

**JUSTICE DELAYED IS JUSTICE DENIED: JAMAICA’S
DUTY TO DELIVER TIMELY RESERVED
JUDGMENTS AND WRITTEN REASONS FOR
JUDGMENT**

By Sha-Shana Crichton[†]

CONTENTS

ABSTRACT	2
INTRODUCTION	3
I. OVERVIEW OF THE JAMAICAN JUDICIAL SYSTEM	8
II. JAMAICA’S PROBLEM WITH DELAYED RESERVED JUDGMENTS AND REASONS JUDGMENT	12
A. The Problem	12
B. The Problem in Context.....	19
III. REASONS FOR INORDINATELY DELAYED JUDGMENTS	20
A. Reasons for the delay: Judges.....	21
B. JamBar’s Suggested Reasons for the Delays.....	24
C. Judicial Attitude: An Unspoken Reason for Delay?.....	24
IV. JAMAICA’S DUTY TO DELIVER JUDGMENTS WITHIN A REASONABLE TIME.....	26
A. Common Law Duty	26
1. Duty to Give Reasons for Judgment.....	26
2. The Duty to give Timely Reasons	29
B. Constitutional Duty.....	30
C. Format of a Written Reasoned Judgment	31

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V. REMEDIAL MEASURES TAKEN TO ADDRESS DELAYED JUDGMENTS 32

 A. Code of Conduct..... 34

 B. Legislative and Constitutionally Mandated Sanctions ... 35

 C. Appellate Review and Peer Influence: Deterrence to Delayed Reserved Judgments..... 36

 D. Resources..... 38

 E. Revise Scheduling Protocols..... 40

 F. Leadership and Oversight by the Chief Justice 41

 G. Strategies That Have Produced Measurable Results 42

 H. Jamaica’s Remedial Measures..... 45

VI. RECOMMENDATION FOR A SUSTAINABLE SOLUTION 47

 #1 Evaluate the call for adequate resources and allocate adequate resources..... 47

 #2 Encourage a Positive Judicial Attitude..... 49

 #3 Address Attorney Delay. 50

 #4 Address Concerns of Complex Issues and Voluminous Documents..... 50

 #5 Increase Leadership and Oversight by the Chief Justice. 51

 #6 Increase use of Oral Judgment in Appropriate Cases..... 52

 #7 Explore legislation geared at sanction and disciplinary actions..... 52

 #8 Use peer influence to catapult change..... 53

CONCLUSION..... 54

ABSTRACT

Like many other Commonwealth common-law countries throughout the world, Jamaica is faced with the problem of excessively delayed reserved judgments and written reasons for judgment, some of which have been outstanding for more than ten years. Jamaica has been chided by the Inter-American Commission on Human Rights and by the United

2016]

Justice Delayed is Justice Denied

3

Nations Human Rights Committee for denying justice to litigants by failing to deliver written reasons for judgment within a reasonable time. In Jamaica, as elsewhere, a delay in delivering reserved judgment and written reasons for judgment means that justice is delayed and justice delayed is justice denied. The delay harms litigants and poses significant threats to the country as it signals an inefficient judiciary. An inefficient judiciary weakens democratic governance and discourages international investment. The Jamaica Bar Association, (“JamBar”) has asked Jamaica’s Chief Justice to address the problem of delayed reserved judgments and written reasons for judgment and has offered several solutions but, to date, the problem persists. This Article examines Jamaica’s problem of delayed reserved judgments and written reasons for judgment. It also evaluates JamBar’s proposed solutions, as well as strategies used by several other Commonwealth countries that have dealt with, or are dealing with, the problem of delayed reserved judgments and written reasons for judgment and recommends a sustainable solution to this long-standing problem.

INTRODUCTION

Jamaica is faced with the long-standing problem of excessively delayed reserved judgments and written reasons for judgment, some of which have been outstanding for more than ten years.¹ The Jamaican Bar Association (“JamBar”) estimates that approximately “‘hundreds of judgments are outstanding over the years.’”² JamBar notes that the excessive delay in delivering reserved judgments and written reasons for judgment is a problem that occurs at all levels of the court system,³ and is pervasive enough to be deemed a “practice.”⁴ JamBar alleges that judges have retired without delivering outstanding judgments⁵ and litigants “‘have died without the benefit of the written judgments to further their case.’”⁶ Litigants have expressed concerns about the delay, and several lawyers, including members of JamBar, have filed complaints with Jamaica’s Chief Justice, Zaila McCalla, asking her to compel judges

1. Erica Virtue, *An Appeal to the Bench*, THE GLEANER (Jan. 4, 2015), available at <http://jamaica-gleaner.com/article/lead-stories/20150104/appeal-bench> (last visited Dec. 1, 2016).

2. *Id.*

3. *Id.*

4. Barbara Gayle, *A Long Wait for Justice . . . 17 Years and Counting – Judge Takes Three Years to Deliver Judgment as Case Filed in 1997 Continues to Meander Through Courts*, THE GLEANER (July 21, 2013), available at <http://jamaica-gleaner.com/gleaner/20130721/news/news1.html> (last visited Dec. 1, 2016).

5. Virtue, *supra* note 1.

6. *Id.*

to deliver reserved judgments and written reasons for judgments within a reasonable time because delayed judgments deny justice to litigants.⁷ The Jamaica Court of Appeal 2015 Annual Report (“Court of Appeal 2015 Report”) indicates that 47 reserved judgments are outstanding from 2011 to 2015, 37 of which became outstanding in 2015.⁸ In addition, 16 reasons for judgment have been outstanding since 2013, 10 of which became outstanding in 2015.⁹ At the end of 2015, there were 311 outstanding Supreme Court records of proceedings awaiting notes of evidence and written reasons for judgment.¹⁰ The Court of Appeal 2015 Report also indicates that 160 reserved judgments were delivered in 2015, but fails to mention whether the judgments were delivered timely.¹¹

JamBar’s complaint about delayed judgments is not new to Jamaica. Jamaica has been chided by the Inter-American Commission on Human Rights and by the United Nations Human Rights Committee for denying justice to litigants in several death penalty cases because although oral judgment was delivered timely, the courts failed to deliver written reasons for judgment within a reasonable time, which impaired the litigants’ ability to exercise their right to an effective appeal.¹²

Judges in Jamaica are expected to deliver judgment and reasons for judgment within a reasonable time, which is defined as three months after the completion of trial or hearing, but no more than six months for complex cases.¹³ The problem of delayed reserved judgments arises when judges reserve judgment until they have contemplated their

7. See Barbara Gayle, *End Delays from the Bench!-Bar Association Calls on Judges to Speedily Hand Down Judgments*, THE GLEANER (May 15, 2016), available at <http://jamaica-gleaner.com/article/news/20160515/end-delays-bench-bar-association-calls-judges-speedily-hand-down-judgments> (last visited Dec. 1, 2016).

8. The Court of Appeal, Jamaica, *Annual Report 2015*, 17 (2015), available at <http://courtofappeal.gov.jm/sites/default/files/Court%20of%20Appeal%20Annual%20Report%202015.pdf> (last visited Oct. 9, 2016) [hereinafter Court of Appeal 2015 Report].

9. *Id.* at 17.

10. *Id.* at 21, 23 (noting that 43% of the 1451 cases pending on appeal were pending because of outstanding transcripts or records of appeal. The record of appeal in a civil case includes the notes of evidence and the written reasons for judgment).

11. *Id.* at 17.

12. Pratt v. Att’y Gen. for Jam. [1993] UKPC 1 (Jam.); Currie v. Jamaica, No. 377/1989, U.N. Doc. CCPR/C/50/D/377/1989 (1994); Kelly v. Jamaica, No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (1996) (Court of Appeal failed to issue a written judgment for almost five years in this death penalty case); Smith v. Jamaica, No. 668/1995, U.N. Doc. CCPR/C/65/D/668/1995 (1999) (Court of Appeal failed to issue deliver judgment for two years); L.C. v. Jamaica, No. 257/1987, U.N. Doc. CCPR/C/33/D/285/1988 (1988) (Court of Appeal took six years to issue written reasons for judgment); Francis v. Jamaica, No. 606/1994, ¶ 4.2, U.N. Doc. CCPR/C/54/D/606/1994 (1995).

13. Desmond Bennett v. Jam. Pub. Serv. Co. [2013] JMCA (Civ) 28 (Jam.).

decision, but fail to deliver the judgment within three to six months.¹⁴ Similarly, a delay in delivering written reasons for judgment arises when judges deliver extemporaneous oral judgments immediately after trial or hearing and promise to deliver written reasons for judgment at a later date, but fail to do so within a reasonable time.¹⁵

In Jamaica, as elsewhere, delayed judgments mean delayed justice and justice delayed is justice denied. The delay in delivering reserved judgment and written reasons for judgment harms litigants in several ways: the delays cause psychological and economic harm to the litigants and negatively impact their ability to effectively prepare an appeal.¹⁶ When a court reserves judgment, the litigants and their lawyers remain in a state of incertitude as they await a final decision in their case. A delay in delivering reserved judgment may cause economic harm to the successful party, who is denied the opportunity to enforce rights or collect benefits, payments, or interests until judgment is delivered.¹⁷ Delayed reserved judgments and written reasons for judgment may also cause anxiety and nervousness, because without the court's reasons for judgment, the litigants are unable to effectively prepare an appeal.¹⁸ It has been reported that prisoners have languished in prison because they were unable to effectively prepare an appeal of their convictions or sentences without written reasons for judgment.¹⁹ Delayed written reasons for judgment also may cause the litigants to incur additional legal fees.²⁰

14. Denys Barrow, *Judgment Delayed is Justice Denied: Delays in Delivering Judgments in the Eastern Caribbean*, 35 (3) COMMONWEALTH L. BULL. 429, 430 (2009).

15. *Id.*

16. See Editorial, *Justice Delayed*, THE GLEANER (May 21, 2016), available at <http://jamaica-gleaner.com/article/commentary/20160521/editorial-justice-delayed> (last visited Dec. 1, 2016) (noting that the delays make going to court a costly and useless exercise); see also Barbara Gayle, *Justice Delayed, Denied! Slow Pace of Court System Causes Judge to Throw Out Defamation Suit*, GLEANER (Oct. 12, 2014), available at <http://jamaica-gleaner.com/article/news/20141012/justice-delayed-denied-0> (last visited Dec. 1, 2016) (noting that delays cause “frustration and severe financial hardships for many of the persons involved”); see generally SHIMON SHETREET & SOPHIE TURENNE, JUDGES ON TRIAL: THE INDEPENDENCE AND ACCOUNTABILITY OF THE ENGLISH JUDICIARY 228 (2nd ed. 2013) (noting that lengthy delays deprive litigants protection of the law).

17. See Thomas E. Shea, *Closing Pandora's Box: Litigation Economics*, 22 CALIF. W. L. REV. 267, 272 (1986) (noting that delays in the judicial system have “an economic cost to the party who is wrongfully denied the amount due”).

18. Virtue, *supra* note 1.

19. *Id.* (noting that scores of Jamaican prisoners are unable to appeal their convictions or sentences because judges failed to issue written judgements in their cases).

20. This is likely to occur when the lawyers make several requests for the judgment. Fidelis Munyoro, *Lazy Judges: Chidyausiku Gets Thumbs Up*, THE HERALD (Zimb.) (Feb. 10, 2015), available at <http://www.herald.co.zw/lazy-judges-chidyausiku-gets-thumbs-up/> (last

Delayed reserved judgments and written reasons for judgment also harm all citizens as they undermine the efficient functioning of the legal system and pose significant threats to the country's social and economic stability.²¹ The delays adversely impact the legal system: they disrupt the availability of precedent; they prevent lawyers from fulfilling their professional responsibility to advise, inform, and zealously advocate for their clients; and they create the unflattering impression of an inept and despotic judiciary.²² These impressions are lasting, and may cause a lack of trust and erode public confidence in the judicial system.²³ A lack of trust and confidence in the judicial system may result in adverse social ramifications, such as encouraging vigilante justice, especially where citizens feel like they have no alternatives but to take matters into their own hands because they are unable to receive a final resolution to their disputes before the courts.²⁴ The domino effect extends to the economy, where potential investors may be dissuaded from investing in Jamaica on the view that the delays are a sign of an inefficient judiciary and, by extension, government.²⁵

visited Dec. 1, 2016) (noting that the delays punish litigants because they suffer from anxiety as they await a final judgment in their case and they accrue legal fees and other expenses from the litigation).

21. Gerald Rosenberg, *The Impact of Courts on American Life*, in INSTITUTIONS OF AMERICAN DEMOCRACY: THE JUDICIAL BRANCH 280, 288 (Kermit L. Hall & Kevin T. McGuire eds., 2005) (noting that the judicial system is fundamental to democracy).

22. William D. Bader & David R. Cleveland, *Precedent and Justice*, 49 DUQ. L. REV. 35, 43 (2011) (noting the increased calls for judicial oversight and discipline because the judiciary is increasingly viewed as powerful and unaccountable); Jason Bosland & Jonathan Gill, *The Principle of Open Justice and The Judicial Duty to Give Public Reasons*, 38 MELB. U. L. REV. 482, 487-88 (2014); GLEIDER I. HERNÁNDEZ, THE INTERNATIONAL COURT OF JUSTICE AND THE JUDICIAL FUNCTION 98-99 (2014).

23. See Martin Kuijer, *The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings*, 13 HUM. RTS. L. REV. 777, 778-80 (2013) (noting that the slow administration of justice undermines public confidence in the "peaceful settlement of disputes").

24. Gayle, *supra* note 4. Attorney Ian Wilkinson, past president of JamBar, noted that the failure to issue timely "could also lead to people taking the law into their own hands when commercial, domestic and other disputes are not settled in a timely manner." See JUDICIAL REFORM IN LATIN AMERICA AND THE CARIBBEAN: PROCEEDINGS OF A WORLD BANK CONFERENCE 2 (Malcom Rowat, et. al eds., 1995); see also PATRICIA KAMERI MBOTE & MIGAI AKECH, KENYA: JUSTICE SECTOR AND THE RULE OF LAW 89 (The Open Soc'y Initiative for E. Afr., eds., 2011) (noting that the delayed delivery of reserved judgments in Kenya caused the litigants to be anxious).

25. Gayle, *supra* note 4 (noting that the delays can also "deter potential investors from investing in Jamaica if it is perceived that the justice system is slow and/or unreliable" which will "affect the economy and, by extension, everything else which depends on it"); see JUDICIAL REFORM IN LATIN AMERICA AND THE CARIBBEAN: PROCEEDINGS OF A WORLD BANK CONFERENCE, *supra* note 24, at 2 (according to Mr. Malcolm Rowat, Chief of the World Bank's Public Sector Modernization Unit in the Technical Department of the Latin American

2016]

Justice Delayed is Justice Denied

7

JamBar has asked the Jamaican government and Chief Justice McCalla to put measures in place to improve the delivery time for reserved judgments and written reasons for judgment.²⁶ The proposed measures include allocating an adequate budget to the judicial system, adopting a judicial code of conduct, and sanctioning delinquent judges.²⁷ The Chief Justice has been responsive to JamBar's call for judicial accountability and has requested a list of the delinquent judges.²⁸ The Jamaican government has also promised that its primary focus over the next few years will be on reducing the backlog of cases so that justice may be timely delivered.²⁹ While these may be steps in the right direction, will the fervor die as it has done so many times in the past?³⁰ The request that judges deliver timely reserved judgments and written reasons for judgment is not new, and neither are the promises to implement measures for timely delivery.³¹ Yet, not much has changed and the problem persists.

This Article examines Jamaica's long-standing problem of delayed reserved judgments and written reasons for judgment, JamBar's call for a solution, the remedial measures that have been taken, and then proposes recommendations for a viable and sustainable solution. Part I gives an overview of the Jamaican legal system. Part II looks at select cases where judgments have been excessively delayed and examines suggested reasons for the delay. Part III argues that delayed judgments are a breach of Jamaica's common law and constitutional duty to deliver judgments with reasons for the court's decision within a reasonable time. Part IV looks at remedial measures other countries have used, and Jamaica is

and the Caribbean Region, administrative inefficiencies and delays, lack of transparency and predictability in court decisions and corruption are judicial obstacles to private sector development in the Caribbean and Latin America).

26. Erica Virtue, *Judgement on Judges*, THE GLEANER (Jan. 4, 2015) available at <http://jamaica-gleaner.com/article/lead-stories/20150104/judgement-judges-0> (last visited Jan. 10, 2016).

27. *Id.*; *Justice Denied*, THE GLEANER (Aug. 17, 2014), available at <http://jamaica-gleaner.com/gleaner/20140817/news/news5.html> (last visited Nov. 28, 2016)

28. *Id.*

29. *Jamaica Bar Wants Faster Judicial System*, STABROEK NEWS (Apr. 24, 2012), available at <http://www.stabroeknews.com/2012/archives/04/24/jamaica-bar-wants-faster-judicial-system/> (last visited Oct. 9, 2016).

30. *See Justice Ministry to Bolster Case Management System*, JAM. OBSERVER (Aug. 12, 2013), available at http://m.jamaicaobserver.com/newstest/Justice-ministry-to-bolster-case-management-system_14849591 (last visited Jan. 10, 2017); Virtue, *supra* note 26; Gayle, *supra* note 4.

31. *See Court of Appeal 2015 Report*, *supra* note 8, at 5. President of the Jamaica Court of Appeal, The Honorable Mr. Justice C Dennis Morrison, expressing "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." *Id.*

implementing, to address the problem of delayed judgments. It is against this backdrop that Part V makes recommendations for a sustainable solution to this long-standing problem. Part VI concludes by noting that a sustainable solution to this long-standing problem of delayed reserved judgments and written reasons for judgment will require all hands on deck, including resource commitment from the government and the cooperation of judges, court staff, and lawyers.

I. OVERVIEW OF THE JAMAICAN JUDICIAL SYSTEM

The legal and judicial system of Jamaica, a former British Colony, is based on the English common-law system.³² In the common-law system, courts operate on a hierarchical structure and adhere to the doctrine of stare decisis.³³ Stare decisis enables certainty, stability, and predictability in common law³⁴ by requiring common-law courts to follow prior judgments (precedent) in cases with similar facts and issues.³⁵ Precedent dictates the outcome of future similar cases.³⁶ In common-law countries, like Jamaica, courts that are on the same level as the deciding court, and lower courts within the court's hierarchical structure, are bound by the court's decision, and must follow the court's reasoning in subsequent similar cases.³⁷

Jamaica's judicial system consists of five tiers of courts organized according to hierarchy: the Petty Court, the Resident Magistrate's Court, The Supreme Court, The Court of Appeal, and the Privy Council. At the lowest level is the Petty Court and at the highest level is the court of last resort, the Privy Council, which is located in London, England.³⁸ Both the Petty Court and the Resident Magistrate Court were established by the Justice of the Peace Jurisdiction Act and the Judicature Acts of 1928

32. *The Court Structure and Hierarchy*, THE SUP. CT. JAM., available at <http://supremecourt.gov.jm/content/court-structure-and-hierarchy> (last visited Jan. 12, 2017); see generally ADAM GEAREY, WAYNE MORRISON & ROBERT JAGO, *THE POLITICS OF THE COMMON LAW: PERSPECTIVES, RIGHTS, PROCESSES, INSTITUTIONS* 1 (2d ed. 2013).

33. GEAREY ET AL., *supra* note 32, at 116. *Stare decisis* is derived from the Latin phrase "*stare decisis et non quieta movere*" which means "to stand by decisions and not to disturb settled matters." *Id.*

34. M.B.W. Sinclair, *Notes Toward a Formal Model of Common Law*, 62 IND. L.J. 355, 356 (1987); Sabrina DeFabritiis, *Lost in Translation: Oral Advocacy in A Land Without Binding Precedent*, 35 SUFFOLK TRANSNAT'L L. REV. 301, 320 (2012).

35. See RUPERT CROSS & J.W. HARRIS, *PRECEDENT IN ENGLISH LAW* 4 (4TH ED. 1991); see also GEAREY ET AL., *supra* note 32, at 116.

36. DeFabritiis, *supra* note 34, at 305.

37. *The Court Structure and Hierarchy*, *supra* note 32; ALLAN C. HUTCHISON, *EVOLUTION AND THE COMMON LAW* (4th ed. 2005).

38. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 3 § 110.

respectively.³⁹ The Supreme Court and the Court of Appeal are provided for under the Constitution of Jamaica.⁴⁰ The Constitution accords appellate jurisdiction to the Privy Council.⁴¹ The Petty Court is presided over by Justices of the Peace and hears minor criminal matters.⁴² The Resident Magistrate's Court is the inferior court of record and has limited jurisdiction to hear certain civil and criminal cases.⁴³ A Resident Magistrate Court is located in each of the island's 14 parishes.⁴⁴ The Supreme Court is the superior court of record and has unlimited original jurisdiction in criminal, civil, and constitutional cases.⁴⁵ The Court of Appeal, the highest appellate court located in Jamaica, is empowered to hear appeals from all the lower courts including the Supreme Court and the Resident Magistrate's Court.⁴⁶ The Privy Council hears appeals from the Court of Appeal.⁴⁷

The Chief Justice is the head of the Jamaican judiciary and the Jamaican Judicial Services Commission.⁴⁸ The Judicial Services Commission makes recommendations to the Governor-General on the appointment or removal of judges, and any disciplinary actions to be taken against judges of all courts, including the Court of Appeal.⁴⁹

Judges at the Supreme Court and the Court of Appeal are guaranteed tenure and may not be easily removed or disciplined.⁵⁰ The Constitution

39. Justice of the Peace Jurisdiction Act (1850) (Jam.); Judicature (Resident Magistrate) Act (1928) (Jam.).

40. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 1 § 97(1), ch. 7, pt. 4 § 103(1).

41. *Id.* at pt. 3 § 110(1).

42. Justice of the Peace Jurisdiction Act § 2 (1850) (Jam.).

43. *The Court Structure and Hierarchy*, *supra* note 32. The Resident Magistrate Court hears cases with claims that do not exceed JD\$250,000 and has a lower penal power than the Supreme Court in criminal cases. *Id.*

44. Judicature (Resident Magistrate) Act, §§ 3, 71 (1928) (Jam.).

45. CONSTITUTION OF JAMAICA July 23, 1962, ch. 7 §§ 97(1), 97(4); The Judicature (Supreme Court) Act §§ 27, 28 (1880) (Jam.); THE SUPREME COURT OF JAMAICA, JURISDICTION, *available at* <http://supremecourt.gov.jm/content/jurisdiction> (last visited Nov. 28, 2016).

46. CONSTITUTION OF JAMAICA July 23, 1962, ch. 7, pt. 2 §§ 103(1) and 103(5); Judicature (Resident Magistrate) Act § 251(1928) (Jam.).

47. CONSTITUTION OF JAMAICA July 23, 1962, ch. 7, pt. 3 §§ 110(1), 110(2) (giving the Privy Council jurisdiction to hear appeals by right and by leave of the Court of Appeals); CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 3 § 110 (3) (empowering the Privy Council to grant special leave to appeal from decisions from the Court of Appeal in any criminal or civil matter).

48. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 1 § 98, ch. 7, pt. 4 § 111(1). The Chief Justice is appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. *Id.*

49. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 4 §§ 111(1), 112. The Judicial Services Commission is established by the Constitution.

50. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7 §§ 97-109.

of Jamaica guarantees the terms for appointment, service, removal, and emoluments for judges at the Court of Appeal and the Supreme Court and these terms may not be altered to the detriment of the judges.⁵¹ Judges serving on the Court of Appeal and the Supreme Court may serve on the bench until the age of seventy or until they chose to resign.⁵² They may be removed only for the “inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour False”⁵³

There are no clear standards for defining misbehaviour. Misbehaviour is determined on a case-by-case basis, giving very little guidance to the judges and to the public as to what behavior will be deemed misbehaviour.⁵⁴ The Judicial Committee of the Privy Council (JPC) addressed the issue of whether certain actions by a judge qualify as misbehaviour in the *Madam Justice Levers* case.⁵⁵ Madam Justice Levers was accused of summary arrest of jurors, discourtesy to counsel, bias against female litigants, and using inappropriate language to criticize fellow judges.⁵⁶ The JPC noted that the public has a right to expect a judge to display the “highest standard of behaviour, . . . but the protection of judicial independence demands that a judge shall not be removed for misbehaviour unless the judge has fallen so far short of that standard of behaviour as to demonstrate that he or she is not fit to remain in office.”⁵⁷ The JPC determined that the test for whether a judge’s behavior can be deemed a ‘misbehaviour’ “is whether the confidence in the justice system of those appearing before the judge or the public in general, with knowledge of the material circumstances, will be undermined if the judge

51. *Id.*; Edward Zacca, *Judicial Reform in Jamaica*, in JUDICIAL REFORM IN LATIN AMERICA AND THE CARIBBEAN: PROCEEDINGS OF A WORLD BANK CONFERENCE 169 (Malcom Rowat ed., 1995) (noting that the constitutionally mandated terms for judicial appointment, service, removal and the emoluments lends to judicial independence and impartiality “that is the legacy of its grounding in English common law.”); *see also* Emily Field Van Tassel, *Resignations and Removals: A History of Federal Judicial Service – and Disservice – 1789-1992*, 142 U. PENN. L. REV. 333, 334 (1993) (noting that the salary protection, the appointment process, and removal mechanism are the geared towards guaranteeing judicial independence, but judicial independence should not trump accountability for misbehaviour. The critical question is what behaviours are to be deemed misbehavior).

52. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 1 § 100(1), ch. 7, pt. 2 § 106(1).

53. *Id.* at ch. 7, pt. 1 § 100 (4), ch. 7, pt. 2 § 106(4).

54. *See Hearing on the Report of the Tribunal to The Governor of The Cayman Islands - Madam Justice Levers (Judge of The Grand Court of The Cayman Islands)* [2010] UKPC 24 (determining whether certain judicial conduct amounts to misbehaviour).

55. *See id.*

56. *Id.* at ¶¶ 8-10.

57. *Id.* at ¶ 50. The JPC looked to the Bangalore Principles of Judicial Conduct to determine the standard of behaviour expected of a judge. *Id.* at ¶ 48.

2016]

Justice Delayed is Justice Denied

11

continues to sit.”⁵⁸ This test added only a scintilla of clarity, but indelibly etched in the minds of the judges and the public that the bar is set high on what behavior will qualify as misbehaviour. It is highly unlikely the JPC will rule that the failure, or the persistent failure, to timely deliver judgments will qualify as a misbehaviour and grounds for removal of a delinquent judge unless the JPC decides that delayed reserved judgments and written reasons for judgment undermine public confidence in the judicial system.⁵⁹

Because of the constitutional provision that terms of appointment and emoluments may not be altered to the detriment of the judges, judges on the Court of Appeal and the Supreme Court cannot be demoted nor can their salary be reduced or withheld for failing to timely deliver judgments. This is unlike California, where the Government Code provides that the salary of judges in the state courts may be withheld if the judges have outstanding judicial matters that remain pending for 90 or more days.⁶⁰ Given Jamaica’s current laws, a judge who is excessively late in delivering judgments can be removed only by impeachment, a long and onerous process.⁶¹

Resident Magistrate judges are not guaranteed tenure and may be reported to the Governor-General for neglecting their judicial duties, including failing to timely deliver judgments.⁶² The Governor-General, acting on the advice of the Judicial Service Commission, will decide

58. *Hearing on the Report of the Tribunal to the Governor of The Cayman Islands* [2010] UKPC 24, 50 (citing to *Therrien v. Canada* (Minister for Justice), [2001] 2 S.C.R. 3 (Can.)).

59. The JPC looks to the Guide for Judges in England and Wales and the United Kingdom Supreme Court Guide to Judicial of 2009 for guidance on judicial conduct. Both guidelines are non-binding and deliberately declined to address the “the timing and style of judgments” on the principle that guidance on such judicial duties are beyond the scope and intent of the code and are best dealt with by court rules, cases, by Heads of Division, or in consultation with fellow Justices. JUDICIARY OF ENGLAND AND WALES, GUIDE TO JUDICIAL CONDUCT (March 2013), available at https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf (last visited Dec. 1, 2016); UNITED KINGDOM SUPREME COURT GUIDE TO JUDICIAL CONDUCT §6.2 (2009), last visited https://www.supremecourt.uk/docs/guide-to-judicial_conduct.pdf (last visited Dec. 1, 2016) (based on the Judiciary of England and Wales Guide to Judicial Conduct).

60. CAL. GOV’T CODE § 68210 (1966).

61. CONSTITUTION OF JAMAICA, July 23, 1962; See Derek Achong, *Lawyers on Delay in Judgments: Not Enough to Impeach CJ*, GUARDIAN (Dec. 7, 2013), available at <http://www.guardian.co.tt/news/2013-12-07/lawyers-delay-judgments-not-enough-impeach-cj> (last visited Dec. 1, 2016) (In Trinidad and Tobago a 3-year delay in delivering judgment is insufficient grounds and not extreme enough to impeach the judge).

62. Judicature (Resident Magistrate) Act, § 32 (1928), (Jam.). Judges of the Supreme Court have a duty address any irregularities or neglect of duties on the part of the Resident Magistrate with him or her and to report any persistent neglect of duties to the Governor-General. *Id.*

whether disciplinary measures are necessary.⁶³

II. JAMAICA'S PROBLEM WITH DELAYED RESERVED JUDGMENTS AND REASONS JUDGMENT

A. *The Problem*

Jamaica has a long-standing problem with the delayed delivery of reserved judgments and written reasons for judgment. It is common for litigants in Jamaica to wait months, and sometimes years, to receive outstanding reserved judgments and written reasons for judgment.⁶⁴ This is particularly unnerving for the litigants, many of whom have already waited years for their cases to be heard.⁶⁵

Flickenger v. Preble presents a palpable example of excessive judicial delay in delivering reserved judgment after a long wait for trial. Elita Flickenger sued Xtabi Resort Limited in 1997 for negligence after her husband drowned while they were guests at the resort.⁶⁶ Approximately fourteen years later, on November 10, 2010, the trial court issued judgment in favor of Xtabi.⁶⁷ The trial court had reserved judgment after concluding trial that spanned five years,⁶⁸ and waited an additional three years to deliver judgment.⁶⁹ Mrs. Flickenger filed a timely notice of appeal,⁷⁰ but failed to meet the court's deadline of June 8, 2012 to file the record of appeal.⁷¹ On June 5, 2012, Mrs. Flickenger requested an extension to file the appeal and a supplementary record.⁷² The court granted this initial request for an extension, with the record of appeal and supplementary record due by September 23, 2012.⁷³ On September 21, 2012, Mrs. Flickenger requested another extension alleging difficulty locating exhibits entered into evidence at trial and

63. CONSTITUTION OF JAMAICA July 23, 1962, ch. 7, pt. 4 § 112.

64. Gayle, *supra* note 4.

65. *Id.*

66. *Flickenger v. Preble*, No. C.L. F-013 of 1997 [Nov. 10, 2010] JMSC 1 [1], [2] (Jam.). The hearings in this case lasted over 10 years. *Id.*

67. *Id.* at 2.

68. *See Flickenger v. Preble* [2013] JMCA (App) 13 [4] (Jam.) (starting the trial on November 26, 2002, and ending on July 25, 2007).

69. *Id.* at 2; *see also Flickenger v. Preble*, No. C.L. F-013 of 1997 [Nov. 10, 2010] JMSC 1 [2] (Jam.) (proceedings delayed because neither party served their submissions on the other).

70. *See Flickenger v. Preble* [2013] JMCA (App) 1 [2] (Jam.) (filing the notice of appeal on Dec. 23, 2010).

71. *Id.* at ¶ [3].

72. *Id.*

73. *Id.*

2016]

Justice Delayed is Justice Denied

13

attorney scheduling complications.⁷⁴ She alleged that her attorney was handling other complicated matters that took priority over her appeal.⁷⁵ Mrs. Flickenger filed the record on December 6, 2012, without leave of the court.⁷⁶ The Court of Appeal denied her second request for an extension.⁷⁷ The Court of Appeal reasoned that the delay of six months to file the record of appeal was excessive, the attorney had failed to mention the reasons for the delay in the affidavit, and the attorney did not show “good reason” for the delay.⁷⁸

Mrs. Flickenger asked the Court of Appeal to discharge the order denying the extension.⁷⁹ She argued that the trial court’s judgment should be set aside because the trial judge failed to properly assess evidence given that he was unable to locate his notes of evidence for the six hearing dates before January 20, 2006,⁸⁰ and his delay in considering the evidence and delivering judgment compromised his ability to deliver a fair judgment.⁸¹

The Court of Appeal, sitting as a full court, granted Ms. Flickenger’s request to set aside the judgment denying her appeal.⁸² The Court of Appeal compared Ms. Flickenger’s 10-week delay in submitting the record of appeal to respondent’s two-year delay in delivering written submissions and the trial judge’s three-year delay in delivering judgment, and concluded that justice required that the Court of Appeal hear Mrs. Flickenger’s appeal and examine her allegations that the trial judge failed to consider material evidence.⁸³ The Court of Appeal later reasoned that while the delay may have caused Ms. Flickenger to question the integrity of the judgment, she was not prejudiced by the missing notes of evidence because they went missing after the judge had delivered judgment and reasons for judgment.⁸⁴ The Court of Appeal, however, noted that the mismanagement of documents underscored the need for “tighter

74. *Id.* at ¶¶ [4]-[5].

75. Flickenger, JMCA (App) 1 at ¶¶ 4-5 (Jam.).

76. *Id.* at ¶ 4.

77. *Id.* at ¶ 20 (Justice Brooks sitting as the sole judge).

78. *Id.* at ¶¶ 7-8.

79. Flickenger v. Preble [2013] JMCA (App) 13 [1] (Jam.). The order was delivered by a single judge sitting on the Court of Appeal. Flickenger, JMCA (App) 1 at [20] (Jam.).

80. Flickenger, JMCA (App) 13 at [35]-[36] (Jam.). Litigation began in 2002 and there were six hearing dates between 2002 and Jan. 20, 2006. *Id.*

81. Flickenger, JMCA (App) 1 at [13] (Jam.).

82. *Id.* at [37].

83. Flickenger, JMCA (App) 13 at [28], [38] (Jam.); *see id.* at [35]-[36] (Jam.) (noting the trial judge located his notes of evidence only from January 20, 2006, even though litigation began in 2002 and there were six hearing dates between 2002 and January 20, 2006).

84. Flickenger v. Preble [2015] JMCA (Civ) 19 [35]-[36] (Jam.).

administrative control of court records.”⁸⁵

In another case of protracted court proceedings, *Bennett v. Jamaica Public Service*, the Court of Appeal called the trial court’s delay of almost three years to deliver judgment “excessive,”⁸⁶ and a “regrettable situation.”⁸⁷ The plaintiff in *Bennett* filed a claim for negligence and breach of statutory duty in 1999.⁸⁸ The trial began in February 2006 and included several days of hearing that spanned the course of five months.⁸⁹ The trial court reserved judgment.⁹⁰ The trial court delivered judgment in favor of the defendant on April 24, 2009, approximately three years later.⁹¹ The plaintiff appealed on 41 grounds, one of which challenged the trial court’s inordinate delay in delivering the judgment as a basis for invalidating its decision.⁹² The Court of Appeal acknowledged that the complaint was not “unreasonable” because a three-year delay in delivering judgment was “clearly excessive” and the trial judge provided no justification for the delay.⁹³ The Court of Appeal reasoned that a three-month time limit, and up to six months in complex cases, for the courts to deliver reserved judgments “is not unreasonable, even in the circumstances of stretched resources in which our courts operate.”⁹⁴ Ironically, the Court of Appeal delayed in delivering reserved judgment.⁹⁵ The Court of Appeal cited attorney conduct as a contributing factor to its delay and noted that the attorney had filed 41 grounds of appeal which “in no small measure, contributed” to the delay.⁹⁶

The Court of Appeal addressed the issue of whether a trial judge’s delay of almost two years in delivering judgment caused the judgment to be flawed, prejudiced the appellant, and whether justice required that the case be reheard in *Bowen v. Robinson*.⁹⁷ In *Bowen*, the trial judge delivered an oral judgment on October 22, 2013, approximately two years

85. *Id.* at [35]-[36] (Jam.).

86. *Desmond Bennett v. Jamaica Pub. Serv. Co.* [2013] JMCA (Civ) 28 [71] (Jam.).

87. *Id.*

88. *Id.* at [4].

89. *Id.*

90. *Id.*

91. *Bennett* JMCA (Civ) 28 at ¶ 5.

92. *Id.* ¶¶ 18, 71. The Court of Appeal, citing to *Cobham v. Frett* [2000] UKPC 49 (PC); [2001] 1 WLR 1775 (Jam.), noted that the delay did not prejudice the result and therefore did not justify invalidating the trial court’s decision. *Id.* at [72]-[73], [88]. The trial judge had all his notes and witness statements. *Id.*

93. *Bennett*, JMCA (Civ) 28 at [71].

94. *Id.*

95. *Id.*

96. *Id.*

97. *Bowen*, JMCA (Civ) 57 at [139], [142] (Jam.).

2016]

Justice Delayed is Justice Denied

15

after reserving judgment at trial.⁹⁸ Counsel for the appellant complained to the Chief Justice about the long wait for the judgment.⁹⁹ Appellant appealed on 18 grounds, including that the delay caused the judge to suffer a lapse of memory, which led him to forget submissions and make material factual and legal errors.¹⁰⁰ Appellant also argued that the excessive delay in delivering judgment was “inexcusable” because the case involved a simple matter.¹⁰¹ Respondent asked for consideration for the trial judge, who “in the interim, presided over the longest criminal trial in the history of Jamaica.”¹⁰² The Court of Appeal rejected appellant’s argument that the trial court’s judgment was defective because the delay caused the trial judge to suffer from a lapse in memory.¹⁰³ The Court of Appeal reasoned that the delay did not impact the judge’s ability to remember material facts and evidence because submissions were presented in writing, the trial judge had continued access to them, and the trial judge had delivered “a carefully considered judgment where all the issues that were raised before him were duly considered and addressed.”¹⁰⁴ The Court of Appeal, however, called the delay “an unfortunate state of affairs” that was exacerbated because the trial judge did not give an explanation or justification for the delay.¹⁰⁵

Jamaica’s problem with delayed judgments and written reasons for judgment is not new. In 1993, approximately two decades before *JamBar* complained to Chief Justice McCalla about delayed judgments, Lord Griffiths of the Judicial Committee of the Privy Council (“JPC”) expressed his disapproval of the Jamaica Court of Appeal’s delay of 45 months to deliver written reasons for judgment in the landmark death penalty case, *Pratt and Morgan v. Jamaica*.¹⁰⁶ Lord Griffiths reminded the Court of Appeal of its duty to deliver reserved judgments within three months of a hearing and emphasized that this important duty is a shared duty that rests not only with the judge assigned to write the opinion but also with the court’s employees who are tasked with reminding the judges of due dates.¹⁰⁷ Lord Griffiths noted that in the United Kingdom, delays

98. *Id.* (reserving judgment on Nov. 1, 2011).

99. *Id.* at [139]-[40].

100. *Id.* at [24], [139], [142].

101. *Id.* at [35], [142] (concerning a simple appeal from taxation by registrar).

102. Bowen, JMCA (Civ) 57 at [143] (Jam.).

103. *Id.* at [150]-[151].

104. *Id.* at [145], [148].

105. *Id.* at [139].

106. *Pratt v. Att’y Gen. for Jam.* [1993] UKPC 1 [19] (Jam.).

107. *Id.*

“in terms of years are unheard of,” especially in death penalty cases.¹⁰⁸

In *Pratt*, Earl Pratt and Ivan Morgan were convicted of murder and sentenced to death on January 15, 1979.¹⁰⁹ Three days later, on January 18, 1979, Pratt and Morgan filed a timely notice for leave to appeal and request for pro bono assistance.¹¹⁰ Approximately two years later, on December 5, 1980, the Court of Appeal dismissed their leave for appeal and promised to issue written reasons for judgment.¹¹¹ On January 7, 1981, Pratt and Morgan notified the Registrar of the Court of Appeal (“Registrar”) that they would need all the necessary papers to file an appeal with the Judicial Committee of the Privy Council (“JPC”).¹¹² The Registrar did not respond to Pratt and Morgan.¹¹³ Pratt resubmitted the request for written reasons for judgment to the Registrar on August 16, 1984, approximately forty-four months after the Court of Appeal had promised to deliver the written reasons for judgment.¹¹⁴ The Court of Appeal had misplaced and had forgotten the papers.¹¹⁵ The Court of Appeal issued the written judgment with reasons on September 24, 1984.¹¹⁶

The Privy Council denied Pratt’s request for special leave to appeal filed on March 13, 1986, because he had failed to petition for special leave to appeal “as soon as possible after judgement.”¹¹⁷ Writing on behalf of the JPC, Lord Templeman expressed concern regarding the Court of Appeal’s delay of three years and nine months to deliver written reasons for its decision, given that Pratt was challenging a death sentence and was forced to remain in a state of uncertainty because ““no action could be taken on his behalf, or on behalf of the authorities, pending the possibility of an appeal to [the JPC] which could only be considered when those reasons had been delivered.””¹¹⁸ As a matter of correct procedure, the appellate court needs the written reasons for the lower court’s

108. *Id.* at [2]. Lord Griffiths noted that death penalty cases are “carried out expeditiously after sentence, within a matter of weeks or in the event of an appeal even to the House of Lords within a matter of months.” *Id.*

109. *Id.* at [1].

110. Pratt, UKPC 1 at [11]. The hearing was delayed because Pratt and Morgan had not received notice that they would receive pro bono assistance until May 29, 1980. *Id.*

111. *Id.* at [11], [24].

112. *Id.* at [12].

113. *Id.* at [19].

114. Pratt, UKPC 1 at [19]. Pratt needed written reasons detailing why the Court of Appeals dismissed their appeal. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at [23].

118. Pratt, UKPC 1 at [24].

2016]

Justice Delayed is Justice Denied

17

judgment at the hearing for special leave to appeal to determine the points of law and whether the lower court erred; but the reasons may be delivered at the time of the hearing and are not a condition precedent to filing the request for special leave to appeal.¹¹⁹ This information conflicted with information Justice Rowe of the Court of Appeal had given to two international bodies that the appellants had petitioned.¹²⁰ Justice Rowe erred in stating that leave for appeal will only be considered when filed with the reasons for the lower court's judgment.¹²¹ The JPC recommended that appellants' death sentence be commuted to life imprisonment after reasoning that delays of over five years after sentencing to carry out executions present strong grounds to determine that the delay amounts to "inhuman or degrading punishment or other treatment."¹²²

While seeking redress in the JPC, appellants had also filed complaints with the Inter-American Commission on Human Rights, ("IACHR"), and United Nations Human Rights Committee ("UNHRC").¹²³ The IACHR determined that the Court of Appeal's delay of almost four years to deliver the reasons for its decision amounted to "cruel, inhuman and degrading treatment," reasoning that the appellants suffered on death row because they could not appeal to the JPC without the court's reasons for judgment.¹²⁴ The UNHRC held that the Court of Appeal's failure to deliver reasons for 45 months deprived appellants of the right to be "tried without undue delay," and the right to have their convictions "reviewed by a higher tribunal according to law."¹²⁵ The UNHRC emphasized that Jamaica's judicial authorities have a duty to deliver written reasons for judgment within a reasonable time.¹²⁶ This duty is not contingent on, or impacted by, the accused's request or failure to request written reasons for judgment.¹²⁷ *Pratt v. A.G. Jamaica*

119. *Id.* at [25].

120. *Id.*

121. *Id.* Justice Rowe's statement presupposes that written reasons for judgment is condition precedent to filing a request for special leave to appeal. *Id.*

122. *Pratt*, UKPC 1 at [85], [87].

123. *Id.* at [17], [22].

124. *Id.* at [30] (affirming that the information on the procedure to file an appeal was incorrect and was based on erroneous information by Jamaica's Chief Justice Ira Rowe).

125. *Id.* at [36] (violations of ICCPR Articles 14(3)(c) and 14(3)(5)); *but see id.* at [38] (noting the JPC's doubt that the UNHRC would have concluded that Pratt and Morgan were denied the right to be tried with undue delay and to appeal to the Privy Council if they were not misled into thinking written reasons for judgment were a condition precedent to filing an appeal).

126. *Pratt*, UKPC 1 at [37] (Jam.).

127. *Id.* (explaining the UNHRC's comment that the responsibility of Jamaican judicial authorities "is neither dependent on a request for production by the accused in a trial, nor is

provides a classic example of justice denied because of judicial delays caused by inefficiencies in the court administration.

Before *Pratt v. A.G. Jamaica*, the UNHRC had heard several cases from Jamaica involving excessive delays in delivering written reasons for judgment.¹²⁸ In some cases, written reasons for judgment remained outstanding for over five years.¹²⁹ In another death penalty case, *Currie v. Jamaica*, Mr. Antony Currie was charged with murder on April 18, 1978, and sentenced to death on December 8, 1978.¹³⁰ He appealed.¹³¹ The Court of Appeal delivered an oral judgment dismissing Mr. Currie's appeal on October 11, 1980,¹³² but delayed 13 years to issue reasons for its decision.¹³³ Mr. Currie filed a complaint with the UNHCR claiming that the delay precluded him from fulfilling the JPC's requirements for judicial review and therefore violated his right to be tried without undue delay under Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR) and to have his conviction and sentence reviewed under Article 14(5).¹³⁴

Mr. Currie had petitioned for special leave to appeal to the JPC, but the JPC dismissed Mr. Currie's petition on February 20, 1987 because he did not have written reasons for the Court of Appeal's judgment.¹³⁵ Mr.

non-fulfillment of this responsibility excused by the absence of a request from the accused").

128. See *Currie v. Jamaica*, No. 377/1989, U.N. Doc. CCPR/C/50/D/377/1989 (1994); see also *Kelly v. Jamaica*, No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (1996) (showing the Court of Appeal failed to issue a written judgment for almost five years in this death penalty case); *Smith v. Jamaica*, No. 668/1995, U.N. Doc. CCPR/C/65/D/668/1995 (1999) (showing the Court of Appeal failed to issue deliver judgment for two years); *L.C. v. Jamaica*, No. 257/1987, U.N. Doc. CCPR/C/33/D/285/1988 (1988) (showing the Court of Appeal took six years to issue written reasons for judgment); *Francis v. Jamaica*, No. 606/1994, ¶ 4.2, U.N. Doc. CCPR/C/54/D/606/1994 (1995) (finding that Clement Francis was convicted of murder and sentenced to death. He appealed and the Court of Appeal orally dismissed his appeal, and promised to deliver written reasons for judgment. His attorneys argued that the Court of Appeal's thirteen-year delay to deliver written reasons for judgment violated Mr. Francis' right, under Article 14 of the ICCPR to be tried without undue delay).

129. *L.C. v. Jamaica*, No. 257/1987, U.N. Doc. CCPR/C/33/D/285/1988 (1988) (showing the Court of Appeal took six years to issue written reasons for judgment); *Francis v. Jamaica*, No. 606/1994, ¶ 4.2, U.N. Doc. CCPR/C/54/D/606/1994 (1995) (showing the Court of Appeal took thirteen years to issue written reasons for judgment); *Kelly v. Jamaica*, No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (1996) (showing the Court of Appeal took almost five years to deliver written reasons for judgment).

130. See *Currie v. Jamaica*, No. 377/1989.

131. *Id.* ¶ 2.2 (appealing on the grounds that the judge had misdirected the jury on the issue of self-defense).

132. *Id.*

133. *Id.* (appealing on the grounds that the judge had misdirected the jury on the issue of self-defense).

134. *Id.* ¶ 12.1.

135. *Currie v. Jamaica*, No. 377/1989 at ¶ 2.2.

Currie’s counsel asked the JPC to allow Mr. Currie’s petition on the grounds that the Court of Appeal’s failure to “issue a written judgement in a capital case was such a serious violation of the principles of natural justice”¹³⁶ or to remand the case to Jamaica directing the Court of Appeal to issue written reasons for judgment as provided for under section 10 of the Judicial Committee Act 1844.¹³⁷

The UNHCR agreed that the Court of Appeal’s failure to issue a written judgment 13 years after dismissing Mr. Currie’s appeal violated his right to a fair trial under Articles 14(3)(c) and 14(5) because it undermined his right to an effective appeal without undue delay.¹³⁸ The UNHCR warned Jamaica to take the necessary precautions to ensure that the courts deliver written reasons for judgment within a reasonable time so that “similar violations do not occur in the future.”¹³⁹

B. The Problem in Context

Delayed reserved judgments and written reasons for judgment have a pernicious impact and should be avoided at all costs. To add context, it is important to understand how judgments are delivered in order to understand why the problem exists, especially in light of JamBar’s comment that the delays are pervasive enough to be deemed a practice and occur at all levels of the judicial system.¹⁴⁰ Judges in Jamaica may deliver judgment in two ways: they may deliver an *ex tempore* oral judgment immediately at the conclusion of trial or hearing, or they may reserve judgment.¹⁴¹ *Ex tempore* oral judgments are best suited in cases where a quick decision is required, where the legal issues are simple, the

136. *Id.*

137. *Id.* ¶ 2.3 (noting that Section 10 of the Judicial Committee Act of 1844 to require judges in any foreign court within its jurisdiction to give to the clerk of the Privy Council a copy of the written reasoned judgment and a copy of the notes of evidence for cases heard by that court that are before the Judicial Committee); Judicial Committee Act 1844, 7 & 8 Vict. c. 69, 10, sch. 1 (Eng.) (stating the Judicial Committee can request the notes of evidence and reasons for judgments in colonial courts).

138. *Currie v. Jamaica*, No. 377/1989 at ¶ 15.

139. *Id.*

140. Barbara Gayle, *Call for Code to Collar Local Judges*, GLEANER (July 30, 2010), available at <http://jamaica-gleaner.com/gleaner/20100730/lead/lead7.html> (last visited Jan. 12, 2017); Gayle, *supra* note 4; Gayle, *supra* note 16; Barbara Gayle, *26-Year Wait for Justice – Civil Suit Filed in 1988 Finally Settled*, GLEANER (April 19, 2015), available at <http://jamaica-gleaner.com/article/lead-stories/20150419/26-year-wait-justice-civil-suit-filed-1988-finally-settled> (last visited Jan. 12, 2017).

141. See Peter M. Tiersma, *The Textualization of Precedent*, 82 NOTRE DAME L. REV. 1187, 1208 (2007) (noting that the English Legal System distinguishes between *extempore* judgments which are delivered orally immediately after a trial or hearing while reserved judgments are delivered “several weeks or even months later” after the judges have thought about the issues).

cases “turn on well-settled principles of law,”¹⁴² there is no possibility of creating precedent, and only the parties are impacted by the court’s reasons.¹⁴³ In these situations, judicial efficiency expects the judges to also deliver reasons for judgment at the conclusion of the trial or hearing.¹⁴⁴ The judges also may deliver an *ex tempore* oral judgment but deliver written reasons for judgment later, within a reasonable time.¹⁴⁵ High-volume courts like the Resident Magistrate’s Court and, to an extent, the Supreme Court, generally deliver *ex tempore* oral judgment at the conclusion of trial or hearing and reasons for judgment at the same time or in writing within a reasonable time.¹⁴⁶ Reserved judgments are generally delivered in writing after the judges have fully contemplated the issues.¹⁴⁷ Judgment is generally reserved in complex cases and in cases that are likely to create precedent.¹⁴⁸

Simple logic suggests that unless there has been a consistent surge in the volume of complex cases and cases that are likely to create precedent over the years, Jamaica should not have this problem of delayed reserved judgments. Yet, JamBar’s comment that the problem exists at all levels of the court system suggests that judgment is being reserved even in cases suited for oral judgment. Data from all levels of the court system on what cases are being reserved would help to clarify the extent of this occurrence.

III. REASONS FOR INORDINATELY DELAYED JUDGMENTS

A critical question to understanding, and by extension solving, the problem of delayed reserved judgment is whether more judgments are being reserved and if so, why? Lord Justice David Neuberger, President

142. ROMAN N. KOMAR, *REASONS FOR JUDGMENT: A HANDBOOK FOR JUDGES AND OTHER JUDICIAL OFFICERS* 8 (1980).

143. J.E. Côté, *The Oral Judgment Practice in the Canadian Appellate Courts*, 5 J. APP. PRAC. & PROCESS 435, 440 (2003).

144. *See id.* at 437.

145. *See id.* at 442.

146. *See* KOMAR, *supra* note 142, at 8 (noting that the caseloads of inferior courts make it impossible to deliver written reasons for each case, therefore, for expedience, the courts should resort to oral reasons. Besides, a majority of the cases before high-volume courts are appropriate for oral reasons because they turn on well-settled principles of law).

147. *See* Tiersma, *supra* note 141, at 1208 (noting that reserved judgments are usually, but not always, delivered in writing but *extempore* judgments are always delivered orally and that reserved judgments are “felt to have greater weight” because the judges have carefully thought about their decision).

148. *See* Michael Kirby, *Ex Tempore Judgments – Reasons on the Run*, 25 U. W. AUSTL. L. REV. 213, 217 (1995) (noting that unlike appellate courts, the trial courts do not have the same ‘luxury’ to reserve judgment; however, at every level of the court system, judgment may be reserved in important cases).

of the Supreme Court of England and Wales, opined that there are two connected reasons for an increase in reserved judgments: the heavy workload of judges,¹⁴⁹ and the voluminous documents that lawyers file.¹⁵⁰ Other suggested reasons include “the judge’s self-confidence, or views of the complexity of the case.”¹⁵¹ We should not assume these reasons are the only reasons for the delays without a detailed statistical analysis of each judge’s productivity, including when and for how long judgments are reserved.

A. Reasons for the delay: Judges

Judges in Jamaica, and elsewhere, are expected to inform the head of the judiciary if they expect that judgment will be delayed.¹⁵² The judges are also expected to submit a justification for the delay and to notify the parties awaiting judgment of the delay.¹⁵³ This does not always

149. See Lord David Neuberger, President, U.K. Supreme Court, Address at the Annual Conference of the Supreme Court of New South Wales, Sydney: Sausages and the Judicial Process: The Limits of Transparency (Aug. 1 2014), available at <https://www.supremecourt.uk/docs/speech-140801.pdf> (last visited Jan. 9, 2017) (noting that the judges’ workload is augmented by the “advent of written arguments” and shorter time-frame for arguing cases which gives judges “much less time to prepare judgments during argument”).

150. See *id.* (explaining that because of the word processor and the fear of professional liability, lawyers tend to file voluminous documents because “neither solicitors nor barristers want to leave anything out, whether it is a document, a witness, an argument or an authority.”); see Kirby, *supra* note 148, at 216 (noting that the variance in the use of ex tempore judgments in the New South Wales Court of Appeal depended on the “personalities of particular judges, the growing pressure on the court and the changing characteristics of the work before [the court]”).

151. JAMES HOLLAND & JULIAN WEBB, *LEARNING LEGAL RULES: A STUDENTS’ GUIDE TO LEGAL METHOD AND REASONING* 83 (Oxford University Press 8th ed. 2013) (noting that “a number of factors, including the judge’s self-confidence, or views of the complexity of the case, and particularly the pressures of his or her caseload, will influence that decision”).

152. See *Bond v. Dunster* [2011] EWCA (Civ) 455 [5] (Eng.) (noting that since the main purpose of hearings in civil cases is to give litigants an avenue to settle disputes, judges should send a letter or email to the parties who are awaiting judgment if the judge foresees that the judgment will be delayed beyond a reasonable period even if the parties do not press for the judgment as a matter of courtesy and transparency.); JAMAICA: JUDICIAL CONDUCT GUIDELINES § 5 cmt. 1 (2014), available at <http://courtofappeal.gov.jm/sites/default/files/pdf/Judicial-Conduct-Guidelines-with-commentaries-revised-21-August-2014.pdf> (last visited Jan. 6, 2017).

153. *Bond v. Dunster*, EWCA (Civ) 455 [2] (noting that since the main purpose of hearings in civil cases is to give litigants an avenue to settle disputes, judges should, “as a matter of good practice and transparency even if the parties do not press for the judgment,” send a letter or email, as a matter of courtesy, to the parties who are awaiting judgment if the judge foresees that the judgment will be delayed beyond a reasonable period); JAMAICA: JUDICIAL CONDUCT GUIDELINES § 5 cmt. 1 (2014), available at <http://courtofappeal.gov.jm/sites/default/files/pdf/Judicial-Conduct-Guidelines-with-commentaries-revised-21-August-2014.pdf> (last visited Jan. 6, 2017).

occur. Some judges do not acknowledge the delay; some acknowledge the delay, but do not give a justification for the delay; and others acknowledge the delay, apologize to the parties, and give reasons justifying the delay.¹⁵⁴ Judges in Jamaica have not attributed the delay to any one specific reason. Instead, they list a panoply of reasons, but the most often cited are a lack of financial and human resources, an overburdened schedule, the complexity of the case, and attorney delay.¹⁵⁵

In *Jamaica Public Service Company Ltd v. Campbell*, the trial judge apologized for the delay in delivering judgment and attributed the delay to the volume of his workload, and the “rather complicated” and “cumbersome nature” of the case.¹⁵⁶ The judge noted that the pleadings were “wordy and complex” and that both parties submitted voluminous documents, including written closing submissions that exceeded one “hundred and twenty pages” and were “supplemented by oral submissions . . . numerous documentary exhibits,” and numerous citations to authority.¹⁵⁷ Similarly, the judge in *Otto v. Elegant Estates Ltd.* apologized to the parties for the 18-month delay in delivering judgment.¹⁵⁸ The judge explained that the delay was “due to [the] pressure of work, and the voluminous,” “complex,” and “confusing” nature of the case, which required written closing submissions that took a long time to digest.¹⁵⁹ In *RBTT Bank Jamaica Ltd v. YP Seaton et al.*, a case involving a commercial dispute that lingered in the Supreme Court for approximately twenty-one years,¹⁶⁰ the judge apologized for the delay of almost two years to deliver judgment.¹⁶¹ The judge noted that an

154. See *Police Serv. Comm'n v. O'Connor (Donovan)* [2014] JMCA (Civ) 35 [1] (Jam.) (the Court of Appeal apologized for the delay of approximately 19 months in delivering reasons for its decision, but gave no justifications for the delay. Oral arguments ended on March 5, 2013 and the Court of Appeal reserved judgment until March 8, 2013 and did not deliver a written reasoned judgment until October 17, 2014); *Black v. R.* [2014] JMCA (Crim) 36 [45] (Jam.) (apologizing for the delay in delivering judgment); *Clarke v. Clarke* [2014] JMCA (Civ) 14 [51] (Jam.) (apologizing profusely to the parties for the delay in delivering judgment, but noting that while there are reasons for the delay, they are not “an excuse for what has been an inordinate delay by any measure in dealing with an interlocutory appeal”); *Eureka Med. Ltd. v. Life of Jam. Ltd.*, No. H.C.V.1268/2003 (Sup. Ct. Jam. 2005) (apologizing for the delay in delivering judgment on plaintiff’s motion for summary judgment and defendant’s cross-motion for summary judgment).

155. Court of Appeal 2015 Report, *supra* note 8, at 23; *Jam. Pub. Serv. Co. Ltd. v. Campbell* [2013] JMCA (Civ) 22 [2]; *Zacca*, *supra* note 51, at 170-171.

156. *Jam. Pub. Serv. Co. Ltd. v. Campbell* [2013] JMCA (Civ) 22 [2] (Jam.).

157. *Id.*

158. *Otto v. Elegant Estates Ltd.* [2013] JMCA (Civ) 88 [10] (noting that it took a long time to unravel the many issues and copious documentation).

159. *Id.*

160. *RBTT Bank Jam. Ltd. v. YP Seaton* [2014] JMCA (Civ) 34, ¶ 259.

161. *Id.*

overburdened schedule, and a delay in obtaining the transcripts contributed to the excessive delay.¹⁶² The judge explained that it took almost eighteen months, until September 2013, to get all the transcripts that the counsel needed to prepare their submissions and the court was assigned additional duties outside of the parish for “at least eight weeks,” which added to the delay.¹⁶³

The Jamaican Court of Appeal 2015 Annual Report cites “familiar” challenges such as lack of resources and an ineffective records management system as the primary reasons for the challenges facing the court, including delayed judgments.¹⁶⁴ The Court of Appeal 2015 Report indicates that the lack of adequate resources prevents the Court of Appeal from hiring a sufficient number of judges to handle the growing caseload; acquiring sufficient space to accommodate more judges, if they were hired; storing court documents; and from purchasing or repairing vital equipment such as computers, scanners, and printers.¹⁶⁵ The Court’s workload has increased exponentially partly because of the “phenomenal increase in its jurisdiction,”¹⁶⁶ yet the number of judges on the Court of Appeal has remained static since 1967 even though the Judicature Appellate Jurisdiction Act was amended to increase the number of judges.¹⁶⁷

The judges’ reasons for the delay in delivering reserved judgment and written reasons for judgments, documented in the Court of Appeal 2015 Annual Report, had been brought to the attention of the Jamaican government. In a report to the World Bank in 1994, Jamaica’s former Chief Justice Edward Zacca listed insufficient financial and human resources as the primary reason that “contributed to [the] extensive delays in the courts” and severely interfered with the judges’ ability to complete trials and deliver reserved judgments and written reasons for judgment

162. *Id.*

163. *Id.*; Barbara Gayle, *23 Years Wait for Justice – Appeal Court Upholds 1992 Conviction but Drastically Reduces Fine and Orders State to Repay*, THE GLEANER, (Dec. 20, 2015), available at <http://jamaica-gleaner.com/article/lead-stories/20151220/23-years-wait-justice-appeal-court-upholds-1992-conviction-drastically> (last visited Nov. 26, 2016) (noting that ineffective records management also contributed to a delay of five years to deliver judgment).

164. *See* Court of Appeal 2015 Report, *supra* note 8, at 23 (noting the delay in receiving criminal transcripts and civil records of proceedings as a major challenge).

165. *Id.* at 4, 23 (noting that the current judges were “hopelessly overworked”).

166. *Id.* at 4 (providing that “the population of Jamaica has moved from 1.85 million to 2.8 million” and the Court of Appeal hears appeals from 34 judges of the Supreme Court, up from 9 and 55 Resident Magistrate judges, up from 22).

167. Judicature (Appellate Jurisdiction) Act 1962, §3(2) (Jam.).

within a reasonable time.¹⁶⁸ Additional reasons included ineffective records management and attorney delay.¹⁶⁹ According to former Chief Justice Zacca, the delays continued because the resources-strapped judicial system remained unable to hire an adequate number of judges to handle the judicial overload.¹⁷⁰ The judicial overload was attributed to an increase in the number of criminal cases caused by a surge in crime and violence and a burgeoning civil case calendar partially due to the dynamic growth in the Jamaican economy.¹⁷¹

B. JamBar's Suggested Reasons for the Delays

JamBar suggested multiple reasons for the delays, primary among them being the lack of adequate resources.¹⁷² Similar to the judges, JamBar claims that the paltry financial resources allocated to the courts has hampered the courts' ability to efficiently administer justice and has contributed to the growing problem of excessively delayed reserved judgments and written reasons for judgments.¹⁷³ JamBar pointed out that there are too few judges to manage the burgeoning caseload, and when a judge has to deal with a huge case load and several complex matters that require extra attention, delivering timely judgments becomes "daunting," and sometimes impossible.¹⁷⁴ JamBar also identified additional reasons contributing to the delay, such as the lack of specific time allocated to the judges to write judgments, the absence of a Judicial Code to provide clear guidance to the judges on their roles and duties, and the failure to discipline or remove errant judges.¹⁷⁵ According to JamBar, judges who persistently fail to deliver timely judgments should face disciplinary sanctions for gross acts of negligence.¹⁷⁶

C. Judicial Attitude: An Unspoken Reason for Delay?

Despite the problems of delayed judgments, it is without question

168. Zacca, *supra* note 51, at 170 (noting that inadequate resources and the slow progress of legal reform have added to the extensive delays in the courts).

169. *Id.* at 170-71.

170. *Id.* at 170.

171. *Id.* at 170.

172. Gayle, *supra* note 4.

173. *Justice Denied*, *supra* note 27 (noting that litigant had to wait four years for judgment); Gayle, *supra* note 140 (explaining that litigants had to wait approximately 10 years for the registrar to locate the files that after 26 years, the parties settled. Attorney Patrick Foster, Q.C. called on the government to provide more resources and appropriate technology to enable the efficient functioning of the courts).

174. *Justice Denied*, *supra* note 27.

175. *Id.*

176. *Id.*

that some judges in Jamaica have managed to deliver timely reserved judgments and written reasons for judgment.¹⁷⁷ The contrast in judicial production given that the judges work in the same work environment with similar workload begets the question of the role of judicial attitude in the timely delivery of judgments.

According to Professors Martin Kuijer and Ziyad Motala, experts on the impact of judicial delay on the right to a fair trial, judicial attitude plays a vital role in the timely delivery of judgments.¹⁷⁸ This accords with the findings of organizational behavior scientists who have demonstrated that attitude can negatively or positively impact behavior and because attitude is contagious, it can influence the behaviors of others within a group or organization.¹⁷⁹ An attitude that is important to an individual will have a strong influence on his or her behavior.¹⁸⁰ It follows, therefore, that judges who have adopted a judicial attitude of efficiency and expediency, and who consider the timely delivery of reserved judgment and written reasons for judgment important to the proper administration of justice, are more likely to make an effort to ensure that judgments are delivered within a reasonable time.

In examining Jamaica's on-going problem with delayed reserved judgments and written reasons for judgment, one should not overlook the impact of the British influence on judicial attitude regarding the importance of delivering timely reserved judgments and written reasons for court decisions in Commonwealth common-law countries. England

177. *Id.*

178. Kuijer, *supra* note 23, at 793; *see also* Ziyad Motala, *Judicial Accountability and Court Performance Standards: Managing Court Delay*, 34 COMP. & INT'L L. J. S. AFR. 172, 177 (2001) (citing THOMAS W. CHURCH JR. ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 54 (1978) (noting that the "established expectations, practices and informal rules of behaviour of judges and attorneys" lend to the "local legal culture," which dictates the pace of the litigation including the speed and backlogs.)); EMMETT MACFARLANE, GOVERNING FROM THE BENCH: THE SUPREME COURT OF CANADA AND THE JUDICIAL ROLE 27 (2013) (noting that judicial attitude played an important role in reducing Supreme Court of Canada's backlog of reserved judgments); *see generally* Rod Vaughan, *Justice Minister Jostles Judges into Action*, ADLSI (Nov. 1, 2013), available at <http://www.adls.org.nz/for-the-profession/news-and-opinion/2013/11/1/justice-minister-jostles-judges-into-action/> (last visited Nov. 28, 2016) (Sir Edmund, formerly of the New Zealand Court of Appeal, stating that judges on the appellate court have an obligation to their colleagues to ensure timely delivery of draft and comments and not to hold up the judgment writing process).

179. STEPHEN P. ROBBINS, ORGANIZATIONAL BEHAVIOR: GLOBAL AND SOUTHERN AFRICAN PERSPECTIVES 75 (Stuart Douglas, 7th ed. 2007); *How Attitude Influences Behavior*, BOUNDLESS (May 26, 2016), available at <https://www.boundless.com/management/textbooks/boundless-management-textbook/organizational-behavior-5/drivers-of-behavior-44/how-attitude-influences-behavior-228-612/> (last visited Jan. 9, 2017).

180. ROBBINS, *supra* note 179, at 75.

has had an “oral tradition in advocacy and judicial decision-making” and as a result, for many years, judges delivered extemporaneous oral judgments in a majority of cases.¹⁸¹ Judges did not consider delivering written reasons for judgment to be important and therefore gave it low priority.¹⁸² Over the past two decades, however, England has moved towards reserving judgment and issuing written reasons for judgment in a majority of the cases heard by the Court of Appeal and in all cases heard by the Supreme Court.¹⁸³ Notwithstanding, judges in some Commonwealth common-law countries are slow to follow suit and have not changed their attitude regarding the low priority attached to writing reasons for judgment.¹⁸⁴

IV. JAMAICA’S DUTY TO DELIVER JUDGMENTS WITHIN A REASONABLE TIME

Judges in Jamaica have a common law and a constitutional duty to deliver judgments and reasons for judgment within a reasonable time after the conclusion of a trial or a hearing on appeal.¹⁸⁵ Excessive delays in delivering reserved judgments and written reasons for judgment is problematic because it is a breach of this important duty.

A. Common Law Duty

1. Duty to Give Reasons for Judgment

Jamaica’s common-law obligation to follow precedent creates an implicit duty on Jamaica’s judiciary to timely deliver reasons for judgment. A judge’s duty to give the reasons on which her decision is

181. Suzanne Ehrenberg, *Embracing the Writing-Centered Legal Process*, 89 IOWA L. REV. 1159, 1166 (2004).

182. *See id.*

183. *See id.*; see MICHAEL ZANDER, *THE LAW-MAKING PROCESS* 273 (7th ed. 2015) (citing Lord David Neuberger, President, U.K. Supreme Court, Address at the Annual Conference of the Supreme Court of New South Wales, Sydney: Sausages and the Judicial Process: The Limits of Transparency (Aug.1 2014) (suggesting that the shift towards reserving judgment came about because of the increased workload caused by the “advent of written arguments” and the quicker speed at which cases were heard which left little time for judges to write judgments during argument, the trend for lawyers to file voluminous documents, and the guarantee that reserved judgments would be included in reporters on online and therefore made available to a wider audience)); see also Kirby, *supra* note 148, at 214 (noting that England has abandoned its tradition of delivering oral reasons for judgments).

184. *See* Ehrenberg, *supra* note 181, at 1166 (noting that “virtually every Commonwealth country has adhered to some degree to the English tradition of orality, and has historically relegated writing to an inferior position”).

185. *Desmond Bennett v. Jam. Pub. Serv. Co.* [2013] JMCA (Civ) 28 [71] (Jam.); see *The Court Structure and Hierarchy*, *supra* note 32; see also CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOM ACT [Constitutional Amendment] 2011 § 12 (Jam.).

based is a mandatory judicial function deeply rooted in common law.¹⁸⁶ A judgment and the court's reasons for judgment inform the litigants and the public of the court's decision¹⁸⁷ and demonstrate that justice is being served by showing how and why the court came to its decision.¹⁸⁸ Demonstrating that justice is being done is particularly important because Jamaica follows a common-law adversarial system where justice is not only to be done, but also shown to be done.¹⁸⁹ In a common-law adversarial system, the litigants present and defend their differing positions and the judges are tasked with the important function of deciding the outcome of each case and creating case law.¹⁹⁰ Justice is shown to be done through a judiciary that honors and promotes fairness, transparency, and judicial accountability.¹⁹¹ Judges show fairness and transparency by giving reasons for judgments.¹⁹²

Transparency debunks perceptions of impartiality, bias, or capriciousness.¹⁹³ It helps to mitigate the damaging perception of judicial despotism, which can cause litigants and the public to question the fairness of; and consequently lose faith, confidence, and trust in the judiciary.¹⁹⁴ Faith in the judiciary is necessary for the proper functioning

186. HERNÁNDEZ, *supra* note 22, at 99 (noting that “[u]nlike most other actors within a legal system, a part of the judicial function is for a court to support its decisions by reasoned explanations on the basis of law”); *see* Flannery v. Halifax Estate Agencies Ltd. [1999] EWCA (Civ) 811, [2000] 1 WLR 377 [381] (Eng.) (noting that the duty to give reasons serves dual purposes: first, it informs the parties of the outcome of the case and why.; and second, it “concentrates the mind” and therefore facilitates a more sound decision); *see* Palmer v. Clarke [1989] 19 NSWLR 159, 173 (Austl.) (upholding that the court’s duty to give reasons applies to *ex tempore* judgments delivered in the presence of the parties in open court, and to reserved judgments delivered at a later date, and generally delivered in writing).

187. RUGGERO J. ALDISERT, OPINION WRITING 27 (2d ed. 2009) (noting that the purpose of a written reasoned judgment is to inform the participants in the lawsuit and other interested members of the public how the court came to its decision).

188. *Id.*

189. *Henriques v. Tyndall* [2012] JMCA (Civ) 18, 254 (citing *R v. Sussex Justices* [1924] 1 KB 256 at 259 (Eng.), which states “it is . . . of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”); *see also* AMARTYA SEN, *THE IDEA OF JUSTICE*, 393 (2011) (noting that the administration of justice is generally more effective when judges are seen to be doing a good job therefore judgments that “inspires confidence and general endorsement” tends to be easier to implement).

190. GEAREY ET AL., *supra* note 32, at 115; *see* AHARON BARAK, *THE JUDGE IN A DEMOCRACY* 155 (2006) (noting that the common-law system empowers judges to create the common law therefore, “common law is judge-made law” that “has been created by judges for hundreds of years”).

191. *See* Lord David Neuberger, *supra* note 149.

192. *See id.*

193. *See id.*

194. HERNÁNDEZ, *supra* note 22, at 98-99 (“The very legitimacy of a court depends on its judgments being accepted by the wider legal community in which it is situated, and at the very least, by the parties that have sought its decision”).

of any democracy and especially a democracy that follows the common-law tradition where judges have a broad discretion to apply the law and to create common-law.¹⁹⁵ The duty to give reasons for judgment promotes judicial accountability because judges are more careful in crafting decisions that are sound, based on reliable evidence, and in accord with precedent.¹⁹⁶

Delivering written reasons for judgment also serves the important functions of developing and documenting common law by recording the growing body of precedent, and increasing the public's access to precedent.¹⁹⁷ Written reasons for judgment decrease the reliance on institutional memory, which is fallible, and instead memorializes precedent thereby providing an accurate account of whether precedent was correctly applied or recorded.¹⁹⁸ Written reasons for judgment provide a blueprint for judges, advocates, and litigants to follow in future cases with similar facts.¹⁹⁹

Written reasons for judgment also facilitate a litigant's right to appeal. In Jamaica, a litigant may file a notice of appeal before receiving the written reasons for judgment, but the appellate court needs the lower court's written reasons for judgment outlining the relevant facts and reasons for the court's decision before deciding the merits of the case.²⁰⁰

195. See Lord David Neuberger, *supra* note 149.

196. HERNÁNDEZ, *supra* note 22 (noting that written judgments enable public scrutiny and therefore encourage judicial accountability); see Ehrenberg, *supra* note 181, at 1194-95 (calling the written opinion "the most powerful method of holding the judiciary accountable" because it allows litigants to see the "reasoning process" used by the judges in deciding their case).

197. See ALDISERT, *supra* note 187 at 182 (stating "[i]n the common law tradition, the court's ability to develop case law finds legitimacy only because the decision is accompanied by a publicly recorded statement of reasons."); see Ehrenberg, *supra* note 181, at 1164 (noting that writing is "essential to the development of . . . legal rules"); see Tiersma, *supra* note 141, at 1209 (noting that a more vigorous doctrine of precedent developed as written reports became more accessible and accurate).

198. See Tiersma, *supra* note 141, at 1197 (noting that oral precedent less reliable and less accurate than written precedent because "memory is fragile," and people may forget decisions but that written decisions or records are not necessary for a system of precedent to operate. What is required is an "institutional memory of how past cases have been decided").

199. Bosland & Gill, *supra* note 22, at 487-88 (noting that providing reasons makes common law, as developed by the courts, accessible to the parties, interested individuals, and judges who have the benefit of the courts' decisions and are able to make an informed decision when applying the law to follow or distinguish prior decisions); see HUTCHISON, *supra* note 37, at 5; GEAREY ET AL., *supra* note 32, at 119.

200. Court of Appeal 2015 Report, *supra* note 8, at 23 (noting that to facilitate an appeal, 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"); Little v. Jamaica, Communication No. 283/1988, U.N. Doc. CCPR/C/43/D/283/1988 (1991) 8.5 (stating that in order to effectively exercise the right to

The appellate court is only able to determine whether the lower court correctly followed precedent, considered material facts, or made an error in applying the law after examining the reasons for the lower court's decision.

A court's failure to provide adequate reasons for judgment may serve as grounds for appeal.²⁰¹ Justice requires the appellate court to order a retrial in cases where the lower court fails to give adequate reasons for judgment.²⁰² A retrial places a financial burden on the litigants and the judicial system and an added psychological burden on the litigants.²⁰³ In light of Jamaica's problems with delayed judgments, the contention that during instances of protracted delays judges die, retire, or otherwise become incapacitated without delivering reserved judgments, written reasons for judgment, or clear notes on the outcome of the affected cases presents fertile grounds for a rehearing.²⁰⁴ The accompanying negative consequence is litigants, and the judicial system, will be saddled with the additional financial burden of retrial.

2. *The Duty to give Timely Reasons*

Judges in Jamaica have a duty to deliver reserved judgments and written reasons for judgments within a reasonable time.²⁰⁵ Judgments are the public face of the judiciary,²⁰⁶ and therefore, Jamaica's duty to timely deliver reserved judgments and written reasons for judgment serves the bigger purpose of fostering public confidence in the effectiveness and credibility of the judicial system.²⁰⁷ Delays beyond three months, or six

appeal, a convicted person is entitled to have access to written reasoned judgments delivered within a reasonable time); *but see* Pratt v. Att'y Gen. for Jam. [1993] UKPC 1 [19] (Jam.) (stating the reasons for the decision are not condition precedent to filing special leave for appeal).

201. Flannery v. Halifax Estate Agencies Ltd. [1999] EWCA (Civ) 811, [2000] 1 WLR 377, 381; *see* Nat'l Com. Bank Jam. Ltd. v. Int'l Asset Servs. Ltd. [2015] JMCA (Civ) 7 [49]; *see generally* Univ. of Alberta v. Chang, 2012 ABCA 324 [31]-[33] (Can.) (the appellate court ordered a rehearing because the reasons were too deficient to make a just decision).

202. Flannery v. Halifax Estate Agencies Ltd. [1999] 1 W.L.R. 377, 383; *see* Univ. of Alberta v. Chang, [2012] ABCA 324, [31]-[33] (Can.).

203. Cobham v. Frett [2000] UKPC 49 (PC) [34]-[35]; KOMAR, *supra* note 142, at 12.

204. Virtue, *An Appeal to the Bench*, *supra* note 1; Gayle, *End Delays supra* note 7. *See* E.S. Nwauche, *An Appraisal for the Constitutional Provision for the Delivery of Judgments in Nigeria*, 27 COMMONWEALTH L. BULL. 1278, 1287 (2001) (noting that the litigants and the entire justice system pay a huge cost when judgments are declared null because of delays.)

205. *See* Bennett v. Jam. Pub. Serv. Co. Ltd. [2013] JMCA (Civ) 28 [71].

206. WILLIAM D. POPKIN, *EVOLUTION OF THE JUDICIAL OPINION: INSTITUTIONAL AND INDIVIDUAL STYLES 1* (N.Y.U. Press 2007).

207. Reid v. Reid [2008] CCJ 8 [22] (Barb.) (noting that delays "deny parties the access to justice to which they are entitled to and undermine public confidence in the administration of justice"); Goose v. Sandford & Co [1998] EWCA (Civ) 245 [112] (Eng.) (quoting The

months for complex cases, are considered excessive.²⁰⁸ As seen in *Bennett v. Jamaica Pub Serv. Co. Ltd.*, excessively delayed judgments can cause the losing party to question the fairness of the court's decision and can be used as a basis for appeal.²⁰⁹ Excessive delays will not invalidate a judgment unless the delay adversely impacts the judge's ability to recall material facts and evidence.²¹⁰ Excessive delays are generally justified only in exceptional cases, such as illness of the judge,²¹¹ but are never justified if they cause prejudice to the litigants.²¹²

B. Constitutional Duty

Jamaica has a constitutional obligation to issue reasoned judgments within a reasonable time. The duty to deliver timely reasoned judgments is implied under the Constitution of Jamaica's guaranteed right to a fair hearing. Section 16(1) of the Constitution mandates that a person charged with a crime be "afforded a fair hearing within a reasonable time by an independent and impartial court established by law."²¹³ Section 16(2)

Honorable Justice DH Lloyd, Address at the Judicial Conference of Australia (Nov. 7, 1998), who said "[a] judge's tardiness in completing his judicial task after a trial is over denies justice to the winning party during the period of the delay. It also undermines the loser's confidence in the correctness of the decision when it is eventually delivered. Litigation causes quite enough stress, as it is, for people to have to endure while a trial is going on. Compelling them to await judgment for an indefinitely extended period after the trial is over will only serve to prolong their anxiety, and may well increase it. Conduct like this weakens public confidence in the whole judicial process. Left unchecked it would be ultimately subversive of the rule of law"; see also Côté, *supra* note 143, at 441 (noting that delays "multiply work and inconvenience and frustrates everyone concerned in the matter, especially the parties").

208. See *Bennett v. Jam. Pub. Serv. Co. Ltd.* [2013] JMCA (Civ) 28 [71] (citing *Reid v. Reid* [2008] CCJ 8 [22] (Barb.)).

209. *Bennett* [2013] JMCA Civ. 28 at [71] (citing *Reid v. Reid* [2008] CCJ 8 [22] (Barb.)).

210. *Bennett* [2013] JMCA Civ. 28 at [72]-[73]. The court in *Bennett* reasoned that delay was not prejudicial because the court had detailed notes of the material facts and evidence, including the witness statements. *Bennett v. Jamaica Pub. Serv. Co. Ltd.* [2013] JMCA (Civ) 28 [73]; see Kirby, *supra* note 148, at 214 (noting that when judgment is reserved, it is best to tackle the task of writing the judgment and reasons for judgment soon after trial or hearing because a delay could cause more recent issues to "blot out the recollection" of important facts); see also Côté, *supra* note 143, at 437 ("[d]elaying the judgment may cause the judge's memory of details on which a judgment is based to become vague or even inaccurate").

211. *Bond v. Dunster Props. Ltd.* [2011] EWCA (Civ) 455 [2] (noting that a substantial delay beyond the "usual period" for delivering judgments is justified where the judge is seriously ill); *Palmer v. Clarke* [1989] 19 NSWLR 159 [169] (Austl.) (noting that delays caused by "technical, logistical or other inescapable reasons" that do not extend the delivery of the written judgment beyond three months, or six months in complex issues, are considered *de minimis* and therefore justifiable).

212. *Cobham v. Frett* [2000] UKPC 49 (PC) [35].

213. CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOM ACT [CONSTITUTIONAL AMENDMENT] 2011 § 16(1) (Jam.).

2016]

Justice Delayed is Justice Denied

31

further provides for the right to a fair hearing when determining “a person’s civil rights and obligations or of any legal proceedings which may result in a decision adverse to his interests. . .”²¹⁴ The guaranteed right to a fair hearing applies from the time of the initial proceeding until the final judgment on appeal.²¹⁵ This means that each stage of the process, including the delivery of reserved judgments and written reasons for judgment, must be completed within a reasonable time.

The Constitution further obliges the courts to issue written reasoned judgments within a reasonable time to facilitate appellate review. Article 16(8) provides that “person[s] convicted of a criminal offence shall have the right to have his conviction and sentence reviewed by a court the jurisdiction of which is superior to the court in which he was convicted and sentenced.”²¹⁶ Similarly, Article 19(5) gives persons aggrieved by “any determination of the Supreme Court” on the issue of their fundamental human rights the right to appeal to the Court of Appeal,²¹⁷ and Article 110 grants appeal to the Judicial Committee of the Privy Council as a matter or right in certain cases, including cases involving final decisions in divorce proceedings.²¹⁸ The Judicial Committee of the Privy Council can also grant appeal by leave in other cases.²¹⁹ The failure to deliver timely written reasons for judgment can adversely impact a person’s constitutional right to appeal.

C. Format of a Written Reasoned Judgment

The task of writing reasons for judgment will require a time commitment on the part of the judge, but this task does not have to be onerous. A judgment with reasons does not have to be long or list every detail, but it must be clear, consistent, coherent, and legible.²²⁰ The reasons for judgment must contain all legally significant facts, the relevant evidence on which the judge’s decision is based, and the reasons

214. *Id.* § 16(2).

215. *See* Williams v. Comm’r of Indep. Comm’n of Investigations [2012] JMFC 1 [85] (stating that the right to a fair hearing arises when the person is charged); *see* Bond v. Dunster Props. Ltd. [2011] EWCA (Civ) 455 [3] (“a ‘hearing’ includes the delivery of judgment”).

216. CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOM ACT (CONSTITUTIONAL AMENDMENT), 2011 § 16(8) (Jam.).

217. *Id.* § 19(5).

218. CONSTITUTION OF JAMAICA, July 23, 1962, § 110(1).

219. *Id.* § 110(2).

220. ALDISERT, *supra* note 187 (referring to Professor Sir Neil MacCormick’s mention of the judge’s duty to the court in terms of the “three C’s”, consequence, consistency and coherence); *see* Univ. of Alberta v. Chang, 2012 ABCA 324 [23] (noting reasons must fulfill two function purposes: “the decision must be reasonably intelligible to the parties, and provide the basis for meaningful appellate review”).

for the judge's decision.²²¹ The level of detail that a judge needs to include in the reason depends on the nature of the case.²²² For example, a case involving a complex issue would need a more detailed explanation of the court's reasons for judgment than a simple issue involving a "straightforward factual dispute."²²³ Lord Justice Henry of the Court of Appeal of England and Wales suggested in *Flannery* that judges should use transparency as a benchmark for giving reasons for judgment.²²⁴

V. REMEDIAL MEASURES TAKEN TO ADDRESS DELAYED JUDGMENTS

Like Jamaica, many Commonwealth common-law countries are also dealing with the problem of excessive delay in delivering reserved judgments and written reasons for judgment.²²⁵ The gravity of the

221. *English v. Reimbold*, [2002] EWCA (Civ) 605 [18]-[19] (holding a judgment does not have to be lengthy, but must include the information the judge considered in making a conclusion); *Palmer v. Clarke* [1989] 19 NSWLR 159, 170 (Austl.) (noting that judges have a common-law duty to give reasons for the decision, but judges do not have an obligation to give "a jurisprudential exposition with every judgment").

222. Gerald Lebovits, Alifya V. Curtin, & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 237, 252 (2008) (noting that the length of an opinion is generally determined by "the nature and complexity of the facts and the issues, by the audience the judge intends to reach, and by the judge's hopes for publication"); *Flannery v. Halifax Estate Agencies Ltd.* [1999] 1 WLR 377, 381 (Eng.).

223. *Woolcock v. Sykes (David)* [2014] JMCA (Civ) 52 [82] (citing *Flannery v. Halifax Estate Agencies Ltd.* [1999] 1 WLR 377, 381 (noting that for a simple issue involving a "straightforward factual dispute" and where the question is which party or witness is telling the truth, the judge may satisfy her common-law duty to provide reasons by indicating in the judgment that she believed the evidence of one witness over the other. For a more complex issue, including cases involving disputed expert evidence, the judge is required to provide a more detailed explanation of how and why she made her decision)).

224. *Flannery v. Halifax Estate Agencies Ltd.* [1999] 1 WLR 377, 382.

225. *Justice Delayed*, *supra* note 16 (noting Trinidad and Tobago's problem with delayed judgments); Oscar Ramjeet, *CCJ Speaks Out Against Delay in the Justice System*, GUYANA TIMES (Feb. 5, 2016), available at <http://www.guyanatimesgy.com/2016/02/05/ccj-speaks-out-against-delay-in-the-justice-system> (last visited Dec. 1, 2016) (noting that the inordinate delay in delivering judgment in Barbados, Guyana, and the Eastern Caribbean Countries); Anil Nandall, *Time Limit for Judicial Decisions Act No. 9 of 2009*, GUYANA CHRON. (June 8, 2010), available at <http://guyanachronicle.com/time-limit-for-judicial-decisions-act-no-9-of-2009/> (last visited Dec. 1, 2016) (former Attorney General and Minister of Legal Affairs of Guyana [2011-14] criticized the delay in delivering judgment noting that "the cancer of delay has infected the legal system in Guyana for a very long time now. As a result, the system has become moribund. Unless this situation is arrested, the system will ultimately grind to a halt"); *Supreme Court Opens; Hemorrhages Identified*, 7 NEWS BELIZE (Jan. 12, 2015), available at <http://www.7newsbelize.com/sstory.php?nid=31276> (last visited Dec. 1, 2016) (Eamon Courtenay, president of the Bar Association of Belize expressed to Chief Justice Kenneth Benjamin that the Bar Association expressed concerned about the delay in delivering reserved judgments. Mr. Courtenay noted that there was noticeable improvement as judgments were being delivered quicker, but there was an appreciable backlog of judgments

problem and its negative impact on the perception of the judiciary's ability to properly administer justice is widely interpreted as a defect in the country's polity, leading members of the judiciary and the legislature in some countries to adopt measures to ensure that judgments are delivered within a reasonable time.²²⁶ These measures include: adopting a code of conduct that serves as a guideline for the judiciary; adopting legislation or constitutional provisions that specify the time limit for delivering reserved judgments and written reasons for judgment and provide for sanctions for delinquent judges; using peer influence and public admonition on appellate review; allocating adequate resources to the judiciary to hire and train judges, judicial clerks, staff, and to purchase necessary technology; increasing supervision of judges and more oversight and involvement from the Chief Judge; revising internal scheduling protocols; and encouraging judges to adopt a judicial attitude of efficiency and expediency.²²⁷

that needed to be addressed); Victoria Lee, *Two Year Wait for Justice in Case Challenging Belize's Law Banning LGBT Relationships*, GLAAD BLOG. (Nov. 2, 2015), available at <http://www.glaad.org/blog/two-year-wait-justice-case-challenging-belizes-law-banning-lgbt-relationships> (last visited Dec. 1, 2016) (noting that after a two week trial in May 2013, Caleb Orozco continues to wait for judgment in his case challenging Section 53 of the Belize Criminal Code that makes it a punishable offense of up to 10 years imprisonment for a person to be in a same sex relationship); *Judge Stands Accused*, DAILY EXPRESS (Dec. 27, 2014), available at <http://www.trinidadexpress.com/news/Judge-Stands-Accused-286945241.html> (last visited Dec. 1, 2016) (explaining that Criston Williams, an attorney from the Republic of Trinidad and Tobago expressed frustration after waiting three and four years, respectively, for the delivery of judgments in the cases of two of his clients who were convicted of murder. He threatened to file a constitution motion against Chief Justice Ivor Archie and the judiciary and requested that Prime Minister Persad-Bissessar impeach the Chief Justice because of delayed judgments); Mohamed Imranullah S., *Chief Justice Wants to Cut Excessive Delay in Judgments*, THE HINDU (Sept. 11, 2014), available at <http://www.thehindu.com/news/national/tamil-nadu/chief-justice-wants-to-cut-excessive-delay-in-judgments/article6398588.ece> (last visited Dec. 1, 2016) (noting the Chief Justice's lament that some High Court judges are causing "inordinate delay in pronouncing judgments").

226. See Nwauche, *supra* note 204, at 1280 (noting that because of the "history of inordinate delays" Nigeria decided to deal with the problem by constitutional provisions). *Id.* at 1279.

227. CODE OF JUDICIAL CONDUCT FOR E. CARIBBEAN SUPREME COURT JUDGES § 3 cmt. n.6 (2000), available at <http://www.eccourts.org/code-of-judicial-conduct/> (last visited Dec. 1, 2016) (advising judges to deliver reserved judgments within "three months, or such longer time as the circumstances may reasonably require"); CONSTITUTION OF GUYANA (1980), §197(3), Time Limit for Judicial Decisions Act 2009 (Act No. 9/2009) (Gy.) (Guyana sets the time limit to deliver judgments by legislation and provides for sanctions under the Constitution); *Judge Resigns After Damning Report From Colleagues*, BBC NEWS (Feb. 14, 1998), available at http://news.bbc.co.uk/2/hi/uk_news/56369.stm (last visited Dec. 1, 2016) (Peer influence was used to encourage judge to resign); WALEED HAIDER MALIK, JUDICIARY-LED REFORMS IN SINGAPORE FRAMEWORK, STRATEGIES, AND LESSONS 50 (2007) (Singapore hired additional judges and court staff and upgraded technology and facilities); Munyoro,

A. Code of Conduct

Judges in several common-law Commonwealth countries have adopted a code or guideline of judicial conduct that outlines the duties and responsibilities of judges and articulates other standards to which the judges have agreed to hold themselves accountable.²²⁸ In many cases, the codes are advisory rather than binding on the judges.²²⁹ As a result, even where the code includes a judicial duty to deliver reserved judgments and written reasons for judgment within a reasonable time, a judge may not be sanctioned or disciplined for failing to fulfill this duty.²³⁰

supra note 20; (the Chief Justice in Zimbabwe increased supervision and oversight of the judges and staff); DISTRICT CT. OF N.Z., DISTRICT COURT OF NEW ZEALAND ANNUAL REPORT 2015 5, available at <https://www.courtsofnz.govt.nz/district/district/annual-reports-of-the-district-court-judiciary/DistrictCourtAR151015WEB.pdf> (last visited Dec. 1, 2016) [hereinafter DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015] (Chief Judge Doogue of New Zealand revised scheduling protocol and encouraged with judges to adopt a judicial attitude of efficiency and importance of timely delivered judgments).

228. Dennis Byron, *Judicial Code of Ethics: Strengthening Caribbean Regional Institutions* (Nov. 15, 2013) available at <file:///C:/Users/schrichton/Downloads/Judicial%20Ethics%20Judicial%20Temperament%20-%20Sir%20Dennis%20Byron.pdf> (last visited Nov. 30, 2016) (paper presented by The Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice at the Jamaican Bar Association's Panel Discussion on Friday 15th November, 2013 at Hilton, Montego Bay, Jamaica).

229. See *Ethical Principles for Judges 3*, CANADIAN JUDICIAL COUNCIL (1998) (non-binding); *Guides to Judicial Conduct*, THE AUSTRALIAN INSTITUTE OF JUDICIAL ADMINISTRATION (Mar. 2007) (non-binding).

230. See *Ethical Principles for Judges 3*, CANADIAN JUDICIAL COUNCIL (1998), available at https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf (last visited Dec. 1, 2016) (noting Canada's code of judicial conduct, the Ethical Principles of Judges, is non-binding and explicitly provides that the terms are advisory and not intended to be used as standards for judicial misconduct. The Ethical Principles for Judges advises judges to deliver reserved judgments, written reasons for judgment, and perform all other judicial duties with "reasonable promptness." Reasonable promptness is interpreted to mean within six months after hearings, except in special circumstances); *Guides to Judicial Conduct*, THE AUSTRALIAN INSTITUTE OF JUDICIAL ADMINISTRATION (Mar. 2007) (stating the Australian Guide to Judicial Conduct was first adopted in 2002 and revised in 2007. The Guide is also non-binding and does not provide for sanctions. The Australian Guide to Judicial Conduct, adopted in 2002 by the Council of Chief Justices of Australia, advises judges to deliver reserved judgments as soon as possible after the completion of a hearing); *Guide to Judicial Conduct*, JUDICIARY OF ENGLAND AND WALES (Mar. 2013), available at https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf (last visited Dec. 1, 2016) (first published October 2004, revised on March 2008 and March 2013); UNITED KINGDOM SUPREME COURT GUIDE TO JUDICIAL CONDUCT (2009) available at https://www.supremecourt.uk/docs/guide-to-judicial_conduct.pdf (last visited Dec. 1, 2016) (based on the Judiciary of England and Wales Guide to Judicial Conduct. Judges in England look to the Guide for Judges in England and Wales and the United Kingdom Supreme Court Guide to Judicial of 2009 for guidance on judicial conduct. Both guidelines are non-binding and deliberately declined to address the "the timing and style of judgments" on the principle that guidance on such judicial duties are beyond the scope and intent of the code and are best

B. Legislative and Constitutionally Mandated Sanctions

Legislative and constitutionally mandated sanctions are another strategy used to curtail excessively delayed reserved judgments and written reasons for judgment. Some countries have adopted legislation or included constitutional provisions that explicitly provide for sanctions and disciplinary measures against judges who fail to meet the specified time limit to deliver reserved judgments or written reasons for judgment.²³¹

Nigeria and The Co-operative Republic of Guyana are among a small number of Commonwealth common-law countries that have adopted this position. Judges in all courts established under the Constitution of Nigeria are required to deliver judgment within ninety days of the conclusion of a trial or hearing.²³² The persistent failure to deliver reserved judgments or written reasons for judgment within the ninety-day time limit constitutes misconduct and grounds for removal pursuant to Section 292 of the Constitution of Nigeria.²³³ Nigeria recently began to remove judges for failing to deliver timely judgments. In an unprecedented decision designed to send a message to judges who habitually abuse the time limit for issuing judgments, Nigeria's National Judicial Council concluded that Judge Gladys K. Olotu's failure to deliver judgment in one case and delay of eighteen months to deliver judgment in another case violated the ninety-day requirement and therefore amounted to misconduct, which constituted grounds for her removal.²³⁴

dealt with by court rules, cases, by Heads of Division, or in consultation with fellow Justices); CODE OF JUDICIAL CONDUCT FOR EASTERN CARIBBEAN SUPREME COURT JUDGES §3 cmt. n.6 (2000), available at <http://www.eccourts.org/code-of-judicial-conduct/> (last visited Dec. 1, 2016). The Code of Judicial Conduct for the Eastern Caribbean Supreme Court ("ECSC") is non-binding and advises judges to deliver reserved judgments within "three months, or such longer time as the circumstances may reasonably require." *Id.*

231. See generally Byron, *supra* note 228, at 5-6 (noting Sir Byron's opposition to legislative intervention in judicial affairs, but acknowledging that this intervention could be prevented if the judiciary takes "proactive steps" to adopt self-regulatory guidelines).

232. CONSTITUTION OF NIGERIA (1999), § 294.

233. *Id.* §294 (1), (6); *id.* § 292 (stating Judges in Nigeria may be removed from office only because of an inability to perform their judicial duties, for misconduct, or because of a violation of the Code of Conduct); see also Tobi Soniyi, *Nigeria Judges who Fail to Deliver Judgment Within 90 Days Risk Sanction, CJN Warns*, ALLAFRICA (May 24, 2016), available at <http://allafrica.com/stories/201605240399.html> (last visited Mar. 5, 2017).

234. Nnamdi Felix, *NJC Sacks 2 Judges, Cautions 3 Others*, PM NEWS (Feb. 27, 2004), available at <http://www.pmnewsnigeria.com/2014/02/27/njc-sacks-2-judges-cautions-3-others/> (last visited Dec. 1, 2016); see also *NJC Retires Judges Over Age Falsification, Delay of Judgment*, PUNCH (Apr. 19, 2016), available at <http://punchng.com/njc-retires-judges-over-age-falsification-delay-of-judgment/> (last visited Dec. 1, 2016) (noting the NJC sanctions another Lagos High State Court judge for allegedly delaying 22 months to deliver

The Cooperative Republic of Guyana has taken a more stringent approach and has amended the Constitution to explicitly include disciplinary measures for judges who fail to meet the time limit to deliver reserved judgments and written reasons for judgment.²³⁵ Section 197(3) of the Constitution of the Co-operative Republic of Guyana Act (Constitution of Guyana) provides that judges can be removed for “persistently not writing decisions or for continuously failing to give decisions and reasons therefor within such time as may be specified by Parliament”²³⁶ In August 2009, the Guyanese government enacted the Time Limit for Judicial Decisions Act of 2009 to specify a time limit within which a judge must give a written or oral judgment with reasons for the judgment.²³⁷ The Judicial Decisions Act provides that all cases must be tried expeditiously and judges presiding over trials in civil cases must give their decisions in 120 days and no later than 30 days from the conclusion of a hearing in all cases on appeal.²³⁸ Notwithstanding, the Judicial Decisions Act includes a generous extension policy.²³⁹ A judge seeking an extension must submit a written request to the Chancellor of the Judiciary, provide the reasons for the requests, and state the amount of time needed for the extension.²⁴⁰ The Chancellor may grant a reasonable extension if the case is complex, the judge is ill and has submitted a medical certificate, the judge claims to be overburdened by other official assignments or submits other explanations that the Chancellor deems reasonable, and the litigants are not prejudiced because of the grant of extension.²⁴¹ To date, no judge has been removed from the bench in Guyana for failing to timely deliver reserved judgment or written reasons for judgment even though Guyana continues to have problems with excessively delayed delivery of reserved judgments.²⁴²

C. Appellate Review and Peer Influence: Deterrence to Delayed Reserved Judgments

The threat of public admonishment on appellate review and peer influence are also used, albeit informally, to check the practice of delayed

judgment).

235. CONSTITUTION OF GUYANA (1980), § 197(3).

236. *Id.*

237. Time Limit for Judicial Decisions Act 2009 (Act No. 9/2009) (Guy.).

238. *Id.* §§ 3-5.

239. *Id.* § 8

240. *Id.* § 8(2) (stating a request for extension must be made no later than twenty-one days before the expiration of the time limit).

241. *Id.* §§ 4, 8(3).

242. Ramjeet, *supra* note 225; Darnley v. Reid [2014] AJ 20 (C.C.J.) 3 (Guy.).

judgments and to deter judges from neglecting the critical task of timely delivering reserved judgments and written reasons for judgments. Judges fearing public criticism on appellate review are likely to deliver reserved judgments and written reasons for judgment within a reasonable time.²⁴³ In some instances, however, public criticism on appellate review does not deter errant judges. Barbados provides a prime example. The Caribbean Court of Justice (CCJ) has chided Barbados on several occasions over the past five years for failing to timely deliver reserved judgments.²⁴⁴ Powerless to penalize the delinquent judges, the CCJ laments Barbados' systematic problem of delayed judgments and its failure to take remedial measures to ensure that judgments are delivered in a timely manner.²⁴⁵

Peer influence is also used to encourage the timely delivery of reserved judgments and written reasons for judgment. Peer influence is especially effective when the judiciary is a small homogenous group.²⁴⁶ Peer influence includes peer disapproval, peer pressure, judges modeling the acceptable conduct by timely delivering judgments with the hopes of encouraging their peers to do the same, and praising judges with outstanding performances.²⁴⁷

Peer influence, specifically peer pressure and peer disapproval, is used sometimes as an effective substitute for formal disciplinary measures against delinquent judges.²⁴⁸ Formal disciplinary measures are

243. STAFF OF H.R. COMM. ON THE JUDICIARY, 105TH CONG., IMPEACHMENT SELECTED MATERIALS 706 (Comm. Print 1998); *see also* SHETREET & TURENNE, *supra* note 16, at 221 (noting that censure on appeal may serve as a deterrent as it could affect a judge's chances of promotion).

244. *Barbados Rediffusion Serv. Ltd. v. Asha Mirchandani* [2005] AJ 1 (C.C.J.), [2005] 69 WIR 35 [45] (Barb.) (judgment outstanding for seven years); *System Sales Ltd. v. Brown-Oxley*, [2014] AJ 16 (C.C.J.) (Barb.).

245. *Walsh v. Ward* [2015] AJ 14 (C.C.J.) [70] (Barb.). President of the CCJ, Sir Byron Dennis, said "the consistent need for the repetition of this disapproval, and over such a long period, of the delays in the system accompanied by calls for remedial action makes the situation extremely deplorable." *Id.*

246. STAFF OF H.R. COMM. ON THE JUDICIARY, 105TH CONG., IMPEACHMENT SELECTED MATERIALS 705–06 (Comm. Print 1998).

247. *See generally* ROBERT J. SHARPE & KENT ROACH, BRIAN DICKSON: A JUDGE'S JOURNEY (2003) (modeling the acceptable conduct); *see* Barrow, *supra* note 14, at 439 (noting the benefits of peer pressure. According to Attorney Barrow, for the majority of the islands of the ECSC with "more than one resident judge subtle peer pressure would add the impetus to deliver").

248. STAFF OF H.R. COMM. ON THE JUDICIARY, 105TH CONG., IMPEACHMENT SELECTED MATERIALS 705–06 (Comm. Print 1998); DANIEL TERRIS, CESARE P.R. ROMANO & LEIGH SWIGART, THE INTERNATIONAL JUDGE: AN INTRODUCTION TO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES 195-96 (2007) (noting that where judges fail to fulfill their judicial responsibilities, the "prospect of disapproval" by their peers serves as a deterrence and consequently a substitute for the "formal process" of adopting rules governing the judges' professional conduct).

difficult, and oftentimes impossible, to execute in a jurisdiction with limited power to penalize delinquent judges, many of whom are guaranteed tenure and cannot be sanctioned or removed from office for failing to deliver judgments within a reasonable time.²⁴⁹ The delinquent judges are allowed to remain on the bench and cannot be removed except by impeachment, a long and onerous process,²⁵⁰ or if they voluntarily resigned because of peer influence. Voluntary resignation is considered one of the most effective and least cumbersome ways to remove an ineffective judge.²⁵¹

Peer influence served as an alternative to impeachment and led to the voluntary resignation of Mr. Justice Jeremiah Harman, senior judge of the High Court of England and Wales.²⁵² Mr. Justice Harman delayed twenty months after the conclusion of the hearing to deliver judgment in *Goose v. Wilson Sandford & Co.*²⁵³ The Court of Appeal ordered a retrial after determining that the delay would cause the defendant to suffer a miscarriage of justice because Mr. Justice Harman had lost his original trial notes, and the delay of twenty months had weakened his recollection of the material facts and evidence.²⁵⁴ Mr. Justice Harman could have been removed only by impeachment if he had not resigned.²⁵⁵

D. Resources

Government allocation of resources to the judiciary is another strategy used to address the issue of delayed judgments.²⁵⁶ Resources have been allocated to hire additional judges²⁵⁷ and staff, including law

249. See *Judge Resigns after Damning Report from Colleagues*, *supra* note 227.

250. See *id.* (noting that if Justice Harman had not resigned, he could only be removed by impeachment, which “has never happened in modern times”).

251. See Tassel, *supra* note 51, at 337; see generally Edward J. Schoenbaum, *A Historical Look at Judicial Discipline*, 54 CHI.-KENT L. REV. 1, 5 (1977) (noting that impeachment is cumbersome and ineffective).

252. *Peers Boot Out Sir Jeremiah the Kicking Judge*, HERALD SCOTLAND (Feb. 13, 1998), available at http://www.heraldsotland.com/news/12308465.Peers_boot_out_Sir_Jeremiah_the_Kicking_Judge/ (last visited Nov. 26, 2016).

253. *Judge Resigns After Damning Report from Colleagues*, *supra* note 227.

254. *Id.*

255. *Id.*

256. See Maria Dakolias, *Court Performance Around the World: A Comparative Perspective*, 2 YALE HUM. RTS. & DEV. L.J. 87, 117, 125 (1999) (noting that Hungary’s judiciary received a budget increase of 185% in 1993-1994 to address the increased demand on the court, but the budget decreased as the demand stabilized. Similarly, in 1992 Ecuador increased the judicial budget and salaries, doubled the size of the Supreme Court and made other changes to address the systematic inefficiencies in the judiciary).

257. Barrow, *supra* note 14, at 438 (noting that resources should be allocated to train judges in writing judgments).

clerks to do research, draft opinions, and perform other tasks to allow the judges more writing time;²⁵⁸ to hire court administrators; to train judges and staff; to implement case management processes; and to purchase adequate technology to capture data, streamline scheduling, and monitor deadlines.²⁵⁹

Adequate resources are necessary to ensure the viability of a country's judicial system.²⁶⁰ Because of the importance of the judicial system to democracy, governments should ensure adequate funding and priority for resources even in situations where the government has limited resources and several government agencies or ministries are competing for those resources.²⁶¹ An infusion of resources, however, is not always the panacea for the problem of delayed judgments.²⁶² Attorney Denys Barrow made an interesting point that the lack of resources, specifically the lack of judges, is often blamed for the delay in delivering reserved judgments, but a proper study should be conducted to ascertain whether

258. Melanie R. Bueckert, *Legal Research in Canada's Provincial Appellate Courts*, 35 MANITOBA L. J. 181, 200 (2011) (noting that the lack of appropriate legal research support can lead to longer time to write decisions and as a result cause lengthy delays between the hearing and disposition of an appeal); MALIK, *supra* note 227, at 35 (noting that Singapore's decision to hire law clerks to do legal research in appeals case for Supreme Court judges "significantly lightened the workload of judges and enabled them to devote more of their time to adjudicating and writing judgments").

259. See MALIK, *supra* note 227; Barrow, *supra* note 14, at 438 (noting that resources should be allocated to train judges in writing judgments).

260. Zacca, *supra* note 51, at 170.

261. Rosenberg, *supra* note 21, at 288 (noting that the judicial system should be given priority for resources because "[t]he judicial system and the rule of law it works to guarantee is fundamental to democracy," and "[w]ithout adequate resources for the judiciary, a robust democratic life is threatened"); see MBOTE & MIGAI AKECH, *supra* note 24, at 89 (noting that the lack of resources has eroded the effectiveness of Kenyan judiciary which is in dire need of an internal support infrastructure, law clerks to assist with legal research, stenographers or electronic devices to record proceedings and a full computerization of registry services to ensure integrity in file storage and management); see also Barrow, *supra* note 14, at 438 (noting that where the number of judges is inadequate to handle the work, more judges should be appointed in order to facilitate "an immediate and fundamental solution to the problem of excessive delay").

262. Barrow, *supra* note 14, at 438; see Kuijjer, *supra* note 23, at 793 (arguing that although judiciaries throughout Europe are challenged by the lack of resources, solving the issue of excessively delayed proceedings does not depend solely on the allocation of increased resources. Judges need to adopt efficiency measures, including a judicial attitude of efficiency and expediency); MALIK, *supra* note 227, at 49 (pointing out that increasing the number of judges and judicial officers is not always a viable solution because while the increase may initially reduce the workload in the courts, "diminishing returns" eventually sets in at that point an increase in hiring becomes counterproductive); see also Dakolias, *supra* note 256, at 118 (using the example of Quito to show that an increase in the budget does not always equate to better performance or greater efficiencies in the courts. From 1990 to 1996 the annual budget increased by 287 percent (three-fold) for the civil courts in Quito. This increase did not lead to better clearance rates).

more judges are needed because “the perception that overwork is the cause of the problem is not necessarily the reality.”²⁶³ A study to determine the resource needs of a judiciary beset by delays should also evaluate and address areas of systemic problems and inefficiencies.²⁶⁴ An infusion of resources will only provide a temporary solution to the problem of delayed judgments if the judiciary is simultaneously dealing with systematic problems and inefficiencies.²⁶⁵

The current trend is not to allocate additional resources, but to ask the courts “to do more with less.”²⁶⁶ Chief judges are encouraged to take a holistic view of the judicial system and implement measures to increase “performance and efficiency” in all areas of court administration, including judgment writing.²⁶⁷

E. Revise Scheduling Protocols

Another strategy used to address the excessive delay in delivering judgments is to re-evaluate and revise scheduling protocols to allow judges sufficient time to write judgments.²⁶⁸ A revised scheduling protocol that allows sufficient time for judgment writing can decrease the delay and improve the delivery time of judgments without requiring additional judicial resources.²⁶⁹ New Zealand effectively reduced its

263. Barrow, *supra* note 14, at 438 (noting that where the number of judges is inadequate to handle the work, more judges should be appointed in order to facilitate “an immediate and fundamental solution to the problem of excessive delay”); see Dakolias, *supra* note 256, at 105 (noting that the call to hire more judges should be examined carefully because although the lack of judges has been named as the primary reason for problems of delay, the root causes are under-management and inefficiencies in the courts. There are cases, however, where more judges are needed, but research would be done to justify the increase.); see also Vaughan, *supra* note 178 (noting New Zealand’s Minister of Justice refused to appoint additional judges after reasoning that overwork was not the problem because crime rates were decreasing and fewer people going into court).

264. Juan Carlos Botero et al., *Judicial Reform*, 18 THE WORLD BANK RESEARCH OBSERVER 61, 63 (2003).

265. *Id.*

266. SHETREET & TURENNE, *supra* note 16, at 100 (noting that because of the tight financial climate, it is unlikely that judicial and administrative resources in England will be increased to match the increase in workload now or “in the coming years”); see Motala, *supra* note 178, at 177 (looking at the efforts of the United States to increase judicial performance without increasing resources and noting that the focus is on judicial performance within the current budget rather than the number of judges and the available resources).

267. SHETREET & TURENNE, *supra* note 16, at 100; see MALIK, *supra* note 227, at 49 (noting that increasing the judges’ productivity and “supporting them with efficient organization” has proven to be more effective than increasing the number of judges and judicial officers and is a prudent way of “optimizing scarce judicial resources”).

268. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5.

269. *W. Larch Ltd. v. Di Poce Mgmt. Ltd.* [2012] ONSC 7014 [276] (Can. Ont. Sup. Ct. J.) (noting that a more flexible system would allow the increased number of complex cases,

2016]

Justice Delayed is Justice Denied

41

backlog of delayed judgments without incurring additional costs by revising its scheduling protocol and effectively maximizing existing judicial resources.²⁷⁰ Judge David Brown of the Superior Court of Ontario also suggested that the court could accommodate the increased number of complex cases and prevent delayed judgments without requiring additional judicial resources by changing its current internal scheduling protocol that uniformly allocates time to write judgments to a more flexible system that allocates time to write judgments based on the complexity of the matter.²⁷¹

Judge Brown delivered judgment approximately seven months after the close of hearing in *Western Larch Ltd. v. Di Poce Management Ltd.*, a case involving a complex summary judgment motion.²⁷² He acknowledged that the delay was unacceptable, but noted that other demands on his judicial time made it impossible to timely deliver reserved judgment.²⁷³

The court's internal scheduling protocols required each judge to sit for 35 weeks, or 875 hours, but allocated only 9 weeks per year, 360 hours, as time for writing judgment.²⁷⁴ Judge Brown's records showed that he spent 7.5 hours of sitting time and 75 hours, 21% of the allocated time, writing the judgment with reasons because of the complexity of the case.²⁷⁵ The court had not adjusted its scheduling protocol to allow judges hearing complex and other urgent motions and applications additional time to write judgments.²⁷⁶ Therefore, the judges managed their rosters by triage, which often resulted in delayed judgments for the less urgent complex matters.²⁷⁷

F. Leadership and Oversight by the Chief Justice

An increase in leadership and oversight by the Chief Justice is another strategy some countries use to combat the delayed delivery of reserved judgments and written reasons for judgment. For example,

including complex summary judgment motions, to “be accommodated within existing judicial resources without requiring the parties to wait a long time for a judgment”).

270. See DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5 (noting the revised rostering and scheduling protocol allows judges to be rostered so that they hear the most important cases and in courts with the highest needs).

271. *W. Larch Ltd. v. Di Poce Mgmt. Ltd.* [2012] ONSC 7014 [275]-[277] (Can. Ont. Sup. Ct. J.).

272. See *id.* at [275].

273. *Id.*

274. *Id.* [271]-[72].

275. *Id.* at [271].

276. *W. Larch Ltd.* [2012] ONSC 7014 at [274].

277. *Id.*

Australia's Chief Justice responded to the concerns of delayed judgments by creating opportunities for litigants or their representatives to report the delays while safeguarding their anonymity.²⁷⁸ The reports alert the Chief Justice to outstanding judgments and allow the Chief Justice to put measures in place to ensure that the outstanding judgments are completed and delivered within a reasonable time.²⁷⁹ Leadership by the Chief Justice is essential to an efficient judiciary.²⁸⁰ As head of the judiciary, the Chief Justice is empowered to implement policies and procedures to ensure that reserved judgments and written reasons for judgment are delivered within a reasonable time.²⁸¹ Notwithstanding, a Chief Justice may be powerless to make credible threats to remove a delinquent judge based on their country's constitutional guarantee of life tenure to judges.²⁸²

G. Strategies That Have Produced Measurable Results

Countries such as Zimbabwe, New Zealand, and Canada have achieved significant success in the efforts to eliminate their backlog of delayed reserved judgments and to improve the delivery time for current reserved judgments.²⁸³ Combining several strategies proved essential to

278. See *Reserved Judgments: Supreme Court – Civil*, QUEENSL. CTS, available at <http://www.courts.qld.gov.au/media-and-the-public/reserved-judgments> (last visited Nov. 30, 2016); see also W.G. Soden, *Access to Reserved Judgments*, FED. CT. AUSTL., available at <http://www.fedcourt.gov.au/feedback-and-complaints/reserved-judgments> (last visited Nov. 30, 2016). The Federal Courts and the Queensland Courts in Australia have placed a notice on their website informing legal representatives of parties who are concerned about the undue delay in receiving judgment in their case that they can file a complaint with Chief Justice through the President of the Queensland Law Society or the President of the Bar Association of Queensland. *Id.* The litigants and their representatives are guaranteed anonymity and confidential treatment of their request. *Id.*

279. See *Reserved Judgments: Supreme Court – Civil*, *supra* note 278; see also Soden, *supra* note 278.

280. See MALIK, *supra* note 227, at 31 (noting that effective top leadership is necessary for the judiciary to perform efficiently).

281. See MACFARLANE, *supra* note 178, at 77 (noting the example of the Supreme Court of Canada's Chief Justice McLachin who "managed not only to eliminate the slight backlog that developed at the turn of the century but also to helm the Court to its fastest productivity level in a decade," and who "is credited as having been 'innovative' and 'aggressive' in setting dates for appeals and for 'cracking the whip' on counsel and stimulating the Court staff").

282. See *Judge Resigns After Damning Report from Colleagues*, *supra* note 227 (noting that the head of the judiciary would have been powerless to remove Justice Harman if he had not resigned because neither the Constitution nor the Guide to Judicial Conduct provided for the removal of a judge who failed to deliver timely judgments).

283. Cyril Zenda, *Rebuked Judges Improve Performance*, FIN. GAZETTE (Aug. 06, 2015), available at <http://www.financialgazette.co.zw/rebuked-judges-improve-performance/> (last visited Nov. 30, 2016); see DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5; see SHARPE & ROACH, *supra* note 247, at 375.

their success. The Chief Justice in each of the three countries used two strategies in common: (1) they encouraged a judicial attitude of expediency, efficiency, and the importance of timely delivery of reserved judgment to the pursuit of justice, and (2) they increased leadership and supervision.²⁸⁴

Zimbabwe had a backlog of delayed reserved judgments. Chief Justice Godfrey Chidyausiku successfully reduced the backlog of delayed judgments by increasing his supervision of the judges, praising performing judges, and threatening disciplinary action against delinquent judges.²⁸⁵ In 2014, some judges had delivered only one or two judgments, while the top-performing judge delivered 72 judgments.²⁸⁶ The disparity in production concerned Chief Justice Chidyausiku because the judges worked in the same environment with similar workloads.²⁸⁷ At the start of the 2015 legal year, the Chief Justice publicly criticized errant judges for failing to timely deliver reserved judgments, praised the productive judges for their stellar performance,²⁸⁸ and threatened to “report all under-performing judges to the Judicial Services Commission” for disciplinary action under Section 187 of the Constitution of Zimbabwe.²⁸⁹ Within six months, there was a noticeable improvement in performance.²⁹⁰ By July 2015, the 30 High Court judges had delivered approximately 770 judgments, almost twice the amount that was delivered for the entire 2014 legal year.²⁹¹ Performance also improved at the Supreme Court. Judgments were delivered in approximately 45 cases in mid-July compared to 80 judgments for the entire 2014 legal year, and only 65 judgments for the 2013 legal year.²⁹²

New Zealand also had a problem with excessively delayed reserved judgments. Reserved judgments were sometimes delayed for two or

284. See Zenda, *supra* note 283; see DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5; see SHARPE & ROACH, *supra* note 247, at 375.

285. Zenda, *supra* note 283.

286. *Id.*

287. Munyoro, *supra* note 20.

288. Zenda, *supra* note 283; see ZIMB. CONST. 2013, § 165(1)(b) (stating “justice must not be delayed, and to that end members of the judiciary must perform their judicial duties efficiently and with reasonable promptness”).

289. Zenda, *supra* note 283. Section 187 of the Constitution of Zimbabwe provides that judges of the Supreme and ordinary courts may only be removed from office for “(a) inability to perform the functions of his or her office, due to mental or physical incapacity; (b) gross incompetence; or (c) gross misconduct.” ZIMB. CONST. 2013, § 187.

290. Zenda, *supra* note 283.

291. Zenda, *supra* note 283.

292. *Id.*

more years.²⁹³ In 2013, the Minister of Justice demanded more accountability noting that the citizens had a right to timely delivered reserved judgments,²⁹⁴ but refused to accept the suggestion that appointing more judges would be the only solution to the on-going problem.²⁹⁵ Chief Judge of the District Court of New Zealand, Judge Jan-Marie Doogue, successfully reduced the backlog of delayed reserved judgments and improved the delivery time for current reserved judgments without appointing additional judges.²⁹⁶ Chief Judge Doogue implemented several measures to increase performance and productivity such as: increasing her supervision of the judges, working with the Ministry of Justice to create a suitable rostering and scheduling protocol that maximizes judicial resources and time without creating a burdensome workload for the judges,²⁹⁷ investing in appropriate training for judges,²⁹⁸ introducing technology to allow a more efficient allocation of sitting dates for judges,²⁹⁹ and introducing peer review so that the judges could “receive feedback from experienced colleagues.”³⁰⁰ In 2014, Chief Judge Doogue also enlisted the cooperation of the judges to ensure that 90% of all judgments would be delivered within three months.³⁰¹ By the end of June 2015, that goal was met; over 92% of all decisions were delivered within three months and no decision remained outstanding for more than 9 months.³⁰²

The Supreme Court of Canada reduced its backlog and eliminated the “chronic” delays in delivering reserved judgments under the leadership of Chief Justice Brian Dickson.³⁰³ Prior to Chief Justice

293. Vaughan, *supra* note 178.

294. *Id.* (noting that the Minister of Justice also stated that the citizens should be informed when the judgments would be delayed).

295. *Id.*

296. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 2. Fifteen new judges were appointed in 2015 to replace retired and retiring judges. *Id.*

297. DISTRICT CT. OF N.Z., DISTRICT COURTS OF NEW ZEALAND; ANNUAL REPORT 2013 4 (2013), DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5.

298. DISTRICT CT. OF N.Z., DISTRICT COURTS OF NEW ZEALAND; ANNUAL REPORT 2014 5 (2014).

299. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5.

300. *Id.*

301. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2014, *supra* note 297, at 5. Other measures adopted to address the delays include working with the Ministry of Justice to target cases that have been in the system too long and deploying judges to address the inequalities in service. *Id.*

302. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 26 (comparing findings to the figures in 2014, where 87% of all decisions were delivered within 3 months, and there were 9 opinions outstanding for over 9 months).

303. See SHARPE & ROACH, *supra* note 247, at 375 (noting the dramatic changes from the early 1980s culture of chronic delays in the delivery of reserved judgments to 1990 where

2016]

Justice Delayed is Justice Denied

45

Dickson's appointment to the Supreme Court of Canada in 1985, the Court had an enormous backlog of reserved judgments.³⁰⁴ Judges failed to deliver reserved judgments within the six-month timeline suggested by the Canadian Judicial Council.³⁰⁵ Instead, it was common for reserved judgments to be delayed for over a year.³⁰⁶ Chief Justice Dickson addressed the problem of delayed reserved judgments by increasing sitting time by 25 percent to reduce the backlog and by implementing measures to monitor the progress of each case.³⁰⁷ The measures included asking the register's office to prepare regular reports that (1) tracked the productivity of each judge with a close look at which judge was writing, (2) list each judge's reserved judgments and how long each case was under reserve, and (3) state whether the judge had submitted reasons for the delay.³⁰⁸ Chief Justice Dickson also encouraged his colleagues to spend the summer working on their backlog.³⁰⁹ Chief Justice Dickson's enthusiasm, diligence, and efficiency influenced some of the judges and they delivered draft judgments on time, but their colleagues did not share the same attitude of expediency and efficiency, and as result did not respond for weeks and sometimes months, which continued the cycle of delays.³¹⁰ The delivery time for reserved judgments began to improve when some of the delinquent judges retired and "highly productive judges" who shared Chief Justice Brian Dickson's proactive attitude and vision for expediency and efficiency were appointed.³¹¹

H. Jamaica's Remedial Measures

JamBar has asked the Jamaican government and the Chief Justice to take remedial measures to eliminate the backlog and to improve the delivery time for judgments.³¹² JamBar's suggested remedial measures include: (1) allocating adequate resources to the judicial system to hire and train judges, law clerks, and staff; (2) allocating sufficient time to judges to write judgments; (3) commending judges with a record of timely delivering judgments; (4) asking the Chief Justice to exercise more oversight of the judges to ensure that they deliver judgments within a

the Court was "essentially current with its work").

304. *See id.* at 371.

305. *Id.*

306. *Id.*

307. *Id.*

308. SHARPE & ROACH, *supra* note 247, at 371.

309. *Id.*

310. *Id.* at 370, 375.

311. *Id.* at 375.

312. Gayle, *supra* note 4.

reasonable time; (5) adopting a Judicial Code of Conduct that details the judges' duties and responsibilities; and (6) sanctioning or dismissing delinquent judges.³¹³

The Jamaican government and Chief Justice have responded to JamBar's call for remedial measures. Thus far, the Jamaican government has allocated resources to the court to hire five additional judicial clerks for the Court of Appeal so that each judge will be assigned a dedicated judicial clerk to assist with research and other matters,³¹⁴ to hire part-time judicial clerks and judicial assistants to help judges with legal research,³¹⁵ to hire a statistician to "collect, quantify and analyze court data,"³¹⁶ and to purchase a high-density filing system to ensure that documents are properly filed.³¹⁷

Similarly, Chief Justice McCalla and President Dennis of the Court of Appeal are taking additional steps to reduce the number of delayed reserved judgments and written reasons for judgment and to improve efficiency and performance within the courts.³¹⁸ These steps include a greater use of *ex tempore* oral judgment, a robust effort to collect and review the inventory of outstanding judgments, and plans to ensure that the judges have adequate time for judicial writing.³¹⁹ In addition, Chief Justice McCalla has responded to the call for increased oversight by addressing complaints of delayed judgments compiled by JamBar.³²⁰ The complaints are treated with anonymity and confidentiality.³²¹

Additionally, Jamaica has adopted Judicial Conduct Guidelines.³²² The Jamaica Judicial Conduct Guidelines provide ethical guidance for judges in their professional and personal conduct and set a time limit of three months to deliver reserved judgments, but fail to impose sanctions or other disciplinary measures beyond those provided in the Constitution.³²³

313. *See id.*

314. Court of Appeal 2015 Report, *supra* note 8, at 4.

315. *Measures Being Pursued to Reduce Delays in Court*, THE JAMAICA OBSERVER (Mar. 31, 2016), available at <http://www.jamaicaobserver.com/news/Measures-being-pursued-to-reduce-delays-in-court> (last visited Nov. 27, 2016) [hereinafter *Measures Being Pursued*].

316. Court of Appeal 2015 Report, *supra* note 8, at 2.

317. *Measures Being Pursued*, *supra* note 314.

318. Court of Appeal 2015 Report, *supra* note 8, at 4.

319. *See id.* at 4-5.

320. *See Virtue*, *supra* note 1.

321. *See id.* (noting JamBar's view that a number of attorneys do not complain because they fear reprisal and JamBar hopes to add another layer of confidentiality by filing complaints with the Chief Justice on behalf of these attorneys).

322. JAMAICA JUDICIAL CONDUCT GUIDELINES (2014).

323. *See* JAMAICA JUDICIAL CONDUCT GUIDELINES §§1.1, 1.2, 5.1 cmt. n. 1; 9.1 (2014);

VI. RECOMMENDATION FOR A SUSTAINABLE SOLUTION

Most of Jamaica's remedial measures used to address the long-standing problem of delayed judgments have recently been implemented and may take some time to show tangible results. Jamaica's Chief Justice and the President of the Court of Appeal have taken laudable steps to increase efficiency within the courts, and the Jamaican Government has crawled out of inertia to provide resources to hire additional judicial clerks and a court statistician.³²⁴ While these are steps in the right direction, they are insufficient to address Jamaica's problem of delayed reserved judgments and written reasons for judgment. It is against the backdrop of what other countries have done to address their problem of delayed reserved judgments and written reasons for judgment that I evaluate the measures Jamaica has taken and suggest additional measures for a sustainable solution.

Because of the complexity of the problem of delayed judgments, no single measure will provide a panacea. As noted, New Zealand, Zimbabwe, and Canada adopted several remedial measures that produced positive and sustainable results because they were feasible under current restraints and were specifically tailored to the needs of the judicial system based on a review of the judicial infrastructure and the "local legal culture."³²⁵ Jamaica should take similar steps in addressing the problem of delayed reserved judgments and written reasons for judgment.

#1 Evaluate the call for adequate resources and allocate adequate resources.

The lack of adequate resources is cited as the primary cause of delayed reserved judgments and written reasons for judgment in Jamaica.³²⁶ Complaints that Jamaica's judicial system is severely under-

see Virtue, *supra* note 26 (stating JamBar was adamant that the Judicial Conduct Guidelines should include sanctions for delinquent judges).

324. *Measures being Pursued*, *supra* note 315; Court of Appeal 2015 Report, *supra* note 8, at 2.

325. Motala, *supra* note 178, at 177 (defining local legal culture as the "established expectations, practices and informal rules of behavior of judges and attorneys").

326. Court of Appeal 2015 Report, *supra* note 8, at 4; *see* Zacca, *supra* note 51, at 170; *see* Gayle, *supra* note 4 (reporting former JamBar president Ian Wilkinson challenging the various governments' commitment to justice in light of the "authorities'" general explanation that a lack of resources is the cause of the delays). Attorney Wilkinson finds this unacceptable and laments that throughout the years the justice system, particularly the courts, has been treated with scant respect by various governments, which clearly only pay "lip service" to "justice" as they provide an embarrassingly low sum in annual budgets to the relevant ministry").

resourced³²⁷ are as long-standing as the problem of delayed judgments. Because of the importance of timely delivered judgments to democracy and the rights of the citizens, a lack of judicial resources does not legitimize or justify excessively delayed reserved judgments or written reasons for judgments.³²⁸ This applies to the errant judges and to the government where the judicial system is inadequately funded.³²⁹

While it is the trend to ask judges to do more with less, it would be a travesty to apply this trend to Jamaica without doing a forensic evaluation of the judicial system's need for resources and addressing the needs identified. It is troubling that the Court of Appeal does not have a full complement of judges or basic technology such as functioning computers and copiers. Addressing the issue of judicial infrastructure and resources should be the Government of Jamaica's first priority. The government should create a plan to ensure that existing resources are effectively utilized and adequate resources are allocated based on the identified needs. This is a feasible measure, but will require the commitment of the government. Based on Vice President of the United States of America Joe Biden's echoed adage, "don't tell me what you value[, s]how me your budget, and I'll tell you what you value,"³³⁰ the government's commitment will signal its value for justice to the judiciary and the citizens.

It is understandable that the Government of Jamaica has resource limitations, which means that all the resource needs of the judiciary may

327. Court of Appeal 2015 Report, *supra* note 8, at 4; *see* Zacca, *supra* note 51, at 170.

328. *See* SHETREET & TURENNE, *supra* note 16, at 228; *see* Bennett v. Jam. Pub. Serv. Co. Ltd. [2013] JMCA (Civ) 28 [71] (noting that "even in the circumstances of stretched resources" in which the courts in Jamaica operate, it is reasonable to require that that written judgments be issued within three months, or a maximum of six months if the case is complex.); *see* Ramnarine v. Ramnarine [2013] UKPC 27 [19] (appeal taken from Trin. & Tobago) (citing Lalla v. Lalla, Civil Appeal No. 102/2003 [73] (stating the lower court delivered the judgment 16 months after the conclusion of the trial). Justice Mendonca of the Trinidad and Tobago Court of Appeal consider the delay to be excessive, but reasoned that because of the heavy workload and limited resources, "writing time for Judges is viewed generally as an unaffordable luxury" therefore some judgments take "undesirably long periods to be written." Pratt v. The Att'y Gen. for Jam., [1993] UKPC 1, [19] (Jam.). Justice Mendonca noted, however, that the lack of resources and heavy workload does not justify the delay. *See id.* (noting that while "[t]heir Lordships are very conscious that the Jamaican government faces great difficulties with a disturbing murder rate and limited financial resources at their disposal to administer the legal system," capital cases should be disposed of expeditiously; delays are not acceptable).

329. SHETREET & TURENNE, *supra* note 16, at 228; Pratt, UKPC 1 at [19] (Jam.).

330. *Biden's Remarks on McCain's Policies*, N.Y. TIMES (Sept. 15, 2008), available at <http://www.nytimes.com/2008/09/15/us/politics/15text-biden.html> (last visited Nov. 29, 2016) (remarks of Senator Joseph R. Biden Jr.: "My dad used to have an expression: 'Don't tell me what you value. Show me your budget, and I'll tell you what you value'").

2016]

Justice Delayed is Justice Denied

49

not be immediately addressed. This makes it imperative that the government creates and honors a strategic plan with a feasible timeline to address resource issues. My suggestions are:

Immediate (1-6 months)

- Hire judges to reduce judicial overload
- Provide essential technology such as functioning computers, printers, scanners, and copiers
- Allocate resources to train judges and staff; create a specific budget to train judges on writing judgments with reasons for the judgments

Short-term (6-12 months)

- Hire adequate staff, including clerks to assist the judges
- Acquire adequate space to accommodate judges and to storage files
- Reevaluate records and case management staff and technology, and purchase appropriate technology and hire or retrain staff (justice should not be delayed because of lost files)

Long-Term (12-24 months)

- Ensure that all courts have a full complement of judges
- Ensure that technology is updated and properly maintained

#2 Encourage a Positive Judicial Attitude.

Encouraging judges to adopt a judicial attitude of expediency, efficiency, importance of written reasons for judgment, and delivering those in a reasonable time would perhaps be the second most effective way to reduce the problem of delayed judgments in Jamaica. A positive judicial attitude is integral to a successful delay reduction program.³³¹ A positive judicial attitude proved vital to Canada's success in reducing their backlog of delayed judgments.³³² The Supreme Court of Canada under Justice Dickson's leadership demonstrated that even if judicial resources are not an issue, delayed reserved judgments and written reasons for judgment will become a problem if judicial attitude is not addressed.³³³ Similarly, a positive judicial attitude led the judges in New Zealand and Zimbabwe to cooperate and thereby dramatically reduce their backlog of delayed judgments and improve the delivery time for

331. Motala, *supra* note 178, at 185; *see Justice Delayed, supra* note 16 (suggesting that the Judicial Services Commission appoint candidates with superior work ethic who have "demonstrated an ability to efficiently deliver sound judgments and display an appetite for demanding court work").

332. *See* SHARPE & ROACH, *supra* note 247, at 371, 375.

333. *See id.* at 375.

reserved judgments and written reasons for judgment.³³⁴ Jamaica's judgment delay reduction strategy should not rely on encouraging judges to adopt a judicial attitude of expediency, efficiency, and the importance of timely delivered judgments without addressing the call for adequate resources, including resources to hire judges to deal with Jamaica's growing caseload. While inefficiencies may compound the problem of delayed judgments, a lack of resources plays a key role.³³⁵ Expecting the judges to do more with less in an under-resourced environment is an abuse of the judges' goodwill and a sure way to ensure burnout within the judiciary.

#3 Address Attorney Delay.

Judges in Jamaica cite attorney delay as a reason for delayed judgments.³³⁶ While attorney delay may be a significant impediment to the timely conclusion of a trial or hearing, the impact on the timely delivery of reserved judgment or written reasons for judgment is at most negligible because the judges should have had all the information needed to prepare the judgment by the conclusion of the trial. This is not to imply that attorney delay should be left unchecked. As seen in *Flickenger*, attorney delay can cause the losing party to question the integrity of the judgment.³³⁷ It is understandable that a judge may want to accommodate lawyers' requests for extensions, but the requests should be granted within reasonable limitations, and should be avoided if they are going to cause unreasonable delays. Judges have a duty to the litigants and to the public to manage a trial or hearing to ensure that justice is not delayed.³³⁸ Judges should discipline attorneys who deliberately or negligently cause unreasonable delays.

#4 Address Concerns of Complex Issues and Voluminous Documents.

The judges' concern that the complexity of the cases and the voluminous submissions the attorneys file increase judicial workload and

334. See DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5; Zenda, *supra* note 283.

335. See *GG Reminds Judges that 'Justice Delayed is Justice Denied,'* JAM. OBSERVER (Sept. 17, 2015) available at http://m.jamaicaobserver.com/news/GG-reminds-judges-that-justice-delayed-is-justice-denied-_19228805 (last visited Nov. 29, 2016) (reporting that Chief Justice McCalla encourages judges and all stakeholders to take steps to improve efficiency).

336. See *Flickenger v. Preble*, [2013] JMCA (App) 19 [35]-[36] (Jam.); see *Zacca*, *supra* note 51, at 171.

337. *Flickenger v. Preble*, [2013] JMCA (App) 19 [35]-[36] (Jam.).

338. *Grant v. R* [2010] JMCA (Crim) 77 [56] (noting that "a trial judge is required to take control of a trial and in the management of the trial, proceed in direction, not only in the interests of the parties to the proceedings, but also in the interest of the public").

2016]

Justice Delayed is Justice Denied

51

contribute to the delay in delivering reserved judgments should be immediately addressed.³³⁹ The simple solution to this concern is training, because it is unlikely that the issues will become less complex.³⁴⁰ But, training will require judicial resources. Lawyers should be trained on reducing voluminous submissions without compromising their duty to effectively represent their clients, and judges should be trained on efficiently processing these documents. Assigning judicial clerks or judicial assistants to help the judges to process these documents will likely improve efficiency.³⁴¹

#5 Increase Leadership and Oversight by the Chief Justice.

Canada, Zimbabwe, and New Zealand provided excellent examples that increased leadership and oversight by the Chief Justice help to effectively reduce the backlog and improve the delivery time for delayed judgments.³⁴² Chief Justice McCalla has done an excellent job thus far and should be commended on working with judges and lawyers to address complaints of delayed judgments.³⁴³ Given the climate of doing less with more, Chief Justice McCalla's leadership in the judicial appointments process is critical. She should recommend only candidates who are committed to efficiency and productivity for judicial appointments.³⁴⁴ Besides encouraging the judges to adopt a judicial attitude of expediency and efficiency, it appears, however, that other corrective measures Chief Justice McCalla could take would be contingent on the availability of adequate resources. For example, Chief Justice McCalla's efforts to allow judges adequate time to write judgments is unlikely to succeed without sufficient judges to handle the growing caseload and an efficient court management system. Absent a showing that the current judiciary is adequately staffed and proper court management systems are in place, efforts to allow judges adequate time

339. See *Jam. Pub. Serv. Co. Ltd. v. Campbell* [2013] JMSC (Civ) 22 [2] (Jam.).

340. *Zacca*, *supra* note 51, at 170.

341. See *MACFARLANE*, *supra* note 178, at 76 (noting that the Supreme Court of Canada's justices' ability to delegate much of their research and writing responsibilities to law clerks had been "beneficial to the Court's efficiency").

342. DISTRICT CT. OF NEW ZEALAND ANNUAL REPORT 2015, *supra* note 227, at 5.

343. Erica Virtue, *Justice Jam! - Shortage of Judges, Increase in the Number of Lawsuits Clogging Court System*, THE GLEANER (Jan. 25, 2015), available at <http://new.jamaicagleaner.com/node/525832> (last visited Jan. 12, 2017) (Chief Justice McCalla meets with the judges with outstanding judgment).

344. CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 4 §112 (the Chief Justice recommends candidates for judicial appointments); *Justice Delayed*, *supra* note 16 (noting that "prospective appointee to the Bench should have previously demonstrated an ability to efficiently deliver sound judgments and display an appetite for demanding court work").

to write judgments will undoubtedly create an imbalance, force judges to triage, and ultimately perpetuate the cycle of delayed judgments.³⁴⁵

Monitoring the judges' productivity is essential to the timely delivery of judgments. Unlike Chief Justice Brian Dickson of Canada who helped to reduce the backlog of delayed reserved judgments by undertaking an extensive and careful monitoring of the progress of each case, Chief Justice McCalla had been precluded from doing the same because of the lack of resources to purchase technology to collect data and to track the productivity of each judge.³⁴⁶ The data collection and tracking issue was recently addressed with the new hire of a statistician and the purchase of new data tracking technology.³⁴⁷

#6 Increase use of Oral Judgment in Appropriate Cases.

Greater use of oral judgment in appropriate cases is a feasible measure that will help to reduce Jamaica's problem of delayed reserved judgments. The "renewed efforts"³⁴⁸ to increase the use of oral judgments can contribute to a sustainable solution to this long-standing problem if judges consistently use oral judgments where appropriate. However, the reasons why judges reserve judgment where an oral judgment would suffice should be thoroughly investigated and addressed so as to prevent a default to reserving judgments.

#7 Explore legislation geared at sanction and disciplinary actions.

The Jamaica Judicial Conduct Guidelines is a welcomed guide, but an unlikely solution to the problem of delayed judgments because the terms are not binding on the judges.³⁴⁹ Notably, the Judicial Conduct Guidelines do not answer the call for sanctions against delinquent judges and do not provide for punitive measures beyond those provided in the Constitution.³⁵⁰ The Constitution does not allow judges at the Supreme Court and the Court of Appeal to be disciplined for failing to timely deliver judgments, therefore Jamaica would have to follow in the

345. *Id.* (noting that judges with outstanding judgment are working on several matters concurrently, therefore the original matter "gets pushed back").

346. Virtue, *supra* note 322 (noting that despite Chief Justice McCalla's repeated request that the Minister of Justice allocate resources to produce statistics, the courts do not have the "power or resources" to hire a statistician or provide statistics on "the average length of time a judge takes to deliver judgment"). *Id.* Statistics allows for transparency and accountability. *Id.* Statistics also reduces delay "even without enforcement, because judges care about their numbers." Botero, *supra* note 264, at 67.

347. Court of Appeal 2015 Report, *supra* note 8, at 1-2.

348. *Id.* at 4.

349. *Id.* at 2.

350. JAMAICA CONDUCT GUIDELINES § 9.1 (2014).

footsteps of Nigeria and Guyana and adopt legislation or amend the Constitution to provide for sanctions and other disciplinary measures against delinquent judges.³⁵¹ As Nigeria and Guyana have shown, the availability of disciplinary measures is not a guaranteed fix for the problems of inordinately delayed judgments.³⁵² In addition to being available, the disciplinary body has to be willing to use the disciplinary measures. Chief Justice Godfrey Chidyausiku of Zimbabwe used credible threats of sanctions and other measures to effectively reduce the number of delayed reserved judgments.³⁵³ Chief Justice McCalla is unable to use credible threats of sanctions because of Jamaica's constitutional limitations. Without a proverbial big stick, judges may be encouraged, but cannot be forced to deliver judgments within a reasonable time.³⁵⁴

While it may be tempting to call for disciplinary measures, it is unfair to use disciplinary measures where inadequate judicial and administrative resources are the root cause of the delays.³⁵⁵ However, the reverse holds true if the delays are caused by the judge's personal conduct.³⁵⁶

#8 Use peer influence to catapult change.

Peer influence can be an effective means to address Jamaica's problem of delayed judgments and catapult change without incurring additional expenses. The Chief Justice and senior judges should create a system where productive judges mentor and give regular feedback to new and underperforming judges,³⁵⁷ especially on topics such as delivering ex

351. CONSTITUTION OF JAMAICA, July 23, 1962, § 100 (4), 101 (4); CONSTITUTION OF NIGERIA (1999), § 292; CONSTITUTION OF GUYANA (1980), §197(3); Time Limit for Judicial Decisions Act 2009 (Act No. 9/2009) (Guy.); *see Justice Denied, supra* note 27 (advocating for sanctions against delinquent judges, but noting the difficulties associated with sanctioning judges).

352. *Darnley v. Reid* [2014] AJ 20 (C.C.J.) 3 (Guy.) (showing that judgment is delayed by seventeen months despite the Time Limit Act).

353. *Munyoro, supra* note 20.

354. *Gayle, supra* note 7 (reporting that Minister of Justice Delroy Chuck suggested that, since Chief Justice McCalla is unable to get the judges to deliver timely judgments, only public pressure can propel them into action).

355. *See Kuijjer, supra* note 23, at 794 (suggesting that disciplinary sanctions are best used when excessive delays are due to the judge's personal conduct).

356. *Id.*

357. *See Jennifer Brown, New Brunswick Judge Won't Face Discipline Over Repeated Delays, CANADIAN LAWYER & LAW TIMES*, (Oct. 21, 2014), <http://www.canadianlawyermag.com/legalfeeds/2340/new-brunswick-judge-won-t-face-discipline-over-repeated-delays.html> (last visited Jan. 12, 2017) (reporting the judge avoided disciplinary action for failing to deliver judgments within a reasonable time after undergoing extensive coaching with peers).

tempore and reserved judgments and writing reasons for judgment. Peer influence also should be used to encourage under-performing judges to increase production and persistently under-performing judges to resign. Additionally, productive judges should be publicly acknowledged for their efforts.

CONCLUSION

It is time Jamaica puts an end the long-standing problem of delayed reserved judgments and written reasons for judgment. The citizens deserve timely justice. Delayed reserved judgments and written reasons for judgment mean justice delayed, which equates to justice denied. The good news is that the problem is not intractable, but a sustainable solution will require all hands on deck. The success of Jamaica's delay reduction efforts will depend on the cooperation of the government, the judges, the courts' staff, and the lawyers.