

## **PRESIDENT OF THE CAYMAN ISLANDS LAW SOCIETY – ADDRESS**

13 January 2010

My Lord Chief Justice, Hon. Justice Henderson, Hon. Justice Quin, Hon Acting Justice Jones, Hon. Chief Magistrate, Hon. Magistrates, Mr Attorney, Hon Premier, Hon. Members of the Legislative Assembly, my colleagues at the Bar, our Special Guests, Ladies & Gentlemen

I am appearing today on behalf of Mr. Charles Jennings, the President of the Cayman Islands Law Society, which as you know represents the Cayman Islands legal profession as a whole. Mr Jennings is presently in the United Kingdom. He returns to the Cayman Islands next week and is very sorry to have missed this occasion. He has prepared this address and asked me to present it on his behalf. I shall accordingly read this address in the personae of Mr Jennings.

First, it gives me great pleasure to second the motion of the Honourable Attorney General to open the Grand Court for the year 2010.

Your Lordship a quick word if I may at the outset about myself. As you know, I have retired as a partner of Maples and Calder after 24 years, the final five of which were in management roles both here and overseas, meaning of course Charles Jennings, not me, Alasdair Robertson. For the time being, I continue in office as President, a position I am honoured to hold and enjoy immensely, not least because of the opportunity it affords me of communicating with yourself and your esteemed colleagues and with representatives of other law firms. Since my retirement from Maples I have offered to stand down as President of the Law Society, a position I have in fact held since 2001 (with the exception of two years

when I was in London and the position was held by Mr, now Mr Justice, Charles Quin). I am not sure if I *will* be departing the position, but if I do I would like to say what an honour and privilege it has been to hold office and how grateful I am to you, your colleagues and the Hon Attorney General for all the help and advice you have given me over the years.

Your Lordship, this has been another testing year for the legal profession, both domestically and internationally. Challenges have arisen on a monthly, if not a weekly, basis. It is not an exaggeration to say that the offshore financial industry is presently the mainstay of the Cayman Islands economy, and the legal profession, charged as it is with advising on the structuring of the vehicles required by the industry, is at the very forefront in our efforts to maintain the Cayman Islands as a pre-eminent, reputable offshore jurisdiction. This was recognised by the previous government, and continues to be so by the new administration and in particular by the Hon Premier.

The laws of the financial industry, just like those governing domestic matters on the island are never set in stone. The needs of the industry, as to both finding solutions to new problems and developing new laws, are dynamic and require constant review and revision – including the introduction, on a fast-track and reliable basis, of new legislation when required. The sad fact is, Your Lordship, that is simply not what is happening at the moment. New legislation needed not only to keep Cayman in the vanguard of the financial world but also to demonstrate to the world how responsive it is as a jurisdiction to the needs of the international community.

During the course of 2009, there were 3 important pieces of legislation introduced that had a material impact on the financial services industry: The amendments to the insolvency regime under the Companies Law; the introduction of "merger" provisions to our Companies Law and the amendments to the Exempted Limited Partnership Law. All of the legislative changes were initiated by the private sector, however what is concerning is the length of time it took for these initiatives to see the light of day. In the case of the insolvency changes,

these were first proposed in September 2005, with respect to the merger provisions, December 2004 and in the case of the partnership law, February 2006.

Also interestingly in the last 5 years, we have introduced 14 pieces of new financial services legislation while Jersey have introduced 27 pieces of legislation and BVI, 18.

At present we have 3 other key pieces of proposed financial services legislation, some prepared by government and some by the private sector, but all vital to the jurisdiction, awaiting enactment. I shall take the liberty, if I may, of listing them for you, with a short comment on why they are so essential:

**Amendments to the Companies Law.** A Joint committee of the Law Society and the Bar Association in 2004 completed a wholesale review of the Companies Law with input from practitioners across the jurisdiction. This review reflected practitioner's experience of the Companies Law and feedback from on-shore practitioners as to what Cayman could do better. As with the changes to the insolvency provisions, it would give us a modern Companies Law at the forefront of international financial centres.

**Amendments to the Insurance Law.** When the IMF visited the Cayman Islands in October 2003 they identified issues in our Insurance Law. When they returned in March 2009, the draft Bill to address those issues had still not been implemented and while the IMF concluded in their report that "substantial progress has been made in the implementation of the 2003 OFC assessment", they expressly noted "some actions remain to be taken in the insurance area". We hope that this will be very shortly rectified.

**Repeal of the criminality provisions of the Confidentiality Relationships Preservation Law.** While often misunderstood outside of the Cayman Islands, in particular by its detractors, it has been agreed by most if not all in the private sector, and indeed Government, that the criminality provisions within this law has long outlived its usefulness in

this modern era. In order to clarify any misconception as a "bank secrecy law", it was broadly agreed that these provisions should be repealed, in particular before any of the supranational bodies, such as G20 or the OECD, turn their attention to blacklisting or whitelisting jurisdictions on the basis of so called "bank secrecy" provisions. A draft bill was produced but again this has not seen the light of day.

In addition there a number of other proposals that the private sector has made but with the existing backlog of critical financial services legislation, has not made it as far as draft Bill stage. These include (a) a proposal to introduce a limited liability company law to create an entity broadly similar to Delaware LLC's, something onshore practitioners have long recommended would be of benefit to the jurisdiction; (b) a law to give effect to the "**Place of Relevant InterMediary Approach**" or "PRIMA" which would have the effect of providing clarity in relation to cross border security transactions; (c) amendments to existing legislation to enable us to recognise the EU collateral directive remedy of appropriation which is becoming more applicable, especially in the aircraft financing world; and (d) an amendment to statutorily override the Mercury case in relation to execution of deeds and thereby accommodate market practice in the global finance industry, in particular the US, with regards to such execution.

There is however a feeling within the private sector that without a "fast track" approach to get new ideas considered, drafted and adopted, there is little point in doing so if such effort, and the effort and time should not be under estimated, is not going to lead anywhere.

Your Lordship, Mr Bergstrom has already listed a number of issues on the domestic front. I have had the opportunity to read his comments earlier this week and on behalf of the Law Society endorse all that he has to say. Although the Law Society and the Caymanian Bar Association may sometimes have different priorities, I hope that Mr Bergstrom agrees that when it comes to promoting the Cayman Islands, its laws and judiciary, we speak with one voice.

There are however two areas of overlap that I feel I must add comment on.

**Legal Practitioners Law.** It may sound a bit like a broken record, this being the sixth year at which the President of the Law Society has said that the introduction of the Legal Practitioners Law is vital for the profession but that is the fact. In the past year, further revisions have been made and a version of the draft Bill which clearly have the support and backing of the Law Society and the Bar Association has been sent to the Government to consider with a view for it to be sent to the Legislative Assembly. It is important not just for the profession and the jurisdiction but also for the public of the Islands to have a law that regulates attorneys in a modern way; the current law has not have been materially amended since 1972 when there were just over 30 attorneys on the roll. Now there are nearly 400 admitted attorneys.

**Legal Aid.** Likewise this has been a long running debate as to the best way of ensuring that one of the most fundamental principles of justice, fair access to legal representation is afforded to defendants and is affordable to the residents of the Islands.

The profession has been very involved in this process and provided substantial input to the Law Reform Commission's report that was produced in July 2008. In summary the Law Reform Commission recommended the preservation of the present system, albeit with suggestions for its modification and enhancement. Both the Cayman Islands Law Society and Caymanian Bar Association endorsed those recommendations.

Notwithstanding such report, as you are aware there has now been established a committee chaired by Ms Neblett, that is further considering this matter.

The profession was extremely surprised and disappointed not to have been directly represented on this committee, but will continue to provide input on what is a very important matter.

We would respectively ask the committee to consider carefully and thoughtfully all options open to them and we stand ready to provide comments and input on any alternative proposals put before them. We would also respectively request that the profession be provided with a draft version of the Committee's report to the Cayman Islands Government in advance of its delivery.

**Commercial Court.** Your Lordship, may I add my voice to all the others who have congratulated you on establishing the new 5 divisions of the Grand Court, in particular the Financial Services Division of the Grand Court. Cayman has always been known for the quality of its legal services and its judiciary, but the establishment of a Division of the Grand Court specifically designed to address complex financial issues gives a further tremendous boost to its credibility and is a hugely significant development in this jurisdiction which the Law Society welcomes with great enthusiasm. We also welcome the appointment of Justices Foster and Jones. The addition of such well respected Attorneys in Justices Jones and Foster can only but enhance the jurisdiction's reputation as a locus for hearing of substantial commercial matters.

**Appointment of new QCs.** On behalf of the profession, I welcome and congratulate: Cheryl Richards; Langston Sibbles; Angus Foster; Neil Timms; and Kenneth Farrow on obtaining silk. It reflects well on the jurisdiction that such number of our colleagues have reached this important milestone in their careers.

**Administration of Justice.** As to administration of justice, the year has witnessed the usual business of the Courts being conducted in both the criminal and civil lists. Your Lordship, 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 effects the lives of the people in the community and also with regard to the international work which is so vital to maintain 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. Particular thanks go 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. Again, the Law Society 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 go to Dr. Alan Milner and his team for their continued excellent publishing of our Cayman Islands Law Reports.

Finally, Your Lordship, I would be deeply remiss if I failed to acknowledge the sad passing of Mr Frank Banks during the course of the year after a brave fight against cancer. Mr Banks was a well respected attorney and personal friend (and if you can believe it, a team mate on a triathlon team with Gus Pope many years ago). He will be very much missed.

Now it remains only for me formally to second the Honourable Attorney General's motion to open the Grand Court of the Year 2010 on behalf of the President of the Cayman Islands Law Society, and also on his behalf 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.

Charles Jennings

President

Cayman Islands Law Society