



Date: 5 May 2015
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New FSD Judge Commences Work

A new non-resident judge, Justice Nick Segal, sworn in earlier this year as a judge of the Financial Services Division (FSD) of the Grand Court, commenced hearing cases in Cayman last Thursday (30 April). Justice Segal will serve from time-to-time as required.

A specialist in financial, commercial and insolvency law and litigation, Justice Segal has gathered experience from a wide range of international jurisdictions. Formerly a partner with Davis Polk in New York and Allen & Overy in London, he is now a partner with international law firm Freshfields Bruckhaus Deringer.

Chief Justice Anthony Smellie said he was pleased to be able to report on the actual commencement of work by Justice Segal on the FSD and to confirm that effective arrangements are in place to allow for him to do so even while he continues to practise as a partner of a large multi-national firm of lawyers. "It is encouraging to know that his experience and expertise will continue to be available to support our responses to the challenging demands of the FSD in particular," the Chief Justice said.

Commenting on his work here in Cayman, Justice Segal says: "It is a great honour to be appointed a judge of the Grand Court and to be able to sit in the FSD. The high quality of the other judges and the important and significant cases handled by the FSD confirms how fortunate I am."

Justice Segal's background in international and cross-border cases has given him an understanding of many different legal systems, and legal and litigation cultures. He has worked on cases in different continents and countries including the United States, Canada, Hong Kong, Thailand, France, Spain, Japan, Abu Dhabi, Dubai, Bahrain, Russia, and Trinidad and Tobago. In the process, he has acted for corporations, banks, insolvency practitioners, governments, central banks and regulatory bodies.

Justice Segal's travels have, over the years, tended to follow the flow of the financial crises, frauds and follies of the corporate and banking world. In the early 1990s, acting on behalf of the government of Abu Dhabi, he was involved first with the restructuring and subsequently with the collapse of BCCI. For this matter and others, he was required to travel frequently (including during the first Gulf War) to Abu Dhabi and Dubai.

Other international undertakings followed during the Asian financial crisis of the late 1990s when he was involved in the restructuring of a large telecom company in Thailand (which required many trips to, and weeks spent in, Bangkok). During this period he was also involved

in Hong Kong in major litigation relating to the legal basis on which publicly listed shares are held by brokers.

During the Russian financial crisis in 1998 he was involved in the restructuring and bankruptcy proceedings of a major Russian bank.

In the western sphere, during the early 2000s he advised a major international bank on litigation being conducted simultaneously in State court in San Francisco and in London. He was also involved in major cross-border restructurings based in London. Similarly, in New York (from 2003 to 2006), he advised on US restructuring and banking law (including the chapter 11 proceeding for Delta Airlines). Further, during the recent financial crisis he advised the Bank of England; the directors of Northern Rock (A UK bank); and the special administrators of the UK subsidiaries of the collapsed Icelandic banks. He was also involved in the English litigation relating to the collapse of Lehman Brothers.

In many of the cases in which he has been involved, says Justice Segal, an understanding of different cultures has been essential. “Commercial transactions, disputes and litigation take place within a cultural milieu and when parties from different places come together there can be misunderstandings and culture clashes,” Justice Segal says, adding: “Lawyers can have an important role as translators and communicators, bridging the cultural divide by explaining differences in expectations, preconceptions and concepts – although it has to be said that some lawyers seem to spend their time expanding and exploiting rather than minimising the differences!”

This close involvement with international legal systems gave him, he says, a “familiarity and a taste for cross-border international law,” prompting an interest in comparative law and legal systems. This further triggered a desire to understand and see from the inside how other systems really work; as a result he decided to qualify as a New York lawyer and to work in New York, and was fortunate in being given the opportunity to become a partner with the New York firm of Davis Polk in 2003. He had to take the New York Bar exam after being able to attend only five of the nine-week bar review course but nevertheless managed to secure a pass.

He remained in New York until the end of 2006 when he decided that he had to return to London because his son needed to be back at a school in London. Upon his return he was, once more, fortunate in being able to join Freshfields Bruckhaus Deringer, with his first task to join the team completing and implementing the Eurotunnel restructuring under French law (using the new “sauvegarde” insolvency reform law).

But it wasn't long before the early effects of the financial tsunami that was about to break on the shores of the UK and US began to affect his work. One day in September 2007, he and one of his colleagues were astonished to be told by the bemused finance director of a client financial institution that the client had that day tried but been unable to raise any further funding in the short term debt markets. The problems of Northern Rock bank had just begun. This would lead to the first run on a UK bank since the nineteenth century and would eventually culminate in nationalisation and new laws giving the authorities additional powers to resolve failing banks.

Justice Segal notes that “being able to see this crisis develop from the beginning and observing and trying to manage the forces and pressures of government, the media and public opinion was a remarkable and, on occasion, overwhelming experience.”

This gave him a special insight into, and perspective on, the process by which new policies and laws were developed by regulators and governments to deal with the “too-big-to-fail” problem. This dilemma had propelled policymakers into grappling with the question of how to avoid the dilemma of large banks becoming so systemically important that their collapse would seriously damage the economy in which they operate and thus require public money to bail them out.

While garnering this wealth of experience on the forefront of many banking crises across a wide international platform, Justice Segal nevertheless remained very interested in the academic side of the law. He has written and contributed to several textbooks and teaches insolvency law to post graduate students at Oxford. In the past he has been a visiting fellow at both Queen Mary and Westfield College and University College London.

He obtained his degree in law from Oxford and graduated in 1979 with a first class degree and was awarded the Carl Albert Prize. He remains heavily involved with and deeply grateful to the university, he says, and currently serves as deputy chair of the Oxford University Alumni Board. He is also member of the advisory board of his college (St. Peter’s College) and of the Master’s in Law and Finance Programme.

Justice Segal is also a trustee with the British and Irish Legal Information Institute (BAILII). Based on the Australian precedent, BAILII provides, free of cost, judgments delivered by the English, Irish and Scottish courts and by the judicature of many other jurisdictions. BAILII, Justice Segal says, “is a wonderful facility, providing access to judgments as soon as or very shortly after they are handed down as well as to a huge number of old cases and materials – all for free and at the click of a button.” He added that in a world in which legal aid and state funding for legal advice to ordinary citizens is being reduced and under pressure, this kind of service seems increasingly important.

Justice Segal’s wife, Genevieve Muinzer, also has a legal qualification. After studying at Princeton University in the USA she obtained a law degree and qualified as a solicitor in England. But she always wanted to use her legal training to support her wish to be a writer and journalist. After writing plays for BBC Radio 4, she wrote for various national and international newspapers and then was given the opportunity to use her skills in communication and policy formulation in support of work of the Prince of Wales, primarily for the Prince’s Foundation for Building Community. The Prince’s Foundation teaches and promotes sustainable development based on community engagement; its work covers, amongst other things, architecture, design, urban planning and the work of traditional craftsmen.

After ten years with the Foundation, Ms Muinzer is now a Director and Trustee of Historic Royal Palaces Inc. (HRP), which was established by the Queen to manage and promote independently royal palaces. She assists the work of HRP and contributes regular feature

articles. Their son, Tim, 22, is studying international development at King's College, London, and is very interested in transforming the way in which global charities promote themselves and engage with the wider world, particularly the younger generation.

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Photo caption: At his January swearing in, Justice Segal is flanked, from left, by Court Administrator Kevin McCormac, Governor Helen Kilpatrick, and, on right, Chief Justice Anthony Smellie.