

REPORT OF FAMILY COURT SYSTEM COMMITTEE

dated 31 August, 2008

The Family Court System Committee was appointed by Chief Justice Sir Burton Hall in May of 2008. Its mandate was to explore and propose immediate practical solutions for family matters as they are presently administered by the court system and also to consider the extent to which limitations of space and insufficiency of appropriately trained support staff adversely affects the disposition of family matters.

Appointed to this committee were:

Justice Rubie M. Nottage
Chairperson

Mrs. Ruth Bowe-Darville
Vice President Bahamas Bar Association

Chief Magistrate Roger Gomez
Family Division, Magistrate's Courts

Mrs. Marilyn Meeres
(Acting) Deputy Registrar
Family Division, Supreme Court Registry

Ms. Sherece V. Gibson
Chief Counsel & Draftsman,
Office of the Attorney-General

Mrs. Grace Bestwick - Co-opted Member
Supreme Court Listing Officer

THE FAMILY COURT SYSTEM

Prior to the establishment of the present Committee in May of 2008, Chief Justice, Sir Burton Hall had opined in May of 2003 on the need for reform of the family court system when he stated,

"It is a given that the functioning of all organs of the State must be continually examined for their responsiveness to the societal needs which they were intended to meet, and, as necessary, the operations of these organs should be reformed and refined to better achieve their intended purpose. The administration of justice is one such organ and the proposals now advanced ... are intended to reflect an integrated ideal of addressing, at the several levels, the legal system in its entirety with a view to developing an organism, which meets the ideals of: 'Impartiality, Competence, Efficiency and Effectiveness' in service to citizens and residents of The Bahamas and such persons as we invite to visit or invest here.¹"

¹ Hall, Burton P.C., "Legislative and Organizational Proposals for Enhancing the Administration of Justice", May, 2003 (as revised 2006).

The Committee was, more specifically, called to address the creation of special procedural tracks within a family court system so that, while a matter would be required to be initiated in a proper court, as prescribed by the Rules Committee ..., that matter or any part of it may be referred by the presiding judge to the court at another level along the track without the parties having to initiate a new application. These tracks would remain open in either direction until the matter is finally disposed of.

The need for the creation of these special procedural tracks arises from an acute awareness that within the family court system there are ancillary matters in which parties find that the several issues in the same dispute require the intervention of different courts. It has been found expensive and inconvenient for parties to have to initiate claims in different courts for jurisdictional and procedural reasons. The case studies presented in this Report describe some of the experiences which parties have had in seeking to traverse these different courts in their effort to find resolution of their individual matters².

The Committee has during the past three months intently considered the present Court System as it pertains to family matters and humbly proffers the proposals contained herein for the consideration of both the Supreme Court Administration and the Government of The Commonwealth of The Bahamas.

A. THE FAMILY COURT SYSTEM PRESENTLY (2008)

Before this report addresses what the Honourable Chief Justice has referred to as 'the family court system' as it presently exists, it is perhaps wise to first digress into a brief discussion of what defines a 'court system', and what comprises that body of law called 'family law' which we now set about undertaking to place into that 'court system'.

I What defines a court system?

Noted legal scholar, Joseph Raz, has opined that the three most general and important features of law in a legal system, is that it is normative, institutionalized and coercive³. Professor Raz goes on to state that, "It is normative in that it serves, and is meant to serve, as a guide for human behaviour. It is institutionalized in that its application and modification are to a large extent performed or regulated by institutions. And it is coercive in that obedience to it, and its application, is internally guaranteed, ultimately, by the use of force."

² See pages 7-9 of this Report

³ Raz, Joseph, *The Concept of a Legal System. An Introduction to the Theory of Legal System*, Second Edition, Clarendon Press, Oxford, 1997, @ p. 3.

If we are then to place what is commonly known as 'family law' into a 'court system', it would be the business of a family court system to ensure that 'family law' where-ever and when-ever practiced possesses these most general and important features of being normative, institutionalized and coercive.

The legal system as presently constituted in The Commonwealth of The Bahamas is plagued with a plethora of statutes which fall to be administered in the sphere of 'family law'. Separate jurisdictional arenas for the Magistrates Court or the Supreme Court increase the complexity of applications made to either. Frustration of the applicant is only compounded where the contours of our archipelagic geography necessitate the existence of Circuit Magistrates and Island Administrators who are called on to administer 'family law' disparately.

In the United Kingdom, the Law Commission for reform of its family law system, has said that one of its principal aims was to remove unnecessary distinctions between different courts and where possible give them uniform powers within a framework that contains common principles and procedures with a standard test.⁴ It would indeed be desirable that such an aim be also embraced by the Law Reformers of our Commonwealth, thus providing greater flexibility in Supreme Court and Magistrates Court processes and improved access to the 'system' of justice.

A family court system as thusly envisaged would become more 'user friendly' and exhibit a more appropriate functionality whereby family law would then be freed to pursue the goals of being:

- Protective - to guard members of a family from physical, emotional or economic harm;
- Adjustive - to help families which have broken down to adjust to new lives apart; and,
- Supportive - to encourage and support family life.⁵

Presently, both the Magistrates Courts and the Supreme Court, Family & Divorce Division, construct the business of the administration of justice with respect to 'family matters' within a broad framework as set forth in more than 20 distinct pieces of substantive or subsidiary legislation.⁶ For example, the Magistrates Court has

⁴ The Law Commission: "*Family Law: The Ground for Divorce*", Law Commission No 192, (UK).

⁵ Eekelaar, J., "*Family Law and Social Policy*", London: Weidenfeld & Nicholson, (1984), @ p. 24-26.

⁶ In particular, these are listed as follows:

- (i) The Constitution of the Commonwealth of The Bahamas;
- (ii) The Supreme Court Act, Chapter 53;
- (iii) The Magistrates Act, Chapter 54;
- (iv) The Marriage Act, Chapter 120;
- (v) The Marriage Rules (subsidiary), Chapter 120
- (vi) The Matrimonial Causes Act, Chapter 125;
- (vii) The Matrimonial Causes Rules (subsidiary), Chapter 125;
- (viii) The Matrimonial Causes (Summary Jurisdiction) Act, Chapter 126;
- (ix) The Status of Children Act, Chapter 130;
- (x) The Legitimacy Rules (subsidiary), Chapter 130;
- * (xi) The Children and Young Persons (Administration of Justice) Act, Chapter 97

jurisdiction to award a decree of legal separation⁷, maintenance⁸, custody⁹ and paternity¹⁰ pursuant to the relevant governing legislation; but it is the purview of the Supreme Court only to award decrees of divorce¹¹, judicial separation, and nullity with subsequent orders for ancillary matters such as property adjustment¹², maintenance¹³, guardianship and custody¹⁴, adoption¹⁵, wardship¹⁶ and paternity¹⁷.

Within the jurisdictions promulgated by legislation, applications are made,

A. **To the Supreme Court** under the provisions of the Matrimonial Causes Act, Chapter 125, for:

- Petitions for divorce, judicial separation, and, nullity;
- Applications relating to Children for Custody, Guardianship, Wardship and Paternity;
- Applications for Financial Relief for Property adjustment, Attachment of Earnings, Maintenance or Willful neglect;
- Procedural Applications pursuant to the Matrimonial Causes Rules; and,
- Other Applications for Protection, and the Discharge or Variation of Existing Orders.

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- * (xii) The Child Protection Act, No. 1 of 2007 (which is not yet in force);
 - (xiii) The Adoption of Children Act, Chapter 131;
 - (xiv) The Supreme Court (Adoption of Children) Rules (subsidiary), Chapter 131;
 - (xv) The Guardianship and Custody of Infants Act, Chapter 132;
 - * (xvi) The Affiliation Proceedings Act, Chapter 133;
 - (xvii) The International Child Abduction Act, Chapter 137;
 - (xviii) The International Child Abduction Rules (subsidiary) Chapter 137;
 - (xix) The Mental Health Act, Chapter 230;
 - (xx) The Rules of the Supreme Court (Order 52 Committal), (subsidiary) Chapter 53;
 - (xxi) The Inheritance Act, 2002, Chapter 116;
 - (xxii) The Sexual Offences and Domestic Violence Act, Chapter 99;
 - (xxiii) The Domestic Violence (Protection Orders) Act, No. 24 of 2007, (which is not yet in force);
 - (xxiv) The Reciprocal Enforcement of Judgments Act, Chapter 77;
 - (xxv) The Rules of Court (Reciprocal Enforcement of Judgments) (subsidiary), Chapter 77;
 - (xxvi) The Penal Code Act (s.256 - Binding-over Orders), Chapter 84;
 - (xxvii) The Habeas Corpus Act, Chapter 63.

*The Child Protection Act No. 1 of 2007 will repeal The Children and Young Persons (Administration of Justice) Act, Chapter 97, The Affiliation Proceedings Act, Chapter 133, and The Guardianship and Custody of Infants Act, Chapter 132.

- ⁷ See Matrimonial Causes (Summary Jurisdiction) Act, Chapter 126.
- ⁸ See Matrimonial Causes (Summary Jurisdiction) Act, Chapter 126.
- ⁹ See Matrimonial Causes (Summary Jurisdiction) Act, Chapter 126.
- ¹⁰ See Affiliation Proceedings Act, Chapter 133.
- ¹¹ See Matrimonial Causes Act, Chapter 125.
- ¹² See Matrimonial Causes Act, Chapter 125.
- ¹³ See Matrimonial Causes Act, Chapter 125.
- ¹⁴ See Guardianship and Custody of Children Act, Chapter 132.
- ¹⁵ See Adoption of Children Act, Chapter 131.
- ¹⁶ See Guardianship and Custody of Children Act, Chapter 132, and ,
The International Child Abduction Act, Chapter 137.
- ¹⁷ See Status of Children Act, Chapter 130.

B. **To the Magistrate's Court for:**

- Legal Separation;
- Applications relating to children for legal custody, Access, paternity, and for Beyond Control/Uncontrollable children;
- Applications for financial relief/ maintenance; and
- Other applications

"Family matters" are not defined by statute but they can be generally said to comprise 'any cause, matter or legal proceeding,

- in connection with or arising out of matrimonial or other domestic relationship between different sex couples; or
- concerning the welfare, maintenance, guardianship, paternity, custody of or access to children.'

The principal aim of the creation of a family court system would thus focus on an attempt to fill the gaps and inadequacies of the legal system as it relates to 'family law' matters¹⁸. Such a system would recognize within its jurisdictional limits the needs of the local family, in its context, and would seek to develop an indigenous jurisprudence that is reflective of those needs.

To this end it could be said that national policy might dictate that the family court system focus on prevention through guidance and counseling to help family units *before* their problems develop into irremediable breakdown¹⁹. Given this policy directive, such a court system would have an obvious multi-disciplinary approach, seeking to incorporate both legal and social services into its daily operations. Its main objective would then be the prevention of the breakdown of the family unit and the protection of the welfare of the members of the family, especially children. Thus would have been achieved a family court system which not only satisfies the objectives of a 'legal system' but also embraces a philosophical approach to the resolution of 'family matters' that can only inure to the benefit of the nation as a whole.

II **What, then, is family law?**

Firstly, it must be admitted that the notion of a 'family' is notoriously difficult to define. The so-called 'nuclear family', a father, a mother and two children, is not the family form that most people will have experienced within our Commonwealth of The Bahamas. West Indian jurists have long ago opined that the English legal system as

¹⁸ Increasingly family relationships are mediated and constructed through such diverse areas of law as competence and compellability in evidence law, contractual capacity, inter-spousal immunity; and inequality or discrimination in employment law, immigration law, and in some countries, taxation. In many of these areas, the Constitution plays a key role.

¹⁹ Antoine, Rose-Marie Belle, "*Commonwealth Caribbean Law and Legal Systems*", Cavendish Publishing, London, 1999, @ p. 259.

imported to the Colonies, "... makes no concessions to the Negro family structure ... it insists upon principles out of touch with social facts and customarily ignored."²⁰

The term 'family' within our context is of limited legal significance for although much effort has been placed on the definition of 'marriage', 'parent' and 'parenthood', relatively few cases define 'a family'²¹. A function-based approach²² to providing a definition will focus on what a family *does* rather than what a family *is*. Thus, the law might describe the functions of a family as: providing security and care for its members; producing children; socialising and raising of children; and providing economically for its members. This functional description of 'family', occludes well with the above-mentioned objective of a family court system as being concerned for the prevention of the breakdown of the family unit and the protection of the welfare of the members of the family, especially children.

As with the term 'family', there is no accepted definition of 'family law'. Family law is usually seen as the law governing the relationships between children and parents, and between adults in close emotional or intimate relationships. With this focus in mind, family law and family court approaches focus on persons who are in a marital and marriage-like relationship. Such law is optimally characterized by conciliation, protection and administration of that group of people in their daily practicalities and their contribution to society²³. It is not only normative and institutional but also coercive. Generally speaking, therefore, 'family law' might more accurately be described as the law that governs the breakdown and consequences of marital and marriage-like relationships. It has been stated earlier that anthropologists and sociologists have found great difficulty in defining the Caribbean family. Labels and typologies often reflected their Euro-centric assumption that families were nuclear, based on a co-residential conjugal union with all members living in the same household²⁴. Family law, as received from the common law of England to its Colonies in the English-speaking Commonwealth, has thus been widely acknowledged as viewing the 'family' through the lens of the 'nuclear family' and 'marriage'.

²⁰ Patchett, K. W., "Some Aspects of marriage and divorce in the West Indies", (1959) 8 ICLQ 632. An excellent sociological analysis of the failure of the Church to impose its views of 'family' in a West Indian context is given in Christine Barrow, "Living in Sin": Church and Common Law Union in Barbados", (1995) 29(2) *Journal of Caribbean History* 47.

²¹ A four-fold typology of family patterns in the Caribbean which has been accepted by many anthropologists and sociologists is as follows: (a) Christian family: patriarchal domestic units based on legal, Christian marriage; (b) Faithful concubinage: patriarchal domestic units based upon a union which is neither legally nor religiously sanctioned; (c) Maternal or grandmother family: female headed households containing women, children and grandchildren; (d) Keeper family: cohabiting unions of less than three years duration, or 'visiting relationships'. See discussion in, "Family in the Caribbean. Themes and Perspectives", Christine Barrow, 1996, Ian Randle Publishers, Kingston, @ pps.55-64.

²² Herring, , Jonathan, "Family Law", Pearson, Longman Press, Harlow, U.K., Third Edition, 2007, @ p.3

²³ Herring, Jonathan, *Ibid*, @ p.3

²⁴ Barrow, Christine, "Family in the Caribbean. Themes and Perspectives", 1996, Ian Randle Publishers, Kingston, Jamaica, @ p.64.

It is, therefore, not surprising that the statistics gleaned from the Supreme Court Registry of The Commonwealth of The Bahamas deal principally with the breakdown of marriage through the number of applications made for divorce during a given period. These statistics show a dramatic and steady rise in the number of divorces filed from the year 1983, when the Matrimonial Causes Act, Chapter 125, came into operation. 287 divorces were filed in 1983, and ten years later, by the year 1993, 612 new divorce applications were recorded as having been filed²⁵. By the year 2003, the total number of recorded divorces in New Providence alone topped 653 cases. This rise is due no doubt to the increase in the grounds of divorce which the enactment of the Matrimonial Causes Act, Chapter 125, gave by including 'cruelty', 'desertion for more than 2 years', and 'separation for more than 5 years' as additional grounds to that of 'adultery'. The statistics also interestingly show that the grounds of 'desertion', 'cruelty' and 'separation' far outstrip the ground of adultery as preferred grounds on which to commence suit²⁶.

Statistics for the period 3rd January 2006 to 29th October, 2007²⁷, reveal that during the relevant period the number of new cases filed for divorce totaled 1,289, each of which would also have had some form of 'ancillary matter' that required further hearing and resolution. These ancillary matters may require Orders for maintenance, custody, property adjustment and may in turn, over the passage of time, require variation, enforcement or committal for contempt of court. It is in the processing of these categories of ancillary matters that parties find that the several issues subsequent to the dissolution of a marriage require the intervention of different courts both before and after divorce.

Case Study A

We shall use as a practical example, a couple living on one of our Family Islands, whose marriage breakdown began to exhibit itself by various forms of violence or abuse, physical and verbal, one to the other.

The court of first resort was the Magistrates'/Administrator's Court where, on its Domestic Side, the Court granted the following relief:

- a legal separation pursuant to s. 13 of the Matrimonial Causes (Summary Jurisdiction) Act, Chapter 112;

²⁵ See Chart at Appendix A herein.

²⁶ An interesting study by Mindie Lazarus-Black, "*Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda*", (1994), Ph.D. Dissertation, University of Chicago, @ p. 181 has indicated that, "Attorneys and their clients (in Antigua and Barbuda) generally find it 'better', 'neater', and 'cleaner' to apply for divorce on the grounds of desertion. In short, the statistics proving that desertion is the chief cause of divorce in Antigua are a function of statutory rules of evidence, of legal procedures, and of the local norm that proscribes discussions about intimate relations in public."

Ms. Lazarus-Black, *Ibid*, @ p. 183, quotes an Antiguan attorney-at-law as stating, "So we as lawyers have to impose a more modern viewpoint onto an archaic legislation. So, as lawyers, we press, stretch, and pull, if the marriage is irretrievably broken down, to find a way to pigeonhole it. And the judges, God bless them, they go along with this farce."

²⁷ See Appendix B herein

- an Order pursuant to s. 35(3)(1) of the Domestic Violence Act, 1991, that one of the parties be required to leave the matrimonial home; and,
- an Order pursuant to s. 256 of the Penal Code, Chapter 84, that one of the parties be bound over to keep the peace towards the other.

The enforcement of each of these three (3) Orders of the Magistrate becomes an issue of concern should one of the parties further obtain a divorce in the Supreme Court with an Order relative to maintenance and custody of children, and/or a property adjustment order. Three (3) courts are available to this couple - the Magistrate's Court in New Providence; the District Administrator's Court in the particular Family Island, and the Supreme Court in either New Providence or Grand Bahama.

The difficulty which arises, however, over jurisdiction can be evinced when one considers that while a Justice of the Supreme Court can vary an Order granted by the Magistrate, the reverse is not possible.

Where the jurisdiction permits, *pro se* access lies only to District Administrators and Circuit Magistrates, while Supreme Court access is available only by engagement of legal counsel. Thus travel and time to New Providence or Grand Bahama, and the engagement of legal counsel, will prove an expensive and frustrating experience for most applicants who may well decide, for monetary reasons, that it is just too time consuming, costly and frustrating to pursue the matter any further when faced with additional costs of legal fees, accommodation while in Nassau/Freeport, and transportation to and from the city.

Case Study B

As an archipelagic nation, more needs to be done to accommodate persons who have to move from island to island in search of legal redress.

Mr. and Mrs. X appeared in Magistrate's Court in Freeport, Grand Bahama. A legal separation was granted and Mrs. X was granted custody of the children with a Court Order that Mr. X pay to her \$100.00 dollars maintenance for the children per week. Shortly after the trial the parties separated and Mr. X moved to Nassau to find employment. He then started to miss his payments of \$100.00 dollars per week.

After trying with great difficulty to locate her husband, Mrs. X was able to bring him to Magistrate's Court in Nassau for the arrears. He was made to pay the arrears, by Order of the Court, but he lost his job and with the opening of a new hotel in Exuma he moved there in search of employment. After waiting for months for the Circuit Magistrate, Mrs. X was able to bring him back to Court for the arrears. Mr. X was ordered to pay \$1,500.00 dollars immediately and the remainder of \$4,500.00 by 16th November, 2008.

It is not difficult to imagine the further complexity Mrs. X would have occasioned should she have petitioned for a divorce in the Supreme Court and on obtaining a decree of

dissolution, find that the \$6,000.00 dollars in Magistrate's Court arrears were not even a part of the Supreme Court Order, thus allowing Mr. X to escape those arrears.

Case Study C

In this case study, a Supreme Court Order of custody was given on 4 January of 1996, whereby on dissolution of the marriage, the children of the marriage were placed in the care of their mother.

In June of 2006, a report was made to the child Protective Services Unit of the Department of Social Services ('Social Services') by one of the children ('BX') that she was being abused by her mother (Mrs. X). A welfare officer at Social Services investigated these allegations on the same day and BX was temporarily placed in Mr. X's custody in June of 2006.

Social Services went before the Chief Magistrate on 5 September, 2006, and obtained a Fit Person's Order pursuant to s.58 of the Children and Young Persons (Administration of Justice) Act, Ch. 97. It was found out later that Social Services should have returned to the Supreme Court to vary the Supreme Court Order of 4 January, 1996. However, the 5 September, 2006, Order, (granted in the Magistrate's Court) placed BX in the custody of the Minister of State for Social Development ('the Minister') for 6 months. Social Services placed the minor with her father even though the order was in the name of Social Service. During this period, BX did not see Mrs. X, and in fact BX refused to do so.

On 17 March, 2007, the Magistrate's Order was renewed by the Chief Magistrate. A Supreme Court Order of 3 August, 2007, provided for BX to have three supervised visits with Mrs. X. On 30 July, 2007, a psychiatric evaluation conducted by the Community Counseling & assessment Centre concluded that Mr. X had no psychiatric problems or illnesses. However, a similar psychiatric evaluation conducted on Mrs. X at Sandilands concluded that she had some psychological impairment.

The father of the child brought his own Supreme Court Summons dated 22 February, 2008, seeking to vary the initial Supreme Court order dated 4 January, 1996, because he wanted full custody of the child. The Office of the Attorney General ('the AG's Office') was joined in the proceedings by an order made by the Chief Justice, and on an application by the AG's Office, an interim order was granted by the Chief Justice that BX remain in the custody of Social Services until the determination of the substantive matter.

On 14th April, 2008, the Chief Justice made a further order granting custody of BX to her father for a three-month period with access to her mother provided that she attended counseling sessions. The Chief Justice requested a Social Service's report. On the 12 August, 2008, the Chief Justice by an order granted outright custody of BX to her father.

Observation: An efficient system of tracking, utilized at both the Magistrate's Court and the Supreme Court levels would have assisted the two Courts and the Social Services Department in the proper administration of this matter.

THE COMMITTEE'S PROPOSALS

1.0 The Family Court of Trinidad & Tobago - a useful model

The Committee was privileged to be permitted to travel to Trinidad & Tobago in order to view at first hand the operation of the Family Court in that jurisdiction. It was a truly enlightening experience! While the Family Court of Trinidad & Tobago is still a pilot project, it is interesting to note that The Family Court of Trinidad & Tobago describes itself as 'an institution unlike any other', ... its philosophy being ... 'to encourage the parties to resolve their family disputes themselves, with specialist assistance and support where ever necessary'. It is this Family Court system that this Committee considers worthy of replication and from which our proposals have in great part been fashioned for it provides an excellent stand-alone model of a family court system in action against which we might seek to offer a critique of our own 'system' and its current challenges as outlined in the Committee's mandate as set out above.

A recently constructed brochure of The Family Court of Trinidad and Tobago states that, "It is the intent of the Court to administer justice in family matters in a manner that is less adversarial and more conciliatory. The purpose is to provide families with support while they seek solutions. For some, this will mean counseling, for others a process of mediation where alternatives can be considered. The focus is placed on finding solutions rather than on conflict. The objective is to encourage parties to formulate their own outcomes when possible, but with the understanding that the Court will keep the process moving and will make decisions when necessary. It is a system, which adopts a holistic approach to resolving family disputes and embraces legal, psychological, social and material issues."²⁸

The entire administration of the Family Court is geared to achieve its stated objective. We would see no reason why this approach cannot be also embraced as a useful model for the operation of the family court system in the Commonwealth of The Bahamas. It is in this regard that the following proposals are made.

²⁸ The Family Court of Trinidad and Tobago, "A New Approach ..." August, 2008.

2.0 The Family Court of The Bahamas - a hybrid family court system

- 2.1 **Proposal:** That there be created a 'hybrid' family court system.
- 2.2 Historically, the Supreme Court of The Commonwealth of the Bahamas is a creature of the Constitution,²⁹ and is by statute made up of several 'Divisions', one of which is the Divorce and Matrimonial Causes Division³⁰, all subsisting within the unified jurisdiction of the Supreme Court. This jurisdictional restriction establishes that no Court can be established as a superior court of record, with high court jurisdiction, outside the Supreme Court unless constitutionally directed.
- 2.3 Given this jurisdictional restriction, a 'hybrid' family court system would bring the Divorce and Matrimonial Causes Division of the Supreme Court and the Family Division of the Magistrates' Court under one jurisdictional nexus whereby the jurisdiction conferred on the High Court to enforce Orders will, by means of Family Court Rules, be appropriated to the Magistrates' Court in order to enable that court to administer and enforce family matters, with the same jurisdictional capability as the High Court.
- 2.4 The hybrid nature of the family court would then be most clearly evidenced by the creation of special procedural tracks within the family court system so that, while a matter would be required to be initiated in a proper court, as prescribed by the Rules Committee, that matter or any part of it may be referred by the presiding judge/magistrate to the court at another level along the track without the parties having to initiate a new application. These tracks would remain open in either direction until the matter is finally disposed of.
- 2.5 Thus, while certain matters such as divorce must always be initiated in the Supreme Court, ancillary matters such as the enforcement of maintenance arrears, injunctions, and committals, will be simultaneously available to parties in the Family Court by special procedural tracks within the family court system so that,
- A Magistrate/Administrator may be given jurisdiction to enforce the Supreme Court Order by reference from the Judge of the Supreme Court, and, similarly,

²⁹ See section 93(1) of the Constitution which states that "There shall be a Supreme Court for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law."

³⁰ Section 3 of the Supreme Court Act, Chapter 35, states that, "From the commencement of this Act, the several courts hereinafter mentioned, that is to say, the General Court, the Court for Divorce and matrimonial Causes, the Court having jurisdiction in Bankruptcy (hereinafter called the Court of Bankruptcy), the Court of Ordinary, the Colonial court of Admiralty and the Court of Common Pleas shall be united and consolidated together and shall constitute under and subject to the provision of this Act a Supreme Court of Judicature for The Bahamas called "The Supreme Court of the Bahama Islands".

- A Magistrate/Administrator **by reference** to a Judge of the Supreme Court for an 'expedited hearing' of any matter with which he has been charged.
- Matters brought before a Magistrate/Administrator for 'expedited hearing', must have a history or pre-condition - such as substantial arrears, inability to easily locate other party, inability to afford counsel - which necessitates the application of this 'extra-ordinary' jurisdictional capability.

This 'hybrid' jurisdictional capability will remain open in both directions without the parties having to initiate new proceedings in one or other court.

Such a jurisdictional capability will necessitate the proper level of legally trained persons to act as Magistrates/Administrators.

Furthermore, a highly skilled staff will be required to facilitate the process of request for an 'expedited hearing' as mentioned above and the subsequent enforcement of a judge's order at the magisterial level. These innovations will clearly require both procedural rules and legislation in order to establish and clarify their implementation.

Our Case Study 'C'³¹ would be an obvious beneficiary of this unique Family Court jurisdiction. Tracking would be the responsibility of the Family Court Administration which would require a re-vamping of the Family Court Registry and the initiation of a new internal process flow for entry into and progress through the system as outlined in sections 3.0 to 8.0 below.

- 2.6 The **hybrid** nature of the family court system whereby the two jurisdictions are brought into one legal framework will thus permit a family court to operate in an independent manner with regard to its process flow and administration, within the present constitutional jurisdiction of the Supreme Court, but with the unnecessary distinctions between different courts removed and, where possible, to be given uniform powers within a framework that contains common principles and procedures with a standard test.
- 2.7 In putting forth this proposal for the creation of a 'hybrid' family court system, the Committee is aware of the constitutional inability of the present Supreme Court system to entertain a family court jurisdiction separate from its own. This is a basic difference from the Family Court of Trinidad & Tobago which has by statute, been given its own separate and distinct jurisdiction and Family Proceedings Rules to govern its process and procedures³².
- 2.8 Nevertheless, the proposal as outlined above would allow a '**unified family court system**' to develop within the present 'Divorce and Matrimonial Division' of the Supreme Court, maintaining the constitutional jurisdiction of a superior court of

³¹ See p. 9 above

³² See *The Family Proceedings Rules, 1998, Trinidad & Tobago*, as amended 2004.

record, yet structured so as to operate internally without unnecessary distinctions between different courts, except jurisdictionally, and to permit within its internal operation, its own peculiar dedicated process flow, Judges' teams, mediation and social services units, day care & youth services, budget, administration and support staff as further explored below³³.

2.9 Our proposal that the family court system be '*unified*' seeks to address the need of families, such as that given in Case Study A above³⁴, who suffer when the court systems that address their legal problems are fragmented, leading to unnecessary delays in adjudication and services, different courts issuing conflicting orders, expensive counsel costs, failure to protect persons at risk of domestic violence and possibly even failure to address substance abuse and addiction.

2.10 Furthermore, a unified family court system will provide an environment which is more conducive to treat the effects of high-conflict family disputes on children. There is widespread agreement that children benefit from low-conflict relations between their parents.

Research has shown that where children are also involved in families where parents are in high conflict family litigation, such children are more likely than their peers to have lower academic performance, social achievement, and psychological adjustment than children with low conflict parents. Children involved in high conflict family disputes are more likely to experience depression, antisocial behaviour, impulsive/hyperactive behaviour, and school behaviour problems. Moreover, research shows, children exposed to parental violence are more likely to assault their siblings and parents, commit violent crimes outside the family, and assault their own intimate partners than children who have not witnessed violence between their parents.

A unified Family Court system is an imperative that no violence-prone society can easily reject. Its objectives are closely aligned with the need to bring coherence and healing to families in conflict, and to stem the increasing prevalence of marital disintegration and its damaging consequences.

3.0 The Family Court - An Independent Internal Process Flow

3.1 **Proposal:** That there be created within the '*hybrid family court system*' as explored above, an independent internal process flow for applicants who seek the court's assistance in their family matter. Such an internal process will be governed by an overriding objective³⁵ which seeks to develop an organism that "meets the ideals of

³³ See sections 3.0 to 5.0 and following.

³⁴ See p. 7 above

³⁵ The Family Proceedings Rules, 1998, as amended, of the Family Court of Trinidad & Tobago gives its overriding objective as follows:

1.1 (1) The overriding objective of these Rules is to enable the court

'impartiality, competence, efficiency and effectiveness' in service to citizens and residents of The Bahamas ...³⁶

The following sections (3.2 to 3.7) will set out a proposed internal process flow which is modeled on that found at the Family Court of Trinidad and Tobago. It is highly customer service oriented in order to best serve the applicant who comes seeking assistance from the Family Court.

3.2 Applicants for the Court's assistance are first met by a specially trained **Customer Service Officer** who ascertains the reason for the visit and provides basic information on the Court and its services.

3.3 Should the applicant have an issue to be resolved and want information on the various types of avenues available for conflict resolution, he/she is interviewed by an **Intake Officer** who assesses individual situations and determines the type of service required. The Intake Officer is specially trained in Social Services and cross-trained by the Judiciary.

3.4 Supreme Court Proceedings

3.4.1 Should the applicant want information on Supreme Court Proceedings, they are seen by a **Family Court Registrar**, or a designated senior **Case Management Officer** in the Court Office.

3.4.1.1 Deputy Registrar & Deputy Marshal Assistant Registrar & Deputy Marshal

These officers are responsible for the supervision of the legal and quasi-judicial work of officers operating in the Supreme Court jurisdiction of the Court. They adjudicate on applications made by parties to litigation before and after the trial of

-
- to deal with family matters -
 - (a) justly; and
 - (b) in a way which, in proceedings affecting any child of the family, gives first and paramount consideration to the welfare of that child.
 - (2) Dealing justly with the case includes -
 - (a) ensuring, so far as is practicable, that the parties are on an equal footing and are not prejudiced by their financial position; and
 - (b) encouraging settlement of any disputes by negotiation or mediation or other means; and
 - (c) saving expense; and
 - (d) dealing with cases in ways which are proportionate
 - (i) to the complexity of the issues; and
 - (ii) to the financial position of each party; and
 - (e) ensuring that it is dealt with expeditiously; and
 - (f) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

³⁶ Hall, Burton P.C., "Legislative and Organizational Proposals for Enhancing the Administration of Justice", May, 2003 (as revised 2006).

an action and exercise in relation to such applications the same powers as a Judge in Chambers.

3.4.2 Attorneys-at-Law, their clerks or self-represented litigants come to the counter to file their applications. These documents are reviewed by a **Case Management Officer** at the **Supreme Court Counter** for accuracy and compliance with the Family Court Proceedings Rules and Court policy.

3.4.3 A sequential case file number is given and the documents are passed to the **Listing Unit**, where Case Management Officers schedule a court hearing in keeping with the Family Court Proceedings Rules.

3.4.4 The Documents are passed to the **Data Entry Unit** where an electronic file is created.

3.4.5 Documents for service are passed to the **Marshal's Assistants/Bailiffs Unit**.

3.4.6 The documents are then passed to the **Records Unit**, which prepares a physical file, which is subsequently stored sequentially in the Filing Office/Vault.

3.5 Magisterial Proceedings

3.5.1 Clerk of the Peace

This officer is responsible for the supervision of the legal and quasi-judicial work of officers operating in the Magisterial jurisdiction of the Court.

3.5.2 Should the applicant decide to make an application before the Magistrate's Court, information is taken by a **Case Management Officer** assigned to the **Pro Se Counter Unit**.

3.5.3 A sequential case file number is given and the documents are passed to the **Listing Unit**, where Case Management Officers schedule a court hearing depending on the urgency and type of application;

3.5.4 The documents are passed to the **Data Entry Unit** where an electronic file is created;

3.5.5 The documents are then passed to the **Records Unit**, which prepares a physical file, which is subsequently stored sequentially in the Filing Office/Vault.

3.6 Magisterial and Supreme Court Proceedings

3.6.1 Directions arising out of court proceedings are processed by Case Management Officers in the **Consequential Activity Unit/Monitoring and Notification Unit**. They thus prepare fresh summonses to litigants, warrants, notices to parties and decrees absolute.

3.6.2 Case Management Officers in the **Judgements and Orders Unit** verify all orders, Magisterial and Supreme Court, handed down by judicial officers. This is done via information presented to the unit by **Judiciary Support Officers**, the Judicial Officers' notes and Audio-Digital recordings.

3.7 The Judicial Officer's Team

3.7.1 The Judicial Officer's Team is made up of

- The Judge/Judicial Officer
- The Judicial Support Officer
- The Court Orderly
- The Judicial Officer's Secretary

3.7.2 The **Judicial Officer** is a Judge or Magistrate or Court appointed official who is entrusted with making the important decisions that impact family life. He acts as an impartial official, dispute settler, adjudicator and/or decision-maker. His team assists in effectively carrying out those functions or decisions. It is their duty to ensure the professionalism, timeliness and efficiency needed to aid in the prompt and fair disposition of cases before the Court.

3.7.3 The Judicial Support Officer

The JSO performs highly responsible technical and clerical work for the court's administration and assists the Judicial Officer in the day to day case management functions of the Court in particular, docket management. He/she/ must daily prepare court lists for the Judge/Magistrate; attend court hearing in order to, inter alia,:

- Record minutes of proceedings;
- Administer oaths to relevant parties;
- Draft court orders and submit to relevant authority for approval;
- Prepare court referral forms and dispatch to the Social Services and/or Mediation units;
- Schedule case events when dates are given by Judge;
- Be responsible for the opening and closing of court and meeting rooms before and at the end of the day's proceedings;
- Solicits law enforcement officers if a potentially volatile or explosive situation arises;
- Ensure closure to matters by,

- Drafting final court order of matter and submitting to relevant authority for approval;
- Collating and recording all documents related to specific court matters;
- Informing relevant authorities with respect to order made by the court;
- Returning exhibits to relevant authorities;
- Checks orders submitted by attorneys, and updates Judge's/Magistrate's diary as necessary.

3.7.4 The Court Orderly

The Court Orderly performs work of a routine nature that involves monitoring and controlling the entry of persons to judges and magistrates' chambers as well as attending to them as required both in and out of court. Duties also include locating legal books and cases in the court's library, and copying confidential documents for the judge or magistrate, *inter alia*.

3.7.5 The Judiciary Secretary

The Judiciary Secretary performs advanced secretarial work with related clerical duties in court administration. He/she is responsible for:

- preparing court lists;
- ensuring that the Judicial Officer's book is prepared for the relevant day's hearing;
- ensuring that all filed documents, reports or test results are placed on relevant files;
- typing notes of evidence, judgments, letters and memoranda;
- verifying draft orders prepared by the JSO.

4.0 The Family Court - Independent Budget & Financing

4.1 Proposal: That there be created within the 'hybrid family court system' as explored above, an independent budget funded, in part, by Government subvention, and supplemented by other private and public funding resources.

4.2 An Accounts Unit will be responsible for the receipt and disbursement of funds arising out of court orders in both Magisterial and Supreme Court proceedings in the Family Court. This Accounts Unit of the Family Court will operate independently of the relevant Supreme Court Unit.

4.3 A major obstacle that many court systems face as they try to create a unified family court system is that of funding staff positions and programs that are not strictly adjudicatory. The implementation of a unified family court system requires an infrastructure of administration and staff who have training to deal with families in crisis, adequate technology and physical facilities. In order for courts to create new staff positions and build adequate facilities to house and equip those programs, and in order to develop innovative programs that have not traditionally been a part of the court process,

they often have to resort to seeking funds from private foundations and other public funding sources.

4.4 A hybrid family court system as envisioned must remain open to create, operate and evaluate new initiatives or innovative programs that may be found, over time, within other jurisdictions. This demands a degree of financial flexibility and greater independence than that accorded the more traditional Supreme Court structure.

5.0 The Family Court - Trained Administrative and Support Staff

5.1 Proposal: That within the hybrid family court system proposed, the family court be structured to operate with an independently trained and dedicated judicial, administrative and support staff.

5.2.1 A unified family court system will require that all judicial administrative and support staff have the requisite technical, inter-personal and conceptual skills to perform their jobs efficiently and effectively in a unique and dynamic 'multi-cultural' environment. They will require proper training to equip and ensure their maximum performance in a:

- Legal/judicial culture (the dominant culture);
- A public service culture (one in which customer service performance is paramount);
- A therapeutic/nurturing culture (one which sees the applicant coming to the Court with their personal issues which requires efficient but compassionate handling);
- A technological culture (one in which the recording and tracking of court proceedings and outcomes in an electronic format is a given).

5.3 Earlier mention was made of the **Family Court Case Management Officer**³⁷ whose role is a unique one and requires special training and skills. He/She must understand and keep pace with the scope and essence of all programmes, activities and services of the Court. This strengthens the Court's institutional capacity to administer judicial services. This person holds a pivotal position in the Court's structure as he/she must possess:

- Knowledge of both Magisterial and High Court proceedings;
- Knowledge in recognizing both Magisterial and High Court documents;
- Knowledge in preparing both Magisterial and High Court documents;
- Knowledge of the process and workflow of both High Court and Magisterial jurisdictions;
- Knowledge of the Court's Case Management Information systems, that is, the JEMS application; and

³⁷ See Items 3.4 and 3.5 above

- Knowledge and understanding of the scope and essence of all programmes, activities and services offered by the Court.

- 5.4 In this regard, another necessary member of the Court administration staff would be a **Grant Development Officer** - a person who is familiar with research to identify potential funding sources and revenue streams for court-based initiatives and projects. Such a staff member would assist the judges in identifying potential resources, in applying for grant funding for the various programmes, activities and services offered by the Court, and in overseeing the performance of grant contracts in which the Court is involved.
- 5.5 The Family Court of Trinidad and Tobago is still principally funded by Government but has expressed its desire to be able to seek additional funds for specific, innovative projects for which governmental funding is slow to provide.

6.0 **Dedicated Court Accommodation**

- 6.1 It would be most desirable that this unique hybrid family court system could be housed in its own separate and **dedicated court building** or accommodation where the environment can be organized to produce comfortable and relaxed surroundings with a choice of soothing colours, wall finishes, plants and a general atmosphere that is non-adversarial in contrast to a traditional court building.
- 6.2 **Security features** must be a high priority. Features such as a walk-through scanner on entry to the facility would be a requirement as we are all mindful of the fact that there is an increased potential for violence in relation to family matters.
- 6.3 **The Hearing Room** where cases are decided should not appear intimidating as might traditional courtrooms, but should promote an atmosphere that is intimate and private, conciliatory and not adversarial, which affords Judicial Officers the opportunity to speak directly to parties, not from an elevated position but around a table thus creating an atmosphere in which greater levels of discussion can take place.
- 6.4 Where-ever the concern of a family in crisis arises, there is also the need for the creation of a **Day-Care and Youth Services** facility within the building which houses the Family Court system. These facilities are created for the convenience of parents and children who are involved in the attendance at one of more of the Court's services. They allow for children to be kept occupied and entertained during what is a stress-full time for all.
- 6.5 Finally, an adequate library should be available for those Judicial Officers and attorneys who are engaged in the hearing of court matters.

7.0 The Resolution Support Services such as Mediation and Counselling services should also be housed in the Family court structure so as to provide a 'multi-door' court system, all located within one building facility.

- **A Mediation Unit** - Of particular importance is the role of the mediation Unit in the Family Court.
 - This Unit is designed to provide critical support in the case management process by saving judicial time.
 - Referral to this unit by a member of the judicial services of the Family Court will allow the party to enter a structured voluntary process where an impartial, third party assists those persons in conflict to resolve their issues to their mutual satisfaction, either before or instead of resort to the judicial process.
 - Matters mediated at the Family Court would include;
 - Maintenance - spouse and/or child;
 - Property adjustment;
 - Custody
 - Access
- **A Social Services Unit** - This unit provides the essential back-bone support of the Family Court in its social outreach.
 - This Unit offers support to the judge and magistrate/administrator as they aim to administer justice.
 - It acts as a resident referral agency, on site, which can greatly assist in the reduction of the Court's caseload by the timely intervention through investigations and submission of reports with respect to the family and its environs, child abuse, uncontrollable children, domestic violence, probation services, psychological and psychiatric assessments, as well as social work counseling and financial assistance.
 - It also interacts with the community in providing services for children and adults who may require temporary homes and shelters.
 - It conducts field visits to schools, hospitals, employment agencies, homes and other institutions as necessary.

8.0 The Information Technology Unit. This unit is crucial for the interfacing of the Family Court with all aspects of court reporting, case flow management, records management and statistical information. Its importance will be reflected in the core effectiveness of a Family Court system that is fully computerized and operates an automated case management information system that improves the speed and efficiency of dealing with the routine operations associated with filing, processing, and retrieval of case information. This will allow for both Court officials and applicants to access information on their matters with ease.

- The Supreme Court of The Bahamas in its Bahamas Integrated Justice Information System (BIJIS) Project had installed as far back as 2002, the Judicial Enforcement Management Software (JEMS) with training for users initiated shortly thereafter in an effort to improve the Bahamas justice system by integrating initially five (5) of the justice agencies through information technology. Yet, in the six years that have now passed the system is rarely seen in use. Reasons given for this inordinate delay range from insufficient trainers available to workload of certain court personnel preventing them using the software. Yet the software, when efficiently used, is intended to assist and reduce that workload. This is a serious indictment of our tardiness in moving our entire court system quickly and confidently into the technological age.
- It is understood that we have now (2008) all the capability required to completely equip the Family Court with the necessary technology which it requires for implementation of all that has been mentioned above.
- A tracking system can be devised which will accommodate the hybrid jurisdiction mentioned at paragraph 2.5 above with its requirement for information transformation in support of an 'expedited hearing'.
- A properly designed and maintained software such as JEMS or JEMS-GUI, together with an Audio Digital Recording (ADR) system will permit the operation of special procedural tracks which will remain open in both directions (Magistrates Court to Supreme Court and/or Supreme Court to Magistrates Court) without the parties having to initiate new proceedings in one or other court. These tracks are **essential** to the operation of the 'hybrid' jurisdictional capability proposed for our Family Court System in this Report and the technological support for such a system is of paramount importance.
- As such this Committee would deem it of the highest priority that the present JEMS/BIJIS system be brought into readiness 'to establish a seamless integrated justice information system that maximizes standardization of data and communications technology among the

primary justice agencies³⁸, and in particular as a preparatory step for the introduction of such a system within a hybrid family court system.

7.0 CONCLUSION

The members of the Family Court System Committee present this Report with the certain hope that it will begin a wave of concern for the establishment of a Family Court as soon as possible. It believes that even sooner, the proposed hybrid family court system can be effectively created. The creation of such a system will in great part alleviate some of the inadequacies of the present court system as it fails to address the needs of so many parties as briefly described in Case Studies A, B and C above³⁹.

Daily our media publishes reports of the dire circumstances which have led to violence in our streets. The increase in crime is a clear indicator of the breakdown of our traditional family structures. As the strain of daily life takes its toll on our people, the resultant stress impacts negatively on their relationships. Many of our people, particularly those caught up in negative cycles such as children who daily witness high conflict family disputes, do not instinctively have the coping skills to assist themselves and those around them to deal with life and society's pressures. Violence learned in the family becomes violence enacted in the community. As family life and the relationships therein are the cornerstone of a wholesome society, drastic intervention is required.

Our Committee believes that, faced with these stark realities in our society, one of the first steps in the right direction must be the improvement of the family court legal system. A family Court system must be designed for The Bahamas which makes the access to a justice that is holistic in nature and curative in effect. It must be one that is more user-friendly than present and one in which the whole community is involved in taking our judicial system to another level. It is in this light that we humbly place the proposals set out herein for your urgent consideration and implementation so as to begin the process of providing through a hybrid family court system an integrated legal-psycho-social healing that is deliverable at a personal, familial and community level.

Justice Rubie M. Nottage
Chairperson

Mrs. Ruth Bowe-Darville
Vice President Bahamas Bar Association

Chief Magistrate Roger Gomez
Family Division, Magistrate's Courts

Mrs. Marilyn Meeres
(Acting) Deputy Registrar
Family Division, Supreme Court Registry

Ms. Sherece V. Gibson
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Office of the Attorney-General

Mrs. Grace Bostwick - Co-opted Member
Supreme Court Listing Officer

31st August, 2008

³⁸ Stated vision of Bahamas Justice Integrated Information System (BJIIS) (2003).

³⁹ See pages 7-9 above.