

OPENING OF THE LEGAL YEAR 2022

Introduction.

May it please your Lordship.

I would like to welcome our guests, His Excellency the Governor, the Chief Minister and other distinguished guests, not least, Sir Bob Neil, MP, Chairman of the All Party Gibraltar Group in Parliament and also a fellow barrister.

HER MAJESTY.

My Lord, I commence this address by reflecting upon the passing of Her Majesty Queen Elizabeth II, Queen of Gibraltar. Gibraltar's profound love and affection for Her were at all times unwavering. I offer the condolences of the members of the Bar to His Majesty King Charles III and the rest of the Royal Family.

We mourn the loss of our nation's most devoted public servant. Her Majesty embodied, with the greatest level of integrity, the symbolic role of the figure in whose name justice is carried out.

Her reign was as illustrious as it was long. So long, in fact, that most members of the Bar, including both of us, were not even born when, in 1954, Her Majesty visited Gibraltar in the early years of her reign. To the best of my knowledge, of the current members of the Bar, only our illustrious doyen, Mr Louis Triay KC, had been called to the Bar at that time.

Many changes in the legal landscape occurred immediately upon Her Majesty's death, not least what still sounds odd as the title of King's Counsel. Such changes occurred due to the existence on our statute book of the Demise of the Crown Act 1901. That UK Act, which applies in our jurisdiction by virtue of the English Law Application Act, contains one single section. It provides for the continuation of appointments made by

the deceased monarch. That the Act attracted political controversy at the time for its retrospective effect, is for another day. However what one has to marvel is how such a limited legislative statement achieves so much in practice.

His Majesty King Charles III has been proclaimed King of Gibraltar. We now owe our allegiance to His Majesty and wish him all the success for his reign.

My Lord, events both abroad and closer to our shores have by and large resumed in what one may cautiously describe as the post-pandemic period we have now hopefully entered. Only in the last week, the Chief Minister and Deputy Minister have been back in the United Kingdom rallying support for Gibraltar in the UK party political conferences; on Tuesday the Chief Minister returned to New York to address the United Nations Fourth Committee on Decolonisation whilst the Deputy Chief Minister continued lobbying at the Conservative Party Conference; and yesterday we completed in London Round 9 of treaty negotiations with the European Union.

BREXIT.

On the last of those, my Lord, it seems quite remarkable that, this time last year, the rounds of negotiations for a Treaty between the United Kingdom and the European Union in relation to Gibraltar's future relationship with the EU **had not even started.**

Nine rounds have now taken place, alternately in Brussels and London. The negotiations are intense. Not only because of the numerous subject matters that are being discussed, and their individual, massive complexities, but also because the political and legal positions of three different governments and of the European Union have to be taken into account and respected.

Tremendous progress has been made over a vast range of issues in the last twelve months, including in relation to the vital issue of border fluidity and our future

relationship with the Schengen Area. A limited number of difficult issues remain. But we continue to work on them with determination and imagination.

It is an absolute privilege for me to have been appointed as the Gibraltar Government's Chief Negotiator for these rounds of technical negotiations. As I go into the negotiating room each time one thing, above all, is in my mind: the crystal clear instructions given to me by the Chief Minister and Deputy Chief Minister that no aspect of the deal is to compromise our British sovereignty in any respect whatsoever.

Indeed, as the Chief Minister made clear in his address to the UN last Tuesday "*It is our British sovereignty and the Common Law, aligned with our entrepreneurial flair and the industry of the people of Gibraltar and the people of the region around us, that already creates wealth in and for Gibraltar and for the surrounding region*". To maintain and enhance that prosperity and stability, notwithstanding the grave challenges posed by Brexit, must be the enduring achievement of the new treaty. And the role of the jurisdiction of this Supreme Court in our future prosperity as a nation is highlighted by the Chief Minister's reference to the importance of the common law in that regard.

Beyond the formal negotiating rounds there have been countless meetings at official and technical levels. We continue to work hand in glove with the outstanding team of officials at the FCDO and other Whitehall Departments. As I have done in previous addresses, I pay tribute to them, as well as to our own officials, for the hard and relentless work that is being carried out.

I would also like to express our gratitude to His Excellency the Governor who, with his own rich legal background, is a constant source of support and advice to us, as we navigate the difficult challenges that come our way.

MONEYVAL REPORT.

My Lord, in June Gibraltar was identified by the Financial Action Task Force as a jurisdiction under increased monitoring, informally known as 'grey listing'. This took place in the context of a very significant amount of work that had been undertaken to tackle 78 recommended actions that were identified in the 2019 Mutual Evaluation Report.

The listing arose due to only 2 of those 78 recommended actions not being satisfied. These concern the pursuit of regulatory sanctions and the pursuit of final confiscation judgments.

Whilst the grey listing is regretted, members of the Bar who practise in this field will have noted that the action plan is the shortest ever received by any country or jurisdiction that has been identified as requiring the increased monitoring process. Both the FATF and the Government are confident of Gibraltar's ability to satisfy the FATF on those two outstanding issues, demonstrating that the action points are not substantive.

The Government will be submitting a progress report to the FATF by the end of this year. This should demonstrate positive and tangible progress on both items and will, hopefully, lead to the FATF Plenary in June 2023 taking the decision to remove Gibraltar from the Grey List.

GOVERNMENT LAW OFFICES.

My Lord, I turn to the daily business of the Government Law Offices.

- **OPC**

Since the last Opening of the Legal Year, the Government has published 18 new Bills covering diverse subject areas such as traffic, civil aviation, income tax, legal services and the British Sign Language.

With respect to that latter, I am happy to report that the British Sign Language Bill was passed by the Gibraltar Parliament in May, and was commenced in June. Since then BSL has been officially recognised as a language in Gibraltar.

In so far as subsidiary legislation is concerned, around 268 legal notices have been published since my last address covering a vast breadth of subject areas.

Of these, Covid-related legislation dominated, in terms of volume, in the last months of 2021 and early 2022. Mercifully this has declined since then.

- **OCPL**

The Office of Criminal Prosecutions and Litigation, led by the DPP, have had another full year. The work of a prosecutor is not an easy one, more so in a small jurisdiction, and I am grateful for their efforts. I also wish to acknowledge their contribution to the Moneyval process.

- **OAC**

Throughout the past year, the Office of Advisory Counsel has worked especially closely and intensively with colleagues in the UK's Department of International Trade and the FCDO to provide for Gibraltar's participation in the new **Free Trade Agreements** being negotiated by the United Kingdom with third countries.

A second significant strand of activity has been advising and supporting the Government and its various departments and specialised agencies, in particular the Gibraltar Financial Intelligence Unit, to ensure the effective implementation of **sanctions** against **Russia** under the automatic recognition regime of our Sanctions Act 2019.

The breadth and depth of the sanctions promulgated against Russia in the aftermath of its invasion of Ukraine in February is unprecedented. Members of the profession are, I know, well acquainted with how complex this area of the law can be. Nonetheless, Gibraltar is more than doing its bit to ensure compliance with sanctions as they come into force and evolve. The sanctions cover a wide swathe: from finance to trade to immigration to import and export controls. And of course, to yachts. Once again this court, in particular its admiralty jurisdiction, has played an important role in the enforcement of sanctions.

The Office is led by our Solicitor General, **Mr Lloyd DeVincenzi**. Lloyd has recently informed me of his decision to seek a new professional challenge in private practice. It is a tremendous loss and I would like to pay tribute publicly to one of the Government's most exemplary and outstanding lawyers and public servants. I will miss him very much, both at a professional and personal level. I know that Ministers and senior civil servants will also miss his wise counsel and advice. I wish him all the success he deserves.

CONCLUSION.

My Lord, in conclusion, it has been yet another full year and undoubtedly challenges lie ahead for the forthcoming one. Nothing new there. As always, the GLO are ready to face those challenges.

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

Michael Llamas CMG KC
HM Attorney General for Gibraltar
7 October 2022