 2010 - 2016					
Year	Total	Allowed	Dismissed	Withdrawn	Pending
2010	12	5	5	2	-
2011	25	4	17	4	2
2012	13	3	6	4	2
2013	17	3	9	5	1
2014	14	6	4	4	15
2015	19	3	14	2	12
2016	15	5	6	4	12

Figure 3: COURT OF APPEAL - CIVIL APPEAL DISPOSITIONS-2010-2016

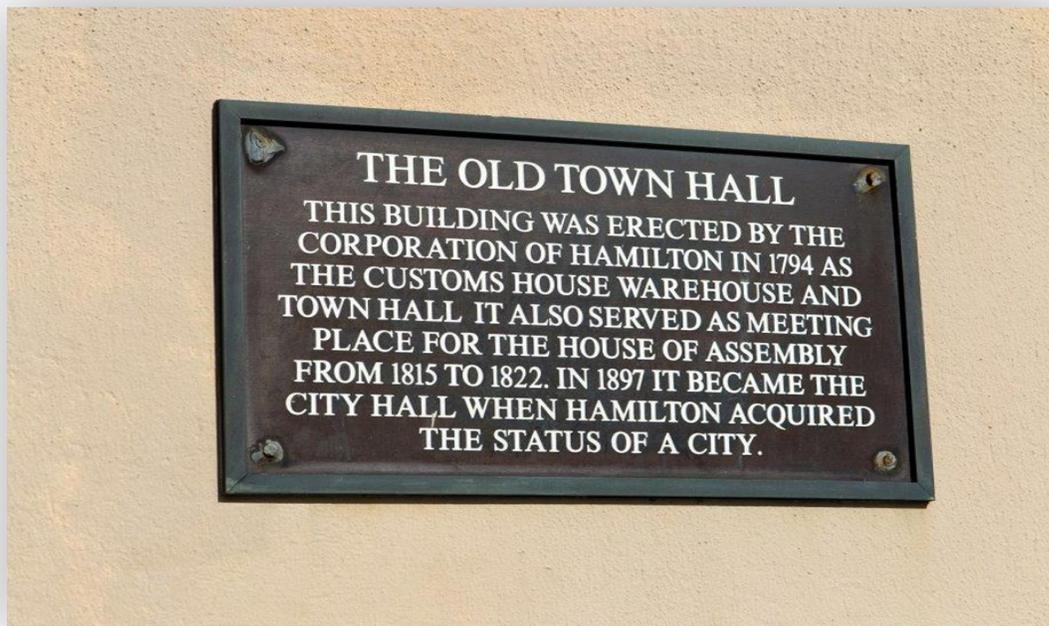


2017 Goals

The Registrar has initiated the introduction of Practice Directions involving Guidance Notes and Case Management Forms in respect of the Court of Appeal Branch of the Supreme Court Registry.

In order to reduce the time between a notice of appeal being filed and the disposal of a case, particularly in criminal matters, arguable appeals must be identified as early in the process as possible. Reforms and steps are currently underway to achieve this goal.

It is intended that the Court of Appeal will no longer sit in Sessions House for the hearing of appeals. The Court's present facilities are less than satisfactory in a modern democracy and it is hoped that promises to remedy this will bear fruit in 2017. Measures and remedial steps have been put in place for the Court of Appeal and its own Registry to relocate to 113 Front Street as their new and long-term location commencing in March 2017.





Supreme Court: Civil and Commercial Division and Appellate Division

In November 2016, a separate Civil & Commercial Registry was established on the 2nd floor of the Government Administration Building, 30 Parliament Street, Hamilton HM12.

Chief Justice Kawaley and Justice Hellman hear the vast majority of the civil matters, and have been designated the Commercial List Justices. The Chief Justice's Chambers and Justice Hellman's Chambers, as well Commercial Courts #1 and #2, continue to be located on the 2nd floor of the Government Administration Building.

Appeals from Magistrates' Court and other statutory appeals are heard by a single Supreme Court Judge sitting as an Appeal Judge. In 2016, the majority of the cases were heard by Chief Justice Kawaley with assistance from Justice Hellman.

Year in Review

The output of the Civil and Commercial jurisdiction of the Supreme Court is measured by reference to the number of published reasoned judgments which increased from 72 in 2015 to 85 in 2016 (18% overall), which is largely attributable to a rise in civil appeal judgments (up 45%) and Commercial Court judgments (up 58%).

Table 4: 2013 - 2016 Published Judgments				
2013				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	36	10	7	54
2014				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	41	23	8	72
2015				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	49	12	11	72
2016				
	Civil-Gen	Commercial	Appeal	Total
Published/Considered Judgments	50	19	16	85

In terms of new filings, the total number of 2016 filings (including calls to the Bar and notary public applications) dropped 3.5% over the previous year. As far as litigious matters only are concerned, 409 matters were filed in 2016 compared with 410 in 2015, a statistically insignificant drop. The biggest categories of case which fell were the traditionally small categories of personal bankruptcy filings (90% down) and partition actions (50% down). Commercial cases filed increased by 17.5% while judicial review filings increased by 41.6%.

Table 5: New Civil Matters Filed by Subtype 2010-2016

Year	Total	Commercial	Originating Summons	Call To Bar	Notary Public	Writ of Summons	Judicial Review	Partition	Mental Health	Bankruptcy
2010	427	91	63	62	6	182	20	0		3
2011	477	75	83	48	6	240	13	10		2
2012	430	88	74	41	4	190	14	10		9
2013	442	70	83	46	5	210	19	10		5
2014	448	70	57	16	3	105	3		10	1
2015	513	57	140	52	51	180	12	12	11	10
2016	495	67	139	34	52	170	17	6	9	1

Table 5: In 2016, the total filings decreased by 18 matters in the civil and commercial division, but there were 10 more commercial filings than the previous year. There was also a notable decrease in Call to the Bar applications and Writs of Summons with an increase in judicial review applications.

Figure 5 CIVIL CASES FILED 2010-2016

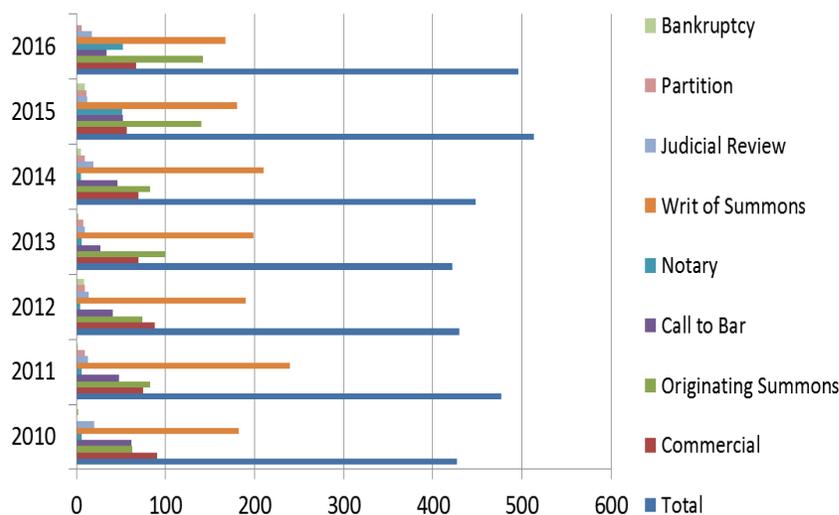
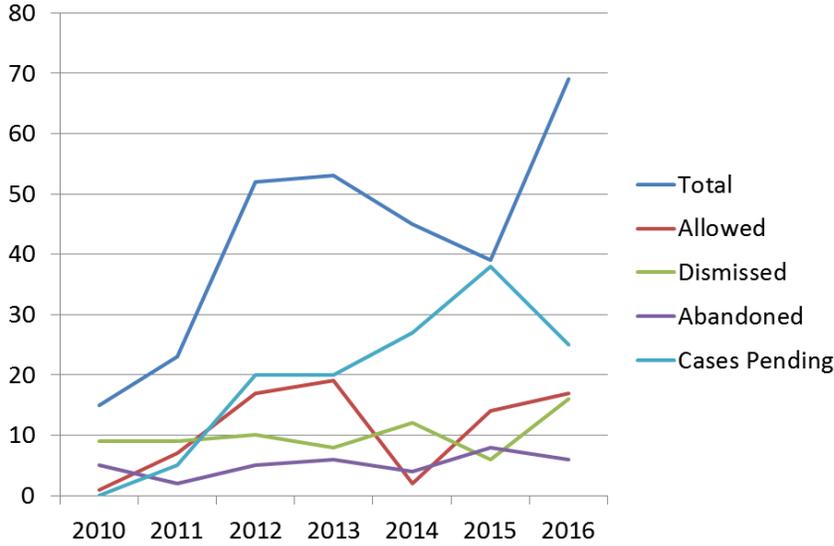


Table 6: CRIMINAL & CIVIL APPEALS FROM MAGISTRATES COURT 2010 - 2016					
Year	Total Filed	Allowed	Dismissed	Abandoned	Cases Pending
2010	15	1	9	5	-
2011	23	7	9	2	5
2012	52	17	10	5	20
2013	53	19	8	6	20
2014	45	7	21	5	27
2015	39	14	6	8	38
2016	69	17	16	6	25

Table 6 In the 2016, the total appeals filed increased over 40% (from 39 cases to 69 cases). 44 of the 69 cases were disposed of, with 17 appeals allowed, 16 appeals dismissed and 6 appeals being abandoned.

Figure 6: CIVIL & CRIMINAL APPEALS FROM MAGISTRATES COURT – DISPOSITIONS 2010-2016



Challenges

Premises

The growing logistical challenges flowing from the masterful stonewalling response of Government to repeated pleas for adequate Court premises over the last 4 years came to a head when the discovery of mould at the 65 Front Street Building forced its evacuation in October 2016. The Supreme Court Registry staff had to be relocated into space occupied by the Commercial Court (Government Administration Building) and the Magistrates' Court (Dame Lois Browne-Evans Building).

The Commercial Court has, for the time being, lost the break-out rooms intended for use by lawyers as consultation rooms. It has also lost the spare room for visiting judges which was previously used by Assistant Justices, appointed from the private Bar to assist the full-time Bench and to attract future full-time appointees to the Civil and Commercial Bench.

Case management issues

Appeals from the Magistrates' Court and civil trials in the Supreme Court increasingly involved litigants in person in 2016. Civil procedure is primarily designed to be navigated by lawyers. More frequent use has been made by litigants in person of the 'McKenzie friend' tool of an articulate lay assistant in court, although this has occurred on an ad hoc basis in the absence of any formal rules.

A Civil Procedure Guide for Litigants in Person is clearly required, as is a Practice Direction or Rules of Court regulating the extent to which non-qualified persons can assist litigants in person in court. Special case management measures may have to be adopted by judges in cases with litigants in person, such as limiting the amount of time allotted for cross-examination and submissions, and more carefully defining the issues at an early stage of proceedings.

Diversity issues

Ongoing judicial education is required to enable judges to dispense justice in a manner which earns the confidence of litigants from various backgrounds and to fulfil the central judicial mission of promoting equality before the law. An Equal Treatment Bench Book is clearly needed. Judicial appointment processes must also consciously promote diversity, especially in racial and gender terms, on the Bench.

Achievements

The creation of a Civil and Commercial Sub-Registry has increased the efficiency of filing and document management procedures.

The Judges have been assisted by the new Registrar's introduction of an electronic diary and her enthusiasm for various other ongoing modernising reforms.

The Commercial Court in conjunction with the Bermuda Bar Association and the Bermuda Development Agency through a brochure and conference speeches promoted Bermuda as a legal domicile while celebrating the 400th Anniversary of continuous courts in Bermuda.

The Commercial Court was invited to join the Singapore Supreme Court led Judicial Insolvency Network, which includes commercial judges from Australia, BVI, Cayman, England & Wales, Hong Kong and the United States. A Practice Direction on Court to Court Communications in Cross-Border Insolvency Cases will be adopted in early 2017.

The Commercial Court was also invited in 2016 to join an England & Wales led Standing International Forum of Commercial Courts which will first meet in London in May 2017.

2017 Goals

- ❖ Litigants in Person Guide
- ❖ Guidelines for the use of 'McKenzie friends' by litigants in person
- ❖ Equality and Diversity Bench Book for judges
- ❖ Guidelines for Communication and Cooperation between Courts in Cross-border Insolvency Matters

Supreme Court: Criminal Division

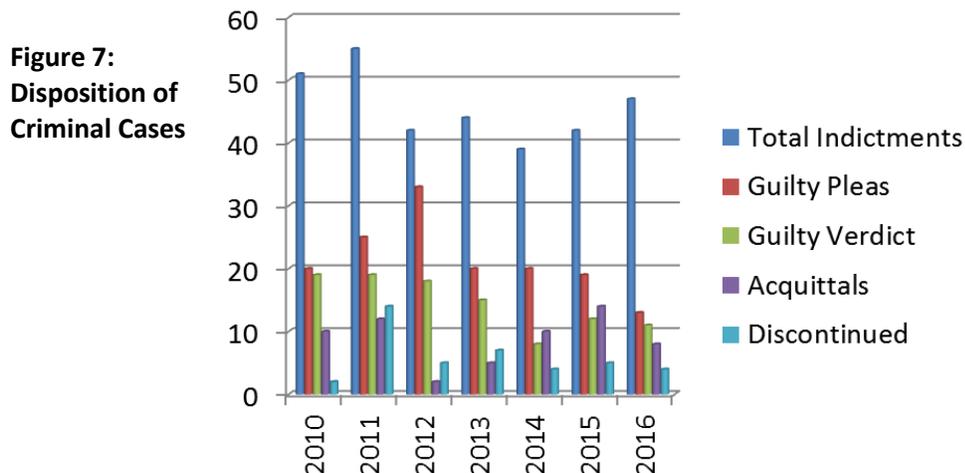
A Criminal Registry was established on the 3rd floor of the Dame Lois Browne-Evans Building at 58 Court Street in the City of Hamilton effective November 2016, and since that time, the majority of the criminal hearings have been conducted in former Magistrates Court #4 on the 2nd floor of the DLBE, which has now been designated the new Supreme Court Criminal Court #2.

In 2016, Justice Simmons and Justice Greaves heard the majority of criminal trial and pre-trial matters with assistance from Acting Justice Scott and Acting Justice Wolffe. Justice Simmons was appointed Supervising Judge of the Criminal List in 2016. The Chief Justice heard most of the criminal appeals from the Magistrates' Court.

Year in Review

In 2016, there were forty-seven new indictments, which was an increase of five or 12% from 2015. Eighteen cases were carried forward to 2017 as compared to thirteen for the previous year.

Year	Total New Indictments	Guilty Pleas	Guilty Verdict	Acquittals	Discontinued
2010	51	20	19	10	2
2011	55	25	19	12	14
2012	42	33	18	2	5
2013	44	20	15	5	7
2014	39	20	8	10	4
2015	42	19	12	14	5
2016	47	13	11	8	4



Challenges

The Criminal Jurisdiction and Procedure Act 2015 and the Disclosure and Criminal Reform Act 2015 came into effect at the end of 2015. Notwithstanding that, for cases sent up to Supreme Court, trial management continued to be a challenge in 2016. Many cases were prolonged or adjourned as a result of late disclosure of materials by the Crown or late defence applications raising issues such as abuse, fitness to plead, dismissal, joinder and severance.

The relocation of the Supreme Court Registry staff and the criminal courts from 113 Front Street and Sessions House to the Dame Lois Browne-Evans Building presented some initial scheduling challenges as the Registrar and Registry staff moved swiftly to ensure that there was no interruption in on-going matters and arraignments.

2017 Goals

The creation of a Criminal Sub-Registry and a Criminal Division Team has increased the efficiency of filings and the management of trials. It is hoped that this initiative will expand in 2017 and 2018 with the creation of a separate Criminal Division Registry at a refurbished Sessions House.

The Criminal Case Management Guidance Notes and Practice Direction Forms will come into effect on the 30 January 2017 and were commissioned and supervised by Justice Simmons. Counsel will be expected to comply with the new requirements, which should result in a more efficient case management system as well as efficiencies in the conduct of trials. These necessary reforms result from the tremendous effort of the Registrar in formulating and drafting Notes and Forms along with the valuable input and collaborative efforts received from the Department of Public Prosecutions, Crown Counsel, Senior Legal Aid Counsel and the Defence Bar during the consultation process. It is hoped that the recommended amendments to the relevant criminal legislation, particularly section 29 and 30 of the Criminal Jurisdiction and Procedure Act 2015, will be enacted in order to provide further clarity.

The introduction of Case Management Guidance Notes and Practice Direction Forms is the first step in the direction of an electronic case management system, which may be realized within the year.

In 2016, meetings took place with staff from the Mid Atlantic Wellness Institute with a view to streamlining the preparation and receipt of mental health reports. It is hoped that this joint initiative will continue to be implemented in 2017.

Supreme Court: Family and Matrimonial Division



In November 2016, a Matrimonial & Family Registry was established and was moved to the 3rd floor of the Dame Lois Browne-Evans Building (DLBE), where the Supreme Court Family Division was relocated in October 2015.

After the retirement of Justice Wade Miller in May 2016, the majority of these cases were determined by Justice Stoneham with some matters being heard by Justice Hellman.

Most applications are heard in Judge's Chambers, which remains located on the 3rd floor of DLBE. Divorce Court is typically listed on the last Friday of every month and as the petitions must be heard in open court, the hearings are usually held in one of the DLBE courtrooms.

The Matrimonial Causes Amendment Rules 2016, which came into effect in 2016, gave petitioners the ability to file an affidavit verifying the contents of their Divorce Petition thus alleviating the necessity of people having to appear in person to give evidence in support of their divorce petition.

The work being done to integrate mediation services into the matrimonial and family courts continued in 2016 with training programs being undertaken to facilitate increasing the number of mediators and creating a minimum qualification standard.

Year in Review

In 2016, the number of Petitions filed remained at the same level and there were no contested divorces in 2016.

Year	Total Petitions Filed	Contested Matters	Special Procedure List	Ordinary List
2010	243	0	20	223
2011	207	1	25	181
2012	190	2	22	166
2013	193	1	22	170
2014	194	0	15	179
2015	165	0	15	150
2016	164	0	15	149

2017 Goals

The number of Litigants in Person in matrimonial and family matters has significantly increased, largely due to the limited availability of Legal Aid and the ever increasing costs of legal representation. As this trend will likely continue into 2017, particularly for the average family, it is clear that consideration should be given to the establishment of a working group to formulate guidance and direction with respect to self-representing litigants, the use of McKenzie friends and the availability of mediation services and other forms of alternative dispute resolution.

The relocation of the Matrimonial and Family Registry to the DLBE building has brought us closer to realising the Unified Family Court system and it is anticipated that further steps will be taken in 2017.

With the Registrar's increased use of her judicial powers in matrimonial cases, and in the event of the grant of judicial powers to the Assistant Registrar, it is envisioned that the management of cases will become more streamlined.

Supreme Court: Probate Division

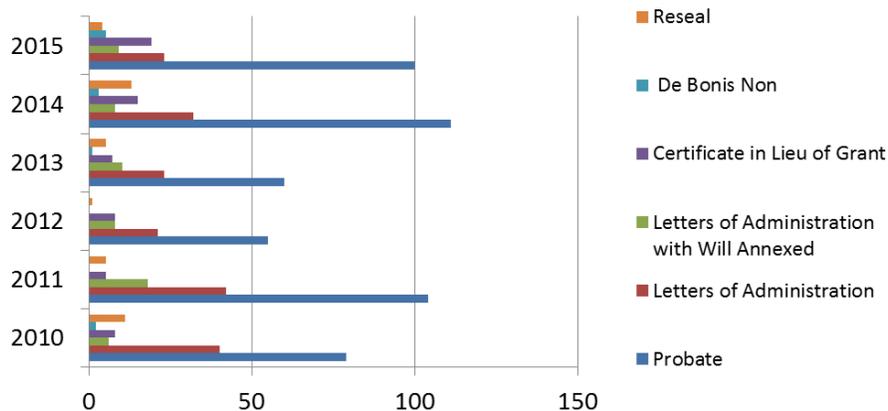
In November 2016, a separate Probate Registry was established and it is located on the 3rd floor of the Dame Lois Browne-Evans Building (DLBE).

Due to staff shortages, there has not been a dedicated probate officer responsible for processing probate applications, letter of administration applications, and applications for certificates in lieu of grant since 2015. The Registrar hopes to hire and establish a dedicated probate officer early in 2017 in order to address the backlog of applications.

Table 9: PROBATE APPLICATIONS FILED 2010-2016									
Year	Probate	Letters of Administration	Letters of Administration with Will Annexed	Certificate in Lieu of Grant (Small Estate)	De Bonis Non	Reseal	Total Grants	Caveats	Caveat Warning/Citation/Order to View Affidavit of Value
2010	79	40	6	8	2	11	146	29	
2011	104	42	18	5	0	5	174	34	
2012	55	21	8	8	0	1	93	6	
2013	60	23	10	7	1	5	106	19	
2014	111	32	8	15	3	13	186	48	
2015	100	23	9	19	5	4	160	38	9
2016	93	46	6	19	1	10	175	19	7

Table 9 – In 2016, there was a total of 175 grant applications filed; an increase of 9.5% compared to 2015. There were 19 fewer caveats filed, a decrease of 50%.

Figure 9: PROBATE APPLICATIONS FILED 2010 - 2016



Establishment List

Judicial Department - Supreme Court
As at December 31 2016

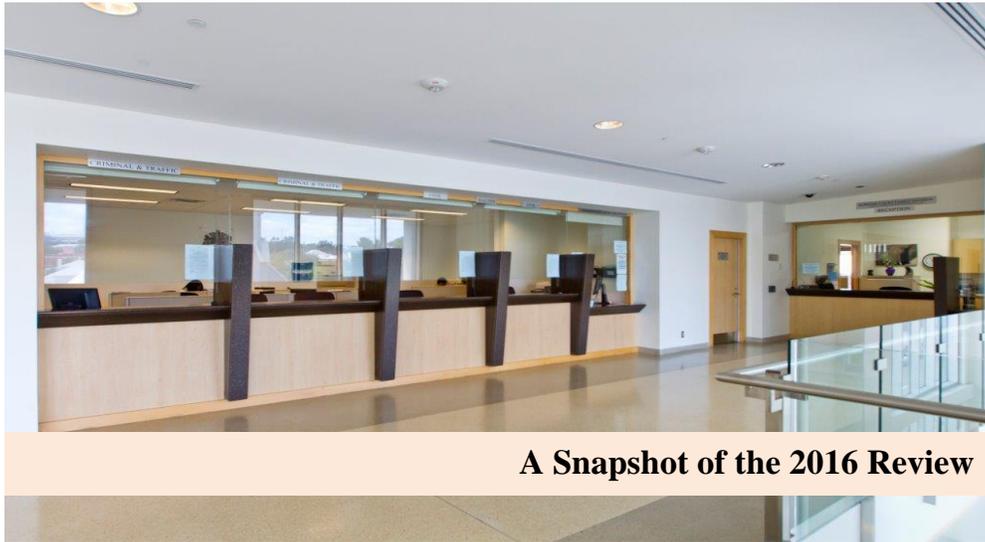
POST	OFFICER'S NAME
Chief Justice	I. Kawaley
Puisne Judge	C. Simmons
Puisne Judge	C. Greaves
Puisne Judge	S. Hellman
Puisne Judge	N. Stoneham
Registrar	S. Subair Williams
Assistant Registrar (Relief)	R. Barritt
Manager	D. Nelson-Stovell
IT Manager	F. Vazquez
IT Assistant	B. Mello
Litigation Officer	J. Lynch
Administrative Officer – Front Office (Civil) (Relief)	R. Wickham
Administrative Officer - Court of Appeal	Vacant
Accounts Officer/Librarian	Vacant
Administrative Assistant to Chief Justice	R. Walker
Administrative Assistant	A. Abdullah
Administrative Assistant to Puisne Judge	T. Perott-Loder
Administrative Assistant to Puisne Judge	J. Robinson
Administrative Assistant to Puisne Judge	L. Wilson
Administrative Assistant to Puisne Judge	S. Swan
Data Consolidator	Vacant
Court Associate	A. O' Connor
Court Associate	E. Simmons
Court Associate	Vacant
Court Associate	Vacant
Court Associate – Court of Appeal (Relief)	J. Smith-Tannock
Secretary/Receptionist	G. Symonds
Data Processor	S. Williams
Data Processor	C. Seymour
Court Attendant/Messenger	C. Fraser
Court Attendant/Messenger	V. Simons



**Statue of Dame Lois Bowne-Evans located at the
Dame Lois Browne-Evans Building**



Magistrates' Court: Year in Review



- ❖ **The Magistrates' Court welcomed Mrs. Maxanne Anderson** who primarily sits in the Family Court.
- ❖ The overall number of **Case Events** adjudicated in the Magistrates' Court decreased by 16%.
- ❖ **The total amount of Family Support cases have decreased by 5%.** Most notably however, there was a marked increase in the number of applications for Domestic Violence Protection Orders (DVPO's).
- ❖ There has been decrease in the number of juvenile cases heard in 2016.
- ❖ **Security enhancements** were carried out throughout the Dame Lois Browne-Evans Building and more will follow in the upcoming year.
- ❖ The Magistrates' Court continued to strengthen their administrative arm by completing the cross-training of five (5) Court Associates as Relief Cashiers. The cross-training allows for extra coverage during annual, sick and or special leave while also enhancing the skill sets of staff.

- ❖ In October 2016 Mental Health Court (MHC) commenced at a special Court sitting which was attended by local and overseas dignitaries, members of the Judiciary, MHC participants, family, and friends.
- ❖ **The in-house updating of the Magistrates' Court procedures** is a work-in progress. The staff are to be commended for their participation in making this a reality.
- ❖ In conjunction with the Department of Court Services efforts are presently underway to formulate a pilot Driving Under the Influence (DUI) Court. It is anticipated that this pilot DUI Court will be launched in mid-2017.
- ❖ Throughout 2016 the Magistrates had productive meetings with various stakeholders (such as Department of Court Services, the Department of Child and Family Services, and the Mid-Atlantic Wellness Institute) to reinforce, and where deemed necessary to improve, the efficiencies of the Courts and the stakeholders. It was a shared sentiment that such meetings were ultimately in the best interest of the public whom we serve.
- ❖ As part of its public educational component Magistrates' Court granted shadowing opportunities to ten (10) individuals who observed all Courts for periods of up to one (1) week each.
- ❖ **The Coroners Reports are currently up-to-date.**
- ❖ **In respect of the total number of Liquor Licences** granted there has been a decrease of 10%.
- ❖ There has been a decrease of 29% in the **total number of Occasional Liquor Licences granted between 2015 and 2016.**
- ❖ **The Bailiff Section saw an improvement in the** serving of all Court documents over the past year.
- ❖ **Over \$2 Million in Traffic Fines was paid into the Magistrates' Court in 2016.**
- ❖ **Ontario, Canada** was added as a Reciprocal Territory for the purposes of the reciprocal enforcement of judgments.
- ❖ The overall number of work days were reduced by two (2) as a result of an island-wide Emergency Measures directive to close all businesses due to Hurricane Nicole. **This closure affected the amount of funds collected in the Magistrates' Court in 2016.**
- ❖ The Coroner's Reports are currently up-to-date and this is due in large part to the efforts of the Coroner's Officer Sgt. Travis Powell and Magistrates' Court Administrative Assistant Patricia McCarter. In conjunction with the Registrar General efforts will be

made to decrease the time it presently takes for family members to receive death certificates.

- ❖ **The Request For Proposal (RFP) process**, for security services at the Magistrates' and Supreme Courts and the Department of Court Services was completed and has been renewed until 31 March 2018 with an option to extend the term of the contract for an additional year.

Key Achievements in 2016



- ❖ Staffing issues have been satisfactorily resolved with the granting of relief staff. It is hoped that these posts will be filled substantively in 2017.
- ❖ At the beginning of 2016, the Magistrates' Court Civil Section had a backlog of outstanding New Civil Documents (NCD's) which were not being processed in a timely manner due to staff shortages. In an effort to address the backlog and to ensure compliance with Financial Instructions, staff from other Sections assisted with inputting these documents in the Judicial Enforcement Management System (JEMS). Permission was granted to employ additional staff in the Civil Section and as a team they were able to process all of the NCD's by the end of July 2016, enabling litigants cases to be expeditiously adjudicated by a Magistrate.
- ❖ The Magistrates' Court staff assisted the Supreme Court with their seamless relocation to the Dame Lois Browne-Evans' Building in the latter part of 2016.

The Magistrates' Court

The Magistrates' Court has specialized Civil, Criminal/Traffic, and Family Courts to ensure a dedicated response to these issues. There are also the Drug Treatment Court and the Mental Health Court which seek to reduce offending behaviour by addressing the drug/alcohol and mental health challenges of offenders. There are no jury trials and all cases 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. Appeals from judgments of the Magistrates' Court are heard by the Supreme Court.



The Magistrates' Court provides funding for the Senior Magistrate, four (4) Magistrates' and acting appointments where necessary. The Magistrates' adjudicate upon Civil, Criminal/Traffic and Family matters which are reported below.

Hearings/Case Events	2012	2013	2014	2015	2016
Mentions	2,809	1,805	3,336	3,199	2,829
Trials	2,229	2,097	1,895	1,944	1,832
Case Events	24,009	25,876	24,715	26,971	23,292

Figure 1: Table of 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 Hearings/Case Events

In 2016 the number of Mentions, Trials and Case Events all declined between 2015 and 2016 (13%, 6% and 16% respectively).

There were two thousand eight hundred and twenty-nine (2,829) Mentions in Magistrates’ Court in 2016 which is three hundred and seventy (370) or 13% lower than the previous year. This figure is close to the average number of Mentions from the 2011 – 2015 period which was noted in The Bermuda Judiciary 2015 Annual Report.

The number of Trials in 2016, one thousand eight hundred and thirty two (1,832) is the lowest over the 2012 – 2016 period. While there was an increase in the number of Trails in 2015 there has been a consistent downward trend as it relates to Trials over the remaining years.

As shown in Figures 1 and 1A there were over 23,000 Case Events scheduled in Magistrates’ Court in 2012, 2013, 2014, 2015 and 2016. Ironically, in 2016 the total number of Case Events is the lowest over the past five (5) years.

Civil Court

The Civil Section is overseen by the Administrative Officer and is administered by three (3) Court Associates and an Administrative Assistant.

Over the past year discussions commenced regarding increasing the ceiling for civil claims to be heard in the Magistrates’ Court from \$25,000 to \$50,000. This remains a consideration.

The Civil Section adjudicated two thousand five hundred and forty-nine (2,549) new cases in 2016 which represents a reduction of one hundred and sixty-two (162) cases or 6% when compared to 2015.

The Civil Section of the Magistrates’ Court is now fully staffed following a period of uncertainty for approximately 6 months. In spite of the staffing challenges they worked as a team to clear up

all of the backlogged new civil documents bringing them completely up-to-date. The team of Court Associates were congratulated for a job well done!

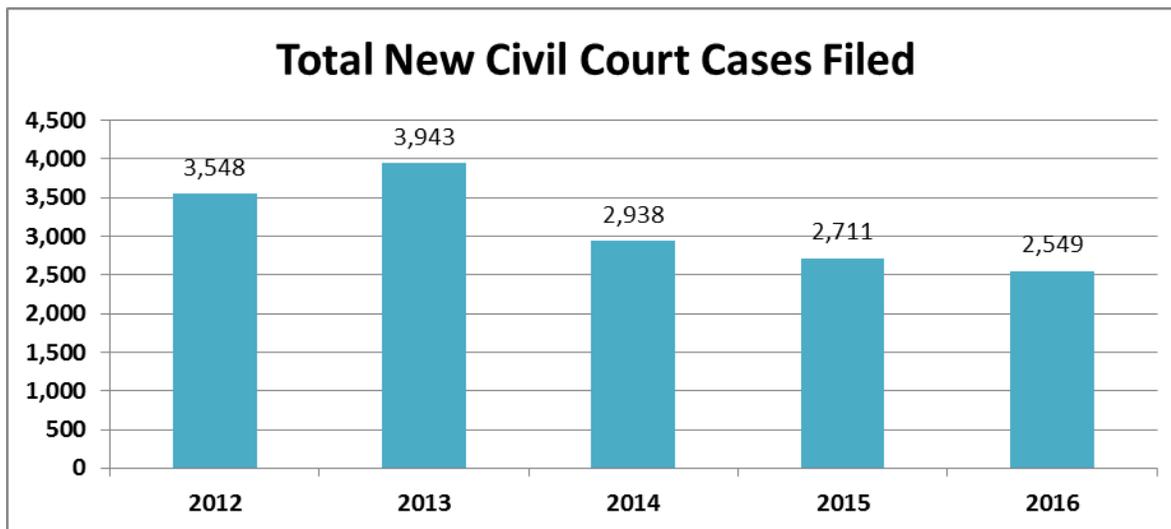
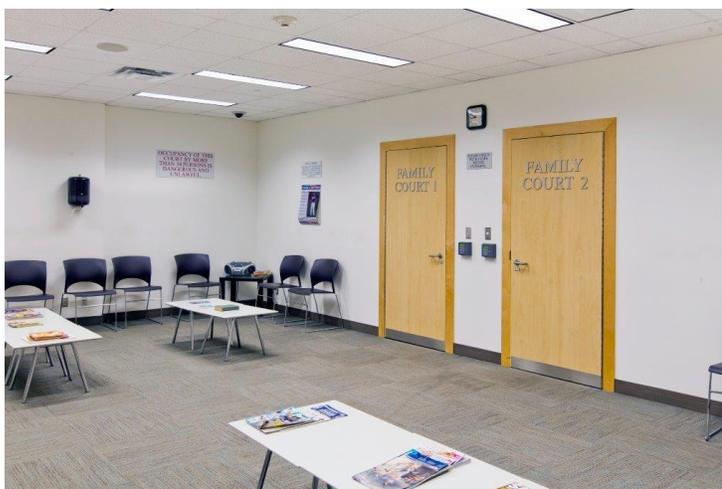


Figure 2: 2012 – 2016 Total New Civil Court Cases Filed

Family Court

The Family Court was established by Section 13 of the Children Act 1998 to exercise the jurisdiction conferred upon the Court by that Act.

There are two (2) Family Courts, each comprised of a Magistrate and two (2) panel members (male and female), pursuant to Section 12 of 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 specialized 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).

With the addition of three (3) new panel members at the start of 2016, the diversity of the Special Court Panel has grown and together with the existing long-standing members, they form a team

worthy of reputable accolades. They assist the Magistrates in decision making and their value to the Family Court and its continued success is beyond rapport.

In 2016 an accredited mediation training programme was completed and the Magistrates' Court played an integral part by assisting wherever needed and providing the facilities for our counterparts at the Supreme Court.

New Family Court Cases

In 2016 there was a 21% increase in the number of cases heard under the Children's Act 1988 in comparison to the 2015 statistics. There were 581 in 2014, 757 in 2015 and 919 in 2016. A trend is developing in this category. This can possibly be attributed to socio-economic factors as families continue to be affected by recessionary conditions (punctuated by unemployment).

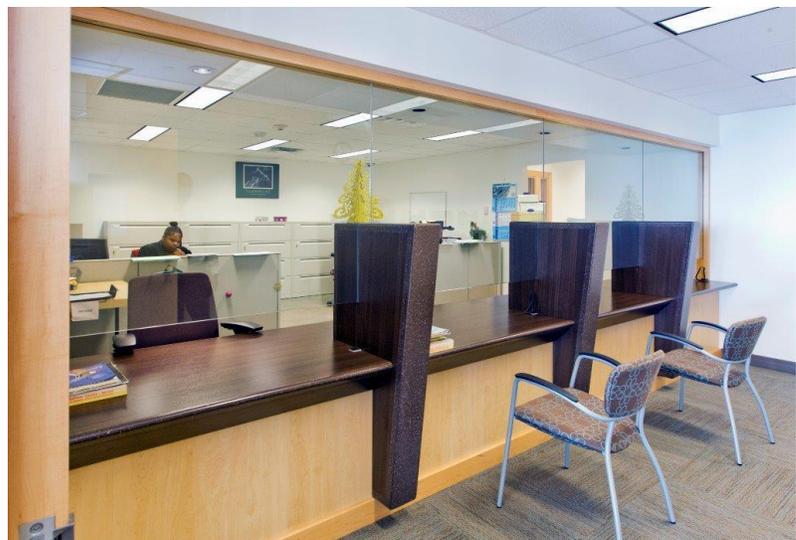
The number of new Family cases filed rose by 24% between 2015 and 2016. This is an indication that more persons are utilizing the Courts for this type of service.

The number of Domestic Violence Protection Orders (DVPO's) continue to increase with seventy-six (76) cases heard in 2016. This represents an increase of 13% when compared to 2015 and an increase of 43% compared to 2014. It is difficult to ascertain the root cause of the increased numbers of DVPO matters but it may partly speak to some of the social issues in the community. The number of new Family cases filed rose by 24% between 2015 and 2016. This is an indication that more persons are utilizing the Courts for this type of service.

In 2016 Ontario, Canada was added as reciprocating country which brings the total to twenty (20) reciprocating countries.

Family Court Administration

The Family and Child Support Section consist of two (2) Family Courts and two (2) Family Court Magistrates. They are administered by one (1) Supervisor – the Family Court Officer, an Enforcement Officer, an Administrative Assistant and three (3) Court Associates (formerly titled Court Clerks). One of the Court Associate's posts was vacated on 30 June 2016 and has remained unfilled; as such the Family Support Section has operated understaffed while managing to administer a heavy caseload.



Caseload

The total Family Court caseload for 2016 is 2,321 cases. This is a minor decline of 5% or (121) cases when comparing it to 2015 which saw a total caseload of 2,442. While the 2016 caseload is less than 2015 it is 11% higher than the 2014 figure. It is anticipated that as the island continues to face economic challenges that figure will increase in 2017.

Child Support Payments

There has been a noticeable decline in the total amount of Child Support Payments received over the past five (5) years as is illustrated in Figure 3. The total amount of Child Support collected during 2016 was \$4,266,083 which is 13% lower than 2015.

While the dollar value decreased there was an 11% increase in the number of Child Support payments received.

APPLICABLE LAW	TOTAL FAMILY LAW CASES		
	2014	2015	2016
Adoption Act 1963, Adoption Rules Act	3	17	11
*Children Act 1998 (Care Orders, Access, Maintenance, Care & Control)	581	757	919
Enforcement (All Case Types in Default)	1,107	1,308	1,011
New Reciprocal Enforcement (Overseas)	6	1	2
Matrimonial Causes Act 1974	28	40	33
Domestic Violence Act 1997 (Protection Orders)	53	67	76
**Juvenile Cases	73	128	115
New Cases Filed	156	124	154
Closed/Finalized Cases	80	0	0
ANNUAL TOTALS	2,087	2,442	2,321

Figure 3: Table of Total Family Law Cases 2014-2016

**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 (15 years old & under).*

Criminal & Traffic Section

The Criminal and Traffic Section are administered by one (1) Supervisor – Records Supervisor, one (1) Senior Administrative Assistant, one (1) Administrative Assistant (formerly titled Secretary) and three (3) Court Associates (formerly titled Court Clerks). They provide case management and court services related to the resolution of criminal and traffic cases. This Section was at full strength for a better part of the year and as such was able to process all of the traffic cases in a timely manner.

TOTAL NEW CASES (Filed)	*2012	2013	**2014	2015	2016
Criminal	702	823	684	610	584
Traffic	7,316	10,248	8,565	9,538	9,736
Parking	11,256	7,688	5,901	4,769	4,519

Figure 4: Total New Cases Filed with the JEMS system 2012-2016

*Revised up from the 2012 Report due to JEMS usage.

**The 2014 figure does not represent the actual number of tickets issued.

Total New Cases (Filed)			
Month	Criminal	Traffic	Parking
Jan	38	774	351
Feb	45	1,216	422
Mar	40	606	397
Apr	31	737	452
May	57	689	285
Jun	56	643	440
Jul	50	777	432
Aug	77	925	450
Sep	61	883	385
Oct	42	960	254
Nov	46	1,009	311
Dec	41	517	340
TOTALS:	584	9,736	4,519

The number of new Criminal matters filed at the Magistrates' Court declined by 4% from six hundred and ten (610) in 2015 to five hundred and eighty-four (584) in 2016.

The downward trend continued as it relates to the new Parking Ticket cases. There was a 5% decline from four thousand seven hundred and sixty-nine (4,769) tickets in 2015 to four thousand five hundred and nineteen (4,519) tickets in 2016.

Alternatively, there was a rise in the number of new Traffic offences adjudicated in the Magistrates' Courts during 2016. The slight increase from nine thousand five hundred and thirty-eight (9,538) cases in 2015 to nine thousand seven hundred and thirty-six (9,736) cases in 2016 represents a 2% increase.

Figure 4A: 2016 Table of New Criminal, Traffic and Parking Cases Filed by Month.

It should be noted that there were over five hundred (500) Traffic cases adjudicated every month throughout the past year and in February and November there were over one thousand (1,000) cases adjudicated. The use of two (2) Courts continued when there was a high volume of Traffic matters on a given day. The Courts ran simultaneously in an effort to ensure that defendants were processed efficiently.

TOTAL CASES (Disposed)	*2012	2013	2014	2015	2016
Criminal	1,400	1,227	436	497	407
Traffic	4,800	8,834	7,640	9,002	8,518
Parking	No Data	No Data	4,816	4,110	3,603

Figure 5: Table of Total New Cases Disposed by a Magistrate 2012 – 2016 (Criminal, Traffic & Parking)
 *Revised up from the 2012 Report due to JEMS usage.

The total number of Criminal, Traffic and Parking cases disposed all decreased by 18%, 5% and 12% respectively. There was a notable decline in the number of Criminal cases disposed from four hundred and ninety-seven (497) in 2015 and four hundred and seven (407) in 2016. (Figure 5 refers.)



Court #2

Top 10 Criminal Offences 2012 – 2016

Offence Code	Offence Description	Offence Count				
		2012	2013	2014	2015	2016
2071	OBTAINING PROPERTY BY DECEPTION	35	92	(3) 60	(6) 36	
2010	STEALING (BELOW \$1000)	77	83	(1) 78	(4) 59	(2) 84
2156	ASSAULT (ABH)	83	71	(4) 56	(1) 72	(1) 88
2300	POSSESSION OF CANNIBIS	91	68	(2) 61	(3) 60	(3) 68
4032	THREATENING BEHAVIOUR	80	65	(3) 60	(5) 50	(6) 27
2127	BURGLARY (NEW)	63	58	(5) 53	(2) 64	(4) 55
2152	ASSAULT (COMMON)	60	45	(6) 48	(7) 35	(7) 24
2067	HANDLING/RECEIVING STOLEN GOODS	49	42	(10) 27	(8) 34	(10) 21
4026	OFFENSIVE WORDS	65	33	(7) 35	(9) 32	(9) 22
2144	WILFUL DAMAGE GT 60	38	27	(9) 28		(5) 29
2091	TAKE VEHICLE AWAY W/O CONSENT			(8) 29	(8) 34	
2316	POSS CANNABIS WITH INTENT			(9) 32	(8) 34	(8) 23
2392	POSS DRUG EQUIP PREPARE					(10) 21
6506	DOG UNLICENCE				(10) 29	(10) 22

Figure 6: Table of Top 10 Criminal Offences 2012 – 2016

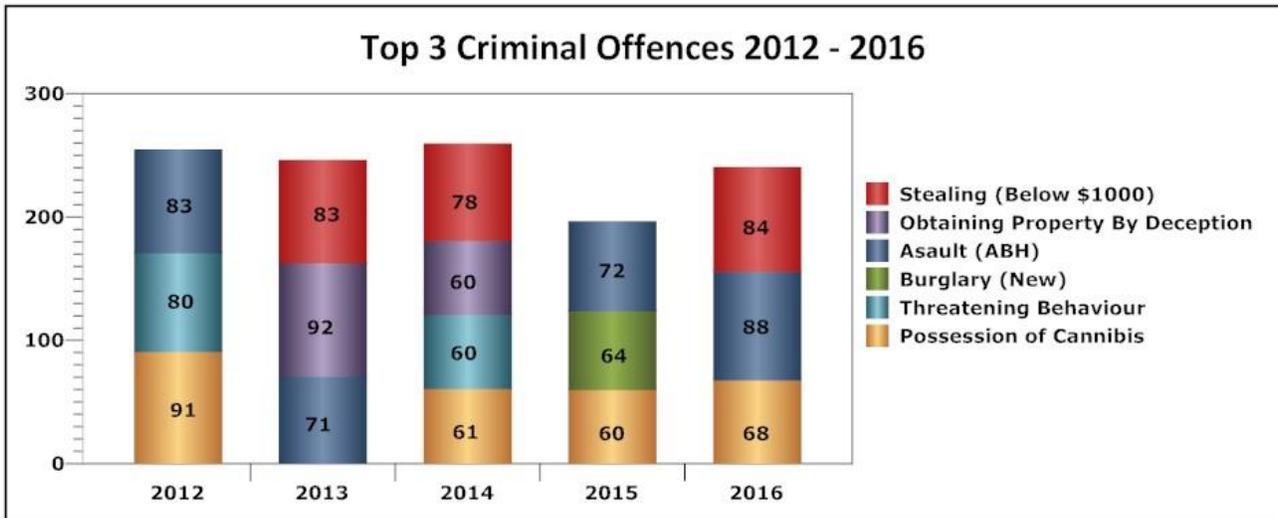


Figure 6A: Table of Top 3 Criminal Offences 2012 – 2016

The Top 3 Criminal Offences in 2016 are as follows:-

1. Assault (ABH)
2. Stealing (Below \$1000)
3. Possession of Cannabis

The top three (3) Criminal offences varied slightly between 2015 and 2016. For two (2) consecutive years the Assault (ABH) offence remained constant as the #1 crime committed. There were 88 cases in 2016 which represents an 18% increase from 2015 and demonstrates a steady increase year over year since 2012.

The Stealing (Below \$1000) offence, which was the fourth highest in 2015, is the second highest in 2016. This represented a 30% increase.

The third highest offence is Possession of Cannabis which has consistently been in the Top 3 offences for the past five (5) years, with the exception of 2015, when it was the fourth highest. It is to be noted that there were seven (7) offences consistently in the Top 10 Offences over the past five (5) years. These offences are as follows: - Stealing (below \$1000), Burglary (New), Assault (Common), Assault (ABH), Possession of Cannabis, Offensive Words and Threatening Behaviour. *(Figure 6 and 6A refers)*

Top 10 Traffic Offences 2012 – 2016

Offence Code	Offence Description	Offence Count				
		* 2012	2013	2014	2015	2016
3002	SPEEDING	2,011	2,384	(1) 3,053	(1) 4,043	(1) 4,411
3007	DISOBEY TRAFFIC SIGN	101	1,649	(3) 1,055	(2) 1,228	(2) 1,490
3147	USE OF HANDHELD DEVICE WHILST DRIVING	637	1,161	(2) 1,058	(3) 841	(4) 544
3013	SEAT BELT NOT FASTENED	35	675	(5) 438	(7) 369	(7) 225
3234	NO DRIVERS LICENSE/PERMIT	249	575	(4) 545	(4) 730	(3) 819
3080	NO 3 RD PARTY INSURANCE	329	346	(6) 379	(5) 473	(5) 468
3229	UNLICENSED MOTOR BIKE	194	296	(7) 351	(6) 431	(6) 431
3070	DRIVE W/O DUE CARE & ATTENTION	179	210	(9) 143	(9) 177	(8) 162
3058	IMPAIRED DRIVING A MOTOR VEHICLE	202	206	(8) 154	(10) 170	(10) 125
3190	FAILURE TO WEAR HELMET	41	185	(10) 131		
3228	UNLICENCED MOTOR CAR				(8) 180	(9) 135

Figure 7: Table of the Top 10 Traffic Offences from 2012 – 2016

*2012 figures were revised from those stated in the 2012 Annual Report using JEMS system.

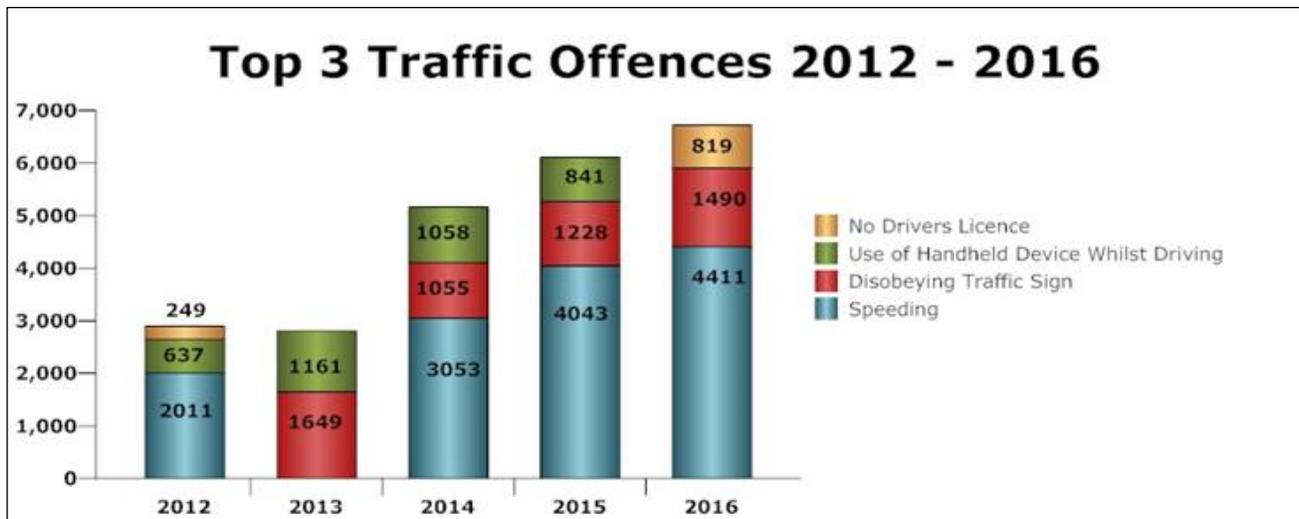


Figure 7A: Table of the Top 3 Traffic Offences from 2012 – 2016

The Top 3 Traffic Offences for 2016 are as follows:-

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

The Top 3 Traffic Offences have all seen a noticeable increase with Speeding listed as the top offence from 2012 to 2016. There was an 8% increase when compared to 2015 and a 30% increase over 2014. Speeding and Disobeying a Traffic Sign remain the Top 2 offences while the No Drivers Licence/Permit (#3) and Use of Handheld Device Whilst Driving (#4) offences switched places in the Top 10 listing.

The offence of “Disobeying Traffic Sign” saw an increase of 262 cases between 2015 and 2016. The 2016 figure is 29% or four hundred and thirty five (435) cases higher than in 2014 but is 11% or one hundred and fifty nine (159) cases lower than the 2013 figure. It is to be noted that there was a significant decrease of 36% or five hundred and ninety four (594) cases in this offence between 2013 and 2014. However, the number of cases for 2014-2015 and 2015-2016 have been increasing at an average rate of 16%, but the number of cases has not surpassed the 2013 figures.

The “No Drivers License/Permit” offence has seen an astronomical climb from two hundred and forty nine (249) cases in 2012 to 819 cases in 2016. This is the first time that this offence has also moved into the Top 3 Traffic offences.

It is important to note that the offence of “Use of Handheld Device Whilst Driving” has for the first time dropped out of the Top 3 Traffic offences. There were five hundred and forty four (544) cases in 2016 which is the lowest number of cases for this offence since 2012.

The balance of the Top 10 Traffic offences in 2016 all saw a decline in the number of cases in comparison to 2015.



Warrants

Outstanding Warrants

For five (5) consecutive years (2012 – 2016) the number of Outstanding Warrants has steadily increased. In 2016 there were ten thousand five hundred and forty-eight (10,548) outstanding warrants within Magistrates' Court which is a 6% increase over the 2015 figure. Outstanding Warrants for criminal and traffic offences fall under three (3) categories which are as follows: - Committals, Summary Jurisdiction Apprehensions (SJA) and Apprehensions.

There was a remarkable increase of 23% as it relates to Committals from six hundred and one (601) in 2015 to seven hundred and thirty-eight (738) in 2016. The number of SJA's increased by 3% from three thousand and ninety-two (3,092) in 2015 to three thousand one hundred and ninety-six in 2016. The number of Apprehensions also increased from six thousand two hundred and six (6,206) to six thousand six hundred and fourteen (6,614) or 7% in 2016.

The total amount of unpaid fines that have accrued as a result of warrants not being executed has risen to \$2,096,167.51 as at 31 December, 2016. In order to reverse the current trend adequate resources would be essential to execute these outstanding warrants. Interagency collaboration would be beneficial. Consideration could be given to offering litigants incentives of discounts so as to encourage the payment of outstanding fines to combat the reduction of warrants. Presently, 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.

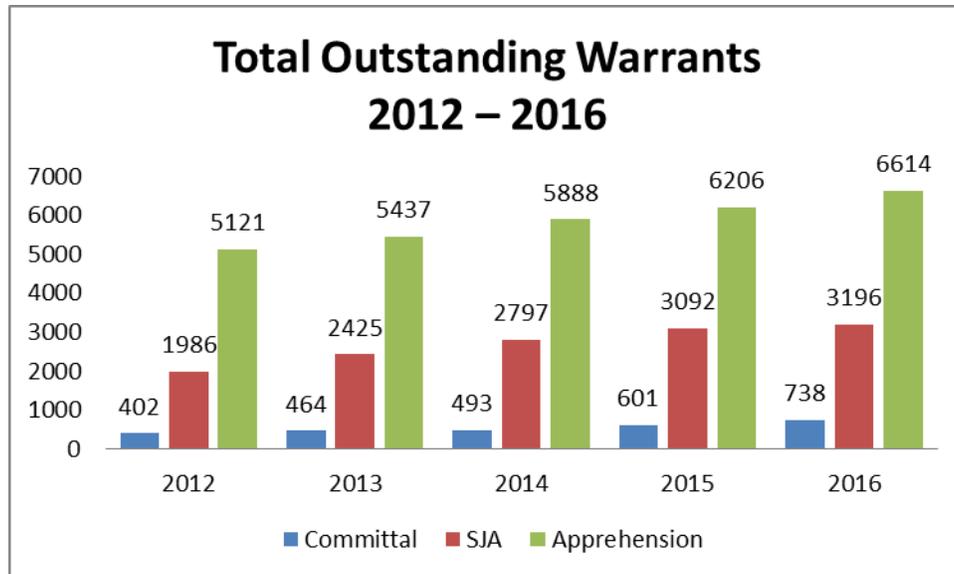


Figure 8: Outstanding Warrants (Apprehension, Summary Jurisdiction Apprehension (SJA) and Committal)

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.



Police and Criminal Evidence Act (PACE) Warrants

PACE Warrants 2012-2016	Legislation	2012	2013	2014	2015	2016
Special Procedure Applications	Telephonic	94	67	66	96	75
	Banking	15	3	12	11	5
	Internet	0	0	1	22	2
	Medical	3	1	1	3	1
	Courier	0	0	0	0	0
	Law Firm/Legal	0	0	1	1	0
	Travel Agents/Airlines	0	1	1	0	2
	Insurance	0	1	0	0	1
Order of Freezing of Funds		1	0	0	0	1
Order Release of Seized Cash/Property		3	6	8	5	7
Continued Detention of Seized Cash		81	72	13	33	95
Search Warrants	Misuse of Drugs Act	29	60	54	65	73
	Firearms	14	27	19	19	41
	Sec. 8/Sec. 15 PACE Act	20	11	18	39	17
	Revenue Act(Customs)	5	2	0	0	2
	Criminal Code 464	2	0	0	0	0
Production Order (Customs)		11	0	0	1	0
Production Order 'PATI' - Public Access To Information		0	0	0	1	0
TOTAL OF ALL TYPES		278	251	194	296	322

Figure 9: Table of 2012 - 2016 PACE Warrants

The number of PACE Warrants increased by twenty-six (26) or 9% for the period January – December 2016 when compared to the 2015 figure. The overall total of three hundred and twenty-two (322) PACE Warrants is the highest over the past five (5) years as is illustrated in Figure 9.

The warrant type ‘Continued Detention of Seized Cash’ for the second year in a row saw a significant increase. There were thirty-three (33) in 2015 and ninety-five (95) in 2016 which represents an over 200% increase year over year.

Second to this, as it relates to significant increases, was the warrant type ‘Search Warrants – Firearms’. There was an increase of over 100% from nineteen (19) in 2015 to forty-one (41) in 2016. Although the number of murders by the use of firearms decreased in 2016, there was an increase in the number of firearms offences.

While the telephonic and internet warrants, which fall under the remit of Special Procedure Applications, each saw an increase in 2015, alternatively in 2016 there was a decrease of 22% and 91% respectively.



Coroner's Reports/Cases

Causes of Death	2012	2013	2014	2015	2016
Natural Causes	72	57	63	60	59
Unnatural Causes	3	6	3	10	3
Murders	4	5	3	4	7
Drowning	3	1	4	3	3
Road Fatalities	8	10	14	8	11
Undetermined	4	3	0	1	0
Hanging	3	1	1	1	2
Strangulation	0	0	0	0	0
Suspicious	0	0	0	0	0
Unknown	n/a	n/a	1	3	3
TOTAL	97	83	89	90	88

Figure 10: Table of Causes of Death in Coroners Cases 2012 – 2016

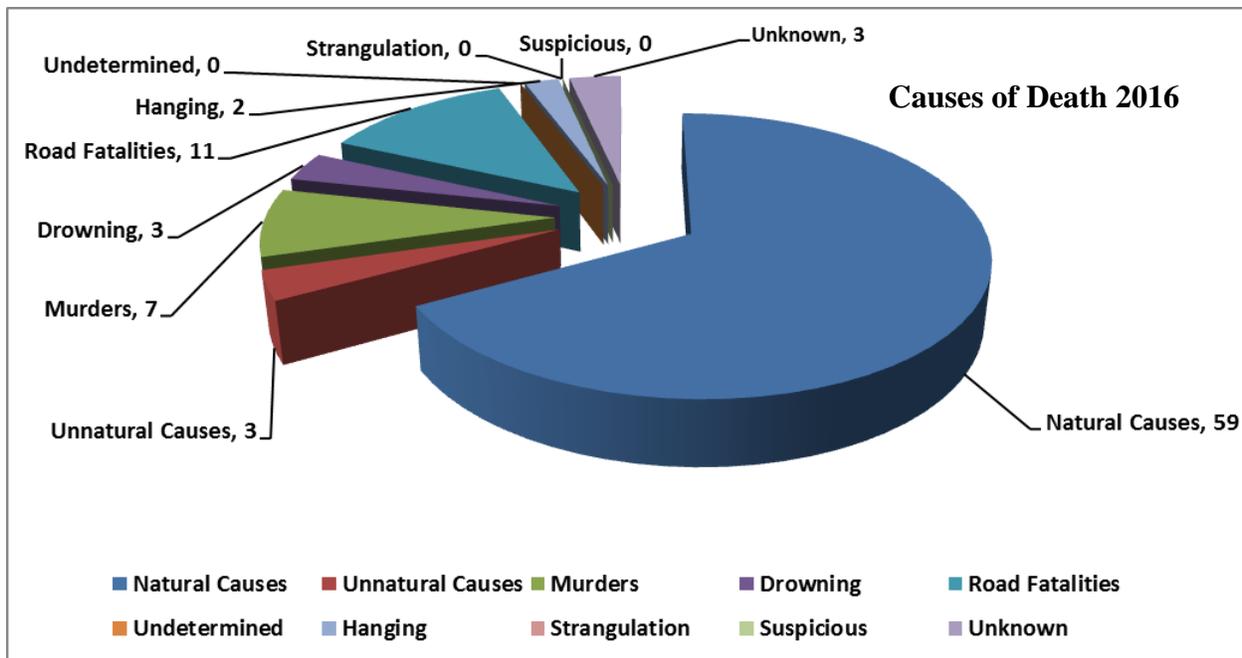


Figure 10A: Table of 2016 Causes of Death in Coroners Cases

The Coroner reviewed eighty-eight (88) Coroner’s deaths from January – December 2016. The Coroner’s death totals decreased by two (2) for that period. The ‘Unnatural Causes’ statistic declined from ten (10) in 2015 to three (3) in 2016. This represents a 70% decline but is equal to the number of ‘Unnatural Causes’ in the 2012 and 2014 statistics.

While there was a notable decline in the number of ‘Road Fatalities’ between 2014 and 2015, unfortunately there was an increase of three (3) ‘Road Fatalities’ or 38% in 2016 when compared to 2015. Likewise, there was a significant increase in the number of ‘Murders’ which was up from four (4) in 2015 to Seven (7) this past year.

The number of ‘Natural Causes’ of death (59) remains as the predominant cause of death over the past 5 years.

Court Administration

The Court Administration Section includes the following six (6) staff: - the Court Manager, Administration Officer (formerly titled Office Manager), Accounts Officer (formerly titled Head Cashier), two (2) Court Associates (formerly titled Cashiers) and an Administrative Assistant (formerly titled Secretary). They provide support and overall control of the personnel, facilities and financial resources of the Magistrates’ Court.

Cashier's Office

The Magistrates' Court Cashier's Office collected \$7,994,190 (seven million nine hundred and ninety four thousand one hundred and ninety dollars) in 2016. This includes all categories (inclusive of Child Support) and represents an 11% decline or \$1,024,149 (one million twenty four thousand one hundred and forty nine dollars).

The Traffic, Parking and Criminal Fines all saw a moderate decline in 2016 of 14%, 18% and 15% respectively. While there was a decline in the amount of proceeds received from Civil Fees, alternatively there was an increase in the number of payments by 24% from 3,968 in 2015 to 4,909 in 2016. (*Figure 11 and 11A refers*)

The only category which had a noteworthy increase in the amount of fees received and number of payments made was the 'Miscellaneous Fees' category. This encompasses the following types of payments: - Legal Aid deposits, Criminal Records Request and copies, and certified copies, etc. There was an 18% increase in the proceeds received under 'Miscellaneous Fees' and a 53% increase in the number of payments.

The total number of Payment Types made to the Cashier's Office for 2016 was 46,417 which represents a further deduction of 4% when compared to 2015. There has been a downward trend over the past four (4) years in the total number of payments received at the Magistrates' Court.

Cashier's Office Payment Types by \$ Amount					
Payment Types (By \$ Amount)	2012	2013	2014	2015	2016
Civil Payments	\$664,664	\$669,312	\$612,425	\$640,222	\$653,817
Civil Fees	\$278,010	\$300,685	\$256,790	\$207,748	\$203,535
Traffic Fines	\$1,456,078	\$1,788,130	\$1,828,645	\$2,445,881	\$2,116,050
Parking Fines	\$496,450	\$312,650	\$249,450	\$209,300	\$171,500
Criminal Fines	\$228,443	\$190,687	\$139,888	\$181,821	\$154,329
Liquor License Fees	\$328,340	\$329,210	\$332,942	\$349,405	\$349,550
Pedlar's License Fees	\$11,070	\$12,870	\$10,440	\$11,160	\$0
Misc. Fees (Including Bailiffs)	\$26,088	\$41,649	\$38,106	\$24,716	\$29,326
Family Support	\$5,487,566	\$5,250,135	\$5,023,883	\$4,898,084	\$4,266,083
TOTAL COLLECTED	\$8,980,794	\$8,895,436	\$8,492,739	\$8,968,339	\$7,944,190

Figure 11: Cashier's Office Payment Types (By \$ Amount) 2012-2016

Cashier's Office Payment Types by Number					
Payment Types (By Number)	2012	2013	2014	2015	2016
Civil Payment (Attach of Earnings)	2,826	3,221	3,575	3,968	4,909
Civil Fees	7,403	9,023	7,364	5,774	5,632
Traffic Fines	6,482	10,269	8,166	9,627	8,905
Parking Fines	9,933	6,253	4,989	4,185	3,722
Criminal Fines	396	385	294	404	398
Liquor License Fees	450	443	455	487	457
Pedlar's License Fees	123	143	116	129	0
Miscellaneous Fees	551	677	851	850	1,299
Family Support	25,669	25,979	23,450	22,705	25,322
TOTAL PAYMENTS PROCESSED	53,879	56,392	49,260	48,152	46,417

Figure 11A: Cashier's Office Payment Types (By Number) 2012-2016

Although there was a decline in the overall Payment Types, the 'Civil Payments – Attachment of Earnings' increased by 24% from 3,968 in 2015 to 4,909 in 2016. Similarly, the number of Family Support payments also rose by 12% from 22,705 in 2015 to 25,322 in 2016.

Liquor Licenses

There were a total of five hundred and sixty-one (561) Liquor Licenses granted in 2016. While the overall total saw a 15% decline the Central and Eastern Districts both increased in numbers by 3% and 14% respectively. Likewise, there was a significant downturn in the number Occasional Licenses granted (267) in 2016. This was the lowest over the past five (5) years and represents a 29% decrease between 2015 and 2016.

DISTRICTS	2012	2013	2014	2015	2016
Central District	153	164	169	174	180
Western District	63	54	56	57	57
Eastern District	52	44	48	50	57
Occasional Licenses	374	338	326	378	267
TOTAL LICENSES ISSUED	642	600	599	659	561

Figure 12: Table of 2016 Liquor Licenses granted by District

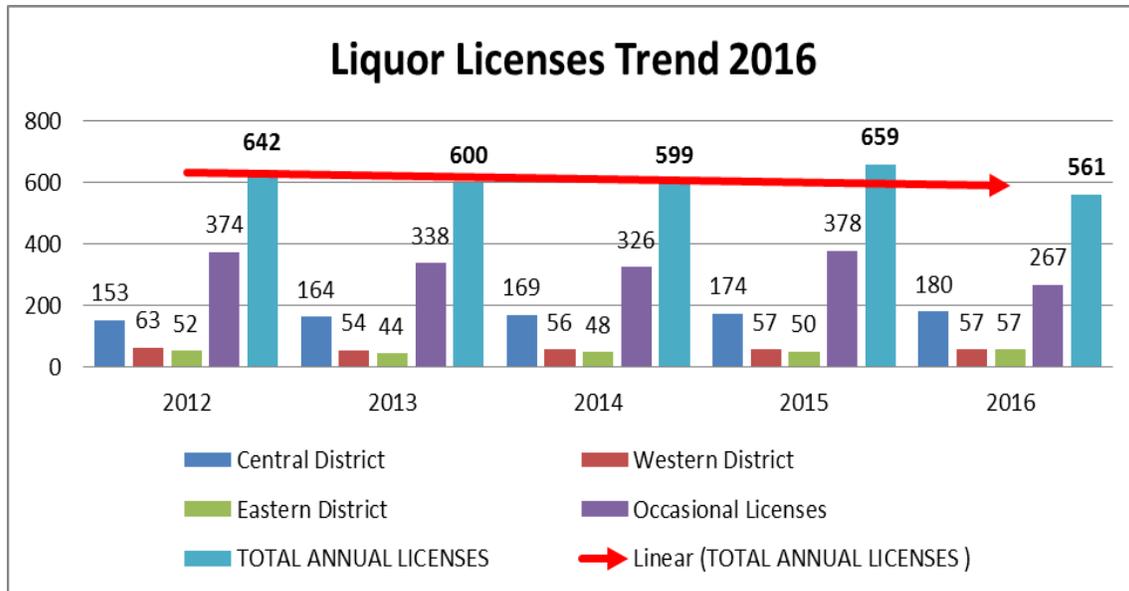


Figure 12A: Table of 2016 Liquor Licenses Trend Line

Bailiff's Section

Execution and Service

In 2016 there was a slight increase of 5% in the total receipt of new Court documents for service by the Bailiffs Section. The number of Court documents received encompasses the Supreme, Magistrates' and Family Courts.

It is to be noted that the Bailiff Section was reduced to three (3) substantive Bailiffs in late 2015 until one of the vacant post was filled in September 2016. Unfortunately, the remaining post is frozen until September 2017. Additionally, in March 2016, in an effort to offer upward mobility opportunities within the Magistrates' Court, the Administrative Assistant was filled via secondment while the job description review process continued.

Although there was an increase in the documents received for service, the Bailiffs managed to improve on their service rate over the previous year by executing 72.9% of the documents that were assigned to them. This was primarily accomplished by making a greater effort in the amount of attempts that were made to service documents which was 37% higher in comparison to the attempts made in 2015.

It should be noted that there was an increase of 10% in the number of Family Court documents for service by the Bailiffs Section. Of these documents there was a 36% increase with Domestic Violence Orders (DVOs) which were all executed by the Bailiffs.

Likewise, the Civil Court also had an increase of documents for service by the Bailiffs. This was primarily with the issuing of 'Eviction Warrants' and 'Warrants of Arrest.' There was a 44%

increase of ‘Eviction Warrants’ compared to the 2015 figures which had a completion rate of 53% due to some of the cases being under appeal.

There was a 26% increase of ‘Warrants of Arrest’ in comparison with the 2015 figures with the Bailiffs managing to execute 76% of those documents.

The Supreme Court had a 28% reduction of documents issued for service by the Bailiff’s Section. It is noteworthy to state that the majority of these documents or 93% were executed by the Bailiff Team. In relation to property sales for the recoupment of funds to settle indebtedness of Judgment Debtors, four (4) auctions were organized without having any success due to no valid offers being made.

In 2016 the Bailiffs obtained possession of thirteen (13) properties for Judgement creditors as a result of Writs of Possession that were issued by the Supreme Court. There was a moderate decline in the number of property possessions in 2016. This decreased by 35% or seven (7) properties as compared to the 2015 figures.

2012 – 2016 Annual Statistics for the Bailiff’s Section

DOCUMENT TYPES	2012	2013	2014	2015	2016
Ordinary Summons	1,230	1,029	638	610	523
Supreme Court Documents	232	311	307	270	210
Family Court Documents	568	641	757	798	892
Committal Applications	908	1,199	1,119	1,523	1,401
Warrants	1,150	1,172	1,147	414	685
Evictions	45	44	42	29	52
TOTALS	4,133	4,396	4,010	3,644	3,763

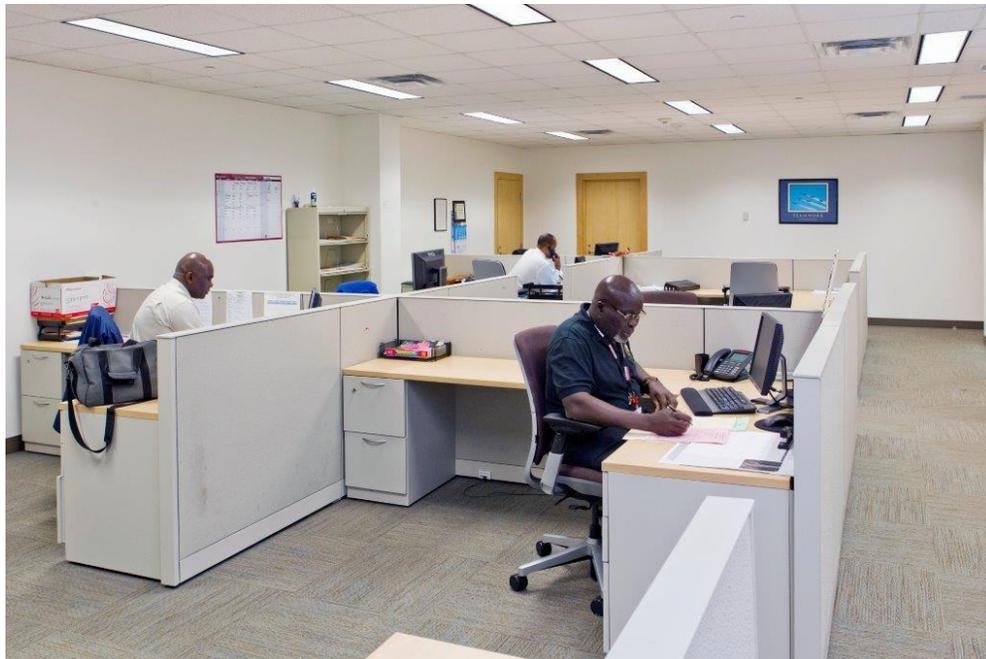
Figure 13: Table of 2012 – 2016 Annual Bailiff Document Types

Bailiffs' Paper Service for 2016

Documents: January - December 2016						
Document Type	Assigned	Exec/Served/Etc	Unable to Locate	Can/Withdrawn	Attempts	Bal
Bill of Cost	0	0	0	0	0	0
Committals Applications	1412	839	13	146	2165	414
Evict Warrants	52	34	0	3	84	15
Foreign Documents	53	53	0	0	0	0
Judgement Summons	157	142	4	4	198	7
Notice of Hearing	105	81	9	1	68	14
Ordinary Summons	590	474	27	19	782	70
Protection Orders	66	62	0	4	66	0
Summons	687	550	67	6	654	64
Warrants of Arrest	902	687	8	84	1150	123
Writs	33	31	1	1	9	0
Other Documents	21	20	1	0	0	0
Totals	4078	2973	130	268	5176	707

Average Rate of Service	72.90%
Average Rate of Unable to Locate	3.19%
Average Cancellation Rate	6.57%

Figure 13A: Table of 2016 Monthly Statistics – Bailiff Paper Service



2016 Administrative Initiatives

- In keeping with the recommendations from the Management Services Review, the Magistrates' Court are in the process of reviewing and updating all of the job descriptions for the administrative staff to put them in line with like positions throughout Government.
- The Magistrates' Court Organization Chart was updated and approved.

The Mental Health Treatment Court Programme is now in full operation with a statutory framework. Participants are enrolled in the programme by means of Probation Orders, with a condition to enroll and participate. In addition, programmes and services to this offender population have been more regular, and there has been noted growth and development in participants and their compliance to treatment, and key stakeholders are working collaboratively. Further the incidence of criminal activity amongst participants is still minimal. As the programme unfolds, with the supporting legislation, existing gaps will be addressed and services expanded.

- It is anticipated that in mid-2017 the Driving Under the Influence (DUI) Court will be implemented on a pilot basis to assist individuals in addressing their alcohol related offences. In February 2017 the Magistrates' Court and the Department of Court Services will be undergoing training in respect of the operation of DUI Court.

Establishment List

Judicial Department - Magistrates Court 2016/2017

POST	OFFICER'S NAME
Senior Magistrate	J. Wolffe
Magistrate	K. Tokunbo
Magistrate	A. Warner
Magistrate	T. Chin
Magistrate	M. Anderson
Court Manager	A. Daniels
Family Support Officer	C. Furbert
Head Bailiff/Dep. Provost Marshal General	C. Terry
Administration Officer	P. Rawlings
Administrative Assistant	VACANT
Enforcement Officer	A. Smith
Records Supervisor	J. Thomas
Accounts Officer	D. Lightbourn
Sen. Admin. Asst. to the Sen. Mag. & to Court #2	N. Williams-Grant
Administrative Assistant to Court #1	D. Richardson
Administrative Assistant to Court #3	D. Cruickshank
Administrative Assistant – (Family)	V. Trott
Court Associate (Family)	A. Williams
Court Associate (Family)	K. Bassett
Court Associate (Family)	VACANT
Court Associate (Civil)	S. Bailey (Relief)
Court Associate (Civil)	C. Lambert (Relief)
Court Associate (Civil)	S. Burrows (Relief)
Court Associate	N. Hassell
Court Associate (Criminal/Traffic)	W. Butterfield
Court Parking Ticket Clerk (Criminal/Traffic)	S. Wilson (Relief)
Administrative Assistant – (Bailiffs' Section)	C. Foggo (Secondment)
Bailiff	FROZEN
Bailiff	D. Millington
Bailiff	H. Beckles
Bailiff	D. Yarde
Bailiff	M. Brangman
Court Associate (Cashier)	T. Mahon
Court Associate (Cashier)	S. Borden

DAME LOIS BROWNE-EVANS BUILDING

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