Gold Coast District Law Association luncheon
Friday 25 February 2005, 12:15pm
L'Esprit on the Water, Southport
'Topical ethical issues'

The Hon P de Jersey AC,
Chief Justice

May I say at once how much I appreciate the work of the Association, led so energetically and positively by Ted Skuse. The District Law Associations throughout the State can play a most beneficial role in informing and encouraging local professions, and this Association is notably productive: even bringing a newspaper to heel!

Ted invited me to speak today about the rule of law. But his successful skirmish with the press suggests another topic.

There is an aspect of our relationship with the media on which I would like to touch briefly today. It is a matter of great regret to me when the legal profession is condemned broadly because of the infractions of only a few. We saw this recently, provoked by the misconduct of a number of southern barristers which emerged three or four years ago. They reportedly avoided substantial tax liabilities by failing to lodge tax returns or resorting to bankruptcy. The matter was brought up-to-date recently by the reported revelation that a number of judicial officers, of all people, have defaulted in lodging their returns.

In this profession, we often speak of the dependence of the authority of courts on the respect of the people; we accept that the independent discharge of a lawyer's function assumes the confidence of the client; and we acknowledge the inherent fragility of that respect and confidence – easily fractured, profession wide, by the breaches of only a few.

There is a tendency for some who shape public opinion to seize on isolated instances of dereliction as an excuse for blackening the rank of lawyers generally, with the professional associations dismissed as merely self-serving guilds. That is not justified, and is potentially harmful to the public confidence to which I earlier referred. It is not excusable, although there is plainly an explanation, and the more graphic the breach, the less surprising the press response.

The taxation breaches, for example, were outrageous, particularly the case of *Cummins*, the New South Wales barrister who failed to lodge a taxation return for 38 consecutive years, misconduct described in the New South Wales Court of Appeal as "an inexcusable pattern of illegal conduct in complete defiance of his civic responsibilities" (2001) 52 NSWLR 279, 286). For those who may be tempted to think that tax evasion is in Australia a game which will in the spirit of things be condoned or overlooked, or who may be emboldened by that reckless claim that the payment of income tax is optional, the warning of the President of the New South Wales Court of Appeal in *Hamman* (1999) NSWCA 404, para 85 is worth remembering:

> "I emphatically dispute the proposition that defrauding 'the Revenue' for personal gain is of lesser seriousness than defrauding a client, a member of the public or a corporation. The demonstrated unfitness to be trusted in serious matters is identical. Each category of 'victim' is a juristic person whose rights to receive property are protected by law, including the criminal law in the case of dishonest interception. 'The Revenue' may not have a human face, but neither does a corporation. But behind each (in the final analysis) are human faces who are ultimately worse off in consequence of fraud. Dishonest non-disclosure of income also increases the burden on taxpayers generally because rates of tax inevitably reflect effective collection levels. That explains why there is no legal or moral distinction between defrauding an individual and defrauding 'the Revenue'. "

Another raw nerve exposed in recent times in this State, though undoubtedly not confined to Queensland, concerns solicitors' overcharging, another instance I believe of isolated default rendering the profession generally vulnerable to criticism. Every practitioner should read carefully the very recently reported decision of the Court of Appeal in *Roche* (2004) 2 Qd R 574, where we sought to define with some precision the obligations relating to such things as blended rates of charge, as to client agreements, as to the obligation to inform clients of bases of charging and so on. That was essentially a gross overcharging case. May I read this brief passage from page 585 of the report contained in the most recently issued part of the Queensland Reports:

> "Major criteria which ultimately inform the professionalism of the law are integrity, and as concomitants, honesty and reasonableness. A degree of recklessness may unfortunately have entered this field in recent times in the case of some practitioners. How, as instances, could it be conceived, as professional, to require recompense from the client, on a timed basis, for unsuccessfully seeking to telephone someone, for time spent unsuccessfully searching a file, and…for steps taken to express thanks for assistance? The legal profession must realise that to maintain its perceived professionalism, its practices must be seen as those appropriate to a profession, and not those of a run-of-the-mill commercial enterprise. There is, in short, a large role for discretion and conservative moderation, characteristics not evident in this unfortunate case."

My end point is that a practitioner tempted into misconduct, if unfortunately not concerned about his or her own position, should at least pause to contemplate the wider damage which may ensue. I speak generally, of course, and not with specific reference to the Gold Coast profession. All practitioners, state wide, should reflect on these things.

Inevitably but unfortunately, human nature being what it is, practitioners will continue to breach their ethical and other obligations, exhibiting unfitness for practice; and the profession overall will inevitably thereby be degraded. Remember the poet John Donne's lines about the dependence of the whole on each part.

But there is equally no doubt that the conscientious dedication of the vast majority will preserve our profession, and at least generally maintain the public confidence on which it depends, as well as the confidence of the judiciary, and the respect of the clients.

I am unsurprisingly protective of our Queensland profession, and reassured by the fine service it delivers to clients. On the other hand, it is important to pause from time to time to reflect about some of the matters I have mentioned here today. It is encouraging to sense the cohesion of the profession in this region, which does not signify our constituting an inward looking self-protective enclave or elite; rather, that cohesion paves the way for continual improvement in the way we do things, through collegial interaction: helping and counselling each other when necessary, and in the case of more senior and experienced

practitioners, and those who lead the local profession, assuming an appropriately avuncular role.

I began by bemoaning unduly broad criticism of the profession. It must however be acknowledged the media potentially plays an important role in relation to understanding of the work of the courts, and maintaining public confidence in their operation. It is the media which provides that glare of potential publicity, and thereby transparency, on which the legitimacy of the judicial process depends. Also, so far as deterrence works in the criminal sentencing process, the media assists by drawing attention to outcomes. Because of its public orientation, the profession must expect the scrutiny of the media. That is part of a legitimate process of accountability. One always hopes, however, for fair and balanced reporting.

There are three other specific matters I would like to raise briefly.

First, I express delight that Mr Ray Rinaudo has accepted appointment as a Magistrate at Southport. He will complement an already strong and dedicated local judiciary.

Second, in but three weeks time, the Lawasiadownunder conference will take place at the Convention Centre, with visiting registrants from many destinations in Asia and the Pacific. Associated with that conference will be an international Chief Justices' Conference attended by 30 to 40 heads from an extraordinary variety of jurisdictions, extending for example to Russia and Afghanistan. I hope you will consider registering for the Lawasia conference, if you have not already done so. The conference program is high level and challenging.

The third matter concerns the sittings of the Supreme Court at Southport, which I am very keen to see continued. Recent experience has shown that we need to have the profession actively identifying, sufficiently early, cases, both civil and criminal, suitable for determination here, and in sufficient bulk to warrant a sittings. I was surprised at the small

caseload given to Justice Mackenzie when he sat here last November. I am personally committed to maintaining this initiative, and I would be very grateful were you to bear in mind, as your cases develop, the prospect of flagging them to the Registrar if convenience favours their proceeding here. Justice Douglas will hold a sentencing day in March, and Justice Mullins, who runs the criminal list, is alive to the desirability of further periods as the year goes on.

I fear I have been far too serious for a luncheon presentation, and for that I apologize. When he invited me, Ted Skuse suggested that what I said be "seasoned with your usual anecdotes, jibes, gambols and flashes of merriment". Having always regarded myself as of rather limited talent to amuse, I was flattered by Ted's invitation that I should try. I am sorry not to have risen to your expectation, Ted, but I hope nevertheless that what I have said this afternoon, may have been of some interest.

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