

SPEECH TO WELCOME AND INTRODUCE THE HON KEITH MASON AC, QC ON HIS PRESENTATION OF THE LECTURE "THE DISTINCTIVENESS AND INDEPENDENCE OF INTERMEDIATE COURTS OF APPEAL" TO CELEBRATE THE OCCASION OF THE 20TH ANNIVERSARY OF THE QUEENSLAND COURT OF APPEAL, BANCO COURT, MONDAY, 24 OCTOBER 2011.

Chief Justice de Jersey; Attorney-General, Minister for Government and Special Minister of State, the Hon Paul Lucas MP; Chief Justice Keane; Presidents Maxwell and McLure of, respectively, the Victorian and Western Australian Courts of Appeal; Judges of the Queensland Court of Appeal; Judges of the Trial Division of the Supreme Court of Queensland; Former Attorney-General, the Hon Dean Wells MP; Mr Jarrod Bleijie (BLAYE), Shadow Attorney-General; Retired judges of the Queensland Court of Appeal; Retired judges of the Trial Division of the Supreme Court of Queensland; Judges of the Federal, Family, District and Land Courts; Federal and Queensland Magistrates; Solicitor-General, Mr Walter Sofronoff QC; Deputy Director-General, Mr Terry Ryan; Senior Deputy Crown Solicitor, Ms Robyn Martin; Queensland Director of Public Prosecutions, Mr Tony Moynihan SC; Chief Executive Officer, Legal Aid Queensland, Mr Anthony Reilly; Public Defender, Mr John Allen; Commonwealth Director of Public Prosecutions, Mr David Adsett; President of the Bar Association of Queensland, Richard Douglas QC; President of the Queensland Law Society, Mr Bruce Doyle; Prof Nick Gaskell, A/Head of the School of Law, University of Queensland; Prof Michael Lavarch, Executive Dean and Prof Rosalind Mason, Head of Law School, Faculty of Law, Queensland University of Technology; Dr Nicky Jones, University of Southern Queensland; distinguished guests, as indeed you all are.

Welcome to the Supreme Court of Queensland's Banco Court on this perfect jacaranda blossom-filled Spring evening. You honour the Court of Appeal by your attendance at this celebration of the 20th anniversary of the date of assent to the *Supreme Court Act 1991 (Qld)* by which the Court of Appeal was established.

Many people have expressed surprise that it is 20 years. Of course, 20 years is but the blink of an eye in the story of the traditional owners of Me-an-jin, now known as Brisbane, the Turrbal and Jaggera people. I acknowledge their Elders past and present.

I am thrilled that so many of you who have been part of the Court of Appeal's story to date have been able to attend. But there are some apologies, foremost of which is that of the legendary, the Hon G E (Tony) Fitzgerald AC, QC, the inaugural President of the Court of Appeal. His greatest public achievement was the 1989 ground-breaking report of the Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, which has come to be known simply as the Fitzgerald Report. The establishment of the Queensland Court of Appeal was another of his significant public achievements. Retired judge of appeal, the Hon Glen Williams AO, QC is overseas and also sends his apology.

The Court is especially honoured by the presence of Presidents Maxwell and McLure who have taken time from their exceptionally busy schedules to attend. Regrettably, President Allsop, who was to join us, is instead fighting a nasty virus. We wish him a speedy recovery. We three Presidents have used this rare opportunity of being together to tour the Court of Appeal precinct in the new court building presently under construction and to discuss matters concerning the next 20 years, including innovative developments in appellate court practice and procedure.

I am delighted that present this evening are all current judges of appeal (Justices Kate Holmes, John Muir, Hugh Fraser, Richard Chesterman AO RFD, Margaret White and Margaret Wilson); the inaugural judges of appeal now retired, the Hon Geoff Davies AO, QC; the Hon Bruce McPherson CBE, QC and the Hon Bill Pincus QC, as well as retired judges of appeal, the Hon Jim Thomas AM, QC; the Hon John Jerrard QC; and Chief Justice Patrick Keane. You, together with former President Fitzgerald and retired judge of appeal, Glen Williams, have made a mighty contribution to the Court's first 20 years. I sincerely thank you all for that.

I note with pleasure the presence of the Chief Justice and current and retired judges of the Trial Division of the Supreme Court of Queensland, including the Hon Ken Mackenzie QC who sat as an additional judge of appeal for most of 2008. Without the diligent and able contribution of you all, the Court of Appeal could not have functioned as efficiently, and the depth of its jurisprudence would have been diminished.

We Queenslanders are fortunate to live in a functioning democracy where the doctrine of the separation of powers is observed and the rule of law respected. Mr Attorney, although at times there have been and will always be a healthy tension

between your arm of government and mine, I thank you and your predecessors over the past 20 years for your appreciation and support of the independent work of the courts in upholding the rule of law. I warmly note the presence of the Hon Dean Wells MP, who was the Attorney-General responsible for the establishment of the Court of Appeal.

And Mr Deputy Director-General, whilst there must always be that healthy tension between the executive and judicial arms of government, there is no reason why we cannot work warmly and cooperatively so as to best serve the people of Queensland, as we do. I thank you and your predecessors over the past 20 years for striving to ensure the courts receive their appropriate share of that seemingly ever-shrinking pie, the State budget; for your administrative support; and for your respect for the doctrine of the separation of powers and the independence of the courts in upholding the rule of law.

Mr Douglas, President of the Bar Association of Queensland, and Mr Doyle, President of the Queensland Law Society, the Court of Appeal has been well-served by the two branches of Queensland's legal profession in terms of both advocacy and high ethical standards. We thank you and your members, including those from the offices of the Queensland and Commonwealth DPP and Public Defender, for that.

We often see in the Court of Appeal the best advocates from throughout Australia. I know that we are moving very quickly toward a national legal profession, but forgive me for making a parochial boast. Be in no doubt that the best Queensland advocates can and do hold their own.

An independent legal profession has an institutional role in a democracy to ensure the independence of courts and that the doctrine of the separation of powers is observed. Its role is also to strive to ensure all citizens have access to the rule of law which provides equal justice for all, regardless of gender, race, religion, power or wealth. I thank you and your members for fulfilling this crucial institutional role.

In that respect, I especially thank the members of the Bar who participate in the Court of Appeal criminal law pro bono scheme and the many legal practitioners from both branches of the profession who regularly appear pro bono in the Court of Appeal in both civil and criminal matters.

One pleasing aspect of my 13 years as President is to have seen a gradual increase in the number of women barristers appearing in the Court of Appeal. In the 2010-2011 year, women barristers comprised 10.2 per cent of all appearances. In criminal matters, this rose to 11.2 per cent but in civil matters fell to 8.9 per cent. Unfortunately, this is noticeably lower than the 21 per cent of women membership of the Bar. I hope that over the next 20 years, the proportion of appearances by women counsel will come to reflect the proportion of women at the Bar and that this will be around 50 per cent. This welcome development will be not just for the benefit of the women involved but for the benefit of the Queensland Bar and the entire community, as women embrace their institutional democratic role in participating in an independent legal profession upholding the rule of law. I know, Mr Douglas, that you and your committee, and you Mr Doyle and your committee, are working hard to achieve this through initiatives like the Equal Opportunity Briefing Policy. I thank you for it.

I am pleased that a number of leading legal academics are present this evening. Your contribution to an independent legal profession, judiciary and the rule of law is also vital. You educate and open the minds of new lawyers, explain controversial legal matters to the public; where necessary speak out on perceived injustices; and identify matters where law reform is needed. Independence is as essential for legal academics in a democracy as it is for the practising profession and judges. Thank you for your contribution.

Whilst we see many brilliant advocates, in the 2010-2011 year, in 42 per cent of civil matters heard in the Court of Appeal and in almost 35 per cent of criminal matters, one party was self-represented. I have already mentioned the profession's pro bono work. Mr Tony Woodyatt, seen by many as Mr QPILCH, I also thank you and the QPILCH staff and volunteers for your valuable contribution to the Court of Appeal through the QPILCH self-representation service which in the 2010-2011 year assisted 12 applicants to the Court of Appeal in various ways. I note that the University of Queensland Law School is currently investigating a scheme for more advanced students under supervision to assist some unrepresented Court of Appeal applicants in criminal matters. I commend these initiatives. Over the next 20 years we must all continue to find innovative and cost-effective ways to improve access to justice.

Also present this evening is the clever inaugural senior deputy registrar (appeals), Ms Jo Sherman, and all her talented successors, Ms Alison Stanfield, Ms Robyn Hill and Mr Neville Greig, together with the present incumbent, Mr Neil Hansen, and members of his staff past and present. I thank them for their visionary and loyal service to the judges and the Court of Appeal. It is because of their excellent work that we have searchable electronic record books in all appeals and that the Court of Appeal's efficient administrative processes, in recent years all on a shoe-string budget, have been used as a model to reform aspects of other registries within the court system.

And I note with affection and gratitude the presence of current and former Court of Appeal associates, executive secretaries and research officers.

I hope that you have taken or will take up the opportunity to view the exhibition outside this court room showcasing the 20 year history of the Court of Appeal. For this and for your souvenir brochures, I thank the Supreme Court Librarian, Mr Aladin Rahemtula, and his equally indefatigable staff, Ms Helen Jeffcoat, Project Officer; Ms Kimberley Lee, graphic designer; and Ms Megan Lincez, researcher; as well as my associate, Ms Wylie Nunn.

It is only when you come to organise an event like this that you fully appreciate how much is involved. All the present judges of appeal and their associates and secretaries have contributed. I thank them. But the bulk of the work has fallen to my associate, Wylie, and my executive assistant, Ms Andrea Suthers. Andrea is a very special person this evening. She is the only one present who was part of the inaugural Court of Appeal staff 20 years ago (as executive secretary to Justice Davies) and who remains part of today's Court of Appeal staff. Tony Fitzgerald, when explaining he was unable to attend, emailed Andrea in these terms: "What stamina you've shown. It's you who should be congratulated!" And so, congratulations and heartfelt thanks to you, Andrea, for your stamina and your months of hard work in preparing for this evening.

But enough from me. You have come to hear our distinguished speaker, the Hon Keith Mason AC, QC. And no wonder! Keith Mason graduated from the University of Sydney with a Bachelor of Arts and a Bachelor of Laws with First Class Honours, and from the University of London with a Master of Laws. He was a solicitor at Minter Simpson & Co from 1970 to 1972 before commencing a brilliant career at the Sydney Bar, mainly in the fields of equity, commercial and public law, taking silk in 1981. He

was full-time chairman from 1985 until 1987 and then part-time commissioner from 1989 to 1990 of the New South Wales Law Reform Commission. From 1987, he served for a decade as Solicitor-General of New South Wales. He appeared in many important matters, but in my mind none more so than his pro bono advocacy enabling women to become priests in the Anglican Church. He was President of the New South Wales Court of Appeal from 1997 to 2008. His publications include co-authorship of the highly respected "Restitution Law in Australia", now in its second edition. Since retiring from the Court, he has become a visiting professorial fellow at the University of New South Wales. He has made and continues to make an enormous contribution to the law and the community as advocate, academic, writer, law reformer and judge, a contribution recognised by his receipt of the Companion of the Order of Australia in 2003 and an Honorary Doctorate of Laws from the University of Sydney in 2005. Keith Mason is not only a learned and experienced jurist and scholar, but also an engaging speaker and one of the most decent human beings you are likely to meet. We are honoured to have him address us on the highly apposite topic he has chosen to celebrate this occasion: "The distinctiveness and Independence of Intermediate Courts of Appeal". Ladies and gentlemen, the Hon Keith Mason AC, QC.