

ADDRESS TO THE OPENING OF THE CAYMAN ISLANDS GRAND COURT

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My Lord Chief Justice, Hon. Justice Henderson, Hon. Justice Quin, Hon. Justice Cresswell, Hon. Justice Foster, Hon. Justice Jones, Hon. Justice Williams, Hon. Chief Magistrate, Hon. Magistrates, Mr Attorney, Hon. Members of the Legislative Assembly, my colleagues at the Bar, our Special Guests, Ladies & Gentlemen

If it may please my Lord.

For many years Ramon Alberga QC, Father of the Cayman Islands Bar, exercised his prescriptive right to address the opening of the Grand Court on behalf of the Cayman Islands Law Reports. I am greatly honoured to have been asked to speak in his place this year, and I can only hope to bring some small measure of Mr Alberga's wisdom and perspective to this address.

This is the 22nd ceremony marking the opening of the Grand Court for the New Year since it was inaugurated in 1992 by the late Chief Justice Sir Dennis Malone. It has become an occasion for the Bench and Profession to take stock on the previous year and look forward to the new year, and afterwards to enjoy some judicial hospitality.

I am privileged to be able to associate myself with the motions to open the Grand Court for the year 2013 moved by Mr Attorney and seconded jointly and comprehensively by the President of the Bar Association and the President of the Law Society, and to add an addendum of my own.

On 3 September 1953, 60 years ago this year, the European Convention of Human Rights came into force. Its architects were leading lawyers from the United Kingdom,

France, and several other Western European countries, under the Chairmanship of Sir David Maxwell-Fyfe. The Convention was a response to the civil and political atrocities committed by the Nazis and their allies, and the spread of Communist and totalitarian regimes in Europe.

Sir David Maxwell-Fyfe (who would later become Lord Kilmuir) was not lacking in first-hand experience in this nascent area of law. He was one of the prosecuting counsel at the first Nuremberg trial. His masterful cross-examination of Goering remains famous today.

The Convention sets out fundamental human and civic rights that every state is expected to protect. Once the United Kingdom had ratified the Convention it extended that ratification to its overseas territories, including the Cayman Islands. Thus, being only a treaty and not a statute, the Convention did not form part of our domestic law nor did it give any rights that were directly enforceable in our courts. Nevertheless, our courts quickly adopted the principle that legislation should be construed, where reasonably capable of bearing such a meaning, so as to conform with the obligations contained in the Convention.

The first case in the Law Reports considering the Convention was Prendergast v Commissioner of Police in 1989. Since then, no less than 18 other cases have considered the Convention. Those cases concerned all manner of criminal and civil proceedings, and concerned private and public law matters alike. Those cases considered Article 3 (protection from inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security), Article 6 (the right to fair and public trial within a reasonable time by an independent and impartial tribunal), Article 9 (the right to freedom of thought, conscience and religion), and Article 14 (protection against discrimination).

On 7 November 2012, our Bill of Rights came into force. The Bill of Rights incorporates the Convention rights, and so now those human and civic rights are now entrenched in our law as constitutional rights which rights are now directly enforceable in our Courts. In giving constitutional recognition to these rights we have joined, so far, six of the other Overseas Territories. I will not be so bold as to predict what the results of this fundamental change may be, but as this new legal landscape evolves in 2013 and beyond we can be sure that the cases argued before our Courts and the judgments they deliver will be at the forefront of that evolution.

That brings me to the importance of written Judgments. Judgments are the means through which judges address parties and the public at large, and explain their reasons for reaching their decisions. As the word necessarily implies, judges are required to exercise judgment. Without judgment there would be no justice, and without Judgments there would be no justice. It is therefore an absolute essential part of common law justice that Judgments be available to the public: that is part of what is meant when we hear the oft-quoted words of Chief Justice, the Lord Hewart, that justice must not only be done but also must be seen to be done.

That Judgments should be publicly available tells us that the audience for Judgments is not merely attorneys, judges, law reporters, and other legal professionals, (important though that audience is) but also the public at large even if, for the most part, most of the public are largely indifferent about most of the Judgments delivered in our Courts. It also tells us that one of the aims of writing Judgments is to enable reasonably intelligent members of the public to understand what the case was about, what decision was reached, and why that decision was reached, even if they would not fully comprehend the analysis of the finer legal principles. An important section of the public for that purpose are the newspapers, both foreign and domestic, and the specialist press overseas whose readers have an interest in our financial services industry.

The need for public availability of Judgments rests on the fundamental principles of due process, open justice, and the rule of law. Thus a reasoned Judgment enables the parties to the proceedings to understand why the court reached the decision that it did. A reasoned Judgment also enables the public to understand what the law is and how it is being administered by the courts. This is a necessary part of ensuring that the public has confidence in, and understanding of, the courts and the administration of justice, and thus ensure public confidence in the rule of law.

On a more practical level, the Law Reports support our financial services industry, the single largest contributing sector of the economy, and thus the well-being, of these Islands. The Law Reports provide a continuing advertisement to the world's financial community that disputes involving Cayman Islands structures, no matter how complex, may be fairly, efficiently and predictably litigated in our courts. In the early 1980s Mr Alberga, as President of the Law Society, and his colleagues understood this and, with the support of Sir John Summerfield, our late Chief Justice, and Michael Bradley, our late Attorney General, they initiated the production and publication of the Law Reports. Each of their respective successors and up to an including those here present today, have continued to support the regular production of our Law Reports. We remain grateful for their continuing support.

It is therefore only right that we take this opportunity to acknowledge the vital role of the judiciary in producing written Judgments. It is pleasing to see (and an excellent advertisement of the quality of the work undertaken in our Courts) that it is not uncommon to see courts in other jurisdictions considering and analysing Judgments of our Court. A quick glance at the legal website Bailii shows that in 2012 courts as high as the Privy Council, on appeal from the Turks & Caicos Islands, were considering Judgments from our courts.

2012 was yet another busy year in all of our Courts. Our judges undertook and completed a great volume of work. Some 140 written judgments and rulings were handed down in the past 12 months by the judges sitting in this Court and the Court of Appeal, maintaining the record pace they set during the previous three years. This amounts to a rate of over three judgments each and every week for each of the last four years.

Many of these judgments concerned difficult and novel matters. The judges sitting in the Financial Services Division delivered judgments on complex issues arising out of the constitution of fund structures, international cooperation in cross-border insolvencies, duties of directors and other fiduciaries of funds, constructive trusts, validation orders in insolvency proceedings, segregated portfolio companies, injunctions in support of foreign proceedings, forfeiture clauses in trust deeds, takeovers, and the well-publicised disputes arising out of the finance contracts of the Ritz Carlton hotel and its subsequent receivership. It is particularly notable that this year saw several long trials in the Financial Services Division, more civil trials than in any previous year.

The Civil Division judges delivered Judgments on topics as diverse as personal injuries disputes (too often, it is unfortunate to say, arising out of road traffic accidents); judicial reviews from various local licensing boards regarding matters as diverse as immigration, planning and firearms; disputes arising out of the proposed developments in Safehaven and South Sound, conditional fee agreements; and malicious prosecution. The Civil Division has had its fair share of proceedings arising out of the local consequences of the prevailing economic conditions; in particular there has been no diminution in the volume of proceedings arising out of defaults on mortgages.

The judges of the Family Division gave a number of important decisions concerning the protection of the interests of patients who are incapable of giving their consent to medical treatments, the custody of children and financial provision in divorces, including the first decisions under the new provisions of the Children Law. Last year the Admiralty Division delivered no written rulings.

Regrettably, our criminal courts were just as busy as the other courts. The judges of the Criminal Division delivered a range of judgments relating to murder, malicious wounding, defilement of minors, burglary, robbery, firearms offences, drugs offences, theft, forgery, and immigration offences.

Last Summer Dr Alan Milner, who has been the editor-in-chief of the Law Reports from the beginning, told me that the complexity of the issues in our judgments has never been so great. Mr Alberga and I agree! Considering and editing the rulings handed down in 2012 will keep us busier than ever.

The preparation of written judgments requires an enormous amount of time and effort outside the hours spent sitting in Court and I know that I speak for the whole of the profession when I say that we are particularly grateful to our judges for the provision of these detailed reasons and the commendably short time that usually elapses between the conclusion of a hearing and the appearance of the written reasons. However, it would be remiss of me not to observe that over the last couple of years the Court of Appeal has too often fallen short in this regard.

I am pleased to be able to report that with the assistance of Dr Alan Milner, the Judicial and Legal Information web-site has now been populated with all the decisions of the Law Reports up to and including 2011. A back-fill exercise has been started to populate the website with unreported judgments. This and other improvements to the web-site are being implemented.

Dr Milner has asked me to convey to your Lordships and to the entire legal profession his best wishes for a successful and happy 2013 and regrets that he was not able to be present today.

I would also like to express our thanks to those overseas judges who have willingly given up their valuable time to sit as acting judges of the Grand Court during 2012 – Mrs Justice Carol Beswick, Mr Justice Michael Mettyear, Mr Justice Seymour Panton, and Mrs Justice Paulette Williams.

It is an honour and a privilege to have been allowed to add these few remarks. It now only remains for me to wish a prosperous, healthy and happy New Year to you and all the judges and magistrates of this Court, and to their administrative staff, and to all members of the profession, and to the people of the Cayman Islands.

I have the honour to support Mr Attorney's motion this morning

Colin McKie

16 January 2013