

Speech for Assise d'Heritage

Monday, 13th September 2010

1. Yesterday I attended the Battle of Britain memorial service at St Luke's Church. That service, as always, reminded us of how the valiant few during the Battle of Britain, and of course so many others from all services during the rest of the Second World War, made the ultimate sacrifice in order that succeeding generations such as ourselves could live in freedom. One of the essential foundations of freedom is of course the rule of law and that in turn depends up on the fair and proper administration of justice. It is therefore fitting that the opening of the legal year should take place at this time and that we should recall the debt which we owe to those who fought to preserve our freedom so many years ago.
2. At the end of June next year, His Excellency's term of office as Lieutenant Governor will come to an end. This is therefore the last Assise d'Heritage which His Excellency and Mrs. Ridgway will be attending. If I may say so, both have taken a great interest in the affairs of the Court. They have been assiduous in attending ceremonial and formal occasions but have also been interested in the substantive workings of the Court. I am therefore particularly pleased to welcome Your Excellency and Mrs. Ridgway to today's sitting and to express my thanks for the interest and support which you have shown during your time in Jersey.

3. A few years ago, my predecessor introduced the practice of meeting periodically with the Chief Justices of certain small Commonwealth jurisdictions. I have been keen to carry on this practice and Jersey is hosting the latest of such meetings. I am delighted therefore to welcome to the bench Sir Geoffrey Rowland, the Bailiff of Guernsey (who is of course well known to members of this Court not only as Bailiff of our sister island but also as a member of our Court of Appeal), His Honour David Doyle, Acting First Deemster of the Isle of Man, Mr. Gordon Ward, the Chief Justice of the Turks and Caicos Islands and Mr. Anthony Dudley, the Chief Justice of Gibraltar.
4. We are all small jurisdictions doing our best to provide justice to the inhabitants of our respective Islands but also endeavouring to deal with some of the complex financial litigation which flows from our positions as international finance centres. Many of the issues which we face are similar and it is therefore of great assistance for us to meet periodically in order to exchange views as to how we deal with particular aspects of the administration of justice. I look forward to our discussions and I am delighted to welcome all four Chief Justices to today's ceremony.
5. I am also pleased to welcome Jurats Le Poidevin (Pedevin) and Ferguson from the Royal Court of Guernsey and Mr Howard Roberts QC, Her Majesty's Procureur from the Law Officers' Department in Guernsey. I have always been a great believer in the two Islands working closely together whether at the level of Bailiff, Jurats or Law Officers and I am delighted our friends from Guernsey are able to be with us today.

6. The Royal Court continues to be extremely busy. From 2006 to 2008 the number of court days was fairly static with the Court sitting for the equivalent of approximately 360 days a year. In 2009 this figure increased to 476 days. It seemed that this might be explained largely by the Alhamrani litigation which lasted for several months. However, the figure for the first six months of 2010 is 235 court days, which suggests that, despite the absence of Alhamrani, we are running at much the same rate as last year. It means that, taken in the round, there are on average two courts sitting every working day. In practice of course we have sometimes have three or four courts sitting and on other occasions less. We could not manage this workload without the assistance of our Commissioners, particularly our two local Commissioners Mr Julian Clyde-Smith and Sir Philip Bailhache, or of course the willingness of the Jurats to commit yet more of their time to staffing so many courts. I believe that the Court has a reputation for providing justice in a reasonably timely manner, both for residents of the Island and for those cases which arise out of finance sector activities where time is so often of the essence. The reputation can only be maintained with the appropriate judicial resources.
7. It is useful every so often to take stock in order to see if one can identify any emerging trends in litigation, so that we can plan for the future. Whilst we continue to have a considerable amount of trust litigation, which often gives rise to interesting and novel points of trust law, there has been a dramatic increase in public law children's cases, i.e. those cases where the state, in the form of the Minister of Health

and Social Services, seeks to intervene so as to remove children from the care of their parents on the grounds that they are at risk of significant harm, whether physical or emotional. Time spent on public law children's cases amounted to 1% of the Court's business in 2006 and 2007, 4% in 2008, 9% in 2009 and the figure for the first six months of this year has risen to 17%. There has been a huge accompanying cost because of the payment to lawyers representing the children. According to the Judicial Greffe payments to such lawyers have averaged over £1 million a year since 2008 and this sum is of course funded entirely by the tax payer. I understand that a working party has been established in order to consider this issue and I hope that it will come up with an acceptable solution which, whilst recognising the fundamental importance of ensuring that the interests of children are safeguarded in such cases, leads to a more cost effective use of resources in these days of budgetary constraints.

8. 2010 has also seen the first year of operation of the Institute of Law which I was delighted to be invited formally to open in July. Whereas previously, students hoping to qualify as Jersey lawyers had to rely on hand-me-down notes and such tuition as their firm might be able to give them, they are now able to receive a structured form of tuition delivered both by visiting academics and local practitioners. Whilst there have inevitably been some teething problems, it is my impression that the Institute has been a resounding success. It is clearly the way forward so as to ensure the professional teaching of Jersey law coupled with a level playing field for all aspiring lawyers. I would like publicly to thank all those who have given their time in support of the Institute, particularly

the local practitioners who have agreed to serve as adjunct professors in an honorary capacity. I also thank the members of the Examination Board who give up so much time to set and mark examination papers.

9. Finally, I return to the topic of legal aid. I know that the future of the legal aid system remains an issue upon which opinions are divided. But I would like to take this opportunity of reiterating something I said last year, namely that many members of the public still fail to appreciate that, in the vast majority of cases, an advocate or solicitor acting on legal aid will receive little or no remuneration. It is a service given in accordance with the long-standing tradition of honorary service in the Island. I would like to pay tribute to the profession for all the work which they undertake on legal aid which is undertaken in a very thorough and professional manner. Were it not for all this work undertaken for free by the profession, a substantial burden would fall upon the taxpayer.

10. It is clear from what I have said that, once again the year ahead will be a busy one but, with the assistance of the profession, we look forward to the challenges that are to come.