

Sitting down with the Bailiff of the Bailiwick of Guernsey

Attorney-at-large Julie Kessler spoke to the Bailiff, Sir Richard John Collas, in his chambers in the Bailiwick earlier this month.



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Sir Richard John Collas (courtesy of Julie L. Kessler)

The Bailiwick of Guernsey is a small, yet important British Crown dependency located in the English Channel. Geographically, it is closer to the coast of France than the coast of England and was originally part of the Duchy of Normandy.

Today it is neither part of the United Kingdom, nor is it a member of the European Union. The Bailiwick comprises the islands of Guernsey, and the smaller nearby islands of Alderney, Herm and Sark. Thirty miles away also in the English Channel is another, larger crown dependency, the Bailiwick of Jersey.

The Bailiwick of Guernsey has always maintained its own legal system. However, because of its unique historical provenance, Guernsey laws comprise elements of both common law and civil law principles.

The Bailiff of Guernsey is the Bailiwick's highest judicial officer.

He is a judge on the Court of Appeal as well as that court's president. He also sits in the Royal Court for bench trials or presiding with jurors -- appointed jurors. Additionally, the Bailiff has a parliamentary role moderating debates and ruling on procedural issues. I spoke to the Bailiff, Sir Richard John Collas, in his chambers in the Bailiwick earlier this month.

Julie L. Kessler: What was the most notable difference in making the transition from private practice to the bench?

Richard John Collas: One of vantage point. I will never forget the first day when I took my seat how different things appeared from the bench. The courtroom seemed to look different. Naturally, the courtroom was not physically different. However, as I was no longer a practitioner trying to persuade the judge, but in control and of course ultimately had to make a decision, made it seem so.

JLK: Guernsey has favorable tax laws -- no sales tax, no capital gains tax, zero corporate tax and income tax is a flat 20 percent. With Brexit on the horizon, do you believe Guernsey will financially benefit following the U.K.'s departure from the European Union?

RJC: Historically, Guernsey has been the beneficiary of the various differences between us, the U.K. and the EU. So it is entirely possible that the Bailiwick will benefit from the split. We have many talented business people here, so I would not be surprised if that turned out to be the case.

JLK: Due to the unique nature of Guernsey's history, in order to qualify to practice law, Guernsey attorneys must attend part of their law school in France. Do you foresee this changing in the future?

RJC: The Certificat d'etudes at the University of Caen focuses on Norman customary law which is part of our system. Pre-Napoleon, all laws were customary laws. Napoleon then codified customary laws therefore generating the Napoleonic Code based mainly on the customary laws of Paris and Orleans. We in Guernsey have a unique legal system based on our unique history. While it is possible that the Bailiwick could one day eliminate this requirement, and the legal aspects that rely on Norman law, that is something that naturally would have to be done by our Parliament.

JLK: Some vestiges of Norman law still remain today that common law attorneys find very unusual, such as the Clameur de Haro, which is used to provide injunctive relief. To raise the Clameur, the plaintiff must, in front of two witnesses and the wrongdoer, drop to their knees, state in French that a tort has been committed then recite the Lord's prayer. Historically, the punishment for failure by the wrongdoer to cease or the plaintiff to raise the Clameur without just cause, was imprisonment in the Castle Cornet, now a museum. How often are Clameur claims made today?

RJC: Not very often, but they do arise on occasion. However, they are often claimed incorrectly. There must be an *immediate* threat to real property and that threat must be in the presence of both the plaintiff and the two witnesses. As that can be a challenge they are fairly rare. In fact, as a judge, I heard my first one just two years ago.

JLK: What are the biggest challenges now facing the Bailiwick?

RJC: The biggest challenge is probably recruiting judges who have sufficient generalist knowledge and the requisite intellectual flexibility as our judges hear an extremely wide variety of matters. Indeed, Scottish and U.K. judges are often astonished at the variety of legal matters we hear. Of course the individuals must also have the willingness to undertake public service. Like jurisdictions everywhere, it can be a challenge to attract talented individuals to the bench as private practice can often be more financially lucrative.

Another challenge is with respect to IT. Larger jurisdictions can better afford to undertake the necessary upgrades to internal systems.

JLK: What is the biggest challenge in hearing cases in an island state where one knows practically all litigants?

RJC: Naturally it is key to avoid even the perception of any bias. Thus in those cases, a lieutenant bailiff or magistrate can be brought in from another jurisdiction, such as from the Bailiwick of Jersey.

JLK: In 1999 the retirement age for Bailiffs was dropped from 70 to 65 years even though there is a tendency today for people to continue with longer working lives. You turned 65 earlier this year. Is the retirement rule firm?

RJC: It is firm, but not inflexible. At my request the Queen granted a two-year extension. So I will continue my public service until May of 2020.

JLK: What do you see in your next role after retirement?

RJC: I will take a long holiday and really think about it (chuckling). But it will probably involve boating, walking and swimming. And good food and wine.