

OPENING OF THE LEGAL YEAR 2018-19

Welcome everyone to the opening of the legal year. Thank you all for coming.

The Gill reforms are now manifesting themselves in real change in the nature of the business of the Supreme Courts, particularly in the Inner House and the appellate jurisdiction of the High Court.

On the civil side, the reduction in reclaiming motions of around a third has occurred. That is attributable partly to the increase in the privative jurisdiction of the sheriff court (with appeals in reparation cases of under £100,000 going to the Sheriff Appeal Court) and partly, but most notably, the introduction of the permission stage in petitions for judicial review.

In accordance with the Review's scheme, where the SAC has already heard an appeal, it is important for the efficient operation of the Court of Session that, whether this court considers the SAC decisions to be right or wrong, it should only hear appeals which raise an important point of principle in the absence of any compelling reason to the contrary. Routine appeals on discretionary or procedural decisions which have been heard by the SAC should not proceed further.

On the criminal side, again, the SAC has, by taking over the summary business, provided time and space for the appellate High Court to look with greater scrutiny at the solemn appeals which have passed the sift and ought thus to have an arguable point to consider.

In contrast to the reduction of appeals to its appellate jurisdiction, the work of the trial courts of the High Court has grown and continues to grow significantly. It is anticipated that, for 2018, indictments, and trials at which as evidence has been led, will increase by a third as compared to 2017. Registered indictments are projected to break the 1,000 mark for the first time next year. This will put a significant strain on our ability to cope with the increasing volumes. I am confident that we can reduce the potential effects of the increase, provided that everyone – the courts, the Crown and the legal profession – play their part; especially in relation, in all three cases, to preparation and readiness to proceed.

Change continues in both civil and criminal procedures. The Rules Rewrite Project continues apace under the auspices of the Scottish Civil Justice Council. The plans to take children out of the court buildings are coming to fruition in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. Pilots to experiment with changes to summary criminal procedure, under the guidance of the Sheriffs Principal, should be underway in the not too distant future.

We will also be issuing in the immediate future a protocol on the broadcasting of court proceedings, covering both the Court of Session and the High Court.

More of the building blocks of the unified Scottish Tribunals have been put in place. In the past year, tribunals dealing with the Private Rented Sector, Additional Support Needs and Charity Appeals have all been transferred into the new structure. The Housing and Property Chamber is the first within the first-tier to reach its full complement. We have also welcomed into the SCTS estate the Glasgow Tribunals Centre.

Over the course of this legal year, the Mental Health, Social Security, not to mention the most important of officials – the Parking & Bus Lane Adjudicators – will all follow suit. In time, we will achieve the simpler, consistent and suitably independent tribunal structure as envisaged by the 2014 Act. I would like to pay tribute to the leadership of Lady Smith and the individual Tribunal chairs for the progress which has been made, particularly as Lady Smith is also heavily engaged in the important work of the Scottish Child Abuse Inquiry.

I continue to have concerns about the reluctance of many of our best practitioners to consider applying to join the judiciary. There have also been well-documented problems in this regard in the other UK jurisdictions. It is not a national phenomenon. There are broad factors in play; partly financial, but also perceptions of the nature of the judicial workload and its potential impact on personal commitments. Two very different developments should help to ameliorate these problems.

The first is the introduction of the Judicial Work Shadowing Scheme whereby practitioners may apply to spend up to three days observing the work of a judicial office holder. The intention of this scheme is to provide a reassuring insight into life on the bench.

The second relates to one of my earlier comments. This is to do with the nature of the work of the court. It will continue to change, to take into account the changing profile of criminal and civil litigation. It will be vital to ensure that it is only the most important cases, from a legal not a personal perspective, heard at this level.

I anticipate that recruitment for three new judges, to replace those retiring, will commence in mid-2019 for appointment then and in 2020. I hope that this will attract the highest calibre of candidate, since that is what is needed not just to fill the Outer or even the Inner House but, in the fullness of time, to chair the appellate Divisions as Lord President or Lord Justice Clerk, shaping the law towards the middle of the century.

I wish to thank all of my judicial colleagues, especially the Lord Justice Clerk, Lady Dorrian, for their help and support. I am grateful to the administrative judges Lords Malcolm, Turnbull, Boyd and Matthews, for their assistance throughout the year. I also thank the SCTS chief executive, Eric McQueen, the head of the Judicial Office, Tim Barraclough, our Principal Clerk, Gillian Prentice, and all the court clerks and other staff working here in Parliament House, in the High Court Centres, the Tribunals Centres, the Office of the Public Guardian and throughout the country.

All those working in the justice system have shown an enduring commitment to improvement at a time of what must seem like constant change. I am constantly both surprised and enthused by the dedication of the court staff throughout Scotland – from Lerwick and Stornoway to Dumfries and the border courts. I have also very much appreciated the engagement of the Law Officers with SCTS as it pursues with vigour its several schemes to improve the criminal and civil justice system to meet the needs of the modern technology driven society which we serve.

I wish also to thank the entirety of legal profession, including the Faculty, the WS, SSC and Law Society, and the many individual counsel and solicitors who have participated so willingly, and for no reward, in the improvement projects; notably the Evidence and Procedure Review, the work of the Scottish Civil Justice Council, its sub-committees and all of the other groups diligently engaged in the constant re development of a justice system fit for the 21st century.

It is now my pleasure to introduce those who have gained the rank and dignity of Her Majesty's Counsel:

Mr Webster, you bring to the senior bar your very substantial experience in a broad civil and public law practice, which included your role as First Standing Junior Counsel to the Office of the Advocate General.

Mr Erroch, you have had a varied practice in both the civil and criminal courts, having specialised in employment, and child and family law, and in your time an Advocate Depute.

Ms Doherty, you have a wealth of experience in civil litigation from your time at the bar. It is always a pleasure to see a legal dynasty, even a small one as yet, making progress.

Mr Khurana, you have the particular distinction of being a qualified medical doctor as well as a member of the Bar. You have specialised in medical law and served as an Advocate Depute.

Mr Renucci, you have a long-established specialism in criminal law, both as a solicitor and at the Bar, where you have appeared in the High Court in all manner of criminal matters. We look forward to you appearing more in the criminal appeal court.

Ms Farquharson, your move from England has been a great benefit to the Scottish Bar and the Crown Office. Your important work in National Sexual Crimes Unit has been remarkable.

Ms Innes, you are a fellow of International Academy of Family Lawyers, reflecting your considerable skills in family litigation. You have also provided valuable assistance to the court in many ways in that role.

Mr Cormack, you are a qualified Solicitor Advocate in this jurisdiction and in England and Wales specialising in commercial dispute resolution as partner at your firm; you have appeared in the General Court of the European Union, although may not be an option in future.

Mr Goddard, you achieved this distinction having been involved as a Solicitor Advocate in defending and prosecuting crime in the High Court at first instance and on appeal, in each of your capacities as a partner of your previous firm.

The rank and dignity of Queen's Counsel is hard earned and well deserved for each of you. I offer you all my sincere congratulations and best wishes for the next chapter in your legal careers.

The calibre of applicants for silk was impressive again this year. As with any application process, some will have been left disappointed. Those individuals who have not succeeded should not be discouraged from applying again in future. Many clearly have the skills and mental agility required of the practising QC. One problem, which I recognise, is the relative dearth of opportunities, compared with days or yore and with the changing business of the court, to appear in the Divisions and to a lesser extent the Outer House.

I repeat what I have said in previous years, that, although never decisive, demonstration of commitment to public service, in particular as an Advocate Depute, and regular appearance in substantive matters in the appellate courts, especially having already represented the party at first instance, are regarded as favourable attributes when it comes to considering applications.

The court will now adjourn.