

Caymanian Bar Association

President's Address for the opening of the Grand Court 13th January 2010

1. Introduction

My Lords, Honourable Chief Justice, Honourable Mr. Justice Henderson, Honourable Mr. Justice Quin, Honourable Mr Justice Jones, Honourable Mr Justice Foster and Magistrates of the Summary Court, I rise on behalf of the Caymanian Bar Association to second the motion of the Honourable Attorney General to open the Grand Court for the year 2010.

2009 was an eventful year. With your indulgence, I will now highlight some of the issues that the profession has had to face over the course of the last year and can expect to face this year. I will also describe some of the issues of concern to the Caymanian Bar Association. I am pleased to report that the Law Society and the Bar Association have worked together to limit the overlap between our respective addresses.

2. Challenges to the Administration of Justice

2009

2009 failed to provide any final outcome in respect of:

First - a final resolution regarding the finding of the commission of inquiry into the conduct of one of our Grand Court Judges; and

Secondly - and although it has been reported that this no longer touches the judiciary - the findings for the Operation Tempura investigation.

We hope these matters can be brought to a final conclusion quickly so we can all move on.

Reform of Legal Aid

The CBA endorsed the recommendations of the Law Reform Commission as noted in their Final Report No. 4, July 2008 at the opening of the Grand Court in January 2009. This report was tabled by the Attorney General in the Legislative Assembly on Friday, 5 September 2008. This report lay dormant until the end of last year when there was a flurry of activity.

We are not sure what is being proposed, other than what we have read in our local newspapers. What is clear is that the recommendations in the LRC report have not been followed. Despite letters of protest, the CILS and the CBA have not been invited to participate in a hastily formed committee set up to consider the new proposals. This exclusion of the local bar is a matter of grave concern to us.

We have been given the opportunity, along with any member of the general public, to provide any comments within 10 days. However, in the absence of any proposals for us to review, our only position can be to support the recommendations of the LRC whose members did considerable research before producing their original report.

Ensuring that all defendants receive a fair trial is part of the basic fabric of any modern society. We must ensure that whatever we end up with in Cayman meets international standards and does not result in convictions being subject to challenge and the very serious consequences that could have.

Cooperation between the relevant authorities

The increase in crime is and will continue to have a consequent impact on our criminal justice system. It is vital that the concerned authorities, including the Commissioner of Police, the new

Director of Public Prosecutions and the Director of Prisons, as well as senior members of the criminal bar, meet regularly and coordinate the necessary modernisation and smooth operation of our system so that we are in the best position to tackle the changing face of crime in these Islands. It is especially important that weaknesses in the investigation and prosecution of serious cases be recognised and addressed and that the Judicial Administration is provided with the resources it needs to ensure that cases are disposed of in a timely and just manner. This, of course, includes the new Court building which is very badly needed and which has been promised for so many years now.

3. The CBA in 2009

Membership

We are pleased to report that the CBA has now increased to 149 members. There are few remaining Cayman lawyers who are not members.

We now also have 43 honorary student members made up of Caymanian law students and articulated clerks.

Legal Practitioners Bill

In 2008, the progress of the Legal Practitioners Bill stalled and was the subject of much comment at the opening of this Court last year. This resulted in a meeting between the then Cabinet and certain concerned Caymanian lawyers. Following that meeting, the CBA set up a committee made up of Waide DaCosta (chair), Winston Connolly, Olivaire Watler, David Collins, Abraham Thoppil, Nick Rogers, Nick Joseph and Sammy Jackson to review the Bill generally, but also to consider the specific concerns that had been raised. This committee held many meetings between March and August last year resulting in a revised Legal Practitioners Bill. This involved a considerable amount of work and the committee members should be commended for their efforts. The revised Bill was approved by the CBA membership by a secret ballot (with 86% of the members attending in favour) at an extraordinary general meeting held on 23 September 2009.

The revised Bill was sent to Cabinet with a request that the Bill now be progressed. Although we have not had a response from the Government, we are hopeful that we will see the revised Bill brought into force in the first quarter of 2010. Our reputation as an international financial centre remains at risk until this is done.

Constitutional Modernisation

The team of Stephen Watler (chair), Orren Merren, Olivaire Watler, Richard Barton, Maxine Bodden and Robert Duggan reviewed the proposed constitution and authored three excellent articles explaining its new framework and principal features. We received a tremendous amount of feedback on how useful people found these articles to help them understand the issues and make an informed vote in the referendum held during the national elections.

Training Programme for Articled Clerks

We are pleased to report that the CBA has prepared a comprehensive training programme for Articled Clerks which is available to all on our website. The intention is to assist those practitioners who do not have either the expertise or resources to produce their own programme and to provide a benchmark for all existing programmes.

Cayman Islands Law School

In 2009, the CBA again delivered presentations at the Law School providing the Professional Practice Course students and first year students with an expectation of what they face if they are successful in their studies. It is important that our students have a realistic expectation of what

the practice of law will mean for them as well as the grades that are needed for them to be competitive.

4. The CBA in 2010

Immigration Guidelines

The CBA is currently working on producing recommended guidelines to the Immigration Board for the granting of work permits to attorneys. We hope that these recommended guidelines will be helpful to the Board and expect to complete them in the first quarter of 2010.

Guidelines on equivalent qualifications

In the coming year the CBA will produce recommended guidelines on what jurisdictions provide on equivalent qualification for the purpose of being admitted as a Cayman Islands attorney-at-law. We hope that the Legal Advisory Council and the Attorney General's office will find these recommended guidelines helpful.

5. 2009 Obituaries

In 2009 we lost two members of our profession in the Cayman Islands both of whom were CBA members:

- Frank Banks
- Gregory Thompson

It is appropriate that we remember them on this occasion.

Conclusion

Now it only remains for me formally to second the Attorney General's motion to open the Grand Court for 2010 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, healthy and prosperous 2010.

James Bergstrom
President
Caymanian Bar Association
13 January 2010