



PROSECUTION CHALLENGES

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THE PRESENTER

- Christina Porter, Tax Counsel
- Former Clerk of Court and Crown Counsel



PROSECUTION PROCESS

- In our jurisdiction, prosecution of crimes is mainly done by the ODPP
- This process usually commences with the police investigating and charging
- Conversely, tax crimes differ from general crimes like murder, and sexual offences
- Tax crimes are generally investigated by the Intelligence and Investigation Unit of the Tax Administration of Jamaica
- Tax matters are prosecuted by Tax Counsel in the Legal Support Division

TAX MATTERS

Tax evasion

Tax fraud

Failure to file



Tax Evasion

[ˈtaks i-ˈvā-zhən]

An illegal practice where a person or entity intentionally does not pay due taxes.

WHAT IS TAX FRAUD?



Tax fraud occurs when an individual or business entity willfully and intentionally falsifies information on a tax return to limit the amount of tax liability.

— Investopedia

Employer's
Annual Return (S02)

DUE MARCH 31

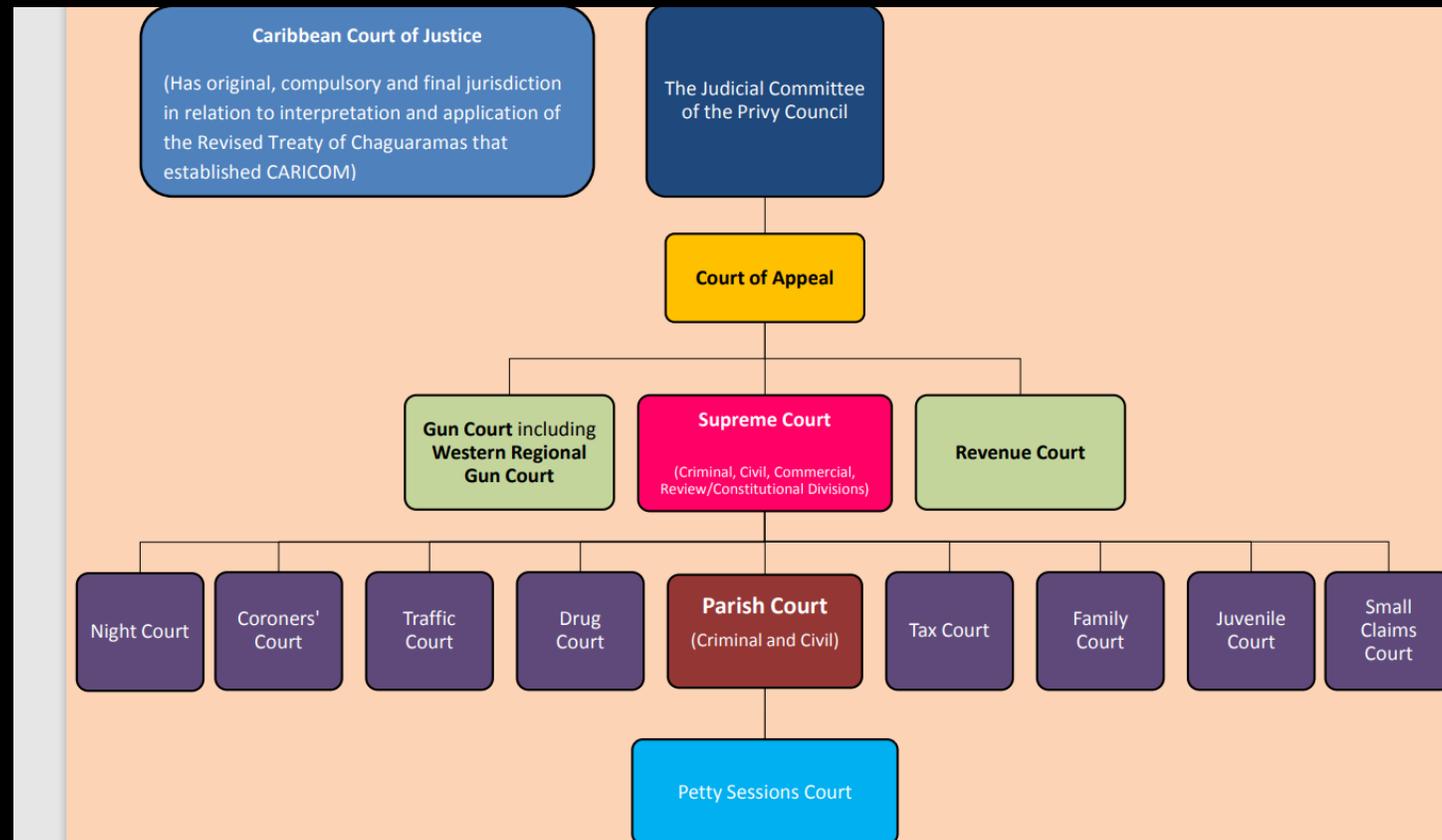
▶ *mandatory* online filing



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OUR COURT STRUCTURE



CHALLENGES FACED

- The challenges faced by Prosecutors include:
 - 1) Who has the authority to prosecute
 - 2) Witness reluctance
 - 3) Effluxion of time
 - 4) Ineffective penalties imposed
 - 5) Weak interagency co-operation

WHO CAN PROSECUTE

- Tax Counsel does not have a right of prosecution in Jamaica
- The authority to prosecute is derived from the Jamaican Constitution 1962 (The Constitution)
- Section 94 (1) creates the Office of the Director of Public Prosecutions (ODPP). This enables the Director of Public Prosecutions (DPP) or those acting under him/her to exercise the functions of commencement of a prosecution, continuing of a prosecution and discontinuing a criminal prosecution.

WHO CAN PROSECUTE (CONT'D)

- In the parish courts, tax division, criminal matters are prosecuted by Clerk of Courts
- A fiat is required for Tax Counsel to prosecute matters
- “fiat” is the authority granted by the DPP to those who do not possess such authority to criminally prosecute cases or to be actively associated with a prosecution.

WITNESS RELUCTANCE



The screenshot shows the Jamaica Observer website. At the top left is the logo for the Jamaica Observer. To its right is a promotional banner for a 20% Black Friday discount at RIU Hotel. Below the logo and banner is a navigation menu with links for Home, News, Business, Sports, Entertainment, Lifestyle, All Woman, and Obituaries. The main headline is "Murder of witness ends case against alleged August Town gangster". Below the headline, it says "0 Comments · Make a comment" and "November 7, 2019". At the bottom right of the article area are social media sharing icons for Facebook, X, and Instagram.

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Murder of witness ends case against alleged August Town gangster

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November 7, 2019

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WITNESS RELUCTANCE

- Due to the high incidence of crime witnesses may be reluctant to give evidence
- Fear of the unknown
- Disinterest because it does not directly impact them
- Time and money involved

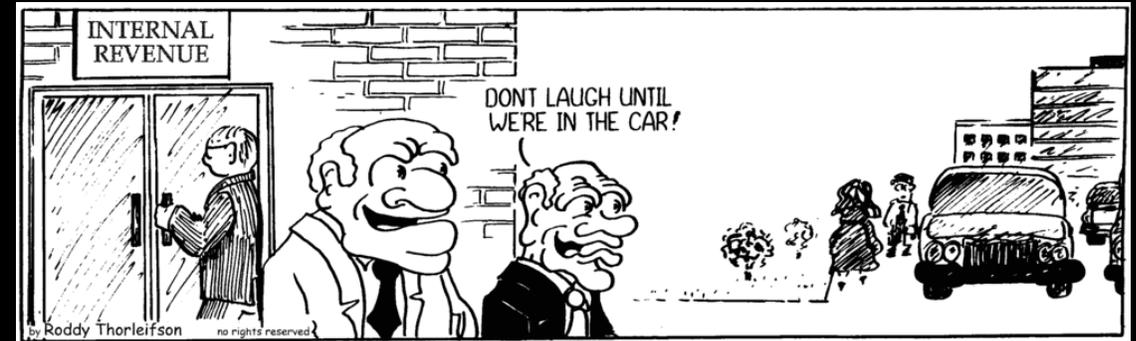
EFFLUXION OF TIME

- Difficult to locate witnesses who may migrate or who do not wish to be found etc.
- Difficult to locate original documentation



INEFFECTIVE PENALTIES

- While our Tax laws provide for substantial penalties to be imposed this is not always the case s67 Income Tax Act
- Often times the fines imposed are paltry in comparison to what the law provides
- Example up to \$2,000,000 can be imposed and a fine of \$3,000 to \$30,000 is what is actually imposed



INEFFECTIVE INTER-AGENCY CO-OPERATION

- Reluctance of various agencies to provide information
- Limited legal framework for information sharing

CONCLUSION

Notwithstanding challenges faced, the following may assist:

- Continued implementation of MOU's and sensitisation;
- Enactment of laws;
- Urging the court to impose more serious penalties in line with the legal framework;
and
- Educating the public about court procedure to reduce the fear of the unknown.



**THE END
THANK YOU!**