

Colin McKie Q.C.'s Address at the opening of the Grand Court

My Lord Chief Justice, Honourable Justices, Hon. Chief Magistrate, Hon. Magistrates, Mr Attorney, Madam DPP, my colleagues at the Bar, our Special and Distinguished Guests, Ladies & Gentlemen

If it may please my Lord.

In 1992 our late Chief Justice Sir Denis Malone inaugurated the first ceremony to mark the opening of the Grand Court for the New Year. It is an occasion for the Bench and Profession to take stock on the previous year and look forward to the new year, and afterwards to enjoy some judicial hospitality.

I am privileged to be able to associate myself with the motions to open the Grand Court for the year 2015 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 an addendum of my own.

4th August 2014 marked the centenary of the British Empire's entry into the Great War. Last year we learned much of the causes of that great conflict which pitted liberal democracies against despots, tyrannies and the forces of militarism. Over the next four years we may expect to learn of the contribution and sacrifice of the soldiers, sailors and airmen, including the Caribbean soldiers of the West Indies Regiment and the British West Indies Regiment, who fought to defend our liberties.

This year 18th June, is the centenary of the Battle of Waterloo. That battle effectively ended the Napoleonic Wars which had seen Britain and her allies fighting against the forces of another despotic dictator. I trust that it will not be overlooked that a number

of important campaigns were fought in the eastern and central Caribbean. The allied success in those campaigns ended the involvement of France and Spain in the Atlantic slave trade and struck a decisive blow against it.

Important though those anniversaries are I would suggest that 2015 will see an anniversary of greater significance will occur on 15th June 2015, being the 800th anniversary of the sealing of Magna Carta, one of the most famous documents in the world. Despite the repeal of most of its clauses it remains a cornerstone of constitutional thought and development in Britain and throughout much of the world.

It is worth reminding ourselves why the Great Charter was, and remains, so important.

At the heart of Magna Carta is the genesis of many of the constitutional rights that underpin liberal democratic societies which were defended in the great conflicts to which I have just referred. It protected individuals from being deprived of their liberty or property except by trial by jury and due process before the law; it linked fines to the severity of the offence; it prevented the state from raising taxes without the approval of parliament; it confirmed that women had freedom of marriage; and by confirming the rights and privileges of the Church, it began the process of the separation of church and state.

It was issued by King John as a practical solution to the political crisis he faced in 1215, but it established for the first time the principle that everybody, including the king, was subject to the law. Its importance was such that dozens of copies were made and distributed to all corners of the kingdom; four of them still survive. For the next two hundred years parliament commenced its proceedings with a solemn reading of the Great Charter and sought from successive Kings confirmations and clarifications of the rights it conferred on individuals and parliament and the its

limitations of the Crown's power. It was seen as sacrosanct, and in 1369 Edward III conceded to declare that statutes conflicting with it were invalid. We might now say that it was the first attempt to create an English constitution.

The very first English law book to be printed was published in 1481 and it comprised an abridgment of statutes, starting with Magna Carta. Thus at the time of the emergence of the English legal professions, every practitioner and every court soon became familiar with its terms.

Magna Carta took a central role in the seventeenth-century conflict between the Stuart kings and the English parliament. The subsequent Civil War, dictatorship, and Restoration culminated in the deposition of James II and the Bill of Rights 1689, enacted by Parliament as a new Magna Carta. The Bill of Rights affirmed, and expanded upon, many of the fundamental rights contained in Magna Carta, but it also declared the supremacy of parliament to legislate (and thus negated the previously understood quasi-constitutional nature of Magna Carta). From that point onwards, the English parliament, its courts and lawyers usually took the Bill of Rights as their starting point of fundamental rights but, unlike their Mediaeval counterparts, did not regard this as a statute inviolable by future parliaments. Nevertheless, no subsequent parliament has seriously attempted to undermine the fundamental rights contained in the Bill of Rights and they remain in force today, and have been enforced in our own Grand Court.

Matters took a different course in the English settlements in the Americas and the Caribbean. The opponents of the Stuarts had revived the Great Charter (and its inviolable nature) when the first English colonies were being established. The charter of each American colony, from the charter establishing Virginia in 1606 to that of Georgia in 1732, protected the colonists' rights as free English subjects. The settlers held themselves to possess all rights guaranteed to their compatriots in

England by the Great Charter and the common law. For those colonies without a charter, royal proclamations confirmed that the children of English colonists would have the same rights as English subjects. The proclamation for Jamaica was issued in 1661, and through that the people of the Cayman Islands took benefit in 1862.

The North American colonists held Magna Carta to be fundamental law, above both king and Parliament, and unalterable by statute. In 1760s and 1770s, colonial lawyers and politicians turned to Magna Carta for support against the British government of George III, not least that the Stamp Acts were contrary to Magna Carta – they were 'taxation without representation'. After the United States won their independence, the Founding Fathers accorded the federal Constitution the position of fundamental law, inviolable by Congress. The first ten amendments to the federal Constitution – the Bill of Rights – were adopted at the same time. Many of those rights are derived from Magna Carta, such as the right to trial by jury and due process according to law.

The constitutions of many former and current British territories and colonies have been informed by this history. Our own Bill of Rights entrenches many of the fundamental rights first afforded by Magna Carta, in particular the rule of law. Thus the very first article 1 expressly confirms the constitutional nature of the rule of law, and article 107 requires the executive and the legislature to uphold the rule of law and the independence of the judiciary, which is itself an essential part of the rule of law. Our constitution requires each judge, on taking office, to swear an oath to "do right to all manner of people according to the law without fear or favour, affection or ill-will" – another essential part of the rule of law.

Judges exercise judgment. Judgments are the means through which judges address parties and the public at large, and explain their reasons for reaching their decisions.

The need for publicly available Judgments rests on the fundamental principles of due process, open justice, and the rule of law. A reasoned Judgment enables the parties to the proceedings to understand why the court reached the decision that it did. A reasoned Judgment also enables the public to understand what the law is and how it is being administered by the courts. This is a necessary part of ensuring that the public has confidence in, and understanding of, the courts and the administration of justice, and thus ensure public confidence in the rule of law.

In respect of our own judgments, I am pleased to be able to report that with the assistance of Dr Alan Milner, the Judicial and Legal Information web-site has now been populated with all the decisions of the Law Reports up to and including 2013. The Law Reports cover over 60 years of Cayman Islands judgments and contain 1867 judgments (if my arithmetic is correct).

A back-fill exercise is well underway to populate the website with unreported judgments from the divisions other than the FSD (which has already been completed). All of our domestic legislation, and some of the UK legislation applicable to the Cayman Islands, may also be found on the website. We thank the Judicial Dept and the Attorney General's Chambers for the great efforts to bring this about.

The Law Reports provide support to our financial services industry which is the single largest contributing sector of the economy, and thus to the well-being, of these Islands. The Reports continually demonstrate that disputes involving Cayman Islands structures, no matter how complex, may be fairly, efficiently and predictably litigated in our courts. In the early 1980s Mr Alberga, as the then President of the Law Society, and his colleagues understood this and, with the support of Sir John Summerfield, our late Chief Justice, and Michael Bradley QC, our late Attorney General, they initiated the production and publication of the Law Reports. Each of their respective successors and up to an including those here present today, have

continued to support the regular production of our Law Reports. We remain grateful for their continuing support.

The Editors are grateful for the continuing and significant financial support provided by the Government. In these times of strained budgets we regret, however, that Govt found it necessary to levy import duty on legal texts, including the Law Reports and student texts, at 22%, a tax on learning and education.

It is therefore only right that we take this opportunity to acknowledge the vital role of the judiciary in producing written Judgments. It is pleasing to see (and an excellent advertisement of the quality of the work undertaken in our Courts) that it is not uncommon to see courts in other jurisdictions considering and analysing Judgments of our Court. A quick internet search shows that in 2014 Judgments from our courts have been considered by courts in the UK (including the Privy Council) but also as far afield as the Courts of Appeal of New South Wales and of Western Australia, Bermuda and the BVI.

2014 was yet another busy year in all of our Courts. Our judges undertook and completed a great volume of work. Some 137 written judgments and rulings were handed down in the past 12 months by the judges sitting in this Court and the Court of Appeal, approximately the same as has been delivered in each of the previous five years. There were no judgments of the Privy Council on appeal from our courts.

Many of these judgments concerned difficult and novel matters. The judges sitting in the Financial Services Division delivered judgments on complex issues arising out of investment funds; company law; insolvency and bankruptcy law; financial services contracts; arbitration; audit negligence; trusts; conflicts of law; insurance; and civil procedure.

The Civil Division judges delivered Judgments on topics as diverse as personal injuries disputes (regrettably, often arising out of road traffic accidents, but also included medical negligence); land and strata disputes; employment disputes; and judicial review (often arising out of challenges to immigration decisions but also included disputes concerning the regulation of water supply and the ongoing disputes concerning the George Town helipad). They considered the constitutional rights of suspects to seek legal advice and, as Mr Attorney has already stated, the ongoing constitutional challenges to the closure of the West Bay Road.

The Civil Division has had its fair share of proceedings arising out of the local consequences of the prevailing economic conditions; in particular the number of proceedings arising out of defaults on mortgages remains very high.

The judges of the Family Division gave a number of important decisions concerning the custody of children and financial provision in divorces; adoption of children; and orders to protect children against potential abuse and unauthorised removal of children out of the jurisdiction. The disputes concerning the custody of children increasingly involve consideration of complex issues of conflicts of laws.

Last year the Admiralty Division delivered no written rulings.

Regrettably, our criminal courts were just as busy as the civil courts. The judges of the Criminal Division delivered a range of judgments relating to: murder and manslaughter; malicious wounding; rape and the defilement of minors; indecency offences (too often the victims of which were children); robbery (more often than not involving firearms); drugs offences; and immigration offences. It is noteworthy that the number of cases concerning the possession of firearms, robberies, and those concerning fraud and other offences of dishonesty against employers, continued at

their previous high levels and serious traffic offences, including causing death by dangerous driving, remain a problem.

The complexity of the issues in our judgments has never been so great, and is substantially greater than the other offshore jurisdictions for which Law Reports International are responsible. Considering and editing the rulings handed down in 2014 for reporting this year will keep Dr Milner, Mr Alberga and I busier than ever.

The preparation of written judgments requires an enormous amount of time and effort outside the hours spent sitting in Court and 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, as now formalised in the Code of Conduct for the Cayman Islands Judiciary and Practice Direction No 1 of 2012 are met. The short time that usually elapses between the conclusion of a hearing and the appearance of the written reasons is commendable.

Two years ago I noted that although, generally speaking, the Court of Appeal delivered many of its judgements very promptly it had become noticeable that it sometimes failed to deliver judgments in a timely fashion. Last January I repeated that there did not appear to have been much improvement and gave the example of a commercial appeal where the judgment was still outstanding 21 months later. I regret to say that there has been little, if any, improvement, and these delays affect all divisions. To give some egregious examples:

In respect of the commercial appeal to which I referred last year, the judgment is still outstanding - an astonishing delay of almost three years.

In an appeal in respect of a high-profile murder case was outstanding for over a year. This attracted considerable adverse publicity.

In a family case judgment on ancillary relief was delivered 15 months after the appeal.

A decision on costs has been outstanding for almost two years.

There are many other examples where the delay is, or has been, measured in years in respect of appeals that lasted merely a day or two. Something is clearly wrong, and public confidence in the administration justice by the whole of our courts is at risk of being undermined.

We can only hope that the recent and much-welcomed appointments of three distinguished judges to the Court of Appeal will increase its resources and make delays such as these a thing of the past.

On the subject of judicial changes, this coming year we welcome three new Grand Court judges Mr Justice Nigel Clifford (well known to this profession), Mrs Justice Ingrid Mangatal from Jamaica, and Mr Justice Nicholas Segal from London.

I would also like to express our thanks to those overseas judges and practitioners, as well as local practitioners, who have willingly given up their valuable time to sit as acting judges of the Court of Appeal, Grand Court, Coroner's Court and Magistrates Court during 2014. In the Court of Appeal we welcomed back for one session former Justice of Appeal Ian Forte; in the Grand Court Mrs Justice Carol Beswick, Mr Justice Patrick Brooks, Mrs Justice Ingrid Mangatal, His Honour Judge Michael Mettyear, Mr Timothy Owen QC, Mr Justice of Appeal Seymour Panton, and Mr Malcolm Swift QC have sat as acting Grand Court judges in the Civil, Criminal and Family Divisions. Mrs Grace Donalds, Ms Angelyn Hernandez, Mrs Philippa McFarlane-Ebanks, Mrs Eileen Nervik, and Mr Adam Roberts sat as acting Magistrates.

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, I wish to make a few remarks on the passing of Sir Richard Ground and Priya Levers, and the retirements of Sir Peter Cresswell, Mr Justice Henderson and the forthcoming retirement of Mr Justice Foster.

As Mr Attorney has already said, Sir Richard Ground dies in February 2014. In 1983 he came to the Cayman Islands as Crown Counsel as was soon promoted to Attorney General of these Islands in 1987, an office he served with distinction until 1992. He left Cayman to take up an appointment as a judge of the High Court in Bermuda in 1998 to serve as Chief Justice of the Turks & Caicos Islands. In 2004 he returned to Bermuda to serve as Chief Justice; he was also elevated to the Court of Appeal of the Turks & Caicos Islands. In 2012 he was appointed as a justice of appeal of our Court of Appeal. It is a great pity that not long after his appointment Sir Richard was cut down at such a young age, and we were deprived of so much of his wisdom and learning.

We give our condolences to Lady Ground and their children.

Priya Levers emigrated to Jamaica from her native Sri Lanka in 1978, and joined the distinguished chambers of Dr Lloyd Barnett QC, Angela Phillips QC and David Muirhead QC. From the early 1990s she would occasionally appearing in our courts as a defence counsel. In 2002 she was appointed as an acting judge of the Grand Court and in April 2003 was appointed as a permanently and full time judge of the Grand Court. She was the first woman to be so appointed.

Priya Levers left an indelible mark on the jurisprudence of the Cayman Islands. Over the next seven years she delivered many important decisions, 25 of which were recognised as meriting full reports in the Cayman Islands Law Reports, and covered

such wide ranging topics as company law, bankruptcy and insolvency, employment law, family law, trust law, torts, property law, civil procedure, evidence, criminal law and procedure, and the conflicts of laws. We can only regret that her distinguished legal career came to an ignominious end in 2010 when the Privy Council recommended that she be removed from office for misconduct, the first (and hopefully last) time one of our judges has been removed from office.

After battling illness, Priya Levers passed away on Xmas Eve 2014 and is survived by her children Dhara, Christopher and Leanne, to whom we give our condolences.

We bid farewell to Mr Justice Cresswell, who served with distinction as a Grand Court judge, predominantly in the Financial Services Division, for over 4 years until his retirement in April 2014.

When, on 24 November 2009, Sir Peter was appointed as a permanent judge assigned to the Financial Services Division, he brought with him a wealth of legal and judicial experience. He was called to the Bar of England & Wales in 1966 and soon specialised in banking law. He took silk in 1983. Despite the demands of his busy practice he still found time to appear as an acting judge in England, and in 1990 was elected as Chairman of the Bar Council. In 1991 he was appointed as a judge of the High Court, specifically the Commercial and Admiralty Courts. In 2009, shortly after his retirement as a High Court judge, he was appointed as an acting judge of the Grand Court and later that year was appointed as a permanent judge assigned to the FSD.

During his tenure, Sir Peter delivered many judgments of which 9 judgments which were fully reported in the Cayman Islands Law Reports. These included judgments on various matters of civil procedure such as the grant of security for litigants' costs, anti-suit injunctions, as well as his judgments concerning the international co-operation in insolvency matters.

He remains a judge of the Qatar International Court, and an active arbitrator in commercial disputes.

Mr Justice Henderson was called to the Bar of British Columbia in 1970. His career in Canada spanned both the public and private bar, and he was appointed Queen's Counsel in 1992. In 1995 he was appointed as a judge of the Supreme Court of British Columbia, sitting at Vancouver. From 2000 until 2003 (when he retired from the bench in Vancouver) his Lordship was appointed from time to time as an acting judge of the Grand Court. In July 2003 he was appointed as a permanent judge of the Grand Court. Until his retirement in November 2014 he sat in all divisions of the Grand Court.

Over the past 14 years, no less than 71 fully reported judgments appear in our law reports (so far), with many more judgments mentioned as notations. His judgments relate to nearly every topic of law that routinely comes before our courts. They are so broad and many that I shall not take the time to list them. In the history of our Grand Court no judge has delivered so many judgements save only my Lord Chief Justice. This huge legacy of jurisprudence will be considered and re-considered by practitioners and judges for many decades to come.

Mr Justice Foster was called to the Bar of Scotland as Advocate in 1975. In 1981 he joined WS Walker & Company and was admitted to the Cayman Islands Bar. His skills were sought in a wide range of subject matters, although later his practice focussed on all respect of financial services. His legal talents, however, ranged more broadly. In the 1980s, he had the distinction of appearing pro bono for Victor Sabaz in his trial for murder. Despite being convicted and sentenced to death (the last time the Grand Court pronounced sentence of death) Mr Foster successfully petitioned the Governor to commute Mr Sabaz's sentence of death to one of life

imprisonment and to allow him to serve his sentence in a prison in his native Nicaragua.

Following his retirement from private practice, Mr Justice Foster served as an acting judge of the Grand Court until 2009, when he was appointed as a permanent judge and assigned to the newly-created FSD and granted silk. In that time he has delivered 29 judgments (so far) that were fully reported in the Cayman Islands Law Reports. They cover a broad range of legal subjects such as company law, insolvency, administrative law, arbitration, insurance, family law, civil procedure, and conflicts of laws. He is due to retire in June 2015.

To each of Sir Peter, Mr Justice Henderson and Mr Justice Foster we wish them a long, healthy and happy retirement.

Dr Milner has asked me to convey to your Lordships and to the entire legal profession his best wishes for a successful and happy 2015 and regrets that he was not able to be present today.

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

14 January 2014