

## **Brief Overview of the Summary Courts for 2012**

The following serves as an update on the progress of the Summary Courts for the past year.

### **Criminal Lists**

Separating Traffic matters from the term "Criminal", it is standard for two Criminal Courts to sit daily from Mondays to Thursdays. Tuesday is the designated "Mention day" for Criminal matters. All non-trial matters are listed in Court #2 on that date while the other Court deals with trials. The mention list is quite long but it is manageable. The effect is that on the other days of the week, for the most part, the Criminal lists are trial lists. The emphasis has been on getting as many trials done as possible. However, the volume is such that Criminal trials are currently being set for June/July of 2013.

### **Traffic Lists**

One Traffic Court sits daily from Mondays to Wednesdays and on most Thursdays. Monday is the designated "Mention day" for Traffic matters when all non-trial matters are listed in Court #2. This results in a very long list but experience has shown that many persons enter pleas on Mondays so as to terminate matters quickly. Traffic trials are set for Tuesdays, Wednesdays and the first, second and third Thursdays of every month (this is elaborated on below). Despite best efforts, Traffic trials are now being set for July of 2013.

### **Civil Lists**

Traditionally, Civil matters (enforcement matters, mentions, domestic violence applications and trials) were heard on Fridays along with Maintenance and Affiliation matters. Civil Trials were often adjourned on several occasions because they could not be reached and sometimes these would be set for weekday afternoons. Subsequently, Thursdays were designated for Civil trials but this affected Traffic trials since both

types of matters could not be usefully listed before the same Magistrate. In the latter two-thirds of 2012, with the assistance of the Office of the Director of Public Prosecutions, several Thursdays were reclaimed so that Traffic trials could be listed on those dates.

In an attempt to bring *certainty* to Civil trial listing and also to cause as little dislocation to the Traffic Lists as possible, in 2013 Civil Trials will be listed for the fourth and fifth Thursday in any month and the third Friday of every month. On third Fridays, no other civil matter or any Maintenance matter is to be listed before the Court hearing the Civil Trials. Originally, no Maintenance matter was to be scheduled at all on that date but there have been some developments in that area.

### **Maintenance and Affiliation Matters**

The advent of the Children Law, 2003 has brought about a requirement to ensure that: cases are listed in a timely fashion; cases are dealt with having regard to the Law and also that any overlap with Grand Court cases is monitored.

Traditionally new matters were listed for Fridays by the Maintenance Clerk, space in the diary permitting and the sitting Magistrates would schedule any necessary adjournments. Adjournments will continue to be scheduled in this way however commencing **January 18, 2013**, I will sit as Case Manager every **third Friday** per month with new applications. These matters will be heard in Chambers, interlocutory orders made and where necessary matters will be listed for further hearing dates on other Fridays. As Case Manager for the Summary Court, I will liaise regularly with the Case Manager for the Grand Court, Mr. Justice Williams.

### **Juvenile & Youth Court Matters**

The types of Orders which can be made, particularly for care matters in Juvenile Courts have greatly been affected by the Children Law, 2003. For

the past few months, the Magistrates have been solely dealing with these matters. The Justices of the Peace require training in order to handle the new regime. I have to stress that training is urgently needed in this area for the Magistrates, Crown Counsel, Court Staff, Social Workers and Justices of the Peace.

### **Drug Court**

This Court continues to meet on Tuesday afternoons. I usually preside, supported by Magistrate Foldats. On occasion, Magistrate Gunn has also presided.

### **Mental Health Court**

This Court meets on the third Wednesday afternoon of every month. Basically, in this Court efforts are made to stabilize the condition of each client. From my own perspective, I still believe that legislation to create a proper framework of operation is urgently needed. The training that I have received in this area suggests that these Courts are really not meant to operate like Drug Courts, due to the impairment of the clients. It is also obvious that, in contrast to other jurisdictions, the Cayman Islands is severely hampered by the lack of specialized medical care and proper residential treatment facilities for the mentally impaired.

### **Non-Violence Review Courts**

The cases in these Courts are considered on the second Wednesday morning of each month. The participants, male and female, come from one of two batches. Some have pled guilty and await sentencing. Some have denied the charge and the Complainants have requested discontinuance but, at the Crown's urging, the Defendant has indicated a willingness to attend a diversionary program. Successful completion usually results in no conviction being recorded against the first group or the charge being left on file or no evidence being offered for the second group.

Participants attend the Men's Non-Violence Programme, the Anger Management Programme or one of the programmes dedicated to strengthening domestic partnerships. All of these programmes are run by the Department of Community Rehabilitation and the officers provide monthly reports to the Courts on each individual's status.

### **Cayman Brac Courts**

In 2013, the Magistrates will continue to attend Court on a monthly basis in Cayman Brac. I believe that it gives a boost to that community for Courts to sit there and persons turn out in numbers to observe Court. Courtroom accommodations are not wholly satisfactory but I appreciate that all parties are doing the best that they can in the circumstances.

### **Coroner's Inquests**

In 2012, quite a few inquests were dealt with by Acting Magistrate Nervik. One or two were dealt with by the regular Magistrates but we have long made our complaints with the process known. The requirement to hand write each witness's deposition and then read it back to the witness is tedious and time consuming. I applaud the efforts of the Rules Committee to amend the Coroners Rules. Perhaps the substantive Law could be amended as well.

### **Assistance of the Director of Public Prosecution and Acting Magistrates**

I must indicate my appreciation of the assistance offered by the Offices of the Director of Public Prosecution this year. When Acting Magistrates were appointed, Crown Counsel were willing to staff a fourth Summary Court whenever they could (about twice a week). The effect was that on occasion we had three Criminal Courts sitting as well as one Traffic Court. This has been particularly useful when the regular Summary Courts have part heard trials or a special sitting to deal with.

There have been some teething problems; such as trials being ready with all witnesses and then the Defendants (usually unrepresented) not turning up. However, Crown Counsel has reported that, when there has been a smaller trial list in a fourth court, rather than the usual adjournments there have been some resultant pleas or the Crown has taken robust approaches to charges resulting in matters being completed.

We are largely hampered by the lack of courtrooms and sufficient Crown Counsel to staff these Courts. Otherwise I would earnestly seek to have four Summary Courts sitting regularly.

I am also grateful for the appointment of Mrs. Grace Donalds and Mrs. Eileen Nervik as Acting Magistrates this year.

Mrs. Donalds immediately stepped up to assist with Criminal and Traffic Trials. As it related to criminal trials I have tried to list mostly unrepresented matters before her because these are the matters that are often adjourned in favour of trials where there is legal representation. Unfortunately several such Defendants have not bothered to appear for trial and warrants have been issued. This by the way occurs in all the Courts and usually when all the witnesses are present for trial. It may be that 2013 is the year to commence *trials in absentia* pursuant to section 62 of the Criminal Procedure Code, 2011.

Mrs. Donalds also greatly assisted the Magistrates by dealing with Maintenance and Civil Lists. On one occasion, she heard Maintenance matters all day and then commenced a civil trial at 3:00pm and concluded it that day. Mrs. Donalds also provided much needed relief where a Magistrate wished to be free of a regular list in order to deal with a part heard trial or where a Magistrate required writing time for judgments.

Mrs. Nervik assisted the Courts greatly at the start of the year before Magistrate Gunn took up her appointment. She dealt with Civil and Maintenance matters, Juvenile and Youth Court lists and Coroner's Inquests. During her recent re-appointment she conducted and concluded quite a few Coroner's Inquests including some in Cayman Brac. This greatly lifted the burden on the regular Magistrates and helped clear our backlog of Inquests. I look forward to her continued assistance in the New Year.

Courtroom space continues to present a problem for the regular Magistrates and especially when acting Magistrates are brought in. We also have problems finding spare offices for the Acting Magistrates. I am optimistic that these issues will be overcome in 2013.

### **Cayman Brac Planning Appeals and Roads Assessments**

There is a Planning Appeal scheduled for Cayman Brac on 21<sup>st</sup> January 2013 and as Chairman of the Tribunal I will be attending for that.

I had indicated schedules for the presentation of documents and submissions to the parties in two separate Road Assessment matters, believing that they would be heard before the end of this year. However in each matter the parties agreed among themselves to readjust the schedules and at present I am waiting to hear from them before I can list any matters for hearing.

### **Nova Hall**

Chief Magistrate

16 January 2013