COURT GOVERNANCE

An address by Judge Michael Forde to the ROTARY Club of Bundaberg on 26 July, 2001.

Introduction

What is of prime importance is trust and confidence in the courts. Those attributes are shaped by the public's personal experiences of the justice system. The level of service provided to the court user should ensure that it is understandable, convenient, and easy to use. Courts need to become more customer service orientated in order to face the increasing challenges caused by a more consumer orientated society.

Questions of accountability, responsiveness, accessibility, improved performance and efficiency of the courts are the issues by which the community measures the performance of the courts whatever the administrative structure happens to be.

Many of you here today represent the stakeholders in the court system. You may have been involved in litigation. You may have friends who have been victims of a criminal act. You may have a family member who has suffered an accident. You may work for a department which has dealings with the court system. The Director of Prosecutions and Legal Aid are important stakeholders. Corrective Services officers who supervise the prison system, community service officers who are responsible for supervising criminals who are the subject of probation or community service orders or victim community groups are all interested stakeholders in the justice system and moreover the court system. Needless to say the legal profession represented by barristers and solicitors also have a vested interest.

When one considers that the core business of the court system is to "deliver justice according to law to the people as expeditiously and economically as it is reasonable practicable to do so" then one comes quickly to the realisation that it is no longer just the judges judging cases, but the community judging the judges.

To Whom Are We Accountable

In any discussion of court governance, it is necessary to look at the stakeholders of the entity. For example, are the courts and moreover the judges accountable to the community? The judiciary of the judges are not responsible to the electorate under the system of responsible government. The public, for the purposes of judicial accountability, cannot be said to be represented by the Parliament or the executive government as the judiciary is answerable to neither (Kenny,1998:1). Although judges can be removed by Parliament for proven misconduct. Kenny says that the public is the whole community, which may not be represented at all times by the majority or the media. The judiciary often makes difficult decisions which are not popular. The Mabo case was such an example. One only has to look at the negative response by government, parts of the media and a large section of the community to realise that. Mabo was the case whereby the High Court held that Australia was a conquered not a settled nation and that traditional land rights of indigenous people should be recognised in certain areas of the nation.

The courts and judiciary realise that there must be public confidence in the courts or the legitimacy of the courts is challenged.

There is now a broader concept of accountability recognised by the judiciary. That is, in order to maintain public confidence in the courts, the judiciary and court administrators have to be responsive to criticism where that criticism is justified. The reason that the judiciary has become more involved in the past few years is that the traditional defender of the judiciary and the court system, the Attorney General has taken a less active role. In fact, the Commonwealth Attorney General has defined his need to intervene by stating that if there were public attacks on the judiciary and such attacks ere capable of undermining the public confidence in the judiciary then he might intervene. This position has been criticised by former Chief Justices of the High Court and the States: Hon.L.J. King (2000) 74 ALJ 444.

The inevitable consequences of this statement which seems to have been applied by various state Attorney-Generals is that the judiciary has assumed a more public role in meeting public criticism.

The Need For A Public Information Officer

Some judges have seen the need to go back to school in order to keep abreast of public opinion (Cuthebertson, 2001:13). In a report in the Herald Sun (Melbourne) in February of this year, a writer reported that a Judicial college was to be set up in Victoria to allow the state's judiciary to go back to school in order to better do their jobs and undergo continuing legal education including computer education. There are also moves afoot for a national judicial college. Presently, orientation programs cover such topics as trial management, judgment writing and the use of information technology and issues such as cultural diversity and gender awareness. These initiatives will hopefully provide a more diverse understanding of the needs of the community. The public may not be aware that there are conferences and inhouse continuing education programs for judges. One question remains and that is communicating such initiatives to the community in a systematic and professional manner in order to promote a more positive attitude towards the courts and moreover the judges.

Chief Justice Murray Gleeson in an address on "The State of the Judicature" (Law Institute Journal, December, 1999 p. 67at 71) stated:

> *"The most important measure of the performance of the court system is the extent to which the public have confidence in its independence, integrity and impartiality".*

Media officers have been appointed to courts throughout Australia to assist the judiciary in dealing with community issues and to provide timely information in relation to cases or related matters. A media officer responsible to the judiciary may allow the media to report more accurately on court affairs. The judiciary would present their views directly to the public and so encourage the perception that the judges are being more responsive or accountable to community needs. A reluctant Attorney-General is not going to provide the ongoing attention to such issues. You may be surprised to know that no appointment has been made of a media officer in Queensland.

The topic of performance evaluation has assumed even greater importance for judge in Australia when the Commonwealth Judges Remuneration Tribunal stated that it would consider productivity and performance when it considers judicial salaries in 2001. A similar threat was made by the Queensland Judges Remuneration Tribunal in their Report last month.

One judge was lamenting the fact that he would not rate very highly in performance at least on a quantitative basis as he had taken two years to deal with one case!

The Justice Department in Queensland has been part of an ongoing national benchmarking exercise organised by the Productivity Commission on behalf of the Council of Australian Governments since 1994. The problem is that there is no Australian wide standardisation of data collection. The statistics which are available and discussed in my written paper do not allow valid comparisons in all areas across the various jurisdictions in Australian courts. New South Wales is attempting to rectify the problem. Except in limited areas, therefore, it is difficult to share best practices amongst the various jurisdictions. Recommendation 14 of the Parker Report entitled "Sharing Best Practice Amongst the Courts" includes the recommendation that there should be a central repository of data. The implementation of that recommendation requires urgent attention if performance evaluation is to have any meaning on a national basis.

As reported last week in the "Courier Mail" I believe that performance evaluation may impinge upon the independence of the judiciary. As outsiders will attempt to define at what level judges are expected to perform and determine the quality of them. The court of Appeal already does this.