
Transcript of Proceedings

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SUPREME COURT OF QUEENSLAND

de JERSEY CJ

IN THE MATTER OF THE FIRST SITTINGS
BY THE CHIEF JUSTICE
AT THURSDAY ISLAND

THURSDAY ISLAND

..DATE 30/09/2002

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THE CHIEF JUSTICE: Ladies and gentlemen, this is the first time I have sat on Thursday Island. Indeed, it is the first time any State Chief Justice has sat in Thursday Island, but it is not the first time a Judge of the Supreme Court or the District Court has sat here, and the Torres Strait Islands have in recent years been well served by Judges from both Courts.

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I am particularly pleased to have the opportunity to sit here as Chief Justice, and I will be saying a little bit more of that in the course of the next couple of days, but there are a couple of points I'd like to make briefly now.

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My first is to note with pleasure the presence in the Court of Mr John Abednego and Mr Ephraim Bani from the Legal Service. They will, I understand, speak in a short while and I look forward to hearing what they have to say.

The second point I wish to make concerns the state-wide inclusiveness of our joint mission. Our joint mission is justice according to law, and that is for all Queenslanders, whether at Thursday Island or Coolangatta and whether administered by the most junior Magistrate or by the Chief Justice. It's a joint collaborative effort designed to ensure a safe and productive community.

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That I find myself now on Thursday Island is a matter of great joy to me and I hope of confidence for you.

I am also especially pleased to see that appearing for the Crown is its most senior representative on the prosecution side, the Director of Public Prosecutions, Mrs Leanne Clare, and this is, I believe, also the first time the Director of Public Prosecutions has in person prosecuted on Thursday Island.

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The third point I wish to make concerns the nature of our approach. Seventeen years ago when I joined the Supreme Court of Queensland, the Court's approach was relatively detached from the other participants, but now we realise that productive outcomes are much more likely if there is creative, if not lateral, contribution from both Crown and defence. We want outcomes that are beneficial for the community and the individual, and if an approach once out of the question will facilitate that, then why not try it?

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Accordingly, I am very pleased to acknowledge the contribution of the community justice groups. The ultimate objective here isn't primarily punitive incarceration where that can be avoided. The objective is solutions which are productive for the individual and thereby the community. I believe that the input of the community justice groups is helping bring that about, and I am very pleased to acknowledge that.

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Can I conclude these brief words by saying again how pleased I am as Chief Justice to be sitting here. You are a peace-loving, law-abiding community, and I am proud to present as your judicial head.

Did you wish to say something, Mr Abednego?

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MR JOHNSTON: I understand Mr Bani wanted to say something first, if it pleases your Honour.

THE CHIEF JUSTICE: Mr Bani, yes. Mr Bani.

MR BANI: Thank you, your Honour. Firstly, I would like to welcome you as an elder of the community. It's a privilege to address you this morning and your presence here is very much appreciated by all of us.

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I would like to touch on a bit of our history briefly but before that, I would like to introduce myself. In my attachment with the legal service as cultural adviser and my capacity to a level of Court I have been called upon as official interpreter.

Torres Strait historically goes back to some 20,000 years ago, when there was an ice age and around 5,000 years ago the whole area was submerged, and the results are the islands that we live on here today. There are 14 of these inhabited and communities - we have communities on each island.

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Historically, we have system of law and order in place. As I recall through our elders' information, that yes - there was a rule that put people on the right side of the road, and the justice - traditional justice system has been carried on since that time until in around 1879 when annexation came. Then we were introduced to the mandatory law system.

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The current situation is still that the laws of both the societies, the traditional law, is still being carried out or minded for by people on the traditional system that - but they are adapting to the new system in a way through education, and there is not much differences between the system because things like break and enters or stealing or adultery had existed for a long time. We had that in our traditional system before, so there is not much difference, but there are a few differences that are still misunderstood today. Traditionally, we might think it is right, but it is interpreted on the other side as a crime.

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So what I would like to see is so much of a cross-cultural education system between justice system and the traditional people to enable everyone to understand each other and come up with something agreeable and understandable so that everything can run smoothly, and that is my sort of a recommendation to you, your Honour, that there is a great need for such a program up here, for self-education via cross-cultural education.

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We have the District Court coming up here which is really good and Torres Strait is now exposed to all levels of Court. This is what I would call a feeling of security for our people seeing the judiciary of high authority and also you coming up here in your capacity as the Chief Justice.

It gives us that security and we find that law and order stands for everyone and we are answerable and we must be obedient to what is being written.

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So this morning, I once again welcome you and express to you that it is really a great pleasure, your presence here for the first time as Chief Justice, your Honour, among us and we warmly welcome you to our humble homes here. Thank you.

THE CHIEF JUSTICE: Thank you, Mr Bani. I greatly appreciate that welcome. Mr Abednego.

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MR ABEDNEGO: Thank you, your Honour. I too welcome your coming to this part of Australia, to this unique part of Australia. When I say "unique", I say essentially it's the - actually the only part of Australia that's bordering another sovereign country and sharing the common border. That is PNG up north.

In that particular area of Torres Strait, the lifestyle goes on. Although we know there's an international border which runs through a certain area in that section, the lifestyle goes on. There's still the barter and the exchange of gifts and goods still happening today, and with that strong influence there of the people saying, "We're just doing their own thing", so that has been accommodated now by the Torres Strait Treaty for that area.

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We too, although small in size, do play a very important role for Australia. Our contribution to Australia has been going back to the 1940 - 1945 war where indigenous people here were called to assist in the defence - from the northern side coming down into Australia. They were called to come and to take up arms here in Thursday Island, to leave the outer islands to an extent defenceless, all the mothers and the kids for that time - 800 able-bodied men came in and they took up arms here to defend Australia.

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At that particular time, 1945, they did not have any citizenship right until the referendum of 1967, but that was our contribution - on behalf of Australia and even today we play a role in helping out the economy of Australia in protection and defence against illicit drugs and so on, exotic diseases from outside because of our situation near another continent.

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And our contribution in maintaining that protection is done through CDEP subsidised employees. Your Honour, CDEP is, if you're not aware of, is that community development employment program under the Commonwealth where the working for the dole principle applies.

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So there's that subsidy in maintaining protection for the economy of Australia, because we regard ourselves as Australians here, and that's our contribution in maintaining the economy, the beef industry and all the farming efforts down south.

And, you know, doing all that we are here predominantly indigenous people in this area and of course, there's the culture clash, what's being influenced since the settlers have moved in. There is culture clash here in that there's maintenance of our traditional lifestyle, crossed by protocols and principles. It has been part of our identity of who we are, while at the same time trying to work in with the system - the Australian legal system. And that will be a clash that will be something that will be ongoing for a long time.

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We really need to preserve our identity and traditional practice and protocol, an integral part of the preservation, and we are trying to hopefully portray a picture to, in this instance, in this Court, and it would just be very understandable from other members that have sat on the Bench in the past recognising that co-existence, but to an extent our traditional lifestyle has not been embedded in legislation, certain legislation where we, I suppose, drive our work in this area.

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So in saying all that, we're here to, I suppose, not only welcome you, your Honour, it's more to give some sort of picture for - something that you might take on board and understand what we're standing here for, especially the indigenous people of this area, the culture clash, and we from this area trying to fit in another system and it's very hard for us at times, and - the leading up to come to the state where cases appear before you and your colleagues there needs to be that picture of understanding.

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Sometimes a defendant or person appearing before Court could be misinterpreted because of the culture clash. It's not the culture of our officers. It's from where that person comes from - a certain picture where that person can be coming from different environments. There's the time when that person becomes quiet inside. It's because many of them not understanding the question, then that silence is more a respect than anything else. To answer the question they will clamp up like the clam shell in the Torres Strait because of threat or fear is the course most likely to take.

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And the questions, not questioning the officers of the Court, it's just a question that it's to the - for the person appearing, how he answers, indeed more respond quickly to the person asking questions by not answering the question, that sort of situation. "Did you break the glass?" "No, I did break the glass" is the answer. That sort of difference in interpretation.

I have some experience in local politics, your Honour. Maybe that's why I'm raving on a bit here. But I like to put my bit in, painting a picture for your Honour to understand practically every time you see an indigenous person before you - there is a difference from where that person is coming from, not necessarily breaking any laws that we all abide by that's is important. It's the background that's important.

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I understand you've got some other meetings which will expand on the legal service, the service itself, the expansion and everybody from here, but it's important that I myself, Mr Bani and later on Bruce might have a say to paint a picture to you about the system, the co-existence of the two - Australian law and traditional law, and people have to obey laws.

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We try to maintain our culture and at the same time trying to abide by what's the mainstream state of law, and that's something that I suppose really at a disadvantage, the indigenous people, because of that co-existence or - actually the merger of cultures of into one, and the proper legal recognition - and still be the relevant legislation and that people participate more, not rather with the point of view from someone sitting on the Bench, some people benefitting the legislation.

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Now, I leave it there, at this stage, your Honour, and we'll talk more at different meetings.

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THE CHIEF JUSTICE: Yes, thank you, Mr Abednego. That was very helpful and very interesting.

MR JOHNSTON: Yes, your Honour, I'd like to make a few comments which are totally uncultural, I presume, but as this is the first time that a Chief Justice has honoured these shores, I'd like to express a reflection on some previous firsts, and it's probably not inappropriate to have some reflection from time to time.

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Firstly, the Torres Strait was partially annexed by the Queensland Government in 1872. On the 20th of July 1877 Lieutenant Chester commenced duties on Thursday Island as the first resident police Magistrate. In 1879 the total annexation of the Torres Strait was complete, and if you have some social time and ask Mr Bani how that total annexation was accomplished, you'll be interested, I'm sure.

At the same time on the mainland these were the gold rush days and Supreme Court Judges were travelling from Brisbane to Cooktown, and the last leg of their journey from Cairns to Cooktown was by horse and coach.

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I am sure that there are a lot of other firsts after 1877, but in 1974 the legal service came into operation on the island and still operates, representing the people of the Torres Strait with the services of a solicitor and the benefit of island field officers.

In 1987, as you are aware, a hundred years after the Cooktown experiences of Supreme Court Judges, Mr Justice Moynihan took evidence on Thursday Island on the extremely significant Mabo case.

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In May of 1994 the District Court presided by Judge Daly conducted its first criminal sittings at Thursday Island and such sittings have continued virtually every six months since that time.

In May 1999, Mr Justice Jones conducted the first Supreme Court criminal sittings on Thursday Island. So that was May 1999, which is three years ago, and perhaps it's a reflection of the Torres Strait community that there has not been the necessity for continuous sittings in that jurisdiction, and I am happy to advise your Honour that I have no matters of such gravity to attract your Honour's attention today.

July 2001, last year, saw the presiding of the Magistrates Court at Thursday Island by the first Magistrate of Islander heritage, Mrs Catherine Pirie.

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The Magistrates Court first presided at Badu Island in December 2001. A cynic would say that this was only 114 years after the first appointment at Thursday Island.

The Magistrates Court has sat there every three months since then and the case load has justified the process, eased the monthly workload on Thursday Island and enabled people to come to justice in their own district. The Magistrate at Badu Island has also benefited with the input from the island's eldest gentleman who sits behind the Magistrate on the dais. The mostly young islanders are confronted not only by the image of the Magistracy, but also their eldest and most respected gentleman.

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Associated with this extension of the Court jurisdiction is the development of the community justice Courts, still in the inexperienced stage but progressing with maturity and direction, the Badu Island community now has its own community Courts, and takes away a lot of the smaller matters that can be dealt with in their own community.

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Island people have for a long time, and even more so since the Badu experience, expressed hope of the extension of the Magistrates Court to the northern and eastern islands. People over the years, and even today, have put themselves at risk at times by enduring long dinghy trips at sea to meet their legal obligations. They can even depart in calm seas but that isn't necessarily the state of the seas that they're facing after an hour into their travel. It is not unusual to represent persons in this Court, your Honour, that have travelled some three to four hours by dinghy to come to Court. They face their responsibility, and hopefully they have the same journey back.

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In the history of Queensland Magistrates and Judges have endured long road trips, even on hazardous roads, on long light aircraft flights, to provide the service to isolated communities. There is no logical difference to allow communities to be disadvantaged because there is no road to travel on or because what is underneath the light aircraft is blue water rather than brown land.

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I make that comment, your Honour, because at the moment the Public Service Union prohibits clerks travelling with Magistrates to Badu Island and the Magistrates have been

assisted by non-union members. But clerks can fly to isolated Cape communities, so what is the difference? The Magistrate must fly; the solicitor must fly; the field officer must fly; the police prosecutor must fly. If the Court does not fly over the period of a year, hundreds of defendants must fly to the Court or come by sea.

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It has been expressed to me that the Courts normally follow the pressures of the police service, and there appears to be logic in that expression, but the logic may not have complete veracity if it is just adopted as a dogma. The police service in isolated communities perform many administrative processes on behalf of other departments, the Justice Department, Transport, the Main Roads Departments and other Federal agency interests, but the police service is not on the islands, so you end up with a Catch 22 situation. Perhaps the more appropriate idea is for the Justice Department to work out its own agenda for community needs and allow the police service to follow.

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These comments are made, your Honour, because it is considered that your Honour's visit is important and it is an approach by yourself to the community of the Torres Strait. You will hear from them their perceptions of justice in the Torres Strait. Most of these concerns won't be matters in your jurisdiction, but I note your Honour's comments and reference to the aspect of a joint mission, and no doubt your genuine considerations of the implementation of justice to this community would not be devoid of your high position perhaps of influence.

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Your Honour's visit is a far cry from the horse and coach journey but to a certain extent it is doing the same thing. The Justices of that time went to the area that had need at that time. Unfortunately, I would respectfully ask the judicial processes consider what are the needs of the community rather than waiting for the communities to show the needs, and perhaps your Honour's approach to this community is prospective in time rather than past in time, and can lead to community-based constructive thought processes for such a system of justice.

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Thank you for your attention.

THE CHIEF JUSTICE: Thank you, Mr Johnston. Mrs Clare, did you wish to say anything at this stage?

MS CLARE: I'll say something very briefly, your Honour. I can say that I'm very pleased to have the opportunity to appear in this courthouse before your Honour on this very memorable day.

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My office is very committed to the principle that justice should be both accessible and visible for all citizens and particularly those in isolated communities.

I also would like to recognise that the circuit to the Torres Strait has become very successful and the reason that it has become so, I think, is because of the goodwill, motivation and

energy of all of the parties involved, that is from the Courts, from Mr Johnston and the legal service, police, the community justice groups, and my office, and I think that this can only be a very good thing for the Queensland community as a whole.

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THE CHIEF JUSTICE: Thank you, Mrs Clare. Well, I'll ask that these proceedings be recorded and that a transcript be made of this. We're a small gathering in this courtroom this morning but what has been said is of interest to all Queenslanders and I'll seek to have these remarks disseminated more widely, but I will ensure also, gentlemen, that you have a copy for your island archives, as a copy will become an important part of the archives of the Supreme Court of Queensland.

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I'll adjourn now so that we can reconstitute for the purposes of the sentence.

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THE COURT ADJOURNED AT 11.13 A.M.

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