



ALLENS NATIONAL RETREAT DINNER

Twin Waters Resort

Saturday 3 May 2003

Chief Justice Paul de Jersey AC

It is a great pleasure to be with you tonight. Some few of the very much older solicitors present may vaguely recall that my friendly relationship with the firm in Queensland extends back to the deeply dim past, at a time when the firm even bore another name, a name whose pronunciation still generates a degree of intrigue! It was then that my abiding respect for what I believed was, and I know still is, a pre-eminent firm of great capacity and achievement, took root. I am confident that just as the firm is, in Queensland, a worthy exemplar, so it is within the national landscape represented here tonight: and I warmly welcome partners from elsewhere into this sunny and, with due respect for separation of powers, "smart" jurisdiction.

It is a particular privilege to be asked to speak at your "retreat", and although this is in strictness a "during dinner" speech, I expect you wish me, in view of your reflective thrust, to attempt some relatively serious observation, though I should certainly not do so at length. I recall the country parson who found but one member of the faithful attending Sunday service. "Should I go on?" he asked the devout farmer. "Well parson, if I took a load of feed down the farm and found only one calf, I'd feed him." So the parson went on and encouraged, warmed to his mission, and delivered the full bit. "Well," he asked his lone congregation afterward, "how was that?" "Father, if I took my feed down the farm and found only one calf, I'd feed him, but I wouldn't dump the full load on him." I shall be spare! Spare, and not delving into the law, though that may leave me vulnerable to some criticism ungraciously voiced in Canada: "Ignorance of the law is no excuse, yet some judges continue to get by." I prefer Francis Bacon's line, "judges ought to be more learned than



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witty.” With that in mind, I will attempt some brief, relatively serious observation.

I am particularly pleased to be speaking to a gathering of solicitors. The court tends to identify with the Bar, for the obvious reason that barristers appear regularly before the court, and that the judges have generally been drawn from the ranks of the Bar. It has indeed been said that the highest judicial accomplishment is the capacity to look a tedious advocate in the eye for two hours and not listen to a word he says! But that situation does not, I hasten to say, arise in Queensland! There is of course absolutely no jibe in relation to solicitors which could possibly bear sensible repetition! This evening, I wish to focus for a moment on the intersection between solicitors and the courts. Litigation solicitors aside, it is perhaps easy for solicitors to lose sight of the court's significance for them. The occasional churlish solicitor may suggest the further the courts are out of sight the better, but there are important synergies between our respective pursuits.

A broad significance of course, is that the courts develop as necessary, and apply, the body of common law which regulates the solicitor's attention to his or her client's interests. In a more immediately professional sense, however, it is the solicitor's ultimate dependence on the court for professional qualification, and professional standards, which defines his or her professionalism. Undoubtedly, skill and learning are necessary prerequisites for the attainment of that status; and they must be well directed. We would find abhorrent fulfilment of Theodore Roosevelt's sarcasm: “a man who never graduated from school might steal from a freight car. But a man who attends college and graduates as a lawyer might steal the whole railroad.” Ultimately the courts have a vital role in overseeing the existence of the qualification, and its competent and ethical application. A power of self-regulation, especially topical in this State, may be important to a profession, but it is the dependence on the court which essentially distinguishes the legal profession from others: medical, engineering, architectural...



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When then Attorney-General Matt Foley first mooted reforms for the Queensland legal profession, the Supreme Court was concerned to ensure that it retained that ultimate role, and fortunately it has – it is of the essence of the professionalism of the law, of the acceptability of solicitors as professionals, of their perceived professional "legitimacy". Part of that is the assurance, to both sides of the dispute or transaction, that the respective solicitors will be guided by their duty to the administration of the law, and to the court.

With the fast pace and rather consumptive nature of a modern high level solicitor's practice, the court can become very remote, if not practically irrelevant. I suggest that it repays the trouble to pause and reflect on what each – the court, the solicitor, can usefully draw from the other.

What can the courts beneficially draw from the solicitors, whom they term their "officers"? I hope, by the way, that the term "officer of the court" appears in your orientation literature for new solicitors – it should be imbued on their consciousness! I do have a real concern that many young, non-litigation solicitors may these days have little comprehension of either the workings or the significance of the courts of law or the role of the judiciary. It could, I fear, be disturbing, furthermore, to ask some of them to explain concepts like the separation of powers, judicial independence, or even the rule of law. I am concerned there may be developing a rather blinkered, tunnel vision obsession with the business of the day. That of course isn't professionalism, and a legal professional isn't a lawyer, absent understanding of the synergy with the courts of which I have been speaking.

What can the courts draw beneficially from their solicitors? First there is a very practical level. Judges are sometimes, and generally unreasonably, accused of being out of touch with community expectations. Peter Cook colourfully observed, "all in all I'd rather have been a judge than a miner. And



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what's more, being a miner, as soon as you are too old and tired and sick and stupid to do the job properly, you have to go. Well, the very opposite applies with judges." I disagree of course, but interacting with lawyers is one instrumental way by which judges may avoid becoming too "old and tired and sick and stupid." Our Supreme Court, moreover, has been fairly shameless in drawing on the expertise of its solicitors in a number of areas outside the courtroom. Solicitors have helped stock a number of Supreme Court committees, especially those involved with IT, in which we are seeking a freer flexible interface between the courts and the profession, thence the clients, as to management of files, electronic filing and so on. Solicitors have helpfully and generously assumed the role of educator here to a large extent, and we in the courts are the grateful beneficiaries: I hope you accept we heed what you say.

Also, judges need continually to be reminded of the exigencies of legal practice. They can bear on otherwise finely balanced discretionary judgments – what is a "reasonable time" in various situations, what standard of care should a reasonably competent solicitor exhibit? John Quincy Adams described what he termed "law logic" as "an artificial system of human reasoning, exclusively used in courts of justice, but good for nothing anywhere else." Whether that be fair or not, the reality is contact between judges and solicitors can establish a useful background context in which judgments, based on the evidence in the particular case, can better be made, to ensure any such "law logic" is avoided. My own view, unsurprisingly, is that the process of judicial reasoning exhibits a refinement and vigorous discipline beneficial in all situations requiring precision in thought. It is and must be informed by a broad experience of life.

Then there is a philosophical level. Judges "out" of the practising professional loop can gain inspiration and spark from contact with busy professionals in touch with the intricacies of day-to-day practice of the law – in the case of this firm, at a demandingly high level. The reality is that with a judge not regularly



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practising in a difficult area of the law, the incisiveness of the judicial appreciation inevitably dims. Some have suggested that that incisiveness could be better maintained through the introduction of a recreation room similar to your Brisbane "42", but I fear it might simply lead to a more extensive list of reserved judgments. Contact with accomplished lawyers can inspire judges to maintain and hone their own skills, while reducing the risk of isolationism. Otherwise the observation a judge is simply a law student who marks his or her own examination paper may take on a grain of truth.

Then turning to the other side, what benefit is there to solicitors from their relationship with the courts? This arises in a number of ways.

On one view, the court is the competent solicitor's bulwark against an unduly demanding client. The solicitor can rely on the court to set a standard of care at a level which is no more than reasonable. We judges have a comparably troublesome experience with some of our rather expansive litigants in person. It is often hard to tell how best to foster conciseness: should one be encouraging; should one be stand-offish? I have myself come to embrace Sir Thomas Beecham's view: "Never smile at the brass section!"

Then in addition, the court will support the solicitor who has the courage to pursue the honest course, although that disappoints and even enrages the client: with contemporary commercial pressures, that may be very important.

In terms of personal esteem, as a member of the profession, a solicitor is, if indirectly, one of the beneficiaries of what is I believe the high regard in which the public holds the court – this may be encouraging at times when solicitors as a group are otherwise singled out for public criticism, most usually by the media.

And of course, a link with the court provides the added benefit of visiting the physical court complex from time to time. Eschew the contemporary luxury of,



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in this State, the Riverside Centre, complete with conference rooms and barbecue facilities. The courts provide an entirely distinct example of memorable interior decoration: where else in Brisbane are you likely to find the uniquely attractive shades of emerald green and burnt orange carpet used quite so frequently – and often in combination with matching curtains?

On a serious note, unless we take the trouble to distil some expression of the practical application of the mutual dependence I have asserted this evening, the sentiment stands condemned as platitudinous. We are part of a profession whose public rewards acumen very well, financially. More significantly I hope, it instils a sense of fulfilment through the rendition of services publicly valuable.

But ultimately, our professionalism rests in the root qualification, and the way we exercise it. That professionalism is explained by a solicitor's relationship with the court which accords, monitors, and one always hopes, finds itself able to maintain that qualification. The relationship should not be overlooked, but, rather, nourished. There is potential advantage both ways. From my aspect, one of those advantages rests in being here tonight. Thanks to your presence, the event has – for me – been inspiring!

Let me conclude with a reference to the legendary Lord Denning, who once left his dinner audience with the sentiment: “I enjoy eating with nice people; I enjoy drinking with nice people; and I enjoy sleeping ... with an easy conscience!” I am confident that perfectly describes us all: thank you!