



## ***THE BANCO COURT***

### **TALK GIVEN TO QUT 1<sup>ST</sup> YEAR ARCHITECTURE STUDENTS 23 SEPTEMBER 2008**

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#### **Justice Margaret Wilson**

[1] Welcome to the Supreme Court of Queensland – and, in particular, to the Banco Court.

[2] I am a Judge of the Supreme Court; I was appointed 10 years ago.

The Court is presently comprised of 26 Judges – the Chief Justice, 6 permanent Judges of Appeal and 19 Judges of the Trial Division.

All but three of us live and work here in Brisbane – although we sit in other parts of the State from time to time. There is a Judge resident in each of Rockhampton, Townsville and Cairns. They, too, sit outside their hometowns, sometimes in Brisbane.

So the Court is an institution for the whole State.

[3] You are probably familiar with the doctrine of the separation of powers. There are three arms of government –

The Legislature – ie Parliament

The Executive – ie Cabinet

The Judiciary – ie the Courts

- [4] Each arm of the government has its own edifice – positioned, perhaps serendipitously, along the George Street axis –

Parliament House

The Executive Building

The Law Courts Complex.

- [5] “The Banco Court”

What is it? What is its significance?

What is it used for?

- [6] “Banco” is derived from the Latin word *bancus*, which means bench or a seat of high distinction.

The Court sitting *in banco* is the Full Court, with full judicial authority.

- [7] Our judicial system is a scion of the system which evolved in England over many centuries. A modified version of the English system was introduced into the Australian colonies. Soon after Queensland separated from New South Wales in 1859, a separate Queensland judicial system was established.

- [8] In the early days there was only a handful of Judges, at most four. They would all sit *in banco* or *en banc* (French) to hear cases. This was also referred to as the “Full Court”.

In time, as the number of Judges increased, the tradition changed – so that a Full Court consisted usually of only three Judges.

And in time Full Courts were assembled only for appeals.

- [9] But still today on ceremonial occasions all the Judges of the Court assemble (in their robes) in this room. For example, the swearing in of a new Judge.

In 2005 there was a special ceremonial sitting of the Court to mark the centenary of legislation passed by the Queensland Parliament giving women the right to be admitted as legal practitioners. Every Supreme Court Judge who was in Brisbane that day sat on the Bench (over 20) and the courtroom was packed – there was standing room only.

- [10] So this space is charged with tradition and symbolism.

Look at the portraits – all but one of them former Chief Justices of Queensland.

There is the first Chief Justice, Chief Justice Cockle, who was a mathematician and a Fellow of the Royal Society. He was a learned and wise but modest man, who laid very stable foundations for the Court.

Through to Chief Justice John Macrossan – Chief Justice from 1989 to December 1997. He died in the last few weeks.

They include Sir Samuel Griffith, one of the fathers of the Constitution. His work in the drafting of the Constitution is remembered in the reconstruction of the smoking room of the vessel, the Lucinda, which you will have seen as you got out of the lifts at the other end of this floor. After being Chief Justice of Queensland, he became the first Chief Justice of Australia.

Sir Harry Gibbs was a Judge of this Court (although not Chief Justice). He went on to be Chief Justice of Australia. He was awarded an imperial honour, the GCMG. That entitled him to have a banner hung in St George's Chapel in St Paul's Cathedral in London. After his death the banner was taken down and his family presented it and other memorabilia to this Court.

- [11] Tradition plays a significant role, and an important one, in the life of the law.

I am not talking about ritualistic behaviour for its own sake – but about the authority, continuity and temperate application of legal principles, which provide a stable and certain framework within which people can get on with their lives and businesses can operate.

- [12] This is very much a working courtroom. History has been made within these four walls.

Until the construction of the Commonwealth Courts building on North Quay, the High Court of Australia used to sit in this room when it visited Brisbane (as it does once a year).

The decision in the *Tasmanian Dams Case* was handed down in this room.

The Supreme Court of Queensland has heard many appeals (criminal and civil) in this room, and it is still used for appeals (along with a purpose built appeals courtroom).

Big trials have been conducted in this room, sometimes after some temporary structural additions. Some years ago someone set fire to a backpackers' hostel in Childers and many young people were killed. Public and media interest in the case was so great that the trial was conducted in this courtroom.

- [13] I want to say something about the importance of the public gallery.

The administration of justice is quintessentially a public process. Ultimately the authority of the Courts rests on public confidence in the system.

So a sufficiently large public gallery, one where people can see and hear the proceeding, is a critical element in the design of a courtroom.

This public gallery seats about 300 people.

[14] The room is also used for public lectures and conferences. This is both a proper utilisation of a public resource and a way of bringing members of the public into the building, and so having them come into contact with the judicial system.

[15] The space comes alive when the various participants take their places within it –

the litigants

the Judges

the barristers and solicitors

the Court staff

the public

[16] Until then, it is merely a hollow shell, albeit one bearing the hallmarks of its functions and traditions.

It is the meeting of the cast and the physical forms which make it into a courtroom.

[17] I appreciate that for many people the costumes of the Judges and barristers (the wigs and gowns) are an abiding impression of Court proceedings.

To me, these costumes have always been simply uniforms – uniforms which symbolise the solemnity of Court proceedings and the continuity of the law. After all, individual Judges are merely ministers of the law, who will, in time, pass on their functions to others.

That said, personally I think there is room for some modernisation of our uniforms!

[18] I have entered this space in different guises over the years.

The building was opened about 2 years after I commenced practice as a barrister.

As a very junior barrister, from time to time I sat in the public gallery to observe proceedings.

I remember being rather intimidated by the dialectic between the Bench and Bar; there were three Judges, each of them pummelling the barristers. I wondered if I would ever be a competent barrister. Needless to say, that was my focus – but on reflection, I realise that the very scale of the room, the elevated position of the Judges, the history that physically enveloped the cast all contributed to my feelings of inadequacy.

- [19] It was in this very space that I first appeared for a client before the Full Court. I remember how anxious I was as I sat in what seemed the cavernous gallery, waiting for cases listed ahead of mine to be heard. I remember the clutch of barristers and solicitors similarly waiting – including my opponent, much senior to me and with a formidable reputation. I remember some of the *sotto voce* comments exchanged. I remember the trepidation with which I moved to the Bar table and eventually addressed the Judges and endeavoured to respond intelligently to their questions.

- [20] Incomprehensible as it was to me at the time, the space worked well as a courtroom.

To me, once my case began, the space contracted; indeed the physical surrounds receded in my consciousness. I was aware only of the discourse between the Judges and the barristers – between the Bench and the Bar Table, as lawyers say. That figure of speech demonstrates how the human and the physical elements coalesce in a courtroom.

Of course, for my client and those in the public gallery it was the interplay between the physical elements of the whole space and all the people within it which transformed the space into a courtroom.

- [21] And, of course, in the last 10 years I have entered this space as a Judge on many occasions – sometimes when it has been functioning as a ceremonial court, sometimes as a working courtroom, and sometimes as a venue for lectures and other public functions.

- [22] To the Judges, this is a very precious place. It is the only place where we can truly sit as a Full Court – a Court *in banco*.

It is here that we come together in the corporate sense, in a tangible expression of the Supreme Court of Queensland as an enduring institution.

And for the Judges who from time to time constitute the Court, it allows a public demonstration of our collegial relationship.

- [23] Next year, 2009, will be the 150<sup>th</sup> anniversary of Queensland's separation from New South Wales and two years later, in 2011, we will be marking the 150<sup>th</sup> anniversary of the establishment of the Supreme Court of Queensland.

You may have heard that construction of a new building for the Supreme Court and the District Court is about to commence. It is to be on Queensland Place, further down George Street, and we hope it will be completed during 2011.

In keeping with Queensland's emergence from its chrysalis into a sophisticated community, quietly confident in its own identity, the new building will be a tall, elegant structure, which draws on subtropical design principles. It will have a double skin glass façade with integrated screening and glass fritting to achieve shading and light control.

We are confident that it will capture the openness, transparency and accessibility which are the goals to which 21<sup>st</sup> century Courts aspire – but at the same time epitomise the authority and continuity of our justice system. It will provide improved facilities for the work of the Courts and the amenity of the public. The Banco Court will be given architectural prominence.

The new building will be a crystalline *palais de justice* set beside a new, green public square, and linked by pedestrian paths in one direction to the river and GOMA and in the other to Albert Park and the Wickham Terrace Observatory.

It is an exciting project for the Courts – indeed for all Queenslanders.