



Cayman Islands Judicial Administration

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Statement from Chief Justice the Hon. Sir Anthony Smellie, KCMG, KC On Recent News Article on OAG's Report on Summary Courts

As Chief Justice, I acknowledge the important role of the Office of the Auditor General (OAG) in the protection of the public's interest in good governance.

However, I am obliged to respond to a recent news report based on the OAG's 2022 update of its 2019 Report, to which I had responded at the time by pointing out that it was deficient in several fundamental respects.

Regrettably, none of these concerns about the deficiencies of the Report were ever acknowledged nor was a response ever received from the OAG.

Coincidentally, the year of the original Report, 2019, marked the onset of the pandemic that resulted in disruptions and dislocations, the likes of which the world has not seen in generations.

Court Performance in Pandemic Conditions

In Cayman, we have certainly had our share of disruptions and stagnation in workforce growth because of Covid-19. That was equally true at the Courts. Unlike other businesses, however, at the Courts we did not have the option of reducing our outputs. Family matters, rather than declining, increased; the number of complex cases filed in the Financial Services Division increased by more than one-third; the intake of cases across the other divisions continued apace.

At the Courts, therefore, we had to find ways of working around the pandemic. Consequently, Cayman was among very few courts globally to continue to operate during the worst periods of the Pandemic, pivoting almost seamlessly to continue to provide the public at home and abroad with access to justice.

As a result, contrary to the lead of the news report, a report by an independent assessment by external consultants as at March 2022 revealed no significant backlogs in any of the criminal divisions of our Courts (for emphasis, including the Summary Courts'). The consultants were Justice Dr. Mathilda Twomey, a former Chief Justice of Seychelles and well-regarded adviser on courts' administration, from Red Lion Consultants, Inns of Court, London, and Mr. Ben Yallop, also from Red Lion Consultants and an adviser to the Lord Chief Justice of England and Wales on the administration of courts.

I had engaged Red Lion as consultant—well before the OAG's Report—to examine and advise on our administration of the courts, focusing on the Criminal Divisions of both the Summary Courts and the Grand Court. The first visit was in

2019 before the national shutdown due to the pandemic, when the consultants made important recommendations for implementation. The team returned in 2022 to finalise the assessment and present the findings that I reference here.

As Chief Justice, I am proud to say that the efforts of the judiciary and staff in rising to challenges have been nothing short of heroic, and the results are remarkable, but you would not know this by reading the recent news report to which I refer herein.

Deficiencies of the 2019 OAG Report

In terms of the deeper reporting deficiencies, the OAG continues to rely on the erroneous assumption that the efficiency and effectiveness of the Judicial Administration, as a whole, can be measured against allegations of excessive costs of progressing cases through the Summary Courts.

Logically, the cost-effectiveness and efficiency of the Judicial Administration can be fairly assessed only by examining how cases are managed and disposed of by ALL the Courts

At the Courts, however, we are mindful of the need to continue focusing on creating greater efficiencies. For example, I have acknowledged the helpfulness of OAG Recommendation 8—to develop a workforce plan that identifies the number and types of staff required to ensure that all our courts continue to operate efficiently and effectively in the future. That recommendation continues to be regarded as helpful and appropriate.

The Report does not, however, discuss the real reason that such a workforce plan could not yet be developed and deployed: the chronic lack of accommodations for staff and the constant adjustments that must be made to alleviate its impact.

The Judiciary and staff at all levels of the administration of justice have been in a constant state of adjustment (much aggravated by the impact of the pandemic) as they sought to meet accommodation needs. The impact of this constant state of flux has been substantial at all levels, yet the judiciary and support staff continue to deliver justice (an incredibly sensitive and testing objective in itself) while coping with these challenges.

The 2019 OAG Report did, however, acknowledge that the “existing court buildings are not fit for purpose” (paragraph 59). But paradoxically, the Report does not examine what impact this must have on efficiencies and effectiveness—although that is the objective that the Report sets for itself.

The failure to respond to or even acknowledge our concerns becomes even more telling in the context of what had prompted the audit—a request from the Public Accounts Committee (PAC) for an audit regarding whether a new Court building, which had been promised by successive governments for more than two decades, was really needed. Yet, ironically, the OAG had, perhaps unwittingly, answered that remit in its own assessment as referenced above—that the “existing court buildings are not fit for purpose”.

Regrettably (but hopefully not irretrievably), the result is that public attention is now being diverted away from the underlying obvious need for modern court facilities.

Example of Unbalanced Claim

I am therefore obliged to comment on one of the more unbalanced claims about the Judicial Administration’s response to the OAG recommendations—Recommendation 7—the only one which appears to directly address the original PAC remit.

The OAG was advised from the outset that a team of professionals has been retained to do just that—develop an Outline Business Case. The work of that team—comprising PriceWaterhouseCoopers (PWC), in consultation with the NORR Group, a fully integrated firm of architects, engineers, and planners—had been well in progress but was suspended due to the onset of the pandemic. It is to be resumed now that Cayman is reopened for business.

Disappointingly, this context is not explained in the relevant aspect of the OAG 2022 Report, which insists: “ ..there is still no Outline Business Case. Without taking these steps, ... the project will be flawed and result in a court building that is not fit for ... purpose.”

A much different impression would have been conveyed by the unfurnished context: an acknowledgement of the involvement of the PWC/NORR team, the intervening impact of the pandemic on the completion of any pending proposal, and the clear response of the Judicial Administration in 2021 to the OAG that “a proper business case must and will be presented to Government before any decision could possibly be taken to invest in a new building”.

As the outgoing Chief Justice, I am obliged not to leave the public record in a state of doubt on so important a matter: There has never been any uncertainty that a proper business case will be presented for the Government’s consideration.

Status of Available Courtrooms

In the interim, however, before the OAG’s Report was first published in 2019, the Government, in consultation with the Judicial Administration, acquired and has since then made the former Scotia Bank building available to the Administration. This has relieved to a degree, in the short- to medium-term, the chronic need for space that has hampered the operations of the Courts for decades.

Two new courtrooms in this building (the second to be completed this month) will bring the total number of Courtrooms to nine. But these are of varying sizes and specifications and only four of the nine will be available or suitable for the hearing of the more serious criminal cases, whether in the Summary Courts or the Grand Court.

One of these four must be available for the Court of Appeal when it convenes for at least nine weeks each year.

Four of the nine Courtrooms are in Kirk House, which is held on lease—the terms of which preclude the trial of risk-sensitive criminal cases.

Even with the addition of the two new courtrooms, there will likely be many occasions when cases will need to be postponed for want of a suitable courtroom.

The foregoing are all factors that indicate the continuing need for a purpose-built state-of-the-art Court House for judicial administration. It is very much to be hoped that public debate over compliance with audit recommendations—several of which are themselves based upon no true understanding of how the justice system works—will not result in further avoidable delay in the fulfilment of this obvious need.

Looking to the Future

Otherwise, as I stated in the Foreword to my latest and last report entitled **The Cayman Islands Judiciary 2019-2021 Retrospective**, “As we look to the future, I fear that in the continuing absence of adequate modern court facilities, the Administration will become the victim of its own success, the result of a false perception that such facilities are not really needed.”

A much more nuanced and balanced OAG response, based upon a more rigorous assessment process than soliciting annual responses to the flawed original Report, would contribute much to avoiding that ill-advised outcome.

The Hon Sir Anthony Smellie, KC
Chief Justice
13 October 2022