



CHRISTMAS BREAKFAST – QUEENSLAND LAW SOCIETY
Hilton Hotel, Brisbane
Friday 2 December 2005, 7am
‘The year in review’

**The Hon P de Jersey AC,
Chief Justice**

I have interpreted my topic “The year in review” to refer to our year in the profession. I will accordingly avoid discussion of tsunamis, avian flu, terrorism – and for that matter anti-terrorism legislation – I was tempted to mention Graham Kennedy, but lack the necessary wit: and “only bores are brilliant at breakfast”. I need no encouragement to avoid what used to be called the Morris enquiry: ample has been said of that already: did I say more than ample?

Our year in the law has been a mixture of comfort and discomfort, with however resilience the abidingly evident feature. Let me talk for a few moments about the profession, and then the courts.

The Queensland profession continues to grow quite dramatically. There are presently 6,396 solicitors with practising certificates and 865 members of the Bar Association. That shows, you may be interested to know, an increase overall of 49.5% (47% for solicitors and 52% increase for barristers) over the last decade. And new entrants abound. So far this year, the Court of Appeal has admitted as many as 530 new practitioners. Last year the figure was 690. Of course their destinations are diverse: pure legal practice could not accommodate regular injections of that magnitude.

But for those entering practice, one hopes optimistic expectations are not dashed. I hear of some young practitioners soon losing heart and leaving the profession, when subjected to the demands of firms driven to meet high overheads and display competitive edge. I not infrequently plead for balance and measure in professional life. Quite apart from the wellbeing of practitioners and their families, a client is generally not well-served by a solicitor harried into a rut by professional pressures.



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This last year saw the first full year of operation of the *Legal Profession Act 2004*, and the new regulatory and disciplinary regime it established. I note from the Legal Services Commission's report that it finalized 502 conduct complaints following the commencement of the new legislation. Only 1% of those were referred on to the Legal Practice Committee, and only 3%, the more serious matters, to the Legal Practice Tribunal. In the years pre and post the new legislation, the number of conduct complaints rose by 153 to 818. That suggests greater awareness of the avenue for complaint, and I suggest greater confidence in the processing of complaints. There has not been any notable increase in the extent to which disciplinary orders, fines, suspensions and striking off has been necessary.

This data confirms the assumption I have previously felt and expressed: that Queenslanders are fortunate to have a legal profession of high efficiency and ethical commitment. The other dimension of the new regime, though, is that with the establishment of the Legal Services Commission, and the court as the Legal Practice Tribunal, (the disciplinary body for serious cases), the public undoubtedly now has greater confidence in the fully independent and objective treatment of the complaints they make.

The year also saw the first full year of operation of the new Continuing Professional Development scheme. The compulsion to satisfy the requirements of the professional associations has meant astonishingly large attendances at conferences, and not just those held at Noosa and Port Douglas. I note by the way the Queensland Law Society annual symposium has not yet been held at Cable Beach. Some annual events I have attended over recent years had become a tad listless: now they bristle with huge attendances, not only at the conference venue, but at conference sessions. This is very refreshing. So is the increased popularity of the Law Society's Specialist Accreditation Programme. I understand, by the way, that listening to me this morning attracts, what is it ... a tenth of a tenth of a CPD point? But you have not come to score points: neither have I.



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The year witnessed an ever expanding commitment in the profession to pro bono work, with one firm even appointing a partner exclusively devoted to this commitment. The Queensland Public Interest Clearing House continued some very good work in this area, with a number of commendable projects – the homeless person's legal clinic, the refugee and immigration legal support project, a consumer law advice clinic and an administrative law clinic. There are now 27 firms of solicitors and 29 members of the Bar affiliated with QPILCH, and I commend them all.

I think it is interesting that younger solicitors, from large firms particularly, enjoy secondment to the pro bono programmes, in that it exposes them to much greater diversity in their work than their ordinary daily diet allows. It is regrettable the pro bono commitment within the profession is not more widely acknowledged.

It is humbling to realize we are all part of such an enduring institution. The Supreme Court will reach its sesquicentenary in the year 2011. I wonder (Attorney) if we will have a new courthouse by then? We were reminded recently, in fact on 5 November just past, that it is now 100 years since women were first given the right to be admitted to the legal profession in Queensland. Our ceremonial sittings, by the way, at which we celebrated that anniversary, was attended by more than 300 people.

Now the courts: well predictably, unremarkably, reassuringly, they have continued reliably to dispose of their relentless caseloads.

The goal of the courts must be, in large measure, to secure predicability of outcome. A solicitor should be able to advise the client at the office with reasonable certainty as to the likely outcome of litigation – subject always to findings on disputed facts. Likewise, the sentences imposed in the criminal court should be reasonably predictable – not too high, not too low. The public would generally, I think, applaud the courts for their predictability



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rather than their startling surprises. What did Evelyn Waugh say – that he preferred people he knew well – they were totally predictable and boring so that he didn’t have to listen to them.

Most of the work of the courts passes without fanfare. This year some high profile work attracted a lot of public comment and analysis, some of it destructively critical to the point where I became concerned over risk of erosion of public confidence. Some quite intemperate criticism was published, for example, following the courts’ effective determination of the Morris enquiry.

But I believe public confidence in the courts of law survives undiminished. The resilience of this system is consistent with the public’s confidence that the right result will prevail, if ultimately.

And as to the extent of interference on appeal, the rate of success on the part of appellants remains relatively low, in the context of the vast amount of work daily accomplished in the courts State-wide; and as a measure of that vastness, we should remember that 24 Supreme Court Judges sit in 12 centres, 36 District Court Judges in more than 40 and about 90 Magistrates in more than 100.

When I speak of predictability, and our work passing without fanfare, our continual progressive refinement of the processes should nevertheless be acknowledged. This last year saw the production of our “Equal Treatment Benchbook”, a guide to fair treatment of all litigants whatever their diverse circumstances, available on the courts’ webpage; we commenced a jurors counselling programme, a debriefing from professionals for jurors emotionally disturbed by the experience; we established at Brisbane a vulnerable witness suite, for the giving of evidence remotely, for which the Director-General kindly provided more than \$400,000. And we continued with our public outreach programme: to illustrate,



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more than 400 members of the public attended the Supreme Court on Queensland Day – voluntarily.

Interest in the work of the courts is probably more acute than one is inclined to think. The courts’ webpage, for example, continues to be a focus of professional and public attention. Last year it registered more than 850,000 hits.

Mind you, as Judges, our role is not necessarily well understood, even by the supposedly well informed. I heard of a cocktail party at Windsor, where a High Court Judge was introduced to the Queen Mother. “What do you do?”, she eventually asked. “I am a Judge, Maam.” “Oh”, came the query, “Of dogs or horses?”

There is no doubt that the best lawyers, the best Judges, are those who continue growing after they join the profession, the court; and that is fostered by not allowing the law to consume one’s entire life. We should all strive to live and learn and to know “what it is we do not know is incorrect” (Hon W A Bablich: “Reflections on the Art and Craft of Judging”).

In terms of being up-to-date and accessible, there is of course a bound beyond which a Judge must not go. The Judge must in the end remain an authority figure, not one of “a pack”. We must resist the temptation to foster undue familiarity. On the other hand, some Judges – of course in other jurisdictions – have trespassed beyond the bound by perversely effecting an ignorance of pop culture, for example. In the end, it is a question of balance. Most Judges would immediately grasp the point of an old cartoon published in Punch magazine, with the RAF chaplain propping up the bar: “What I cannot stand about the Padre, “ says one pilot officer to another, “is his unholier than thou attitude.”

The greatest contemporary challenge for our courts is levelled by the extent of self representation by litigants – currently about 30% of all cases in the Court of Appeal for example. That is a recent phenomenon. The long enduring albatross remains, which is



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the inaccessibility of justice, particularly on the civil side with the cost of litigation and the general unavailability of legal aid in that arena. We strive in the courts to streamline our processes to enhance accessibility: the embrace of mediation and other mechanisms of ADR, and the extension of technology, through electronic set downs, e-Chambers, the Internet generally, video recording and so on, have gone a long way in that regard. But civil litigation in the Supreme Court nevertheless would remain financially beyond the capacity of most people, and that is greatly to be regretted.

On behalf of the Judges I should express gratitude for the cooperation of the profession in ensuring that the courts dispose of their caseloads with efficiency, and as I have been saying, predictability.

I come finally to our host this morning, the Queensland Law Society. The Society has, over the last year, reshaped itself and redefined its relevance. Its structure is leaner, and its reach clearer. I particularly applaud its more pronounced regional commitment. The Society is there to assist solicitors in amazingly diverse circumstances throughout the State, from the solicitor who does the run with the Magistrates around the Indigenous communities in the Cape, to the solicitor on the 27th level of the Riparian Plaza, not forgetting, in between, my civilized friends in Maryborough who close the doors at 12.30 and go home for lunch with their spouses.

The image of solicitors was tarnished some time ago by negative publicity concerning the handling of complaints, and by the serious ethical dereliction of a small number of practitioners. But that is now, as I say, some time ago. Moving around the State and speaking with those who interact with the courts and the profession, I am convinced the legal practitioners of this State are held in high regard.

But what may not be sufficiently understood is the importance of harnessing expert legal services at an early stage, before a problem escalates. Some people, also, may too



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readily conclude their problem does not need expert involvement. Others may mistakenly believe a solicitor need be involved only where millions of dollars are at stake. Experience shows that what may appear relatively straight forward is, not infrequently, deceptively so.

I am accordingly pleased today to launch the Society's State-wide campaign, "Solicitors – your experts in the law". We will shortly see publicity by highways around the State, on Brisbane buses, in high traffic areas like Central Station. The people will be reminded that solicitors are not only experts in the law, but are approachable, friendly and accessible human beings: male or female, youthful or mature, and from a broad range of ethnic backgrounds. And the public will be reminded of the vast array of situations in which professional assistance is not only warranted, but essential.

It is with great pleasure, therefore, that I launch this, the Society's most recent progressive initiative. And in concluding now, ladies and gentlemen, I wish you all a restful, reinvigorating and safe Christmas season.