

# OPENING OF THE LEGAL YEAR 2015

## INTRODUCTION

I would like to begin by welcoming our guests, **Her** Excellency Governor and the Chief Minister. I would also like to express the regret of the Bar at the death of Sir Christopher Staughton who was a member of the Court of Appeal from 2000 to 2006 and its President from 2005 to 2006.

My Lord, next week **you step down** as President of the Court of Appeal. You have honoured that court with your presence since 2006 and with your distinguished Presidency since 2011. You have brought many things to the Gibraltar judiciary and to the Judicial Service Commission, not least your **gravitas** and your **razor-sharp** mind. Your humility has struck us all. You will be sorely missed. On behalf of the Gibraltar Bar, I wish to thank you. We wish you and Lady Kennedy great happiness for your future. I would like to welcome Sir Maurice Kay who will take over on Tuesday and wish him the best of luck and success.

I would also like to give a special word of welcome to the gentleman sitting immediately to my left, **Mr Louis Triay QC**, the doyen of our Bar who, later this month, will celebrate a remarkable 65 years of Call and who, even more remarkably, can still sail the distance with most of us.

**My Lord**, it is with a great sense of joy and **professional** satisfaction that I stand here today to deliver the Speech Opening the Legal Year as the first Gibraltarian Attorney General in over 100 years. I would like to thank all those who encouraged and supported me. It gives me even greater pleasure to be able to say that today, for the first time ever, a Gibraltarian Attorney General moves for the Opening of the Legal Year before a Gibraltarian Chief Justice.

That is a testimony to the progress made by the legal profession in our jurisdiction. Having practised for many years away from Gibraltar and with lawyers from many

other European jurisdictions, and even though we must always strive to continue to progress, I say with confidence that it is an honour and a privilege to be the Leader of a Bar of the **stature** of the Gibraltar Bar.

It goes without saying that I intend to uphold the integrity of my Office; to discharge the responsibilities of an Attorney-General to the utmost of my abilities; and to further the good work of all my predecessors. I would like to thank my immediate predecessor, Mr Ricky Rhoda, with whom I continue to enjoy a very close working relationship. Indeed, Mr Rhoda is standing in for me today at the Conference of the Attorneys-General of the BOTs and CDs currently being held in Anguilla.

## **ROLE AND RESTRUCTURE.**

My Lord, in a number of interviews I gave at the time of my appointment I explained how I intend to discharge my **ROLE**. I will not repeat them now save to say that I will move away, and indeed I have already moved away, from the predominantly criminal prosecutorial role performed by my predecessors to one which more closely resembles the role of the Attorney General in England & Wales. As a former Attorney in England & Wales has said "*the lion's share of the Attorney's time is taken up as principal adviser to the Government*". That is what I have been doing since 1997 in the area of European law and, since my appointment last May, that is what I have been doing in expanded areas of importance to the Government.

One new area has been acting as legal advisor to the Governor in relation to his functions under the Constitution and laws of Gibraltar. I would like to say that the four months I have acted in that capacity to **Sir James Dutton**, have been excellent and extremely productive. I intend to use the format he and I have established for our meetings as the model for my work with his successors.

In order to assist me in performing my role as Attorney, one of the first things I promoted was a restructure of the government legal service. This happened last August (1 August 2015) when the AG's Chambers, EUID and LSU were replaced by the **Gibraltar Law Offices** which is made up of 4 Offices : the **Office of Criminal Prosecutions & Litigation** which takes over from the AG's Chambers, the **Office of**

**Advisory Counsel**, which is responsible for providing legal advice to Ministers and Government Departments, the **Office of Parliamentary Counsel** with responsibility for drafting the laws of Gibraltar and the **Administration Office** which is responsible, among other things, for the production and publication of the Gazette.

All of these offices now come under my supervision and superintendence. They comprise 25 lawyers with a further 9 lawyers in other Government departments. I believe that the new structure will be a success in leading to greater efficiency, better service and better use of resources. I am grateful to the Chief Minister and to the Minister of Justice for having supported that restructure which I think is important moving forward.

## **ANNIVERSARIES.**

My appointment has taken place in a year when we have celebrated three important anniversaries.

Firstly, this year marked the 75<sup>th</sup> anniversary of that momentous event in our history that was the **Evacuation**. In his speech during National Day, the Chief Minister drew a thought-provoking analogy between the refugees of today and our very own **evacuation generation**. It made me wonder what legal rights were available to them throughout the evacuation process and for their repatriation after the War. Perhaps there was little by way of law. But they could rely on their determination, resilience and fortitude, without which, we would perhaps not be here today.

Few people exemplified those traits better than one of the leading lights of that event, **Sir Joshua Hassan**. This year we have celebrated the centenary anniversary of his birth. During the month of August we celebrated his remarkable longevity and extraordinary achievements as political leader of our community. Today, I would like us to remember, and pay tribute to him, as a lawyer, Queen's Counsel and founder of what remains Gibraltar's largest law firm. He was a very accomplished and devoted lawyer with a very wide practice ranging from crime, to large banking and commercial transactions. I am told by members of his Chambers who had the privilege to work with him that many times they went to him with complicated legal

problems and he knew the technical answers, showing that he worked extremely hard to keep up on his law whilst still being civilian leader of Gibraltar.

Finally, this year the world, and the common law world in particular, celebrated the 800<sup>th</sup> anniversary of the signing of that extraordinary charter of rights that is the **Magna Carta** (1215). Chapter 39 of the Carta reads as follows :

*“No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land”.*

**My Lord, what a statement !** With it, the foundations for the rule of law, and therefore the foundations for the emergence of democratic societies, were laid. An astonishing 800 years ago !! My Lord, to put it into local historical context, 800 years ago Gibraltar was governed by the **Almohad Caliphate**, under the **Caliph Yusuf II "al-Mustansir"** !!

## **RULE OF LAW.**

The fact that even the highest power in the land is subject to certain overriding rules, is clearly of critical importance in the domestic field. Indeed, it was in that context that the principle of the rule of law was conceived. [presence of law enforcement agents].

**But in Gibraltar’s case, when others beyond the shores of our British territorial waters, seek to denigrate and undermine our jurisdiction, compliance with the international rule of law and the European rule of law acquires vital importance in ensuring and safeguarding the reputation, stability and prosperity of our jurisdiction. And it is on these aspects of the rule of law that I would now like to say a few words.**

During the last **Legal** Year, Gibraltar has continued to excel in its compliance with the international rule of law in the area of **tax transparency and cooperation** :

- 1.1 We now have 27 Tax Information Exchange Agreements (**TIEAs**) with OECD Member Countries.
- 1.2 Last year we also gave effect to the **OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. The standard.**
- 1.3 On 21 August 2015 we passed domestic legislation<sup>1</sup> giving effect to the Inter-Governmental Agreement between the US and Gibraltar on the automatic reporting of accounts, known as **FATCA** (Foreign Account Tax Compliance Act). Drafting work to give effect to the UK FATCA is well underway and on 29 October 2014, Gibraltar signed up to what is colloquially known as “Global FATCA”<sup>2</sup> which commits some 90 countries to a Common Reporting Standard on automatic exchange of information.

My Lord, these are all cutting edge requirements. Gibraltar is present in all of them. So it is not surprising that when, on 29 October 2014, the OECD published its Phase 2 Review Report on Gibraltar’s overall performance on exchange of tax information and transparency, it gave Gibraltar one of its highest overall ratings, that of “Largely Compliant”. The same rating as the United Kingdom and Germany.

Of equal importance to our jurisdiction is our compliance with the international rule of law in the area of **financial regulation and supervision**. During the last Legal Year, we have continued to justify the Prime Minister’s statement in the House of Commons on 9 September 2013 that Gibraltar, along with the other BOTs, is a well-regulated, independent financial services jurisdiction and that it is no longer fair to refer to Gibraltar as a tax haven.

And in the last Legal Year too we have given effect to no less than **12 international conventions** within our internal legal order. These have included conventions covering a very wide range of areas, from the Rome Statute on the International

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<sup>1</sup> The International Co-Operation (Improvement of International Tax Compliance) (United States) Regulations 2015.

<sup>2</sup> The Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (“MCAA”).

Criminal Court, to the Cartagena Protocol on Biosafety and the 2005 Hague Convention on Choice of Court Agreements. They all place Gibraltar at the heart of the international community.

Our compliance with the **European** rule of law is doing equally well. On 29 January 2013, the Chief Minister was able to announce that Gibraltar was completely up to date with all its obligations to transpose EU measures. I am delighted to report that 1 ½ years later that record still holds. It is no mean achievement and it is one that many Member States, with greater resources than us, would be happy to vaunt about. In the last Legal Year, we have transposed no less than 69 EU measures. This has included a package of some 18 pieces of legislation published last December as a result of the UK opt-in on Justice and Home Affairs.

## **EU LITIGATION.**

One of the most interesting legal issues that the last Legal Year has thrown up has arisen in a court action brought by the **Gibraltar Betting and Gaming Association** (GBGA) against HMRC before the High Court in London. The GBGA is challenging the compatibility with EU law of the new licensing and tax regime introduced in the UK on the provision of online gaming services. By judgment delivered on **14 July** 2015, the High Court decided to refer a number of questions to the CJEU in Luxembourg. One of these is the vexed question of whether or not EU law applies between Gibraltar and the United Kingdom. This is a complex issue which, over the years, has been the subject of much difference of view between the UK and Gibraltar Governments. HMGoG has intervened in the case on this specific point and we are leading the argument in favour of an affirmative answer to that question. Until such time as that matter is settled, hopefully in our favour, we find ourselves in the insidious position that Gibraltar, and the persons established here, do not, as a matter of legal right, enjoy in the UK the same EU rights as those enjoyed by all other EU territories.

Two recent examples illustrate the anomalies created by this state of affairs, even for the UK and its citizens : (a) on 30 July 2015 we received a Letter of Request from the Family Court at Manchester pursuant to EU Regulation (EC) No 1206/2001 of 28

May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and (b) on 20 August 2015 we received a request from the Criminal Injuries Compensation Authority in Glasgow pursuant to Council Directive 2004/80/EC relating to compensation to crime victims regarding an assault on a UK citizen whilst in Gibraltar. In both cases, we find ourselves in the extraordinary position where we can provide better and speedier cooperation and help to, say, Bulgaria and Latvia, and to Bulgarians and Latvians, than we can to the UK or to British nationals. That cannot be right.

## **CONCLUSION.**

My Lord, I have sought to touch upon some of the more important themes that concern our jurisdiction. There will, no doubt, be challenges on all of those fronts in the new Legal Year. But I am confident that with the same determination, resilience and fortitude displayed by our ancestors our jurisdiction will remain stable and steadfast. The Caliph's title "**al-Mustansir**" is Arabic for "*he who seeks the aid of God*". We will also pray for such aid in pursuing fearlessly the application of the rule of law and the principles of natural justice to our homeland.

My Lord, it remains **for** me to formally move for the Opening of the Legal Year.

**Michael Llamas QC  
Attorney General**

**2 October 2015**