

SPEECH FOR THE LAUNCH OF THE COURT OF APPEAL PRO BONO SCHEME, Court of Appeal, Wednesday, 12 April 2000

The Honourable the Attorney-General, Chief Justice, Judges of the Supreme Court, Chief Judge Wolfe, Senior Stipendiary Magistrate Hine, the Honourable Laurence Springborg MLA, Mr Glynn, Vice President of the Bar Association of Queensland, Mr Carne, President of the Queensland Law Society, Ms Macdonnell, Director-General of the Department of Justice, Mr McEwan, Director of the State Reporting Bureau, members of the Bar who have agreed to take part in this Scheme, other members of the profession, members of the Court and Registry staff, guests.

Welcome and thank you for your attendance today, which demonstrates your interest in and support for the Court of Appeal Pro Bono Scheme.

There can be no argument as to the need for this Scheme. For some years now funding cuts to Legal Aid have meant that crisis within the Legal Aid system has only been avoided by wizardry in administration, the dedication and hard work of those working within the various Legal Aid agencies and the preparedness of the private profession to accept work at unprofitably low Legal Aid rates and often for nothing at all. Irrespective of legal aid, many members of the legal profession have long been prepared to do work "pro bono publico", for the public good, that is, lawyers have worked without charge or at reduced rates for those in need, in the interests of justice.

Complaints about the rise in numbers of unrepresented litigants feature in the Annual Reports of all the nations' courts. A major factor in this increase is cuts in funding to Legal Aid. Chief Justice Gleeson has bemoaned that 28 per cent of litigants appearing before single High Court Judges are now unrepresented; he queries whether macro-economically these legal aid cuts can be justified.

In the Queensland Court of Appeal in 1998-1999, 47 civil matters were heard where at least one party was unrepresented, up from 20 in 1997-1998; 102 criminal matters were heard where at least one party was unrepresented, up from 74 in 1997-1998, an increase of over 37%.

Since July 1999, statistics have been kept by the Court of Appeal's Research Officer on the success rates of unrepresented litigants. It is interesting to note that so far this financial year 19 of 66 unrepresented litigants before the Court of Appeal in criminal matters, or almost 30%, were successful.

The Judges of Appeal became concerned that self-represented litigants' inability to clearly articulate the real issues in their case could possibly result in injustice.

Justice Pincus raised with me his ideas for a Scheme such as this, loosely based on one he examined during a jurisprudential trip to North America. Dare I emphasise the worth of such jurisprudential travel? Independently, I had arranged to discuss pro bono work with the Presidents of the two professional organisations. Justice Pincus joined in the meeting and with the support and goodwill of all this Scheme fell into place. The Judges of Appeal in consultation with the Queensland Bar Association then invited a number of experienced criminal law barristers to place their names on the Court of Appeal Pro Bono list. There was an overwhelmingly positive response. Those barristers' depth of experience in criminal law is something which makes this Scheme special; it is against the tide of "juniorisation" seen for some years in most Legal Aid and pro bono schemes. The Scheme has been enthusiastically received by the Chief Justice, the Judges of Appeal, the Bar Association, the Law Society and, importantly, by its essential core, the barristers who have agreed to take part in it.

The Scheme will be reviewed after 12 months to assess its viability and effectiveness and to consider whether it can be extended.

The operation of the Scheme is simple. When an appellant has been convicted of murder or manslaughter and has been refused Legal Aid, the Senior Deputy Registrar (Appeals) invites the appellant to take part in the Scheme. If the appellant accepts that invitation, the Senior Deputy Registrar (Appeals) contacts a barrister on the Court's list who is available to take the case. Care will be taken to spread the load evenly, not disadvantaging those barristers whose names begin with letters early in the alphabet. The barrister may be able to work with his or her pupil or another junior barrister in the taking of instructions so that in many cases a solicitor may not be required, the Appeal Record Book providing a sufficient brief. Where a solicitors' firm is needed, the barrister will approach an appropriately experienced firm of solicitors and request them to act; alternatively, I will contact the President of the Queensland Law Society who will arrange for an experienced firm to act. All practitioners will offer their services without charge. The Scheme should ensure that the real issues in these serious cases are placed before the Court of Appeal, resulting in greater access to justice to those most at risk of lengthy periods of imprisonment.

I congratulate and thank you who are part of the Scheme for your commitment to the public good, to the Court and to your profession. Your generosity reminds us all that we are part of an honourable and noble profession prepared to place the delivery of justice before personal financial gain.

Nevertheless, this Scheme, developed to improve an imperfect situation, cannot absolve Government from its responsibility to provide adequate Legal Aid funds.

I will conclude by quoting from a response sent by one of the 25 barristers who accepted my offer to join the Scheme. It highlights the generosity of spirit of all taking part.

"the prospect of preparing a murder or manslaughter appeal for days and then being kicked around the Court of Appeal for absolutely no remuneration, seems irresistible. Accordingly I agree to take part."

Mr Tony Glynn SC, Vice-President of the Queensland Bar Association, who is one of the experienced criminal law barristers taking part in the Scheme (but who is not the author of the letter from which I have quoted) will now speak on behalf of the Association.