

**ADDRESS TO THE MOST EXCELLENT ORDER OF THE BRITISH  
EMPIRE QUEENSLAND ASSOCIATION INC, MONDAY, 23 MAY, 2005,  
PARLIAMENTARY ANNEX**

What a pleasure and honour to be in such esteemed company as the members of the Queensland Association of The Most Excellent Order of the British Empire. The mould in this nation has been broken and they're not making any more of you, rendering you all the more special.

Before I move to more serious topics, let me share the story of my mother's OBE. She is 91 and lives independently in the Fairfield home she and my father, who died in 1977, built in the late 1960s when I was still at school. She had six children and was a meticulous house keeper. She did not work outside the house in paid employment after her marriage in 1936 and nor did she ever do any community work. She would regularly grumble as she threw up her hands in disgust at the latest drama caused by one of her children: "People have got the VC for less than I have to put up with from you kids!" She was a matriarch whose life centred around husband, home, family and a small circle of close friends and relatives, so my siblings and I were more than a little surprised when Mum announced at her 80th birthday that she'd been awarded an OBE. You've probably heard it before. Her OBE was the acronym for "Over bloody eighty"! Perhaps some of you are looking forward to a second OBE!

On a less flippant note, your President and my long standing friend, Pixie Annat, kindly provided me with a few pages outlining the history of the Order. The Most Excellent Order of the British Empire was instituted in the closing phases of the Great War in 1917 to give recognition to those who performed outstanding work in the war effort outside the civil service. Perhaps the greatest break-through was that potential recipients of the award included women. Pre-existing awards for women were almost entirely confined to the Royal Family, the aristocracy and some Indian princesses, although the exceptional Florence Nightingale had managed to be appointed to the Order of Merit in 1907.

The innovative nature of the Order of the British Empire to include women was a sign of the times. The medal of the Order of the British Empire was first instituted in 1917, the year before an overwhelming majority of the UK parliament (385 to 55) passed the Representation of the People Act 1918 (UK), giving women of property over the age of 30 the right to vote and stand for parliament, and men over 21 (or 19 if having seen active service) the right to vote. Women over the age of 21 did not obtain the right to vote until 1928 with the passing of the Representation of the People (Equal Franchise) Act 1928 (UK).

On this issue at least, the child was more advanced than the mother in that most Queensland women over 21 obtained the right to vote in Queensland elections in January 1905.<sup>1</sup> You will note my qualification by the use of the word "most". This is because Indigenous people had been specifically excluded from voting in Queensland in 1885. Incredibly, Indigenous Queenslanders did not receive the right to vote until

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<sup>1</sup> *Elections Acts Amendment Act 1905 (Qld)*, s 9

1965.<sup>2</sup> Even then, it was an offence to encourage Indigenous people to enrol to vote and enrolment did not become compulsory until 1971.<sup>3</sup>

When women first became eligible to join The Most Excellent Order of the British Empire in 1917 and 1918, women were not only gaining the right to vote but also becoming eligible for the first time to practice as lawyers. It often surprises people to learn that, before enabling legislation, the term "person" in statutes throughout the western world authorising admission to the legal profession was widely understood not to include women. In 1913 in England, Gwyneth Bebb, Karin Costelloe, Maude Ingram and Lucy Nettlefold applied to the Law Society for permission to sit for the law exams. The Law Society refused their application because they were women. The four brought an action against the Law Society asking for a declaration that they were each a "person" within the Solicitors Act 1843 (UK). Their cases were dismissed at first instance and on appeal because, by inveterate usage, the term "person" in that Act had never included women; if the law was to be changed, it was a matter for parliament not the court.<sup>4</sup> I do not know whether Miss Bebb's pioneering efforts were recognised by the conferral on her of an honour under The Most Excellent Order of the British Empire. In any case, she was successful in having the UK parliament pass the Sex Disqualification (Removal) Act 1919 (UK) which permitted women for the first time to enter the legal profession as either barristers or solicitors.

Once again, the precocious child, Queensland, was ahead of its mother country, England, with the passing of the *Legal Practitioners Act* 1905 (Qld) which unequivocally allowed women to be admitted as barristers or solicitors. The centenary of the passing of that Act will be celebrated on 9 November this year by a ceremonial sitting of the judges of the Supreme Court which, we hope, many members of the profession and the public will attend, by an exhibition curated by the Supreme Court Library in the Supreme Court's Rare Books Room Precinct, and the launch of a book celebrating the history of women in the law in Queensland.

The *Legal Practitioners Act* 1905 (Qld) was an important and logical extension of the right of women to vote. This is because an independent legal profession plays a vital role in a democracy, ensuring that every citizen has access to the rule of law, which provides equal justice for all regardless of gender, race, skin colour, religion, power or wealth. Independent lawyers are duty bound to protect and pursue their clients' rights, unswayed by the power, privilege or wealth of others, in independent courts and subject only to the law and their professional duty to the court. This may sometimes mean being an advocate for the least popular and least attractive members of society against governments, the rich and powerful or populist views. It may also involve defending the independence of the judiciary without which individuals could not enforce their legal rights against governments or the rich and powerful. The right of women to be admitted as lawyers was an essential step in enabling women to exercise their full democratic rights. Both democratic institutions and the lives of men and women making up the democracy have consequently been enriched through the contribution of women to the independence of the legal profession and the jurisprudence upon which the profession and the courts act.

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<sup>2</sup> *Elections Act Amendment Act* 1965 (Qld), s 4.

<sup>3</sup> *Elections Act Amendment Act* 1971 (Qld), s 6.

<sup>4</sup> *Bebb v Law Society* [1914] 1 Ch 286.

As we Queenslanders celebrate two important centenaries in 2005 (women's right to vote and women's right to be admitted as lawyers) it is interesting to note that an ancillary development was the establishment of The Most Excellent Order of the British Empire, recognising for the first time meritorious service irrespective of rank or gender.

I have mentioned the importance of an independent judiciary as a part of democratic government, and would like to briefly expand on the work of the Queensland judiciary. I was privileged in 1998 to be appointed President of the Court of Appeal Division of the Supreme Court of Queensland. This is a stimulating and demanding role. The jurisdiction of the Queensland Court of Appeal is diverse, covering both civil and criminal appeals. For most purposes, the Court of Appeal is the final appellate court, as special leave is needed to appeal to the High Court, the ultimate Australian appellate court. Every case is unique, with its own challenges; it is always important to those directly or indirectly touched by it. The work is often intellectually rigorous. My role as President of the Court of Appeal provides an opportunity to play a part in the good government of Queensland, for while the courts are fiercely independent of the legislature, it is not always appreciated that the courts and the judiciary are themselves an arm of government.

Every magistrate and judge in Queensland brings to the bench not only their legal qualifications and professional experience, but also their personal attributes and unique life experiences. In 1990, there were no women judges or magistrates in Queensland. Today there are 21 women magistrates from a bench of 85; 6 women District Court judges from a bench of 36 and 7 women Supreme Court judges from a bench of 24. Four magistrates have an Indigenous or Torres Strait Island background. A number of judicial officers are first or second generation migrants. Increasingly, the composition of the judiciary reflects the qualifications and talents of our multicultural society of Indigenous and migrant Australians, in which women are playing their rightful role, a change not unlike that realised with the institution of this Order in 1917.

This diverse body of men and women, the Queensland judiciary, is enthusiastic to ensure the public understands its important constitutional role as an independent arm of government to which individuals can turn to impartially enforce their rights against other citizens, corporations or the State. The courts are proud of their tradition of openness and encourage the public to exercise their right to attend court hearings or visit the court precinct. Some of you may wish to do so on Queensland Day, Monday, 6 June between 9.30 am and 3.00 pm when regular 45 minute tours of the court will be conducted. I have circulated flyers about the Queensland Day tours and warmly invite you to participate.

Judges, like others in modern public life, are frequently criticised in the media. Judges are most often attacked about the sentences they impose, and are frequently said to be out of touch with the community and its values. That criticism is not always fair or informed.

Please do not think that I am anti-media: the media plays a crucial role in democracies like Australia. I have enormous respect for those journalists who fearlessly and

impartially scrutinise all arms of government, including the judiciary, in the interests of the protection of democracy and better government. Time and again throughout the world, when the pillars of democracy are shaken, the first casualty is the free press and the brave journalists who work to defend it. Inappropriate judicial behaviour should be exposed to the public by a vigilant media. In the long term, this can only result in a more accountable, stronger and better judiciary. But if the community is well-served by its judiciary, as in Queensland, it is essential that the public has confidence in it. Unfair reporting can wrongly undermine that confidence.

Generally, the quality of reporting in Queensland of legal cases by the print media is reasonably responsible, accurate and fair. But certain elements of the media, particularly some talk-back radio shows, find irresistible the easy target of a judge's or magistrate's sentence and unfairly snipe at it. It is not demanding, investigative journalism to state only some facts and conveniently ignore others so as to make a sentence for a crime of human interest appear peculiar and to invoke a strong public reaction and media-pleasing controversy. A victim, or the victim's family, will often, understandably, feel aggrieved, even by a measured and appropriate sentence. A judge must balance on the one hand society's and the victim's interest in punishment and deterrence and on the other, society's and the offender's interest in rehabilitation. Unfortunately, complex issues such as sentencing, which turn on the unique facts of a particular case, are too often trivialized by cries for the appealingly simple solution of heavier penalties.

Heavier penalties do not always provide the answer. The punitive treatment of Germany after World War I in the Treaty of Versailles created a milieu of resentment and injustice in which Hitler and Nazism flourished; it is now recognised as a major cause of World War II. Where appropriate, salutary punishment should be tempered by rehabilitative considerations. Interestingly, the prison sentences imposed in common law countries like the UK, USA and Australia are considerably heavier than those imposed in Western Europe. I do not perceive that Western European societies are less safe than those in the UK, USA or Australia.

I believe that, in the great majority of cases, if the public had access to all the information placed before the sentencing judge, they would appreciate these competing interests and understand why a judge imposed a particular sentence. The correctness of this view is borne out by case studies which have found that the hypothetical sentences imposed by lay people with full details of the case were the same, or more lenient, than the actual sentences imposed by judges.

Although judges should never be influenced by knee-jerk, uninformed public opinion, they are responsive to sensible, informed, community ideas about justice. Over my 29 years in the law, I have seen a significant increase in penalties for dangerous driving offences, offences involving sexual abuse of children and offences of physical violence, especially armed robbery and domestic violence. There have also been important improvements in the practice and procedure relating to the giving of evidence by children and by complainants in sexual cases. The thoughtful, informed views of Joe and Gina Citizen do count.

It is important to understand that judges give reasons in open court for the sentences they impose. A sentence which is plainly too lenient, too heavy or otherwise

inappropriate, or which is unjustifiably inconsistent with comparable cases will be corrected on appeal. The Court of Appeal encourages quality reporting of cases by ensuring all branches of the media and the public have immediate access to its delivered judgments. I urge you when next you hear or see a media report about a sentencing matter before my Court, the Court of Appeal, which you think seems odd or just plain crazy, go to the courts' website, [www.courts.qld.gov.au](http://www.courts.qld.gov.au) (it is on the flyer), follow the prompts, read the judgment and reach an informed opinion. If you are interested in the justice system, visit the courts in person or virtually: they are your courts.

Thank you for inviting me to meet you at your annual luncheon. On behalf of the judges and the community, thank you for your extraordinary community service recognised by your membership of the Queensland Association of The Most Excellent Order of the British Empire. The Order was formed with the vision of recognising noble service and merit, and with equality and inclusiveness in mind – qualities every bit as important at the beginning of the 21st century as they were at the commencement of the last.