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Induction for new members of the Legislative Assembly

Members Reading Room, Parliament House
Tuesday 24 February 2004, 12 noon

Chief Justice Paul de Jersey AC

I am pleased to have the opportunity to speak with you, ladies and gentlemen, and I am grateful to the Speaker and the Clerk of the Parliament for accommodating us.

Nine months after I was appointed Chief Justice, the Australian Institute of Judicial Administration published a report from Professor Stephen Parker of Griffith University entitled "Courts and the Public". It was a disturbing report: it confirmed many people regarded the courts as – you will I am sure be surprised: aloof, unresponsive and incomprehensible. One of the report's recommendations was that "the court system needs to think about proactive ways of educating the public about the role, function and activities of Australian courts". We Judges are strongly committed to that goal.

As an arm of government, the judiciary is unique: from your perspectives especially, because it is not elected, yet wields enormous power –extending to the power to deny a person his or her liberty. But I immediately acknowledge something common to the courts and the legislature. The effectiveness of all our work depends absolutely on public confidence. If the people didn't respect our judgments, there could be insurrection. If anything, it is sentencing campaigns which sometimes erode that public confidence. But I believe Queenslanders do generally have great confidence in the work of their courts.

In that report, Professor Parker relates a story about Sir John Latham and Mussolini. Latham was telling Mussolini about the Australian Constitution and the power of the High Court to declare legislation and executive actions

invalid. Mussolini listened, and at the end said: "Yes, Mr Latham, how does the court get its order, with such far reaching effect, obeyed? Does the court have an army or an enforcing agency?" Latham responded: "No, Mr Mussolini, it doesn't work that way. The court simply pronounces its decision and it will be obeyed. That's how the system works." And Mussolini's reply: "Truly, Mr Latham, your answer is remarkable. You have anarchy in your system." (pp 16-17) Parker observed that "inexplicable though it may be to a dictator, courts primarily work through voluntary acceptance of their authority".

We are acutely conscious there is inherent fragility about that public confidence. One way of enhancing it, is for courts to communicate with their public – explaining their processes. How can people be confident about a process of which they are ignorant? Contemporary courts are vibrantly alive to this. That partly explains why the Chief Judge and I are here today.

We want to communicate an appreciation of the significance of the courts. Most analysts would say it rests in their independence, their separation from the executive and the legislature. As you have heard already today, under our Westminster system inherited from England in 1788, there are three branches of government. In theory, they are separate. But in practice the executive and legislature have been brought together in parliament with systems of checks and balances to ensure they monitor each other. Both those arms of government comprise elected representatives. For the system to operate democratically, the independence of the non-political judiciary must be absolutely secure. Of course in a democracy the creating and administering of the law must be subject to the will of the people. But to ensure the impartial application of the law, the judiciary must be completely immune from political pressure. Sometimes the rule of law means courts must make judgments which governments find distasteful: the courts must be

in a position to apply the law fearlessly, fearlessly to stand between citizen and State.

Accordingly, while Judges and Magistrates are certainly dedicated to public service, they plainly must not be considered “public servants”, the designation of those who administer the executive – which stands separately. Public servants implement ministerial policy, while Judges deliver justice according to law, at no one’s behest, independently.

What does this notion of judicial independence involve? Essentially, impartiality, freedom from any external influence which may corrupt.

It is a critically worthwhile feature of our judiciary that the Judges are not elected, by contrast with the Judges in some American States, and some people think us distinctive in that regard. We have all heard of those US Judges: they tend to impose outlandishly long terms of imprisonment, up to hundreds of years, especially when seeking re-election. In this country, and reflecting the English Act of Settlement of 1701, Judges of most courts are appointed for life, meaning in Queensland until the age of 70, subject to removal for misbehaviour. Security of tenure means there is no incentive to please the body which would re-appoint.

But in practical terms there is some difficulty maintaining a completely independent judiciary. That is because there is necessary material dependence on the other arms of government. The executive is the paymaster.

For true judicial independence, the Judges should enjoy security in three respects: security of tenure, meaning a guaranteed term of appointment, necessary so that Judges are not concerned about making decisions to

please the body responsible for their possible re-appointment; financial security, necessary it is said to ensure Judges are not tempted to accept bribes – although there is no need for that justification in modern day Australia; and institutional security, or control over the administration of the court, preventing among other things the other branches of government from influencing the allocation of Judges to hear particular cases.

The judiciary depends upon the other arms of government to respect this independence, and that respect is forthcoming. Of course, as you know, the executive pays Judges those immense salaries and overly generous pensions, and as well provides brilliantly equipped buildings and superbly resourced staff to run the courts. And, you will be thinking, these levels of generosity place the judiciary in a potentially difficult situation. For the record: Judges are but reasonably paid, in accordance with the determination of an independent tribunal; the courthouses are not what 21st century Queenslanders deserve; and our court staff are frequently under-resourced and undervalued. More of that no doubt in my next annual report.

Independence has an important corollary, accountability – the quid pro quo. As the public becomes increasingly more interested in the operation of the judiciary, it more and more seeks an accountable judiciary, not just in justifying decisions made in important cases, but also on the more administrative side, avoiding delay and minimizing the expense of litigation.

Accountability is achieved by Judges giving comprehensive reasons for judgment – which is virtually unique to the judiciary; through the appeal process; and fundamentally, by conducting court proceedings in public. What we do is there for all to see and assess. A more recent form of public accountability is achieved by courts publishing annual reports.

Let me briefly pass to the makeup of the court system in this State, this independent, accountable, separate arm of government in which, as I have said, our people have confidence.

I begin by saying you are all most welcome to attend court proceedings. They are almost always open to the public, and you are especially welcome as the elected representatives of the people. But be warned. Contrary to perceptions enlivened by O J Simpson, much of what happens in courtrooms is, as externally perceived, rather dull. Ask our reliable media court reporters. The most interesting are probably criminal jury trials, and sentencing. From time to time we survey jurors about the system and the results are helpful and encouraging.

The Supreme Court comprises 24 Judges, all in Brisbane save for Justice Jones in Cairns, Justice Cullinane in Townsville and Justice Dutney in Rockhampton. The court sits at 11 centres State-wide as the need arises. The Supreme Court has jurisdiction to deal with all cases, and regularly deals, on the criminal side, with homicides and major drug crime, and on the civil side, with claims worth more than $250,000. The Supreme Court includes a permanent Court of Appeal of five Judges. You may be interested to know that our Supreme Court includes seven women Judges of 24, the largest proportion of women Judges of any higher court in Australia – save, for obvious reasons, the Family Court.

The District Court is a busy and major trial court: it is the court which deals, in addition to civil cases, with all of the major crimes other than homicides: rape, arson, burglary, dangerous driving causing death etcetera. The District Court comprises 35 Judges, with 12 centred outside Brisbane. It sits in 42 centres around the State.

Then there is the Magistracy. 75 Magistrates deal State-wide with the less serious crimes and civil claims, and their work accounts for most of the public face of the judiciary from day to day. Magistrates sit in 132 centres. The Queensland Magistracy has endured enormous challenges over the last year or so. I am enormously supportive of the work of the Magistracy State-wide, and I take this opportunity to confirm the importance of that judicial arm.

Reverting to the published report to which I referred at the outset, the courts of this State have, over the last few years especially, striven to render their processes more comprehensible to the public. The Supreme Court runs comprehensive programs of public lectures and presentations on topics as diverse as women in the law, cricket and the law, Steele Rudd. They are well attended. We maintain a lively induction program for school students, thousands of whom pass through the courthouse annually. We host tours of the courts for the public on Queensland Day. Last year 380 members of the public attended. We try to demystify the process so far as we can. For example, in 1999 we developed a video which is shown to all jurors before they enter court. I will leave a copy with the Speaker for the Library. We are currently developing a video about the legal and judicial system for schools and service groups. We distribute a glossy information booklet, and jurors are additionally assisted with a handbook.

In terms of the timely and cost effective disposition of the work, our courts are at or near the top, on nation-wide comparisons. With the bustling State economy, the commercial community is specially served by a “Commercial List” in the Supreme Court, established at the Court’s initiative to ensure streamlined treatment of commercial disputes. Our courts are committed to all that modern technology – allowing for resources, can offer: video links to prisons and remote witnesses, interactive crime scene computer-based technology for juries: our courtrooms are switched-on, though it is true we

would like to be given more switches! Processes evolve to meet adapting expectations. For example, by contrast with the position two or three decades ago, our courts would not now embark on a civil trial unless persuaded all attempts at mediation had failed. There is strong emphasis on methods of resolving disputes short of judicial adjudication – to save money and time and preserve human relations. Necessarily costly litigation should be reserved only for those cases which really need it.

Contemporary Queensland Courts: independent and separate, but not aloof, rather – accessible and striving to be more so, efficient, up-to-date.

As I mentioned earlier, most of the criticism we endure relates to levels of sentencing. Queensland is well served by a system where the sentence is determined by a Judge or Magistrate exercising a well-informed, relatively unfettered discretion. The Chief Judge intends, I understand, that you assume the role of Judge for the moment and quickly come to a realization of how very easy our task really is!