



# **COMMONWEALTH OF THE BAHAMAS**

## **2022 CONTRIBUTION COMPENDIUM OF JUDICIAL BILLS**

**Presented to the Honourable Senate**

**by**

**Senator The Honourable L. Ryan Pinder Q.C.  
Attorney General and Minister of Legal Affairs**

**on  
Monday, 3rd May, 2022**

## **INTRODUCTION**

Madam President, I rise to move the following Bills that with the concurrence of the Opposition we will debate as a compendium of Judicial Bills:

- Magistrates (Amendment) Bill, 2022;
- the Evidence (Amendment) Bill, 2022;
- the Criminal Procedure Code (Amendment) Bill, 2022;
- the Juries (Amendment) Bill, 2022.

The need for the amendments to the statutes in this compendium of Bills is twofold, namely, to update and modernize the law and to refine the law, all in an effort to accord with the changing requirements of our people and to advance the efficient and effective administration of justice. It is the effective and

administration of justice that is paramount and we should be committed to systematically adjusting the legislation and procedures to ensure the administration of the courts, justice and the method in which the OAG, DPP and public defenders offices operate to ensure the greatest efficiency while not prejudicing due process.

### **Magistrates (Amendment) Bill**

This Bill seeks to increase the financial thresholds of the jurisdiction of a Magistrate to hear certain matters as follows:-

- (a) \$5,000 in respect of small cause claims, claims in tort and contract;
- (b) \$10,000 in respect of actions for the recovery of money;
- (c) \$10,000 in respect of land disputes;
- (d) \$2,000 in respect of seizures under the revenue laws;

- (e) \$20,000 in respect of the Chief Magistrate and Stipendiary Circuit Magistrates in civil proceedings;
- (f) \$10,000 in respect of Circuit Magistrates in civil proceedings;
- (g) \$1,000 in respect of the transfer of small cause claims from the Magistrates' court to the Supreme Court;
- (h) \$10,000 in respect of the removal of a small cause claim from the Supreme Court to the Magistrates' court;
- (i) \$100 in respect of an appeal in matrimonial or civil matters heard by Magistrates;

The maximum penalties will now be amended as indicated below:-

- (a) fees payable in civil proceedings and sums recoverable for compensation to \$1,500 in each case;
- (b) a Magistrate may impose for non-compliance with his requisition to 6 months or \$1,500.00;

(c) per diem penalty which may be imposed by a Magistrate for non-compliance to \$50.00;

(d) value of a person's tools and implements of trade which may be taken under distress issued by a Magistrate to \$1,500.00;

(e) compensation for loss of time of parties and witnesses attending for proceedings before a Magistrate's court and Attorney costs to \$1,000.00;

(f) costs by way of a lump sum which may be awarded to \$500.00;  
and

(g) court and officer's fees payable in respect of civil proceedings.

The broadening of the jurisdiction of the Magistrates Court is intended to rebalance cases between the Supreme Court and the Magistrates Court in order to relieve the volume of minor disputes from the calendar of the Supreme Court. As we would know – the magistrates court is in many instances the primary court for

many civil and criminal cases, and especially in civil matters operates more of a small claims court. The jurisdictional limits we seek to increase have not been adjusted in many years and the operation of society has outpaced these limits. We look to rebalance the jurisdiction of the magistrates court to be able to serve its intended purpose, but in the context of today's society. This would in turn free up the calendar of the Supreme Court to hear more serious matters in what should be a more expedited calendar.

The Supreme Court of The Bahamas, created by Article 93(1) of the Constitution, is the reincarnation of the Court that was first established by the Supreme Court Act of 1896. The Supreme Court has unlimited jurisdiction in general, civil and criminal matters.

## **Evidence (Amendment) Bill 2022**

The intent behind The amendment of the Evidence Act (Ch. 65) is to provide for a better framework for remote court hearings to better allow for the administration of justice utilizing modern technology. During COVID we saw the transformation of court matters to a virtual setting, and by all accounts it operated rather well.

In the interest of providing a framework for the continued administration of justice, the following is proposed by this Bill:-

- (a) removes all references to “live television link” and replaces them with references to “video link”;
- (b) inserts a new definition of “video link”;
- (c) repeals and replaces sections 78A to 78C;

(d) repeals and replaces the Schedule containing the amended Rules applicable to the giving of evidence by video link in criminal proceedings.

The ability to give evidence by way of video link will be available to children, the elderly and other vulnerable witnesses, and will now include any other witness whose evidence is likely to be diminished, because of fear or distress in having to physically testify in person in a court. A witness, who falls under any of the above categories, may testify by video link with the court's permission or on the court's own motion.

In the current Act, only witnesses, who were outside The Bahamas or were on an island in The Bahamas other than the island in which the proceedings were being held were able to give evidence by television link. With this amendment, witnesses may



give evidence by video link whether within or outside The Bahamas.

The Bill also seeks to amend the circumstances in which an accused person may testify by video link, by making it possible for him to so testify if he conducts himself in such a way as to render the continuation of the proceedings in the physical space of a court impracticable, rather than where the continuation of the proceedings in court is impossible, as in the provisions to be repealed. This amendment accords with the provisions of Article 20 (2).

The overarching goal of these amendments are to provide the opportunity for evidence by way of video link when the circumstances make it difficult for in person testimony and thus

removing an impediment to the delay in the administration of justice, especially in difficult cases.

### **Criminal Procedure Code (Amendment) Bill 2022**

This is the companion to the Evidence (Amendment) Bill. It repeals references to “television link” in the principal Act and replaces them with references to “video link”. It also sets out that the right of a person accused of a criminal offence to defend himself in person or by a legal representative as provided in Article 20(2)(d) may be exercised in a trial by way of video link. It further provides that an accused person can only be tried by video link with his consent, or by the court’s direction where he has so conducted himself as to render continuance of the trial in court impracticable; and further where, in the opinion of the court, the interest of justice so requires.

Obtaining the consent of the accused is vital as there are scholars and arguments who would say by applying it without requesting consent of the accused may present multiple constitutional challenges.

### **The Juries (Amendment) Bill 2022**

This Bill proposes to remove the requirement to publish the approved list of jurors in the daily newspapers. It substitutes the Judiciary's website for the Government's website as a place for publication of the approved list. The Bill further seeks to provide that the approved list must contain the full name of each prospective juror and his date of birth. It also provides for persons aggrieved by the inclusion of their names on the approved list to apply to the Registrar for exemption from, or disqualification for, jury service.

The reason for this amendment is twofold – firstly the associated costs with publication of lists in the newspaper is rather costly and onerous. Secondly, it is a move to better protect the identity and address of potential jurists.

The above Bills have been shared with the Chief Justice and he fully supports them and amendments. In fact, he has stated that these bills introduce transformative reforms. That the package of legislation would represent the single largest legislative intervention by a Government in the Bahamas in the administration of justice in many decades. The draft Bills were also circulated to the Bar Association and the wider Bar for consultation. As mentioned, we have a commitment to the effective administration of justice on an ongoing basis and these are legislative steps in the right direction.

## **Other Proposed Reforms**

As indicated earlier, there are other reforms that can be made outside of the legislative approach that has an impact on the administration of justice. For the benefit of transparency and updating Bahamians I would like to highlight some initiatives that are underway.

The OAG and its related institutions such as the DPP and the Public Defender also must work more efficiently within the courts in order to ensure justice is administered efficiently and effectively. To that end I am pleased to announce that we have approval to acquire and put in place an integrated case management system that will be able to monitor and electronically case manage all of the civil and criminal actions in which we are a part. This will create significant efficiencies in how we administer case matters compared to the current paper

file case management internally. This new integrated case management system will be able to speak with the system being put in by the Chief Justice for the judiciary and allow seamless electronic interaction of calendars, court documents and filings and other communication and coordination. This was one of the primary needs identified by my litigation team upon becoming attorney general and I am pleased to say we have secured this much needed case management platform.

Additionally, to leverage the administration of justice in our family of islands, the Chief Justice and myself have committed to build out the remote court system throughout the country. We have committed to secure the necessary IT equipment and facilities to allow for remote hearings and eliminate the need for magistrates to travel the island to have circuit courts. This will go a long way to addressing the delays and backlog in court

matters throughout the country. This is a program we are currently engaged in and hope to be able to roll out the remote court matters in the family islands within months, save for supply chain challenges.

### **More to Do**

Although we all agree these are positive legislative initiative, I think it important to emphasize that the advancement of the efficient and effective administration of justice cannot fully be accomplished by the executive, or the legislature although we will do everything we can. The judiciary and the private attorney practitioners also need to take some responsibility. A recent study and trend analysis has demonstrated that the average duration of proceedings is approximately 211 days. Of this it takes on average 96 days for preparation for the proceeding, 35 days for the hearing and 80 days to receive a judgment. These timelines

MUST be reduced to advance the effective administration of justice.

Private Practitioners – Private practitioners have a responsibility to advance matters in a proper and expeditious manner. Feedback received would suggest that private practitioners draw out court matters unnecessarily, and I think the timeframes for concluding hearings is evidence of that. A 96 day average to prepare for hearings seems rather unreasonable as an average, matters should be prepared and ready for trial much quicker and I ask the Bar and private practitioners to take some responsibility in this regard. You have an obligation as well.

Judiciary – As indicated, the average days for a hearing is 35 days. The Prime Minister only this week just spoke to me about this matter and how when he was an earlier practitioner he would do



a trial in 2 to 3 days, when the same matter these days are taking weeks. This is a function of both the private practitioners drawing these matters out, but also we need the judiciary to take control of their courts and advance a disciplined and efficient trial or hearing.

We also take note that the average amount of days to receive a judgment after the hearing is 80 days. This is far too long to wait for a judgement, it creates frustration, inefficiencies and has adverse impacts on the economic and commercial development of the country. During the Opening of the Legal Year I would have stated that one area that would facilitate the perceived and actual efficiency of the administration of justice would be a renewed focus on the delivery of judgements in a timely fashion. I reiterate this position.

There is a legal maxim that says, 'Justice delayed is justice denied'. This means that cases should be heard without unnecessary delay, as to do otherwise leads to great injustice. 80 days is an average, so there are many cases that wait on judgements for far more than 80 days. This is a key component of the judiciary's commitment to effective and efficient administration of justice.

I thank you for your indulgence and hereby move for the second reading of what I term the compendium of judicial bills.