Closing remarks to the CQLA Conference 2006
Rydges Capricorn Resort
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Dutney J

I always find it difficult to know what to address in these closing remarks. You have already had a solid programme of professional and academic papers from a variety of high quality speakers including the Chief Justice, Justice Demack, the Chief Magistrate, the Presidents of the Law Society and the Bar Association, sundry imported luminaries as well as senior legal and academic persons from our own region. The cast assembled is one of which Jill and those who have assisted her should be proud and for which we should be grateful. It also says something of our own and the region's charms that our humble conference is able to attract such speakers. The quality of speaker has been such that to give you more of the same would be to give you too much of a good thing.

I traditionally follow the guest speaker of the conference; invariably a professional speaker with a fascinating, and today most entertaining patter. To seek to emulate that would be not only impossible but impertinent.

What's left? In past years I have summarised the year since our last conference and commented on local events of interest. Apart from the arrival of a new Central Registrar with whom I am most pleased and the pseudo retirement of Hugh Grant from practice – I say pseudo because as you all know his retirement has had no discernible impact either on his workload or his hours – it has been a quiet year.

Some excitement has been invoked recently by discussions concerning the relocation of the Family Court and the Federal Magistrates Court into the State courts complex. That will happen from about April next year and will mean all the courts as well as tribunals like the Guardianship and Administration Tribunal will be in one location. But what else is there to talk about?

There was one issue of a more serious note I wanted to address. Those who practice in crime are no doubt aware that the *Corrective Services Act* 2006 commences tomorrow. From my point of view the most significant changes are those the Act makes to the *Penalties and Sentences Act.* From tomorrow, all prisoners sentenced to terms of imprisonment whether for offences committed before or after the commencement of the Act may be given either a Parole Release Date or a Parole Eligibility Date.

A Parole Release Date is available where the sentence is for three years or less and is not in relation to a sexual offence or a serious violent offence. The significance of a Parole Release Date is that the prisoner is automatically released on the Parole Release Date without any application being made to a parole board. It has the same effect as a suspended sentence save that the prisoner is subject on release to the supervision of parole and is liable if the parole is breached to being re-incarcerated without the need to be brought back before the court.

Sexual offences are defined to include, apart from the usual offences, possessing or making objectionable films under the *Classification of Films Act* 1991, offences under the *Classification of Computer Games And Images Act* 1995 and the *Classification of Publications Act* 1991. Serious violent offences are those regarded as such under the present legislation. I take that to mean that an offence is a serious violent offence only if it is declared to be so and not merely because it is capable of being so declared. Otherwise the provisions would have almost no application. If an offender is entitled to a Parole Release Date that date can be any date within the sentence. It can be the first date, which is in effect an immediate release on parole or it can be the last date, which means every day of the sentence has to be served. Where an offender with a Parole Release Date is sentenced to a further term of imprisonment a new Parole Release Date must be set provided the total term does not exceed three years or the subsequent offence is neither a sexual offence nor a serious violent offence. In either of those cases a Parole Eligibility Date must be set that is not earlier than the existing Parole Release Date.

In any case where an offender is not eligible for a Parole Release Date the Court may fix a Parole Eligibility Date. That is the date at which the offender can apply for parole. The date must not be less than the present minimum non parole periods. That is half the sentence except where the offence is a serious violent offence or where the offender is given a life sentence. The date can be longer. A prisoner can, for example receive a sentence of four years with a Parole Eligibility Date after three years. That offender would not be eligible to apply for parole until three quarters of the way through the sentence.

If somebody already has a Parole Eligibility Date when sentenced on a subsequent occasion the court must impose a new Parole Eligibility Date not earlier than the existing one.

The provisions for suspended sentences are not affected but it will be rare that I will give one in lieu of a Parole Release Date where that was available. In some cases, imprisonment with an immediate Parole Release Date will have attractions over a probation order because of the automatic enforcement provisions if it is breached.

As far as I am concerned, it is the responsibility of solicitors or counsel appearing before a judge or a magistrate to advise the judge or magistrate if the client has an existing Parole Release Date or a Parole Eligibility Date. Otherwise we are going to get into a frightful mess, particularly in the magistrates court where there are so many repeat offenders.

Regrettably, regional parole boards are abolished. It is always disappointing when services previously offered on a regional basis are centralised in Brisbane. This means we will no longer be able to blame the perceived injustices of the parole system on Tony Arnold and a solid topic of conversation for the Wednesday lunch will be lost. I will have to take a closer interest in the football competition so I have something to talk about.

Whenever someone is running short of topics to talk about there is always something happening in America. Last month there was a quite remarkable event. I refer of course to the trial of Donald D Thompson. There are two Donald D Thompson's.

One is respected writer of science fiction best known for a series entitled the *Sol Chronicles.* I am not referring to him.

The Donald D Thompson to whom I am referring was (note the use of the past tense) an elected District Judge for the state of Oklahoma. Judge Thompson was based in the city of Sapulpa, the County seat for Creek County. In its own right Sapulpa is now most famous as the home of Donald D Thompson. Otherwise, it has little to recommend it. A Google search of Sapulpa fails to disclose a single interesting fact. It is very near the town of Tulsa made famous by Dusty Springfield but even she was 24 hours away. Imagine how far from Sapulpa she would want to be. As close as Sapulpa got to fame before Judge Thompson leapt to prominence was that it sits astride the famous route 66 as in, "I get my kicks on…"

It is about getting his kicks that led Judge Donald Thompson to notoriety. On the 22 June 2004, proceedings were instituted in the Court of Judiciary in Oklahoma seeking his removal from office for breaches of canons 1, 2 and 3 of the code of judicial conduct and for an offence of moral turpitude. David Pannick QC, who writes a regular column in the Times, suggested that the judge's real offence was to mix business with pleasure. You might wonder what is so terribly wrong with that. After all, isn't that what this weekend is really all about.

Alas, Judge Thompson took things a little too far.

Canon 1 of the Code of Judicial ethics says that a judge "should participate in establishing, maintaining and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary will be preserved." Canons 2 and 3 are to like effect and I would only bore you by reading them.

What then was Judge Thompson's sin?

Matters came to a head, if you'll pardon the pun, when a jury in a murder trial inquired as to a puzzling "sh" "sh" sound during the evidence. The sound was that of Judge Thompson vigorously applying a penis pump that he kept under his bench for that very purpose. Neither the Court documents nor any reports I have read on the case state specifically to what he was applying the penis pump but there was a pretty strong circumstantial case that it was being used in the manner its manufacturer intended.

A former court reporter gave evidence at the trial that this particular use took place while the grandfather of a murdered infant was giving emotional evidence. Judge Thompson was getting pretty emotional at the same time.

The reporter told the jury in Judge Thompson's trial about another occasion when she looked during closing arguments to observe the judge shaving his scrotum with a disposable razor. Pannick surmises that that is one way to let counsel know that it is time to move on to the next submission. At various other times the court reporter observed Judge Thompson applying creams and lotions to his equipment.

The investigation into Judge Thompson began when a detective in another case heard the "sh" "sh" sound and investigated, seeing the device under the judge's bench. Not surprisingly this took place during an adjournment. Even a senior detective might be reticent about asking if he could approach the bench in those circumstances. A consultant urologist who gave evidence in the trial observed that he had only ever seen such a device once before and that was in the film *Austin Powers*.

The petition for Judge Thompson's removal, of which I have a copy here for anyone interested, provides other even less savoury particulars which even I am reluctant to disclose.

The defence argued that the penis pump was just one of a number of items including a stress ball, a shoeshine kit and handheld games with which the judge "often fiddled" during breaks in legal argument. No doubt the jury decided that this was a case of improper fiddling.

While probably the most bizarre example of judicial conduct of its type, Judge Thompson is hardly unique.

David Pannick recalls the instance of a New York judge in 1985 who was formally admonished for loudly commenting when a female advocate entered his court room, "What a set of knockers!" In 1988 a California judge was removed for making off colour jokes in his court room. He asked a female attorney appearing before him what was the difference between a Caesar salad and a particular sexual act. When the attorney was unable to answer the judge responded, "Great, let's have lunch."

In 2003 a judge in Boston, Massachusetts, considering a claim for asylum by a Uganda woman named Jane who claimed to have been tortured in her homeland, commented from the bench before dismissing her application, "Jane come here. Me Tarzan."

Finally, in 2003, a judge in Angouleme, in South West France was suspended pending an investigation into allegations he masturbated while a lawyer made her submissions in a case involving a dispute between neighbours.

David Pannick concludes his article with the comment that the fate of Judge Thompson, now awaiting sentencing confirms that "May it please your honour" is no defence to inappropriate sexual conduct during legal proceedings.

The fact it has been an uneventful year for the profession in Central Queensland may not be any bad thing. I would like to believe that my conduct in the past year is not such as to place at risk my chances of addressing this gathering next year. As to which I should say that rumours which I understand are circulating of my and/or Bronwyn's imminent departure from Central Queensland are greatly exaggerated.

I am unique amongst those gathered here in being the only person required by statute to reside in Central Queensland. Section 287(3) of the *Supreme Court Act* 1995 requires the Central Judge to reside within the central District. Perhaps the legislature thought that was the only way to keep a judge here.

Since I am too young to claim the judicial pension and have no intention of following the spectacular demise of Judge Thompson, you are likely to be stuck with me for some time yet.

In looking about for something to say, I came upon something that might be of interest to barristers and alarm to solicitors.

A great deal of eclectic trivia appears in the Times despite its rather staid image. In April this year, Alex Wade, a solicitor, contributed a piece on the comparison between the respective brains of a solicitor and a barrister. Observing that men's brains were, on average, bigger than women's (1.25 kg compared to 1.15kg) a fact that seems self evident to about half the world's population, he went on.

"One night I was out with a barrister with a pronounced hatred for solicitors. "Here, read this," he said, with a malicious glint in his eye. He pushed a document stamped "Classified" across the table. I was right to be wary, for within this document were statistics long withheld from the public by the Law Society. They made for terrifying reading.

Studies have shown that the average barrister's brain weighs 4 kg. Yes, this is nearly four times the average, but it shows what the rest of us are up against. A top QC's brain approaches 7 kg, while even a mere junior weighs in at 3.5 kg. The contrast between those of wig and pen and us mere solicitors could not be more stark. (You appreciate I am reading Mr Wade's article. I am not for a moment suggesting that the brain even of senior counsel approaches that of a Supreme Court judge.) *The contrast between those of wig and pen and us mere solicitors could not be more stark, when we consider that the average weight of a solicitor's brain is a disgraceful 12 grams. Some do not even register on the scales.*

There is one solicitor whose brain apparently approaches the national average, but he was formerly an accountant … It got worse when my source turned to the page that reported how barristers and solicitors had fared with IQ tests. Barristers were invariably too busy being tall, dark and handsome, driving fast cars and living in large houses to take the tests, while solicitors unhesitatingly tried to do their bit. Their bit was not impressive. Few solicitors were able to draw a square, and only one knew that a circle is like a triangle only more circular. Most asked if they could carry bundles of IQ papers back and forth, to a notional barrister, rather than sit the tests.

The author was sceptical and queried the source of the study. *"Facts are facts" the barrister responded. "It's like those scientists who've proved that blokes are cleverer than women. You can't argue with them."* Who could argue with an article in the Times. There is one sure way, however, to get the answer. Brief counsel.

While on the topic of England I pause to note that in recent times we have become used to the Blair Government eroding the traditional rights of the subject particularly in response to issues of so-called terrorism. Distressingly, many of those ideas are subsequently picked up in Australia. The most recent example is a proposal floated only last week to give judges in ever lengthening terrorism trials the power to dismiss barristers or solicitors representing defendants. Such a power is anathema to those of

us who value the right of clients to select their own representation be it good, bad or indifferent. Were I to be less civil libertarian in outlook, however, the proposal might have some merit. Imagine taking a vote from the jury on whether Lo Monaco should be allowed to continue to address them beyond an arbitrary limit, say, three hours in any given case. I conducted a straw poll among the District Court judges who have visited Rockhampton in recent years. Most thought that Tony Blair was onto something worth pursuing.

I was going to say, "That reminds me of a joke". It would not of course be true. I am reminded of the joke because it is written down on the paper in front of me and because you have to put a joke in every paper so people are still awake at the end. They keep hoping you've got another one and that it can't all be this bad. I like this joke because in the last couple of years I have developed a soft spot for magistrates. It concerns two magistrates who had rather too much to drink one Friday night and were promptly arrested by the unsuspecting new policeman in town. Everyone was embarrassed when the facts emerged but bail was never in issue because each magistrate simply signed the bail papers for the other on condition that each would appear in court on Monday morning.

On Monday morning the question arose who would sit first. "I will," said one magistrate. For the sake of the story we'll call her Annette, although heaven forbid if either of our magistrates was ever seen in other than a state of perfect sobriety. Annette could see what was expected in these circumstances. "This is a serious matter, this drunkenness in a public place," She said. "However, as this is your first offence, I shall treat the matter with a great deal of leniency and place you on a good behaviour bond."

Annette then stepped down from the bench and into the dock and the second magistrate, we'll call her Bronwyn, stepped up and sat on the bench. "There is a prevalence of this type of offence coming before the courts and something must be done about it. Why, this is the second example of such behaviour that the court has had to listen to this morning. Fined $500!"

I am not sure there is any relevant moral to that story. Perhaps its message is not to push yourself forward before you can see which way the wind is blowing.

I began this address bemoaning that the past year has been one which provided so little to talk about. That is not to say it has been dull. George Cowan, Graeme Crow, John Shaw, John Taylor from Mackay and the Jeff Clark who is married to Philippa Beckinsale all successfully completed the Kokoda track in April despite continual rain. George survived to turn 40. One of our nameless magistrates turned 50. Gerard O'Driscoll became a father again and John Shaw a father-in-law. We had four new solicitors admitted in the first three months of the year although Peter Carr decided that as a solicitor he made a good bricklayer. He is a loss. He was good at both cricket and golf. Which talent will be in heavy demand if we ever take on the doctors again. The Chief Justice was here in July for the opening of the law year church service and a number of you attended what I thought was a very enjoyable dinner on the roof of the court house. The Chief justice informed me that he was impressed not only by the venue but also by the excellent company. Cameron Press has been at the bar, been a solicitor and been back at the bar all in less than a year. I wonder what it

must be like to have your brain swell, shrink and swell again in so short a period and what happens to the cranial space in the meantime? But enough of my idle daydreams. You all want to go home.

Listening to Rupert McCall has inspired me to close with a few lines of doggerel of my own which I humbly entitle, "The CQLA Conference 2006."

Once more the conference draws to a close.
What has it achieved you thoughtfully pose?
Judge Irwin attended and Presidents two.
The Chief Justice was here – that's right, in he flew.
All gathered together for the first bar-b-q.
Lectures were given - Jill saw to that too.
Murphy and Hart and our own DCJ,
So many experts with so much to say.
Not naming the others is not such a crime.
It's only because their names just don't rhyme.
We had afternoon sports and dinner at night,
And the party went on until almost first light.
Up on the Sabbath, a little bit frayed
Such is the fate of those that have played
Too long and too hard and a price must be paid.
But not wanting in stamina most people have stayed
Right through to my closing, however clichéd.
We had ballads and rhymes and the odd yarn as well
From Rupert McCall. But alas, that's the bell
That signals the end with its deep solemn knell.
And now, even I have no more to tell
So a safe trip home and to all, farewell.