

PRESS RELEASE - Wednesday, June 28, 2017

Civil Justice Advocacy Group (CJAG)

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DIGITAL RECORDING IS THE OFFICIAL RECORD OF THE COURT

A recent judgment of the Privy Council (UK) has declared the digital recording of court proceedings to be the primary and official record of the court.

The ruling comes five years after the Civil Justice Advocacy Group (CJAG) launched a campaign to counter the decision by former President of the Court of Appeal, Edward Zacca, to deny parties access to the digital recordings of their Court of Appeal hearings in 2011 and 2012.

“We had been stymied by several officers of the court on this issue at every turn.”

Former Attorney General, Kim Wilson, told members of CJAG in a meeting in January 2012, that the “judge’s notes” still constituted the official record of court proceedings.

In July of 2012, former Supreme Court Registrar, Charlene A. Scott publicly stated: “The judge’s note is the official record, unless otherwise indicated” — a direct contradiction of the Bermuda Judiciary’s Annual Report for 2012, which had reported: “The CourtSmart digital voice recording system has now been operational for more than 8 years. It is extensively used in our Supreme Courts, both in trial and in chambers hearings, as the formal record of proceedings...”

And although Court of Appeal recordings were again allowed to parties at the end of 2012, members of CJAG continued to be denied recordings of their hearings held between 2011-2012, and continued to be told that the digital record was not the “official record”—which left it open for parties to be denied access at any time.

When the group sought assistance from the Centre for Justice in 2013, they were told, again, that the official record of court proceedings was the “judge’s notes.”

In 2014 the former Director of Public Prosecutions (DPP), Rory Field, released the following statement to CJAG via the Commissioner of Police, in response to a criminal complaint made by members of the group: “In law, the official record of the Court of Appeal and the Supreme Court is the judge’s notes...”

When CJAG asked for “copies of the Bermuda legislation that supports the DPP’s analysis that, in law, the judge’s notes are the official record of proceedings”, they received the following reply on behalf of the DPP: “There is no specific reference to Judges notes in statute...”

Evidence Amendment Act 2001, Never Brought into Force

CJAG subsequently brought to the attention of the authorities the fact that legislation intent on making the digital recording the official record of court proceedings and providing guaranteed access to all parties, was tabled in the House of Assembly in 2001.

“Unbelievably, the *Evidence Amendment Act, 2001*—tabled in the House by the late Attorney General, the Hon. Dame Lois Browne-Evans—was never brought into force over the course of the last 16 years!”

“Although passing both the House and Senate without issue, and receiving the assent of the Governor, all in 2001, this piece of legislation never received the required gazetting under seven consecutive Attorney Generals (Ministers of Justice) — five under the Progressive Labour Party (PLP) and two under the current One Bermuda Alliance (OBA); neither the additional required gazetting by three consecutive Chief Justices, including the former CJ, the late Richard Ground and the current CJ, Dr. Ian Kawaley.”

“Where is the accountability?”

Petition to Premier Dunkley Met With Silence

By way of a petition dated 11 January 2015, CJAG brought much of the foregoing to the attention of the current Premier, the Hon. Michael Dunkley. The group formally requested that the Premier exercise his powers under sections 71A(b) and 86(5) of the Bermuda Constitution, to initiate an investigation of the DPP, Rory Field.

It concluded: “It is an absurdity that Bermudians are being told by the highest, legal, public officer that they have no legal right to a true and unbiased record of their proceedings, in the face of legislation passed by their duly elected representatives, and confirmed by its sustained usage by the Judiciary.”

This petition was met with a stony silence, without even an acknowledgement of receipt.

Privy Council Judgment Vindicates CJAG’s Efforts

In *Sumodhee (and others) versus The State of Mauritius*, on appeal to the Privy Council, the Director of Public Prosecutions of Mauritius had also argued: “It is the transcript of the shorthand note (and/or the judge’s notes of evidence) which is ‘*the*’ official record of the proceedings in the court of trial.”

Not so, says the Privy Council.

In a judgment handed down on 22 May 2017, and referencing sections of the Mauritius Constitution identical in substance to corresponding sections of the Bermuda Constitution, the following confirmation was given:

“A digital recording is clearly a record of the proceedings... For a Supreme Court trial, the modern transcript is prepared from the digital recording, not from a shorthand note. Moreover . . . it is the digital recording which is the primary record; the transcript . . . is a derivative. An accused is entitled, on payment of the cost of providing it, to a copy of the digital record of the trial.”

Therefore, despite the foregoing administrative failures of the Bermuda government and judiciary, this recent ruling of the Privy Council confirms that the consistent usage of the digital recording system by the Bermuda courts would have “clearly” rendered it the official record, in any event.

“Why were we given the run around on such a basic issue? Why was an Act of Parliament, assented to at all legislative stages, never brought into force? Why were we denied access to a court recording system paid for by the public purse? Why were we told that a system that was in use, and regularly transcribed for appeals, was not the official record?”

“We believe these impediments severely affected our constitutional right to progress our cases before the courts, and will be making a further statement in due course.”

“In the meantime, we feel vindicated by this recent ruling of the Privy Council, and will continue to expose injustice, and to improve access to justice, in the Bermuda Judiciary.”

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