SUPREME COURT OF QUEENSLAND

North Queensland Law Association Conference, 50th Anniversary NQLA
Friday 29 May 2009
Jupiter's Hotel, Townsville
"Matters of interest to the courts and to the profession"

The Hon Paul de Jersey AC
Chief Justice

It is always a great pleasure for Kaye and me to be with you. It is especially so this year, as we celebrate the 150th anniversary of the State of Queensland, the 50th anniversary of the re-established District Court of Queensland, and the 50th anniversary of the North Queensland Law Association.

While the annual conference is the Association's showpiece presentation, the Association has always and in many ways been a force for desirable cohesion within the northern profession, a profession which dates from the arrival of Charles Beaufort Grimaldi in Bowen on 10 August 1864. Mr Grimaldi was the first solicitor to practise in North Queensland, as North Queensland historian Dr Dorothy Gibson-Wilde informs us in her interesting contribution to the excellent Supreme Court History Program Yearbook for 2008, now available for a modest charge through the Supreme Court Library.

Dr Gibson-Wilde informs us that Charles Grimaldi's father Stacey, the Marquis Grimaldi, was renowned for challenging the succession to the Principality of Monaco. Somewhat less romantically perhaps, the son Charles, on arrival in Bowen, set up his practice from a room at the Royal Hotel.

These days in North Queensland, we see substantial local professions in Cairns, Townsville and Mackay, with practitioners in many other centres as well. The people of North Queensland are well served by their lawyers.

You may be interested to know the current figures: in Townsville, 222 solicitors and 26 barristers; in Cairns, 245 and 22; and in Mackay, 110 solicitors and 3 barristers.

In his foreword to Mr Gordon Dean's interesting history to be launched by Justice Cullinane this evening, recalls Professor Geoffrey Bolton's reference to the "strong spirit of communal identification and of the belief in qualities which distinguished those living in North Queensland from the city dominated southerners". To someone from Brisbane, that spirit is palpable, and to experience it a number of times a year is enlivening. I have on previous occasions, addressing this conference over the last 11 years, related it to the comparative size of the profession from region to metropolis.

I know you will accept part of my role is to foster cohesion State-wide. My having said that, there is a particular warmth and collegiality about the North Queensland profession. I am especially impressed to note in recent times the synergy between the Office of the DPP and the rest of the profession.

I expect it is often still true in this part of the State that "a solicitor's word is his bond", an expression dating back to the 70s and before, which should now translate to "his or her bond".

In non-contentious work, there is no doubt clients benefit when the lawyers can get on productively together. Similarly in the modern approach to contentious work, with the slant towards consensual resolution. And when the matter goes to a hearing, I can assure you the judges greatly appreciate cooperation, rather than conflict, at the bar table.

In short, friendly professional inter-relationship makes practice more attractive for you; and even more significantly, it enures to the benefit of your clients, thence the public.

I remain respectfully proud of the North Queensland profession for its strong commitment to rendering optimal legal services in this great part of Queensland. An incidental measure of that respect and pride has rested in Kaye's and my determination regularly to attend the annual conference. I again congratulate the Association on its splendid work over the last 5 decades in fostering relationship, cohesion, and continuing professional development in the North Queensland profession. May I say a little more on that?

One very significant particular achievement of the Association was effective pressure for the development of the law school, assuring a reliable source of entrants to the regional local profession – those born and bred here.

Much is due to those who have led the Association over the years. I note Gordon Dean's reference to Raoul Giudes as its "giant". Raoul is no doubt one of many, with Patrick Sutton the current champion. I recall with gratitude Raoul's support for me particularly in the early 2000s:

I note from Mr Dean's photographs that it was not until the 20th century that north Queensland practitioners, being photographed, began to smile. Perhaps now we smile too much. Justices Chubb and Shand, portrayed in 1908 on page 2 of the book, could on no view be accused of smugness. Neither could Messrs Suthers, Dean, Drake, Roberts and Ryan, portrayed in 1959 on page 40. The photographic smile apparently emerged with Jim Carey in 1970 (page 44), and by then of course the Association was in full flight.

The Association has achieved much of which to be proud, and its endeavours will continue.

A current challenge is the necessary enhancement of the Edmund Sheppard Building, to accommodate especially the needs of the magistracy. Now that the construction of the new courthouse in Brisbane, years overdue, is in place, the redevelopment of the

Townsville complex takes on priority, and I will appreciate the Association's support as I continue to promote that view.

In interestingly chronicling the history of the North Queensland profession, Gordon Dean collects a lot of memorabilia to do with the Association including, for annual Association dinners, the dinner menus. They were held in the 1960s at the Hotel Allen. Mr Dean presents the menus for 1960 and 1966. The bar may allege some degree of slippage. Over 6 years, the scale of the menu diminished from 7 courses to 4; "fillet of whiting tartare and grilled spatchcock" were replaced by "fish mexicana and half spring chicken"; and, I was shocked to note, the 1966 "toast list" relegated the bar, in priority, below the law society. It is indeed significant that these days we tend to toast "the profession".

These are of course tid-bits. Mr Dean has recorded lots of truly significant matters, and for that record, we are grateful to him and his sponsor, the Supreme Court Library Committee.

I turn now to the judiciary. As I suggested at the ceremonies in Bowen on Thursday, and here in Townsville yesterday, the region has also been well served by the judiciary, since Separation, and I will now speak a little, if I may, about the role of the courts.

As you may well know, Justice Cullinane, recently honoured by admission to the Order of Australia, is the 11th Northern Judge, since the arrival of the first, Edmund Sheppard, in Bowen in 1874. The lineage is strong, including two Northern Judges who went on to become Chief Justice, namely Sir Pope Cooper and Sir James Blair, though there are doubts as to the latter's effectiveness in that role. What is accepted in relation to Sir James Blair is that he was universally well-liked.

As to Sir Pope Cooper, the Supreme Court Library collection includes a drinking glass which bears Pope Cooper's monogram. It is a water glass, not a champagne glass, and I say that because historically, Pope Cooper's term as Northern Judge is probably best

remembered for his battle with the government, and especially the Premier Sir Samuel Griffith, over reimbursement of his circuit expenses. As former Mr Justice McPherson records in his history of the Supreme Court, Griffith considered Pope Cooper unjustifiably extravagant. Cooper's predecessor, Edmund Sheppard, had been economical, but by contrast Pope Cooper, it was said, claimed even for the cost of the ice necessary to cool his champagne.

Griffith criticized the Judge in the Legislative Assembly, and the acrimony persisted for some four years until, as McPherson relates:

> "the government seized the initiative by including in the estimates a separate and reduced annual sum for the circuit expenses of the northern judge. By the time Cooper J was officially notified of it, over two-thirds of the amount allowed had already been expended. The Judge at once warned the government that when the balance was exhausted he would close his circuit and return to Bowen. The moment arrived during the criminal sittings at Townsville. Faithful to his promise, Cooper J declared his intention of ending the sittings at midday and discharging all the prisoners on the circuit list. Having first issued instructions that they were all to be rearrested, the northern prosecutor Virgil Power prevailed on the government to give an unqualified undertaking by telegram to meet all Cooper's reasonable expenses, and the sittings were resumed." (p 196)

As McPherson observes, "this retreat by the government of the day represented a victory for Cooper in circumstances in which a man of lesser determination might well have succumbed, but it damaged his public esteem. The Brisbane Courier thought he must be suffering from a 'mental ailment'."

Fortunately such friction does not these days arise. Maybe contemporary judges are more modest in their expectations. What has not changed is the determination of our courts to provide their services wherever substantially required.

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Unlike other courts within the Australian federation, the work of our State courts is accomplished in a substantial number of centres throughout the State. In that sense, the development of the courts has followed the development of the separated colony, then State.

The Supreme Court sits, as required, in 11 centres as well as Brisbane: Cairns, Townsville, Mt Isa, Mackay, Rockhampton, Longreach, Bundaberg, Maryborough, Toowoomba, Roma and Southport. There are resident Supreme Court Judges in Cairns, Townsville and Rockhampton.

Necessary decentralization, a feature of both executive government and the judicial branch in this State, extends also to the District and Magistrates Courts. More dramatically than with the Supreme Court, the District Court sits at 44 regional centres, and Magistrates Courts in 106. Consistently, of a state-wide profession exceeding 8,000 practitioners, there are substantial local professions operating in six centres: Rockhampton, Mackay, Townsville, Cairns, the Gold Coast, and Toowoomba. I should add that not insubstantial numbers of practitioners serve other major regional centres, as examples, Ipswich, Pine Rivers, the Sunshine Coast, Gympie, the Fraser Coast, Maryborough, Bundaberg, Gladstone, Innisfail and so on – roughly equating, I suppose to the "Sunshine Route" we used to learn at primary school in the 1950's. I should add reference to Mt Isa and other western centres.

Since the early days of the separated colony, there has been an acknowledgement that where practicable, courts should go to the people rather than the reverse. Two centuries ago, in the era of Edmund Sheppard and Pope Cooper, Judges embarked on greatly inconvenient journeys – on horseback and by coastal steamer – to service circuit centres. It should be noted that these days, Magistrates especially, still endure considerable burdens servicing Cape and Torres Strait communities.

I mentioned the inconveniences endured by Cooper and Sheppard. The first Northern District Court Judge, Judge Joseph Long Innes, appointed in 1865, was actually based in Gladstone, but he conducted circuits in Bowen. The Supreme Court Yearbook also includes an interesting article on early District Court Judges by former Chief Judge Pat Shanahan, which reproduces an extract from the Brisbane Courier concerning an appearance by Long Innes as counsel in a trial before the Chief Justice of New South Wales (p 10):

> "A bit of a scene occurred towards the close of the trial. The Chief Justice, Sir Alfred Stephen, objected to too close a cross-examination – implying suspicion of motives and veracity of certain detectives, who might, he added somewhat offensively, 'be as respectable as the counsel'.
>
> 'Yes, your Honour', said young Innes (a son of Captain Innes and junior counsel for the prisoner). 'Yes, your Honour, or as any person in the Court.'
>
> The Chief Justice, of course, fired up, 'Mr Innes,' said he, 'I will not permit any impertinence here'."

In relation to the basic objective, I was personally disappointed in 2002 when events conspired to prevent the trial of Mr Long, the Childers backpacker murderer, in Bundaberg, which is the closest Supreme Court centre to Childers. As I said in the course of delivering a pre-trial ruling, "recognizing the decentralized nature of the State, it is fundamentally important that a trial ordinarily proceed in the district of the alleged offence." I am very pleased to acknowledge the executive's support for court sittings in remote centres, with for example Magistrates resourced to attend remote Torres Strait centres, lest defendants endure potentially life threatening dingy trips, without their having the fuel to survive, simply because they cannot afford to buy it.

The comparative remoteness of some court centres has obviously affected, in a number of respects, the way the court proceeds. For an historical and now aging example, the court used not to sit on Easter Tuesday, so that parties and witnesses in proceedings adjourned

over the Easter period could make their sometimes arduous journeys back to courthouses without losing their break.

We have for many years been conscious of the need to avoid imposing unnecessarily on witnesses, and in putting it that way, I am sure Edmund Sheppard and Pope Cooper were similarly impelled. But in these distant lands, our experience intrigues those outside.

I recall the intrigue of some English judges when I informed them in the late 1980's that our Supreme Court not infrequently took evidence by telephone.

As we all know, technology has, in many forms over the decades, proved invaluable in the streamlining of court proceedings. I expect, before the end of my term, to see the advent of full electronic filing in Queensland courts, with appropriate accommodation of course for the situation of those without legal representation. Allowing for the nature of technological development, it would be foolhardy to seek to forecast other likely changes, but they are inevitable. Technological support greatly facilitates the dispatch of our work. Timeliness and other efficiencies would be lost, absent that support, with our contemporary case-load.

In Bowen on Thursday I noted that town was an important court centre from early in the life of the colony. That importance is not diminished, by the way, because some colourful characters have recently pretended it is Darwin.

It was in 1874 that legislation mandated there be a northern judge, to reside and carry out duties in Bowen. That was Edmund Sheppard, followed in due course by Pope Cooper. As I have said, the District Court circuits were then conducted by Judge Long Innes, styled the Northern District Court Judge, but in fact resident in Gladstone. Gladstone was north of Moreton Bay, I accept, but calling Long Innes the Northern District Judge does tend to emphasize just how very far distant from the south-east the true far north was perceived to be.

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It was in 1889 that the Northern Judge, of the Supreme Court, was moved from Bowen to Townsville, where the gold discoveries had led to a substantial population increase. And so it was that the Northern Judge moved from the comparatively grand Bowen courthouse, to the comparatively modest wooden courthouse on Cleveland Terrace in Townsville, which was the re-erected original Bowen School of Arts, ironically enough.

The title assigned for my address this morning is "matters of interest to the courts and to the profession". It was apparently felt the Chief Justice should be allowed a wide berth. I hope what I have said may have been of some interest.

In dwelling on the decentralization of the State, I have this morning tended to focus on the courts and the profession in North Queensland. You would have found that agreeable: I certainly did. But in the end, though dispersed, the Queensland profession is a relatively united and cohesive profession. Modern communications help ensure that, as does the work of the professional associations, including in the area of continuing professional development. Courts are likewise, though sitting in numerous centres, at one in mission and method. Then there is the supervening assurance that the profession and the courts are mutually supportive, which is critical to the effective delivery of justice according to law.

The people of Queensland are well served by their profession, and their courts. True it is that few members of the public take the trouble to come and watch the courts in action, but I do not think that signals any broad lack of interest. If the public takes the courts for granted, then it pays the courts something of a compliment, in betraying implicit faith in the courts' conscientious and effective discharge of their mission.

I do believe there is an abiding active public interest in the work of all State courts, and it is an interest flavoured by confidence borne of the independence, transparency and predictability of the process.

Ultimately, there is confidence in the healthy operation in this State of the rule of law, and for your important role in ensuring that, ladies and gentlemen, I express considerable gratitude.