

**ADDRESS OF COLIN McKIE Q.C. ON THE OCCASION OF THE  
OPENING OF THE GRAND COURT ON 13 JANUARY 2016 GIVEN ON  
BEHALF OF THE CAYMAN ISLANDS LAW REPORTS**

My Lord Chief Justice, Hon. Judges of the Grand Court, Hon. Chief Magistrate, Hon. Magistrates, Mr Attorney, Madam DPP, Madam Solicitor General, my colleagues at the Bar, our Special and Distinguished Guests, Ladies & Gentlemen

If it may please my Lord.

In 1992 our late Chief Justice Sir Denis Malone presided over the first ceremony to mark the opening of the Grand Court for the New Year. From those modest beginnings the occasion now overflows this Court room – and is attended by not only the Bench and the profession (now comprising not only the private and public bar, but also academic lawyers and students from the Truman Bodden Law School; the Law Reform Commission; and in-house lawyers), but also Her Excellency the Governor, Members of the Legislative Assembly, and other business and civic leaders. It is an occasion to reflect on the previous year and look forward to the New Year, and afterwards to enjoy some judicial hospitality and each other's company.

I am privileged to be able to associate myself with the motions to open the Grand Court for the year 2016 moved by Mr Attorney and seconded jointly and comprehensively by the President of the Law Society and the President of the Bar Association, and to provide an addendum of my own.

2015 marked an important anniversary for the law, namely the 800<sup>th</sup> anniversary of the sealing of Magna Carta. My mind naturally turns to the

anniversaries of 2016 and, being a consulting editor of the Law Reports, to literary anniversaries. In April 2016 will be 400 years since the deaths of William Shakespeare and Miguel de Cervantes (and many of their works are concerned with law, justice and fairness). More prosaically, but relevantly, 2016 is the 150<sup>th</sup> anniversary of the publication in England of the first volume of the *Law Reports*. Those reports adopted a new standard for law reporting that had been suggested by Nathaniel Lindley QC (later Lord Lindley), and which thereafter has been widely accepted in the Commonwealth. That standard, which our own CILR applies, is to report all cases which:

*"introduce, or appear to introduce, a new principle or a new rule;*

*"materially modify an existing principle or rule;*

*"settle, or materially tend to settle, a question up[on which the law is doubtful;*

*"are for any reason peculiarly instructive."<sup>1</sup>*

A first-year law student looking at the title pages of the early volumes of the *Law Reports* will be immediately familiar with some of names of the series (such as Queen's Bench and Chancery Appeal reports) but may be less familiar with some (such as Common Pleas reports) and may find three to be rather odd groupings – Probate and Divorce; Admiralty and Ecclesiastical; House of Lords Scotch and Divorce appeals). My hypothetical student may attribute this to the existence at the time of multiple common-law courts, and comfort himself that by 1881, i.e. once the Judicature Acts had been fully implemented, the *Law Reports* comprised four series - Appeal Cases; Queen's Bench, Chancery, and Probate Divisions.

---

<sup>1</sup> see the Introductory Essays to the *ICLR Anniversary Edition*, which provides a detailed history of the *Law Reports*.

My student, however, is a bit more curious, and reads the title pages for the volumes for the Probate Division reports published after 1881. It comprises reports of probate, divorce, admiralty and ecclesiastical cases, and my student asks himself the question, "*Is there any connexion between this very disparate grouping of cases, or is it just a rag-bag of cases that do not fit into the other series?*"

The answer that I would give would be that they were from ancient times, courts that administered civil law (i.e. Roman law in the lay courts and canon law in the ecclesiastical courts), as distinct from common law or equity. From the earliest times the development of the law in the civil courts was influenced by the common law and equity, and vice versa. To give two very early examples - the right to trial by jury (in common law courts) and discovery of documents (in courts of equity) came directly from the civil law.

Civil law has continued to influence the development of the common law and equity. Civil law provided many of the innovations in the development of commercial law, especially insofar as it was necessary to develop mercantile law to facilitate international trade<sup>2</sup>. Thus, the very large majority of what eventually became the Bills of Exchange Act 1882, Partnership Act 1890, Sale of Goods Act 1893, and the Marine Insurance Act 1906 were codifications of mercantile law, much of it derived from, or influenced by, civil law. Those Acts were masterpieces of legislative

---

<sup>2</sup> Lord Mansfield, one of the great architects of English mercantile law, stated that "*Mercantile law is not the law of a particular country but the law of all nations*" - *Luke v. Lyle* (1759) 2 Burr. 882.

drafting<sup>3</sup> and were readily adopted throughout most of the Commonwealth and, with one exception, all form part of our Laws today.

But the influence of civil law did not stop in Victorian times. Because the House of Lords heard appeals from Scotland, a legal system which is a hybrid of civil law and English common law and equity, it would as often develop English law to be consistent with Scottish law as vice versa, and a similar process operated through the Privy Council which often heard appeals from civil law and hybrid jurisdictions (such as Quebec and South Africa). Thus in 1932, the famous case of *Donoghue v Stevenson* - which is usually taken as the founding case in the modern law of negligence – it is actually a Scottish appeal and the majority comprised the two Scottish Law Lords and only one English Law Lord. More recently, many important developments in the rules of conflicts of law are derived from civil law. Thus, from 1974 and culminating in *The Abidin Daver* in 1984, the House of Lords gradually assimilated English law on *forum non conveniens* to that of Scottish law. Much of the recent developments of the law of restitution are derived from civil law – see *Foskett v McKeown* in 2001. *Donoghue v Stevenson* and *The Abidin Daver* have been relied upon many, many times in our courts, and *Foskett v McKeown* relied upon more recently, and their principles are now embedded in our common law.

It should therefore be no surprise that our courts are alert to the need for our common law to develop in a way that facilitates international business, the life-blood

---

<sup>3</sup> Sir MacKenzie Chalmers (later Chief Justice of Gibraltar) and Sir Frederick Pollock (later Editor of the *Law Reports*).

of our financial services industry. Thus, every year our courts deliver judgments which consider judgments from many jurisdictions, including those with strong civil law elements, such as the Channel Islands.

Those judgments are delivered in public. The need for publicly available Judgments rests on the fundamental principles of due process, open justice, and the rule of law. 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/or how it is being developed) 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.

Our CILR provide support to our financial services industry which is the single largest contributing sector of the economy, and thus to the well-being of our Islands. The Editors are grateful for the continuing and significant financial support provided by the Government, the support of the judiciary, the whole profession, and the Law Associations.

We are fortunate that disputes involving Cayman Islands structures, no matter how complex, have been, and seen to be, fairly, efficiently and predictably litigated in our courts. The reporting of our judgments is a continuing advertisement of that fact but they are merely the end-result of many peoples' efforts. The infra-structure that lies behind the administration of justice is key – a judiciary that is experienced, independent, and fair-minded that is demonstrably committed to "*the just, most expeditious and least expensive determination*"<sup>4</sup> of disputes - and which is supported by a similarly able and dedicated civil service; modern legislation and procedures;

---

<sup>4</sup> See the Preamble to the Grand Court Rules.

modern physical and technological facilities; and professionals who are experienced, cost-effective, efficient and ethical.

All of our infra-structure requires constant examination and maintenance. The CILR keep their performance under review and strive for improvements. I leave it to others to comment on to the extent that improvements may be made upon the rest of our infrastructure.

I am pleased to be able to report that all the decisions of the CILR up to and including 2014 have been published on line and in hardback. The first volume for 2015 is currently with the printers, and much of the editorial work for the second volume has been completed. Our Law Reports now cover over 60 years of Cayman Islands judgments and contain 1941 judgments (if my arithmetic is correct).

We therefore 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 Courts. A quick internet search shows that in 2015 Judgments from our courts have been considered by courts as close as Bermuda and as far as Western Australia.

2015 was yet another busy year in all of our Courts. Our judges undertook and completed a great volume of work. Some 134 written judgments and rulings were handed down in the past 12 months by the judges sitting in this Court and the Court of Appeal, approximately the same as has been delivered in each of the previous five years. There was one judgment of the Privy Council on appeal from the Court of Appeal.

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 investment funds; banking law and the regulation of banks; company law; partnership law; insolvency law; international exchange of tax information; arbitration; audit negligence; trusts; conflicts of law; insurance; and civil procedure.

The Civil Division judges delivered Judgments on topics as diverse as personal injuries disputes (regrettably, often arising out of road traffic accidents); land and strata disputes; freedom of information; probate and the administration of estates; employment disputes; judicial review (often arising out of challenges to immigration decisions); and limitations on foreign attorneys to practise in our courts.

The Civil Division has had its fair share of proceedings arising out of the local consequences of the prevailing economic conditions; in particular the number of proceedings arising out of defaults on mortgages remains high.

The judges of the Family Division gave a number of important decisions concerning the care and custody of children and financial provision in divorces; public law proceedings to protect children; and unauthorised removal of children out of the jurisdiction. The disputes concerning the custody of children increasingly involve consideration of complex issues of conflicts of laws.

Last year the Admiralty Division delivered no written rulings.

Regrettably, our criminal courts were just as busy as the civil courts. The judges of the Criminal Division delivered a range of judgments relating to: murder and manslaughter; malicious wounding; rape and the defilement of minors; indecency offences (too often the victims of which were children); robbery and burglary (frequently involving firearms and other offensive weapons); theft and other offences of dishonesty; and drugs offences. It is noteworthy that the number of

judgments concerning the possession of firearms, robberies, and those concerning fraud and other offences of dishonesty against employers, continued at their previous high levels and serious traffic offences, including causing death by dangerous driving, remain prevalent.

The complexity of the issues in our judgments has never been so great, and is substantially greater than any other comparable offshore jurisdictions. Considering and editing the rulings handed down in 2015 for reporting this year will keep Dr Milner, Mr Alberga and I 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 their work to ensure that the requirements for judicial diligence, including the delivery of judgments, are met. The short time that usually elapses between the conclusion of a hearing and the appearance of the written reasons is commendable.

On the subject of judicial changes, last year saw the retirement of Justice of Appeal Mottley (who served from 2006). (As we have already heard, in the next few days Sir John Chadwick will formally step down as President of the Court of Appeal, a position he has held since 2008.) Their output was prodigious and our law has been much enriched by their wisdom and learning.

Last year we welcomed as new Justices of Appeal: Sir Alan Moses; Sir Richard Field (both from England); and Dennis Morrison (from Jamaica), and new Grand Court judges: Mrs Justice Mangatal from Jamaica; Mr Justice Clifford and Mr Justice Segal from London.



I wish to express our thanks to those local and overseas judges and practitioners who have willingly given up their valuable time to sit as acting judges of the Court of Appeal, Grand Court, Coroner's Court and Magistrates Court during 2015. In the Court of Appeal Justice of Appeal Mottley, immediately after his retirement (!), returned to harness for one session; and in the Grand Court Sir Andrew Morritt, Alastair Malcolm QC, Michael Mettyear, Malcolm Swift QC, Timothy Owen QC, (all from England), Francis Belle and Seymour Panton (both from Jamaica), and our own Robin McMillan presided over a wide range of cases. Our own Mrs Grace Donalds, Ms Angelyn Hernandez, Mrs Philippa McFarlane, Mrs Eileen Nervik, and Mr Adam Roberts sat extensively as acting Magistrates and Coroners.

I also wish to thank the Administrator, Clerk of the Courts, the Deputy Clerks and all the administrative staff at the Court House who behind the scenes work hard and diligently to give the public and attorneys their valuable assistance and service.

Dr Milner has asked me to convey to your Lordships and to the entire legal profession his best wishes for a successful and happy 2016 and regrets that he was not able to be present today.

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 QC**

13 January 2015

