Launch of Queensland Public Interest Law Clearing House

Customs House

Friday 19 April 2002, 12.30pm

Chief Justice Paul de Jersey AC

I recently for the first time, in fact at the instance of my Associate, read the book "Gideon's Trumpet". It is an account of how in the 1960's a prisoner without means, denied legal representation at his trial and consequently wrongly convicted, persuaded the Supreme Court of the United States to construe the Constitution so as to oblige the States to ensure legal representation for persons charged with felonies.

Four decades on, the case for legal representation for people exploring or pursuing their rights in a complicated society is plainly even stronger.

Yet the extent of self-representation is, in this country, increasing. Apparently up to half of the matters dealt with by the Family Court involve at least one unrepresented party, and the incidence of self-representation is especially evident before the Administrative Appeals Tribunal, in refugee and immigration matters and in summary criminal matters (J Dewar and B Jerrard: "Self-representing litigants", a paper delivered to the Queensland Supreme Court Judges' pre-Easter seminar 2002).

In the Supreme Court, about 29% of litigants before the Court of Appeal are currently unrepresented, and about 10.5% in the Trial Division. The District Court is sensing an increase in self-representation in its appellate jurisdiction from the Magistrates Court, and there is a trend towards self-representation of at least one party in applications for de facto property division under the *Property Law Act* and in appeals to the Supreme Court from the Guardianship and Administration Tribunal.

Lack of legal representation warrants some modification of the usual courtroom process. Unrepresented litigants must necessarily receive additional assistance from the Judge, but with care, so as not to prejudice unfairly the represented opponent.

Similarly, unrepresented litigants are imposing substantial burdens on court registry staff, who are inevitably being strained from their traditional position of not giving advice. What is a registry officer reasonably to do when asked to file an originating document which is in hopelessly inadequate form? The compelling human response is to be helpful.

The trend towards self-representation is not explained, I should make plain, by a lack of confidence in lawyers! My own belief is that public confidence in the expertise of lawyers is high.

In a paper presented to the Supreme Court Judges' pre-Easter seminar this year, Professor John Dewar and the Court Administrator, Ms Bronwyn Jerrard, suggested four factors as contributing to the increased incidence of self-representation: reduced availability of legal aid, perceived high cost of lawyers' fees, extended reach of law and litigation, and what they termed "the demystification of law and the growth in a self-help culture through information kits, internet sites and clinics".

The last factor I find especially interesting. My own experience has been, for example, that litigants are more comfortable about appearing for themselves under the simplified Uniform Civil Procedure Rules regime. A possible consequence of our being more explanatory and forthcoming about our processes – as should occur – is that people will develop confidence about dispensing with lawyers. That will often however be misguided.

There is every reason to think that this trend towards self-representation will continue, if not increase.

One would surmise that with the limitation on legal representation in actual court proceedings, a similar limitation in respect of out-of-court matters must mean that good claims are, not infrequently, neither identified nor pursued. In principle, that is not desirable, especially where it means a lost opportunity for improvement in lifestyle, as with an injured party not pursuing a fairly arguable claim.

As the High Court has confirmed (*Dietrich* (1992) 177 CLR 292) a person is fundamentally entitled to a fair trial. Absent legal representation, that prospect obviously diminishes.

Limitations on available legal aid have become a fact of life. There are of course limits to the resources which executive government can apply in that regard, although we should not tire of encouraging the executive to be as liberal as it can. Nevertheless, the availability of legal aid will never extend to cover everything we consider reasonable, or even necessary.

But take a citizen who is seriously disadvantaged through inability to identify and process a legitimate claim, by reason of the unavailability of legal advice or representation. That must be considered unacceptable in contemporary society.

In the context of the insurance debate, I have recently spoken of what I have termed an imperative stipulation that persons substantially injured through the negligence of others are fully compensated – while not over-compensated, suggesting, for example, that any further statutory capping of compensation could – ordinarily would – work undue hardship.

We have to be vigilant to preserve these entitlements or basic rights – the right to a fair trial, the right to be compensated where injured through the negligence of others. Some compromise has to be made in the case of legal aid to ensure the former; it would be disappointing were compromise to be forced upon the public in relation to the latter, because of current emergent circumstances in the insurance industry.

Fortunately the community is finely served by a legal profession which, in a spirit of altruism, is prepared to counter, at least to a substantial degree, the consequences of that need for compromise, by the provision of legal services pro bono, or at reduced rates, for those unable from their own means to pay for them. It is with considerable pride in the Queensland profession that I acknowledge that.

This willingness is long-standing. Speculative fee arrangements have for decades ensured worthwhile claims are progressed – and unmeritorious ones weeded out early. There is no evidence known to me that “no-win, no-fee” arrangements induce unscrupulous practices.

While I deprecate US style contingency fees, I believe lawyers' speculative fee arrangements advance the public interest.

I am especially pleased, today, to seek to reinforce the Attorney-General's commendation of all who have been involved in the creation and development of Queensland Public Interest Law Clearing House. This initiative denotes a further substantial progression in the provision of legal services in this State to those who cannot afford them.

In October last year the Caxton Legal Service reached its 25th anniversary. I spoke at its anniversary conference, and then a fortnight later launched the "Mallesons Stephen Jacques in the Community" project for the provision of pro bono and other voluntary effort. I was particularly struck at the time when reminded of the substantial extent of the pro bono initiative throughout our profession in Queensland, work which does the profession enormous credit, but for which adequate public recognition has not in the past been given.

I am encouraged by the professionalism with which QPILCH has been established, and congratulate those driving it. I have every confidence that through QPILCH, Queensland's legal profession will enhance the provision of legal services to those unable to afford them from their own means, and stretch towards new even higher levels of commendable public service.