



North Queensland Law Association Annual Conference, 2006 Jupiter's, Townsville Saturday, 17 June 2006, Noon

The Hon P de Jersey AC, Chief Justice

Our State leaders rightly emphasize the geographical vastness of Queensland, and the consequent expense of providing adequate resources. Ensuring legal services exemplifies this. For example, our Magistrates sit in more than 100 centres, the District Court in at least 40 and the Supreme Court at 12. The size of the State and the distribution of its populace necessitate our servicing as many court centres as that. It is a very important principle that so far as practicable, the courts go to the people, not vice versa. History shows the fate of governments which, for reasons of supposed economy, withdraw essential services from country centres.

The cost of maintaining all those court centres is obviously substantial. Primarily there is the cost of the necessary buildings and the registry and support staffs. But beyond that cost, and this draws into my theme today, there is the cost of establishing and maintaining electronic links among those court centres through the State which enable them to "talk" to each other. The days must be gone, or soon banished, when the capacity of those who manage a broadly distributed system, as ours must be, depends, for example, on the periodic receipt of manually compiled data from distant centres. It is the vastness of this State, and the consequent breadth of our mission, which render the optimal delivery of legal services here uniquely challenging.

Modern means of communication substantially reduce, if not eliminate, many of the traditional risks of isolation. Members of the profession in regional centres regularly communicate with colleagues elsewhere, including Brisbane, and that interaction of course includes the judiciary. Judges routinely now communicate by email, wherever in the State they are located. Our formal monthly meeting in the Supreme Court, which is physically located in Brisbane, is "attended" by regional Judges via telephone link. I am certain our new courthouse, when it eventually comes, will allow for videoed participation.



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For all that, the opportunity to interact in person is invaluable, and that is why I greatly appreciate, for example, attending these conferences.

A downside with the fall off in civil litigation especially, is the reduced need for Brisbane Supreme Court Judges to visit the traditional "circuit" centres. In principle it is important for metropolitan Judges to experience regional communities, and meet local professions: it is also important for the local professions to be drawn, sometimes, from a comfort zone created because of close familiarity with the approach of a resident Judge. Brisbane Judges should preferably not exhibit an unduly metropolitan mindset, and likewise the effectiveness of the regional practitioner should not be limited by narrow parochialism. In this regard, it is beneficial the Court of Appeal has been able to conduct a sittings annually north of Brisbane, and that the Mental Health Court has sat in Townsville. I have said before, and it remains my position, that I firmly favour regional Judges sitting more in Brisbane than during one Court of Appeal session each year, and that is to an extent occurring.

The State-wide reach of the courts, and of the profession, needs to be seen in the context also of the national profession. We are all extremely pleased to see Glenn Ferguson as a member of the Executive of the Law Council of Australia, and Glenn Martin SC as the President of the Australian Bar Association.

On one view, those achievements are symbolically important, against a background punctuated by unjustifiable claims from elsewhere over the years that the Queensland profession has been unduly introspective and self-contained. To illustrate from very recent history the hollowness of those tilts, Justice Williams of our Court of Appeal sat on the Solomon Islands Court of Appeal for a fortnight from 15 May, as has been occurring for many years – but one example of the commitment of many judicial officers beyond the bounds of the State; Queensland practitioners have for some years been deploying their professional talents for a time each year in Bangladesh.



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There are obviously many areas where adopting a nationally coordinated approach to professional affairs is important. One current example concerns an issue now before SCAG, the suggested modification or removal of advocates' immunity. Another assuming increasing prominence is the concept of judicial commissions. That said, national trends and concerns should not be allowed to diminish the role of our State-wide profession or perceptions of it.

One trend of recent years concerns me. I refer to effective control, from other States, of substantial previously "Queensland" firms of solicitors, which some would see now as little more than branch offices here of firms primarily centred in and controlled from southern States. On the other hand, there are, reassuringly, firms which have resisted national overtures, or having once succumbed have now retreated. What are paraded as national firms are often in reality Sydney or Melbourne firms. In this highly developed and progressive State of Queensland, high level legal services should be delivered by firms not only stocked by Queenslanders, but managed by Queenslanders. That is no more than a reasonable expression of State identity and esteem.

When I uphold our Queensland profession, I proceed on the basis it is axiomatic there is basic practical advantage to a client in using practitioners closely familiar, through training and experience, with State legislation, case law and other requirements, and with their local communities.

However grand the national thrust, never forget Beaconsfield, and for that matter, Bamaga and Kowanyama. Local concerns both matter, and can define. We have a federation, and must continue to recognize the sway of State issues. We have a large State which is, for Queensland, in the nature of a mini federation. We must continue to recognize the sway of regional issues.

At that regional level, that embraces in a very practical way recourse to the local profession. The larger regional centres are now characterized by not insubstantial local professions, and it is important to those communities that local talents be used to the full.



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That is not to exclude work going to the metropolis, or summoning a Brisbane practitioner, where necessary to match the issue to the relevant professional expertise. But as the regional professions develop, that should be decreasingly necessary.

Maintaining the vibrancy of the regional profession requires attention to succession planning. I know some centres experience considerable difficulty retaining their own progeny once admitted, and attracting younger practitioners to maintain staffing complements. This has been the case for years. As a person who lived more than his first decade in country centres, and has regularly visited them since, I have difficulty comprehending why Brisbane is magnetically compulsive to the point where many young people so readily eschew the attraction of practice in other interesting, and prospectively less stressful, drawcard Queensland locations.

Local professions must, obviously enough, work at ways of attracting younger practitioners into, or back into, their ranks. Also, the Queensland Law Society may like to consider ways of drawing attention to the positives of practice in regional centres. The Society has enthusiastically embraced its State-wide responsibility, and I think this is one area in which it could produce valuable, down-to-earth benefit. It is also interesting to ponder executive government's incentives to medical practitioners to serve in regional Queensland. Some attention should probably be given to whether sufficient attractions are being offered to legal practitioners for service in the Office of the DPP in regional Queensland, and similarly, in the Legal Aid Office and related governmental or quasi governmental agencies. The Law Society may consider reviewing that issue and raising it with executive government.

In raising these issues, I echo sentiments not infrequently expressed to me by senior regional practitioners.

Speaking of the North Queensland profession, I want to mention the invaluable contribution made by Townsville historian Dr Dorothy Gibson-Wilde to the Supreme Court History Program. In March last year, the Library commissioned her to compile a database



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of North Queensland firms and practitioners covering the period 1861 to 1961. Through academic research, the publication of books and commissions from legal organizations, Dr Gibson-Wilde has over about three decades amassed a wealth of material concerning the North Queensland profession. Its consolidation and publication on-line will facilitate appropriately wide access to this important historical information.

You may interested to know that the *Supreme Court Library Act* 1968 was recently amended to facilitate the Library's receipt and publication of historical legal documents, including for example opinions written for clients by bar luminaries of eras long gone. The legislation has been drafted to accommodate questions of privacy and privilege.

I thank Dr Gibson-Wilde for her involvement. It was she, incidentally, who prepared the profiles, for the publication "A Woman's Place", of Townsville practitioners Wendy Pack and Marjorie Pagani.

Inevitably, some particular thrusts must, for reasons of convenience, originate in the capital. But they need not end there. For example, the Commercial List began operation in Brisbane because so much of the State's commercial disputation emerges there. But the Judges who run that list, Mr Justice Muir and Mr Justice Chesterman, will add commercial cases from elsewhere in the State, and manage those cases, and there is no reason why they would not travel to a regional centre, if required, to conduct any necessary trial. I am not sure the Commercial List has been accessed substantially from regional centres. It should be accessed as necessary, and I remind you of the applicable practice direction.

Another example of a Brisbane development with potential State-wide application, is the e-courts facility. Something which is available State-wide, is the electronic searching of file indexes. For the last reporting period to 30 June 2005, more than 460,000 searches were conducted in that way, with 128,000 of them occurring outside normal business hours, and that showed an increase of 57% over the previous year. On average, more than 1,300 on-line searches were conducted every business day. The strong popularity of that service is



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Saturday, 17 June 2006, Noon**

testament to its manifest convenience. A natural development should in due course be a capacity to search on-line the content of files, and eventually, electronic filing and so-called paperless hearings.

I have spoken of the judiciary and the practitioners. One link between them is the professional associations. Since becoming Chief Justice, I have come to a more acute appreciation of the prospectively very important role of the associations.

My senior judicial colleagues and I meet from time to time with the leaders of the Bar Association and the Law Society for discussion of any matters of current mutual concern. Those discussions are very helpful.

The Judges and the profession work importantly together, to foster the interests of litigants and the interests of those who harness legal services generally. That is not some sort of conspiratorial collaboration or alliance: it is simply a matter of ensuring the delivery of optimal legal services. Where the presidents or executive officers draw attention to perceived problems, we are naturally keen to address them. Fortunately, relatively few arise, and the thrust of our discussions has been largely directed towards ways of streamlining what we already do. The court readily embraces this additional layer of accountability. What of practitioners?

The professional associations discharge an important role refreshing Queensland practitioners as to their positions both individually and collectively. As to the former, individual competency and ethical application, the Law Society's annual specialist accreditation and personal injuries seminars, at which I have in recent years spoken, provide a good illustration of the Society's commendable commitment to a worthwhile CPD programme. The Bar Association, likewise, has been convening a series of well attended and well presented seminars of particular relevance to the Bar.

Direct briefing is increasingly a matter for concern. I am not satisfied it ensures proper promotion of the interests of clients. I am pleased the Bar Association is looking at ways



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Saturday, 17 June 2006, Noon**

of better monitoring those who feel they must accept briefs directly from clients. It is unfortunate national competition policy apparently means the practice cannot be simply outlawed. A client's interests are undoubtedly best served in the traditional way – by a barrister properly briefed by a comprehensively informed solicitor. The phenomenon of direct briefing greatly concerns me.

As to collective considerations, the interaction among practitioners State-wide evident at CPD events is patently beneficial. I note that attendance on these occasions, wherever the seminar is conducted, is not overwhelmingly Brisbane-based, and the canvas is broad and varied: clients should reap the benefit of a genuinely professional interaction, not one focused on the latest trends in ball games and movies.

The legal profession in this State comprehends the Judges, the barristers and our solicitors, including practitioners who practise in the governmental and corporate fields and those in academia. Its mission is publicly important. We work together to ensure the fulfilment of that mission. We have, over the years, developed a number of means of heightening the prospect of our accomplishing that. Things are working well, although some problematic realities remain. I mention a couple of them.

While I believe the public has a generally good impression of the profession, which by and large does render very good service, the media creates an image problem by saturation coverage when things go wrong. Inevitably, some readers and viewers will become dismissive of the profession because of, for example, findings like those of the misconduct of Mr Baker and its regrettably colourful character. Regional professions can suffer because of publicity given to questionable activities more locally based, as for example the mortgage finance schemes on the coasts. I do not think there is an easy solution to this general blighting of the profession because of the misconduct or questionable conduct of a few. I do my best, through various public utterances, to uphold the profession, as do the Presidents of the professional associations. The Law Society's public campaign to promote a better appreciation of the value of legal services, launched late last year, is another initiative to seek to counter negative influences. But in the end, the adverse flow-



**North Queensland Law Association Annual Conference, 2006
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Saturday, 17 June 2006, Noon**

on effect is probably just something we have to live with, in the reasonable confidence that the overall satisfaction of the recipients of legal services will overwhelm it. It is also disappointing in this context, however, to see scant public recognition of the substantial pro bono commitment of the profession these days. Of course that work brings other rewards, if they be sought, but it is disappointing when the media focuses on the negatives to the exclusion of substantial positives. I mention, by the way, that QPILCH hopes to establish a Homeless Persons' Legal Clinic here in the next few months. Tony Woodyatt, its coordinator, will be visiting in July or August, and I hope you will consider supporting that excellent public initiative.

There is another consideration I wish to raise. Many practitioners contribute to the community other than as lawyers: philanthropically, on school and hospital boards, governing charities and service groups, through churches and the arts – the list goes on. The Order of Australia recognizes those whose community contribution is distinctive. In the ranks of the law, that acknowledgement should not be confined to the judiciary. I urge you to identify practitioners who should be recognized in this way, and to nominate them. My Executive Assistant will help you with the process. While according appropriate recognition to the individual, those awards indirectly also enhance our profession and foster a proper understanding and appreciation of our public application, and in the case of many people, true altruism.

Reverting to the matter of media coverage, from the perspective of the courts, while the approach of some regional newspapers might be criticized, and that extends to one of our national broadsheets, I acknowledge the Courier Mail and the live media in Queensland have in recent years given generally fair coverage. Courts cannot expect to be immune from criticism – though one hopes it will be constructive, and that criticism is levelled indicates at least a level of desirable public interest in the work of the courts, and some appreciation of its importance. In recent times, the Courier Mail has published interesting stories on the work of the Supreme Court, including you may recall a well researched article on vexatious litigants and a feature on the courthouse in Brisbane. The Far Northern Judge has contributed interesting articles on sentencing to the Cairns Post. Our



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Saturday, 17 June 2006, Noon**

Achilles heel State-wide in relation to media coverage will always rest in sentencing in the criminal courts, that issue being so inherently emotive. We would wait in vain for the fulfilment of an ideal of comprehensive reporting of sentencing in the criminal court. Published letters to the editor suggest an abysmal ignorance of the sentencing process, and of the circumstances germane to particular cases. Again, there is no easy fix to that problem, but I do think the appointment of a media liaison officer, or public affairs officer, attached to my Office to serve the courts State-wide, would help to some extent.

We are presently in the process of developing a comprehensive sentencing database, utilizing software created by the NSW Judicial Commission, and hope to have this available to the courts, the prosecution and Legal Aid by the middle of the year. A major object is increased consistency and predictability in this important area. This is potentially the most significant development in recent years in the streamlining of our process in the criminal justice system: I am enthusiastic about it.

Thank you, ladies and gentlemen, for listening to me, and I confirm my wish to listen to you. We are members of an estimable State-wide profession and a worthy national profession – lawyers in a great common law tradition. Self-esteem does not however equate to self-satisfaction, and both dedication to best service to the client, and the highly competitive nature of contemporary practice, have led to a dynamic commitment to continuing professional development. I have been seeking today to highlight a supervening consideration, which is that our continuing effectiveness in serving the public will, I firmly believe, be enhanced through collegial interaction and communication. Modern electronics open up extraordinary vistas in that regard. The value of meeting in person in this way will however always remain high, and I warmly thank you for the opportunity.