

Opening of the Legal Year 2021

Friday 1st October 2021

Law Council Chairman's Speech

Chief Justice, I also welcome His Excellency the Governor, the Chief Minister, the Minister for Justice and other distinguished guests.

Introduction

1. I am pleased to report that, whilst the challenges presented to the legal profession by the pandemic have continued to test us, the year since we were last gathered here before you has been weathered with a different outlook and approach.
2. My advance apologies for touching upon some of the same areas which I addressed last year where these continue to be pertinent to the Law Council's activity and the interests of its membership and the legal profession generally.

Legal Services Regulatory Authority

3. This year the LSRA has continued to focus on AML/CTF compliance by law firms and a final review of the required amendments to the Legal Services Act and the Code of Conduct, both of which are nearly there and pave the way to a much-anticipated full commencement of the Act in the near future.
4. Through our seats on the LSRA Board, the Council has continued to participate in this process and looks forward to the roll out of the full regulatory framework for the benefit of clients, the profession and the jurisdiction generally thus ensuring that we continue to thrive and retain our reputation as an international centre of legal excellence.
5. A word of thanks to those involved in the review of the draft Code of Conduct, in particular the Chief Justice, the Registrar, Chairman Sir Peter Caruana, CEO David Dumas and Crown Counsel Ms Michele Walsh. Gibraltar's legal services industry will, for the first time in its long history, have the benefit of a tailor-drafted Code reflecting the

complex needs and idiosyncracies of the diverse legal disciplines within its broad church.

6. The industry is already adapting to a greater degree of regulation, at this stage, from an AML/CTF compliance perspective.
7. The regulation of AML/CTF compliance by law firms is welcomed by the Council as this ensures that firms and individual practitioners alike are educated and constantly alive to the risks and consequences of allowing such activity into their practices thereby ensuring, as far as possible, that the hard-earned reputation of our legal services industry is not tarnished by unwitting exposure to such practices and that where such practices are indulged in knowingly, that they are identified and addressed as quickly and effectively as possible.
8. However, the additional costs and resources arising from this increased regulation are also being felt. Whilst such oversight has been commonplace in relation to other financial services, many law firms, particularly those without the company management arms, are experiencing this greater level of scrutiny and cost for the first time.
9. Some smaller firms, who may in the past have undertaken Regulated Financial Business occasionally (for example, conveyancing for existing clients), are questioning whether it is financially viable for them to continue to do so.
10. The Law Council continues to support the smaller firms and sole practitioners in adapting to these developments.
11. The changing regulatory landscape may well result in some of these practices and practitioners grouping together or consolidating in order to achieve the economies of scale with which to better face these developments.

Duty Solicitor Scheme

12. On 27 June 2021 we entered the fourth year of the Duty Solicitor Scheme.
13. The Council looks forward to progressing the review of the Scheme and related Rules as agreed with the Ministry for Justice at the time of commencement.

14. I would like to thank the Royal Gibraltar Police, Deputy Registrar Mr Maurice Turnock and all practitioners involved in the Scheme for its continuing success.
15. The new Roster, which will take us to 30 September 2022, commenced today with 4 practitioners on the Senior Panel and 25 on the Legal Aid List.

Employment Tribunal

16. The issues which I touched upon last year in relation to the Employment Tribunal have unfortunately not been fully resolved.
17. I repeat my observations from last year which continue to apply.
18. The Tribunal continues to experience the trends of the last few years: increased complexity of cases, of damages claims, areas of law touched upon and participation of litigants in person. This combination continues to stretch Tribunal resources and chairperson availability.
19. I will turn to litigants in person shortly.
20. This year we have thankfully received much needed guidance from this Court in relation to liability in claims arising from the Bullying Act. Whilst this is not expected to result in a reduction in these claims or in the amount of Tribunal work arising therefrom in the short-term, it is certainly hoped that the clarity provided by this Court will assist advisers, parties and chairpersons to proceed with greater certainty in new and existing matters.
21. The difficulty in progressing claims against certain large employers, including the State, continues due to frequent conflicts of interests with panel chairpersons. These claims continue to make up much of the current backlog.
22. I am however happy to report that there is light at the end of this particular tunnel.
23. The Law Council is aware of imminent plans by the Ministry of Employment to enlarge the Tribunal panel of chairpersons and

perhaps even appoint some part-time chairpersons to ensure that such backlogs are consigned to history. I am also aware of plans to appoint a President of the Tribunal and to establish permanent Tribunal premises, with a suitable location being actively sought. The Council warmly welcomes these developments which are being spearheaded by the Director of Employment Ms Debbie Garcia and has offered its assistance in rolling out these measures in the spirit of cooperation which we have always enjoyed with her Ministry.

24. Finally, I would like to mention the Tribunal's long-standing and stalwart secretary: Ms Susan-Wink Sampere who retired earlier this year. The Council thanks her for her unstinting service to all users of the Tribunal. Her dedication, good-humour and timely cups of tea will be sorely missed by chairpersons.

Mental Health Review Tribunal

25. The Mental Health Review Tribunal has experienced a significant increase in its caseload and routine case management hearings (due in particular to the statutory annual reviews of all admitted patients). This has meant that the Tribunal now sits for between 3 and 6 hours every Wednesday, often getting through an average of 3 to 8 matters in each sitting.
26. Virtual hearings continue to work well for patients, hospital staff, senior management and doctors.
27. The video link hearings allow for representatives and staff to appear as and when required from their different locations and reduces delays during hearings and the need for these individuals to travel and wait around between their cases or during deliberations. It has also helped us to comply with the strict time limits imposed by the Mental Health Act during lockdowns and to sit when Tribunal members and representatives have been isolating.
28. This format also allows the Tribunal to accommodate the higher volume of work, retain the involvement of experienced practitioners with busy practices and will hopefully translate into savings for the public purse which funds their services.

COVID 19

29. The Covid-19 pandemic has continued to challenge our sector in the last year.
30. However, the financial and logistical demands of those first 6-9 months has resulted in the emergence of far better organised, resourced and flexible practices able to operate in the toughest of conditions and to flourish during the stretches of relative normality.
31. Investment in IT systems and restructuring of working practices and environments thereby enabling employees and practitioners to work remotely have been at the core of the resilience that the sector has required and gained as a result of this experience. The enduring result is the greater acceptance of flexible working arrangements by law firms, in particular for practitioners, for the general benefit of all concerned.
32. The sector's resilience throughout this period has been due in no small part to the very significant contribution of the Courts Service in keeping all of its services going through the lockdowns and the intervening periods. Its commitment to ensuring that the administration of justice and the needs of court service users were met at all times and as far as possible within the constraints of public health guidance is gratefully acknowledged by the Council and the legal services sector generally.
33. On behalf of the Bar and the Council, I would like to thank the Courts Service and in particular you my Lord, the Registrar and the Chief Executive Officer for your continued support of the, at times admittedly demanding, needs of the profession during this past year.

Court Users Committees

34. The Council has continued to address matters of interest to the profession, largely Covid related, with the Courts Service on an ad hoc basis despite the many other pressures and priorities on your agenda. The Council is grateful for the opportunities to do so and the ever helpful, prompt and constructive responses received on every occasion.

35. We look forward to the resumption of the in person quarterly meetings of our standing Court Users Committee to discuss matters of common interest.

Sole Practitioners Gibraltar group

36. One of the more interesting and welcome developments of the year was the formation of the Small Practitioners Gibraltar group in response to a consultation by the Council.
37. This is a group of 18 sole practitioners.
38. We look forward inviting a member of the Group onto the Law Council Board at our first AGM to ensure that the interests of this demographic are always represented.

The Law Council

39. The Council continues to meet on a monthly basis.
40. I would like to thank our secretary of the last year and a half Mrs Lisa Triay who is to leave us shortly. During her time with us she has provided a seamless transition from her predecessors. She has luckily avoided the organisational demands of not one but two Bar Lunches! We wish her all the best for the future.
41. I would also like to thank all members of the Law Council Board for their work and support this year and once again, I single out Emma Lejeune our Treasurer and Vice-Chair for her support and for continuing to fill our statutory seat on the Finance Centre Council. Through her seat on the FCC she has formed part of various sub-committees tasked by the Minister for Financial Services to review changes to our financial services legislation in preparation for Brexit and relating to the jurisdiction's Moneyval review.

General Observations

42. I would like to express a few general observations in my capacity as Chair.

43. The first, which I said I would return to, is the matter of litigants in person. The increase of litigants in person in all forums, Courts and Tribunals continues to rise and shows no sign of abating. They are here to stay.
44. Putting to one side for a moment the reasons for their increasing participation in litigation, there can be no doubt that they present a significant challenge for all stakeholders. Represented parties often experience much higher costs as a result of their inexperience, often having to guide them through the process and sometimes even having to take carriage of matters for them – bundle preparation being a common example. Proceedings are generally more drawn out involving more and longer case management and interlocutory hearings. Courts and Tribunals often and understandably struggle to hold them to the same standards as represented parties.
45. The reality is that these individuals would generally prefer to be represented but simply cannot afford it. The truth is that litigation, particularly where conditional fee arrangements are not available or appropriate, is fast becoming unaffordable for most people of modest incomes. Some people are not eligible for public funding and some areas of law simply do not attract it.
46. It seems to me inevitable that the cost of litigation will continue to increase and, therefore, so will the incidence of litigants in person. This is an issue which we expect will continue to feature on all stakeholder agendas in our commitment to ensuring access to justice for all.
47. A by-product of this increasing trend is the emergence in this jurisdiction of professional McKensie friends. These individuals, whilst assisting the litigants, the Court and other parties are not regulated in England and Wales and are certainly not envisaged by our Legal Services Act. It remains to be seen whether they are also here to stay.
48. Whilst most firms have a presence in the less lucrative areas of work representing our community's most needy, it has traditionally been the smaller shall we say "high street" type practices that have provided much of this representation and ensured access to justice to many individuals that would otherwise not have enjoyed it. In light of my earlier comments regarding the recent pressures felt by smaller practices and sole practitioners, it is therefore important that all

stakeholders continue to have the interests of such practices in mind going forward. Let me add that this has always been the case and I have no doubt that they will continue to do so.

49. Perhaps the time has also come, as in other jurisdictions, for the profession to recognise and thereby encourage the pro bono work which our sector has always provided to the community. This is something which will feature in the Council's agenda in the coming year and no doubt in our discussions with the Courts Service.
50. Another trend appears to be a shortage of new qualified local practitioners available for private practice and not just in litigation. It is not clear to me why this is the case, whether a result of lower numbers qualifying and being called to the Bar, a greater demand from the sector or a combination of both. This is thankfully being addressed by the engagement of English trained practitioners in different capacities, some of whom are establishing themselves here on a longer term basis.

Acknowledgements

51. I would like to note the recent passing of a member of the Bar this year.
52. Mr Lionel Culatto was one of the founder members of the Gibraltar Conservation Society and a strong advocate for the preservation of Gibraltar's architectural heritage. He was also one of the professions authorities on Landlord and Tenant law. He will be missed by his colleagues at Isolas and by the profession generally.
53. Our condolences go out to his family.
54. On a lighter note, I would like to congratulate Mr Louis Triay QC on behalf of the Council for becoming a Guinness World Record holder for the longest career as a lawyer – 71 years and counting since his call to the Bar in 1950! This legendary status will no doubt remain unchallenged in this jurisdiction for a very long-time.

Today

55. I thank the Bishop for once again agreeing to hold the Red Mass today which is an important event for many of our practitioners of faith and a traditional pre-cursor to the current proceedings.
56. The Council has opted not to hold this year's Bar Lunch on the basis of public health considerations. We look forward to hosting this as soon as possible.
57. And on that note, I second the motion that the legal year be opened.

Kenneth Navas
Law Council Chairman