

OPENING OF THE LEGAL YEAR 2021

CHIEF JUSTICE'S SPEECH

Once again the opening of the legal year is marked by the Covid 19 pandemic. Looking at the glass half full, the number present in this courtroom has doubled from last year when there were only 20 of us. Although in reduced format we have had a procession and guard of honour for which I thank the Commissioner and the Superintendent. And, on the basis that the traditional reception takes place in the gardens and there is a very reduced number of guests, I am pleased that as soon as we finish, we will be able to enjoy samosas washed down by some inexpensive wine.

Over the past few months, quite rightly tribute has been paid to various public and voluntary bodies and private individuals for their contribution and hard work in managing the impact that Covid 19 has had upon our community. With the caveat, that we are public servants, and that therefore this is what we are paid to do, in good times and in bad, I nonetheless take advantage of the annual opportunity I allow myself to make a public statement, to pay tribute to the Gibraltar Courts Service staff and the judiciary for their work and commitment over the past 12 months.

Although mostly not public servants, I also wish to thank the legal profession. Mr Navas, the Chair of the Law Council has always conveyed the diverse views held by his membership, whilst also being an understanding interlocutor, who has assisted me and my team greatly when taking broad operational decisions. And for their part, individual practitioners have almost invariably understood our difficulties and endeavoured to assist.

Like every other organisation our work has been disrupted by Covid, but we have managed to continue to operate reasonably effectively. There is no backlog in the family or criminal jurisdictions. As regards the latter, that may in part be because in the 2020 calendar year, only 30 criminal matters were transferred or committed to the Supreme Court. That is by some margin the lowest number since we started to maintain statistics in 2009.

Where we are feeling the pressure is with civil work, particularly with what I would describe as high value commercial and trust litigation. Understandably in 2020 there was limited

progress in many of those actions, but with the advent of vaccinations in Gibraltar and other jurisdictions, there has been renewed focus by practitioners in seeking to progress those cases. In cases where 10 or 100's of millions of pounds are at stake and in which usually multiple parties are involved, what would otherwise be relatively simple applications, can take days, submissions become esoteric and sometimes almost akin to deciding how many angels can dance on the head of a pin.

But although the courts have operated reasonably effectively, it has not been easy.

Throughout the year our staffing levels have been affected by what were undoubtedly essential re-deployments to other departments. Indeed, in January this year when Gibraltar was being battered by Covid, at Minister Sacramento's request, the CEO, Ms Cumbo, was seconded to the Gibraltar Health Authority, where she worked for 4 months.

A few weeks ago, our bailiff team was decimated with sick leave; annual leave and isolation requirements. This meant that the Registrar qua Admiralty Marshal, had to clamber up a rope ladder at the Eastern Anchorage to arrest a 322 metre 164,000 ton crude oil tanker. The poundage from the sale of that vessel will result in a payment into the Consolidated Fund in excess of a quarter of a million pounds.

In November 2020 a member of staff working in the principle registry office tested positive for Covid. That meant that 13 staff members in what is the Supreme Court's administrative engine room, had to isolate and be away from the office. Closing the Registry counter is a matter of absolute last recourse, because not only is it central to our operations, but also because if the counter is closed, claims and applications cannot be filed and the only option is to apply a general stay to all existing actions. Alive to that, the counter remained open and for some 2 weeks was manned by senior members of the GCS staff including the CEO who went back to doing the kind of work she did when she was just a little bit younger. Immediately measures were put in place to mitigate the risk of it happening again, and I am grateful to Minor Works and JBS who over a few days divided the large open plan office into two smaller offices so that we could segregate staff into smaller teams and thereby reduce the future chance of mass isolation.

Our first in person Court of Appeal session since the start of the Covid pandemic starts next week. I am grateful to Sir Maurice for his coming a few days earlier than he had to, to join us for this ceremony. It is always a privilege to share the bench with him. Although the court has not physically sat in Gibraltar, that does not mean that it has been inactive. Pursuant to the provisions of the Civil Contingencies Court of Appeal Regulations, a number of appeals, were delay would have led to injustice, have been heard remotely. In very large measure thanks to the flexibility shown by the judges of the Court of Appeal, those hearings proved a success. In slower time we need to consider whether it is desirable for aspects of those emergency provisions to find their way into a substantive amendment to the Court of Appeal Act. Likewise, remote hearings were conducted in the Supreme Court with judges sitting in their chambers. But always with a live feed transmitted to a court room to preserve the fundamental principle of open justice.

The principle of open justice is about seeking to secure public confidence in the administration of justice and to do so we must subject ourselves to public and professional scrutiny. From my perspective, criticism of judicial decisions is not only welcome, but essential, because it is through the involvement of civil society that laws evolve, hopefully to better serve the community. Although I confess that I do not follow it much, social media has become a conduit through which to criticise court decisions. That criticism is most prevalent when it comes to sentencing. In that regard what I would say is that no two cases are ever same; that crime impacts upon victims in different ways; that the circumstances of each defendant is always different and that Supreme Court sentencing reasons are posted in the GCS website, usually within a couple of hours of sentencing. Criticism is useful, most especially when it is informed. It is capable of being conveyed in an incisive nuanced tweet. Although at its best, it is part of robust but courteous debate which allows for a plurality of views. In that context the opinion of those that work in the criminal justice system, with victims and with offenders is particularly valuable, as is that of the legal profession.

A legal profession which continues to grow. At present there are some 260 lawyers in private practice, add to that crown counsel and other in-house lawyers, both in government and businesses generally, and we probably have 1 lawyer for every 100 citizens. I do not suggest that given that number of lawyers that the courts are over stretched, because that would be fanciful. Many of them only set foot in this court building on the day that they are approved, admitted and enrolled and are involved in non-contentious and financial services work. What

the figure highlights is the economic significance of legal services in Gibraltar. I hope that at least in part, the courts by safeguarding the rule of law and judicial independence and I like to think, operating a reasonably efficient system, can contribute to inspire business confidence and investment in Gibraltar.

As we look to the future, and irrespective of the outcome of negotiations with the European Union, it is very likely that legal and financial services will continue to be one of the pillars of our economy. Allied to that, Gibraltar can seek to further develop as a centre for dispute resolution because there can be no doubt that commercial litigation activity can generate further wealth and employment in our economy. But how do we develop it? Does the judiciary and the Courts Service grow organically with increased volume of commercial litigation or do we position ourselves to attract that work by having a specific commercial and financial jurisdiction with judges working exclusively in that field? I do not pretend to have the answer. Different successful small jurisdictions have tackled the issue in different ways. I simply think that all stakeholders need to adopt a very sober approach in which we develop a road map so that when the time comes to invest, it is done in a focused way and we seek to aim for the possible and not call out for the impossible.

That said, I want no one to walk away under the misapprehension that I have somehow gone to the dark side of what I sometimes, sardonically, refer to as the "*industry of law*". Within the constraints of an adversarial system, justice is first and foremost about the rule of law and the protection of rights. High value commercial litigation absorbs a disproportionate amount of court resources. It can also indirectly impact upon access to justice, because it has the potential to inflate the rates of fees charged by lawyers, so that instituting court proceedings can become unaffordable for many. It can impact upon the professional progression of junior lawyers, who find it easier to meet targets by supporting their leaders, rather than developing their own advocacy skills and fulfilling their potential. It can also lead many at times (and I include myself in that group) to have a distorted view of our civil justice system. In past Openings I have commented on the breadth of work we do in the courts, how we must deal with everything that in larger jurisdictions is heard by a plethora of specialist courts. That equally applies to our legal profession, who in litigation alone (which is the only area which I can pretend to understand) as a body has to undertake the whole spectrum of work. A diverse profession which in family, criminal and immigration work, to name the more obvious, there

are lawyers who represent clients, well beyond their professional obligations, for what objectively is rather limited remuneration.

There are no simple answers to how we can all deal with such a broad spectrum of work and competing interests in a way which is fair to all. Expanding entitlement to legal assistance is always an option, but it is also fair to say that when compared to the equivalent regime in England and Wales, provision for legal assistance in Gibraltar is significantly better. All I say is that whilst developing Gibraltar as a forum for commercial litigation is desirable and would benefit our wider economy, it cannot be done at the expense of ordinary citizens and their right of access to justice and the practitioners who represent them.

This is also the occasion when we mark deaths and retirements. In this last legal year 4 Justices of the Peace have retired or resigned namely Mr Albert Langston; Mr Charles Seruya; Mr Dilip Tirathdas and Professor Ian Peate. I thank them for their contribution to the administration of justice. In the legal profession we had the untimely death of Lionel Culatto who was called to our Bar in 1976 and who latterly was semi-retired and working as a consultant with Isolac. Always good company at the Opening of the Legal Year Bar Lunch, he will be remembered for his incisive legal mind.

This ceremony affords an opportunity to review the past year and to look forward to what the future may bring. But this year is also about celebrating one of our own. Louis Triay QC is now not only the doyen of the legal profession in Gibraltar, but he is now also the Guinness World Record Holder for the longest career as a lawyer, in what is his 71st year of call to the Gibraltar Bar and his 40th year in silk. This ceremony in which I now declare the Opening of the New Legal Year, is all about tradition, but sometimes traditions have to be broken, and this year instead of me having the last word, it will be Mr Triay.

A E Dudley
1 October 2021