

## **BAILIFF'S SPEECH FOR ASSISE D'HERITAGE**

**14th SEPTEMBER 2009**

1. The Assise d'Heritage is, amongst other things, the occasion on which the Seigneurs answer for their Fiefs which they hold from the Crown. It is therefore most fitting that Her Majesty's personal representative in the Island should be present to witness the occasion as well as to answer himself on behalf of the Bishop's, Abbots and Abbesses. I am delighted therefore to welcome His Excellency and Mrs Ridgway to this ancient ceremony.
  
2. I am also very pleased to welcome three officials from the Ministry of Justice. Mr Patrick Bourke is the Head of the European Division of the International Directorate, which division includes the Crown Dependencies amongst its responsibilities. Mr Karl Banister is the Head of the Constitutional Law team and Miss Louise Moreland is one of the lawyers in that team. It is always helpful for officials from the Ministry of Justice to come and get to know the Island and see how we do things in practice and I am delighted that all three officials are with us today. As I said when I was sworn in as Bailiff, it would be wrong not to acknowledge that there have

been occasional tensions in the relationship between Her Majesty's Government and the Crown Dependencies in recent years. But officials at the Ministry of Justice work hard to represent the Island's interests and to assist us wherever possible. I would like to take this opportunity to thank Mr Bourke and his colleagues publicly for all their efforts on our behalf.

3. The Assise marks the beginning of the legal year and it is an opportunity to review any events of particular significance in the past year and look to the future. It has of course been a year of change. This is the first Assise over which I shall preside as Bailiff following the retirement of Sir Philip Bailhache after 14 years in the office. Many well deserved tributes were paid to him on his retirement and I will content myself today simply with repeating my opinion that he has been an outstanding Bailiff.
4. However, Sir Philip is not the only judge of the Royal Court who has retired this year. Mr Francis Hamon retired as a Commissioner at the end of July after some 21 years as a judge of the Royal Court. Mr Hamon retired as Senior Partner of Crill, Cubitt, Sowden and Tomes (as it then was) as long ago as

1987. His plan was to pursue various hobbies including in particular bird watching. However, Sir Peter Crill, the Bailiff at the time was in need of assistance and Mr Hamon agreed to sit as a Commissioner. One can see from Jersey Law Reports that he was busy from the first. Following the dismissal of Mr Vernon Tomes as Deputy Bailiff an even greater burden fell on Mr Hamon's shoulders. In 1995, despite the fact that he had wished to retire in 1987, he agreed to become Deputy Bailiff in order to allow for an orderly succession following the departure of Mr Tomes. Since 2000 he has again served as a Commissioner. Throughout this time he has presided over the Court with great humanity and inevitably also with a degree of humour. He has also conducted proceedings with considerable efficiency. On a number of occasions, after a comparatively short hearing of the morning or afternoon session of the Samedi Court, I have emerged into the Robing Room to say that that went quickly, only invariably to be told by the Ushers that I had a long way to go before I could match Mr Hamon! I wish to take this opportunity of saying publicly that, when his Island needed him at a difficult time, Mr Hamon answered the call without hesitation and served with distinction as a judge of this

Court for some 21 years. I would like to thank him for his outstanding public service.

5. There is one further retirement this year which I should mention. After a distinguished army career, Mr Graham Riley was appointed as Chief Usher in 1991. His interview assessment described him as “an interesting, personable applicant who could handle any situation that is likely to crop up in this post”. What an accurate assessment that was. Mr Riley has been a calm, authoritative and reassuring presence in the Court and on ceremonial occasions for some eighteen and a half years. He has provided wonderful support for all the judges of the Court and I know that the service that he and the team that he has led provides is also much appreciated by others who use the Court such as the legal profession. He retires on 14th October and, being the modest man he is, he wishes to simply slip off into the sunset. However, I cannot let this occasion pass without thanking him for his loyal and distinguished service and to wish him and his wife Sue well in their retirement.
6. This has been another busy year for the Courts. What has been of particular note is the number of long cases. The Alhamrani

litigation lasted 102 days in Court before settling and there are two criminal trials due to be heard shortly which are expected each to last several weeks. This has emphasised the limitations of the Court rooms available in the Island and at times the Judicial Secretary has been hard pressed to allocate suitable Courts. For example, the Court in which we are sitting today is the only one of sufficient size to take a jury. So, if we have a ten week jury trial, no other jury trial can be held during that time. So far, we have been fortunate, but there must be a real risk that there could be unacceptable delay in hearing contested criminal trials. Although I have referred to this previously, I think the time has come when we must give serious consideration to the provision of modern and proper Court facilities to cater for the anticipated business of the Royal Court.

7. I turn next to the question of legal aid. Under our system, all Advocates and Solicitors of less than 15 years call are duty bound to act on a rota for those in need of legal aid. I think that many members of the public still fail to appreciate that, in the vast majority of cases, an Advocate acting on legal aid will receive little or no remuneration. It is a service given by the profession in accordance with the long tradition of honorary

service in the Island. It is sometimes said that there may be a perception that lawyers work less hard for their client where they are not being paid. What I would say in response to this is that in the nine years that I have been a judge, I have never gained that impression. I would like to pay tribute to the profession for all the work which they do in support of the legal aid scheme. If the profession were not in effect funding legal aid in this Island, a substantial burden would fall upon the tax payer.

8. In the past there was no fixed upper limit for legal aid. This enabled people of moderate means to litigate on the basis that they would pay a reasonable amount to their lawyer but thereafter he or she would work for free. For reasons which I understand, the rules were changed some years ago and there is now a fixed financial limit, above which a person is simply not eligible for legal aid. This has, I think, led to the problem that also exists in the UK, namely that those with a substantial income and those with little income can afford to litigate but those in-between cannot. In particular, those falling not far above the cut-off point for legal aid find it very difficult to litigate.

9. This leads on to the problem of the cost of litigation. There is no doubt that it has become extremely expensive and is beyond the reach of many. This is unacceptable. There must be access to justice for all the community. The question is how to address the problem. In the UK the Woolf reforms were intended to help but there are very mixed views on whether they have been a success or not. In my view we need to consider whether procedures should be adjusted according to the value of what is at stake. For example, is the full rigour of discovery really necessary for a modest claim? Could the use of electronic equipment help reduce costs? Should there be less oral argument in some cases?
10. When I became Deputy Bailiff, I set up a body called the Royal Court Consultation Group. It consisted of myself and the Master together with a number of members of the profession who specialise in litigation. It was intended to establish a means of communication between the profession and the Court so that we could be alert to and respond to concerns of the profession and vice versa. I think that the work of the Group has helped streamline Court procedure in certain respects. To give but two examples, we recommended the introduction of a

compulsory summons for directions so as to ensure cases proceeded promptly and did not fall into black holes and simply disappear from view. This has led to cases getting to trial more quickly. We also recommended the introduction of rules concerning witness statements with a view to saving time at the hearing. However pressure of other work has meant that we have not been very active for the last year or so. I therefore propose to invite my successor as Deputy Bailiff, when he takes up office in November, to take over the chairmanship of the Group and work to come up with recommendations as to how we can make the cost of civil proceedings in the Royal Court more affordable, particularly in the smaller cases. I emphasise that the Group is not a decision making body. Any suggestions it comes up with will be put out to consultation in the usual way. I invite any practitioners intended in joining the Group to contact me.

11. The coming year will bring in one very important reform. Rather than aspiring Jersey lawyers having to rely on hand-me-down notes and such assistance as busy practitioners in their firm are able to give, they will now be able to enrol in the Institute of Law, which formally opened its doors on 4th

September. Now, for the first time, there will be professional teaching of the various topics and the examinations will be set and marked by academics as well as practitioners. The Institute is the brain child of Sir Philip Bailhache and it would never have happened but for his determination to push it forward. Inevitably there may be some teething problems as we move from one system to another but it is undoubtedly the way forward and should provide a level playing field for all who wish to qualify. I wish it every success and am delighted to hear that 40 students have enrolled for this year.

12. As I have already mentioned, the Court is as busy as ever. Indeed, even if we strip out the time on Alhamrani, the first 6 months of 2009 show a considerable increase in Court days compared to the previous year. In this connection, given that there is no Deputy Bailiff until November, I am particularly grateful for the hard work of the Commissioners, in particular during this period Mr Clyde-Smith and Sir Philip Bailhache. Despite the pressures, with the assistance of the profession, we look forward to what the coming year will bring.