

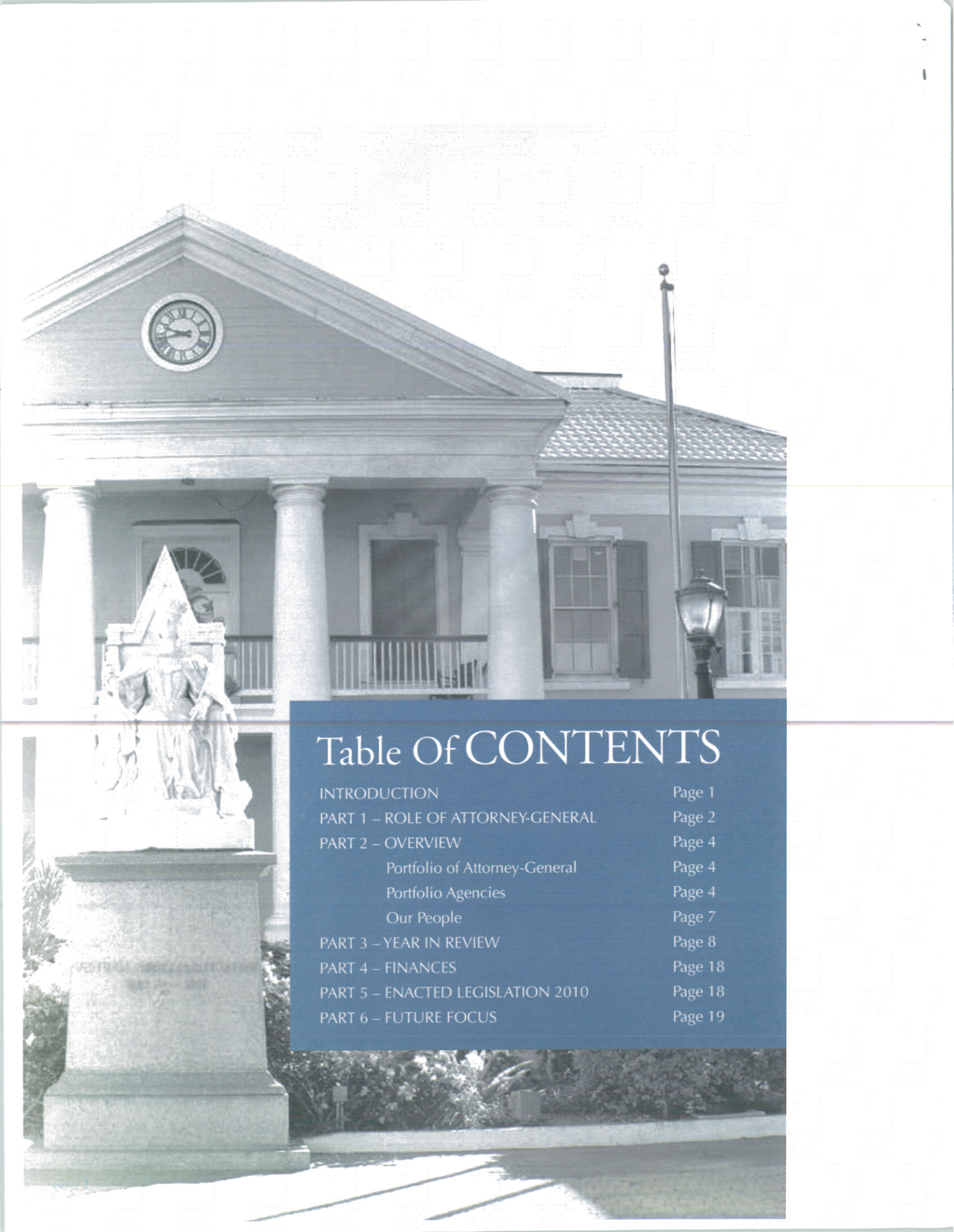


# REPORT 2010

Of The Attorney-General & Minister Of Legal Affairs



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# Report 2010

## Of The Attorney-General & Minister Of Legal Affairs



Fellow Bahamians,

The Government seeks to provide our country with an improved and more efficient justice system in order to promote an orderly society and economic growth.

The Office of the Attorney-General and Ministry of Legal Affairs perform important functions in relation to the justice system.

*Our mission at the Office of the Attorney General is to promote justice in the Commonwealth of The Bahamas through the delivery of comprehensive and efficient legal services to the Government.*

Over the past year we have made progress over several areas of the Attorney-General's portfolio. By this Report 2010, I share with you highlights of the efforts and achievements of our team over the past 12 months. I also state our direction for 2011.

I am honoured to serve you as Attorney-General and Minister of Legal Affairs.

John Delaney QC  
*Attorney General*  
*Minister of Legal Affairs*



Official swearing in ceremony of John Delaney QC as Attorney General of The Bahamas

## PART 1 Introduction

### ■ Role of Attorney-General

The title “Attorney-General” first appeared in England in 1461. Over the centuries the nature of the office has evolved and the Attorney-General has many common law powers and privileges associated with being the *Principal Law Officer of the Crown*.<sup>1</sup>

Today as the Crown’s first law officer, the Attorney-General performs a number of functions<sup>2</sup>, including, amongst other functions: legal adviser to the government; superintending Minister with responsibility for legal affairs<sup>3</sup>; guardian of the public interest; and functions in relation to Parliament and the legal profession. Additionally, the Attorney-General is recognised as titular head of the Bar.<sup>4</sup>

The *Constitution*<sup>5</sup> requires that “[t]here shall be a Cabinet for The Bahamas which shall have the general direction and control of the government of The Bahamas and shall be collectively responsible therefore to Parliament.” It further requires that “[t]he Cabinet shall consist of the Prime Minister and not less than eight other Ministers (of whom one shall be the Attorney-General)...”

The powers of the Attorney-General are stated at Article 78 of the *Constitution* in the following terms:



Cabinet hosted by Sir Arthur Foulkes, Governor General of The Bahamas

2 Jones, ‘The Office of Attorney-General’, p. 43.

3 ‘The concept of ‘superintendence’ has never been categorically defined but can be said to encompass: “...setting the strategy for the organization; responsibility for the overall policies of the prosecuting authorities, including prosecution policy in general; responsibility for the overall ‘effective and efficient administration’ of those authorities, a right for the Attorney-General to be consulted and informed about difficult, sensitive and high profile cases; but not, in practice, responsibility for every individual prosecution decision, or for the day to day running of the organization.” - The Governance of Britain: A Consultation on the Role of the Attorney-General: <http://www.attorneygeneral.gov.uk/attachments/Consultation%20on%20the%20Role%20of%20the%20AGO.pdf>

4 The Law Officers of The Crown, J. Ll. J. Edwards, Sweet & Maxwell, 1964, Introduction.

5 The Bahamas Independence Order 1973, Chapter VI, The Executive, Article 72

1 The Law Officers of The Crown, J. Ll. J. Edwards, Sweet & Maxwell, 1964, Ch 13 Privileges and Honours.

“(1) The Attorney-General shall have power in any case in which he considers it desirable so to do –

- (a) To institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
  - (b) To take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
  - (c) To discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (2) The powers of the Attorney-General under paragraph (1) of this Article may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.
- (3) The powers conferred upon the Attorney-General by sub-paragraphs (1)(b) and (c) of this Article shall be vested in him to the exclusion of any other person or authority: Provided that, where any other person or authority has instituted criminal proceedings, nothing in this Article shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.
- (4) In the exercise of powers conferred upon him by this Article the Attorney-General shall not be subject to the direction or control of any other person or authority.
- (5) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings to any other court shall be deemed to be part of those proceedings.”

*At a Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions*



convened at Marlborough House, London, in October 2010, “[t]hemes discussed and to which Law Ministers and Attorneys-General expressed commitment were those of professionalism, independence, freedom from corruption, transparency and accountability.”<sup>6</sup>

Report 2010 is in furtherance of the Attorney-General’s commitment to transparency and accountability in the exercise of his functions.

On the topic of an annual report by Attorneys-General, it is observed that in March 2008 the English Government published a White Paper<sup>7</sup> and a Draft Bill that proposed, amongst other things, that the Attorney-General be required to produce an annual report of his/her functions and to lay it before Parliament. The annual report would exclude information that related to legal professional privilege; would prejudice national security or international relations; or would prejudice the investigation of a suspected offence or proceedings.

It is further observed that Attorneys-General of Canadian and Australian provinces are required by law to produce annual reports to be laid before Parliament.<sup>8</sup>

<sup>6</sup> Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions, Marlborough House, London, 21-22 October 2010, COMMUNIQUE.

<sup>7</sup> Entitled “The Governance of Britain – Constitutional Renewal”.

<sup>8</sup> Attorney-General Act [RSBC 1996] Ch. 22, British Columbia, Canada; Ministry of the Attorney-General Act RSO 1990, Ch. M.17, Ontario, Canada; Public Sector Management Act 2009, South Australia, Australia.



*AG Delaney at the Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions in London.*

## PART 2 Overview

### ■ Portfolio of the Attorney-General

The Attorney-General and his team of law officers and administrative personnel of the Office of the Attorney General (“OAG”) and Ministry of Legal Affairs (“MLA”) provide advice and services on a range of law and justice issues. The Attorney-General’s portfolio<sup>1</sup> encompasses a diverse range of responsibilities as follows:

- Legal Advisor to the Government
- Relations with the Judiciary
- Notaries Public
- Criminal Prosecutions
- International Legal Cooperation
- Inquiries
- Mutual Legal Assistance
- Law Reform and Revision
- Legal Education
- Coroners
- Justices of the Peace
- Law Reports
- Legal Aid
- Relations with the Magistracy
- Relations with the Industrial Relations Tribunal
- Relations with the Utilities Regulation and Competition Authority
- Utilities Appeal Tribunal Act
- Registration of Documents
- Registration of Births, Marriages and Deaths
- Companies
- Registration of Commission Merchants
- Intellectual Property Rights
- Relations with The Bahamas Financial Services Board
- Promotion and Development of Financial Services

<sup>1</sup> Official Gazette dated 2 December 2009.

## ■ Portfolio Agencies

- The Office of Attorney-General
- Law Reform and Revision Commission
- Registrar General's Department

### Office of the Attorney-General

The OAG leads the portfolio and sets the policy and operational direction.

The administrative head of the OAG and MLA is the Permanent Secretary<sup>2</sup>, Mr. Archie Nairn, appointed 21 June 2010<sup>3</sup>. He is assisted by Under Secretary Leroy Sumner and First Assistant Secretary Bridgette Stuart and a team of administrative staff.

To effectively execute the legal service functions of the Attorney-General, the OAG is divided into two departments, namely:

1. **Department of Legal Affairs; and**
2. **Department of Public Prosecutions.**

### Department of Legal Affairs

The Department of Legal Affairs is the larger of the two departments consisting of 31 law officers and headed by the Director of Legal Affairs, Mrs. Deborah Fraser, who was appointed Director in 2005. Mrs. Fraser is a veteran law officer of the Crown having started her service with the OAG in 1987. The office of Director of Legal Affairs is as a matter of law the *Head of the Legal Department*<sup>4</sup> of the OAG.

The Department provides services to Parliament, all government ministries and departments, and to the several Service Commissions.

The Department of Legal Affairs, in turn, is organized into four (4) sections:

- Civil Chambers**  
Advises government ministries and agencies; and drafts and vets legal documents on behalf of the government. Currently seven (7) law officers are assigned to this section.

- Civil Litigation**

Acts on behalf of government ministries and agencies in civil litigation, whether as plaintiff or defendant, and renders advice to government and its agencies on contentious matters. This section also represents the Crown in judicial review proceedings except in relation to the criminal law. At present the section has twelve (12) law officers assigned to it. Assistant Director of Legal Affairs David Higgins is the head of litigation.

- International**

Provides assistance to foreign countries in matters of mutual legal assistance pursuant to treaties, under the *Criminal Justice (International Co-operation) Act*, or under the *Civil Justice (Proceedings in Other Jurisdictions) Act*; and also carries out treaty obligations under multilateral organizations to which The Bahamas is a party, such as the *Caribbean Community, Organisation of American States* and the *United Nations*. It also has responsibility for conducting any litigation necessary to execute its mandate. This section presently has six (6) law officers and is headed by Deputy Director of Legal Affairs Antoinette Bonamy.

- Legislative Drafting**

This section is equivalent to what is known as the *office of parliamentary counsel* in other Commonwealth jurisdictions. It drafts and amends Bills and subsidiary legislation. The Legislative Drafting section is to be distinguished from the Law Reform and Revision Commission in that the latter has the function of keeping the laws of The Bahamas under constant review so as to systematically develop and modernize them. Whereas the Commission undertakes large legislative reform projects, the Legislative Drafting section generally does not. The Legislative Drafting section has five (5) law officers including Director of Legal Affairs Deborah Fraser who, in addition to her overall responsibilities for the Department of Legal Affairs, functions as de facto *chief parliamentary counsel*.

### Department of Public Prosecutions

This Department is authorized by the Attorney-General to institute and undertake criminal proceedings against any person before any

<sup>2</sup> The Constitution, Article 88, subject to the direction and control of the relevant minister, the Permanent Secretary is responsible for the ministry.

<sup>3</sup> Permanent Secretary Thelma A. Beneby retired 31Mar10 from the OAG and was succeeded by Harrison Thompson ad interim until Permanent Secretary Nairn's appointment to the OAG.

<sup>4</sup> The Constitution, Judicial and Legal Service Commission Regulations, Reg 2. "Head of Department"



court in respect of any offence against the law of The Bahamas and to take over and continue any criminal proceedings that may have been instituted by any other person or authority.

The Department is concerned exclusively with the criminal law. It represents the Crown in criminal appeals; advises the Attorney-General in criminal law matters; litigates in judicial review proceedings if it concerns criminal law and procedure; and represents requesting countries in extradition matters before Bahamian courts.

The Department comprises 20 law officers headed by a Director of Public Prosecutions, Mrs. Vinette Graham Allen, a veteran prosecutor with senior management experience in the Departments of Public Prosecution of Jamaica and Bermuda, respectively. Mrs. Graham Allen's term as Director commenced on 5 August 2010.

### Law Reform and Revision Commission

The Law Reform and Revision Commission ("LRRC") is established under the Law Reform and Revision Act. The LRRC is headed by a Law Reform and Revision Commissioner, currently Mr. Justice (Ret) Mohammed. During the year, ending 31 October, a second Commissioner, Mr. Justice (Ret) Mustafa Ibrahim, was engaged on a project for the revision of the Penal Code.

The general functions of the LRRC are to keep under review the laws of The Bahamas

with a view to modernizing their systematic development and reform, and to prepare revised editions of the existing laws with a view to repealing and eliminating all obsolete or archaic laws and laws which are temporary in nature. The LRRC is subject to the direction of the Attorney-General and is required to produce a report annually that is laid before Parliament.

At present, the LRRC is staffed by eleven (11) persons. Of that number, five (5) are law officers (including Commissioner Mohammed).

### Registrar General's Department



Ms Jacinda Butler  
Registrar General

The Registrar General's Department ("RGD") is responsible for:

- Registration of deeds
- Certification and registration of births, marriages and deaths
- Registration of Companies
- Registration of Business Names
- Registration of Commission Merchants
- Intellectual Property Office (Patents, Trademarks and Design Copyright).

The RGD is headed by acting Registrar General Ms. Jacinda Butler.





Mr Archie Nair  
*Permanent Secretary*



Mrs Deborah Fraser  
*Director of Legal Affairs*



Mrs Vinette Graham Allen  
*Director of Public Prosecutions*



Mr Leroy Sumner  
*Under Secretary*



## ■ Our People

The OAG and MLA combined have a staff complement of 253 persons comprising 50 males and 203 females.

### Office of Attorney-General

The OAG (inclusive of the Department of Legal Affairs, Department of Public Prosecutions, Law Reform and Revision Commission, and the administration department of the MLA) currently has a complement of 142 persons on staff including the Attorney-General. Of that number, 136 are located in the Nassau, New Providence offices, while six (6) are stationed in the Freeport, Grand Bahama office.

There are at present 57 law officers (down by 4 compared to the start of year), including the Attorney-General, comprising 19 males and 38 females.

### Registrar General's Department

The RGD has a total of 100 persons, including 17 males and 83 females. There are 3 attorneys.

87 staff members are based at the Nassau office and 13 at the Freeport office.



*A planning session at the OAG.*

## PART 3 Year In Review

*Our mission in the OAG is to promote justice in the Commonwealth of The Bahamas through the delivery of comprehensive and efficient legal services to the Government. The OAG is composed of law officers, support staff and administrators who work towards accomplishing this mission.*

Highlights and summary of activities of the Attorney-General and the portfolio agencies during 2010 -

### ■ OAG Operational Improvements

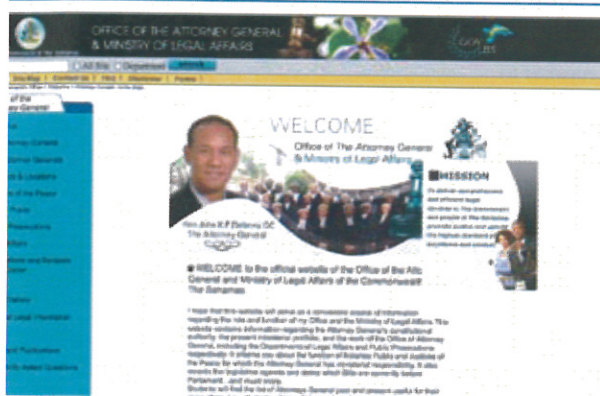
- i. Secure government domain email provided<sup>1</sup> – Arrangements were made early in the year for OAG personnel to be provided with secure government domain (*bahamas.gov.bs*) email accounts

for the conduct of OAG electronic communications. This compares with a pre-existing situation where there was limited email access and, where internet access existed, email accounts hosted by unsecure commercial email service providers were most often used. A standard email signature block was implemented to provide a professional presentation of OAG email communications; and email user groups were established to facilitate departmental and work group communications.

- ii. Strategic planning undertaken – the Attorney-General convened departmental meetings with senior law officers for strategic planning and to establish operational objectives. Additionally, general staff meetings were held for information exchanges on various issues.
- iii. OAG Website [www.bahamas.gov.bs/attorneygeneral](http://www.bahamas.gov.bs/attorneygeneral) Launched<sup>2</sup> – Substantial information content was prepared and a website designed and launched on 1 December. It is hosted on the government domain. The website is the first ever for the OAG and is in furtherance of a commitment to better serve the public by the provision of information.

<sup>1</sup> Facilitated by the Information Technology Unit of the Ministry of Finance.

<sup>2</sup> Facilitated by the Information Technology Unit of the Ministry of Finance.



The website:

- Provides information about the authority and function of the Attorney General;
- Records the legislative agenda and informs the public as to what Bills are currently before Parliament;
- Provides direct link to *Bahamas Laws Online* for access to Statute Laws of The Bahamas;
- Informs about the functions of Notaries Public and Justices of the Peace;
- Provides information useful for students engaged in civics studies;
- Provides legal developments not otherwise addressed by the Supreme Court or Court of Appeal websites.

iv. Reporting introduced – A requirement that Directors report quarterly in writing to the Attorney-General has been introduced. Moreover, in addition to having issued written reports to the Prime Minister at intervals during the year, the Attorney-General has, by Report 2010, introduced a concept of annual reporting by the OAG. The reporting requirements are

expected to assist the OAG in maintaining focus on objectives and are in furtherance of a commitment to transparency and accountability.

## ■ Additional criminal trial courts for New Providence

Liaised with the judiciary for the provision of an additional criminal trial court for the island of New Providence, increasing the number of criminal trial courts available to try criminal cases at any one time from two to three as of February 2010.

## ■ Department of Public Prosecutions

This Department received early and sustained focus in line with the Government's commitment to create greater efficiency and effectiveness in the criminal justice system in response to the increased demands placed upon it.

Departmental highlights are as follows:

- i. Planning meetings convened to establish departmental objectives.
- ii. Commenced an audit which remains ongoing which, amongst other things, identified cases no longer triable and therefore to be formally discontinued.

Artist rendering of new courts to be located in the former Ansbacher House.



- iii. Re-organised departmental senior management.
- iv. *Bail Act* referred to the LRRC.
- v. Considered and made recommendations to the LRRC relative to electronic monitoring rules.
- vi. Improved liaison with police.

vii. Established working groups of specialized responsibility and assigned counsel as follows:

- Dangerous Drugs;
- Proceeds of Crime;
- Complex Fraud;
- Extradition;
- Terrorism;
- Corruption;
- Human Trafficking;
- Cyber Crime;
- Homicide;
- Sexual Offences & Offences Involving Children;
- Appellate Practice;
- Magistrates' Court Supervision; and
- Criminal Case Management & Witness Care.

viii. Completed a review of the *criminal justice process* and produced recommendations for reforms, in brief and namely:

- Establishment of *witness care units* to provide appropriate support service to victims and witnesses (witnesses being critical components of the justice system and essential to the prosecution's case);
- Implementation of *criminal case management*;
- Increased use of technology to enhance processes; and
- Involvement of prosecutors early in the investigative stage for all serious and complex cases.

ix. Implemented during September a pilot project for a *witness care* programme

including: providing status reports to witnesses as to the progress of their cases, and, where necessary, support regarding their attendance at court. There has been positive feedback regarding this pilot project.

## ■ Department of Legal Affairs

Arising out of a planning meeting early in the year, it was resolved that operational effectiveness would be enhanced by the following:

- Implementation of a case tracking system;
- Implementation of a register of opinions;
- Implementation of practice groups; and
- Implementation of a manual of civil precedents and procedures as a resource for the law officers.

During the year progress was made on each of the abovementioned items.

**Departmental highlights are as follows:**

- i. Legislative Drafting Section – Prepared 45 pieces of legislation for Parliament and more than 100 statutory instruments.
- ii. Civil Chambers Section – Engaged in several large commercial contractual matters

in which the Government was party; completed all acquisition of land around South, Nassau and Meeting Streets identified as required for the new Magistrates' Court complex precincts; in conjunction with other relevant ministries, reformed the process by which claimants apply for and receive compensation in the government land acquisition process; and have engaged in town meetings in various areas to educate the public on acquisition of land process.

- iii. Civil Litigation Section – Re-organised the law officers in this Section into four (4) specialty practice areas called *practice groups*. Each practice group is headed by a practice group chairperson. This method of organization is designed to achieve greater efficiencies and competencies through

*Implemented during September a pilot project for a witness care programme: providing status reports to witnesses as to the progress of their cases, and where necessary support regarding their attendance at court.*

specialization. Additionally, the practice group chairperson would provide improved supervision to the management of individual litigation cases. He or she is able to have more direct oversight than the Director of Legal Affairs who has wide and considerable departmental oversight responsibilities. In addition to ongoing litigation matters from prior years, this Section engaged in more than 80 new court cases during the year on the government's behalf.

## ■ Law Reform and Revision Commission (LRRC)

The LRRC received substantial attention and had been cited at the beginning of the year for strengthening and expansion in line with the Government's commitment to do so.

- i. New premises - Relocated the LRRC during month of July from OAG premises at Post Office Building to separate and more suitable premises at BAF Financial Centre.
- ii. Career path established – secured the implementation of a post of *Deputy Law Reform and Revision Commissioner* towards developing a career path for lawyers engaged in the legislative drafting and law reform to be graduated up the ranks.
- iii. Strengthening – three (3) additional law officers and three (3) supporting staff were assigned to the LRRC.
- iv. Penal Code reform project – a first draft revised penal code delivered by Law Reform and Revision Commissioner Ibrahim on 31 October and now under review by third parties. Project ongoing.
- v. Prepared rules<sup>3</sup> for the implementation of the *Electronic Monitoring Scheme* to facilitate the monitoring of the movement of individuals subjected to electronic monitoring by the court.
- vi. Criminal Procedure Code review project – ongoing.
- vii. Thirteen legislative Bills were prepared during the year that have gone to Parliament; another 18 Bills are in draft; 8 pieces of subsidiary legislation are at varying stages of

finalization; and the review and updating of existing statutes and *Bahamas Laws On-line* for publication in 2011 are near finalised.

## ■ Registrar General Department (RGD)

- i. Convened meetings with all RGD staff and noted issues facing the Department, including problems related to the client-serving operations being spread over multiple locations.
- ii. Decision was taken to consolidate the client-serving operations of the RGD; this was achieved during July. Operations previously spread over three locations across downtown Nassau were combined into one expanded premises at 50 Shirley Street, Nassau. The consolidation has resulted in improved convenience to clients, more efficient operational supervision, and savings in rent payments of approximately \$250k per annum.
- iii. To improve productivity of the RGD, a law officer from the OAG was assigned to act as Assistant Registrar and remains so assigned.
- iv. To better serve its clientele, the RGD, in conjunction with the Bahamas Financial Services Board, held a seminar with corporate services firms to identify issues for redress.
- v. To improve staff effectiveness, seminars were held in conjunction with the Department of Public Service for staff training. Further, in September cross-training of staff was introduced and carried out by the Registrars and Departmental managers.

## ■ Relations with the Judiciary & Magistracy

- i. Judiciary & Magistracy –The Attorney-General
  - Liaised with the Chief Justice on several matters including a request for additional criminal trial courts resulting in an additional criminal trial court for New Providence in February and another targeted for early in the New Year. The increase of two (2) additional criminal

<sup>3</sup> Penal Code (Electronic Monitoring) Rules 2010.

trial courts for New Providence would represent a doubling of the number of criminal trial courts for the island over that which existed at the start of 2010, for a total of four (4) criminal trial courts;

- Moved Bills in the Senate for the increase in the number of seats on the Supreme Court Bench from 12 to 15 seats and on the Court of Appeal bench from 5 to 6 seats. Those Bills are now law; and
- Liaised with the Chief Justice and Magistrates in January to receive issues of concern to the Magistracy.

i. Court security

- Liaised with Chief Justice and the Chief Magistrate, respectively.
- Liaised with Minister of National Security and Commissioner of Police, respectively, on multiple occasions and arranged for a number of security adjustments, including increased surveillance of premises during evening night hours to prevent break-ins and property damage.

ii. Renovation, construction and expansion – substantial activity:

- Liaised extensively with the Minister of Public Works regarding the new Magistrates' Court complex, the Supreme Court renovation and expansion project, including former Ansbacher House conversion, and construction of second Coroners' Court project at Victoria Gardens.

- The Magistrates' Court project is nearing completion, now projected for early 2011;
- Former Ansbacher House purchased in July for use by judiciary as additional courts, and other judicial facilities;
- Construction for comprehensive renovations to the Supreme Court buildings commence in August; and
- Plans for construction of second Coroners' Court were completed by Ministry of Public Works and put out to tender in December, with construction projected for early 2011.

## ■ Relations with the Industrial Relations Tribunal

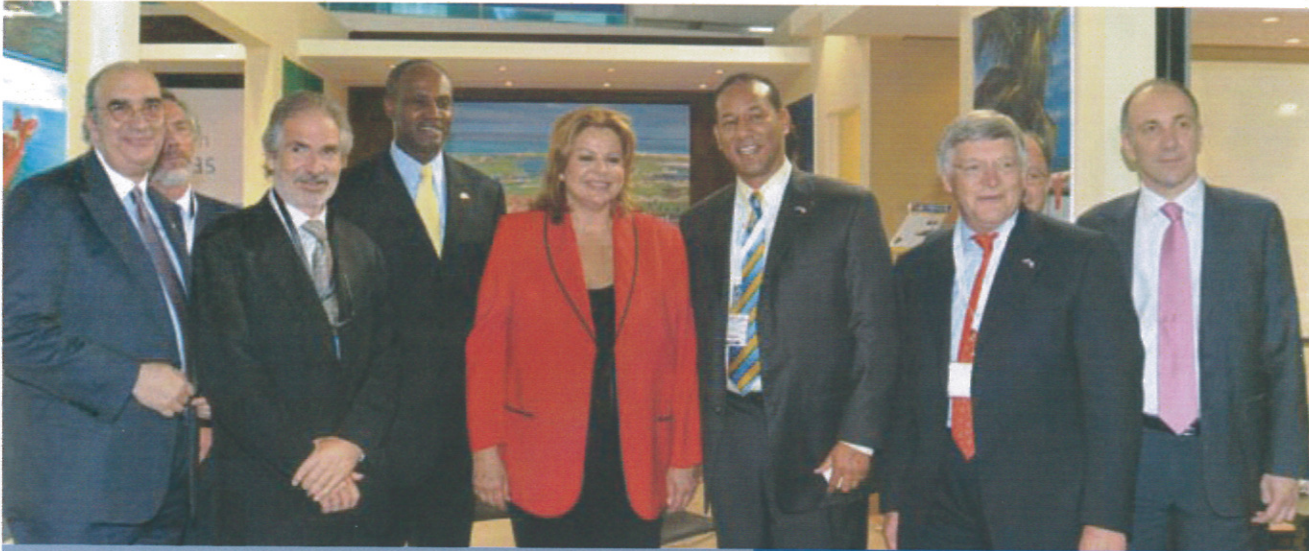
Met with the President of the Industrial Tribunal and discussed issues of concern for the Industrial Tribunal; inspected the precincts of the Industrial Relations Tribunal at New Providence and Grand Bahama, respectively; and prepared draft of intended legislation regarding revisions to the duties of the Industrial Relations Tribunal.

## ■ Relations with *Bahamas Financial Services Board (BFSB)*, and Promotion and Development of Financial Services:

- i. On behalf of the Government and together with BFSB, finalized a *Vision and Strategic Framework* for the financial services sector. The strategy document was unveiled during the first half of the year setting a broad direction and clear tone for The Bahamas as a globally competitive international business jurisdiction for
  - Private wealth management;
  - International investment into the Americas and emerging markets; and



*Contract signing for converting former Ansbacher House to courts.*



AG Delaney greeting Mrs Louka Katselli, Greek Minister of Finance, Competitiveness and Shipping.

- Residency for high net worth individuals – creating high value jobs and business opportunities on a sustainable basis.
- ii. Addressed key players in the financial services sector at the BFSB's *International Business & Finance Summit* in January.
- iii. Liaised extensively with BFSB Chief Executive Officer on numerous issues during the year.
- iv. Addressed the *Society of Trust & Estates Planners 1-Day Seminar* in April.
- v. Attended *Posidonia 2010*, the world's largest shipping conference in Posidonia, Greece. While leading The Bahamas' delegation and promoting The Bahamas' shipping registry, also promoted the advantages of The Bahamas' financial services centre to facilitate international shipping and the business affairs of ship owners. In so doing, met with the Union of Greek Ship Owners, and greeted Mrs Louka Katselli, the Greek Minister of Finance, Competitiveness, and Shipping.
- vi. Met with representatives of the *Association of International Banks and Trust Companies* and *The Bahamas Association of Compliance Officers*, respectively, on matters of interest to those Associations.
- vii. Several pieces of legislation of relevance or importance to the financial services sector were prepared<sup>4</sup> (some of which have already been enacted or before Parliament while others are still in draft), namely:
  - International Business Companies (Amendment) Act, 2010;
  - Investment Funds (Amendment) Act, 2010;
  - International Tax Cooperation Act, 2010;
  - The Bahamas and United States of America Tax Information Exchange Agreement (Amendment) Act, 2010;
  - Banks and Trust Companies Regulation (Amendment) Act, 2010;
  - Central Bank of The Bahamas (Amendment) Act, 2010;
  - Business Licence Act, 2010;
  - Probate and Administration of Estates Bill, 2010;
  - Securities Industry Bill;
  - Perpetuities Bill;
  - Trustee (Amendment) Bill;
  - Executive Entities Bill;
  - Companies (Amendment) Bill;
  - Companies Winding Up Rules;
  - Insolvency Practitioners Regulations; and
  - Foreign Bankruptcy Proceedings (International Cooperation) Rules.

<sup>4</sup> In some cases produced in conjunction with external consultants and/or practitioners.



*Utilities Appeal Tribunal members Elliot Lockhart and Lowell Mortimer along with president Cathleen Hassan-Johnson meet with the AG and OAG senior management.*

## ■ Relations with Utilities Regulation Competition Authority (URCA) & Utilities Appeal Tribunal (UAT)

- i. Liaised with Chairman of URCA to address issues facing the newly established authority.
- ii. Met with CEO and Legal Counsel of URCA and addressed issues raised by URCA.
- iii. Facilitated the selection and appointment of members of the UAT.
- iv. Debated in the Senate the Bill for the *Utilities Regulation Competition Authority (Amendment) Act 2010*, which was passed into law during December.

- i. Regarding a long standing regional commitment of The Bahamas to provide suitable premises for the *Eugene Dupuch Law School* ("EDLS"), liaised with the Ministry of Public Works which facilitated preparation of architectural drawings and the tendering of the same for construction of the new law school facilities;
- ii. Convened meetings with the EDLS Principal, participated in EDLS Legal Week Seminar, addressed law students on what is expected of new attorneys; attended Council of Legal Education meetings;
- iii. Addressed on multiple occasions law students engaged in the LLB programme taught at College of The Bahamas.

## ■ Legal Education



*Eugene Dupuch Law School 2010 graduation ceremony.*

## ■ Legal Aid

Met with representatives of the Legal Aid Clinic of the EDLS and discussed issues and possible areas of support.

## ■ Arbitration

- i. In December 2009 moved the Bills for the *Arbitration Act 2009* and the *Arbitration (Foreign Arbitral Awards) Act 2009* in the Senate, which were enacted that month. Following a period of discussion with industry and by ministerial authority, brought the new law into force in the month of May.
- ii. Gave several presentations on the new arbitration laws.



## ■ Companies

- i. Caused to be prepared and presented to Parliament on an urgent basis an amendment to the *International Business Companies Act 2000* that remedied a lacuna in the law that had adversely impacted the restoration of IBCs which had been previously struck off the Register of IBCs.
- ii. Directed the Law Reform and Revision Commission to produce draft modern insolvency laws for Bahamian companies.

## ■ Bahamas Bar

- i. Met and had numerous discussions with the President regarding various issues.
- ii. Addressed the Bahamas Bar Seminar on *Financial Legislation Update 2010* during November.

## ■ Matter of Straw Vendors' Arrest & Detention in New York

On behalf of the Ministry of Foreign Affairs, instructed US Attorneys to assist Bahamas General Consul in New York in connection with efforts to facilitate an expeditious judicial processing of nine (9) arrested and detained Bahamians straw vendors leading to their return to The Bahamas.



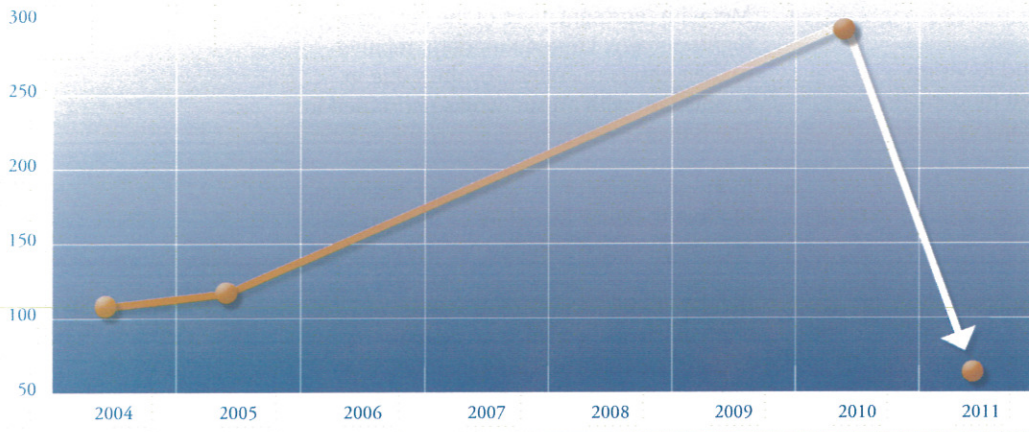
## ■ Intellectual Property Rights

- i. Assigned a law officer to remain conversant with developments in this area of law and to advise.
- ii. Met with representatives of the *Performing Rights Society*, United Kingdom, relative to their efforts to collect royalties due in connection with artistic works performed in The Bahamas.
- iii. In the aftermath of the arrest and detention of nine (9) Bahamian straw vendors in New York, issued a Public Advisory during October 2010 to inform and educate the Bahamian public regarding matters of United States of America law pertaining to purchase and trafficking in counterfeit products to deter future similar incidents.

## ■ Coroners

- i. Liaised with the Magistrate William Campbell, Coroner, regarding the processing of pending coroner cases.
- ii. Liaised with Law Reform and Revision Commissioner Mohammed on the Coroner's Bill 2010 to repeal and replace the existing *Coroner's Act 1909* with a modern law to improve the function of Coroner and disposition of coroner cases.
- iii. Liaised with the Chairman of the Judicial and Legal Service Commission relative to a Coroner to succeed Magistrate William Campbell.
- iv. Liaised extensively with the Ministry of Public Works relative to the construction of a second Coroners' courtroom at the Victoria Gardens premises; plans for the same were completed and tendered in December for construction.
- v. Received Magistrate William Campbell's report dated 30 November, in summary, reporting:
  - Lack of smooth and orderly transition in 2005 was a factor that led to build up in arrears extending into 2008;

## Pending Cases In The Coroner's Court



- Arrears in 2004 was 101 and by June 2005 was 128;
  - Per experience, most Coroners cases do not require a public inquest. Only approximately 10% need a public inquest;
  - Specialist Coroner reinstated last quarter of 2009;
  - 229 cases disposed of during January 2010 – November 2010 of which 211 cases were processed by inquiry without a public inquest and 18 cases by way of public inquest;
  - 10 police-related deaths pending (8 shootings, 1 choke hold, 1 in custody); and
  - Total number of pending cases is 69 with 66 being public inquest cases.
- vi. Moved the Coroner's Bill 2010 in the Senate during December, which was passed during December with minor amendments.

### ■ Notaries Public

Review of the *Notaries Public Act* commenced towards improving the regulation of notaries. There were 515 Notaries Public licensed for the year.

### ■ Justices of the Peace

Review of the legislation governing Justices of the Peace commenced and a draft *Justice of the Peace Bill* has been completed. There were 831 Justices of the Peace on the roll.

### ■ Attorney-General as leading counsel for the Crown

In addition to his review and direction in several civil litigation matters before the courts, as *principal law officer* he has personally appeared in courts as leading counsel for the Crown.

■ Attorney-General attended *Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions*

The meeting was held in London, England during October during which several agenda items of importance to The Bahamas were discussed, including: Role of the Attorney-General, E-Judiciary and Use of Technology in Court, Media Freedom and Defamation, Competing Criminal Jurisdiction, Juvenile Justice, Alternative Sentencing and Overcrowding in Correctional Institutions, Public Confidence in the Criminal Justice System, Co-operation in Criminal Justice Matters, and Disaster Laws in an Era of Climate Change.

■ Attorney-General attended *Caribbean Financial Action Task Force ministerial meeting*

The meeting was held in Grand Cayman during November in which important issues concerning anti-money laundering and counter terrorism financing regional matters and at which The Bahamas was elected as a member of the steering group.



*AG Delaney and Dep. Dir. of Public Prosecutions, Garvin Gaskin of The Bahamas at meetings with AG Sam Bulgin of The Cayman Islands.*



*AG Delaney and AG Anand Ramlogan of Trinidad and Tobago at Commonwealth Attorneys General and Law Ministers meeting, London.*



*Bahamian delegation at Posidonia Shipping Conference, Greece.*

## PART 4 Finances

Funding for the OAG<sup>1</sup> is provided for at Head 7 of the National Budget<sup>2</sup> and at Head 10 for the Registrar General's Department.

### ■ Office of Attorney-General – Head 7

Total allocation is \$10.5M. This compares with \$9.85M the prior year. See note 1 below explaining that there was no material increase in funding over the prior year.

Note:

1. The increased funding for the present fiscal year over that of last fiscal year was, in the main, a transfer to Head 7 of expenses that were previously funded directly from the Ministry of Finance<sup>3</sup>.
2. Capital expenditure relative to the construction works for the Magistrates' Court, Coroners' Court and Supreme Court is provided for elsewhere in the National Budget and not under Head 7 for the OAG and MLA.

### ■ Registrar General's Department - Head 10

Total allocation is \$3.5M, compared to \$3.9M for the prior fiscal year.

A reduction by \$375K is due mainly to fiscal efficiency resulting from a consolidation of three client serving operations of the Department into one expanded location at 50 Shirley Street, with back-office and storage at Magna Court on the other side of Shirley Street.

<sup>1</sup> Inclusive of the Law Reform and Revision Commission but not the Registrar General's Department.

<sup>2</sup> Estimates and Revenue Expenditure 2010/2011

<sup>3</sup> The \$680k relates to the salary for the second of the two Law Reform and Revision Commissioners that was contracted specifically in connection with the Penal Code and Criminal Procedure Code and 5 attorneys that were engaged at the OAG over the prior fiscal year.

## PART 5 Enacted Legislation 2010

The following laws prepared by the OAG were enacted by Parliament during the year:

1. The United States of America and The Bahamas Preclearance Agreement (Amendment) Act, 2010
2. The Financial (Supplementation and Variation Appropriation) (Revenue Account Expenses) (2009) Act, 2010
3. The Financial (Supplementation and Variation Appropriation) (Capital Development) (2009) Act, 2010
4. The Planning and Subdivision Act, 2010
5. The International Business Companies (Amendment) Act, 2010
6. The Investment Funds (Amendment) Act, 2010
7. The Bahamas Technical and Vocational Institute Act, 2010
8. The Good Samaritan (Food Donation) Act, 2010
9. The Appropriation (Revenue Account Expenses) (2010/2011) Act, 2010
10. The Appropriation (Capital Development) (2010/2011) Act, 2010
11. The Tariff (Amendment) Act, 2010
12. The Excise (Amendment) Act, 2010
13. The Stamp (Amendment) Act, 2010



## PART 6 Future Focus

14. The Spirits and Beer Manufacture (Amendment) Act, 2010
15. The Industries Encouragement (Amendment) Act, 2010
16. The Road Traffic (Amendment) Act, 2010
17. The Bahamas and the United States of America Tax Information Exchange Agreement (Amendment) Act, 2010
18. The International Tax Cooperation Act, 2010
19. The Animal Protection and Control Act, 2010
20. The Forestry Act, 2010
21. The Supreme Court (Amendment) Act, 2010
22. The Court of Appeal (Amendment) Act, 2010
23. The Banks and Trust Companies Regulation (Amendment) Act, 2010
24. The Central Bank of The Bahamas (Amendment) Act, 2010



25. The Business Licence Act, 2010
26. The Financial Administration and Audit Act, 2010
27. The Passenger Tax (Amendment) (No. 2) Act, 2010

### ■ Access to Justice

- Working towards eliminating avoidable delays
- Proposing effective and modern approaches to criminal and civil justice.

### ■ Community well being

- Supporting victims, witnesses and the vulnerable in our society.
- Educating the public on justice issues and promoting responsible practices in the community.
- Promoting legislation to make more convenient the interaction by the public with government and the public sector generally.
- Promoting legislation to reduce red tape in business transactions

### ■ Organisational Capability

- Improving training and conditions of service for our people to ensure a valued and skilled workforce.
- Implementing modern law firm management techniques including management by strategic objectives.
- Implementing and using new technologies to enhance capabilities

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# Notes





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