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Reconciling FATCA With Bahamian Laws

Iyandra P. Bryan

Overview of FATCA

In 2010, the U.S. government enacted the *Hiring Incentives to Restore Employment Act* (the "*Act*"). The *Act*'s principal purpose is to provide U.S. employers with the necessary incentives to hire and retain new employees. With exemptions and tax credits offered by the *Act*, the U.S. Government has chosen to offset its costs by incorporating the provisions of the *Foreign Tax Account Compliance Act of 2009* ("*FATCA*"). *FATCA* implements measures which challenge the concept of offshore financial privacy, by measures such as increased reporting requirements and taxation of foreign institutions. By *FATCA*, the Internal Revenue Service (the "*IRS*") may impose additional reporting requirements for U.S. persons who hold offshore financial accounts or enjoy offshore financial services. These reporting requirements are in addition to the current foreign banking reporting requirements and require disclosure of a broader class of foreign assets.

Reporting Requirements of FATCA

Under the provisions of the Act, any U.S. person who holds an interest in any foreign financial assets must disclose the extent of such assets by attaching a disclosure statement to his or her annual income tax return, so long as the aggregate value of all foreign financial assets exceeds fifty thousand dollars. Pursuant to the Act, foreign assets include foreign financial accounts, foreign stocks and securities, and interests in foreign entities. Moreover, all U.S. entities "formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets," will be subject to the same reporting requirement.

Importantly, beginning in 2014, the Act will mandate that all foreign financial institutions enter into an agreement with the U.S. Treasury Department to report information about its U.S. account holders each year. A "foreign financial institution" is defined broadly to include any foreign entity that (i) accepts deposits in the ordinary course of a banking or similar business, (ii) holds financial assets for the account of others as a substantial portion of its business, or (iii) is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting or trading in financial assets (including securities, partnership interests, commodities, or any interest in such securities, partnership interests or commodities). Accordingly, this broad definition encompasses foreign investment banks, foreign commercial banks, foreign insurance companies, foreign hedge funds, foreign private equity funds, and foreign securitization vehicles.

Foreign financial institutions will be required to determine which of their equity and debt holders (and certain other of their counterparties and other "account holders") are U.S. account holders, and to report this information to the IRS or otherwise be subject to a 30% withholding tax on the foreign financial institution's U.S. source income and/or the proceeds of certain sales and other dispositions.

Prior to the year 2016, foreign financial institutions will be required to report the name, address, and taxpayer identification number of each account holder who is a U.S. taxpayer individual and where it is a U.S. taxpayer entity, the name, address and taxpayer identification number of each substantial U.S. owner; and the

account number. Beginning in 2016, the required reporting will be expanded to include income from U.S. accounts, and beginning in 2017, full *FATCA* reporting with respect to U.S. accounts will be required.

The duty of confidentiality imposed on a financial institution in respect of its customer's affairs is imposed on a financial institution not only by statute but also by the common law.

If the foreign financial institution is unable to obtain information from a specified account holder, it may either (i) withhold the 30% withholding from the payments it makes to the recalcitrant account holder, or (ii) elect to receive its U.S. source payments, subject to 30% withholding on the portion that is allocable to the recalcitrant account holder.

Further, if an account holder fails to provide the requisite information, a 30% withholding tax will be imposed on all withholdable payments made to foreign financial institutions. For such purposes, withholdable payments are defined as (1) any gross proceeds from the sale or other disposition of any property of the type which can produce interest or dividends from sources within the U.S., and (2) any U.S. source payment of interest (including original issue discount and portfolio interest), dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits and income, if such payment is from sources within the U.S.

FATCA and Current Bahamian Law

The implementation of reporting requirements under FATCA presents certain challenges which will require consideration and satisfactory resolution.

Banks and Trusts Companies Regulation Act

The *Banks & Trusts Companies Regulation Act, 2000* (the "*BTCRA*") imposes a duty of confidentiality on all licensees of the Central Bank of The Bahamas ("*licensee*"). Section 19 of the *BTCRA* expressly provides that no person acquiring information in their capacity as a director, officer, employee or agent of a financial institution shall without the express or implied consent of the customer concerned, disclose to any person any information relating to the identity, assets, liabilities, transactions or accounts of a customer**.** There are very limited exceptions to this confidentiality provision.

Data Protection Act

Further, under the *Data Protection (Privacy of Personal Information) Act, 2003*, (the "*DPA*") restrictions are put in place to safeguard and protect personal information of living individuals. By section 6 of the *DPA*, a data controller may not use or disclose personal data in any manner incompatible with the purposes for which it is kept. Additionally, the DPA requires that appropriate security measures shall be taken against unauthorised access to or alteration, disclosure or destruction of the data and against accidental loss or destruction.

Confidentiality Under the Common Law

The duty of confidentiality imposed on a financial institution in respect of its customer's affairs is imposed on a financial institution not only by statute but also by the common law. In the leading case of *Tournier v. National provincial and Union Bank of England (1924) 1 KB 461*, which defined the scope of a bank's duty of secrecy, the court held that a bank had a duty of secrecy to its customer with regard to its customer's affairs, subject to certain qualifications:

- where disclosure is under compulsion of law;
- where there is a duty to the public to disclose;
- where the interests of the bank require disclosure; and
- where the disclosure is made by the express or implied consent of the customer.

Reconciling FATCA with Bahamian Law

Financial institutions must give attention to strategies which resolve the issues raised by reporting requirements of *FATCA* vis a vis the statutory and common law duty of confidentiality which is owed by a financial institution to its customers. In certain cases, resolution may be achieved by simple written waiver by customers of their rights under Bahamian confidentiality

and privacy laws which would allow foreign financial institution to report relevant information pertaining to its customers to U.S. tax authorities. It is anticipated that prudent financial institutions will continue to consult in earnest with their attorneys to ensure that all regulatory and statutory requirements are satisfied and that clients' interests are served in the context of evolving regulation.

Iyandra P. Bryan, an Associate in the Ocean Centre office, is a member of a number of practice groups including:- Securities & Investment Funds; Financial Services, Insurance Law and Regulation; Private Clients & Wealth Management; Insolvency & Corporate Restructuring; and Commercial Transactions.

Awards of Legal Costs in Employment Actions

Audley D. Hanna, Jr.

Employment law has been an area of law rife with uncertainty for decades within The Bahamas. In 2001 the Employment Act (the "EA") was passed and came into force on 1st January, 2002. One of the objectives of the EA was to codify the law relating to employment so as to clearly define the relationship between employer and employee in regards to standard hours of work, vacation, dismissal and wages. However, section 4 of the EA preserves any greater rights to which an employee may have been entitled under the common law or contract wherever there is a conflict between such rights and the EA. In, **Wells v Snack Food Wholesale [2006] 1 BHS. J. No. 59**, Lyons J provided, at paragraphs 29 and 30, the following interpretation of section 4 of the EA:

> *"**29** It is only if the contract between the employer and the employee made specifically for a greater provision on severance or if some other law (not the general common law), arrangement or custom similarly made for greater provision that section 4 could be called upon.*
>
> ***30** The long and the short of it is that an employer on terminating an employee (other than for justifiable summary dismissal or unfairly) pays the employee's severance pay calculated in accordance with section 29, then the contract has been properly and fairly terminated and the employee has no cause for complaints. The employer has complied with the law."*

The effect of this interpretation, if followed, would have meant that during the termination process an employer would need only (save in circumstances where a more favourable custom or arrangement existed) consider severance pay in accordance with section 29 of the EA. In turn, an employee during this process, unless able to establish some actual arrangement to the contrary, would be more likely be resigned to accepting severance pay in accordance with the statute. It is arguable therefore that, if the ruling in **Wells v Snack Food** had stood and the EA did in fact oust the common law in relation to severance pay, the volume of litigation in relation to severance pay would have been either significantly diminished or often determinable upon a summary basis having regard merely to the provisions of section 29 of the EA.

...the EA, while providing a mechanism for establishing the minimum rights of an employee, did not necessarily establish strict guidelines as the decision in Wells v. Snack Food had suggested it might.

However, the foregoing interpretation of the EA was subsequently overturned and in **Paula Jones v The Bank of the Bahamas Court of Appeal Civil Appeal No. 19 of 2006** it was held that section 29 of the EA represented only the minimal severance pay with respect to which an employee was entitled and an employee was free to make an application under the common law for a greater benefit. As such, the EA, while providing a mechanism for establishing the minimum rights of an employee, did not necessarily establish strict guidelines as the decision in **Wells v Snack Food** had suggested it might. Consequently, due to the fact that employees are still entitled to make claims at common law outside of the EA, it is arguable that the EA has, thus far, failed to reduce the amount of employment litigation as the dicta in **Wells v Snack Food** suggests may have been initially envisioned.

Litigants in employment matters have two available venues within which to commence their

actions: the Industrial Tribunal (the "Tribunal") and the Supreme Court. Actions brought within the Tribunal are brought under the jurisdiction of the Industrial Relations Act 1970 (the "IA"). Both the Tribunal and the Supreme Court have similar powers to hear matters and to make determinations on disputes although proceedings within the Tribunal tend to be less formal and to have a more limited form of discovery. The Tribunal is intended to be accessible to claimants and to avoid the time and expense which may otherwise deter a claimant from pursuing an action.

One of the key aspects of the Tribunal's accessibility is the issue of legal costs. Within the Bahamian Court system, while costs are ultimately within the discretion of the Court, as a general rule, the unsuccessful party pays the costs of the successful litigant. However, within the Tribunal legal costs are not awardable, therefore a litigant need not refrain from commencing an action solely due to a fear of having to pay a costs order. On the other hand, where an employment related action is commenced within the Supreme Court, the traditional position has been thus far upheld with costs being awarded to the successful litigant in most cases. As such, a claimant has had the strategic advantage of pursuing an employment related claim within the venue which had the potential of exerting the greatest degree of pressure on the other party. The effect of the legal costs issue has been, to some extent, coercive; a litigant with a less than meritorious claim, or a marginal claim, can readily take advantage of the spectre of a costs award as a tool to obtain a settlement, as often an employer may seek to settle such claims upon a nuisance basis rather than risk having to ultimately pay the employee's legal costs in addition to the sums claimed. While this is no doubt potentially true in relation to all forms of litigation, employment litigation is unique insofar as there is an alternative mechanism available (i.e. the Tribunal) within which the issue of paying the costs of the successful party need not be considered when determining whether or not to defend an action. Further, while it may be argued that the issue of paying a costs award would be an equal concern for the employee, the reality of course is that, in many cases, the recovery of costs from an individual may be difficult or worse.

...it is arguable that the Chief Justice intended to establish a precedent whereby a claimant should not be entitled to costs within the Supreme Court in relation to an employment matter which could have been alternatively pursued within the Industrial Tribunal.

Three recent cases have placed renewed consideration on the issue of costs awards within employment cases and have, perhaps, opened a dialogue as to whether an award of costs should be made in employment cases at the Supreme Court level, in normal circumstances. The first of these cases **Gibson v Kleijn [2010] BHS J No.17** was decided in March, 2010. Although the Chief Justice determined that the plaintiff had been wrongfully dismissed, and therefore entitled to damages, he declined to award costs stating, at paragraph 26:

> *"This claim for damages for wrongful dismissal could have been pursued in the Industrial Tribunal, which is the mechanism established by Parliament for the adjudication of these kinds of claims arising out of employment disputes. The Plaintiff by electing to pursue this claim in the Supreme Court should not recover costs which he could not receive if he had properly brought the claim in the Industrial Tribunal pursuant to the provisions of the Industrial Relations Act. Accordingly, I make no order as to costs."*

Based upon the foregoing dicta, it is arguable that the Chief Justice intended to establish a precedent whereby a claimant should not be entitled to costs within the Supreme Court in relation to an employment matter which could have been alternatively pursued within the Industrial Tribunal. While of course this decision is merely within the ambits of the overall discretion of the Court in relation to the award of costs, it appears to establish a principle which is somewhat of a departure from the manner in which costs have been traditionally awarded within the Supreme Court in employment related actions.

Appearing to accept that **Gibson v Kleijn** may have the potential to be interpreted as a general principle within employment cases, Justice Adderley seemingly attempted to temper such an application and to confirm that a determination as to costs in employment cases was an issue that remained within the Court's discretion. In **Davis-Evans v Bahamas First Corporate Services Limited and another [2011] 1 BHS J. No. 27** Justice Adderley noted at paragraph 26:

> "*The court notes the view of Barnett, CJ expressed in **Gibson v Keijn** that a claim such as this could have been pursued in "the Industrial Tribunal, which is the mechanism established by Parliament for*

the adjudication of these kind of claims arising out of employment disputes, and that the plaintiff ought not to receive costs when [she] could not receive them at the Tribunal." Nevertheless upon the application of counsel for the plaintiff I will hear the parties on costs at a date fixed."

This decision was rendered in February, 2011, and while it is unclear as to whether Justice Adderley was in concurrence with the determination in **Gibson v Kleijn**, it is clear that he was minded to consider arguments on the point.

...there is now competing authority with respect to the manner in which costs should be dealt with in employment cases within the Supreme Court

A more definitive consideration of **Gibson v Kleijn** was undertaken by Justice Evans in **Ferguson v Bahmar Development Limited [2011] 1 BHS J. No. 23** a decision which, like that in **Davis-Evans v Bahamas First Corporate**, was rendered in February, 2011. In **Ferguson v Bahmar**, Justice Evans considered that, having regard to the fact that the Supreme Court remained vested with the power to hear employment actions, it should generally exercise its discretion to award costs in favour of the successful litigant in employment cases. Justice Evans observed at paragraph 51:

> "*While I understand the position taken by the Honourable Chief Justice in his recent decisions, I fully accept the dicta of Allen J in the Jeremiah Gray case. As indicated to Counsel for the defendant during submissions, I find it difficult to accept that a litigant should be deprived of his right to costs in order to discourage him from bringing an action for wrongful dismissal before the Supreme Court which is something he has a right to do. In my view once the Supreme Court allows the matter to proceed and does not exercise its power to stay the action the successful plaintiff is entitled to his costs unless there is some other good reason to deny him the same.*"

As a consequence of the respective decisions in **Gibson v Kleijn** and **Ferguson v Bahmar** there is now competing authority with respect to the manner in which costs should be dealt with in employment cases within the Supreme Court. Indeed, it is possible that no resolution to this issue may be forthcoming unless order relating to costs in an employment case is appealed to the Court of Appeal and determined by that Court. In the interim, it is likely that the judge's ruling in **Gibson v Kleijn** shall be relied upon as a basis to resist applications for costs in the Supreme Court. It may therefore encourage litigants to pursue their claims within the Industrial Tribunal thereby reducing the work load on the Supreme Court and removing a tool from the arsenal of the vexatious litigant.

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Conducting Business in the Cayman Islands

Francine Bryce

Until recently, a business could only be carried on in the local market place in the Cayman Islands through:

- an individual (i.e. a Caymanian or holder of a Residency Certificate conferring such a right); or
- a company licenced to carry on business or trade in the Cayman Islands.

On September 28, 2011, a new law was introduced which allows exempted companies or exempted limited partnerships to carry on a "special economic zone business" in a "special economic zone" in the Cayman Islands if they are registered with the Registrar of Companies as a Special Economic Zone Company or Partnership.

Exempted companies or exempted limited partnerships are entities incorporated in the Cayman Islands which are not entitled to engage in trade with any person except in furtherance of business carried on outside the Islands. Under the Special Economic Zones Law, 2011 (the "SEZ Law"), this remains but is distinguished in that, the business, though it has a physical presence in the islands, is deemed to be outside of the Cayman Islands.

What follows, is a summary of the licensing requirements for conducting business in the local market place in the Cayman Islands pursuant to the Companies Law, the Local Companies (Control) Law (Revised) (the "LCCL") and the SEZ Law.

Companies

The law provides that no company shall carry on business in the Islands unless:

- it is a local company which is Caymanian controlled with at least 60% of its shares beneficially owned by Caymanians and at least 60% of its directors are Caymanians;
- it has been granted a licence under the Local Companies Control Licence Law and under the Trade and Business Licensing Law (Revised);
- it is licensed under the Bank and Trust Companies Law (Revision); or
- it is operating under a franchise granted by the Government.

Generally, all companies conducting business in the Cayman Islands are required to obtain a Trade and Business Licence.

Application for Licences

Generally, all companies conducting business in the Cayman Islands are required to obtain a Trade and Business Licence. Foreign-owned or controlled companies carrying on business in the Cayman Islands must also obtain a Local Companies Control Licence ("LCCL").

In the absence of securing 60% Caymanian participation, a company can proceed to apply for a LCCL by submitting:

- an application form along with the requisite processing and licence fee;
- a copy of the Memorandum and Articles of Association of the company or the bye-laws;
- a statement setting out the nature of the business the company is carrying on or proposes to carry on;
- copies of the advertisements seeking Caymanian participation; and
- such other information as the Trade and Business Licensing Board (the "Board") may require.

Grant of the LCCL

The grant of this licence is entirely at the discretion of the Board and hinges largely on the Board being satisfied that it would be in the public's interest to grant the licence. Each application is assessed on its own merits; however, we should indicate that one factor considered by the Board is, the efforts of the company to obtain Caymanian participation. In deciding whether or not to grant a licence, the law provides that the Board shall have regard to a number of factors including:

- the economic situation of the Islands and the due protection of persons already engaged in business in the Islands;
- the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;
- the advantage or disadvantage which may result from that company carrying on business in the Islands;
- the desirability of retaining the economic resources of the Islands in the control of Caymanians;
- the efforts made by the company to obtain Caymanian participation;
- the number of additional people from outside the Islands who would be required to reside in the Islands were the application to be granted;
- whether the company, its directors and employees have and are likely to continue to have the necessary professional, technical and other knowledge to carry on the business proposed by the company;
- the finances of the company and the economic feasibility of its plans;
- whether the true ownership and control of the company have been satisfactorily established; and
- the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the company.

In most cases, a LCCL is granted for a maximum period of 12 years and may be subject to such terms and conditions as the Board may see fit. Once granted, the company is required to pay the prescribed annual licence fee on the anniversary date of the grant of the LCCL and submit a return of shareholdings.

Special Economic Zone Companies

There are a number of benefits to establishing a business in the Special Economic Zone ("SEZ"), including the fact that the 60% Caymanian participation rule does not apply and there is no requirement to obtain a LCCL or Trade and Business Licence. The exempted company or exempted limited partnership is required to (a) register or re-register as a SEZ company/ partnership and (b) obtain a Trade Certificate.

Registration of a Special Economic Zone Company

A fundamental requirement of the registration process is that an approval letter to operate in the SEZ must first be obtained from the developer of the SEZ.

For a new registration, the process is much the same as with any exempted entity. The Memorandum and Articles should state that the company will be carrying on special economic zone business. The objects are restricted to conducting business mainly outside the Islands. There are no restrictions on the name, except that it must include the words "Special Economic Zone Company" or "SEZC".

If the company already exists as an exempted company, then it may apply to be re-registered as a SEZC and will require a resolution to alter its Memorandum and Articles and change its name as outlined above.

A fundamental requirement of the registration process is that an approval letter to operate in the SEZ must first be obtained from the developer of the SEZ.

Trade Certificate

Upon registration as a SEZC, an application for a trade certificate must be made to the Special Economic Zone Authority ("SEZA"). The application must be supported by evidence of registration as a SEZC in good standing along with the prescribed non-refundable application fee. Other information required includes the following:

- Applicant Details - including copies of the passports or identification for all Directors;
- Business Details – nature and type of business being conducted, expected number of employees, exact location of the business, register of Directors and return of Shareholders;
- Personal Details of each Director – including nationality and questions on conviction of criminal offences or other liability and bankruptcy; and
- Complete Due Diligence on each director.

Where the application is submitted, SEZA shall within seven days of the application being made or additional information received, grant or refuse the trade certificate.

The trade certificate granted will specify the period of validity, the SEZ business which may be conducted, the name of the SEZ in which the enterprise is authorized to carry on business, the address of the premises from which the SEZ business is to be conducted, and all terms and conditions, if any. The trade certificate may be amended on an application to the Authority and payment of the requisite fee.

The trade certificate is not transferable or assignable but is subject to voluntary surrender, suspension or revocation in accordance with the SEZ Law. As with any other Cayman Islands company, the SEZC is subject to an annual fee.

There are a number of unique concessions of doing business within the SEZ but this will form the subject of a later article.

Francine Bryce, an Associate in the Cayman office, is a member of a number of practice groups including:- Real Estate & Development; Private Clients & Wealth Management; Insolvency Maritime/ Shipping & Aviation; and Commercial Transactions.

FOCUS Visits with Philip C. Dunkley, QC

Senior & Global Managing Partner

Focus is pleased to continue its highlight of influential Higgs & Johnson personnel. In this issue we feature an interview with Mr. Philip C. Dunkley, QC who is the current Senior and Global Managing Partner of the firm.

You have been practicing law in The Bahamas since 1974 what would you say are some of the most notable positive changes in the practice since your early days as a Bahamian attorney?

Undoubtedly, the most significant changes in the

practice of law in The Bahamas, like elsewhere in the World, have been the profound changes that have occurred as a result of technological innovations, particularly the introduction of the pc, internet and smartphones. By and large, those changes have been positive.

In 1974, correspondence and legal documents in the firm were produced by electric typewriters and copies by carbon paper. A manual typewriter was kept for the frequent periods of power cuts. There were no word processors. Few lawyers could type. Errors in a draft document usually meant that the document had to be entirely re typed. The fastest form of mail delivery was airmail, which took about a week between the UK and The Bahamas. In civil court proceedings, there were no stenographers or other recording devices and the judge had to record the evidence and submissions in long hand manuscript. There were no witness statements and evidence in chief was laborious and protracted. There were no transcripts of evidence and junior lawyers were expected to keep manuscript records of the proceedings, particularly the evidence.

Today, competition for work has, in my view, resulted in practices that have compromised professional standards and ethics in many areas.

Then, productivity and efficiency was relatively low and civil trials took at least twice the time of a similar trial today.

Since 1974, there has been the introduction of the fax, the computer, pc, the internet and smartphones. We have seen a revolution in information technology. These innovations have enabled lawyer-client communications to become seamless and instantaneous, globally. Lawyers now are on call 24/7 and are able to practice within the context of the firm environment, from wherever they wish. In civil courts, court stenographers now take the evidence and submissions in real time and there have been changes in the rules to provide for witness statements, which may be accepted as evidence in chief. Trials can be completed in a fraction of the time it would have taken in 1974.

Many of these changes were beyond my imagination in 1974; all are positive, although some are not without a new set of obvious challenges.

What would you say are some of the more disturbing trends you see developing within the profession?

During my professional life, I have witnessed a trend amongst commercial lawyers to seek to promote the business and commercial aspects of the practice of commercial law at the cost of compromising the professional aspect of the practice of law.

In 1974, the Bahamas Bar was considerably smaller than it is today. There was not the competition between lawyers to win clients. There was a greater degree of unity and integrity at the Bar. Minimum Bar scale fees were generally honoured and clients could not generally drive a wedge between lawyers on fees or influence a lawyer to compromise his professional standards.

Today, competition for work has, in my view, resulted in practices that have compromised professional standards and ethics in many areas.

What do you see as major challenges for the Bahamian legal profession during the next few years?

I think that the legal profession is at a critical stage of its evolution globally.

The recent global recession has resulted in unprecedented pressure from clients on legal fees. Commercial clients have increased their in-house legal capabilities and are outsourcing legal services to jurisdictions or organizations that are capable of producing legal services for less than conventional law firms. Primary legal services can now be obtained from internet domains that provide those legal services at extremely low prices.

Globally, corporate consumers of legal services are demanding that law firms compete with the fee structures available through outsourcing. In the future, there can be no doubt that similar pressures will increasingly be put on law firms in The Bahamas.

It seems to me that the major challenge for The Bar, law firms and individual lawyers will be to adapt to these changes in the market without compromising the professional and ethical standards that must, in my view, accompany the provision of legal services. If the professional and ethical standards are not maintained it will

be the end of the "legal profession" as we know it and in its place will evolve a body of "legal service providers" divorced from core values which have hitherto been essential within the legal profession.

In December 2009 you assumed responsibility for the Global Management of Higgs & Johnson. What is your assessment of its evolution into a multi-jurisdictional firm?

I think that my greatest asset in my success as a litigation lawyer has been my ability to focus on the issue at hand and to exclude outside distractions.

This merger has made us the only law firm with a presence both in The Cayman Islands and The Bahamas. I have always considered this a great fit. The Cayman Islands are strong in securities and capital markets and The Bahamas is strong in private wealth management. I believe that there is, therefore, great synergy in having a presence in both jurisdictions. Nonetheless, I had always realized that there are challenges in merging firms especially across jurisdictional boundaries. These challenges were not lessened in our case by the global recession.

Do you find the practice of law a stressful enterprise?

The Evidence Act ought to be amended to provide that there is an irrebutable presumption that the practice of law is inherently stressful.

In 1974, there were no smarphones. Nonetheless, the day never seemed long enough to do all that needed to be done for the clients. Long hours were not only expected but were necessary to do a good and timely job for the client or to adhere to court time limits. Days in court were followed by nights researching for court the following morning or an urgent matter that had unexpectedly interceded. On days when in chambers, most of the day would be spent on the phone. Non office hours were used to do the "paper work". In later years, there were the added responsibilities of managing the firm. I have always loved the law, but there is no doubt that, at times, I have found it stressful.

More recently, I have sought to control some of the factors that result in stress and for the most part my days are now relatively stress free.

How do you manage the stress?

In the past few years, I have tried to control the factors that create stress. For instance, I try to limit smartphone communication on weekends and holidays. I will look at it but only communicate where there appears to be a need. I also try to allow myself some time on one afternoon a week for personal pleasures, such as golf. I have a great team of lawyers assisting me and this has allowed me to delegate a lot of work with confidence.

What would you say has been your greatest asset contributing to your years of a successful legal practice?

I think that my greatest asset in my success as a litigation lawyer has been my ability to focus on the issue at hand and to exclude outside distractions. I have always tried to give to my client my undivided attention when his or her matter came on for trial. The greatest asset contributing to my management of the firm has undoubtedly been the great people with whom I have surrounded myself, including Diane Knowles, our office manager, without whom the many plans and goals that were made would have remained unfulfilled.

Do you look forward to retirement and if so, are there particular things you would wish to do during that phase of your life?

I have a 12 year old daughter who still has high school and college in front of her. Retirement is, therefore, something that I do not permit myself to contemplate at this time.

What advice would you give to lawyers entering the profession?

I would tell the new lawyer that his law degree and Bar Qualifications do not establish that he is a competent lawyer, but only that he is now properly qualified to learn the law. I would congratulate the new lawyer on becoming a true student of the law. I would advise the new lawyer to seek out and obtain the best possible mentor in the law - for the lawyer's legal destiny will in large part be determined by the experience and mentoring that he receives in his early years of practice. I would implore the new lawyer never to compromise his honour or integrity for anyone or anything, for these are the essential ingredients of any lawyer.

New Head of Investment Funds Welcomed to the Cayman Bar

(L-R) - Gina Berry, Partner; Andrew Bolton; Derek Jones, Regional Managing Partner; Sarah Bolton; and Philip Boni, Partner

Sarah Bolton, the new Head of the Investment Funds team in Cayman, was admitted to practice as an attorney-at-law in the Cayman Islands by the Hon. Mr. Justice Henderson. The admission application was made by the firm's head of litigation in the Cayman Islands, Mr. Philip Boni who indicated that this was really a 're-admission' application as Mrs. Bolton had previously practiced in the Cayman Islands and that with such a distinguished career, Higgs & Johnson was privileged to have her. Mr. Justice Henderson commented that this admission was not simply ceremonial, as becoming an Officer of the Grand Court demands the highest expectations, integrity and honesty of its Officers.

Support of the 'Caring for Life Foundation' Through the Scotiabank Golf Tournament

Higgs & Johnson is a proud sponsor of the second annual Scotiabank golf tournament held in support of the Caring for Life Foundation which was established in 2009. The Foundation's goal is to provide all Cayman Island residents with continually improving world class healthcare. This is done by raising money to pay for equipment, make building and property improvements to health facilities and supports research and education efforts that assist the Health Services Authority. Gina Berry, partner commented, "Higgs & Johnson is committed to supporting worthwhile causes in the Cayman Islands and is pleased to assist the Caring for Life Foundation by agreeing to be a hole sponsor at the Scotiabank golf tournament. We understand the importance of corporate sponsorship and are glad to aid the Foundation that pledges to enhance the quality of life in our community."

Pictured (l-r) is Heather Anderson of Scotiabank receiving the cheque from Delia Bunce of Higgs & Johnson.

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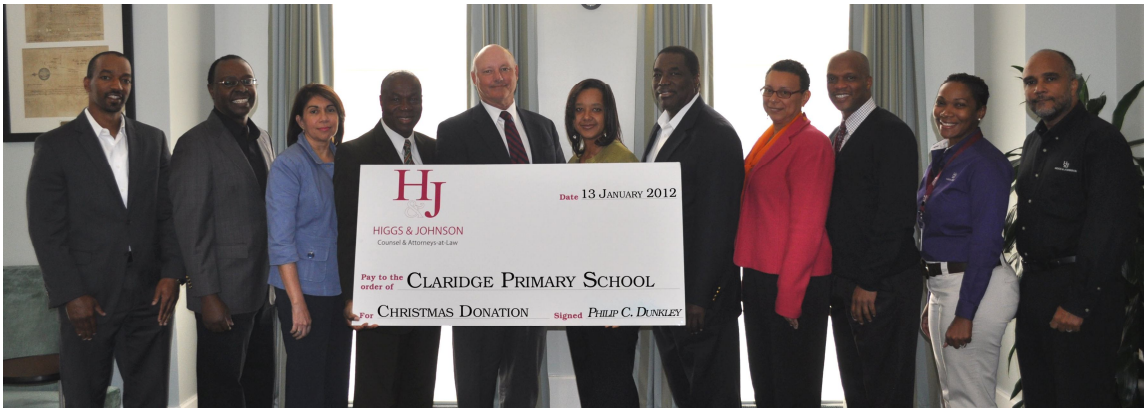
Annual Donation to Adopted School - Claridge Primary



(L-R) Partners - N. Leroy Smith, Oscar N. Johnson Jr., Surinder Deal; Claridge Primary Principal - Milton Lewis; Philip C. Dunkley, QC; Claridge Primary Teacher - Michelle Nabbie; Earl A. Cash, Heather L. Thompson, Sterling H. Cooke, Christel Sands-Feaste, and Michael F.L. Allen.

Higgs & Johnson presented the principal of Claridge Primary, Mr. Milton T. Lewis, with its annual Christmas donation. Last year's donation assisted in the launch of the pilot program, TECHCITED, an online e-learning program that was targeted towards grades 3 – 6 students who were operating two grades below their current grade level.

This year's donation has been earmarked for a school field trip to Epcot Center in Orlando, Florida, the first international field trip in seven years. Michelle Nabbie, coordinator for the trip, indicated that 17 persons inclusive of students and chaperones will be travelling. The students are between grades 4 – 6 and have been reviewing the relevant material in their Science and Social Studies classes.

Mr. Lewis joined Claridge Primary at the start of the school year and is filled with much enthusiasm and excitement. He noted, 'This is an excellent opportunity for the students as they will be able to take what they have been learning in the classroom and incorporate it into the actual experience. I, along with the school, am grateful to Higgs & Johnson for their continued commitment as it directly benefits our students."

H&J Team Wins the 2nd Annual STEP Bahamas Moot

(L-R) Tara Cooper Burnside, Dwana Davis-Imhoff and N. Leroy Smith

STEP Bahamas hosted its second annual moot competition between local firms Higgs & Johnson and McKinney, Bancroft & Hughes. The Moot related to the question of how, if at all, a power of amendment should be used to change trust beneficiaries in a way that may possibly be contrary to the original design of the trust. The H&J team not only won the judges vote but also the audience vote that was taken. The team comprised litigation partners N. Leroy Smith and Tara Cooper Burnside along with Associate Dwana Davis-Imhoff in the Private Clients & Wealth Management group.