

OPENING OF THE LEGAL YEAR 2024

CHIEF JUSTICE'S SPEECH

If it has gone by largely unnoticed then we have succeeded. But the past legal year has been extraordinarily challenging for us, and I anticipate that it will take us at least another 6 months before we find ourselves on an even keel.

The unexpected departure from the bench and appointment as Speaker of our Parliament of the person formerly known as Mrs Justice Ramage-Prescott is undoubtedly the judiciary's loss and Parliament's gain. But that loss has been most acutely felt during the nine months in which that office was vacant and consequently our Supreme Court judicial complement was down by 25%. For those in the legal profession the comparator would be, a firm suddenly losing 25% of its key fee earners and not being able to replace them for nine months. This, whilst endeavouring to continue to provide clients the same standard of service.

Mr Justice Happold took up office on the 1st August and that will of course help ease the pressure. He is already proving to be a real asset to our small judicial team and I hope that we have made him feel welcomed and valued.

Looking at the raw numbers, as regards new claims filed this calendar year, they are broadly similar to past years. We are however experiencing some pressure with crime. Not only because we have been down one judge, but also because we have had to deal with some relatively long criminal trials. The most obvious example is the trial presided over by Mr Justice Yeats at the start of the year, which at 10 weeks, has been our longest criminal trial with a jury in the last 20 years. Typically, in that same period we would have been able to list some five or six criminal trials.

As things stand, we have some 30 criminal matters that have to be dealt with. Some have trial dates; some are not yet ready to be set down for trial and some will go short. But looking forwards, I anticipate that as the pressure in the court diary begins to ease in the first quarter of 2025, it is likely that we will start to schedule two criminal trials for hearing at the same time. Defendants, particularly those on remand, and complainants, especially those who are vulnerable, are entitled to a hearing within a reasonable time. To those that practice at our

criminal bar I would remind you that the overriding objective which applies to both the court and the advocates to deal with a case justly, includes dealing with it efficiently and expeditiously.

The Magistrates' Court has also faced significant challenges. It operated without a substantive Stipendiary Magistrate for 6 months until Mr Bonfante took up office in March. I pay tribute to the lay justices who during that period, in alternate weeks doubled and tripled their sitting days. I am very grateful to them for their dedication and commitment. This past year saw the Judicial Service Commission conduct a recruitment process for Justices of the Peace and advice having recently been tendered to His Excellency, I anticipate that an announcement will be made shortly.

Since he took up office Mr Bonfante has introduced new case management processes designed to reduce the time it takes for cases to progress from first appearance to final hearing. Over the course of the forthcoming year we will need to measure its effectiveness. But whether or not this new approach works will be down not only to the court but also to the criminal bar; the Office of Criminal Prosecution & Litigation and the Royal Gibraltar Police. As with most of what we do in the courts to seek to improve the service we provide, very little can be achieved unless the principal stakeholders support and engage with the process.

Also instrumental in ensuring that the operations of the Magistrates' and Coroner's Courts remained unaffected, was Mr Tonna. He is the judicial officer holding the greatest number of offices. Registrar of the Supreme Court; Registrar of the Court of Appeal; Additional Stipendiary Magistrate; Deputy Coroner; Admiralty Marshal; Administrator General and Sheriff. During the past year he also sat as an acting Puisne Judge, and I fully expect this will continue in the future.

Mr. Tonna's responsibilities encompass the full spectrum of the administration of justice, although perhaps the least enviable of his roles is that he is my right hand when it comes to discharging my more administrative functions. My very sincere thanks go to him for his extraordinary dedication.

It would be remiss of me not to acknowledge the other key person in our organisation. Not only the lynchpin to our daily operations but also the person with vision and commitment to continuously strive to provide a better service to our community. To those that have regular interactions with the Courts Service it will be obvious that I speak of our Chief Executive Officer, Ms Cumbo. Every day three, four or five and sometimes even six courts will sit as from 10:00 in the morning, the fact that for the most part it happens seamlessly is testament to her and her dedicated team of 43 civil servants including support grades. They are the backbone of the Courts, and I thank them all for their professionalism and dedication.

In January 2023 during the second reading of a bill, the Chief Minister very graciously referred to our “*court system*” as “*one of the best in the world*”. Grateful as I am for those words, it would be presumptuous of me to adopt any such description. What I can say is that our touchstones are impartiality and integrity. Our mission - to provide an administration of justice which commands public trust and confidence.

From my perspective one of the more important aspects of my office is to be alive to any issues or shortcomings, within the system and to work— usually alongside the Registrar and the CEO—to address and resolve them. The reality, however, is that in recent times we have not had the bandwidth to address all these issues as proactively as we would like.

By way of example, although in context a relatively minor matter, the Supreme Court Fees were last reviewed in 2015. Since then, the Index of Retail Prices has increased by about 30%. The review cannot simply be a straight arithmetical increase because the pre-requisite to our commanding public trust and confidence is access. The rule of law is nothing without the public whom we serve having real as opposed to theoretical access to the courts. More prosaically what the profession can expect is an increase in fees, which nonetheless will remain below the level of fees in England and Wales; that any increase of the issue fee for relatively low value claims will be modest and that

some fees such as those for the making of applications in the Court of Protection may remain the same or even decrease.

One of the jurisdictions which despite its importance does not usually get a mention on these occasions is the family jurisdiction. Possibly that is partly because proceedings are held in private. As there has been in England and Wales, there is a legitimate debate to be had as to whether and in what circumstances accredited members of the media should be allowed to attend family proceedings. Particularly in public family cases where the Care Agency seeks care orders in respect of children which can have the effect of depriving parents of their parental rights.

Although care cases are not huge in number, averaging 6 a year (although sometimes involving more than one child) they are labour intensive and it is important to acknowledge the specialist skills of lawyers who practice in that field; guardians ad litem and social workers. It is the area of law in which arguably the very most consequential decisions are taken.

Other than when high profile cases are involved, the Coronial jurisdiction is also one which is often forgotten. There are at present 43 deaths under investigation by the Coroner although not all will necessarily require an inquest because the post mortem examination may show that the death was the result of natural causes. The coronial jurisdiction has become more complex and with the introduction of Medical Examiners in the GHA more cases are being referred to the Coroner. That is a good thing because some deaths which in the past may have been certified are now being reviewed more carefully. But of course, it is self-evident that if more deaths are investigated finite resources become stretched.

As always it is a privilege to sit with our Court of Appeal. It is no accident that their Michaelmas sitting coincides with this ceremony, because the President and Justices of Appeal are an integral part of our judicial family. I likely have not previously spoken about the workings of the Court of Appeal. Whilst the perception might be that they

only hear cases in the bi-annual sessions, the reality is that more and more they are also considering interlocutory applications either on the papers or remotely. The latter has become easier since we acquired our new audio-visual system.

Let me immediately allay any fears that there might be, because I know as a fact that our Court of Appeal very much rather sit in Gibraltar than remotely, but it seems to me that legislation which allows for substantive appeals to be heard remotely in certain limited circumstances would be desirable. The reality is that very occasionally there are cases which ideally ought to be heard swiftly without having to wait until the next session.

Of course, ensuring that the administration of justice is fit for purpose is not the exclusive domain of the courts and the legal profession. The Minister for Justice, can look forward to my raising with him some legislative, resource and systemic administrative issues, which if addressed would assist us in the discharge of our functions. I know that at the very least I can count on a sympathetic ear.

There are other bodies who support the administration of justice, that often remain unrecognised. Today provides me with an opportunity to mention some of them.

Vital to criminal justice but very often unacknowledged, our two Probation Officers who have a very heavy case load preparing not only pre-sentence reports but also providing support to the Parole Board. I thank them for their professionalism and commitment.

An institution which we do not readily associate with the courts or the legal profession, but which has become a welcome fixture in the qualification route to lawyers, is our University. It is now coming to 10 years since the Supreme Court Act was amended to introduce the requirement for an approved academic course in Gibraltar Law. I suspect that trainee lawyers, some of whom are attending this ceremonial opening, would rather not do the course and sit the exams but, and I accept it is purely anecdotal, the feed-

back that I have received is that many of those that do the course appreciate its value during their first few years of practice, and that some turn to their lecture notes as a first port of call. My thanks to the Vice Chancellor for what I know is her continued support and commitment to the course and to those lawyers who support the course as speakers in the various topics.

Another institution that plays a crucial role in upholding the integrity of the legal profession and consequently of the administration of justice is the Legal Services Regulatory Authority. Established under the Legal Services Act 2017, it is nearly five years since the first CEO took office. My congratulations to Mr Francis Muscat who was appointed as Chief Executive in February. Right that we acknowledge the hard work and commitment of his predecessor David Dumas KC who both in his time in the Bar Council and thereafter as the Authorities first Chief Executive was instrumental in bringing a project fraught with difficulties to fruition.

I mark the passing of David's father, Victor Dumas OBE JP who passed away last November. Appointed a Justice of the Peace in 1972 he was a stalwart of the lay bench for 24 years before moving to Part II and thereafter continued to attend this ceremony for many years.

Finally, and on a less sombre note, let me pay tribute to three members of staff who retired this year. They certainly deserve recognition not only because of their dedication but also because in varying degrees they had to put up with me. Mrs Inma Cano and Mrs Inez Hazell both retired as Personal Secretaries. Inma, the most fortunate only had to put up with me for under a year. As regards Inez, all I can say is that although regularly badgered by her for 6 years when not doing what I was supposed to do, I miss her. And then of course Ms Anne Karine Hernandez - to the litigation bar much better known as Kiki. Kiki retired this year after a total of 39 years and 6 months service - 20 of those in the courts, a member of staff who worked in the courts both in the old days of distinct courts and registries and later with the Gibraltar Courts Service. The listing

officer for her last 8 years, she kept lawyers and judiciary in line. I hope to join them now for a drink and our traditional nibble.

With that, I declare the New Legal Year Open.

A E Dudley
Chief Justice

27 September 2024