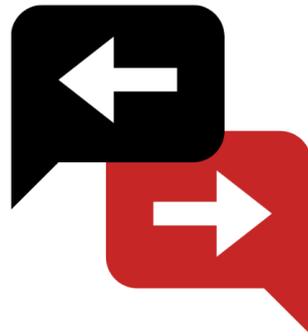




FROM THE PETTY CIVIL COURTS TO THE



SMALL
CLAIMS
COURT

**DISCUSSION PAPER ON THE PETTY CIVIL COURT
OF THE JUDICIARY OF TRINIDAD AND TOBAGO
A case for the establishment of Small Claims Courts**

1.0 Introduction and Background

The existing Petty Civil process is in urgent need of reform as it is fraught with delay and frustration.¹ In Trinidad and Tobago, the Petty Civil Court is a function of the Magistracy, which also exercises summary jurisdiction in criminal matters. In its petty civil jurisdiction, the Magistracy deals with civil matters involving claims less than the sum of fifty thousand dollars (\$50,000.00).²

In 1998, Mr. Justice Richard Greenslade in his report entitled “*Judicial Sector Reform Project: Review of the Civil Procedure*” identified the following problems with the Petty Civil Court:

- i. it is wrongly placed within the Magistrates’ Courts and hence compete for court facilities and court resources,
- ii. it fails to reach the needs of smaller litigants,
- iii. substantial backlogs,
- iv. the process for serving is extremely difficult,
- v. court management is overburdened with both Criminal and Civil matters

In his report, Greenslade recommended that a fresh start is required, an entirely new system for dealing with small claims.

A Report of the review team appointed by Cabinet to advise on systems to reduce existing delays in the administration of justice, chaired by Dennis Gurley, Attorney-at-Law (the Gurley Report), identified recommendations for a Small Claims Court in Trinidad and Tobago, including the following:

“This Court should not be a Court of record, pleadings should be informal and kept to a minimum, legal representation should be discouraged, no legal costs should be allowed and there should be no right of appeal except with leave of a Judge of the High Court on a point of law.”

In 2003, the Petty Civil Court Strategic Review Committee prepared a preliminary report on the Petty Civil Court. The Committee identified, inter alia, the following problems with the Petty Civil Court in 2003:

- i. the period of validity of ordinary summonses,
- ii. service of the summonses,
- iii. issues concerning the roles and functions of various court personnel and their levels of training and experience,
- iv. lack of proper record keeping, storage, archiving and retrieval mechanisms of court files,
- v. lack of standardization of procedures and policies from district to district,

The most recent study of the Petty Civil Courts was concluded in May 2020. Data gathered across 12 District Court locations revealed the following:

- The average time to disposition is 2 years (where many other jurisdictions in the world dispose of matters within 6 months)
- Serving summonses, and the issues experienced with performing this function, contribute to a significant bottleneck in the case flow

¹ See ‘*Improving Court Services Through Process Reform*’ Annual report 2017-2018

² See the Petty Civil Act Chapter 4:21

- Approximately 20% of the pending caseload can be immediately considered for mediation.
- The lack of dedicated and consistent judicial resources contributes to backlogs and lengthy trial processes
- There are various service delivery inconsistencies across court locations, due to the nuances of each location

This further reinforces the dire need to reform the Petty Civil Court.

The present day strategic focus of the Judiciary of Trinidad & Tobago, corroborated by research, such as that mentioned above, and the content of various speeches of successive Chief Justices over the years, including the Honourable Mr. Justice Ivor Archie, ORTT, has been geared towards “better service delivery through process reform” especially in the face of limited financial resources.

Despite various efforts and some minor changes to the Petty Civil processes since the early 1990’s, the Judiciary is cognizant that the Petty Civil Court (PCC) and its related systems are in urgent need of wide-scale, systematic reform.

The *Criminal Division and District Criminal and Traffic Courts Act No. 3 of 2018* paved the way for large-scale reform within the Magistracy, as it relates to criminal matters. Processes, people and other resources are being reorganised to address the demands of the summary criminal jurisdiction. With recent reform in the civil (supreme), criminal, family and children jurisdictions, the petty civil jurisdiction must also be revisited with the view to keeping pace with the broader goals and vision of the Judiciary.

The COVID-19 Pandemic of 2020 necessitated a quick transformation in the operations of the Judiciary of Trinidad & Tobago. This wave of organizational change also presents the Judiciary the opportunity to advance its reform in the PCCs.

2.0 The Issues

2.1 The process is lengthy and accommodates delay

The types of matters that are heard before the Petty Civil Court include; debts (monies owing), breach of contract, neglect/negligence, and possession. According to the Annual Report 2017-2018,³ over the last eight years, an average of approximately 1,900 petty civil matters per year were listed to be heard. Monies owing accounted for over 60% of the matters filed. There has been a steady decline in the disposition to filing ratio from 51% in 2010 to 29% in 2017. The period of January 1 2015 to December 31 2018 showed an average annual clearance rate of 55% (where the international court performance standard is between 92% and 100%). Matters in the PCCs are generally disposed of between 1 to 2-year periods and the 1 to 2-year age of active pending matters account for over 70% of the pending caseload.

The reasons cited for delay include

- “Reasons relating to the Defendant”,
- “Adjourned for Trial (date set for Trial)”,
- “Both parties absent”.

These reasons account for roughly 50% of adjournments.

These statistics therefore illustrate within the court a culture of delay. It should be noted that the Petty Civil Court process is not governed by the *Civil Proceedings Rules 2016*, which adopts case management principles and caseflow management techniques including case management conferences, adjournment policies and other strategies to avoid unnecessary delay. The Rules of Court for the Petty Civil process, which are contained in the *Petty Civil Court Act Chap 4:21*, are outdated.

Within the Magistracy, no real distinction is made between the people, processes, physical spaces and other resources of the Magistracy assigned to treat with the various case types. Magistrates assigned to sit in the Petty Civil Court jurisdiction (Petty Civil Judges), Magistracy Registrars and other Court staff share their time between the criminal and civil matters, with criminal matters often consuming the priority position due to the size, and often urgent nature, of the caseload.

Matters are disposed of by decisions of the Petty Civil Court Judge. Although the Petty Civil Court Act provides for matters to be resolved through mediation, the court does not facilitate this service. For many courts, petty civil matters are adjourned (or hearing dates deferred) because there is no Magistrate available to hear them. They are simply not prioritized.

2.2 Process is intimidating (location, lack of information, customer service) which may be why persons resort to attorneys to do it for them

Although, the District Courts deal with both civil and criminal matters, the strong police presence within the courts presents an atmosphere of criminality. Further, some courtrooms which are used for both civil and criminal matters are outfitted with holding cells and in some instances

³ See 10.0 Process Reform and Re-engineering through E-Strategies

accused persons are brought into the court room and placed into the holding cells whilst civil matters are proceeding.

Also, the buildings, process flows and information available are not suitably designed for a self-represented litigant or anyone not familiar with legal rules and process. Signage is inadequate (not clearly visible, and in legal language) and staff are not appropriately trained to guide and assist customers through the process. Official information on the process can only be obtained at the court office, from court office staff.

The process for filing a claim appears complicated for the average individual, particularly those who file without an attorney. Litigants are not sufficiently aware of the requirements throughout the entire process.

In other courts of similar jurisdiction around the world, the petty civil/small claims process is usually premised/contemplated on the self-represented litigant being the primary customer. Processes of filing court documents, rules of evidence and methods of service, and general information about the court processes are designed to suit persons of limited means and persons who do not have access to attorneys' services.

In Trinidad and Tobago, the data collected on matters filed and matters disposed of illustrates that a large number of the court's customers (and especially claimants) for the petty civil jurisdiction are either private businesses (or public utilities. These include financial institutions, hire purchase companies, insurance companies, utility companies, and medium to large private businesses.

2.3 The under-utilisation of mediation

Although the Petty Civil Court Act provides for the resolution of matters by way of mediation, there is an apparent under-utilisation of non-litigious measures to address cases.

2.4 Service

The Petty Civil Courts Act Chap 4:21 indicates that service of the summons is to be effected no later than 3 days prior to the matter being listed for hearing. Due to the history of issues with effecting service, court office staff usually set the date of hearing for 6-8 weeks from the date of the issuance of the summons.

While the summons is served on the Defendant by visiting their home or work address, Bailiffs on court staff and even claimants, sometimes find difficulty in locating defendants. Bailiffs are reluctant to serve in hotspot/high crime areas and they only work during the hours of 7:00am to 4:15pm. This limits opportunity for service.

Where service is to be effected by the claimant, the onus is on the claimant to collect the summons from the Court office, and file the return of service with a sworn affidavit. Claimants may serve either on their own, with the accompaniment of a police officer, or outsourced services from a private Bailiff. When the summons is not collected by the claimant or the return of service is not filed, the matters are adjourned. In many cases, the Defendant cannot be found. This results in adjournments. In some cases, after multiple attempts (usually 3 to 4 attempts), the process to apply to the Court for a decision may take another 2 months. These cases utilize significant court resources and time, with no benefit to the claimant.

2.5 Outdated court records management system

While the District Criminal and Traffic Courts are readying for the full implementation of the case management information system, the Trinidad and Tobago Judicial Information Management system (TT.jim), the Petty Civil Court is not yet making similar steps. The Petty Civil Courts in the San Fernando Magistrates Court and the Scarborough Magistrates Court operate on JEMS (Judicial Enforcement Case Management Information System) after same was piloted in 2005 at these two court locations, but all of the other court locations are still operating with archaic paper records and processes.

Quite apart from the heavy reliance on paper (and the issues associated with those, including issues pertaining to the integrity of court files), there are no proper storage facilities for these files. While some files are stored in boxes on the floors, others are bursting at the seams on the shelves.

Since every District Court location in Trinidad & Tobago has been outfitted with For The Record (FTR) digital record court record solution and video conferencing technology it is important that recordkeeping in relation to petty civil matters be allowed to happen in an electronic environment.

3.0 The Proposed Solution

The product of this proposed reform effort is an efficient small claims court that replaces the petty civil court, which resolves claims in a timely manner, is founded on systems and process that are convenient and customer-focussed.

In other jurisdictions worldwide, the Small Claims Court holds a prominent position in the civil court system and is regarded by the World Bank's *Ease of Doing Business Report* as a key element of public trust and confidence in the judicial system:

"They help meet the modern objectives of efficiency and cost-effectiveness by providing a mechanism for quick and inexpensive resolution of legal disputes involving small sums of money.⁶ In addition, they tend to reduce backlogs and caseloads in higher courts. Small claims courts usually use informal hearings, simplified rules of evidence and more streamlined rules of civil procedure—and typically allow the parties to represent themselves."⁴

It is an example of proportionate justice, alternative dispute resolution and modern access to justice because of its simplified civil procedure, relaxed rules of evidence and afforded self-representation. In various countries, the Small Claims Courts have been regarded as the vanguard of the legal system at its point of contact with the life of the ordinary citizen that must, as efficiently as possible, dispose of huge numbers of small private quarrels.

Summary

The Small Claims Court, which essentially requires facilities, legislation and caseflow management systems, processes, procedures and policies, will comprise the following key components:

- A. Appropriately placed and laid out facilities, to allow access to the public across Trinidad & Tobago, which handle services ranging from receipt of filings, hearings and issuance of orders of the court;
- B. New legislation;
- C. Small Claims Rules of Court;
- D. Appropriately staffed Small Claims Courts including appropriate Judicial Officers and administrative staff, in accordance with the legislation; and
- E. Technological solutions and processes to support the aforementioned Rules of Court and service to the customers, to allow for adequate monitoring of the effectiveness of the Small Claims Court and continuous improvement of same.

⁴ Enforcing Contracts Good Practices, Doing Business – World Bank Group - <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/good-practices#Introducing>