My lord

Faculty is once again grateful for the opportunity to address the Court at the opening of the legal year. I am delighted to extend my own congratulations to the new silks, and to welcome the first recipients of Honorary Kings Counsel. The award of the rank and dignity is a momentous point in the career of any lawyer. For the Advocates and Solicitor Advocates, this marks the recognition of their ability in advocacy. For the Honorary silks, this marks a significant contribution to the legal profession as a whole. In the case of each, it demonstrates standing in the profession, for which sincere congratulations are merited.

The last year has been a very busy one for the Faculty of Advocates. We continue to work closely with the Courts in order to get through the backlog created by COVID. We are engaging with Scottish Ministers and other stakeholders in attempts to improve access to justice for survivors of sexual assault. The workload at the Bar is at unprecedented levels, but with the support of the judges and wellbeing innovations, it is one with which we are coping.

Of greater concern remains legal aid provision for criminal defence solicitors. Accepting that public money is stretched at present, years of underfunding and decline are now creating significant difficulties amongst those few solicitors left undertaking this crucial work. The disparity between what is affordable by way of salaries to the defence branch and what is paid to those joining Crown Office or private practice is creating huge difficulties in recruitment and retention. Recent statistics show that only 8% of criminal defence solicitors are under 30 years of age, whilst an alarming 46% are over 50. Those figures tell a story which we can no longer afford to ignore: that branch of the profession is on the cusp of terminal decline.

I raised concerns about this two years ago. That led to the Scottish Government setting up the Short life Working Group on the future of the legal profession. This is now an emergency. And can I stress, at the risk of repetition, this is not self-pleading. Faculty as a whole, and the criminal practitioners within it, make no complaint about the funding of their aspect of the justice system. The problem lies with the funding of criminal defence solicitors. If the problems are not addressed, and now, then from where will the criminal practitioners of the future come? We must act now, or we will face a situation in which obtaining criminal representation is a luxury as opposed to a basic right. Access to justice is fundamental, and must be prioritised in the years to come, starting now.

If I might pass from that looming crisis to end on a more positive note, this is of course the last Opening of the Legal Year to be presided over by Your Lordship, and the last to be attended by My Lady, the Lord Justice Clerk.

I have had the pleasure, indeed the honour, to work with you both for many years. We all trained at the same firm, and I was fortunate to junior to each of you in the early days of my career. I then appeared before each of you, with admittedly varying degrees of success, following on your respective elevations. Since my appointment as Dean of Faculty, I have worked closely with both of you, as we sought to tackle the predations of COVID and its aftermath. Throughout this time, you have both been uniformly helpful, approachable and proactive.

The contribution of each of you to the law of Scotland has been immense. From my own point of view, the Full Bench decisions in Whitehouse and in The Lord Advocates Reference – to each of which you both contributed significantly – signal hugely important developments in the law of Scotland. Beyond that, your support of the profession, in what have on occasion been challenging times, has been palpable, and most welcome.

In short, and on behalf of Faculty, you both have our sincere thanks for your contributions to the law and to the justice system in this country. We will miss you, and you will always receive a warm welcome at the Advocates Library.