

**Speech given by Bailiff
Assise d'Héritage
15 September 2008**

Votre Excellence, mesdames et messieurs,

Je commence cet adresse en français pour souligner le fait que Jersey est encore un pays bilingue où la langue française reste une partie importante de notre culture. Une connaissance suffisante de cette langue reste également importante pour les étudiants du droit jersiais qui souhaitent devenir avocat ou écrivain auprès de cette cour.

I lapse into English, not on your account Your Excellency, for you are an accomplished linguist, but in ence to others. Occasions such as the Assise d'Héritage do call into question the place of the French language in the courts. Is the use of French in our courts just a quaint traditional anachronism which will die in time like pro bono and other Latin tags, or is the language a core part of our legal history and culture? I have a firm view on that, but I want to talk this morning not about French but about tradition and reform in the context of the practice of law in 2008 and beyond.

But first, Your Excellency, may I extend on behalf of all the members of the Court a very warm welcome to you and to Mrs Ridgway at this traditional ceremony to mark the opening of the legal year. I also welcome the Seigneurs, although the attendance of the latter may not be entirely voluntary. Their presence, renewing a duty of loyalty to the Crown, is not evidence that we are a feudal society, but proof of an attachment to history and tradition which is embedded in every Jerseyman and woman.

A love of tradition and conservatism are widespread in the legal profession, perhaps because those of us who have trained in England have been brought up on a diet of precedent and respect for the decisions of our forebears. It is a strength but also a potential weakness. I remember not long ago the vociferous protests of some leading members of the profession as the consolidated and revised version of Jersey's statute laws was about to go live on the Internet. The changes in numbering of the articles would lead to chaos, it was said, and we were better off without it. Now, the ability to find on the web an up to date statement of the Island's laws, together with the judgments of the courts, largely free of charge and accessible to all, is widely recognised as one of Jersey's great strengths as an international finance centre. A love of tradition and reform are not mutually exclusive.

The profession, and the courts, do have a duty to innovate, to offer new services and to change with the times. I am sometimes frustrated at the slow pace of reform, with the delay, for example, in providing an electronic court where the materials to which the judges and advocates refer are not in massive piles of paper but on a compact disc. These changes do of course take time, and human resources, which are in short supply. But they also involve an ability to see the benefits of change on the part of Court officials and practitioners and a willingness to bring it about. I should like to express my gratitude to numerous members of the profession, and to members of the Judicial Greffe, who have contributed to the work of the Jersey Legal Information Board in the last 12 months. All being well, the Court of Appeal will pilot a project before the end of the year whereby an appeal will be heard without paper, with all authorities and written submissions being in electronic format and accessible on computer screen during the course of oral submissions. If successful, the pilot will be repeated in the Royal Court next year, and that will lead in short order to the ability to file pleadings and other documentation with the Judicial Greffe electronically. The last year has contained one major disappointment for me in that the Institute of Law has not, for various reasons, yet opened its doors. I will say no more at this stage than to express the hope

that it will be functioning and offering a course to law students before the next Assise d'Héritage in 2009.

A few months ago the Chief Minister published the 2nd interim report of the Constitution Working Group which I had the honour to chair. The mandate of the group was to report to the Chief Minister on the implications for Jersey of being placed in a position where the assumption of independence was the sensible way forward. No one who understands the Island's constitutional position will have been surprised by the conclusion that sovereignty would cause no major problems for Jersey. This is not the time nor the place to speculate on the merits or demerits of independence, but I do hope that each member of the profession will read the report. It sets out a number of recommendations as to precautionary steps which should be taken to strengthen our institutions and to enhance our ability to stand on our own two feet should the need arise.

Lawyers, of course, understand very well that the Island's political autonomy, and the independence of its legal and judicial systems, place it within a few small steps of sovereignty. The unusual suggestion that a Minister of the UK government might send a judge to preside in this Court, or a prosecutor to usurp the functions of the Attorney General, has as much legal foundation as the notion that the Chief Minister of Jersey might appoint a commissioner of his choosing to go and sit at the Old Bailey. The independence of the Court from political interference is one of the pillars of democracy. What may be worth restating, however, is that every defendant has a legal right to be tried by a court which is impartial and free from the appearance of bias. Any defendant and Crown advocate in a criminal case, and any party in a civil case, has a right to challenge the impartiality of a judge, and the judge must then make a judicial decision on the challenge, a decision which is subject to appeal. The alleged appearance of bias on the part of the judge is, however, a matter for the parties before him, and not for any self-appointed guardians of judicial independence.

Lawyers have an important part to play in the protection of our freedoms ; it is part of the oath that the advocates have just taken. They also have a duty, I believe, to debate the constitutional future of the Island, and to lead discussions. It is encouraging that one member of the Bar has taken just such an initiative.

The Law Society, too, has a duty to engage in public affairs. When the President of the Society, the Bâtonnier and I qualified nearly 40 years ago, the Law Society was a dining club with a few ad hoc committees advising the States on law reform. And it still serves an excellent annual dinner. Since the late 1960s, however, the profession has grown in numbers exponentially, and plays a significant part in the economic success of the Island. The Society has been incorporated and now has important responsibilities in terms of professional discipline, the setting of ethical standards and of ensuring so far as possible that disputes on fees are fairly resolved. If the reputation of the profession is to be maintained, and indirectly the Island's reputation as a responsible finance centre, the Society must, in my view, shed its amateur origins and develop into an organisation with a core professional staff. I applaud the Society's recent resolution to appoint a Chief Executive and I hope that he or she will be given the authority to implement the decisions of the Committee and to help the Society to deal with some of the knotty problems it faces. The independence of the Bar, given the nature of its composition, can perhaps be taken for granted. The operation of the profession as a whole within an orderly structure needs a little more care and attention, and I am very glad that progress is being made. It will lay the foundations for greater participation in public affairs than is possible at present, and that will be good for the Island.

Monsieur le Procureur, la parole est à vous.