

RECOGNITION OF PORTRAIT OF SIR JAMES COCKLE
PRESENTATION OF SENIOR COUNSEL

CHRISTMAS GREETINGS

9.30AM Wednesday 16 December 1998
Banco Court

Chief Justice Paul de Jersey

On this occasion we customarily contemplate the path forward by reference to the events of the preceding year. I begin this morning, however, by going back much further, indeed to the foundation of the Court.

Some years ago, Dr Norman Behan AO, CMG, generously donated to the Court a portrait of the first Chief Justice of Queensland, Sir James Cockle, Fellow of the Royal Society. He was Chief Justice from 1863 to 1879. Until recently that portrait hung behind this Bench. Earlier this year, it emerged that that portrait was probably a sketch for a considerably larger painting, the one which now graces the wall behind us. Two great granddaughters of Sir James Cockle, who live in England, this year generously donated this larger portrait to the State Library of Queensland. This donation was arranged through the Library's Heritage Retrieval Project.

The State Library of Queensland Foundation has since arranged the portrait to be restored. We are immensely grateful to the State Library for agreeing that the portrait should hang here on permanent loan.

May I say a little of Sir James Cockle? He was appointed Chief Justice on 23 February 1863, at the age of 43 years - coming from England. Queensland already had a resident Judge, its first Judge, Mr Justice Alfred James Peter Lutwyche. His portrait, by the way, hangs in Newstead House: I would assert this courthouse is its natural home.

The appointment of Chief Justice Cockle took place at a time when Mr Justice Lutwyche's tendency to be outspoken had soured relations between the Court and the Executive. This first Chief Justice, one is pleased to note, was able to secure both peace, and the respect of his new colleague. It is said that his "strict impartiality, and reputation for orderly and convincing decisions, soon assured him the respect of the legal profession and the community" (J.M. Bennett: "Sir James Cockle, First Chief Justice of Queensland" [1972] Vol 2, No. 6 Queensland Heritage, page 4).

While, returning to England, he may not have left Queensland the heritage of a criminal code, he did, through his 16 year term as Chief Justice, in the words of the great Sir Samuel Griffith, "form by precept and example, what were to be the future traditions of the Court, and earn for the Bench that respect which ... was in the first instance acquired and can only be maintained by the personal qualities of the Judges" (Rev R Harley, Obituary notice of Sir James Cockle, "Proceedings of the Royal Society" 1896 Vol 59 xxxiii).

I should record that the other much valued portrait, presented by Dr Behan, will, in due course, I am hoping, join a collection of judicial memorabilia, together with the core of the Supreme Court Library's nationally significant rare books collection, to be displayed in a specially constructed area in the public corridor outside this courtroom. I am hoping that we may bring that project to completion early next year.

I repeat the delight of the Judges that the State Library has graciously agreed that this portrait should now hang permanently in the Courthouse which maintains desirable traditions, many of which Sir James Cockle apparently inspired and developed.

I now invite Mr Neil Roberts, President of the State Library of Queensland Foundation, to address the Court.

I now invite the recently appointed Senior Counsel to make their announcements ...

Would those Senior Counsel now please come forward to sign the roll? ...

On behalf of the Judges, I congratulate you. Your appointment denotes professional eminence, and you join a company of singularly distinguished counsel to whom an Attorney would ordinarily primarily look when considering judicial appointment.

To optimise the reliability of the selection of Senior Counsel, I did this year consult widely and actively with the Judges of the Supreme Court, the Chief Judge of the District Court, the Chief Justice of the Federal Court, and the Judges of the Family Court, together with the Solicitor-General and the President of the Bar Association. At the judicial level especially, it was a strongly collegial process. I sincerely thank the judges and all others who assisted me in this difficult task.

The number of appointees, comparatively large in light of the experience of recent years, reflects the circumstance that there were very many high quality applicants, and a number of appointments from the existing rank of Senior Counsel to the bench and elsewhere. It should not be assumed that similar numbers will necessarily be appointed in following years.

We again congratulate the recent appointees and wish them well in the discharge

of their enhanced professional and public responsibilities.

This has, in many respects, been a momentous year for the Supreme Court.

Most obviously, the composition of the Court has substantially changed, with my own appointment as Chief Justice in February, the appointment of Justice McMurdo as President of the Court of Appeal in July, the appointment of an additional Judge of Appeal, Mr Justice Thomas - also in July, and the appointment of three Judges to the Trial Division, Mr Justice Chesterman in March, Justice Wilson in August, and Justice Atkinson in September.

I am very pleased to report that the Court has worked very well collegially. That assurance aside, the best reflection is the demonstrable efficiency and dedication with which the Judges have disposed of the substantial workload of the Court.

In terms of figures, on the criminal side, the Trial Division began the year with 206 outstanding active cases: the total has reduced over the year to 175; and significantly, 92% of cases are being disposed of within 12 months of the presentation of indictment, 55% within less than three months. The civil side has shown quite dramatic improvement: the Trial Division began the year with 233 outstanding cases, now there are only 108.

Again significantly, we have reached the position where we can offer very early trial dates, within three months of readiness in most cases, and frequently more quickly than that. With the co-operation of the profession, we can improve on this yet further.

The Court of Appeal continued efficiently to dispose of its unremitting caseload. That Division of the Court began the year with 191 appeals outstanding, increasing somewhat over the twelve months to 262 at present; but cases are being heard within acceptable timeframes.

In part the Trial Division's enhanced capacity for quick resolution results from the active use of the mechanisms of alternative dispute resolution. It is the fact that fewer cases are going to trial. Last year, the total number of originating documents filed in the Court was 5,219, including 2,870 writs. Of those, surprisingly few went to judgment, only 70. That contrasts with the position three years ago, when 112 went to judgment. The trend reflects increasing interest on the part of disputants and the legal profession in more creative dispute resolution. Last year, more than 200 cases were referred to ADR, by contrast again with only 95 three years ago. And of those cases which went off to ADR, well over one-half thereby resolved, with others settling subsequently.

Acknowledging the benefits of mediation and like processes - frequently leading to consensual resolution, the speed of the process, often less expensive, the

preservation of relationships between the parties, the facilitation of continuing commercial relationships and so on - this is a worthwhile trend in the public interest, and will likely develop further: that is, more mediation and less adjudication. It also leaves the Court better able to deal optimally with the increasingly difficult cases which are coming to form, and should form, the core of its work.

During the year, events in New South Wales focussed national attention on excessive delay which has occurred elsewhere in the delivery of reserved judgments. It was reassuring when the Judges during our Easter seminar, and of our own initiative, adopted a protocol requiring the delivery of judgment in all but exceptional cases within three months of the conclusion of the hearing. This occurred well before the publicity given to the events in New South Wales. The protocol is being observed.

And so I express considerable satisfaction with the way in which the Court has disposed of its work this last year. There are Judges for whose pivotal administrative role this year I should express particular thanks: the President and Judges of appeal, for collaboratively and effectively advancing that side of the Court's operation; to the Senior Judge Administrator, for his role in important day-to-day court administration and especially his management of the civil lists; to Justice Mackenzie, for his assured management of the extremely important criminal list; and to all those Judges who have not only discharged a substantial workload of cases with such dedication, but have also participated enthusiastically in many other ways in the collaborative development of this Court on which my Chief Justiceship will always depend.

The Judges have been greatly assisted by many others: the Court Administration staff, the Registry staff, the Sheriff and his officers, the Supreme Court Librarian and his staff, the State Reporting Bureau, the Bailiffs, and officers of the Corrective Services Commission who work with the Court in its criminal jurisdiction. All court staff are dedicated and competent people who support the Judges with devotion to the public interest, and for that the Judges express appreciation.

Speaking of the collegiate spirit of this judiciary, may I particularly acknowledge the presence with us today of the Central Judge, Justice Demack. I was privileged in April to attend the opening of the new Rockhampton courthouse, and to hear strong testimony to his Honour's work in central Queensland. Indeed, the resident judges in all centres outside Brisbane perform a very important judicial role in this appropriately decentralised State. From my own point of view, I derived great benefit through visiting, in the course of the year in my capacity as Chief Justice, the court at Cairns, Townsville, Mackay, Rockhampton, Bundaberg, Maryborough and Toowoomba. I will next year visit other centres. The essential work of this Court is not confined to Brisbane.

I turn now for a moment from the actual disposition of our work, to a few matters bearing more on perceptions of how the Court fulfils its public charter.

The Court was distracted for a time, probably unduly because of the manner of reporting, by aspects of the report of the Australian Institute of Judicial Administration published earlier in the year, entitled "Courts and the Public". I have, on other occasions, questioned conclusions drawn from that report, especially those reported in the media. We have, however, for some time been concerned to implement changes which may improve the manner of presentation of the Court especially. One constructive result of the publication of that particular report has been to intensify our effort in that regard, and a committee of Judges, led by Justice Byrne, is actively exploring ways in which we can enhance the image of the Court. Demystifying the judicial process, while not reducing the authority of its judgments, is a challenge facing courts generally. As but one illustration of our own approach this year, I mention the release of the so-called "Jurors Video", now played to all jury panels prior to the selection process, designed to arm them in advance with a broad appreciation of what lies ahead. I mention also an important initiative within the Court this last year with relation to cross-cultural matters.

The Court joined a national network of court representatives focussing on the relationship between Aboriginal and Torres Strait Islander people and the court system. The network was established this year. It will facilitate the exchange of information, and foster a closer appreciation of ways of improving the administration of justice in this area. Justice White has undertaken this important additional responsibility. Other matters apart, her experience as counsel in the Mabo litigation, and subsequent experience in this area, well qualify her. The initiative is already bearing fruit. Her Honour has recently discussed with representatives of the Department of Justice and Attorney General the development of an interpreter programme covering major Aboriginal languages and the two most extensively used Torres Strait Islander languages, as well as training communication facilitators to assist counsel with Aboriginal and Torres Strait Islander clients. I mention also that the President participated in a conference in November concerning community justice groups operating in some of the Aboriginal and Torres Strait Islander communities, groups established to streamline indigenous community participation in the court process. All these developments are exciting and reassuring.

I have spoken of the level of the Court's actual performance this last year. I am confident it will improve yet further. I have spoken briefly of the need to enhance so far as possible the proper perception of what the Court does in fact achieve. I conclude by touching on one area which is indispensably linked to our capacity to perform optimally in the public interest into the future. That is the need to exploit fully the advantages which may accrue through innovative technology.

Effective use of the technology we have has assisted our reaching the current healthy state of our lists: we need now to consolidate and expand on these gains. One would be foolish to gainsay the capacity of modern technology to streamline the judicial process. In recent months, we have seen the beneficial use of Themis for viewing the civil callover list and arranging listings by email, facilities barely imaginable five years ago and productive of great efficiencies now. We do of course make use of many other modern technologies, but my observations of other systems, both within Australia and elsewhere, suggest we are lagging behind. A more adequate application of financial resources to the judicial system is necessary to allow full exploitation of mechanisms which are elsewhere becoming commonplace: computer facilities for the comprehensive tracking of cases within the system to ensure they are being properly progressed, and this means redevelopment of our current Civil Information Management System, and the earliest possible introduction of the so-called QWIC (Queensland-wide Integrated Courts) system on the criminal side; our system should be developed to provide for centralised recording of the judgments of the Court; more video equipped courts, especially in regional centres, for the reception of evidence of witnesses from remote locations where appropriate; high-tech courtrooms, allowing for the display of information electronically - as I noted occurs in Shanghai; full electronic listing of cases for hearing; the capacity to conduct appeals in substantial and complex cases electronically, with a view to avoiding wastage of paper, time, and other resources; full electronic filing of documents. The list goes on.

Some may be surprised to learn that Supreme Court Trial Division Judges presently lack even access to the educational resources of the Internet; and that no Trial Division Judge is connected to the court's computer network - so cannot share files with their secretaries, use internal e-mail, or research judgment databases. Most Judges' computers are so old they cannot access the full facilities offered by Themis.

Now I know that the Attorney General and the Director-General are aware of our concerns in this area. I highlighted them in the Court's Annual Report, and we have discussed them in person. I am confident that they are both doing their utmost to redress the deficiency. But there needs to be, dare I say it, a much more expansive approach to the funding of the courts. As I have said elsewhere, the Parliament and the Executive would be terribly wrong to ignore the importance of adequately funding the technology necessary for the progressive development of the courts. The potential consequent economies will be more than adequate compensation, and the resultant enhancement of justice is a benefit not lightly to be foregone. There is no doubt in my mind that the Parliament and the Executive increasingly must recognise the societal significance of comprehensive funding for this third arm of Government.

I thank you, Attorney, for your support of the Court, and for the support of the Director-General and her officers, without which the Court could not hope effectively to operate in an administrative sense; I thank you, Mr Gotterson and Mr

McCafferty, for the co-operation of your constituencies: I again acknowledge the integrity and competence of the profession, qualities on which the Court depends for the effective discharge of our mutual mission; and to you, Attorney, representing the public, our thanks go to the people for their support and confidence notwithstanding a popular climate of some scepticism - for their realisation and acknowledgement that this third arm of Government is indeed pivotal to the securing of personal freedom and the rule of law.

And now, reverting to the theme of this pleasant occasion, Mr Attorney, Mr Gotterson, and Mr McCafferty, to the members of the profession, and to the public we all jointly serve, my colleagues and I extend our warm wishes for a happy Christmas and stimulating and fulfilling 1999!

Mr Attorney?