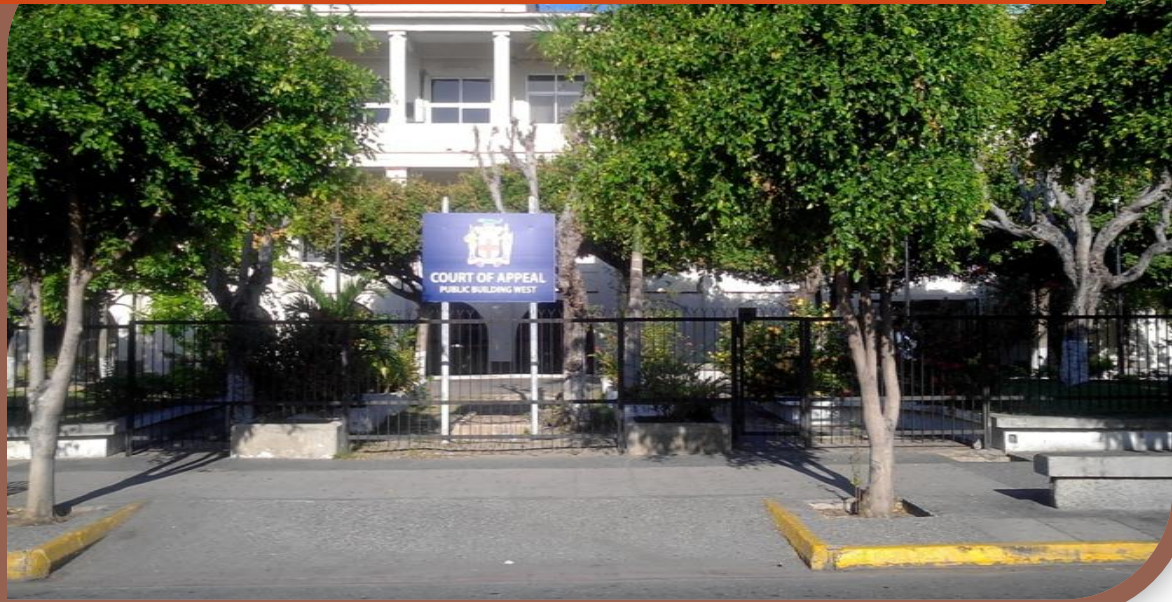


Court of Appeal, Jamaica Annual Report 2015



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Message From The Honourable Chief Justice

I commend the Hon. Mr. Justice Dennis Morrison, OJ, CD, President of the Court of Appeal and staff for an excellent report on the work of that Court. This report highlights the achievements as well as the challenges experienced and serves as a precursor to our move towards a comprehensive, annual report from the Courts of Jamaica.



**The Hon. Mrs. Justice Z. McCalla OJ
Chief Justice**

Over the last few years, there has been much emphasis on the training and sensitization of the Judiciary, as well as increased focus on justice reform and modernization of the systems which support the daily functioning of our courts.

Whereas we have made some strides in several areas, we are aware that the inability to obtain timely and accurate information/data for the justice system, has been a source of some concern. The accuracy of the count of the number of cases in backlog has been an issue. This deficiency has led to the court not being able to facilitate a comprehensive production and publication of the work of all courts.

Information is needed on the functioning of the justice system not only for promoting public policies but also for internal use by the court. The Ministry of Justice has responsibility for collating statistics emanating from the courts. However, the vast number of cases which come in to the Supreme Court and the Parish Courts (formerly Resident Magistrates' Courts) and the rapid rates at which they come into the system, pose a challenge, which underscored the need for an in-house statistician.

Improvement in quality and access to justice sector information is vital and so I am heartened that since May 2nd, 2016, the Justice Undertakings for Social Transformation (JUST) Program, through the Justice Reform Implementation Unit (JRIU) of the Ministry of Justice, has facilitated the employment of a Statistician to the Court. He has commenced work to collect, quantify and analyze court data as well as to prepare a mechanism for the accurate capture of that data. In

that regard, a statistical software is currently being populated to enable a more sophisticated form of data capture which is equipped with the capability to generate a range of reports which track the timeliness with which cases move through the court system, by looking at data such as case disposal rate, case carriage ratio, disposal-carriage ratio and case aging ratio. This will also focus on a host of other demographics which will form the basis for policy decisions and effective planning.

We are aware of the need to monitor and report on the performance of all courts, hence the introduction of these new systems. Given the complexity of the court system and the volume of cases, full implementation of all systems and processes will take time. However a comprehensive data gathering tool will be implemented in the short term.

This report is a timely follow-up to the Public Education Day that was launched at the St. Andrew Parish Court at Half-Way-Tree on June 7, 2016. It was followed by another such event at the St. James Parish Court on June 23, 2016 and such events are scheduled for other parishes, to provide information on our Justice system and access to justice.

I am committed to pursue these initiatives as on-going work of our courts as another medium through which we engage the public.

Much work has been on-going in our courts at all levels and I am committed to the production of a comprehensive report on the work of all courts.



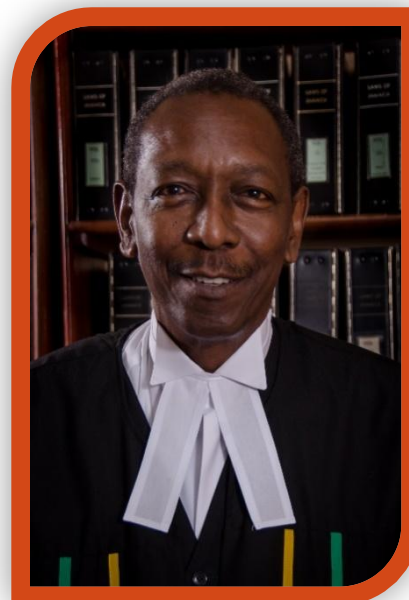
The President's Message

It gives me great pleasure to write this message for the Annual Report of the Court of Appeal for the year 2015. This is the first of what is intended to be a yearly feature of the court's work and, for the future, our aim will be to ensure that each year's report is published no later than the end of February in the succeeding year.

The year under review was by any measure an eventful one for the court. Perhaps the most notable event, to which further reference is made in the body of the report, was the departure of the Honourable Mr Justice Seymour Panton. Mr Justice Panton went off on well-deserved pre-retirement leave, after over 40 years of public service, at the beginning of July 2015. Upon his retirement on 4 January 2016, he had been a Judge of Appeal for just over 16 years and the inspirational President of the court since 2007. At a farewell sitting held in his honour on 3 November 2015, he was lauded as an insightful, fearless and forthright judge, who never shirked the judge's responsibility to speak plainly and firmly on the great issues of the day whenever the need arose. His was a wonderful example of fidelity to principle in all things and I wish to place on record, again, our thanks to him and our best wishes for his good health and happiness in retirement.

As it happens, 2015 was a year of change and renewal for the court. I must mention specially the permanent appointments of Mrs Justice Marva McDonald-Bishop and Mrs Justice Almarie Sinclair-Haynes, as well the acting appointments of Miss Justice Paulette Williams and Mr Frank Williams. By the end of the year, each of them had brought their own unique energy to the work of the court.

All members of the court continue to strive for the best possible performance in the face of an always increasing caseload. The court is committed to the principle that the timely delivery of judgments is of equal importance to the hearing of appeals within a reasonable time of the date of filing. Among the steps taken to minimise the level of outstanding judgments has been the



The Hon. Mr. Justice Morrison P (Ag)

greater use of oral judgments, delivered shortly after the completion of the hearing of appeals. While oral judgments have been a feature of the court's work for many years, a renewed effort is now underway to increase their use in all appropriate cases. The inventory of outstanding judgments and reasons for judgment, always a worrying aspect of any court's work, is under continuous scrutiny, even as active steps are being taken to ensure that each judge is afforded more time out of court to attend to the time consuming business of judgment writing.

But it remains a matter of notorious fact that the court is under-resourced and the judges who staff it hopelessly overworked. All Presidents of the court over the last many years, Mr Justice Panton hardly least among them, have highlighted the lamentable reality that the court's complement of judges has remained static for almost 50 years, notwithstanding the phenomenal increase in its jurisdiction. Over the period since 1967, when the number of judges in the Court of Appeal was increased to seven, the population of Jamaica has moved from 1.85 million to 2.8 million. In 1967, appeals to the court were taken in the main from decisions of judges of the Supreme Court, of whom there were nine, and resident magistrates, of whom there were 22. The corresponding number in each category today is 34 and 55 respectively. In addition, the court now hears appeals from three Masters of the Supreme Court, as well as specialist courts and tribunals, such as the Revenue Court, the Gun Court and the Disciplinary Committee of the General Legal Council, none of which was in existence in 1967.

The pool of cases coming to the court has therefore widened exponentially, while the number of judicial bodies whose job it is to hear and dispose of the cases has remained static. In recognition of this reality, Parliament amended the court's constituent statute in 2008 to provide for a maximum of 12 judges. But today, a full eight years since that amelioration was promised, the complement of the court remains the same, the increase on paper stymied by the non-provision of the long promised physical facilities to accommodate the additional judges. It is my fervent hope that 2016 will be the year in which we will see a fulfilment of the promises which have consistently been repeated and renewed since 2008.

On a positive note, it is right to record that this year saw the appointment of five additional judicial clerks, all qualified attorneys-at-law, for the purpose of providing research and other assistance to the judges. The result of this has been that, for the first time, each judge now has his or her own dedicated judicial clerk.



Also on a positive note, I wish to place on record my gratitude to our indefatigable and infinitely calming Registrar, Mrs Stacie-Anne Brown, and her dedicated staff. In the preparation of this report, for which Mrs Brown has been largely responsible, we have been assisted by Dr Denarto Dennis, the recently appointed statistician of the Supreme Court, particularly in relation to the preparation and presentation of the statistical tables and charts included in the report. We are grateful to Dr Dennis for his enthusiastic willingness to help and I share the Honourable Chief Justice's optimism that his work will greatly facilitate the business of data gathering, analysis and planning for the courts.

To all other members of staff at all levels, I pay special tribute, for their sustained service and exemplary commitment to the work of the court in often trying circumstances.

I also pay grateful tribute to my fellow judges. As any member of the court over the last many years will readily attest, the combination of the pace and volume of work which they are required to do on a weekly basis is nothing short of brutal. Despite the fact that, by the very nature of the office they hold, their conscientious and unstinting performance remains largely unsung, the judges continue to provide extraordinary service.

And finally, and hardly least, I must say thanks to the Honourable Chief Justice. Firstly, for so graciously agreeing, at too short notice, to provide a message for inclusion in this report; and secondly, for all that she continues to do to assist the court to carry out its mandate.

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Judges of the Court

Section 3 of the Judicature (Appellate Jurisdiction) Act provides that the composition of the court should be the President and not more than twelve judges of appeal¹. Currently, the complement of judges at the court is seven (including the President), the same number since 1967.

The year under review saw significant changes in the judicial faces of the court, both in terms of those who said farewell and those who joined us.

Farewell

In 2015 the Court of Appeal bade farewell to two eminent and well respected judges who served the court, the justice system and indeed the nation, with great dedication and distinction.

The court was first called upon to bid farewell to the Honourable Mr. Justice Seymour Panton, OJ, CD, President of the Court of Appeal. The learned President, who was appointed judge of appeal on the 3rd November 1999 and President of the Court of Appeal on the 8th July 2007, proceeded on pre-retirement leave on the 1st July 2015.



The Hon Mr. Justice Panton P



The Hon Mr. Justice Dukharan JA

Later in the year, the court bade farewell to another senior judge of the court. The Honourable Mr. Justice Mahadev Dukharan, CD, who served as a judge of appeal since his appointment to that post on the 3rd November 2008, proceeded on pre-retirement leave on the 10th November 2015.

¹The Chief Justice of Jamaica, by virtue of her position as head of the judiciary, is also a member of the court but can only sit at the invitation of the President and if there are at least four other judges sitting.

Appointments

The year saw several appointments, both acting and permanent, being made to the court. On the 24th August 2015 the Honourable Mr. Justice C. Dennis Morrison, CD, who had been serving as a judge of appeal since his appointment as such on the 1st May 2008, was sworn in to act as President of the Court of Appeal. The Honourable Mrs. Justice Marva McDonald-Bishop, having served as an acting judge of appeal, was on the 21st September 2015 appointed judge of appeal. Then, after also having served as an acting judge of appeal, the Honourable Mrs. Justice Almarie Sinclair-Haynes was appointed a judge of appeal on the 16th November 2015.

The court also welcomed the acting appointments of two Puisne Judges of the Supreme Court, namely the Honourable Miss Justice Paulette Williams and the Honourable Mr. Justice Frank Williams, who were both appointed acting judges of appeal on the 21st September 2015. At the close of the Michaelmas Term 2015 the court was therefore constituted as follows: the Honourable Mr. Justice C. Dennis Morrison P (Ag); the Honourable Miss Justice Hilary Phillips JA; the Honourable Mr. Justice Patrick Brooks JA; the Honourable Mrs. Justice Marva McDonald-Bishop JA; the Honourable Mrs. Justice Almarie Sinclair-Haynes JA; the Honourable Miss Justice Paulette Williams JA (Ag) and the Honourable Mr. Justice Frank Williams JA (Ag).



Seated: The Hon. Mr. Justice Morrison P (Ag) (centre), the Hon. Miss Justice Phillips JA (left) and the Hon. Mr. Justice Brooks JA (right). Standing (from left to right) the Hon. Mrs. Justice McDonald-Bishop JA, the Hon. Mrs. Justice Sinclair-Haynes JA, the Hon. Miss Justice Williams JA (Ag) and the Hon. Mr. Justice Williams JA (Ag).

Court Staff

In anticipation of the proposed expansion of the court the total number of court staff posts was increased to 37. However, the current court staff complement is 28, comprising:

- 1 Registrar
- 1 Deputy Registrar
- 5 Senior Judicial Clerks and 2 Judicial Clerks
- 1 Director Human Resource and Administration
- 5 Executive Secretaries and 1 Senior Secretary
- 3 Chief Court Assistants and 1 Senior Court Assistant
- 1 Senior Records Officer and 1 Records Officer
- 2 Attendants
- 1 Casual Daily Paid Worker
- 3 Part-time cleaners

The year 2015 proved to be quite an emotional one as the court grieved the sudden loss of one of its longest serving staff members. With great sadness, we were confronted with the passing of our colleague Miss Patricia Young, Executive Secretary 1. Miss Young, who joined the court in 1997, died in hospital on the 26th May 2015 after a brief illness. She left an indelible mark on all who knew and worked with her and continues to be greatly missed.

In February 2015 the court bade farewell to Miss Carla Thomas, Senior Judicial Clerk. Miss Thomas, who gave approximately seven years of service to the court, left to join the Attorney General's Chambers. Then, in June 2015, Mr. Roy Scott, Chief Court Assistant, having given over 10 years of service to the court, resigned for the purpose of migration. Both officers made invaluable contributions to the court through their dedication, high quality of work and professionalism and will no doubt continue their excellence in their new endeavours.

During the period under review the court welcomed eight new members of staff, including the long needed additional judicial clerks. In April 2015 Miss Patichia Wint, Mrs. Diane Bernard, Mrs. Jenelle Nelson-Gayle and Miss Angela Grant (Senior Judicial Clerks) and Miss Jacqueline McLeod and Miss Clowenese Brown (Judicial Clerks), and Mr. Christopher Headley (Records Officer) joined the court. And finally, in July 2015, Miss Georgette Campbell (Executive Secretary 1) joined the court.

The work of the court

The period under review saw the court, despite the limited number of judges, continue the arduous task of tackling the ever increasing workload. It is imperative to note that the work of the court goes well beyond the hours dedicated weekly for the oral hearing of matters listed before each division and in chambers.

In addition to preparing for and hearing the matters on the court's lists, as well as writing judgments, each individual judge is assigned several criminal transcripts throughout each term (and during the legal vacations) which he or she has to peruse and consider, in order to determine whether or not leave to appeal should be granted.

Throughout each term, single judges of appeal also consider, on paper in the first instance, procedural applications such as those for injunctions, stays of execution, and security for costs. Civil matters at the stage of case management are also referred to single judges of appeal for directions upon the filing of records of appeal by the appellants.

The work of the court during the period under review is captured as follows:

- I. transcripts referred to single judges of appeal for consideration of criminal applications for leave to appeal (Table A and Charts 1 and 5);
- II. applications referred to single judges of appeal for consideration on paper (Table B and Charts 2 and 5);
- III. civil records of appeal referred to single judges of appeal for case management directions (Table C and Charts 3 and 5);
- IV. oral hearings conducted in chambers by single judges of appeal (Table D and Charts 4 and 5)
- V. written judgments delivered, reserved judgments and outstanding reasons for judgment (Tables E, F and G);
- VI. disposal of matters (Tables H and I and Chart 6); and
- VII. new appeals (Table J and Chart 7)
- VIII. pending appeals (Tables K, L, M, N, O and P)

Table A
Criminal Transcripts Referred to Single Judges for
Consideration of Applications for Leave to Appeal

	Number Referred
Hilary Term	11
Easter Term	9
Summer Vacation	12
Michaelmas Term	7
Grand Total	39*

*NB. The number of transcripts referred each year is dependent on the number of transcripts received from the Supreme Court. Transcripts are usually referred to a single judge shortly after receipt by the registry. Prior to referral to the judge, notification of receipt of transcript is dispatched pursuant to the Court of Appeal Rules.

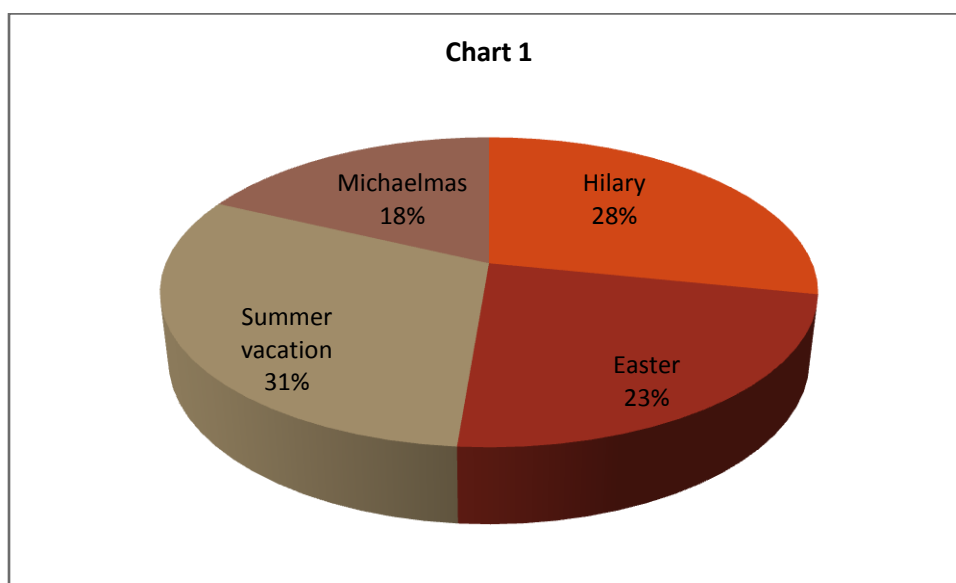


Chart 1 shows that the Summer Vacation and the Hilary Term saw the largest number of criminal applications for leave to appeal being referred to single judges of appeal in 2015.

Table B
Number of Applications Referred for Consideration
on Paper by Single Judges 2015

	Number Referred
Hilary Term	17
Easter Term	38
Michaelmas Term	22
Grand Total	77**

**NB. The figures in Table B are dependent on the number and nature of the applications filed. Applications for permission to appeal and for extension of time to appeal are not referred to a single judge but are heard in court.

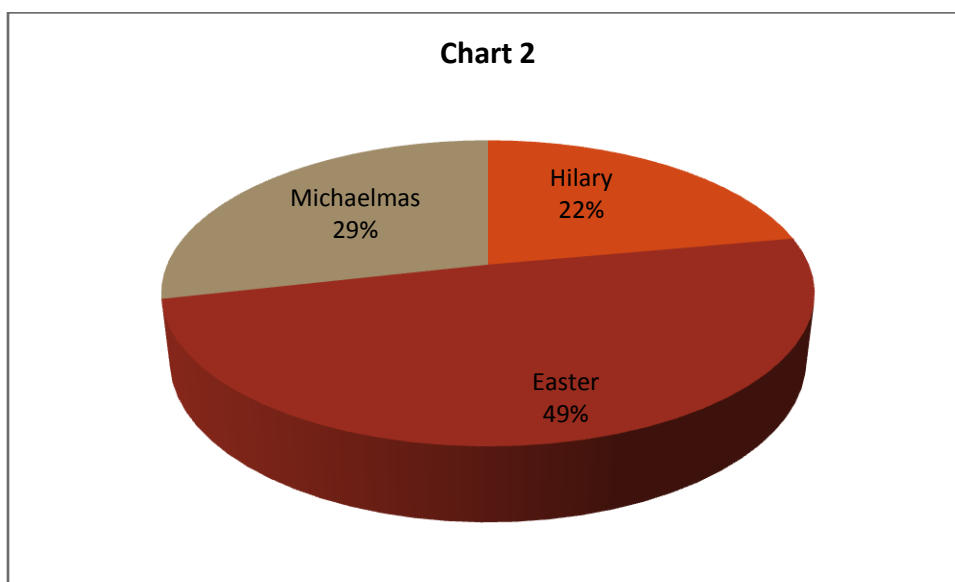
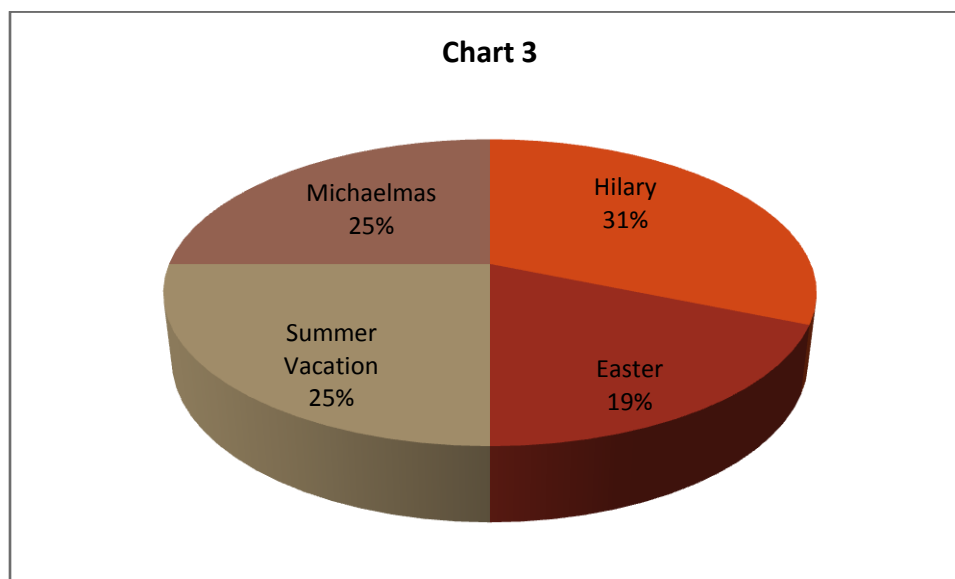


Chart 2 shows that the Easter Term saw the largest number of applications being referred to single judges of appeal for consideration on paper in 2015.

Table C
Number of Civil Records of Appeal Referred to Single Judges for
Case Management Directions 2015

	Number Referred
Hilary Term	10
Easter Term	6
Summer Vacation	8
Michaelmas Term	8
Grand Total	32***

***NB. The number of records referred each year is dependent on the number of certified records of proceedings received from the Supreme Court as well as the level of compliance of parties in filing records of appeal within the time prescribed by the Court of Appeal Rules.



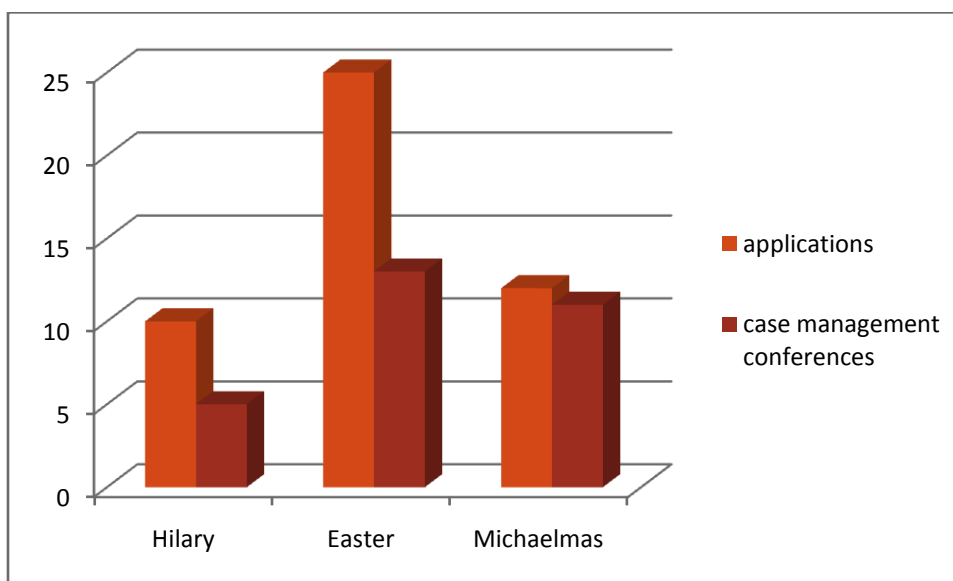
As seen in chart 3, the Hilary Term accounted for the largest number of referrals of records of appeal to single judges for case management directions in 2015, followed by the Summer Vacation and the Michaelmas Term.

Table D
Hearings in Chambers* 2015

	Hilary	Easter	Michaelmas	Total
Applications	10	25	12	47
Case Management Conferences	5	13	11	29
Grand Total	15	38	23	76

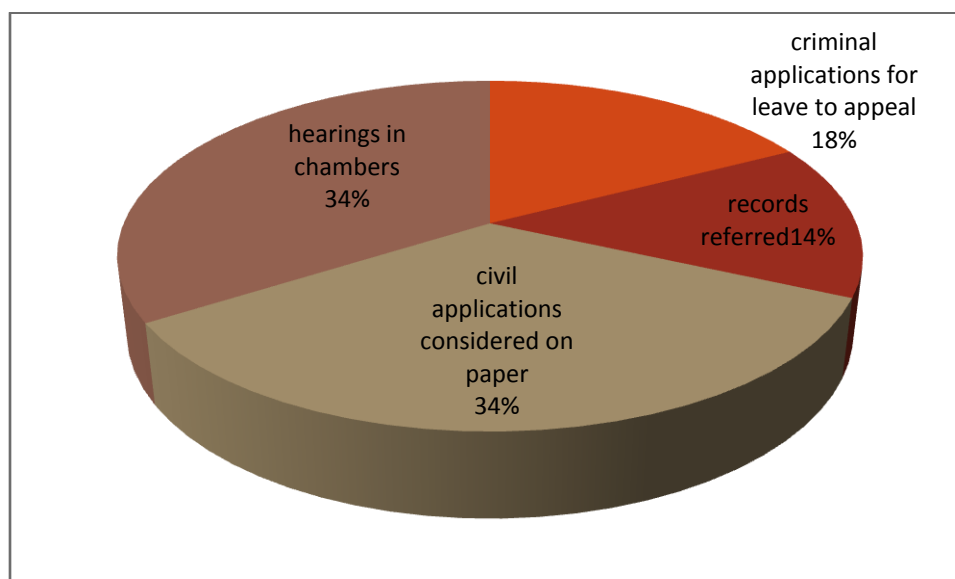
*NB Hearings in chambers are conducted by single judges of appeal, usually on the direction of the single judge to whom the matter was first referred. Some matters, such as applications for bail and applications to remove attorney's names from the record, are automatically scheduled for hearing in chambers.

Chart 4



There are essentially two types of hearings that are conducted by single judges in chambers - applications and case management conferences. Chart 4 shows that for 2015 most of the hearings in chambers were conducted in relation to applications.

Chart 5



In addition to time spent by individual judges of appeal writing judgments, for the year under review, as seen in chart 5, 34% of their work in chambers related to oral hearings, 34% related to consideration of applications on paper, 18% related to considering criminal applications for leave to appeal and 14% related to records of appeal referred for case management.

Table E
Written Judgments** Delivered 2015

	Hilary	Easter	Summer Vacation	Michaelmas	Christmas Vacation	Total
Civil Appeals	24	20	0	27	0	71
Criminal Applications for leave to Appeal and Criminal Appeals	10	10	0	15	0	35
Applications	16	16	3	18	1	54
Grand Total	50	46	3	60	1	160

**NB Written judgments include oral judgments reduced to writing as well as reasons for judgments previously delivered.

Table F
Outstanding Reserved Judgments*

Year	Total
2011	1
2012	2
2013	3
2014	4
2015	37
Total	47

*NB Reserved judgments refer to cases in which the judgments of the court have not been delivered.

Table G
Outstanding Reasons for Judgments*

Year	Total
2013	2
2014	4
2015	10
Total	16

*NB Reasons for judgments refer to cases in which the judgments of the court have already been delivered but detailed written reasons have been promised.

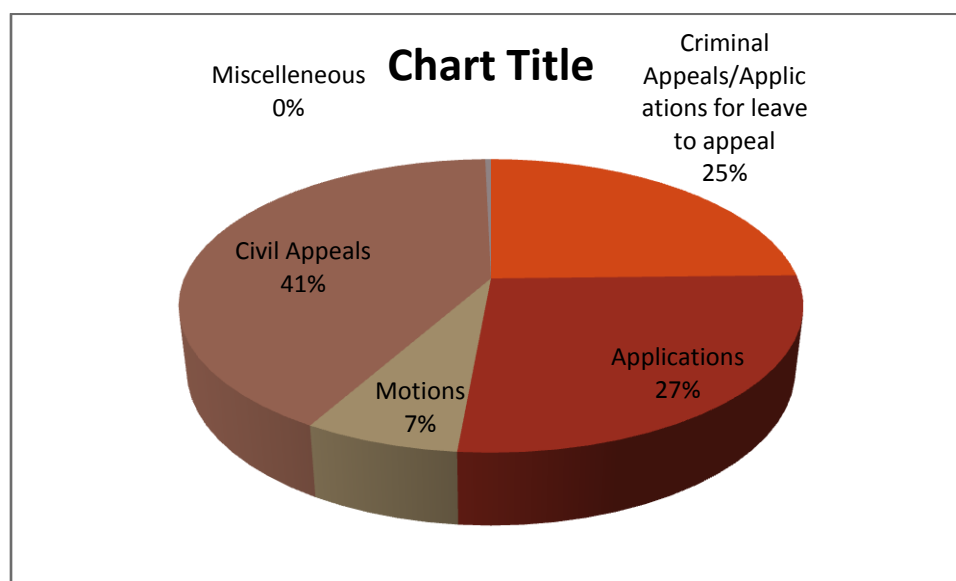
Table H
Disposal of Applications and Motions by the Court 2015

	Hilary	Easter	Michaelmas	Total
Applications	21	22	32	75
Motions	5	7	7	19
Grand Total	26	29	39	94

Table I
Disposal* of Appeals by the Court 2015

	Hilary	Easter	Michaelmas	Total
Civil	40	47	29	116
Criminal	15	34	20	69
Miscellaneous	1	0	0	1
Grand Total	56	81	49	186

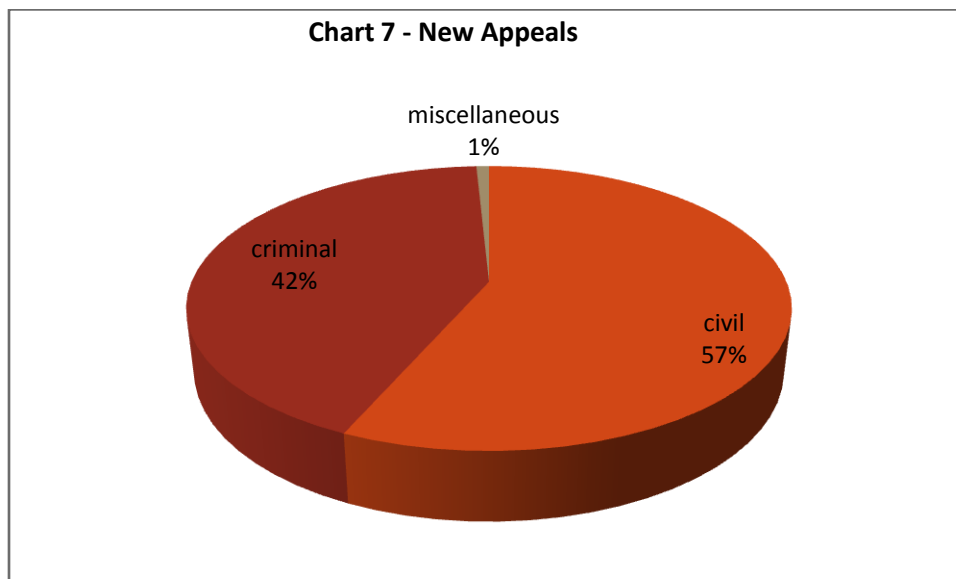
NB* Disposal includes matters determined and withdrawn



As seen in Chart 6, of the matters disposed of by the court in 2015, 41% were civil appeals, 27% were applications, 25% were criminal appeals/applications for leave to appeal and 7% were motions.

Table J
New Appeals Filed 2015

Type	Total
<i>New Appeals Filed</i>	
Civil	141
Criminal	106
Miscellaneous	2
Total	249



As seen in chart 7, of the new appeals filed in 2015, 57% were civil appeals, 42 % criminal appeals/applications for leave to appeal and 1% were miscellaneous.

Table K
Hilary Term 2015

Appeals	Pending At start of Term	New Cases filed	Disposed cases	Pending at close of the term
Supreme Court				
Civil	738	34	35	737
Criminal	501	21	11	511
Miscellaneous	5	0	1	4
Resident Magistrate Court				
Civil	53	6	5	54
Criminal	91	7	4	94
Miscellaneous	0	0	0	0
Total	1388	68	56	1400

Table L
Easter Term 2015

Appeals	Pending At start of Term	New Cases filed	Disposed cases	Pending at close of the term
Supreme Court				
Civil	737	54	35	756
Criminal	511	37	28	520
Miscellaneous	4	0	0	4
Resident Magistrate Court				
Civil	54	5	12	47
Criminal	94	4	6	92
Miscellaneous	0	1	0	1
Total	1400	101	81	1420

Table M
Michaelmas Term 2015

Appeals	Pending At start of Term	New Cases filed	Disposed cases	Pending at close of the term
Supreme Court				
Civil	756	30	22	764
Criminal	520	31	15	536
Miscellaneous	4	1	0	5
Resident Magistrate Court				
Civil	47	12	7	52
Criminal	92	6	5	93
Miscellaneous	1	0	0	1
Total	1420	80	49	1451

Table N
Total figures (Tables K, L & M) for 2015

Appeals	Pending At start of 2015	New Cases filed 2015	Disposed Cases 2015	Pending at close of 2015
Total	1388	249	186	1451*

*NB The 1451 pending cases at the close of 2015 includes 311 civil records of proceedings and 310 criminal transcripts which the court has not yet received. Therefore the "true" pending figure falls to be reduced to 830. Please see tables O and P.

Table O
Outstanding Supreme Court Criminal Transcripts

Year	Number outstanding
2000	1
2001	1
2002	1
2004	1
2005	2
2006	3
2007	1
2008	1
2009	2
2010	7
2011	11
2012	31
2013	54
2014	96
2015	98
Total	310

Table P
Outstanding Supreme Court Records of Proceedings

Year	Number outstanding
2003	10
2004	8
2005	21
2006	13
2007	15
2008	24
2009	17
2010	26
2011	28
2012	34
2013	25
2014	30
2015	60
Total	311

The ratio of outstanding record of proceedings and outstanding transcripts to the pending appeals is 0.43. This means that for every 100 appeals that are pending, 43 are pending either as a result of an outstanding records of proceedings or outstanding transcript.

Practice Notes and Directions

During the year under review the court issued one practice note and one practice direction. Both took effect on 1st June 2015.

Practice Note No 1/2015 was issued in relation to the electronic filing of skeleton arguments and written submissions under a pilot electronic filing project embarked on by the court. It represents an effort by the court to take advantage of the opportunities afforded by modern technology. The purpose of the Practice Note is to advise parties with matters before the court of the pilot project and to outline the procedure for electronic filing.

Practice Direction No 1/2015 was issued in relation to statements of costs. The purpose of the Practice Direction is to facilitate the court's making of summary assessments of costs whenever it deems it appropriate so to do, pursuant to its powers under rule 65.7(1)(a) of the Civil Procedure Rules.

The court's practice notes and practice directions are available on the court's website (www.courtsofappeal.gov.jm).

Challenges

During 2015 the court continued to face familiar challenges. The main ones were:

1) Limited number of judges

Although the Judicature (Appellate Jurisdiction) Act has been amended to facilitate an increase in the number of judges of appeal, the actual number of judges sitting in the court has yet to be increased. This is as a result of the absence of space in the present confines of the court building to accommodate the additional judges and support staff. The proposed and very necessary physical expansion of the court has not yet been realized.

2) Delay in receipt of criminal transcripts and civil records of proceedings

Criminal applications for leave to appeal/criminal appeals from the Supreme Court

In order for criminal applications for leave to appeal and appeals to proceed, the court has to obtain the trial transcript from the Supreme Court. At the close of 2015 there were 310 outstanding criminal transcripts. Please see table O on page 21.

Civil appeals from the Supreme Court

The Court of Appeal Rules require the court's registry to obtain from the Supreme Court certified copies of the record of proceedings (inclusive of notes of evidence, if any, and written reasons for judgment). These documents are required so that the appeals can proceed to the filing of records of appeal, case management and finally hearing of the appeals. At the close of 2015 there were 311 outstanding civil records of proceedings. Please see table P on page 21.

Criminal and civil appeals from Resident Magistrates' Courts

Under the Judicature (Resident Magistrates) Act, appeals from Resident Magistrates (RM) Courts are filed in those courts (verbally or in writing). Unless informed, the Court of Appeal is generally unaware of appeals from RM Courts until the particular court forwards the records of proceedings. In most cases there is usually quite a delay between the filing/giving of the notice of appeal with the RM Court and the submission of the record of proceedings by the RM Court.

3) Resources

In 2015 the court continued to face challenges in relation to resources. At the close of the year the court was in need of replacement computers; printers; scanners and photocopiers.

4) Storage space

The court has long exceeded storage space for the many files that it currently houses, some of which date back to the 1960s. The court still stores files relating to Cayman Islands appeal, which it heard up to 1984. Many of the older files are badly affected by termites and rodents, and the room in which they are stored is challenged by dust, inadequate lighting, a lack of ventilation and the absence of air conditioning. The registry staff has embarked on a project to create temporary space by boxing the older files that are in a condition to be handled. The project is affected by staff's inability to work in the basement for prolonged periods as well as the limited space therein for storing the boxes.

Postscript

The Honourable Mr. Justice Panton P retired on the 3rd January 2016 and the Honourable Mr. Justice Morrison P was sworn in as President on the 4th January 2016.