

OPENING OF THE GRAND COURT 13th JANUARY 2021
ADDRESS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

My Lord Chief Justice, Honourable Judges of the Grand Court, Honourable Chief Magistrate, other Honourable Magistrates, [.....].

I rise to second the Attorney-General's motion for the Opening of the Grand Court, and I am grateful to my Lord Chief Justice for the opportunity to make a few remarks at this time.

When we gathered on 15th January 2020 to mark the last opening of the Grand Court, little did we know what the year would bring. Some of us were in this very building two weeks later, on the afternoon of 28th January, when it began to shake all around us. That was an afternoon that we are unlikely ever to forget, at the beginning of a year that many of us would rather forget. But the Courthouse stood firm, and Court was convened again the very next day, following the "all clear".

A few short weeks later it, was confirmed that Covid-19 had reached our shores, and everything changed. As the majority of the Islands were locking down, the work of many was just beginning.

Whilst numerous public servants strived to protect the community from the virus in so many different ways, the ODPP sought to play its part to keep the wheels of justice turning. We had to change our working practices, with little (if any) time in which to do so. It was by no means straightforward, but in conjunction with the Courts, Law Enforcement Agencies, and Defence Bar, we managed to keep those wheels turning, whilst minimising any risk of transmission of the virus as we did so.

Like many others, we at the ODPP are grateful to the uniformed services, medical practitioners, and other front-line workers who played their part in protecting these Islands from the virus as we got on with our work. No doubt they did so, at times, at personal risk.

The introduction of measures to protect the community, in what became known as the “hard” and “soft” curfews, brought further challenges for the criminal justice system. Whilst the majority of us abided by the new rules, more than a few did not.

Breaches of varying seriousness took place, but our laws were successfully enforced. Helpful sentencing guidelines were issued by the Honourable Chief Justice, and special sittings were organised by the Courts in order to deal with such offenders as swiftly as possible. The amount of work that went on “behind the scenes”, to deal with this new reality, was remarkable. It really cannot be understated.

Although the Courts had to make many adjustments in those first few months of the pandemic, they never stopped operating. In many ways, we all had to work even harder. Within the first days of the lockdown, special sittings of the Summary and Grand Courts were convened to consider numerous bail applications, listed in light of the pandemic.

As might be expected, these hearings generated a huge amount of urgent work on the parts of the police, Her Majesty’s Prison Service, Crown Counsel, Defence Counsel, and the Courts, in difficult conditions. The safety of our community, which of course includes those incarcerated within the community, was at the forefront of everybody’s minds.

Whilst the “lockdown” brought a period of calm to the streets, it did not bring to an end to the cases moving through the courts. The disruption to that workload was minimised as far as possible, as a result of strenuous effort on the parts of judges, court staff, counsel, law enforcement officials, and of course “Zoom”.

The manner in which all stakeholders strived to preserve access to justice for all, in such unprecedented times, should not be forgotten. I would like to commend, in particular, the meticulous attention to detail of the Judicial Administration, in cases where the physical presence of participants was required in Court. Unlike in many less fortunate jurisdictions, the Grand Court was in a position to resume full jury trials by July 2020, with careful measures in place to protect all participants.

Despite the ports being closed and an air bridge yet to open, the Court of Appeal also continued to sit. Following the issue of practice directions by the Honourable Chief Justice, and of course further technical wizardry, the Court of Appeal sat remotely very soon after the lockdown began, and managed to deal with a full caseload. By then, we were all getting better and better at Zoom. Not only had we learned how to “turn off mute”, we had begun to start using “Share Screen”.

Since July, it has been - for the most part - business as usual at the Courthouse. Whilst a small number of more complex trials had to be postponed for reasons beyond anyone’s control, we have begun to catch up with this caseload, and we hope to catch up further in 2021.

Covid-19, an earthquake, and 2 near misses with hurricanes of brutal ferocity, were not the only challenges we faced in 2020.

A huge amount of work has been continuing, across numerous government agencies, to address the recommendations in the FATF Mutual Assessment Report on Anti-Money Laundering and Counter Terrorist Financing Measures. We fervently hope that the strenuous efforts taken to show the world that the Cayman Islands treats such offending seriously will be recognised in due course.

As investigators, supervisors and regulators have continued to enhance their capabilities in relation to anti-money laundering, so too have the lawyers at the ODPP. We now have a dedicated team of financial crime counsel, who are continuing to provide legal advice and representation in some of the most complex cases ever to be investigated in this jurisdiction. As is the case in all common law jurisdictions, these investigations (and any subsequent prosecutions) take time.

The ODPP also continues to provide assistance to overseas jurisdictions in their efforts to thwart international financial crime, and our prosecutors are liaising directly with competent authorities from other jurisdictions like never before. The same can be said for other law enforcement agencies, such as the newly formed Cayman Islands Bureau of Financial Investigation, and the Financial Reporting Agency. Those who may perceive the Cayman Islands to be a safe haven for ill-gotten gains will, we hope, soon be disavowed of that notion (if not already).

Once again, the more conventional workload of the ODPP has not abated in 2020. In fact, in 2020 we received more requests to provide legal advice and charging decisions than any year on record (XXXX rulings). We have had to refine our working practices, in order to provide urgent advice to law enforcement agencies in an increasing number of cases.

We have also adapted our working practices, again in close collaboration with the Court, to develop a system of electronic filing of case documents. This system was fully rolled out in the latter half of 2020. Anyone who has sought to implement such new technology, whether it be in the public or private sector, will know how many challenges such a project can throw up. But we managed it, and we continue to seek to identify how our processes may be streamlined to increase efficiency.

It should, however, be remembered that no case can be prosecuted successfully without evidence, no matter how streamlined the process. Our system of justice is entirely dependent upon the good people of these Islands who are prepared to assist with investigations, and who are prepared to speak their truth. The evidence of every witness can make a difference in a criminal prosecution, and such evidence can of course result in the protection of the whole community from future wrongdoing.

Before I conclude my remarks, I would also like to take the opportunity to reflect on some potential misperceptions of the constitutional functions of the ODPP. Whilst we seek to uphold the laws of these Islands, insofar as they give rise to offences, we seek to do so as lawyers. Our primary function is to prosecute offences on behalf of the public, in line with the relevant laws and guidance, upon receipt of a file of evidence.

Whilst we work in the same space as law enforcement agencies, we are an entirely independent entity. The principle of independence underpins every Law Enforcement Agency, and every stakeholder in the criminal justice system, including - perhaps most importantly - the Judiciary. Whilst we all work closely at times, each serves the criminal justice system in a different capacity.

Our lawyers do not have powers to investigate, and we do not have oversight of the many agencies tasked with such profound responsibilities. That is the nature of our system, and it is one of the ways in which we seek to keep it healthy.

I would like to conclude my remarks by congratulating my learned friend Ms. Candia James-Malcolm, who was appointed Deputy Director of Public Prosecutions in Summer 2020, following an extremely competitive recruitment process. Ms. James-Malcolm is a dedicated and able practitioner, and she is a credit to our team.

I would also, if I may, wish to express my thanks to all Crown Counsel at the ODPP, as well as our team of dedicated support staff. Many of our team have had little rest over the last 12 months, and we hope that the year to come may bring a modicum of respite. Whether it does or not, we will continue to seek to serve the public, in the interests of justice.

Patrick Moran
Director of Public Prosecutions