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North Queensland Law Association Conference
Rydges Southbank, Townsville
Friday 24 May 2013, 9:25am

The Hon Paul de Jersey AC
Chief Justice

I am very pleased to be attending and speaking at, as Chief Justice, what is I believe my fifteenth consecutive conference.

However, my judicial association with North Queensland is much more long-standing. When I was first appointed to the Supreme Court in 1985, my first circuit commitment, which occurred shortly after that appointment, was a month's criminal sittings at the Edmund Sheppard Courthouse. My having appeared for the defence in only five or six criminal cases at the bar, that sittings was quite a challenge. But I got through it thanks to the substantial support of the experienced practitioners who graced my court here in Townsville.

I think it was on that circuit that I rather less responsibly managed to lose the keys to the courthouse, to the dismay of then Registrar Ray Keane. That was not the electronic era, so that the courthouse had in consequence to be completely, manually re-keyed. I was comforted when Mr Keane said he forgave me.

In those days, indeed until as recently as last August with the opening of the Queen Elizabeth II Courts of Law in Brisbane, the Edmund Sheppard building, and subsequently the Cairns courthouse, boasted facilities far superior to those of the Supreme and District Courts in Brisbane. I was very pleased that one of my first official acts as Chief Justice was attending the opening of the Virgil Power Courthouse in Rockhampton, in 1998, meaning that each of the major regional centres was served by a good quality courthouse for both courts.

Each of them now needs further attention, particularly with the technology, and the Edmund Sheppard building especially needs expansion, but limitation on government resources will unfortunately delay those developments for a time. While suggesting there is some State-wide sense of pride with the establishment of the new metropolitan courthouse, I acknowledge that we – meaning for the moment I, must be astute to promote the need for appropriate further development of the regional facilities.

In the Supreme Court, we have recently embarked on what might loosely be termed a "strategic planning" exercise, and I was very pleased when Justice McMeekin agreed to be part of the smaller emergent group of judges charged with the development of our plan for particular future action.

You may be interested to know that outside the Judges' conference room on the sixteenth level of the new Brisbane courthouse, there is a discrete gallery of photographs of the three current regional Supreme Court Judges, Justices McMeekin, North and Henry. Even in these days of easy communication, we do well to remind ourselves, in Brisbane, that we have colleagues who discharge arguably even more significant responsibility in the regional centres. I pay tribute to the resident regional Judges of both Supreme and District Courts, and to the regional Magistracy. The regional Supreme Court judges now participate in our various meetings in Brisbane by video link.

These conferences provide an excellent opportunity for interaction between the judges and the practising profession. There is no doubt the relationship between the judges and practitioners in this State is a close one, and that is beneficial – we feel free to counsel each other where we sense that improvement might be wrought.

I was pleased earlier in the year when, opening debate about possible changes to the criminal justice system, the profession responded with vigour. We should be prepared to revisit the wisdom of traditional approaches however time-hallowed, and especially so in the internet age where citizens, including jurors, have access to so much information. I expect that debate will continue.

The issue I then raised, which caught the attention of the media and aroused the interest of the profession, and it was but one of a number of interesting issues, was whether juries should be denied knowledge of an accused person's past criminal history, where perceived to be relevant. I referred to the apparently effective UK experience over some years. The question here, of course, is whether by *Pfennig* and other decisions, the High Court has set the bar so high as to defy the importance of ordinary human experience. This is not an area where the only, or even predominant wisdom, reposes in the legal profession, and the ensuing debate involved the general public.

The profession made no response to my invitation that we debate the adoption of the UK situation where a judge is entitled to comment to a jury, adversely to an accused, for advancing a case for the first time at trial. I personally do favour that position, and consistently my support for our recent practice direction about the disclosure of the defence contentions pre-trial is understandable. New South Wales has recently moved legislatively in that direction.

Our practice direction was the result of substantial consultation between the court and the profession. The court would I hope be regarded as an objective independent voice in all of this. I personally regard that practice direction as very much a first step in a journey which I hope will lead to a much more sensible result than presently obtains. My own position is that it should extend to all criminal trials, not just the very long ones, and compel pre-trial defence disclosure – though legislation would be needed for that.

At present, the defence can sit back and put the Crown to proof simply in the hope that some "t" will be left uncrossed. That is unsustainable, and I believe against the public interest.

If that practice direction does not prove effective in cementing and expanding the present culture of cooperation between the court and the criminal defence profession in particular,

then we will, as I presently feel for what it is worth, have to consider encouraging the government to enact situations such as now prevail in New South Wales and Victoria.

Since making that particular address in March, I have been approached in the street by two or three former jurors who have told me how frustrating they found it not to be allowed any enlightenment about what the prosecution must establish for proof "beyond reasonable doubt". I said in March that the current Victorian position, by virtue of that State's legislation, is desirable. I would support similar enabling legislation here.

The extraordinary pace of development over the last 20 years especially, thanks to technology, militates we must as lawyers have increasingly open and receptive minds. Look at the existing influence of things like Facebook, Google, Wikipedia, You Tube and Twitter, and that has developed in only a few years. I am not a "social media" communicator, but I do regularly employ search engines to gather information. If a 64 year old judge is doing this, what should we be apprehending as to a 30 or 40 year old juror notwithstanding judicial admonition?

In my address to the QLS Symposium in March I sought to raise a number of questions about 21st century profiles, not only in relation to the criminal justice system, but also in approaches to civil litigation and that of the courts. I will not repeat that address today. It is on the courts' webpage if you wish to read it.

I claimed then that the assertion the law is in a time-warp is ill-founded. Imagine, 30 years ago, a suggestion that – as now frequently occurs, evidence be received in a courtroom by telephone or video; or that a complainant child be permitted to give evidence from a location outside the courtroom. Technology is not only affecting, but changing the way we do things: we should be harnessing it, using video links to prisons for example to the maximum, and moving towards full electronic filing.

Full electronic filing can be established in ways which do not disadvantage unrepresented litigants or litigants without access to computers. Singapore showed us how to do that many years ago.

As to the electronic receipt of evidence from prisons, it should I think be a rare occurrence that a bail application by an unrepresented prisoner, or indeed the sentencing of a person already in custody, is not done by video link. The economies of proceeding that way are obvious.

Practitioners should not confine their attention to the receipt of evidence by telephone. Video links are easily arranged these days via Skype for example, and I am not persuaded that going that way involves security risks, recognizing that the process is fully public anyway. Parties should explore and try to agree on such processes. It is better not only to hear a witness given evidence, but to see the witness as well.

One of the number of prospects presently engaging the executive government is reduction in the transportation of prisoners to courthouses. I have for a long time felt that the optimal deployment of our substantial video capacity should mean that for most of the work in the criminal court, save for trials of course, there should be no need to transport the prisoner to the courthouse. The video transmission is of high quality these days, and proceeding that way should not prejudice the fairness of the process.

Defence counsel have referred to a need sometimes to take instructions during a sentencing hearing. Allowing for comprehensive advance preparation, that should not arise except unusually, and then the proceeding could be adjourned.

As to a victim's interest in observing a prisoner being sentenced, the quality of video transmission we enjoy these days is reasonably good, and the screen in the courtroom provides a good image of the person at the other end.

I believe that substantial savings could be achieved through this extended use of the video capacity without imperilling the justice of the process. In the period of nine months to the end of March this year, the attendance of as many as 2,586 prisoners was required in the three State courts. In fact only 2,179 of them actually went from the holding cells to the courtroom.

I have heard anecdotally that some defence lawyers may prefer to have the prisoner at the courthouse because they may thereby avoid a need to travel to the correctional centre for the purpose of taking instructions. If that is what is happening then it cannot be justified.

In this context we have, through a video-conferencing working group representing all interested agencies, established a video-conferencing pilot scheme, running from 8 April 2013 to 7 June. It is being conducted in Brisbane, involving a Brisbane firm of solicitors and the Arthur Gorrie Correctional Centre. The object is to assess the efficacy of video links as an alternate to actual prison visits. The response to date has been overwhelmingly positive, and we are exploring a broader application of the pilot.

There have been massive process changes over my 42 years in practice, and I am sure they will continue. The best course for the profession is to anticipate them and prepare for them. As I also suggested in March, one hallmark of an effective practitioner is adaptability. My own legal career began in the era of carbon copies.

In Townsville and Cairns the profession enjoys the potentially considerable benefit of regional Judges who are well-qualified by learning and experience, who are energetic, and who are committed to their regions. My colleagues the Northern and Far Northern Judges have already introduced some changes in approach, which I believe are working well. For example, I would like more commercial work to remain in the regional centres, and providing a more readily accessible applications jurisdiction should facilitate that.

I thank you, ladies and gentlemen, for your cooperation with the judiciary to ensure not only the delivery of justice according to law thence maintenance of the rule of law, which

must be a given, but also to secure what must be another given, which is making sure that what we do is accomplished in the optimal way.

As always, I use the opportunity to wish you all well in your continuing professional careers. I hope you are finding them both fulfilling and enjoyable.