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The Role of Chief Justice of Queensland

Supreme Court of Queensland: pre-Easter Seminar 2001
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Chief Justice Paul de Jersey AC

Section 11 of the *Supreme Court of Queensland Act* 1991 prescribes the composition of the Court as a Chief Justice, a President of the Court of Appeal, other Judges of Appeal, a Senior Judge Administrator, and such other Judges as are appointed by the Governor in Council. By contrast, legislation at the time of the constitution of the Court was in terms only permissive as to the appointment of a Chief Justice. McPherson JA records, in his history of the Court, Harding J's assertion in 1893, on the eve of Griffith's appointment, that there was then no legal necessity to appoint anyone to that office (p34).

Sir James Cockle was appointed first Chief Justice of Queensland on 23 February 1863. He held the office for 16 years. The State has had 16 subsequent Chief Justices, over the 138 years of its existence - which yields an average term of 8 years! Pope Alexander Cooper has served for the longest term thus far, 18 years from 1903; and Hugh Denis Macrossan the shortest, for but one month prior to his death in 1940. Two left this office to be appointed to the High Court, Samuel Walker Griffith in 1903 as that Court's inaugural Chief Justice, and William Flood Webb in 1946, as a Justice. Two Chief Justices left office to be appointed Governor of Queensland – Alan James Mansfield in 1966 and Walter Benjamin Campbell in 1985.

It is generally perceived that the Chief Justice is *primus inter pares;* and that is so notwithstanding the Chief Justice's statutory and otherwise commonly accepted authority. (Technically, if the Chief Justice presides over an equally divided appellate bench, his opinion prevails, although that is by dint of his presiding, not his office: s41(2) *Supreme Court of Queensland Act* 1991.)

While a Chief Justice should desirably provide, among other things, a degree of intellectual leadership, the holder of the office must utterly acknowledge and uphold the independence of the other Judges. When he was sworn in as Chief Justice of the High Court on 21 April 1952, Sir Owen Dixon said, and his observation is in practice as relevant to this Court as to the High

Court: "The Court is a co-operative institution; the position of the man who presides differs little from that of any other Judge … a man's influence on the Court does not depend on where he sits."

On no reasonable view could the office of Chief Justice in this State be regarded, by a conscientious holder of it, as a sinecure. In the current era it would be very difficult for a Chief Justice to operate as merely a part-time Judge with an imposing title. The role carries with it exposure to fairly relentless pressure and a great variety of demands.

Appointment other than in the twilight of one's judicial or professional career therefore should help. It is interesting to recall that Sir Guy Green, who went on to be – I understand – a very successful Chief Justice, albeit of a smallish Court, was only 36 years old when appointed to that office in Tasmania. He served in the role for 22 years until appointed Governor of Tasmania in 1995. He was appointed Chief Justice following two years in the Tasmanian magistracy, then a matter of some national media intrigue.

Undoubtedly the critically important feature, if a Chief Justice is most effectively to uphold the office, is that he or she enjoy the confident support of the Judges of the Court, Judges working harmoniously together. It was apparently the expectation that that support would <u>not</u> be forthcoming which led Sir Julian Salomons, appointed Chief Justice of New South Wales in November 1886, to decline to be sworn in. How one seeks to earn that necessary and valuable support is largely a matter of personal style.

Retiring Queensland Chief Justices have, in their valedictory remarks, tended to emphasise these aspects. Sir Charles Wanstall, for example, said in 1982: "If I may lay claim to any virtue as Chief Justice it has been, I think, my capacity to contribute to the preservation of a happy and harmonious bench. No bench which is torn by internal strife can function as a bench should. Every Judge needs the personal support and helpful concern of all of his brothers, and without those supports , there can be no bench but only a number of individual Judges. I believe that we have a real Court and a real bench. I pray that it will continue."

Similarly, Sir Walter Campbell in 1985: "Three and a half year as Chief Justice is a short period of time, but I could not have done the little which I feel I have achieved without the support and sheer hard work of my colleagues on the bench. The unity of the Court and the spirit of harmony and co-operation which exists among its members were great sources of comfort, indeed of inspiration, to me while I was Chief Justice, and I will always remember with fondness and with gratitude the Judges who helped and advised me so readily and in so many ways."

Sir Mostyn Hanger in 1977, after six years as Chief Justice, displayed somewhat less appetite for the role. He said: "When I was appointed Chief Justice I did retain my enthusiasm for judicial work. In the year 1972 I daily sat on nine Full Courts, but I very soon found that with the other duties which had fallen to my lot to discharge, this was beyond my capacity. Inevitably some of the judicial work had to be shed and time devoted to other matters. This was work which was not to my liking and more and more I found that what had been a pleasure was becoming a chore; that I had to push myself to settle to work. This was not to be endured, and I decided to leave the bench … I do think that a Judge can be a Chief Justice for too long; that a long tenure of the office is not desirable."

Sir Alan Mansfield, departing eleven years earlier in 1966, had emphasised what he saw as an all absorbing character of the judicial role: "I have always viewed the place of a Judge as that of a servant of the State – an independent servant not of the Government, but of the State as a whole – with a duty to place judicial work before everything else, even one's own convenience. I did not measure the amount of work which I did by the amount which was done by any other Judge."

In recent history, practical fulfilment of the role of Chief Justice of Queensland has changed substantially twice: first during the Chief Justiceship of WB Campbell, with the appointment of a Court Administrator for the first time. There were then 20 Supreme Court Judges. Prior to that, the Chief Justice had necessarily to attend himself to a wide raft of sometimes fairly humble practical issues, including for example the preparation of a court calendar; and his greatest assistance was apparently provided by the Registrar.

The next substantial change came with the creation of the Court of Appeal and Trial Divisions of the Court in 1991 – then a court of 22, and the devolution of administrative responsibilities to the President of the Court of Appeal and the Senior Judge Administrator respectively.

The current statutory delineation of the Chief Justice's administrative responsibility appears in s13A of the *Supreme Court of Queensland Act 1991*:

> "(1) Without limiting the responsibilities, functions or powers of the Chief Justice, the Chief Justice, subject to this Act, is responsible for the administration of the Supreme Court and its divisions and the orderly and expeditious exercise of the Court's jurisdiction and power."

The Chief Justice's role here, while comparable with that of the Chief Justices of the other States and Territories, therefore differs from that of the Chief Justice of the High Court. Section 17 of the *High Court of Australia Act* 1979 provides that the High Court "shall administer its own affairs". There is a Clerk of the Court, required to act on behalf of the Justices in that regard. Section 46 provides then that the relevant powers of administration "may be exercised by the Justices or by a majority of them". That model is therefore, by statute, fully collegial, with no relevant residual power in the Chief Justice, which appears to be the same as the position obtaining in England and Wales.

Subsection (1) of s13A,which charges the Queensland Chief Justice with responsibility for the administration of the Supreme Court, is supplemented by subs (2) which accords the Chief Justice "power to do all things necessary or convenient to be done to perform responsibilities under subs (1)." Under my administration, occasion for the exercise of that "power", save following consultation and in accordance with the majority view of the Judges, has rarely arisen.

The role of the Chief Justice in Queensland is in fact wider than s13A, with its focus on administration, may suggest, and falls to be carried out in an era distinguished by a number of features not present even as recently as a decade or more ago, especially the extent of public accounting and high public expectations as to judicial accountability.

Some detail of what I see as my role as Chief Justice of Queensland may be drawn together under three broad headings: stewardship of the Supreme Court, leadership of the judicial arm of government, and personal judicial work, statewide.

(A) Stewardship of the Supreme Court

(i) seeking to ensure optimal administration

- monitoring trends and disposition of case loads, and method (practice directions)
- practically there is substantial "delegation" to President and SJA (each of whom has, subject to s13A, power parallel to that of the Chief Justice, in relation to their respective Divisions: s32, s60); assistance of Court Administrator
- maximum accessibility to Judges
- keeping Judges comprehensively informed (by, for example, the monthly meeting, frequent discussion, memoranda, agendas), facilitating a virtually completely collegial approach
- contact with Attorney-General (jurisdiction, aspects of administration, judicial appointments, etc)
- working of the recently established "Focus Group" (administrative policy direction); the longer standing "Judges' Committee" (judicial input re proposed legislation affecting the Court); membership of the Rules Committee, established under *Supreme Court of Queensland Act* 1991 (s118C);

(ii) identifying deficiencies and seeking to remedy them (for example, staff classifications, Brisbane courthouse, aspects of jurisdiction, media liaison)

(iii) garnering resources

- access to Attorney-General and as necessary, Premier and Treasury
- contact with Director-General
- maintenance and development of the courthouses (Statewide) including heritage considerations

(iv) promoting public awareness of the significance and the work of Supreme Court (for example, public statements and publications, other initiatives such as Rare Books, Lucinda, 2nd floor)

(v) seeking to manage problems actual and potential; "relating" to Judges, in Brisbane and regional centres; where appropriate, and subject to consultation, speaking up for a judge unfairly treated in the media, and defending the Court.

(vi) monitoring the working and adequacy of current administrative models: for example, as to financing –promoting any desirable reform.

(B) Leadership of the judicial arm of government

(i) interacting, in support of the judicial system, with heads of the executive and legislative arms of government

(ii) representing the judiciary publicly outside the courtroom

- managing the judicial/executive interface (for example contact with the Premier and Attorney-General, annual report, "Christmas Greetings", etc)
- visible representation in the public arena on official occasions (also, receiving diplomatic/consular representatives)

(iii) enhancing public awareness of the judicial role

- "use" of the media
- publicizing work of individual Judges in particular positions, or those undertaking particular "projects"
- regularly delivering public addresses

(iv) assisting, as warranted, heads of other State Courts

(v) with all Judges, actively supporting and assisting the legal profession

- Chief Justice's Consultative Committee (Brisbane)
- attending District and Regional Law Association conferences and other events, and interacting with regional professional groups
- drawing attention to professional imperatives (including presiding at admission ceremonies)
- appointment of Senior Counsel

(vi) discharging particular statutory responsibilities, for example, under Criminal Justice Act, reviewing Magistrates' transfers

(vii) interacting at the national level; upholding the State interest

- Council of Chief Justices of Australia and New Zealand
- contact with State Attorney-General (SCAG)

(viii) helping represent the Queensland judiciary internationally

(B) Personal judicial work, Statewide

(i) sitting as substantially as practicably at both trial and appeal levels (approximately 50% of my time)

(ii) sitting as much as possible (presently at each place approximately once every two years) in provincial centres outside Brisbane, with notice to local communities

I believe the Court currently operates well, and substantially because of the commendable preparedness of the Judges to join in a harmonious, collegial approach, to which they bring vast wisdom, commonsense and mutual respect. If the term of my chief justiceship to date bears a worthwhile hallmark, I think it is that, and I will strive to ensure it endures.