

Chairman's Speech Opening Legal Year 2016

Friday 14th October 2016

Last year I set out what would be the Bar Council's strategy over the three years during which I hoped to chair the Council. I am grateful for the assistance I have had from David Dumas as Vice-Chairman and the Council during the last 12 months. If I am re-elected in the Spring of next year I will deliver my last speech next year.

I was pleased that we had a number of new members elected onto the Council in April 2016 and among those who retired from membership of the Council I should single out the special thanks of the Council to Guy Stagnetto who stood down after unbroken service of 22 years. I am also grateful to Peter Isola and Melo Triay for agreeing to be my nominees on the Admissions & Disciplinary committee until the new regulatory law is in place.

I also want to acknowledge with gratitude the work of court staff not only for today but for their support during the year to practitioners.

Before I review the main highlights of the last 12 months and look forward to the next legal year I want on behalf of the Bar to pass on our condolences to the family of Sir Iain Glidewell who passed away recently. He was a leading member of the Gibraltar Court of Appeal in his latter years and we are grateful for his contribution to the Gibraltar Judiciary.

Sir Jonathan Parker retired from the Court of Appeal after being a regular in our Courts for many years. His ties to our jurisdiction go much deeper than just the law and I want to thank him for his work as a member of the Court as well as his recent skilful chairmanship of the Public Inquiry into the Dr Giraldi Home.

Our Court of Appeal has seen new appointments in the last legal year and this is the first opportunity that I have to formally welcome Sir Colin Rimer and Lady Janet Smith to the Court even though I appreciate that they sat at the beginning of the year on a number of matters. I hope that you will enjoy your time among us.

I also want to acknowledge the presence today of old friends Sir Paul and Lady Kennedy.

Finally, Chief Justice, following on from the adoption of legislation by Parliament I congratulate you on becoming Head of the Judiciary.

When I set out the 3 year strategy that the Council was committed to from 2015 I said that that was composed of a number of principal elements:

1. Regulation;
2. Continuing professional development;

3. Improving Communication and
4. Access to Justice.

We have undertaken quite a lot of work in those fields.

Communication

As members know we committed ourselves to launching a website for the Council and did so recently. That site will be improved in months to come. We have also established an electronic newsletter for our members called the Council Quarterly. The intention behind that will be to issue newsletters each quarter with the objective of keeping members up to date on general news, social events, case notes, legislative and other developments of interest to persons providing legal services.

We have gone so far as being persuaded to establish a presence on social media, a page on Facebook and a presence on Twitter where we will, I stress conservatively, comment on a number of issues.

The strategy behind the launching of the website, the newsletter or indeed the presence on social media is not just an attempt to embrace more modern methods of communication to facilitate interaction with members and the wider public. It is a recognition that we needed to finally adopt more modern methods of communication or we might not have enough of a voice in this day and age.

On the subject of technology I want to acknowledge with thanks the efforts of the CEO of the Courts to obtain the installation of Wi-Fi in all court rooms.

Regulation

I said last year that one of the big objectives of the Council was to modernise the regulatory system in relation to persons who provide legal services in Gibraltar.

I am pleased to say that after substantial work by the Council and discussions with a receptive Minister and Judiciary the consultation process on the Legal Services Bill was launched in July with a close date of the 21st September.

We will now engage in further discussions with the Chief Justice and Minister for Justice to consider the representations made (for which we are thankful) and take the bill to a more final state which allows its presentation in Parliament.

I would hope that with continued support of the profession, the Judiciary and not least Government it will be possible to take a bill to Parliament early in the new year. In my view there is now no good reason why that timescale cannot be met and we commit ourselves to work towards that objective.

The Legal Services Bill went to consultation with an explanatory note which described its content and objectives. This is intended to be a far reaching piece of legislation that will include within its scope any person providing legal services be they private practitioners, foreign counsel called to do particular cases in Gibraltar, Government lawyers, in-house counsel, legal executives or law-costs draftsmen. In short it will affect and include within its scope of regulation all persons who are providing legal services. It intends to establish a register made up of nine parts depending on the various categories of persons who are providing legal services. It will expressly permit lawyers to provide legal services through LLPs or corporate entities.

The need for reform is clear. As John Restano's excellent book on Gibraltar legal history shows in 1961 (a year after our last Supreme Court Act) there were only 18 legal practitioners in Gibraltar. When the conduct and discipline rules last saw a major overhaul – 1980 – there were only around 30 practitioners. Since then we have had a massive shift in the economy towards a diversified private sector ever evolving with opportunities unimaginable then because of new forms of telecommunications. There are now 33 law firms in Gibraltar. There are 250 private practitioners and Government lawyers and an additional significant number of persons providing legal service as in-house counsel in industry.

Once all is said and done I would imagine that the new regulatory law will bring within its scope more than 350 people who, in some shape or form, are providing legal services in Gibraltar. Membership of the Council will be automatic. We are very conscious that the Council needs to be representative of all sectors and branches of the legal profession. That is why the draft Bill refers to the successor of the Bar Council as the Law Council. This is not just nomenclature it is a signal that we are conscious of the breadth of our responsibility and that we are ready to play that role.

There is no doubt that if presented to Parliament the Bill would represent the most radical and comprehensive reform of the regulation of legal services in 50 years and we hope during the next 12 months to see it come onto the statute book.

The legislation is intended to be an umbrella piece of legislation that will allow regulations concerning conduct, discipline rules, practising certificate rules, rules on solicitors accounts and other codes to be placed under it. An important feature of the new reforms is the ambition of the Council that there should be a Code of Conduct for Gibraltar replacing the rather vague references to adherence to both Law Society Rules or the English Code of Conduct which sometimes makes it difficult for practitioners to understand what rules and regulations they need to adhere to and are not always suited to a fused profession.

With that in mind I formed a committee under the chairmanship of Lewis Baglietto QC to conduct work towards a Gibraltar Code of Conduct. I am pleased to say that their work advanced very well during the last legal year and I am very grateful to the members of that committee for giving of their time towards that end. I see it as an important and integral part

of the reforms that we are working towards. That Code has been modelled on the New Zealand Code of Conduct given that they have also a fused profession. The latest draft has been endorsed by the Council and has been sent to the Chief Justice, Attorney General and Registrar for their input given their central role in conduct and discipline. After the benefit of their views I would hope the Code will go to wider consultation as soon as possible during the course of the year so we can have input from the profession as a whole.

CPD

The Professional Certificate of Law run by the University for the first time from the Autumn of 2015 has of course had its teething problems but generally speaking has been a significant development in providing a formal qualification on Gibraltar law externally audited by a UK body as a pre-requisite to practice in Gibraltar.

There are improvements that can be made to any new course and work is being conducted to achieve that. The course is a very positive development in formal Gibraltar legal education. It also allows the possibility of an induction or CPD for young and not so young practitioners who may wish to attend presentations on a variety of subjects that may serve as useful updates or general information on fields in which they may not ordinarily practice.

The Council is also pleased to have seen visits by the Chancery Bar Association of England & Wales, the Inner Temple and Middle Temple during the course of last year for various events. Both the Inner Temple and now more recently the Middle Temple have set up local associations. We hope that they will work with the Council to organise CPD style events on a number of subjects in the years to come.

Access to Justice

The Council's work this year has been dominated by the efforts towards improving the regulatory system as well as enhancing progress under its communication agenda. As we look forward to the next 12 months we are hoping to dedicate ourselves more fully to the area of civil legal assistance. As I made clear last year I consider that as things have developed over the last 40 years the eligibility threshold for applications for legal assistance now operates as a hurdle to access to justice. There are now thousands of Gibraltarians who have become legally disenfranchised. We pledge to work with Government on trying to radically overhaul that system too. We have given some thoughts to Government as to areas where the system should be improved and we would hope that a more formal set of proposals will emerge during the course of this legal year. I do wish to make it clear that this is an area where urgent reform is required because many people are now unable to access justice and when they do face inequality of arms.

BREXIT

There is no doubt that the most seismic event to affect Gibraltar in recent years was the BREXIT Referendum of the 23rd June 2016. The referendum has caused huge uncertainty Europe-wide and sparked tumultuous political developments in the United Kingdom. The aftermath of that referendum is not clear. There are many and complex issues. Whether UK parliamentary endorsement is needed. Whether the Scottish Government or the Scottish Parliament need to give consent either before or after an invocation of article 50. What objectives for a post BREXIT future the UK Government is seeking in its negotiations with the European Union; Whether those negotiations will be successful; How long they will take and what status and relationship the UK and Gibraltar will have with the European Union after those discussions are concluded. At all stages of that process there are a huge number of imponderables not least because of the complicated constitutional architecture of the United Kingdom as well as the realpolitik thrown up by the dynamics of so many different national agendas and more provincial objectives of certain Member States.

The position of Spain is of course a constant and looming presence. It unsurprisingly guarantees to cast a long shadow over those discussions. The Gibraltar Government will be involved in highly complex and delicate negotiations with the UK on BREXIT. These issues are best not ventilated to the four winds because they engage issues of huge political sensitivity and therefore I see no purpose in publicly analysing this in granular detail or agonising about the various permutations. Suffice it to say that we recognise that our relationship with the United Kingdom and access to the UK market is (if asked to choose) more important than access to the EU market and that the key for Gibraltar is freedom of movement at the border and (if possible to some degree of) political stability with our large neighbour. To the extent that the Government requires the assistance of the Bar in promoting Gibraltar's interests in this highly charged political atmosphere or within the BREXIT negotiations themselves we stand ready to assist in whatever way we can.

As we have control over our own laws the Government may also wish to consider retaining the ability of EU citizens to move freely, establish themselves, move capital and provide services into Gibraltar. It may make reciprocal treatment easier going forward if we send the clear signal that at least in Gibraltar EU citizens will not lose the four freedoms.

The Teaching of Constitutional Development

I end on a personal plea. My friends know that I have a more than passing interest in constitutions.

In the context of education generally my personal plea is that Gibraltar students be schooled in constitutional development and history at an early stage. They should learn not just about the American War of Independence, the history of Germany or the Chartists but also about our 1964 Constitution or the importance of 1921 in our process towards self-government.

During our time in British law schools we learn about parliamentary sovereignty. Quite apart from the academic debate as to whether there is any longer truly parliamentary sovereignty in

England it is a debate that has no real place in Gibraltar. Here there is no parliamentary sovereignty. There is popular sovereignty and constitutional supremacy. Parliament legislates subject to the constitution. The constitution is the only law chosen by the people in referendum in an act of democratic legitimacy that adopted the document negotiated by its representatives. It would never have become law had the people rejected it and to that extent Her Majesty in Council accepted that the condition precedent was the sovereign act of our people. What Canadian lawyers would call a Patriation of the Constitution.

Our lawyers are in the front line and need to be advocates of our constitutional culture. And that culture needs to be instilled from the schools so that the law of laws as my daughters call it becomes as read as other ordinary educational texts.

As we are lucky enough to have a Justice Minister who also holds the Education portfolio I will leave that thought with him to see how that can be accommodated in what I know is already a very busy school calendar.

If we are going to be more aware of where we are going we need to understand where we have come from and the study of local history, its politics and its constitutional development will not just create a better breed of Gibraltar lawyer, it will create a better sense of our identity as a people.

My lord, I too move the opening of the legal year.

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