LEGAL WALES CONFERENCE SCANS THE HORIZON

What will the law in Wales look like in 15 years time? That was the common thread running through presentations at this year’s Legal Wales Conference on 11 October. Held in Cardiff’s City Hall, the Conference attracted over 200 delegates and was the biggest and most prestigious to date.

The high point was an address by Lord Thomas of Cwmgiedd, incoming Lord Chief Justice, who recalled the huge constitutional changes Wales had seen since the first Conference fifteen years ago. But he struck a cautionary note. Devolution had given an impetus to the establishment of Wales-based specialist legal associations. These provided a base from which lawyers in Wales could take advantage of the new opportunities, but so far, these had not always been taken.

By way of example, Lord Thomas cited the growth of Administrative Court work in Wales. Often against resistance from within the legal profession, the courts had been working, successfully, to ensure that administrative law cases arising in Wales were heard in Wales. But over 80% of the advocates appearing in these cases, even when heard in Wales, were based outside Wales. In this and other areas where devolution of government and the decentralisation of the courts were proceeding in parallel, Welsh lawyers needed to re-double their efforts to take advantage of the opportunities that this gave them.

Lord Thomas also stressed the need to ensure that where judicial powers were devolved, as was already the case in relation to those administrative tribunals sponsored by the Welsh Government, there was a proper separation between, on the one hand, the functions of appointing members and administering the tribunals in question and, on the other, the departments whose actions were under scrutiny.

Lord Thomas’s speech followed a fascinating lecture in which the issue of judicial independence in a small legal domain was also discussed. Professor Brice Dickson of Queen’s University Belfast, gave an objective assessment, under the title “Small is Beautiful?” of the advantages and challenges provided by the Northern Ireland legal jurisdiction. With a population only half that of Wales, Northern Ireland was able to sustain a wholly separate legal jurisdiction, responsive to the particular social and political imperatives of the province. This demonstrated that, in principle, the size of a legal jurisdiction was not an insurmountable obstacle. Anything was possible, but it would be wrong to ignore the practical disadvantages that went hand in hand with the advantages of a small jurisdiction. Professor Dickson referred in particular to the challenge of a limited pool of lawyers and hence of judges. Recognising that the suggestion was controversial, he suggested that there was no practical reason why appointments to the bench in Northern Ireland could not be opened up to candidates from England or Wales, given the close similarity of the respective legal regimes.

These ideas were very relevant to the debate on the future shape of devolution in Wales. Paul Silk, chair of the Commission on Devolution in Wales, and Helen Molyneux, one of the Commissioners, updated delegates on the work of the Commission, which is currently
considering the Assembly’s powers, with a view to reporting to the UK government some time in the next few months. Two important themes that had emerged from the evidence given to the Commission, and on which the Commission would need to reach conclusions, were the way in which law-making powers of the Assembly were defined (which differs from the Scottish and Northern Ireland models) and the extent to which responsibility for the closely related fields of the courts, criminal justice and policing should continue to be reserved to Westminster or should be transferred to Wales.

Some administrative tribunals are already devolved and an important new one, the Welsh Language Tribunal, is in the course of being established. Meri Huws, the Welsh Language Commissioner, gave an insight into the complexity of the role of the Commissioner and looked ahead to the full implementation of the Welsh Language Measure 2011, by the promulgation of statutory standards under the Measure in a year’s time. At that point her wide powers to enforce standards, subject to appeal to the Tribunal, would take effect. Stressing that her role was to operate the legislation to the best of her ability, she nevertheless drew attention to the position in which it would place the Commissioner and the Tribunal, from time to time, of having to consider whether to impose sanctions on the Welsh Government itself. This obviously echoed the emphasis placed by Lord Thomas on the practical importance of judicial (and quasi-judicial) independence.

Naturally, rights are of no significance unless they can be enforced effectively and this includes the ability of those whose rights are under attack to access effective legal advice and representation. This was the issue addressed by Elfyn Llwyd MP, a member of the Justice Committee of the House of Commons, under the title “What Price Justice?” With many years of personal experience, as a solicitor and later as a barrister, of providing legal services to some of the most economically deprived communities in Wales, together with his knowledge of the needs of constituents in his role as MP, he made a powerful attack on the legal aid policies not only of the present government but of its predecessors. He called for opposition to current proposals which, in his view, would inevitably create “advice deserts” throughout Wales. He stressed that the most effective way of influencing government was by active engagement with Ministers and civil servants so as to demonstrate flaws in the proposals, an approach that had already ensured the withdrawal of some of the most harmful plans. Andrew Caplan, Vice President of the Law Society, who chaired the session, added his voice to the call for active and constructive pressure from all parts of the legal profession in opposition to ill thought out proposals likely to deprive large parts of the population, particularly in areas such as Wales and his own home on the Isle of Wight, of proper access to the courts.

As publicly-funded legal services shrink, the spotlight inevitably shifts to alternative sources of legal advice and representation. Members of the forum marking the launch of LawWorks in Wales, chaired by Claire Carless, UK General Counsel to Siemens Plc, were eager to stress, however, that pro bono services should not be seen as a means of cushioning the blow of legal aid cuts. There are many situations, including navigating the maze of the social security system, or the representation of the complex legal needs of those under physical or mental disabilities, in which pro bono provision will always be the only practical way of delivering effective representation. Participation in the LawWorks network should not,
therefore, be seen as a threat to conventional means of providing legal services but as complementing them, as well as being an effective way of developing new legal skills and demonstrating social responsibility.

Wales is particularly fortunate, during this period when the focus is on the way in which its legal institutions should develop, to have two of its sons in key positions, Lord Thomas at the head of the judiciary and Sir David Lloyd Jones at the head of the Law Commission of England and Wales. Sir David explained how the Commission was working to respond positively to the fact that the jurisdiction now contains two legislatures. One way has been through the establishment of a Welsh Advisory Committee. Another has been through engaging with the Welsh public, and the legal profession in Wales, in putting together the forthcoming Twelfth Programme of Legal Reform. Sir David stressed that the duty of the Commission is to serve both countries and that in future it will be alive to the need to include in its programme worthy projects specific to Wales as well as to the fact that reforms relevant to both England and Wales may need to be implemented separately in the two countries or, as is occurring in relation to the Commission’s proposals on rented accommodation, in Wales but not in England.

A possible area for law reform specific to Wales is that of the Church in Wales. Frank Cranmer, a Research Fellow of Cardiff University’s Centre for Law and Religion, reminded the Conference that disestablishment of the Church of England in Wales was a precursor of devolution. Yet, as some of the troubles of the Marriage (Same Sex Couples) Bill had demonstrated, disestablishment had not been complete, with the Church in Wales being left with a number of public responsibilities, for example in relation to marriage. Paradoxically, there was now no effective mechanism for reforming these functions since the necessary legislative competence had not been transferred to the Assembly and the Parliamentary appetite for legislation related solely to the Church in Wales was extremely limited.

As well as the various plenary sessions, the Conference, as always, included ample opportunity for show-casing, through a series of breakouts, expertise in a number of subjects of general interest to mainstream legal practitioners in Wales, including the developing field of Welsh environmental law, chancery practice, the new civil costs regime, arbitration and mediation, and open government in the age of social media. There was also an opportunity, under the auspices of the Welsh Legal History Society, to learn something of the early life and work of Professor Dafydd Jenkins, the world’s leading expert on Medieval Welsh Law, who died last year at the age of 101.

The annual Legal Wales Conference has been described as an event unique to Wales in that it brings together a complete cross-section of legal life in Wales. Judges (including the Lord Chief Justice himself) barristers, solicitors, legal executives, academics, students and others all rub shoulders together, and exchange views, in a relaxed, informal atmosphere, whilst gathering information of real relevance to the practice of law in Wales. This year the Conference was accredited by all three professional bodies and the delegate profile reflected a growing realisation that it provides a tremendous opportunity for practitioners to keep
abreast of legal developments not only those specific to Wales but also ones of wider significance but examined from a Welsh perspective.

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(Conference Director)