SUPREME COURT
OF QUEENSLAND

Queensland Law Society Symposium 2014
Brisbane Convention and Exhibition Centre
Friday 21 March 2014, 8:50am

The Hon Paul de Jersey AC
Chief Justice

I congratulate you Mr President on an excellent, interesting and well-delivered address. It really obviates the need for mine! But I will honour my commitment.

I also recognize the Jaggera and Turrbul peoples, the traditional custodians of these lands. A central goal as Governor will be to interact with all the people of Queensland, with a special concern for our indigenous fellow citizens, recognizing the very real need to enhance their conditions and move more positively towards full reconciliation, which I take to mean full mutual respect, understanding and support.

I have just completed 16 years as Chief Justice. You may reasonably expect something apparently perceptive from me today, notwithstanding a few months are to see my translation to a very different role. I expect this will be the last occasion on which I will as Chief Justice have the opportunity to say anything substantial to so many of my colleagues drawn together.

The emphasis on a Chief Justice's being no more, on the court, than first among equals, may mask an ideal of potential leadership within the broad profession. Over my term I have endeavoured to encourage practitioners towards higher ethical standards: less commercialism more professionalism, and I remain sad that leaving the Banco Court following admission, many young practitioners will never thereafter, through face to face engagement, be reminded that their professional lineage is rooted in the court, entailing the strongest admonition to embrace impeccable ethical standards. There lies a challenge for our more senior supervising practitioners.

My other focus outside the courtroom has rested on the regional profession. I am very pleased to see a large number of regional and country solicitors here today. I am sorry if I

have overused the word “decentralized” over the last 16 years, but the avoidance of a metropolitan mindset for a Chief Justice of this State is in my opinion an absolute imperative.

Just as the courts should go to the people, and the most graphic illustration of that is the amazingly wide geographic reach of the Magistrates Court, so likewise practitioners should be present and practising in every substantial local community. This occurs, and I respectfully applaud especially our colleagues who practise where the State newspaper is not available until 11am or the next day, or where rations have to be railed in from Rockhampton. Having grown up in country Queensland, I know these stalwart solicitors are treasured by their local communities, and so they should be.

I was substantially motivated, some years ago now, to publicly oppose the then federal government’s push for national legal profession reform, by my fears over how much it would cost, and the impact of further financial imposts on sole or small firm practitioners, especially those with a limited client base, as in regional and suburban situations. We should uphold, rather than imperil, the provision of legal services in this State outside the capital.

Kaye and I have been both thrilled and humbled to meet with many of these great Queenslanders every year at the Central and Northern Law Association conferences, at which we have been made so welcome.

The practising profession, the courts…in an era fortunately now long gone, the regional courts operated with considerable detachment, exhibiting their own idiosyncratic practices and not especially welcoming of “intruders” from the south. Especially I suppose with modern transport communications and technology, the courts and the practising profession now exhibit much greater State-wide integration, and that is very much in the public interest.

Another aspect of my approach, which may have paraded under the heading “leadership”, has been my contribution to public debate about legal matters. While I have in that regard

taken a starkly different approach from that of my predecessors, I have seen it as consistent with the times. I doubt 21st century Queenslanders would be content were the leader of their judiciary to be cocooned in inscrutability, and I have believed a measured contribution publicly may enhance, not diminish, public perceptions of the office of Chief Justice and a capacity to influence good outcomes. I have accordingly delivered addresses on countless occasions, and I have been grateful to the media for courteously affording me the opportunity, from time to time, to speak to issues of topicality.

The address I gave on this occasion last year certainly provoked debate. What I raised drew on the experience of other respectable, if not hallowed, jurisdictions. Since my address I note the New South Wales parliament coincidentally reduced the scope of the so-called "right to silence" , and I think that probably reflects contemporary expectations.

The most important of the issues I raised last year, so far as I was concerned, is early disclosure of the defence position. Perhaps less important, but still important, would be adopting the Victorian template allowing judges to define "beyond reasonable doubt" more helpfully for juries. One other issue I raised last year, greater latitude in informing juries of past convictions, is obviously much more controversial, but I presently think we wise judges and practitioners may be underestimating our fellow citizens' capacity to render objective and considered results.

Whether segments of the profession like it or not, reasonable community expectations will compel active consideration of all of these issues, and sooner rather than later. Victoria, the United Kingdom, and now New South Wales with derogation of the so-called right to silence…we have traditionally here not followed, but maybe in these areas we are now actually being given a responsible lead which we should directly consider following.

I do not intend re-addressing in further detail those various possible reforms today. My message today is broader and that is that the profession must face reality and anticipate rather than necessarily repel mooted change, of course not "change for change's sake", but change which rationally will improve the health of our community and the condition of its individual citizens.

A newly-appointed Chief Justice is traditionally expected to express some vision of the legal landscape for the immediately ensuing years. In 1998, I publicly advocated expanded recourse to the methods of alternative or additional dispute resolution, mediation for example, and the more active harnessing, within the court system, of modern technology. I was not being prescient, merely realistic, and as things have turned out, each of those features has in face defined the last decade and a half.

While I continue to support mediation, I fear it may have unduly eclipsed court adjudication, and I have on other occasions expressed my basis for some concern.

The improvements in the delivery of legal services wrought by technology just cannot be gainsaid. Neither 16 years ago could they have been predicted. Who would have thought realistic the jurors in Dr Patel's trial accessing the exhibits by computer? And how sensible, convenient and economical that most appearances by prisoners in criminal cases take place by video link to the jail. I was astonished to learn of the financial savings achievable by proceeding that way, without conceivably impairing the interests of justice.

In your own offices, the last 16 years will have witnessed technological change, in terms of file management storage and research, of exponential proportion.

Change in both our procedural and substantive approaches is inevitable and unstoppable, and I hope opinion leaders within our profession will come more readily to acknowledge that, and to accept that change can in fact be a good thing. A very good simple example of that was ending the need to sequester deliberating juries. Common convenience militates in favour of letting juries separate, and subsequent experience has unearthed no risk, yet in introducing that reform, we lagged at least a decade behind the UK. And I believe expressions of outrage at the introduction of majority verdicts have proved quite unwarranted.

We need to approach reform and change with open minds, not 21st century minds nevertheless blinkered by a perception that what has been done for a long time must inevitably be right and the best way of doing things forever.

Twenty months ago, the Supreme and District Courts in Brisbane, and the litigating profession, experienced monumental change, with our move into the Queen Elizabeth II Courts of Law, for many of us a darkness into light reawakening. For those members of the public unfortunate enough to have to go to court in Brisbane, visiting this courthouse will be at least pleasant if not uplifting, notwithstanding the unfortunate business at hand. For all citizens, there is now a metropolitan courthouse of which they can be proud, and they will be, for decades to come.

That is patently beneficial development, and I mention its effect on court users and the people to remind us that as professionals, our goal is not limited to enjoying a fulfilled life in the law, and securing our families' prosperity, but more fundamentally rests in our serving our fellow citizens, by shepherding them through legal problems they cannot themselves resolve without expert assistance, and doing so ethically and efficiently.

To that end, a genuine commitment to continuing professional development is crucial. But so is a broader realization that the legal landscape will never be static, and that a positive contribution to debate over mooted change is the one which is the more likely to bear fruit.

I have been privileged to deliver an address on this occasion at, I believe, all annual symposiums since my appointment as Chief Justice in 1998. I use the word "privileged" deliberately and advisedly. The profession in Queensland fills me with pride. It is ethical, efficient and altruistic. Nationally, it is of substantial proportion, and respected. The professional associations exhibit desirable independence, and proper devotion to their members' interests. I have always regarded it as a very substantial privilege to be the putative leader of the legal profession in this State, and I hope I have in that role been able to do some good.

That you perform optimally, ladies and gentlemen, is in your own interests, and of course, the interest of the community, our public. And in commending and encouraging you, I conclude with resort to an epithet which used to be employed in reference to our profession, but in these somewhat clinical times seems to have rather fallen out of favour. As we acknowledge our goal of public service, let us recognize that ours in indeed a noble profession, and let that realization engender and maintain the high personal esteem which should justly characterize each and every one of us, as we are statutorily termed, as "practitioners", but as I prefer to say, as lawyers!