QUEENSLAND LAW SOCIETY CHRISTMAS BREAKFAST

Brisbane Club, Wednesday, 8 December 2004, 7am

Chief Justice, Paul de Jersey AC

I am very pleased to have the opportunity to speak this morning. I was diverted to read, in the billing for this event, that I am expected to be "intimate" with you. I hope you will not be disappointed – too many of us and only an hour!

I am sorry: if by intimate, the organizers meant approachable, and if that's seen to be 95% of my trademark, I am your well satisfied servant.

That said, it would have lent a completely new dimension. I but hear of these things, most recently last week at a murder trial characterized by threesomes. New experiences do however continue…last Friday night I attended a function at the Victory Hotel, a QUR Association event. For the first time, my dress standard must survive a bouncer's assessment! To my question: "Is it alright", I extracted a grunt – which I interpreted, as it emerged correctly, in the affirmative. I was fortunate my David had warned in advance: no Dad, don't wear your jacket.

I am surprised to see you here, ladies and gentlemen: knowing the real me, you must be heartened by the wisdom of Oscar Wilde: "Only bores are brilliant at breakfast".

Today's other theme is our celebration of Christmas. In that we trail the retailers by a couple of months: the law proceeds at measured pace. Warm Christmas greetings to us all! The formal festal event in the Banco Court takes place next Wednesday at 9:15am. You are all most welcome. But I

give advance intelligence – don't expect this year the traditional Christmas insults; all will be benign…though I hope not anodyne.

Enough of this posturing. We have completed, in a measured way, what could have been a tumultuous year for the profession, with the introduction of the Legal Profession Act. The professional associations deserve commendation for that, and especially, if I may say, their Presidents and Councils. The Associations have responsibly accepted that they have a large role in bedding down the new regime, a role they are discharging admirably. The sky hasn't fallen in: the transmogrifying Queensland Law Society remains a strong, efficient and significant professional body: and the disciplinary machine is now protected by the independent umbrella of the Supreme Court. The Legal Practice Tribunal, incidentally, will sit for the first time next Monday morning, for directions hearings in two matters. The umbilical cord between the profession and the public is a fragile thing, but I am confident these changes have bolstered it.

Professional standards remain high. Dereliction is fortunately infrequent. I believe there is these days an acute perception in those entering the profession of the very high ethical commitment demanded of them. I make no bones about the public disclosure of past offending which has come to characterize some admission ceremonies. As well as confirming the responsibility of the court's approach to the matter of admission, that probably acts as some deterrent. I have been told anecdotally by the law schools that the focus at admission ceremonies on the unacceptability of plagiarism has in fact reduced its occurrence; though of course desisting for fear of adverse consequence is not really the preferable attitude. We should act ethically even though no rule requires it (cf. Prof Patrick Schiltz: "On being happy, health and ethical": (1999) 52 Vanderbilt Law Review 871, 909).

Apart from ethical commitment, there is professional efficiency, and it is reassuring to see the associations requiring a formal commitment to continuing professional education as part of the ticket to practise. What is expected is not onerous, but potentially beneficial, and certainly necessary. "Proctor", by the way, continues in my view as an instructive, and entertaining storehouse of information, and has its own part to play in this direction. Continuing education of good quality is expected of all parts of the profession, including the judiciary. As you probably know, all newly appointed Judges now attend a week-long live-in orientation course conducted in Sydney by the AIJA – but continuing judicial education has many facets.

I remain concerned about the commercial drive which increasingly plagues contemporary practice, with business considerations overwhelming the traditionally professional. Of course I appreciate that rents must be paid and wages met, large work competitively tendered for, and lawyers sometimes supplemented by HR and marketing personnel. But an obsession with billable hours is an alarming phenomenon, for a number of reasons I need not articulate this morning. It is interesting as I visit court centres elsewhere in the State to note contrasts. The Central Queensland profession, for example, exhibits a somewhat more relaxed approach, certainly lifestyle enhancing, while maintaining high efficiency. In that part of the State, formal undertakings are still often accepted by word of mouth. Now I am not blind to the complexities spawned by the much larger, much more intense professional milieu here in the metropolis. But I firmly believe that the most effective practitioner is the practitioner with a rounded approach to life.

I travel to Mackay tomorrow for the opening of the restored Mackay courthouse: a 1939 structure of Georgian Revival magnificence. I think in Brisbane I would prefer reconstruction to restoration!

Another matter of some concern to me is whether our younger practitioners, especially, are recognizing their relationship with the Supreme Court. It is, as we know, to the Court that we owe our professional legitimacy as lawyers – the Supreme Court approves the course of professional study pre-requisite to admission, the Supreme Court admits practitioners, the Supreme Court disciplines errant practitioners, and the Supreme Court thereby sets requisite professional standards. No doubt the law schools emphasize this, as do I at admissions ceremonies. But how many non-litigation lawyers would subsequently reflect on that? In a pressured practice, with high ambitions to succeed, I fear not many.

The description "officer of the court" may be quaint, but it acknowledges the fact. It is plainly important to recognize this kinship with, and dependence on, the Supreme Court. Doing so concurrently reminds the practitioner of the appropriately high ethical obligation which binds him or her, and of the predominant duty, in cases of conflict, which is owed not to the client, but to the court and the administration of the law.

I suspect most of the young practitioners of recent years, having been admitted, never venture again to the courthouse. If I am right about that, then I think it is a pity. On the other hand, the Judges venture out of the court to the profession quite regularly. I have been very pleased this year, for example, to open or attend the opening of three new sets of solicitors' offices – among a host of other outside engagements with the profession throughout the State.

I will shortly stop listing my concerns. But pardon my mentioning one more. I discern an increasing flow of younger lawyers out of the profession. The court admits so many I suppose there could not realistically be placements for them all: 645 so far this year and 603 last year. More than 100 applicants will face the Court of Appeal next Thursday. But I sense that disenchantment is

leading an appreciable number elsewhere. Presumably long working hours, the business orientation, attitudes of cynicism and aggression and the like contribute to this…in some cases. Professional mobility is a feature of contemporary life which was not present when I was growing up professionally three decades ago. But there is great waste in securing this qualification, only effectively to abandon it after a short time – however useful the education and training which led to the qualification may generally prove in other domains. It is important that a person not be condemned to a lifetime of professional discontent – that would obviously not be in the public interest. I wonder however whether there could not be a renewed focus on diversity and other lifestyle considerations within some professional situations. The notion of lawyers preoccupied with work to the point of "stopping living" is disturbing, or as one writer puts it "living to work, rather than working to live" (ibid, p 890). The best practitioner, certainly, is the practitioner who does not allow the law to become his or her entire life. Maybe if balance were given more play, those presently tempted to move on would less likely fall into a state of disenchantment.

I commend to you a very interesting, and amusing article in vol 52 of the Vanderbilt Law Review, written in 1999 by Professor P J Schiltz entitled "On being a happy, health and ethical member of an unhappy, unhealthy and unethical profession". The author is an academic of Notre Dame Law School. Be warned: the author speaks from the US perspective – only aspects of his experience apply here. But the article offers interesting advice for those veering towards discontentment.

Now having expressed these concerns, I must acknowledge that a lot of good work is already being done in these directions. I understand that younger practitioners especially, in firms, are becoming more assertive about the desirability of a measured balance between work and leisure. And as to a commercial fixation, many practitioners are working voluntarily for those

without means, and many firms, including large city firms, are heavily supporting that pro bono thrust, making their solicitors available during normal working hours to assist with advice at clinics for the homeless and unemployed for example.

I use the opportunity to applaud the work of the Queensland Public Interest Law Clearing House, managed so well by Mr Tony Woodyatt and directed so effectively by Mr Andrew Buchanan of Allens and more recently Mr Peter Rosengren of Deacons.

I urge you all to become involved in the pro bono work which is increasingly distinguishing the Queensland profession. It is not only a good thing to do for others: it also makes you feel good.

We are doing our best at the Supreme Court to avoid any unduly blinkered approach to things. The workload is relentless, but we manage with your help to get through it efficiently, and I hope the litigants who lose at least leave the courthouse with the satisfaction of having been treated fairly. But core business aside, we continue to foster a more interested appreciation of the role of the courts within the community.

The second floor public precinct speaks for itself, and continues to grow. For example, we are about to acquire, thanks to the generosity of his widow Mrs Helen Hart, an Inson portrait of the former Mr Justice Graham Hart. We are about to acquire also, by private donation, an original chair from the Queensland Government Steam Yacht “Lucinda”. The Supreme Court History Program continues with vibrancy to convene well attended lectures in the Banco Court, and the Library curates fascinating static displays. I urge you all to join in these ventures. The second floor public corridor should be visited by all younger practitioners especially.

On the technical side of things, this year saw the introduction of the somewhat controversial new expert witness rules. We can expect to begin to feel the impact of those new rules over the ensuing months, and naturally we will be monitoring their effectiveness. Though not generally a "safety in numbers" person, I yield to the temptation of mentioning, to the critics of this initiative, the practice direction of the Chief Justice of New South Wales, of 18 November 2004, introducing a single expert regime in all personal injury cases in New South Wales from 31 January next year. The Rules Committee continues to streamline the Uniform Civil Procedure Rules, and I urge you to write to Justice Williams, or me, with any suggestions for improvement. The Rules are, I believe, working well, and I am interested to note that Associate Professor Cairns is undertaking a research project to assess their effectiveness. This year, on the criminal side, saw the finalization of our bench book, an invaluable collection of sample directions and other materials for use in the criminal court. It is on our court webpage for all to see. We are about to launch an "equal treatment" benchbook – directed to the treatment of all who come before us, and focusing on issues of race, religion, sex and disability. I must mention also the reintroduction of the eChambers facility in the District Court, for its Planning and Environment Court division, and our increasing resort to electronics in relation to such matters as the allocation of trial dates. We are, I can assure you, doing as much as we can, as well as we can, with the resources made available to us.

Life is busy in the courts: and like school teachers, we need breaks some apparently consider not insubstantial.

I greatly appreciate the contributions made by the professional associations to the consideration of proposals for change or reform. They are based on substantial experience and collective wisdom and expertise. Those who comprise the advisory committees in various areas should know that their work is appreciated. On the broader plane, I appreciated Vice-President Rob

Davis's comments in this area in the recent Proctor. It will be important to ensure confidence in the high standard of the Land Court and the Planning and Environment Court is maintained, in context of the proposed restructuring involving the Land and Resources Tribunal. Another area where the profession's contribution is and will be important, is the desirable consolidation of the multiple, disparate regimes for the treatment of personal injury damages claims: a contemporary minefield for practitioners, and unnecessarily so. The number of procedural applications coming before the courts amply demonstrates this.

Next February I will reach the 20th anniversary of my appointment to the Supreme Court, with seven of those twenty years as Chief Justice. My overall 34 years in the profession have witnessed enormous change. Now I am conscious that, as the American historian Joyce Appleby has cautioned, "it is the conceit of all contemporaries to think that theirs is a time of particularly momentous changes". I will rest with the epithet "substantial". Whether momentous is for your assessment. Let me list some of those changes: the retreat from oral advocacy with much greater focus on presentations in writing; decreased attachment to litigation, with the embrace of mediation and other mechanisms of ADR; the "commercialization" of legal practice, to which I referred earlier; the technological revolution, with the introduction of computers, the Internet, video recording; the changing complexion of criminal trials, with the advent of DNA testing and the video recording of police interviews; the increasingly lurid character of criminal offending, attributable in large part, I fear, to the pervasive drug culture; the proliferation of judicial review of administrative decisions, including – somewhat to my astonishment – as to the day-to-day management of prisoners; and, dare I say it, vast changes even in reasons for judgment themselves, in relation to their scope, and most markedly perhaps, in relation to the expedition with which they are delivered. Three decades ago, it was not unknown for Judges to justify months, sometimes years of delay in the delivery of reserved judgments on

the basis their judgment would benefit from a phase of gestation: no longer! Vast changes, and in embracing them, the courts have benefited from the willing cooperation of the profession. Our heaviest albatross remains the serious inaccessibility of civil justice because of cost and limitations on legal aid. Our greatest current challenge is probably self-representation. There is a very helpful section on that in our 'equal treatment' benchbook.

One particular trend which continued this year was a fall off in civil trial work in the courts. In the Supreme Court at Brisbane, for example, 1,685 claims were filed, down 9% on the previous year. The year before had seen a 17% reduction. This is part of a world-wide trend. I assure you we still have plenty to do. For example, our disposal rate in crime was up 36%. ADR is a large reason for the fall-off in civil, and I strongly support ADR. But there is a rather disappointing corollary to its success, and that is a reduction in the number of trial judgments which can be used as precedents or guides. Last year only 91 trial judgments were given by the Supreme Court in Brisbane. Another disappointing side-effect is that advocacy skills in the civil arena are not being honed through regular exercise. It is I accept a little odd to be complaining that ADR has been too successful. The excellent consequence, of course, is that we can give very quick treatment to those difficult cases which really have to go to trial. More and more of them are being dealt with in the Commercial List, which I commend to you. 63 matters were placed on that list this year, almost double the previous year's intake. I would frankly like to see more commercial work retained in Queensland, and proceeding in the Supreme Court.

But for all those trends, changes and challenges, our mission remains immutable, and it anchors the profession as much as the courts: that is the delivery of justice according to law. I applaud your dedication, ladies and gentlemen, to that noble goal, I thank you for your support of the court of

which you are officers, and I wish you and your families, as we approach Christmas, peace … and balance!