

***SPEECH AT THE 2006 QUT FACULTY OF LAW PRIZES
CEREMONY CELEBRATING THE OUTSTANDING
ACADEMIC AND COMMUNITY ACHIEVEMENTS OF QUT
LAW AND JUSTICE STUDIES STUDENTS DURING 2005***

QUT, GARDENS POINT CAMPUS, 15 MAY 2006

by the Hon Justice Margaret McMurdo*

The Hon Professor Michael Lavarch, Dean, QUT, Faculty of Law and Justice Studies, Ms Sheryl Jackson, Head, QUT School of Law, Distinguished Guests - as you all are:

What a delight to speak to so many talented law or justice studies graduates and students, your teachers, families and friends. My heartfelt congratulations to all prize winners on your hard work and the honours it has brought. My thanks also to those who have assisted, supported and encouraged you in these achievements. I know that many of them are here tonight.

Whether you have studied or are studying law or justice studies, I am confident you will all have learnt of the fundamental importance to a democracy of the rule of law, the concept that every citizen is subject to equal justice according to law from courts and judges, independent of the other arms of government, the legislature and the executive. You also know that an essential adjunct to an independent judiciary acting under the rule of law is an independent legal profession.

Earlier this month I was privileged, together with hundreds of other women judges from 43 countries, to attend in Sydney the Eighth Biennial Conference of the International Association of Women Judges. The theme of the conference was "An Independent Judiciary". One session was dedicated to the topic "Maintaining Judicial Independence". We Australian judges listened with shocked admiration to stories from Justice Carmen Argibay of the Supreme Court of Argentina, Justice Nazhat Shameem of the High Court of Fiji and Judge Mary Ang'awa from the Kenyan courts of threats in their countries to judicial independence. We thought, almost smugly, how fortunate we Australian judges are.

A few days later I read in The Australian newspaper (Tuesday May 9, 2006) that South Australian premier Mike Rann had attacked his State's highly respected Chief Justice over comments Chief Justice Doyle made about the dangers of the legislature dumping social problems on the courts and prisons through populist legislative changes requiring tougher sentences from courts. It is entirely proper for judges, especially Chief Justices, to speak out from time to time on matters such as sentencing which directly affect the administration of the criminal justice system. The Australian reported that Mr Rann's "criticism of Justice Doyle escalates a row with the State's legal fraternity, whom he has attacked as 'enemies of the State' and described as a 'snobbish closed shop'.

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... Mr Rann said sentences that did not reflect community expectations 'undermine public confidence in the administration of justice.'" The President of the Law Society of South Australia rightly spoke in defence of the Chief Justice, supporting his call for greater emphasis on crime prevention and rehabilitation and noting that the Premier's focus on higher penalties was "not the best thing for victims of crime or the State".

Perhaps I should not have been smug.

Why do I mention this matter tonight? To remind us all, judges, lawyers, academics, law or justice studies graduates or students, fellow citizens, that none of us can smugly take our fundamental democratic institutions for granted. We must be vigilant in protecting them or they will be eroded. Use them or lose them.

As intellectual leaders in law and justice studies you prize winners are particularly well-placed to help others in the community appreciate these fundamental concepts and why they must be protected. I urge you to do what you can, whether in your chosen field of work or in social discourse with friends, family and acquaintances, to explain, educate and advocate. If you are in a conversation over a media-fanned controversy about the correctness of a sentence imposed by the courts (a daily occurrence if you listen to talkback radio) ensure that those who express an interest in the controversy understand the importance of the rule of law and an independent judiciary and legal profession. Urge them to reach their own informed view with the full facts. Suggest they read the judge's full published reasons, usually available on the Court's website: www.courts.qld.gov.au. Tell them that case studies have shown that the hypothetical sentences imposed by lay people, with full details of the case before a sentencing judge were the same, or more lenient, than the actual sentences imposed by judges. Explain to them that 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. Remind them that complex issues such as sentencing, which turn on the unique facts of a particular case, are too often trivialised by uninformed cries for the appealingly simple solution of heavier penalties. Tell them that although judges should never be influenced by knee-jerk, uninformed public opinion, they are responsive to sensible, informed community ideas about justice. Over my 30 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. Assure them that in a democracy the thoughtful informed views of the citizen do count. But remind them that many highly regarded experts, like Professor of Criminology and Criminal Justice, Ross Homel, consider that judges' sentences are often too heavy and that getting tough on crime by placing offenders in prison often punishes and excludes vulnerable and damaged groups from mainstream society, arguing instead that governments need to get tough on the *causes* of crime. Explain that judges give reasons in open court for the sentences they impose and 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 statistics kept by the Court of Appeal demonstrate that only a tiny proportion of the sentences imposed by Queensland judges and magistrates are changed on appeal and more likely because they are too heavy than because they are too light. These statistics show that judges generally get it right. The Court of Appeal ensures that all branches of the media and the public have immediate access to its delivered judgments on the Court website. Encourage them to visit the website and to read the Court of Appeal decisions. Tell them that the Courts are proud of

their tradition of openness and members of the public are welcome to attend court proceedings and observe them first hand. Indeed, in a few weeks on Queensland Day, Tuesday 6 June, they will have an opportunity to take part in organized tours of the Supreme and District Court buildings between 9.30 am and 3.00 pm but, of course, the public are welcome in the courts at any time.

Thank you for inviting me to speak with you at this special ceremony. I note that it is held on the traditional lands of the Turrbal Aboriginal people, who for tens of thousands of years conducted significant ceremonies here, perhaps not so very different from this. Again, my congratulations to the prize winners. May you all enjoy basking this evening, and for many days to follow, in the warm glow of the well-earned rewards of your success. And afterwards, like the President of the South Australian Law Society in her recent defence of Chief Justice Doyle, may you use your knowledge and intellect to protect our democratic institutions.