

OPENING OF THE LEGAL YEAR 2021

Introduction.

May it please your Lordship.

I would like to welcome our guests, His Excellency the Governor, the Chief Minister and other distinguished guests.

I closed my address last year in the hope that, by this time, the pandemic would be behind us, our new relationship with the EU would have been settled and that this year's opening would be taking place before a full court, in full dress followed by refreshments.

We are not out of the woods yet on any of those fronts, but in the last year we have continued to progress on them.

COVID.

As the Covid pandemic carried on mutating around the globe, our first death was inevitably and sadly recorded in November 2020. We have now lost 97 dear members of our community.

We, the members of the Bar, share in the grief over the loss of family and friends.

On behalf of the Bar I wish to extend our deepest condolences to all those affected.

The pandemic has continued to impact on legal services in Gibraltar. Not least, the Court of Appeal has not been able to sit in Gibraltar since June 2020. I am pleased that hearings have continued to take place remotely and the Bar is deeply grateful to all who have made this possible.

I am also pleased to note that in person hearings will resume next week.

BREXIT.

My Lord, in the early hours of the very last day of 2020 we reached a major milestone with regard to Brexit, and the future of this jurisdiction, when agreement was reached on the framework for a treaty, to be concluded between the UK and the EU, setting out the terms for Gibraltar's future relationship with the EU, the so-called New Year's Eve Agreement.

The Agreement was the culmination of many months of intensive negotiations which were led by the Chief Minister Fabian Picardo, the UK Foreign Secretary Dominic Raab and the Spanish Minister for Foreign Affairs, Arancha Gonzalez Laya.

It addresses the Gibraltar Government's core objective, which is to deliver fluidity for the movement of persons across our land frontier with Spain. In order to achieve this, the Agreement envisages a regime whereby both Gibraltar and Schengen immigration checks will be operated at the Gibraltar airport and port. Frontex, the EU's Border Agency, will carry out the Schengen checks.

The NYEA caters for other matters too, such as a bespoke regime for the movement of goods, environmental and labour protection, law enforcement and judicial cooperation. It will also contain its own governance provisions, including an institutional framework and a dispute resolution mechanism.

No sooner had the NYEA been reached, the UK and Gibraltar Governments continued to work hand in glove preparing for the negotiations with the EU. I would like to record our thanks to the UK Government for the time and resources they have devoted to this. We have been able to have access to experts in all relevant Whitehall Departments, not just at the FCDO and Cabinet Office.

Unfortunately, it was not until 20 July 2021 that the European Commission published its draft mandate for the future treaty. It is regrettable that the mandate has crossed a number of red lines set out in the NYEA, in particular, the glaring omission of the role

of Frontex in performing the Schengen checks. It is notable that the Gibraltar, UK and Spanish Governments have been unanimous in decrying this omission.

It is expected that the final draft of the mandate will be adopted very shortly and we are both confident and hopeful that it will have been amended to record the role that Frontex will play. We anticipate that the first round of negotiations with the EU will take place during this month of October.

Recent events in the UK, with the shortage of **petrol supplies**, has acted as further evidence as to why the UK's own treaty with the EU would not have been a good one for Gibraltar, and why a bespoke solution for Gibraltar was essential. It is remarkable, if I may so, that notwithstanding the fact that no treaty has been in place for Gibraltar since the end of the transitional period under the Withdrawal Agreement, the Government has managed to preserve a great level of the status quo, not least on border fluidity.

In this context, I would like to highlight the decision taken to renew the MoUs which were negotiated under the Withdrawal Agreement and which had expired on 31 December 2020. The Committees met this week in San Roque and Gibraltar and serve to maintain the dialogue with our counterparts in Spain in matters such as police and customs cooperation, the environment and citizens' rights.

It is on the basis of such dialogue that trust is built and progress is made.

Whilst hopeful that an agreement will be reached with the EU, Government has continued to prepare for a **Non-Negotiated Outcome**. This work is led by a Board that is co-chaired by the Deputy Chief Minister, Dr Joseph Garcia, together with the UK's Minister for Europe, Ms Wendy Morton. The most recent meeting of the Board took place in Gibraltar on 9 September.

BEYOND BREXIT & COVID

My Lord, I would like to highlight some of the other work that has kept the three offices of the GLO busy during the course of the last legal year.

With regard to the **Office of Parliamentary Counsel**, earlier this year important legislation was introduced to curb the storage and transportation of large quantities of **petrol in containers** which were being used for illicit activities. In addition, last week Parliament approved a further Bill that will significantly increase the penalties available at sentencing.

Parliament has also approved the **Medicinal Cannabis Bill**. The Act, which was published on Monday, creates the regulatory framework for activities surrounding the production, import and export of medicinal cannabis. Gibraltar now joins a number of jurisdictions such as Australia, New Zealand, Canada, Jersey and the Isle of Man where medicinal cannabis may be produced under licence.

With regard to the **Office of Advisory Counsel**, I would first like to congratulate my colleague Lloyd DeVincenzi who has become Gibraltar's first Solicitor General. Lloyd is a pillar of the GLO and his designation is no more than recognition of the outstanding manner in which he has discharged his advisory functions for many years now.

In addition to the daily legal advice provided to Ministers and Government Departments, his Office has been particularly involved with the further work undertaken in relation to **MoneyVal's** assessment of our jurisdiction and our efforts to underpin Gibraltar's stance against the potential misuse of our finance centre for illicit activity.

The Office has also been advising and preparing for a full **International Maritime Organisation (IMO)** audit. The audit will cover a wide spectrum of areas, including safety at sea and the prevention of pollution from ships.

With regard to the **Office of Criminal Prosecutions and Litigation**, notwithstanding the issues thrown up by the pandemic, the OCPL was able to handle every court sitting and meet each and every of its obligations without fail.

The OCPL continues to see an increase in document heavy cases requiring a modern and coordinated approach with the RGP, particularly in dealing with disclosure issues that arise.

I wish to note, and record my appreciation to all those involved in securing a civil court order under the **Proceeds of Crime Act** which has seen the confiscation of a sum of £1.7 million. This is by far the largest such recovery order to date and highlights the excellent work of the RGP and the OCPL in this area, with other such cases in the pipeline.

The Office has also carried out the prosecution of **historic sexual abuse cases** thereby demonstrating our jurisdiction's ability to properly investigate and successfully prosecute these crimes even where the acts complained of date back decades. Unfortunately, the public sometimes need reminding that sentencing, for historical crimes pre-2012, must take place in accordance with the tariffs contained in the old Criminal Offences Act and not the far steeper sentences provided for in the current Crimes Act. This is not a failing of the criminal justice system but rather a reflection of sentencing practice as it was then. The public can and should have confidence in our criminal justice system.

CONCLUSION.

My Lord, in conclusion, it has been another rather full year, with important challenges facing us in the new one. The GLO is ready to face those challenges.

My Lord, it remains for me to formally move for the Opening of the Legal Year.

Michael Llamas CMG QC
HM Attorney General for Gibraltar
1 October 2021