

OPENING OF THE LEGAL YEAR 2022

CHIEF JUSTICE'S SPEECH

When this ceremony started and everyone bowed, and when every day lawyers and court staff bow as they enter the courtroom, they do not bow to the judges but rather to the Royal Coat of Arms, to show respect for the King's justice.

Reference to that justice is also to be found in the National Anthem. Not in the first verse which is about wishing our Sovereign a long and successful reign. But rather in the second verse, which many probably mumble. It is only there that we have the first entreaty to His Majesty the King:

"May he defend our laws"

Despite the historic connection between the Crown and the courts, the request in the National Anthem is not for His Majesty to defend "*his laws*" but rather "*our laws*" because at the heart of any democratic state is the rule of law. The truly fundamental principle which underpins all other fundamental rights. As Lord Bingham put it in his seminal work "*the Rule of Law*":

"...all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts"

For the past 70 years Gibraltar's laws were administered in Her Majesty's Courts. And it is with sadness, but also with the sense of dedication to duty that her Late Majesty exemplified, that the judiciary, and no doubt the legal profession, move on to the new era by re-committing ourselves to the preservation of all that is good about our system of justice, and whilst acknowledging that it will always be an imperfect system, endeavouring to make it as perfect as possible.

A good news story is that funding has been provided to rebuild the GCS website. The number of inquiries that were received as to when the site would return has served to highlight to us, that it is a tool which is well used by the profession, the media and as far away as a legal journalist in the US. I hope that when you visit the new website you will agree that it is far more attractive and user friendly. Its development will continue over the next few months as will the work to ensure that search functionality is maximised.

But, because there are always buts, one of the imperfections that we are battling at present, is our audio visual and recording system in our courtrooms which is now beyond its end of life, obsolete and not capable of repair. The Coroner's courtroom simply cannot be used because the recording system does not work. In courtroom 2 the video playback system has broken down completely although some parts have been scavenged and dated television screens with the right connectors acquired, so that we can continue to run criminal trials where CCTV footage is relied upon, in this courtroom. It is not a happy state of affairs. That said, I signal my thanks to Government for making available what is likely to be a significant funding package and particularly to the Minister for Justice for her support. The publication of the tender notice this week is a very welcome development, albeit, my entirely uninformed guesstimate is that we are not likely to have a new system in place before Spring 2023.

My thanks as well go to IT&LD for their ongoing support, on many occasions at very short notice. It is thanks to them and their ability to find work arounds that a number of criminal trials that would otherwise not have been effective, have gone ahead. I know that until we get the new system the GCS and IT&LD will continue to do everything within their power so that trials can carry on.

Staying with crime. If we compare ourselves to the Crown Courts in England and Wales we are in a significantly better position. Matters which are ready to be set down for hearing will, subject to witness availability, be offered dates as from January 2023.

Viewed from an input - output model, the number of cases being sent to the Supreme Court over the last four calendar years has remained constant at between 30 and 40, not all of which proceed to trial, whilst over the last 3 years we have had the benefit of a third puisne judge which has allowed us to ensure that at the court end there is no backlog.

My thanks again to Government for making funding available for a third substantive post of puisne judge and my congratulations to Mr Justice Restano on his substantive appointment by His Excellency, acting on the advice of the Judicial Service Commission.

However, what I would describe as the good news story in the criminal jurisdiction does not remotely mean that in the Supreme Court we are operating with spare capacity. Speak to anyone down Main Street and they will think that crime is pretty much all we do. In fact it does not even account for 20% of our work. There is a very full family list which properly does not get coverage because those cases are heard in private. The breakdown of marriages and relationships sometimes unfortunately results in disputes over residence and contact with children. And with a greater proportion of couples becoming homeowners, acquiring assets, liabilities and pensions, when parties fail to reach agreement as to their distribution, those disputes have to be resolved by the court. And although the actual number of cases has not necessarily grown, the asset and liability base of couples results in additional complexity, with cases which were previously dealt with in 1 day now requiring 2 or 3 days.

Likewise in public family work. In care proceedings, very rightly there has to be detailed scrutiny of the evidence and the law, including independent representation for the child, before a determination can be made as to whether removal is in the best interests of that child. Those cases when contested can easily be listed for a week or more.

But the type of work which not surprisingly attracts very little broader public interest but imposes the greatest time burden is high value commercial litigation. As business, finance and commerce becomes globalised, law firms continue to grow and ever more complex disputes come to court. Disputes which take up a very significant amount of judicial resources. This year an insolvency dispute has almost exclusively kept a judge tied up for 6 months.

In 1987 in the *Spiliada*, Lord Templeman's entreaty was that jurisdiction hearings should be measured in hours not days. I regret to say that it is an entreaty which has not lasted the test of time. This legal year a jurisdiction application in a high value complex international dispute was heard over 7 days with an additional 2 days required for pre reading.

Historically summary judgment or strike out applications were listed for ½ a day, nowadays they rarely require less than 2 days. Even some case management hearings are now listed for a day or more.

And of course, the greater the financial value of the litigation the greater the compulsion by counsel to drill down into the most esoteric of submissions or manage to disagree over how many angels can dance on the head of a pin. And at the end of it all, the judgment has to be written whilst juggling with other work.

I touched upon it at last year's opening and the position remains true today. We cannot as a jurisdiction be heard to complain about attracting that type of work, but over the next few years we need to develop a strategic approach as to how to meet the challenges that commercial litigation brings. One that allows for our jurisdiction to continue to be an attractive investment hub, in which the courts can in a just, timely and cost effective way resolve commercial disputes. But, without it impacting negatively upon our citizenry and their access to justice.

The issues I raise in relation to the volume of work also applies to the Court of Appeal. At a practical level The President and I are discussing the possibility of longer or additional sittings, and subject to legislative change the holding of remote sittings in exceptional circumstances, something which from a technical angle will be much easier once we acquire a new audio visual system. But for today let me simply say that as always, it is a privilege for the resident judiciary to be joined at this ceremony by our Court of Appeal.

This of course is also the occasion when we mark events that have taken place over the last legal year. I have touched upon the death of Her Late Majesty Queen Elizabeth II and the accession of His Majesty King Charles III whose courts these now are. Closer to home two retired members of our judiciary passed away. John Mockett at the age of 94. I had the privilege of being his colleague a lifetime ago, when he was Stipendiary and I was Registrar, not necessarily the tidiest, he was an absolute gentleman who always saw the very best in people. Krishna Khubchand JP also passed away this year. I had the privilege of getting to know him when I was Stipendiary. He took his judicial oath before the late Sir Renn Davis in 1983 and gave committed service in Part I of the roll for some 20 years. More importantly he was a kind and generous gentleman.

I hope you will allow me to finish this address by marking Hazel Cumbo's appointment as a Member of the Order of the British Empire in Her Late Majesty's last New Years' Honours List. She will be in Windsor later this month to receive her award. I know that she attributes her award to the hard working and committed staff that she leads as CEO of the Gibraltar Courts Service. It is undoubtedly true that the staff are a dedicated team that provide tremendous support to the judiciary, with an appreciation of the significance of the work the courts do, and almost invariably with a smile.

It is impossible for me to do justice to Hazel today. For me it is always Hazel, because we first met at Notre Dame. For those of you who have been around long enough, cast your mind back to the days before the major renovations of the court building and the creation of the Courts Service. The registries of both courts operated archaic systems

dating back to the 1930's; systemic problems were exacerbated by institutional discord between the registries and an overall aversion to change. The inevitable outcome was poor performance in the delivery of services; backlog of work and inordinate delays. Whilst having to maintain different operations to service the Magistrates' Court and the Supreme Court, Hazel established common accounting and administrative back offices; put in place systems for the collection of data and production of statistics to measure performance; established staff training programmes with particular emphasis on cross training of staff to provide resilience and to allow for succession planning, and ensured that processes were documented. Merely by way of example of the significant impact her efforts have had on the administration of justice, time for the notification of a hearing date went from an average of 12 to 18 months to the Gibraltar Courts Service's current target of within 5 days of an application being filed. Applications for simple probates usually used to take more than a year, and at present the aim is for these to be processed within 10 days.

Importantly, she remains as committed as she was on the first day.

This is the first proper post Covid ceremony, and there have been some changes, not least ensuring that there is greater representation of the profession. However, when we now move to the garden you will realise that as far as I am concerned there is one thing that simply cannot change.

I declare the New Legal Year Open.

A E Dudley

Chief Justice

7 October 2022