

THE CHIEF JUSTICE'S REPORT
AT THE OPENING OF THE LEGAL YEAR

11 January 2023

The proceedings commenced with Prayers led by Pastor Andrew Ebanks of Agape Family Worship Centre.

Welcome and salutations were extended to His Excellency the Governor; the Deputy Governor Mr. Franz Manderson; The Honourable Premier Mr. Wayne Panton, The Honourable Speaker Mrs. Katherine Ebanks-Wilks, Members of Cabinet and of the Legislative Assembly, the Commissioner of Police; our judicial colleagues sitting in the galleries and other distinguished guests, including the Hon. William D. Wallace, a District Judge for the 378th District Court in Ellis County, Texas visiting the Cayman Islands.

Thanks were expressed to Pastor Ebanks for having led the gathering in prayer.

The Chief Justice then invited the Honourable Attorney General (actg), Ms. Resha Sharma KC to move the motion for the opening of the Court, to be followed and seconded by Mr. Simon Davis, Director of Public Prosecutions, then Mr. Richard Barton on behalf of the President of the Cayman Islands Legal Practitioners' Association (CIPLA), and by Mr. Colin Mckie QC on behalf of the consultant editors of the Cayman Islands Law Reports.

THE CHIEF JUSTICE'S REPORT

Farewells

In keeping with the tradition established by the former Chief Justice, Sir Anthony Smellie, who joins us today as an honoured guest, I begin with reflections on the changes and transition occurring within the Courts over the last year.

Judiciary

I begin with farewells and with Sir Anthony's retirement in October 2022. At my swearing in, I expressed the Judiciary's profound gratitude to Sir Anthony for his stellar leadership as Chief Justice since June 1998 and his formidable contribution to the development of Cayman's jurisprudence.

I will not say much more than that today as the Valedictory Ceremony to mark his retirement and to acknowledge his unparalleled contributions to the administration of justice in the Cayman Islands and the growth and development of Cayman as a leading Financial Centre will be held on Monday the 16th January 2023. I trust you have all received your Invitations. If you have not, please accept this as our invitation to you to join us on that occasion.

The Valedictory Ceremony will be followed by light refreshments before we move into the Conference organised by my brothers Kawaley and Segal during which Sir Anthony's contributions to the development of Cayman jurisprudence will be considered in greater detail.

We look forward to seeing you there.

Court Staff

We said farewell too to the Court's Law Librarian, Mrs. Beverly Speirs who retired in May, 2022. Ms Bev, as she was fondly known was also Librarian for the Attorney General's Office, the Office of the Director of Public Prosecution and the Law School for many years. According to our records Ms Bev served over 19 years in the Courts which is extraordinary when you consider this was her second career, her first being librarian in our public school system. Ms Bev managed the

work in all four entities seamlessly and was a great resource for the judiciary and we thank for her service to the courts.

I take the opportunity too to welcome our new Librarian, Mr. Victor Villarin.

Cloden “JR” Douglas well known Caymanian musician and entertainer who served as a Marshal of the Courts for nearly 19 years until his retirement last year August. JR was our resident “sound man” for the Grand Court Opening for many years, managing all the Court’s audio needs.

We thank him for his support of the Judiciary over his many years’ of service.

In 2022, we also said goodbye to Mrs. Patricia Palmer who was Personal Assistant to the Chief Justice for some 16 years before transitioning to Judicial Affairs Administrative Manager in 2021 which post has responsibility for managing the rosters for the temporary judges and their travel and other arrangements.

We thank Mrs. Palmer for years of dedicated service to Sir Anthony and other members of the Judiciary and wish her well in retirement. I take this opportunity to formally welcome her replacement, Ms Rene Shortridge.

Transitions

A number of employees transitioned upward within the organization and we are very proud of their achievements:

These are Tori Vernon a former Executive Officer in the Criminal Registry who successfully competed for her new role Registrar of the Specialist Courts, which include the Drug Court, the Mental Health Court and the Domestic Violence Courts.

Tori replaces Ms Katrina Watler who was appointed the new Supervisor for the Criminal Registry.

Ms Monique Fearon, formerly Executive Officer in the Civil Registry is now a Clerical Officer in the Criminal Registry.

Ms. Miriam Jennings, former Accounts Officer, now Court Funds & Finance Officer.

New Beginnings

We also welcomed 17 new hires in various positions:

Kent Gill who joins us as Deputy Financial Controller as well as Kyla Seymour and Nicholas Bodden who will be working in the Finance centre as well as Accounts Offices. Sharon Patricia Wallace is the Court Funds & Finance Manager.

Ms Deborah Lee Shung joins us as Deputy Clerk of Court in the Civil & Family Divisions.

Ms Kameka Malabre joins us as Executive Officer in the Civil Registry and Jodi Lorimer in the equivalent post in the Criminal Registry.

Messrs Jordon Thompson and Christopher Duhaney join us as Court Marshals.

Ms Delicia Ebanks is a new Grand Court Clerk.

Mr. Emilio Garcia Guevara is a welcome new addition to the IT Department as the Courts continue to modernize and improve our digital capability.

Alene Donaldson Walters and Karen Hoskins join us as Personal Assistants to Judges of the Grand Court.

Jaclyn Ebanks-Williams and Cavelle Vaughan have joined the Bailiff unit.

Ms Monique Barrett joins the Legal Aid Department as a Legal Aid Assistant.

The Judiciary is especially pleased to have recruited an additional Court Reporter, Ms Ann Marie Long. This will allow us to accommodate three criminal trials which are scheduled to be heard in tandem in the April.

The Judiciary is also pleased to say that we continue with our internship program which allows Law Students to be exposed to the inner workings of the Courts.

Milestones in 2022

It was a good year for the Courts.

After the COVID induced hiatus, the Judiciary's Distinguished Lecture Series resumed with a powerful and topical address by Mary Arden, Lady Arden of Heswall, recently retired from the UK Privy Council and the UK Supreme Court.

Her speech was entitled, *“Taking Stock of Recent Jurisprudence of the Privy Council.”*

Those who had the opportunity to attend will have remarked not only on the clarity with which Lady Arden explained recent Privy Council decisions but also on her warmth and willingness to engage with members of the public after the Speech, including persons personally affected by the Privy Council’s decision in the matter of *Day and another v The Governor of the Cayman Islands*.

IT Infrastructural Landmarks

At the end of the calendar year, we completed the final rollout of the CURIA/APEX case management platform within the Financial Services Division, the Civil Registry and the Family Division. This has allowed us to disseminate rulings, orders and judgments and applications through the platform. The streamlining of these documents within the platform, is another milestone in the journey to becoming a paperless Court.

Attorneys and notaries are now able to pay for their practising fees and notary renewals on our online portal. Once payments are processed, an electronic Practicing Certificate is generated.

Through the E-Folio, self-represented litigants, Police Officers, and other justice sector agencies have online access to court offices to file court documents without having to commute to a court building, once they are registered as members on the website. The E-Payment component of the CURIA platform is currently being tested and will shortly be available for escrow and online payments within the platform.

The Courts have continued to build upon the foundation laid during COVID with respect to remote hearings and have streamlined the processes associated with these hearings.

We would like to thank our external partners and stakeholders for assisting the Courts with our various pilot programs concerning this platform which has proven to be a great success.

The Historic Visit of the Judicial Committee of the Privy Council

In November, for the first time in the history of the Cayman Islands, the Judicial Committee of the Privy Council sat in the Cayman Islands. The Justices also met with students of our Truman Bodden Law School as well as with students from UCCI and two of the High Schools. The session was live streamed so the students who could not participate in person were able to observe the session in real time. The JCPC also held Court User's Meetings with regional court users by videolink. All in all, it was a very successful first sitting and we hope to have many more.

New Courtrooms brought into service

The Justices presided in one of the two new Courtrooms which were brought into service in 2022. The addition of these two courtrooms in the Law Courts on Cardinal Avenue has given us a welcome increase in capacity, particularly in the circumstances where one courtroom will be assigned for use by the Court of Appeal and will allow the work of other Courts to continue unimpeded by the sittings of that court as in years past.

A special thanks go to the following persons responsible for what were major renovations:

Special Project Manager Simon Griffiths who took over the project after the sudden and unfortunate passing of Mr. Peter Ranger.

I would also like to thank the Public Works Department Staff including-

Deputy Director of the Public Works Department, Ms. Niasha Brady;

Ms. Cathy Seymour - Project Manager Minor Works

Dave Johnson - Senior Manager Facilities

Anthony Edwards - Site Supervisor

Ms. Dubedah Boldeau - Architect

Our consultant Mr. Colin Wilson, who served as Quantity Surveyor for both projects and who in 2022 assisted Simon with the project management whilst Simon and the PWD team divided their time with other important CIG projects.

And the Director of Planning, Mr. Haroon Pandohie and his staff.

Court Security

The issue of adequate court security has been a topic of concern for many years to meet the full range of security needs of the court and judicial staff. With the support of the Commissioner of Police Mr. Derek Byrne and the Government, there is now formally established a Court Protective Unit under the auspices of the Royal Cayman Islands Police Service. This unit will comprise 14 auxiliary officers and 1 Sergeant to be appointed later this year. This means that in 2023, court security will largely comprise uniformed auxiliary officers will maintain order within the precincts of the court on a day-to-day basis.

There are now 9 open court rooms as well as a number of hearing rooms in which Judges may sit in Open Court or Chambers. The business of the court takes place over 3 buildings with two discrete areas within the court complex for the management of defendants in custody. Court Security will continue to be a priority for the Judiciary as we work to ensure the safety and wellbeing of all court users whilst they are within the precincts of the court and we look forward to working with our stakeholders on work yet to be completed in this area.

Two objectives for 2023

Looking forward, the Judiciary have the two objectives for the Courts in 2023 which are intended to address concerns about the efficiency and effectiveness of the Courts and the challenges we face in meeting the needs of the public that we exist to serve.

A Blueprint for Excellence

“Court excellence is paramount to maintaining public confidence and trust in judicial institutions”: International Consortium for Court Excellence.

The first is to create our own bespoke Blueprint for Excellence using the International Framework for Court Excellence (“the Framework”) as our guide. The Blueprint will inform the strategic planning exercise to be embarked upon by the Court in March of this year.

The Framework was designed by an international consortium for Court Excellence which includes the US organization, the National Centre for State Courts as well as

the Federal Judicial Center the Singapore State Courts, the Australasian Institute of Judicial Administration.

The Framework is not very complex but it is a lot of information to condense.

Briefly, the Framework is a quality management system designed to help courts improve performance. It is built on **10 core judicial values**:

Equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness and certainty.

The Framework identifies seven areas of court excellence aligned with those values.

The **seven areas of court excellence** are:

1. Court leadership and management: To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.
2. Court planning and policies: To formulate, implement and review plans and policies that focus on achieving the Court's purpose and improving the quality of its performance.
3. Court proceedings: To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.
4. Public trust and confidence: To maintain and reinforce public trust and confidence in the Court and the administration of justice.
5. User satisfaction: To understand and take into account the needs and perceptions of its users relating to the Court's purpose.
6. Court resources: To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.
7. Affordable and accessible services: To provide practical and affordable access to information, court processes and service.

The Framework also provides a methodology for assessing a court's performance against these seven areas of court excellence which provides clear guidance for courts intending to improve their performance.¹

*"A foundation stone of excellent court planning and performance is the maintenance of accurate, comprehensive and reliable information and databases. It is essential not only to assessing the performance of a court but also assessing whether its strategies or activities for improvement are having a positive effect."*²

The Framework has developed 11 focused, clear and actionable performance measures, the **Global Measures of Court Performance**:

1. **Court User Satisfaction.** The percent of court users who believe that the court provides procedural justice, i.e., accessible, fair, accurate, timely, knowledgeable, and courteous judicial services.
2. **Access Fees.** The average court fees paid in civil cases.
3. **Case Clearance Rate.** The number of outgoing cases as a proportion of the number incoming cases.
4. **On-Time Case Processing.** The percentage of cases disposed or otherwise resolved within established timeframes.
5. **Duration of Pre-Trial Custody.** The average elapsed time criminal defendants who have not been convicted of crime are detained awaiting trial.
6. **Court File Integrity.** The percentage of case files that can be located and retrieved in a timely manner and meet established standards of accuracy, organization and completeness.
7. **Case Backlog.** The proportion of cases in a court's inventory of pending cases that have exceeded established timeframes or time standards.
8. **Trial Date Certainty.** The certainty with which important case processing events occur when scheduled expressed as a proportion of trials that are held when first scheduled.

¹ International Framework for Court Excellence, p.1

² IFCE page 7

9. **Employee Engagement.** The percent of employee of a court who, as measured by a court-wide survey, are passionate about their job, committed to the mission of the court and, as a result, put discretionary effort into their work.
10. **Compliance with Court Orders.** The total amount of payments of monetary penalties (fines and fees) collected by a court or court system, expressed as a proportion of the total amount of monetary penalties ordered by a court in a given period of time.
11. **Cost Per Case.** The average cost of resolving a single court case, disaggregated and location of court, and by case type.

As described by the Framework, the Global Measures ‘*constitute a limited and manageable set of core performance that form a “balanced scorecard” of a court’s performance.*’³

The idea behind the Global Measures is “*what gets measured, gets managed.*”

Strategic Planning

The strategic planning exercise will get underway within the first quarter of the year during which we will identify where we may be underperforming within any areas of excellence, identify solutions to improve performance and identify the resources we need to implement the solutions.

The process begins with the Court Excellence self-assessment questionnaire to assess the Courts’ performance in all seven areas of excellence. The questionnaire seeks to measure performance against a number of outcome statements. An illustrative example under the heading **Court Leadership** is the statement “*Our court leaders drive the court’s performance and engage staff and key stakeholders in the process.*”

The responses to that and other output statements, which may range from zero to innovative or zero to excellent, are scored and added up for each area of excellence, thus identifying the areas that need improvement.

³ Global Measures of Court Performance (3rd ed.) p 3

Having identified the areas where our performance is strong and those that need improvement - for those of you who are familiar with strategic planning, having performed a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) we will then devise our action plans: the strategies we are going to employ to improve performance.

This will be a collaborative process involving court users and stakeholders such as the police, prison and government departments such as Department of Children and Family Services and the Department of Counselling services as well as the HSA.

We will also collaborate with the JLSC the distinguished members of which include the Chairman, Mr. Ormond Williams, who owns a business consultancy which offers training in Leadership Development, local businesswoman, Brigitte Kirkconnell who manages part of a Cayman business empire renowned for its focus on customer service, Langston Sibblies who has substantial experience in administrative law and policy development, Mr. Guy Locke, a very experienced Insolvency practitioner, and several noted jurists including our own President of the Court Of Appeal, the Chief Justice of the Eastern Caribbean Supreme Court and the President of the Caribbean Court of Justice which is the only Court in the Caribbean to be designated a Court of Excellence.

I am pleased that this programme of Excellence on which we are to embark will allow for a closer and more meaningful collaboration with the JLSC on matters in judicature.

Once the steps that need to be taken to improve performance are identified - the Action Plans- the Courts must ascertain what resources are required to achieve them. We are fortunate in this jurisdiction that the Judiciary enjoys fiscal autonomy, as Sir Anthony noted in his Speech at last year's Opening, which essentially means that we have the power to allocate our resources as we see fit which will allow us to use allocated funds to implement the steps we have identified as necessary for achieving court excellence.

That said, any increases in our budget as a result of our pursuit of excellence will still need to be funded by the Government.

As we spend most of our time and resources on running courts, we are grateful for the support already promised by the DG who assures me that the necessary human resources are within the civil service. We also anticipate that court user and stakeholder engagement will provide additional human resources not just in brainstorming solutions to any shortfall in performance but implementing those solutions. In addition, the National Centre for State Courts who are part of the International Consortium will lend assistance to Court’s seeking to implement the Framework.

We will only know if our Action Plans are improving performance if we measure our performance. The Global measures are SMART: specific, measurable, attainable, relevant and time bound, another familiar strategic planning term. Measuring them will allow us to track our progress.

Performance measurement and performance management will allow us to set clear performance targets, formulate and justify budget requests, make resource allocation decisions and, importantly for the continued independence of the Judiciary, *“insulate the court from inappropriate performance audits and appraisals imposed by executive and legislative agencies.”*⁴

Court Performance 2022

We haven’t started the process and we don’t have a scorecard, but the figures which the Clerk of Court has provided may help to illustrate how the Global Measures are used.

The table below is a summary of the work done in the **Criminal Division** of the Summary and Grand Courts.

CRIMINAL STATISTICS 2022	IND	SCA	COR	MHC	DOM	DRC	CRIM	TRAF	TIC	YT	BR
Cases filed	102	36	62	20	49	18	872	1143	8525	27	210
2022 cases brought forward	77	24	59	19	16	9	456	551	585	8	33

⁴ IFCE Global Measures of Court Performance p 4

Total cases disposed of in 2022	104	14	47	12	61	29	943	1075	8317	27	437
Defendant on remand at end of 2022	29	0	-	4	1	1	27	0	0	1	2

KEY

- IND - Indictment (Grand Court)
- GCR - Committed to Grand Court (S 7 CPC Committal to Grand Court for sentence & S 25(2) Committal to Grand Court - breach of Grand Court SSSO)
- SCA - Summary Court Appeal
- COR - Coroners Court
- MHC - Mental Health Court
- DRC - Drug Court
- CRIM - Criminal Court
- TRAF - Traffic Court
- TIC - Tickets
- YT - Youth Court
- BR - Cayman Brac Court

Given the limited data that the Courts actually capture and report on, the only Global Measure we can comment on is Global Measure 3 which deals with case clearance rate. Given the truism that *"We measure what matters"* it is fair to say that, within the existing paradigm, the only metric which matters is the number of cases completed by the Courts. Adopting the Global Measures will be an enormous but necessary paradigm shift.

The case clearance rate is a way of expressing the cases disposed of as a percentage of the total cases coming in. The hypothesis underlying the case clearance rate is that a judicial system which is able to handle the inflow of judicial cases would have a Case Clearance Rate of 100%. Looking at the Grand Court Criminal Division, 102 cases were filed and 104 were disposed of. Just

looking at 2022 alone, those figures show a case clearance rate of 102%. This is a clear indicator that the Court is effectively handling incoming cases.

77 cases were brought forward from the year before. Assuming an annual intake of 100 cases per annum, the backlog suggests a clearance rate of under 70% for at least the two prior years. If a Court's case clearance rate is 70% and remains at 70%, then the cases not disposed of will move forward to the next year, creating a backlog that will continue to grow year over year. What we see can perhaps be explained by COVID and the restrictions imposed during the period 2020 to 2022.

If the case clearance rate is not 100%, the Court will always be behind and this has implications for another important indicator of performance which is the time between the date the matter is first brought before the Court and the date on which it is concluded, a very important metric in light of the Constitutional guarantee of a fair trial within a reasonable time.

That the Grand Court in 2022 had a clearance rate of 102% bodes well for the future. The Court must continue to have a clearance rate of over 100% if it is to deal not only with incoming cases but clear the backlog as well.

In the Summary Court Criminal Division, the figures produced by the Clerk of Court tell the same encouraging story with the Summary Court having a case clearance rate of 106%. That Court had an intake of 872 cases in 2022. On that performance metric then, the Summary Court is performing at a high standard. That said, 456 cases were brought forward. In order to clear the accumulated backlog, the current clearance rate of over 100% will have to be not only sustained but also improved.

District Courts

The Town Hall where the Magistrates have sat in various divisions of the Court for the last 25 years, if not longer, and which had also been used to facilitate jury selection over the last several years, will not be available to the Courts in 2023 as it is slated for renovations. In order to maintain the momentum we have achieved in increasing the case clearance rates in the Magistrate Court, we propose to establish the a first District Court and are now trying to identify a suitable space in West Bay for the immediate purpose of hearing those matters that would have been heard in the Town Hall but also for the purpose of using it

as a Pilot Court perhaps leading to the establishment of a District Court in Bodden Town to supplement what would then become the George Town District Court.

The benefit of this initiative is that we would take justice to the people. Establishing Courts in different districts or parishes and establishing out-station courts to serve the public in the more remote parts of a district or parish is nothing new. It would also have the added benefit of reducing the congestion in George Town and relieving persons who have to attend Court of the relentless hunt for parking space. It would also create new court spaces without the administration having to try and find more space in the centre of town for courtrooms and thus rationalize the use of our resources.

We will Report on both initiatives next year.