Queensland Law Society Christmas breakfast
Ballroom C, Hilton Hotel
Friday 1 December 2006, 7.30am

The Hon Paul de Jersey AC
Chief Justice of Queensland

I have been asked to speak this morning for a short time on the subject, the challenge of specialization. It is a challenge frankly facing all contemporary lawyers, whether accredited specialists or not.

Half a century ago, a practitioner could come close to a general command of most areas of the law. As it was said, if you did not know the law, at least you knew where to look for it. That this is no longer feasible can be demonstrated even by reference to the extent of law-making, pre and post, say, 1950.

In the first half of the 20th century, reported High Court decisions accounted for 81 volumes of the Commonwealth Law Reports. The second half produced half as many again, 125 volumes. From 1900 to 1950, the Queensland Parliament enacted 46 bound volumes of statutes. The period 1951 to 2000 produced 82 bound volumes, and they are generally much thicker as well.

The problem of the proliferation of legal writing is not an exclusively modern phenomenon. The Emperor Constantine, who unified the Roman world at the beginning of the fourth century AD, inherited a great weight of opinion from jurists of the classical period. He felt that such a great body of law threatened to make litigation itself almost impossible. (We may perhaps suspect that Constantine's judges did not reach the uniformly high standard of the modern bench.) The Emperor, a practical man, hit upon a novel solution to his problem: he nominated as authorities five jurists of previous centuries, and had all the other suppressed. Where his five favourite authorities disagreed, as inevitably they did, the point of law would be decided by a simple majority, without further argument.

The Emperor Justinian, who ruled the Greek part of the empire during the sixth century, faced the same problem as his predecessor: it was becoming much too expensive for lawyers to acquire all the necessary sources of law, the textbooks, responses,

constitutions and rescripts. Justinian had the laws codified, in a work that has transmitted to us much of Roman law. In the edict confirming his new code, Justinian warned advocates not to refer to any other sources "unless they wish to be subjected to a charge of forgery, together with the judge who permits such a thing to be heard, and to endure the most severe penalties". Although "the pious, fortunate and renowned" emperor (as he styled himself) did not specify exactly what he meant by "severe penalties", he may have had more in mind than the rigours of the professional standards committee. Indeed the emperors of his age had a reputation in the spheres of blinding, roasting, maiming and beheading sufficient to silence even the most ingenious barrister.

This expansion in our law over recent decades has identified completely new, or novel, legal principles; new areas of law; and maze-like byways in established avenues for relief. Areas of law virtually unknown or unexplored 50 years ago now command daily attention, intellectual property law being a prime example.

The drug culture now infects a lot of crime. Terrorism crime is on our present agendas. Modern science throws up remarkable issues – for example, as arose here a couple of years ago, the artificial insemination of a woman after the death of a male partner. The work of our courts in an increasingly complex society will become even more demanding, and correspondingly, what is expected of the profession.

It has been necessary for the shape of professional practice to change or evolve to accommodate developments in the legal landscape. It is now inconceivable that any practitioner could command the whole field.

While I was at the Bar from 1971 to 1985, there was still a general belief that expertise in arcane, and if that suggests just ancient mysteries, then newly intricate fields as well – that that expertise dwelt substantially only with members of the Bar. By the late 1970's that was clearly not the case. I knew of solicitors whose appreciation of the nuances of the most difficult concepts of international financing, for example, was unsurpassed – by

anyone. While the barristers were tending to present as generalists, firms of solicitors were establishing and nurturing cadres of distinct specialists. That is not to say there were not still and there are, highly talented barristers who can quickly assimilate the relevant literature and apply a lateral evaluation. But for all that, specialization characterized the solicitors' branch more evidently than the Bar.

One marked aspect of this process of evolution has indeed been the emergence of the specialist, qualified to present himself or herself as acutely attuned to the intricacies of what are sometimes particularly difficult and demanding fields.

Gone are the days, if they ever existed, when having gained one's qualification, one could survive professionally with an occasional top-up, perhaps a periodic look at the ALJA and the ALMD; and that is so whether you are a solicitor, a barrister or a judge. The output of legislation and case law, and the increasing intricacy of some of the problems which arise in day-to-day practice plainly necessitate a much more active application to continuing development. So do personal esteem, the interests and demands of clients and the public, and the fundamentally concrete need to avoid negligence suits. As the cliché has it, "education" holds the key, although in this context we prefer these day the word "development" to "education".

I am very pleased the Queensland Law Society has taken on the accreditation of specialist practitioners.

Some idea of the extent of specialization in the more formal sense, in the solicitors' branch, may be gathered from the number of accreditations by the Society. Over the last 10 years or so, while the accreditation scheme has been operating, the Society has accorded specialist accreditation to the following numbers of practitioners: family law 146; personal injury law 125; succession law 23; property law 27; immigration law 1; criminal law, a new accreditation, 8; likewise new, business law, 6; and also new, commercial litigation 13. This is a popular initiative, and it should be noted those numbers represent

only a fraction of the numbers of practitioners seeking accreditation – the qualification is not for the asking.

On the litigation side, we are, in the Supreme Court, and no doubt the District Court also, the grateful beneficiaries of specialization. In the Supreme Court, we have two specialized lists which assume specialization among the practitioners involved. They are the Commercial List and the Mental Health Court. In the District Court, the Planning and Environment Court caters for highly specialized practitioners and the needs of their clients. There are other areas of litigation practice in which the practitioners often develop distinctly high levels of speciality: personal injuries litigation, once comparatively routine, but now beset with pitfalls thanks to complex legislative regimes; medical negligence; probate law; the criminal law; and in the Federal sphere, family law, migration law and taxation.

The potential advantages of specialization to the client are obvious. And in law, unlike medicine, the client does not first have to be referred to the specialist by the generalist. One advantage to the broader community is that it helps keep high level legal work within this State, which has some possible economic consequence, but is also good for local esteem.

The potential advantage to the practitioner is also clear. Focussing on a particular field of interest and developing high level expertise should ordinarily prove stimulating. On the other hand, it must be acknowledged, some practitioners will see greater interest in commanding a range of various area of practice. Also, for some a broader command is necessary. I have in mind country practitioners, and sole practitioners, although work which is beyond one's capacities must be referred elsewhere.

This is a profession where maintaining one's interest level is very important, in one's owns interests and the interests of the client. Justifying one's accreditation as a specialist in a particular field, then utilizing that accreditation, can refresh a career, perhaps just as much

as vertical progression – junior counsel to senior counsel to judge; employed solicitor to associate to partner.

Yet despite offering these advantages to our careers, our clients, and our community, the challenge of specialization reaffirms the fundamental truth that the law is a learned profession. The modern practitioner cannot come to know the law in its entirety, but comes to the law with profound knowledge of her or his increasingly discrete practice area. However, as Gertrude Stein warns, "to the specialist his speciality is the whole of everything and if his speciality is in good order…then every must be succeeding". As the furtherance of globalization ushers in an increasingly complex society and with it an increasingly specialised profession, we must remain ever vigilant to the difficulties the world presents that cannot be addressed within the confines of family law, criminal law, or even commercial litigation. Whilst as individuals we come to apply our expertise to the difficulties that present themselves in law offices and before the courts, as a profession we come together in a learned pursuit. And, whatever one's accreditation, it is as a profession we come together this morning.

Thank you for listening to these brief observations. I commend the Society as convenor, and all who participate in this specialist accreditation programme. And having said that, ladies and gentlemen, I wish you all a restful and fulfilling festive season – in the enjoyment of which we are all specialists.

Footnote: For the content on Constantine and Justinian, I am indebted to Mr Mark Thomson, Research Assistant, Supreme Court Library.