

## **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 2016.

Before continuing, I would take a moment to remember the passing of a member of our legal community during 2015: Irvin Banks.

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

### **The CBA in 2015**

The CBA now represents the interests of more than 220 Caymanian attorneys and over a 100 student members. The CBA was formed and is charged with seeking to protect and promote the legal profession and, in

particular, the interests of Caymanian attorneys. However, the CBA is not a statutory body invested with powers, but an association of members - who give freely of their time and resources. It should be remembered that the profession is not some monolith but a number of individual firms, many of them now effectively controlled from overseas. The CBA has worked quietly and effectively behind the scenes to promote the development of our Law and the advancement of Caymanian lawyers.

Last year the CBA launched its Legal Seminar Series. The CBA worked with local Law firms to design, provide and host training programs designed to develop the legal skills of Caymanian lawyers and trainees on a range of topics from corporate law, to mutual funds and private equity law. The seminars supplement local attorney education and complement the training programs currently provided by local law firms. The target audience being young Caymanians pursuing a career in law ranging from law students, PPC students, law interns, paralegals, articulated clerks and junior attorneys. 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. This program received tremendous support and feedback, and the CBA intends to develop and expand its successful Legal Seminar Series this year.

### **The Legal Practitioners Bill**

Now I turn to what has become a rather unfortunate tradition, like my predecessors, I find myself in the position this year of needing to address the venerable topics of the need for a new Legal Practitioners Bill and for new Court facilities.

What more can be said of the importance of new Legal Practitioners legislation to our profession that has not already been said in more eloquent speeches in the past? Little, I imagine.

For more than a decade the CBA has tried to bring in legislation to improve the position. There are difficult issues facing the profession now aggravated by that

failure. The failure to pass such legislation has been damaging to the jurisdiction and the interests of Caymanian lawyers. The CBA considers that the advancement of Caymanians in the profession has been inadequate. This unsatisfactory state of affairs has been compounded by the inadequacies of enforcement of our immigration regime.

The CBA and the Cayman Islands Law Society have worked together constructively on the myriad issues confronting the jurisdiction and the profession and there is significant agreement of both organizations to the general terms of a new draft Legal Practitioners Bill. A number of the CBA's concerns are addressed in a new draft of the Legal Practitioner's Bill. It is fair to say that the Law Society has recognised and accepted the importance of enhancing the interests of Caymanian lawyers.

There has been much well intentioned, but often misguided comments made about how best to promote the interest of Caymanian lawyers. The CBA trusts that

public debate on the Legal Practitioners Bill will be well informed, based on an understanding of those initiatives that will truly advance the interests of Caymanian lawyers.

### **New Court Facilities**

Whilst the profession was encouraged by the words of the Honourable Premier last year, we have yet to hear of detailed project details and timelines for the new court facilities. If I may be indulged in doing so, I echo the remarks of my Lord Chief Justice at last year's Grand Court opening in this regard: "*We hope at next year's opening to be speaking of the building in tangible, even if more prosaic and concrete terms.*"

### **Drafting Legislation in Plain Language**

Finally, I would like to extend every thanks to our members who have continued to assist Government with its legislative agenda by providing input and constructive comments on draft legislation. However, time and time again we have seen much needed draft legislation poorly conceptualised and mired in overly technical language,

often resulting in abandonment of the draft or Bill to the detriment of the development of our law. The CBA calls for a reconsideration of current legislative drafting techniques and a transition to the use of 'Plain Language' in our laws and regulations.

As Cayman evolves and becomes more sophisticated, the need to have clear and concise legislation grows. Convoluted, overly technical legislation that cannot be deciphered without reliance on attorneys or this Honourable Court is arguably discriminatory, a breach of natural justice and simply a waste of time and money. The laws of these Islands must be accessible by laypeople and practitioners alike.

My Lord Chief Justice, in his recent judgment in the Permanent Residence and Employment Rights appeals<sup>1</sup> reminded us of the necessity for clear and unambiguous legal drafting so to avoid the danger of 'doubtful

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<sup>1</sup> *In re Hutchinson-Green and Racz* (unreported) 28 August 2015 at [83].

penalization.' If I may again borrow from your Lordship's words, referencing the works of Francis Bennion:

*"... whenever it can be argued that an enactment may have legal meaning requiring infliction of a detriment of any kind the principle against doubtful penalization comes into play. If the detriment is severe the principle will be correspondingly powerful. As Staughton LJ said in relation to penalization through retrospectivity, it is a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended."*

## **Conclusion**

Now it only remains for me formally to second the Honourable Attorney General's motion to open the Grand Court for 2016 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 2016.

Abraham Thoppil  
President, Caymanian Bar Association  
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