

## **Opening of the Legal Year 2020**

**Friday 2<sup>nd</sup> October 2020**

### **Law Council Chairman's Speech**

Chief Justice, I also welcome His Excellency the Governor, the Chief Minister, the Minister for Justice, the Leader of the Opposition and other distinguished guests.

#### **Introduction**

1. Having served on the Council since 2006 and more recently as Vice-Chairman, David Dumas' departure to take up the post of CEO at the LSRA, offered me an opportunity take on the Chairman role. It was a daunting prospect as David and his predecessors have left big shoes to fill.
2. That said, I looked forward, in particular, to the opportunity to continue my work of many years under several Chairmen in the setting up and commencement of the LSRA and to finally see it up and running.

#### **Legal Services Regulatory Authority**

3. This brings me to the first item in my address.
4. First and foremost, I would like to thank the members of the LSRA Board for their work since partial commencement of the Act in July last year, in particular its Chairman Sir Peter Caruana, and to CEO David Dumas. Whilst not a member of the Board himself, I would also like to acknowledge the role of Mr Albert Yome in this regard.
5. Through our seats on the LSRA Board, the Law Council continues to be involved in the setting up, direction and activity of the LSRA under Sir Peter's insightful and steady chairmanship together with David's very experienced hand at the helm, ensuring that it continues to move apace towards full commencement, eagerly expected in the coming months.
6. Save for a number of technical issues requiring amendments to the Legal Services Act and final approval of the Code of Conduct, both of which are very much in hand, it is nearly there.
7. The Law Council looks forward to working with its increased membership which will include all Crown Counsel, in-house counsel, legal executives and costs draftsmen.
8. We are also keen to support a diversification of the legal practice issues that we have traditionally dealt with on behalf of our members and which have generally centred around litigation practice areas, thus ensuring the high standards of quality and delivery of legal services which our jurisdiction deserves across all areas of practice.

#### **Duty Solicitor Scheme**

9. On 27 June 2020 we entered the third year of the Duty Solicitor Scheme and last of the initial three-year period of the Legal Assistance (Amendment) Rules 2018.
10. Unfortunately, the Covid experience has not allowed the Council to progress the review of the Scheme and related Rules in their third year as agreed with the Ministry for Justice

at the time of commencement. We look forward to embarking upon this process as soon as possible so as to ensure that the future of both are consolidated for the benefit of individuals arrested by the Police, those who qualify for Legal Aid and Assistance generally and for those practitioners participating and engaged under these schemes.

11. We certainly have a good base to work from.
12. I would like to thank the Royal Gibraltar Police, HM Customs, Deputy Registrar Mr Maurice Turnock and all practitioners involved in the Scheme for its continuing success.
13. The new Roster, which will take us to 30 September 2021, commenced yesterday with 11 practitioners on the Senior Panel and 25 on the Legal Aid List.

### **Employment Tribunal**

14. The Employment Tribunal, chaired by our practitioners, continues to experience trends identified in the last few years: namely, increased complexity of cases, of damages claims, areas of law touched upon and participation of litigants in person. This combination is stretching Tribunal resources and chairperson availability to levels which prevailed in 2015 before the reform of the Employment Tribunal legislation.
15. Claims arising from the Bullying Act are now commonplace as standalone claims or in addition to the more, dare I say, traditional claims of unfair or constructive dismissal and often feature all of these issues. Thankfully, the Tribunal is gradually producing a body of caselaw which is helping parties and chairpersons alike to approach these cases with increased confidence and dispatch.
16. A more recent trend seems to be a difficulty in progressing claims against certain large employers including the State in its various incarnations. This is due to frequent conflicts of interests with panel chairpersons. These claims make up much of the current backlog of claims.
17. The appointment of a President of the Employment Tribunal and allocation of permanent premises, with for example, a permanent infrastructure to accommodate video link facilities, will help to address the issues which I have just mentioned and hopefully become a point of liaison between chairpersons and the Ministry of Employment which oversees the Tribunal.

### **Mental Health Review Tribunal**

18. Another Tribunal which is experiencing a reincarnation under the Mental Health Act is the Mental Health Review Tribunal.
19. A greater familiarity of appeal rights and procedures by patients, their families and all stakeholders has seen a significant increase in appeals which has challenged doctors, nurses, hospital staff, Tribunal members and representatives alike as they deal not only with the high number of appeals themselves but with many issues arising for the first time at practically every other hearing.
20. The perseverance and dedication of all involved is to be commended.
21. One very welcome development is the increasing expertise of a group of practitioners who are becoming seasoned in this very complex area of law through consistent exposure to cases and frequent appearances before the Tribunal.

22. This Tribunal, which now meets at least one afternoon a week, has, since lockdown, been successfully operating via video link with Tribunal members appearing on a screen.

### **COVID 19**

23. The biggest challenge for the profession this year has naturally been the Covid-19 pandemic.
24. This experience has placed and continues to place huge demands upon our profession.
25. We have seen the disappearance of at least one small firm as a direct result of this and wholly unprecedented numbers of redundancies in our largest firm.
26. I fear that this may not be the last that we hear of such unwelcome developments for our sector and our jurisdiction generally. I certainly hope that it is.
27. The Council was represented on CELAC by Finance Centre Council representatives Marc Ellul and Nick Cruz. Whilst the Council would have preferred its own seat, it was satisfied with the manner in which its concerns were communicated by Marc and Nick and we are very grateful for their efforts in making our voice heard amongst so many others on the FCC.
28. Our involvement in Task Force Future saw the creation of several Law Council sub-committees, in particular court users and admiralty practitioners.
29. We were invited to consider and propose a vision for the future of legal practice in a post-Covid Gibraltar. A paper was prepared for the Joint Ministerial Team headed by Ministers Isola, Daryanani and Licudi. Whilst some of our conclusions and recommendations admittedly stretched the boundaries of imagination, it was certainly a worthwhile exercise in self-analysis and collegiate thinking, traits that our profession is perhaps less recognised for. Hopefully, some of our less “blue sky” thinking can be pursued through our standing Court Users committees. I am very grateful for the contributions from practitioners and sub-committee members alike in the very short time allowed.
30. I have looked forward to this opportunity, on behalf of the Bar and the Council, to thank and congratulate the Courts Service and in particular to you my Lord, the Registrar and Chief Executive Officer not just for managing to keep the Courts Service open since the Covid outbreak but for ensuring a swift return to normality upon its full-reopening following the end of the lockdown. The proactive manner in which the Courts Service has anticipated and reacted to developments in the public health arena in order to ensure that the administration of justice and the needs of court service users (lawyers and clients alike) were met, has been second to no other public body and deserves to be acknowledged.
31. The Bar and the Council know just how much planning and many long hours of hard work have gone into delivering and maintaining the high level of service which Gibraltar is accustomed to.
32. So, from all of us at the Bar, thank you.
33. We look forward to continuing to assist and support the Courts Service in every possible way with the challenges that it may still face in the foreseeable future.

### **Court Users Committees**

34. Our standing Supreme Court Users Committee, chaired by you my Lord, has continued to progress matters of common interest to the Courts Service and its users.
35. Unfortunately, the lockdown and intervening period has not allowed for our quarterly meetings but we certainly look forward to our next opportunity to meet in order to continue our work on pending and fresh matters identified since the last meeting.
36. I am pleased to report that before the lockdown, I met with the Stipendiary Magistrate and it was agreed to revive the Magistrates' Court Users Committee under his chairmanship in order to address issues of relevance to that Court and its users. We look forward to our first meeting with him too.

### **Financial Services Act**

37. This year has also seen the commencement of the Financial Services Act, a project several years in the making and consolidating the vast body of financial services legislation under a single statute.
38. The Law Council was invited to participate in the final stages of drafting and did so under a sub-committee formed for this purpose and populated by members of the Board, including myself and Emma, but also by other members with expertise in specialist areas.
39. This was a significant exercise delivered under very tight deadlines. I am very grateful to those practitioners who helped us deliver it on time.

### **The Law Council**

40. The Covid experience has resulted in increased demands upon the Board and its members. During some weeks I have found myself unable to attend to little other than Council business.
41. Since the lockdown, all monthly meetings have been held virtually, ad hoc meetings have increased, with the Board often meeting at less than 24-hours' notice before opening of business in order to address matters requiring its urgent attention.
42. Thankfully we continue to have two members of the Government Legal Office on our Board which has served us very well when considering Covid-related developments over the last few months.
43. I am especially grateful to Lisa Triay our secretary for her support during the last few months. Lisa is a worthy successor to our long-serving secretary Madge Bishop who retired this year after nearly 15 years of loyal and unstinting service to the Council. We wish her a happy retirement in England where she is closer to her family and children.
44. I would also like to single out Emma Lejeune our Treasurer and Vice-Chair – both posts held by a woman for the first time in the Council's history – for helping me steer the Council in these difficult times and for taking our, now statutory seat, on the Finance Centre Council thereby ensuring that our profession's interests are ably represented in that most important forum and that awareness of our profession's needs and views continue to be voiced.

45. The Council is currently holding over with its pre-Covid Board due to our inability to hold an AGM since the second quarter of the year. We look forward to the next AGM and Board member elections once the Legal Services Act has been fully commenced and our membership enlarged, hopefully in the first quarter of the new year.
46. Emma and I were recently asked by Chronicle Editor Mr Brian Reyes, to sum up the immediate future of Gibraltar's legal services industry in a few words. Emma summed it up nicely with the words: regulation, innovation and perseverance. I have no doubt that we will all need several strong doses of the latter in the months to come.

### **Acknowledgements**

47. I would like to note the passing of two members of our Courts in the last year.
48. Lt Col John Joseph Porral CBE ED Ret'd, long serving member and former Chairman of the Justices passed away earlier this year. Whilst I did not have an opportunity to appear before him myself, he was a highly respected Justice with long and distinguished careers in local business and the Gibraltar Defence Force, later the Gibraltar Regiment, serving as its Commanding Officer between 1969 and 1972 and recognised as having been instrumental in gaining the 'Royal' title' for the Regiment.
49. This year also saw the passing of Sir John Grant Mackenzie Laws. Whilst he did not have an opportunity to sit on a session of our Court of Appeal and further enrich our jurisprudence with his work, he will be remembered for his role as representative of the British Government at the inquest into the deaths of the three IRA members. I am reliably informed that around that time he was also a speaker on the subject of the rule of law at a very enjoyable event for members of the Inner Temple Bar at the now Elliot's Hotel.
50. Our condolences go out to their families.

### **Today**

51. We have managed to hold the annual Red Mass this morning which has been well-attended, albeit we have missed the ceremonial entry into the Cathedral and we have sat in accordance with the Church's social distancing policy. I thank the Bishop for agreeing to hold the Mass which is an important event for many of our practitioners of faith and a traditional pre-cursor to the current proceedings.
52. It saddens me that these proceedings will not be followed by the annual Bar Lunch which attendees look forward to as an opportunity to relax and enjoy each other's company over good food and a glass (or two) of wine, momentarily putting aside our daily roles and concerns. We look forward to hosting this as soon as public health advice allows us to. May that be much sooner than any of us currently expect.
53. And on that note, I second the motion that the legal year be opened.

Kenneth Navas  
Law Council Chairman