

ARTICLES

USING LAW CLERKS TO IMPROVE EFFICIENCY IN JAMAICAN COURTS

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I. INTRODUCTION

Jamaica has a longstanding and ongoing problem with delays in the judicial system. There are delays across all levels of the courts and at each stage of the court process, including delays in scheduling new cases for trial, disposing of criminal and civil cases, and delivering reserved judgments and written reasons for judgment.¹ As an example, a recent report revealed that several mentally ill persons have spent over 40 years, and some close to 50 years, in prison awaiting trial.² The delays have further prohibited timely access to court services causing persons wishing to bring new civil matters in the Supreme Court of Jamaica to wait a minimum of five years for their case to be heard.³ In addition, delays in disposing of criminal and civil cases have caused them to lag in the courts for several years,⁴ contributing to a growing backlog of cases.⁵ Also, delays in delivering reserved judgment continue to

¹ See Edmond Campbell, *Justice Delays Anger Chuck*, THE GLEANER (Jun. 25, 2020, 12:38 AM) <http://jamaica-gleaner.com/article/lead-stories/20200625/justice-delays-anger-chuck> [hereinafter, *Justice Delays*].

² Livern Barrett, *'I don't want to die like Noel Chambers' - Man in prison for 50 years without trial pleads for freedom*, THE GLEANER (Jun. 17, 2020 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20200617/i-dont-want-die-noel-chambers-man-prison-50-years-without-trial-pleads>; See Livern Barrett, *Beaten black and blue – Mentally ill inmate blamed for attack on 50-year prisoner*, THE GLEANER (June 23, 2020, 12:19 AM), <http://jamaica-gleaner.com/article/lead-stories/20200623/beaten-black-and-blue-mentally-ill-inmate-blamed-attack-50-year> (noting that “seven mentally ill men [were] identified in a report by INDECOM who have each spent at least 40 years in prison awaiting trial.”); see also Romario Scott, *Courts under fire as inmate held for 40 years dies without trial*, THE GLEANER (June 4, 2020, 12:14 AM), <http://jamaica-gleaner.com/article/lead-stories/20200604/courts-under-fire-inmate-held-40-years-dies-without-trial>.

³ Barbara Gayle, *Paul Lowe—A victim of the justice system*, THE GLEANER (July 5, 2020, 12:18 AM), <http://jamaica-gleaner.com/article/news/20200705/paul-lowes-victim-justice-system> [hereinafter *Victim of the Justice System*] (noting that Jamaica’s “Minister of Justice Delroy Chuck bemoaned the fact that cases that were ready for trial were now being set for dates in 2025 and 2026.”).

⁴ Barbara Gayle, *See you in 2022! - Four-year waiting list for civil cases in the Supreme Court*, THE GLEANER (Jul. 22, 2018, 12:00 AM) [hereinafter *See you in 2022!*] (former president of the Jamaican Bar Association (Jambar) expressing disappointment that cases still meandered through the justice system although the Civil Procedure Code, which became effective in 2006, “was designed to shorten litigation”); see also Kimone Frances, *Chuck Urges Justice Brooks to Clear Court Backlog*, JAM. OBSERVER (Dec. 9, 2020), http://www.jamaicaobserver.com/news/chuck-urges-justice-brooks-to-clear-court-backlog_209485?profile=1373.

⁵ Frances, *supra* note 4; Latonya Linton, *Consistent Reduction in Criminal Case Backlog*, JAM. INFO. SERV. (May 23, 2019), <https://jis.gov.jm/consistent-reduction-in-criminal-case-backlog> [hereinafter *Criminal Case Backlog*]. See *The Court Newsletter*, Ct. of App. Jam. (Sep. 2020), <https://courtofappeal.gov.jm/sites/default/files/publications/READ%20ND%20QUART>

challenge the judiciary.⁶ In addition to protracted delays in delivering reserved judgments, judges have retired without issuing reserved judgment in cases over which they presided.⁷ In such instances, justice requires a retrial.⁸ Justice delayed because of inadequate resources or inefficiencies within the judicial system is justice denied.⁹ It is widely acknowledged that an efficient judiciary and court system are essential to a country's democracy.¹⁰ To that

ER%20NEWSLETTER%20%28July-September%202020%29%20.pdf (noting the definition of backlog used by the courts in Jamaica as cases that have been in "the system for over two (2) years without being disposed."); see generally Robert A. Brown, *Solutions for the Backlog of the Supreme Court of Colorado*, 36 U. COLO. L. REV. 545, 546 (1964) (defining backlog as "the number of cases awaiting hearing and disposition by the court.").

⁶ *Court of Appeal working to reduce backlog*, THE GLEANER (Sept. 22, 2021, 12:11 AM), <https://jamaica-gleaner.com/article/news/20210922/court-appeal-working-reduce-backlog> (referring to the backlog of seventy reserved cases in the Court of Appeal). See also Sha-Shana Crichton, *Justice Delayed Is Justice Denied: Jamaica's Duty to Deliver Timely Reserved Judgments and Written Reasons for Judgment*, 44 SYRACUSE J. INT'L L. & COM. 1, 12 (2016) (describing the months and years that many litigants in Jamaica are required to wait for written judgments).

⁷ Livern Barrett, *Long Wait For Justice - Destitute claimants forced to start legal Battle All Over After Judges Retire Without Delivering Judgment*, THE GLEANER (July 12, 2020, 12:33 AM), <http://jamaica-gleaner.com/article/lead-stories/20200712/long-wait-justice-destitute-claimants-forced-start-legal-battle-all> [hereinafter, *Long Wait for Justice*]; Barbara Gayle, *End Delays from the Bench! - Bar Association calls on judges to speedily hand down judgments*, THE GLEANER, (May 12, 2016, 12:00 AM), <http://jamaica-gleaner.com/article/news/20160515/end-delays-bench-bar-association-calls-judges-speedily-hand-down-judgments> [hereinafter, *End Delays from the Bench*]; Livern Barrett, *Delayed Justice- Ernie Smith and company ask court to order the Gov't to pay them \$143m after unconstitutional delay*, THE GLEANER (Sep. 15, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20180916/delayed-justice-ernie-smith-and-company-ask-court-order-govt-pay-them>.

⁸ *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 (Jam.); *Flannery v. Halifax Estate Agencies Ltd.* [1999] 1 W.L.R. 377, 383 (Eng.). See *Univ. of Alberta v. Chang*, [2012] ABCA 324, [31]-[33] (Can.); *Long Wait for Justice*, *supra* note 7 (describing how a plaintiff in malpractice case was required to refile a 10-year-old case when the justice who had previously heard the case retired without rendering a verdict).

⁹ CAROLINE SAVVIDIS, COURT DELAY AND HUMAN RIGHTS REMEDIES: ENFORCING THE RIGHT TO A FAIR HEARING 'WITHIN A REASONABLE TIME' 1 (2016); Brown, *supra* note 5 at 545. See generally, Carlene Davis, *PM reaches out - Holness urges speedy case resolution for sick teen*, THE GLEANER (Jul. 10, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/lead-stories/20180711/pm-reaches-out-holness-urges-speedy-case-resolution-sick-teen> (quoting Prime Minister Andrew Holness saying "I have asked the attorney general to fast-track the matter, to help it to come to a resolution very quickly...The delay is really denying the family justice.").

¹⁰ Okechukwu Oko, *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria*, 31 BROOKLYN J. INT'L L. 9, 20 (2005) ("A fair, efficient and accessible judicial system is necessary not just to protect citizens' rights but also to consolidate and deepen the democratic process."); Gerald Rosenberg, *The Impact of Courts on American Life*, in INSTITUTIONS OF AMERICAN DEMOCRACY: THE JUDICIAL

end, delays in delivering justice negatively affect the legitimacy of the courts and the perception of justice.¹¹

Legal stakeholders in Jamaica, and in particular judges and lawyers, have consistently attributed the delays to a steady annual increase in new criminal and civil cases, the growing complexity of new civil cases, a significant backlog of cases, and an under-resourced judicial system.¹² Judges, lawyers, and citizens alike have asked the Jamaican government to provide adequate human and financial resources, including hiring additional judicial law clerks, to help the judges with their workload in an effort to increase timeliness and efficiency in the judicial process.¹³

The Jamaican government and Chief Justice, head of Jamaica's judiciary, have taken several targeted steps to address the delays. Most notably, the Jamaican government has increased the budget allocated to the judiciary.¹⁴ This allowed for the appointing of additional judges; building of

BRANCH 280, 288 (Kermit L. Hall & Kevin T. McGuire eds., 2005) (noting that “[t]he judicial system and the rule of law it works to guarantee is fundamental to democracy.”); Denys Barrow, *Judgment Delayed is Justice Denied: Delays in Delivering Judgments in the Eastern Caribbean*, 35 COMMONWEALTH LAW BULL. 429, 441, (2009) (noting that “[t]he stability of a democratic State is at risk when it does not deliver justice.”).

¹¹ Mirko Bagaric & Gabrielle Wolf, *Sentencing by Computer: Enhancing Sentencing Transparency and Predictability and (Possibly) Bridging the Gap between Sentencing Knowledge and Practice*, 25 GEORGE MASON L. REV. 653, 691 (2017-2018) (noting “As Professor Stefan Voigt observes, ‘detaining a suspect while he is waiting for his trial is a serious intrusion into his personal freedom,’ and ‘[o]verly long court delay is not only likely to threaten the legitimacy of a country's judicial system, but can also lead to a loss in legitimacy of the political system at large,’ . . .”).

¹² Frank Phipps, *Inconvenient decisions, A real danger for stable judiciary*, THE GLEANER (Oct. 25, 2009), <http://mobile.jamaica-gleaner.com/20091025/cleisure/cleisure2.php>; Renae Dixon, *Lack of Resources Creates Backlog in Courts*, JAM. OBSERVER (Oct. 16, 2016), http://www.jamaicaobserver.com/News/Lack-of-resources-creates-backlog-in-courts_76861&template=MobileArticle; Editorial, *More Support for Judges*, THE GLEANER (Dec. 28, 2017) <http://jamaica-gleaner.com/article/commentary/20171229/editorial-more-support-judges> [hereinafter *More Support for Judges*] (noting that the cases are “increasingly complex.”).

¹³ Barbara Gayle, *Wrong blame for judges - Attorney defends members of the Bench against tardy judgment charges*, THE GLEANER (Jan. 19, 2018 12:00 AM) <http://jamaica-gleaner.com/article/news/20180211/wrong-blame-judges-attorney-defends-members-bench-against-tardy-judgment> [hereinafter *Wrong Blame for Judges*] (citing a Jamaican lawyer's suggestion that law students should be hired as judicial clerks to help with the judges' heavy workload). See Barbara Gayle, *Probing Justice: Judges Still Demanding Justice - Poor Working Conditions, Inadequate Remuneration Still Hurting*, THE GLEANER (Dec. 22, 2017), <http://jamaica-gleaner.com/article/lead-stories/20171226/probing-justice-judges-still-demanding-justice-poor-working-conditions> [hereinafter, *Probing Justice*] (reporting Jamaican judges' request for adequate remuneration, office space, and additional judicial clerks); Phipps, *supra* note 12.

¹⁴ The budget allocated to the justice sector for 2019-2020 was \$8.5 billion for Recurrent and \$1.7 billion for capital, an increase from 2017-18 where the amount allocated was

new and refurbishing of existing courthouses to add more space; hiring of additional court staff, including judicial clerks; and the purchasing of necessary equipment, supplies, and case management systems.¹⁵ Also, the Chief Justice has outlined a strategic plan focused on delivering timely court services, reducing case backlog, and creating sustained efficiency.¹⁶ The goals of the Strategic Plan are to eliminate intractable delays, improve timeliness and efficiency within the judicial system, and make Jamaica's judiciary the best in the Caribbean Region by 2022 and among the best in the World by 2025.¹⁷

The goals of the Strategic Plan are timely, laudable, and well-intentioned. However, it may be difficult, if not impossible, to achieve these goals in the stated timeline without causing the judges and court staff to experience significant burnout which can ultimately diminish the quality of justice dispensed from the still under-resourced courts. On the whole, the courts are congested at all levels.¹⁸ This suggests that they are overburdened and are carrying a heavier caseload than they can effectively dispose of given their current resources.¹⁹ To meet the Strategic Plan's benchmarks and

\$6.86 billion for recurrent and \$1.18 billion for capital. Godfrey Barnes, *Government Presents Budget of \$803 Billion for 2019-20*, JAM. INFO. SERV. (Feb. 15, 2019), <https://jis.gov.jm/government-presents-budget-of-803-billion-for-2019-20/>. *But see* Edmond Campbell, *Justice budgets could double to speed up cases and fight crime*, THE GLEANER (Jan. 13, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170114/justice-budget-could-double-speed-cases-and-fight-crime> [hereinafter *Justice budgets*] (The Minister of Justice anticipating that in the 2017-18 fiscal year the budget allocated to the justice ministry could double from its current nearly \$6 billion as part of the "increased efforts to dispose of cases more expeditiously.").

¹⁵ *Justice budgets*, *supra* note 14; Latonya Linton, *\$1 Billion Spent to Build, Renovate Justice Facilities*, JAM. INFO. SERV. (June 26, 2020), <https://jis.gov.jm/1-billion-spent-to-build-renovate-justice-facilities/> [hereinafter *Renovate Justice Facilities*].

¹⁶ *Strategic Plan for the Jamaican Judiciary 2019-2023*, THE S. CT. OF JAM. 13, <https://supremecourt.gov.jm/content/strategic-plan> (last visited Jan. 15, 2022). [hereinafter *Strategic Plan for the Jamaican Judiciary*].

¹⁷ *Id.* at 4-5.

¹⁸ Syranno Baines, *Court backlog persists despite some improvements*, THE GLEANER (Nov. 20, 2018), <http://jamaica-gleaner.com/article/lead-stories/20181121/court-backlog-persists-despite-some-improvements>.

¹⁹ *The Chief Justice's Annual Statistics Report on Criminal Matters in the Parish Courts – Report for 2019*, PARISH CT. OF JAM. 9, https://parishcourt.gov.jm/sites/default/files/The%20Chief%20Justice%60s%20Annual%20Report%20on%20CriminalMatters%20in%20the%20Parish%20Courts%20for%202019_RLLL.pdf [hereinafter *Report for Parish Court Criminal 2019*]; *The Chief Justice's Annual Statistics Report for the Supreme Court 2019*, THE S. CT. OF JAM. 10 (2019), https://supremecourt.gov.jm/sites/default/files/THE%20CHIEF%20JUSTICE%60S%20ANNUAL%20STATISTICS%20REPORTFOR%20THE%20SUPREME%20COURT%20FOR%202019_1%20%281%29.pdf [hereinafter *Report for Supreme Court 2019*]; *Court of Appeal Jamaica, Annual Report 2019*, CT. OF APP. JAM. 30-31 (2019),

timeline, some courts are required to double, and others triple, their current output for sustained periods.²⁰ This significant increase in workload may result in members of the judiciary and court staff feeling overworked and overwhelmed, while others may become detached and unmotivated to perform their duties.²¹ An overworked or unmotivated judiciary and court staff can be counterproductive to the overall goals of timely, efficient, and effective justice.²² Put slightly differently, overwork reduces morale and causes health problems including stress, anxiety, and burnout.²³ In short, overwork may lead to missed or delayed court hearings, reduced productivity and inefficiencies, and may propel the judges to use shortcuts that can compromise the practice of judging and the quality of judgments and justice.²⁴

This Article suggests that by strategically increasing the number of judicial law clerks, Jamaica can improve the likelihood of attaining the goals of efficiently delivering justice within the timeline specified in the Strategic Plan, modified to account for the impact of the COVID-19 pandemic, without significantly overworking the judges and court staff. Essentially, judicial law clerks typically are a cost-effective way to improve the court's overall efficiency and productivity while also providing important training for attorneys and potential future judges.²⁵

A review of the literature on courts that have successfully eliminated their backlog of cases and improved efficiency indicate that a targeted and

<https://www.courtsofappeal.gov.jm/sites/default/files/Court%20of%20Appeal%20Annual%20Report%202019.pdf> [hereinafter *Report for Court of Appeal 2019*].

²⁰ See *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 25.

²¹ See Sherrie Bourg Carter, *The Tell Tale Signs of Burnout . . . Do You Have Them? Running out of gas? Recognizing the signs of burnout before it's too late*, PSYCH. TODAY (Nov. 26, 2013), <https://www.psychologytoday.com/us/blog/high-octane-women/201311/the-tell-tale-signs-burnout-do-you-have-them>.

²² Alicia Bannon, *The Impact of Judicial Vacancies on Federal Trial Courts*, BRENNAN CTR. FOR JUST. ANALYSIS (2014), <https://www.brennancenter.org/sites/default/files/publications/Impact%20of%20Judicial%20Vacancies%20072114.pdf> (noting that court delays increase the cost of litigation).

²³ Carter, *supra* note 21.

²⁴ Bannon, *supra* note 22 at 8-10. See EMMETT MACFARLANE, GOVERNING FROM THE BENCH: THE SUPREME COURT OF CANADA AND THE JUDICIAL ROLE (LAW AND SOCIETY) 78 (2012) (noting that “[e]fficiency has a direct effect on the effectiveness of the institution and the quality of its judgments.”); *see also id.* at 87 (“justices recognize that if they were overworked there could be negative repercussions for the quality of the Court’s judgments.”).

²⁵ See David Lat, *How Should a Judge Be: In Defense of the Judge as CEO*, 69 VAND. L. REV. EN BANC 151, 157-58 (2016) (noting that law clerks “they play a major role in helping judges maintain their high productivity levels in the face of rising caseloads.”); Donald Molloy, *Designated Hitters, Pinch Hitters, and Bat Boys: Judges Dealing with Judgment and Inexperience, Career Clerks or Term Clerks*, 82 LAW AND CONTEMP. PROBLEMS 133, 151 (2019).

strategic use of judicial law clerks can be particularly effective in this endeavor.²⁶ It is to be noted that while the literature indicates that no one method alone will solve the problems of judicial delays and case backlogs, courts in common law countries, such as Canada and the United States, have consistently posited that judicial law clerks have helped to significantly reduce the judges' workload, the courts' backlog of cases, and improve the overall efficiency of their courts. The UK, which houses Jamaica's court of last resort, has also recently adopted a robust use of judicial law clerks to help reduce the judges' workload and improve the courts' efficiency.²⁷

This Article is organized as follows. Part I gives an overview of the problems with delay within the courts in Jamaica and the far-reaching effects of those delays. Using court statistics to put the problem in its proper context, this section shows that the problem of delays is longstanding, and delays exist at all levels within the court system.

Part II details the efforts by the Jamaican government and Chief Justice to address the delays, including the Chief Justice's Strategic Plan which lays out a path to timely and efficient court services. This section concludes by suggesting that, in light of the courts' congestion rates and the steady increase in new cases, the recent infusion of human and financial resources on their own may not be enough to attain the goals laid out in the Strategic Plan within the stated timeline.

Part III looks at Canada, the US, and the UK, three common law countries with legal systems similar to Jamaica's legal system that use judicial law clerks to help to reduce their case backlogs and increase timeliness and efficiency in their courts.²⁸ Equally important, their judicial clerkship programs provide additional training to newly-minted lawyers and create a valuable pipeline for future judges. This section gives an overview of the typical duties of judicial law clerks and assesses the different judicial law clerkship program models used in these three countries.

Part IV first suggests that Jamaica expand its judicial law clerkship program, with the immediate focus of attaining the Strategic Plan's goals. Second, this section suggests that after the case backlog has cleared, Jamaica

²⁶ See *Infra* Part III.

²⁷ *Id.*

²⁸ See ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 355 (2d ed. 2008) (referring to the family courts in Canada, the USA, and the UK as "counterparts" to Jamaica's family court in other jurisdictions); see also Jeanne Slowe & Claudette Solomon, *UPDATE: The Jamaican Legal System and Legal Research*, N.Y.U. L. GLOBALEX (May/June 2020), **Error! Hyperlink reference not valid.**<https://www.nyulawglobal.org/globalex/Jamaica1.html> (noting that Jamaica follows a common law legal system); see *Infra* Part III (looking at the use of law clerks in US, Canada, and the UK to help to address judicial overload.).

may refine the program as needed to enhance sustainability in the timely delivery of justice.

Part V concludes by noting that no initiative on its own will solve the longstanding problem of judicial delays. Consequently, relying on judicial law clerks without using additional delay-reduction strategies will not solve Jamaica's problem of the protracted delays and congested courts. Bearing this in mind, employing judicial law clerks is an excellent and cost-effective way to start unclogging the courts. Judicial law clerks have a proven history of helping judges to reduce their workload and increase efficiency within the judicial system, which is vital to ensuring timely and efficient justice. The terms judicial law clerks and law clerks are used as synonymous throughout this Article.

A. *Jamaica's Problem with Judicial Delay and Case Backlogs*

Jamaica's problems with delays in the judicial system span decades.²⁹ There are delays in criminal and civil cases at all levels of the court system.³⁰ Stakeholders, including litigants, lawyers, and concerned citizens consistently express frustration that the protracted delays and the slow pace with which the courts operate undermine democracy and deny citizens the right to access to justice within a reasonable time.³¹ By way of example, because of delays in the Supreme Court of Jamaica civil cases that are ready for trial are typically calendared to be heard in five to six years.³² Criminal cases are similarly impacted by the delays. Criminal cases, and in particular those involving serious crimes such as murder, typically receive higher scheduling priority than civil cases and are usually set to be heard within twelve to twenty-four months.³³ But even so, because of court delays these

²⁹ Crichton, *supra* note 6, at 15.

³⁰ *Id.* at 3.

³¹ See Shelly-Ann Irving, *Courts to Receive Additional Support in Handing Down Judgments*, JAM. INFO. SERV. (May 26, 2016), <https://jis.gov.jm/courts-receive-additional-support-handing-judgments>; Barbara Gayle, *Delay Is Danger - Government Could Face Multimillion-Dollar Lawsuits Over Snail's Pace Justice System*, THE GLEANER (Oct. 4, 2018), <http://jamaica-gleaner.com/article/lead-stories/20181014/delay-danger-government-could-face-multimillion-dollar-lawsuits-over> [hereinafter, *Delay is Danger*]; *Justice Delays*, *supra* note 1 (noting that attorneys and litigants have complained about the delays in the justice system). See also CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOM ACT [CONSTITUTIONAL AMENDMENT] CONSTITUTION OF JAMAICA 2011 § 16(1), 16(2) (Jam.) (noting the right to a fair hearing within a reasonable time).

³² *Victim of the Justice System*, *supra* note 3 (noting that civil cases in the Supreme Court of Jamaica are "being set for dates in 2025 and 2026.").

³³ See Livers Barrett, *'I need to close this chapter in my life' - Widows of slain American missionaries bemoan lengthy road to trial*, THE GLEANER (July 26, 2020), <http://jamaica-gleaner.com/article/lead-stories/20200726/i-need-close-chapter-my-life-widows-slain->

cases can languish in the court system for several months or years before trial actually begins.³⁴

There are also delays in disposing of cases within a reasonable time. While the courts have made great efforts to improve on the number of cases disposed of within two years of being filed, cases continue to lag in the system for several years.³⁵ Court Reports indicate that there are cases that have been in the judicial system for over ten years.³⁶ At the higher end for example, in 2019, the Supreme Court of Jamaica's Home Circuit Court Division disposed of a criminal matter that had lagged in the system for thirty-two years.³⁷ Cases that are not disposed of within two years contribute to the already substantial backlog and further clog the courts causing additional delays.³⁸

Delays in issuing reserved judgments continue to plague the judicial system and are of great concern to litigants and the lawyers who represent them.³⁹ A case is not fully disposed of until the court delivers judgment.⁴⁰ Without the court's judgment and reasons for judgment, a litigant remains unsure of her rights or obligations, cannot collect benefits, payments, or interests, and is unable to effectively prepare an appeal.⁴¹ In recent months, the judiciary has made significant improvements in disposing of cases and delivering reserved judgments within a reasonable time.⁴² However, instances

american-missionaries-bemoan [hereinafter *Lengthy Road to Trial*]; see also Melvin M. Belli, *The Law's Delays: Reforming Unnecessary Delay in Civil Litigation*, 8 J. LEGIS. 16, 20 (noting that criminal matters automatically take precedence over civil cases in the hearing schedule).

³⁴ See *Lengthy Road to Trial*, *supra* note 33.

³⁵ *Delay Is Danger*, *supra* note 31; See *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 25 (cases should be disposed of within two years of being filed).

³⁶ *Report for Supreme Court 2019*, *supra* note 19, at 95; *The Chief Justice's Annual Statistics Report for Civil Matters in the Parish Courts for 2019*, PARISH CT. OF JAM. 20 (2019),

https://supremecourt.gov.jm/sites/default/files/Annual%20Statistics%20Report%20for%20the%20CivilDivisions%20of%20the%20Parish%20Courts_2019.pdf [hereinafter *Report for Parish Court Civil 2019*].

³⁷ *Report for Supreme Court 2019*, *supra* note 19, at 6; see also *Report for Parish Court Criminal 2019*, *supra* note 19, at 47 (noting that the maximum time to disposition ranges from a low of 34.90 months in the Corporate Area Parish Court-Criminal Division to a high of 35.67 years in the St. James Parish Court). *But see Report for Supreme Court 2019*, *supra* note 19, at 6 (noting that some cases were disposed of within 6 months across all Divisions).

³⁸ *Report for Supreme Court 2019*, *supra* note 19, at 38.

³⁹ See Crichton, *supra* note 6, at 26-27.

⁴⁰ See *id.*

⁴¹ See *id.* at 5.

⁴² *Report for Supreme Court 2019*, *supra* note 19, at 2; *Report for Court of Appeal 2019*, *supra* note 19, at 2; Syranno Baines, *Hold Judges Accountable, Bar Tells Chief Justice*, THE GLEANER (Mar. 13, 2019), <http://jamaica-gleaner.com/article/lead-stories/20190313/hold-judges-accountable-bar-tells-chief-justice>.

where reserved judgments are unreasonably delayed or judges retire without delivering judgment in the cases over which they presided cannot be discounted.⁴³ As an example, the Court Administration Division (CAD) revealed that at the Supreme Court level, four High Court judges had retired leaving twenty-seven reserved judgments undelivered.⁴⁴ In instances when a sitting judge retires before issuing reserved judgment, justice requires a new trial.⁴⁵ This was the situation in *Chen-Young v. Eagle Merchant Bank Jamaica Limited*.⁴⁶ In a landmark ruling, the Court of Appeal declared its 2017 judgment a nullity and ordered a new trial.⁴⁷ Driving the court's decision, in 2013, a panel of three judges heard the case and reserved judgment, but all three judges retired approximately sixteen months before another panel of judges delivered judgment in 2017.⁴⁸ The Court of Appeal reasoned that the judges who had heard the case were incapable of handing down a valid decision because they had retired, had not received permission from the Governor-General to continue in office until they delivered judgment, and their respective posts had been filled.⁴⁹ Looking to precedent set in *Chen-Young*, the Court of Appeal also declared judgment in a case filed by Richard Lake against National Commercial Bank a nullity and ordered a new trial because the judge who heard the case and reserved judgment retired without delivering judgment.⁵⁰ At the time, the case had spent approximately 13 years in the court system.⁵¹

The courts do not appear to prioritize disposing of cases that are granted a new trial because the sitting judge or panel of judges had retired without delivering judgment. In these instances, the litigants suffer anew the consequences of protracted judicial delays. As an example, a litigant filed suit in the Supreme Court alleging negligence.⁵² The presiding judge reserved judgment, but retired three years later without delivering judgment.⁵³ The

⁴³ *Long Wait for Justice*, *supra* note 7; *Justice Delays*, *supra* note 1 (noting that “[a]pproximately 50 per cent [sic] of reserved judgments are delayed for more than two years.”).

⁴⁴ *Long Wait for Justice*, *supra* note 7.

⁴⁵ See Crichton, *supra* note 6, at 1; *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 (Jam.).

⁴⁶ *Chen-Young*, [2018] JMCA App 7 [7]-[8].

⁴⁷ *Id.* at [7], [230].

⁴⁸ *Id.* at [5]-[7].

⁴⁹ *Id.* at [7], [151], [230].

⁵⁰ McPherse Thompson, *Judge's Retirement Nullifies \$29b Lawsuit - Richard Lake Case Against NCB To Be Tried Again*, THE GLEANER (Oct 10, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/business/20181012/judges-retirement-nullifies-29b-lawsuit-richard-lake-case-against-ncb-be>.

⁵¹ *Id.*

⁵² *Long Wait for Justice*, *supra* note 7.

⁵³ *Id.*; *Robinson v. Attorney General of Ja.* [2021] JMFC Full 1 [4].

litigant spent several years seeking to obtain a resolution of the original claim, but the delays persisted.⁵⁴ Based on precedent set in *Chen-Young*, the case would be set for retrial.⁵⁵ Having already completed trial, the litigant was now faced with the dilemma of abandoning the claim or accepting the associated financial and emotional burdens of litigation and starting anew. Approximately ten years after the litigant filed the original claim and after several attempts at seeking a resolution, the litigant sued the Government alleging a breach of her constitutional right to a fair trial within a reasonable time.⁵⁶ The litigant, legally blind, claimed that a retrial would “further breach [her] constitutional right to a fair trial”⁵⁷ because during the lengthy time-lag since the trial of the original claim her health has deteriorated; her financial support has diminished; and key witnesses would not be available at a retrial which would severely prejudice her case.⁵⁸ The litigant requested, and was awarded, damages.⁵⁹ A similar and equally unfortunate instance of judicial delay occurred in the Supreme Court when a litigant filed a breach of contract suit.⁶⁰ The case was nearing completion after eight years of delays, but the presiding judge was set to retire before the case would be completed.⁶¹ The Supreme Court assigned the case to another judge and a new trial began.⁶² Five years later, the case remained unresolved.⁶³ The litigant lamented that “the same issue of delays”⁶⁴ that persisted in the initial case returned in the retrial.⁶⁵

Essentially, the courts are required to complete cases within two years of the case entering the court.⁶⁶ Cases that go to trial should be completed within two years from filing, and should never extend beyond three years.⁶⁷ Matters that do not require adjudication in the Supreme Court should

⁵⁴ Robinson, [2021] JMFC Full 1 [5].

⁵⁵ *Id.* (noting that since the judge retired in 2013, the litigant wrote to the Chief Justice in 2013, 2016 and 2018 and to the Attorney General in 2019 seeking a resolution of her original claim); *See* *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 (Jam.).

⁵⁶ Robinson, [2021] JMFC Full 1 [2], [5].

⁵⁷ *Id.* at [32]; *Long Wait for Justice*, *supra* note 7.

⁵⁸ Robinson, [2021] JMFC Full 1 [31]. *But see id.* at [71] (the Court of Appeal concluding that the litigant “has not discharged her legal burden in proving that a fair trial [on her original claim] can no longer be guaranteed . . .”).

⁵⁹ Robinson, [2021] JMFC Full 1 [71]; *Long Wait for Justice*, *supra* note 7 (noting that the litigant was awarded “damages in excess of \$25 million.”).

⁶⁰ *Long Wait for Justice*, *supra* note 7.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Long Wait for Justice*, *supra* note 7.

⁶⁶ *Justice Delays*, *supra* note 1.

⁶⁷ *Id.*

not extend beyond 12 months.⁶⁸ In instances where a written judgment is required, judgment should be delivered orally and written reasons for judgment should be delivered within three months after the completion of trial or hearing; or within six months for complex matters.⁶⁹

B. Court Delay in Context: Structure and Function of Jamaica's Courts

In Jamaica and elsewhere, a court's efficiency is determined by the: (1) number of cases filed per year; (2) number of cases disposed per year; (3) number of cases pending at year end; (4) clearance rate – ratio of cases disposed to cases filed; (5) congestion rate; (6) average duration of each case;⁷⁰ (7) the case backlog rate;⁷¹ and (8) the complexity of the cases.⁷² Also critical in assessing a court's efficiency is the availability of adequate resources, including the number of judicial officers and court staff.⁷³

To put Jamaica's problem with court delay in its proper context, one must look at the structure and functions of the courts, available court statistics, empirical and anecdotal evidence, and judicial resources. Jamaica has a five-tiered hierarchical court structure. At the first tier is the Petty Sessions Court, which hears minor offences⁷⁴ and is typically presided over by Justices of the Peace.⁷⁵ At the second tier are the Parish Courts, which are inferior courts of record; Jamaica is divided into fourteen parishes, each of which has a Parish Court.⁷⁶ Each Parish Court hears non-violent criminal cases originating in

⁶⁸ *Id.*

⁶⁹ Crichton, *supra* note 6, at 3; *Justice Delays, supra* note 1 (noting Minister of Justice Chuck's comments that "Parish Court cases should be completed within two years, with 18 months a realistic average" and written judgment with reason for judgment should be delivered within three to six months).

⁷⁰ Maria Dakolias, *Court Performance Around the World: A Comparative Perspective*, 2 *YALE HUM. RTS. AND DEV. J.* 87, 93 (1999).

⁷¹ *Report for Supreme Court 2019, supra* note 19, at 11.

⁷² Dakolias, *supra* note 70, at 87, 92.

⁷³ Pim Albers, *Performance Indicators and Evaluation For Judges and Courts*, Council of Europe, <https://rm.coe.int/performance-indicators-and-evaluation-for-judges-and-courts-dr-pim-alb/16807907b0> (last visited Jan. 15, 2022).

⁷⁴ The Justice of the Peace Jurisdiction § 2 (1850) (Jam.) available at <https://moj.gov.jm/sites/default/files/laws/The%20Justices%20of%20the%20Peace%20Jurisdiction%20Act.pdf> (last visited Mar. 10, 2022); *Customer Service Charter for the Courts of Jamaica 2017*, CT. ADMIN. DIVISION 11 (2017), <https://cad.gov.jm/wp-content/uploads/2017/11/CharterUpdatedOctober2017.pdf>.

⁷⁵ *The Court Structure and Hierarchy*, S. CT OF JAM., <https://supremecourt.gov.jm/content/court-structure-and-hierarchy> (last visited Jan. 8, 2022) [hereinafter *The Court Structure and Hierarchy*].

⁷⁶ *Id.*

that jurisdiction and civil matters up to a certain monetary value.⁷⁷ Violent crimes, such as murder and rape, are referred to the Supreme Court of Jamaica, which is at the third tier.⁷⁸ The Supreme Court sees the highest volume of new cases filed each year.⁷⁹ It is the superior court of record and the country's highest trial court with "unlimited original jurisdiction in criminal, civil and constitutional cases"⁸⁰ and limited appellate and supervisory jurisdiction.⁸¹ The Supreme Court hears appeals from the Petty Sessions Courts and the registrar of the Supreme Court, and reviews decisions from local administrative bodies.⁸² It also incorporates specialized courts such as the High and Circuit Court Divisions of the Gun Court and the Revenue Court.⁸³

At the fourth tier is the Court of Appeal. The Court of Appeal is the intermediate appellate court and the highest appellate court located in Jamaica.⁸⁴ The Court of Appeal hears appeals from the Parish Courts and the Supreme Court, including procedural applications, procedural appeals, and substantive appeals.⁸⁵ The Court of Appeal also hears applications for leave to appeal to the Judicial Committee of the Privy Council, the court of last resort.⁸⁶

The Privy Council, located in the United Kingdom, is at the fifth and final tier.⁸⁷ Appeals to the Privy Council are by invitation or permission and are typically "restricted to cases of a certain monetary value or where they are of exceptional public importance."⁸⁸

This Article focuses on the trial courts and appellate court located in Jamaica: the Parish Courts, the Supreme Court, and the Court of Appeal.

⁷⁷ Parish Courts hear cases with claims that do not exceed JD\$250,000. They have a lower penal power than the Supreme Court in criminal cases. *Id.*

⁷⁸ *Id.* ("Courts of equivalent jurisdiction in other countries are sometimes called "High Courts").

⁷⁹ *Report for Supreme Court 2019*, *supra* note 19, at 4-5.

⁸⁰ *Jurisdiction, S. CT OF JAM.*, <https://supremecourt.gov.jm/content/jurisdiction#:~:text=The%20Supreme%20Court%20was%20then,an%20appellate%20and%20supervisory%20jurisdiction.> (last visited Jan. 15, 2022).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *The Court Structure and Hierarchy*, *supra* note 75.

⁸⁴ *Id.* See also Slowe & Solomon, *supra* note 28.

⁸⁵ *Report for Court of Appeal 2019*, *supra* note 19, at 14.

⁸⁶ *Id.*

⁸⁷ *The Court Structure and Hierarchy*, *supra* note 75; Slowe & Solomon, *supra* note 28.

⁸⁸ *The Court Structure and Hierarchy*, *supra* note 75.

C. Court Delay in Context: Court Data and Judicial Resources

The courts at all levels in Jamaica carry an overwhelming caseload. In addition to a burgeoning backlog of cases, there is an annual increase in the number of new cases entering the courts.⁸⁹ Recently available court data makes it possible to track and measure performance and efficiency across the courts.⁹⁰

The Supreme Court of Jamaica, which sees the highest volume of newly filed cases, saw an annual increase of approximately 4% in the number of new cases from 2017 to 2019.⁹¹ In 2017, 12,604 new cases entered the court.⁹² In 2019, the number rose to 13,116 new cases.⁹³ The Supreme Court projects that in 2020, between 13,000 and 13,800 new cases will enter the court.⁹⁴ The Court of Appeal also saw an increase in the number of new matters before the court. While carrying a sizeable pending caseload of 1,591 in 2017, the Court of Appeal saw 283 newly filed appeals in 2018 and 276 in 2019.⁹⁵ The Parish Courts also consistently reported a high volume of newly filed cases. In 2017, 32,266 new criminal cases entered the Parish Courts,⁹⁶ adding to the existing backlog of 30,667 criminal cases.⁹⁷ Two years later, in 2019, 48,316 new civil and criminal cases entered the Parish Courts.⁹⁸ In

⁸⁹ *Report for Supreme Court 2019*, *supra* note 19, at 4, 5, 22; *Court of Appeal Jamaica, Annual Report 2018*, CT. OF APP. JAM. 20 (2018), <https://www.courtsofappeal.gov.jm/sites/default/files/Court-of-Appeal-Annual-Report-2018.pdf> [hereinafter *Report for Court of Appeal 2018*] (showing an increase in the number of appeals from 2017). *But see Report for Parish Court Criminal 2019*, *supra* note 19, at 5 (reporting a slight decrease in the number of new criminal cases entering the Parish Courts).

⁹⁰ *Report for Parish Court Civil 2019*, *supra* note 36, at 3.

⁹¹ *The Chief Justice's Annual Statistics Report for the Supreme Court 2017*, THE S. CT. OF JAM. 5 (2017), https://supremecourt.gov.jm/sites/default/files/CHIEF%20JUSTICE%27S%20ANNUAL%20REPORT%20FOR%20THE%20SUPREME%20COURT_2017.pdf. [hereinafter *Report for Supreme Court 2017*]; *Report for Supreme Court 2019*, *supra* note 19, at 4.

⁹² *Report for Supreme Court 2017*, *supra* note 91, at 5.

⁹³ *Report for Supreme Court 2019*, *supra* note 19, at 4-5.

⁹⁴ *Report for Supreme Court 2019*, *supra* note 19, at 10.

⁹⁵ *Report for Court of Appeal 2018*, *supra* note 89, at 27; *Report for Court of Appeal 2019*, *supra* note 19, at 22.

⁹⁶ *The Chief Justice's Annual Statistics Report on Criminal Matters in the Parish Courts – Report for 2017*, PARISH CT. OF JAM. 12, https://supremecourt.gov.jm/sites/default/files/CHIEF-JUSTICES-ANNUAL-STATISTICAL-REPORT-ON-CRIMINAL-MATTERS_PARISH-COURTS_2017.pdf.

⁹⁷ *Criminal Case Backlog*, *supra* note 5.

⁹⁸ *Report for Parish Court Criminal 2019*, *supra* note 19, at 5 (26771 new criminal cases entered the Parish Courts); *Report for Parish Court Civil 2019*, *supra* note 36, at 4 (21545 new civil cases entered the parish courts in 2019).

addition to an increase in the volume of new cases, the judges also noted an increase in the complexity in newly filed civil matters.⁹⁹

Despite the annual increase in newly filed criminal and civil cases, the courts have remained chronically under-resourced and understaffed for several years.¹⁰⁰ While literature on court delays advise that a lack of judicial resources is not always the sole cause of judicial delays, in Jamaica's case, the history of chronic underfunding of the judiciary combined with the ever-growing caseload contributed significantly to lengthy judicial delays.¹⁰¹ In addition to a lack of necessary equipment and shortage of courtroom space, the courts at all levels were left to operate without a full complement of judges and an adequate number of support staff, including judicial law clerks to assist judges with research and other tasks.¹⁰²

The number of judges that may be appointed to a particular court is set by law. The law provides for a complement of up to forty-two Supreme Court judges including the Chief Justice and a Senior Puisne Judge.¹⁰³ At the close of 2017, there were a total of thirty-six Supreme Court judges, who were supported by ten judicial clerks.¹⁰⁴ The Court of Appeal and Parish Courts also operated with notable judicial vacancies. Since 1967 and until the close

⁹⁹ Court of Appeal *Jamaica, Annual Report 2015*, CT. OF APP. JAM. 23 (2015), <https://www.courtsofappeal.gov.jm/sites/default/files/Court%20of%20Appeal%20Annual%20Report%202015.pdf>; *Jam. Pub. Serv. Co. Ltd. v. Campbell* [2013] JMSC (Civ) 22 [2]. *See More Support for Judges, supra* note 12 (noting that the cases are “increasingly complex.”); *see also* James Campbell, *Murder Appeals, Delayed Executions, and the Origins of Jamaican Death Penalty Jurisprudence*, 33 L. & HIST. REV. 435, 447 (2015).

¹⁰⁰ *See* Dixon, *supra* note 12. *Compare* Phipps, *supra* note 12 (mentioning the President of the Court of Appeal's comment in 2009 that the judges at the Court of Appeal are overworked with eight judges doing the work of twelve). *Compare with* Chen-Young v. Eagle Merchant Bank Jam. Ltd., [2018] JMCA App 7 [155] (Jam.) (the issues of heavy judicial workload and under-resource persist in 2018).

¹⁰¹ *See* Dixon, *supra* note 12. *See also* Phipps, *supra* note 12; *see generally* Belli, *supra* note 33, at 21 (detailing the primary causes of trial delay in the United States of America court system: “inefficient judicial administration; a vast increase in litigation; the attitude of lawyers, fostered by incentives for defense lawyers to delay; and, finally, the priority of criminal over civil matters.”).

¹⁰² *See Probing Justice, supra* note 13 (citing the shortage of secretarial staff as a contributing factor to the court delays). The members of the Bench pointed out that there is one secretary assigned to four judges and that was not fair to the judges or the secretaries who have the task of typing the handwritten notes of judges); Arthur Hall, *40 years of neglect- Chuck admits that political administrations have failed the justice system*, THE GLEANER (Jan. 14, 2017 9:17AM), <http://jamaica-gleaner.com/article/lead-stories/20170115/40-years-neglect-chuck-admits-political-administrations-have-failed> [hereinafter *40 years of neglect*].

¹⁰³ The Judicature (Supreme Court) Act § 5 (2004) (Jam.) *available at* [https://moj.gov.jm/sites/default/files/laws/Judicature%20\(Supreme%20Court\)%20Act.pdf](https://moj.gov.jm/sites/default/files/laws/Judicature%20(Supreme%20Court)%20Act.pdf) (last visited Mar. 10, 2022).

¹⁰⁴ *Probing Justice, supra* note 13.

of 2017, the Court of Appeal operated with seven justices.¹⁰⁵ This remained so despite a 2008 amendment that provided for an increase to thirteen justices.¹⁰⁶ Seven senior judicial clerks assisted the Court of Appeal's seven justices.¹⁰⁷ Notably, the number of Parish Courts judges remained below the forty-six judges authorized to be appointed by statute.¹⁰⁸ It is important to point out that the law also allows the Minister of Justice to seek an amendment to increase the number of judges to a number necessary to satisfactorily discharge the business of the court.¹⁰⁹

Once appointed, judges may serve until they resign or until they reach the mandatory retirement age of seventy.¹¹⁰ When a judge reaches the mandatory retirement age, that judge is precluded from continuing judicial functions unless he or she receives prior permission from the Governor-General.¹¹¹ This means that judges who have reached the mandatory retirement age may not continue to hear cases even if the cases were near completion before the retirement date.¹¹² In addition, they cannot issue reserved judgments unless they receive prior permission from the Governor-General.¹¹³

An adequate number of judicial officers and court staff create the foundation for an efficient court.¹¹⁴ A study of the impact of judicial

¹⁰⁵ *Report for Court of Appeal 2018*, *supra* note 89, at 5; Lavern Barrett, *Appeal court expansion to start this week*, THE GLEANER (Apr. 17, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180418/appeal-court-expansion-start-week> [hereinafter, *Appeal Court Expansion*]; *40 years of neglect*, *supra* note 102.

¹⁰⁶ *Report for Court of Appeal 2018*, *supra* note 89, at 2; *Appeal Court Expansion*, *supra* note 105.

¹⁰⁷ *Court of Appeal Jamaica, Annual Report 2017*, CT. OF APP. JAM. 8 (2017), <https://www.courtofappeal.gov.jm/sites/default/files/Court-of-Appeal-Annual-Report-2017.pdf>. This number remained the same in 2018. *Report for Court of Appeal 2018*, *supra* note 89, at 7.

¹⁰⁸ Judicature (Resident Magistrate) Act, § 4(1) (1928) (Jam.) available at <https://moj.gov.jm/sites/default/files/laws/The%20Judicature%20%28Resident%20Magistrates%29%20Act.pdf> (last visited Mar. 10, 2022).

¹⁰⁹ *Id.* § 4(3).

¹¹⁰ CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 1 §§ 100(1); *id.* at pt. 2 § 106(1).

¹¹¹ CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 1 §100(2); *id.* at pt. 2 §106(2).

¹¹² CONSTITUTION OF JAMAICA, July 23, 1962, ch. 7, pt. 2 § 106(2).

¹¹³ *Id.* at pt. 3 § 106(2).

¹¹⁴ Melanie R. Bueckert, *Legal Research in Canada's Provincial Appellate Courts*, 35 MAN. 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); Waleed Haider Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons*, at 1, 35 (The World Bank, Directions in Development Ser. No. 38779, 2007), available at <https://documents1.worldbank.org/curated/pt/641511468300664743/pdf/387790SG0Judic101OFFICIAL0USE0ONLY1.pdf> (noting that Singapore's decision to hire law clerks to do legal research in appeals case for Supreme Court judges "significantly lightened the

vacancies on federal trial courts by the Brennan Center in the United States found that “having a single judicial vacancy for 12 months was associated, at a statistically significant level, with a 2 percentage point increase in the percentage of cases pending for three years or more.”¹¹⁵ Judicial vacancies affect the entire court system.¹¹⁶ To illustrate, the study also revealed that judicial vacancies directly contributed to difficulty scheduling cases for trial¹¹⁷ and increased the disposition time for felony cases.¹¹⁸ Judges and court administrators who were interviewed for the study suggested that judicial vacancies created “substantial delays” in criminal cases.¹¹⁹ Further, civil cases, and in particular complex civil cases,¹²⁰ were more likely to be delayed for even longer periods.¹²¹ This typically happens because the courts tend to prioritize criminal over civil cases considering the accused’s constitutional and human right to a speedy trial.¹²²

Anecdotal evidence suggests that in Jamaica, insufficient judges, court staff, and resources have contributed to on-going massive delays in scheduling civil cases for trial and disposing of those cases in the Supreme

workload of judges and enabled them to devote more of their time to adjudicating and writing judgments”); *see also* Rosenberg, *supra* note 10, at 288 (noting that the judicial system should be given priority for resources because “[w]ithout adequate resources for the judiciary, a robust democratic life is threatened.”).

¹¹⁵ Bannon, *supra* note 22, at 1.

¹¹⁶ *Id.* at 8 (“When you have a vacancy it affects all parts of your court system,” observed the Eastern District of Texas’s Chief Judge Davis.”).

¹¹⁷ *Id.* at 5.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 4, 5.

¹²⁰ *Id.*

¹²¹ Bannon, *supra* note 22, at 4, 5 (noting the observation of several judges and court administrators who “suggested that complex civil cases were frequently hardest hit by judicial shortages, because they often require close review of a lengthy record or the scheduling of a multi-week trial.” However, a heavy criminal docket and a long-standing vacancy “created substantial delays in criminal trials and sentencings” in one of the courts studied.).

¹²² Belli, *supra* note 33, at 20 (noting that criminal matters automatically take precedence over civil cases which leads to further delays in civil cases).

Court¹²³ and Parish Courts,¹²⁴ and the delays in disposing of cases and issuing reserved judgment in the Court of Appeal.¹²⁵

For one, courts should aim to reduce delays in civil and criminal cases by ensuring that sufficient judges are available to initiate trial. As a simple matter of logic, “the number of judges available to initiate trial at the time a case is ready to be tried decreases a case’s processing time.”¹²⁶ Litigants in Jamaica have expressed concern that cases are being adjourned because judges are not available to initiate trial.¹²⁷

Jurists have surmised that for decades, the resources allocated to the judiciary have not kept pace with the growing caseload.¹²⁸ As such, the continued under-resourcing of the Jamaican judiciary has undermined the efficiency of the courts.¹²⁹ To explain the delay in scheduling civil cases in the Supreme Court, a court official noted that “while the civil list was a long one, the real problem is that the judges’ diaries are full and more judges are

¹²³ See you in 2022!, *supra* note 4; Racquel Porter, *Court Backlog Could Hurt Agreements with International Partners*, JAM. OBSERVER (Jan. 09, 2018), http://www.jamaicaobserver.com/news/court-backlog-could-hurt-agreements-with-international-partners_122012?profile=1373.

¹²⁴ See *Probing Justice: Staff Shortage Hurting Parish Courts*, THE GLEANER (Dec. 26, 2017) <http://jamaica-gleaner.com/article/lead-stories/20171227/probing-justice-staff-shortage-hurting-parish-courts> (noting that “[T]he judges are also disappointed with the failure of the justice ministry to provide them with staff, particularly for the preparation of notes of evidence in appeal cases.”). To be highlighted, the Supreme Court Report for 2019 notes that “prominent reasons” for court delays include “the non-appearance of parties and/or attorneys, absenteeism of witnesses and investigating officers, incomplete files, missing files, documents to be filed, statements outstanding and disclosure.” *Report for Supreme Court 2019*, *supra* note 19, at 8.

¹²⁵ See *Appeal Court Expansion*, *supra* note 105; see also *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 [155] (Jam.).

¹²⁶ Joel H. Garner, *E Pluribus Unum? Research on Processing Time in Criminal Cases*, U.S. DEP’T OF JUST., 2, 15, <https://www.ncjrs.gov/pdffiles1/digitization/129550ncjrs.pdf> (last visited Jan. 15, 2022).

¹²⁷ Barbara Gayle, *Long Wait for Justice - Senior Citizen Faces Christmas Gloom As Court, Pension Matters Drag On*, THE GLEANER (Dec. 22, 2019), <http://jamaica-gleaner.com/article/lead-stories/20191222/long-wait-justice-senior-citizen-faces-christmas-gloom-court-pension> [hereinafter *Matters Drag On*].

¹²⁸ Dixon, *supra* note 12; Porter, *supra* note 123.

¹²⁹ Lavern Barrett, *Sykes seeks to make J’can judiciary best in the region in three years*, THE GLEANER (Sep. 17, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180918/sykes-seeks-make-jcan-judiciary-best-region-three-years> (noting that Jamaica’s judicial system has been “crippled for decades by chronic under-resourcing and a backlog of civil and criminal cases . . .”); Phipps, *supra* note 12; *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 6 (quoting a former President of the Court of Appeal who surmised that “[t]he related handicaps of a lack of sufficient judicial personnel and inadequate resources which have beset the Court of Appeal for several decades is well known.”; *40 years of neglect*, *supra* note 102).

needed to try the cases.”¹³⁰ A basic yet salient argument in support of hiring an adequate number of judges was that most cases that have been pending for “months and years” could not be completed until more judges are appointed.¹³¹

Like the request for an adequate number of judges, the request for an adequate number of law clerks to help with the courts’ workload has been ongoing. Judges and lawyers have continuously requested additional law clerks and court staff to help manage the courts’ workload and clear the significant case backlog.¹³² In fact, one judge noted that a solution to the problem of judges retiring without delivering written judgment “is to assign a judicial clerk to retir[ing] judges to assist them to expedite the process of completing any matters they might have outstanding.”¹³³ In a similar vein, Jamaican attorney Maurice Long intimated that his constant experience with delays in having civil cases processed was rooted in the fact that many of the judges were not assigned judicial clerks to assist them.¹³⁴ In 2013, Long proposed to the Ministry of Justice that recruiting recent law school graduates for two-year periods on a rotating basis to serve as judicial law clerks would help to unclog the courts.¹³⁵ Ideally, each judge would be assigned two judicial law clerks who would assist the judges with “research, thereby allowing the registry staff to concentrate on administrative matters” and ultimately improve efficiency in the courts.¹³⁶ Long noted that in the crowded legal job market, recent law graduates would welcome the opportunity to

¹³⁰ *See you in 2022!*, *supra* note 4; *see also Matters Drag On*, *supra* note 127 (“Right now, cases in the Supreme Court are being set for trial in 2024,” said the court official. More judges and staff could help to solve the problem because litigants are always complaining that cases are taking too long to be tried, the court official added.”). *See Trend Statistics on the Parish Courts and the Supreme Court 2019*, THE S. CT. OF JAM. 18, 19, <https://supremecourt.gov.jm/sites/default/files/Trend%20and%20Variance%20Analysis%20on%20the%20SupremeCourts%20and%20the%20Criminal%20Division%20of%20the%20Parish%20Courts.pdf> (explaining that higher trial date certainty rates typically lead to higher clearance rates and shorter case disposition time) [*hereinafter Trend Statistics 2019*]. *But see Supreme Court 2019*, *supra* note 19 (suggesting that the court’s available resources impact the hearing date certainty).

¹³¹ Carlene Davis, *Bulletproof Windows for New Court Of Appeal Building*, THE GLEANER (Aug. 9, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180810/bulletproof-windows-new-court-appeal-building> (noting also that judges at all court levels are overworked).

¹³² *Wrong Blame for Judges*, *supra* note 13; Dixon, *supra* note 12.

¹³³ *Probing Justice: Judges reject blame for delayed judgments*, THE GLEANER (Dec. 27, 2017) <http://jamaica-gleaner.com/article/lead-stories/20171227/probing-justice-judges-reject-blame-delayed-judgments>.

¹³⁴ *Wrong Blame for Judges*, *supra* note 13.

¹³⁵ *Id.*

¹³⁶ *Id.*

serve as judicial law clerks.¹³⁷ He further noted that, in addition to the incentives of being employed and increasing their learning experience, recent law graduates serving as judicial law clerks would also qualify to have the interests on their student loans discounted by the Students' Loan Bureau.¹³⁸

Hiring an adequate number of judicial law clerks to help judges with research, administrative tasks, and other duties of the court is a tried and proven way of reducing the judges' workload so they can focus on adjudication.¹³⁹ In fact, judges in Jamaica who have been assisted by judicial law clerks have noted the important work of the judicial law clerks in enhancing the judges' productivity and facilitating efficient and timely court services.¹⁴⁰ This appreciation for the work of judicial law clerks stands in instances where the judicial law clerk is a volunteer or a member of the court's staff.¹⁴¹

D. Effects of the Court Delay

In sum, unaddressed delays at any stage of the judicial process typically hinder the overall efficiency of the court and the effects of those delays are far reaching. Put simply, delays in disposing of cases typically increase the number of cases pending at the end of the year and can ultimately cause a backlog if the cases are not disposed of within two years.¹⁴² A growing backlog of cases added to the pending caseload can lead to congestion, increase the case congestion rate, and overwhelm the courts,

¹³⁷ *Id.* (explaining that “with the abundance of graduates, this would find favour with students.”). See also *More Support for Judges*, *supra* note 12 (positing that recent law school graduates would welcome the opportunity to serve as judicial law clerks because “many Jamaicans are graduating with law degrees and professional qualifications, but having difficulty to find jobs.”).

¹³⁸ *Wrong Blame for Judges*, *supra* note 13. (The interest would be discounted for the period the law graduates serve as judicial law clerks and when paying on their loan by deductions from their salary).

¹³⁹ See *infra* Part III (discussing how law clerks are used in Canada, the United States, and the UK to reduce judicial workload so that the judges can focus on adjudicating cases).

¹⁴⁰ *Report for Court of Appeal 2019*, *supra* note 19, at 4 (thanking the Senior Judicial Clerks for performing a “crucially important role in the work of the court . . .”). Judge Batts repeatedly thanks judicial law clerk and notes that the law clerk’s “able assistance facilitated [the] timely preparation and delivery [of the written judgment].” *BRL Ltd. v. Anderson*. [2017] JMCC (Comm.) 37 [47]; *First Union Financial Co. Ltd. v. Village Resorts Ltd.* [2017] JMCC (Comm.) 05 [69]; *In the Matter of the Children*, [2016] JMSC (Civ) 193 [22].

¹⁴¹ *Report for Court of Appeal 2019*, *supra* note 19, at 4; *Barrington Cigars (Jam.) Ltd. v. Minister of Fin. & Plan.* [2014] JMSC (Civ) 21 [1] (Judge notes that “[t]he delay in delivery of this judgment is entirely due to administrative challenges” and thanks the volunteer judicial clerk for assisting in typing judgments.).

¹⁴² *Report for Supreme Court 2019*, *supra* note 19, at 38.

causing additional delays. Ultimately, court delays adversely affect citizens including litigants, victims, and their families; attorneys; members of the judiciary; and the government.¹⁴³

Court delays typically cause significant financial and emotional burden to the litigants and their families. Delays at any stage in litigation cause litigants to incur additional expenses including attorney fees, court fees, and related expenses such as transportation costs.¹⁴⁴ In instances where a delay in judgment necessitates a retrial, the litigants are presented with a dilemma: start the litigation anew or abandon their claim.¹⁴⁵ Litigation is expensive, time consuming, and typically emotionally taxing. As a result, some people choose to forgo seeking justice and abandon their claim rather than repeat the process, while some are forced to abandon their claim because of prohibitive litigation costs.

Court delays can cause litigants to lose money. For example, litigants who are accused of a crime and are detained pre-trial are most likely unable to work and earn an income. Additionally, even if they are not detained, they may be prohibited from working pending the outcome of the case. The stigma of a criminal charge may damage the litigant's reputation,¹⁴⁶ preventing her from getting work or attracting and maintaining customers or clients.¹⁴⁷

The same holds true for litigants in civil cases. Litigants have suffered financial hardships and have lost income, their businesses, and business opportunities as they await trial or disposition of their case. As an example, a business owner claims that inordinate court delays have caused her to lose her business and means of financial support.¹⁴⁸ The business owner sued the security company hired to monitor her property after thieves broke in and stole millions worth of equipment.¹⁴⁹ She has had to wait nineteen years for the trial, which is now set for 2023.¹⁵⁰ The business owner claims that theft of the equipment coupled with the long delays and the uncertainties

¹⁴³ See also Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399, 420 (1973).

¹⁴⁴ See generally Bannon, *supra* note 22, at 4 (noting that court delays increase the cost of litigation). See also *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 [44] (Jam.) (applicant positing that the protracted delays in litigation have been "financially ruinous to him.").

¹⁴⁵ *Long Wait for Justice*, *supra* note 7.

¹⁴⁶ SAVVIDIS, *supra* note 9 at 41.

¹⁴⁷ *Id.* at 105 (noting that "criminal proceeding may have a profound effect on the accused's life and reputation").

¹⁴⁸ Corey Robinson, *Trial date uncertainty - Senior citizen hopes to be alive when decade-long court case finally starts*, THE GLEANER (Jul. 28, 2019), <http://jamaica-gleaner.com/article/news/20190728/trial-date-uncertainty-senior-citizen-hopes-be-alive-when-decade-long-court>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

in setting the case for trial have caused the “death of her business,” and “a depletion of her savings and promise of a worthwhile pension.”¹⁵¹

In a similar instance of judicial delay, a business owner who spent over twenty years in litigation claimed that because of protracted court delays he lost business and earning opportunities which destroyed his business.¹⁵² It stands to reason that because delays in disposing of a case delay the grant of a final judgment, litigants such as this business owner may be prevented or excluded from pursuing or taking advantage of business opportunities because of the uncertainty of the outcome of their case.¹⁵³

At any rate, the lengthy delay in disposing of cases leaves litigants seeking financial redress through the legal system at a financial disadvantage. For example, in instances where litigants seek pecuniary damages, the projected damage award loses value in the long wait for the trial to begin or the case to be resolved.¹⁵⁴ Damages in the amount of \$500,000 in 2004 would value less in 2023 because of inflation and currency devaluation.¹⁵⁵ The financial inequities occasioned by the delays are perhaps most visible in cases where litigants seek to get or recoup money or property.¹⁵⁶ In those instances, the defendant, who most likely has the money or property, continues to benefit from it, typically at the expense of the claimant.¹⁵⁷

Court delays in both criminal and civil cases are not only a financial burden, they also can create an emotional burden on litigants.¹⁵⁸ In criminal cases, “one of the purposes of the right to trial within a reasonable time is to

¹⁵¹ *Id.* (“That was my pension, my investment. I took out a whole lot of finances,” said Goldsmith. “After a good while, I took on a little job – thinking that the case would be finished – to keep my brain occupied, and all now the case has not started as yet.”).

¹⁵² *Victim of the Justice System*, *supra* note 3. See also *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 [44] (Jam.) (applicant noting that the court delays ruined his professional and business career).

¹⁵³ SAVVIDIS, *supra* note 9 at 41. See *Victim of the Justice System*, *supra* note 3 (plaintiff laments missed business opportunities because of the delay). See also Posner, *supra* note 143, at 420.

¹⁵⁴ See Posner, *supra* note 143, at 420.

¹⁵⁵ *Id.* at 421.

¹⁵⁶ Property is used here in its broadest sense and includes but is not limited to real, personal, private, and intellectual property.

¹⁵⁷ Bannon, *supra* note 22, at 5 (noting an attorney’s observation “that delays were shifting the balance of power in settlement dynamics toward defendants.”). See Belli, *supra* note 33, at 16, 22 (arguing that “[d]elays not only exhausts plaintiff’s resources but also allows defendant to keep his money and draw interest from it.”). See also Paul Connolly & Sandra Smith, *The Litigant’s Perspective on Delay: Waiting for the Dough*, 8 THE JUS. SYS. J. 271, 271 (1983) (noting that delay is sometimes a “tactical tool wielded by the defense to pressure financially insecure plaintiffs into accepting modest settlements while the defendant earns interest on or uses the money rightfully belonging to the plaintiff.”).

¹⁵⁸ SAVVIDIS, *supra* note 9 at 71 (“... delay in the administration of justice necessarily causes unnecessary frustration, anxiety and suffering.”).

protect individuals from ‘remaining too long in a state of uncertainty about their fate.’”¹⁵⁹ The uncertainties regarding when a case will be set for trial and the protracted delays during trial typically causes litigants, witnesses, and their families to experience anxiety and elevated stress levels.¹⁶⁰ In criminal cases, the delays typically cause extreme anxiety and stress, particularly when it results in “lengthy periods of incarceration for the accused person prior to trial.”¹⁶¹ Likewise, accused individuals out on bail typically continue to experience elevated anxiety and stress levels, especially when the delays lead to ongoing prolonged proceedings and a continuously deferred trial.¹⁶²

Victims, witnesses, and their families may also similarly experience considerable anxiety and stress due to the delays. For example, delays and the accompanying uncertainties about the outcome of a case may cause members of the community and other citizens to doubt the victim’s claim and then blame, ostracize, and threaten the victim, her family, and witnesses, and otherwise endanger their physical safety.¹⁶³ Delays also increase opportunities to intimidate or otherwise force witnesses not to cooperate at trial.¹⁶⁴ Therefore, delays in setting a case for trial and disposing of the case may leave victims feeling silenced, forgotten, and frustrated as they remain in a prolonged state of uncertainty as to whether they will get their day in court, their case will be timely resolved, and whether justice will be served.¹⁶⁵

¹⁵⁹ *Id.* at 29.

¹⁶⁰ *Id.* at 29, 71.

¹⁶¹ Beverley McLachlin, P.C, Chief Justice, S. Ct. of Can., Remarks at the Empire Club: The Challenges We Face (Mar. 8, 2007), S. CT. OF CAN. <https://www.scc-csc.ca/judges-juges/spe-dis/bm-2007-03-08-eng.aspx?pedisable=true> (last visited Jan. 15, 2022).

¹⁶² *Id.* (“Even where the accused is out on bail, the stress of the ongoing proceedings and the upcoming, ever-deferred trial may be considerable”).

¹⁶³ This is particularly true in Jamaica owing to the “informer fi dead” culture. See Jason Cross, *'Informer fi dead' Culture Must Go, Says Commish*, THE GLEANER (Aug. 10, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170812/informer-fi-dead-culture-must-go-says-commish>. See also DPP: *Jamaica Must Rise Above 'Informer fi Dead' Culture*, JAM. OBSERVER (Sept. 20, 2014), http://www.jamaicaobserver.com/news/DPP--Jamaica-must-rise-above--informer-fi-dead--culture_17572832.

¹⁶⁴ Livern Barrett, *Slow Justice - Commish Raises Concerns About Pace of Court System*, THE GLEANER (June 13, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170614/slow-justice-commish-raises-concerns-about-pace-court-system> (quoting Jamaica’s Police Commissioner: “[d]uring the wait [for a case to be heard and disposed of], majority of the accused may be granted bail and are then better able to influence witnesses, whether with violence or bribes. Interest will naturally wane. Unfortunately, in the end, majority of these suspects will not be convicted.”).

¹⁶⁵ See Bert Samuels, *Justice Delayed is Justice Denied*, THE GLEANER (Nov. 6, 2019), <http://jamaica-gleaner.com/article/commentary/20191106/bert-samuels-justice-delayed-justice-denied> (observing “that delays are currently wreaking pain, anxiety, frustration, and great hardship on litigants. The delays are being exploited by defendants, who benefit from adjournments which toss trials years into the uncertain future.”). See generally, *Covid:*

As in criminal cases, litigants in civil cases also experience anxiety and heightened stress levels because of protracted court delays. In addition to worrying about the additional financial cost, missed business opportunities, loss of income, and, in some instances, the damage to personal or business reputation, litigants are likely to feel unsettled because the uncertainties about the progress of the case leaves them unable to make concrete plans.¹⁶⁶

Another harmful concomitant effect of prolonged court delays is the adverse impact on the quality and availability of evidence. As a consequence of protracted court delays, witnesses may become unavailable because of illness, death, migration, or other reasons.¹⁶⁷ Also, memories fade over time causing witnesses to forget material aspects of the case.¹⁶⁸ Further, evidence may get spoiled, lost, or destroyed because of the delays.¹⁶⁹ Under these circumstances, litigants in a civil case may be forced to abandon their claim and pursuit of justice.¹⁷⁰ In criminal matters, a court may dismiss the case fearing prejudice to the accused.¹⁷¹ When delays affect the quality and availability of evidence causing the acquittal or dismissal of a case, it stands to reason that victims are likely to feel revictimized, aggrieved, apathetic, and abandoned by the justice system. The accused, if guilty, may continue with

Rape Trial Delays Leave Woman Feeling 'Forgotten, BBC (Jan. 27, 2021), <https://www.bbc.com/news/uk-england-leeds-55828140>.

¹⁶⁶ See Samuels, *supra*, note 165. **Error! Hyperlink reference not valid.**

¹⁶⁷ See McLachlin, *supra* note 161. See *Lengthy Road to Trial*, *supra* note 33 (defense attorney in Jamaica defending the accused in a murder case laments that because of the protracted delays they have lost three out of five material witnesses; “[o]ne is dead; one has migrated; and the other one” cannot be located.)

¹⁶⁸ Michael Heise, *Justice Delayed?: An Empirical Analysis of Civil Case Disposition Time*, 50 CASE W. RES. L. REV. 813, 814 (2000) (noting that “[p]rolonged case disposition time frequently correlates with an increase in litigation costs and threatens evidentiary quality as memories fade, evidence spoils, and witnesses and litigants die.”); McLachlin, *supra* note 161 (noting that [w]itnesses are less likely to be reliable when testifying to events that transpired many months, or even years, before trial.”).

¹⁶⁹ Heise, *supra* note 168, at 814.

¹⁷⁰ Richard E. Messick, *Uncorking the Bottlenecks: Using Political Economy Analysis to Address Court Delay*, CHR. MICHELSEN INSTITUTE (2015), <https://www.cmi.no/publications/5847-using-political-economy-analysis-to-address-court> (“Frustrated by long waits, parties may abandon the effort to vindicate their rights.”).

¹⁷¹ See Erica Virtue, *Man freed of murder charge after 100 court appearances – Matter should not have dragged on for so long, says Chuck*, THE GLEANER (Aug. 2, 2020), <https://jamaica-gleaner.com/article/lead-stories/20200802/man-freed-murder-charge-after-100-court-appearances-matter-should-not> (discussing dismissal of murder case against Lynford Allen which was dismissed after 13 years because of lack of evidence.); see also Bannon, *supra* note 22, at 5 (noting that “lengthy waits for trial can prejudice outcomes.”).

illegal pursuits, perceiving the justice system to be dysfunctional and ineffective.¹⁷²

Notably, the financial and emotional hardships litigants, victims, and their families face because of court delays inherently alter the hands of justice. To explain, a long wait to set a case for trial and drawn-out court proceedings may pressure a criminal defendant, even if innocent, into pleading guilty.¹⁷³ Similarly, the delays may also force plaintiffs in a civil case to settle for unfavorable terms or abandon their claim.¹⁷⁴ On the contrary, defendants in a civil suit may be less inclined to settle where delays result in ever-extended trial dates.¹⁷⁵

Court delays also harm citizens. Like citizens in other countries, Jamaican citizens want, and deserve, an efficient judicial system that disposes of cases timely and effectively.¹⁷⁶ Further, court delays can prove costly to citizens because they typically bear the financial costs of delays.¹⁷⁷ The government uses money from the taxpayers' coffers to compensate individuals who successfully allege that court delays breached their constitutional right to a fair trial within a reasonable time.¹⁷⁸ Taxpayers also bear the costs associated with retrials and additional litigation costs resulting

¹⁷² See generally Garner, *supra* note 126, at 31; G. Larry Mays & William A. Taggart, *Court Delay: Policy Implications for Court Managers*, 1 CRIM. JUST. POL'Y REV. 198, 199 (1986) ("The most frequently mentioned disservices to justice caused by delay are that society is not protected when defendants on bail are free to commit other crimes; deterrence is minimized when punishment is not swift.").

¹⁷³ Bannon, *supra* note 22 at 5 (noting that two attorneys observed that "delays caused by the division's vacancy were putting additional pressure on their clients to forego trials altogether and plead guilty to avoid continued uncertainty and lengthy pre-trial detentions.").

¹⁷⁴ See Messick, *supra* note 170 (noting that court delays may leave parties frustrated and as a result abandon their claims.); see Belli, *supra* note 33 at 17 (noting that delays and protracted court proceedings unfairly punish the claimant who may be forced into an unfavorable settlement because he or she needs the financial award to survive).

¹⁷⁵ Bannon, *supra* note 22, at 4, 6 (noting that delays "make it harder to settle civil cases"). See Brown, *supra* note 5, at 549 ("This delay can serve to improve the bargaining position of the party appealing"); Posner, *supra* note 143, at 420 (noting that delays are "likely to reduce the probability of a settlement"). *But see* Bannon, *supra* note 22, at 6 (quoting a district judge who noted that long delays in setting trial dates encouraged settlements).

¹⁷⁶ See Sherry-Ann McGregor, *Laws of Eve: Four Years to Await Trial is Too Long*, THE GLEANER (April 5, 2018), <http://jamaica-gleaner.com/article/flair/20180409/laws-eve-four-years-await-trial-too-long> (noting that Jamaican citizens "want a system that disposes of criminal cases within an acceptable time frame").

¹⁷⁷ See Messick *supra* note 170 (noting that court delay is costly to the litigants and to "society as a whole").

¹⁷⁸ See *Long Wait for Justice*, *supra* note 7 (litigant paid \$25 million dollars for breach of the right to a fair trial within a reasonable time). See also Livern Barrett, 'Murder Convict To Get Damages For Drawn-Out Case', THE GLEANER (June 01, 2019), <http://jamaica-gleaner.com/article/lead-stories/20190601/murder-convict-get-damages-drawn-out-case>.

from court delays,¹⁷⁹ and costs associated with keeping accused persons detained during protracted pre-trial detention.¹⁸⁰

Lawyers are also affected by court delays. Like litigants, they too sometimes feel frustrated, anxious, and unable to make concrete plans because of the uncertainties associated with the delays.¹⁸¹ Moreover, their professional reputation may suffer because people may blame them for the delays.¹⁸² In short, citizens may view lawyers as complicit in the delay or incompetent and inept at marshalling the case to a timely resolution.¹⁸³

Court delays also adversely impact judges and court staff. Specifically, the delays increase judicial workload which leads to further delays and sometimes causes work-related stresses and burnout.¹⁸⁴ Some judges embark on ambitious and overzealous work schedules to manage their caseload, but find that their pace is unsustainable long-term and can lead to burnout.¹⁸⁵ Professors Anleu and Mack, in their book on judicial performance, have noted that “[d]issatisfaction and large caseloads can result in stress and burnout among judicial officers.”¹⁸⁶ When judges and court staff are stressed and burned out, their productivity level typically declines.¹⁸⁷ Put

¹⁷⁹ *Delay Is Danger*, *supra* note 31.

¹⁸⁰ Bannon, *supra* note 22 at 7 (noting the unnecessary costs of having to house, feed, and otherwise care for accused persons whose pre-trial detention is extended because of court delays).

¹⁸¹ See *Long Wait for Justice*, *supra* note 7 (describing the experiences of multiple litigants and their attorneys to get judgments in their cases).

¹⁸² Connolly & Smith, *supra* note 157, at 272 (noting that the delays lead to an “erosion of public confidence in the courts and the legal profession”).

¹⁸³ See Balford Henry, ‘Storyteller’ Morrison angry with court’s delay, THE GLEANER (Aug. 4, 2019), http://www.jamaicaobserver.com/news/-storyteller-morrison-angry-with-court-s-delay-one-time-alleged-shower-posse-head-again-bemoans-time-to-settle-compensation-case_171560?profile=1373 (detailing the story of a litigant who is “angry with court delays” and as a result has developed a mistrust for the justice system and lawyers. “I don’t trust the system or any lawyer when it comes to my case”).

¹⁸⁴ See *Chen-Young v. Eagle Merchant Bank Jam. Ltd.*, [2018] JMCA App 7 [155] (Jam.); SHARYN ROACH ANLEU & KATHY MACK, PERFORMING JUDICIAL AUTHORITY IN THE LOWER COURTS 74 (2017).

¹⁸⁵ See Gregory K. Orme, *The Utah Court of Appeals - Twenty Years Later*, UTAH BAR. J., May/June 2007, at 9, 11 (noting that in an effort to reduce delays at the Utah Court of Appeals, “We started out with an ambitious, ultimately unsustainable, pace of hearing cases. For the first several months, although it meant lots of weekend and evening work, we heard and wrote cases at a rate that had most of us reading briefs and hearing arguments in 18 cases a month and writing opinions in six of those. These weren’t easy slam dunk cases, mind you; these were all but exclusively cases newly moved from the Supreme Court’s backlog. That pace could not be sustained for long without burning ourselves and our law clerks out, but we stuck with it long enough to put a real dent in the backlog in a very short time”).

¹⁸⁶ ANLEU & MACK, *supra* note 184, at 74.

¹⁸⁷ Carter, *supra* note 21.

simply, stress and burnout can lower morale, diminish motivation to work, and lead to health problems that can prevent judges and court staff from working or cause them to work less efficiently.¹⁸⁸ The court's workload typically increases as a direct result and creates "further pressures on the justice system," and additional delays.¹⁸⁹ Relatedly, albeit not surprisingly, lawyers in private practice typically hesitate to apply for judgeships because of the intense workload and unattractive salary.¹⁹⁰

Additionally, as the face of the judiciary, judges are often blamed for court delays.¹⁹¹ Court delays sometimes create the perception that judges and court staff are lazy, inefficient, and do not care. This perception holds true even where empirical data suggests that the courts are chronically under-resourced and understaffed, and the judges and court staff are operating beyond capacity. It is worth noting that judges with a high caseload or a large volume of complex cases are sometimes forced to triage to cope with their caseload.¹⁹² As a result, some cases are given a lower priority and therefore further delayed.¹⁹³

Systemic court delays also adversely affect the government. On the whole, court delay erodes public trust and confidence in the legitimacy of the courts which in turn puts into doubt the country's democracy and endangers public safety.¹⁹⁴ It is widely acknowledged that an effective and efficient judicial system is essential to democracy.¹⁹⁵ Persistent delays nurture public

¹⁸⁸ See Bannon, *supra* note 22, at 10 (examining the concerns of lawyers on the "wear and tear" on judges); LORD JUSTICE BRIGGS, JUDICIARY OF ENG. AND WALES, CIVIL COURT STRUCTURE REVIEW: FINAL REPORT 29 (2016), <https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf> (heavy workload can affect judicial morale).

¹⁸⁹ McLachlin, *supra* note 161.

¹⁹⁰ See *Probing Justice*, *supra* note 13 ("[i]t is difficult to get lawyers from the private bar to apply for posts on the Bench because the salary was not attractive to them and the workload was too much").

¹⁹¹ Dixon, *supra* note 12; *Wrong Blame for Judges*, *supra* note 13. See Paul Marcotte, *L.A. County Bar Sues California: Seeks More Judges to Cope with Huge Civil Case Backlog*, 74 ABA J., 28, 28 (Feb. 1988).

¹⁹² David C. Vladeck & Mitu Gulati, *Judicial Triage: Reflections on the Debate over Unpublished Opinions*, 62 WASH. & LEE L. REV. 1667, 1673 (2005); *W. Larch Ltd. v. Di Poce Mgmt. Ltd.* [2012] ONSC 7014 [274] (Can. Ont. Sup. Ct. J.).

¹⁹³ *W. Larch Ltd.* [2012] ONSC 7014 at [274].

¹⁹⁴ *Justice Delays* *supra* note 1 (noting that prolonged court delays are a "matter of public concern that cannot be ignored"); Connolly & Smith, *supra* note 157, at 272; Heise, *supra* note 168, at 814 (noting that delays in resolving civil disputes "erode public confidence in the civil justice system").

¹⁹⁵ Oko, *supra* note 10 at 20 ("A fair, efficient and accessible judicial system is necessary not just to protect citizens' rights but also to consolidate and deepen the democratic process"). See David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, 53 U.C. DAVIS L. REV. 1313, 1315-1316 (2020) (noting that "[j]udges are increasingly being called upon to intervene to protect democracy. . .").

doubt of the courts' legitimacy and endanger public confidence in its ability to deliver timely, efficient, and effective justice and access to justice.¹⁹⁶ As a result, citizens looking to the courts to enforce the rule of law, solve their legal issues, and provide legal protection, may take matters into their own hands¹⁹⁷ out of mistrust of the courts' ability to do so timely, effectively, and equitably.¹⁹⁸ For similar reasons, others may abandon the idea of pressing charges, filing suit, or otherwise seeking redress or legal protection through the courts.

Equally important, lack of public trust and confidence in the courts' ability to provide timely and adequate legal protection challenges economic growth and development.¹⁹⁹ The delays make it difficult to attract domestic and foreign investors who want swift justice and the comfort of knowing that if a legal dispute arises, it will be resolved effectively and within a reasonable time.²⁰⁰

It is without question that effective justice is reliable and fair. Delays in disposing of cases and issuing judgments may cause litigants and citizens alike to mistrust the quality of judgments and for this reason doubt a court's ability to dispense effective justice. This is particularly so in instances where the delays call into question a judge's ability to "accurately assess the evidence presented, especially if the assessment was going to be based on the demeanour and credibility of witnesses."²⁰¹

As another consequence, judicial delays engender lawlessness and public safety concerns. For example, when criminal cases are dismissed because victims or witnesses lose interest and refuse to cooperate,²⁰² or

¹⁹⁶ SAVVIDIS, *supra* note 9 at 70 ("that unreasonable delay endangers public confidence in the administration of justice and the rule of law itself"); Heise, *supra* note 168, at 815; MACFARLANE, *supra* note 24, at 78 (referring to Wilson J's comment that "the legitimacy of the Court process is also at stake when significant backlogs develop"); Editorial, *CJ Should Speak on Status of Gorstew Judicial Review*, THE GLEANER (Nov. 20, 2019), <http://jamaica-gleaner.com/article/commentary/20191120/editorial-cj-should-speak-status-gorstew-judicial-review>.

¹⁹⁷ See Garner, *supra* note 126, at 2; Messick *supra* note 170.

¹⁹⁸ See Heise, *supra* note 168, at 815.

¹⁹⁹ Porter, *supra* note 123 (Jamaica's former Chief Justice noting that "the high volume of backlog in the Circuit Court could affect existing agreements with international partners"). See generally Frans van Dijk & Horatius Dumbrava, *Judiciary in Times of Scarcity: Retrenchment and Reform*, 5 INT'L J. FOR CT. ADMIN. 1, 2 (Jan. 6, 2013) (explaining the impact of court delays on the economy in several European countries).

²⁰⁰ *End Delays from the Bench*, *supra* note 7.

²⁰¹ *Id.* (citing former president of the Jamaica Bar Association, Sherry-Ann McGregor).

²⁰² See Garner, *supra* note 126, at 2 ("Victims and witnesses, severely burdened by the necessity of repeated court appearances, lose interest or refuse to cooperate (Cannavale, 1976."); See *Lengthy Road to Trial*, *supra* note 33 (a criminal defense attorney in Jamaica noting that "delays mean witnesses for both the prosecution and accused persons oftentimes disappear or become frustrated and lose interest in the trial").

because of other legal technicalities occasioned by protracted delays, the accused and persons with similar intentions are empowered to believe that the courts are toothless and they can commit crimes with impunity.²⁰³ Pre-trial delays increase opportunities for criminals who are not incarcerated prior to trial to commit new crimes,²⁰⁴ and for the accused to intimidate witnesses or otherwise interfere with the case.²⁰⁵ As former Chief Justice of Canada, Chief Justice Beverley McLachlin, noted in a speech, “As the delay increases, swift, predictable justice, which is the most powerful deterrent of crime, vanishes.”²⁰⁶

II. STEPS TAKEN TO FIX THE PROBLEM OF COURT DELAY

A. *Support from the Government*

Judges and lawyers have opined that the court delays could have been reduced if judges were given “the tools and resources necessary” to do their jobs.²⁰⁷ High on the judges’ wish list are more judges and law clerks.²⁰⁸ The

²⁰³ See generally Garner, *supra* note 126, at 2 (“Delay in the processing of criminal charges has long been perceived as a serious national problem”); see also Jeffrey A. Butts et al., *Delays in Youth Justice*, OFF. OF JUST. PROGRAMS (Oct. 2009), <https://www.ojp.gov/pdffiles1/nij/grants/228493.pdf> (noting that timeliness and efficiency in disposing of cases is an indicator of quality justice).

²⁰⁴ Garner, *supra* note 126, at 2 (“When not incarcerated prior to trial, dangerous defendants are free to commit new crimes.”).

²⁰⁵ See *Lengthy Road to Trial*, *supra* note 33 (a prosecutor in Jamaica noting that “[t]he longer the trial drags on . . . means accused persons or individuals acting on their behalf have more time to interfere with the case.” As an example of interfering with the case, the prosecutor noted that “people stay in prison and give their friends and associates instructions to intimidate witnesses”).

²⁰⁶ McLachlin, *supra* note 161. See also *Justice budgets*, *supra* note 14 (quoting Jamaica’s Minister of Justice “One of the antidotes to crime has to be a speedy, efficient, and impactful justice system where when a man commits a crime and he is caught, he knows that he is going to be put away in quick time”).

²⁰⁷ *Probing Justice*, *supra* note 13; Porter, *supra* note 123 (noting that the justice system also receives help from international partners, including the Government of Canada.); *Wrong Blame for Judges*, *supra* note 13.

²⁰⁸ *Probing Justice*, *supra* note 13; Porter, *supra* note 123; See Christopher D. Bryan, *The Role of Law Clerks in Reducing Judicial Backlog*, 36 COLO. LAW 91, 93 (2007) (noting that for Colorado district courts, “[i]n addition to increased judgeships, judicial districts may want to increase, either on a full-time or part-time basis, the number of law clerks they use to assist in handling crowded dockets and expediting the administration of justice.”); but see Dakolias, *supra* note 70, at 87, 105 (noting that historically court delays have been attributed to a lack of judges. “This perception, however, relates primarily to those courts that are not well-managed. Improving the performance of these courts may change

government listened and increased the budget allocated to the courts, which allowed for the hiring of more judges, law clerks, and court staff; building and improving of courtrooms and court spaces; and purchasing of essential court management systems, equipment, and supplies.²⁰⁹ The judges at the Supreme Court were also given Fridays to write judgments.²¹⁰

In 2018, the Jamaican government approved the request to appoint ten Parish Court judges and provided funding to hire additional court staff and twenty-two additional judicial clerks.²¹¹ As a result of the new hires, the number of judicial clerks doubled to a total of forty-three.²¹² The Minister of Justice indicated that the government's goal is to ensure that almost every judge at the Supreme Court and Court of Appeal will have a judicial clerk.²¹³ In 2019, three permanent judges joined the Court of Appeal bringing the complement to ten judges.²¹⁴ The number of judicial clerks assigned to the Court of Appeal also increased from seven in 2018²¹⁵ to eleven in 2019.²¹⁶ The Jamaican government pledged to increase the number of Court of Appeal judges to its full complement of thirteen judges by 2021.²¹⁷ In 2020, six permanent judges were appointed to the Supreme Court.²¹⁸ The Minister of Justice also noted that legislation has been prepared, and is awaiting approval from Parliament, for retired judges to continue serving in the judiciary.²¹⁹

perceptions of the problems of delay. This is not to say that in some cases there is not a need for additional judges, but additional research is needed to justify the increase, as increasing the number of judges may not always solve the problem.”)

²⁰⁹ *Renovate Justice Facilities*, *supra* note 15. See Gladstone Taylor, *Appeal Court expansion on track for month end completion*, THE GLEANER (Nov. 5, 2018, 12:00 AM), <http://jamaica-gleaner.com/article/news/20181105/appeal-court-expansion-track-month-end-completion>; *Measures Being Pursued to Reduce Delays in Court*, THE JAM. OBSERVER (Mar. 31, 2016), available at <http://www.jamaicaobserver.com/news/Measures-being-pursued-to-reduce-delays-in-court> (last visited Jan. 15, 2022).

²¹⁰ *Report for Supreme Court 2019*, *supra* note 19, at 2.

²¹¹ Donald De La Haye, *Newly renovated Chapelton Family Court opens*, THE GLEANER (Apr. 11, 2018), <http://jamaica-gleaner.com/article/news/20180412/newly-renovated-chapelton-family-court-opens>; *Justice Delays* *supra* note 1.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Report for Court of Appeal 2019*, *supra* note 19, at 5.

²¹⁵ *Report for Court of Appeal 2018*, *supra* note 89, at 7.

²¹⁶ *Report for Court of Appeal 2019*, *supra* note 19, at 9.

²¹⁷ *Gov't crafting law on employment of retired judges*, THE GLEANER (Dec. 8, 2020), <http://jamaica-gleaner.com/article/news/20201208/govt-crafting-law-employment-retired-judges> [hereinafter *Gov't Crafting Law*].

²¹⁸ *Nine judges promoted*, THE GLEANER (Sep. 14, 2020), <http://jamaica-gleaner.com/article/news/20200914/nine-judges-promoted> (five puisne judges and a Master-in-Chambers).

²¹⁹ *Gov't Crafting Law*, *supra* note 217.

B. The Chief Justice's Strategic Plan

With a similar vision to increase efficiency in the courts, Jamaica's Chief Justice unveiled a strategic plan to advance the judiciary's mission "[t]o provide sound, timely judgments and efficient court services"²²⁰ and make Jamaica's judicial system "[t]he best in the Caribbean in three years and one of the best globally in six years."²²¹ The Strategic Plan, *Benchmarking The Future: Courting Excellence – Strategic Plan For The Jamaican Judiciary 2019-2023*, outlined a four-year plan to introduce "initiatives aimed at strengthening organizational capacity, improving financial stewardship, guaranteeing timely delivery of court services, reducing case backlog, [and] setting a solid foundation for a continuous cycle of improvement and sustained efficiency."²²² The initiatives, for the most part, are informed by statistics that measure performance of the Jamaican judicial system.²²³

To ensure timely delivery of court services and reduce the case backlog, the judiciary was tasked with disposing of 95% of all cases within twenty-four months of filing,²²⁴ attaining and maintaining a target trial date certainty rate of 95%, and a weighted case clearance rate of 130% across all courts for six years.²²⁵ Statistical projections indicate that the current case backlog across the courts can be reduced to under 5% in five to six years²²⁶ if 95 of every 100 cases set for trial or hearing proceeded without adjournment and the courts dispose of 130 cases for every 100 new cases filed.²²⁷ To prevent future case backlogs and adhere to international best practices, the judiciary is expected to maintain a clearance rate of between 90% and 110% annually.²²⁸ Key findings demonstrate that "persistent case clearance rate of fewer than 100%, especially few[er] than 90% will accelerate the case backlog."²²⁹ The Strategic Plan explicitly mentions providing timely judgments.²³⁰ Based on this directive, the judiciary is expected to deliver all

²²⁰ *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 17.

²²¹ *Id.* at 13.

²²² *Id.*

²²³ *Report for Supreme Court 2019*, *supra* note 19, at 4.

²²⁴ *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 25.

²²⁵ *Id.*; *Report for Supreme Court 2019*, *supra* note 19, at 4.

²²⁶ *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 30; *Report for Supreme Court 2019*, *supra* note 19, at 4.

²²⁷ See *Report for Parish Court Civil 2019*, *supra* note 36, at 3 (noting that "a weighted average case clearance rate of 130% and a weighted average trial date certainty rate of 95% will reduce the net case backlog in the court system to under 5% over the next 5-6 years.").

²²⁸ *Report for Parish Court Criminal 2019*, *supra* note 19, at 8.

²²⁹ *Id.*; Dakolias, *supra* note 70, at 87, 99.

²³⁰ *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 17.

judgments within 90 days of a case being completed but no more than 180 days in exceptional circumstances.²³¹

The Strategic Plan has received favorable reception among members of the judiciary and other legal stakeholders. However, some members of the judiciary called the goals “gargantuan”²³² and noted that a 130% clearance rate is a “daunting task” and an “ambitious benchmark.”²³³ Critics have called the Strategic Plan “bold” and “the targets set for case-clearance rates” “aggressive.”²³⁴ This suggests a veiled recognition of the significant amount of work and high output levels required of the judges and court staff to realize the goals outlined in the Strategic Plan. For the most part, the judges and court staff have been working at full capacity for sustained periods to address the courts’ workload and toward achieving the increased output level requirements.²³⁵ However, it is not sustainable, fair, nor a good business decision to ask judges and court staff to work at capacity for sustained periods without the appropriate resources particularly in light of the significant case backlog and the actual and projected annual increase in newly filed cases. As mentioned above, an attempt to cope with the elevated workload can lead to judicial burnout, resulting in additional delays and a decline in the quality of judicial services and justice.²³⁶

C. *Are the Court Delay Reduction Efforts Working?*

The government’s infusion of resources into the judiciary and the direction and goals outlined in the Strategic Plan are welcomed efforts in addressing the issues of delay in the courts. While these efforts have begun

²³¹ Christopher Thomas, *Solve St James jury dilemma, says high court judge*, THE GLEANER (Mar. 27, 2019), <http://jamaica-gleaner.com/article/news/20190327/solve-st-james-jury-dilemma-says-high-court-judge>; see also *Justice Delays*, *supra* note 1.

²³² *Report for Parish Court Civil 2019*, *supra* note 36, at 3.

²³³ *Strategic Plan for the Jamaican Judiciary*, *supra* note 16, at 19.

²³⁴ Edmond Campbell, *Ambitious court road map - Chief justice rolls out plan to make judiciary number one in the Caribbean*, THE GLEANER (Feb. 20, 2020) <http://jamaica-gleaner.com/article/lead-stories/20200201/ambitious-court-road-map-chief-justice-rolls-out-plan-make-judiciary> (last visited Jan. 15, 2022) **Error! Hyperlink reference not valid.** (“Speaking yesterday at the judicial function, attorney-at-law and former deputy governor of the central bank in Trinidad and Tobago, Dr Terrence Farrell said that the strategic plan outlined by Jamaica’s chief justice was bold. Farrell said that the targets set for case-clearance rates were aggressive, noting that there might be passive resistance by those who were not amenable to change.”).

²³⁵ See *Report for Parish Court Criminal 2019*, *supra* note 19, at 3.

²³⁶ See generally DONALD TOWEY, *COST MANAGEMENT OF CONSTRUCTION PROJECTS* 13 (2013) (“if a business is working at capacity, it may wish to suspend growth because accepting more work without appropriate resources could lead to a decline in services and quality.”).

to show promising results in reducing court delay, more has to be done and, to put it bluntly, more resources have to be allocated to the judicial system to eradicate the systemic court delays, achieve the goals outlined in the Strategic Plan, and achieve sustainable efficient and effective court services.

The judiciary has made important strides toward delivering timely justice and reducing the case backlog since the infusion of human and financial resources and the implementation of the Strategic Plan. For example, the Supreme Court of Jamaica has made significant improvements in delivering outstanding judgments. The clearance rate for delivery of outstanding judgments increased three and a half times, from 54.19% in 2018 to 189% in 2019.²³⁷ The case backlog rate reduced by 2% from 32.97% in 2018 to 30.89% in 2019.²³⁸

Efficiency in the Parish Courts also improved. Over a three-year period, the Parish Courts reduced the backlog of criminal cases by 40%, from 30,667 to 12,399.²³⁹ Criminal cases were also being processed and disposed of at a faster rate. The overall case clearance rate on criminal matters rose 7.29 points from 2018 to 101.60% in 2019,²⁴⁰ and the average criminal case disposal rate saw a 2.83% increase from 70.92% in 2018 to 73.75% in 2019.²⁴¹ Additionally, for the first time since the statistical reports were first generated, seven Parish Courts had a clearance rate exceeding 100% on criminal cases.²⁴² The Court of Appeal has also made improvements which were credited to the “positive impact of the additional judges”²⁴³ and the judicial clerks who “perform a crucially important role in the work of the court.”²⁴⁴ For instance, in 2019, the Court of Appeal increased its case clearance and disposal rates. The Court disposed of 193 appeals, an increase of 37.86% over the previous year,²⁴⁵ and increased the clearance of appeals rate by 20.40% for the same period.²⁴⁶

Despite these improvements, the courts at all levels carry a significant case backlog. As a result, statistics indicate that the courts remain congested.²⁴⁷ Congestion is a precursor to, and result of, court delays. The

²³⁷ *Report for Supreme Court 2019*, *supra* note 19, at 2; *Report for Supreme Court 2018*, *supra* note 82, at 137.

²³⁸ *Report for Supreme Court 2019*, *supra* note 19, at 1, 11; *Report for Supreme Court 2018*, *supra* note 82, at 11.

²³⁹ *Criminal Case Backlog*, *supra* note 5.

²⁴⁰ *Report for Parish Court Criminal 2019*, *supra* note 19, at 7.

²⁴¹ *Id.* at 1, 24.

²⁴² *Report for Parish Court Criminal 2019*, *supra* note 19, at 18, 25.

²⁴³ *Report for Court of Appeal 2019*, *supra* note 19, at 2.

²⁴⁴ *Id.* at 4.

²⁴⁵ *Id.* at 24.

²⁴⁶ *Id.* at 23.

²⁴⁷ *See* Dakolias, *supra* note 70, at 87, 103 (noting that “[d]elay reduction programs are essential in courts where there is a high congestion rate.”).

congestion rate “is the caseload divided by the number of resolved cases”²⁴⁸ and is generally used to measure “how well a court is doing in managing its pending caseload, relative to its rates of disposition and clearance and the implied state of resources.”²⁴⁹ It also “reflects the time it would take a court to dispose of its pending and incoming cases given its current efficiency and clearance rates.”²⁵⁰ The ideal case congestion rate is 100%.²⁵¹ A high case congestion rate suggests that a court is struggling with its caseload. For example, a 150% case-congestion rate suggests that “given the resources currently at [the] court’s disposal and its degree of efficiency, it is carrying one and a half times its capacity.”²⁵² It also suggests that if the court continues at its current level of productivity, it will take one year and six months to dispose of its current caseload.

Starting with the Parish Courts, as of 2019, the average case congestion rate across all Parish Courts on criminal matters was 146%.²⁵³ While this is a marked improvement from the 310.20% case congestion rate for the first quarter of 2018 and 238.07% for the fourth quarter in 2018,²⁵⁴ it also means that the Parish Courts are carrying approximately one and a half times more criminal cases than they can reasonably handle based on the available resources.²⁵⁵ Clarendon Parish Court was the most congested at 254.18% followed by St. Ann at 194.48%, Trelawny at 186.41%, and Manchester at 174.46%.²⁵⁶ Notably, each of these courts had a clearance rate of 88% and above.²⁵⁷

The Supreme Court is equally congested. The Supreme Court sees the highest volume of newly filed cases. In 2019, 13,116 new cases entered the court.²⁵⁸ With an average case clearance rate of 58.91%, the Supreme Court disposed of 7,727 cases, leaving a total of 24,939 unresolved cases at

²⁴⁸ *Id.*

²⁴⁹ *Report for Parish Court Criminal 2019*, *supra* note 19, at 8.

²⁵⁰ Dakolias, *supra* note 70, at 87, 103.

²⁵¹ *Report for Parish Court Criminal 2019*, *supra* note 19, at 8; Latonya Linton, *Significant Improvement in Case Disposal Rates in the Courts*, JAM. INFO. SERV. (Oct. 10, 2018), <https://jis.gov.jm/significant-improvement-in-case-disposal-rates-in-the-courts/> [hereinafter *Significant Improvement*].

²⁵² *Significant Improvement*, *supra* note 251.

²⁵³ *Report for Parish Court Criminal 2019*, *supra* note 19, at 24.

²⁵⁴ *The Chief Justice’s Annual Statistics Report on Criminal Matters in the Parish Courts – Report for 2018*, PARISH CT. OF JAM. 29, https://supremecourt.gov.jm/sites/default/files/THE%20CHIEF%20JUSTICE%27S%20ANNUAL%20STATISTICS%20REPORT%20ONCRIMINAL%20MATTERS_PARISH%20COURTS_t.pdf.

²⁵⁵ *See Trend Statistics 2019*, *supra* note 130, at 19.

²⁵⁶ *Report for Parish Court Criminal 2019*, *supra* note 19, at 18.

²⁵⁷ *Id.*

²⁵⁸ *Report for Supreme Court 2019*, *supra* note 19 at 10, 138.

the end of 2019.²⁵⁹ Court data suggests that the High Court Civil Division (HCV) is the most congested division of the Supreme Court, which explains why litigants with cases ready for trial have a long wait for their cases to be heard.²⁶⁰ To explain, the HCV has a clearance rate of 17.15%.²⁶¹ This means that of the 5,160 new cases filed in 2019, the HCV disposed of only 885.²⁶² At the end of 2019, the court had 13,279 unresolved cases.²⁶³ Also, the average case disposition time in the HCV was 3.72 years (3 years and 9 months).²⁶⁴ Taken together with the court's case turnover rate of 0.07%, cases that remained unresolved in 2019 will take an average of 8.8 more years to disposition.²⁶⁵ Notably, to meet the current target of 130% clearance rate under the Strategic Plan, the HCV Division would have to increase its output by approximately 800%.

Even where Divisions of the Supreme Court do a good job of clearing cases, the significant backlog still weighs heavily on the court. For example, in 2019, 396 new cases were filed in the Home Circuit Court (Criminal Division), of which 309 were disposed,²⁶⁶ but the existing backlog meant that a total of 970 criminal cases remained unresolved.²⁶⁷ The average disposition time was 2.38 years.²⁶⁸ The Matrimonial, Probate, and Gun Court Divisions, which had clearance rates in 2019 that complied with international standards, also had an overwhelming case backlog at the end of 2019.²⁶⁹ To illustrate, the Matrimonial Division had 3,934 newly filed cases, disposed of 3,269 but also had a backlog of 5,954.²⁷⁰ The backlog was almost twice the number of newly filed cases.²⁷¹ Similarly, the Probate Division had 2,599 newly filed cases and a clearance rate of 99.54%, but had 2,469 unresolved cases.²⁷² Too, the Gun Court Division, which had an outstanding clearance rate of 100%,

²⁵⁹ *Id.* at 10, 11.

²⁶⁰ *Id.* at 137-38.

²⁶¹ *Id.*

²⁶² *Report for Supreme Court 2019, supra* note 19, at 10.

²⁶³ *Id.* at 11 (and a case backlog rate of 71.52%).

²⁶⁴ *Id.* at 10, 33 ("The oldest matter disposed in the year was 206 months old or just over 17 years old while the lowest time that a matter took to disposition was less than a month. The most frequently occurring time to disposition in the period was 19 months or just over a year and a half").

²⁶⁵ *Id.* at 37-38.

²⁶⁶ *Id.* at 10.

²⁶⁷ *Id.* at 11.

²⁶⁸ *Id.* at 10-11.

²⁶⁹ *Report for Supreme Court 2019, supra* note 19, at 10-11 (the Gun Court had a clearance rate in 2019 of 100%, and the Matrimonial Court had a clearance rate of 83.10%. For the same year, the Gun court had a case backlog rate of 35.63% and the Matrimonial Court 26.61%).

²⁷⁰ *Id.* at 11 (indicating a clearance rate of 83.10%).

²⁷¹ *Id.*

²⁷² *Id.* at 10-11.

had 508 incoming cases, disposed of 508 cases, but had 569 unresolved cases at the end of 2019.²⁷³

The Court of Appeal remains congested despite improvements in productivity in 2019.²⁷⁴ Statistics from the Court of Appeals offer proof of the congestion. In 2019, the Court of Appeal improved its clearance of appeals by 20% over the previous year with help of the additional judges²⁷⁵ and court staff. A total of 276 new cases entered the court in 2019 and 193 were disposed of, which equates to a clearance rate of approximately 70%.²⁷⁶ However, at the end of 2019 there were 1,817 appeals pending,²⁷⁷ 1,734 of which were brought over from 2018.²⁷⁸ Essentially, the Court of Appeal will have to almost double its current output to achieve a case clearance rate of 130%. To ask the Court of Appeal to meet a 130% case clearance rate until the backlog is cleared without the full complement of judges and adequate court staff is like asking a soccer team that consistently played without all team members to win the World Cup.

III. LAW CLERKS: A STEP TOWARD EFFICIENCY

The literature on judicial efficiency collectively indicates that no one method has successfully solved the problem of excessive court delays and chronic case backlogs.²⁷⁹ The literature demonstrated, however, that some courts have successfully reduced their backlog of cases and created and maintained sustained efficiency when they evaluated the workload of the courts, strategically hired law clerks, and incorporated other delay reduction initiatives.

Common law countries such as Canada, the United States of America, and, more recently, the United Kingdom have successfully utilized judicial law clerks as a sustainable solution to addressing the court delays without overburdening their judges.²⁸⁰ More concretely, judicial law clerks have helped to reduce judges' workload, which in turn typically reduces case

²⁷³ *Id.*

²⁷⁴ *Report for Court of Appeal 2019, supra* note 19, at 2.

²⁷⁵ *Id.* at 2, 23.

²⁷⁶ *Id.* at 31.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ MACFARLANE, *supra* note 24; *See* Butts et al., *supra* note 203; Dakolias, *supra* note 70 at 87, 100-101 (noting that "a set of reforms is generally necessary--rather than any single reform").

²⁸⁰ Bryan, *supra* note 208, at 91 (noting that in addition to creating more judgeships, Colorado district courts hired law clerks to help to reduce the workload of "overworked judicial officers."). *See infra* note 282.

backlogs and court congestion, and accelerates case flow.²⁸¹ Overall, there is a general consensus among judges in all three jurisdictions that law clerks are vital to maintaining and sustaining efficient court functions and services.²⁸²

Another key benefit to the judiciary, and country, of hiring law clerks and investing in law clerkship programs is the opportunity to mentor and provide additional training to newly-minted lawyers.²⁸³ This practice advances the legal profession, builds a pipeline of future judicial candidates, trains future leading practitioners who become “influential ambassadors” for the judiciary, and trains future law professors who in turn train future lawyers and law clerks.²⁸⁴

This section first looks at the typical duties of a law clerk in all three jurisdictions and then looks at the law clerkship program models in Canada, the United States, and the United Kingdom and how those countries have used law clerks to help to reduce the courts’ workload and to restore or maintain efficient court operations.

A. Law Clerks

Law clerkship programs typically provide additional training for newly minted lawyers and help to increase judicial productivity, which in turn reduces the court’s pending workload.²⁸⁵ In countries, including Canada, the United States of America, and the United Kingdom, law clerks are law school graduates with excellent research, writing, organizational, and communications skills whose essential duty is to help judges with the work of

²⁸¹ Bryan, *supra* note 208, at 91.

²⁸² *See id.* (noting that “law clerks can play an indispensable role in helping judges process a large number of cases in far less time than it takes judges to do on their own, especially in docket management and day-to-day work in chambers.”); Mitchell McInnes, Janet Bolton & Natalie Derzko, *Clerking at the Supreme Court of Canada*, 33 ALBERTA L. REV. 58, 63 (1994) (noting that law clerks have become “an entrenched and indispensable part of the judicial process at the Supreme Court of Canada.”); Laura Jenkins & Mike McCabe, *Why are assessors and judicial assistants not more widely used in commercial litigation?*, LEXOLOGY (Aug. 6, 2018), <https://www.lexology.com/library/detail.aspx?g=436bb7ea-0fb4-4430-8196-449599d6e8f2> (“many in the judiciary also see judicial assistants as a useful auxiliary function in dealing with the volume and complexity of their workload.”).

²⁸³ Joseph D. Kearney, *A Truth About Career Law Clerks*, 98 MARQ. L. REV. 13 (2014) (asserting that hiring term law clerks advances the legal profession and the common good); Molloy, *supra* note 25, at 151 (noting that judges have “a duty to the bar and to newly minted lawyers to mentor law clerks.”); Bueckert, *supra* note 114, at 181, 200; Bryan, *supra* note 208, at 91.

²⁸⁴ Molloy, *supra* note 25, at 151; William H. Pryor Jr., *The Perspective of a Junior Circuit Judge on Judicial Modesty*, 60 FL. L. REV. 1007, 1026 (2008); McInnes et al., *supra* note 282, at 69.

²⁸⁵ *See* Lat, *supra* note 25, at 157-58 (noting that law clerks “they play a major role in helping judges maintain their high productivity levels in the face of rising caseloads.”).

the court.²⁸⁶ Common across all three jurisdictions, law clerks' primary duties typically include conducting legal research and analysis, checking citations, proofreading, drafting bench memoranda, reviewing case records and filings, and performing other tasks to allow the judges more time for adjudicating cases and judicial decision-making.²⁸⁷ These other tasks sometimes include researching, drafting, editing, and formatting speeches, articles, and presentations.²⁸⁸ Sometimes, judicial law clerks help to draft judgments.²⁸⁹

A key benefit of hiring law clerks is they typically bring fresh ideas, perspectives, and enthusiasm that energize judge and motivate them to look at novel and existing issues in new ways.²⁹⁰ Equally important, most law clerks are "digital natives";²⁹¹ they are proficient with new technology,

²⁸⁶ MACFARLANE, *supra* note 24, at 73; Sally Kane, *A Guide to Legal Internships, Externships and Clerkships*, BALANCE CAREERS (May 9, 2019), <https://www.thebalancecareers.com/legal-internships-externships-clerkships-and-clinics-2164367>; McInnes et al., *supra* note 282, at 69–70; Mallory Hendry, *Changes coming to SCC law clerks program*, CAN. LAW. (Apr. 19, 2017), <https://www.canadianlawyer.com/news/general/changes-coming-to-scc-law-clerks-program/274256>; Michael N. Rhinehart, *Professional Devil's Advocates: The Career Law Clerk*, FED. LAW., March 2015, at 40, 41; Nina Holvast, *The Power of the Judicial Assistant/Law Clerk: Looking behind the Scenes at Courts in the United States, England and Wales, and the Netherlands*, 7 INT'L. J. CT. ADMIN. 10, 10 (2016); *Person Specification UKSC Judicial Assistants 2020/21*, S. CT. U.K., <https://webmicrosites.hays.co.uk/documents/4856148/4856273/PERSON+SPEC.pdf> (last visited Jan. 2, 2022).

²⁸⁷ Bueckert, *supra* note 114, at 200 (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 114, 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"); Ralph R. Mabey, *The Evolving Bankruptcy Bench: How Are the "Units" Faring?*, 47 B.C. L. REV. 105, 116 (2005); Molloy, *supra* note 25, at 133, 137 (noting that "[t]he principal duties of the law clerk include conducting legal research, editing, drafting opinions, checking citations, preparing memoranda, doing legal analysis, and attending oral arguments."); Holvast, *supra* note 286, at 10.

²⁸⁸ Todd C. Peppers, Micheal W. Giles, & Bridget Tainer-Parkins, *Surgeons or Scribes? The Role of United States Court of Appeals Law Clerks in "Appellate Triage"*, 98 MARQ. L. REV. 313, 320 (2014).

²⁸⁹ McInnes et al., *supra* note 282, at 75; Peppers et al., *supra* note 288, at 320–321.

²⁹⁰ John U. Kester, *The Law Clerk Explosion*, 3 LONG TERM VIEW 1, 15 (noting that benefits of law clerks who typically bring "the attitudes of a new generation to which judges ought to be exposed . . . [and] can transmit the stimulation of youth and the challenge of bright, questioning minds to judges whose own mental muscles might otherwise atrophy"); Molloy, *supra* note 25, at 151 (noting that term clerks in particular "bring a greater degree of freshness of thought to the court.").

²⁹¹ See Toree Randall, *Meet Me in the Cloud: A Legal Research Strategy That Transcends Media*, 19 J. LEGAL WRITING INST. 127, 128 (2014); Nicholas W. Allard & Heidi K. Brown,

“embrace technology,” and as a result are more likely to use technology in innovative ways to increase judicial productivity and the court’s overall efficiency.²⁹²

To a large extent, a law clerk’s tasks may vary depending on the level of the court, the type of case, and the needs of the particular judge or judges to whom the clerk is assigned.²⁹³ For example, the duties of law clerks at the appellate level typically include performing legal research and analysis, reviewing the record on appeal, preparing bench memoranda, drafting opinions and reasons for judgment, and maintaining chamber files.²⁹⁴

Law clerks have helped significantly to increase the productivity of trial court judges.²⁹⁵ Trial courts typically have a higher volume of incoming cases than appellate courts.²⁹⁶ Consequently, law clerks at the trial court level primarily focus on assisting the judge or judges “in operating chambers

Training Powerful Legal Communicators: What Does the Future Hold?, 90 N.Y. ST. BAR ASS’N. J. 10, 10–11 (2018) (viewing the largest cohort of present and incoming law students are Millennials and Gen Zers and deducing that most law clerks are digital natives).

²⁹² Raymond H. Brescia, *Law and Social Innovation: Lawyering in the Conceptual Age*, 80 ALB. L. REV. 235, 306 (2017); see also Molloy, *supra* note 25, at 151.

²⁹³ See Molloy, *supra* note 25, at 142; see also Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152, 154 (1990) (explaining that “[d]ifferent judges use clerks differently, some only to exchange ideas, or to check footnotes, or to research records, others, after discussion, to draft opinions.”).

²⁹⁴ See Peppers et al., *supra* note 288, at 320 (noting the “high work load in courts of appeals” and the duties of appellate law clerks); Lat, *supra* note 25, at 159 (giving an example of an appellate court judge who “generally relies upon her law clerks to take the first pass through the record on appeal, to conduct the initial legal research, and to prepare a first draft for her review.” Further giving another example of a judge “who also typically has her clerks draft opinions (which she then edits heavily), [and who] agrees that opinion drafting by clerks is necessary for most judges. As she states, ‘The caseload is too large and our decisions have to be explained in writing, and no single judge can do it all himself or herself. . . .’”).

²⁹⁵ Mark D. Killian, *Court Calls For 44 New Judges*, FL. BAR (Mar. 15, 2001), <https://www.floridabar.org/the-florida-bar-news/court-calls-for-44-new-judges> (quoting Chief Justice Wells “[s]pecifically, we emphasize the importance of additional trial court law clerks, who can significantly increase the productivity of the judges in the trial courts.”); George Everly, III & Michael L. Shenkman, *District Judges As Investments*, 53 HARV. J. ON LEGIS. 59, 79–80 (2016) (noting that a single law clerk can double a district court judge’s productivity by “performing legal research and drafting opinions and orders at the judge’s direction. A second law clerk might supplement another sixty percent of the judge’s original production. . . .”).

²⁹⁶ Mitu Gulati & Richard A. Posner, *The Management of Staff by Federal Court of Appeals Judges*, 69 VAND. L. REV. 479, 496 (2016) (“District judges have heavier caseloads than court of appeals judges, yet smaller staffs”); Molloy, *supra* note 25, at 135 (noting that the workload of trial court judges is heavy and as a result it is “impossible for one person to efficiently accomplish all of this work and write all of the opinions.”).

efficiently under considerable time constraints and tremendous workloads.”²⁹⁷ For these reasons in particular, trial court law clerks must be able to multitask, triage, and balance short deadlines and large workloads.²⁹⁸ This means that in addition to conducting legal research and analysis, drafting and editing opinions, and reviewing citations, trial court law clerks also typically review trial records, attend oral arguments, take notes at trial, prepare bench memoranda, and perform any other tasks that enhances the efficiency of the case flow.²⁹⁹

Courts in the three jurisdictions employ law clerks based on various clerkship models. For instance, in one model, some courts hire term clerks, which typically are recent law school graduates hired for a fixed 1-year or 2-year term.³⁰⁰ In a “traditional” clerkship model, term clerks are assigned to an individual judge.³⁰¹ However, based on workload and budgetary concerns, some courts assign term clerks to more than one judge while other courts assign term clerks to a pool where they serve any or all of the court’s judges.³⁰² Term clerks are typically paid a modest salary and are not considered for retirement or long-term benefit plans, which makes them a cost-efficient hire.³⁰³

In another model, some courts hire career clerks. Career clerks have longer term tenure, are a part of the court’s permanent staff, and typically earn a higher salary than term clerks.³⁰⁴ While traditional term law clerks tend to focus on dual goals of enhancing their legal knowledge and skills and increasing judicial productivity, a career law clerk’s primary focus is to increase judicial productivity and efficiency in the courts.

In yet another model, some courts hire a combination of term clerks and career clerks.³⁰⁵ Because of the higher financial costs of hiring career law

²⁹⁷ Molloy, *supra* note 25, at 137.

²⁹⁸ *Id.* at 153.

²⁹⁹ *Id.* at 137.

³⁰⁰ MACFARLANE, *supra* note 24, at 73; John Bilyeu Oakley & Robert S. Thompson, *Law Clerks in Judges’ Eyes: Traditional and Innovation in the Use of Legal Staff by American Judges*, 67 CALIF. L. REV. 1286, 1287 (1979); Mabey, *supra* note 287, at 111.

³⁰¹ Oakley & Thompson, *supra* note 300, at 1287. See Mary Lou Stow & Harold J. Spaeth, *Centralized Research Staff: Is There A Monster in the Judicial Closet?*, 75 JUDICATURE 216, 216 (1992) (explaining that these clerks typically work for the individual judges only, not for the court or any of its divisions).

³⁰² Hendry, *supra* note 286. See Oakley et al., *supra* note 300, at 1292 n.31 (1979) (noting that the concept of central staff at the Michigan Court of Appeals “was created by pooling a second law clerk” that previously worked for each justice but distinguishing term clerks working in a pool from central staff attorneys, “lawyers who work for the court as a corporate whole”).

³⁰³ Pryor, Jr., *supra* note 284, at 1025.

³⁰⁴ Mabey, *supra* note 287, at 111 n.29 (noting that career clerks earn “generous salaries”).

³⁰⁵ Molloy, *supra* note 25, at 154 (adding that some judges think a one-year clerkship “seems best for the clerk” but is “least helpful to the judge.” A two-year term clerkship

clerks, as of 2007, federal judges in the United States are allowed to hire only one career law clerk.³⁰⁶ State courts are not bound by the same restrictions as federal courts and can hire more than one career clerk.³⁰⁷ A survey of judicial hiring preferences indicates that judges saw “no real difference in the work of career and term clerks”³⁰⁸ as it pertains to their written work.³⁰⁹ New term clerks bring welcomed fresh perspectives and energy to the court, but on the downside, they also require greater supervision than career clerks.³¹⁰ With this downside in mind, some judges prefer to hire career clerks;³¹¹ they also prefer career clerks due to the length of their tenure, institutional knowledge, and the belief that career clerks are more experienced, which makes them more efficient and able to exercise better judgment.³¹² Career law clerks are particularly attractive to judges who want to avoid selecting and training new

was most favored by the judges because “[t]he two-year term clerk, after learning the ropes, provides the judge sound advice coupled with an enthusiasm and energy for the work.”). See Mabey, *supra* note 287, at 115 (noting the results of a survey “which suggest[s] that if more bankruptcy judges had two law clerks, more would choose at least one traditional, short-term law clerk because these law clerks’ staggered terms would then assure continuity and productivity.”).

³⁰⁶ Gulati & Posner, *supra* note 296, at 489 (noting that starting in 2007, the United States federal courts reduced the number of career law clerks each judge could hire to one because of the higher salary career clerks receive); Pryor, Jr., *supra* note 284, at 1024–25.

³⁰⁷ See Mabey, *supra* note 287, at 112–13 (noting that “California state court judges generally used permanent clerks, whereas the Ninth Circuit and federal district judges exclusively used term law clerks”).

³⁰⁸ Molloy, *supra* note 25, at 142. See Mabey, *supra* note 287, at 113 (adding that “the preference for permanent law clerks over term law clerks hinges on four factors: (1) caseload pressures; (2) workload per law clerk; (3) clerkship prestige; and (4) perceptions of law clerk productivity.”).

³⁰⁹ Molloy, *supra* note 25, at 142. *But see id.* at 152–153 (discussing the reasons why judges switch from using career clerks to term clerks).

³¹⁰ Molloy, *supra* note 25, at 138, 151.

³¹¹ Thomas B. Marvell, *State Appellate Court Responses to Caseload Growth*, 72 JUDICATURE 282, 286 (1989).

³¹² David F. Levi & Mitu Gulati, *Judging Measures*, 77 UMKC L. REV. 381, 408 (2008); see Gulati & Posner, *supra* note 296, at 492 (“Judges may vary over their judicial careers in terms of preferences for a career clerk. Some will have a career clerk early in their careers, but dispense with them later as the judge becomes more experienced or fears excessive delegation of his judicial responsibilities to the career clerk. Others hire a career clerk as they become more senior and feel that their energy and ability are declining”); see also Molloy, *supra* note 25, at 152 (noting that “career clerks serve the judge differently because they have longevity in the position, know the judge’s way of thinking and are likely to capture the judge’s voice in writing.” Also, career clerks require less supervision than term clerks); Mabey, *supra* note 287, at 115 (observing that judges prefer permanent clerks because of permanent clerks’ greater knowledge and experience made permanent law clerks more efficient and productive. One judge stated that “knowledge, experience, productivity and continuity vastly outweigh any benefits from young inexperienced and transient lawyers.”).

clerks yearly or bi-yearly.³¹³ Additionally, career law clerks provide continuity; therefore, judges who also hire term clerks or judicial interns often rely heavily on the career clerk to train and supervise these term clerk or interns.³¹⁴ Currently, some state courts are choosing to hire career clerks over term law clerks particularly where “caseloads increase at rates that far exceed new judgeships or funding of additional staff.”³¹⁵ To that end, “[c]areer clerks for many judges have become an essential efficiency in managing growing dockets without growing judicial resources.”³¹⁶

In addition to law clerks, some courts provide judicial internships. Judicial interns are law students who work part-time for one or more judges during the school year or full-time over the summer.³¹⁷ Judicial interns also contribute to increased judicial productivity.³¹⁸ Specifically, judicial interns typically provide legal research and administrative support, draft case summaries and bench memoranda,³¹⁹ and perform other tasks that “free up the time of the law clerks”³²⁰ and judges to focus on other matters.

Judicial interns are also a cost-effective way to reduce a court’s workload without burdening its budget. Most judicial internship positions are unpaid, but students can earn academic credits for their work.³²¹ Some courts, however, pay their summer judicial interns a stipend.³²² The two most common arguments against hiring judicial interns are a lack of court space and time to supervise the interns. Judicial interns, still students, typically require more supervision than term clerks.³²³

³¹³ Levi & Gulati, *supra* note 312, at 408.

³¹⁴ Molloy, *supra* note 25, at 153. *See* Bueckert, *supra* note 114, at 187–88, 192 (noting that using a career clerk to supervise term clerks and interns “removes responsibility for supervising the clerks from the judges.” For example, in Canada’s Quebec Court of Appeal, a senior clerk oversees the clerkship program and is responsible for hiring and training the clerks.).

³¹⁵ A. Bruce Campbell, *Mentoring—An Unmet Challenge*, 40 COLO. LAW. 99, 101 (2011).

³¹⁶ *Id.*

³¹⁷ Oakley & Thompson, *supra* note 300, at 1293; Bryan, *supra* note 208, at 93 (noting that many law schools have semester-long externships where law students earn academic credit while “assisting with the ever-expanding workload of state courts”).

³¹⁸ Gulati & Posner, *supra* note 296, at 480 (noting that judicial interns are essential given the judges’ workload).

³¹⁹ *Id.* at 492.

³²⁰ *Id.*

³²¹ Bueckert, *supra* note 114, at 193; Bryan, *supra* note 208, at 93.

³²² *About the Program*, AM. BAR ASS’N, <https://www.americanbar.org/groups/litigation/committees/jiop/about> (last visited January 4, 2022) (noting that the ABA’s Judicial Intern Opportunity Program, provides summer judicial internships to law students from backgrounds traditionally unrepresented in the profession and pays them a stipend of \$2,000).

³²³ Gulati & Posner, *supra* note 296, at 483.

B. Canada

Jamaica has often mirrored Canada in its legal and judicial reforms.³²⁴ Canada has had a robust law clerkship program for approximately five decades.³²⁵ The law clerkship programs at the various levels of courts in Canada serve both to provide further training to newly-minted lawyers and to reduce the court's workload.³²⁶ Canada's judiciary has repeatedly praised the work of law clerks in helping judges to manage their workload, which in turn improves efficiency in the courts.³²⁷

Canada first hired law clerks in the late 1960s³²⁸ to help justices manage the workload in the Supreme Court, the nation's highest court.³²⁹ At that time, each justice at the Supreme Court was allowed to hire one law clerk for a one-year term.³³⁰ In the early 1980s, the Court developed a significant case backlog because of an increase in the number and complexity of newly filed cases.³³¹ Considering the law clerkship program's success in reducing the justices' workload, court administrators decided to expand the clerkship program twice in the 1980s to allow each justice to hire up to three law clerks.³³² Expanding the law clerks program helped the justices to cope with the increased workload as they were able to delegate to the clerks the research and drafting that went into preparing for the cases.³³³ It took several years, until the end of the 1990s, to eliminate the backlog.³³⁴

³²⁴ Irving, *supra* note 31; Livern Barrett, *Justice in three years - Chuck bats for speedier trials*, THE GLEANER (Oct. 11, 2018), <https://jamaica-gleaner.com/article/lead-stories/20181012/justice-three-years-chuck-bats-speedier-trials>.

³²⁵ MACFARLANE, *supra* note 24, at 73.

³²⁶ Bueckert, *supra* note 114 at 187 (noting that "a court's clerkship program is normally intended to act as an articling or training program for recent law school graduates."); McInnes et al., *supra* note 282, at 60 (noting that the law clerkship program in Canada was created to help with the Supreme Court's heavy workload).

³²⁷ MACFARLANE, *supra* note 24, at 73 (noting that "the clerks' research function is fundamental to their ability to perform their duties in a timely manner"); McInnes et al., *supra* note 282, at 73; ONTARIO CTS., THE SUPERIOR COURT OF JUSTICE: MAPPING THE WAY FORWARD 2010–2012, at 34–35, <https://www.ontariocourts.ca/scj/files/annualreport/2010-2012-EN.pdf> (last visited Jan. 8, 2022).

³²⁸ MACFARLANE, *supra* note 24, at 73; McInnes et al., *supra* note 282, at 60–61.

³²⁹ McInnes et al., *supra* note 282, at 60.

³³⁰ MACFARLANE, *supra* note 24, at 73; McInnes et al., *supra* note 282, at 61.

³³¹ MACFARLANE, *supra* note 24, at 75.

³³² *Id.* at 73; McInnes et al., *supra* note 282, at 61.

³³³ MACFARLANE, *supra* note 24, at 73; *see also id.* at 75 (noting that "the justices' ability to delegate so much of their research and writing responsibilities to a dedicated staff has been beneficial to the Court's efficiency").

³³⁴ MACFARLANE, *supra* note 24, at 75; *but see id.* (showing that increasing the number of law clerks was not the only means of addressing the backlog. The Chief Justice addressed structural issues, such as including case management and tracking capabilities, and made procedural changes.).

Despite a modest fluctuation in the number of new cases, the Supreme Court of Canada again expanded the law clerkship program in 2018 to allow each of the nine justices to hire four law clerks.³³⁵ The justices reasoned that hiring the additional law clerk was necessary because, while the number of newly filed cases had fluctuated only slightly, their workload had increased significantly because of the complexity of the cases and their additional duties outside the courtroom, which included giving speeches and attending events.³³⁶

Law clerks at the Supreme Court of Canada typically serve a one-year term.³³⁷ They do legal research and analysis; write bench memoranda synthesizing the facts of the case, the decision of the lower courts and the litigants' legal argument; check citations; edit written reasons for judgment; and attend oral argument.³³⁸ Depending on the justice, law clerks may help to prepare speeches and presentations.³³⁹

Canada also hires law clerks to work at the trial and intermediate appellate levels in the provincial and federal courts³⁴⁰ and some courts also hire judicial interns.³⁴¹ In most instances, the courts partner with universities to create a program where law students serving as judicial interns can receive academic credit for their work.³⁴² Some courts, however, pay their summer judicial intern a stipend.³⁴³

Outside of the formal clerkship model, Canada has used law students to work on a discrete project with the end goal of eliminating its case backlog. To illustrate, in the 1990s, Ontario's largest trial court³⁴⁴ and one of the world's busiest trial courts,³⁴⁵ the Superior Court of Ontario, developed a

³³⁵ Hendry, *supra* note 286. In addition, each judge has a judicial assistant and a court attendant. MACFARLANE, *supra* note 24, at 73.

³³⁶ Hendry, *supra* note 286.

³³⁷ McInnes et al., *supra* note 282, at 61 (showing that judges in Québec typically hire their clerks for two years).

³³⁸ MACFARLANE, *supra* note 24, at 73; McInnes et al., *supra* note 282, at 70.

³³⁹ Hendry, *supra* note 286.

³⁴⁰ Bueckert, *supra* note 114, 186-87.

³⁴¹ *Id.* at 193.

³⁴² *Id.* (showing examples of courts that have internship programs where students clerk for academic credit including the Courts of Appeal of Nova Scotia, Alberta, New Brunswick, and Manitoba).

³⁴³ *Summer Student Program, ONTARIO CTS.*, <https://www.ontariocourts.ca/scj/clerkship/summer/> (last visited Jan. 5, 2022).

³⁴⁴ ONTARIO CTS., *THE SUPERIOR COURT OF JUSTICE: REALIZING OUR VISION 2015–2016 REPORT 12*, <https://www.ontariocourts.ca/scj/files/annualreport/2015-2016.pdf> (last visited Jan. 8, 2022).

³⁴⁵ *About the Superior Court*, ONTARIO CTS., <https://www.ontariocourts.ca/scj/> (last visited Jan. 8, 2022).

significant backlog of more than 1,500 civil cases.³⁴⁶ The Regional Senior Justice launched an initiative to eliminate the backlog.³⁴⁷ As a part of that initiative, law students were recruited to help purge old unresolved cases while the remaining cases were set for trial.³⁴⁸ In addition, approximately forty-eight “experienced lawyers” volunteered time in the evenings to hold pre-trial conferences targeted at resolving the cases on the list.³⁴⁹ The cases that did not settle were immediately tried by a team of judges assembled from the region for that purpose.³⁵⁰ With these combined efforts, it took eighteen months to eliminate the backlog.³⁵¹ To prevent a recurrence and maintain efficiency, the court implemented case-flow management for all of its civil cases, installed new software to manage case inventory, and referred cases to mediation.³⁵² As a result of these efforts, backlogs became non-existent in the Superior Court of Ontario and “the average civil case [could] be brought to trial with a fixed date within two to three years of the commencement of proceedings.”³⁵³ Not surprisingly, “Ottawa’s success with these initiatives [was] widely recognized and has drawn international attention.”³⁵⁴

C. *The United States*

Law clerks have been a part of the American judicial system since the late 1800s.³⁵⁵ The law clerkship program started in the United States Supreme Court and served primarily as an apprenticeship program to provide additional training to newly-minted lawyers.³⁵⁶ Over the years, law clerkship programs have become a staple in federal and state courts.³⁵⁷ While continuing to provide additional training for new attorneys, law clerkship programs have

³⁴⁶ ONTARIO CTS., THE SUPERIOR COURT OF JUSTICE: 20TH ANNIVERSARY EDITION 2008–2010 REPORT 44, <https://www.ontariocourts.ca/scj/files/annualreport/2008-2010-EN.pdf> (last visited Jan. 8, 2022) [hereinafter COURT REPORT 2008-2010].

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ COURT REPORT 2008-2010, *supra* note 346, at 44.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ Zachary Wallander & Sara C. Benesh, *Law Clerks as Advisors: A Look at the Blackmun Papers*, 98 MARQ. L. REV. 43, 46 (2014).

³⁵⁶ *Id.* (stating that an overburdened Supreme Court requested that Congress hire clerks and when Congress refused this request Justice Horace Gray “using his own money, hired the first law clerk of the Supreme Court to assist him with his work.”).

³⁵⁷ Chad Oldfather & Todd C. Peppers, *Introduction: Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks*, 98 MARQ. L. REV. 1, 1 (2014).

grown to respond to the judges' increasing workload.³⁵⁸ To illustrate, in the mid-1960s the United States Court of Appeals for the District of Columbia Circuit saw an explosive increase in the number of appeals filed. The court received approximately 1,100 appeals each year, but "each of the Court's nine judges was authorized to have only one law clerk."³⁵⁹ In 1965, several of the judges were allowed to hire a second law clerk on a temporary basis to assist with the court's workload.³⁶⁰ Two years later, the position was made permanent and each judge was allowed two full-time law clerks.³⁶¹

Today, law clerks are vital members of a judge's staff. In the federal courts in particular, the current number of clerks reflects Congress's response to the growing caseload and the judges' workload. For example, each justice in the United States Supreme Court, the nation's highest federal appellate court, is authorized to hire four law clerks;³⁶² the Chief Justice is authorized to hire up to five law clerks.³⁶³ At the intermediate appellate level, federal court of appeals judges are allowed a staff of five, and in many instances they hire four law clerks.³⁶⁴ District court and magistrate judges are allowed "up to two law clerks . . . , one of whom may be a career law clerk."³⁶⁵ Bankruptcy court judges are allowed two personnel slots which usually includes at least one law clerk.³⁶⁶ In addition to law clerks, a federal judge's staff includes at least one secretary.³⁶⁷ Some judges also hire judicial interns.³⁶⁸

Although it has been widely acknowledged that law clerks are vital to a court's efficiency, the court's budget may not allow hiring an adequate number of law clerks. As a result, alternative sources of funding are

³⁵⁸ Peppers et al., *supra* note 288, at 315 (noting that federal courts of appeals judges have tried "a variety of different approaches . . . to attack their bulging caseloads, from writing fewer published opinions to reducing the number of cases scheduled for oral argument." The judges have also "an increasing number of law clerks."); Gulati & Posner, *supra* note 296, at 480.

³⁵⁹ COMM. ON THE D.C., ADDITIONAL LAW CLERKS FOR JUDGES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, H.R. REP. NO. 94-596, at 2 (1975).

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² David Stras, *Keynote Address: Secret Agents: Using Law Clerks Effectively*, 98 MARQ. L. REV. 151, 152 (2014).

³⁶³ *Id.*

³⁶⁴ Gulati & Posner, *supra* note 296, at 480 (explaining that "[f]ederal court of appeals judges have staffs consisting usually of a secretary and four law clerks; some judges have interns, externs, or both (law students working part time). These staffs are essential, given judicial workloads and judges' limitations."); Peppers et al., *supra* note 288, at 315 (documenting the increase in the number of federal law clerks from one in the 1940s and 1950s to two in 1969 to three in 1979 and four at present).

³⁶⁵ Rhinehart, *supra* note 286, at 41.

³⁶⁶ Mabey, *supra* note 287, at 110.

³⁶⁷ Gulati & Posner, *supra* note 296, at 480.

³⁶⁸ Gulati & Posner, *supra* note 296, at 480.

sometimes explored. For example, judges at the District of Columbia Court of Appeals, DC's highest appellate court, were overburdened and needed help to manage the caseload.³⁶⁹ The court secured a one-year Law Enforcement Assistance Administration discretionary grant, which provided the funds to hire an additional law clerk for each judge for one year.³⁷⁰ Within that period the temporary law clerks helped the court to reduce the case backlog by 4%,³⁷¹ and "decrease the average number of days between argument and disposition of appellate cases."³⁷² In short, over a ten-month period, they helped to reduce the average time lapse from ninety-seven days to eighty-one days for cases on the regular calendar and to thirty-one days for cases on the summary calendar.³⁷³

The judges asked for two permanent law clerk slots to assist with the court's increasing workload.³⁷⁴ To support their request, the judges argued that adequate research staff is essential to avoiding a backlog of cases, particularly at the appellate level.³⁷⁵ Second, they argued that each judge at the United States Court of Appeals for the District of Columbia Circuit, a comparable court, was allowed to hire two law clerks which allowed them better research capabilities and the ability to better cope with their caseload.³⁷⁶ Third, they demonstrated that the temporary law clerks assigned to the court for the year successfully helped the court to reduce the caseload and "ha[d] enabled the court to reduce substantially the interval between argument and decision."³⁷⁷ Based on these arguments, the court was authorized to hire an additional clerk for each judge at the District of Columbia Court of Appeals.³⁷⁸ Each judge was allowed two personal law clerks, and the chief judge could hire three personal law clerks.³⁷⁹ The chief judge was also allowed to hire up to three more law clerks for the court.³⁸⁰ In addition, each judge was allowed to hire a personal secretary.³⁸¹

As the literature indicates, law clerks are beneficial in helping to reduce the court's workload, but they alone will not eliminate delays and backlogs in a court that is chronic under-resourced, lacks proper case

³⁶⁹ COMM. ON THE D.C., *supra* note 359, at 7 (stating that the court had a "potentially crippling backlog of cases awaiting disposition. . .").

³⁷⁰ *Id.* at 2.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ COMM. ON THE D.C., *supra* note 359, at 1.

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 2.

³⁷⁷ *Id.* at 7.

³⁷⁸ *Id.* at 8.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

management structures, or embodies a legal culture that does not honor efficiency.³⁸² This is especially true when the number and complexity of incoming cases continually increases.³⁸³ As an example, the Supreme Court of Colorado experienced congestion and inordinate delays because of a consistent increase in the number of newly filed appeals and a growing backlog of cases.³⁸⁴ The court, which typically had a backlog that grew at an average rate of five cases per year, saw a rapid increase in its backlog toward the end of the 1950s.³⁸⁵ The backlog, which stood at approximately 200 in 1955, grew by 40 cases in 1956, and 115 cases in 1957.³⁸⁶ At the end of 1958, the backlog grew to 483 cases despite the court's efforts to stem its growth.³⁸⁷ The court became overwhelmed because of a significant increase in filing between 1956 and 1958, and by 1959 there were 538 cases pending before the court and a twenty-two-month lag time between issue and disposition of a case.³⁸⁸ In an effort to address the increased workload and court delays, in 1959 the legislature allocated money to hire law clerks to do "research and routine administrative work."³⁸⁹ The law clerks "proved to be of substantial benefit, but they were not enough to stem the tide."³⁹⁰

Taking a holistic approach to solving the delay and backlog problem in 1960, the court combined a recently implemented strategy of docket planning which controlled how and when cases are set for oral argument,³⁹¹ removed cases that were filed solely to cause delay,³⁹² and consolidated cases "for oral argument and opinion where appropriate."³⁹³ These initiatives helped to increase the disposition rate and reduce the filing rate.³⁹⁴ That year,

³⁸² See Brown, *supra* note 5, at 555 (suggesting that none of the remedial measures put in place by the Supreme Court of Colorado standing alone would solve the backlog); see also *id.* at 549 (commenting that in the Supreme Court of Colorado some appeals were filed purely for dilatory purposes which contributed to overwhelming the system); Dakolias, *supra* note 70, at 87, 87, 107 (noting that "local legal culture and the amount of litigation have significant influence over delay").

³⁸³ Brown, *supra* note 5, at 548, 550–51.

³⁸⁴ See generally *id.*

³⁸⁵ *Id.* at 546.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ Brown, *supra* note 5, at 546.

³⁹¹ *Id.* (explaining that the chief judge introduced the docket planning method in 1960).

³⁹² *Id.* at 547, 549. In addition, the court publicly declared that appeals filed solely for dilatory purposes would not be tolerated. This resulted in a substantial decrease in the filing rate. *Id.* at 549.

³⁹³ *Id.* at 547.

³⁹⁴ *Id.*

the court also engaged visiting judges to help with writing opinions.³⁹⁵ These visiting judges were “qualified trial court and retired [appellate] court judges.”³⁹⁶ The visiting judges helped the court to produce approximately 371 opinions.³⁹⁷ Overall, these initiatives combined helped the court to successfully reduce the backlog by 100 cases and “the time-lag by 10 months.”³⁹⁸

Buoyed by the success, the court’s new chief justice urged the court to continue to work hard to eliminate the backlog.³⁹⁹ By the end of the year, the court disposed of 523 cases; issued 354 written opinions, 104 of which were issued by one justice; and reduced the backlog to 320 cases.⁴⁰⁰ The results were laudable, but the court’s intense work pace was not sustainable.⁴⁰¹ In spite of the hard work by dedicated judges, the backlog resurged by 1962.⁴⁰² At the end of the year, the backlog had increased by over 100 cases to 427.⁴⁰³ Also at this time, the visiting judgeship program started to dismantle because visiting judges were “infrequently available” and therefore not regularly used.⁴⁰⁴ The following year, the number of pending cases increased to over 500 and the time lag from issue to disposition rose to approximately one year.⁴⁰⁵

The backlog and delay were attributed primarily to the significant increase in the number of new cases filed, which then was at an “all-time high” of 486.⁴⁰⁶ The court was working at capacity, yet, paradoxically, the backlog was at its highest.⁴⁰⁷ It was suggested that to effectively eliminate the backlog, the court had to undertake a thorough analysis of the court operations and

³⁹⁵ Brown, *supra* note 5, at 547 (visiting judges’ program was introduced at the Supreme Court of Colorado in 1960).

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ Brown, *supra* note 5, at 547.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.* at 548.

⁴⁰⁴ *Id.* at 547–8; *see id.* at 554 (noting that the visiting judges’ program has been criticized because the lower courts also have congested dockets and backlogs; therefore, they are unable to take time from their court to aid the supreme court. Further, there is a larger issue, which is that the supreme court needs more judges on a permanent basis to meet the demands of the court’s increased workload).

⁴⁰⁵ Brown, *supra* note 5, at 548.

⁴⁰⁶ *Id.* (identifying the increasing filing rate as the “largest single factor responsible for the backlog”).

⁴⁰⁷ *Id.* at 551.

develop sustainable initiatives aimed at increasing the disposition and clearance rates.⁴⁰⁸

D. The United Kingdom

In the United Kingdom, judicial law clerks are referred to as judicial assistants.⁴⁰⁹ Compared to the United States and Canada, the courts in the UK have a shorter history of hiring judicial assistants. Like in the United States and Canada, judicial assistants help to reduce the courts' workload and increase judicial productivity. Consequently, they have become a vital addition to the UK's judicial staff.⁴¹⁰ Judges in the UK view judicial assistants as essential in helping them deal with the "volume and complexity of their workload."⁴¹¹

Judicial assistants were first hired in the UK in 1997.⁴¹² The Civil Division of the UK Court of Appeal, the intermediate appellate court, hired judicial assistants "as a temporary response to the backlog of applications for leave to appeal."⁴¹³ The court tried several judicial assistant program models to assess which would best address the court's growing workload.⁴¹⁴ For example, during the first year of the program, the Court of Appeal hired sixteen judicial assistants for one year on a part-time basis of two and a half days each week.⁴¹⁵ The following year, the court hired some judicial assistants to work part-time and others full-time.⁴¹⁶ The court's continued struggle with an ever-increasing workload made it clear that the judges needed additional help with research, processing appeals, and managing the caseload.⁴¹⁷ Between 2010 and 2016, the court's caseload increased by 54%.⁴¹⁸ Lord Justice Briggs, while serving on the Court of Appeal, issued a report indicating that the court struggled with an excess of incoming cases and had accumulated a sizeable backlog as a result.⁴¹⁹ Referencing court data, Lord Justice Briggs noted that the annual incoming cases exceeded the court's

⁴⁰⁸ *Id.*; *see id.* at 561 (noting that while "stop-gap" solutions may provide temporary relief, the problem will persist if the filing rate increases).

⁴⁰⁹ Holvast, *supra* note 286, at 10.

⁴¹⁰ Jenkins & McCabe, *supra* note 282.

⁴¹¹ *Id.*

⁴¹² Holvast, *supra* note 286, at 19.

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.* (the full-time Judicial Assistants stayed for three years).

⁴¹⁷ *Id.*; BRIGGS, *supra* note 188, at 12 (noting that the court's backlog has gotten substantially worse).

⁴¹⁸ Jenkins & McCabe, *supra* note 282.

⁴¹⁹ BRIGGS, *supra* note 188, at 12.

capacity to manage the caseload.⁴²⁰ He surmised that the court needed seven additional justices to cope with the enormous workload.⁴²¹ But, the Government had made it clear that no additional judges would be hired in the immediate future.⁴²² Lord Justice Briggs recommended that the court increase the number of judicial assistants as one way of reducing its significant workload.⁴²³ As a result, in October 2016, the number of judicial assistants rose from seventeen to twenty-six.⁴²⁴

Judicial assistants in the Court of Appeal assist the justices in preparing for appeals, analyzing files submitted in support of appeal, doing legal research, and drafting case summaries.⁴²⁵ On occasion, the judicial assistants also “assist with research into specific subjects of interest in the law or administration of justice.”⁴²⁶

Judicial assistants are also critical to the efficient and effective functioning of the UK’s highest appellate court, the Supreme Court of the United Kingdom. The UK Supreme Court hired judicial assistants for the first time in 2000.⁴²⁷ The Appellate Committee of the House of Lords (“House of Lords”), predecessor to the Supreme Court, hired four judicial assistants to support the twelve Law Lords.⁴²⁸ The judicial assistants worked primarily for the four senior Law Lords, but provided occasional assistance to the other Law Lords.⁴²⁹ A lack of office space prevented the House of Lords from increasing the number of judicial assistants.⁴³⁰ The House of Lords transferred judicial authority to the Supreme Court in 2009 and moved to a more spacious location, which allowed the Court to increase the number of

⁴²⁰ *Id.* (noting that the court exceeded its capacity to handle incoming workload by 9,400 hours, and by approximately 50,000 hours to handle the accumulated backlog).

⁴²¹ *Id.* (detailing assistance from retired and High Court Judges would be needed in addition to the additional justices).

⁴²² *Id.*

⁴²³ *Id.* at 95.

⁴²⁴ *Id.* at 96.

⁴²⁵ 17070 - *Judicial Assistants in the Court of Appeal*, MINISTRY OF JUSTICE, <https://justicejobs.tal.net/vx/mobile-0/appcentre-1/brand-2/candidate/so/pm/1/pl/3/opp/17070-17070-Judicial-Assistants-in-the-Court-of-Appeal/en-GB> (last visited Jan. 22, 2022).

⁴²⁶ *Id.*

⁴²⁷ Tetyana Nesterchuk, *The View from Behind the Bench: The Role of Judicial Assistants in the UK Supreme Court*, in *JUDGE AND JURIST: ESSAYS IN MEMORY OF LORD RODGER OF EARLSFERRY* 99–100 (Andrew Burrows et al. eds., 2013); Colin McIntyre, Joseph Farmer & Michael Deacon, *Supreme Courts: The US and UK Compared*, L. SOC’Y SCOT. (Feb. 16, 2015), <https://www.lawscot.org.uk/members/journal/issues/vol-60-issue-02/supreme-courts-the-us-and-uk-compared/>.

⁴²⁸ Nesterchuk, *supra* note 427, at 100.

⁴²⁹ *Id.*

⁴³⁰ *Id.* at 101.

judicial assistants.⁴³¹ That year, the Court hired eight judicial assistants to assist the twelve Justices.⁴³² For the first time, some Justices were assigned a personal judicial assistant.⁴³³ The judicial assistants program continues to expand⁴³⁴ and now includes nine judicial assistants.⁴³⁵

Like law clerks in the U.S. Supreme Court and the Supreme Court of Canada, judicial assistants at the UK Supreme Court assist the justices with a range of tasks aimed at facilitating efficiency in the courts.⁴³⁶ For example, the judicial assistants' tasks at the UK Supreme Court include drafting bench memoranda, summarizing applications for permission to appeal, doing legal research, attending hearings and discussing the cases with their assigned Justice(s),⁴³⁷ and assisting the justices to research and draft extra-judicial speeches and presentations for legal conferences.⁴³⁸

The High Court of the United Kingdom welcomed its first cohort of judicial assistants in its Commercial Division in 2018.⁴³⁹ The UK High Court hears first instance civil and criminal cases and appeals from lower courts.⁴⁴⁰ With the increasing workload, judges, members of the bar, and other legal stakeholders agreed that judicial assistants were necessary to achieve timely and effective delivery of justice in the High Court.⁴⁴¹ Yet, there were no formal provisions in the High Court's budget to hire judicial assistants across all divisions.⁴⁴² Recognizing the Commercial Court's increasing workload

⁴³¹ *Id.*

⁴³² *Id.*; McIntyre et al., *supra* note 427 (noting that one judicial assistant is a permanent employee while the other seven each serve a one-year term).

⁴³³ Nesterchuk, *supra* note 427, at 101.

⁴³⁴ UK. SUP. CT., THE SUPREME COURT ANNUAL REPORT AND ACCOUNTS 2019-2020 39 (2020), <https://www.supremecourt.uk/docs/annual-report-2019-20.pdf> [hereinafter *Report for UK Supreme Court 2019-2020*].

⁴³⁵ *Id.* at 119.

⁴³⁶ Nesterchuk, *supra* note 427, at 104.

⁴³⁷ McIntyre et al., *supra* note 427.

⁴³⁸ *Id.*

⁴³⁹ SOPHIE TURENNE & JOHN BELL, THE ATTRACTIVENESS OF JUDICIAL APPOINTMENTS IN THE UNITED KINGDOM: REPORT TO THE SENIOR SALARIES REVIEW BOARD 23, 23 n.56 (2018),

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748580/SSRB_Report_Attractiveness_Turenne-Bell_Revised_14_March_FINAL_-_temp_pdf.pdf.

⁴⁴⁰ *The Structure of the Courts, CTS. & TRIBUNALS JUDICIARY*, <https://www.judiciary.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf> (last visited Jan. 22, 2022); RICHARD WARD & AMANDA AKHTAR, WALKER AND WALKER'S ENGLISH LEGAL SYSTEM 97 (11th ed.).

⁴⁴¹ TURENNE & BELL, *supra* note 439, at 23, 23 n.56.

⁴⁴² See JUDICIARY OF ENGLAND AND WALES & SENIOR PRESIDENT OF TRIBUNALS, JUDICIAL DIVERSITY COMMITTEE OF THE JUDGES' COUNCIL - REPORT ON PROGRESS - ACTION PLAN 5 (2018), <https://www.judiciary.uk/wp-content/uploads/2020/07/judicial-diversity-committee-of-the-judges-council-annual-report-2018.pdf> (noting that the Judicial

and the judges' need for support to manage the workload,⁴⁴³ the Commercial Bar Association (COMBAR) and the Commercial Court of the Queen's Bench Division of the High Court launched the Commercial Court Judicial Assistant Pilot Scheme in November 2017 to select and hire three permanent judicial assistants for a six-month placement starting in early 2018.⁴⁴⁴ COMBAR funded the scheme.⁴⁴⁵

The Judicial Diversity Committee proposed hiring judicial assistants for all High Court judges to help with their expanding workload.⁴⁴⁶ The judges across all divisions needed help to monitor and analyze the increase in electronic filings and submissions, clarify issues before a hearing, summarize key facts and legal issues, and research support.⁴⁴⁷ This proposal was rejected in 2018 on the ground that a judicial assistants scheme would be difficult to administer because of "cost, security, IT, and [] administrative resources."⁴⁴⁸ Judges at the High Court continued to ask the court to hire judicial assistants to help them with their workload which had increased in volume and complexity.⁴⁴⁹ For example, Justice Hildyard of the High Court explained in *The RBS Rights Issue Litigation*, a complex civil case, that while experts could help with technical queries, he needed judicial assistants to help during trial with assimilating and organizing evidence, ensuring that "the point of each day in the case is suitably marshalled,"⁴⁵⁰ and to provide the research support he needed to produce judgment in a timely manner.⁴⁵¹ To demonstrate the benefits of hiring judicial assistants in facilitating efficient and expedient court services, Justice Hildyard noted that because Justice Evans-Lombe had the help of a judicial assistant in the *Barings* trial, he was able to produce judgment in three months "when it would likely have taken at least twice that had the judge been operating without assistance."⁴⁵²

Looking at the successes of the judicial assistants' scheme in the Commercial Court and Chancery Division in the Business and Property Courts, the Ministry of Justice funded a Judicial Assistant Scheme which allowed the High Court to hire judicial assistants across all three Divisions

Assistants Scheme was not introduced in the High Court because of "key difficulties" such as "cost, security, IT and the administrative resources that would be needed to deliver and administer the scheme.").

⁴⁴³ TURENNE & BELL, *supra* note 439, at 23, 23 n.56.

⁴⁴⁴ *The Judicial Assistant Pilot Scheme*, COMBAR, <https://www.combar.com/news/the-judicial-assistant-pilot-scheme> (last visited Jan. 22, 2022).

⁴⁴⁵ TURENNE & BELL, *supra* note 439, at 23, 23 n.56.

⁴⁴⁶ See JUDICIARY OF ENGLAND AND WALES ET AL., *supra* note 442, at 5.

⁴⁴⁷ *Id.*; TURENNE & BELL, *supra* note 439, at 23–24.

⁴⁴⁸ See JUDICIARY OF ENGLAND AND WALES ET AL., *supra* note 442, at 5.

⁴⁴⁹ Jenkins & McCabe, *supra* note 282.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

starting in 2019.⁴⁵³ The High Court offers individual appointments lasting three to five months.⁴⁵⁴ Currently, the court seeks to hire thirty-six judicial assistants for three-month terms, the equivalent of twelve full-time appointments each year.⁴⁵⁵ The judicial assistants in the High Court are expected to “demonstrate an outstanding intellectual ability, excellent organisational skills and the ability to manage large and complicated workloads, as well as a high level of professional integrity.”⁴⁵⁶ They typically assist the judges to whom they are assigned with doing legal research, clarifying issues before a hearing, identifying and summarizing important facts, procedural history, and legal issues, and “providing general support for the judge(s) in the organisation of their work and hearings.”⁴⁵⁷ The courts in the UK do not appear to have an existing policy of hiring judicial interns or externs.

IV. JAMAICA SHOULD TAKE A MORE STRUCTURED APPROACH TO USING LAW CLERKS TO HELP TO INCREASE EFFICIENCY IN THE COURTS.

Like Canada, the United States, and the United Kingdom, Jamaica should take a more structured and strategic approach to using judicial law clerks to help to reduce the courts’ workload and increase efficiency and timely service. There is no question that the large volume of newly filed cases added to the internal and external challenges have led to a burgeoning backlog of cases, which have perpetuated the longstanding problem of protracted court delays. In fact, it must be rather concerning to citizens, potential investors, or anyone thinking of seeking justice through the courts to learn that the judicial

⁴⁵³ JUDICIARY OF ENGLAND AND WALES, BUSINESS AND PROPERTY COURTS - THE COMMERCIAL COURT REPORT 2018-2019 (INCLUDING THE ADMIRALTY COURT REPORT) 26 (2020), https://www.judiciary.uk/wp-content/uploads/2020/02/6.6318_Commercial-Courts-Annual-Report_WEB1.pdf (reporting that the first Commercial Court Judicial Assistants Pilot Scheme 2017-2018 was very successful and got “extremely positive feedback from both Judicial Assistants and judges.” The second Pilot Scheme was also a success leading the Ministry of Justice to fund a Judicial Assistant Scheme).

⁴⁵⁴ 26587 - *Judicial Assistant - High Court of England and Wales*, UK JUST., <https://justicejobs.tal.net/vx/mobile-0/appcentre-1/brand-2/candidate/so/pm/1/pl/3/opp/26587-26587-Judicial-Assistant-High-Court-of-England-and-Wales/en-GB> (last visited Jan. 22, 2022); *2020/21 Applications Open for High Court Judicial Assistant Scheme*, CTS. & TRIBUNALS JUDICIARY (May 4, 2020), <https://www.judiciary.uk/announcements/new-judicial-assistant-scheme-launched/> (last visited Jan. 22, 2022).

⁴⁵⁵ 26587 - *Judicial Assistant - High Court of England and Wales*, *supra* note 454; *2020/21 Applications Open for High Court Judicial Assistant Scheme*, *supra* note 454.

⁴⁵⁶ 26587 - *Judicial Assistant - High Court of England and Wales*, *supra* note 454.

⁴⁵⁷ *Id.*

system is “crippl[ed]” and “chok[ed]” by its workload.⁴⁵⁸ Put simply, this suggests that justice will be delayed and ultimately denied because the judicial system is overloaded and does not work.

As mentioned earlier, the Jamaican government has allocated additional resources to the judicial system, and the Chief Justice has outlined a Strategic Plan to ensure quality, efficient, and timely court services which are steps in the right direction. However, more action will be required to uncripple and unchoke the courts. To explain, without adequate court staff, the Chief Justice has to rely on the goodwill of some judges and court staff who have continuously been overworked for extended periods to realize the goals of the Strategic Plan. As explained in the example of the judges in Colorado, this is not sustainable and can have the opposite effect of causing the judges to burnout which will only cause additional delays.

As suggested by judges and attorneys, the Jamaican government and Chief Justice should explore hiring an adequate number of judicial law clerks to help the judges with their workload. The practice of hiring judicial law clerks to help judges to achieve a manageable workload finds support with Justice Denys Barrow of the Caribbean Court of Justice who notes that “[a]n overworked judge may be relieved not solely by the appointment of an additional judge but instead (or in addition) by the appointment of a judicial clerk.”⁴⁵⁹

It is important to remember that because a government cannot claim lack of funds as a valid reason for allowing court delays to deny justice to its citizens, the government should increase the budget allotted to the courts specifically to hire judicial law clerks.⁴⁶⁰ Ideally, each judge at all three tiers of court should be assigned at least one personal judicial law clerk to help with the judge’s workload; justices at the Court of Appeal should be assigned no fewer than two law clerks. The extensive legal research required to support the Court of Appeal justices’ duty to provide reasons for judgment justifies this suggestion.

Considering the ongoing situation of case backlogs, the courts should continuously assess each judge’s workload and determine the number of clerks that judge will need to effectively manage the caseload and meet the

⁴⁵⁸ Danae Hyman, *Chief Justice Promises Best Courts Regionally In Three Years; Backlog To Clear In Six Years*, THE GLEANER (Mar. 10, 2019), <http://jamaica-gleaner.com/article/lead-stories/20190310/chief-justice-promises-best-courts-regionally-three-years-backlog> (noting that the backlog of cases is choking the parish courts); Lavern Barrett, *Chief Justice Promises Faster Divorces*, THE GLEANER (Apr. 4, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180405/chief-justice-promises-faster-divorces> (noting that the backlog cases is crippling the courts).

⁴⁵⁹ Barrow, *supra* note 10, at 438 (further noting that “[a] judicial clerk can assist a judge in significant ways with the burden of writing a judgment.”).

⁴⁶⁰ See SAVVIDIS, *supra* note 9, at 33 (noting that states cannot be excused from the enforcement of a valid judgment due to lack of funds).

goals under the Strategic Plan. Given that a law clerk typically increases a judge's productivity, sometimes by 100%, a judge in the Supreme Court with an overwhelming caseload and backlog of cases, for example, may need the help of two personal law clerks for two years to reduce his or her workload to a manageable level, but after the case backlog has been cleared will only need the help of a personal law clerk.

Courts that see high volumes of cases, complex cases, or are experiencing high congestion rates may need additional help to reduce their pending caseload and improve efficiency. To that end, the courts should explore hiring additional law clerks that are available to assist all judges. These judicial law clerks would not be assigned to a particular judge; they would be available to assist all judges in that court.

Second, the government may also hire law clerks on a temporary basis for the sole purpose of working on discrete projects with the end goal of reducing a court's workload. Following the example of the District of Columbia Court of Appeals,⁴⁶¹ the government may hire temporary clerks for six months or a one-year term to focus on a particular delay reduction goal. For example, in the Supreme Court, temporary law clerks could focus on ensuring that case files are up to date and have the required information for trial to proceed. As another example, temporary law clerks could help to update court records and help to purge old unresolved cases.

Third, the Chief Justice may explore internship or externship relationships with Norman Manley Law School, MonaLaw, and University of Technology, where law students would serve as judicial interns or externs for academic credit. The benefits of this arrangement to all parties often outweigh the challenges of supervising these law students. Like the model adopted by the Superior Court of Ontario, the judicial interns or externs would be assigned to various courts to work on discrete projects aimed at eliminating the court's case backlog.⁴⁶²

Fourth, the Chief Justice may approach members of the Jamaica Bar Association (JamBar) to sponsor a judicial law clerk or several clerks for a set term. These clerks may be directed to the courts, or divisions within a court, with the highest case backlog. To offer an example, (COMBAR) in the UK provided funds to the High Court to hire three judicial assistants for a six-month period to help to reduce the caseload.⁴⁶³

Fifth, the Chief Justice may explore hiring judicial law clerks on a part-time basis. This allows the court great flexibility in determining what days and times the judicial law clerks will report to work. This is by no means ideal when faced with the present urgency of "uncrippling" and "unchoking"

⁴⁶¹ See generally COMM. ON THE D.C., *supra* note 359.

⁴⁶² ONTARIO CTS., *supra* note 327, at 44.

⁴⁶³ TURENNE & BELL, *supra* note 439, at 23, 23 n.56.

the courts, but it should put to rest any challenges or arguments against hiring clerks based on a lack of space. The Chief Justice may look to the UK Court of Appeal which hired sixteen judicial assistants for one year on a part-time basis; the judicial assistants worked two and a half days each week.⁴⁶⁴

V. CONCLUSION

Jamaica's Chief Justice's Strategic Plan aimed at making the Jamaican judiciary one of the best in the Caribbean and the world in terms of quality, timely, and efficient court service is a welcomed note to our ears as it signals an end to the longstanding protracted court delays. However, asking judges to consistently overwork to meet the Strategic Plan's timelines is neither fair to the judges nor sustainable. While no one method alone can ensure efficiency in a judicial system, Jamaica should look to the successes of Canada, the US, and the UK, in employing law clerks to help to increase judicial productivity. In short, Jamaica should consider a systematic and strategic approach to hiring judicial law clerks who are undoubtedly a cost-effective way to start unclogging the courts.

⁴⁶⁴ Holvast, *supra* note 286, at 19.