

## Editorial | Put Fire Under Slowpoke Judges

The Gleaner

Now that the Jamaican Bar Association has followed Hugh Small's advice and formally complained about slowcoach judges who often take years to deliver their rulings, we hope that Delroy Chuck is good on his word in aggressively attending to the problem.

Indeed, the Judicial Code of Conduct, about which Mr Chuck has spoken, should not only be fast-tracked but anchored in law. There are also other things that the Government should do, as a matter of urgency, to improve the efficiency of the courts.

Until recently, the focus on the backlog in Jamaica's courts has primarily been on criminal matters, where the count of outstanding cases is estimated at nearly half a million. In February, Mr Small, who has served as a judge in Bahamas, in an article in this newspaper, noted that the problem also exists in the civil courts, where the consequences are often counted not in the philosophical and social constructs of delayed justice but in hard economic values.

"Jamaica's Parliament needs to require accountability of the judiciary, and the Jamaican Bar Association should open a discussion on the adoption of similar legislation," he wrote. That reference is to the provision in the Guyana constitution that, among the grounds on which judges can be removed from office, is "for continuously failing to give decisions and reasons therefor within such time as may be specified by Parliament".

Last week, the Bar Association took the issue forward by giving Chief Justice Zaila McCalla a list of 62 cases, going back a decade, and names of the judges who presided over them, for which

judgments, or the written reasons for the decisions, are outstanding and demanding urgent attention.

This issue is complicated, the association's president, Sherry Ann McGregor, pointed out, by the fact that several of the judges with outstanding judgments "have either retired or will soon reach the constitutionally stated retirement age".

### **UNDERMINING FAITH**

The issue here is that the mandatory retirement age for Jamaican judges is 70, although a judge reaching that age may be allowed to continue in office "as may be necessary to enable him to do deliver judgments or to do any other thing in relation to proceedings that were commenced" before his mandatory retirement. The proviso allowing retired judges to continue for a time does not always work well. And when it doesn't, cases, including some of the Bar Association's list of 62, may find themselves in a sort of judicial purgatory without a clear path of delivery.

In the event, post-retirement extension doesn't address the continuing problem of the slowcoaches who don't write their judgments in time, frustrating litigants and undermining faith in the justice system.

For a possible solution, Mr Small drew on the examples of the Guyana constitution, as well as India's Code of Civil Procedure, which requires judges to deliver their written decision in 30 days and twice that in exceptional circumstances. He also drew attention to the position of the Caribbean Court of Justice that no judgment, for matters of extreme complexity, should be outstanding for more than six months but normally delivered within three.

We agree. So does Mr Chuck, the justice minister.

"Judges must know that they are holding up many lives when they fail to deliver their judgments on time," he said.

We now look forward to his action.

## **Five Charged With Lottery Scamming Offences Following 2013 Operations**

The Gleaner

The police say they have now charged five people who were arrested following a series of anti-lottery scamming operations in Hanover and St James in May 2013.

The five, who are all from western Jamaica, have been charged with lottery scamming offences in connection with the fleecing of approximately US\$5,500 (J\$650,000) from two American citizens.

They are:

1. Kimberly Williams, 29, of Hopewell, Hanover
2. Romain Jones, 28, of Green Island, Hanover
3. Mark Davy, 35, of Logwood, Hanover
4. Sheldon Binns, 33, of Green Island, Hanover
5. Shericka Brown, 24, of Hampden Land, Trelawny

All five have been charged with conspiracy to obtain property, while Davy is facing the additional charges of possession of ganja and dealing in ganja.

Brown is booked to appear in the Montego Bay Resident Magistrate's Court on Wednesday, June 1, while the others will appear in the Lucea Resident Magistrate's Court on Tuesday, June 7.

# State Agencies Battle In Court Over Adoption Of Child

The Gleaner

Livern Barrett



Contributed

Belliveau

- An attempt by a Canadian citizen to adopt a three-year-old Jamaican child has triggered a legal fight among three state agencies charged with safeguarding the rights of children.

According to court documents obtained by The Gleaner, the Office of the Children's Advocate (OCA) wants a High Court judge to green-light a judicial review of a decision by the Adoption Board to refuse an application by Francine Belliveau, a Canadian citizen, to adopt the child.

The Child Development Agency (CDA) is listed as the second respondent in the OCA's application, which is scheduled to be heard in the Supreme Court on June 9.

According to the documents, the OCA wants the court to grant, among other things, an "order of certiorari to quash the first respondent's [Adoption Board] decision to refuse adoption application of Francine Belliveau in respect of child [name withheld] without affording a full hearing to the adopter or the Children's Advocate and acting on the advice and directive of the second respondent [CDA]".

Charging that the child has since been placed in foster care in St Ann, the OCA also wants the court to grant additional orders for the Adoption Board to hear and determine Belliveau's

application and prohibit the CDA "from making any further changes in the status of [the child] until the judicial review proceedings are heard and determined."

The OCA noted that Belliveau submitted an application to adopt the child in November 2014, but said this was refused by the Adoption Board. It said the Canadian citizen challenged the decision in the Jamaican Supreme Court and, on May 29 last year, a judge directed the board to reconsider the application and make a decision in the child's best interest.

### **BYPASSED ADOPTION BOARD**

The OCA said the Adoption Board was also directed by the High Court to make a decision "forthwith".

However, the OCA charged that instead of complying with the directives of the court, the Adoption Board followed the directives of the CDA and not only refused Belliveau's application, but argued that it had "no authority in law" to delegate its functions to the CDA.

Several attempts yesterday to get a comment from the CDA or its attorney, Shanique Scott, were unsuccessful.

However, the OCA - in court documents supporting its application - included a letter in which the CDA explained the sequence of events that ultimately led to the decision to refuse Belliveau's application to adopt the child.

The CDA indicated that it was contacted late last year by the mother of the child who signalled that she was having a change of heart about putting the infant up for adoption.

"As a result, the [Adoption] Board was of the view that it was in the best interest of [the child] to seek information from [her mother] as to whether she wished to proceed with the adoption before making a decision," read a section of the CDA letter.

"Upon receiving that confirmation on February 22, 2016, the Child Development Agency sought legal advice on the matter and, based on this, the Adoption Board decided to refuse the adoption on that basis," the document continued.

But the OCA fired back, arguing that the decision to refuse the adoption application without allowing its representatives or Belliveau the opportunity to make written or oral submissions on behalf of the child was "a denial of natural justice and the principles of procedural fairness".

[livern.barrett@gleanerjm.com](mailto:livern.barrett@gleanerjm.com)

## **Cop Arrested In Murder Of Policewoman Not Pointed Out At ID Parade**

The Gleaner

Livern Barrett, Senior Gleaner Writer



A witness has failed to identify the police constable who was taken into custody in connection with the slaying of his colleague, Corporal Judith Williams. As a result, his attorney-at-law Peter Champagnie, said he will now be seeking to have the constable released.

"I don't see any reason for his continued detention in the absence of any other process," Champagnie told The Gleaner.

Attempts to get a comment from Assistant Commissioner Ealan Powell, who heads the Criminal Investigations Branch, were unsuccessful.

The female corporal, who was attached to the Office of Police Commissioner Dr Carl Williams, was shot several times last month moments after she left her east Kingston home for work.

The police, through a statement released by its Corporate Communications Unit two weeks ago, revealed that the constable was one of two persons in custody in connection with Williams' death.

He is scheduled to appear in the Kingston and St Andrew Parish Court tomorrow in an unrelated case.

The constable was charged for assault arising from an incident with his female companion nearly a year ago.

## **Auto dealer fined for cash transaction exceeding \$1m**

The Observer



million Jamaican dollars.

KINGSTON, Jamaica — The operator of Drax Hall Auto brokers Devon Hayden and his secretary Andreen Green pleaded guilty today in the St Ann's Bay Resident Magistrate's court to two counts of breaches under the Proceed of Crime Act for cash transactions in excess of one

Hayden was fined \$150,000 on count one and \$70,000 on count two, whilst Green was fined \$70,000 on count one and \$30,000 on count two.

Hayden and Green were arrested in January 2016, along with two of their customers who had made purchases using cash, which exceeded \$1 million.

**Renaë Dixon**

## **OCG reports disturbing breaches at Hanover PC**

The Observer



(L) HARRISON... the OCG remains committed to fulfilling its statutory obligations. (R) Director of Public Prosecutions Paula Llewellyn.

THE Office of the Contractor General (OCG) says it has uncovered incidents of gross impropriety, favouritism and other disturbing breaches involving the awarding of government contracts at Hanover Parish Council.

The OCG outlined the breaches in a scathing 176-page report now before Parliament stemming from its investigation into the circumstances surrounding allegations of nepotism and conflicts of



interest, favouritism, irregularity and impropriety in the awarding of Government contracts to alleged relatives and political affiliates of two councillors.

The OCG has called on the Ministry of Local Government and Community Development to, among other matters, probe the circumstances surrounding agreements allegedly entered into between the Hanover Parish Council and one of the councillors' in-laws.

The local government ministry has been "reminded" that the agreement uncovered — whereby the Hanover Parish Council is using lands allegedly belonging to the councillor's relatives in exchange for government contracts — "has legal implications" for the ministry itself.

The OCG said it was "unable to reconcile in all instances, the recommendations, contracts and cheques made in favour of the relatives and political affiliates" of both councillors.

According to the report, one of the councillors received approximately \$14.8 million for the period March 2012 to April 2014, of which \$6.5 million was made payable to his family members and political affiliates.

At the same time, the report said the other councillor received, for the same period, some \$13.5 million of which \$3 million was made payable to his family members and political affiliates.

"The recommendation and selection process of contractors, as utilised by [the councillors] and/or the Hanover Parish Council, are devoid of checks and balances that are necessary for transparency and accountability in the management of public funds," the OCG concluded. The OCG described the systems at the Hanover Parish Council for the awarding of contracts under \$500,000 for works such as drain cleaning and bushing as "unsatisfactory and unacceptable".

It points out glaring breaches such as the award of contracts before a recommendation is even made; recommendations by some councillors for contracts to go to relatives who are "invariably awarded" those contracts; and a selection process which is "devoid of due diligence".

The OCG has also asked the ministry to initiate an investigation into the procedures used in the contract award process by the Roads and Works Department at the council. According to the report, it was discovered that blank contracts were given to contractors for them to sign and that an official of the department selected contractors, a responsibility which is outside of his remit at the council.

The report also states that, in some instances, the parish council does not verify the competence of individuals recommended for contracts. Furthermore, the OCG wants changes to be made to the Contractor General Act Public Sector Procurement Regulations 2008 in order to prevent the award of contracts to relatives and affiliates of public officers, and advises that even where it is allowed for a project to be recommended by a councillor, that the suitability of these recommendations should be independently vetted by the procuring or implementing public body.

**The End**