

A TOAST TO THE LAW 8 NOVEMBER 2008

1. President Nici Schmitt, Chief Justice and Mrs de Jersey, distinguished guests, ladies and gentlemen.
2. It is 31 years since I attended my first Central District Law Association Conference. It was on Keppel Island in 1977. I was the youngest at the conference by some years. The year before Geoff O'Driscoll's conduct led to the banning of the article clerks from the conference, a ban I note he did not see fit to lift when he became president of the Association many years later. The year before I arrived Hugh Grant, John Shaw, Damian "Sandshoe" Carroll, as he once was, and the late Tom Maguire left the conference in a light plane, flew back to the mainland, competed in a touch football grand final, drew the game then won it on the toss of a coin and flew back to the conference triumphant with their trophy. You will see Hugh Grant and John Shaw over there with Andrew Palmer. And Sandshoe Carroll is here but in the guise of his Honour Magistrate Carroll and we welcome he and Bernadette back to their old stamping grounds. On the Saturday afternoon of my first conference we played a game of touch football on the beach but now we don't. Or more accurately "can't".
3. Things have changed in 31 years. There were only two female lawyers at that conference, both solicitors – Trish Kelly, now a judge in South Australia and Denise Flanagan, who still consults with Swanwick Murray Roche. There were no female judges or magistrates in Queensland in those days. It was to be 14 more years before Margaret McMurdo was

appointed to the District Court bench. There were no computers then, no internet, and no mobile phones. There was a phantom president who, when this dinner ended, would sign the account for the drinks for those who partied on, often until dawn. It is rumoured that the Phantom President came out only at night, gambled on the horses, and couldn't later tell his one true love Deidre what he had done.

4. There was no Chief Justice at our dinner in those days. Indeed, before the ascendancy of the present Chief Justice, I am not sure that any Queensland Chief Justice visited us at all. I can recall Sir Harry Gibbs and Sir Gerard Brennan attending the conference but not the Chief Justice of Queensland.
5. Speaking of Chief Justices, Sergeant Sullivan KC, the last of the sergeants, once said of Chief Justice May who was Chief Justice of Common Pleas in Ireland in the 1880's that if you had neither law nor merit on your side you brought your case before Chief Justice May as before him 'no case was certain and no case was hopeless'.
6. That cannot be said of our present Chief Justice who celebrates his tenth year in office and more importantly his eleventh visit to this conference in that capacity. To include us in your busy schedule is indeed an honour which we deeply appreciate.
7. While on a personal note we have the Chief Magistrate, Judge Brendan Butler, here with us tonight for his first conference in that capacity. He has come here to celebrate his 60th birthday tonight.

8. I have said things have changed and they have but some things do not change. The events in the United States this week were momentous. The election of a man of colour to the Office of the President of the United States is simply remarkable. But beneath that accomplishment lies something far more important and that is the calm acceptance by a nation of 300 million people of the transition of power in accordance with the rule of law. Done peacefully, without violence in the streets, a smooth transition and the business of government goes on. It is a truly wonderful thing. We share that with the United States – this acceptance of the rule of law. That has not changed and we hope that it never will.

8. I have mentioned Sir Gerard Brennan. Sir Gerard went to school here in Rockhampton and his father was once Central Judge. Sir Gerard spoke of the rule of law when addressing an Irish audience in these terms:

‘The rule of law is like the air we breathe: so long as it is there – undiluted and freely flowing – we are not ordinarily conscious of its presence. But let the rule of law be polluted or impeded and we choke under the excesses of raw power. Fundamental to both our societies is freedom under the law, that is to say, our peoples are ruled by laws which leave individuals free to think as they please, to act without restraints that are unnecessary to achieve the common good and to be secure in their person and their property. Both countries boast a government of laws and not of men, a government under which the legal rights of minorities, of the powerless, of the poor are protected equally with the legal rights of majorities, of the powerful and the affluent.

In a democracy, the rule of law is not achieved by raw power but by public acceptance of the law and by public confidence in the institutions which promulgate and administer it.’

9. What I wish to say to you tonight is that public acceptance of the law and public confidence in the institutions which promulgate and administer it exists because of those who have gone before us and it continues only to the extent that each of us do our duty.
10. I and my fellow judicial officers have the great advantage of belonging to institutions which are fiercely independent, learned, uncorrupted, industrious and respected.
11. You, the practitioners of the law, too, have a great heritage. Some firms in this city trace their lineage back to the nineteenth century and their forebears look down upon them from their walls in their daily work. When I first came to Rockhampton Ewan Palmer, Andrew's father, and Colin Grant, Hugh's father, were universally spoken of with admiration for not merely their knowledge of the law and its practice, but for the wisdom that they brought to the problems of their clients and to their interaction with their colleagues. They were the inaugural President and Secretary of this Association. Two of the senior solicitors in Rockhampton when I came to the city were Jack Simpson of Grant & Simpson and Des Davey of Rees R & Sydney Jones, both now gone. Both were men of impeccable standing and ethics, and masters of their areas of practice. Frank O'Driscoll, father of both Gerard and Geoff was another whose life is an example to us all. He was an inaugural member of this Association.
12. Whenever a client sits down over the desk from you the trust that they place in you in helping solve their problems derives from that

distinguished heritage built up by men like them over the decades. You stand on their shoulders. It is your courage and persistence in the application of the laws to all who come to you, the poor, the powerless, the powerful and the affluent that lies at the heart of our system. A toast to the Law is a toast to our continuing freedoms and to your continuing endeavours.

13. I will end with a story about a judicial officer. I could speak of many judicial officers who have served here in Central Queensland – Central Judges Justices Kelly and Demack, the District Court Judges who are resident here such as Judges Shanahan, Dodds and Nase. I know stories about each of them, but I would like to tell you a story about a magistrate and his dealings with the poor and the powerless. The magistrate is Ted Loane whose son Paul is here tonight. Ted retired over 20 years ago and died about 14 years ago. The story I want to tell you is known to the older practitioners but probably not to the younger ones. Ted was a big man in every sense – physically imposing and he shared the view of the Master of the Rolls Lord Jessel that he may be wrong, and he sometimes was, but he was never in doubt. And he knew how to use his power and authority in dealing with the citizens that came before him. The story I want to tell is a story about Claude Thompson, an Aboriginal man.
14. Claude lived on the streets of Rockhampton and his income was a pension. He was often brought before the magistrate for being found drunk in a public place. Ted had his office in the old Magistrates Court building fronting East Street. His door was always open and I mean

literally open. Anyone was free to walk in and have a chat to him when he was in residence. Claude often did. Because of his drinking habits Claude often ran out of money before pension day. Ted was one of those he would go to to get some money to tide him over. Ted told me that he always paid him back.

15. One day Claude was before the court yet again for being drunk in a public place. The sergeant of police who was prosecuting made a strong speech. He informed the court that Mr Thompson had been before the court now on nearly 20 occasions in that month alone. He was becoming a pest. It was essential that the court do something about it.
16. Ted, with the great power of his voice that he had and his immense authority, ordered Claude to stand. He told him that he was a disgrace and that the sergeant was right. He informed him that his conduct could not go on and that a heavy fine was called for. Claude said to Ted, 'Your Worship, you want to be careful'. Ted did not take kindly to having his authority questioned in his own court and roared at him, 'Why?' Claude replied, 'Because you will be paying it'.
17. Could I ask you to stand and charge your glasses? I give you a toast to the law.