

OPENING OF THE LEGAL YEAR 2020

Introduction.

May it please your Lordship.

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

A special word of welcome to His Excellency, Vice Admiral Sir David Steel. He was sworn in as Governor on 11 June 2020 and attends this ceremony for the first time. His Excellency read Law at Durham University and was Called to the Bar in 1988. He is a bencher of the Middle Temple.

It will not be lost on anyone that for the first time in our history the Governor, the Chief Justice, one of our puisne judges and the Chief Minister are all Benchers - and all of the same Inn of Court!

For six years of His Excellency's military career he acted as judge advocate appointed under the UK's Armed Forces Act. It is the first time, certainly since I am Attorney, that a Governor comes to us with such a rich legal background. He and I have already built a strong working relationship which I greatly appreciate and value and which I am sure we will develop in the years to come.

I would also like to welcome Mr. Richard Ullger who was appointed Commissioner of Police on 9 July 2020 and wish him well in this vitally important role.

I also welcome Mr. Kenneth Navas who appears today for the first time as Chairman of the Law Council and wish him a successful tenure as Chairman.

Covid 19.

My Lord, today marks an important date in the legal calendar and it is one that goes beyond the pomp and circumstance of judges and lawyers parading in their finery. Its significance is much deeper, for it is proclaiming that the courts are open, that justice will be served and that the rule of law will be upheld. In England a ceremony has been held continuously since the Middle Ages. I understand it has only been interrupted twice: during the Second World War and at the time of Her Majesty's Coronation.

Gibraltar too has a strong tradition in marking the Opening of the Legal Year. And, therefore, whilst we are gathered here in circumstances which are not those we would have wished, I would like to thank Your Lordship, on behalf of the Bar, for finding a way to host the ceremony. The Covid 19 pandemic has required our community at large to adapt its life in many ways and it is only right and proper that today's ceremony has also been adapted to reflect the health protection measures necessary to keep us safe, whilst allowing the ceremony to take place.

My Lord, until this year, for most of us pandemics caused by rampant viruses were the preserve of gripping novels and Hollywood blockbusters. Now, no one will be able to read such books or watch such films with the same level of detachment.

The first legislative steps to combat the virus in our jurisdiction were taken at the end of January when Covid was formally declared a notifiable disease under the Public Health Act and an infectious disease under the Quarantine Act. Interestingly, that was not even a big headline at the time.

As the disease spread its deadly grip across Europe, Gibraltar's civil contingencies mechanisms were activated. It would not take long before Gibraltar experienced a full lockdown. In ordinary circumstances this would have amounted to an outrageous affront to our constitutional rights and freedoms. But there was nothing normal about these times. Through the Civil Contingencies Act, aspects of our normal daily life, of our most basic civil and human rights, were subjected to curbs and controls. Never would I have thought that in my legal career I would be involved in sanctioning legislation limiting civil

liberties to this effect.

Prior to this year, the Civil Contingencies Act, which was enacted in 2007, had only been used twice: when the Mediterranean Hotel was at risk of collapse and following the explosion in the Sullage Plant at North Mole. On 11 February 2020 the Act provided the legal basis for imposing restrictions on persons arriving in Gibraltar from designated areas. Since then, some 130 enactments have been published using the powers under the Act. It is an astonishing figure. And sadly we can envisage more will be required in the weeks and months to come.

In addition to the phenomenal work carried out by the Government and all the front line heroes and heroines in the Gibraltar Health Authority and the emergency workers, closer to our profession, I would like to acknowledge the work undertaken by legal officers and administrative staff.

Subscribers of the Gazette who receive it electronically will not have failed to notice that the Gazette was delivered at all times of the day and of the night, during and outside the working week. I pay tribute to those persons who have ensured that, come what may, the necessary legislation has been drafted, enacted and published. The Honourable Samantha Sacramento, Minister for Justice, is also the Minister for Civil Contingencies. We are glad to have played our part together with her officials, the office of the Civil Contingencies Coordinator and the Director of Public Health to have drafted the legislation required for the Government to combat Covid.

Your Lordship had the not insignificant task of keeping the wheels of justice turning whilst keeping court users and staff safe. I am pleased that the Government Law Offices were able to assist you, the Registrar and the Chief Executive with the legislation that led to the suspension of many aspects of court life whilst at the same time respecting the basic principles of access to justice. It is very gratifying to see that a few weeks ago the first socially distanced jury trial took place.

For the legal profession Covid has affected business with some areas inevitably feeling the effects more than others. It is still too early to see what the lasting impacts may be. Much of this is, of course, out of our hands but as a well-regulated jurisdiction we are

hopeful that we will emerge in a strong position.

General Elections.

Covid aside, in the past year Gibraltar held a General Election in October 2019 when the Government's mandate was renewed for a further term. I congratulate the Government for its success at the polls and all those elected as members of the Gibraltar Parliament. It is noteworthy that, as has been the case since April 2011, save for a short interruption, the key posts of Chief Minister and Leader of the Opposition are held by members of the Bar, both of whom are also Leading Counsel. I also extend my congratulations to The Honorable Samantha Sacramento MP, also a member of the Bar, whom the Chief Minister entrusted with the Justice portfolio. She is the fifth successive member of the Bar to hold this important post, and the first woman to do so.

BREXIT

In the last year my office has continued to support the Government in its tireless work on Brexit and its consequences.

Last year, shortly before this ceremony, Lady Hale delivered the Supreme Court's judgment that led to the dissolution of the Westminster Parliament and subsequent general elections in the UK. The strengthened government sealed the "deal" and passed the Withdrawal Agreement Act 2020 which paved the way for exit on 31 January 2020.

We were required to work closely with officials in London in order to produce equivalent legislation. The Government published the European Union (Withdrawal Agreement) Bill on 13 January 2020 and 8 days later the Gibraltar Parliament passed the Act.

Sadly for many of us, at midnight on 31 January 2020, at a ceremony at the frontier, the EU flag was lowered as the UK and Gibraltar definitively exited the European Union.

Although to some it may seem as though nothing has changed we should be under no illusion that something most profound has come to pass. Gibraltar has, as a matter of law, left the EU. We are now in a transition period - but it will end in 90 days.

Absent a deal that might mitigate them, the direct legal and practical effects of leaving the EU will become very apparent as from 1 January 2021.

As has now been a feature in the years since the 2016 referendum, I have had the honour to accompany the Chief Minister and the Deputy Chief Minister to the many meetings in Whitehall, 10 Downing Street and in Madrid seeking to secure the best possible outcome for Gibraltar. The work is incessant and we continue to work hand in glove with the excellent team at the FCO in addressing all the challenges that face us.

Work is being carried out by members of the Government Law Offices and myself on several fronts.

We have implemented the commitments entered into in the Withdrawal Agreement. On 27 May 2020, I was able to participate remotely in the meeting of the Specialised Committee on Gibraltar set up by the Withdrawal Agreement, where the EU noted the progress that had been made. This included the conclusion of the Tax Treaty as well as the good work that has been carried out by the Committees set up pursuant to the Memoranda of Understanding on Citizens' Rights, Environmental Protection, Police & Customs Cooperation and Tobacco.

My Lord, I take this opportunity to say something that is perhaps not common in our shores. I would like to pay tribute to Mr. Antonio Garcia Ferrer who unexpectedly passed away on Sunday 20 September 2020. Mr. Garcia Ferrer was the Head of the Gibraltar Desk at the Spanish Ministry of Foreign Affairs and an integral part of the Spanish Government's Brexit negotiating team on Gibraltar. Mr. Garcia Ferrer was a great man and a great diplomat. He commanded the full respect of the entire Gibraltar Government team. I worked closely with him in the Committee work. He will be sorely missed. May he rest in peace.

In parallel to that work, we have continued work towards preparedness should no deal materialize – the fact that yesterday the European Commission took the first step in bringing infringement proceedings against the UK in relation to the UK's Internal Market Bill makes it all too clear why we must continue with this work stream.

We have also devoted considerable resources in assessing and preparing our domestic legislation for Gibraltar's participation in the future trade agreements that the UK is negotiating with third countries such as the United States, Australia, Japan and Turkey.

Finally, work continues towards reaching agreements on Gibraltar's future relationship with the EU. That work is ongoing, with the last round of talks having taken place in Madrid this week.

CONCLUSION.

My Lord, as you may see, it has been another rather full year. I can only hope that next year I will be addressing you with Covid behind us, Brexit successfully negotiated and to be able to celebrate it before a full court, in full dress and with the prospect of a samosa or two.

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

Michael Llamas CMG QC
HM Attorney General for Gibraltar
2 October 2020