

OPENING OF THE LEGAL YEAR 2018

May it please your Lordship

I would like to welcome our guests, His Excellency the Governor, the Chief Minister and other distinguished guests.

I would like to express a particular word of welcome to one of our guests.

The **Right Honourable Lord Lloyd-Jones**, whom we have the privilege of having here with us today as a guest of the Gibraltar Bar Council.

Lord Lloyd-Jones was made a Justice of the Supreme Court of the United Kingdom on 2 October last year.

Prior to that, he was appointed to the High Court in 2005. From 2008 to 2011 he served as a Presiding Judge on the Wales Circuit and Chair of the Lord Chancellor's Standing Committee on the Welsh Language. In 2012 he was appointed a Lord Justice of Appeal and from 2012 to 2015 he was Chairman of the Law Commission.

At the Bar his practice included international law, EU law and public law. One of his more celebrated appearances was as amicus curiae in the Pinochet litigation before the House of Lords.

I mentioned last year, when welcoming Lord Mance, that Lord Lloyd-Jones was my pupil master at Brick Court Chambers many, many years ago, 26 to be precise. I remember with great fondness being his pupil when he was preparing the preliminary reference in *Banks*, the Coal Authority and British Coal, under the now expired European Coal and Steel Community Treaty.

Lord Lloyd-Jones was a tremendous inspiration to me. I would like to thank him publicly for all I learned from him and for having set me on course for my career in European law.

We have met on various occasions since those days. The last time was on Saturday 3 February this year. It was in Brecon Cathedral. It was for a sad occasion, the Funeral Service of David Vaughan CBE QC. I know how close Lord Lloyd-Jones and David were and what a sad loss it was for him. It was also a sad loss for our profession and, in particular, for all those of us who practise in the area of European Law and had the privilege of coming within his orbit at some stage in our careers. From Brick Court, David was one of the great pioneers of European law in the UK. Factortame is but one of his more famous cases. He was a great supporter of Gibraltar. He appeared before the Supreme Court and Court of Appeal here and he and I worked together when the Government challenged the designation of a Spanish environmental site in BGTW under the EU Habitats Directive. I pay tribute to that great man on behalf of the Gibraltar Bar.

My Lord, I also wish to pay tribute and express the regret of the Bar at the passing away of two very prominent members of the bench: Sir Brian Neill who was a member of the Court of Appeal from 1997-2003 and its President from 1998-2003 and Sir William Aldous who was a member of the Court of Appeal from 2005-2014. Both were outstanding men who made a great contribution to the administration of justice in Gibraltar.

BREXIT.

My Lord, it will come as no surprise that Brexit has once again taken up the lion's share of my time in the last year.

Of all the work done, I would highlight two milestones that have been reached in the last year which I consider are particularly important to our jurisdiction and relevant to the practice of our profession.

Firstly, the work we carried out in the months after the referendum of June 2016 confirmed that continued access to the UK market for our financial services and online gaming companies was the essential first step in securing Gibraltar's future post-Brexit, with the UK representing over 90% of the market for our online gaming and

financial services companies. On 8 March 2018, the Government announced that, after months of negotiations, it had reached agreement with the United Kingdom Government for the continued access to the UK market post-Brexit for our companies in these two vital sectors of our economy. This had been the stated objective for Phase 1 of the Government's Brexit Plan. It was achieved on that day and is in my view the essential founding block for everything else connected to Brexit in Gibraltar.

Secondly, in same period I have been working relentlessly with the Chief Minister and Deputy Chief Minister to ensure that, despite rhetoric from elsewhere, Gibraltar is not excluded from the arrangements aimed at ensuring the UK's orderly withdrawal from the European Union. On 19 March 2018, the Draft Withdrawal Agreement ("WA") was published. Article 3 of the draft Agreement provides for Gibraltar's inclusion in those arrangements, and notably, our inclusion in the transition period that is likely to run until 31 December 2020. During that time, EU law will continue to apply in Gibraltar as it does now.

It is true that the WA has still not been finalised and that discussions are still ongoing, including on the final terms of Gibraltar's inclusion. But, as the Chief Minister has stated in an Address to the Nation on 28 March 2018 and in a Statement before Parliament on 20 September 2018, the Government is confident that the WA will apply to Gibraltar and that we will enjoy continued access to the EU Single Market until at least the end of the transition period. All parties are working very hard with the aim of Gibraltar becoming the first step toward the final Brexit agreement.

We are at a critical juncture of the negotiations. Peak Brexit. Much will happen in the coming weeks.

There is room for cautious optimism on the transition.

As to the future post 31 December 2020, the rejection of the Chequers Proposal by the EU leaders in Salzburg on 19/20 September 2018 showed that tensions still exist. We are therefore working on outcomes for Gibraltar even in the unlikely event that the EU-UK negotiations on their future partnership fail. What we call the "No Deal-Deal for Gibraltar".

I would like to thank the Chief Minister and the Deputy Chief Minister for the trust they have bestowed in me in providing them with the legal advice they need to steer our nation through these historic negotiations and for making me an integral part of their team.

As I did last year, I would also like to thank the Heads of each of the Government Law Offices, and their respective teams, for ensuring that all the rest of the work that has to be done, gets done.

And I would also like to acknowledge Daniel D'Amato. I sent Daniel from our Offices in Town Range to Brussels three years ago, just before Brexit. Little did we know what was to come. Daniel has thrived in Brussels and has acquired a deep knowledge and understanding of EU law and Brexit matters. I would like to express my personal gratitude to him for his hard work and the excellent support I receive from him.

SECURITY.

My Lord, Security is the other area that has occupied much of my time in the last Legal Year. In this period, the Government has adopted two important Bills in this area, the Terrorism Bill and the Armed Forces (Gibraltar) Bill.

The Terrorism Bill was published on 21 December 2017. It provides the basis for the exercise of powers used in the United Kingdom to deal with terrorism and terrorism-related activities. These powers were requested by the Royal Gibraltar Police, and agreed to by the Government. The drafting saw the engagement of the former Independent Reviewer of Terrorism Legislation, David Anderson QC, now Baron Anderson of Ipswich. It is a significant piece of legislation and will be a welcome and necessary entry into our statute book.

The Armed Forces (Gibraltar) Bill was published on 24 May 2018. It is the result of a very close collaboration between the Government, the Ministry of Defence, the Royal Gibraltar Police and the Royal Gibraltar Regiment. The Bill provides for the application in Gibraltar of certain provisions of the UK Armed Forces Act 2006. It makes provision

for the exercise, in Gibraltar, of jurisdiction, powers and competences by service authorities and courts in certain circumstances. I am currently engaged in the drafting of a Protocol setting out the operational cooperation that is to exist between the RGP and the Service Police. It has been a challenging piece of work, but is now near completion.

It is expected that both Bills will be taken to Parliament very soon. Together with the Immigration and Asylum Act, they will form part of a new set of statutory measures updating Gibraltar's laws in the area of security. Drafting is also advanced in relation to the last piece of legislation in this area, the Investigatory Powers Act.

I would like to express my deep gratitude to the support provided by HE the Governor in relation to all this work and, in particular, the Armed Forces Bill and the inclusion of the Royal Gibraltar Regiment within its scope which he is championing.

GOVERNMENT LAW OFFICES.

My Lord, I turn now to the Government Law Offices. By way of general announcements, I would like to say 4 things.

Firstly, on 2 August 2018 the Director of Public Prosecutions Act 2018 entered into force. It establishes Gibraltar's first ever office of DPP. The creation of this office forms part and parcel of the structural reforms that I undertook to carry out when appointed Attorney. The DPP will head the Office of Criminal Prosecutions and Litigation. Section 4 of the Act grants the Attorney the power to appoint the DPP, after consultation with the Governor. Yesterday we issued an advert inviting applications for the post and it is my intention to make the appointment by no later than 22 October 2018.

Secondly, during the month of August, we conducted interviews for the recruitment of further Crown Counsel. A total of 20 applicants were interviewed. I hope to be able to inform the successful applicants after the appointment of the DPP.

Thirdly, next week we will be launching a website for the Government Law Offices. You will be able to access it at: www.gibraltarlawoffices.gov.gi.

For now, we have striven to consolidate a core set of documents and information in order to get the website going. Among other things, the site will give access to our Statutes, Gibraltar case law, the principal judgments delivered by the Luxembourg and Strasbourg Courts in relation to Gibraltar, the main public documents on Brexit and the speeches delivered by Gibraltar's Chief Ministers and Leaders of the Opposition before the UN's Committee of 24 (Special Committee on Decolonisation) and Fourth Committee (Special Political and Decolonisation Committee).

The site will be developed further as we go along. One area we are already examining is to make the Gazette available electronically on the website. Any comments or suggestions from users will be most welcome.

Finally, one of the documents you will find in the site is my first Annual Report for the Legal Year just transpired. The Report will give an overview of the activities carried out by the Law Offices, with information and data that I hope the profession and others will find useful. Not only does the Report provide transparency on the work we do but I hope it will also become a valuable reference document. I would like to express my deep gratitude to my colleague, Lloyd DeVincenzi, Head of the Office of Advisory Counsel, without whose participation publication of this Report would not have been possible.

Turning to the Offices.

OFFICE OF ADVISORY COUNSEL.

Over the past year, the OAC has continued to provide advice to Ministers, Government Departments and Authorities on the usual wide spectrum of matters with an increase in the last year in the areas of healthcare, employment and human resources.

The Office has seen a surge in the requests for advice on data protection issues following our implementation of the EU's General Data Protection Regulation. The OAC has also assisted in the drafting of Data Sharing Agreements between Government Departments and private entities.

One of the highlights of the Office's work this year has been its contribution to the potential creation of the first European Grouping for Territorial Cooperation ("EGTC") between Gibraltar and Spain. The EGTC is an entity with legal personality under European law and its objective is to facilitate and promote cross-border cooperation.

The Office also houses the Mutual Legal Assistance ("MLA") contact point for Gibraltar which is very effectively operated by Grace-Anne Gear. In the last Legal Year, we have received 68 requests for assistance, including 19 European Investigation Orders. This is up from the figures for the last two years.

In June, amendments were made to the Mutual Legal Assistance (International) Act 2005 (by the Mutual Legal Assistance (Miscellaneous Amendments) Act 2018) that enlarge the scope of countries to whom we can provide assistance under that gateway. The amendments also clarify that production orders for special procedure material can be obtained. It is anticipated that this will speed up the process of providing mutual legal assistance.

OFFICE OF PARLIAMENTARY COUNSEL.

The last 12 months have been especially busy for the Office of Parliamentary Counsel. In terms of the delivery of the Government's domestic agenda, Parliament has passed a total of 22 Acts, including the Immigration and Asylum Act and the Freedom of Information Act.

A total of 29 Bills and 270 items of secondary legislation have been published and 17 EU Directives have been transposed. Gibraltar continues to remain up to date with its obligation to implement all applicable EU measures in time.

This, notwithstanding the fact that the OPC has had to be reconfigured in the last year in order to establish a "Withdrawal Bill Team" led by Paul Peralta and including Nadia Sisarello-Parody and Michelle Garcia. They are doing a tremendous job in preparing Gibraltar's legislation for Exit Day. A Gibraltar Bill, equivalent to the UK's European

Union (Withdrawal) Act 2018, is at an advanced drafting stage. This work has required, among other things, the examination of over 20,000 pieces of EU legislation. From this, around 1,600 have been identified as requiring further scrutiny and possible amendment. It is no mean task.

OFFICE OF CRIMINAL PROSECUTION AND LITIGATION.

My Lord, finally, with regard to the Office of Criminal Prosecutions and Litigation, 736 criminal matters have been reviewed over the preceding 12 months, of which some 12% proceeded to the Supreme Court. Of those committed or sent to the Supreme Court, some 67% of the cases have resulted in pleas of guilty being entered.

The Inter-Agency Committee, which includes representatives from law enforcement agencies as well as various government departments, has been meeting bi-monthly with a view to the timely exchange of information on allegations of money laundering, fraud and regulatory offences.

Advice is being given on an ongoing basis to the Economic Crime Unit and the Money Laundering Investigation Unit. There is now a monthly review undertaken of all investigations by those Units. Some 35 domestic cases are currently under review. The Office also continues to be closely involved with the work being done in connection with our preparation for the first mutual evaluation by Moneyval, due to take place in April 2019, on Gibraltar's compliance with the principal international standards to counter money laundering and the financing of terrorism.

In addition, the Royal Gibraltar Police is now seeking advice from the Office at a very early stage in any allegation involving serious crime. And advice is also provided to HM Customs on a regular basis with monthly meetings now taking place with the Collector. May I thank both the Commissioner, Mr Ian McGrail and the Collector, Mr John Rodriguez, for the excellent work they carry out on law enforcement and for the close working relationship we enjoy.

OTHER EVENTS OF THE LAST YEAR.

My Lord, to conclude, I would like to highlight some of the more important outings of members of the Law Offices in the Last Year:

- Mr Lloyd DeVincenzi stood in for me in the Overseas Territories Attorneys General Conference held in Bermuda in February, and in the Devolved Administrations Law Officers' Meeting held in Belfast in June.
- Mr Paul Peralta presented a paper on Gibraltar and Brexit at the Commonwealth Association of Legislative Counsel 2018 Conference held in Jersey last week, and
- Mr Rhoda's now traditional attendance at the Symposium on Economic Crime held in Cambridge earlier this month.

CONCLUSION.

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

**Michael Llamas QC
HM Attorney General for Gibraltar
28 September 2018**