

GRAND COURT OPENING 14 January 2015 – REMARKS BY THE HON. ATTORNEY GENERAL

My Lord Chief Justice, Hon. Judges of the Grand Court, Hon. Chief Magistrate, and other Hon. Magistrates, Madam DPP, Madam Solicitor General, other colleagues at the Bar, public and private, our special guests, Ladies and gentlemen.

My Lords, I rise at your invitation to move the motion for the opening of the Grand Court for the Year 2015.

In doing so, I crave the indulgence of the Court to make a few observations.

Allow me to begin by noting the retirement of Justice Henderson from the bench after many years of outstanding judicial service as evidenced by, among other things, his numerous landmark judgments.

Justice Henderson has given exemplary service and has contributed exceptionally to the body of jurisprudence in this jurisdiction and beyond.

Indeed, early in his tenure in the Cayman Islands I prosecuted a murder trial before him, which raised some novel issues of law for the Cayman Islands; for example, the issue of whether or not there is a Priest and Penitent or religious communication privilege in the Cayman Islands. Interestingly, this is the only case from the Cayman Islands, that I am aware of, that has made it all the way to the European Court of Human Rights in Strasbourg; instructively, that was before we had a locally justiciable Bill of Rights.

When the Bill of Rights did arrive in 2012, Justice Henderson wasted no time in helping to bring judicial clarity to certain provisions, including making the first declaration of incompatibility of a piece of legislation – the Police Law. His contribution to the

administration of Justice has been not just substantial but also stellar. He will be greatly missed, but forever remembered.

On behalf of the AG's Chambers, the office of the DPP, the Bar and indeed the entire Government, we wish to thank him for his years of dedicated service, and wish for him a long, healthy and not too busy retirement.

My Lord, allow me to also say a fond farewell to Justices Cresswell and Foster both of whom have served admirably as F.S.D Judges. We also thank them for their years of invaluable service, and we wish them a healthy and happy retirement.

Similarly, we also would like to thank Justice of Appeal Campbell for his services on our Court of Appeal.

And on a more somber note, we observe with sadness the passing of the late Justice of Appeal and former Attorney General, Richard Ground (died in Feb. 2014), as well as former Grand Court Judge Priya Levers.

My Lords, on a very happy note, we welcome Madam Justice Mangatal to the Bench in the Cayman Islands.

It is true that she is no stranger to our shores, but we are indeed delighted to be able to welcome her as a permanent addition to our Courts. We wish for her an enjoyable tenure.

Let me also welcome the appointment of Justices Segal, and Clifford-QC, to the FSD, and Mr. Robin McMillan as an acting Judge of the Grand Court.

Moving on My Lords,

I am happy to report that a number of significant pieces of legislation were enacted during the 2014 legislative calendar. These include amendments to the Police Law following, as mentioned earlier, a declaration of incompatibility of certain provisions by this court in respect of the pre-charge detention periods; amendment to the CPC to enhance video conferencing

facilities for remand and mention cases from Northward; Contract (Rights of Third Parties) Law; Exempted Limited Partnership Law; Directors Registration Law; and the Grand Court (Amendment) Law, which enables the Grand Court to make interim relief orders in the absence of substantive proceedings in these Islands. There was also the Conditional Release Law; the Second Hand Dealers Law, and Trade and Business Licensing Law, as well as an amendment to the Summary Jurisdiction Law.

There was also a Commencement Order to bring into effect the harmonized definition of the term “child” for the purposes of the adoption of Children Law, something that Justice Williams welcomed for all; and there was the promulgation of pieces of important Immigration subsidiary legislations.

During this year we are hoping to continue dialogue on a number of other significant pieces of proposed legislation, including the Foreign Judgments Reciprocal Enforcement Law and a Charities Law, and to undertake further work on Data Protection; the Protected Disclosures o/c Whistle-Blowing Law, as well as others. Please allow me to also note the very important work by the Grand Court Rules Committee, chaired by My Lord Chief Justice, in producing new Coroners Rules; also for its work on the Adoption of Children Regulations, and the primary Law itself, and publishing updated Rules for applications under the Registered Land Law.

There were also a number of significant judgments from the Courts during the year and we look forward to hearing more about those from the seconders of the motion.

However, permit me to mention one particular matter, which is the judgment from the Court of Appeal in the matter of Alice Mae Coe and others – where the Court of Appeal, in upholding the decision of Justice Henderson, very helpfully clarified the scope of Section

19 of our Bill of Rights in the Constitution, albeit by way of obiter-dicta.

This clarification is significant, given that it was contended by the applicants and some academics that Section 19 had the effect of abolishing the Judicial Review procedure as we all know it, including all the safeguards such as legal standing, pre-action protocol, the need to file promptly, as well as leave requirement, etc.

This very persuasive obiter from the Court of Appeal observed that Section 19 does no more than recognize what was described in the Court as, “the constitutionally protected remedy of Judicial Review under Order 53”.

And speaking about judgments My Lords, given that our Bill of Rights is still evolving with the occasional challenges to certain actions of Government, the Chambers of the Attorney General and the Office of DPP continue to update our readiness for these challenges by conducting in-house training sessions, the last of which was held in December. 2014.

Additionally, My Lords, 2014 saw the start of the Cayman Islands World Bank led Anti-Money Laundering National Risk Assessment, a year and a half long examination by stakeholders working groups of the Countries’ Anti-Money Laundering framework. Co-ordinated by the AG’s Chambers working, of course, in conjunction with CIMA, the Office of the DPP and Ministry of Financial Services, together with private sector partners, the objectives include seeking to ensure that Cayman’s self-assessment is completed in time for the 4th round of mutual evaluation in 2017.

My Lords, 2014 was indeed a challenging year for all of us in the Criminal Justice System, and law enforcement, including the RCIP. But despite the many challenges our Police Service

continues to work assiduously to keep us safe, keep our streets safe, and it is therefore incumbent on all of us to continue to give the Commissioner of Police and his officers our unconditional support and encouragement.

Indeed my Lords, Cayman's first Cold Case to be brought to completion since the establishment of the RCIPS Cold Case Unit resulted in the conviction of – R v Chad Anglin (May 2014) for the murder of Frederic Bise, and in December 2014 Leonard Ebanks was also convicted of being an accessory after the fact to the murder.

My Lords, I can confirm that the Government is actively looking at the matter of additional accommodation for our Courts. We are confident that there is light at the end of the tunnel as the Government is very committed to dealing with this long outstanding issue as recently outlined by the Hon. Premier in his Strategic Policy Statement in the Legislative Assembly.

Permit me My Lords, to observe that the Law School continues to produce excellent exam results; indeed, in the last academic year the results saw one student awarded a first class honours degree, nine awarded upper second class, and seven, lower second class honours degrees.

We wish to also highlight and applaud the recent placement scheme worked out between the Chancery Bar, the Cayman Bar Association and the Cayman Islands Law Society in consultation with the Legal Advisory Council and the Director of the Law School whereby some Cayman Articled Clerks now have the opportunity to do part of their Articles of Clerkship in certain law firms in the UK.

My Lords, at the Office of the Director of Public Prosecutions, the DPP, Ms. Richards QC, wishes me to note for Your Lordships' attention the following:

As of Mid-last year, an additional Summary Court, Court 7, commonly termed the Back Log Court, began sitting. Under the direction of the Chief Magistrate, with the dedicated assistance of Acting Magistrates, Angelyn Hernandez, Philippa McFarlane–Ebanks and Adam Roberts, the objective was to bring forward for earlier trial those unrepresented matters which had been given lengthy trial dates. The DPP, My Lord, is pleased to say that while there are some issues to be ironed out, it has proven to be effective in ensuring that a minimum of two of three trials per day proceed in a timely manner.

Also, at the end of the year the Office of the DPP bid farewell to Deputy Director Trevor Ward QC who returned to his home country of Tobago. However, following an open recruitment exercise, the new Deputy Director will be Mr. Patrick Moran from the UK, who will take up Office in March.

Almost in tandem with Mr. Moran, My Lord, will be the first post-holder of the new post of Senior Crime Case Manager in the DPP's Office. The post holder will have the remit to oversee and handle disclosure matters. This has proven to be a critical issue in ensuring that trials are able to proceed in an efficient manner. Creating this new post is but one way of seeking to address this concern.

Additionally there will shortly be a review of the entire disclosure process. Unlike in the UK, the process in Cayman is not a statutory one; while the guiding principles are clearly set out by case Law, there is no requirement for defence case statements and for the defence to give an early indication of the material which they seek. Similarly, it is accepted by the DPP that the Crown must do its part to better respond in a timely manner and to establish systems which are able to cope even with late requests for disclosure.

And still on the DPP's Office, My Lord,

The first quarter of the year will see the arrival of UK Criminal Justice Advisor Claire Wetton who through the kind assistance of the Office of the Governor will for a three month period assist in conducting an efficiency review of the systems in place. Areas to be covered in this review include case management and trial issues, including evidence gathering, improving efficiency of delivery of evidence, witness preparation/witness care, efficient and timely presentations in the Summary court, review of police and prosecutor working relationships, including lines of communication between those two agencies; the disclosure process in the absence of Defense Case Statements, – liaising with the Police, late or inadequate disclosure, as well as a system in place for dealing with child witnesses.

My Lords, it is fitting in closing, that we publicly recognize and applaud the continuing hard work and dedication of the entire judiciary and judicial administration.

A special word of recognition of, and thanks to, My Lord Justice Quinn and fellow judges who have had primary conduct of the Friday mention criminal lists which have evolved into full case management hearings, focused on fostering greater efficiency in the system. Also to the Chief Magistrate, Magistrates, Acting Magistrates for their sterling work in 2014 in dealing with the volume of cases before the Summary Courts, to the Listing Officer, Mrs. Yasmin Ebanks, on occasion ably assisted by Ms. Suzanne Livingston who worked hard to optimize the listings and to use every available space for hearings, and finally but by no means least to all the dedicated members of the Court Staff.

And so my Lords, on behalf of the Bar, public and private, we reaffirm our continuing commitment and support for the work of

the Judiciary, and the entire administration of Justice, as well as the Rule of Law.

I wish for your Lordships, all colleagues, Court Staff, all those in law enforcement as well as all others, a safe, productive and enjoyable 2015.

I now My Lords formally move the motion for the opening of the Grand Court for the Year 2015.

If it so pleases you, My Lord.

Hon. Sam Bulgin QC,
Attorney General
January 14, 2015.