

**ADDRESS OF COLIN McKIE Q.C. ON THE OCCASION OF THE
OPENING OF THE GRAND COURT ON 17 JANUARY 2018 GIVEN ON
BEHALF OF THE CAYMAN ISLANDS LAW REPORTS**

My Lord Chief Justice, Hon. Judges of the Grand Court, Hon. Chief Magistrate, Hon. Magistrates, President of the Justices of the Peace Association, Mr Attorney, Madam DPP, Madam Acting Solicitor General, my colleagues at the Bar, our Special and Distinguished Guests, Ladies & Gentlemen

If it may please my Lord.

I am privileged to be able to associate myself with the motions to open the Grand Court for the year 2018 moved by Mr Attorney and seconded jointly and comprehensively by the President of the Law Society and the President of the Bar Association, and to provide my own remarks.

We are gathered here to mark the opening of the Grand Court for the New Year. The importance of the occasion is reflected by the attendance of representatives of the legal profession, Her Excellency the Governor, the Deputy Governor, Members of Cabinet and the Legislative Assembly, and business and civic leaders. We take this opportunity to reflect on the previous year and look forward to the New Year.

I am pleased to be able to report that all the decisions of the Cayman Islands Law Reports up to and including June 2017 have been published on line and in hardback. Our Law Reports now cover a period of 65 years and they contain substantially more than 2,000 judgments. We have heard from Mr Attorney that the second volume of the *Cayman Islands Law Review* has recently been published under the editorship of Mitchell Davies, the Director of the Truman Bodden Law School. The *Review* is a welcome addition to our law-reporting resources.

We have heard Mr Robertson mention what we call the rule of law. The expression may require a bit of explanation. Its essential features may be summarised as follows:

- The government and its officials and agents as well as individuals and private entities are accountable under the law.
- The laws are clear, publicised, stable and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- The process by which laws are enacted, administered, and enforced is accessible, fair and efficient.
- Justice is delivered timely by competent, ethical, and independent, representatives and neutrals who are of sufficient number, have

adequate resources, and reflect the makeup of the communities they serve.

Consideration of the rule of law ought not to be confined to civics classes or academic debate on constitutional law. It has a real and direct impact on all of us and our everyday lives. The rule of law contributes to –

- Democratic accountability
- Defending against arbitrary action, abuse of power and corruption
- Effective and equitable public administration.
- Equality
- Security of persons and property
- Fair and orderly resolution of disputes
- Economic growth and jobs

Or, to put it more simply, the rule of law facilitates peace, security and prosperity.

To be effective, the rule of law requires active and continuing support from Government, the legislature, the judiciary, the independent oversight offices and bodies established under our constitution, the press, and the public at large. Without that constant support it will be eroded over time to the detriment of society as a whole, and we will have less peace, security and prosperity.

The economic effect of the rule of law helps illustrate its importance to our everyday lives. Each year the World Bank conducts a very detailed survey of institutions, think tanks, NGOs, intergovernmental organisations, and the private sector, to ascertain their views on the application of the rule of law in many countries and territories.

The rating agencies such as Moody's and Standard & Poor use the World Bank survey when they rate government and private sector debt, and those ratings determine the interest rate payable. The interest rate payable by governments is recovered through taxation. The interest rate payable by banks on their debt affects the interest rate they charge to us, their customers.

Investors' decisions on inward investment and development of infrastructure are known to factor in the rule of law, and many no doubt consult the World Bank survey.

But many economic decisions are taken without referring to surveys but still take account of the rule of law. For instance, tourist operators selling holiday packages, and tourists themselves, when selecting holiday destinations take into account the effectiveness of government to protect personal security and property.

We can see, therefore that the rule of law directly impacts upon all of the major pillars of our economy. The World Bank survey includes the Cayman Islands. The

scale runs from 2.5 (best) to -2.5 (worst). The Cayman Islands score in 2016 was 0.8, the same as Barbados and Samoa. It is significantly lower than the UK, the USA, much of Western Europe, HK and Singapore (with scores from 1.5 to 1.8). However, it is sobering that in 1996 our score was 1.5, and that over the intervening 20 years our score has moved steadily downwards. What factors have caused those surveyed to form less favourable views of our application of the rule of law, I do not know, but the speeches today and in previous years have identified some areas for improvement. In any event, I suggest that it is in all of our interests to understand how the application of the rule of law might be improved.

The subject of statistics brings me to a survey of last year's judgments, many of which concerned complex and novel issues. In 2017 our judges delivered over 150 written judgments, a number which, once again was a slight increase on the number delivered in recent years. The Privy Council delivered two judgments on appeal from our Court of Appeal.

The judges of the Criminal Division delivered a range of judgments relating to: murder and manslaughter; malicious wounding; rape and the defilement; indecency offences (often relating children); robbery and burglary (frequently involving firearms and other offensive weapons); theft, bribery and other offences of dishonesty; money laundering; and drugs offences; criminal procedure and rules of evidence. There were several judgments concerning prisoners who have been sentenced to life

imprisonment, but for whom the minimum period that they must serve prior to being eligible to be considered for parole must now be set.

The judges sitting in the Financial Services Division delivered judgments on complex issues arising out of the administration of investment funds; companies and partnerships; mergers; directors' duties; shareholder disputes; insolvency and reorganisation; confidentiality; fraud; arbitration; trusts; private international law; and civil procedure.

The Civil Division judges delivered Judgments on topics as diverse as: the eligibility of candidates in the General Election; personal injuries and medical negligence; land and strata disputes; employment disputes; judicial review (often arising out of challenges to immigration decisions and requests under the Freedom of Information Law); legal aid; and civil procedure.

The judges of the Family Division gave a number of important decisions concerning divorce and unmarried couples with children (much of it concerning the care and custody of children and financial provision for the parties and children); public law proceedings to protect children from harm; and removal of children out of the jurisdiction. The disputes concerning the custody of children increasingly involve consideration of complex issues of private international law.

It is now common to see overseas courts referring to the rulings of our courts implicitly demonstrating the wider relevance that those rulings have and the high regard that those other court have for our judges' rulings. A quick check online revealed 31 such references last year in judgments from England, Australia, Hong Kong, Ireland, Barbados and Bermuda.

The preparation of written judgments requires an enormous amount of time and effort outside the hours spent sitting in Court. I know that I speak for the whole of the profession when I say that we are particularly grateful to our judges for the provision of these detailed reasons and their work to ensure that the requirements for judicial diligence, including the delivery of judgments, are met. The short time that usually elapses between the conclusion of a hearing and the appearance of the written reasons is commendable.

I wish to express our thanks to those local and overseas judges and practitioners who have willingly given up their valuable time to sit as acting judges of the Grand Court, Coroner's Court and Summary Court during 2017. In the Grand Court they were – Marlene Carter, Dame Linda Dobbs, Mrs Justice Marva McDonald- Bishop, Mr Alistair Malcom QC, HH Michael Mettyear, Mr Tim Owen QC, HH Philip St John Stevens, Malcolm Swift QC, Michael Wood QC, HH Paul Worsley QC. In the Summary and Coroner's Courts they comprised - Mrs Grace Donalds, Ms

Angelyn Hernandez, Mrs Philippa McFarlane-Ebanks, Mr Adam Roberts and Mrs Eileen Nervik QC.

I also wish to thank the Administrator, Clerk of the Courts, the Deputy Clerks and all the administrative staff at the Court House who behind the scenes work hard and diligently to give the public and attorneys their valuable assistance and service.

Finally, as has been mentioned in the other speeches today, Kipling Douglas, a former magistrate and judge, passed away in June of last year.

After an initial career as a civil servant, a journalist and editor, Kipling was called to the bar in 1963. He started in private practice in Jamaica until his appointment there as a magistrate. In 1983 he was appointed as magistrate in Cayman, and made his home here. He was subsequently appointed as the first senior magistrate. In 1993 he was appointed as Chief Justice of the Turks & Caicos Islands where he served until 1996. On his return to Cayman, Kipling served as an acting judge of the Grand Court until 2000. In 2004 he joined the newly formed Financial Reporting Authority as its legal adviser. In 2011 he helped found the Cayman Islands offices of Smeets Law.

In his long and varied legal career he was particularly proud of his work for the Commonwealth Magistrates' and Judges' Association. He was elected to the

Executive Council in 1985, appointed Vice President in 1991, and finally appointed Honorary Vice President for life.

Outside of the law, Kipling was a talented journalist (often writing pieces for the *Caymanian Compass* about his travels) and the author of several books including "*The Courtroom, the Poor Man's Theatre*" a collection of his courtroom anecdotes. In his earlier years he was also a fine cricketer and successful rally-car racer (winning the Jamaica motor rally in 1967).

Kipling was admired for his wit and wisdom, his calm and easy-going manner, and his courteous and gentlemanly manners. He will be greatly missed.

It is an honour and a privilege to have been allowed to add these few remarks. It now only remains for me to wish a prosperous, healthy and happy New Year to you and all the judges and magistrates of this Court, and to their administrative staff, and to all members of the profession, and to the people of the Cayman Islands.

I have the honour to support Mr Attorney's motion this morning.

Colin McKie QC

17 January 2018