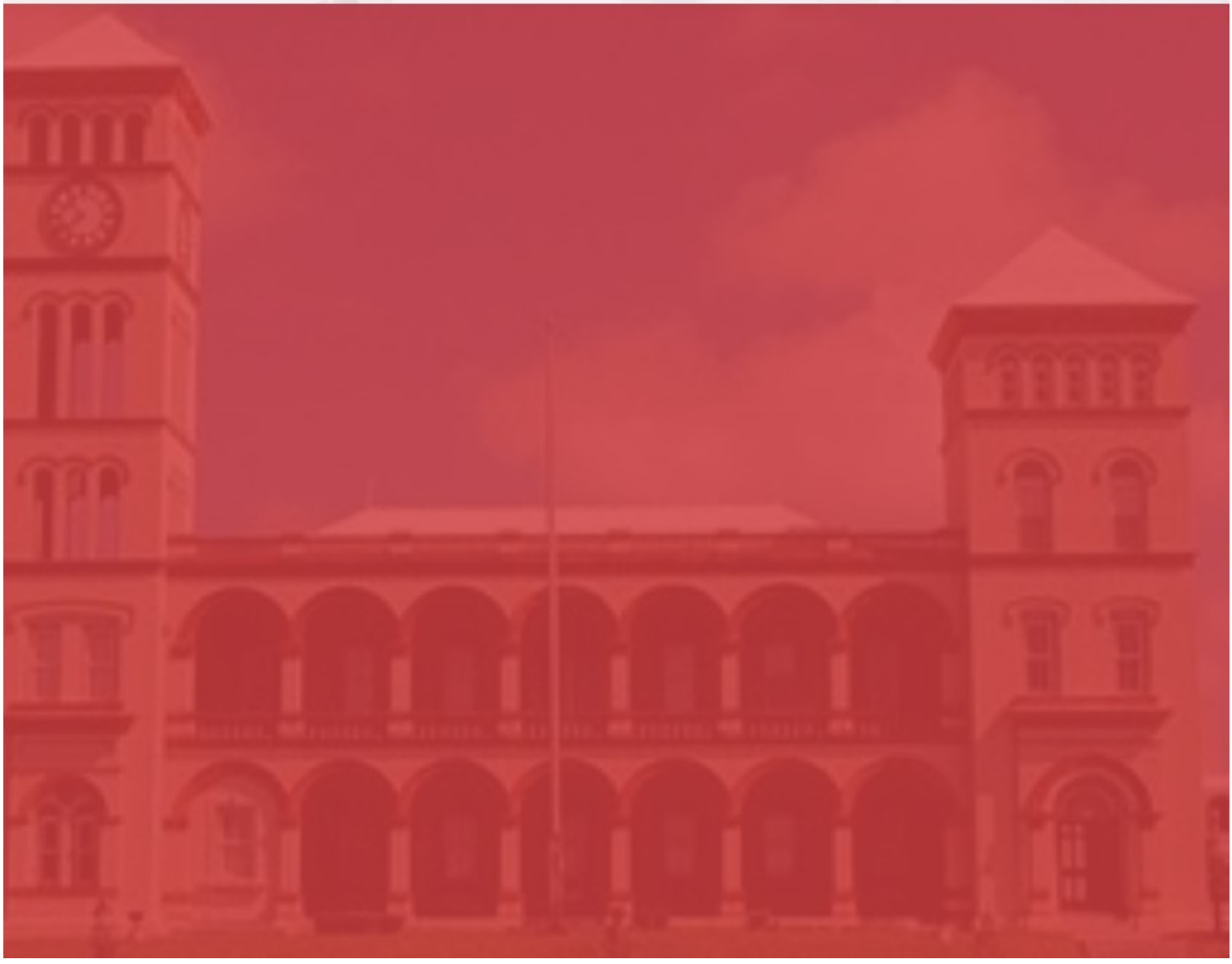
2020 Bermuda Judiciary

Annual Report



The Bermuda Judiciary Annual Report 2020

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: 2020

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FOREWORD BY THE CHIEF JUSTICE

The Hon Mr. Justice Narinder Hargun
Chief Justice of Bermuda

The event which has had a profound effect on the delivery of justice in the calendar year 2020, as in many other walks of life, is the continuing Covid 19 pandemic.

The Covid 19 pandemic has had unprecedented health and economic challenges on a global basis. It has had severe impact on global economies including the economies of small island jurisdictions such as ours, which are based on tourism and in-ternational business.

Not surprisingly Covid 19 has also been a disruptor of legal services and the delivery of justice. As a result of Covid 19 we have decided that it is prudent to postpone the annual New Legal Year Ceremony, an important ceremony confirming that the courts of Bermuda are open, that justice will be served and the rule of law upheld.

As a direct result of Covid 19 all courts in Bermuda were closed in April last year. What is remarkable is how quickly alternative means were found for the delivery of court services.

Remote hearings prior to Covid 19 pandemic were an exception and largely limited to the taking of evidence of witnesses overseas. With the use of technology, particularly the Zoom and Webex platforms, it was soon realised that most courts could function nearly as normally as before. This has certainly been the case in relation to civil and international commercial disputes. The acceptance of remote hearings has allowed hearings to take place with counsel and parties and the Court being in different jurisdictions.

We have experimented well with hybrid hearings, where the witness giving evidence is in court, so that the judge can observe the witness giving evidence, but otherwise it is a remote hearing. We have found it possible to have fair hearings and comply with the requirements of open justice.

Given the travel restrictions, the last three sessions of the Court of Appeal have taken place remotely on the Zoom platform and by all accounts have been well received by all concerned. It is hoped that the Court of Appeal can hold physical hearings in Bermuda in the June 2021 Session.

Hopefully the Covid 19 pandemic will diminish in its severity by the end of summer 2021. However, its effect on the delivery of justice is likely to be long lasting. The acceptance of technology and the acceptance of remote hearings and even witness trials, particularly in civil and commercial cases, has, I believe, changed the landscape for good. We need to learn from our experience and see how remote hearings can be improved but remote hearings and the use of technology are, I believe, here to stay. Covid 19 has had the effect of accelerating the use of technology in the delivery of justice, which in the long-term, is likely to be a positive development.

The real adverse impact of Covid 19 has been on the ability of the courts to hold jury trials and criminal cases pending in the Magistrates courts. In common with all other jurisdictions which hold jury trials, this

remains a challenge for us. As you will note from the report from Justice Simmons, as a result of the Government's introduction of the emergency measures and island wide shelter in place regulations, all criminal cases were delisted with effect from 17 March 2020. The Supreme Court was closed for jury trials for a period of nearly 8 months and the first trial post Covid 19 was held on 9 November 2020.

Our inability to hold jury trials for those 8 months has resulted in a backlog of criminal cases. At present, there are 50 criminal cases pending before the Supreme Court. In my previous reports I have highlighted that in relation to criminal cases pending in the Supreme Court, our goal is to offer a trial to all defendants within 3 months of the indictment. The lack of a second courtroom in 2019 resulted in an almost doubling of the time frame between indictment and the trial. The closure of the criminal courts between April and November last 2020 has resulted in a significant delay in the period between indictment and the subsequent trial. As Justice Simmons notes in her report the 2020 time frame has increased to 13.5 months. In order to reverse this trend, as noted by Justice Simmons, it is imperative that we have a second criminal trial courtroom which is compliant with Covid 19 regulations.

In the Civil and Commercial division, despite the impact of Covid 19, there was in fact a significant increase in the number of actions commenced in 2020 (415) compared with actions commenced in 2019 (356). There was a substantial increase in the number of actions commenced in the commercial jurisdiction in 2020 (90) compared with commercial actions commenced in 2019 (53).

Last year I stated that our long-term goal is to centralise all services provided by the Judiciary, other than Commercial Courts, in one location in the Dame Lois Browne Building. I am pleased to note that we have been working constructively in the past year with the Public Works Department to achieve this goal.

This year saw the departure of Governor John Rankin to take up appointment as the Governor of the British Virgin Islands. I wish to record my deep appreciation of all the support extended by Governor Rankin to the Bermuda Judiciary during his tenure as the Governor of Bermuda. As noted in the previous reports, the Governor and the Judicial and Legal Services Committee ("JLSC") perform a pivotal oversight role in dealing with judicial appointments and judicial complaints. The Bermuda Judiciary welcomes Governor Rena Lalgie and looks forward to working with her in the coming year.

I also acknowledge with thanks the time-consuming oversight role performed by the JLSC, chaired by Sir Christopher Clarke, President of the Court of Appeal. This year saw the retirement of Sir David Baragwanath, former Judge of the New Zealand Court of Appeal, from the JLSC. We are grateful to Sir David for his service to the Bermuda Judiciary and wider legal family. We welcome Mr James Jardine, a former member of the Bermuda Senate, and Justice Adrian Saunders, President of the Caribbean Court of Justice, as new members of the JLSC. We thank them for agreeing to contribute to this crucial oversight role.

We welcome Justice Larry Mussenden to the Bermuda Bench, who was sworn as a Justice of the Supreme Court of Bermuda by Governor John Rankin on 3 December 2020.

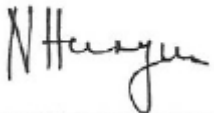
Once again I extend my gratitude to the Senior Magistrate Wolffe and to Magistrate Attridge for their assistance in acting as Puisne Judges on a temporary basis over the last 12 months. I also thank the panel of Assistant Justices who voluntarily sit as Assistant Justices of the Commercial Court for a nominal consideration. Their service is particularly important in circumstances where the assigned judges to the Commercial Court are unable to act for one reason or another.

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

Last year I acknowledged the valuable assistance provided by former Chief Justice Kawaley in presiding over one of the largest cases in trust litigation probably in any jurisdiction. I once again acknowledge that valuable assistance and note that the trial of the action is scheduled to commence in March this year with an estimated time of 12 weeks.

I invite you to read the 2020 Annual Report where you will find the main highlights of the past legal year and short commentaries on the various courts and their respective jurisdictions.

In closing, I wish each one of you a safe and productive new legal year.



Narinder K. Hargun
Chief Justice

Report from the Registrar and Taxing Master

"Out of the mountain of despair, a stone of hope."
Dr. Martin Luther King, Jr.

2020 OVERVIEW:

2020 thrust unprecedented challenges upon Bermuda. The COVID-19 pandemic not only touched all corners of the globe and forced justice systems throughout Commonwealth jurisdictions to make immediate changes to how court proceedings are conducted. Bermuda was not alone in experiencing the significant disruptions which the COVID-19 pandemic caused. There has been an entire upheaval of the traditional view that justice can only be administered through the use of physical courts. The global pandemic inhibited attention being focused towards previously intended goals for this year; however, the strives and resolve exhibited by the Judiciary by having to change how justice is administered so unexpectedly far outweighs any negative impact experienced.

Court matters following COVID-19
The Judiciary had to find practical ways to continue offering court services amidst the imposition of the Shelter-in-Place regulations, the closure of Government Offices, and the implementation of social distancing conditions.

In an effort to ensure the health, safety and welfare of the Members of the Public who interface with the Courts of Bermuda, as well as Court staff, the Court implemented a number of precautionary measures, the purpose of which was to reduce direct interactions between staff and members of the public, whilst still ensuring that the Judiciary upheld its constitutional mandate to provide access to justice. A total of 11 Court Circulars were released, which provided guidance concerning the Court's operations throughout Shelter-in-Place ("SIP"), office closures and the imposition of social distancing conditions. In essence, the Magistrates' Court and the Supreme Court of Bermuda never ceased operation during these changes.

A Court Circular was released which dealt specifically with Court hearings being heard by audio visual platform, and the regulation of hearings being heard remotely. Matters listed in the Magistrates' Court that were held remotely during SIP included Plea Court, mentions, sentencings, Drug Treatment Court, Driving Under the Influence Court, Domestic Violence Protection Orders, urgent Family Court matters, and any other matters deemed urgent by the presiding Magistrate.

During SIP, applications to the Supreme Court were vastly dealt with by a Judge administratively, which saw the attorneys submit all evidence and submissions that they wished to rely on electronically, and a decision on the application was made on the papers alone without Counsel having to appear. Matters were also dealt with remotely using audio visual platforms.

During this period, the Department ran on a skeletal crew. A small number of staff were granted an exemption to travel to and from the Courts of

Bermuda in order to facilitate Court hearings as only Judicial Officers had the capacity to work from home using remote access, as well as Senior Management. This highlights the Judiciary's need for a modernized electronic case management system as, at present, the Court's case files are only fully accessible in hard copy. In 2021, we will be continuing to advocate for the purchase a viable case management system which will also utilize features such as electronic filing.

Following the lifting of the SIP Guidelines in May 2020, the Judiciary's staff returned to office on a rotational basis. The Courts continued to offer reduced services until 30 June 2020, when the Court resumed full services. With the impact of the pandemic on global travel and the continued imposition of social distancing conditions, requests to hold hearings via audio-visual means continued through to the end of 2020 and have continued into 2021.

The restrictions of global travel had a most notable impact on the Court of Appeal, which is usually sees a panel of three Court of Appeal Justices (inclusive of the President of the Court of Appeal) travel to the island three times a calendar year. These restrictions necessitated both the June and November 2020 sessions of the Court of Appeal being held via an audio-visual platform.

Court's Accommodations

Unfortunately, the Judiciary has continued to face accommodation challenges, which were only intensified following the onset of COVID-19. With the imposition of social distancing conditions, the only Court room allocated to the Matrimonial Division of the Supreme Court located on the 3rd Floor of the DLBE became unusable as it did not meet social distancing guidelines. Similarly, social distancing requirements also restricted the Criminal Division of the Supreme Court to hold jury trials for a significant portion of 2020.

Following collaboration between the Department and the Ministry of Public Works, modifications were made to Sessions House to ensure the space is compliant with all social distancing and health guidelines. The modifications to Sessions House allowed jury trials to continue despite the spacing restrictions imposed by COVID-19.

It is anticipated that the Department will continue to work with the Ministry of Public Works as the vision for the majority of the Judicial Department being housed in the DLBE is finally coming to fruition. The Government continues to demonstrate its commitment to expanding and renovating the Court's facilities at the DLBE which will provide suitable space for administrative staff, Judge's Chambers and Court room facilities, as well as suitable, secure and separate jury space.

OBJECTIVES FOR 2021

The concerted efforts to increase the efficiency of the Judiciary's administrative functions and modernized accessibility adaptations will continue despite interruptions caused by COVID-19.

1. The Judiciary has secured a contract for the courts' recording system to be upgraded for all courtrooms as well as to provide hard-wired Audio/Visual Links in four courtrooms. The impact of COVID-19 as well as the Evidence (Audio Visual Link) Act 2018 coming into effect on 12 November 2020, this is essential. It is anticipated the installation will be completed well before the end of 2021.

2. Continuing to work closely with the Department of Estates and Planning to push forward with the consolidation of <u>all</u> courtrooms (save for the Civil and Commercial This will dispense with the unsustainable fragmentation of the Judiciary's accommodations.

3. In addition to the challenges created by a global pandemic, the largest civil Supreme Court trial is listed for a final trial this year with pre-trial hearings commencing in March 2021 and the expected completion of the trail to be in September 2021. This litigation involves four parties where up to 31 attorneys are required to be in attendance in the courtroom. Renovations are expected to be completed shortly.

4. Advocating to obtain funding for a modern case management system which will move the jurisdiction towards utilizing much

needed functions such as electronic filing. Whilst this has been a goal for quite some time now, the demand for this has increased significantly given COVID-19's global impact.

These are not small tasks, but I have little doubt with the tenacity and perseverance demonstrated in 2021 these goals can be accomplished. Indeed, we do not know what lies ahead in 2021 given the fluidity of COVID-19.

ACKNOWLEDGMENTS

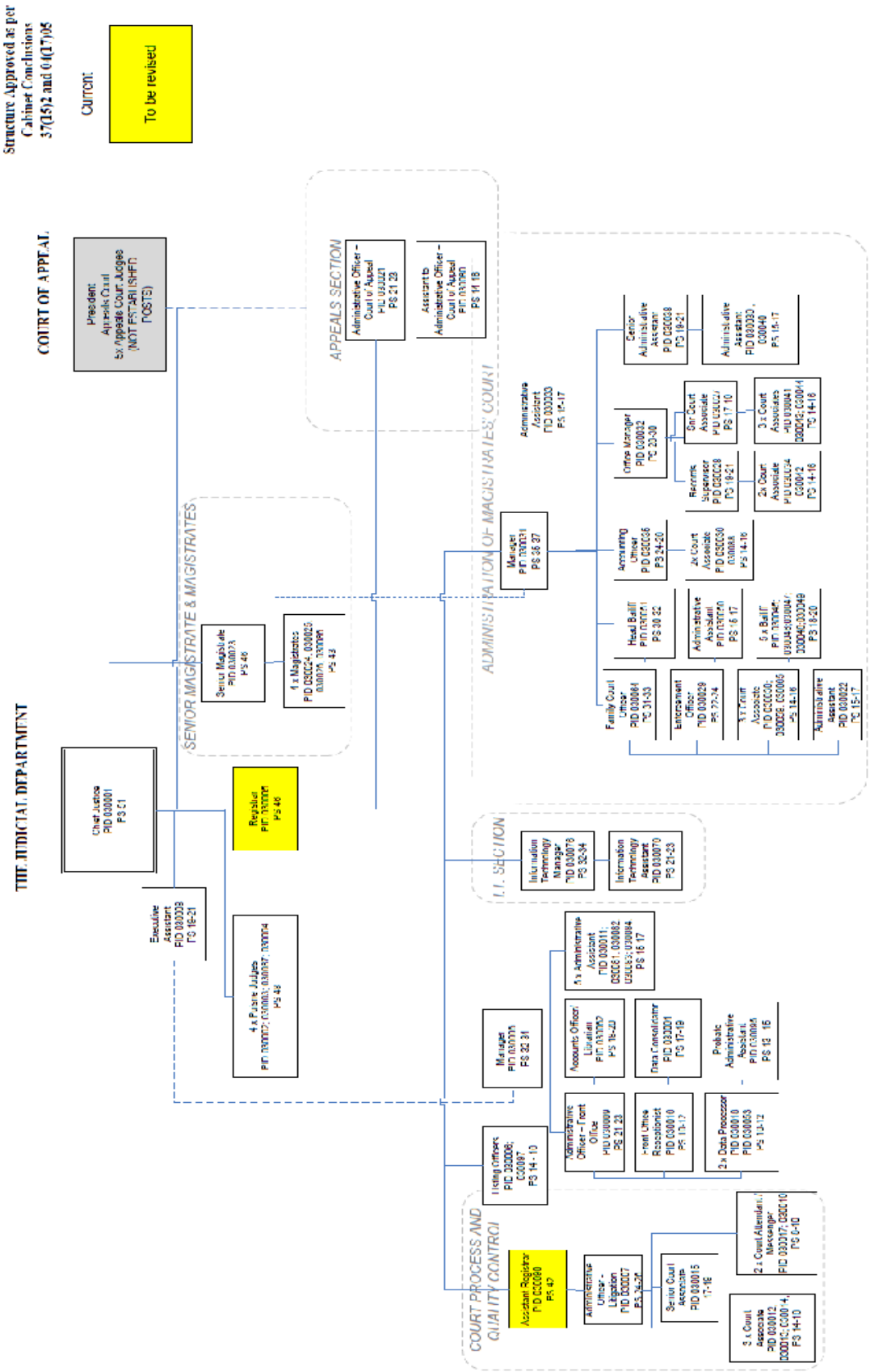
This report would not be complete without giving the Assistant Registrar, Mrs Cratonia Thompson, the recognition she deserves. Mrs Thompson plays a crucial role in the day to day running of the courts as well as spearheading projects such as the completion of the modifications to Supreme Court #1 (Sessions House) to align with COVID-19 protocols. Her role was critical in ensuring criminal jury trials were able to proceed in a safe and comfortable environment. I am, and continue to be, immensely grateful to her for all that she does.

Thanks must also be given to the Ministry of Public Works and in particular, the Estates Department for all of their assistance with the securing of and modification of the Judiciary's accommodations.

It goes without saying that the staff of the Judicial Department play a vital role in ensuring the people of Bermuda obtain their constitutional right of access to justice. Staff have shown a great deal of perseverance and understanding throughout the unique circumstances 2020 brought to the jurisdiction. My appreciation for their commitment to serving Bermuda is immeasurable.

I must also give acknowledgment to the members of the Bar who have been overwhelmingly cooperative in assisting the Courts with implementing new policies and procedures. Their patience and responsiveness in working with staff ensured that the Courts did not come to a grinding halt.

Judicial Department Organisational Chart & Establishment List 2020



Establishment List

Judicial Department – Court of Appeal
As at 31 December, 2020

POST	OFFICER'S NAME
President of the Court	The Rt. Hon. Sir Christopher Clarke
Justice of Appeal	The Rt. Hon. Sir Maurice Kay
Justice of Appeal	The Hon. Mr. Justice Geffrey Bell
Justice of Appeal	The Hon. Mr. Justice Anthony Smellie
Justice of Appeal	The Rt. Hon. Dame Elizabeth Gloster
Administrative Officer/Clerk of the Court of Appeal	J. Audley Quallo
Assistant to the Administrative Officer/Clerk of the Court of Appeal (Relief)	Judith Anderson-Lindo

Judicial Department – Supreme Court
As at 31 December, 2020

POST	OFFICER'S NAME
Chief Justice	The Hon. Mr Narinder Hargun
Pusine Judge	The Hon. Mrs. Charles-Etta Simmons
Pusine Judge	The Hon. Mrs. Nicole Stoneham
Pusine Judge	The Hon. Mrs. Shade Subair Williams
Pusine Judge	The Hon. Mr. Larry Mussenden
Registrar of the Courts	Alexandra Wheatley
Assistant Registrar	Cratonia Thompson
Manager of the Supreme Court	Dee Nelson-Stovell
IT Manager	Frank Vazquez
Administrative Officer (Criminal)	Nakita Dyer
Administrative Officer (Civil)	Avita O'Connor
Accounts Officer/Libraian	VACANT
IT Assistant	Brian Mello
Executive Assistant to the Chief Justice (Relief)	Erin Butterfield
Administrative Assistant	Joy Robinson
Administrative Assistant	Carmen Edness
Administrative Assistant	VACANT
Administrative Assistant	VACANT
Administrative Assistant	VACANT
Probate Administrative Assistant	Carlton Crockwell
Listing Officer	Gail Symonds
Listing Officer	VACANT
Senior Court Associate	VACANT
Court Associate	Wendy Butterfield

Court Associate (Relief)	Gina Astwood
Court Associate	VACANT
Customer Service Representative	Patsy Lewis
Data Processor	Sandra Williams
Data Processor	Christie Seymour
Court Attendant/Messenger	Vivian Simons
Court Attendant/Messenger	Gladwin Trott

Judicial Department – Magistrates' Court
As at 31 December, 2020

POST	OFFICER'S NAME
Senior Magistrate	The Wor. Juan Wolffe, JP
Magistrate	The Wor. Tyrone Chin, JP
Magistrate	The Wor. Khamisi Tokunbo, JP
Magistrate	The Wor. Maxine Anderson, JP
Magistrate	The Wor. C. Craig Attridge, JP
Manager of the Magistrates' Court	Andrea Daniels
Family Support Officer	Cory Furbert
Deputy Provost Marshal General/Head Bailiff	Christopher Terry
Office Manager	Patrice Rawlings
Administrative Assistant (Administration)	VACANT
Enforcement Officer	Ashley Smith
Records Supervisor	Jearmaine Thomas
Accounts Officer	Deneise Lightbourn
Senior Admin. Assistant to the Senior Magistrate	Nea Williams-Grant
Administrative Assistant (Criminal)	Dwainisha Richardson
Administrative Assistant (Civil)	Dorlene Cruickshank
Administrative Assistant (Family)	Angela Williams
Court Associate (Family)	Raneek Furbert
Court Associate (Family)	Debra James
Court Associate (Family)	Sindy Lowe
Senior Court Associate (Civil)	Candace Bremar
Court Associate (Civil)	Michelle Rewan-Alves
Court Associate (Civil)	Angela Seaman
Court Associate (Appeals)	Nicole Hassell
Court Associate (Criminal/Traffic)	Dawn Butterfield (Relief)
Court Associate (Criminal/Traffic)	Donneisha Butterfield
Administrative Assistant – (Bailiffs')	Tina Albuoy
Bailiff	Donna Millington
Bailiff	Donville Yarde
Bailiff	Veronica Dill
Bailiff	Vernon Young
Bailiff	VACANT

Court Associate (Cashiers)	Shondell Borden
Court Associate (Cashiers)	Towana Mahon

OVERVIEW OF THE JUDICARY

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

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

The Judicial System in Bermuda consists of the Magistrates' Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council as the final appellate court for Bermuda which is located in London, UK. The Court of Appeal Registry and the Supreme Court Registry is responsible for the administration of the Court of Appeal and the Supreme Court, respectively. The Court of Appeal is established by the Constitution and the Court of Appeal Act 1964. Similary, the Supreme Court is established by the Constitution and the Supreme Court Act 1905. Both establishments are governed by rules of court: The Rules of the Court of Appeal for Bermuda 1965 and the Rules of the Supreme Court 1985.

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

The Court of Appeal is an intermediate Court and its principle function is to adjudicate appeals from the Supreme Court (either sitting in its appellate or original jurisdiction.

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

THE COURT OF APPEAL

MESSAGE FROM THE PRESIDENT

The Rt. Hon. Sir Christopher Clarke

There could scarcely have been a more tumultuous year. At the beginning of the March session of the court everything seemed set for a steady rollout of cases to be heard in the usual way. And all was well enough until two days before the end of the session when two members of the court thought it wise to depart marginally earlier than usual in order not to be detained indefinitely (although if you must be detained, there is scarcely anywhere better than Bermuda).

But the remainder of our sessions of the Full Court have had to be done remotely as will be the case for the March 2021 session. This has worked as well as we could have hoped, and we owe a debt of gratitude to Frank Vasquez for enabling everything to run smoothly. We owe a similar debt to the practitioners who have grappled with the system and put up with earlier starts than usual to accommodate up to 3 different time zones.

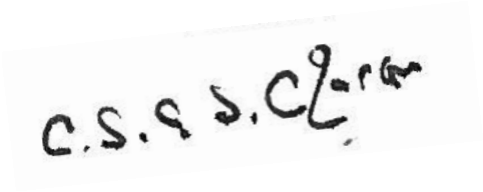
Remote hearings work: but they are far from ideal, and we long to return to normality. They have allowed the Court to fulfil its functions.

Remote hearings work: but they are far from ideal, and we long to return to normality. They have allowed the Court to fulfil its functions. As can be seen from the summaries in this report we have continued to have an interesting caseload and there is more to come in 2021. As always, the Court appreciates the high standards shown by practitioners appearing in front of it.

This year has seen the introduction of a new Practice Direction in relation to criminal appeals, which has been fashioned with the assistance of the Bar in order to iron out the problems identified in our ruling in November 2019, and some unsatisfactory features of existing arrangements and practices for both Bench and Bar alike. I am particularly grateful for the assistance in this respect of Elizabeth Christopher, President of the Bar Council, Cindy Clarke, whom we congratulate on being appointed Director of Public Prosecutions, and Patricia Harvey.

I express my thanks also to my fellow justices all of whom have rendered signal service, including Justice Kay, who was good enough to step in to preside for most of the November session, and Justices Simmons, Gloster and Smellie who have agreed to sit, outside the conventional period for sessions of the Court in January 2021, in order to ensure that the hearing of an important case is not unduly delayed; and Justice Bell who, as well as participating in full sessions of the Court, is readily at hand for interlocutory matters to be heard by a single Justice in Bermuda. We welcomed Justice Subair Williams to sit as a member of the Court in a case last year and are grateful for her signal contribution to our deliberations. We look forward to Justice Simmons' participation in the case to be heard in the January session.

Last, but by no means least, I offer my profound thanks to Audley Quallo, Clerk of the Court of Appeal, whose superintendence of the administration of the Court, in his particularly distinctive style, has been the greatest support.



Sir Christopher Clarke
President of the Court

COMPOSITION OF THE COURT

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

The Rt. Hon. Sir Maurice Kay
Justice of Appeal

The Hon. Mr. Geoffrey Bell
Justice of Appeal

The Hon. Mr. Anthony Smellie
Justice of Appeal

The Rt. Hon. Dame Elizabeth Gloster
Justice of Appeal

THE COURT OF APPEAL FOR BERMUDA

Audley Quallo
Clerk of the Court of Appeal for Bermuda

YEAR IN REVIEW

2020 is not a year on which we shall look back with undiluted pleasure. It has turned out to be an *annus horribilis*. Like most judicial systems around the world, we have fallen victim to tremendous backlogs, resounding lack of progress, attack on already stretched court resources in the form of staff and technology with no immediate relief on the horizon. Nevertheless, the Court of Appeal has remained amazingly stoic throughout, and I am happy that some progress has been made…well, enough to report upon.

This year has truly shown the importance of millennials in leadership. The use of technology has demonstrated the breadth of the Court's capabilities operating in the 21st Century. What should have been an interruption to the Court of Appeal has only allowed us to show judicial fortitude in perilous times, and on the international stage. Not only was the Court able to continue with its scheduled sessions for the legal year in the form of remote hearings, but the Court has been fully exercised by sitting outside of the traditional three sessions per year. In fact, the Court is scheduled to sit in the Hilary term between 25 and 27 January 2021, where it will hear a trust case of a considerable financial value. I digress to both congratulate and thank Mrs. Justice Charles-Etta Simmons, who was appointed and sworn by Her Excellency the Governor as an Acting Justice of Appeal on 8 January 2021 to sit as a member of the Court of Appeal in adjudication of this cause. It is important that Bermuda's highest domestic appellate Court assures the international business community that our doors remain open for business as usual, despite the unfortunate and unforeseen circumstances as witnessed in 2020.

The ability to conduct remote hearings has both sustained the principle of open access to justice and has extended the ability to the global community to access our proceedings. For the June and November sessions – which were the sessions impacted by the Covid-19 Pandemic – the Court broadcasted a total 16 hearings, which included substantive appeal hearings, interlocutory applications, judgment deliveries and directions for criminal appeals. The cumulative total viewers for all broadcasted proceedings currently stand at 4,154 viewers. These are more viewers virtually, then that which one would expect to see in a traditional open court forum.

Indubitably, the introduction of remote Court of Appeal hearings has sparked the question of our Court's future insofar as it relates to physical hearings. Any suggestion that virtual hearings have now replaced physical hearings in Bermuda should be unequivocally debunked. In fact, the creative measures employed to mitigate any disruption to the Court's business during the pandemic has shown us that there is scope for considering the Court's sitting pattern going forward. This thought, I am sure, will receive universal approbation.

The latter possibility cannot be considered too fanciful; there is a considerable backlog across the various jurisdictions in the Supreme Court. This leads to the likelihood that decisions from many of those cases may become the subject of appeal. Also, the Court's practice of reserving Mondays and Fridays for reading and judgment writing results in the Court sitting only three days per week in a session, which amounts to 27 sitting days a year. Obviously, if extenuating circumstances prevail, the Court will hold a sitting on any one of its reading/judgment writing days. The *prima facie* disadvantage arises where cases that require more than one day in a session reduce the possibility of other cases getting into a particular session. Reading/judgment writing days, however, are essential to the principle of expedient justice as it increases the ability for judgments to be produced timeously and by the end of session or close thereto. This is an objective that the Court embraces and fully upholds. However, with remote hearings now proven to be an effective tool to the administration of justice, the Court can convene during any term to hear matters that it could not hear when physically sitting in Bermuda.

Last year, the Chief Justice noted the Court of Appeal's Canute Judgment ("the Judgment") which addressed non-compliance of counsel in criminal appeals and said appeals not progressing when they ought to have. The Chief Justice's comments and the Judgment resulted in a cross collaboration between the President of the Court and representatives of the Bermuda Bar Council (Ms. Elizabeth Christopher, President and Ms. Cindy Clarke, Vice President, to name a few). This collaboration led to the implemented Practice Direction 16 of 2020. The practice direction provides guidelines on how a criminal appeal will progress and sets deadlines to ensure that an appeal is not left languishing after the Notice of Appeal has been filed. The system has worked moderately well. Since its implementation observations have been made of areas that can do with tightening-up.

Drafted changes have been made to the civil and criminal Orders in the Rules of the Court of Appeal. These draft changes have been shared with members of the civil and commercial bar and members of the criminal bar. All recommendations will be incorporated into the working document for presentation to the President of the Court. Of note, I wish to thank Ms Kehinde George, Mr Rod Attride-Stirling and Mr Ben Adamson for their invaluable feedback of the civil rules. Equal expressions of gratitude are extended to Ms Elizabeth Christopher on behalf of the Criminal Defence Bar, and Director of Public Prosecutions, Ms. Cindy Clarke for the prosecutorial bar. It is hoped that these changes can be implemented before the end of the current legislative session. The Court of Appeal Act 1964 is also ripe for review and considerations will be given to the amendment of this Act in this legal year.

One aspect that remains paramount to the Court's functioning is a modern technological platform. Our current position gives rise to the thought of technological senility. The Court of Appeal does not function on a case management software and is left having to find creative ways to keep court files up-to-date, which includes the maintenance of various folder systems for electronic document retention. In June 2020, I was presented with the opportunity to form the membership of a Bar Council Sub-Committee (on Electronic Platforms). The dialogue was fruitful, and our needs adequately captured. I am most grateful to Ben Adamson who chaired that sub-committee alongside Kehinde George and Lynesha Lightbourne of the Bermuda Development Agency. A report was submitted to the Bar Council, and it is my fervent hope that the contents of that report will be further considered, and implementations effected in this legal year.

Recognitions

The Court of Appeal would like to recognise two appointments which were recently announced by Government House. Firstly, the historic appointment of Ms Cindy Clarke to the position of Director of Public Prosecutions – the first Bermudian female to hold that position. Continued congratulations are extended to the immediate past Director of Public Prosecutions, now the Hon. Mr. Justice Larry Mussenden, who was formally sworn in as a Puisne Judge of the Supreme Court of Bermuda on 3 December last. The Court of Appeal much looks forward to the continued contribution of both successors to the system of the administration of justice through their new roles. We should also like to recognise the invaluable efforts of Mr Frank Vazquez, IT Manager for the Judicial Department and his IT Assistant, Mr Brian Mello. The increased reliance on technology to ensure the Court's business remained steady called for great resilience and stick-to-itiveness. Both have been instrumental and attentive to the Court of Appeal's needs and are thanked.

(l-r) The Hon. Mr. Justice Larry Mussenden, Puisne Judge of the Supreme Court; and Ms. Cindy Clarke, Director of Public Prosecutions

One of the main components necessary for appellate judges to have in considering an appeal, is a transcript of the proceedings below so that they can get the full picture. For this, the Court must recognise the indefatigable efforts of Ms. Margaret Gazzard, the official court transcriber, who has, on most occasions, burned the mid-night oil to ensure the timely production of transcripts in criminal appeals and at times civil appeals; sometimes providing a swift turnaround on short notice. Ms. Gazzard has performed yeoman service to the Court of Appeal and I am sure to the wider judiciary. Thank you, Ms. Gazzard. I should also like to thank the tireless efforts of my administrative assistant Ms. Judith Anderson-Lindo who has equally performed tireless efforts by ensuring the Registry operates without blemish.

2021 GOALS & OBJECTIVES

#1 Sitting Patterns of the Court of Appeal;

Recognition and experience of the benefit of both virtual and physical sessions of the Court has given rise to a consideration of how the Court sits and when. This will require a cross dialogue with key stakeholders which will include: The President of the Court, the Chief Justice, The Registrar, Bar Council and other key persons before a definitive position is taken. If there is to be a shift in the Court's sitting pattern it will be established by way of Practice Direction and gazetted accordingly.

#2 Implementation of a virtual platform for access to court documents by judges;

A part of moving into the technological ages is the slow departure from couriering documents to the overseas justices for the reading and preparation of appeal hearings. What was a brief interlude of relief to this issue has now returned and we struggle to maintain this most basic amenity. Recently, we have used the software Dropbox to transmit files electronically to the overseas justices. However, this service is only available off the government network.

We would like to see an equivalent platform, which is supported by the Government's Information Technology Office, implemented for this purpose. For the time being, this is not an absolute departure from preparing hardcopy bundles, but it allows the justices expedient access to court documents which gives additional time to adequately prepare. We will continue to work with our in-house IT personnel and the Information Department of Technology to source and implement a system unique to our needs. With this initiative it is hoped that we can avoid incurring couriering expenses.

#3 Transcriptionist services to produce increased speed on production of court transcripts.

In *Kenneth Williams v The Queen* [2020] CA (Bda) 17 Crim, Justice of Appeal Geoffrey Bell noted that one of priorities for the judiciary as a whole is *"to install a digitally based system of recording which could produce transcripts at greater speed and less expense than provided by the current system, which leaves the judge or magistrate having to take a detailed note that inevitably slows down the judicial process to a crawl."*

It is important that the production of transcripts are (a) swift to provide an expedient turnaround on appeal hearings; and (b) captures the whole of the proceeding of the court which falls under review by an appellate court. In relation to transcripts for appeals in the Court of Appeal, it is noted that transcripts for criminal appeals are completed by only one person. Civil appeals (usually members of the commercial bar) would employ a private transcriptionist company who usually do well in providing a 48-hour turnaround.

Appeals from the Magistrates' Court are transcribed by one in-house member of staff which raises some concern. Firstly, a transcriber for court purposes should be certified for that purpose and who can operate at industry standards. This ensures that transcripts are reliable which fairly and objectively capture the proceedings as recorded in the trial court; alongside this is the constitutional guarantee of a right to a fair hearing of an appellant. Secondly, the transcriber in the case of the Magistrates' Court does not transcribe from the audio proceeding, but rather from magistrates' notes. These notes may sometimes be subject to error in the event a magistrate records something inaccurately, or altogether misses a part of the proceeding. The domino effect places the appellate judge in no better position because of their reliance on the transcript. This is the benefit of having audio recorded proceedings and a transcript produced therefrom.
A review of the current system of transcripts will take place to identify a more viable solution to cure the concerns raised by the Court of Appeal in *Williams*. This segues into the next goal for 2021.

#4 The implementation of a case management suite which incorporates electronic filing and the payment of statutory fees when filing.

It is painfully obvious that the current case management system used by the entire Judicial Department – JEMS – is antiquated and slowly moving toward retirement. The Court of Appeal, however, has never had the pleasure of experiencing JEMS because it was never made a user of it for various reasons. Nevertheless, as I stress above, it has become equally obvious that the time has come for the Court of Appeal and the wider judiciary to enter the times where we embrace technology and employ it fully in our various areas of operation. Having said this, I must remember that Rome was not built in a day.

Until we do get to a place where the entire court system is unified in its technology, the Court of Appeal Registry will explore options that will promote (a) electronic filing; (b) submissions of electronic payments for filing fees; and (c) an interactive website user-friendly to both the legal fraternity and wider public where electronic fillable forms are obtainable. These initiatives will be unveiled in the form of Practice Directions.

In relation to statutory fees, and as I noted in the 2019 annual report, the time has come for a review of our court fees, which has not been increased since the enactment of the 1965 Rules. This exercise has been incorporated in the amendment to the Rules.

#5 Obtaining Court of Appeal files under quarantine.

In 2018, staff members of the Court of Appeal Registry were required to vacate the building at 113 Front Street. Unfortunately, the abrupt move did not allow for time to enact provisions for the relocation of court files. The result seeing the files becoming victim to asbestos and the requirement to quarantine files at the Bishop Spencer Building, where they have remained for nearly two years onward.

The movement to repossessing court files has been infinitesimal and has deprived members of the Bar and wider public to accessing court records. We appreciate and accept that a part of access to justice is not limited to just observing court proceedings, but access to public records (within means). Accordingly, provisions have commenced to see to it that all court files currently in quarantine are thoroughly cleaned and returned to the court precincts. We are optimistic for a start-up in Q2 of this legal year and to conclude by Q4; that is both Court of Appeal and Supreme Court files.

#6 Increase robust reporting measures on appellate statistics.

The Court's business has become increasingly complex. It is important that its activity – administratively and judicially – are properly recorded and reported upon in annual reports. Therefore, a complete overhaul in reported data will be seen in successive reports enabling the public and court users to appreciate the level of work conducted by the Court of Appeal.

Last year, we ventured to provide a brief exposé into the revenue derived by the Court through its various proceedings. Unfortunately, the measuring of this data could not continue this year for fear of ill-reporting and lack of a proper system in place to adequately capture this data. This is part and parcel the requirements for a case management suite which can produce a variety of reports, and which can be transposed into reportable data.

Further consideration will be given to this objective by identifying (1) the types of data that is required to report on; (2) ways in which this data should be captured; and (3) the benefits derived from having this data.

APPEAL 2020 STATISTICS

Overview

Unsurprisingly, the reporting year shows fewer filings than that in previous years. However, there is a 5% increase in this reporting period, with 22 appeals filed, in contrast to the 21 appeals filed in 2019. Of the 22 appeals filed, 12 represent civil appeals and 10 represent criminal appeals. A five-year review suggests that on average, the Registry receives 31 Notices of Appeal filed per annum (civil and criminal).

In 2020, out of the 12 civil appeals filed, the Court disposed 5 of those appeals. In other words, there was a 47% disposition on civil appeals which were filed and heard in the same year. Similarly, the court disposed of 6 of the 10 criminal appeals filed in 2020, representing 60% of the appeals filed and heard in the same year. I should preface this report by indicating that 3 of the 10 criminal appeals in 2020 were grouped into 1 appeal proceeding[1], and the interlocutory application concerning this appeal was disposed. The substantive appeal has been carried over to the March 2021 session.

Assessment of Statistics

Covid-19 will be unanimously censured for low performance throughout this Annual Report, I am sure. Whilst this is an undeniable reality, a meticulous assessment of the statistics is still warranted which gives a different context of the figures reported upon.

Firstly, the Court of Appeal has, through its recent judgments, sought to provide guidelines for future cases, which if applied, will deter the need to bring cases before the Court of Appeal with similar themes. Secondly, as it particularly relates to civil appeals, the use of alternative dispute resolution ("ADR"), if applied early on and proven effective, curtails the need for the parties to seek further judicial intervention from the Court of Appeal. I also suggest that judgments/decisions in the inferior courts have been carefully crafted with considerable skill, which sets out how a party to a proceeding has lost; whilst unsatisfying may be regarded as fair in helping litigants to accept their defeat without feeling aggrieved and seeking to appeal. Sometimes an appeal may have been filed but does not proceed because a procedural step has not been considered by the parties before filing an appeal.

An example of ADR and its application is seen recently in the case of *Tawanna Wedderburn v The Bermuda Health Council et al*, where on the day of the appeal, the parties reached and agreed position without further need of the Court's intervention. On the criminal side, there was the case of *Deja Richardson v The Queen*, which would have concerned an appeal against sentence; counsel on each side were agreed that the sentence of the Supreme Court should have reflected time spent in custody. The real issue was whether the Supreme Court was *functus* preventing it from being able to correct a mistake in the intending appellant's sentence. Following administrative intervention, a proper course was identified which resulted in the appeal being withdrawn.
While the latter two cases made it as far as being factored into the statistics, the features which led to their discontinuance, I suggest, if considered beforehand, a Notice of Appeal would not have been filed which may explain generally the decrease in appeal filings over the years.

Civil Appeals

[1] Roberts, Brangman and Smith-Williams v The Queen [2020] CA (Bda) 18 Crim

The Court issued 8 judgments in respect to civil appeals in 2020. 1 of those judgments concerned an application for leave to appeal to Her Majesty-in-Council, for which leave was granted.[2] In the March 2020 session there were 5 civil appeals scheduled to be heard. 3 of those appeals were withdrawn, 1 was carried over to the June 2020 session and 1 prosecuted in the assigned session. In June there were a total 6 civil appeals scheduled, of which 5 of the 6 proceeded as scheduled, and 1 was withdrawn. Of the 5 heard, 1 was continued in the November 2020 session. In the November 2020 session there were 5 matters scheduled for prosecution (not including the 1 carry-over from June 2020). Of the 5, 2 were withdrawn, 2 were carried over into 2021 and 1 was heard.

In total, the Court of Appeal heard **8** civil appeals in 2020 (this includes the application to the Privy Council mentioned above) of which 2 judgments remain outstanding. There were **6** withdrawn appeals in 2020 and **3** appeals were carried over into 2021; this figure does not include appeals filed after the November 2020 session (there was 1) because the obvious consequence is that it will not be prosecuted until the following legal year. I make one observation to aid readers in understanding these statistics. Although it is reported that the Court issued 17 judgments, of which 8 arise from civil appeals, the distinction must be made between judgments issued and appeals heard. For instance, the *Grand View* appeal was heard in November 2019, but the judgment not issued until April 2020. Similarly, in *Imran Siddique*, this was a ruling on costs for an appeal that was heard in June 2019. Therefore, the publishing of the judgment would be captured in the reporting year but not the hearing, which falls outside of the reporting year.

Criminal Appeals

In 2020 the Court issued 10 judgments in relation to criminal appeals. In *Alex Wolffe*, the Court issued 2 sequential judgments – one in relation to conviction and the other for sentence – as the latter hearing was based upon the Appellant's success on the conviction appeal. There were 5 hearings scheduled for the March session where 1 matter was carried over to June 2020. 2 matters (including the carry-over) were scheduled and heard in June 2020. In November, 9 appeals were scheduled where only three matters proceeded. Of these 9 appeals, 3 were joined as they concern the same subject matter, and a further 2 were joined for the same reason. Therefore, the collective scheduled hearings would suggest that there were 6 *hearings* scheduled in November. Of the 6, 1 was withdrawn, 2 were carried over to 2021, and 3 hearings were conducted which resulted in judgments. 1 of the 3 hearings concerned a successful interlocutory application to reopen an already decided-upon appeal, with the substantive appeal to now take place in March 2021.

There were 3 judgments issued as a result of appeals initiated by the Crown, all but one was dismissed. A prosecutor's appeal resulting in a dismissal should not be considered in the context of a win/loss. Quite the opposite, prosecutors operate as "ministers of justice" whose primary functions are to preserve the interests of their complainant victims/or victims' family, and to ensure that the current state of the law by statute, common law or both is preserved and accurately reflected by decisions from the court in which they appear. Therefore, the launch of a prosecutor's appeal should be considered an act within the public interest.

[2] Grand View Private Trust Company Ltd v Wong, Wen-Young (also known as Winston Wong) *et al* [2020] CA (Bda) 11 Civ

Table 1 : COURT OF APPEAL - TOTAL APPEALS FILED 2016 - 2020			
Year	**Grand Total**	**Criminal**	**Civil**
2016	31	10	21
2017	44	18	26
2018	35	16	19
2019	21	9	12
2020	22	10	12

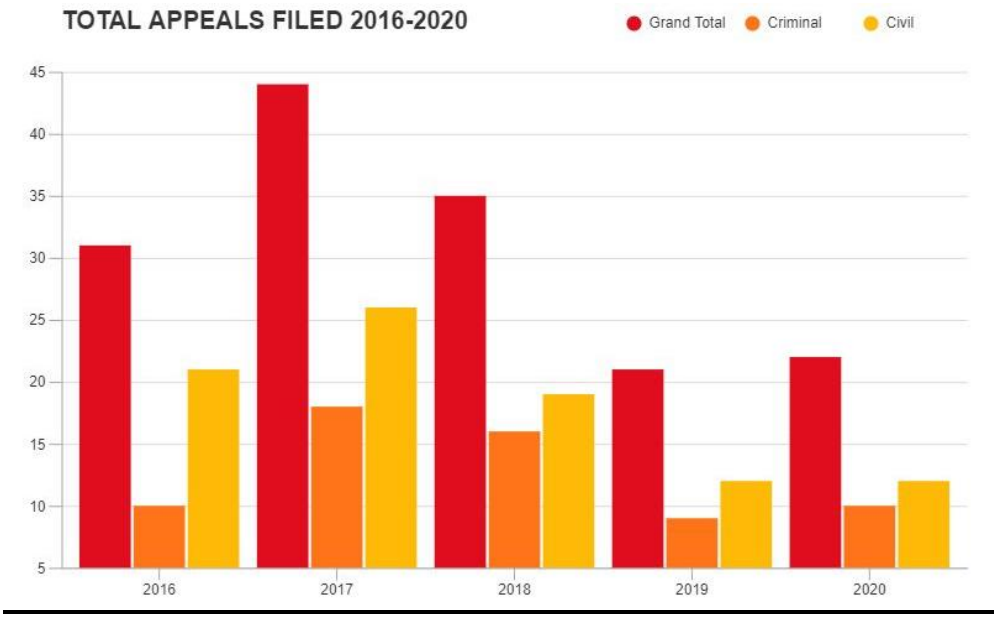
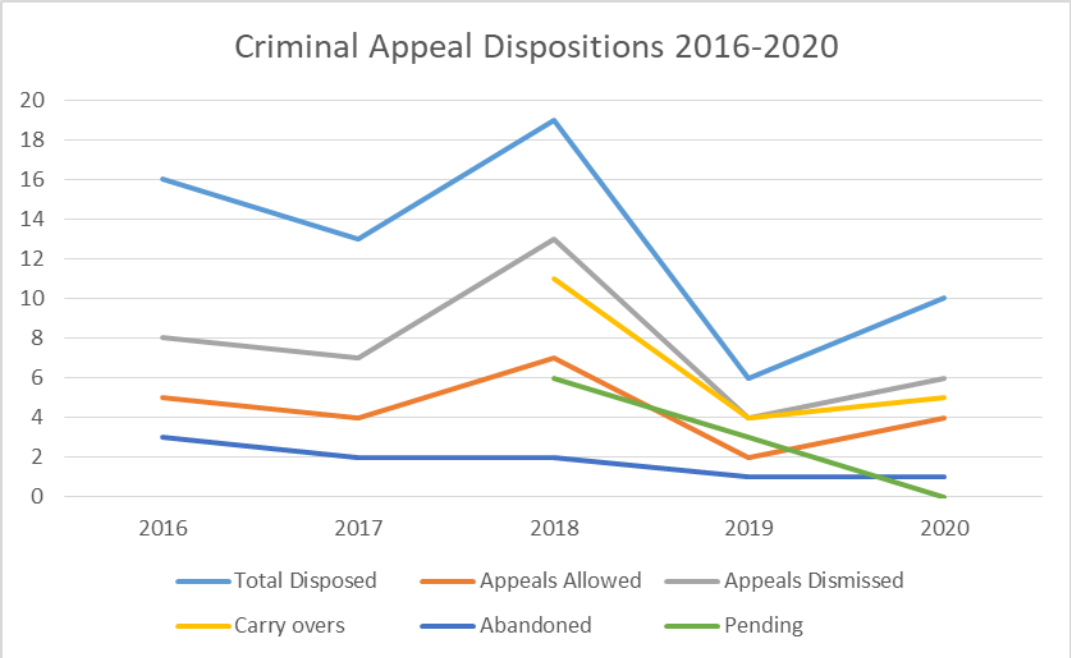
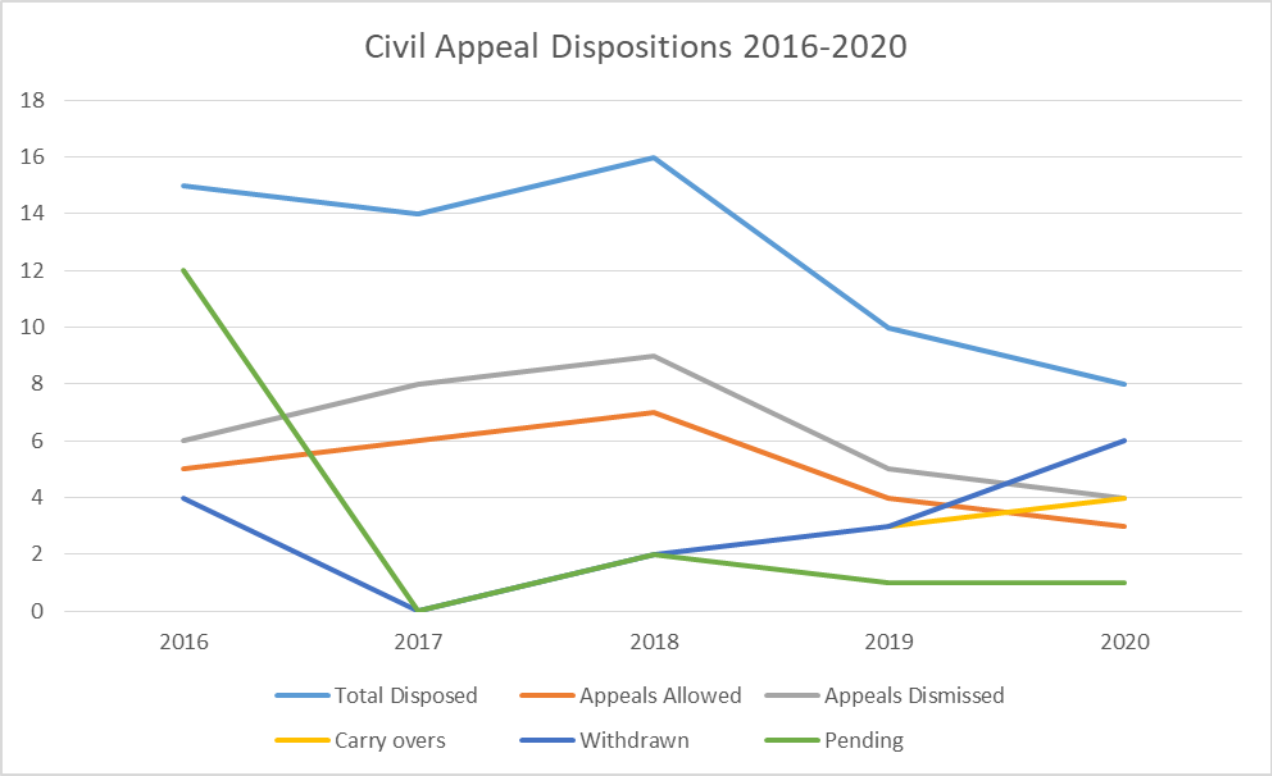


Table 2: COURT OF APPEAL - CRIMINAL APPEAL DISPOSITIONS 2016 - 2020						
year	Total Disposed	Number of appeals allowed	Number of appeals dismissed	Total appeals carried over from preceding legal year	Abandoned	Pending[3]
2016	16	5	8	Not measured	3	5
2017	13	4	7	Not measured	2	-
2018	19	7	13	11	2	6
2019	6	2	4	4	1	3
2020	10	4	6	5	1	0



[3] Appeals that were filed in 2020 but were not heard and will be carried over into the 2020 legal year.

Table 3: COURT OF APPEAL - CIVIL APPEAL DISPOSITIONS 2016 - 2020						
Year	**Total Disposed**	**Allowed**	**Dismissed**	**Total appeals carried over from preceding legal year**	**Withdrawn**	**Pending[3]**
2016	15	5	6	Not measured	4	12
2017	14	6	8	Not measured	0	0
2018	16	7	9	Not measured	2	2
2019	10	4	5	3	3	1
2020	8	3	4	4	6	1



CASES IN REVIEW

Appeal against convictions for wounding with intent, attempted robbery and intimidation by threats – prosecution's case based on circumstantial evidence and confession to fellow prisoner - allegations by defence of abuse of process as basis for stay of the prosecution- whether such allegations are better resolved as part of the trial – defence of alibi – late disclosure of alibi – suggestion that alibi a recent fabrication – subpoenas to prison officers to elicit evidence to rebut recent fabrication – prosecution's claim for public interest immunity ("PII") in respect of prison records upheld – whether proper procedure applied and claim for PII properly upheld- – further evidence adduced on defence case ex improviso – whether prosecution entitled to adduce evidence in rebuttal.

Alex Wolffe v The Queen [2020] CA (Bda) 1 Crim

The Appellant was convicted for two counts of intimidation, 1 count of wounding with intent and 1 count of attempted robbery.

On 23 October 2018 the Appellant and another cyclist traversed Harbour Road, Paget Parish in an attempt to ambush and rob other motorcyclist. He was found to have been involved in separate attacks upon two motorcyclists, Mr Jahvon Mallory and Mr Borislov Angelov. The offence against Mr Mallory involved intimidation and threats of injury by the spoken word with the intent to stop and rob him, which fortunately did not succeed. The offences against Mr Angelov proved far more serious. When similar attempts to stop and rob him did not succeed, he was chased by the two assailants to his home where he was set upon by both. One of the assailants, armed with a knife, inflicted several stab wounds to his body, while the other brandished what appeared to Mr Angelov to be a firearm. Mercifully, although critically injured, Mr Angelov survived.

The Appellant appealed against his conviction, which was unsuccessful, which led to a subsequent appeal against sentence which was also unsuccessful.

The Appellant's grounds of appeal questioned whether his conviction, in all the circumstances of the case on the evidence presented, was safe. He submitted 9 grounds of appeal, namely that (1) the trial judge erred in rejecting the Appellant's application to dismiss the charges against him; (2) the judge erred in in his instructions to the jury by saying if they found one or more descriptors provided by the Complainant differed from the Appellant's actual appearance, that they should return verdicts of not guilty; (3) the jury's verdict was unreasonable and unsupported by the evidence; (4) the judge erred when he refused to allow the Appellant to lead evidence on an application to stay the proceedings; (5) the judged erred in dismissing the application to stay the proceedings on the grounds of late disclosure lost evidence, and the failure to preserve evidence; (6) judge erred in not requiring Crown to make full disclosure of a meeting between a jailhouse informant and police investigators; (7) judge erred in allowing the Crown to bring two ex parte applications during the trial of which full disclosure was not made to the Appellant; (8) the judge erred in permitting the Crown to suggest fabrication or concoction in light of the fact that the contents of the interveiew wherein he maintained he told the authorities everything, were not disclosed to him and he was severely restricted in what he could ask about the interview; and (9) the judge erred in allowing the Crown to lead rebuttal evidence relevant soley to the Appellant's credibility.

Grounds **1, 2 and 3** were dismissed. The Court found that the factual assessment of the appellant's account was a matter for the jury. Its inherent implausibility was such as not likely to have given them much pause. This was frankly acknowledged by Ms Mulligan when she accepted, in response to a question from this Court,

that the jury could reasonably have regarded the Appellant's account as implausible.

In their deliberations leading to the conviction of the Appellant, the jury would have had in mind the directions and warnings given by the learned trial judge especially about the inherent weaknesses of the identification evidence, including the obvious disparities between the height and build of the assailants as described by Mr Angelov and Mrs Angelov (albeit at trial, contrary to her earlier estimate of 5' 8", she estimated the taller of the assailants as being 5' 10" tall) and the height and build of the Appellant. The jury would have had in mind, as Mr Richards argued before this Court, that persons engaged in a life and death struggle do not fight standing upright. Recollections by witnesses involved in or observing such a struggle, of relative heights and weights, are unlikely to be precise.

The jury was also adequately directed by the learned trial judge on other related issues going to identification, including the fact that no mention was made of either assailant wearing eye glasses, the absence of any forensic evidence linking the Appellant to the crimes and the evidence of Geneiko Green and Jahvon Taylor (who testified as a defence witness) that the Appellant was wearing clothing and a helmet on the night of 22nd October which did not match the clothing or head wear of either assailant.

These were all matters of fact for the jury and it was well within the bounds of their reasonable deliberations to have regarded them as explicable in all the circumstances of the case or as insignificant in light of the evidence of the Appellant's connection to the bike used in the earlier incidents, and his reported confession to Troy Woods, which the jury may well also have accepted. This incriminatory evidence pointed to the Appellant as one of the two assailants involved in the attacks upon Mr Mallory and Mr Angelov. The Court therefore did not accept Ms Mulligan's submissions that the case should have been withdrawn from the jury on account of the weakness or unreliability of the identification evidence.

In respect to **grounds 4, 7 and 8** the Court was not persuaded by the arguments advanced. In the first place, there is simply no basis for concluding other than that the judge was correct in his assessment that it would have been inappropriate to conduct a voir dire into whether or not the putative interview as alleged by the Appellant, had taken place. He had found that the material presented on the PII application in response to the subpoenas neither "weakened the Prosecution's case nor does it strengthen the Defence case". He could not have so concluded if the material before him had revealed that an interview recording an account of the Appellant's ambush alibi had in fact taken place. The learned trial judge had also been assured by the Prosecution that no record of such an interview existed.

As Mr Richards now submits in response on this point, correctly understood, this is a ground of appeal that an interview was conducted with the Appellant on his reception at Westgate Prison outside the parameters and protections of the Police and Criminal Evidence Act 2006 and/or the Judges' Rules. However, these protections exist to ensure that, where the prosecution seeks to rely upon an inculpatory (or mixed) statement of an accused against him, the voluntariness of the alleged statement is clearly established before it may be admitted into evidence.

In this case not only has the Prosecution never sought to rely upon any evidence of confession made during any such interview, it does not accept that such an interview actually took place. On the contrary, it is the Appellant who had sought to rely upon an alleged exculpatory statement which he asserts he made during an interview in support of his case.

It is clear from the reasons for rulings of the learned trial judge that he had addressed his mind to this subject of prior notice and expressly directed that notice not be given. When asked by Ms Mulligan to review his decision, he confirmed his earlier ruling that the material put before him should be protected on grounds of public interest immunity but undertook to keep the matter under review as required, in the interest of fairness, as the trial proceeded. This he doubtlessly did. In the

end he was satisfied that the non-disclosure of the protected material would in no manner interfere with the fairness of the Appellant's trial. That was a matter for the judge to determine and the Court saw no reason for concluding to the contrary.

Ground 5, the Court was satisfied that this complaint gave no basis for a stay of the proceedings and was properly rejected. The test throughout was whether any failure of disclosure on the part of the Prosecution risked the Appellant not being given a fair trial. Only where such a risk arose, would it have been exceptionally appropriate to stay his trial instead of allowing all attendant issues – such as the availability or unavailability of evidence – to be examined and resolved as part of the trial process. The trial judge correctly identified the governing principles from the case law at pages 12 to 14 of his ruling.

The Appellant's Counsel offered no evidential basis for this ground of appeal, relying instead it seemed, on the mere supposition that the lateness of the disclosure or the unavailability of evidence, was itself a proper basis for this more sinister inference. While the investigative and prosecutorial failings were glaringly apparent and deserving of criticism (and were in fact criticized by the learned trial judge), they do not justify such an inference.

Insofar as **ground 6** is concerned, the Court concluded that there having been no basis for a concern that Mr Woods was an agent of the police with the result that he elicited the confession from the Appellant unfairly, that there was no basis for a finding that its admission into evidence at the trial was unfair

The Court did not see that there was anything further that the learned trial judge could sensibly have done to assist the defence in establishing the existence of a record which the prosecution, being mindful of its duty of disclosure, said did not exist and the primary evidential value of which would be nil, given its allegedly self-serving and exculpatory nature.

In respect to **ground 9**, the Court did not consider that the learned trial judge was wrong to have regarded the matter as having arisen ex improviso within the meaning of the modern test and so to have exercised his discretion to allow the prosecution to adduce the evidence in rebuttal.

Unanticipated though it no doubt was, the relevance of the new line of defence was clear: consistent with the Appellant's 'ambush alibi', the jury were now to be left with the suggestion that the men who had ambushed, robbed him of motorcycle CE875 and used it to commit the attacks upon Mr Mallory and Mr Angelov, were now out to silence him.

The rebuttal evidence was clearly necessary and relevant to counter that unforeseen suggestion. In the Court's view it was admitted in the proper exercise of discretion by the learned trial judge and so this ground of appeal also failed.

HELD: The result is that the Appellant's appeal against conviction was dismissed and his conviction upheld.

Unlawful arrest – failure to take into account relevant considerations – was the claim to judicial review within the scope of the leave given
The Commissioner of Police v Dr Mahesh SannaPareddy [2020] CA (Bda) 4 Civ

The Respondent is a prominent medical practitioner who has been employed by Bermuda Health Care Services ("BHC") since 2000, and is its Medical Director since 2011.

On Thursday, 19 May 2016 officers of the Bermuda Police Service ("BPS") attended at the Respondent's residence and arrested him under section 23(6) of the Police and Criminal Evidence Act 2006 ("PACE"). They then searched his house. This included searching the purse of a female friend who happened to be there and the Respondent's wallet, a cabinet in the kitchen, which had within it five patient files, and taking those files and two IPAD tablet computers. The Respondent contended, and Kawaley CJ (as he then

was) held, that that arrest and the subsequent search of his home, without a search warrant, purportedly effected under section 18 or 31 of PACE was unlawful.

On appeal, the Appellant who originally advanced 20 grounds of appeal were refined into six issues; and in oral argument these, essentially, boiled down to two. The first issue was the contention that the judge only granted leave for the Respondent to argue the legal point that Section 23(6) of PACE should be construed in a manner consistent with the amended section 24 of UKPACE; and that the judge erred in law in considering anything going beyond this point.

The second issue boiled down to the question as to whether the decision to arrest the Respondent was unreasonable given the fact that Dr Reddy had volunteered to come forward.

HELD*:* In dismissing the appeal, the court upheld the Supreme Court's decision that the arrest of Dr Reddy was unreasonable because the BPS had not considered any alternatives to summary arrest and, if they had, the decision summarily to arrest him was unlawful. The application advanced the contention that UKPACE represented a codification of common public law principles applicable to the power of summary arrest. The court deemed it relevant to consider the appropriateness of arrest (in a dawn raid) as against other less intrusive options, having regard in particular to Dr Reddy's section 5 and common law rights to personal liberty. This was particularly the case given that Dr Reddy was well aware of the nature of the case being made i.e. that there had been unnecessary diagnostic tests; had supplied the US Department of Justice with documentation; and had also offered to provide information to the BPS – an offer that had not been taken up. It was apparent to the Court that the Chief Justice was entitled to find, as he did, that there was no or no credible evidence that the investigating officers had evaluated the appropriateness of the options. That was a judgment for him to make and there was no detection of an error of law in his making it. On that basis the arrest was held to be unlawful because it was made without taking into account the question of the relative appropriateness of the options – a highly relevant consideration.

Further, since the power to search did not arise it was unnecessary to determine whether the search was reasonably required for the purpose of discovering evidence falling within section 18 or, more relevantly, section 31 of PACE.

Police Officer collecting money to avoid traffic tickets from proceeding to court – whether sentence was manifestly inadequate – application of UK Sentencing Council's Guidelines
The Queen v Kyle Wheatley [2020] CA (Bda) Crim 9

This was the Crown's appeal against the Supreme Court's sentence of the Respondent to 2 ½ years' imprisonment for conspiring, contrary to section 128 of the Criminal Code Act 1907 ("the Code") to pervert the course of justice by agreeing to facilitate the unauthorized destruction or suppression of tickets issued to motorists alleged to have committed traffic offences. The Crown contends that the sentence was manifestly inadequate and should be increased.

The Respondent was, at the time of the offence, employed as a Police Constable with the Bermuda Police Service ("the BPS") and was attached to the Court Liaison Unit ("the CLU"). In that capacity he had the means of access to traffic tickets issued by police officers. The copy portion of the ticket is forwarded to the CLU. The information from the ticket is entered into the Judicial Enforcement Management System and the ticket remains in a secure drawer at the CLU until the appointed Court Date for the motorist to appear and answer to their alleged offence.

For a period of about 2 years between early 2016 and January 2018 the Respondent pulled tickets in exchange for cash. Two other people acted as "brokers" for him by identifying people who had received traffic tickets and obtaining cash for him, from which they received a commission, in order for their traffic tickets to be pulled. It appears that in total at least 61 traffic tickets never

resulted in court proceedings as a result of the Respondent's activities. The Crown estimated that the Respondent received about $10,700 in return for pulling these tickets and that the actual loss to the Government was in the region of $29,675. Not all the tickets were pulled for cash but the exact number that were is unknown.

At the appeal hearing, the Crown contended that this was a case of high culpability and either Category 1 or Category 2 harm, referencing the Sentencing Council's Guidelines, so that the sentence which one would expect to see after a trial should be between 5 and 7 years. The Crown further submitted that the sentence ought not to have been less than 3 ½ years and should have been somewhere between 3 ½ years and 5 years. This would represent a sentence before discount for plea.

HELD: the Court did not regard the outcome of appeal as dependent on whether and, if so, exactly how the judge fitted (or could have fitted) his sentence into the Guidelines, which are, in any event, as the Respondent's Counsel put it, guidelines and not tram lines. Looking at the matter in the round, the Court took the view that it was open to the judge to take a starting point (before discount for plea) of the order of 4 years. Whilst the sentence imposed can, by reference to the Guidelines be said to be either on the low side or below that specified if the culpability and harm were both at the highest level, the Court did not regard it as *manifestly* inadequate. The Appeal was dismissed.

Undue influence between co-sureties – steps for banks to take to completely insulate itself from claim of undue influence – ability for co-sureties to seek independent counsel from each other.
Keimon Lawrence v HSBC Bank Bermuda Ltd [2020] CA (Bda) 10 Civ

Mr James and Mr Lawrence are father and son. Mr James was, and had been for many years, the Head Bellman at the Fairmont Southampton Princess. At the time of the transaction, he was 53. Mr Lawrence was in 2008 an employee of the Bank, engaged as a Computer Operator. He was then 33. He was made redundant in 2012.

Mr James had a friend called Alexander "Jerry" Ming ("Mr Ming"), whom he had met in the early 2000s because Mr Ming was employed by the Fairmont Southampton Princess. In early 2008 Mr Ming asked Mr James if he would guarantee a loan that Mr Ming was seeking to obtain from the Bank. Mr Ming explained that he was intending to buy a business and that he had approached Mr James as he knew that Mr James owned a sizeable property. Initially Mr James was completely against the idea and rebuffed Mr Ming's sales pitch and business venture. In the end, the persistent Mr Ming persuaded Mr James to provide the necessary guarantee to the Bank; and, as part of that persuasion he offered Mr James $50,000 a year *"as a return on any investment by way of guarantee".*

The business venture was the purchase of 80% of a company called GSC Ltd which, according to Mr Ming had secured a contract to install and maintain the air conditioning, heating and ventilation units in the new Acute Care Wing at the King Edward Memorial Hospital.

Having obtained legal advice from the same law firm, both Mr James and Mr Lawrence executed the First Facility Letter in their capacities as Additional Guarantors, on 11 June 2008. The Borrower was to be The Fitz Group Ltd, a Bermuda company. The loan was to be an on-demand term loan of $3,666,666 and was to be made available for 8 years from drawdown.

Following the release of the loan facility to the company, there came a period where the borrower defaulted in the monthly payments which resulted in the bank going after Mr Lawrence and Mr James and the guarantors. In the end, the bank took possession of the guarantors' residential property in order to liquidate and pay back the outstanding loan balance. In the Supreme Court Mr Lawrence claimed that he was unduly influenced by his father, Mr James, to co-sign as a guarantor to the loan.

On appeal, the Court of Appeal identified the following essential features: (i) both father and son were advised by the Bank to obtain independent legal advice before deciding to provide a guarantee. It is not suggested however, that they were told that as between them they may wish to get separate advice. The Bank did not recommend any particular law firm; (ii) so far as the Bank was aware, Mr James was agreeing to act as guarantor and put up the Property as security in order to assist Mr Ming, his friend. There was, so far as the Bank was aware, no commercial benefit to either father or son; (iii) the bank suggested to Mr James that he should obtain all the relevant financial information and review it with an accountant; (iv) Mr Lawrence did not raise with the Bank any concerns about the wisdom of entering into the guarantee; nor did he say to the Bank that his father was exerting undue influence or that he was in any way being put under pressure to enter into the guarantee by his father.

In arriving at its conclusion the Court had regard to *inter alia* the authority of *Royal Bank of Scotland Plc v Ettridge (No 2)* [2002] 2 A.C. 773 where Lord Nicholls laid down the steps on which banks should take in order to protect itself against claims of undue influence by a surety. These steps were contemplated in the context of the undue influence being that of the debtor husband and a wife acting as guarantor. But since the undue influence, on which the Bank is put on inquiry, can be that of a co-surety the court considered the steps in *Ettridge* must apply, mutatis mutandis, to such a situation.

In the present case the Bank learnt the name of the lawyers who were, in the event, involved. But what the procedure outlined called for in the present case was, firstly, that the Bank should communicate directly with Mr Lawrence informing him that, for its own protection, the Bank would require confirmation from a solicitor acting for him to the effect that the solicitor had fully explained the nature of the documents and the practical implications they will have for him and that the purpose of that requirement is that he should not be able later to dispute that he is legally bound by the documentation. The Bank should not have proceeded with the transaction until it had received an appropriate response from Mr Lawrence directly.

Mr Lawrence had understood what the Bank was seeking and why it was seeking it. Moreover, he should have been asked, or at least invited, to nominate an attorney who was completely separate from Mr Ming or his father; but told that the attorney could be the same attorney as was acting for either of them, if that is what he preferred.

HELD: It was held that the Bank had not done enough to insulate itself from the consequences of any undue influence on Mr Lawrence by his father. As a result, the default judgment was set aside and the matter remitted to the Supreme Court to determine whether or not Mr Lawrence in fact entered into the transaction under the undue influence of his father.

Unlawful Carnal Knowledge – luring – sentence manfifestly inadequate – starting point for sentence for unlawful carnal knowledge
The Queen v Chez Rogers [2020] CA (Bda) 16 Crim

This was an appeal taken by the Crown against a sentence passed in the Supreme Court on the 15th of July 2020. The Respondent was convicted on his guilty plea on the 1st of July 2020 on two counts, being first the offence of unlawful carnal knowledge of a girl under the age of 14 years, contrary to section 180 (1) of the Criminal Code 1907 ("the Code"), for which offence he was sentenced to a period of 18 months' imprisonment; and secondly, the offence of luring, contrary to section 182 E of the Code, for which he was sentenced to 12 months' imprisonment. The sentences were ordered to run concurrently, so that the global sentence was one of 18 months. Leave to appeal was granted to the Crown on the 7th of October 2020

The offences occurred between August and September 2019, when the Respondent was 19 years of age, and the child victim was 13. The matters came to light when the victim's mother took her

daughter's cell phone as a punishment, and discovered on the phone messages of a sexual nature, sent to the victim by the Respondent, in which the Respondent suggested to the victim that the two should meet, and also suggesting various types of sexual activity. The Respondent was subsequently arrested and admitted in his interview with the Police that he had sent sexually explicit messages to the victim, that he had made arrangements with the victim to meet up for sex, had suggested various types of sexual activity, essentially the charge of luring, and had subsequently had both vaginal and oral sex with the victim, on two occasions. He had no previous convictions, and had pleaded guilty at what was effectively the first opportunity.

The grounds of the appeal are that the sentence imposed by the sentencing judge was manifestly inadequate and wrong in principle, in that the judge erred in law in determining that the starting point for the sentence for unlawful carnal knowledge was one of two years' imprisonment. The Crown also contended that the sentence imposed by the judge for luring contrary to section 182E of the Code was manifestly inadequate, and that the total period of imprisonment was too low when considering the total criminality of the offences before the court.

The Crown relied upon the much more serious cases of *R v Brangman* [2019 Bda LR 93 and *R v Rogers* [2015] Bda LR 50 because they were unable to find a case on all fours with the facts of the case before us, and unwilling to acknowledge that cases decided on the basis of a less serious charge (section 181 of the Code) could be applied as a sentencing aid when considering a charge under section 180 of the Code. But the aggravating features of Brangman and Rogers are so marked that they offer little assistance as a guide to sentencing in a case with significantly different facts, such as this one. That there is an important distinction between charges under section 180 of the Code and section 181 is without question.

Parliament passed legislation with reference to specific age limits for the particular victim, and this court recognises that. But a sentencing judge must always have regard to the particular circumstances of each case, and an appellate court considering a sentence appeal similarly so. And in my judgment that does not mean that sentences ordered in section 181 cases are wholly without assistance to the court when considering sentence for charges brought under section 180. But the court must always bear in mind the difference in seriousness between the respective charges.

In relation to the charge of luring, The Crown emphasised the need for this court to give some guidance as to the appropriate range of sentence. It seemed to the Court that the judge took the appropriate view of the seriousness of the luring charge in this case, and the sentence imposed reflects that, and is in a reasonable range when compared to the more serious charge of unlawful carnal knowledge.

In the Court's view this was a case where the sentences, both on the unlawful carnal knowledge and on the luring charge, may be said to have been on the lenient side, but I would not regard them as being so much so that the sentences, taken together and bearing in mind the totality principle, could be described as manifestly inadequate.

HELD: In the circumstances the appeal would be dismissed.

Magistrates' Court trial - excessive length of trial - injustice caused by delay and fragmented nature of trial - need for case management by the magistrate to ensure trial completed within a reasonable time - fairness of trial process
Kenneth Williams v The Queen [2020] CA (Bda) 17 Crim

The Appellant in this case was convicted in the Magistrates' Court on 15 May 2019 by the Worshipful Tyrone Chin on 6 counts of sexual exploitation of young peson whilst in a position of trust, 1 count of intruding upon the privacy of a child, 1 count of showing offensive material to a child and 1 count of acts of indecency involving a child,

all of which were against a young female child. He was sentenced on 26 July 2019.

The sentence for each offence comprised a term of imprisonment ranging between 6 months and 18 months, and the magistrate divided these into three groups based on the timeframe within which the offences in question had occurred, with all the sentences within each such group to run concurrently, and the three groups together to run consecutively. The net effect was that the total sentence amounted to three years' imprisonment. The Appellant appealed the convictions to the Supreme Court, which appeal was heard by Subair Williams PJ on 1 July 2020. Her judgment dismissing the appeal was handed down on 28 August 2020.

There were two grounds of appeal, which, by submission of the Appellant's Counsel, was truncated and dealt with together under ground 2. Since this ground of appeal concerned the length and fragmented nature of the trial, the court commenced its assessment by reviewing the trial's course. This exercise will not be undertaken in this review.

The magistrate's judgment, delivered on 15 May dealt fully with the evidence, starting with that of the child complainant. He held that that evidence supported the different counts against the Appellant. There were two lengthy periods when the child complainant stayed with the Appellant and his girlfriend, at the request of the child's mother, first for a period from 8 to 20 April 2014, when the Appellant was living at Spanish Point and again from 5 to 28 August 2015, by which time the Appellant and his girlfriend were living in an apartment on Court Street. The Appellant's case was that in respect of both periods, he could not have committed the offences (which according to the child occurred when only the two of them were in the home), because for each of these periods he left the house early in the morning and returned in the evening. For the first period, the Appellant was unemployed, and his evidence was that he was absent from the home all day looking for work, or hustles. During the second period, the Appellant's girlfriend was heavily pregnant and ordered to bed rest.

The magistrate found the child complainant's evidence to be credible and reliable. He found the Appellant's evidence that he never spent any "one on one" time with the child to be hard to believe. He found the girlfriend's evidence to be well memorised and seemingly well-rehearsed. After various references to the evidence, he set out detailed findings of fact in which he identified those parts of the Appellant's evidence which he did not believe, and similarly so for the girlfriend's evidence. He made some findings of fact in relation to his acceptance of the child complainant's evidence, but did not do so in respect of every incident. He concluded by declaring himself satisfied beyond reasonable doubt in relation to each of the nine counts.

Before the Supreme Court, five grounds of appeal were argued. The first was in relation to the length of trial, making complaint that the trial was unduly prolonged due to the magistrate's lack of trial management, and resulting in unfairness to the Appellant. The second ground of appeal is described as having been on the basis that the magistrate had erred in law by refusing a stay arising out of material non-disclosure, but was actually the consequence of the magistrate's refusal to recuse himself. The third ground appears to have been written in the same terms as the second, but related to the photographs referred to in paragraph 15 above. The fourth ground contended that the magistrate had misdirected himself on the law and the facts, in terms of his use of the word fiduciary. The fifth ground was based on a complaint that the magistrate had failed to consider the defence case. Given the grounds that were pursued in the appeal to the Court of Appeal, no useful purpose is served in addressing grounds apart from the complaint of delay.

The key issue in this appeal is the fairness of the trial, to which is addressed further below. And in this regard emphasis is made about the fairness of the process which is in issue, and not the question whether the magistrate ultimately reached the right conclusion. But before moving to that, the Court addressed the remaining period of delay identified by the judge, being the question of the three months' loss of time "wasted in pursuit of

the recusal application and the abandoned application for a mistrial." The Court commented on the magistrate's responsibility for proper case management in regard to these aspects of the case at paragraphs 9, 22 and 26 above. It did not seem that this delay should be regarded as attributable to the defence, if indeed this is the effect of the judge's comments. It was not regarded as appropriate to blame the defence for the delay of eight months identified, and if and insofar as the judge did so, it was held to be wrong. When the cases talk of a defendant's conduct as negating the effect of delay, as in Boolell, one must bear in mind that the conduct in that case was truly egregious, and the delay was of a much greater extent. And even then, with delay caused by the defendant as in Boolell, Lord Carswell said at page 3728:

> *"Their Lordships consider, however, that when it became clear that time was dragging on and that the defendant was bent on dislocating the course of the trial and prolonging the proceedings by every means within his power, it was incumbent on the court to take such steps as it could to expedite matters and reach a conclusion. This should have led to the injection of an element of urgency after the nolle prosequi was entered and the trial had to begin afresh. Certainly from that point onwards, the court should have explored more effectively ways of conducting the trial without gaps between sitting days and of moving it quickly on after the disposal of attempts by the defendant to delay it.(emphasis added)"*

Conducting the trial without gaps, and certainly without lengthy gaps, between sitting days is clearly a critical feature of a fair trial, and one that Mr Lynch rightly emphasised. This was particularly the case in relation to the mother's evidence, which took place over a period of more than six months, over some six or seven separate hearing days. As Mr Lynch pointed out, such a fragmented process necessarily meant that time would be wasted in orientation at the start of each session.

the question for this court was whether there was a fair trial. Ms Sofianos in her address submitted that there was no unfairness to the Appellant and that the judge's judgment, supporting that of the magistrate, was sound. The Court indicated that it did not think that the judge was right to blame defence counsel for delay said to have been caused by excessive crossexamination of the Crown's witnesses, nor in relation to meritless applications made by defence counsel, when the task of case management was one for the magistrate. Meritless applications should be dealt with quickly, so as not to delay the trial process inappropriately. The view that Ground PJ (as he then was) took the delay in the case of Andrew Robinson seemed to have also applied in this case, namely that by reason of the numerous interruptions and delays, the whole process amounted to a miscarriage of justice.

In saying that, it was appreciated that the magistrate did express concern at the slow pace of the trial. But it was up to him to do something about it, for instance by acceding to counsel's request (when it was apparent that the trial was moving far too slowly) that a sufficient block of time should be reserved to enable the trial to be completed without any further delay. That request was made in January 2018, after the trial had been under way for almost five months, but unfortunately it fell on deaf ears, such that another sixteen months passed before judgment was given. The Court did not think it is an answer to the unfairness of the trial to say, as the judge did in paragraph 67 of her judgment, that the magistrate's judgment was clear and accurate, and that he came to the right result. The ultimate issue is whether the trial process has been fair, and for the reasons. Thusly, the appeal was allowed, the convictions set aside and the Appellant discharged from custody.

In giving judgment, this Court indicated that in consequence of the direction that verdicts of acquittal should be substituted for the convictions, and that there should be no retrial. In this regard the Court was acutely conscious of the fact that the Appellant has been in custody since his conviction on 15 May 2019, and so has in fact been incarcerated for some 18 months, approximately

half of the sentence he received on 26 July 2019. Quite apart from the fact that a retrial would no doubt be deeply traumatic for the child complainant, well more than three years after she had originally given evidence, we took into account the Appellant's substantial period of incarceration while the appellate process has been undertaken, in ordering that there should not be a retrial.

Sexual Offences – the test for admission of the child complainant's evidence – direction to the jury regarding such evidence – judicial bias – treatment of medical evidence regarding STD
William Franklyn Smith v The Queen [2020] CA (Bda) Crim

The Appellant was convicted of four sexual offences. The victim ("A") was aged 10 or 11 at the time of the offences. A was, at the time of the trial, aged 12.

A was living in a house in which four generations of her family lived or were present. The Appellant had been in a relationship with A's aunt, during which he had resided in the house. Although that relationship had ended, he still visited. He is the father of the A's aunt's children. He stayed overnight on 31 October 2017. In the early morning of 1 November, A's great-grandmother found him in A's bedroom, dressed only in boxer shorts. A family row took place. Later that day, the great-grandmother questioned A about what had happened. A said that nothing had happened on that occasion (the evidence was that A had been asleep when the Appellant was found in her room). However, she then referred to two previous occasions when the Appellant had sexually abused her. The first was on 23 September 2016 – a date she could recall with precision because her aunt had been in hospital giving birth to the Appellant's child. The second was in June or July 2017 during the school holidays.

The grounds of appeal had four themes, namely (1) the Judge's approach to receiving A's evidence; (2) the Judge's direction to the jury on their approach to A's evidence; (3) judicial bias; and (4) the admissibility of forensic evidence relating to infection.

As to the first of these grounds, the Appellant's counsel sought to attack the Judge's conclusion on the threshold question and the understanding of the concepts of oath and solemn affirmation; he was speaking to the victim's ability to give truthful evidence. He referred to certain passages in the transcript where the Judge asked leading questions and where A was unable to provide answers.

The second ground concerns the judge's direction to the jury on the assessment of A's evidence, which was broken down into two criticisms: (1) that part of it is taken from an English model direction that was devised for use in relation to very young children; and (2) that it is too limited giving rise to an unbalanced summation, largely favourable to the Crown.

Thirdly, the Appellant's counsel alleged that the learned trial judge displayed bias in his directions to the jury making certain references in the transcript of the judge's summation to the jury.

Lastly, the Appellant's counsel argued two grounds of appeal in relation to the evidence given by a medical doctor who examined A following the report to police. The doctor found no evidence of any internal or external tears, bruising or abrasions to the vagina but said it was to be expected given the passage of time from the incident to the time of reporting. Swabs were taken from A and, on analysis, these tested positive for trichomonas, a parasite that lives in the vagina. The doctor's evidence was that it is almost always transmitted by sexual intercourse.

As to this evidence, the Appellant's counsel complained that the Judge wrongly refused to conduct a *voir dire* before deciding upon its admissibility. It was submitted that, if he had done so, doubt would have been cast on the doctor's expertise and this would have led him to exclude her evidence from the purview of the jury. Further, and in any event, the evidence ought to have been excluded because its prejudicial effect outweighed any probative value, not least because there was

no evidence that the Appellant or any adult partner of his had trichomonas.

HELD: The Court in dismissing the appeal found that this was a difficult trial which was conducted fairly and adroitly by the Acting Justice. The convictions were safe.

As to the first ground, the transcripts contained a sufficiency of material which justified the Judge's conclusions. The Canadian case *of R-v-Fletcher* [1982] CCC 2907 made it clear that an appellate court should avoid laying down what and how many questions should be asked. It is a matter for the discretion of the trial Judge and the exercise of that discretion should not be impugned unless manifestly abused. Secondly, whilst the Judge was having to assess A ahead of receiving her account of the allegations, the Court having the advantage of a complete transcript of the account which she proceeded to give, convinced the Court that A had more than sufficient intelligence to qualify her to give evidence and an appropriate understanding of the duty of speaking the truth. Her evidence, when it eventuated, further confirmed that the course taken by the Judge was amply justified.

On the second ground of appeal, it was held that the direction could not be regarded as a simple regurgitation from the template English directions. It was a lengthy exposition, tailored to the evidence and issues in this case. The second complaint which seemed to have focused on the absence from the direction of specific reference to matters such as the delay between the alleged incidents and the report to the police were unimpressive. The Judge did include within the summation a specific reference to delay and included reference to "the lack of opportunity to prove or disprove the allegation by, for example, a timely medical examination, particularly in the light of the evidence of the doctor". Moreover, when the Judge came to review the evidence of the doctor, he returned to the issue of delay and the disadvantage it may have caused the Appellant in relation to medical issues which was entirely favourable to the defence.

In dismissing the third ground, the court reminded itself of the test to be applied on bias; that is whether a fair-minded and informed observer would conclude that there was a real possibility, or a real danger, that the Judge was biased. The Court found this allegation too fanciful, because in almost every case, the Judge was juxtaposing the case for the Crown and the case for the defence. In any event, the summation included the standard direction on judicial comments which was carefully positioned immediately before the commencement of the Judge's review of the evidence. The review was also repleted with constant reminders of the jury's sovereignty in relation to their position as the "judges" of the facts.

The fourth ground, there was nothing in the complaint of failure to conduct a *voir dire*. The Judge was not asked to conduct one and there is no reason why he should have been or should have himself initiated one.

In the all the circumstances, the appeal was dismissed, and the conviction upheld.

REPORTS FROM THE PRIVY COUNCIL 2020

The Court of Appeal granted leave to one case in 2020; *Grand View Private Trust Company v Wong & Ors* [2020] CA (Bda) Civ 11. The hearing of this appeal remains at large. There were no other matters considered by the Privy Council for Bermuda.

The Committee is scheduled to hear the same sex marriage appeal between 3 and 4 February 2021. This matter was decided by the Court of Appeal in the November 2018 session.

The Committee is to decide on the issue of whether the Domestic Partnership A ct 2018 ("the 2018 Act"), providing that only marriages between a man and a woman will be recognised as such in law, infringes the Constitution Order 1968 ("the Constitution"). Parliament passed the 2018 Act, which provided for same-sex couples to enter domestic partnerships and declared that a marriage is void unless the parties are respectively male and female. The Respondents, being individuals affected by the legislation and a Bermudian church which supports and conducts same-sex marriages, applied to the Supreme Court of Bermuda for a declaration that the provisions of the 2018 Act which purported to revoke same-sex marriage contravened the Constitution.

The Supreme Court of Bermuda ruled in favour of the Respondents, holding that section 53 of the 2018 Act contravened sections 8 and 12 of the Constitution. The Court of Appeal for Bermuda allowed the Attorney General's appeal only in part, holding that section 53 of the 2018 Act contravened section 8 (but not section 12) of the Constitution. But the Court also held that section 53 was void on the grounds that it was enacted for a religious purpose. The Attorney General now appeals to the Judicial Committee of the Privy Council. The Respondents are seeking to cross-appeal for a declaration that the 2018 Act contravenes section 12 of the Constitution.

THE SUPREME COURT

COMPOSITION OF THE COURT

The Hon. Mr. Justice Narinder Hargun
Chief Justice of Bermuda

The Hon. Mrs. Justice Charles-Etta Simmons
Puisne Judge
Supervising Judge of the Criminal Division

The Hon. Mrs. Justice Nicole Stoneham
Puisne Judge
Head of the Matrimonial Division

The Hon. Mrs. Justice Shade Subair Williams
Puisne Judge
Civil/Commercial/Appellate Division

The Hon. Mr. Justice Larry Mussenden
Puisne Judge
Civil/Commercial/Appellate Division

Civil, Commercial and Appellate Division:

YEAR IN REVIEW

Output: The Legal Areas

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

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

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

Output: The Numbers

A measure of the output of the Civil and Commercial jurisdiction is the number of published or reasoned judgments. It is unsurprising, given the Covid 19 pandemic in 2020 that the total number of written judgments is down from 73 in 2019 to 255 in 2020. It is significant to note that written judgments in commercial cases are up from the 13 in 2019 to 20 in 2020.

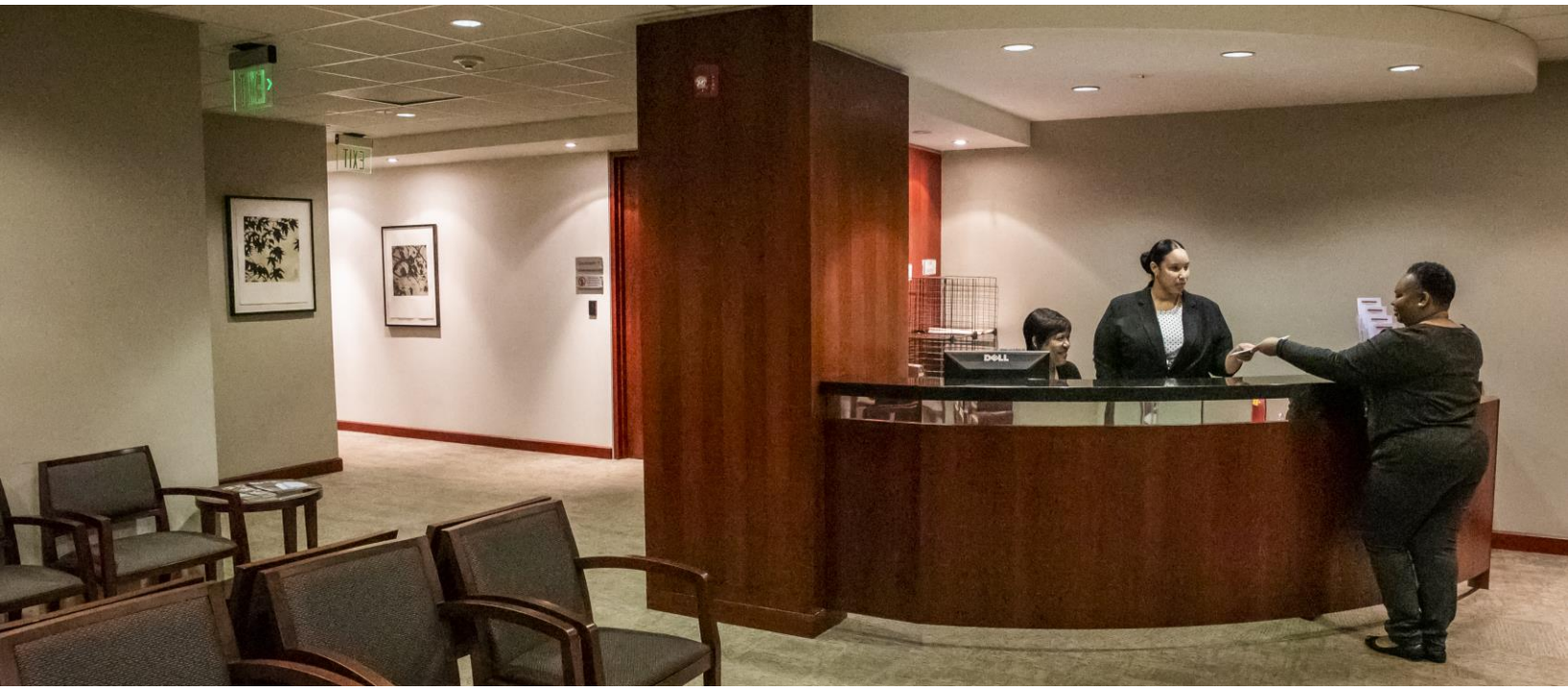
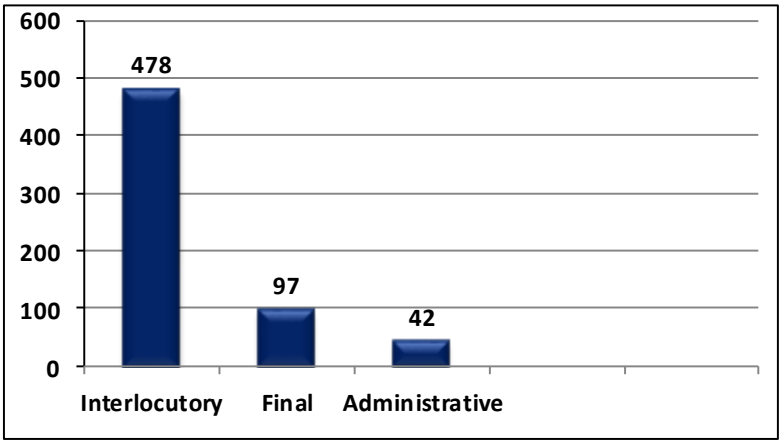


Table 1: 2014 - 2020 Published Judgments				
2014				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	41	23	8	72
2015				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	49	12	11	72
2016				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	50	19	16	85
2017				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	57	16	14	87
2018				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	49	18	19	86
2019				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	44	13	16	73
2020				
	Civil-Gen	**Commercial**	**Appeal**	**Total**
Published/Considered Judgments	23	20	12	55

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

Table 2: Number of orders made



In 2019, the figures reveal 722 interlocutory orders were made and 139 final orders were made (a total of 861) in civil and commercial matters. A further 70 orders were made in administrative matters (e.g. admissions to the Bar and appointment of notaries).

In 2020, there were 478 interlocutory orders, 97 final orders and 42 administrative orders. This measure shows that there was an appreciable reduction in the number of orders made in 2020 compared with the orders made in 2019.

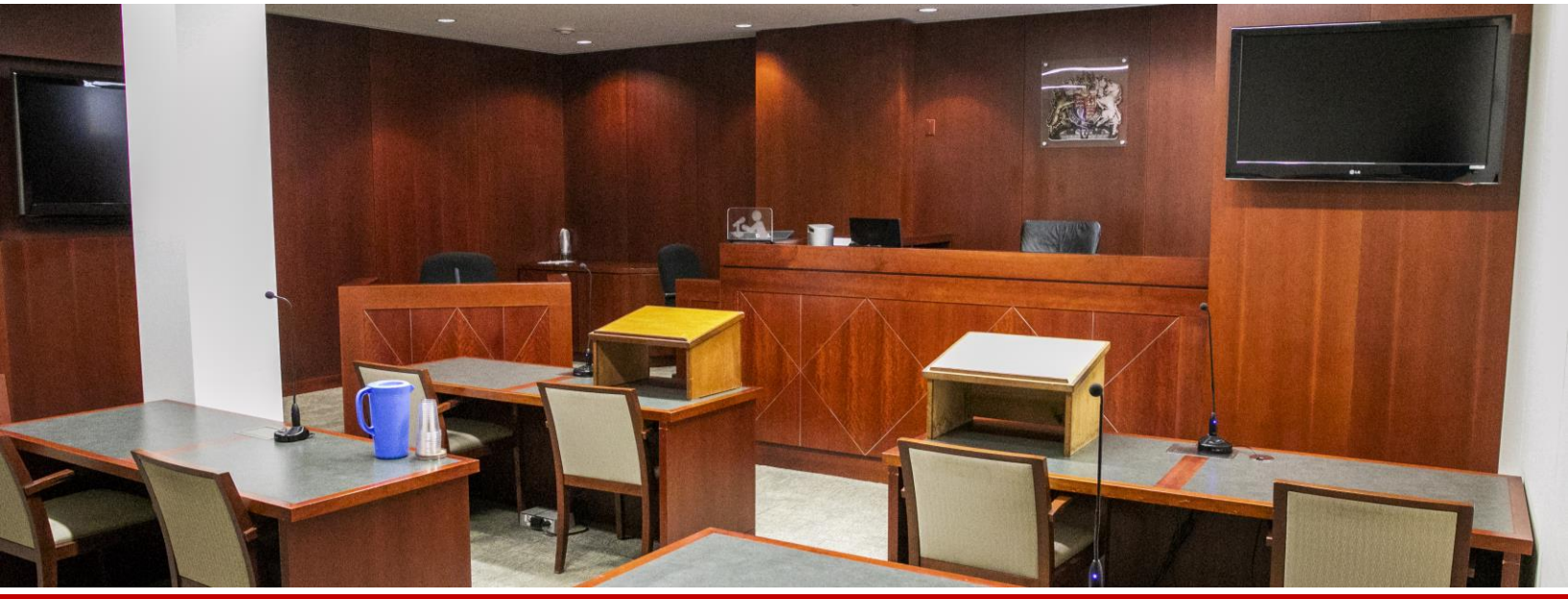
Another measure of activity in the Civil and Commercial Court is the number of actions commenced within the relevant year. Substantive proceedings are represented by (i) writ of summons filed in the Commercial Court; (ii) originating summons filed in the civil jurisdiction; (iii) writ of summons filed in the civil jurisdiction; (iv) judicial review notices of motion; and (v) partition actions in the civil jurisdiction. In these categories there was in fact a significant increase in the number of actions commenced in the 2020 (415) compared with 2019 (356). There was a substantial increase in the number of actions commenced in the commercial jurisdiction in 2020 (90) compared with commercial actions commenced in 2019 (53).

Table 3: New Civil Matters Filed by Subtype 2015-2020

Year	Total	Commercial	Originating Summons	Call To Bar	Notary Public	Writ of Summons	Judicial Review	Partition	Mental Health	Bankruptcy	Other
2015	513	57	140	52	51	180	12	12	11	10	N/A
2016	495	67	139	34	52	170	17	6	9	1	N/A
2017	478	59	145	45	33	160	20	1	11	4	N/A
2018	447	43	86	22	31	180	29	3	10	4	N/A
2019	503	53	70	43	25	215	11	7	15	1	63
2020	489	90	86	42	11	209	25	5	14	0	7

Criminal and civil appeals from the Magistrates' Court are also heard in the Civil and Commercial Divsion. In 2020, the total number of appeals filed were down by (from 47 cases to 33 cases). 33 appeals were lodged, with 2 appeals allowed, 2 appeals dismissed, 6 appeals being abandoned and 23 pending.

Table 4: CRIMINAL & CIVIL APPEALS FROM MAGISTRATES COURT 2015 - 2020					
Year	**Total Filed**	**Allowed**	**Dismissed**	**Abandoned**	**Cases Pending**
2015	39	14	6	8	38
2016	69	17	16	6	25
2017	79	23	13	7	26
2018	59	4	9	5	41
2019	47	2	6	4	35
2020	33	2	2	6	23



Family & Matrimonial Division:

YEAR IN REVIEW

"Parenting is the easiest thing in the world to have an opinion about, but the hardest thing in the world to do."
Matt Walsh

During the period January 2020 through March 2020, 33 divorce petitions were filed into the Registry. Due to the global Covid-19 pandemic the Registry closed its doors mid-March 2020.

Upon the re-opening of the Registry and the courts, a further 117 divorce petitions were filed during the period May 2020 through December 2020.

In total, 150 divorce petitions were filed in 2020. When compared to the revised number of petitions filed the previous year namely 174, the manually collected data indicates that 24 less petitions were filed in 2020 than in 2019. Unreasonable behaviour continues to be the most cited reason for the breakdown of the marriage.

In total, there were 122 orders of Decree Nisi and 106 Decree Absolutes granted in 2020. An estimated 32 Decree Nisi orders were granted to petitioners acting in person without legal representation.

The number of litigants appearing without the benefit of a lawyer continued to grow. This notable trend placed an extraordinary strain on the division including the two administrators, who were required to patiently correspond with in person litigants on a multitude of matters including general legal procedure, drafting of legal documents and emotional expectations during hearings. The division's administrators, Ms. Tiphanni Philip and Ms. Carmen Edness are to be commended for their efforts.

An estimated 40 chambers applications before the judge were made by litigants acting without counsel. These applications included ancillary relief, relocation of children overseas, custody, care and control, paternity, enforcement of financial orders, and leave to present a divorce petition within 3 years of marriage. The most common reason provided by litigants for appearing without legal representation was their inability to afford attorney's fees. Notably, there was not one single application before the judge wherein an attorney stated on the record that he/she appeared *pro bono*. This worrisome circumstance more and more challenges the public perception of justice in Bermuda.

In 2020 there were at least 15 matters carried over from the previous year which required the input of the Court Appointed Social Worker. There were 6 additional orders for the preparation of Social Inquiry Reports. The focused work of Ms. Nichole Saunders, Court Appointed Social Worker and Mr. Sijan Caisey, Social Worker Assistant was vital to narrowing the issues before the Court, including the long-term welfare of our children and their families.

The impact of the covid-19 pandemic decreased the in-person services offered by the Court Appointed Mediator, Mrs. Miriam Shaya-King. There were 10 cases in which parties voluntarily engaged in mediation services and 3 agreements were reached without the need to resume face-to face litigation. In all of these cases, Mrs. Shaya-King conducted virtual meetings sometimes in the wee hours of the day to accommodate one party resident in a different time zone overseas.

The mediation process is confidential. It facilitates non-adversarial communication and is therefore less stressful than traditional litigation. What is discussed within mediation is not disclosed to the judge. The only information disclosed to the judge is the agreement reached, if any, on any part of the disputed issue.
The Court Appointed Mediator, Mrs. Shay-King said this:-

> *"Family mediation is a process which facilitates clear communication and opens the door for challenging discussions and potential negotiations and exploring outcomes to which both parties can give their commitment. This process allows both parties to express their strongly held views in a private, safe and skilfully managed environment. This approach is a compassionate and sensitive way of dealing with relationship challenges. It aims to bring about healing and respectful communication whether or not couples continue to live together. It is also more private and much less expensive than using attorneys. In the event that couples are going through the courts, mediation can be very relevant in bringing about healing and understanding in very difficult circumstances. Mediation is about developing skills which will empower people to find solutions.*
>
> *In mediation, the mediator acts as a neutral party and facilitates a conversation between the two parties involved in the conflict in having a conversation about their issues, allowing the parties to learn from the process and have a dialogue between them which has been difficult or non-productive. The aim of the mediation is for the parties to discover their deep values which are hidden under the threats they experience from the other party as well as become aware of the defend-attack patterns which take place between the two of them. The mediator's role is for the mediator to help parties tell their stories, explore underlying interest and concerns, and generate options for solving problems and reaching agreements. The hope is that once the parties have experienced this, they are able to learn from each other as well as learn more about themselves which opens up space for creating options. Family mediation can last between 4-6 sessions anywhere between 2- 3 hours per session depending on the complexity of the issues. "*

There remains a lack of public awareness of such services via the court process including the fact that such services are provided at no costs. It is hoped that mediation services for Bermuda's families will become an integral feature within the division's case load and positively conserve judicial time for legal issues.

Upon the re-opening of the Registry and the Matrimonial Court, the division could no longer accommodate face-to-face chambers hearings as its allocated 12 feet x 12 feet chambers on the 3rd Floor of the Dame Lois Browne-Evans Building, did not meet social distancing guidelines. However, the generous co-operation of the Senior Magistrate, other Magistrates and their administrative staff permitted the division, subject of course to the scheduling of Magistrates' Court matters, seamless weekly use of court rooms equipped with appropriate technology, within the DBLE building. The Supreme Court Matrimonial division extends earnest appreciation to Mrs. Nakita Dyer, the Magistrates' Administrative Officer (Litigation) and her team for their professionalism, co-operation, patience and commitment to the smooth operation of the Supreme Court Matrimonial division during these challenging times.

The loss of the one and only hearing room allocated to the Matrimonial Division, reminds us of the pressing need for adequate court facilities for Bermuda's families, supporting professionals, court administrative staff and judges. In this regard, the division extends enormous gratitude to the Bermuda Government for demonstrating its commitment to provide an expansion of court facilities within the Dame Lois Browne-Evans Building. It is hoped that the soon to be expended facilities will include a user friendly courtroom, hearing rooms, public waiting rooms, mediation/conference rooms, voice transcription technology and a team of trained administrative staff.

Mr. Frank Vasquez, IT Manager and Mr. Brian Mello, IT Assistant have superbly supported the division's judge, administrative assistants, private counsel and litigants in person, whether prearranged or at the very last moment, with the necessary IT support to ensure the smooth running of SKYPE virtual hearings, where ever conducted on any given day, within the Dame Lois Browne-Evans Building. With the full support of the Matrimonial Bar, the division successfully conducted virtual hearings of divorce petitions.

The division welcomes written feedback from members of the Matrimonial Bar on ways in which virtual hearings may be better utilized moving forward into 2021/22 and on the creation of standard guidelines for such hearings.

Criminal Division:

YEAR IN REVIEW

For the Criminal Jurisdiction this report is set against an unprecedented backdrop. Although bearing no other comparisons, that backdrop is prophetically described by the famous quote of Charles Dickens from A Tale of Two Cities:

"***It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair***."

For the more phlegmatic reader, the effect of the global Coronavirus pandemic is reflected in the stark comparative statistics on trial totals. As a result of the government's introduction of emergency measures and concomitant island wide shelter in place regulations, the last day that the Supreme Court operated was Monday, the 16th of March, 2020. Thereafter, all Criminal Jurisdiction matters listed from the 17th of March until the 23rd of April (inclusive) were delisted. The Arraignment session scheduled for 1st of April was also delisted by the direction of the Chief Justice which was published in the Official Gazette. The Arraignment sessions resumed on the 4th May 2020.

OVERRIDING OBJECTIVE

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

Several challenges persisted during the reporting period which have been reported on in the past that have had a negative effect on the court's efficiency. The greatest challenge is the inadequate physical plant provided to the criminal jurisdiction of the Supreme Court especially in light of the need for adequate physical distancing in indoor environments.

We continued to be challenged by the extended vacancy in the dedicated Puisne Judge's post intended to fill the compliment of judges in the Criminal Jurisdiction. Additionally, as experienced in the previous year we sustain inefficiency in our trial schedule as a result of the increase in representation of defendants by Legal Aid Counsel as a result of Legal Aid Amendment Act 2018 and the concomitant decrease in representation by other defence Counsel. We continue to experience multiple applications for excusal from jury service made by persons liable to jury service, although the lack of criminal trials during the year made applications by many people redundant in the circumstances.

PHYSICAL PLANT

The Criminal Division continued to operate out of Court 4 on the second floor of the Dame Lois Browne-Evans Building from August 2019 for the majority of the reporting year 2020. After the Court resumed in-person hearings in Court 4 in May 2020, the courtroom was not deemed to be COVID-19 Regulations compliant. Hence no criminal trials could be heard therein.

We realised that we had to find alternative accommodation for jury trials. We formed an in-house team and sought the assistance of the Department of Public Land and Buildings, a division of the Ministry of Public Works, to find a suitable venue for use as a criminal trial courtroom for the resumption of criminal trials.

We were aware that we would be competing for scarce public funding for renovation to any space that might be found to be suitable. We were shown several possible venues for the creation of a COVID-19 Regulation compliant courtroom. The cost of renovating and renting those premises would have been prohibitive at the time. Fortunately, Sessions House was once again offered to us as a trial court.

We sought a quote from a company in the private sector to include a schematic of how Plexiglas panels could be installed in the courtroom, and in a space that could serve as a jury room, the historic jury room having been found to be too small for the purpose in the circumstances.

A formal proposal for fabrication and installation of Plexiglas barriers to all areas was received on 3rd of July 2020 from Steve Cristofoli, the Project Manager of Management & Design Services, a division of Gorham's. The proposal included schematics and illustrative pictures of partitions However, thereafter some delay was experienced when the question arose about payment for the services and material. During the interim the island experienced a shortage in Plexiglas.

Through the auspices of the Registrar, Ms. Alexandra Wheatley, we asked for the cost to be provided out of Government funds that had been appropriated for emergencies arising out of the pandemic. We stressed to Government that the courts are an essential service, and the judiciary had a Constitutional responsibility to provide every person charged with a criminal offence with a fair trial within a reasonable time. Ultimately Government provided the funds for the work to be carried out by the Department of Public Works. Gorham's very graciously permitted their schematics and pictures to be used for the purpose.

During the last week in August 2020 fabrication of the Plexiglas partitions was commenced. Thereafter on the 29th of October we hosted a site visit with Defence and Crown Counsel as well as officers from the Department of Correction, and Jury officers so that they could review the work that was near completion in the courtroom and jury room. All had previously been informed of our intention to carry out the alterations to Court 1 to accommodate criminal trials. The first trial post COVID-19 was held on November 9th 2020 and was completed on the 26th of November 2020. No issues with the alterations to the courtroom arose.

I would be remiss for not expressing my profound thanks to the persons who were instrumental in securing the much needed compliant courtroom. In house, our team consisted of the Hon. Chief Justice, Mr. Narinder Hargun; Registrar, Ms. Alexandra Wheatley; Assistant Registrar, Mrs. Cratonia Thompson; Litigation Officer, Mrs. Nakita Dyer; IT Manager, Mr. Frank Vasquez and IT Assistant, Mr. Brian Mello; as well, Court Attendants Mr. Vivian Simons and Mr. Gladwin Trott. From the Department of Public Land and Buildings, Ms. Caroline Blackburn, Estates Surveyor; From the Ministry of Public Works, Mr. Sheridan Ming, Acting Buildings Manager; and Mr. Thomas Brown, Acting Superintendent and his wonderful team who put up with my every question and request.

Notwithstanding that we were able to secure one COVID-19 compliant courtroom, we continued through the reporting year to press Government

for an additional COVID-19 Regulation compliant courtroom. At the time of writing this report, talks were afoot to make court 4 in the Dame Lois Browne-Evans Building compliant however the jury room in that building presents a challenge as it too small to accommodate a jury with proper physical distancing. It is hoped that the jury room can be located in a more adequately sized space within the building.

At the time of writing this report there are 50 cases pending disposal before the court. As the statistics herein have shown, just under half of cases go to trial. If we are able to operate two trial courtrooms, the current back log of cases will take two years to be disposed of. That does not account for the fact that new indictments come before the court at every monthly Arraignment session.

It is absolutely crucial that we have a second criminal trial courtroom which is COVID-19 Regulation compliant operational as a matter of urgency. Further delay strains the Judiciary's duty to provide each defendant with a fair trial within a reasonable time.

THE ESTABLISHMENT

In the last report I highlighted the following:

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

His Excellency the Governor first made the announcement for the appointment to fill the vacant post in the Criminal Division on the 20th of March 2019.

I am happy to report that former Director of Public Prosecutions, Mr. Larry Mussenden, was appointed to the post of Puisne Judge on the 3rd of December 2020 by His Excellency the Governor. Mr. Mussenden was sworn in as a Justice of the Supreme Court by the Governor on the following day, the 4th of December 2020.

Regrettably, Justice Mussenden is unable to take up criminal case assignments that issued out of his former office during his tenure. He has been assigned to other jurisdictions of the Supreme Court. In the circumstances temporary appointments continued to be made in the reporting year. It is anticipated that such appointments may be required for a further 6 to 8 months into the 2021.

Justice Mussenden has a penchant for pursuing advances in data management and court technology. I believe that he will have much to offer in bringing up the standard of data management and court technology of the Criminal Jurisdiction to a level prized by other jurisdictions. Such will increase the efficiency in the work of the criminal courts.

JURY SERVICE APPLICATIONS

The Juror's Act 1971 governs among other things the disqualification, exemption and excusal of persons liable to jury service. Because members of the public have found some aspects of jury management to be shrouded in mystery, in the last report I included Table 4 which represents the vetting of written applications for non-service as part of our aim of transparency in the criminal trial process and to track the effect that such applications may have on the jury selection process which is a major component in the criminal trial process.

Notwithstanding that written instructions accompany each jury summons that is served informing panel members that they can apply in writing for excusals and deferments, many panel members wait until they attend court on the return day of the summons to seek an excusal or deferral directly from the trial judge. This leads to delay and indeed can often frustrate the trial judges' schedule for the commencement of the hearing of evidence.

Table 4 has been expanded to show disposals by reference to bimonthly sessions, which is the jury service period. The totals for each type of application reveals the decrease in criminal trials in 2020. This is a direct result of the suspension of criminal trials from March 2020 until November 2020.

DISPOSAL OF CASES

Despite the closure of the Dame Lois Browne-Evans Building, the Supreme Court remained in operation. Staff directly engaged in criminal trial court matters were able to attend court under the Emergency Powers (COVID-19 Shelter in Place) Regulations 2020 Exemption for Designated Public Officers. Judges were also exempt from the Shelter in Place Regulations. However, in the interest of staff safety, the attendance of staff was kept to an absolute minimum.

I must give special recognition to our Litigation Officer, Mrs. Nakita Dyer, who was diligent throughout to ensure that I was made aware of all queries raised by Counsel or defendants about the management of cases in the circumstances. She was also available, it seemed around the clock, to assess urgent non-trial applications which she efficiently arranged with Counsel to be conducted either by zoom or by telephone conference.

On the 14th of April the Registrar issued Circular No. 8 of 2020. It provided temporary protocols and procedures for holding electronic court hearings via video and or audio platforms. It was issued under the Emergency Powers Regulations referred to above as well as in conjunction with the Criminal Procedure Rules 2013, the Emergency Powers Act 1963 and other practice directions and Court circulars.

There were 6 bail applications or variations between the 25th of March and the 17th of April 2020 during the shelter in place period. They were either held via the Zoom platform, or on the papers where Crown Counsel and Defence Counsel were in agreement as to the outcome of the application. There was an application for a Warrant for Detention Without Charge pursuant Section 29A of the Firearms Act 1973 during the period that required a court appearance on two occasions because the legislation in issue required the deponent of the affidavit supporting the application filed in the matter to be available for cross-examination by the defence.

There were no jury trials during the Shelter in Place for obvious reasons. The history of the re-start of jury trials post shelter in place is set out below. However, for comparison purposes trials during the reporting year are hereafter compared to the preceding three reporting years.

For the preceding three years (2017-2019) there were 22, 18 and 15 jury trials held respectively. For the reporting year there have been a total of 2 jury trials. This resulted in 3 persons being convicted by a jury (one trial was a two defendant trial). Correspondingly the number of indictments carried forward to the succeeding year were 14, 20 and 25 respectively. For the reporting year 49 indictments have been carried forward to 2021. This number is comprised of 28 new indictments filed in the reporting year 2020 and 21 indictments that had been filed between 2017 and 2019.

Of Offence Types, notwithstanding the island wide shut down and the slowdown in the court's work between the 17th of March and the 23rd of April, there were 5 murder related offences types indicted in 2020 as compared with 7, 8 and 4 respectively in the preceding three years. (This category includes murder, attempted murder and accessory offences).

There seems to be a downward trend in cases of manslaughter coming before the court. The preceding 3 years had 5, 2, and 1 indictments respectively while the reporting year recorded no manslaughter cases. It is beyond the scope of this report to determine the cause or causes. Other decreases in indictments containing various other offence types appear to be as a direct effect of the pandemic.

It bears mentioning however, that indictments for firearm offences were at a low over the preceding three years at 2, 1 and 2 respectively, whereas by contrast 10 indictments came before the court in the reporting year. Again the cause of this increase is beyond the scope of this report.

However, least all the delay in disposing of criminal cases be blamed on the pandemic, I must

point out again the effect of the Legal Aid Department's interpretation of and/or the effect of, the amendment to section 12 of the Legal Aid Act 1980. As pointed out in the 2019 report the Legal Aid Committee continues to assign Legal Aid Counsel (almost exclusively) to persons granted a Legal Aid certificate. Of the 34 new indictments filed in the reporting year 2020, Legal Aid Counsel appeared for the defendants in 15 of those indictments. That represents 44% of all indictments filed in the reporting year.

As pointed out before, there have been only two Legal Aid Counsel appearing in criminal trial matters and of those, only one who has actually been conducting criminal trials on behalf of defendants. Whether it is one or two Legal Aid Counsel appearing for legally aided defendants, the effect of appointing only Legal Aid Counsel to defendants facing a criminal trial who have been granted legal aid leads inevitably to delay, this will be the case even if we were to have a second functioning criminal trial courtroom.

In the reporting year there are 50 criminal cases awaiting trial. In 40% of those cases Legal Aid Counsel act for the defendants. Subject to what is said under Physical Plant, if we were to have two COVID-19 Regulation compliant courtrooms available for criminal trials we could not run two trials at the same time in which both cases involve the single Legal Aid Counsel who has been actively conducting trials, or were the case involves for example two defendants that are each represented by a Legal Aid Counsel.
Table 3 shows how efficiently or not the courts have been dealing with case management. As mentioned in the last annual report, we had lost efficiency in 2016 and 2017. However in 2018 we attained our previously established ideal average time frame of 3.5 months between a defendant's first appearance in Arraignment Court and his/her trial. Thus living up to our international reputation for efficiency in bring criminal trials to conclusion.

Unfortunately, that ideal timeframe was sacrificed to the lack of a second trial court and a second full time judge dedicated to the criminal jurisdiction. This resulted in an almost doubling of the timeframe from the previous 3.5 months to 6.5 months in the 2019 reporting year. The 2020 timeframe has increased to 13.5 months.

Our above stated loss of efficiency has been compounded by the practice of the Magistrates' Court in sending up cases to the Supreme Court on the Arraignment day following the defendant's appearance in Magistrates Court. This is done pursuant to section 28(1)(a) of the Criminal Jurisdiction and Procedure Act 2015. The cases have consistently come before the Supreme Court on Arraignment day without sufficient documentation for defence Counsel to advise the defendant so that he or she can enter a plea or select a form of challenge to the indictment. Indeed in many cases the defendants have come to Arraignment court without an indictment having been filed.

This state of affairs persisted notwithstanding my having implored Crown Counsel to make every effort to engage section 28 (1)(b) which permits the prosecutor and the defence to agree to a later Arraignment day such as would give the Crown an opportunity to prepare and serve the minimal papers that are required to put the defendant to his/her plea.

There had been a consistent period of approximately 40 days that passed between the court requesting a presentence report after conviction and the sentence hearing. Those reports have predominantly been in the order of Social Inquiry Reports (SIRs). During the reporting year the average time frame has increased to 103 days. A part of that can be accounted for by the effect that COVID-19 has had on other government agencies. However there has been a marked increase in requests for Psychiatric Reports (PsR), and the preparation time for that type of report is markedly longer. I note that the PsR are usually written by one Psychiatrist; his office has pointed out that the Psychiatrist has experienced a backlog in producing PsRs; that no doubt accounted for the longer preparation time.

ACKNOWLEDGEMENTS

I have shown our appreciation for the assistance of various persons named above who assisted with the fitting out of Court 1 Sessions House to ensure that it was compliant with COVID-19 Regulations.

I extend my deepest gratitude to the Senior Magistrate Mr. Wolffe and to Mr. Attridge for their assistance in filling in as Puisne Judge on a temporary basis over various periods of time during the reporting year.

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

I thank the Court Associates Miss Wendy Butterfield and Miss Kylah Akinstall for keeping the official record Court Smart running during court hearings, and for having grace under fire when matters involving juries do not always proceed smoothly. Eternal gratitude must be given to Mr Vasquez and Mr Mello who have found a way of dividing themselves to meet the constant demands of keeping our antiquated electronic equipment up to task on a shoestring (and increasingly non existing) budget.

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

Nakita Dyer, Administrative Officer of the Criminal Division

MODE OF DISPOSITION (Table 1)				
	2017	2018	2019	2020
TOTAL NUMBER OF NEW INDICTMENTS	48	42	36	34
TRIAL TOTAL FOR THE YEAR	22	18	15	2
TRIALS FOR 2 CO-ACCUSED PERSONS	4	1	0	1
MULTI- DEFENDANT TRIALS (3 OR MORE CO-ACCUSED)	4	1	0	0
DEFENDANTS ACQUITTED BY JURY	6	11	3	0
DEFENDANTS CONVICTED BY JURY	21	8	9	3
DEFENDANTS DISCHARGED ON FINDING NO CASE TO ANSWER	4	0	1	0
HUNG JURY	1	0	0	0
MISTRIALS	0	1	2	0
GUILTY PLEAS	22	11	9	6
INDICTMENTS QUASHED	0	0	0	0
NOLLE PROSEQUIS ENTERED IN	6	4	6	1
INDICTMENTS REMITTED TO MAGISTRATES' COURT	3	3	1	3
TOTAL NUMBER OF NEW INDICTMENTS CARRIED FOR-WARD	14	20	25	28
TOTAL NUMBER OF 2017 - 2019 INDICTMENTS CARRIED FORWARD				21
TOTAL NUMBER OF INDICTMENTS CARRIED FORWARD				49

OFFENCE TYPES (Table 2)			
2017		**2018**	
MURDER RELATED OFFENCES	7	MURDER RELATED OFFENCES	8
MANSLAUGHTER RELATED OFFENCES	5	MANSLAUGHTER RELATED OFFENCES	2
DRUG RELATED OFFENCES	12	DRUG RELATED OFFENCES	5
MONEY LAUNDERING RELATED OFFENCES	3	MONEY LAUNDERING RELATED OFFENCES	3
FIREARM RELATED OFFENCES	2	FIREARM RELATED OFFENCES	1
SEXUAL RELATED OFFENCES	3	SEXUAL RELATED OFFENCES	10
WOUNDING RELATED OFFENCES	16	WOUNDING RELATED OFFENCES	13
2019		**2020**	
MURDER RELATED OFFENCES	4	MURDER RELATED OFFENCES	5
MANSLAUGHTER RELATED OFFENCES	1	MANSLAUGHTER RELATED OFFENCES	0
DRUG RELATED OFFENCES	7	DRUG RELATED OFFENCES	5
MONEY LAUNDERING RELATED OFFENCES	8	MONEY LAUNDERING RELATED OFFENCES	4
FIREARM RELATED OFFENCES	2	FIREARM RELATED OFFENCES	10
SEXUAL RELATED OFFENCES	4	SEXUAL RELATED OFFENCES	2
WOUNDING RELATED OFFENCES	10	WOUNDING RELATED OFFENCES	6

CASE MANAGEMENT (Table 3)			
2017		**2018**	
AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	7.5 MTHS	AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	3.5 MTHS
AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING	2.3 MTHS	AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING	2.5 MTHS
AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	40.5 DAYS	AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	43.6 DAYS
2019		**2020**	
AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	6.5 MTHS	AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL	13.5 MTHS
AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING	2.5 MTHS	AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING	1.8 MTHS
AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	40.0 DAYS	AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING	103.0 DAYS

JURY SERVICE APPLICATIONS (Table 4)	
2020	
DEFERRALS	98
EXEMPTIONS*	5
ECONOMIC HARDSHIPS	1
EXCUSAL	7
JUROR DISQUALIFICATION**	8
EXCUSAL BY JUDGE MEDICAL	19
OTHER	24

*** Exemptions pursuant to Part 11 of the Jurors Act 1971**

****Disqualifications pursuant to Sec. 3(2) and 3(3) of the Jurors Act 1971**

Probate Division:

YEAR IN REVIEW

Unfortunately, staffing shortages in critical areas of the Supreme Court section of the Judicial Department continue to affect the two-person Probate Team; manpower that would be available to the Probates Registry is redirected elsewhere in the Department.

As of January 30, 2020 there are approximately 65 applications awaiting review and several ongoing applications that have been processed, but from whom we are awaiting a response from the estate representative/attorney, or for filing of further documentation prior to the issue of a Grant.

Outputs

In 2020 there were marginally fewer filings compared to 2019. In 2020 a total of 147 applications were filed, 17 less in comparison. There were 39 caveats filed in 2020, 6 fewer in comparison.

Grants Issued and Stamp Duty Assessed

In 2020, there were 134 Grants issued, compared to 152 Grants issued in 2019.

In 2020 the highest stamp duty assessment for a single estate was $319,188; the lowest assessment was $22.

In 2020 of the 134 Grants Issued, 97 had no stamp duty assessed as the net estates were of an amount lower than the statutory taxation exemption in place at the time of the deceased's death.

2021 Goals

Staff continue to diligently work to clear the backlog of applications, prioritizing applications that are urgent, given the impact of staffing shortages.
The staffing situation has impacted the completion of planned electronic checklists and guidance notes to assist those who prepare probate application documents. It is anticipated that in 2021 this will be realized as we believe this will be helpful, particularly to those new to the probates process. Greater accuracy in applications will also reduce the amount of time it takes for Registry staff to review an application and supporting documents.

Table 10: PROBATE APPLICATIONS FILED 2016 - 2020									
Year	Probate	Letters of Admin.	Letters of Admin. with Will Annexed	Certificate in Lieu of Grant (Small Estate)	De Bonis Non	Reseal	Total Appls.	Caveats	Caveat Warning/ Citations/ Orders to View Affidavit of Value or Will
2016	93	46	6	19	1	10	**175**	19	7
2017	81	29	6	24	2	11	**153**	39	7
2018	124	40	5	40	1	7	**217**	34	8
2019	112	25	5	31	2	8	**183**	45	8
2020	95	13	5	25	4	5	**147**	39	3
Change	-17	-12	0	-6	2	-3	0	-6	-5
%	-15%	-48%	0%	-19%	100%	-38%	0%	-13%	-63%

Table 10A: STAMP DUTY ASSESSED ON GRANTS ISSUED 2017-2020							
Year	No. of Grants Issued	Total Gross Estate (Bermuda$)	Primary Homestead Exemption	48(1)(B) Spousal Exemption	Statutory Deductions	Net Value of Estate	Stamp Duty Assessed
2017	184	162,140,848	70,222,266	40,851,144	9,906,211	41,166,645	4,331,314
2018	95	91,463,813	37,432,244	16,226,920	3,215,068	34,589,582	5,469,968
2019	152	109,101,485	51,912,205	25,916,715	8,994,581	22,277,983	1,688,329
2020	134	101,179,501	48,585,233	24,122,804	8,049,752	21,260,917	1,700,032

THE MAGISTRACY OF BERMUDA

MESSAGE FROM THE SENIOR MAGISTRATE

The Wor. Juan P. Wolffe, J.P.

"Challenges in life inculcate a fighting spirit. Every moment full of challenges makes it interesting and overcoming them makes life meaningful"

Anil Sinha

The COVID-19 pandemic unapologetically wreaked havoc upon every Court system in the entire World. As a direct result of lockdowns and other precautionary measures being taken, court operations in most jurisdictions came to a screeching halt which unfortunately led to horrendous backlogs in court cases being heard. Even now, most court systems are still grappling with the daunting task of scheduling matters which they were compelled to adjourn during the pandemic.

The Magistrates' Court of Bermuda was not graciously spared of COVID-19's wrath and consequently in 2020 we were compelled to confront unfathomable challenges that were thrust upon us by the coronavirus. Thankfully, the Magistrates and the Magistrates' Court staff rose to the occasion by resolutely, dutifully and unwaveringly meeting each and every challenge presented to them. In doing so, they ensured that the wheels of justice continued to revolve through these trying times.

From the end of March 2020 the entire Island effectively went on total lockdown and even now into 2021 precautionary measures are still being imposed by the Bermuda Government. However, throughout this period Magistrates and the Magistrates' Court staff preserved the proper administration of justice through the following:

(i) The Magistrates' Courts continued to hear cases remotely throughout the Shelter-in-Place Regulations (Lockdown), the closure of Government Offices, and the imposition of curfew and social-distancing conditions. In essence, the Magistrates' Court never ceased operations and therefore the number of cases that had to be adjourned were significantly reduced.

(ii) A comprehensive and robust regime carried out by Magistrates' Court staff during the lockdown and curfew periods to contact and/or summons parties whose cases could not be heard and provide them with new return dates after the anticipated opening of Government Offices.

(iii) Magistrates and Magistrates' Court staff reporting for work at the Court Building during the lockdown and curfew periods so that they may be available to address any concerns/queries of members of the public (some of whom attended the Court building in-person), to process any proceedings

that may have been filed, to resolve any urgent issues/matters which arose (particularly those involving an individual's liberty or the welfare of a child).

So while most members of the public sought refuge in the comforts and safety of their respective homes in order to shield themselves from the coronavirus, Magistrates and Magistrates' Court staff risked, and still risk, their own health by attending Court in-person so that defendants in criminal matters, victims in domestic abuse matters, and children in family matters, can still receive justice. The end result of the Magistrates' and Magistrates' Court staff's dedication and commitment is that currently both of the Criminal Courts, the Civil Court, both of the Family Courts, Traffic Court, Case Management Court, and all of the Treatment Courts have cleared up any case backlogs which were created by COVID-19 precautionary measures being imposed Island-wide. In fact, all of the Magistrates' Courts are basically back to the normality which they experienced pre COVID-19.

During the 2021/2022 legal year, the Magistrates and the Magistrates' Court staff will continue to do that which it has effectively and efficiently been doing in previous years. That is:

- to encourage parties in civil actions to resolve their disputes without the need for a contentious and potentially expensive trial;

- to assist those crippled by debt to satisfy their financial responsibilities in a manageable way over a reasonable period of time;

- to encourage delinquent parents to conduct themselves in a manner which is in the best interests of their children, both emotionally and financially;

- to provide guidance and intervention for the wayward teen who may have run fowl of the law;

- to implement diversionary measures to steer offenders away from Westgate and by finding alternatives to incarceration;

- to give the drug addict or alcoholic a real chance at stopping their cycle of drug or alcohol use, offending behavior and incarceration; and,

- to remove the stigma associated with those struggling with mental health issues, and rather than criminalizing mental health, Magistrates give offenders the opportunity to address their challenges in humanistic ways.

In 2021 we will also continue to advocate for "special measures" legislation for child victims of sexual abuse; specific counseling programs for victims of sexual assault; a web-based online payment system for child support and fines; an extension of the Legal Aid programme for family and civil matters; and, the implementation of a digital case management system.

I am thrilled to say that through the collaborative efforts of the Magistrates' Court, the Mid-Atlantic Wellness Institute ("MWI"), the Bermuda Police Service, the Legal Aid Office, and the Department of Court Services that a monumental step has been taken in the jurisprudential care of persons who appear in the Magistrates' Court but who are also presenting with a mental health issue. Through the services of a Liaison and Diversion Officer ("LDO") such individuals are now triaged at the Magistrates' Court and are therefore able to receive immediate psychiatric intervention or direction. The benefit of such immediate intervention

is that individuals are diverted away from incarceration at the Westgate Correction Facility and instead are guided towards the necessary services afforded by MWI and other helping agencies.

Unfortunately, the COVID-19 pandemic did delay the implementation of several Magistrates' Court initiatives such as the establishment of a Probation Review and a Re-Entry Court. Such specialized courts would assist offenders who are in the community to take advantage of the rehabilitative services being offered, and, so that those who are released from the Westgate Correctional Facility are given a safety net from which they can transition smoothly back into society (and thereby reduce their likelihood of reoffending). Subject to the vicissitudes of the COVID-19 pandemic we are hopeful that in 2021 considerable progress would be made on such specialized Courts.

In essence, for the legal year 2021/2022 Magistrates and Magistrates' Court staff will continue to be at the forefront of the deliverance of justice in Bermuda.

Finally, I want to take the opportunity to profusely express my gratitude to the Magistrates' Court staff. They are truly the back-bone and the glue of the Magistrates' Court and without them the Magistrates' would not be able to effectively and efficiently carry out their functions.

Juan P. Wolffe
Senior Magistrate

OVERVIEW OF THE MAGISTRACY

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

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

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

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

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

The Senior Magistrate maintained the acting Magistrate roster thereby giving opportunities to those in the legal profession to acquire judicial experience and skills which would put them in a position to elevate to the bench.

COMPOSITION OF THE COURT

The Wor. Juan P. Wolffe, JP
Senior Magistrate of Bermuda

The Wor. Khamisi Tokunbo, JP
Magistrate

The Wor. Tyrone Chin, JP
Magistrate

The Wor. Maxine Anderson, JP
Magistrate

The Wor. C. Craig Attridge, JP
Magistrate

EFFECTS OF THE COVID-19 PANDEMIC ON COURT OPERATIONS

As a result of the global COVID-19 pandemic which commenced in late March 2020, and still continues into 2021, the Magistrates' Court had to find workable ways to ensure that the break in court services would not be too drastic. Therefore, Magistrates and the Magistrates' Court staff ensured that the wheels of justice kept revolving through the implementation of the following:

(i) The Magistrates' Courts continued to hear cases remotely throughout the Shelter-in-Place regulations (Lockdown), the closure of Government Offices, and the imposition of curfew and social-distancing conditions. In essence, the Magistrates' Court never ceased operations and therefore the number of cases that had to be adjourned were significantly reduced.

(ii) A comprehensive and robust effort by Magistrates' Court staff during the lockdown and curfew periods, to contact and/or summons parties whose cases could not be heard and provide them with new return dates after the anticipated opening of Government Offices.

So while most members of the public sought refuge in the comforts and safety of their respective homes in order to shield themselves from the coronavirus, Magistrates and Magistrates' Court staff risked and still risk their own health by attending Court in-person so that defendants in criminal matters, victims in domestic abuse matters, and children in family matters, could still receive justice. Additionally, Magistrates took the initiative of staying civil debt recovery and evictions during the Shelter-In-Place and curfew provisions so as to give relief to members of the public who struggled financially as a result of the pandemic.

The end result is that currently both of the Criminal Courts, the Civil Court, both of the Family Courts, Traffic Court, Case Management Court, and all of the Treatment Courts have cleared up any case backlogs which were created by COVID-19 precautionary measures being imposed Island-wide. In fact, all of the Magistrates' Courts are back to the normality which they experienced pre COVID-19.

COURT ADMINISTRATION

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

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

The Cashier's Section collected $7,010,440 in 2020, which is 24% less than that collected in 2019. The reduction in payments collected is directly attributed to (i) precautionary measures being put in place at the Magistrates' Court from March – July, 2020, (ii) a reduction in the numbers of persons attending the court to make any type of payment, (iii) the inability of persons being able to pay because of lost employment or reduced income, and (iv) members of the public not attending court because of health and safety concerns. The cashiers are to be commended for their ability to adapt to the many precautions that were implemented as a result of the COVID-19 pandemic.

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

Special mention should be made of Ms. Patrice Rawlings (Office Manager) and Ms. Deneise Lightbourn (Accounts Officer), both of whom went over and beyond the call of duty during the Shelter-In-Place and curfew restrictions. They played a crucial role by ensuring that the administration of justice did not come to a grinding halt on account of the pandemic.

Patrice Rawlings, Office Manager

Deneise Lightbourn, Accounts Officer

HEARINGS/CASE EVENTS

Hearings/Case Events	2016	2017	2018	2019	2020
Mentions	2,829	3,295	3,602	4,035	3,658
Trials	1,832	1,717	1,399	1,174	966
Case Events	23,292	22,095	25,040	27,150	18,579

Figure 1: Table of 2016 - 2020 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.*

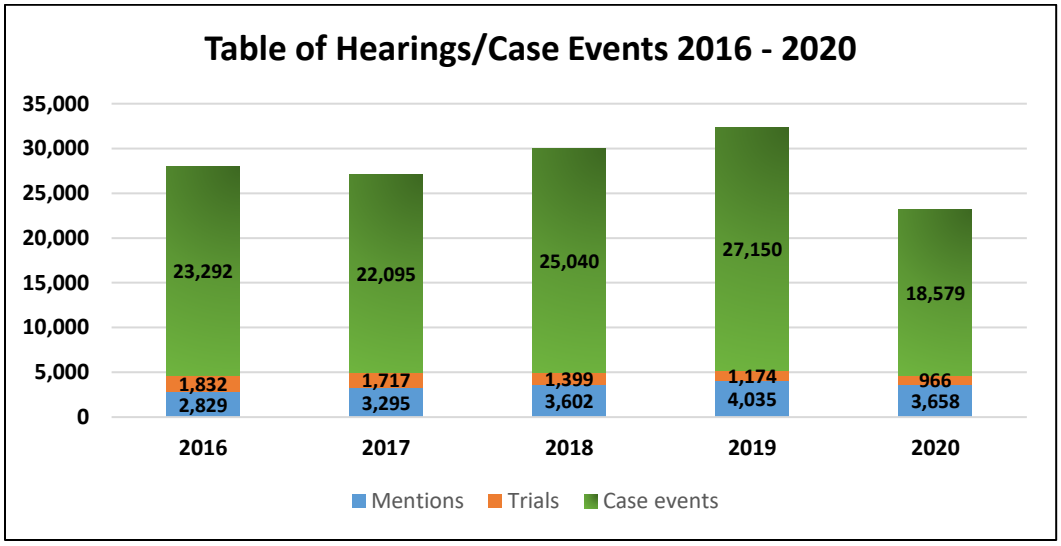


Figure 1A: Chart on 2016 – 2020 Hearings/Case Events

In 2020 the number of Mentions declined by 12% as did the Case Events which saw a 32% decline in the Magistrates' Court when compared to 2019. Since March 2020 the vast majority of Hearings (other than Trials) were heard by an audio visual link and due to the logistics of setting up such technology and the elongation of time that is expended to have remote hearings, it was deemed more practical to reduce and spread out the hearing dates of matters. It is anticipated that the Magistrates' Court will return to all in-person court appearances in March 2021.

CIVIL COURT

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

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

As stated earlier, prior to COVID-19 protocols being imposed by the Bermuda Government, the Magistrates' Court took the initiative of staying the filing of Eviction proceedings and the recovery of rent arrears. This was because the Magistrates' Court were sympathetic and empathetic to the financial plight of members of the public who come before the courts and who were unable, not through any fault of their own, to meet their financial obligations. This partly explains the 50% reduction in the number of new civil cases instituted.

Special mention to all of the staff in the administrative arm of the Civil Section as they remained current in respect of the processing and distributing of all New Civil Documents received in 2020.

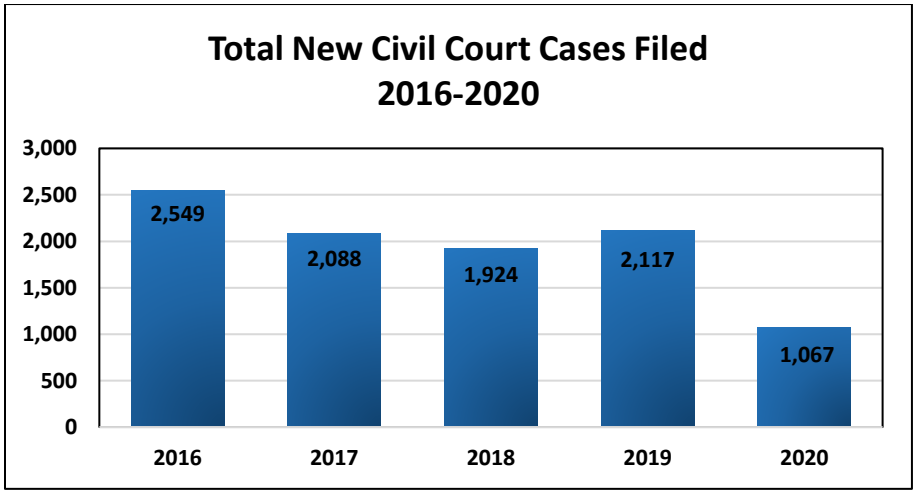


Figure 2: 2016 – 2020 Total New Civil Court Cases Filed

(Filed)	
Month	Civil
Jan	97
Feb	185
Mar	54
Apr	0
May	2
Jun	78
Jul	162
Aug	85
Sep	69
Oct	134
Nov	93
Dec	108
TOTALS:	1,067

Figure 2A: Table of New Civil Court Cases Filed in 2020

FAMILY COURT

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

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

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

The Special Court Panel had (fourty-three) 43 members serving in 2020 each of whom represent a diverse range of individuals from various walks of life. The Special Panel Members assist the Magistrates in decision making and their value to the Family Court and its continued success is immeasurable.

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

Family Court Cases

The number of New Family cases filed saw a notable increase of 25% in 2020. Of particular interest is the increase in the number of Juvenile criminal cases (19%) and Domestic Violence Protection Orders (30%). Whilst we cannot definitively conclude that there is a correlation with the COVID-19 pandemic, the only explanation that one can reasonably give for the increase in numbers is the monumental financial, emotional, and societal stressors caused by the global pandemic.

Children's Act 1998

In 2020 the number of cases heard under the Children's Act 1998 (Care Orders, Access, Maintenance, Care & Control) decreased by 32% in comparison to 2019 and 42% when compared to 2018 however, the severity and complexity of these cases have increased. From March – July 2020 and again due to the COVID-19 pandemic the number of applications in respect of child support and access reduced.

Family Court Administration

The Family Court is chaired by a substantive Magistrate. The Family and Child Support Section falls under the remit of the Family Support Officer and is generally supervised by the Enforcement Officer.

This Section provides administration for two (2) Family Courts and two (2) Family Court Magistrates. The remaining support staff are an Administrative Assistant and three (3) Court Associates. Specific recognition should be given to the Family Support Section who continue to assist mothers, fathers and children who come before the Court and who routinely need assistance in resolving rather sensitive and delicate family court issues.

Throughout 2020 the Family Support Section continued the exercise of identifying any Aged Out Files ***(Where the child has attained the age of eighteen years old or has completed full-time education.)*** and have

taken the necessary steps to determine whether the case should be brought in front of the Magistrate for closure.

CHILD SUPPORT PAYMENTS

There was a 15% decline in the total amount of Child Support Payments received in 2020 when comparing it to 2019. This is illustrated in Figure 12 and the total value of the decline is $587,663. Comparatively, this is not a significant reduction in light of the challenges caused by the COVID-19 pandemic. This shows therefore that although persons may have lost employment or had their incomes reduced, they still honoured their obligations to their children.

APPLICABLE LAW	TOTAL FAMILY LAW CASES				
	2016	2017	2018	2019	2020
Adoption Act 1963, Adoption Rules Act	11	4	16	0	1
*Children Act 1998 (Care Orders, Access, Maintenance, Care & Control)	919	874	836	780	590
**Enforcement (All Case Types in Default)	1,011	920	909	713	461
New Reciprocal Enforcement (Overseas)	2	0	0	0	0
Matrimonial Causes Act 1974	33	31	15	13	10
Domestic Violence Act 1997 (Protection Orders)	76	66	53	45	64
***Juvenile Cases	115	51	34	42	52
New Cases Filed	154	147	151	112	149
ANNUAL TOTALS	2,321	2,093	2,014	1,705	1,327

Figure 3: Table of Total Family Law Cases 2016-2020

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

****** Matters in which an enforcement order was made for the collection of child support arrears.***
******* Juvenile Cases – Criminal & Traffic Cases for children who are too young to go to regular court (17 years old & under).***

CRIMINAL, TRAFFIC & RECORDS SECTION

The Criminal/Traffic/Records Section falls under the remit of the Office Manager and is supervised by the Records Supervisor. There are two (2) Court Associates designated to this Section. They provide case management and court services related to the resolution of criminal, traffic and parking ticket cases as well as manage all Record requests.

Additionally, the Court Associates provide clerking support to the Magistrates and are solely responsible for inputting Demerit Points into the Transport Control Department (TCD) Driver's Vehicle Registration System (DVRS) and the Judicial Enforcement Management System (JEMS).

Unfortunately, due to the COVID-19 pandemic, we were unable to pursue the on boarding of new employees across Bermuda Government. Fortunately, we were granted permission to continue to employ a Temporary Relief in this Section. As at the end of the calendar year there was one (1) substantive and one (1) Temporary Relief Court Associate in this Section.

Ms. Jearmaine Thomas (Records Supervisor) led by Ms. Patrice Rawlings (Office Manager) are both to be commended for voluntarily covering the word load of their colleagues who, for health and safety reasons, were unable to attend the court building.

TOTAL NEW CASES (Filed)	2016	2017	2018	2019	2020
Criminal	584	616	608	435	529
Traffic	9,736	7,767	8,497	8,112	4,396
Parking	4,519	11,857	15,668	19,949	19,637

Figure 4: Total New Cases Filed with the JEMS system 2016-2020

Total New Cases (Filed)			
Month	Criminal	Traffic	Parking
Jan	40	571	2,119
Feb	38	472	2,227
Mar	19	448	1,829
Apr	40	42	0
May	20	296	1,199
Jun	67	450	1,871
Jul	74	356	2,125
Aug	89	417	1,564
Sep	42	350	913
Oct	37	397	1,851
Nov	36	417	2,182
Dec	27	180	1,757
TOTALS:	529	4,396	19,637

Figure 4A: 2020 Table of New Criminal, Traffic and Parking Cases Filed by Month.

The number of new Criminal cases/matters filed at the Magistrates' Court increased by 22% from 435 in 2019 to 529 in 2020. This increase is partly due to offences committed under the recently enacted COVID-19 regulations and also an increase in the number of burglaries and assaults. It is difficult to conclude that this is as a result of the COVID-19 pandemic however such an inference can be reasonably drawn.

This was not the case as it relates to the number of new Traffic matters filed which saw a significant decline of 46% from 8,112 in 2019 to 4,396 in 2020. This is clearly a result of less traffic being on the road due to the Shelter-In-Place and curfew restrictions but also there being less vehicles on the road because of the reduction in persons residing in Bermuda.

TOTAL NEW CASES (Disposed)	2016	2017	2018	2019	2020
Criminal	407	447	380	356	353
Traffic	8,518	6,982	7,713	8,397	3,967
Parking	3,603	2,857	3,514	6,169	2,169

Figure 5: Table of Total New Cases Disposed by a Magistrate 2016 – 2020 (Criminal, Traffic & Parking)

Total New Cases (Disposed)			
Month	Criminal	Traffic	Parking
Jan	25	491	293
Feb	33	490	311
Mar	21	281	244
Apr	8	12	0
May	12	69	198
Jun	40	154	374
Jul	40	386	199
Aug	34	382	140
Sep	34	360	49
Oct	58	510	65
Nov	28	493	163
Dec	20	339	133
TOTALS:	353	3,967	2,169

Figure 5A: 2020 Table of New Criminal, Traffic and Parking Cases Disposed by Month.

The total number of Criminal cases disposed of in 2020 reduced by 1% or 3 cases which is reflective of the robust efforts of Magistrates and Magistrates' Court staff to dispose of even during the COVID-19 pandemic. ***(Figure 5 refers.)***

In 2020, the Criminal/Traffic/Records Section processed a total of 1,300 Record Requests which is a significant decrease of 41% when compared to 2019. This is most likely as a result of the reduction in employment vacancies and travel throughout 2020. These requests consist of Criminal and Traffic records from persons who reside in Bermuda. The requests come from various sources which include, but are not limited to, local and overseas Employment Agencies, Private Companies, Canadian Immigrati on, the US Consulate, etc.

In early 2020 (January – March) there were approximately 200 Record Request letters that had been prepared but were outstanding for collection. After the Shelter-In-Place restrictions were lifted this Section began the process of contacting individuals. Ms. Jearmaine Thomas (Records Supervisor) is to be commended for organizing daily appointments with the various applicants for collection as by the end of May 2020, 55% or 107 of the letters had been collected.

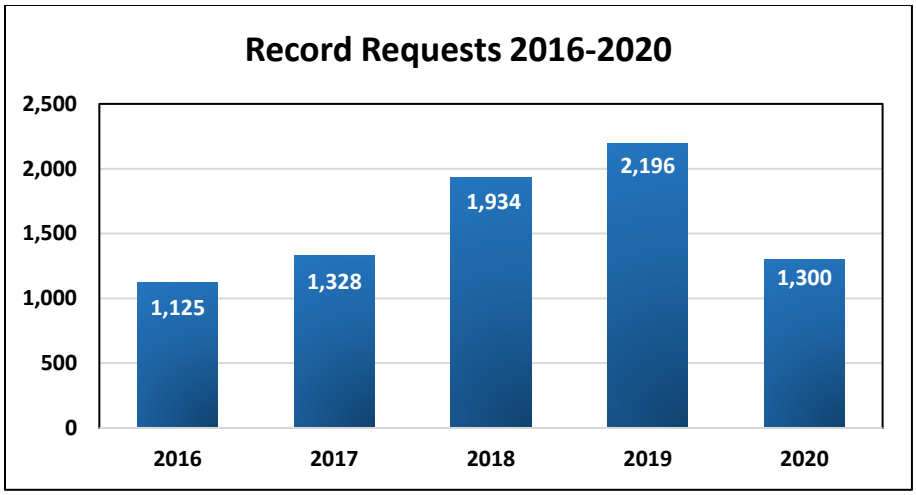


Figure 6: Table of 2016 – 2020 Record Requests

It is to be noted that the fee for a Record Request at the Magistrates' Court continues to be disproportionately low at $10.00 per application, when a similar report from the Bermuda Police Service is $100.00. It is our intent to once again communicate with the Attorney General's Chambers to address this manifestly inappropriate fee.

Magistrates' Court No. 3

Top 10 Criminal Offences 2016 – 2020

Offence Code	Offence Description	Offence Count				
		2016	2017	2018	2019	2020
2071	OBTAINING PROPERTY BY DECEPTION		(9) 22		(8) 15	(10) 18
2010	STEALING (BELOW $1000)	(2) 84	(2) 66	(1) 99	(1) 59	(6) 36
2156	ASSAULT (ABH)	(1) 88	(1) 77	(2) 64	(2) 46	(4) 40
2300	POSSESSION OF CANNIBIS	(3) 68	(3) 63	(7) 29		
4032	THREATENING BEHAVIOUR	(6) 27	(6) 30	(3) 60	(3) 41	(5) 39
2127	BURGLARY (NEW)	(4) 55	(4) 45	(4) 37	(8) 15	(3) 48
2152	ASSAULT (COMMON)	(7) 24	(8) 26	(5) 31	(8) 15	(5) 39
2067	HANDLING /RECEIVING STOLEN GOODS	(10) 21				
4026	OFFENSIVE WORDS	(9) 22	(6) 30	(10) 24	(10) 12	
2144	WILFUL DAMAGE GT 60	(5) 29	(5) 35	(6) 30	(5) 20	(7) 23
2091	TAKE VEHICLE AWAY W/O CONSENT				(5) 20	
2316	POSS CANNABIS WITH INTENT	(8) 23	(7) 27		(6) 19	
2392	POSS DRUG EQUIPMENT PREPARE	(10) 21	(8) 26		(7) 17	
6506	DOG UNLICENCE	(9)22				
2388	POSS DRUG EQUIPMENT USE		(10) 21	(8) 26		
2364	IMPORT CANNABIS			(9) 25	(10) 12	
4034	TRESPASS PRIVATE PROPERTY			(8) 26	(4) 23	
2011	STEALING (ABOVE $1000)				(7) 17	
2169	ASSUALT ON POLICE				(9) 13	
2203	HAVE BLADE/POINTED ARTICLE				(10) 12	
2231	SEX ASSAULT				(5) 20	
2284	PROWLING				(10) 12	
2373	IMPORT OTHER DRUGS				(7) 17	
2388	POSS DRUG EQUIPMENT				(5) 20	
2524	AFFRAY				(9) 13	
6002	PROCEEDS OF CRIME				(10) 12	
5000	FAIL TO COMPLY W/ORDER TRIBUNAL EMP. ACT					(9) 19
6220	CURFEW VIOLATION					(2) 44
6221	OFFENCE AGAINST EMERGENCY POWERS REG.					(9) 19
7604	MARINE SPEED 100M FERRY REACH					(8) 22
7605	CREATE WAKE 100M SHORELINE					(1) 53
7649	USE/KEEP UNREGISTERED BOAT					(10) 18

Figure 7: Table of Top 10 Criminal Offences 2016 - 2020

The Top 3 Criminal Offences in 2020 are as follows:-

1) Burglary*
2) Curfew Violation
3) Assault (ABH)

*The most prevalent offence was "Create Wake within 100 meters of the Shoreline" however the above list contains strict criminal offences.

Curfew Violations appears in the Top 3 Criminal Offences for the first time, which is indicative of persons on probation not complying with their bail/probation orders.

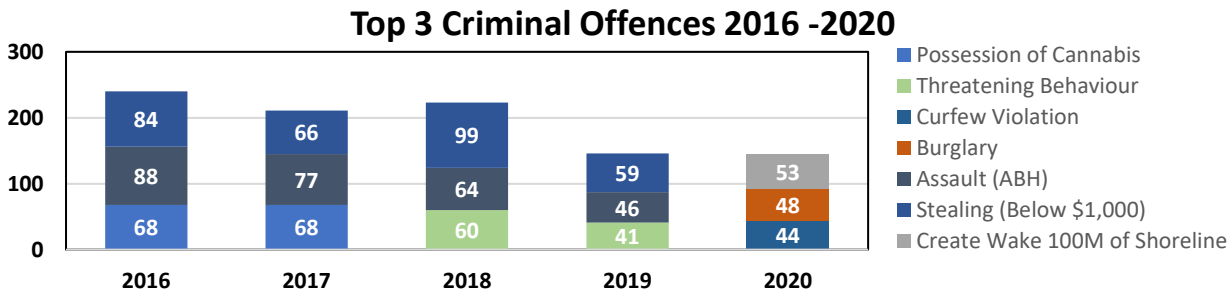
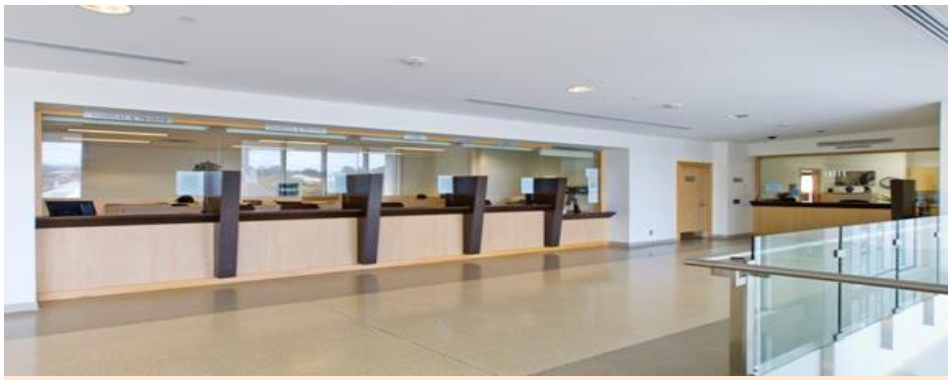


Figure 7A: Table of Top 3 Criminal Offences 2016 – 2020



Magistrates' Court Criminal | Traffic | Records | Civil | Bailiff's Reception Windows.

Top 10 Traffic Offences 2016 – 2020

Offence Code	Offence Description	Offence Count				
		2016	2017	2018	2019	2020
3002	SPEEDING	(1) 4,411	(1) 3,874	(1) 4,405	(1) 3,929	(1) 1,849
3007	DISOBEY TRAFFIC SIGN	(2) 1,490	(2) 982	(3) 833	(2) 816	(2) 424
3147	USE OF HANDHELD DEVICE WHILST DRIVING	(4)544				
3013	SEAT BELT NOT FASTENED	(7) 225	(9) 98			(10) 52
3234	NO DRIVERS LICENSE/PERMIT	(3) 819	(3) 702	(2) 851	(3) 752	(3) 374
3080	NO 3RD PARTY INSURANCE	(5) 468	(4) 411	(4) 449	(4) 675	(4) 345
3229	UNLICENSED MOTOR BIKE	(6) 431	(5) 402	(5) 425	(5) 505	(5) 311
3070	DRIVE W/O DUE CARE & ATTENTION	(8) 162	(6) 317	(7) 221	(10) 98	(9) 67
3058	IMPAIRED DRIVING A MOTOR VEHICLE	(10) 125	(7) 144	(6) 231	(7) 186	(7) 106
3064	FAILURE TO WEAR HELMET		(10) 10	(8) 147	(9) 114	
3228	UNLICENCED MOTOR CAR	(9) 135	(8)124	(9) 142	(6) 319	(6) 136
3414	FAIL EXHIBIT NUMBER PLATE				(8) 126	(8) 71

Figure 8: Table of the Top 10 Traffic Offences from 2016 – 2020

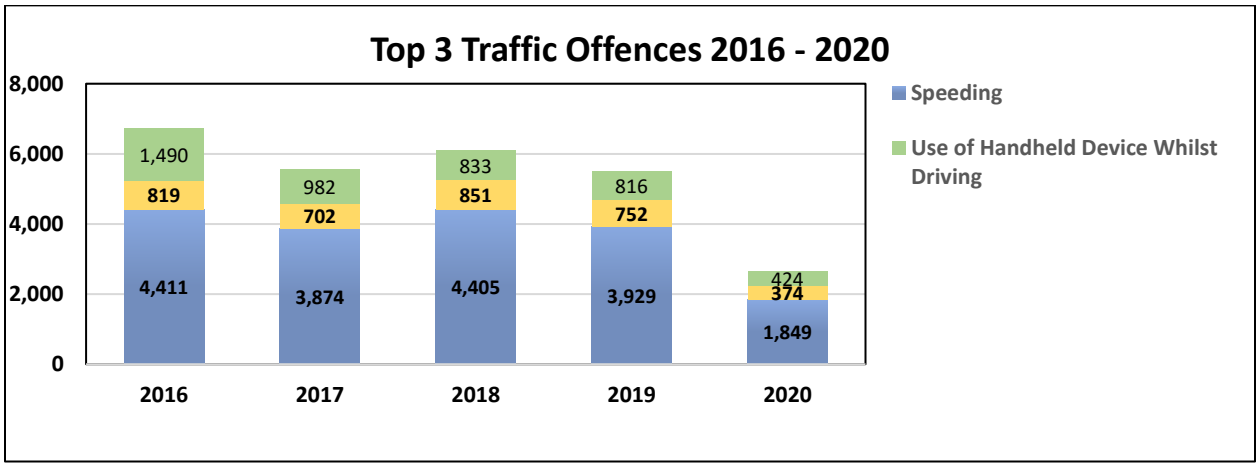


Figure 8A: Table of the Top 3 Traffic Offences from 2016 – 2020

The **Top 3 Traffic Offences for 2020** are as follows:-

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

The Top three (3) Traffic Offences have remained constant between 2017 and 2020.

Warrants

Outstanding Warrants

There was a minimal change in the number of outstanding warrants executed in 2020 despite the reduction in the movement of members of the public during the COVID-19 pandemic period.

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

TOTAL OUTSTANDING WARRANTS	2016	2017	2018	2019	2020
Committal	738	699	726	637	661
SJA	3,196	3,174	3,425	3,172	3,077
Apprehension	6,614	7,050	7,533	6,856	6,834

Figure 9: Outstanding Warrants 2016-2020
(Apprehension, Summary Jurisdiction Apprehension (SJA) and Committal)

*NOTE: **Committal Warrants** are issued when a defendant is found or pleads guilty of an offence, does not pay the fine, asks for more time to pay (TTP) and then does not meet that deadline.*

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

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

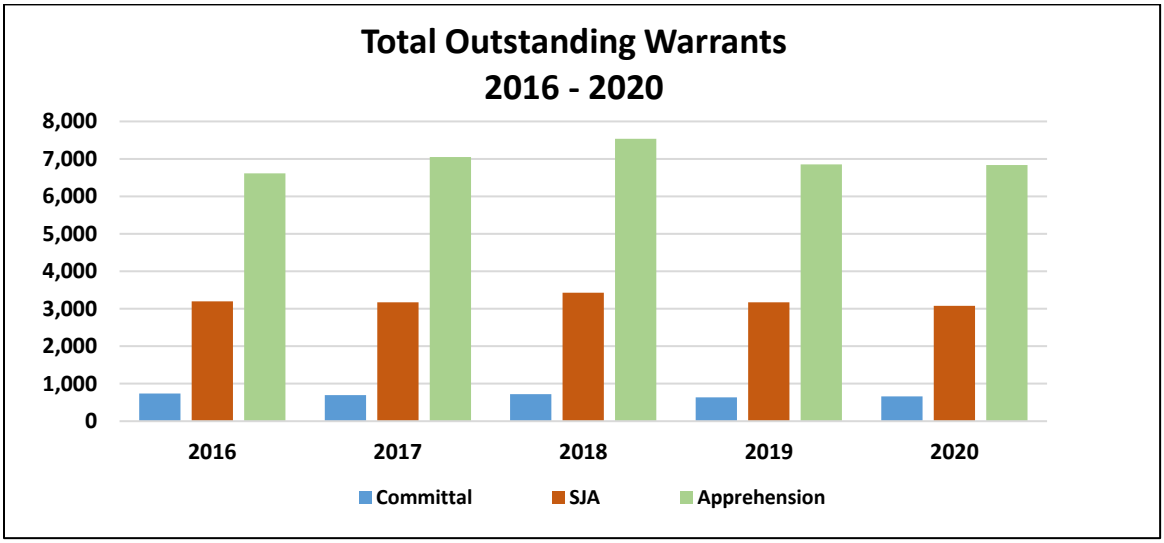


Figure 9A: Outstanding Warrants 2016-2020

Police and Criminal Evidence Act (PACE) Warrants

PACE Warrants 2016-2020	Legislation	2016	2017	2018	2019	2020
Special Procedure Applications	Telephonic	75	56	72	50	88
	Banking	5	7	9	9	5
	Internet	2	5	6	10	9
	Medical	1	2	1	1	3
	Courier	0	0	0	0	0
	Law Firm/Legal	0	1	0	0	0
	Travel Agents/Airlines	2	0	1	0	0
	Dept. of Social Insurance	1	0	1	0	0
	School	0	0	0	1	0
	Covid-19 Emergency Powers	0	0	0	0	6
	Financial	0	0	0	0	1
	Airport	0	0	0	0	1
	Belco Electricity	0	0	1	0	0
	Electronic Taxi App.	0	0	1	0	0
	Hospital (MAWI)	0	0	0	1	0
	Insurance	0	0	0	0	0
Order of Freezing of Funds		1	0	1	4	0
Order Release of Seized Cash/Property		7	2	1	2	0
Continued Detention of Seized Cash		95	61	31	18	8
Search Warrants						
	Misuse of Drugs Act	73	101	45	56	37
	Firearms	41	34	10	13	18
	Sec. 8/Sec. 15 PACE Act	17	21	16	12	20
	Liquor	0	0	0	0	1
	Mental Health	0	0	0	0	1
	Criminal Code	0	0	0	0	0
	Revenue Act(Customs)	2	0	0	0	0
Production Order (Customs)		0	0	0	0	0
Production Order 'PATI' - Public Access To Information		0	0	0	0	0
TOTAL OF ALL TYPES		322	290	196	177	198

Figure 10: Table of 2016 – 2020 PACE Warrants

The was an increase of 11% in the number of PACE Warrants issued and executed in 2020 when compared to 2019. During the past year warrants for the telephone records saw a marked increase of 43% or 88 warrants which is a record high over the last five (5) years.

Additionally, there were notable increases of 28% and 40% for the PACE warrants executed as they relate to firearms and general offences.

Coroner's Reports/Cases

Causes of Death	2016	2017	2018	2019	2020
Natural Causes	59	60	52	76	51
Unnatural Causes	3	6	26	16	17
Murders	7	5	8	0	6
Drowning	3	4	8	1	2
Road Fatalities	11	14	10	8	5
Undetermined	0	1	7	1	0
Hanging	2	3	4	2	2
Strangulation	0	0	0	0	0
Suspicious	0	0	0	0	0
Unknown	3	1	6	2	2
TOTALS	88	94	121	106	85

Figure 11: Table of Causes of Death in Coroners Cases 2016 – 2020

The Coroner's Office is managed by the Senior Magistrate who reviewed 85 Coroner's deaths from January – December 2020.

There was a decline in the total number of Coroner's cases when compared to 2019; however there was an increase in the number of deaths as a result of unnatural causes. There has also been an increase in the number of Coroner's Inquests being conducted before a jury due to deaths occurring in the Westgate Correctional Facility.

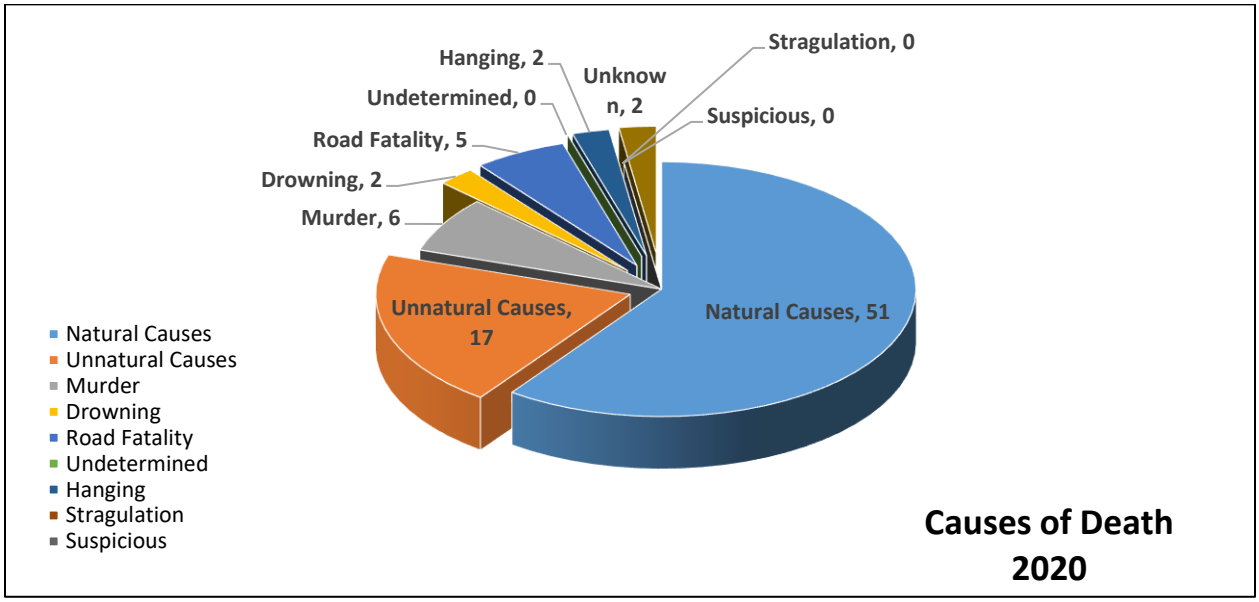


Figure 11A: Table of 2020 Causes of Death in Coroners Cases

CASHIER'S SECTION

The Cashier's Office is overseen by the Accounts Officer who has two (2) Court Associates (formerly titled Cashiers) under their remit. Collectively they received a total of $7,010,440 in fees and fines in 2020. All of the Court Associates are required to perform relief cashiering duties during the substantive employees leave from work. The Accounts Officer along with her two (2) Court Associates was responsible for training eight (8) Court Associates over the past year in these duties. All of them have carried out their duties exceptionally well and immensely enjoy interacting with the Bermudian public.

There was an overall decline in fines collected for Traffic, Parking and Criminal fines in 2020. Prior to the onset of the COVID-19 pandemic Magistrates' Court has taken into consideration the financial circumstances of individuals who have been fined and accordingly the Magistrates' Court have allowed persons to pay off their fines in installments. Of course, COVID-19 has added an additional layer of challenges which the Magistrates' Courts are empathetic and sympathetic to.

In particular, there has been a steep increase of individuals asking for more time to pay their fines because of lost or reduced income due to COVID-19. Having said this, it is important for the Magistrates to decipher whether an individual has legitimately lost income due to COVID-19 or whether they are disingenuously using COVID-19 as an excuse.

Historically, persons who were delinquent in paying their fines were primarily those who were repeat offenders and/or those who deliberately defied Court orders. Over the past 3 to 5 years, and COVID-19 has only compounded the problem, we have been seeing a considerable increase in persons who prior may not have had any indebtedness and were able to sufficiently meet their financial obligations, but now cannot pay their fines, civil debts, or child support. These persons are comprised of blue and white collar workers, individuals from middle class families, and persons from all ethnicities.

Imposing Community Service Orders is a viable option because (i) it relieves the individual of the financial burden of paying the fine, (ii) in many cases it presents an opportunity for the individual to learn a new skill which could potentially lead to employment, and (iii) the individual is giving back to the community.

Cashier's Office Payment Types by $ Amount					
Payment Types (By $ Amount)	2016	2017	2018	2019	2020
Civil Payments	$ 653,817	$ 585,954	$ 822,318	$ 840,416	$ 653,180
Civil Fees	$ 203,535	$ 192,315	$ 158,990	$ 167,085	$ 93,220
Traffic Fines	$ 2,116,050	$ 2,124,033	$ 2,247,845	$ 2,926,651	$ 1,587,199
Parking Fines	$ 171,500	$ 168,825	$ 443,625	$ 523,050	$ 472,650
Criminal Fines	$ 154,329	$ 139,569	$ 258,584	$ 172,507	$ 106,095
Liquor License Fees	$ 349,550	$ 552,101	$ 552,188	$ 570,631	$ 718,730
Misc. Fees (Including Bailiffs)	$ 29,326	$ 41,642	$ 42,464	$ 36,612	$ 22,827
Family Support	$ 4,266,083	$ 4,582,552	$ 4,288,809	$ 3,944,202	$ 3,356,539
TOTAL COLLECTED	**$ 7,944,190**	**$ 8,386,991**	**$ 8,814,823**	**$ 9,181,154**	**$ 7,010,440**

Figure 12: Cashier's Office Payment Types (By $ Amount) 2016-2020

Cashier's Office Payment Types by Number					
Payment Types (By Number)	2016	2017	2018	2019	2020
Civil Payment (Attach of Earnings)	4,909	3,938	3,942	4,590	3,027
Civil Fees	5,632	5,328	4,262	4,422	2,388
Traffic Fines	8,905	7,508	8,136	9,553	4,637
Parking Fines	3,722	3,193	6,089	7,390	6,303
Criminal Fines	398	382	378	225	230
Liquor License Fees	457	509	520	570	408
Miscellaneous Fees	1,229	1,776	2,241	2,546	1,499
Family Support	25,322	20,097	18,860	17,201	13,696
TOTAL PAYMENTS PROCESSED	**50,574**	**42,731**	**44,428**	**46,497**	**32,188**

Figure 12A: Cashier's Office Payment Types (By Number) 2016-2020

BAILIFF'S SECTION

Bailiff's Paper Service 2020

The Bailiff's Section falls under the remit of the Head Bailiff/Deputy Provost Marshall General. Throughout 2020 the Bailiff's Section operated under strength with four (4) Bailiffs to execute the processes issued by the Courts.

Due to the COVID-19 pandemic the year 2020 proved to be very challenging for the Bailiffs as it relates to the execution of Court Orders under such trying conditions.

After a somewhat smooth start to the year which was business as usual, the Bailiffs were called upon by His Excellency the Governor, to serve our country in their capacity as Crown Officers under the Provost Marshal General Act 1965.

For several weeks between the months of April and June, the Bailiffs assisted the Ministry of National Security in the monitoring of permitted business under the Emergency Powers COVID-19 Shelter in Place Regulations 2020. During this time period, there was a significant increase in Domestic Violence Orders (DVO). Although being confronted with serving DVO's in potential unsafe areas, the Bailiffs successfully served all of these documents by (while) exercising the required precautionary measures.

In 2020, a total of 2,122 processes were issued by the Courts for the attention of the Bailiffs, of which 60% were issued between the months of July and December. From these figures, it can be clearly seen that after Government relaxed the Shelter in Place and Curfew Regulations, more cases were brought before the Courts. The Bailiffs responded with a successful service rate of 83.18%.

Documents: January - December 2020						
Document Types	Assigned	Executed Served Etc.	Unable to Locate	Cancelled Withdrawn	Attempts	Outstanding
Committals Applications	585	480	4	94	1129	11
Evict Warrants	36	28	0	8	44	0
Foreign Documents	18	15	3	0	0	3
Judgement Summons	63	63	10	0	80	0
Notice of Hearing	137	128	1	1	78	8
Ordinary Summons	223	210	1	9	323	4
Protection Orders	145	144	0	1	157	0
Summons	485	349	70	6	449	130
Warrants of Arrest	372	300	1	72	701	0
Writs	21	21	0	0	6	0
Other Documents	37	27	2	5	15	5
Totals	2122	1765	92	196	2982	161

Average Rate of Service	83.18%
Average Rate of Unable to Locate	4.34%
Average Cancellation Rate	9.24%

Figure 13: Table of the 2020 Monthly Statistics – Bailiff's Actual Paper Service

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

2021 MAGISTRATES' COURT INITIATIVES

- In 2020 the Senior Magistrate commenced the operation of the Driving Under the Influence (DUI) Court whereby offenders are now able to retain their license if they participate in a robust, structured programme that addresses their drinking and driving impulses. By doing so, they were able to continue to be employed and to take care of their families, or to continue to transport their loved ones to school or to the hospital. It is hoped that in 2021 we will build upon the successful foundation created in 2020.

- It was hoped that in 2020 there would have been the implementation of a Probation Review and Re-Entry Court so that offenders who are in the community can take advantage of the rehabilitative services being offered, and, so that those who are released from the Westgate Correctional Facility are given a safety net from which they can transition smoothly back into society and thereby reduce their likelihood of reoffending. Unfortunately we were unable to do so in 2020 due to the COVID-19 pandemic and therefore a lack of resources, but we hope to revisit this initiative in 2021.

We will continue to advocate for:

- "Special measures" legislation that would mandatorily allow vulnerable witnesses such as child victims of sexual abuse to give evidence in a way which is not hampered by intimidation and which does not compound the trauma which they have already suffered.

- Specialized counselling programmes for victims of sexual assault and other victims of crime after the conclusion of the criminal trial so that they may be equipped to adequately deal with any trauma they may have suffered. Such counselling could be extended to the children and family members of those who may have been murdered.

- A web-based online payment system that would allow persons who have committed certain low level traffic offences (such as parking or speeding), or those who wish to pay child support into the Collecting Office, or those who wish to satisfy Judgment Debts, to do so without the need to leave from work or home (such as those who may have physical challenges).

- Increased funding for Legal Aid so as to ensure unobstructed access to justice and to ensure that those who are financially unable can still receive proper legal representation.

- Extend the Legal Aid programme to Civil and Family Matters so that those who are crippled with debt and those who are embroiled in contentious child support and child custody matters can know their rights. Indeed, like the Duty Counsel in Plea Court, there should be a Duty Counsel in the Civil and Family Courts.

- Implementation of a digital case management system which would streamline the administrative process of fixing dates for hearings and trials, and which would allow for pleadings and documentary evidence to be easily available to parties in matters.
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- Amendment of the archaic 1968 Mental Health Act so that those who have a mental health disorder can receive immediate and comprehensive psychiatric intervention rather than they or their loved ones having to wait until their episodic issues escalate and the person finds themselves within the walls of the Courtroom.