QUEENSLAND COURTS

Queensland Law Society Annual Succession Law Conference

Crowne Plaza, Pelican Waters, Caloundra, Sunshine Coast
Friday, 31 October 2008, 9am
Opening address

The Hon Paul de Jersey AC
Chief Justice of Queensland

The front cover of the Conference brochure carried an atmospheric photograph of the wreck of the SS Dicky. That ill-fated vessel ran aground during a cyclone in 1893. Dicky Beach, at the other, northern end of the Caloundra strip, takes its name from the rusting skeleton of the hull.

When I was a child, annually visiting Caloundra with my family for Christmas holidays, the wreck was reasonably intact, to the point where bathers used it as a dressing shed – and remember that the 1950's were rather more conservative times. I recall a childhood fascination with the phenomenon of the large exposed wreck on the beach.

There is little apparently available in the literature as to the origins of the SS Dicky. Caloundra Tourism makes the claim that Dicky Beach is "the only recreational beach in the world to be named after a shipwreck that can be explored on the beach".

Seeing the photograph on the brochure recalled for me the lines in Percy Bysshe Shelley's "Ozymandias": "Nothing beside remains. Round the decay of that colossal wreck, boundless and bare, the lone and level sands stretch far away."

I thought it particularly apt for the organizers to include that photograph on a brochure for the Annual Succession Law Conference, although one would hope the estates with which you are concerned, ladies and gentlemen, are not destined for comparable wreckage and limited utility.

You practise in an area of the law calling for refined skills, both in relation to the relevant law itself, and in your capacity to deal with the players. I expect Dr Darzins' session will helpfully address the latter issue tomorrow morning. As to your legal skills, Mr Justice Chesterman will be providing a judicial perspective on recent succession law litigation.

I have recently heard some cases in this area myself. I sense, and this accords with anecdotal knowledge, that challenges to wills, whether in relation to testamentary capacity or family provision, are increasingly frequent these days, consistently with the larger size of estates in these robust economic times, and the circumstance that people live longer, with regrettably longer exposure to conditions such as dementia.

I am pleased to note the "advanced practice" session on "end of life decisions", especially in relation to facilitating organ and tissue donation. It is of immense social utility that the frequency of organ donation be substantially ramped up.

I am also pleased to note, in addition to the pure law sessions on solemn form proceedings and undue influence, the focus on efficiencies in succession law practice. There is no doubt, as I suggested earlier, that practice in this area of the law requires not only specialist knowledge, but special skills, if not prescience, in dealing with clients in various stages of mental and physical deterioration and decay.

This is, I sense, an area of the law in which practice can be rendered the more satisfying for its productive outcomes. There is particular satisfaction in the realization that, deploying your lawyerly talents, you have actually helped someone – beyond leaving them with a large account and a pile of papers. In my judicial capacity, I was very pleased to be able to deliver a "family provision" judgment in recent years which I am sure should have done much to alleviate the plight of a woman without privilege or means, and desperately needing help. It was a case of *Goold*, determined in the year 2005.

Ms Goold had brought an application under s 41(1) of the *Succession Act* for provision from the estate of her deceased mother. When the mother died, aged 59, she left an estate which by the time of the hearing in 2005, was worth approximately $450,000. The deceased left $140,000 to her father, and the balance to her long-term friend and neighbour, with nothing for her daughter. There was no other dependent. Neither the father nor the neighbour sought to sustain the provision made in his favour.

The applicant was at relevant times in a situation of substantial deprivation. She lived in a one bedroom former worker's cottage "left over" after the construction of the Somerset Dam. To bring it to habitable condition would cost up to $90,000. She lived a frugal existence, dependent at the time of the hearing on workers compensation payments. Her health was in precarious condition. Other serious orthopaedic matters apart, she desperately needed dental treatment which would cost almost $40,000.

There was another very sad twist to the case. When the applicant was but an infant, the deceased demanded, for reasons unfathomable, that her husband leave the marriage and take the applicant with him. That occurred. The deceased had no contact with the applicant over the following years, and had said that she did not wish to contact her. On the other hand, the applicant had desperately craved contact with her mother, and by various means sought that contact, but it was always denied. I reached the view there was no basis from which it could be suggested there was any conduct on the part of the applicant which should have disentitled her to provision.

I felt the lion's share of the estate should have gone to the applicant. I was pressed, however, with a number of cases where, notwithstanding the absence of competing claims, no more than half the estate was awarded to the deserving applicant. I was reminded of an observation by White J in a case called *Gardner* that awards in the range of 40% to 60% of the available estate were sometimes made in such circumstances, although in that case Her Honour awarded only 40%.

I reached a conviction that three-quarters of this estate should go to the applicant, with an adjustment then necessary of course in the provision for the father and the neighbour.

I said this:

> "What strikes me about the present case is the compelling nature of the applicant's claim upon the estate, seen in the context of the vastly disproportionate 'competing claims' of the existing beneficiaries. As I have said, my view is that making adequate provision for her proper maintenance and support, the deceased should have allowed her approximately three-quarters of the estate... Concluding that that provision would have been adequate and appropriate, it would not be right to shrink from varying the will to that extent because that would involve allowing an amount outside a 'range' drawn from other cases."

In the result, the father would have received approximately $34,000 and the neighbour $79,000, with the balance of $340,000 going to the applicant.

Insofar as "ranges" can be distilled from the case law in this area, I rather hoped that my award of three-quarters of the estate in that case operated to lift any applicable range. There was, I should say, no appeal. It is particularly satisfying where, applying the law, you see a beneficial and productive outcome.

I hope you experience similarly satisfying outcomes in your succession practices.

I conclude with some reference to probate, which continues to form an important and busy area of Supreme Court operations. This year saw increases in the workload of that part of our jurisdiction. To illustrate the number of probate applications received between January and May this year was 2,450. The number received in the same period last year was 2,178. From July to September this year, 1,545 probates were finalized – last year the figure was 1,478.

It is vital that probate work be conducted efficiently, consistently, and in compliance with the legislation. There is particular need for expedition in the despatch of the work. Surviving dependants must be equipped at the earliest possible opportunity for access to the financial resources to which they are entitled, and upon which they depend for their continued well-being, and probate usually arises after time has been lost in other areas, obtaining death certificates for example.

In earlier months this year, there was concern over the efficient despatch of probate applications in the Registry. A substantial increase in workload led to serious delays in the processing of the applications. The delays reached six weeks or so. We actively sought to redress that. Following a review of processes and some reallocation of resources, the turn around period was brought back to approximately a fortnight. In July, the average turnaround was 17.6 calendar days, reducing in August to 13.2 and in September to 11.4 days.

I record my gratitude to members of the Law Society's Succession Law Committee, particularly John de Groot, and other stakeholders such as the Public Trustee, for their assistance in the Registry management of the situation. You have my assurance that we are closely monitoring this aspect of Registry operations to ensure such problems do not recur.

I am aware that the Acting Deputy Director of Courts wrote recently to Dr de Groot outlining some possible streamlining of probate work in the Registry, and I expect those matters may be raised in the course of the conference. They include a change in the paper used for the grant, in the interests of economy and consistency with the Registry of Births, Deaths and Marriages; simplifying the probate process, acknowledging that most applications are straightforward; and how the progress of applications can be notified without taking Registry officers from their primary task.

Changes may have to be processed through the Rules Committee, and the comments of the members of the Succession Law Committee would of course be sought. All of this forms part of a general rejuvenation of the Registry which has been underway for the last 2-3 years. I hope you are reassured by this commitment to optimal efficiency.

In wishing you well for an interesting and productive conference, it is now my considerable pleasure to declare open the QLS Succession Law Conference 2008.