THE COURTS AND THE COMMUNITY

Address to
WOMEN IN INSURANCE

8 SEPTEMBER 1999

JUSTICE MARGARET WILSON

1. It is a great pleasure, and honour, to be invited to speak at your annual general meeting.

   Directly or indirectly, insurers are involved in most of the civil litigation conducted in Queensland courts. And so I welcome this opportunity to meet you, and to share with you some thoughts on "The Courts and the Community."

2. It is just a year since I was appointed to the bench. From a personal perspective it has been a stimulating and challenging year, and I have been heartened by the support of the other judges and the profession.

3. Most members of the community never come into contact with the criminal courts (except perhaps through jury service). On the civil side, divorce and accident compensation are the most frequent reasons why people come to court.

   It is a fact that the level of public awareness of our justice system – its role in our system of government, the principles on which it is based and how it operates – is disturbingly low.

   And there is a correlation between the level of public trust and confidence in the justice system and the level of public knowledge about it.

Recently a former Chief Justice of Australia, Sir Anthony Mason, drew attention to how little many Australians know about our system of government, and advocated the re-introduction of civics courses into our schools.[1]

4. You shouldn't think that the judges are impervious to the criticisms of the justice system, and the way we carry out our function within it. Justice Sandra Day O'Connor of the United States Supreme Court said recently:-

> "In the last analysis, it is the public we serve, and we do care what the public thinks of us."[2]

5. We have sworn to uphold the supremacy of the law, and to decide cases impartially. We cannot always bend to public opinion, and it would be wrong for us to do so.

6. I want to say a little about a concept which is central to our justice system, and that is judicial independence.

In this country, judges of most courts are appointed for life (subject to compulsory retirement at the age of 70). We can be removed only for misbehaviour, and then only by Parliament. Our salaries are charged on the Consolidated Revenue, which means they do have to be voted every year by Parliament like ordinary departmental budgets. We are immune from being sued for the way we perform our work.

What a privileged lot, you may be thinking.

But the principle of judicial independence in its modern form can be traced back almost 300 years to the *Act of Settlement*, passed by the English Parliament in 1701.

The preceding period of English history, the Stuart era, was a very turbulent one. In the last 11 years of his reign Charles II sacked 11 of his judges whose decisions he did not like, and this brother James II sacked 12 in 3 years.

Although not all the judges of that era were subservient to the reigning monarch, it is understandable that parliament saw them as mere tools of the King and the King saw control of the judiciary as an essential element of royal power.[3]

The *Act of Settlement* in which the principle of judicial independence was enshrined, finally closed that chapter of English history.

7. The principle of judicial independence was not proclaimed for the benefit of the judges. It exists to serve the public.

8. To ensure the impartial application of the law, the judiciary must be completely immune from political pressure. This is how one American judge explained it to a newly appointed colleague:-

> "Ken, I was appointed by the Carter administration, having served in a position in the Carter administration. You've served in the Reagan administration; now you've been appointed by President Reagan. You will know that you are a judge when you rule against the government's position."[4]

9. In our system of government, which we have inherited from England, there are 3 branches of government, the Legislature, the Executive and the Judiciary. The Legislature (Parliament) makes the law. The Executive (the Queen, represented by the Governor, and the Cabinet Ministers) administers the law. The judiciary interprets and applies the law.

In theory the 3 branches are separate and distinct.

In practice the Legislature and the Executive have been brought together in Parliament with a system of checks and balances to ensure they carefully monitor each other.

The judiciary is the apolitical organ of government. In practical terms it is dependent on the Executive for funding and resources.

10. There needs to be a level of co-operation between the Judiciary and the Executive. But it is to be expected that there will be a level of tension, and this is not unhealthy. The Judiciary has to be constantly on its guard to maintain its independence from the Executive.

    (a) Blatant interference is unlikely. In the USSR there was a Chief Justice named Terebilov. Many of the judges during those days were known as "telephone judges." Either before a trial took place, or sometimes part way through the trial, they would be rung up by the prosecuting authorities and told what their decision should be. They prosecuting authorities took the view that after all the work they had spent on building up the prosecution case, they weren't going to run the risk of the judge making a mess of it.[5] That sort of interference is unlikely in our society.

    (b) But there is a more subtle form of interference that we have to be vigilant to guard against. Public officials are constantly being called upon to be accountable; departmental budgets are being slashed; and performance standards are being imposed.

    The funding of the courts is at a chronically low level. Albeit unintentionally, this could reach the point of interference with the independent administration of justice. This is something that has to be constantly monitored.

    Accountability is an essential part of the justice system. Proceedings are conducted in public; we are duty bound to give reasons for our decision; not only are these available for public as well as professional scrutiny and comment, they are subject to appeal. Ultimately, if Parliament is unhappy with the law as applied by the courts, it can legislate to change it.

11. Independence does not mean isolation from the community. Judges are criticised for being out of touch with the community. No doubt this criticism is based partly on reality and partly on perception.

Much of our law is judge made. Over the centuries the judges have moulded the law to meet the needs of their generations. We all recognise that we have a responsibility to ensure that the law remains relevant to the lives of ordinary citizens.[6]

Needless to say, we would not be true to our judicial oaths if we bent to every passing fad or trendy notion.

12. The courts are open to the public. You are free to come into the back of courtrooms and observe the courts in action, with very few exceptions. I encourage you to do so.

13. It is sometimes said that court procedures are archaic and that courts speak in a language that is barely intelligible to the ordinary citizen.

There is a formality and a solemnity about court proceedings. It would be surprising if there were not, given the seriousness of the matters with which we deal.

In Queensland courts, the rules of procedure have recently been completely re-drawn, so that they are now common through all levels of the courts, and expressed in simple English.[7]

We do try to ensure that those who come to the courts, whether on trial for criminal offences, as litigants in civil disputes, as witnesses, or as jurors, understand what is happening throughout the proceedings.

But there is always room for improvement.

14. The Queensland courts have a site on the internet. (http://www.courts.qld.gove.ua/). There you will find general information about the role of the courts, and an overview of the Magistrates Courts, the District Court and the Supreme Court, and of the function of the judges. Trial processes, including the jury system, are explained. There is practical information such as

addresses and other contact details for the courts, and daily court lists. There are lists of current and former judges, and lists of recent decisions. The texts of Supreme Court decisions are also available on the internet.

15. There needs to be more two-way communication between the citizens and the courts. We want to raise the level of public awareness of what we do, how we do it, and why.

Ladies and Gentleman, it is only by working together that we can hope to achieve this end. Please help us.

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[1] Newspaper reports of comments made at 17th Annual AIJA Conference, Adelaide, 7 August 1999.
[2] Quoted in Podges, J "Confidence Game" *American Bar Association Journal*, July 1999 at 86.
[3] Brooke LJ "Judicial Independence – Its History in England in England and Wales" in *Fragile Bastion: Judicial Independence in the Nineties and Beyond,* ed. H Cunningham (Judicial Commission of NSW) 89 at 97.
[4] Quoted in " 'What is Judicial Independence?' Views from the Public, the Press, the Profession, and the Politicians" *Judicature* Vol 80 No 2 73 at 77.
[5] Lord Ackner "The Erosion of Judicial Independence" *New Law Journal,* 6 December 1996 at 1789.
[6] Gleeson CJ Speech on 175th Anniversary of Supreme Court of NSW, 17 May 1999 at p5.
[7] The Uniform Civil Procedure Rules 1999; The Criminal Practice Rules 1999.