

PRESIDENT OF THE CAYMAN ISLANDS LAW SOCIETY – ADDRESS

16 January 2013

May it please your Lordship, Hon. Justices Henderson, Quin, Jones, Cresswell, Foster and Williams, Hon. Chief Magistrate, Hon. Magistrates, Hon. Attorney General, His Excellency the Governor, Deputy Governor, Hon. Members of the Legislative Assembly, my colleagues at the Bar, our Special Guests, Ladies & Gentlemen.

I have had an opportunity to read Mr. Crowley's speech in advance and confirm that I agree with all he has to say.

Your Lordship, although I have had the pleasure of reading two of Mr Jennings's Grand Court opening speeches while Vice-President of the Cayman Islands Law Society, it is a privilege and an honour that I am able to deliver this speech in my first year as President of the Law Society. It would, however, be remiss of me to not first mention my predecessor. Charles Jennings sat as Law Society President for 9 years (a record I believe) and to have commanded the respect of the legal profession for so long is meritorious in its right. The fact that it has taken four of us to replace him says more.

I have the fortune of having 3 very able Vice-Presidents in Antonia Hardy, James Bagnall and Kevin Butler and a Secretary and Treasurer, Huw Moses, who in the short time since being appointed shades my previous tenure in that role.

In undertaking the Presidency, I informed the membership that I intended to characterise it with a theme of "constructive engagement". What do I mean by that? In essence, to me it means that we remain open and willing to engage in dialogue with all stakeholders with a view to promoting this honourable profession within the Islands and, in so doing, the interests of the jurisdiction as a whole. It is only through reasoned arguments; clear facts and objective analysis that we can hope to address the challenges in front of us.

Legislation. For as long as I have been a member of the Law Society, the Society has undertaken (at great expense and time of its members) to comment on almost every piece of legislation prepared by Government. I believe this contribution to society over the years has been invaluable and every member who has taken part should be applauded for their contribution. The reality of a modern world, whether we like it or not, is that more, not less laws and regulations are inevitable; and thus it becomes increasingly important for us to all work together to the betterment of these Islands.

In order to better equip the Islands, the Attorney General had the foresight in 2006 to set up the Law Reform Commission (the “LRC”) and it has become an important body in the development of legislation in the Cayman Islands. It has also been helpful to hear Mr Ian Paget-Brown's report.

However, If there was one critique that the profession may have with respect to the LRC in the recent past, it has been the lack of communication between the LRC and the profession and this has in the past unfortunately led to tension between the LRC and the profession. In the spirit of constructive engagement, I would respectfully invite the Attorney General to consider a couple of revisions to the current process.

First, it would be helpful if the LRC announced, in advance, the areas of law in respect of which it was considering making enquiries and set out its proposed terms of reference for public input before starting an inquiry. Secondly, once those terms of reference are decided, the LRC should publicly announce its terms of reference before starting the inquiry. Thirdly, where the LRC determines that an inquiry is urgent, it should state its reasons. Lastly, we appreciate that the LRC has limited resources and we would therefore invite the Attorney General to seek participation in its work from additional members of the profession and interested professional bodies, such as CISPA.

Education and Communication. Again, in the spirit of constructive engagement, I, together with the President of the Caymanian Bar Association have reached out and met with the Attorney General to discuss matters of mutual interest and would very much hope that we can continue to engage in dialogue on a regular basis and I thank the Honorable Attorney for his kind words earlier and looking forward to working in partnership with him. In one of our first meetings it was very interesting to hear the Attorney General share a number of common thoughts for the profession to consider; namely more interaction between the various parts of the profession and we see two key opportunities here. Firstly, in setting up educational workshops that would enable practitioners outside of their practice to better understand developments in other areas through seminars given by experienced practitioners in their respective areas of practice. Secondly, recognising the size of the profession now (over 460 admitted attorneys-at-law) there is need for more social events to unite the profession. Not an easy task with so many busy lawyers, but we are taking notes on how other professions address the same issues. With the hope that the Legal Practitioners Bill will soon be resolved to the satisfaction of the vast majority of current practitioners, we very much hope this can be a key focus going forward.

Legal Practitioners Bill. Your Lordship, I am sure that having seen this legislation addressed before you since 2002, you would recall that the original intention of this Bill was simply to introduce a modern framework for the regulation and discipline of the profession and for licensing and regulating lawyers practising Cayman Islands law outside of the jurisdiction.

I fear that the lengthy delay and consequent misunderstanding of the objectives of the Bill have enabled the Bill to become something more than merely a bill to regulate the profession. It is important for us to ensure that the objective of the Bill remains clear, namely to introduce a regulatory framework that reflects modern international standards. We need to take stock of the progression of profession over the last 30 to 40 years and ensure that we enable it to continue to flourish. We need to look forwards and not backwards.

A successful legal profession is critical to the country's economy and to the creation of opportunities. Only a successful profession that can compete globally in an intensely competitive market will continue to create those opportunities.

Earlier I mentioned 'clear facts'. Here is one. Since 2008 (the year the global recession started), 48 Caymanians have qualified or are in the process of qualifying as attorneys-at-law. While I understand that some may view this as relatively recent, the critical point is that it is only in the last 5-10 years when the profession has really expanded, that the firms have grown to the size where this is possible. In that time frame, the firms have stepped up their scholarships and recruitment to enable suitably qualified Caymanians to benefit from this success. Without the growth of Cayman law internationally, it is difficult to see this having happened.

Contrary to the perception of some, the profession has, and will continue to ensure the inclusion of Caymanians. The profession may be inherently media shy, and thus has not adequately conveyed this, but the fact is that today, the global managing partner of two of the 5 firms identified as members of the "offshore magic circle" of law firms is a Caymanian. The local managing partner of another is a Caymanian and several firms such as Solomon Harris, Travers Thorp Alberga, Bodden and Bodden and Ritch and Connelly are all headed by well-known and respected Caymanian attorneys. There are also now over 110 Caymanians who are admitted as attorneys-in-law. Out of a voting population of 18,000, this is a very high number compared to the UK or other Commonwealth countries. I believe that this will only continue to grow with the recent increase in the number of Caymanians entering the legal profession, provided the right environment is adopted - built on a meritocracy and hard work, where opportunities exist to compete for advancement. I have not met one Caymanian attorney, prior to and since taking up the Presidency, who would want anything less. The major law firms last year put together a commitment paper for the former Premier that set out the framework for this to be achieved. It is in this spirit of constructive engagement that I hope to see the profession continue to flourish.

My final fact on this topic is simple. We all live in a democracy and believe in the rule of the law. When the Caymanian Bar Association brought a version before its membership in 2009, 86% of its members approved it.

Not 86% of attorneys-at law but 86% of substantially all Caymanian lawyers. Should their voice not be heard in all of this debate?

While I have heard Mr Paget Brown remarks, I do not think this is the place or the time to go into detail on some of the points raised, the important point to me is to be constructive and look forward and I thank your Lordship for your invitation to met with respect to is.

Administration of Justice. This last year has witnessed the usual business of the Courts being conducted in both the criminal and civil lists. As always, your Lordship and Honourable Justices and Magistrates are all to be commended for so diligently and efficiently disposing of the lists week in and week out and, in particular, for ensuring that the majority of cases were dealt with in a timely manner. This is clearly important both in respect of local litigation, which affects the lives of the people in the community, and also with regard to the international work which is so vital to maintaining Cayman's position as a leading financial centre. Once again, there have been key cases to resolve, and the continued demonstration of the effectiveness of the jurisdiction as an open forum for dispute resolution is maintained.

As always, we are grateful to all those who are responsible for the administration of the Court system and particular thanks goes to the Court Administrator, the Clerk and Deputy Clerks of the Court, the Listing Officer and the Registrar of the Court of Appeal and all those who work with them.

The Law Society also acknowledges the important work of those who produce the Cayman Islands Law Reports which are in daily use here and are increasingly referred to and cited in other jurisdictions as well. Our thanks again goes to Dr. Milner and his team and also Ramon Alberga QC and Colin McKie for their continued excellent publishing of our Cayman Islands Law Reports.

As noted by the Honorable Attorney General and Mr Crowley, we also welcome Sir Richard Ground as a new Court of Appeal judge as well as Baroness Scotland (former Attorney General for England, Wales & Northern Ireland) as a new member of the Judicial and Legal Services Commission (replacing Sir Richard Ground). Their contribution to the profession is greatly appreciated and highly valued.

Now it remains only for me to formally second the Honourable Attorney General's motion to open the Grand Court of the year 2013 on behalf of the Cayman Islands Law Society, and also to take this opportunity to wish Your Lordship, Judges, court staff and fellow members of the legal profession a very happy and prosperous New Year.

Alasdair Robertson
President
Cayman Islands Law Society