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North Queensland Law Association Conference 2007
"Matters of current interest to the profession and the courts"
Friday, 1 June 2007, 9:15am
Cairns International Hotel

The Hon Paul de Jersey AC
Chief Justice of Queensland

I am very pleased to have the opportunity to address you. I cannot offer any particularly "hot" topic this morning, and that is on one view reassuring: turbulence would be an undesirable feature of the climate of our court system. I hope nevertheless what I have to say will be of some interest.

The first is to reaffirm a basic feature underlying our court system, and that is the complementary roles of the Judges and the profession. Legal practitioners involved with the courts play a very important role in the discharge of our mission, the delivery of justice according to law.

They do that in a number of indispensable ways. I mention the most important: competently assembling and presenting the relevant evidence; drawing attention to applicable legal principles; upholding an overriding ethical obligation to the court; ensuring the court is accurately informed about the law especially, even where contrary to the interests of the client; helping ensure a procedurally streamlined court operation; realistically advising the client, in the hope unmeritorious cases will not unnecessarily clog the court system; and through their public presentations, supporting the court as an institution, and thereby helping maintain public confidence in it.

Some self-represented litigants have from time to time suggested there is some sort of unholy alliance between the court and the profession. In truth, the collaboration to which I have referred works very much in the interests of all litigants, represented or not. I thank you for your continuing support of the courts of law.

A feature of practice in a regional centre, unfortunately not so achievable in the metropolis, is the close cohesion of the profession, and its evident association with the courts. Those features ensue, of course, from the comparative size of the regional centres and their

professions. I am always grateful to the resident Supreme and District Court Judges for the leadership roles they discharge so effectively in these regional centres. That has a significant consequence, in that it continually reminds the regional profession of its professional lineage.

It is to the Supreme Court that a legal practitioner owes his or her professional legitimacy: it is that court which admits the practitioner to legal practice, and it is that court which is the effective ultimate determinant of professional standards.

The term "officer of the court" is rather quaint, but it encapsulates a practitioner's ultimate status. That 'status' involves acknowledgement, or in modern terms, "accreditation', by a high institution in which our people have enduring confidence. That is a valuable acknowledgement, which spawns both benefit to the practitioner, and also, correlative obligation. In the metropolitan centre, I fear newly-admitted practitioners, many of whom will probably never enter the courthouse again, may, subjected to commercial pressure especially, tend to overlook these features; and it is also a risk, even, with long-standing practitioners carrying on non-litigation practices.

And so a regional profession, for the reasons I have suggested, is more acutely reminded of the roots of its professional legitimacy. It is the public which is the prospective beneficiary.

I am pleased to note various recent initiatives which emphasize the link between the profession and the court.

Retired Justice Carter's address at the Townsville Courthouse last November provided a good example, as have the Supreme Court Library travelling exhibitions in Townsville and Cairns.

While mentioning Library initiatives, I should speak of the Supreme Court Yearbook, published now in its second year under the auspices of the Supreme Court History Programme. It is a very useful guide to the structure of the legal system, State and

Federal, within Queensland, as well as containing interesting historical materials and articles. It can be obtained from the Supreme Court Library.

On 27 April this year, I participated for the first time in talk-back radio, with the presenter Madonna King on 612 ABC from Brisbane. It was a very interesting experience, if demanding not to mention daunting. There were many calls, and many which could not even be reached. The callers displayed considerable interest in the work of the courts, and not just the work of the criminal courts, although there were many questions relating to the jury system in particular. What struck me especially was the apparent depth of public interest in the work of this branch of government.

If that experience was a reliable general indicator, then what I drew from it is reassuring. It would be a sadly nihilistic community which did not show intelligent interest in the workings of such a significant branch of government.

I mention this today to emphasize that significance, and that it is a significance which is recognized and monitored by the people, who are our "constituents".

The institution has a number of material manifestations, being the courthouses. I am pleased that active departmental consideration is being given to the long needed further development of the Townsville courthouse, which is being closely monitored now by the Northern Judge and me.

As you know, we hope for the construction of a new Supreme and District metropolitan courthouse in Brisbane. The hope is that courthouse be opened in 2011, which will mark the 150th anniversary of the establishment of the Supreme Court of Queensland. A design competition has been held, and I understand the Premier will announce the winning design at 1.30pm today. I was a member of the judging panel. This should be a building not just for the people of Brisbane or South East Queensland, but a metropolitan courthouse for all Queenslanders. I have striven for years for this: in the interests of jurors, Court registry and administrative staff, the profession, prisoners, the public and many others. Here's hoping.

That this particular development has progressed to this point is also important for the whole State, insofar as we see the State government prepared to commit the substantial amounts of money necessary for the purpose: it reflects the government's serious interest in doing its best to uphold a critically important public institution.

May I move finally from the broadly grand, to a very practical issue? For a long time we have been concerned about the assessment of party and party costs in the Supreme and District Courts, especially because of the protracted and expensive nature of the process. There are considerable delays and backlogs within the Brisbane Registry. Any backlog is intolerable. It is not unknown for a costs assessment to extend over a period longer than the duration of the trial, and even to cost more than the trial itself: those features are utterly unacceptable if not worse. The Rules Committee is exploring, in an active, and proactive, way, establishing a regime under which accredited costs assessors will be available to assess costs. We envisage the accreditation of appropriately experienced members of the legal profession and others. I imagine assessors from outside the profession would need to have accrued some years' experience before justifying their accreditation. Also, any applicant for accreditation would need to demonstrate an acceptable ethical commitment. They will be statutorily accorded, we hope, appropriate immunity and protection. The Uniform Civil Procedure Rules would apply to such an assessment. There is also a current proposal that where an assessment involves issues of significant legal interest, and the determination of those issues may have relevance to other assessments, the assessor furnish, with the determination, reasons in form for publication on the court webpage. I am also proposing the Probate Registrar develop a practice of publishing reasons in interesting probate applications which come before him.

This is the area of professional practice about which I hear the most criticism and adverse reflection. That has been the case for some time, and we have for some time been considering, within the court, ways of dealing with it. We have now reached a point of obligation to address it. I look forward to our unveiling in the near future a new model which will render assessments in this area more predictable, less expensive, and more timely.

It goes without saying that the most desirable position, if it can be achieved, is that no comprehensive party and party costs assessment be necessary. Where both sides are represented by experienced practitioners, they should be able to agree on a reasonable figure for costs, whether on the standard or indemnity basis. In that case, either the costs may be dealt with by agreement, or the Judge may be asked to fix costs. In the interests of efficiency, I recently published a practice direction headed "Agreed or fixed costs". It is intended to encourage parties to agree on the amount of costs otherwise to be assessed, and to signal the authority of the court, in an appropriate case, to fix costs, and to ensure parties are in a position to inform that process. Where the court is confident it can reliably fix costs, it will do so with a view to avoiding undue delay and expense. To that end, parties are asked, at all relevant times during the hearing of a matter, to be in a position to inform the court of the realistic assessment of the amount of the recoverable costs on either basis. There is an important caveat. As the practice direction says, "preferably parties should not, for this purpose, be put to the expense, and suffer the delay, of preparing a costs statement complying with the UCPR". Nevertheless, the court's expectation is that any estimate will be carefully formulated and realistic. The practice direction includes related provision for an exchange of estimates, which may lead to agreement, but in the event that an assessment nevertheless becomes necessary, the level of the estimates exchanged may be taken into account by the assessor in the final determination of who should pay the costs of the assessment. That is set up as an abbreviated form of the costs statement and response contemplated by the UCPR, abbreviated with a view to avoiding delay and expense.

As you may gather from this two-pronged approach to the costs assessment issue, we are determined to modernize this area of registry and court administration, so that it better serves the interests of litigating parties.

I hope you find this important annual conference professionally invigorating, as well as being enjoyable. I regret my own inability to stay for the duration. I have to travel to Hong Kong for a conference of Chief Justices of Asia and the Pacific, being held in conjunction with the biennial LAWASIA Conference. I am involved in my capacity as Chair of the

Judicial Section of LAWASIA. Please accept my sincere regret that I cannot spend longer with you, although I have greatly enjoyed the privilege of meeting with many of you again in the course of my sitting here in court over the last week. I am also grateful to Deanne Drummond for accommodating me at this session in the context of my other necessary travel.

In very recent times, I have progressed from speaking to the Gold Coast District Law Association last Friday at Southport, to the Law Ball in Toowoomba last Saturday evening, now to this significant annual event in North Queensland.

The regions are close, though rather separated geographically – unlike in Europe, because here we plainly speak the same language. Yet there are differences in "culture" from south to north, with the local very plainly apt to its environment.

Part of my role is to support all stations of the court, and the profession throughout the State. It is part of my role, but I assure you there is absolutely no burden attaching to it.