

## CHIEF JUSTICE'S ADDRESS TO THE OPENING OF THE GRAND COURT

16<sup>TH</sup> JANUARY 2013

PRAYERS LED BY REV MARY GRAHAM OF ST. GEORGE'S ANGLICAN CHURCH.

### **SALUTATIONS**

YOUR EXCELLENCY THE GOVERNOR, HON. MADAM SPEAKER, HON. DEPUTY GOVERNOR, HON. MEMBERS OF THE LEGISLATIVE ASSEMBLY, DISTINGUISHED GUESTS, MEMBERS OF THE BAR, MEMBERS OF THE PRESS, LADIES AND GENTLEMEN, ON BEHALF OF THE JUDICIARY AND THE JUDICIAL ADMINISTRATION, I THANK YOU FOR HAVING TAKEN THE TIME FROM YOUR BUSY SCHEDULES TO ATTEND THE OPENING OF THE COURTS FOR 2013.

I INVITE THE HON. ATTORNEY GENERAL TO MOVE THE MOTION FOR THE OPENING OF THE COURTS, TO BE FOLLOWED BY MR. IAN PAGET-BROWN CHAIRMAN OF THE LAW REFORM COMMISSION; MR ALASDAIR ROBERTSON, PRESIDENT OF THE CAYMAN ISLANDS LAW SOCIETY; MR DALE CROWLEY PRESIDENT OF THE CAYMAN BAR ASSOCIATION, AND AGAIN MR ROBERTSON BRINGING THE REPORT OF MR COLIN MCKIE AS CONSULTANT EDITOR OF THE CAYMAN ISLANDS LAW REPORTS; ALL SECONDING THE MOTION.

### **REPORT**

IT IS CUSTOMARY TO BEGIN WITH PERSONNEL MATTERS AND LAST YEAR WE NOTED A NUMBER OF TRANSITIONS. SIGNIFICANT AMONG THEM WAS THE THEN IMMINENT RETIREMENT OF DELENE CACHO AND HER SUCCESSION BY KEVIN MCCORMAC AS COURT ADMINISTRATOR. ALTHOUGH THE APPOINTMENT OF MRS. GUNN AS MAGISTRATE WAS ANNOUNCED LAST JANUARY, AS TODAY IS MRS. GUNN'S AND MR MCCORMAC'S FIRST ATTENDANCE AT A CEREMONIAL

OPENING OF THE COURT BUSINESS YEAR, I EXTEND A SPECIAL WELCOME TO THEM NOW.

THE WORDS OF WELCOME EXTENDED TO SIR RICHARD GROUND AS A MEMBER OF THE COURT OF APPEAL AND TO BARONESS SCOTLAND ON HER APPOINTMENT TO THE JLSC ARE ALSO NOTED AND ENDORSED BY THE COURT. WE ALSO JOIN WITH THE ATTORNEY GENERAL IN WELCOMING MISS JACQUELINE WILSON BACK TO THE FOLD AS SOLICITOR GENERAL.

(RESPONSES TO MOVERS OF THE MOTION)

### **LEGAL AID**

I BEGAN MY REPORT LAST YEAR WITH THE SUBJECT OF LEGAL AID. ITS IMPORTANCE DESERVES PRIORITY OF RECOGNITION THIS YEAR AS WELL. IN MAY OF LAST YEAR, A WHITE PAPER BILL ENTITLED THE LEGAL AID AND PRO BONO SERVICES BILL WAS PRESENTED ON BEHALF OF CABINET BY THE ATTORNEY GENERAL FOR PUBLIC CONSULTATION. THE JUDICIAL ADMINISTRATION RESPONDED AS DID THE CILS, THE CBA, AND THE CRIMINAL BAR ASSOCIATION.

EACH RESPONSE RAISED FUNDAMENTAL CONCERNS ABOUT THE DRAFT BILL, BY NO MEANS LEAST THE CONCERNS THAT PROPOSALS IN IT WOULD BE INCOMPATIBLE WITH THE BILL OF RIGHTS AND HARMFUL TO THE INDEPENDENCE OF THE PROFESSION. FOR INSTANCE, WHILE IT IS TO BE EXPECTED THAT THE PROFESSION WOULD MORE READILY PROVIDE PRO BONO SERVICES, IT WAS FELT THAT COMPULSION TO DO SO ON PAIN OF PENALTY COULD HARDLY BE REGARDED AS REASONABLY NECESSARY IN OUR DEMOCRATIC SOCIETY.

THERE WERE ALSO CONCERNS EXPRESSED THAT THE PROPOSED MEASURES WOULD PROVE TO BE COUNTER-PRODUCTIVE AND ULTIMATELY HARMFUL TO THE INTERESTS OF THOSE WHO NEED REPRESENTATION BEFORE THE COURTS BUT WHO CANNOT AFFORD TO PAY.

IT WAS EXPLAINED THAT THE LITERAL IMPLEMENTATION OF SOME OF THE PROPOSED REFORMS WOULD LIKELY RESULT IN THE PRACTICE OF CRIMINAL LAW IN THIS JURISDICTION BECOMING NO LONGER FEASIBLE AND SO THE LIKELY

CONSEQUENCE WOULD BE THE DIMINUTION OF THE ALREADY SELECT NUMBER WHO PRACTICE IN THAT FIELD TO THE DETRIMENT OF DEFENDANTS AND THE ADMINISTRATION OF JUSTICE.

WHILE SOME REFORMS ARE NEEDED, THE GENERAL RESPONSE REMAINED THE SAME AS IT DID WHEN THERE WAS THE SUDDEN MOVE TO CHANGE THE SYSTEM 3 YEARS AGO. THE REALITY THAT THE EXISTING SYSTEM WORKS FAIRLY WELL AND DELIVERS GOOD VALUE FOR MONEY WAS REAFFIRMED.

THIS REALITY IS CLEAR FROM THE FACT THAT LAST YEAR'S BUDGET AND EXPENDITURE, AT \$1.86 MILLION, REMAINED CONSTANT WITH THOSE FOR THE PRECEDING SIX YEARS. THIS WAS ACHIEVED EVEN WHILE THE NUMBER OF APPLICATIONS (BOTH CIVIL AND CRIMINAL TOGETHER) ROSE FROM 452 IN 2011 TO 557.

I THINK EVERYONE WILL AGREE THAT THIS IS CLEAR EVIDENCE THAT CONCERNS OVER ESCALATING COSTS AND UNJUSTIFIED GRANTS OF LEGAL AID ARE NOT WELL FOUNDED.

GIVEN THE CHEQUERED HISTORY OF OUR ATTEMPTS AT REFORMING LEGAL AID, I AM OBLIGED TO REMIND OUR COLLEAGUES IN GOVERNMENT THAT APPROPRIATE REFORMS WERE IDENTIFIED AND RECOMMENDED AS LONG AS 2008, WHEN THE LRC REPORTED THEIR FINDINGS AFTER A DETAILED AND THOROUGH EXAMINATION OF THE SUBJECT OF LEGAL AID. THOSE WERE RECOMMENDATIONS WITH WHICH, ON BEHALF OF THE JUDICIARY, I AGREED AND INDEED, IN SOME IMPORTANT ASPECTS, HAD PROPOSED IN THE FIRST PLACE.

I UNDERSTAND THAT IN LIGHT OF THE RESPONSES LAST YEAR TO THE CONSULTATION BILL, THE SUBJECT WAS IN JULY ONCE AGAIN REFERRED BY CABINET TO THE LRC. AS YET HOWEVER WE HAVE NOT BEEN ADVISED OF THE OUTCOME.

AS WE ALSO EXPLAINED IN OUR RESPONSES LAST YEAR, THE MORE ELABORATE AND FAR-REACHING PROPOSALS PROPOSED IN THE CONSULTATION BILL, WOULD LIKELY PROVE TO BE UNWIELDLY AND UNDULY EXPENSIVE.

IT IS AGAINST THAT BACKGROUND (WHICH I MIGHT NOW ONLY SUMMARISE) THAT WE URGE THE HONOURABLE MEMBERS OF CABINET AND THE LEGISLATURE TO LET US NOW SETTLE THIS MATTER, WHICH IS SO VERY IMPORTANT TO THE ADMINISTRATION OF JUSTICE, ONCE AND FOR ALL. I TAKE THIS OPPORTUNITY TO CONFIRM MY AVAILABILITY TO DISCUSS ANY ASPECT OF THE MATTER.

### **THE CONSTITUTIONAL BILL OF RIGHTS**

THE ADVENT OF THE CONSTITUTIONAL BILL OF RIGHTS SINCE NOVEMBER IS RIGHTLY REGARDED AS HAVING COMMENCED A NEW ERA FOR THE OBSERVATION AND ENFORCEMENT OF FUNDAMENTAL RIGHTS.

THE RIGHT TO LEGAL REPRESENTATION FOR THE ENFORCEMENT OF THOSE RIGHTS BEFORE THE COURTS IS ITSELF ENSHRINED IN THE CONSTITUTION AND IT IS IN THIS CONTEXT AS WELL THAT THE STATE'S OBLIGATION TO PROVIDE LEGAL AID FOR THOSE IN NEED MUST BE RECOGNISED.

ALREADY I AM ADVISED THAT CASES INVOLVING CONSTITUTIONAL ASPECTS HAVE BEEN FILED AND THE SPECIAL ISSUES THAT THEY RAISE MUST BE CAREFULLY AND EFFECTIVELY RESOLVED.

FOR OUR PART, THE JUDGES AND MAGISTRATES HAVE RECOGNISED THE NEED FOR UPDATING ON CONSTITUTIONAL LAW MATTERS AND HAVE ALREADY PARTICIPATED IN CONTINUING EDUCATION ON THE SUBJECT IN A SYMPOSIUM PRESENTED BY DR LLOYD BARNETT LAST NOVEMBER. DR BARNETT IS WIDELY REGARDED THROUGHOUT THE CARIBBEAN AS A LEADING EXPERT IN THIS AREA OF THE LAW AND WE ARE GRATEFUL TO HIM FOR HIS TIME AND EFFORT TAKEN TO PREPARE AND PRESENT THE MATERIALS FOR OUR SYMPOSIUM. THIS HE DID ENTIRELY PRO BONO, IN THE BEST TRADITIONS OF BENCH AND BAR.

### **THE GRAND COURT RULES COMMITTEE**

ALSO IN ANTICIPATION OF THE BILL OF RIGHTS, NEW RULES OF COURT, IN THE FORM OF ORDER 77A OF THE GRAND COURT RULES, WERE PROMULGATED BY THE GCR COMMITTEE IN OCTOBER. ORDER 77A IS DESIGNED SPECIFICALLY TO ALLOW FOR THE BRINGING OF APPLICATIONS UNDER THE CONSTITUTION.

THESE NEW RULES ALONG WITH SEVERAL OTHER NEW OR AMENDING RULES MARKED A BUSY YEAR FOR THE GCR COMMITTEE.

THANKS TO A GREAT DEAL OF RESEARCH AND DRAFTING BY COLIN MCKIE, THE GCR COMMITTEE IS POISED TO INTRODUCE A NUMBER OF FURTHER MEASURES THIS YEAR, INCLUDING, AFTER CONSULTATION WITH THE CORONERS AND OTHER STAKE HOLDERS, A SWEEPING OVERHAUL OF THE PRACTICE AND PROCEDURES OF THE CORONERS' COURT, AN EXERCISE REGARDED AS LONG OVERDUE.

### **THE NEW COURT BUILDING**

MR CROWLEY REMARKED ON THE NEED FOR THE NEW COURT HOUSE, THE SUBJECT TO WHICH I NOW TURN.

PLANS WHICH WERE IN AN ADVANCED STAGE WERE SHELVED IN THE LATTER PART OF 2008 WHEN THE GLOBAL FINANCIAL CRISIS REACHED OUR SHORES. SINCE THEN THE PROJECT HAS BEEN RECOGNISED AS A PRIORITY IN EACH THRONE SPEECH IN ANTICIPATION OF THE GOVERNMENT BEING ABLE TO RAISE THE NECESSARY FUNDING.

IN THE MEANTIME, THE NEED FOR MORE COURT ROOMS, CHAMBERS AND ADMINISTRATIVE OFFICES HAS BECOME EVEN MORE URGENT, NOTWITHSTANDING THE EXPANSION OF THE OPERATIONS ACROSS THE ROAD AT KIRK HOUSE. A MAIN REASON FOR THIS IS THE UNSUITABILITY OF KIRK HOUSE FOR THE CONDUCT OF SERIOUS CRIMINAL TRIALS, GIVEN THE CONCERNS ABOUT SECURITY THAT ATTEND SUCH TRIALS.

AS YOU WILL HEAR IN A BIT MORE DETAIL LATER ON, THE INCREASING CRIMINAL CASELOAD REQUIRES THAT WE CONDUCT AT LEAST TWO, IDEALLY THREE GRAND COURT TRIALS EACH DAY, IF WE ARE TO AVOID UNACCEPTABLE DELAY IN THE DISPOSAL OF CASES. THE NEED FOR A FOURTH MAGISTRATE HAS ALSO BEEN RECOGNISED BUT MAY NOT BE ADDRESSED FOR LACK OF COURT ROOM AND CHAMBERS.

WE STILL HAVE ONLY TWO COURT ROOMS WITH SECURED ACCESS TO CELLS AND DOCKS DESIGNED FOR THE CONDUCT OF SERIOUS CRIMINAL TRIALS. YET, WHEN WE INCLUDE THE CURRENT NEEDS OF THE THREE SUMMARY COURTS WHICH, LIKE THE GRAND COURT CRIMINAL DIVISION MUST SIT MONDAY TO FRIDAY, THE PRESENT NEED IS FOR AT LEAST SIX COURT ROOMS, AND SEVEN WHEN THE COURT OF APPEAL IS IN SESSION.

THE MODERN STANDARDS OF ADMINISTRATION OF JUSTICE ALSO REQUIRE THAT THE DIFFERENT NEEDS, NOT ONLY OF ALLEGED OFFENDERS, BUT ALSO OF JURORS, WITNESSES, VICTIMS OF OFFENCES, CHILDREN AND INDEED THEIR FAMILIES ATTENDING COURT, MUST BE MET. INDEED, IN RECOGNITION OF THIS, THE PLANS FOR THE NEW COURT BUILDING INCLUDE A SEGREGATED WING SPECIALLY DESIGNED FOR THE CONDUCT OF FAMILY AND CHILDREN CASES.

THIS COURT HOUSE WAS BUILT MORE THAN FORTY YEARS AGO WHEN THE VOLUME AND COMPLEXITY OF CASES NOW COMING BEFORE THE COURTS COULD NOT HAVE BEEN ANTICIPATED. IN THIS CONTEXT, THE INCREASED DEMANDS PLACED UPON THE ADMINISTRATION OF JUSTICE BY THE INTERNATIONAL FINANCIAL AND COMMERCIAL CASES MUST ALSO BE EMPHASISED. THESE CASES ARE OFTEN MONITORED BY THE FINANCIAL MEDIA AND THEIR OUTCOME CAN BE VERY CONSEQUENTIAL, NOT ONLY TO THE IMMEDIATE PARTIES, BUT SOMETIMES TO THE FINANCIAL MARKETS AS WELL. IT IS IMPORTANT THAT WE APPRECIATE THAT THEIR TIMELY AND EFFECTIVE DISPOSITION BY OUR COURTS WILL THEREFORE BE ESSENTIAL TO MAINTAINING CAYMAN'S REPUTATION AS A MAJOR FINANCIAL CENTRE.

FOR REASONS SUCH AS THESE, IT FOLLOWS THAT INVESTMENT IN THE INFRASTRUCTURE OF THE COURTS, IS AS IMPORTANT AS INVESTMENT IN ANY OTHER FUNCTION OF GOVERNMENT.

SO HERE TOO I TAKE THE OPPORTUNITY TO REMIND OUR COLLEAGUES IN GOVERNMENT THAT IT IS VERY IMPORTANT THAT PROGRESS IS MADE THIS YEAR. JUSTICE HENDERSON (WHO HELPED WITH OVERSIGHT OF THE DESIGN STAGE), THE COURT ADMINISTRATOR AND I, ARE AVAILABLE TO DISCUSS THE WAY FORWARD.

## **OTHER PRACTICE REFORMS**

IN RECOGNITION OF THE FACT THAT THE ADMINISTRATION OF JUSTICE IS ALWAYS A WORK IN PROGRESS, THE VARIOUS AREAS OF PRACTICE AND PROCEDURE MUST CONSTANTLY BE KEPT UNDER REVIEW.

TO THIS END LAST YEAR SAW A RECORD NUMBER OF PRACTICE DIRECTIONS AND CIRCULARS BEING ISSUED, THE RESULT OF REGULAR DISCUSSIONS BETWEEN THE JUDGES, SOMETIMES BRINGING TO LIGHT ALSO PROBLEMS IDENTIFIED BY THE PROFESSION.

THERE ARE NOW STANDING COMMITTEES ON DIFFERENT AREAS OF PRACTICE WHICH THE JUDGES HAVE AGREED TO CHAIR.

THE CRIMINAL LAW PRACTICE COMMITTEE CHAIRED BY JUSTICE QUIN, WILL BE REVIEWING PRACTICE AND PROCEDURE IN THE CRIMINAL DIVISIONS AND WILL BE WORKING CLOSELY ON THIS INITIATIVE WITH THE CHIEF MAGISTRATE AND MR MCCORMAC. AFTER A MEETING ON 8<sup>TH</sup> NOVEMBER THAT COMMITTEE PRODUCED 6 SPECIFIC AIMS SET OUT IN A LETTER FROM MR MCCORMAC AS FOLLOWS:

- a) to reduce the time between the flow of information between the detection of an offence and the completion of court proceedings;
- b) to improve the flow of information between different agencies and make best use of available technology;
- c) to improve the experience of jurors, witnesses and victims;
- d) to minimize the need to repeat information at the various stages of a criminal case;
- e) to improve the quality of documentation at each stage and the speed and accuracy with which it is produced; and

- f) to explore ways in which less serious cases can be dealt with outside the court system (eg: by cautioning, and/or by changes to the fixed penalty system).

GIVEN THE VERY BROAD BUT NECESSARY SCOPE OF THESE OBJECTIVES, PRIORITIES MUST BE AGREED AND SET AND THIS WILL BE DONE AT THE NEXT MEETING.

THE FSD USERS' COMMITTEE CONTINUES TO MEET ON A QUARTERLY BASIS WITH JUSTICE FOSTER AS CONVENOR. THE AIM OF THIS COMMITTEE IS CONSTANTLY TO IMPROVE THE PRACTICE AND PROCEDURES IN THAT DIVISION. TO THIS END, THE COMPREHENSIVE MANUAL THAT WAS PUBLISHED BY THIS COMMITTEE LAST YEAR (WITH INPUT FROM THE PROFESSION AND THE JUDGES, ESPECIALLY JUSTICE CRESSWELL) WAS IMPROVED BY AMENDMENTS AND ADDITIONS MADE DURING THE COURSE OF THE YEAR. A SUB-COMMITTEE HAS BEEN NAMED SPECIFICALLY TO WORK WITH THE ADMINISTRATION ON THE USE OF TECHNOLOGY, E-FILING BEING THE FIRST PROJECT IDENTIFIED.

JUSTICE JONES CHAIRS THE INSOLVENCY RULES COMMITTEE WHOSE REMIT, SET BY SECTION 155 OF THE COMPANIES LAW, IS IN BROAD TERMS, TO PRESCRIBE AND REVISE AS NECESSARY, THE RULES FOR THE REGULATION OF INSOLVENCY PRACTICE BEFORE THE COURTS. THIS COMMITTEE WILL ALSO CONTINUE TO MEET ON A REGULAR BASIS.

JUSTICE WILLIAMS' COMMITTEE ON FAMILY LAW PRACTICE MADE RECOMMENDATIONS LAST YEAR WHICH RESULTED IN IMMEDIATE IMPROVEMENTS TO PRACTICE IN THAT AREA. HIS COMMITTEE WILL SHORTLY BE CONSIDERING RULES AIMED AT GIVING BETTER EFFECT TO THE CHILDREN LAW WHICH CAME INTO EFFECT IN JULY LAST YEAR.

ONCE AGREED BY HIS COMMITTEE, THOSE DRAFT RULES WILL BE CONSIDERED BY THE GCR COMMITTEE FOR PROMULGATION.

AS CHAIRMAN OF THE GCR COMMITTEE, THE PRIMARY RULE MAKING BODY FOR THE COURTS, I WISH TO ACKNOWLEDGE THE INVALUABLE WORK UNDERTAKEN BY ITS MEMBERS WHO ARE THE HON ATTORNEY GENERAL, MR GRAHAM RITCHIE



(A LONGSTANDING REPRESENTATIVE OF THE PROFESSION) AND OF COURSE AGAIN, MR COLIN MCKIE AS OUR SCRIBE AND RESEARCHER PAR EXCELLENCE. I LOOK FORWARD TO OUR DELIBERATIONS OVER THE COURSE OF THE YEAR.

## **LAW REPORTING**

ON THE SUBJECT OF LAW REPORTING, THE PAPER PRESENTED BY MR ROBERTSON ON BEHALF OF MR MCKIE IS VERY INSIGHTFUL. WHILE RECOGNISING THE IMPORTANCE OF THE TIMELY PROVISION OF JUDGMENTS, IT ALSO EMPHASISES THE IMPORTANCE OF OUR SYSTEM OF LAW REPORTING AND THE HIGH STANDARD OF THE OFT CITED CAYMAN ISLANDS LAW REPORTS. THESE ADMIRABLE REPORTS WOULD NOT EXIST WITHOUT THE DEDICATED WORK OF DR MILNER AND HIS TEAM AT LRI WHO, IN TURN, RELY UPON THE CONSULTANT EDITORS FOR THE SELECTION OF JUDGMENTS FOR PUBLICATION. THIS ROLE OF CONSULTANT EDITOR IS ONE THAT MR ALBERGA QC HAS CARRIED OUT VOLUNTARILY SINCE COMMENCEMENT OF THE REPORTS IN 1984 AND HE HAS MORE RECENTLY COME TO BE ASSISTED IN THIS EVER INCREASING TASK BY MR MCKIE. WE WILL ALWAYS BE INDEBTED TO THEM FOR THIS INVALUABLE SERVICE.

THE REPORTS, WHILE GAINING RECOGNITION ABROAD, HAVE ALSO BECOME INDISPENSIBLE TO THE PRACTICE OF LAW IN THIS JURISDICTION. THEIR CONTINUED PUBLICATION AT THE REQUIRED HIGH STANDARD MUST THEREFORE BE ASSURED. BUT THIS, AS WE ALL UNDERSTAND, COMES AT A PRICE AND IT IS TO THIS ASPECT THAT I MUST NOW SAY A FEW WORDS.

ACCESS TO THE LAW REPORTS ON THE JUDICIAL WEBSITE CANNOT CONTINUE FREE OF CHARGE AND THE PROFESSION WAS INFORMED OF THE INTENTION TO LEVY A FEE, WHEN PASSWORDS WERE ISSUED EARLY LAST YEAR. THE ADMINISTRATION'S INTENTION IS THAT THE FEE SHOULD BE NO MORE THAN REQUIRED TO ENSURE THAT THE COSTS WILL CONTINUE TO BE MET. ACCORDINGLY, DRAFT RULES FOR THE LEVY OF THAT MINIMAL FEE, WILL SOON BE PRESENTED TO THE GCR COMMITTEE FOR PROPOSAL TO CABINET FOR APPROVAL.

## **CASE DISPOSAL**

AS USUAL, I CONCLUDE MY REPORT WITH A SUMMARY OF CASE DISPOSALS.

TRENDS CONTINUE AS THEY HAVE OVER THE LAST FEW YEARS.

THE CONTINUING REDUCTION IN THE NUMBER OF APPEALS TO THE COURT OF APPEAL WAS MOST REMARKABLE LAST YEAR WHICH SAW THE NUMBER OF APPEALS ON THE CRIMINAL AND CIVIL SIDES DECLINE BY 43% AND 44% RESPECTIVELY TO 17 AND 9. [SEE NOTE BELOW – page 13]

THE OPPOSITE TREND CONTINUED AS BEFORE HOWEVER IN THE SUMMARY AND GRAND COURTS. AS I MENTIONED EARLIER, THESE TRENDS REAFFIRM THE NEED TO INCREASE THE NUMBER OF TRIALS BEING TAKEN BOTH IN THE SUMMARY AND GRAND COURTS.

THE MOST PRESSING CONCERNS ARE OF COURSE, THOSE ATTENDING THE CRIMINAL CASES AS THEY INVOLVE THE LIBERTY OF THE SUBJECT AND THE RIGHT OF DEFENDANTS TO KNOW AS SOON AS REASONBLY POSSIBLE, WHAT THEIR FATE WILL BE. THE CONSTITUTION RECOGNISES THAT, AS DEFENDANTS ARE PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY, THEY SHOULD NOT BE KEPT IN CUSTODY AWAITING TRIAL ANY LONGER THAN IS ABSOLUTELY NECESSARY.

THE AVERAGE TIME TO DISPOSAL LAST YEAR OF A CRIMINAL CASE IN THE SUMMARY COURT WAS 303 DAYS OR 10 MONTHS, ABOUT THE SAME RATE OF DISPOSAL AS IN 2011. WHILE THIS OUTCOME LAST YEAR WAS AGAIN SIGNIFICANTLY BETTER THAN THE AVERAGE OF 370 DAYS RECORDED IN 2010, IT STILL WAS FAR TOO LONG AND BELIES THE PRINCIPLES OF SUMMARY JUSTICE.

BUT THIS RESULT CANNOT BE UNDERSTOOD PROPERLY WHEN VIEWED IN ISOLATION. IT MUST BE CONSIDERED IN THE CONTEXT OF ALL OF THE WORK THAT THE SUMMARY COURT UNDERTAKES EACH YEAR. ON THE CRIMINAL SIDE ALONE THERE WERE MORE THAN 1300 CHARGES FILED; MORE THAN 6000 TRAFFIC TICKETING AND OTHER CHARGES FILED AND MORE THAN 60 FILES FOR CORONERS' INQUESTS.

THERE WERE 101 CHARGES BROUGHT AGAINST YOUTH OFFENDERS.

ON THE CIVIL SIDE IN THE SUMMARY COURT, 347 PLAINTS WERE FILED AND 113 APPLICATIONS FOR MAINTENANCE AND AFFILIATION ORDERS.

AT THE SAME TIME, THE SPECIALISED SUMMARY COURTS CONTINUED THEIR WORK, WITH THE DRUG REHABILITATION COURT GRADUATING 13 PARTICIPANTS LAST YEAR, BRINGING A TOTAL OF 73 PERSONS GRADUATED SINCE THIS VERY BENEFICIAL PROGRAMME BEGAN FORMALLY IN OCTOBER 2007.

THE PILOT PROJECTS WHICH WE EXPECT WILL LEAD TO THE FORMAL ESTABLISHMENT OF MENTAL HEALTH AND DOMESTIC VIOLENCE COURTS, ALSO CONTINUED TO OPERATE AND A HELPFUL OVERVIEW OF THAT ASPECT AS WELL AS THE OTHER AREAS OF WORK IN THE SUMMARY COURT PREPARED BY THE CHIEF MAGISTRATE, WILL BE PUBLISHED ALONG WITH MY REPORT ON THE WEBSITE.

WHAT I AM BOUND TO EMPHASISE NOW IS THAT, WHEN CONCERNS ABOUT DELAY ARE VIEWED AGAINST THE BACKGROUND OF THE VERY SIGNIFICANT WORKLOAD OF THE SUMMARY COURT, NO LONG TERM SOLUTION CAN BE FOUND THAT DOES NOT FACTOR IN THE NEED FOR A 4<sup>TH</sup> MAGISTRATE, A NEED WHICH ITSELF BRINGS US BACK TO THE NEED FOR THE NEW COURT FACILITIES. THESE NEEDS ARE EVIDENT FROM THE FACT THAT WE OFTEN HAVE DIFFICULTY PROVIDING COURT ROOMS FOR OUR THREE MAGISTRATES, LET ALONE A FOURTH. THEY ARE ALSO EVIDENT FROM THE WORK WHICH HAD TO BE ALLOCATED TO THE ACTING MAGISTRATES LAST YEAR, IN WHICH REGARD I MUST EXTEND OUR APPRECIATION TO MRS DONALDS AND MRS NERVIK FOR THEIR INVALUABLE SERVICE RESPECTIVELY AS MAGISTRATE AND CORONER LAST YEAR.

SIMILAR CONCERNS ARISE WHEN WE TURN OUR ATTENTION TO THE INCREASING WORK LOAD OF THE GRAND COURT. HERE IT IS ALSO CLEAR THAT THE ONLY LONG TERM SOLUTION IS TO CONDUCT MORE TRIALS AT ONCE. NOT ONLY TWO AS WE NOW ONLY SOMETIMES MANAGE BECAUSE OF LACK OF JUDGES AND COURT ROOMS, BUT AT LEAST THREE TRIALS AT ONCE, IF WE ARE NOT TO BE IN BREACH OF THE CONSTITUTIONAL MANDATE FOR TIMELY TRIALS. IN THE GRAND COURT, THE AVERAGE TIME TO DISPOSAL FOR EACH OF THE 99 CRIMINAL CASES COMPLETED LAST YEAR WAS 305 DAYS. THIS AS AGAINST THE BENCHMARK OF

180 DAYS SET IN 1999 (BY REFERENCE TO INTERNATIONAL BEST PRACTICE) AND GENERALLY MAINTAINED UNTIL ABOUT THREE YEARS AGO WHEN THE NUMBER OF INDICTMENTS FOR SERIOUS OFFENCES FIRST DRAMATICALLY INCREASED. THERE ARE 62 INDICTMENTS CARRIED OVER TO 2013.

GIVEN THE MORE SERIOUS AND COMPLEX NATURE OF INDICTMENTS WE SEE NOWADAYS, THE CAUSES OF DELAY ARE MANIFOLD AND NOT CONFINED ONLY TO OUR ADMINISTRATIVE AND JUDICIAL CAPACITY. FOR INSTANCE, WE HAVE NOTICED INCREASED ATTEMPTS AT FRUSTRATION OF THE TRIAL PROCESS BY THE REPEATED SACKING OF ATTORNEYS, OFTEN AT THE LAST MINUTE BEFORE COMMENCEMENT OF TRIAL. DESPITE SUCH ATTEMPTED ABUSES OF THE PROCESS, THE JUDGES MUST AND WILL MANAGE TO ENSURE THE PROPER DISPOSAL OF THE CASES AND TO ASSIST IN THIS OBJECTIVE, IT MAY BE ADVISABLE TO INCLUDE, AMONG THE REFORMS OF THE LEGAL AID SYSTEM , PROVISIONS TO DELIMIT THE EXTENT TO WHICH A DEFENDANT CAN CHANGE HIS ATTORNEY WHILE FUNDED BY LEGAL AID.

BUT SUCH CAUSES FOR DELAY ASIDE, UNDOUBTEDLY THERE IS THE NEED FOR MORE COURT ROOMS TO ALLOW FOR THE SIMULTANEOUS CONDUCT OF MORE CASES IN THE GRAND COURT AS WELL AS IN THE SUMMARY COURT.

I BELIEVE THAT THAT IS THE APPROPRIATE NOTE OF EMPHASIS ON WHICH TO CONCLUDE MY REPORT THIS YEAR, IT IS WITH THE TIMELY REMINDER, SUITABLE FOR THE NEW AGE OF CONSTITUTIONAL GOVERNANCE IN WHICH WE LIVE, AND GIVEN IN THE WORDS OF WILLIAM BLACKSTONE, THAT 'JUSTICE DELAYED IS JUSTICE DENIED'.

THE ANNUAL STATISTICS ON THE WORK OF THE COURTS, INCLUDING THE COURT OF THE APPEAL, WILL BE PUBLISHED AS USUAL WITH MY REPORT ON THE WEBSITE.

I EXTEND OUR THANKS TO THE COMMISSIONER OF POLICE AND TO HIS MEN AND WOMEN IN UNIFORM FOR THEIR SYMBOLIC SHOW OF SUPPORT. FINALLY, TO REV. MARY GRAHAM, WHO WAS GOOD ENOUGH TO REMAIN TO THE END, OUR HEART FELT THANKS FOR HER INSPIRING WORDS OF PRAYER. FROM ALL YOU

HAVE HEARD I AM SURE YOU WILL UNDERSTAND WHY WE NEED YOU TO KEEP US  
IN YOUR PRAYERS!

I CONCLUDE BY ACCEDING TO THE MOTION FOR THE OPENING OF THE COURT  
AND EXTEND TO YOU ALL, ALONG WITH OUR USUAL INVITATION TO LINGER FOR  
A BIT OF SOCIAL INTERACTION, VERY BEST WISHES TO ALL IN ATTENDANCE AND  
TO YOUR FAMILIES FOR A HAPPY AND SUCCESSFUL NEW YEAR.

**HON. ANTHONY SMELLIE**

CHIEF JUSTICE  
THE CAYMAN ISLANDS  
16TH JANUARY 2013

**NOTE TO CASE DISPOSAL** Subsequent to presentation of the speech, it was  
discovered that the number of cases filed in the Court of Appeal was higher than  
the number provided to the Chief Justice. 27 cases were filed in criminal matters  
in 2012 (30 in 2011) and 24 in civil cases (16 in 2011). Thus, there was a small  
reduction in criminal cases but a 50% increase in civil cases. Please read the  
speech in the light of this correction – all the figures for 2012 appear separately at  
[www.judicial.ky/publications/annual-statistics](http://www.judicial.ky/publications/annual-statistics)

**K. McCormac**  
Court Administrator