

Opening of the Legal Year 2020

As reported at [2009]UKPC 43, Lord Phillips handing down the advice of the majority of the Judicial Committee of the Privy Council, in respect of the removal of my predecessor in office, at [181] said that Mr Justice Schofield's, intended cancellation of the Opening of the Legal Year showed, and I quote: "*a lack of judgment in relation to his public conduct in a respect that was damaging to his office*". In the context of the Covid pandemic, I suspect that had I cancelled this year's ceremonial opening I would not have attracted such strong criticism. But from my perspective marking the legal year is a significant annual event. This year we miss most of the ceremonial aspects and there will be no drinks or samosas in the gardens. In strict compliance with the Covid Regulations there are no more than 20 of us in this court room, and as I wear my mask, my glasses get steamed up, I struggle to read this address.

Enjoyable as the ceremonial aspects are, the core purpose of the event is to review the successes and challenges of the previous year and to explore what may lie ahead. This year more than ever that is an important exercise.

First, my sincere apologies to the members of the legal profession whose day this is and who I have been unable to invite. I single out the doyen of our profession Louis Triay QC now in his 70th year of practice, who earlier this year was hosted by the Treasurer of the Middle Temple to mark

that anniversary. Also Sir Peter Caruana, the chair of the Legal Services Regulatory Authority who with his CEO David Dumas QC and the rest of the board have actively sought to bring about the full implementation of the Legal Services Act. As in very many other spheres the pandemic has had an impact, but positive change in the regulation of the profession is already apparent and I know that there will be further positive developments over the next few months.

I welcome the guests that are here, and in particular His Excellency, to his first Gibraltarian Opening of the Legal Year. Because of your professional background your Excellency is in familiar territory. Curiously, including Sir David, 25% of those present today are benchers of the Middle Temple, and that takes me to the Minister for Justice, who was recently elected as a bencher and who in any forthcoming Gibraltar Middle Temple event will be Master Junior. I congratulate her on her election as a bencher, but more importantly I thank her for the support she has provided the administration of justice through what have been challenging times.

Congratulations also to Gareth Coomb on his appointment as Superintendent of HM Windmill Hill Prison and to Richard Ullger our new Commissioner of Police. I say absolutely nothing about the retirement of the former Commissioner. But there is a satellite issue upon which I will comment, and in doing so I prefix what I say by acknowledging that whoever is appointed under the

Commissions of Inquiry Act, is a matter entirely for the Government. That said, what I found disconcerting was that Mr McGrail should have asked for an inquiry to be conducted by a UK High Court Judge and that Government should have adopted that position when stating that the inquiry will be, and I quote: *“led by a senior judge from outside the jurisdiction, a high court judge or higher”*. No doubt it was not intended, but an inference that could legitimately be drawn, is that the local judiciary is either not equipped to handle an inquiry of that nature or is insufficiently independent or both. And on both I would fundamentally disagree. Because it is a privilege for me to lead a team of senior judges who constantly display ability, dedication, integrity and impartiality.

My other team, which I hold in equally high regard, are the CEO of the Courts Service and the Registrar. Over the past months they have worked extraordinarily hard to keep our courts operating. I will not overstate the position, I immediately recognise that other individuals and institutions have faced and will continue to face far greater pressures and demands than what we have had to deal with. But that does not mean that we have not had our challenges. With the coming into force of the lockdown period in March, I made Rules of Court allowing for the partial closure of the public counters; hearings were vacated, bail was extended and a moratorium for the payment of fines granted. But the courts did not close. Because simply put we cannot close. The Magistrates’ Court continued to deal

with remands and over- nights, including breaches of Covid Regulations. In the Supreme Court provision was made for the filing of urgent applications by email; urgent matters were heard either remotely or in person; and the admiralty registry remained open and we were ready to undertake ship arrests.

Post lock down on 1 June the registries were re-opened to the public and we made it a point of tackling the backlog. In civil and family that has been achieved. In the Court of Appeal, by virtue of Covid Regulations, appeals in which delay would cause injustice will be heard remotely in October, November and December.

The resumption of jury trials is evidently more problematic, but we had one in September and have a number listed over the next weeks. We are in the fortunate position that when hit with the pandemic we had no backlog, but we are not complacent and are looking at how best to run trials. The difficulty of course is that one size does not fit all. A two or a three day jury trial is not the same as a trial with three defendants each with separate representation or indeed a complex fraud trial which can last weeks. Similarly a low value civil claim with few witnesses is not the same as a multi-million pound claim were social distancing does not allow all the lawyers to fit in one court room. This against the backdrop that the courts will adhere to public health advice strictly. I sympathise with counsel when they say that wearing a mask impairs their ability to do their job,

because for my part it sometimes feels as though it dulls the senses. However, we have to take the precautions that we are advised by Public Health Gibraltar are necessary, because we owe a duty to court users, some of whom attend not through choice but through compulsion of law; to the staff and to the wider community.

However, the fact that so far the courts have weathered Covid with a modicum of success should not lead anyone to conclude that we are in rude health. I have absolutely no complaints whatsoever as regards the size of our judicial complement, save to say that if our volume of work remains as at present, then we definitely need to retain the third puisne. 8 new JPs have been selected for appointment to take account of past and prospective retirements. This legal year we have had 6 justices move to Part II of the roll. Ms Louise Pardo and Ms Joshina Viroomal asked to be moved to Part II after 20 and 18 years of service respectively, whilst Mr Melvyn Farrell very properly requested the transfer upon his very well received appointment as Speaker. Mr Charles Armstrong; Mr David Cuby and Ms Brenda Soiza transferred to the Part II after long and committed service upon reaching retirement age. One of our retirees, Ms Soiza who is with us today, until her very recent retirement also served as deputy chair of the justices. I thank them all for their service to the administration of justice.

Although we are very adequately resourced as regards judicial officers, the position with the Gibraltar Courts

Service complement is rather different. The official complement is of 43 but on the ground, on a good day, we are operating with 70% of that number and over the summer at times we have been operating with 50% of the staff. We treat the court registries as an amalgam, but to be clear what is in fact being run are multiple distinct registries: QBD, Administrative Court; Chancery; Commercial; Probate; Family; Crown Court; Court of Protection; Admiralty; Appellate; civil and criminal Court of Appeal; Magistrates' and Coroner's Court and I possibly miss some others. And of course the generic administrative and accounting functions of any public body.

I understand the financial impact that Covid has had on the wider economy and consequently upon public finances. But the court administration is at a tipping point, there is no slack left. Our problems transcend Covid, any further reduction to our operating levels could have a serious impact upon the service we provide. The nature of what we do means that officers require training and time within the department before they can discharge their duties effectively. I say that to make the point that deploying officers to the Courts Service on a short term basis to tackle pressing needs is not be a viable option, rather there is an urgent and pressing need to find solutions that will work in the short, medium and long term.

I conclude by recording the deaths of Maureen McNamara who served this court as a social worker in family matters

and latterly as a guardian ad litem; Lt Colonel John Porral who prior to his retirement some 25 years ago was a stalwart of the lay bench and Sir John Laws, who although appointed to our Court of Appeal and having historic connections with this jurisdiction passed away this year without having been able to sit.

The tone of this speech possibly reflects the grim times in which the world finds itself, but we can hope that the new legal year which I now declare open, brings better times. Finally, on the basis that I do not have a bailiff or an usher present to call out, may I now ask you all to stand so that I can walk out of the court room in keeping with tradition.

A E Dudley
Chief Justice

02 October 2020