

**ADDRESS OF COLIN McKIE Q.C. ON THE OCCASION OF THE
OPENING OF THE GRAND COURT ON 11 JANUARY 2017 GIVEN ON
BEHALF OF THE CAYMAN ISLANDS LAW REPORTS**

My Lord Chief Justice, Hon. Judges of the Grand Court, Hon. Chief Magistrate, Hon. Magistrates, Mr Attorney, Madam DPP, Madam Solicitor General, my colleagues at the Bar, our Special and Distinguished Guests, Ladies & Gentlemen

If it may please my Lord.

I am privileged to be able to associate myself with the motions to open the Grand Court for the year 2017 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 my own remarks.

This year marks the 25th anniversary of the first ceremony to mark the opening of the Grand Court for the New Year. The occasion now overflows this Court room – and is attended by not only the Bench and representatives of the whole of the profession, Her Excellency the Governor, Members of the Legislative Assembly, and business and civic leaders. It is an occasion to reflect on the previous year and look forward to the New Year, and afterwards to partake of the Judge's hospitality and enjoy each other's company.

Important though that quarter century anniversary is, I would like to reflect on some of the events of 50 years ago because 1967 was an eventful year for our legal profession and Courts.

In January 1967 our legal and judicial landscape was quite different from that which exists today.

The legal profession was split into barristers, solicitors, and law agents, and comprised about a dozen resident practitioners supplemented by occasional visits from Jamaican barristers. Fusion of the profession did not occur until the enactment of the Legal Practitioners Law in August 1967.

There were no associations of practitioners to represent the interests of the profession. However, moves to establish one shortly took place and on 2 October 1967 the Cayman Islands Law Society was incorporated.

There was neither an Attorney General nor a Director of Public Prosecutions. The resident stipendiary magistrate was an official member of Executive Council (the predecessor to the Cabinet) and the Legislative Assembly. He advised the Administrator (there being no Governor until 1971) and ExCo on legal issues and was responsible for drafting legislation and addressing the Assembly on legal issues. Fortunately, efforts to resolve this unsatisfactory state of affairs started later that year and the first Attorney General - John Ollquist, a barrister from New South Wales –

was appointed in December 1967. Nevertheless it was May 2011 before Cheryll Richards QC was appointed as our first Director of Public Prosecutions.

The sole judge resident on the Islands was the stipendiary magistrate who presided over Petty Sessions Court (criminal) and the Quarterly Petty Court (civil) (the predecessors of the Summary Court) and the Coroner's Court. He was also an acting judge of the Grand Court – there would be no resident judge of the Grand Court until September 1968.

(I pause to note that the Queen's Birthday Honours of 1967 recognised the exceptional contribution of the then stipendiary magistrate - Geoffrey Horsfall – with his appointment as Commander of the Order of the British Empire.)

In 1967 appeals from the Grand Court were heard by the Court of Appeal for Jamaica - our own Court of Appeal was not established until 1984. In January 1967 litigants in appeals had to travel to Jamaica for appeals, [and in the days of the Federation, they had to travel to Trinidad][check with RA]. June 1967 saw the innovation of the President of the Court of Appeal for Jamaica and two Justices of Appeal travelling to the Cayman Islands to hear appeals¹.

In 1967 the Cayman Islands Law Reports did not exist. There were very few legal texts to be found on the Island. In those days attorneys had to rely on their own

¹ Sir Herbert Duffus (President), Gerald Waddington JA (who in 1970 would be appointed to succeed Mr Ollquist as our second Attorney General) and [name] Eccleston JA [check with RA].

personal collections of judgments and those of their colleagues, and to borrow texts from others. It was not until 1987 that the first volume of the CILR was published under the editorship of Dr Alan Milner.

I am pleased to be able to report that the first volume of the Cayman Islands Law Review was recently published under the general editorship of Mitchell Davies, the Director of the Truman Bodden Law School which is proposed to be published twice each year. It will contain case summaries, and be a forum for legal scholarship in the Islands. I commend this extra resource to the profession and the judiciary alike.

I must take this opportunity to note the retirement of Dr Milner in July 2016 (at the age of 80), and pay appropriate tribute to his contributions to law reporting and especially our law reports.

Dr Milner's interest in law reporting started early in his career. In 1962, at the age of 26, he was appointed the founder Dean of the Law School at a new Nigerian University. Upon his election as a Fellow and Law Tutor at Trinity College, Oxford, in 1966 he used his first-hand experiences in Nigeria of the problems of finding case-law and other teaching materials to establish, with assistance from the Ford Foundation, the African Law Reports.

In the early 1980s, and with the active encouragement and assistance of our late Attorney General Michael Brantley QC and of Ramon Alberga QC (then president of the Cayman Islands Law Society), Dr Milner undertook the establishment of the Cayman Islands Law Reports. The first volume was published in 1987 (covering the years 1984 and 1985). They grew from one volume to cover two years of judgments to one volume to cover six months of judgments. As far as I am aware, it is the only series of law reports for the Commonwealth Caribbean that publishes in books as well as online.

In addition to being the publisher and editor of the Cayman Islands Law Reports, Dr Milner also established the Manx Law Reports (1985), Palmers Company Cases (1985), the Financial Law Reports (1985), the Jersey Law Reports (1988), the Gibraltar Law Reports (1998), and the Guernsey Law Reports (2007). He has also been a law reporting consultant to the Commonwealth Secretariat in Africa and the Caribbean. He also produced the first new edition of the Laws of the Falkland Islands for more than 50 years.

In 2009 Dr Milner was appointed with the honour of Order of the British Empire in recognition of his contribution to “good governance in Africa, the Overseas Territories and the Crown Dependencies.”

Dr Milner's contribution to the advancement of this jurisdiction and its practitioners has been immense. He leaves the editorship of the Law Reports in the

able hands of Mrs Sarah Snell, who has worked with Dr Milner as a law reporter since 2003.

We wish Dr Milner and his wife Patricia all the very best in their well-deserved retirement.

It is important to recognise that the Law Reports are not only for use by attorneys, judges, and students. They enable members of the public to know and understand our common-law, and how our courts administer our laws in our name. They demonstrate that we have we have an experienced, independent, and fair-minded judiciary and which is committed to the fair and impartial administration of justice. They also stand as witness to the skill and experience of the attorneys that appear before our Courts. They provide essential support to our financial services industry which, as Mr Robertson has already stated, forms such an important part of the economic well-being of these Islands.

The volume and complexity of considering judgments for reporting in the Law Reports continues to increase. Last year, Dr Milner appointed Alex Henderson QC as an additional consulting editor. As a former judge of the Grand Court, his contribution and insight has already been substantial and we look forward to working with him in the years to come.

I am pleased to be able to report that all the decisions of the CILR up to and including 2015 have been published on line and in hardback. The first volume for 2016 is currently with the printers, and much of the editorial work for the second volume for 2016 has been completed. Our Law Reports now cover 65 years of Cayman Islands judgments and contain substantially more than 2,000 judgments.

2016 was yet another busy year for judgments delivered by our Courts. Our judges undertook and completed a great volume of work. Some 140 written judgments and rulings were handed down in the past 12 months by the judges sitting in this Court and the Court of Appeal, a slight increase on the number delivered in recent years. There were three judgments of the Privy Council on appeal from the Court of Appeal.

Many of these judgments concerned difficult and novel matters.

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); bigamy; robbery and burglary (frequently involving firearms and other offensive weapons); arson; theft, bribery and other offences of dishonesty; money laundering; and drugs offences. Once again the number of judgments concerning the possession of firearms, robberies, and those concerning fraud and other offences of dishonesty

involving breach of trust, continued at their previous high levels and serious traffic offences, including causing death by dangerous driving, remain prevalent.

The judges sitting in the Financial Services Division delivered judgments on complex issues arising out of investment funds; companies and partnerships; mergers; insolvency and bankruptcy; confidentiality and international exchange of tax information; arbitration; trusts; conflicts of law; and civil procedure. It is noticeable that the judgments indicate that the disputes whose origin lies in the events of the Great Recession and/or its aftermath are now either finished or very nearly so.

The Civil Division judges delivered Judgments on topics as diverse as: medical negligence; land and strata disputes; planning and development; extradition; insurance; employment disputes; judicial review (often arising out of challenges to immigration decisions); and civil procedure. Over the last few years it has been noticeable that the number of judgments concerning judicial review proceedings has slowly but steadily increased.

The judges of the Family Division gave a number of important decisions concerning divorce and annulment (much of it concerning the care and custody of children and financial provision for the parties and children); public law proceedings to protect children from harm; 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.

Despite some high profile maritime incidents in our waters, and collisions overseas involving Cayman-flagged ships, the Admiralty Division delivered no written rulings.

The complexity of the issues in our judgments has never been so great, and is substantially greater than any other comparable offshore jurisdictions. Considering and editing the rulings handed down in 2017 for reporting this year will keep Mrs Smith, Mr Alberga, Mr Henderson and me busier than ever.

We therefore 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 through the English common-law world considering and analysing Judgments of our Courts.

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, are met. The short time that usually elapses between the conclusion of a hearing and the appearance of the written reasons is commendable.

There were a few changes of the judicial guard in 2016. In January, after more than 7 years in office, Sir John Chadwick retired as president of the Court of Appeal. His contribution to the Court of Appeal, and member of the Judicial and Legal Services Commission, has been truly exceptional. Our law has been much enriched by his wisdom and learning. We wish him a long, healthy and happy retirement.

Sir John Goldring was appointed to succeed Sir John Chadwick as both President of the Court of Appeal and member of the Judicial and Legal Services Commission. Sir John Goldring brings with him huge experience from his 12 years as a judge of the English High Court (Queen's Bench Division), 5 years as a Lord Justice of Appeal (including 3 years as the senior presiding judge for England and Wales). The offshore world is not new to him, he having served as a member of both the Court of Appeal of Jersey and of Guernsey. He joins what is already an exceptionally strong bench. We wish him every success in his new office.

In the Grand Court we welcomed Robin McMillan as a new judge. He is, of course, well known to us as a practitioner in these courts for over twenty years and more recently as an acting Grand Court judge.

Andrew Jones QC has announced his intention to retire from the bench in 2017. His contribution to this jurisdiction as a practicing lawyer, law reformer, rule-maker, and judge has been immense. There will be an opportunity for a fuller

appreciation of his contribution at a later date, and in the interests of not prolonging today's speeches I will not try to pre-empt that appreciation..

The Judicial and Legal Services Commission, which fulfils an important role in the protection of our democratic and constitutional rights, including the independence of the judiciary, also saw some changes. I have already mentioned the retirement of Sir John Chadwick and the appointment of Sir John Goldring.

Richard Coles, our former Attorney General, and Charles Jennings, a former managing partner of Maples and Calder and president of the Cayman Islands Law Society, and Sir David Simmons, a former Attorney General and Chief Justice of Barbados, all retired from their positions on the Commission having served on its since its establishment in 2010. We thank them for their hard work and their unique legal experience and perspectives that they have brought to this important institution. We welcome their replacements Langston Sibblies QC, Chairman of the Cayman Islands Monetary Authority, Guy Locke, a former partner of Walkers who has been coaxed out of retirement, and Sir Adrian Saunders, a former High Court Judge and Justice of Appeal of the Eastern Caribbean Supreme Court, and currently a Judge of the Caribbean Court of Justice

Finally we welcome your own well-deserved appointment to the Commission.

In July we said goodbye to Kevin McCormac who had served as our Court Administrator for the previous four years, and thank him for his hard work, patience, and great skills as an administrator. We welcomed Suzanne Bothwell as his replacement. Mrs Bothwell brings great experience from her previous employment in government over the previous 15 years, both in and out of the Attorney General's Chambers. In particular, she has served as a senior crown counsel with responsibility for criminal, civil, family and international law and anti-money laundering matters.

I wish to express our thanks to those local and overseas judges and practitioners who have willingly given up their valuable time to sit as acting judges of the Grand Court, Coroner's Court and Magistrates Court during 2016. In the Grand Court they were – Linda Dobbs, Alastair Malcom QC, Michael Mettyear QC, Malcolm Swift QC, Timothy Owen QC, Michael Wood QC (all from England), Seymour Panton and Marva McDonald-Bishop (both from Jamaica), and our own Chief Magistrate Hall. Our own Mrs Grace Donalds, Ms Angelyn Hernandez, Mrs Philippa McFarlane-Ebanks, Mrs Eileen Nervik, and Mr Adam Roberts sat extensively as acting Magistrates and/or Coroners.

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.

Our new Editor in Chief, Sarah Snell, has asked me to express her regrets that she is not able to be present today and to convey to your Lordships and to the entire legal profession her best wishes for a successful and happy 2017.

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

11 January 2017