

CBA President's Address at the opening of the Grand Court

My Lord Honourable Chief Justice, Honourable Justices of the Grand Court and Magistrates of the Summary Court, my colleagues at the Bar, Ladies and Gentleman, I rise on behalf of the Caymanian Bar Association (CBA) to second the motion of the Honourable Attorney General to open the Grand Court for the year 2017.

With your indulgence, I will highlight some of the CBA's initiatives.

The CBA in 2016

A majority of Caymanian attorneys have joined the CBA, and the CBA currently represents the interests of more than 245 Caymanian attorneys. The CBA also has a Student Chapter with over 130 honorary student members comprised of Caymanian law students and articled clerks.

The CBA is not a statutory body invested with powers, but an association of members - who give freely of their time

and resources. The CBA has worked quietly and effectively behind the scenes to promote the development of our Law and the advancement of Caymanian lawyers.

The CBA Seminar-cum-Training Programme for young lawyers and articled clerks is now in its second year. On behalf of the CBA, I would like to thank each of the presenters and their firms for freely giving of their time and facilities for these seminars. Discussions are on-going with the legal advisory council and the Truman Bodden Law School, to develop a new online commercial law seminar series targeting newly qualified lawyers practicing in these Islands, Bermuda and the British Virgin Islands. We hope during the course of this year to advance and announce a structured advocacy training course for junior lawyers.

The Legal Practitioners Bill

For well over a decade, the CBA has had to rue the opportunities missed to modernize our Legal Practitioners Law and improve the governance of the Profession,

including of overseas practitioners. During that period the CBA has been heavily involved in trying to progress a modern and balanced law.

We have, at last, the Legal Practitioners Bill, 2016 before the Legislative Assembly that addresses the need for the profession to succeed in a highly competitive global market as well as the need to promote Caymanian advancement within the profession. In my last year as President I can now congratulate Government on grasping the nettle and presenting a Bill that the CBA can support. It promises a new era for the Profession.

In a survey of CBA members in good standing (from 25 law firms, 2 trust companies and solo practitioners), over 77% of those voting supported the LP Bill. In the past there has been much ill-informed debate, sometimes including those who neither read nor understood what was proposed. We hope for an informed debate on the LP Bill. The CBA has addressed queries and concerns raised by members worked constructively with the Cayman Islands

Law Society (CILS), and collectively we have spent thousands of man-hours doing so.

The new Legal Practitioners Law will not, and cannot, resolve all the issues facing Caymanian lawyers. Some involve questions of principle and do not offer easy solutions. For example the CBA has long been concerned about the lack of opportunity for Caymanian litigators to gain experience and progress. The problem is aggravated by an increasing dependence on the English Bar even in cases where there are local alternatives and litigation departments have sound and capable lawyers. Video conferencing increasingly allows control to be overseas with Cayman attorneys sometimes marginalized to the point they can add little value. With no real price penalty, Silks are doing from their chambers interlocutory matters that could be done here by locals. There are widespread fears that we are training a profession of solicitors and of a self fulfilling prophesy of Cayman lawyers being unequal to compete in advocacy. It has dire long term consequences for the senior advocacy profession and the

local recruitment of judges. Although the Court pushed back, I gather there has even been a case in which the parties announced that their counsel would appear by Video Link. This is symptomatic of a mindset here and in London. Not so gradually that scenario is becoming commonplace and, unless challenged, it may become the norm. This is a public policy issue that will have to be addressed in the near future.

The profession has been a key driver in the success of our financial industry. There is now a critical mass of Caymanians in practice, many of them very talented. With the hoped for passage of the Legal Practitioners Bill, the CBA may shortly, have to consider what role it could usefully play in protecting Caymanians in our profession. If the Bill passes, a new society called the Cayman Islands Legal Practitioners Association (“**CILPA**”) will take its place. It will at last present a professional body with the tools to properly regulate the profession. I hope that all CBA and CILS members will participate to make the new CILPA regime a success. The CBA commits to do what it

can to ensure it. Let that be a most enduring aspect of the CBA's legacy.

Caymanian Protection and Immigration

The CBA was of course founded in part to seek to ensure that local persons in the legal profession in these Islands were not unfairly treated or marginalized in the perceived increasing foreign domination of our profession. The CBA's efforts in that regard have had mixed results. We cannot yet say that talent and hard work will take a Caymanian to the pinnacle of legal career. In some instances prospects are defeated simply because the quality of post qualification training for Caymanian lawyers may not be possible to the standards available elsewhere. In other cases, the barriers may be even less palatable.

Arguments will continue over whether or not the limited ascension of local lawyers into true equity partnership is a natural consequence of a limited talent pool. Inadequate enforcement of the immigration law to appropriately regulate and ensure due opportunity for Caymanians will

be a factor in that debate. It is therefore ironic that I speak this morning to decry the lack of success of that same immigration regime in providing due recognition and protection to the plight of many hundreds of expatriates. The implications for them, their families, our society and our wider economy are potentially extremely negative. It is hoped that the New Year will find appropriate relief and that the due functioning of our immigration regime and the fulfilment of its difficult but very necessary task can recommence.

The immigration regime itself needs drastic overhaul. Unfortunately, today, it inadequately serves both the needs and legitimate expectations of Caymanians and those of the many foreign workers, be they in professional services or otherwise, who contribute to the vibrancy of our community, and success of our economy. The reality today is that even Government departments appear to be inconsistent in applying the definition of something as fundamental as who is a Caymanian. The consequences range from the issue of whether a child may benefit from

free medical treatment, to Caymanian ownership of local businesses or to the most fundamental of constitutional considerations.

Immigration is not a problem unique to the Islands. Immigration has been at the forefront of political shifts in both Europe and the United States in recent months. I echo the remarks of Lord Carnwath in a recent decision of the Supreme Court¹ of England and Wales on an immigration related matter: *“The public, and particularly those directly affected by immigration control, are entitled to expect the legislative scheme to be underpinned by a coherent view of its meaning and the policy behind them.”*

The transition to the use of 'Plain Language' (now seen in the Legal Practitioners Bill, 2016) in drafting all our laws and regulations will also help - as legislation poorly conceptualised and mired in overly technical language, are a detriment to the development and effective application of our laws.

¹ [2016] UKSC 63 R (on the application of Mizra)(Appellant) v Secretary of State for the Home Department (Respondent).

Conclusion

I would also like to thank all professional and other court staff in their various capacities for all the efforts they have put in during the past year and for the preparations for this annual ceremonial opening of our judicial year

Now it only remains for me formally to second the Honourable Attorney General's motion to open the Grand Court for 2017 and, on behalf of the Caymanian Bar Association, I would like to take this opportunity to wish all Judges of the Grand Court, all Summary Court Magistrates, all the Court Staff and fellow members of the legal profession a very happy and prosperous 2017.

Abraham Thoppil
President, Caymanian Bar Association
11 January 2017