



SPEECH BY CHIEF JUSTICE SIR BRIAN M. MOREE Kt.; Q.C. AT THE OPENING OF THE LEGAL YEAR ON 12TH JANUARY, 2022

As a result of the pandemic, I preside over these virtual court proceedings today with only two of my colleagues – Senior Justice Turner and Justice Charles – in the court room with me. I nonetheless wish to publically acknowledge and pay tribute to the enormous contributions made to the administration of justice in The Bahamas by all the Supreme Court Justices. I deeply regret that they are not all physically present today as they each deserve the spotlight of public recognition for their sterling and outstanding work throughout 2021. I thank them for their national service.

I also wish to thank the Registrars, the Magistrates and all members of staff of the Judiciary for their work, commitment, diligence and support throughout 2021. It is only on the back of these persons that the Courts are able to function.

I am grateful to Reverend Father Kendrick Forbes, J.C.L., Vicar General of the Roman Catholic Archdiocese of Nassau for his prayer and blessing for the work of the Judiciary and the Bar in 2022.

I thank Acting Commissioner of Police Clayton Fernander for joining us today in his capacity as the Acting Provost Marshall. I am grateful to him for his support and assistance in organizing this event.

I remain grateful and humbled by the opportunity to serve my country and the Bahamian people as the Chief Justice and thank God for his many blessings in my life and recognize His providential hand in all things.

In 2021 Senior Justice Estelle Gray Evans and Justice Ruth Bowe-Darville retired both leaving behind a legacy of outstanding judicial service. Senior Justice Gray Evans had a career in the Judiciary spanning 26 years. During that time she made an enormous contribution to the work of the courts and her many judgments during her fourteen years as a Justice of the Supreme Court form part of the ongoing development of Bahamian jurisprudence.

Senior Justice Gray Evans was the senior judge in the Northern Region and served as acting Chief Justice on three occasions. Her instinctive sense of justice and fair minded approach to judicial decision making will be remembered as part of her legacy. I thank her for her judicial service and wish her all the best in her future endeavours.

Justice Bowe-Darville gave sterling service to the Judiciary during her tenure as a Justice of the Supreme Court. Her case management skills are well known as she firmly but fairly managed cases to trial. Justice Bowe-Darville brought expertise, sensitivity to the human realities behind cases and decades of private practice experience to the resolution of litigious disputes which enabled her to adeptly

discharge her judicial duties. Her principled approach to judging was apparent in all of her judicial decisions. I wish her continued success as she moves into another phase of her life.

In December of 2021 Deputy Registrar Carol Misiewicz commenced her pre-retirement leave prior to demitting her substantive office in February, 2022. Her administrative responsibilities included oversight of the Family Registry and her judicial duties involved hearing interlocutory chamber applications in all Divisions of the Court except the Criminal Division. I recognize and thank Deputy Registrar Misiewicz for her service to the Judiciary and her contribution to the administration of justice. As she pursues new opportunities within her areas of interest and expertise I wish her success in all her undertakings.

In 2021 we welcomed five new judges to the Supreme Court – Justice Denise Lewis-Johnson, Justice Andrew Forbes, Justice Jeanine Weech-Gomez, Justice Neil Brathwaite and Justice Camille Darville-Gomez. These appointments significantly increased our judicial resources bringing the total number of judges to twenty before the retirement of Justice Gray Evans and Justice Bowe-Darville. This provided much needed assistance in dealing with the increasing number of cases filed in the courts. Justice Forbes is assigned to the Northern Region while the other four Justices are sitting in New Providence. They each bring to the Judiciary specialized skills and expertise in different areas thereby strengthening the Supreme Court Bench.

There were also five new Magistrates appointed in 2021 – Magistrate Shaka Serville, Magistrate Algernon Allen, Jr., Magistrate Kendra Kelly, Magistrate Ian-

Marie Darville-Miller and Magistrate Simone Brown. I welcome each of the new Magistrates to the Judiciary. Magistrate Brown is currently working out of the Garnet Levarity Justice Centre in Freeport but will be moving to the new court in Eight Mile Rock as soon as the premises are ready for occupancy. The other four Magistrates are assigned to courts in New Providence. The newly appointed Magistrates have already made a significant impact on the volume of cases which are being cleared and I have no doubt that their work will increase our capacity to deal with the backlog.

The 2021 Annual Report will be circulated within the next few days setting out an overview of the work of the Courts during the past 12 months. The Report includes key statistics for 2021 and other important information in connection with the progress in reforming and modernizing the Courts in The Bahamas. I commend it to all who are interested in the work of the Courts.

The theme of the Opening ceremony this year is the centrality of justice to the way of life in The Bahamas. It is my firm view that a functioning, efficient, fair and effective administration of justice anchored in the Rule of Law providing open access to justice is essential to the establishment, development and sustainability of a peaceful, civilized and cohesive society in a democratic country. It is important for members of the public to fully grasp the reality of the centrality of justice to their way of life and not see the administration of justice as a distant abstract concept which is best left to lawyers. The simple point is that the preservation of the liberties and fundamental rights which all in our country expect to enjoy are inextricably linked to and depended upon a competent, efficient and independent

judiciary. The profundity of this nexus should inform decisions by the Executive relating to the allocation of resources to the Judiciary.

It was Lord Neuberger who said:

“...rights which cannot be enforced are rights bereft of meaning. A legal right is a sham if it cannot be vindicated in court, and enforced once established. As already mentioned, it is one thing to create bare institutions; to create a justice system, but it is another to render it effective and accessible to all citizens. In our modern consumer, market based society, with its multiplicity of laws and rights, and its increasing scope for legal disputes, it is more important than ever that we have effective, accessible institutions of law.”

In these difficult times when there is increasing competition for public funds it is essential for the decision makers who control the public purse and the general public at large to fully comprehend that the administration of justice is foundational to the peace, order and good governance of our society. This is not merely a slogan but an enduring principle of high importance. In setting national priorities and allocating public funds one ignores this principle at great risk to the country. I am reminded of the words of an English judge when he stated that:

“[w]hen the financial masters are cutting budgets they should heed the warning that “we must be careful that we do not end up knowing the price of everything and the value of nothing.”

It is folly to try to measure the value of the administration of justice in terms of dollars and cents. Properly understood, it is essential to all else which is a part of a civilized and ordered society.

Under the Constitution, the Judiciary is a co-equal independent branch of Government. This constitutional status must be reflected in the way in which the court conducts its operations thereby strengthening the institutional independence of the Judiciary. The Judiciary must not be treated as another Government Department or agency. It bears reminding the public that it is an independent Judiciary which is the ultimate custodian of their rights and liberties. If we are to fulfil our vital constitutional role the Judiciary must be given adequate financial resources, competent staff, proper equipment and supplies and suitable physical premises to operate the courts.

The Judiciary needs to have more control over its administrative, financial and operational matters in order to implement the necessary reforms within the court system. It is for this reason that I am disappointed that the Court Services Bill has not been passed by Parliament. It was tabled in the House of Assembly last year but was not advanced prior to the dissolution of Parliament before the general election. I am in communication with the Attorney General on this subject and I am encouraged by his assurance that this matter will receive the urgent attention of the new Administration. I strongly urge the Government to re-introduce the Court Services Bill in the House of Assembly and expedite its passage and enactment into law. The Bill, if passed, would be a transformative legislative intervention which would fundamentally change the operations of the Courts.

It was Lord Bryce who observed that:

“[t]here isn’t any better test of the excellence of a government than the efficiency of its judicial system”.

We in the Judiciary stand ready to do our part in improving efficiencies and productivity if we are provided with the means to do so.

In reviewing the year of 2021 for the Courts I am reminded of the iconic opening words penned by Charles Dickens in 'A Tale of Two Cities' - "It was the best of times, it was the worst of times." For the Judiciary, it was a year of innovation, reform and significant progress in modernizing important components of the Court system at a time where there was minimal resistance from stakeholders mindful of the imperative to change in order to conduct business during the pandemic – in this sense it was the best of times. On the other hand, the devastation and intrusion of Covid 19 into almost all human behavior was, in a sense the worst of times.

Throughout it all the take away message is that 2021 was a productive year for the Courts.

However, there is still much more work to be done in 2022 and going forward we will be focused on execution and the implementation of the many projects and initiatives which we have been working on for the past two years.

The long awaited new Case Management System in the Courts, known as JWorks, has now been installed and the configuration and migration of the data will be completed in February. The Go Live Dates for the various Divisions of the Court will start in February. JWorks will be installed across the court system including the Magistrates Courts, the Supreme Court and the Court of Appeal. The migration of the Court of Appeal data will start later this month.

The E Filing portal has been activated and we are only waiting for the integration with the Government payment system to be completed before launching this service. Lawyers and litigants should be E Filing court documents in The Bahamas by the end of February. This will substantially change the function and role of the Civil Registry and I will be saying more about this in the coming months.

During 2021 we digitized approximately 3.2 million pages of court records and these scanned documents will be ingested into JWorks over the next few weeks. Another 4.5 million pages of court records will be digitized between January and the end of July. The newly renovated office for the Digitization Unit is expected to be completed by the end of January. I wish to acknowledge the ongoing work of the members of our team in the new internal Digitization Unit headed by Mrs. Grace Bostwick who have performed under difficult circumstances.

The Digital Court Reporting system is ready to be implemented in the Criminal Division of the Supreme Court and the Magistrates Courts and has already been activated in a pilot programme. The system will go live across the courts as soon as we complete the training of judicial staff and finalize the new Policy and Procedures Manual.

The Bail Management System has been launched and is operational. Effective 7 March, 2022 all bail applications in the Supreme Court will have to be made through the new Bail Management system thereby fully automating this process. The version of the software for the Magistrates Court has been completed and will be launched in February.

The Court Automated Payment system in the Family Magistrates Courts is operational and we are now working on increasing utilization through training and the launch of a public awareness programme.

We have automated the process for obtaining court hearing dates and in most cases dates are given within 14 days of submitting the request. In interlocutory applications we now aim to hear those applications within 3 months.

In the Supreme Court Criminal Division we continue to have difficulties with fixing trial dates within reasonable time periods. Lawyers who practice in this area are accustomed to obtaining trial dates which are far into the future based on their calendar. Every case must be considered on its own facts and circumstances but as a general principle the court will not surrender its calendar to the commitments of counsel. It is time that we address the problem of scheduling conflicts and adjournments. Lawyers who are booked for 18- 24 months into the future should not assume that this will dictate the pace of the case and the trial date. I am aware that constitutional issues are engaged in this discussion but the court is not impotent in the face of counsel who claim to have no availability for 2 or 3 years. I intend to discuss this matter with members of Bar Council, the Director of Public Prosecutions and members of the Criminal Bar in an attempt to find a sensible and balanced approach to this problem but the current position is no longer sustainable. We have a duty to the public to address the backlog and to get criminal cases to trial within a reasonable period of time.

We will be setting up in the Registrar's Office a Resolution Desk which will deal with all enquiries relating to procedural anomalies and cases where the targeted dates

for action are not met. We in the Court system must be accountable for our commitments with regard to work flows and where we are not meeting our self-imposed deadlines the matter can be referred to the Resolution Desk for early intervention.

It is necessary for the court on the civil and family side to better triage cases at the intake stage to more efficiently direct their course through the court system. We will make this intervention through Case Progression Officers who will proactively manage the life cycle of cases assigned to them using the new case Management System.

I will be issuing a Practice Direction in February establishing 'Motion Days' for hearing interlocutory applications which are not expected to take more than 30-60 minutes. The Motion judge will also hear applications which do not qualify as urgent for the Urgent Duty Judge but which nonetheless justify an expedited hearing. The time is over where lawyers and litigants must wait months for hearing dates for non-contentious applications or applications which are procedural or case management related.

There will be an increased use of 'Paper Applications' where the matter will be disposed of on the papers without a hearing. I also intend to increase the utilization of telephone hearings for appropriate applications. I will be releasing a Practice Direction setting out the details relating to these applications. When there are hearings, counsel will be expected to comply with time limits set by the presiding judicial officer for oral submissions. There simply is not enough judicial time to listen to counsel for as long as he/she wants to talk. Careful, thorough, clear and

reasoned written submissions by counsel will reduce the need for long oral submissions.

We will continue to rely heavily on remote video/Zoom court hearings in the Supreme Court. There have been many enquiries about the use of these hearings going forward. It is my view that remote video hearings in the Supreme Court are here to stay and are now a permanent part of the court system and will be used as one of the Disposition Modes in addition to In-Person Hearings, Telephone hearings and Applications on the Papers.

I am in discussion with the Attorney General with regard to conducting remote court hearings in the Family Islands using court rooms where available and the Office of the Administrator when there is no court room. There is no good reason why we cannot deliver greater access to justice for persons in the Family Island where they will not have to incur the costs and endure the inconvenience of travelling to either Grand Bahama or New Providence to deal with their cases. The solution will involve the deployment of the necessary technology and a package of legislative amendments to facilitate the process. Once the necessary legislative amendments are made, we will be able to conduct hearings in the Family Islands between the visits of the Magistrates on Circuit.

I have also had discussions with the Attorney General relating to proposed amendments to the Magistrates Act to increase the civil jurisdiction of the Magistrates to \$20,000.00 and to award costs up to \$1,000.00. This is a part of a compendium of legislation relating to the administration of justice which I have discussed with the Attorney General which includes proposed amendments to the

Evidence Act, The Criminal Procedure Code, The Jurors Act, The Child Protection Act as it pertains to the Juvenile Court and the Coroners Act.

I am in consultation with the Attorney General in an effort to locate suitable premises for a breakout Juvenile Court, a Commercial Court fitted out with the necessary technology and a separate Family Court with all the ancillary support services including counselling, social services, child care facilities and mediation services. It is my hope that resources will be made available to the Judiciary to set up these courts by the end of the second quarter of this year.

A new system of court connected mediation will be introduced into the Family and Commercial Divisions during the first quarter. I have circulated a draft of the Practice Direction and Schedules to the key stakeholders and will be proceeding with this project during the first quarter. I have no diffidence in stating that a modern court system must have a mediation component as an alternative method of resolving disputes to reduce the number of cases which proceed to trial. The following observation is as applicable to the Bahamas as it was to the intended audience of the speaker when he said:

“If Alternative Dispute Resolution [and specifically mediation] is to become a practical reality and not, in the main, a literary subject in this country, [attorneys] will have to recognize the conciliation of cases out of court, and not only the winning of cases in court, as part of their professional vocation.”

Coroners Inquests have been hampered largely due to the ongoing COVID 19 pandemic which continues to impact the smooth running of the Coroner’s Court. The Acting Coroner completed several Inquests in 2021 and one in 2022 but the

pace of future Inquests is dependent on providing an environment which is compliant with the Covid 19 protocols and regulations.

We will make further changes in the Probate Registry in 2022 to ensure that we can deliver on our policy to process all compliant applications within 90 days.

The Judicial Research Counsel programme is now in its third year. Two members of the unit will be moving on to other engagements but we will have 12 Judicial Research Counsel working in the Judiciary by the end of January.

There remains a compelling need for a customized New Supreme Court Complex. Progress on this project has been severely impacted by the pandemic and it remains to be seen whether this will be financially viable in the short term through innovative ways of financing using the capital markets and/or possibly some form of Public/Private Partnership.

The Bahamas Judicial Education Institute is now responsible for all training in the Judiciary. The Institute is mandated to provide structured, judiciary specific programs throughout the course of the legal year for the judiciary and will be engaged in a massive training programme in 2022 in connection with the new software applications, new work flows, new procedures and general up skilling in computer technology. The new Training Centre in Charlotte House is completed but for a few remaining items on the Punch List and this will now provide us, for the first time, with a customized 'plug and play' training facility for our judicial officers and our staff.

I am acutely aware of the existence of the digital divide in our country which means that all court users do not have access, or in some cases the same level of access as others, to the technology needed to use the new ICT solutions underpinning the modernization of the courts. For this reason, the reform of our work processes in the courts will include the establishment of 'Service Centres in Court buildings and the appointment of 'Court ICT Support Officers to assist court users who do not have access to technology. We will also open Zoom Rooms in our Court Buildings for use by parties and witnesses who do not have access to the requisite technology to participate in video remote hearings. I also intend to speak with the President of the Bar about the possibility of providing a similar facility in the offices of the Bar.

We in the Judiciary are cognizant of the issues arising from the delivery of judgments in Supreme Court cases, most particularly in the non criminal divisions. I intend to address this matter head on with the judges and will be rearranging court calendars to ensure that judges will have time to prepare their judgments shortly after completing the matter. Timelines will be put in place for the delivery of judgments and I will be saying more about this after I complete my discussions with judges on this important subject. It is axiomatic that improved work flows and greater efficiencies in our procedures will be marginalized if lawyers and litigants cannot get judgments within a reasonable period of time. The judges are in court hearings and trials almost every day and they are left to write their judgments after working hours or on weekends. Notwithstanding their diligence and commendable commitment this is not working and we will make the changes during the first quarter of 2022 to address this problem.

Time restrictions only permit to say that the new Civil Procedure Rules will be circulated to members of the the Bar and other key stakeholders by Monday of next week. There will be a 3 month period of consultation with members of the Bar with the intention of promulgating the new Rules by the end of May, 2022.

The multiple initiatives and projects in the courts which I have summarized all have a single overriding objective – to provide a modern, efficient, fair and accessible court system headed by an independent Judiciary which is functioning in line with best practices and fulfilling the reasonable expectations of court users. This is our mission and once we are given adequate resources by the Government we in the Judiciary will spend 2022 in and about the business of fulfilling this mission.

I borrow the words of a former Master of the Rolls in England when I say that “.....fair and equal access to the courts is not a privilege but a fundamental right ..which is a requirement of a modern civilized society.” In 2022, for the Judiciary, it will be all about making this a reality.

I join one of my predecessors in quoting the words of Sir Winston Churchill spoken to the President of the United States at the height of World War II when he said “Give us the tools and we will get the job done.” This is my message to the Executive branch of Government.

I declare the 2022 Legal Year open.