

OPENING OF THE LEGAL YEAR 2023

CHIEF JUSTICE'S SPEECH

A few days ago, one of the puisne judges, who shall remain nameless and whom, with no attempt to identify, I would describe as the most self-effacing judge in the jurisdiction, asked why we have to hold this ceremony every year, not least given the disruption which albeit only for a couple of days, it causes to our operations.

My retort was that it was the one occasion in the year when the Chief Justice can highlight issues which affect the administration of justice and maybe in so far as it affects the courts urge investment or suggest legislative change which improves the service which we provide. More prosaically, I reminded the judge that the last Chief Justice who attempted to cancel the ceremony, for that and many other reasons, found himself removed from office, and that is not a path I wish to follow.

And so to highlight the usefulness of this ceremony, at last years' opening I highlighted our desperate need for a new audio visual system. As will be evident to everyone not only in this courtroom but also in courtrooms 2, 3 and 4 we now have a new system which fulfils all our requirements.

My thanks to government for providing funding of the order of £450,000, which includes maintenance over the next 5 years; to BUK Solutions who were successful in the tender bid and to ITLD who have supported them throughout the installation process. Contrary to popular belief, this summer was an extraordinarily busy time for us, particularly for our CEO Hazel Cumbo and her team who in effect have project managed the installation of the new system. This was carried out in our 7 courtrooms; our 2 vulnerable witness rooms and H.M. Prison over a period of 8 weeks and involved rewiring, installation, commissioning and training of staff. In the meantime, the Magistrates' Court and the Supreme Court criminal calendars continued as normal. My sincere thanks to Ms Cumbo and her staff. The commitment of the Gibraltar Courts Service to support the judiciary may in large measure take place in the background, but it never goes unnoticed by me and my sister and brother judges.

This is a year in which we have had a number of retirements. In the Magistrates' Court Ms Lowri Murphy resigned as a Justice of the Peace and Mr Charles Pitto retired from the offices of Stipendiary and Coroner. My hope and expectation is that the Judicial Service Commission will start the recruitment process for a new Stipendiary and Coroner very soon and that someone is selected by very early next year. There have also been retirements within the GCS. Ms Janet Apap retired as Usher /Paper Keeper, always a smile on her face when walking the judges into the courtroom; Ms Maruzella Ghio retired as personal secretary, the epitome of calm understated efficiency; Ms Frances Garro retired as Executive Officer, always eager to help. Finally, Mr Francis Buttigieg retired as senior paper keeper/ process server. Mr Buttigieg who is possibly better known through his involvement with Dignity at Work Now, worked in the courts for 35 years and 8 months. He also was always willing to help, undertaking tasks such as ship arrests which did not form part of his duties. I regret to say that with Mr Buttigieg retiring, the torch for the longest serving member in the courts was passed to me, but I can assure everyone that I have no intention of breaking Mr Buttigieg's record. I wish them all a long and healthy retirement.

On a sad note, this year saw the passing of Maruchi Risso J.P., She was appointed a JP in 2002 and until her retirement was extraordinarily committed to the Magistrates' Court. This year is also the first time that Louis Triay King's Counsel is not with us. He died at the age of 94 in his 73rd year of call to the Gibraltar Bar, 40 of those in silk, the Guinness World Record Holder for the longest career as a lawyer, he was a force of nature, the likes of which we will not see again.

As it should, life moves on and so does work.

For the next few months, the justices of the peace will be sitting more often. Justices play a fundamental role in the administration of justice, however, it is one which is not sufficiently understood or appreciated by the public they serve. For my part, I am very grateful to them for their dedication and commitment. I anticipate that during the course of this legal year we shall have a need to recruit more justices. I would urge members of the public, from all walks of life, who wish to make a positive contribution to our community, to apply.

Turning to the Supreme Court, the number of cases remains largely constant. However, high value complex commercial cases, although few in number, have a disproportionate impact

upon the judicial workload. The changing nature of the work we do also impacts upon our Court of Appeal. Going forwards it is likely that sessions will be longer or that occasionally, extra sessions will have to be intercalated as and when the need arises. In my wish list, is an amendment to the Court of Appeal Act which would allow for substantive (and not only interlocutory) hearings to be conducted remotely. I make clear that there is no desire either on my part or more importantly on the part of our Court of Appeal to hear cases other than in person in Gibraltar. But there are instances when it is in the interests of justice to deal with a substantive appeal very expeditiously, and subject to stringent certification by the President or the Chief Justice, the ability to do so would be a useful tool. And of course, our new system makes such hearings all the easier.

I would express a word of caution about remote hearings. Reliance by the profession on English counsel is not decreasing. Whilst in the long term it will undoubtedly undermine our home grown advocates, I recognise that it is a perfectly legitimate resource which lawyers and/or their clients may wish to use. However, and although I have sung the praises of our new technology, I fear that with it will come increased pressure to have English counsel involved in ever more minor applications with the request that they be dealt with remotely, not least because this will reduce costs. And if that becomes more prevalent, in time litigants in person will no doubt wish to use English counsel through direct access, to the detriment of the profession's development.

Returning to the Court of Appeal, this year has seen the appointment of Sir Adrian Fulford, he is not with us today but hopefully will be here for the next session. I am grateful to the President, to Sir Colin and Sir Patrick for joining us today. It is always a privilege for the resident judiciary to be joined in this ceremony by our Court of Appeal, because it serves to illustrate that they are truly an integral part of Gibraltar's judicial family.

This past year has also seen the coming into force of the Legal Services Act, not may I add without some difficulty. It had been a long standing ambition of the then Bar Council that we should have our own professional code of conduct. One that took account of our fused profession. A lot of effort was put in by many of us in the drafting of a code, derived from that in New Zealand, which was the model advocated by the Bar and later the Law Council. It was therefore somewhat disappointing, that at the eleventh hour, and having already concurred with the code, that the Law Council purported to withdraw its concurrence. As I understood it, in

part, this was because a significant proportion of its members took issue with certain conflict provisions in the code which they and the Law Council said “*affect[ed] and undermin[ed] the established practice of members*”. As I informed the Law Council at the time, any established practice was one which necessarily had to comply with the existing regulatory regime and in particular the conflict of interest provisions in the SRA Code of Conduct and that any deviation therefrom was to be deprecated.

All that said, for my part I am perfectly content with our having retained the English SRA and BSB Codes, undoubtedly that has the advantage that these are living documents which are updated in a way that a jurisdiction such as ours cannot realistically hope to emulate. But as I also pointed out at the time my perception was and remains that the real issue was and is, not so much about the detail of the code that applies, but rather an element of concern by some, over the more appreciable level of regulation which the new regulatory regime will bring about.

That episode also speaks to a bigger picture that many within the profession have not sufficiently engaged with the new statutory regime. It is worth remembering that the Law Council is now a statutory body, that by operation of law, its chair is a member of the LSRA and that two other members of the LSRA are appointed by me on the advice of the chair of the Law Council. The legal profession, quite properly has a very large level of input into its own regulation and it is legitimate that practitioners may wish to influence the direction of travel of the LSRA, but the way to do so is by engaging and participating in the Law Council and LSRA which are the bodies which respectively represent and regulate the profession.

I cannot leave the subject of the regulation of the profession without paying tribute to David Dumas KC who has been the first CEO of the LSRA and who shall be retiring shortly. The profession should be grateful to him for his dedicated service over the past few years.

Notwithstanding what I have said, I continue to be the professions greatest supporter. And this not because my daughter was admitted as a solicitor this past legal year. She accepted my invitation, so hopefully she is in one of the other courtrooms, I suspect ignoring everything I have to say. I hope not everyone ignores it, because my advantage is that of having an overview of what is happening at the litigation bar, and all I wish to continue to do, is attempt to give a steer which helps the profession grow and develop further, without it forgetting the fundamental role which it plays in the administration of justice and the rule of law.

Every year I challenge myself to somehow weave the samosas into my speech, evidently this year I have decided to keep it simple.

I declare the New Legal Year Open.

A E Dudley
Chief Justice

29 September 2023