

Address to Caxton Legal Centre Inc, Annual General Meeting and
Launch of the 6th Edition of the Queensland Law Handbook at
Caxton Legal Centre,

28 Heal Street, New Farm, Wednesday, 11 October 2000

For most of us, mention human rights and we think of the all too numerous examples of horrific human rights violations flashed by satellite into our lounge room TVs: we witness in sanitised comfort arbitrary detention, torture and killing in exotic, far-off places like East Timor, Chechnya, the Balkans or Sierra Leone. Although some argue that particular mandatory sentencing regimes or the lengthy internment of refugees in the north of Western Australian are human rights abuses, most Australians probably feel comfortable about their country's human rights record. With some justification they feel that serious breaches of human rights only occur in other countries which do not share Australia's western democratic system, its independent judiciary, its largely efficient and incorrupt administration system, and its free and vigilant media.

They do not regard human rights as much of a domestic issue and would probably share Federal Attorney-General, Daryl Williams QC MP's view given on the ABC's AM program on 19 July 2000:

"I think Australia does have a very good human rights record and I think it bears repeating that it does. I would ask anybody who wants to criticize Australia to point to another country that has a better record. We don't have arbitrary detention here, we don't have people having their arms chopped off for supporting the wrong political party."

But as Amnesty International has recently pointed out, Australia's human rights record is far from perfect and, in any case, as Jack Kerouac says: "comparisons are odious".

Those of you here tonight, and those who are not but who have supported the Caxton Legal Service over the years, have long recognised that there have been and remain significant day-to-day human rights issues in Australia.

Fifty-two years ago, the United Nations Universal Declaration of Human Rights affirmed in its 30 Articles the inherent dignity and the equal and inalienable rights of freedom, justice and peace for all members of the human family. The Declaration affirms that all human beings are born free and equal in dignity and rights and are entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind as to race, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The Declaration was proclaimed to be a common standard of achievement for all peoples and all nations so that every individual and every organ of society can strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.

The Declaration is a great read and I commend it to you: I was pleased to note that Article 24 states that you have a "right to rest and leisure, including reasonable limitation of working hours)"!)

Human rights issues may seem clear-cut and defined when we read articles on Cambodia, Tibet or Burma, but are often less visible in our own communities, institutions, streets and parks.

Those of you working in community legal centres know all too well that human rights are daily violated in Australia: when a woman is violently bashed by her enraged and overbearing partner; when a bullying landlord intimidates a submissive tenant; when the young, the disabled, the elderly, or the vulnerable are abused or mistreated; when the unarmed and innocent cannot be protected from violence in isolated, largely indigenous communities; or whenever ordinary citizens cannot ascertain and enforce their legal rights and entitlements because of poverty or legal ignorance.

The work of community legal centres recognises these otherwise unaddressed human rights issues whether by appealing the decision of a welfare agency to discontinue payments; assisting a woman to obtain safe accommodation and a restraining order against an abusive partner; helping a client fill out a legal aid application; finding a bed for a homeless woman camped under the William Jolly Bridge; preparing a claim for criminal compensation for a child victim of sexual abuse; helping someone who feels aggrieved by the conduct of a police officer to refer the matter to the Criminal Justice Commission, assisting a client with neighbour problems or helping a disqualified driver regain his licence so he can take up a job offer. These are all in their own way real human rights issues.

Those working at the Caxton Legal Centre are often too busy organising access to a basic income, food, safe shelter and the protection of this State's commendable legal system to necessarily identify their achievements as the human rights work it most definitely is.

Caxton Legal Centre began its noble life very humbly as the Baroona Legal Service, Baroona Hall, 17 Caxton Street, Petrie Terrace in 1976 offering evening legal advice sessions from 7 to 9 pm every Monday to Friday evening. In 1983 the first edition of the Queensland Law Handbook was produced. It was updated and reprinted in 1986, 1989-1990, 1994 and 1997. Tonight I have the honour of

launching the 6th edition of this well researched, effectively presented and, importantly, accurately indexed legal tool.

Di Fingleton, now Chief Stipendiary Magistrate, in a speech at a celebration dinner for Caxton's 20 year birthday in 1996, described the first edition as "accurate, well produced and accessible in its writings on various aspects of the law affecting the lives of the majority of people"; whilst it was produced for non-lawyers, she noted it was also part of most firms' law libraries. I have been provided with a copy to enable me to launch the Handbook in an informed way; I think it would look pretty good and be useful on the shelves of the President of the Court of Appeal!

Caxton Legal Service has long been seen as at the cutting edge of developments in the law, not only by providing free legal advice and services, but in seeking positive social change and law reform. Caxton Legal Service innovatively implemented integrated legal and counselling services, sensibly adopting an holistic approach to the problems of its clients. Another commendable development was Caxton's use of volunteer law students who not only provided free bodies to share the workload, but went on to enter the legal profession instilled with the idealism of Caxton's ethos. Caxton was also early in embracing alternative dispute resolution and I note that a comprehensive section of the Handbook covers this increasingly important area for community legal services.

One aspect of human rights, access to an impartial and fair legal system is of special interest to me and I know, to you for it is at Caxton's heart. The number of unrepresented litigants who appear before the courts is a growing concern.

Complaints about the rise in numbers of unrepresented litigants feature in the annual reports of all the nation's courts. A, but by no means the only, factor in this increase, may be cuts in funding to legal aid, although at least in Queensland there has been a recent increase in some forms of legal aid funding. Chief Justice Gleeson has bemoaned the fact that 28 per cent of litigants appearing before single High Court judges are now unrepresented; he queries whether it is macro-economically sensible not to provide more generous legal aid funding.

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, a increase of over 37 per cent.

Although there is no specific data as to the reasons for self-representation in the Queensland courts, an interesting research paper was released earlier this year dealing with litigants in person in the Family Court of Australia. Most such litigants do not have legal representation simply because they cannot afford it. Recent changes to legal aid have intensified what was a pre-existing trend in the Family Court towards self-representation. Just under half of those in the sample group of

the Family Court study who had been refused legal aid were refused on grounds that were attributable to the 1997 change in legal aid guidelines. The study found that unrepresented litigants were more likely than the population as a whole to have limited formal education, limited income and assets and to have no paid employment. I am sure you do not find that surprising.

No doubt there are similar considerations amongst unrepresented litigants in other courts, including the Court of Appeal. I suspect that a further factor is that litigants are now more aware of their rights than in the past and more prepared to exercise them, even without representation. I also like to think that, at least in the Court of Appeal, the frightening experience of litigation for unrepresented litigants is slightly lessened by helpful registry and court staff and the useful information sheets prepared by the Research Officer under the supervision of the Judges of Appeal for unrepresented litigants. If I am right, this development is partly because of the work of community legal centres like Caxton and publications like Caxton Legal Centre's Queensland Law Handbook informing clients of their rights and reminding courts of their responsibilities.

Since July 1999, statistics have been kept by the Court of Appeal's Research Officer on the success rates of unrepresented litigants. As at April this year, approximately 19 of 66 unrepresented litigants before the Court of Appeal in criminal matters, or about 30 per cent, 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 Court of Appeal pro bono scheme loosely based on one he examined during a jurisprudential trip to North America. If there are any Courier-Mail journalists present, 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. With the support and goodwill of all, the Court of Appeal pro bono scheme for those charged with murder or manslaughter, but who had been refused legal aid, fell into place. The scheme was launched in April of this year. Although it is too early to address its success, the enthusiasm with which the legal profession has embraced the scheme is encouraging. This enthusiasm is demonstrated by the following excerpt from a response sent by one of the 25 barristers who accepted the offer to join the scheme:

"I) 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."

Undoubtedly many of you who have worked at Caxton understand only too well that barrister's sentiments.

What is clear from my observations of unrepresented litigants in both the District Court and the Court of Appeal is that they have a wide range of needs: for information, for advice on court etiquette, for advice on the preparation of documents, the formulation of legal argument, and the rules of evidence; they are also often in need of emotional and other practical support. Without these things there is a very real potential for injustice. It is not appropriate or possible for the Court to provide much of the support needed.

I am extremely grateful for the work done by the Caxton Legal Centre and other community legal centres, whose commitment to human rights meets, at least partially, the needs of unrepresented litigants in courts and ADR centres in Queensland.

Having just returned from the Australian Institute of Judicial Administration's biennial conference on Technology in the Courts, I am conscious that a new group of disempowered people is emerging: those who are not computer literate and lack access to computers and the internet. In time, courts will inevitably embrace the electronic filing of applications and material and access to the court's recorded transcript will be through computers. Many unrepresented litigants will need a new form of assistance with computer technology to effectively access the courts, perhaps much as in pre-Industrial Revolution times many people could only communicate in writing through a scribe.

On the other hand, technology also provides new opportunities to provide access to justice. Video links to prisons and to those in remote areas will enable centres like Caxton to extend their client base beyond those who can physically attend the New Farm premises and enable the provision of a new and much needed service to those disadvantaged by distance. Such innovative work is already being done by the Women's Justice Network.

My associate tells me the great Roman lawyer and statesman, Cicero, is reported to have said 50 years BC: "We have a natural propensity to love our fellow man, and this, after all, is the foundation of all law." It is a statement that all lawyers at some stage in their careers should reflect upon at leisure (perhaps in that leisure time guaranteed under Article 24 of the Universal Declaration of Human Rights)!

If Cicero was right and law is predicated on a love of humanity, and the United Nations Declaration of Human Rights is an accurate declaration of the inherent dignity belonging to every human being, then human rights and legal rights are so inextricably linked, that making legal processes accessible to the community and

empowering people to exercise their legal rights is not only an act promoting human rights, but is indeed the very foundation of our legal system. I am happy to observe that these sentiments, whether or not in the knowledge that they were shared with Cicero, have not bypassed the members of the legal profession who

have supported Caxton over the last 24 years. The contributors to the various editions of Caxton's Queensland Legal Handbook read like a veritable Queensland Who's Who: senior public servants, prominent barristers, including silks, senior and junior solicitors, respected academics, judges and magistrates, as well as less well-known decent human beings. Like many of those contributors, Caxton has matured and can now almost claim middle-aged success and respectability!

Community legal centres like Caxton are at the front line of this interface between human rights and legal rights. Caxton has empowered the elderly, victims of domestic violence, children, workers, single parents, indigenous people, the disabled, the poor and the legally ignorant. It has also taken on the role of community educator, law reformer and information disseminator, and has recognised its clients' diverse cultural and geographic needs, making the 6th edition of the Queensland Law Handbook as much a human rights statement as any that could be handed down by the glamorous and famous high fliers in Geneva or New York. I sincerely thank and congratulate all those involved directly or indirectly with its production, and with the production of the earlier editions. The 6th edition of the Caxton Legal Service's Queensland Law Handbook is proudly launched!