# THE BERMUDA JUDICIARY

# ANNUAL REPORT 2021

GOVERNMENT OF BERMUDA

# The Bermuda Judiciary Annual Report 2021


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: 2021**

**Report edited by: Audley Quallo**

# Contents




## one



## two



## three

# FOREWORD BY THE CHIEF JUSTICE

As the attached Reports relating to the Criminal Court, Civil and Commercial Court, the Family Court, the Court of Appeal and the Magistrates Court, attest the work of all courts during the last year (2021) was again heavily impacted by the adverse operational effects of Covid 19 pandemic.

As was the case in the previous year (2020) the greatest adverse impact of Covid 19 has been on the ability of the Criminal Courts to hold jury trials. The attached Report from the Criminal Division shows that prior to Covid 19 the number of indictments carried forward to the next year was around 20 (2018) to 25 (2019). In 2020, the first year of Covid 19, the number of indictments carried forward to the next year increased to 49 and in 2021, the second year of Covid 19, that number increased to 67.

Prior to Covid 19 the average timeframe in 2019 between first appearance in a criminal case in the Supreme Court to trial was 6.5 months. In the first year of Covid 19 (2020) that a period increased to 13.5 months and in the second year of Covid 19 (2021) that period now stands at 22.8 months.

Our priority in the coming year, hopefully with the abatement of Covid 19, is to deal with the backlog of criminal cases pending in the Supreme Court. Our aim is to reduce the backlog to pre-Covid 19 numbers as quickly as possible. In order to achieve this objective, it would be necessary to operate two jury courtrooms for the foreseeable future.

With the retirement of Justice Simmons (see below) the Supervising Judge of the Criminal Division, for the next 12 months, will be justice Subair Williams. I am grateful to Justice Subair Williams to assume this vital responsibility at this time. We welcome Justice Juan Wolffe, formerly the Senior Magistrate, to the Supreme Court who will be the second Judge dealing with cases in the Criminal Division. We congratulate Justice Wolffe at his appointment as Puisne Judge of the Supreme Court.

Despite the restrictions imposed by Covid 19 over the last two years the work of other courts has continued, largely remotely via the Zoom platform. As the Report from the Court of Appeal shows, the Court of Appeal conducted all its sessions in 2020 and 2021 remotely and heard 18 appeals in 2020 and 17 appeals in 2021.

The Civil and Commercial Division of the Supreme Court has been able to hear cases remotely largely unaffected by the Covid 19 restrictions. Despite these restrictions the total number of written judgments published by the Civil and Commercial Division increased from 55 in 2022 to

94 in 2021. It is also noteworthy that cases commenced in the Commercial Jurisdiction increased from 90 in 2022 to 101 in 2021.

In April 2020, with the retirement of Justice Charles-Etta Simmons, the Supreme Court will lose one of its most dedicated judges in the Criminal Division. Justice Simmons has a long history of public service, in the roles of Solicitor General, Magistrate, Registrar of the Supreme Court and the Court of Appeal and a Judge of the Supreme Court. We are grateful to Justice Simmons for her long service to the Bermuda Judiciary and for her leadership role as the Supervising Judge of the Criminal Division over the last five years.

As stated in previous reports our long-term goal is to centralise all services provided by the Judiciary, other than the Civil and Commercial Courts, in one location in the Dame Lois Browne Building. Again, I am pleased to note that this project is moving ahead, and we continue to work with the Public Works Department to achieve this goal.

Once again, I acknowledge with thanks time-consuming oversight role performed by the Judicial and Legal Services Committee ("**JLSC**"), chaired by Sir Christopher Clarke, President of the Court of Appeal. This year saw the retirement of Ms Elizabeth Christopher, past president of the Bermuda Bar Association. We are grateful to Miss Christopher for her service to the Bermuda Judiciary and the wider legal family. We welcome Mr George Jones, the current President of the Bermuda Bar Association, as new member of the JLSC.

Amongst its other duties JLSC receives and deals with professional complaints against Judges and other Judicial Officers. During the last year the JLSE received two such complaints. In the first complaint, the Complainant alleged that the magistrate did not allow for due process in that he refused to allow closing speeches and the way the magistrate dealt with certain witnesses; and the magistrate was overly critical about the Complainant's attire. In the second complaint, the Complainant alleged that the Judicial Officer did not recuse herself when she ought to have because the Judicial Officer had personal account of the issues in the case owing to an outside relationship with the Complainant. I confirm that there were no complaints alleging undue influence on part of any Judicial Officers.

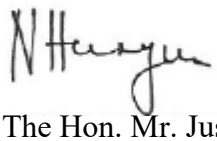
I extend my gratitude to the former Senior Magistrate Wolffe and Magistrate Attridge for their assistance in acting as Puisne Judges of the Supreme Court on a temporary basis over the last 12 months. I also thank the panel Assistant Justices who voluntarily set as Assistant Justices of the Commercial Court for a nominal consideration.

Once again, I wish to take this opportunity to thank everyone who works in the Judicial Department: the Justices, the Magistrates, the Registrar, the Assistant registrars, Clerk of the Court of Appeal, the managers and all staff for their dedicated service during the last year in difficult circumstances.

I also wish to thank again the valuable service provided by the former Chief Justice Kawaley for presiding over the 12-week trial of one of the largest cases in trust litigation in any jurisdiction.

I invite you to read the 2021 Annual Report where you will find the main highlights of the past legal year and short commentaries on various courts and their respective jurisdictions.

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



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

# REPORT FROM THE REGISTRAR & TAXING MASTER

**2021 OVERVIEW:**

The COVID-19 pandemic continued to cause disruptions in the Judiciary throughout 2021. In particular, the ability to hold hearings and the manner in which hearings were held were most significantly impacted. However, the methods and practices used in 2020 to make these adjustments allowed the Courts to run more smoothly having addressed any kinks experienced in 2020.

**Court matters following COVID-19**

As in 2020, the Judiciary had to continue to find practical ways to provide court services amidst the imposition of the fluctuating COVID-19 regulations, the intermittent closure of Government Offices, and the implementation of social distancing conditions. The health, safety and welfare of the public, as well as Court staff, was and remains paramount in continuing to implement precautionary measures, to minimize direct interactions between staff and members of the public, whilst simultaneously ensuring that the Judiciary upheld its constitutional mandate to provide access to justice.

During 2021, ten Court Circulars were released, which provided directions concerning the Court's operations throughout 2021 as a direct result of the fluidity of COVID-19 regulations and restrictions. As in 2020, the Magistrates' Court and the Supreme Court of Bermuda never ceased operation throughout 2021. The Supreme Court continued to provide alternatives for Judges to determine urgent applications such as determining applications administratively as well as the through the use of audio visual platforms which ordinarily would not have been available to Counsel pre-COVID-19.

The fundamental requirement for the Judiciary to obtain a modernized electronic case management system continued to be highlighted throughout 2021. Most regrettably, in March 2022, the Judiciary was advised the capital funding to purchase such a system in the 2022/2023 Fiscal Year was denied by the Government. Whilst it is appreciated the economy has taken a hit as a direct result of COVID-19, the Judiciary cannot function without a case management system. Our current case management system will becoming obsolete as of May 2022, so the short-sightedness of denying this funding has severe repercussions to Bermuda. The Judiciary cannot ensure members of the public access to fair hearings before an independent and impartial court which is

guaranteed by the Bermuda Constitution Order 1968 without being provided the required infrastructure to do so. Former Chief Justice Ian Kawaley rigorously advocated for the independence of the Judiciary to be recognized and formalized by the Government. It is evident for reasons such as this that efforts will be renewed by the Judiciary for administrative autonomy which is an essential element of judicial independence.

**Courts' Accommodations**

Provisions for adequate accommodations for the Judiciary continues to be a common theme which has plagued the Judiciary for many years. COVID-19 has continued to highlight these deficiencies. Despite this, with the assistance of the Ministry of Public Works, we have been able to provide two courtrooms which have numerous safeguards in place for criminal jury trials. Modifications were made to Court #1 located in Sessions House to ensure the space is compliant with all social distancing and health guidelines in 2020, followed by Court #4 in the Dame Lois Browne-Evans Building (**DLBE**) in 2021.

Collaboration between the Department and the Ministry of Public Works commenced and continues with the design phase for the renovations to be completed in the DLBE. Completion of these renovations will see the Court of Appeal, all Supreme Courts (save for the Civil and Commercial Courts which will remain in the Government Administration Building) and the Magistrates' Courts court rooms and services all in one location. I am very pleased with the Government's continued demonstration of its commitment to expanding and renovating the Court's facilities at the DLBE.

**OBJECTIVES FOR 2022**

Efforts to modernize and increase the efficiency of the Judiciary's administrative functions must continue. COVID-19 can no longer create distraction from fulfilling our duty to provide swift and fair access to justice. Indeed, the effects from COVID-19 have put a spot light on the Judiciary's need to modernize both its administrative and judicial functions.

1. COVID-19 caused further delay with the upgrading of the courts' recording system to be upgraded for all courtrooms as well as to provide hardwired Audio/Visual Links in four courtrooms. Installation dates will be finalized in short order and it is anticipated the installation will be completed by the end of the summer.

2. Continuing to work closely with the Department of Estates and Planning to push forward with the consolidation of courtrooms, Chambers and all administrative support. This will dispense with the unsustainable fragmentation of the Judiciary's accommodations.

3. Court fees have never been increased and have always been paid via revenue stamps. In order to obtain the appropriate revenue stream for the extensive services provided, fees for all courts will be increased to be in line with the current economy as well as with other jurisdictions. Members of the Bermuda Bar will be consulted prior to the increases being put to Cabinet.

4. Obtaining funding for a new case management system.

5. Much needed attention will be given to the updating of current Practice Directions such as, those for taxations hearings, to bring them in line with modern practices in the UK. This will increase the efficiency of the courts by allowing taxations to be heard on the papers if certain criteria are met which will also ultimately increase the availability of the courts.

6. It has become evident of the significant need to create electronic forms for the submission of pleadings in some of the Supreme Court jurisdictions. Electronic forms are standard in many jurisdictions and there is no reason why we in Bermuda cannot step up to the plate and provide modern services which are indicative in maintaining our repute as a desirable and highly respected Commonwealth jurisdiction. There is disproportionate amount of time dedicated by our administrative staff in reviewing and correcting the content of applications and supporting documents. The use of electronic forms will eliminate the room for error which will greatly reduce turnaround times for the issuing of documents. Consultation with members of the Bermuda Bar will be made when necessary.

7. On an administrative front, proposals are being submitted to Cabinet to amend the current organizational structure of the Judiciary in order to fill gaps and inefficiencies through the creation of new posts and significant amendments to current job descriptions.

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

**Acknowledgments**

The Asisstant Registrar, Mrs Cratonia Thompson, continues to play an essential role in the day to day running of the courts as well as spearheading projects such as the completion of the modifications to Court #4 (Dame Lois Browne-Evans Building) to align with COVID-19 protocols as was done for Court #1. Mrs Thompson was instrumental in ensuring this project was completed in order for the Courts to be in a position to hold simultaneous criminal, jury trials to address the significant back log of indictments which had been increased substantially since the pandemic first affected Bermuda in March 2020. Mrs Thompson also continues to provide me with daily, substantial assistance with all matters relating to the Judiciary which are too numerous to list. With this being said, her role as Assistant Registrar is critical and my appreciation for her dedication and willing to work as a team is invaluable.

The staff of the Judicial Department have always played a vital role in ensuring the people of Bermuda obtain their constitutional right of access to justice. Despite the continued challenges

experienced by COVID-19, staff have continued to demonstrate their fortitude and team mentality throughout this time to ensure this service is provided. I acknowledge and value the staff for this, particularly given the significant impact COVID-19 has had on everyone's mental wellness since March 2020. All staff should certainly be commended.

It is with great sadness, the Judiciary also experienced the loss of Bailiff, Vernon Young on 17 April 2022. Mr Young was an asset to the Judiciary. He was a humble and peaceful soul who is greatly missed. I give my condolences to Mr Young's family and express my personal appreciation for Mr Young's time in the Judiciary.

I must also give acknowledge my appreciation for the members of the Bar who have been extremely understanding and patient despite the numerous fluctuations of services the Courts during 2021 due to COVID-19 restrictions and limitations throughout 2021.

**REGISTRAR**
**ALEXANDRA DOMINGUES**

# 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 | Dawn N. Butterfield |

**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.

# COURT OF APPEAL

# MESSAGE FROM THE PRESIDENT

The Rt. Hon. Sir Christopher Clarke

When I left Bermuda in a hurry in March 2020, as the pandemic started to close everything down, I did not foresee that it would not be until March 2022 that I would be able to return in person. (A return in September 2021 was prevented by a Covid diagnosis 48 hours before my planned departure from Heathrow). In the interim two years virtual hearings have served us well, largely without hiccups, and have ensured that access to justice has been maintained. The availability of this resource will be a continuing benefit. But it is a real joy to be back to in-person hearings.

The range of cases that have come to the Court of Appeal has in no way diminished because of the pandemic; and the Court has endeavoured to deal with them as timeously as their characteristic permit. That it has been able to do so is down to my fellow justices all of whom have rendered signal service. This year is the final year for which the Court will enjoy the great benefit of the skills and experience of Justice Kay, one of the two longest serving current members of the Court.

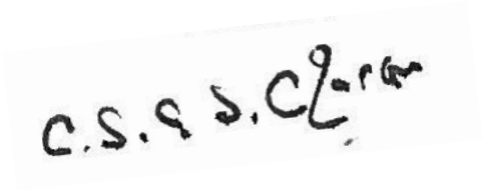
This will mean that the Judicial and Legal Services Committee will shortly be inviting expressions of interest for the vacancy which his departure will create.

We shall continue to benefit from the contribution of Justice Bell, the other of the two longest servers who, as well as participating in full sessions of the Court, is readily, and most usefully at hand to hear interlocutory matters as a single Justice in Bermuda; and of Justices Smellie and Gloster, who, as well as sitting in some of the traditional three-week sessions, have helpfully sat in special sessions for individual cases which needed to be heard outside of the traditional court sittings. We have also been very glad to have had sitting with us Justice Charles-Etta Simmons, whose retirement comes in April 2022 at the end of a long and distinguished career in the Supreme Court; and Justice Subair Williams, both of whom have stepped in to assist the Court when asked so to do.

I am delighted to be able to record that Justice Smellie was made a Knight Commander of the Order of St Michael and St George in the Platinum Jubilee Honours List for his services to Law and Justice in the Cayman Islands.

The Court of Appeal in Bermuda has had an eventful year. The number of appeals filed and the number of appeals disposed shows us that Covid is becoming a thing of the past and that the business of the courts is returning to normal, which will, no doubt, produce an increased number of appeals. The cases heard this reporting year have included matters of considerable significance. Details of some of them appear later in this report; these include a mixture of Criminal and Civil appeals.

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

As we strive for normalcy around the globe we cannot deny the aftermath effects of Covid-19, and the requirement for us all to be innovative and unique in the way in which we deliver services. No matter what one's trade, even the court system has had to bend to the 'new normal' to ensure that access to justice remains uncompromised as we charter through these uncertain times. Whilst we long for a return to in-person court proceedings, and that eventuality does not seem too far from the horizon, the Court of Appeal has nevertheless maintained access to the appellate court for persons aggrieved by decisions from the subordinate courts.

Over the course of 2021, the Court pronounced judgment in 19 cases. That is one more case in comparison to the 18 judgments pronounced in 2020. For comparison, in 2019 (pre-Covid) the Court pronounced 18 judgments. March 2020 was the year that the global pandemic, Covid-19, unwelcomely hit our shores. Therefore, the data shows us that the court's output remained uncompromised during the pandemic, and that we were able to deliver the same high quality of services, although in an unconventional fashion, so that there was no interruption to the services of the Court by members of the public or the legal fraternity. This data does not capture the amount of interlocutory hearings conducted by single judges (virtual and in person) which illustrates the court's busyness year round.

The use of technology for access to justice has proven invaluable and has allowed the Court to adjudicate applications and substantive appeals outside of the traditional court sessions. In addition to increased court sessions comes an increase in work output by administrative staff in the Court's Registry. Training has become paramount in the use of video-conferencing solutions and the use of electronic document retention platforms that are used as a secondary form of electronic filing and supports a paperless environment especially during court proceedings. The cloud solution also communicates documents to judges in real time and allows for early review of cases rather than waiting for couriered boxes which sometimes could take up to a week before receiving. Whilst all these improvements and flexibilities increase the court's performance, it invites a further discussion for the need to consider increase staffing for the Court of Appeal

Registry which is currently staffed by only two people. This arrangement may have proved sufficient in the past, but is now proving to become overwhelming on the Registry.

**Data Analysis**

As the data further below will show, cases in the Supreme Court are getting back on track, as it reflects in the number of filed appeals to the Court of Appeal. This is not to suggest any irregularities or incorrectness in judgments, but demonstrates case progression where cases have been languishing on account of the pandemic. We expect that this will be the flow of matters as the court system strives towards clearing back logs, as well as current cases before the courts.

One point of note is the case type that the Court has heard in the reporting year, and which seems to be the case for the current legal year. A common theme of late concerns appeals from decisions of Judicial Review and or matters seeking constitutional redress. Citizens' have seemingly become more liberal and interested in the preservation of their rights and holding state actors accountable for decisions that either impact an individual at a personal level, or where the decision rendered presents wider ramifications thus placing the appeal under the scope of general public importance; one will see this in the recitation of cases further on.

**Progress Reports**

There has been progress with the 2021 goals established in the 2020 Report. I am happy to confirm that whilst sitting patterns have not been formally adjusted, the Court continues to support hearing applications or appeals outside of the traditional three sessions a year. This is either on an emergency basis or where the length of the appeal is likely to consume an entire ordinary sitting session. It is suspected that this will be the case going forward.

The Court now uses the cloud based solution known as Share Point which allows (a) document retention capabilities; and (b) instant transmission of Court papers to overseas Justices. The additional benefit of this service is counsel's ability to upload documents instantly for an appeal that is before the court. We have proven that this form of electronic filing is useful for the Court of Appeal's purpose in many different ways. It also saves on the couriering expenses and expenses to produce copious bundles; that associates costs savings on paper. Like most technology, there is the occasional glitch, but the overall solution works well.

In my 2020 report, and following the Court of Appeal's decision in *Kenneth Williams v The Queen* [2020] CA (Bda) 17 Crim, I indicated the desire to explore options to increase transcription services for court cases. I did not realise my words would have such clairvoyant effect, as I am saddened to report the retirement of Ms Margaret Gazzard who has provided unblemished service through the years by producing transcripts that have been essential for hearings to occur effectively. The domino effect of Ms Gazzard's retirement has caused the Department to seek alternative transcription solutions which has included contracting with overseas transcribing companies. We cannot however quibble with the change of relationship, as the benefits of contracting with a company in contrast to a single individual has proven beneficial on a number of levels. Transcript production is expedited, and there is also a feature to have live transcription

services at a hearing, which has proven beneficial to the Bench. This however, remains an unresolved objective until a contract is firmly in place.

The Registrar, no doubt, will continue to emphasize the importance for the Court to operate with an updated case management suite purpose-built for Bermuda's Courts. While the Court of Appeal has found relief in a cloud base solution for the intended purpose of a hearings, we remain in the shadows with no electronic case management software which is unsatisfactory for a senior appellate court in 2021. We hope that a significant level of importance will be attached to this overdue project.

I am happy to report that the process has begun in recovering Court of Appeal files that are currently housed at the Bishop Spencer Building. We anticipate that the mould remediation of these files will commence shortly and should be completed by the third quarter of 2022. Once the files are cleaned and returned to the Court building the contents of each file folder will be scanned into the system for e-filing. This will support expedited access to documents by parties who file praecipes.

Website construction is currently underway for the Judiciary which will allow for a separate and equal presence of one of the three branches of the Government. This site, for the Court of Appeal and undoubtedly for the other courts, will prove instrumental in the sharing of information in a timely manner as opposed to relying on third party departments. The site will possess an array of capabilities that will put the Judiciary in good standing with sister judiciaries throughout the Commonwealth. With the introduction of virtual court proceedings, live streaming has proven monumental to the principle of access to justice. The Court of Appeal will look at the logistics of live streaming its proceedings from the Courtroom, in addition to managing a video library that will store historically streamed court proceedings, similar to those seen in the Privy Council. In 2021, all live streamed Court of Appeal proceedings attracted a total 6,443 viewers which is 43.2% more viewers than that in 2020. This is a long term initiative but we will continue to update court users and the general public as we progress with these initiatives.

Amendments to the Court of Appeal fees for documents filed in Court have been submitted to the Registrar who is in discussions with Ministry officials. Litigants can expect to see an increase in filing fees; the fees have not been increased since the enactment of the Rules of the Court in 1965, save for minor amendments. This change comes as a first step to amending the Rules of the Court of Appeal. Substantial amendments have been presented to the President of the Court for review and consideration.

Finally, another initiative that remains important not only for the Court of Appeal directly, but for the wider Judiciary, is the need to provide the Court of Appeal with its own space which includes a designated appellate court. With the backlogs in the Supreme Court identified above, it is unhelpful to the administration of justice that trials are put off on account of the Court of Appeal commandeering trial courts to ensure that appeals are disposed of swiftly. This frustrates the ability to clear the backlogs and to progress matters in reasonable amounts of time. Much dialogue has been exchanged with members of the Public Works Ministry to the extent that plans have been

drawn and considered. It is hoped that we can graduate from discussions to structural changes for the courtroom territorial battles to be brought to an amicable end.

**Recognitions**

The report this year may appear to some as scanty, and you would not be wrong. That is because this writer, since September 2021, has been domiciled in the United Kingdom for the purposes of concluding a Masters of Law Degree in Legal Practice. For this, I wish to thank the President of the Court of Appeal, The Rt. Hon. Sir Christopher Clarke, the Hon. Mr. Justice Narinder Hargun, Chief Justice, and all Judges of the Judiciary at the Court of Appeal, Supreme Court and Magistracy, for the vote of confidence and support during this most challenging period. I wish also to thank the Registrar of the Court of Appeal, Mrs Alexandra Domingues, officials within the Ministry of Legal Affairs & Constitutional Reform Headquarters and its departments, and members of the wider legal nucleus for their invaluable support of me as I pursue this venture.

In my last report, I had the pleasure of thanking Mrs. Justice Charles-Etta Simmons for her service to the Court as an Acting Justice of Appeal. It saddens me this year that I close the year off by recognising her impending departure come April 2022 as she retires after nearly 30 years of unwavering and selfless service to the people of Bermuda. Mrs Justice Simmons has served in many corners within the public service: She has been Solicitor General, a magistrate, Registrar of the Supreme Court and Court of Appeal and finally a Judge of the Supreme Court for Bermuda. She has given yeoman service and is thanked for her support and availability to the Court of Appeal when we were in need. Her pending departure comes as bittersweet because Mrs Justice Simmons is the last of her judicial generation who has seen three presidents of the Court of Appeal and five chief justices during her tenure as a judge. We now enter the face of a fully recomposed bench with fresh and bright minds who now walk in the pathway of judges who led before them.

I would also like to extend my profound gratitude to Ms Dawn Butterfield, my administrative assistant. Dawn officially started with the Court in April 2021. Since the time of my departure for my master's degree, she has demonstrated a spirit of stick-to-itiveness and commitment to ensuring that the Court's administrative arm maintained in my physical absence.

Lastly, I would like to extend a personal vote of thanks to Justice of Appeal Geoffrey Bell who, as the residential Justice of Appeal, avails himself at a moment's notice to resolve interim applications and deals with case management issues to ensure that appeals remain on track for substantive hearing. I extend my thanks to all members of the Judicial Department who, in anyway big or small, assisted the Court of Appeal; thank-you.

## APPEAL 2020 STATISTICS

*Overview*

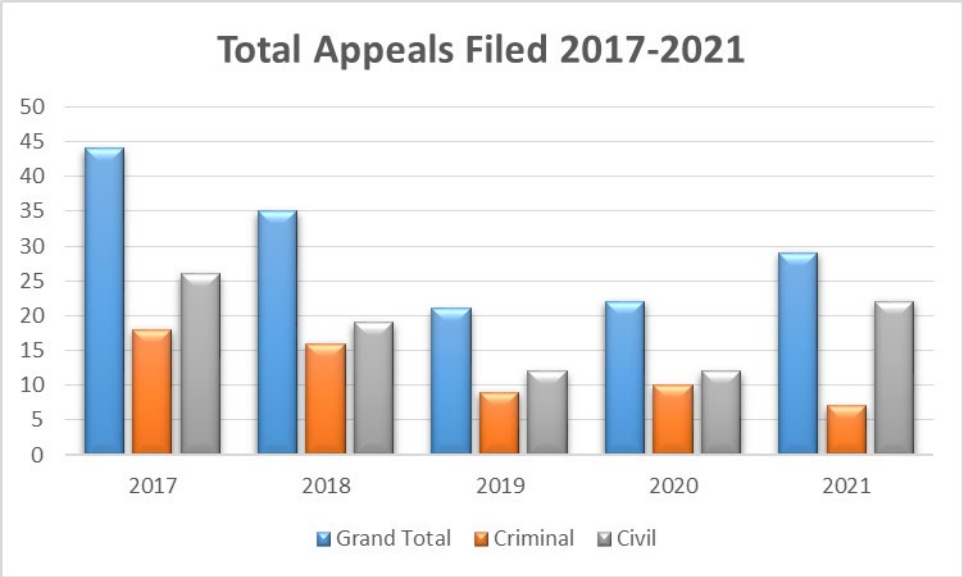
There was a 58% increase in the amount of civil appeals filed during the reported year with **22** appeals or applications for leave to appeal lodged in the Registry. This is a marked difference in comparison to the 12 civil appeals filed in 2020. Unsurprising is the 35% drop in criminal appeals filed with just **7** in 2021, whereas there were 10 appeals filed in 2020. This is no doubt owing to the observation made above regarding backlogs in the Supreme Court. This is more felt in the criminal jurisdiction of the court because of the number of cases impacted by the pandemic and other working parts in getting a criminal trial off the ground. The Court is aware of a plan put in place by the Director of Public Prosecutions which has been endorsed by the Judiciary in an attempt to clear the backlog. Assuming this plan to progress in the manner intended, we can expect over the course of the 2022 period to see an increase in filed criminal appeals. This brings the total appeals filed in 2021 to **29** which is 7 more in comparison to the total 22 filed in 2020.

The Court pronounced judgment in six criminal appeals in 2021, one of which was an appeal by the Crown[1]. 13 judgments were in respect of civil appeals.

**Table 1 : COURT OF APPEAL - TOTAL APPEALS FILED 2017 - 2021**

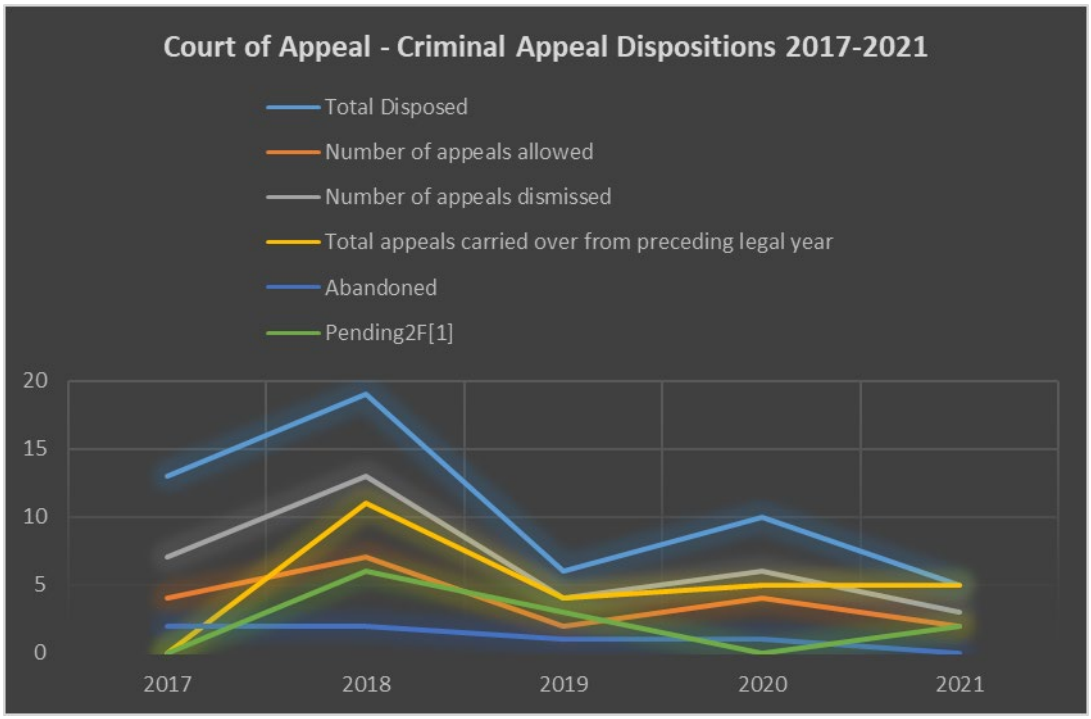
| Year | Grand Total | Criminal | Civil |
|---|---|---|---|
| **2017** | 44 | 18 | 26 |
| **2018** | 35 | 16 | 19 |
| **2019** | 21 | 9 | 12 |
| **2020** | 22 | 10 | 12 |
| **2021** | 29 | 7 | 22 |

[1] *R v Creary* [2021] CA (Bda) 19 Crim, 3 December 2021

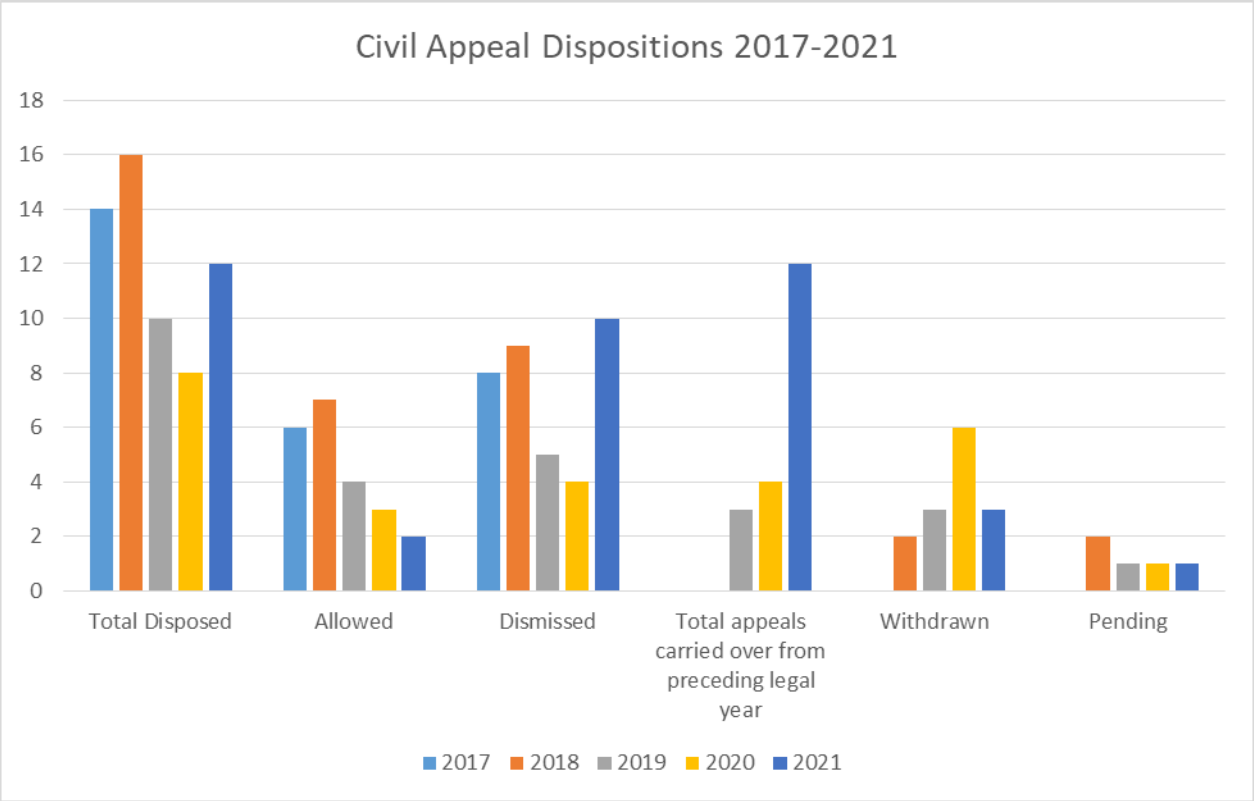



| mTable 2: COURT OF APPEAL - CRIMINAL APPEAL DISPOSITIONS 2017 - 2021 | | | | | | |
|---|---|---|---|---|---|---|
| **year** | **Total Disposed** | **Number of appeals allowed** | **Number of appeals dismissed** | **Total appeals carried over from preceding legal year** | **Abandoned** | **Pending[2]** |
| **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 |
| **2021** | 5 | 2 | 3 | 5 | 0 | 2 |

[2] Appeals that were filed in 2020 but were heard in the 2021 legal year.




| Table 3:<br>COURT OF APPEAL - CIVIL APPEAL DISPOSITIONS 2017 - 2021 | | | | | | |
|---|---|---|---|---|---|---|
| **Year** | **Total Disposed** | **Allowed** | **Dismissed** | **Total appeals carried over from preceding legal year** | **Withdrawn** | **Pending** |
| **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 |
| **2021** | 12 | 2 | 10 | 12 | 3 | 1 |


Civil Appeal Dispositions 2017-2021
18
16
14
12
10
8
6
4
2
0
Total Disposed
Allowed
Dismissed
Total appeals carried over from preceding legal year
Withdrawn
Pending
2017
2018
2019
2020
2021

## HIGHLIGHTED CASES OF 2021

*Misfeasance in Public Office – ingredients of the tort – claim against officers of Department of Children and Family Services for misfeasance in the context of child care and supervision proceedings – whether duty of care owed to a parent in the context of such proceedings where the interests of the child is paramount – need for clear and fully particularized statement of claim – application to strike out claim for being frivolous and vexatious and for being time-barred – application to strike out heard by Acting Puisne Judge who had not sworn to prescribed oath of office – whether decision of the judge invalidated by failure to swear the oath or whether the decision deemed valid by application of the doctrine of de facto authority.*
***Wanda Ann Pedro v The Attorney-General and Minister for Legal Affairs & Constitutional Reform*** [2021] CA (Bda) 1 Civ

The Appellant brought claims in the Supreme Court against the Department of Child and Family Services (DCFS), certain individual workers employed within the DCFS and officers of the courts, including the Magistrates who had dealt with the case involving the care and supervision of her child. The claims against the Magistrates and court officers were later withdrawn as there was no basis that they could be properly sued. The claim sought to allege misfeasance in public office of certain DCFS officers viz: the social workers who were assigned to the case involving her child.

By a Chambers Ruling delivered on 28 November 2019, the Registrar acting qua judge, struck out the Appellant's remaining claims against the DCFS and its officers on two grounds. Firstly, under the Rules of the Supreme Court Order 18 r 19 – that they were frivolous, vexatious and an abuse of the process of the court because, *inter alia*, the Appellant had consented to and had not appealed against the orders of which she complained in her action. Secondly, that her claims were time-barred by operation of the Limitation Act 1984 and that she had failed to establish that they came within any of the exceptions allowed by the Limitation Act.

The Appellant appealed against the Ruling on a number of grounds, that (a) the learned Registrar lacked jurisdiction to hear the claims as she purported to do so sitting as an Acting Judge of the Supreme Court while not having sworn to the prescribed constitutional judicial oath of office; (b) the Registrar ought to have recused herself on grounds of apparent bias from trying the claims because she had earlier, in her capacity as Legal Aid Counsel, formed a view of the merits of the claims when deciding to refuse the Appellant a full grant of legal aid; (c) also on account of previous interactions in her capacity as Registrar with the Appellant about her claims, in striking out the claims under Order 18 r. 19, the Registrar improperly excluded from her consideration evidence which would otherwise have been relevant for consideration and which, if adduced at trial, would have been capable of justifying the claims; and finally (d) in striking out the claims as time-barred, the Registrar considered matters which she ought not have considered and failed to consider matters which, by virtue of the relevant provisions of the Limitation Act, she ought properly to have considered.

*Was the Registrar sitting validly as an Acting Judge?*

It was confirmed that the Registrar was duly appointed in keeping with section 75(2) of the Constitution to act as a Puisne Judge by an instrument of appointment signed by the Governor on 16 September 2019, covering the relevant period (19 September through 27 September 2019). This is as expressed in her Instrument of Appointment, a copy of which was presented to the Court during the hearing of the appeal. However, in Order to undertake the functions of office, an appointee must first swear and subscribe to the oaths or declare the affirmations of office, as prescribed by the Constitution as mandated by section 76 therein. It appeared through the evidence that the Registrar had not sworn the requisite oath before

entering upon her duties in the office of Acting Puisne judge. Enquiries having failed to confirm that the Registrar executed the prescribed oath, the appeal proceeded upon the concession, properly given by Counsel for the Attorney-General, that she did not. In fact, the Registrar herself was unable to verify that the oath prescribed by section 76 was executed, although she affirms that the prescribe oath of office for her substantive post of Registrar was executed when she was formally appointed to that post. The oath of office for Registrar is however, prescribed under the Promissory Oaths Act 1969 and it is accepted that its execution for the assumption of her duties as Registrar could not be regarded as a substitute for the oath prescribed for the assumption of her duties as an Acting Judge.

The question therefore became whether that apparent failure to have taken the prescribed form of oath or affirmation carries vitiating consequences for her functions as an Acting Judge, here in particular, for the purposes of the ruling.

A passage from Halsbury's Laws of England, while not supported by authority, comments on the position in the United Kingdom as understood by the authors. The Appellant's counsel submitted that the position must be *a fortiori* in Bermuda, given that the requirement is one mandated by the Constitution. The relevant passage of Halsbury's is found in the Fifth Edition Vol 20 paragraph 597 (pp595-596) which provides:

> *"597.* ***Oaths to be taken.*** *As soon as may be after their acceptance of office, the senior executive officers of state and members of the judiciary as specified by statute must take the oath of allegiance and official or judicial oath, in the form and manner specified. [Here citing the prescribed forms of oath specified as set out in the Promissory Oaths Act 1868, U.K. ss 2-4.] ("the 1868 Act")…. If any officer specified declines or neglects, when an oath required to be taken by him is duly tendered, to take such oath, he must, if he has already entered on his office, vacate it and if he has not entered office he must be disqualified from entering it; but no person may be compelled, in respect of the same appointment to the same office, to take such oath more than once."*

The office of Acting Puisne Judge of the Supreme Court is a judicial office created by the Constitution and the Constitution and laws invest its holder with all the moral and legal duties and responsibilities, powers, rights and obligations which flow from that appointment. This symbolic construct is the foundation of the framework for ensuring that citizens' rights are determined by competent, independent and impartial judges, according to law. The swearing of the oath (or declaration of the affirmation) is the expression of the office holder's recognition of the requirements and responsibilities of the particular judicial office which he or she assumes, and a solemn promise, binding upon conscience, for its due and proper fulfilment. Section 76 of the Constitution requires that upon being appointed and before entering into the functions of the office, the Acting Puisne Judge must swear the judicial oath or declare the judicial affirmation, in that capacity and in no other capacity. The requirement of appointment and the requirement of the swearing of the oath are both substantive and different requirements. A proper assumption of office therefore necessitates that both are satisfied. But significant as all this is, does it follow that failure to have taken the precise prescribed form of oath must mean that the ruling is invalid.

Counsel for the Attorney-General sought to resolve the issue by submitting that whether the Registrar gave the ruling in her capacity qua

judge or qua Registrar, the ruling would still stand because Order 32 Rule 11 of the Rules of the Supreme Court empowers the Registrar *"to transact all such business and exercise all such authority and jurisdiction as may be transacted by a judge in Chambers with limited exceptions…"* In other words, the submission was understood to say that if the Registrar was not validly appointed as a judge, she would revert to her default position as Registrar, and would still have the ability to make the ruling in which she did. This was not accepted by the Court.

There are however, long and well-settled lines of judicial authority based on public policy and which recognise the important public interest in the due administration of justice, which must be considered. This public policy is embodied in two distinct but complimentary doctrines. the first line of authority is directly relevant to the question of the consequences of a failure of procedure, such as a failure to follow a statutory procedure for the empanelment of jurors or a failure to take a prescribed form of oath. The following discussion of the principles comes from the judgment of Lord Mance on behalf of the Privy Council in *Director of Public Prosecutions of the British Virgin Islands v Penn* [2008] UKPC 29 at [15] , citing and applying dicta from the earlier judgment of the Privy Council in *Montreal Street Railway Company v Normandin* [1917] AC 170. Both of these cases involved failures to observe the statutory processes for the proper selection of criminal juries (in DPP V Penn) and civil juries (in Montreal Railway).

In considering the principles that emanate from these cases, it is clear that the symbolic importance of the oath (as described above) notwithstanding, the Constitution (as were the Juries Acts in both Montreal Railway and DPP v Penn), is silent as to the consequences of non-compliance. This is especially important for present purposes because of the longstanding and pre-existing principles of common law discussed in the cases and which came to be relied upon by the Privy Council in DPP v Penn, principles of which the legislature must be taken to have been aware when the Constitution was promulgated. It can therefore be assumed that the Constitution leaving them untrammelled is in recognition of the important public policy which the pre-existing principles embody.

Therefore, the Court concluded that the same public policy concerns of uncertainty, inconvenience and finality to litigation which informed the decisions of the Privy Council in both Montreal Railway and DPP v Penn, would inform the present discussion as to whether the failure to have subscribed the oath invalidates the Ruling of a duly qualified and appointed tribunal, there appears no basis in principle for distinction and the result must be the same. Moreover, there is the second limb of the doctrine, apparently originating in the Margate Pier case, whereby a failure of procedure – such as the failure to subscribe to an oath or comply with any other process - has come to be regarded as *not* invalidating the acts of the judge. Indeed to the contrary, as *Coppard v Custom and Excise Commissioner* [2003] EWCA Civ 511 shows, the de facto doctrine may be held to validate not only the judgment given by the judge but also the office which he or she was duly qualified to occupy and the duties of which everyone thought he was performing. It is from this line of authority that has emerged the modern doctrine as it relates more particularly to judges, that of the de facto judge.

The Court therefore dismissed this ground of appeal. While doing so it recognised that to do so may be seen as allowing non-valid appointments. However it took the view that in the present case it raised no such concern about the judge's title. Here the Registrar had been presented with a duly issued instrument of appointment by the Governor authorizing her to sit as an Acting Puisne Judge of the Supreme Court, which is itself a duly constituted tribunal under the

Constitution of Bermuda. Further, everyone therefore reasonably assumed that she was validly appointed to act. Any question as to the validity of the ruling as an act performed with her not having entered properly into the functions of her office, for want of the proper oath as contemplated by section 76 of the Constitution is amply answered by the application of the de facto doctrine such that the ruling is to be regarded as valid. In keeping with the mandate of the de facto doctrine for public confidence in the certainty and finality of litigation, so too would any other act performed during the tenure of the appointment which might be questioned on similar grounds.

*Limitation*

The Appellant's Writ was filed on 10 July 2018 some 8 years and 7 months after Magistrate Wolffe made the conclusive orders. the Writ was therefore not filed within the six years prescribed by section 4 of the Limitation Act. The Appellant invited the Court to find that she has a good arguable case for the extension of the limitation period on this basis of sections 12(4) and 15 of the Limitation Act.

In summary, the Appellant's reliance on sections 12(4) and 15 of the Act, involved an averment (at paragraph 107(a) of the draft amended pleadings) that the limitation period should not have been held to have started to run until when, in 2020, she obtained a medical report from Dr Lisa Nolan, as that was when, she alleges, she discovered the extent of her "injuries"), as having been caused by the tortious conduct of the DCFS. This is because the report from Dr Nolan itself references previous psychological reports from Dr Phillip Brownwell dated 15 December 2009 and Susan Adhemar dated 19 May 2009, the former of which, from Dr Brownwell's summary, reveals that the Appellant had from 2009 been diagnosed with Adjustment Disorder with Anxiety.

However, as appeared from the Appellant's own evidence because the Appellant was aware in 2009 of her psychological trauma, she was required if she believed that it was caused by the tortious conduct of the DCFS, to have commenced proceedings no later than December 2015. She did not commence proceedings until more than two and a half years later in July 2018 and so her claim must be regarded as time-barred, in addition to being unsubstantiated in its allegations of misfeasance in a public office.

In the result, the Appellant failed in her arguments on each of her grounds of appeal. This is despite having been afforded by this Court the further opportunity to plead a viable cause of action to overcome the result below (on the paltry state of the pleadings as then presented) that her claim was frivolous and vexatious, and time-barred.

The other grounds of appeal were not vigorously pursued and so not widely considered by the Court, save to say, they were unimpressive and would not have gained traction resulting in the same result of the appeal being dismissed.

---

*Appeal against failed Application for Judicial Review against Decision of the Public Service Commission not to dismiss a police officer found guilty of gross misconduct – Application for Judicial Review against Police Commissioner for dismissing police officer for gross misconduct prior to appeal to the Public Service Commission - Police (Conduct) Orders 2016 – Public Service Commission Regulations 2001- Guideline Legal Principles on sanctioning a police officer for gross misconduct involving operational dishonesty* ***Oswin Pereira v Commissioner of Police and The Public Service Commission*** [2021] CA (Bda) 12 Civ

The Appellant was a police constable serving in the Bermuda Police Service. On Saturday 13 May 2017, The Appellant was on duty with PC 2445 Boden on their police motorcycles when they had cause to pursue Talundae Azariah

Grant, who was riding a motorcycle with a pillion passenger. The pursuit started at Barnes Corner in Southampton, involved driving at high speeds, and concluded at the junction of East Dale Lane and South Shore Road in Southampton, where both Mr Grant and the pillion passenger abandoned the motorcycle and took off on foot. Mr Grant was chased and caught by PC Pereira, and PC Boden arrived a short time later. PC Pereira twice used his Taser with a view to subduing Mr Grant, and what happened during the struggle between them led to a complaint being made against both officers, which was heard by a panel appointed under the Police (Conduct) Orders 2016 ("the PCO").

The Panel gave its decision in January 2020, and made the following findings of fact as against PC Pereira:

> *(i) The Panel dismisses Pc Pereira's overall account as implausible.*
>
> *(ii) The Panel's determination is that after a pursuit of Mr Grant, Pc Pereira lawfully deployed his TASER which eventually momentarily incapacitated Mr Grant, allowing Pc Boden to commence further restraint (handcuffing).*
>
> *(iii) During the hand cuffing of Mr Grant, Pc Pereira wilfully and intentionally turned off his BWC and then unnecessarily struck Mr Grant twice in the head area using his ASP. The turning off of the BWC indicates a level of premeditation in regards to "covering up" (not recording) an unjustifiable assault on a prisoner being restrained.*
>
> *(iv) This action constitutes gross misconduct.*

Having found that PC Pereira's actions during the arrest of Grant amounted to gross misconduct, the Panel moved on to consider the appropriate disciplinary action and concluded that he should be dismissed without notice.

PC Pereira appealed the Panel's decision to the Public Service Commission ("the PSC"), as provided for by section 37 of the PCO, and the PSC rendered its decision on 17 August 2020. In it the PSC dealt with some 11 grounds of appeal. They dismissed grounds 1 through 5. They dealt with grounds 6,7,8 and 9 together, which grounds concerned the admission of the statement made by Mr Grant, who had died in an unrelated traffic accident by then, and the Panel's refusal to review Mr Grant's testimony in the Magistrates' Court proceedings. The PSC allowed that ground of complaint, saying that PC Pereira should not have been denied the opportunity to put Mr Grant's cross-examination into evidence, and that the Panel's refusal to admit it was unfair to PC Pereira. They refused ground 10, and in relation to ground 11, a contention that the Panel had acted unreasonably in finding that PC Pereira's action amounted to gross misconduct, the PSC found (paragraph 47) that the Panel's conclusion that PC Pereira unjustifiably assaulted Mr Grant by striking him twice in the head was unreasonable, and reversed that finding. In relation to the complaint that PC Pereira had turned off his body camera, and had given an implausible account of his actions in that regard, the PSC first found that it could not say that the Panel's finding that PC Pereira had wilfully turned off his body camera was unreasonable. In relation to the second finding by the Panel, that PC Pereira had given an implausible account of the material events, the PSC held that that they were unable to say that this finding was unreasonable. The PSC did not immediately say in terms that PC Pereira's turning off his camera amounted to gross misconduct, but did say that giving an inaccurate or implausible account of events in order to shield himself from criticism and potential misconduct charges was in the PSC's opinion gross misconduct. However, when considering the appropriate sanction, the PSC held that PC Pereira had been "clearly culpable" in denying that he had requested PC Boden to turn his body camera off. They found the real aggravating factor in the case to have been PC Pereira's implausible account of what had transpired, and continued by finding that in the absence of finding any evidence to support the Panel's finding that PC Pereira had assaulted

Mr Grant, the sanction of dismissal without notice was unreasonable. They did regard PC Pereira's conduct as serious, varied the Panel's decision to dismiss without notice and substituted a final written warning.
However, that was not the end of matters because both PC Pereira and the first Respondent ("the Commissioner") took judicial review proceedings, in the case of PC Pereira to set aside the decision which had by then been made by the Commissioner to dismiss PC Pereira prior to the final determination of the decision of the PSC, and by the Commissioner seeking to quash the PSC's decision. The two sets of proceedings were consolidated, and judgment on those proceedings was given by Subair Williams J on 15 February 2021.

From the outset of the case, the judge noted that the facts involved gross misconduct of a dishonest nature, insofar as PC Pereira's dishonesty was not only self-serving but continual. The PSC had not disturbed the Panel's finding that PC Pereira's conduct in turning off his body camera was wilful and intentional, or that his conduct in giving an implausible account of events some two years later constituted gross misconduct. She rejected counsel's submission that this was not a case of operational dishonesty. She held that applying the reasoning in Salter, the Panel ought to have proceeded on the basis that, absent exceptional circumstances relating to the misconduct itself, dismissal without notice was inevitable, commenting that Burnett J in Salter had noted that cases of suppression of evidence were to be considered the most serious breaches of professional conduct which would "almost invariably" result in dismissal or a requirement to resign. In particular, the judge accepted the submission of counsel that the language used by the PSC in their decision did not indicate

The judge concluded that the PSC had misdirected itself in law by failing to apply the correct approach as set out in Salter, and that had the PSC been properly guided by the statutory "unreasonable" test in reviewing the Panel's decision on sanction, it could not have overturned the Panel's decision to dismiss PC Pereira. Accordingly, she found in favour of the Commissioner's application, refused PC Pereira's application, and restored the Panel's decision to dismiss PC Pereira.
The Notice of Appeal was filed on 25 March 2021, and set out five grounds of appeal, as follows:

(i) The Learned Judge erred in law when she intervened with the PSC's decision, which is final and shall not be subject to the direction and control of any other person or authority unless the decision can be considered perverse or there has been an obvious error of law.

(ii) The Learned Judge erred in law when she misconstrued the test laid out in the cases of R (on the application of the Chief Constable of Dorset) v Police Appeals Tribunal v Mr. Neil Salter [2011] EWHC 3366 (Admin) and The Queen on the application of Darren Williams v Police Appeals Tribunal of Police of the Metropolis [2016] EWHC 2709 (Admin).

(iii)The Learned Judge erred in law when she suggested at paragraph 76 of the judgment that "the PSC reversed the Panel's factual findings that PC Pereira unnecessarily struck Mr. Grant twice. However, the PSC's acceptance that PC Pereira wilfully and dishonestly turned off his body cam was implicit that they accepted that he did so to prevent access to any evidence of video footage of the events which transpired after he turned off the body cam". To the contrary, the evidence shows the body camera footage capturing the time that PC Pereira is alleged to have assaulted Mr. Grant, which was rejected by the PSC, and not challenged.

(iv) The Learned Judge erred in law when she misapplied the statutory test of "unreasonableness", as set out in Section 28(1)(d) of the Public Service Commission Regulations 2001.

(v) The PSC failed to instruct independent counsel for the judicial review which led to the

PSC's position at the judicial review not being fully heard".

In dismissing the appeal the Court found that the performance by the Public Service Commission ("PSC") of its functions is not subject to the direction or control of any other person or authority. But that does not mean that it is not open to review on the usual grounds for judicial review.

It was not apparent that the judge misconstrued the test laid out in the two cases mentioned (*Salter* and *Darren Williams*). These cases lay down that the almost invariable sanction in a case of operational dishonesty (with limited exceptions, of which personal mitigation is rarely to be one) is dismissal. As the judge rightly held that was not the starting point adopted by the PSC. The PSC had, in effect, been guilty of the same sort of error as led to a successful judicial review in those cases, as decided on by Burnett J (as he then was) and the English Court of Appeal.

The fact that the evidence showed the body camera footage capturing the time that the appellant is alleged to have assaulted Mr Grant does not mean that what the Panel found to be the wilful and dishonest turning off of the appellant's body camera was not done in order to prevent any record of anything that transpired after he turned it off, or thought that he had – there is a delay of some 3 or 4 seconds between turning the camera off and it actually turning off, of which delay, the Panel found, Mr Pereira was either unaware or failed to take into account. It is practically impossible to see what other purpose there could have been for such an instruction.

The judge did not err in her application of the statutory test of *"unreasonableness*". On the contrary she rightly held that, if the PSC had properly approached the statutory "*unreasonable*" test in reviewing the Panel's decision on sanction, it could not have overturned the Panel's decision to dismiss the appellant on the grounds of unreasonableness. If the PSC had begun from the right starting point it could not have found that the decision of the Panel to dismiss was unreasonable, having regard to the appellant's dishonesty in (a) wilfully turning off his body camera; and (b) giving dishonest evidence to the Panel that he had in fact sought to ensure that PC Boden's camera was on.

The fact that the PSC failed to instruct independent counsel is no ground for allowing the appeal. The parties were all represented by competent counsel. It would be odd for the PSC, the tribunal appealed from, to be represented as well.

The key factor in this case is the application of the *Salter* principle, and once the principles applied in that case are accepted, this case becomes straightforward. As well as accepting that the conduct complained of and found by both the Panel and the PSC to have occurred was gross misconduct, Ms Greening accepted (and in our view was right to do so) that the conduct complained of did constitute operational dishonesty. The application of the Salter principle then inevitably leads to dismissal as the starting point. As Burnett J explained in Salter, the need for the imposition of what may appear to be a harsh sanction arises from the requirement to maintain public confidence in the police service. And he also pointed out that while, exceptionally, a police officer might be retained, public confidence is likely to be adversely affected if such an officer were disqualified by his own misconduct from performing a substantial part of his ordinary duties. And as Kay LJ pointed out in the Court of Appeal in Salter, because of the importance of public confidence, the potential of mitigation is necessarily limited. Lastly, one must not lose sight of the point made by Burnett J referred to in paragraph 12 above, which demonstrates the potential difficulty in continuing to employ an officer found to have committed operational dishonesty. It is unfortunate that the PSC was not apparently referred to the relevant authorities when considering the appropriate sanction. Indeed, neither, does it seem, was the Panel. Had they been referred to the authorities, no doubt the PSC would have appreciated that operational dishonesty calls for dismissal save in exceptional circumstances.

*Appeal against sentence - Appellant's plea of Not Guilty alleged to have been based on bad advice from counsel - no entitlement to discount based on guilty plea where no such plea entered.*
***Omar Davy v The Queen***

On 10 July 2018, the Appellant, a 38-year-old native of Jamaica, arrived at the Bermuda airport on board a commercial flight from Toronto, Canada, where he had been visiting family. His evidence was that he had purchased a ticket to travel to Bermuda only the previous day, and that he was travelling to Bermuda, which he had previously visited some six or seven times, for the purpose of attending traffic court. On returning to his brother's house in Scarborough, on the east side of Toronto, following the purchase of the ticket, he said that he had been approached by two men who had come from an SUV parked nearby. The men had shown him a phone on which were three videos of family members, his mother, his sister and his daughter, taken in Jamaica. He was then shown a video call on the phone, where he recognised the man on the call as someone to whom he owed $24,000 which had been advanced to him for architectural drawing and construction work, which he said he had been unable to carry out because his laptop had been taken from him by the Bermuda police during a previous visit. He described the man on the call as a don named Mr Courtney. One of the men had a gun, and told the Appellant to open his brother's car, which the Appellant did, and from which one of the men removed a laptop bag and an orange suitcase belonging to the Appellant, as well as his passport and ticket, which had been on the seat. These items were then transferred to the SUV, which the Appellant was told to get into. He said that when he entered the vehicle a dark cloth was placed over his head. He was then choked and hit, and at some stage told his attackers that he was going to Bermuda the next day, and that when he got back he would have the money to repay what he owed. When the SUV came to a stop the Appellant was taken to a garage where he was again attacked and beaten. The beating was said to have been severe, including further choking, kicks to his body and head, such that he passed out, and was awakened by heavy slaps to his face and jaw. During the course of this beating the Appellant was told that he had to take a package to Bermuda. The Appellant's evidence was that he felt he had no alternative but to agree. He was told that if he tried anything funny, the men would kill his family. He said that he told them that he had an 8.30 flight, and that it was by then 4.30 in the morning. He was given a package, which was placed in a book inside his laptop bag together with a roll of tape, which he said he was told should be used to tape the package to his leg after he had gone through Customs.

He was then taken to the airport, where he cleared security and boarded the flight to Bermuda. He said that he did not alert the police or dispose of the package during the flight because he believed the men's threats that they would kill his family. During the flight the Appellant took all the items out of the laptop bag, including the package. He said that he used a razor blade to cut the bag to make sure there were no more drugs in the bag (he later said that he did not know the package contained drugs), and placed the package in the waist of his pants. He said that he had thought about leaving the package in the pocket behind the plane seat, but had dismissed the idea because of his fear of harm being inflicted upon his family.

On landing in Bermuda the Appellant went through Customs, when he was subject to a secondary search. Before that could be undertaken the Appellant fled, but was eventually caught on the Causeway, and taken back to the Customs area. While there the Appellant removed the package from the back of his trousers and placed it in his luggage. The package was recovered and on analysis was found to contain some 220.88 grams of heroin with an estimated street value of $765,700.

He was charged with offences of importation and possession with intent to supply diamorphine, and obstruction of a Customs officer. It was submitted by his Counsel at the appeal that it was on the basis of the Appellant's belief that he had a defence to the charges, based on the duress to which he said he had been subjected, that he pleaded not guilty to the charges of importation and possession with intent to supply.

There are two sections of the Criminal Code 1907 ("the Code") which are relevant to a defence that the person charged is not criminally responsible for the act or omission in question, and these are (1) acts done in resistance to violence; and / or (2) Acts done for the purpose of self-preservation

Before the judge gave his summation to the jury he had a detailed discussion with counsel on the applicable law, which included reference to the case of Zegelis v R [2014] Bda LR 28. Suffice to say that the Appellant's counsel, Archibald Warner, did not agree with the judge's view as to the need for physical presence to be established for the statutory defence to be available in regard to section 47. In the event, in his summation, after the judge had detailed the Appellant's evidence, he dealt with the Appellant's defence under section 47 in this way, having first read the section to them:

> *"A person is not criminally responsible for an act, that is, the bringing the drugs into Bermuda, if the person does the act or omission, when the act is reasonably necessary in order to resist actual violence threatened to the person or to another person who is in the person's presence. There is no onus on the defendant to prove that he did the act in those circumstances. The Prosecution bears the onus of satisfying you, beyond reasonable doubt that he did not do so. The Prosecution can do so if it relies – if it satisfies, sorry, you, beyond reasonable doubt, of any one of the following things:*
>
> > *a. That violence was not threatened to the defendant.*
>
> *I stop there. And that's the Prosecution's case. Nobody threatened him. Nobody beat him up. That is a creation; that's what they say. Or, no violence was threatened to another person in the defendant's presence. The Prosecution's case is, in this case, neither Mummy, nor daughter, were in his presence at the time of this alleged threat."*

The Judge then read section 48 of the Criminal Code to the jury and then summarised the case on both sides, leaving the matter to the jury. At the conclusion of the summation the jury withdrew to deliberate, and returned within half an hour to deliver unanimous verdicts of guilty on all three charges. On 20 February, 2019, the judge sentenced the Appellant to 18 years on each of the first two counts, to run concurrently. There was a sentence of 6 months on the third charge, again to run concurrently.

The appeal was against the sentences imposed in February 2019. The Appellant averred that "After I told my lawyer my circumstances, he advised me that I had a defence of duress". Thus the first of the Appellant's grounds of appeal is that the fact that he chose a trial instead of pleading guilty should not have been held against him (as it was when he was sentenced) to deny him the credit he would have been afforded had he pleaded guilty. Since the grounds of appeal essentially constituted a complaint against the Appellant's former counsel, it was ordered that his affidavit should be served on Mr Warner, together with a waiver of privilege, and that Mr Warner should have liberty to serve a response within 7 days following receipt of the complaint. In the event, Mr Warner chose not to respond.

There was no criticism of the judge's summation; the criticism was made of counsel, of whom it was said by Ms Christopher that he should have looked at the judgment of this Court in the case of Zegelis, and should have appreciated that the Appellant had no defence based on the provisions of the Code regarding duress, and should have so advised him. In those circumstances, submitted Ms Christopher, the Appellant had only pleaded not guilty on the basis of bad advice from his counsel, and should now be treated in the same manner as someone who had pleaded guilty, the course that the Appellant said he would have followed if he had been properly advised as to the law on duress.

The second general ground of complaint was in relation to the appropriate sentence following conviction after trial, it being said that the Appellant had not been sentenced, as he should have been, as a mere courier. The Court was referred to cases where sentences comparable to that given to the Appellant had been imposed on importers of equivalent quantities of the type of drug specified in the fifth schedule to the Misuse of Drugs Act 1972 ("the Act"), but where the offender in question had been higher up the chain of responsibility in regard to the importation.

The Court dealt with both grounds succinctly. Firstly, in the case of a defence of duress, it is to be noted that the heading in the Code for section 47 is "Acts done in resistance to violence" and that for section 48 is "Acts done for purposes of self-preservation"

In relation to section 47, the threats said by the Appellant to have been made by the two men in Toronto in regard to members of his family were clearly not threats made to those persons in the Appellant's presence, as the judge pointed out in

his summation. The potential application of section 47 would therefore arise only in the event that the acts or omissions of the Appellant were reasonably necessary for the purpose of resisting actual violence threatened to him. While the judge left the determination of the section's application to the jury, it is not hard to see why the jury should have rejected the defence so quickly when, even on his own account, there had been no actual violence to the Appellant for some time before he had been delivered to the airport in Toronto and before his arrival in Bermuda. Even had there been violence inflicted on him as he alleged (and there was no sign of this upon his person when he was apprehended in Bermuda), he was no longer the subject of "actual violence threatened to him" as section 47 requires, once cleared through security in Toronto to board the flight to Bermuda.

The position is different in regard to section 48. In Zegelis, this Court indicated that the judge should not have left the section 48 defence to the jury, since he had directed them that the section could not provide a defence in law, no doubt based on the absence of there being any person present and in a position to execute the threats at the time that the Appellant had imported the drugs into Bermuda. It seems to me that the judge should have given the same direction in the instant case, and not left that issue to the jury. But, as in Zegelis, the reality is that the Appellant was not prejudiced by the error, but rather the reverse. In the event, as already noted, the defence was properly rejected.

In relation to the appropriate sentence, there were a number of authorities referred to in the course of argument in effort to establish the appropriate sentence on the facts in this case. It was determined that the instant case was one of commercial importation of a significant quantity of heroin, and the sentence was proportionate to other sentences for similar offences. But it is also to be noted that because of the Appellant's implausible defence, the Court could not assume that the Appellant was indeed a courier somewhat lower down the chain of responsibility than an importer who had planned and organised the drug importation. The judge in sentencing made it very clear that he understood that the jury had rejected the Appellant's defence, and that in sentencing he could not go behind that. The judge also said in terms that he could simply adopt the Crown's sentencing submissions as his own, and those submissions were that the Appellant's evidence was wholly concocted. In those circumstances there is no basis for the argument that the Appellant was at the bottom of the chain of responsibility.

The Court therefore dismissed the appeal.

---

*Whether defendants afforded fair trial under section 6(1) of the Constitution Order 1968 – breach of the principle of equality of arms – whether a provision considered unconstitutional is void ab initio – admission of fresh evidence*

The substantive hearing in this appeal arises following a successful application by all three appellants to have their appeals reopened where they already had previously determined appeals against conviction. Their common features are that the Applicants were convicted of very serious offences a considerable time ago; they each pursued conventional appeals to this Court but their convictions were upheld. They sought to have their appeals reopened as a result of recent legal developments.

This is part of the fallout from the recent case of Jahmico Trott in the Supreme Court, a judicial review case in which the Chief Justice decided that the provisions in section 519 of the Criminal Code, which effectively accorded to the Prosecution more extensive rights of challenge without cause to potential jurors than were accorded to the Defence, were deemed unconstitutional by reason of section 6(1) of the Constitution. It is an equality of arms point.

In *Trott*, counsel for the DPP had stood down 10 jurors, all of whom appeared to be of Afro-Caribbean descent and 9 of whom were male (Trott was an Afro-Caribbean male) the Chief Justice determined that section 519 (2) of the Criminal Code Act 1907 ("the Code"), as it then stood, was inconsistent with the fundamental right to a fair trial laid down in the Bermuda Constitution ("the Constitution"). That section gave markedly greater rights to the Crown to stand by potential jurors than it gave to the accused(s) to make a peremptory challenge. In the final paragraphs of his judgment in *Trott* the Chief Justice said this:

> *"Conclusion*
> *59. Having regard to the reasons set out above, I am satisfied that the disparity between the accused person's and the Crown's right to challenge jurors gives rise to a real possibility that the jury may be biased in favour of the Crown. Such a state*

*of affairs offends the appearance of impartiality on the part of the jury which is an essential element of the fundamental right to a fair hearing by an independent and impartial tribunal guaranteed by section 6 (1) of the Bermuda Constitution. It follows that the provisions of section 519 (2) of the Code are inconsistent with the fundamental right to a fair trial established by section 6 (1).*

*60. I am also satisfied that the extreme disparity created in the jury selection process also results in the infringement of the principle of equality of arms by making the position of the accused extremely weaker than that of the Crown, and results in a breach of the right to a fair trial under article 6 of ECHR and the right to a fair trial established by section 6 (1) of the Constitution.*

*61. It was for these reasons that following the hearing on 17 July 2020, the Court declared that section 519 (2) of the Criminal Code is inoperative to the extent that it allows for a disparity between the amount of standbys afforded to the Crown, and challenges without cause afforded to the accused person."*

As was apparent from those provisions, an accused person had a right of peremptory challenge of three potential jurors, except in a case where the offence was punishable with death where his right extended to five. Both the Crown and the accused person had a right to challenge any potential juror for cause on the grounds specified in subsection (4). Any such challenge should be tried by the court of trial. In other words, the decision should be that of the trial judge. In addition, the Crown had a right of standing jurors by without specifying any reason. Although that right was said in Trott to be limited to 36 jurors it is in fact unlimited. The figure of 36 appears in section 13 of the Jurors Act 1971 ("the Jurors Act") as the number of jurors to be selected by the Registrar to constitute the panel from which jurors are to be selected, with another 36 jurors to comprise stand-by jurors. The court was given to understand that in practice the number of jurors listed by the Registrar could be more than 36, although not necessarily as many as 72, and that they would be treated as a single panel, which the Court would go through in sequence in order to create a jury and alternates.

After the judgement, the Legislature amended the section by the Criminal Code Amendment (No 2) Act ("the Amending Act"), which was passed on 24 July 2020 and came into force on 5 August 2020. The Amending Act repealed subsection 1 of section 519 of the Code and replaced it by the following:

*"(1) An accused person arraigned on an indictment for any indictable offence, and the Crown in relation to each accused person, may each effectively challenge without cause—*

*(a) if an offence is punishable with a mandatory life sentence of imprisonment, not more than five persons; or*

*in any other case, not more than three persons, drawn to serve as jurors in connection with the trial."*

The result of the Amending Act was that, for the future, when there was a single accused, the Crown and the accused had a right to challenge 3 jurors without cause. If there was more than one accused, each accused had a right to challenge 3, and the Crown had a right to challenge a total of 3 times the number of accused persons. The right of standby on the part of the Crown was abolished. A juror could be discharged if both the accused and the Crown agreed or, on the application of either the Crown or the accused, could be challenged for cause. The provisions of the Jurors Act were unaffected.

In the three cases before the Court of Appeal, the defendants were convicted and appealed to the Court and their appeals were dismissed. **Brangman** was convicted of attempted murder and using a firearm during the commission of an indictable offence. He was sentenced to 15 years imprisonment for the offence of attempted murder and a consecutive sentence of 10 years imprisonment for the firearms offence. He was ordered to serve one half of his total sentence before he could be eligible for parole. On 17 November 2011 his appeal against conviction was dismissed by this Court. A subsequent appeal to the Privy Council was dismissed on 6 October 2015. On 4 April 2015 **Roberts** was convicted of premeditated murder and using a firearm to commit an indictable offence; and was sentenced to life imprisonment with 25 years to be served before consideration for parole. He appealed to this Court and his appeal against conviction was dismissed on 12 May 2017. On 16 October 2018 **Smith-Williams** was

convicted of premeditated murder and using a firearm while committing that offence. His appeal against conviction was dismissed by this Court on 25 July 2019.

Upon hearing the parties and reading the submissions, the following issues seemed to have arisen for consideration by the Court, namely:

(i) Does the principle of finality apply and does the Court have power to reopen an appeal? If so, what is the test which this Court should apply in deciding whether to re-open these appeals?

(ii) What, on its true construction, is the effect of section 5 of the Amending Act ("the saving provision")? How does it apply, if at all, to a case concluded before it was enacted in which there was a disparity between the number of standbys exercised by the Crown and the number of peremptory challenges afforded to the accused ("the relevant disparity")?

(iii) If, on its true construction, section 5 precludes reliance by the accused on a relevant disparity, is that inconsistent with the accused's constitutional rights?

(iv) Was section 5, if otherwise effective to preclude a challenge on the grounds of the relevant disparity, a breach of the separation of powers because it was a retrospective abrogation of rights directed specifically against defendants in particular criminal proceedings?
In

*Finality to Litigation*

In addressing (i) above, the Court started with establishing the well-known principle of *res judicata*. That is, the need for finality in criminal (and other) litigation. If the accused has had his appeal determined and has failed to set aside either his conviction or sentence, the effect of setting either of them aside after a later second appeal, may wreak havoc with the administration of criminal justice and cause great injustice to victims and others. There is a strong public interest in not unravelling a series of past cases. Retrying a case years after the event may raise insuperable problems on account of the lapse of time, unavailability of witnesses, loss of exhibits and the like.

However, after going through a line of authorities from around the commonwealth, it seemed to the Court that it should recognise, as in effect it has already done, that it has an implicit power to re-open an appeal and that it may (but is not obliged to) do so if (i) the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality; (ii) there is no other effective remedy; and (iii) the accused would suffer substantial injustice if it did not do so. It is noteworthy to point out that the English cases referred to proceed on the basis that the Court will consider whether to grant exceptional leave on the grounds that the accused has or may have suffered a substantial injustice. It then considers whether to allow the appeal on the ground that the conviction is unsafe (the relevant test in England). There were, thus, potentially three matters to be decided (a) whether the matters relied on might cause the Court to think that the accused has suffered a substantial injustice and that the circumstances are exceptional as defined by the Rules; i.e. whether the application to reconsider should be entertained in principle; (b) whether the Court in fact comes to that conclusion; and (c) whether the appeal should be allowed. These items may, of course, all be considered at the same time, but had to be addressed in sequence. The English Court of Appeal said in the civil case of *AIC Ltd V the Federal Airports Authority of Nigeria* [2020] EWCA Civ 1585 [59] before a court embarks on reconsideration it must first consider whether there was a sufficiently compelling reason that may justify reconsideration and outweigh the importance of finality.

Different courts have approached the question of finality in different ways and with differently formulated exceptions, particularly when considering the effect of a later decision that a statute or a provision thereof was unconstitutional. In exercising its judgment to reopen the appeals the Court adopted the approach taken in *Arbour Hill* [2006] IESC 45 and *Cadder v HM Advocate* [2010] UKSC 43; [2010] 1 WLR 2601. The decision that the disparity between the Crown's statutory right of standby and the accused's right of peremptory challenge gave rise to the real possibility of bias and an inequality of arms and, therefore, an unfair trial, and that, to the extent that section 519 (2) allowed for such a disparity it was unconstitutional ought, ordinarily, to be held not to permit an appeal in closed cases. The Court reached this conclusion for a number of reasons.

First, whether or not an appeal should be re-opened and, if re-opened, allowed, is a matter for the discretion and practice of this Court. As Lord

Bingham indicated in Hawkins, the Court was concerned with the general practice of the Court (which, itself, may be departed from) and not with any inflexible rule. No statute lays down any test for the exercise of what has been described as a residual jurisdiction: Taylor v Lawrence. Even if the conditions specified in the Criminal Procedure Rules in England, which are not replicated in Bermuda, are satisfied there is still a residual discretion to decline to re-open concluded proceedings.

Any discretion must, of course, be exercised on proper grounds. As the Supreme Court recognised in Cadder, if the right decision is to allow all or any of these appeals, the Court should not decline to do so simply because the result may be to burden the Court with many others. At the same time, in considering the exercise of our discretion, it is important to bear in mind that the Court must take into account three different sets of interests: (a) the interests of the accused; (b) the public interest in good order, finality, certainty and closure; and (c) the interests of the victim's family and others, who will be understandably disturbed, if not appalled, at the prospect of everything going back, years later, to square one. Those courts which have considered the problem have realised that any solution may appear harsh on someone; but those courts that have dealt with constitutional challenges, or the equivalent (i.e. reliance on the HRC), have decided that the right approach is that their decisions should not, subject to rare exceptions, affect closed cases, even if the change in the law concerns the method of jury selection, the unconstitutionality of a statute, or a breach of the HRC.

It was accepted that, any discretion must, of course, be exercised on proper grounds. As the Supreme Court recognised in Cadder, if the right decision is to allow all or any of these appeals, we should not decline to do so simply because the result may be to burden the Court with many others. At the same time, in considering the exercise of our discretion, it is important to bear in mind that we must take into account three different sets of interests: (a) the interests of the accused; (b) the public interest in good order, finality, certainty and closure; and (c) the interests of the victim's family and others, who will be understandably disturbed, if not appalled, at the prospect of everything going back, years later, to square one. Those courts which have considered the problem have realised that any solution may appear harsh on someone; but those courts that have dealt with constitutional challenges, or the equivalent (i.e. reliance on the HRC), have decided that the right approach is that their decisions should not, subject to rare exceptions, affect closed cases, even if the change in the law concerns the method of jury selection, the unconstitutionality of a statute, or a breach of the HRC.

It was further accepted that, as the Court held in *Arbour Hill*, there is no principle of constitutional law that cases which have been finally decided and determined on foot of a statute which was later found to be unconstitutional must invariably be set aside as null and of no effect; an Irish constitutional approach, but held to be equally applicable in Bermuda. Whilst the Bermuda Constitution does not in terms address the question of finality, it operates in respect of a legal system which recognises that principle, and it embodies concepts which derive from the HRC, which applies to Bermuda.

Additionally, in *Arbour Hill* the Court referred to and relied on the fact that when its decision in *Burca v Attorney General* [1976] 1R 38 struck down a statute governing the selection of juries in criminal cases as being unconstitutional, it did not mean that *"the tens of thousands of jury decisions previously decided by juries that were selected under a law that was unconstitutional should be set aside"*. It also held that, save in exceptional circumstances, any approach other than the one that it adopted *"would render the Constitution dysfunctional and ignore that it contemplates a set of rules and principles designed to ensure 'an ordered society under the rule of law' "*.

*Effect of Section 5 of the Amending Act*

Under Section 5 the method of challenge in past cases is not invalidated only because of the amendment to section 519 and, accordingly, no past conviction shall be quashed solely on the ground that it resulted from a trial in which the Crown stood by more potential jurors than a defendant was able to challenge without cause. The section recognises and endorses the finality principle of the common law, but leaves open the ability of the Court of Appeal to quash a conviction if satisfied that the accused will have suffered such an injustice, and the circumstances are sufficiently exceptional, to make it appropriate, in the Court's view, to reopen and allow the appeal. But an excess number of standbys is not, by itself, enough. On this basis the saving provision is to be treated as confirming that the Court needs to find something more than a disparity of standbys to re-open and allow an appeal. This is consistent with the

principle of finality and the exception to it (whichever formulation of the exception is adopted). It is also observed that the fact that Parliament included the saving provision would appear, itself, to be a recognition of the fact that the past method of challenge might itself breach constitutional rights, and justify the reopening of an appeal and allowing it. If there was no prospect of that happening the provision was unnecessary.

In these circumstances it was apparent to the Court to proceed on the basis that Parliament did not intend section 5 to have the effect that an appeal can never be reopened or a conviction set aside if there has been a relevant disparity. But what it did do was to provide a strong steer in what seems to me to be the right direction, namely that the mere fact of some disparity is not a sufficient ground for allowing an appeal.

It was further argued that if the saving provision has the effect of disabling an accused from relying on the infringement of his constitutional rights, it was a legislative intrusion on the judicial function, and was targeted against a specific group, and therefore constituted an interference by the State with the accused's rights to a fair trial and was contrary to the rule of law. Best put, it was stated that the appellants are not in a general class; that section 5 affects a targeted group; and that, if it has the effect relied on, it is incompatible with the accused's fundamental rights. That analysis did not seem correct to the Court. The provision is framed generally; it applies to all previous cases; it cannot be said to have been targeted at any specific individuals.

In summary, the Court did not find there to be, having regard to the number of standbys made by the Crown, a relevant disparity in any of the three cases. After review of the evidence in each case and the submissions advanced by Counsel, the Court elected to dismiss the appeals of Brangman and Roberts. One concern expressed was the incorrectness of the interchangeable use of the terms 'stand by' and 'stand down' and who was empowered to use them. In the case of Brangman, there were certainly three who fell into that category but there were several others who, having been stood by at the first stage, were later recalled. When they proffered reasons why they should not serve, rather than those reasons being investigated and evaluated by the judge, they were again stood by, either by the judge or the Prosecution, or effectively excused. Sometimes the words "stand down" were used, either by the judge or the Prosecution. On some but not all of these occasions, it was clear that the prospective jurors were not being asked to stand by but were being excused. On other occasions, the words "stand down" were used when it was clear that "stand by" was intended. The Crown says that this is just a convenient way of saving time, but it does (a) give the appearance of the Prosecution playing a privileged part in the selection of the jury; and (b) gives the impression that the judge is contracting out his function of standing jurors down to the Crown.

Strictly, the Defence right is one of peremptory challenge. "Stand by" should be used only in relation to the Prosecution's right which, when exercised, does not remove the juror from the pool. He or she may be reached again. When a potential juror is removed for cause, the correct term is "excused" or "stood down" but not "stood by".

*Smith-Williams*

In this case the appellant invited the Court to admit what is said to be fresh evidence in the form of affidavits from Ryan Furbert and Rasheed Muhammad. Ryan Furbert left Bermuda very shortly before the trial. That he had departed was discovered by the police on 2 October 2018 and the selection of the jury began on 4 October 2018.

The case for the Crown was that on 4 February 2011 Colford Ferguson was shot by Rasheed Muhammad, who had been taken to and away from the scene on a black motorcycle ridden by the appellant. (Muhammad has never been charged with the murder). The scene was East Shore Road, at a house on which Ferguson and Furbert were working. Some 20 minutes before the murder the motorcycle had been ridden to the scene, driven by Muhammad. He returned later as a passenger, with the appellant as rider. The principal evidence relied on was what was a confession that the appellant was said to have made to Troy Harris, an associate of his. This was said to have happened first when they were both at Westgate Correctional Facility, and, subsequently, when they were both out of prison in conversations at their houses (the evidence was that they lived opposite each other). The latter conversations were recorded on an electronic listening device. That evidence was admissible against the appellant but not against Muhammad. It was the lynchpin of the Crown's case. The Crown had some complementary evidence and the defence said that no confession was made and that other elements of Harris' story was untrue.

*Ryan Furbert's affidavit*

As was recorded in the judgment of this Court on the first appeal, at first it was thought that Furbert might have been the intended victim, as a result of an altercation that had taken place two months earlier when his gold chain had been snatched from his neck by Trey Simons, and Furbert, having previously tried to get it back, had been taken to Trey Simons' house by his brother, where he had damaged Simons' motorcycle in retaliation. But at the trial, and in the light of Harris' evidence, the case of the Crown was that the murder was one of mistaken identity in the context of MOB/Parkside territorial conflicts.

The significance of the affidavits, it is said, is that it contradicts the Crown's case that Mohammad had been the rider of the bike on the first occasion and that, having seen Furbert, he recruited the appellant to convey him back to the scene (the appellant being the rider) where he would then go on to shoot and kill Colford Ferguson. If the rider on the return trip was the same as the rider on the first trip (who was said not to be the appellant) that contradicted the case of the Crown (a) that there had been a change of rider; and (b) that the rider on the return trip was the appellant. If the person who was looking for him after the shooting was the shooter, then on that evidence, if accepted, it was not Muhamad.

There are, therefore, at least four questions for consideration viz (a) whether the evidence now sought to be adduced was available at the time of trial; (b) whether it is well capable of belief; (c) whether it might have given rise to a reasonable doubt in the minds of the jury if it had been before them at the trial; and (d) whether there is a reasonable explanation for the failure to adduce it at the trial. In addition, it is common ground that, if the application to admit fresh evidence is to succeed, it must satisfy the test for re-opening of an appeal.

As it relates to the purported fresh evidence of Ryan Furbert, the Court was unpersuaded that his evidence would have cast any doubt in the minds of the jury whether it was available, or not. Furbert had produced two affidavits, one in relation to the first appeal, which was unsworn, and in the second he provides a different story, for which the Court did not accept that any satisfactory explanation had been given as to why the new evidence in the second affidavit was not contained in the first. It is also material, in a case such as this, to consider why Furbert did not provide his evidence. As was stated previously, he must have been aware at the time of trial of the significance of this "new" evidence. *A fortiori* he must have known that at the time of his first affidavit, given that his first affidavit was sworn in support of the Appellant's appeal. There has been no real explanation proffered from Furbert as to why he omitted from his first what he now inserts in this second affidavit.

*Rasheed Muhammad*

As it relates to the first affidavit of Muhammad, the Court declined to admit this evidence, such as it was, because, as it decided, the fact was that his evidence was not shown to have been unavailable at the time of the trial. Muhammad had not manifested fear to the appellant's legal team at the time of the trial. He was in the court building for part of the trial – but no attempt had been made to secure his attendance as a witness by any legal process. The Court also doubted whether the evidence was capable of belief since he had been unwilling to attend to give evidence; had not been willing to swear the affidavit before an English solicitor, and, thus, the only account which could formally be attributed to him was the one in his police interview in which, when asked where he was at the time of the murder, his first words were "I can't recall". Further, even if the account of the 13 hour working day was broadly accurate, it would not exclude the possibility of occasional absence, particularly out of season.

However, in a second affidavit sworn by him before a Manchester solicitor, he says that at the trial he was very reluctant to be involved due to the nature of the charges that the appellant faced, and the gravity of the circumstances and repercussions which could have befallen him should he have entered the trial arena. It was, he says, his desire to be involved, but his will would not allow it as he was deep in fear and concern for himself and his loved ones should he have given a statement for the defence or be used as a witness in live examination.

Not without some hesitation the Court arrived to the conclusion that it should admit the evidence of Muhammad. It then followed that despite the fact that the Court was not inclined to admit the evidence of Furbert, the effect of allowing the appeal on a different basis will be that Furbert's evidence will, if available, be able to be put before the jury in any new trial. Accordingly, the appeal in respect of Smith-Williams was allowed.

**Devon Hewey v The Queen**
**JCPC 2019/0055**

Leave was granted by the Privy Council for the hearing of an appeal by the Appellant, Hewey, to challenge his conviction for premeditated murder.

On 31 March 2011, Mr Randy Robinson was fatally shot in Pembroke parish while talking to Mr Kevin Busby. Mr Jay Dill and the Appellant were arrested for murder and were later tried in the Supreme Court of Bermuda, before Greaves J and a jury.

At trial, the Appellant did not give evidence or call any witnesses; Mr Dill did both, calling witnesses including an expert in gun-shot residue ('GSR'). GSR is composed of lead, antimony and barium. Analysis of items belonging to the Appellant, which was admitted in evidence, revealed the presence of particles containing each of these elements, either alone or combined with one of the other elements, but not of any containing all three elements ('three-component particles').

The prosecution and defence GSR experts agreed that the one- and two-component particles could have come from a firearm or from innocent sources, and that only three-component particles were characteristic of GSR.

Evidence was also admitted showing that Mr Dill and the Appellant were members of a gang engaged in a feud with a gang of which members of Mr Robinson's family (but not Mr Robinson himself) were members. In addition, Mr Busby was permitted to give a video-recorded statement at trial, without being cross-examined, on the grounds that he was in fear.

On 25 February 2013, the Appellant and Mr Dill were convicted of the premeditated murder of Mr Robinson. The Appellant was sentenced to life imprisonment with a requirement to serve 40 years before eligibility for parole. This period was subsequently reduced on appeal to 25 years.

The hearing of this appeal is scheduled during the Hilary Term of the Court on 1 and 2 February 2022.

**Attorney General for Bermuda v Ferguson et al**
**JCPC 2019/0077**

On 3 and 4 February 2021 the Privy Council heard the appeal of the captioned matter.

The Bermudian Parliament passed the Domestic Partnership Act 2018, which provided for same-sex couples to enter into 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 Bermudian constitution.

The Supreme Court of Bermuda ruled in favour of the Respondents, holding that s. 53 of the 2018 Act contravened sections 8 and 12 of the Bermudian constitution. The Court of Appeal for Bermuda allowed the Attorney General's appeal only in part, holding that s. 53 of the 2018 Act contravened section 8 (but not section 12) of the Constitution, but the Court also held that s. 53 was void on the grounds that it was

enacted for a religious purpose.
The Attorney General appealed to the Judicial Committee of the Privy Council. The Respondents sought to cross-appeal for a declaration that the 2018 Act contravenes section 12 of the Constitution. We now await judgment from their Lordships.

**Other Reports**
There were no published judgments from the Privy Council during the reported year. However the Privy Council decided and refused leave to appeal in two criminal applications: Jacqui Pearman-DeSilva (JCPC 2018/0111) and Wolda Salamma Gardner (JCPC 2017/0079).

*Pearman-DeSilva*
On 7 December 2014, the Appellant shot and killed Prince Edness as he walked on a footway not far from Southampton Rangers Football Club. The Appellant was the pillion passenger on a motorcycle. Prior to the shooting there had been a heated exchange at the Club in which it was alleged the Appellant was involved and the deceased.

The Appellant was identified on CCTV getting onto the back of a bike outside the club, wearing a light coloured helmet. The bike was then seen travelling to the southern part of the parking lot where the Appellant got off the bike and walked towards a van. He was out of view for a short time before returning to the bike which left, with him as the passenger, very shortly before the shooting took place.

After the shooting a police car was approaching the area when a bike sped by in the opposite direction; a chase then ensued. Owing to heavy traffic and pedestrians, the bike was forced to turnaround, and the police blocked the bike forcing it to travel into a private driveway. As it did this the passenger fired two shots at the police car. The riders escaped.

The Appellant went to his girlfriend's house shortly after the chase and with him he had a red paisley bandana. She had told the Appellant about the shooting and who had been killed, for which the Appellant became very upset.

The following day, 8 December, the police executed a warrant at Seymour Farm, the girlfriend's house, and seized various items including a red paisley bandana and a light coloured helmet which it was formally agreed the Appellant had left there the previous evening.

On 3 January 2015, when the police attended Clear View Guest House to arrest the Appellant, he ran out of the back of the building and jumped over a cliff into the sea. He was eventually persuaded to come out of the sea and was then arrested on suspicion of murder and cautioned; he made no reply. He also gave a "no comment" interview to the police and did not give evidence at his trial.

It was common ground that the same gun used to shoot at the police was the same as to murder the deceased. There was no forensic evidence linking the Appellant to either the shell casings or the bike.

Whilst there was no evidence of three or two component particles of gunshot residue (GSR), there was some evidence of one component particles linking the Appellant to the killing. They were as follows: on the light coloured helmet, four lead and two antimony; on the front of the red paisley bandana, five lead, seven antimony and four barium; and on the back two lead and five antimony. On stubs taken from the front passenger seat of the car in which he travelled later in the evening: five lead, seven antimony and one barium. Thus a total of 42 one component particles comprising 16 lead, 21 antimony and 5 barium and so, although there were no three component particles that comprise GSR as such, all three constituent elements were present in single particle form.

The Appellant argued several grounds of appeal which addressed issues of the GSR evidence, hearsay evidence,

the judge's failure to give a *Lucas* direction to the jury, and recognition evidence.

However, the Court of Appeal on 17 November 2017 dismissed all grounds of appeal. Similarly, the Privy Council having considered written submissions from the parties, and the report of Ms Shaw dated 6 February 2019, *de bene esse*, agreed to report to Her Majesty that there was no risk that a serious miscarriage of justice occurred and refused permission to appeal.

*Gardner*

The facts of this case arise from a dispute about payment for drugs where the Appellant was called upon to assist. Gardner came armed with a gun, and Kent Greenidge brought in Caswell Robinson with his jeep to help flush out the victim from a strand of bamboo into which he had fled, with the aid of the vehicle's headlights. The shooting followed an extended period of threats to the victim who had run into and remained hidden in the bamboo. Both Greenidge and Caswell Robinson saw the Appellant pull out a gun.

After the shooting Robinson, Patrick Stamp and the Appellant departed in the jeep; Robinson was driving, the Appellant was in the front passenger seat, and Stamp was in the back.

Numerous one and two-component particles of gunshot residue in the front passenger area of the jeep connected the Appellant to the gun. The Appellant's case was that he was in the area by chance as he had called Stamp with regard to the delivery of a Christmas hamper. He never had the gun and was not the shooter. His case was that he had been on his phone when the shot went off, that he had "flinched" and at that point had dropped his phone. Without locating it, he had quickly left the bamboo and had got into the jeep.

The Appellant argued a number of grounds at his appeal. Firstly, he argued that the trial judge erred in law when she permitted the GSR expert, Allison Murtha, to give evidence for the Crown on matters not contained in her original report, namely, that it was unlikely that the one and two-component particles reported came from other sources.

Secondly, he said the judge erred in directing the jury on the GSR evidence and did not give a fair and balanced summing-up.

Thirdly, the judge erred by not directing the jury to treat the evidence of Ms Murtha with caution, given that the method in which the GSR evidence was collected and analysed was neither transparent, impartial or fair.

Fourthly, the judge erred by misdirecting the jury on the law of premeditated murder.
Fifthly, the judge failed to give the appropriate direction that the prosecution witness, Robinson, may have had an interest to serve, and the jury should treat his evidence with caution.

Sixthly, that the judge made several prejudicial statements against the Appellant and the Appellant's counsel such that the overall cumulative effect was that the summation was not balanced and fair.

Penultimately, that the judge erred in law by constantly intervening during the Appellant's counsel's questioning of witnesses, such that the Appellant did not receive a fair trial.

Finally, that the judge failed to review the evidence of Loryn Bell, the telephone records expert that was crucial to the Appellant's defence.

The judgment was of the court which was led by Bernard JA (Ret) found that the Appellant's trial was fair and not prejudicial to the Appellant. Therefore the Court dismissed the appeal.

Likewise, the Privy Council found there to be no serious miscarriage of justice and refused permission to appeal

# 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**

# Matrimonial & Family Division

## YEAR IN REVIEW

The year 2021 was the worst of times for the division. It was the most heart wrenching and exhausting of times. It was the year of remote video hearings zooming into home offices, living rooms, bedrooms and the front seat of motorcars; oral evidence buffering and scowling faces freezing in unison seconds prior to vanishing into wireless fidelity (Wi-Fi).

The year 2021 witnessed the division's administrative team plummet to one administrator as the number of divorce petitions and sundry applications made by litigants in persons, skyrocketed. An estimated 82 appearances were listed for litigants-in-person before the Judge in Chambers in respect of matters in which they were the applicant. 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. These applications required more of the Judge's time and focus not only during the scheduled hearing but after drafting detailed orders and giving direction to the division's administrator.

The year 2021 was the year that the lone administrator, Ms. Carmen Edness foraged the building, week after week, for an available hearing room outfitted with a court recording system so that desperate and sometimes quarantined parents and attorneys could be heard remotely via ZOOM. It was the year of an undeniable breakdown in the very legal machinery designed to regulate disputes concerning families. Prior to 2016 the division was regularly staffed with three administrators to carry out a plethora of tasks including supporting the judge administratively. Since then, the administrative staffing of the division has been haphazard, at best. This administrative challenge coupled with the explosion in the number of litigants-in-person filing documents and appearing in proceedings, inherently designed for specialists' attorneys, strained the division. Given the strain on the division, the collection of statistical data is limited for this year. However, the following is believed to be an accurate reflection of divorces for the year 2021:-

| Number of divorce petitions filed | Number of female petitioners | Number of male petitioners | Number of Petitioners acting without an attorney | Number of Respondents acting without an attorney | Number of Decree Absolutes |
|---|---|---|---|---|---|
| | | | | | |
| **139** | **91** | **48** | **40** | **67** | **122** |

The resignation of the Court Appointed Mediator, Mrs. Miriam Shaya-King, an experienced professional family mediator keenly aware of the nuances of Bermudian families and life here in Bermuda, was a significant setback to families seeking a non-adversarial approach to resolving conflict. Mrs. Shaya-King's decision to spend more time with her family is applauded but her

departure has left a gaping hole in the family justice system. The division wishes her well moving forward.

The year 2021 was a year of disbelief. The Bermuda Bar lost a true champion for family justice. Mrs. Karen Williams-Smith, Barrister & Attorney will always be remembered for her well researched and succinct arguments. She was always courteous to the Court as well as opposing counsel but known to be short on patience for foolishness during proceedings. Mrs. Williams-Smith exemplified the 'family lawyer'; fierce yet fair, focused on the welfare of the child; compassionate about law reform and the legal structure for dealing with families in dispute. She was a major contributor to the 2009 Justice for Families –a review of family law in Bermuda. It is hoped that upon reflection, her contributions to the family justice system will motivate us to do right by families in Bermuda. Failure to do so will continue to destabilize wider society.

Throughout the year 2021, the patience and dedication of family law specialists must be acknowledged. These practitioners had appropriate remote locations and made every effort to ensure that bundles were received well in advance of the hearing. They attended remotely prepared, organized and focused on the legal issues. However, there is a growing trend that would suggest that the practice of family laws neither requires legal research, submissions on the law, nor drafting of legal Orders.

In conclusion, where do we go from here?

# Civil, Commercial and Appellate Division:

## YEAR IN REVIEW

### Output: The Legal Areas

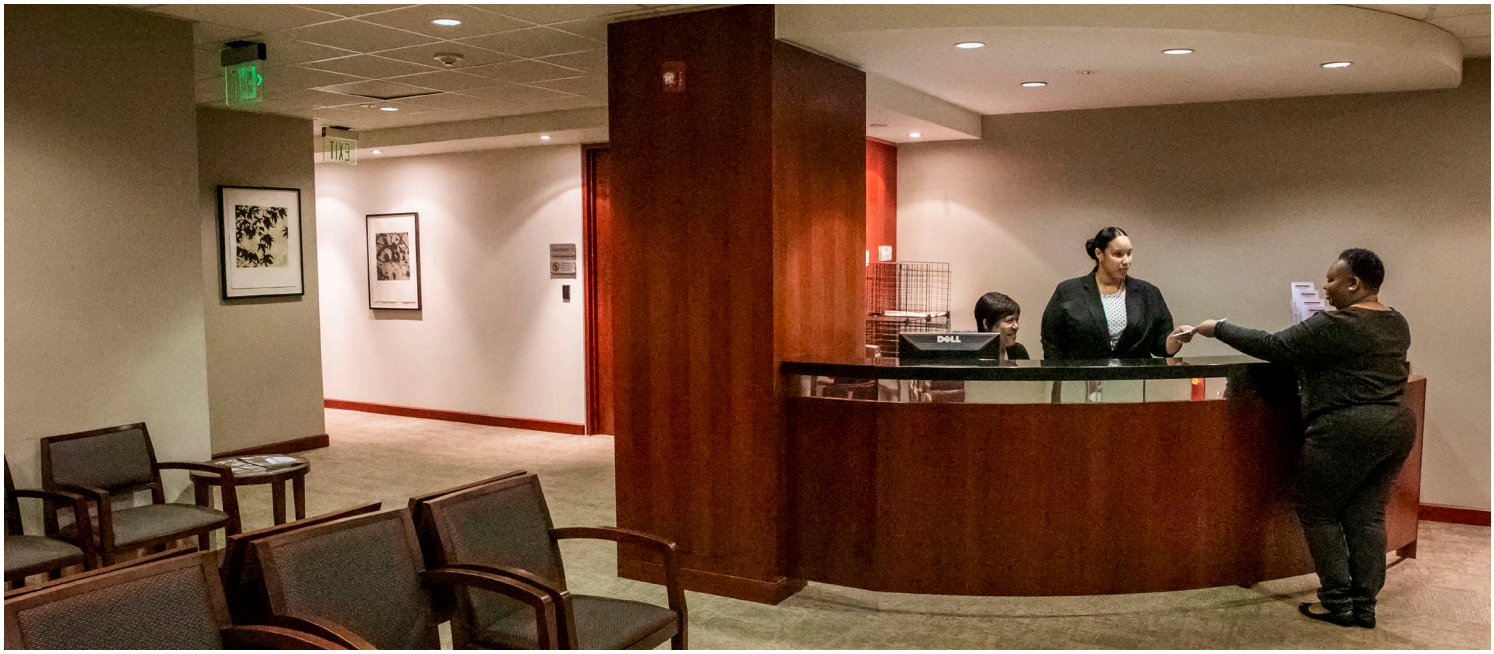
The Civil and Commercial Division has very wide brief. The civil area may be divided into two halves: (1) deciding cases which concern the relationship between the citizen and the State (public law cases), and (2) deciding cases involving private law rights, mainly disputes between private individuals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

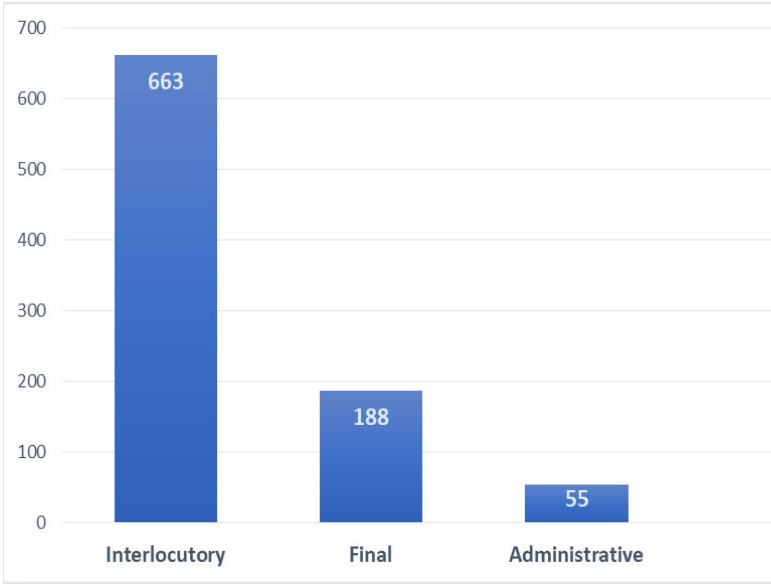
A measure of the output of the Civil and Commercial jurisdiction is the number of published or reasoned judgments. It is unsurprising, given the Covid 19 pandemic in 2021 that the total number of written judgments is up from 55 in 2020 to 94 in 2021. It is significant to note that written judgments in commercial cases are up from the 20 in 2020 to 26 in 202.



| Table 1: 2014 - 2020 Published Judgments | | | | |
|---|---|---|---|---|
| **Table 1: 2016 - 2021 Published Judgments** | | | | |
| **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 |
| **2021** | | | | |
| | **Civil-Gen** | **Commercial** | **Appeal** | **Total** |
| **Published/Considered Judgments** | 49 | 26 | 19 | 94 |

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 2020, the figures reveal 478 interlocutory orders were made and 97 final orders were made (a total of 575) in civil and commercial matters. A further 42 orders were made in administrative matters (e.g. admissions to the Bar and appointment of notaries).

In 2021, there were 663 interlocutory orders, 188 final orders and 55 administrative orders. This measure shows that there was an appreciable increase in the number of orders made in 2021 compared with the orders made in 2020.

**Table 3: New Civil Matters Filed by Subtype 2016-2021**

| Year | Total | Commercial | Originating Summons | Call To Bar | Notary Public | Writ of Summons | Judicial Review | Partition | Mental Health | Bankruptcy | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **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 |
| **2021** | 417 | 101 | 78 | 67 | 20 | 106 | 17 | 4 | 15 | 2 | 7 |

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 decrease in the number of actions commenced in the 2021 (417) compared with 2020 (489). There was a substantial increase in the number of actions commenced in the commercial jurisdiction in 2021 (101) compared with commercial actions commenced in 2020 (90).

Criminal and civil appeals from the Magistrates' Court are also heard in the Civil and Commercial Division. In 2021, the total number of appeals filed were up (from 33 cases to 41 cases). 41 appeals were lodged, with 11 appeals allowed, 10 appeals dismissed, 3 appeals being abandoned and 17 pending.

**Table 4: CRIMINAL & CIVIL APPEALS FROM MAGISTRATES COURT 2016 - 2021**

| Year | Total Filed | Allowed | Dismissed | Abandoned | Cases Pending |
|---|---|---|---|---|---|
| **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 |
| **2021** | 41 | 11 | 10 | 3 | 17 |

# Probate Division:

## YEAR IN REVIEW

Staffing shortages, staff turnover in the Supreme Court section combined with absences due to COVID-19 continued to affect the output of Probate Section. Even so, the Team continued to put their all into moving the files along.

### Outputs

In 2021 there was a 20% increase in compared to 2020. In 2021 a total of 176 applications were filed, 29 greater in comparison. There were 47 caveats filed in 2021, 8 more in comparison.

*Grants Issued and Stamp Duty Assessed*

In 2021, there were 128 Grants issued, compared to 134 Grants issued in 2020.

In 2021: 94 grants issued 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) on the deceased's estate; the lowest stamp duty assessment on a single estate was $217.72; and there were two large stamp duty assessments on a single estate application, being $1,134,641 and $2,134,595.

### 2022 Goals

Staff continue to diligently work reviewing applications, prioritizing those that are urgent. Near the end of 2021 an additional administrative assistant was on-boarded in a temporary relief capacity and trained to assist with processing applications.

Recruitment efforts are underway for the Judicial Department to have a full complement of staff by the end of 2022. This will allow plans for the completion of electronic guidance notes and direction to come to fruition. This direction will be particularly helpful to those new to the probates process and will result in greater accuracy in applications filed and reduced staff processing turnaround time.

| Table 10: PROBATE APPLICATIONS FILED 2017 - 2021 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 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 |
| **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 |
| **2021** | 114 | 31 | 5 | 14 | 0 | 12 | **176** | 47 | 4 |
| **Change** | 19 | 18 | 0 | -11 | -4 | 7 | 29 | 8 | 1 |
| **%** | 20% | 138% | 0% | -44% | -100% | 140% | 20% | 21% | 33% |

| Table 10A: STAMP DUTY ASSESSED ON GRANTS ISSUED 2017-2021 | | | | | | | |
|---|---|---|---|---|---|---|---|
| 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 |
| **2021** | 128 | 97,771,018 | 42,690,83 | 14,381,733 | 3,915,738 | 37,274,805 | 4,728,732 |

# Criminal Division:

## YEAR IN REVIEW

### YEAR IN REVIEW

Following the year in review for the reporting year 2020, this is the second year that the Criminal Jurisdiction report is set against the backdrop of the Covid-19 pandemic. The work of the criminal jurisdiction continued to be adversely affected as it had in the previous reporting year. It seems an understatement to observe that the pandemic has had a negative effect on the court's efficiency.

Having experienced the effects of the pandemic on our ability to sustain the administration of justice (as indicated in our overriding objective) it might seem axiomatic that we would be better prepared in this reporting year to meet the challenges of the criminal jurisdiction of the courts being in lock down. But it was not to be. Once again I turn to Shakespeare "*if to do were as easy as to know what to do, chapels had been churches and poor men's cottages princes' palaces*".

### 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.

The effect of the Covid-19 pandemic during the reporting period has continued to be our greatest challenge. The Chief Justice mandated a shutdown of the criminal courts on two occasions during the reporting year. This was done in response to Covid guidelines emanating from the government. However, we have also been challenged by having only one dedicated Puisne Judge working in the criminal division. When possible we have had the fortune of having two Magistrates experienced in criminal matters acting in the capacity of Assistant Justice or Acting Judge as the vicissitudes of the work has required.

We continue to experience a high number of written applications for excusal from jury service made by persons liable to jury service. Table 4 shows a comparison with the last reporting year. There were 51 less written applications in this reporting year as compared to last year. However, it should be noted that some written applications were overtaken by the court closures and those are not reflected in table 4.

While we do not keep statistics on defendants that appear before the court unrepresented by counsel but who wish to apply for legal aid, it is to be noted that quite a few cases were adjourned pending the Legal Aid Committee meeting. They appeared to have difficulty scheduling their meetings resulting in several cases having to be adjourned on a number of occasions.

Our efficiency was also affected by attrition in staff, in particular trained Court Associates. A court cannot operate without a Court Associate. A Court Associate is a court clerk. They have a number of tasks that are designed to keep a court functioning. Among other tasks they prepare the court room for the impending proceeding. They announce the oncoming matter as well as each adjournment of the court. They assist the judge throughout a proceeding. They operate the digital recording system, making notes of what is being said while imprinting a time reference for easy access later to the digital recording. They are the conduit between judge and counsel. They swear in witnesses, and tag all items admitted into evidence by the judge. They draw up orders made in court by a judge.

The criminal jurisdiction was without a Senior Court Associate from June 2020 to December 2021. One Court Associate post, which had been filled temporarily in 2020 became vacant at the start of the reporting year and remained vacant throughout the reporting year. In the result, once we were physically in a position to do so, we were not able to conduct two criminal trials at the same time. During the lengthy period that we were short of Court Associates, Mrs Joy Robinson, who serves as my Administrative Assistant and is tasked with special responsibilities for all matters concerning juries, stepped in and carried out the Court Associate functions without resistance or complaint. I wish to commend her for going over and above her designated tasks and assisting judges in the criminal jurisdiction in order to keep the criminal court functioning.

A modern judiciary needs to be able to meet the requirements of providing court users and our staff with a level of technological equipment that meets our need of delivering justice. The pandemic has revealed that our budget is insufficient to even sustain the systems that we have been using for the last 3 years. Further there has been a lacuna in obtaining the assistance of other departments in our attempt to upgrade our systems and provide services.

It is essential that government provide the judiciary with a budget, interdepartmental assistance, and the assistance of other departments in the implementation of new and future systems. We are currently using technology (including court specific technology) that is over 10 years old in the court rooms and through the judiciary. The task of replacing systems is a challenge for the current IT resources. Without an adequate budget and support for technology the courts cannot operate efficiently. We will continue to experience delays in cases where technology has failed us.

**PHYSICAL PLANT**

During the last reporting year Court 1 in Sessions House was brought in line with Covid-19 requirements for social distancing. Notwithstanding that, the need continued for the necessary reconfiguring of Court 4 in the Dame Lois Browne-Evans Building if the criminal jurisdiction was to achieve its pre-Covid-19 practice of running two criminal trials at a time. It was all the more urgent to have two trial courts compliant with the Covid-19 regulations issued by the government if the backlog that had accumulated over the previous year was to be tackled.

In February 2021, the Chief Justice nominated Justice Larry Mussenden to spearhead the alterations needed for Court 4 to be made Covid-19 compliant. It was determined early that the space that had been previously used for the jury room, which was located on the 3rd floor of the building, would not be able to accommodate a jury with proper social distancing. The Department of Works identified the boardroom on the 5th floor as suitable for reconfiguring as a jury room. The necessary Plexiglas panels were installed in Court 4 to achieve the required physical distancing. With the panels in place the courtroom was fit to be used for all criminal matters which at first did not include a jury trial. In the fullness of time removable Plexiglas panels were configured for the boardroom to enable it to function as a jury room with appropriate social distancing yet still be available generally as a meeting space. In October the alterations to the designated jury room had been completed and the court room and jury room were declared to be completed for the purposes of listing criminal trials. For various reasons not related to the physical spaces (in particular the lack of Court Associates), Court 4 has not yet been used for a criminal trial.

Justice Mussenden acknowledges that he could not have carried out his assignment of bringing Court 4 in line with Covid-19 regulations without the help of several key people. He extends his deepest gratitude to the in-house team comprising the Registrar, Mrs. Alexandra Domingues; Assistant Registrar, Mrs. Cratonia Thompson; Litigation Officer, Mrs. Nakita Dyer; IT Manager, Mr. Frank Vasquez; as well as our Court Attendants Mr. Vivian Simons and Mr. Gladwin Trott.

He also wishes to acknowledge the assistance of Ms. Caroline Blackburn, Estates Surveyor from the Department of Public Land and Buildings; from the Ministry of Public Works, we had the tireless advice and guidance of both Mr. Sheridan Ming, Acting Buildings Manager; and Mr. Thomas Brown, Acting Superintendent.

**THE ESTABLISHMENT**

In the last report I was happy to indicate that the former Director of Public Prosecutions, Mr. Larry Mussenden, was sworn in by the Governor as a Puisne Judge on the 3rd of December 2020. He has therefore served in that capacity for the whole of this reporting year. In the last report I made the observation that Justice Mussenden would be unable to take on criminal case assignments that issued out of his former office during his tenure. It had been estimated that that state of affairs would persist for a further 6-8 months.

That, as it turned out, was an understatement. As a result of the backlog of criminal cases accumulating since the impact of the pandemic, Justice Mussenden continues to be unable to be assigned criminal cases that issued out of the office of the Director of Public Prosecutions while he held that office. He continues to be assigned cases in the other jurisdictions of the Supreme Court. In the result, we have had to continue to call upon temporary appointments from the Magistrates' Court Bench.

## JURY SERVICE APPLICATIONS

The Juror's Act 1971 governs among other things the disqualification, exemption and excusal of persons liable to jury service. I have 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 persons available for the jury selection process which is a major component in the criminal trial process. Table 4 reflects the disposal of written applications by prospective jurors in the last reporting year and in the current reporting year.
In practice the Chief Justice has assigned the vetting of applications for non-service to the Supervising Judge. In carrying out that task I work with a dedicated Registry staff member, Mrs. Joy Robinson, and through her, the police service Court Liaison Officer ensures that the statutory provision of a jury panel is met at the start of every criminal trial by jury.

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

## DISPOSAL OF CASES

The work of the criminal jurisdiction of the Supreme Court has as previously indicated been adversely affected by the Covid-19 pandemic.

The total number of new indictments has increased by one over the previous year, however new indictments have not reached the pre Covid-19 levels. Table 1 shows the real numbers over the period 2018-2021. It would be difficult, if not impossible, to assume that the extent to which indictment levels have fallen in this reporting year as compared to 2018 and 2019 is as a result of the pandemic.

The extent to which criminal trials have been litigated do appear to be pandemic related. We have sustained two periods during which the criminal court was shut down and trials were temporarily suspended. The first shutdown was for the period the 9th April to the 30th April 2021. The details were contained in Circular # 3 of 2021 issued by the Registrar which necessitated the temporary closure of the one trial court that we had in operation and the delisting of all trial fixtures during the period. The second shutdown covered the period May 3rd to May 28th 2021. The details of the suspension of the court's services were contained in Circular # 6.

Notwithstanding the temporary closure of the criminal trial court, non-trial hearings were conducted remotely by the widely used video platform referred to as "Zoom". We were able to continue non trial matters such as case management and sufficiency hearings. This could not have been accomplished without the cooperation of Crown and Defence counsel as well as our dedicated

court staff, some of whom were actually working from home during the periods indicated. Ultimately, the closure of the trial court has exacerbated the trial back log.

Table 3 illustrates the delays in disposal of cases in the reporting year as compared to the period 2018-2020. For example, the average timeframe between first appearance and trial has gone from a low of 3.5 months to an all-time high of 22.8 months in this reporting year.

We have experienced much delay in receipt of psychiatric reports. We were informed in September 2021 that due to Covid-19 and concomitant shortages in staffing levels, clinical care needs of patients, patient demands and physician capacity experienced by the Bermuda Hospitals Board, the Mid Atlantic Wellness Institute (MWI) had reassessed the estimated length of time for patient assessments for the preparation of Psychiatric reports from 6 weeks to 12 weeks. We were also informed that MWI no longer had a forensic psychiatrist on their staff and that we should source a forensic psychiatrist from the private sector. This has resulted in a delay in receiving psychiatrist reports and none has been received since September.

This matter was brought to the attention of the Registrar and at the time of preparing this report discussions had been held and a meeting had been suggested to take place between the Registrar and a Mr. Preston Swan the Acting Chief Operations Officer/VP Clinical Operations (MWI). It is my hope that a solution can be found so that applications for psychiatric reports and other formalities requiring reports or evidence of a psychiatrist as provided by the Criminal Code and the Mental Health Act can be complied with.

The average timeframe between request for sentencing reports (not involving forensic psychiatric reports) and a sentencing hearing has risen from 3.3 months in 2020 to 8 months in 2021.

It is plain in the circumstances to see from Table 3 that we were challenged in meeting our commitment to the public's access to justice during the reporting year. Table 1 demonstrates the trial totals for the reporting year and the previous three years. There were 5 trials completed in the reporting year as compared to 18 in 2018 and 15 in 2019. We did however manage to complete 3 more trials than was done in 2020. These 5 trials were for indictments from previous years.

The challenge going forward is to reduce the total number of indictments that have carried over from 2018-2021. In other words, there are 67 unresolved criminal matters that are fixed for trial or await trial dates which emanate from 2018 up until the end of the reporting year 2021.

It is patently clear that having just two judges working in the criminal division will not be sufficient to ensure that all defendants are afforded a fair trial in a reasonable period of time. Any one of several matters may delay a trial. Many trials require two or more weeks to complete. Those with two or more defendants will require anywhere from 3 to 8 weeks to complete. With two trial judges doing trials they will be required to carry out the other essential criminal case matters such as twice monthly case management hearings, sufficiency hearings, abuse applications and challenges to the jurisdiction of the court as well as sentences of defendants who plead guilty without going to trial.

Each of the above mentioned types of matters would be disruptive to a judge and to jurors who are sitting in a trial. If an additional judge were available, a digital platform such as Zoom could be deployed for such hearings (except sentencing) in the event that there is no court room available for these short matters.

In these extenuating circumstances it may be necessary to appoint an additional Puisne Judge, one who could assist with criminal matters, at least for as long as the back log persists. Such a vacant post may exist. It would be for the government to provide the necessary funds to fill this established post. Another option would be for the government to fund an Assistant Justice post for such period as the Governor may deem necessary as provided by Section 73(6) of the Constitution to provide for the vicissitudes of the judiciary so that it may meet its overriding objective of doing justice by the provision of access to justice in circumstances where a backlog persists in the criminal trial calendar.
It should also be borne in mind that without a dedicated court for the Court of Appeal, a trial court will have to be made available for the three sittings of that court once they resume in person hearings, which is likely to be sooner rather than later. During the three weeks that the court of Appeal is sitting one of the trial courts will not be available for conducting criminal trials.

**ACKNOWLEDGEMENT**

I have shown our appreciation to various persons named above who assisted with the fitting out of Court 4, Dame Lois Browne-Evans Building to ensure that it was compliant with Covid-19 Regulations.

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

As always, 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 cannot heap enough praise on Mr. Frank Vazquez and Mr. Brian Mello who have found a way of addressing the IT needs of all the judges and staff, particularly those who worked remotely. As with the last reporting period, they had to meet the constant demands of keeping our antiquated electronic equipment up to task on a shoestring (and increasingly non-existing) budget.

I wish to single out Mrs. Nakita Dyer, the Litigation Manager of the criminal jurisdiction for her dedication to the pursuit of justice. Mrs Dyer has proven to be an essential resource in the management of criminal cases. She seems never to tire of striving to carry out her tasks efficiently and accurately. She has gained the respect of the whole department not to mention counsel who have come to rely on her for dealing with their matters promptly. As an example of her dedication,

she has gone over and above the call of duty in ensuring that unrepresented defendants are informed of and assisted in being included in remote hearings. She has been a vital leader to the staff under her supervision. If the truth is to be told, Mrs. Dyer has kept me on course and focused through all of the trying times during this reporting year.

**CONCLUDING REMARKS**

Section 71 (a) of the Bermuda Constitution provides for the tenure of judges of the Supreme Court. Essentially it provides that a Puisne Judge shall vacate office upon attaining the age of 70 years. While I have not yet attained that age I will do so during the first week of April of 2022. As such, this is the last contribution that I shall make to the Supreme Court Annual Report particularly as the Supervising Judge of the Criminal Jurisdiction.

While this is not the forum for reflecting on my lengthy career in the Judiciary, I think it would be remiss of me not to mention a few individuals. I will be eternally grateful to former Chief Justice Ian Kawaley for designating me the Supervising Judge of the Criminal Jurisdiction of the Supreme Court. I acknowledge, albeit posthumously, the tremendous support of my friend and former classmate Miss Joann Lynch, who served so ably as the first Litigation Manager of the Criminal Jurisdiction. She was my rock. I thank the current Chief Justice Narinder Hargun for extending my appointment as Supervising Judge.

I am grateful to the Director of Public Prosecutions, Miss Cindy Clarke, for all the respect and support she has shown me. In particular I am grateful that she responded so promptly to concerns that I expressed about the late receipt of the record in new cases sent up for arraignment that came before the court. Her response has made for a more efficient process and meets the Judiciary's goal of doing justice.

I cannot single out defence counsel that have made my tasks easy, as I run the risk of offending those not mentioned by error of omission. Nor shall I single out those that mounted challenges that sent me scurrying to brush up on a particular legal point. All have shown me the greatest respect, especially when I have of necessity ruled against their submissions. I have enjoyed our banter in court, it has reduced the pressure that I and most criminal trial judges constantly experience.

It has been a delight to see the ranks of the Bar enlarged by young counsel. Had I more time on the bench I would have taken delight in rounding off some of their rougher edges as was the wont of the old fashioned judges that I had the privilege to appear in front of. I leave that task now to those that follow me.

In each report that I have contributed to I have singled out staff members that have contributed to the apparent seamless work that we do in the Criminal Jurisdiction. It has not always been easy for them, but fortunately for me each one of them has shown dedication beyond expectation. But I would be remiss in my judicious conduct if I did not recognise those that have not worked directly with me or on a specific project; nonetheless their work has assisted me. Many go about their work

quietly and without need to be praised. It is to those that I wish to express my profound gratitude. I have noticed you. I am thankful for your support. I will remember each of you fondly.

# SUMMARY OF INDICTMENTS LISTED AND DISPOSED OF 2018 – 2021

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

| MODE OF DISPOSITION (Table 1) | | | | |
|---|---|---|---|---|
| | **2018** | **2019** | **2020** | **2021** |
| **TOTAL NUMBER OF NEW INDICTMENTS** | **42** | **36** | **34** | **35** |
| **TRIAL TOTAL FOR THE YEAR** | **18** | **15** | **2** | **5** |
| **TRIALS FOR 2 CO-ACCUSED PERSONS** | **1** | **0** | **1** | **0** |
| **MULTI- DEFENDANT TRIALS (3 OR MORE CO-ACCUSED)** | **1** | **0** | **0** | **0** |
| **DEFENDANTS ACQUITTED BY JURY** | **11** | **3** | **0** | **4** |
| **DEFENDANTS CONVICTED BY JURY** | **8** | **9** | **3** | **1** |
| **DEFENDANTS DISCHARGED ON FINDING NO CASE TO ANSWER** | **0** | **1** | **0** | **0** |
| **HUNG JURY** | **0** | **0** | **0** | **0** |
| **MISTRIALS** | **1** | **2** | **0** | **0** |
| **GUILTY PLEAS** | **11** | **9** | **6** | **8** |
| **INDICTMENTS QUASHED** | **0** | **0** | **0** | **1** |
| **NOLLE PROSEQUIS ENTERED IN** | **4** | **6** | **1** | **5** |
| **INDICTMENTS REMITTED TO MAGISTRATES' COURT** | **3** | **1** | **3** | **4** |
| **TOTAL NUMBER OF NEW INDICTMENTS CARRIED FORWARD** | **20** | **25** | **28** | **33** |
| **TOTAL NUMBER OF 2017 - 2019 INDICTMENTS CARRIED FORWARD** | | | **21** | |
| **TOTAL NUMBER OF 2018 - 2020 INDICTMENTS CARRIED FORWARD** | | | | **34** |
| **TOTAL NUMBER OF INDICTMENTS CARRIED FORWARD** | | | **49** | **67** |

| OFFENCE TYPES (Table 2) | | | |
|---|---|---|---|
| **2018** | | **2019** | |
| MURDER RELATED OFFENCES | 8 | MURDER RELATED OFFENCES | 4 |
| MANSLAUGHTER RELATED OFFENCES | 2 | MANSLAUGHTER RELATED OFFENCES | 1 |
| DRUG RELATED OFFENCES | 5 | DRUG RELATED OFFENCES | 7 |
| MONEY LAUNDERING RELATED OFFENCES | 3 | MONEY LAUNDERING RELATED OFFENCES | 8 |
| FIREARM RELATED OFFENCES | 1 | FIREARM RELATED OFFENCES | 2 |
| SEXUAL RELATED OFFENCES | 10 | SEXUAL RELATED OFFENCES | 4 |
| WOUNDING RELATED OFFENCES | 13 | WOUNDING RELATED OFFENCES | 10 |
| **2020** | | **2021** | |
| MURDER RELATED OFFENCES | 5 | MURDER RELATED OFFENCES | 11 |
| MANSLAUGHTER RELATED OFFENCES | 0 | MANSLAUGHTER RELATED OFFENCES | 0 |
| DRUG RELATED OFFENCES | 5 | DRUG RELATED OFFENCES | 2 |
| MONEY LAUNDERING RELATED OFFENCES | 4 | MONEY LAUNDERING RELATED OFFENCES | 0 |
| FIREARM RELATED OFFENCES | 10 | FIREARM RELATED OFFENCES | 4 |
| SEXUAL RELATED OFFENCES | 2 | SEXUAL RELATED OFFENCES | 7 |
| WOUNDING RELATED OFFENCES | 6 | WOUNDING RELATED OFFENCES | 2 |

| CASE MANAGEMENT (Table 3) | | | |
|---|---|---|---|
| **2018** | | **2019** | |
| AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL | 3.5 MTHS | AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL | 6.5 MTHS |
| AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING | 2.5 MTHS | AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING | 2.5 MTHS |
| AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING | 1.4 MTHS | AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING | 1.3 MTHS |
| **2020** | | **2021** | |
| AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL | 13.5 MTHS | AVERAGE TIMEFRAME BETWEEN FIRST APPEARANCE AND TRIAL | 22.8 MTHS |
| AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING | 1.8 MTHS | AVERAGE TIMEFRAME BETWEEN CONVICTION AND SENTENCE HEARING | 3.5 MTHS |
| AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING | 3.3 MTHS | AVERAGE TIMEFRAME BETWEEN REQUEST FOR SENTENCE REPORTS AND SENTENCE HEARING | 8 MTHS |

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

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

| JURY SERVICE APPLICATIONS (Table 4) | | |
|---|---|---|
| | **2020** | **2021** |
| DEFERRALS | 98 | 69 |
| EXEMPTIONS* | 5 | 0 |
| ECONOMIC HARDSHIPS | 1 | 2 |
| EXCUSAL | 7 | 10 |
| JUROR DISQUALIFICATION** | 8 | 2 |
| DEFERRALS BY JUDGE – MEDICAL | 19 | 18 |

# THE MAGISTRACY

# THE SENIOR MAGISTRATE OF BERMUDA

## Wor. Juan P. Wolffe, JP

***"For me, the court is not a place. It's not a building. It is a service. The general public are our customers. It is their expectations and needs that the justice system must aim to satisfy……..They desire a justice system that is accessible, efficient, modern, one that produces fair and reasonably predictable outcomes."***
**The Hon. Mr. Justice Adrian Saunders**
**President of the Caribbean Court of Justice**

The worldwide challenges of the last two (2) years have brought the eminent words of The Hon. Mr. Justice Adrian Saunders into vivid focus. The global pandemic has significantly impacted our people medically, socially, financially, legally, and psychologically. Specifically, our fellow citizens: have lost employment or have had their incomes considerably reduced; have lost their homes due to an inability to pay mortgages or rent; have been unable to satisfy their monthly payments for utilities; have despondently watched their children not receive crucial in-person educational tutelage which they enjoyed prior to April 2020; have been the victims of domestic abuse; and for some, may have engaged in risky behavior which heretofore they would not have even contemplated. Therefore, it was and still is imperative that the Magistrates' Court respond to such dire realities in ways which are rooted in the ideals of "service", efficiency, fairness, and of course compassion. After all, as alluded to by Justice Saunders, the Dame Lois Browne-Evans Building is more than just a concretized edifice. It is a place where court users should reasonably expect to receive justice in its truest sense.

I am profoundly proud to say that over the legal year 2020/2021 the Magistrates' Court, as it had done over the previous years, met and possibly exceeded the expectations of the public by ensuring that the wheels of justice kept turning. But as they say, the "proof is in the pudding". Whilst the statistics have not reached the levels of pre-pandemic figures they are definitely on an upward trend. In this regard, we saw increases in the number of: Family Law cases, criminal law cases, and traffic cases adjudicated upon; fines collected for parking and criminal fines; Court documents being served; Committal and Apprehension Warrants being executed; and Coroner's Cases being

processed. This was despite the fact that the overall number of cases instituted was less than in previous years.

I would be remiss though if I did not say that this was not without the phenomenal collaborative efforts of all stakeholders such as the Magistrates, Magistrates' Court staff, members of the Bermuda Bar, the Department of Public Prosecutions, Department of Court Services, the Department of Child and Family Services, the Bermuda Police Service, the Bermuda Hospitals Board, the Department of Corrections, various treatment providers, and the helping agencies. Without the synergy generated all these stakeholders the Magistrates' Court would not have been able to considerably reduce the overwhelming backlog which could have been created as a result of the pandemic.

I am also extremely optimistic about what the legal year 2022 will hold. Even with the likelihood that human and capital resources will be drastically slashed I am confident that the delivery of justice by the Magistrates' Court will not concomitantly falter. We cannot however rest on our laurels. We still must take concerted and genuine efforts towards providing the Magistrates' Court with legislation, programs and systems which we have been vociferously advocating for over the past few years. In particular:

- "Special measures" legislation that would mandatorily allow vulnerable witnesses, such as child victims of sexual abuse, to give evidence in ways which are 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 sustained. Such counselling could be extended to the children and family members of those who may have been murdered to help them deal with the psychological and behavioural consequences of losing a loved one in such a gruesome way.

- 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 owe child support, or those who have Judgment Debts, or those who have fines, to meet their financial obligation without the need to leave from work or from home (such as those who may have physical challenges).

- Cutting-edge and functioning video-link facilities that would allow children and apprehensive witnesses to give evidence away from the Courtroom setting and from the glaring eyes of those who may have victimized them.

- Increased funding for Legal Aid so as to ensure full 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 legal rights. Indeed, like the Duty Counsel in Plea Court, there should be a Duty Counsel assigned to the Civil and Family Courts.

- Implementation of a digital case management system which would streamline the administrative processes of fixing dates for hearings and trials, and which would allow for pleadings and documentary evidence to be easily and immediately available to the parties.

- 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.

Each of the above will meaningfully enhance the "doing" of justice in the Magistrates' Court.

Finally, as I have repeatedly said in previous addresses, the vast majority of the accolades and kudos must be directed towards the Magistrates' Court staff. They are the face and backbone of the Magistrates' Court and without their tireless efforts and deep compassion for the people of Bermuda the Magistrates would not be able to effectively and efficiently carry out their duties. I am eternally grateful to them.

**The Worshipful Juan P. Wolffe**
**Senior Magistrate of Bermuda**

# 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**

# The Magistrates' Court

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

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

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

**The Magistrates' Court**

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.

**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 2022, the Magistrates' Court had to find workable ways to ensure that the break in court services would not be too drastic. Therefore, Magistrates and the Magistrates' Court staff ensured that the wheels of justice kept revolving through the implementation of the following:

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

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

The end result is that 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. 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.

While the Cashier's Section collected $6,244,306.22 in 2021, which was 11% less than in 2020, they are again to be commended for their ability to adapt to the many precautions that were implemented as a result of the COVID-19 pandemic. As with 2020, the reduction in payments collected is directly attributed to (i) precautionary measures being put in place at the Magistrates' Court at various stages throughout the year, (ii) a reduction in the numbers of persons attending the court to make any type of payment, (iii) the inability of persons being able to pay because of

lost employment or reduced income, and (iv) members of the public not attending court because of health and safety concerns.

The administrative team in this Section, are to be commended for their professionalism whilst serving customers, both in person and via the telephone continuing their efforts from 2020. The Court Associates are worth their weight in gold and often carry out their duties with commitment and dedication. Special mention should be made of Ms. Towona Mahon and Ms. Shondell Borden, both of whom went over and beyond the call of duty and played a vital role in the administration of the Courts. It is notable that all of the Court Associates who process the receipt of fees and fines had a phenomenal input accuracy rate of 99%.

## Hearings/Case Events

| Hearings/Case Events | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Mentions | 3,295 | 3,602 | 4,035 | 3,658 | 3,499 |
| Trials | 1,717 | 1,3997 | 1,174 | 966 | 1,086 |
| Case Events | 22,095 | 25,040 | 27,150 | 18,579 | 19,815 |

**Figure 1: Table of 2017- 2021 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.*

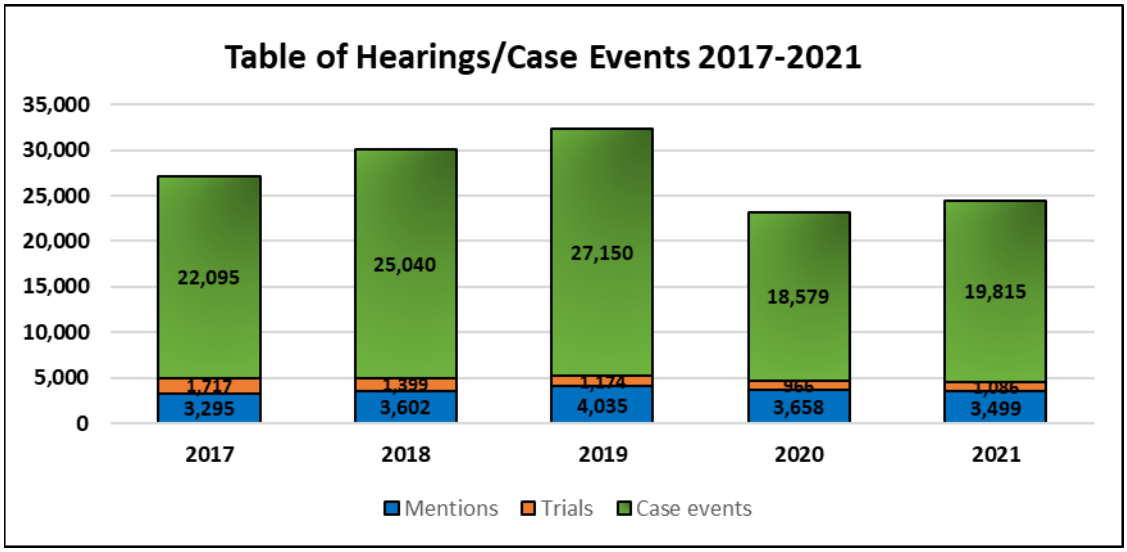


**Figure 1A: Chart on 2017 – 2021 Hearings/Case Events**

In 2021 the number of Mentions declined by 4% as the courts were continuing to reduce the amount of occasions that persons made a physical appearance in the court room (due to the continued presence of the COVID-19 virus). However, in an effort to reduce the backlog of cases created by the COVID-19 pandemic the court increased efforts to have trials heard and to accept new filings. Hence, Case Events increased by 7% and the number of Trials increased by 12%. Whether or not the court will increase the number of Mentions, Trials and Case Events in 2022, will very much be determined by the status of the COVID-19 pandemic.

***The Civil Court is primarily presided over by The Worshipful Tyrone Chin.***

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

The Civil Court has returned to pre-COVID-19 pandemic operations and are accepting the filings of all proceedings including eviction proceedings and the recovery of rent arrears (which were

stayed in 2020). However, it would appear that members of the public are not instituting civil actions as the number of new Court filings has been reduced by 10%.

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

Special mention to all of the staff in the administrative arm of the Civil Section as they remained current in respect of the processing and distributing of all New Civil Documents received in 2021.

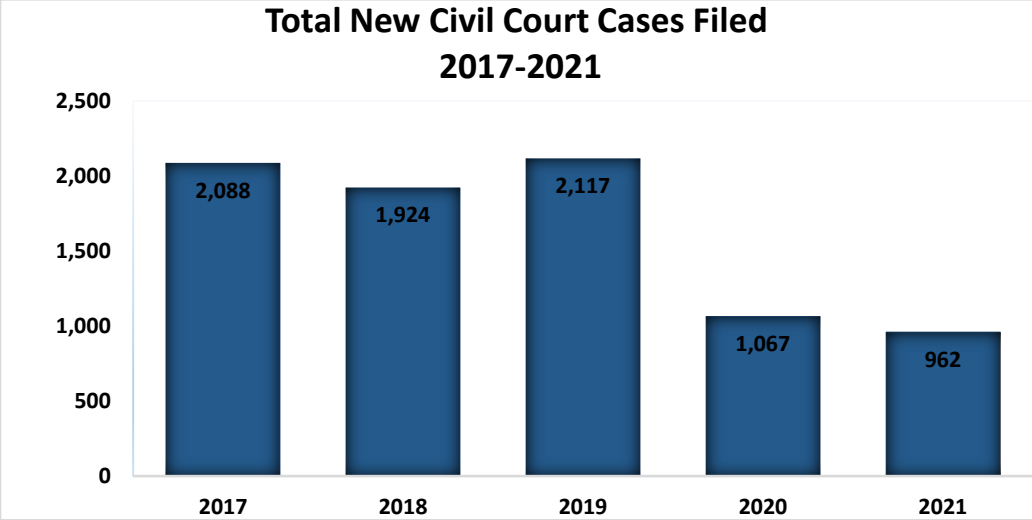



**Figure 2: 2017 – 2021 Total New Civil Court Cases Filed**


**Magistrate Anderson**

**Magistrate Attridge**

***The Family Courts are primarily presided over by The Worshipful Maxanne Anderson (Chairperson of the Family Court) and The Worshipful C. Craig Attridge.***

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 Special Court Panel**

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

The Special Court Panel had (fourty-three) 43 members serving in 2021 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.

We wish to pay specific tribute to Rev. C. Winston Rawlins who served on the Family Court Panel with distinction for twenty-one (21) years. During his tenure Rev. Rawlins exhibited the utmost compassion and understanding, and his infinite wisdom was beneficial not only for the Magistrates' and other Panel Members but most importantly for the parties and children who came before him. It will also be remembered that Mr. Rawlins was by far the most debonair and best dressed person in the court room whenever he sat. He will be sorely missed by all.

**Special Panel Member – REV. CHARLES WINSTON RAWLINS, JP**

**Family Court Cases**

The number of New Family cases filed saw a notable decline of 32% in 2021. This is to be counter-balanced by a staggering increase in the number of Juvenile cases filed which tripled over the 2020 figures from 52 to 158, and the Domestic Violence Protection Orders which also saw an increase from 64 in 2020 to 115 in 2021. In this regard, we reiterate what we said in the 2020 report:

*"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 2021 the number of cases heard under the Children's Act 1998 (Care Orders, Access, Maintenance, Care & Control) increased by 6% in comparison to 2020. The severity and complexities of these cases remained the same.

**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.

***Family Support Forms***

The Family Support Section continues to assist mothers, fathers and children who come before the Court and who routinely need assistance in resolving rather sensitive and delicate family court issues. It is noted that the number of adoptions increased by 80% in 2021 (5) compared to one (1) in 2020 and zero (0) in 2019. This maybe an indication of more persons coming forward to provide children with a prosperous life which they may not have otherwise had. It should also be noted that unfortunately there are a number of children in foster care who have not been adopted and so hopefully these recent numbers are an indication that more children will be adopted by loving parents in the coming months and years.

## Child Support Payments

The total amount of child support payments received in 2021 ($3,293,921) is comparable to the amount received in 2020 ($3,356,539). As with 2020, this shows that although persons may have lost employment or had their incomes reduced due to the COVID-19 pandemic they still put the welfare of their children as a priority.

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

**Figure 3: Table of Total Family Law Cases 2017-2021**

***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

**Sen. Magistrate Wolffe**

**Magistrate Tokunbo**

***The Criminal & Traffic Courts are primarily presided over by The Worshipful Senior Magistrate Juan P. Wolffe and The Worshipful Khamisi Tokunbo.***

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

Unfortunately, due to the COVID-19 pandemic, we were unable to pursue the on boarding of new employees across Bermuda Government. Additionally, we lost our long-term Temporary Relief Court Associate Dawn Butterfield towards the end of the year to another Section within the Judicial Department. As such recruitment commenced and we look forward to filling this vacant post

substantively in early 2022. At the end of the calendar year there was one (1) substantive Court Associate in this Section. Special mention to our Court Associates and the Supervisors in this Section for their untiring fortitude throughout the past year. This is despite the fact that there were numerous occasions when staff were compelled to quarantine due to being a close contact of a COVID-19 case.

| TOTAL NEW CASES (Filed) | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Criminal | 616 | 608 | 435 | 529 | 594 |
| Traffic | 7,767 | 8,497 | 8,112 | 4,396 | 4,323 |
| Parking | 11,857 | 15,668 | 19,949 | 19,637 | 18,363 |

**Figure 4: Total New Cases Filed with the JEMS system 2017-2021**

| Total New Cases (Filed) | | | |
|---|---|---|---|
| Month | Criminal | Traffic | Parking |
| Jan | 38 | 219 | 1,146 |
| Feb | 27 | 216 | 1,164 |
| Mar | 63 | 379 | 2,256 |
| Apr | 53 | 163 | 1,410 |
| May | 52 | 196 | 1,194 |
| Jun | 70 | 321 | 993 |
| Jul | 49 | 400 | 954 |
| Aug | 74 | 612 | 1,505 |
| Sep | 48 | 477 | 1,463 |
| Oct | 35 | 447 | 3,036 |
| Nov | 43 | 417 | 2,182 |
| Dec | 42 | 476 | 1,060 |
| TOTALS: | 594 | 4,323 | 18,363 |

**Figure 4A: 2021 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 12% from 529 in 2020 to 594 in 2021.

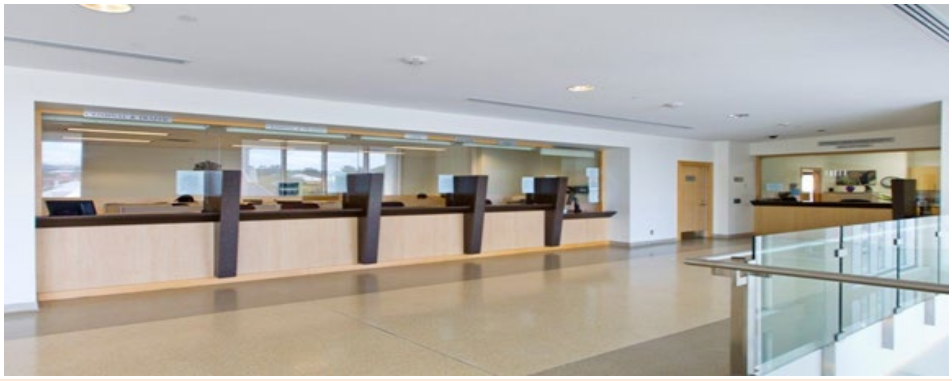
This was not the case as it relates to the number of new Traffic matters filed which saw a minor reduction of 2% from 4,396 in 2020 to 4,323 in 2021.

Additionally, the number of Parking cases filed were reduced by 6.5% in 2021 (18,363) when compared to 202 which had 19,637 matters heard.

**Magistrates' Court No. 2**

| TOTAL NEW CASES (Disposed) | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Criminal | 447 | 380 | 356 | 353 | 361 |
| Traffic | 6,982 | 7,713 | 8,397 | 3,967 | 3,781 |
| Parking | 2,857 | 3,514 | 6,169 | 2,169 | 5,440 |

**Figure 5: Table of Total New Cases Disposed by a Magistrate 2017 – 2021 (Criminal, Traffic & Parking)**



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

| Total New Cases (Disposed) | | | |
|---|---|---|---|
| Month | Criminal | Traffic | Parking |
| Jan | 15 | 396 | 111 |
| Feb | 24 | 262 | 110 |
| Mar | 19 | 299 | 156 |
| Apr | 28 | 146 | 83 |
| May | 25 | 144 | 188 |
| Jun | 44 | 220 | 111 |

| | | | |
|---|---|---|---|
| Jul | 38 | 338 | 522 |
| Aug | 43 | 433 | 754 |
| Sep | 26 | 395 | 695 |
| Oct | 26 | 274 | 822 |
| Nov | 36 | 429 | 1,165 |
| Dec | 37 | 445 | 723 |
| TOTALS: | 361 | 3,781 | 5,440 |

**Figure 5A: 2021 Table of New Criminal, Traffic and Parking Cases Disposed by Month.**

---

The total number of Criminal cases disposed of in 2021 increased by 2% to 361 cases when compared to 353 cases disposed in 2020.

There was not an appreciable change of the figures between the two years for Criminal and Traffic matters however, there was a marked increase in the number of parking tickets disposed of and this most likely is due to increased efforts by the Corporation of Hamilton and the Bermuda Police Service to enforce parking regulations.
***(Figure 5 refers.)***

---

## Record Requests

In 2021, the Criminal/Traffic/Records Section processed a total of 1,597 Record Requests which is a significant increase of 23% when compared to 2020 (1,300). This is most likely as a result of either an increase in employment vacancies and travel throughout 2021. The requests come from various sources which include, but are not limited to, private citizens, local and overseas Employment Agencies, Private Companies, Canadian Immigration, the US Consulate, etc.

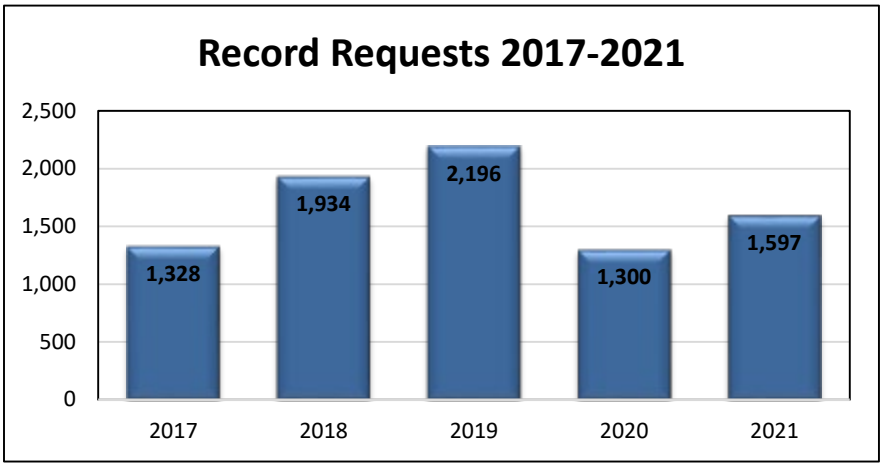



**Figure 6: Table of 2017 – 2021 Record Requests**

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. Representing a move from 2020 we are currently in discussions with the relevant Government Departments to increase the amounts payable for Record Request checks.


**Top 10 Criminal Offences 2017 – 2021**

| Offence Code | Offence Description | Offence Count | | | | |
|---|---|---|---|---|---|---|
| | | 2017 | 2018 | 2019 | 2020 | 2021 |
| 2071 | OBTAINING PROPERTY BY DECEPTION | (9) 22 | | (8) 15 | (10) 18 | |
| 2010 | STEALING (BELOW $1000) | (2) 66 | (1) 99 | (1) 59 | (6) 36 | (2) 74 |
| 2156 | ASSAULT (ABH) | (1) 77 | (2) 64 | (2) 46 | (4) 40 | (7) 30 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2300 | POSSESSION OF CANNIBIS | (3) 63 | (7) 29 | | | |
| 4032 | THREATENING BEHAVIOUR | (6)30 | (3) 60 | (3) 41 | (5) 39 | (5) 34 |
| 2127 | BURGLARY (NEW) | (4) 45 | (4) 37 | (8) 15 | (3) 48 | (3) 45 |
| 2152 | ASSAULT (COMMON) | (8) 26 | (5) 31 | (8) 15 | (5) 39 | (7) 30 |
| 2067 | HANDLING /RECEIVING STOLEN GOODS | | | | | |
| 4026 | OFFENSIVE WORDS | (6) 30 | (10) 24 | (10) 12 | | |
| 2144 | WILFUL DAMAGE GT 60 | (5)35 | (6) 30 | (5) 20 | (7) 23 | (8) 27 |
| 2091 | TAKE VEHICLE AWAY W/O CONSENT | | | (5) 20 | | |
| 2316 | POSS CANNABIS WITH INTENT | (7) 27 | | (6) 19 | | |
| 2392 | POSS DRUG EQUIPMENT PREPARE | (8) 26 | | (7) 17 | | |
| 6506 | DOG UNLICENCE | | | | | |
| 2388 | POSS DRUG EQUIPMENT USE | (10) 21 | (8) 26 | | | |
| 2364 | IMPORT CANNABIS | | (9) 25 | (10) 12 | | |
| 4034 | TRESPASS PRIVATE PROPERTY | | (8) 26 | (4) 23 | | (9) 25 |
| 2011 | STEALING (ABOVE $1000) | | | (7) 17 | | |
| 2169 | ASSUALT ON POLICE | | | (9) 13 | | |
| 2203 | HAVE BLADE/POINTED ARTICLE | | | (10) 12 | | |
| 2231 | SEX ASSAULT | | | (5) 20 | | (10) 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 | (4) 40 |
| 6221 | OFFENCE AGAINST EMERGENCY POWERS REG. | | | | (9) 19 | (1) 97 |
| 7604 | MARINE SPEED 100M FERRY REACH | | | | (8) 22 | |
| 7605 | CREATE WAKE 100M SHORELINE | | | | (1) 53 | (6) 32 |
| 7649 | USE/KEEP UNREGISTERED BOAT | | | | (10) 18 | |

**Figure 7: Table of Top 10 Criminal Offences 2017 - 2021**

**The Top 3 Criminal Offences in 2021** are as follows:-

1) Offences Against Emergency Powers Regulations
2) Stealing (Below $1000)
3) Burglary (New)

Offences Against Emergency Powers Regulations has catapulted from No. 9 in the Top 10 Criminal Offences in 2020 to No. 1 in 2021. This is obviously a reflection of the increased efforts of the Bermuda Police Service to enforce the regulations. It should be noted that recent legislation has been enacted to have certain offences under the Emergency Powers Regulations to be dealt with by way of a ticket and not be treated as a criminal offence if the fine is paid outside of court.

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

**Top 10 Traffic Offences 2017 – 2021**

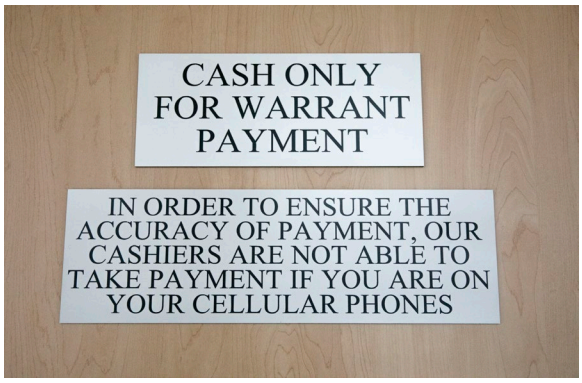
| Offence Code | Offence Description | Offence Count | | | | |
|---|---|---|---|---|---|---|
| | | 2017 | 2018 | 2019 | 2020 | 2021 |
| 3002 | SPEEDING | (1) 3,874 | (1) 4,405 | (1) 3,929 | (1) 1,849 | 1) 1,915 |
| 3007 | DISOBEY TRAFFIC SIGN | (2) 982 | (3) 833 | (2) 816 | (2) 424 | (2) 721 |
| 3062 | REFUSE BREATH/BLOOD TEST | | | | | (9) 60 |
| 3013 | SEAT BELT NOT FASTENED | (9) 98 | | | (10) 52 | |
| 3234 | NO DRIVERS LICENSE/PERMIT | (3) 702 | (2) 851 | (3) 752 | (3) 374 | (5) 295 |
| 3080 | NO 3RD PARTY INSURANCE | (4) 411 | (4) 449 | (4) 675 | (4) 345 | (4) 319 |
| 3229 | UNLICENSED MOTOR BIKE | (5) 402 | (5) 425 | (5) 505 | (5) 311 | (3) 328 |
| 3070 | DRIVE W/O DUE CARE & ATTENTION | (6) 317 | (7) 221 | (10) 98 | (9) 67 | (8) 72 |
| 3058 | IMPAIRED DRIVING A MOTOR VEHICLE | (7) 144 | (6) 231 | (7) 186 | (7) 106 | (7) 94 |
| 3064 | FAILURE TO WEAR HELMET | (10) 10 | (8) 147 | (9) 114 | | |
| 3324 | DEFECTIVE SAFETY GLASS/TINT | | | | | (10) 57 |
| 3228 | UNLICENCED MOTOR CAR | (8) 124 | (9)142 | (6) 319 | (6) 136 | (6) 135 |
| 3414 | FAIL EXHIBIT NUMBER PLATE | | | (8) 126 | (8) 71 | |

**Figure 8: Table of the Top 10 Traffic Offences from 2017 – 2021**

The **Top 3 Traffic Offences for 2021** are as follows:-

1. Speeding
2. Disobeying a Traffic Sign
3. Unlicenced Motor Car

Unsurprisingly, Speeding continued to be the most prevalent traffic offence in 2021. It will be interesting to see what impact the initiative "Operation Vega" recently instituted by the Bermuda Police Service will have on traffic offence statistics for 2022.



## Warrants

### Outstanding Warrants

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

The number of Committal Warrants reduced from 661 in 2020 to 621 in 2021 which represents a 6% decline. This can be attributed to reduced police and Bailiff operations due to the COVID-19 pandemic protocols.

As opposed to the increase in the number of Summary Jurisdiction Apprehension warrants which had a minor increase of 2% from 3,077 in 2020 to 3,140 in 2021 and the Apprehension warrants which saw an increase of 6.5% from 6,834 in 2020 to 7,278 in 2021. This is attributable to more concentration on these types of warrants over the Committal warrants.

| TOTAL OUTSTANDING WARRANTS | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Committal | 699 | 726 | 637 | 661 | 621 |
| SJA | 3,174 | 3,425 | 3,172 | 3,077 | 3,140 |
| Apprehension | 7,050 | 7,533 | 6,856 | 6,834 | 7,278 |

**Figure 9: Outstanding Warrants 2017-2021**
**(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.*

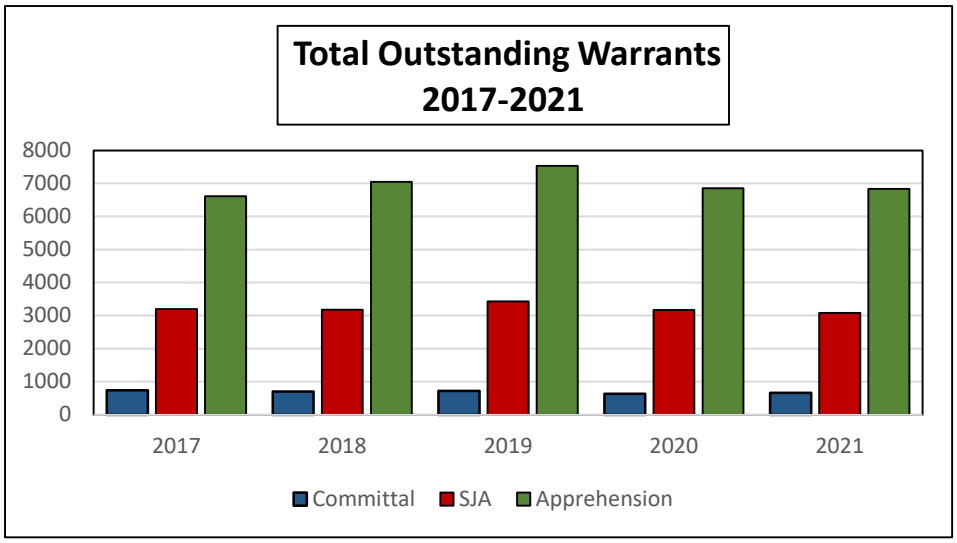



**Figure 9A: Outstanding Warrants 2017-2021**
**(Apprehension, Summary Jurisdiction Apprehension (SJA) and Committal)**

## Police and Criminal Evidence Act (PACE) Warrants

| PACE Warrants 2017-2021 | Legislation | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|
| Special Procedure Applications | Telephonic | 56 | 72 | 50 | 88 | 65 |
| | Banking | 7 | 9 | 9 | 5 | 10 |
| | Internet | 5 | 6 | 10 | 9 | 2 |
| | Medical | 2 | 1 | 1 | 3 | 1 |
| | Courier | 0 | 0 | 0 | 0 | 0 |
| | Law Firm/Legal | 1 | 0 | 0 | 0 | 0 |
| | Travel Agents/Airlines | 0 | 1 | 0 | 0 | 0 |
| | Dept. of Social Insurance | 0 | 1 | 0 | 0 | 0 |
| | School | 0 | 0 | 1 | 0 | 0 |
| | Covid-19 Emergency Powers | 0 | 0 | 0 | 6 | 0 |
| | Financial | 0 | 0 | 0 | 1 | 2 |
| | Airport | 0 | 0 | 0 | 1 | 0 |
| | Belco Electricity | 0 | 1 | 0 | 0 | 0 |
| | Electronic Taxi App. | 0 | 1 | 0 | 0 | 1 |
| | Hospital (MAWI) | 0 | 0 | 1 | 0 | 0 |
| | Insurance | 0 | 0 | 0 | 0 | 3 |
| Order of Freezing of Funds | | 0 | 1 | 4 | 0 | 15 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Order Release of Seized Cash/Property | | 2 | 1 | 2 | 0 | 7 |
| Continued Detention of Seized Cash | | 61 | 31 | 18 | 8 | 14 |
| Search Warrants | | | | | | 0 |
| | Misuse of Drugs Act | 101 | 45 | 56 | 37 | 15 |
| | Firearms | 34 | 10 | 13 | 18 | 7 |
| | Sec. 8/Sec. 15 PACE Act | 21 | 16 | 12 | 20 | 14 |
| | Liquor Licence Act 1974 | 0 | 0 | 0 | 1 | 0 |
| | Mental Health Sec.71(1) | 0 | 0 | 0 | 1 | 0 |
| | Criminal Code | 0 | 0 | 0 | 0 | 0 |
| | Revenue Act(Customs) | 0 | 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 | | **290** | **196** | **177** | **198** | **128** |

**Figure 10: Table of 2017 – 2021 PACE Warrants**

The number of PACE Warrants granted in 2021 were less than the number of warrants granted in 2020. This is surprising as one would have thought the relaxing of COVID-19 protocols would have increased applications for PACE Warrants**.**

## Coroner's Reports – Causes of Death

| Causes of Death | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Natural Causes | 60 | 61 | 79 | 60 | 64 |
| Unnatural Causes | 10 | 12 | 3 | 5 | 8 |
| Murders | 5 | 5 | 0 | 6 | 7 |
| Road Fatalities | 15 | 12 | 10 | 7 | 17 |
| Suicide | 3 | 2 | 4 | 3 | 2 |
| COVID | n/a | n/a | n/a | 0 | 5 |
| TOTALS | 93 | 92 | 96 | 81 | 103 |

**Figure 11: Table of Causes of Death in Coroners Cases 2017 – 2021**

***NOTE:-***

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

***Fatal:*** *These cases include Road and Marine fatalities.*

The Coroner's Office is managed by the Senior Magistrate who reviewed 103 Coroner's deaths from January – December 2021.

There was an increase in some of the metrics as it relates to Coroner's cases. Most notably are the increases in deaths due to Unnatural Causes, COVID and Road Fatalities.

Overall the total number of Coroner's cases has increased from 81 in 2020 to 103 in 2021 representing a 21 % change. From this, a reasonable inference can be drawn that we as a community are unhealthier, are engaged in questionable conduct which leads to our death and that we are increasingly reckless on our roads.

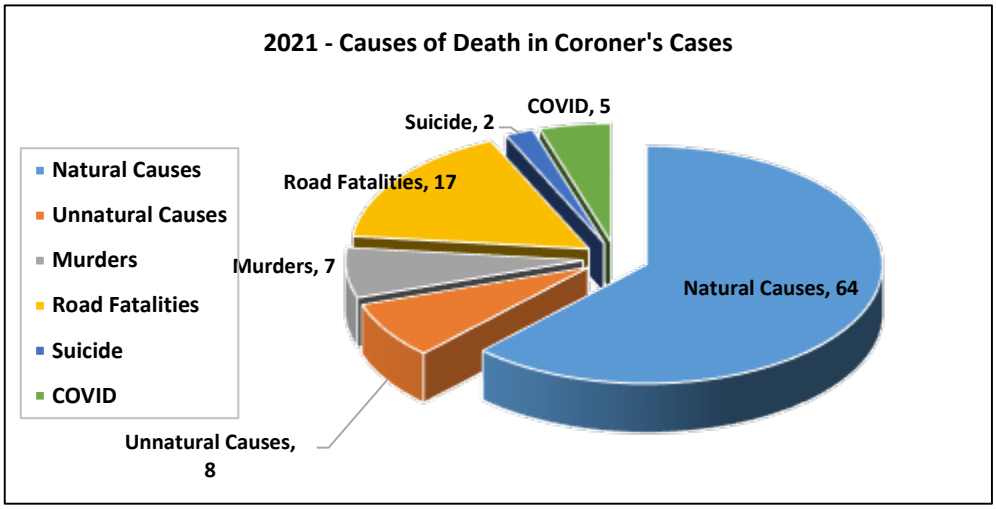



**Figure 11A: Table of 2021 Causes of Death in Coroners Cases**


## Cashier's Section

The Cashier's Office is overseen administratively by the Accounting Officer who has two (2) Court Associates (formerly titled Cashiers) under their remit.

Collectively the Cashier's Office received a total of $6,244,305 in fees and fines in 2021. This represents an overall decline of 11% in fines collected for Criminal, Traffic, Parking and Civil matters in 2021. The Magistrates' Court, as it did in 2020, still takes into consideration the financial circumstances of individuals who have been fined and accordingly the Magistrates' Court have allowed persons to pay off their fines in instalments. Additionally, Magistrates' are making Community Service Orders in lieu of the imposition of fines so that those who are unable to pay fines can give back to society through charity work.

| Cashier's Office Payment Types by $ Amount | | | | | |
|---|---|---|---|---|---|
| Payment Types (By $ Amount) | 2017 | 2018 | 2019 | 2020 | 2021 |
| Civil Payments (Attach of Earnings) | $ 585,954 | $ 822,318 | $ 840,416 | $ 653,180 | $ 592,499 |
| Civil Fees | $ 192,315 | $ 158,990 | $ 167,085 | $ 93,220 | $ 82,075 |
| Traffic Fines | $ 2,124,033 | $ 2,247,845 | $ 2,926,651 | $ 1,587,199 | $ 1,282,933 |
| Parking Fines | $ 168,825 | $ 443,625 | $ 523,050 | $ 472,650 | $ 568,425 |
| Criminal Fines | $ 139,569 | $ 258,584 | $ 172,507 | $ 106,095 | $ 164,206 |
| Liquor License Fees | $ 552,101 | $ 552,188 | $ 570,631 | $ 718,730 | $ 222,136 |
| Misc. Fees (Including Bailiff Fees) | $ 41,642 | $ 42,464 | $ 36,612 | $ 22,827 | $ 38,110 |
| Family Support | $ 4,582,552 | $ 4,288,809 | $ 3,944,202 | $ 3,356,539 | $ 3,293,921 |
| TOTAL COLLECTED | **$ 8,386,991** | **$ 8,814,823** | **$ 9,181,154** | **$ 7,010,440** | **$ 6,244,305** |

**Figure 12: Cashier's Office Payment Types (By $ Amount) 2017-2021**

| Cashier's Office Payment Types by Number | | | | | |
|---|---|---|---|---|---|
| Payment Types (By Number) | 2017 | 2018 | 2019 | 2020 | 2021 |
| Civil Payments (Attach of Earnings) | 3,938 | 3,942 | 4,590 | 3,027 | 2,896 |
| Civil Fees | 5,328 | 4,262 | 4,422 | 2,388 | 2,259 |
| Traffic Fines | 7,508 | 8,136 | 9,553 | 4,637 | 4,035 |
| Parking Fines | 3,193 | 6,089 | 7,390 | 6,303 | 7,638 |
| Criminal Fines | 382 | 378 | 225 | 230 | 297 |
| Liquor License Fees | 509 | 520 | 570 | 408 | 101 |
| Misc. Fees (Including Bailiff Fees) | 1,776 | 2,241 | 2,546 | 1,499 | 1,956 |
| Family Support | 20,097 | 18,860 | 17,201 | 13,696 | 12,730 |
| TOTAL PAYMENTS PROCESSED | **42,731** | **44,428** | **46,497** | **32,188** | **31,912** |

**Figure 12A: Cashier's Office Payment Types (By Number) 2017-2021**

## Bailiff's Section

### Bailiff's Paper Service 2021

The Bailiff's Section falls under the remit of the Head Bailiff/Deputy Provost Marshall General. Throughout 2021 the Bailiff's Section continued to operate under strength with four (4) Bailiffs to execute the processes issued by the Courts.

The effects of the COVID-19 pandemic continued to be felt as the number of documents served in 2020 (1,771) and 2021(1,793) were significantly lower than in 2019 (pre-COVID) when 2,723 documents were served. This represents a decline of 52% when comparing 2019 to 2020 and 34% when comparing 2019 to 2021.

In addition, COVID-19 continued to affect the statistics as it relates to assigned processes. There was a decline from 2,122 documents assigned in 2020 compared to 2,050 in 2021. This represents nominal decline of 3%.

The Bailiffs are to be commended for managing an average service rate of 92% during what was yet another unpredictable and unprecedented year riddled with continuous COVID-19 issues.

# BAILIFF STATISTICS 2017 – 2021

| Documents Types | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|
| Ordinary Summons | 465 | 385 | 510 | 223 | 221 |
| Supreme Court Documents | 218 | 185 | 200 | 132 | 217 |
| Family Court Documents | 917 | 853 | 732 | 634 | 733 |
| Committals | 1160 | 794 | 753 | 493 | 384 |
| Warrants | 739 | 461 | 472 | 253 | 209 |
| Evictions | 56 | 57 | 56 | 36 | 29 |
| **TOTALS** | **3555** | **2735** | **2723** | **1771** | **1793** |

**Figure 14: Table of the 2021 Monthly Statistics – Bailiff's Actual Paper Service**

# 2021 MONTHLY SERVICE RATES FOR THE BAILIFFS' SECTION

| Documents: January - December 2021 | | | | | | |
|---|---|---|---|---|---|---|
| Document Types | Assigned | Executed Served Etc. | Unable to Locate | Cancelled Withdrawn | Attempts | Service Rate |
| Committals Applications | 477 | 531 | 0 | 123 | 2944 | 111% |
| Evict Warrants | 29 | 19 | 0 | 11 | 55 | 66% |
| Foreign Documents | 62 | 56 | 5 | 0 | 3 | 90% |
| Judgement Summons | 57 | 49 | 8 | 0 | 115 | 86% |
| Notice of Hearing | 147 | 129 | 15 | 0 | 123 | 88% |
| Ordinary Summons | 221 | 219 | 12 | 11 | 453 | 99% |
| Protection Orders | 79 | 77 | 0 | 1 | 98 | 97% |
| Summons | 583 | 451 | 130 | 2 | 897 | 77% |
| Warrants of Arrest | 344 | 348 | 0 | 114 | 1419 | 101% |
| Writs | 21 | 20 | 0 | 1 | 12 | 95% |
| Other Documents | 30 | 31 | 2 | 0 | 0 | 103% |
| Totals | 2050 | 1930 | 172 | 263 | 6119 | |

| | |
|---|---|
| Average Rate of Service | 92% |
| Service Rate of Unable to Locate | 8% |
| Rate of Cancellation/Withdrawal | 13% |
| Service Rate of Attempts | 298% |

**Figure 14A: Table of the 2021 Monthly Statistics – Bailiff's Actual Paper Service**

| Month | Ordinary Summons | Supreme Court Docs | Family Court Doc | Committals | Warrants | Evictions | Totals |
|---|---|---|---|---|---|---|---|
| Jan | 21 | 37 | 59 | 37 | 12 | 3 | **169** |
| Feb | 22 | 13 | 73 | 90 | 40 | 0 | **238** |
| Mar | 46 | 16 | 37 | 28 | 34 | 3 | **164** |
| Apr | 6 | 3 | 0 | 18 | 5 | 0 | **32** |
| May | 13 | 8 | 117 | 48 | 3 | 3 | **192** |
| Jun | 26 | 39 | 84 | 37 | 21 | 1 | **208** |
| Jul | 19 | 19 | 59 | 16 | 10 | 4 | **127** |
| Aug | 13 | 19 | 53 | 17 | 24 | 3 | **129** |
| Sep | 12 | 17 | 77 | 8 | 3 | 1 | **118** |
| Oct | 8 | 21 | 72 | 41 | 11 | 0 | **153** |
| Nov | 21 | 15 | 49 | 6 | 22 | 9 | **122** |
| Dec | 14 | 10 | 53 | 38 | 24 | 2 | **141** |
| **TOTALS:** | **221** | **217** | **733** | **384** | **209** | **29** | **1793** |

**Figure 14B: Table of the 2021 Monthly Statistics – Bailiff's Actual Paper Service**

**Christopher Terry (Head Bailiff/Deputy Provost Marshal General).**

**The Bailiff's Section from left to right: Veronica Dill (Bailiff) | Donna Millington (Bailiff) | Donville Yarde (Bailiff) and Vernon Young (Bailiff).**

## 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.

- 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.

# *Tribute to Vernon "No Worries" Young*

*From the Heart of a Supervisor*

An unexpected phone call received early on Monday morning catapulted the commencement of a new work week with an awareness of how we impact each other in a work environment.

I can truly say that Vernon's calm and professional demeanour was an asset to the Bailiffs Section.

Soon after he became a Bailiff, I quickly realized that his pet phase was "No Worries".

Although some of his duties were very challenging, Vernon would stick out his chest, put a broad smile on his face and say
"No worries".

He possessed great conflict management skills and thereby never added fuel to a contentious incident.

This kind hearted man brought a smile and laughter, in a quirky way, to us all on a daily basis.
The reality of his passing has not yet hit home and at times I expect to see him at work.

I miss him dearly and may he Rest in Eternal Peace.


DAME LOIS BROWNE-EVANS BUILDING