Mallesons Stephen Jaques Professional Dinner
Marriott Hotel, Brisbane
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Chief Justice Paul de Jersey AC

I am very pleased to have the opportunity to address you. Part of my goal as Chief Justice has been to emphasize the relationship between the practising profession and the courts. That relationship posits mutual dependence. The essence of your professionalism rests in your dependence on the court. It is the Supreme Court which regulates your admission, monitors fulfilment of your ethical responsibilities and depends day to day on the discharge of your overriding duty to the court. In "return" as it were, the court gives you professional legitimacy. It is your relationship with the court which distinguishes your profession from others. It is your being held out by the court as fit to practise which allows you to practise. Beyond those aspects, we jointly discharge our public responsibilities best, if we do it in a spirit of harmonious cooperation. I am very reassured to be able to say that on my assessment, there is no doubt we do, and for that I am grateful.

I want to speak for a short time this evening about how you may maintain and develop your professionalism, though faced with the not inconsiderable pressures of contemporary practice. That a non-practitioner, a relative outsider, should presume to speak on such a topic, will I hope be forgiven. My protest is that from my present position, I have become a fairly close observer of professional life, and not being directly immersed in it, I may have some enhanced prospect of objective comment.

It is sad reality that the pressures under which you labour these days are diverse and immense. The most recent manifestations of them, in relation to the plight of the insurance industry, appear to have come rather from left field. The temporal proximity between the HIH collapse and 11 September, and the emergent

insurance problem, leaves me entirely unconvinced that the profession and the judiciary have largely contributed to that problem. The courts and the profession have been working steadily in this area for decades. It is highly significant that the insurance problem arose apparently suddenly, and so close in time to those major disasters. Yet, we lawyers are trenchantly criticized. My fear is that the criticism, being unjustified, will unduly erode public confidence in our work.

It does, however, seem clear that some lawyers have been too entrepreneurial, and some Judges too magnanimous. The bar on no win/no fee advertising is, in my view, a reasonable response to the former, and the appeal mechanism has always generally dealt adequately with the latter. But it remains regrettable that these errancies should be stigmatising the profession as a whole.

What is being overlooked by many is that speculative fee arrangements have meant that many worthy claims which would otherwise die for want of financial backing have been processed over the years, and the unworthy ones have been weeded out early. Speculative fee arrangements have served the public well.

The courts and the profession have become “whipping boys”, for the present, in relation to these problems, which I believe have a lot more to do with the internal management and policies of insurance companies. The profession and the courts are of course used to criticism. Some of it involves tilts at an institution and a profession felt to be elitist. I read recently a medical specialist’s complaint that Judges whose decisions are reversed on appeal cannot be sued in negligence. It is disturbing to think that a highly educated member of the public should not understand, or perhaps resent, the judicial immunity which is integral to judicial independence in turn integral to the maintenance of the rule of law. Both the courts and the profession are these days forthcoming with acknowledgement of their goal of public service, and the need to communicate and interact with their public. Suggestions of elitism are baseless. And so is

much of the criticism levelled so generally at the profession because of the misdemeanours of a small few.

The other aspect of the insurance industry to which I draw attention, is the feature that significantly bad cases have not, with few exceptions, come from Queensland: they have come largely from New South Wales. The recent exception was the case of the young man who dived into the Gold Coast canal, but that jury verdict was expeditiously quashed on appeal. It would be a pity for Queenslanders if a primarily New South Wales problem led to substantial restriction on the right to sue in this State. Allowing for some necessary yielding to a national thrust, the Queensland response thus far seems appropriately restrained, and I hope it remains so.

My end point is that under this sort of pressure, the practitioner needs to summon a fair degree of tenacity in order to maintain confidence in the face of unjust criticism.

My next examples of current pressures do directly concern the profession. I have in mind the barristers, largely again in New South Wales, who reportedly failed in a major way to discharge their taxation responsibilities: grossly reprehensible conduct which, again, led to diminution in public support for the profession generally. And in this bracket I add mention to the Andersens debacle in the United States of America: another profession certainly, but one close to ours, and a case which, though sited in the US, stirred vibrations internationally. These professional nightmares, inevitably highly publicized and rightly so, add to the pressure under which we all operate. The latter will no doubt re-emerge in the MDP debate. Our object being the maintenance of deserved respect and confidence from those we serve, these pressures obviously inhibit our capacity to achieve them.

The other source of pressure to which I refer is more systemic and long-standing. The distinction between contemporary practice and legal practice when I entered the profession in 1971 is simply startling. I recently sat for a week in Maryborough, where I lived as a child – a city of which I am nostalgically very fond. A curiosity of practice in Maryborough is that come the middle of the day, some firms still close up with the partners going home for lunch with their spouses. I applaud that degree of measure! In a city and region in its own way progressive, local practitioners have been able to maintain a balanced approach to professional life. Now in Brisbane, distance would of course prevent such luxury. But so I suspect would the rather frenetic nature of current practice. I am pleased to hear of pressure from younger practitioners for more emphasis on so-called "lifestyle" considerations. I hope that pressure continues to produce beneficial results, and I also hope that Brisbane firms do not feel impelled to seek to match, for whatever reason, the pace of practice in southern capitals.

The last three decades since my admission to practice have witnessed an utter transformation in the scale of legal practice and that has spawned additional pressures: to meet high and relentless overheads; to attract and keep clients who are more inclined these days to move from firm to firm, with firms now often obliged to tender competitively for work, and being driven even to the length of retaining marketing staff; to operate in an increasingly regulated domain, such that to protect and promote both the position of the firm and the rights of individual people, human resources staff need often to be employed; to command an increasingly complex bank of legislation and judge made law; to master intricate legal concepts, the courts unfortunately sometimes not assisting with judicial definition marked by particular precision. These sorts of pressures, the product of the changes in practice which have characterized the whole of my professional life to date, mean that the modern practitioner is particularly challenged to display true professionalism in the face of intense business pressure in particular.

I have covered a host of problems. How does the modern practitioner effectively deal with them? How does the modern practitioner ensure that he or she remains a true professional?

It is fundamentally important that the individual lawyer not be daunted by these pressures, but acknowledge them and work persistently through them, ever conscious of the point of the profession, and of the abiding ethical stipulations.

It is also enormously important I believe, that practitioners not operate in isolation. One cannot overstate the beneficial value of human interaction – within the firm and the family, and the usefulness of community orientation. These interactions help ensure the individual remains balanced. They also keep the individual in touch with community attitudes, and that is itself important in the approach to the client. As to community orientation, the value of pro bono schemes and voluntary work again cannot be overstated – though undervalued and insufficiently acknowledged by some of our critics. As to team work within the firm, the professional staff and the support staff must obviously seek to work together in harmony and mutual cooperation. Every person within the firm has obligations to all others: if they are discharged amicably and conscientiously, the individual will be energised and the firm will exude the confidence which I believe characterizes yours. Harmonious teamwork is a very important key.

Another response which I suggest as appropriate to the challenges of these pressures, is a lively commitment to professional excellence, wherever one's task lies. A practitioner should work to expand, to push the boundaries of his or her professional talents: keep up-to-date through reading – hard copy and the internet – and discussion; attain the Law Society's specialist accreditation in your field; write articles for professional journals; deliver papers on specialized subjects at CLE sessions; if briefing counsel for advice on complicated problems, research them fully and be prepared to argue the toss in conference. As I said, push the boundaries of your professional capacity. As to the non-

practitioner, the quest for all should be optimal personal performance. That is one pathway to fulfilment.

There is, overall, the desirability of maintaining a broad involvement in life, rather than a narrow absorption with the law. I can do no better than quote in this regard from Sir Walter Scott's "Guy Mannering" where the Scots lawyer, Counsellor Pleydell, taking Guy Mannering into his library, offered this advice:

> "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

The pressures, the challenges, the responses…you will have your own views on many of the issues I have mentioned tonight. I hope nevertheless my approach has been of some interest. I wish you all well as, faced with the pressures of contemporary practice, you seek to expand your professional capacity in the pursuit of true excellence.