



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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**The Hon Paul de Jersey AC**  
**Chief Justice**

**“A brief departing reflection on the value of our joint initiative”**

We are all honoured tonight by the presence of our esteemed Medical Patron Dr Glenda Powell, our President Katharine Philp, and many former Presidents, including my dear friend and former colleague Des Derrington. And being nostalgic, I note Ross Phillipson – he and I were little boys together in Maryborough in the 1950’s; and two former classmates at Churchie, John Robertson and Ian Airey, from the 1960’s. Older men tend to reminisce!

Ladies and gentlemen, my being co-patron of the Medico-Legal Society in my capacity as Chief Justice has given me great satisfaction, and I hope some joy to the Society.

As a Judge over 29 years, I have been privileged to meet and hear from many doctors. I was never much of a cross-examiner, while a barrister, in matters of medical complexity. Maybe that is why some doctors who gave evidence apparently thought I wasn’t such a bad chap. But I must not speak ill of the doctors!

I was immensely impressed by the psychiatrists who sat with me from 1994 to 1996 on the then named Mental Health Tribunal. Much more recently, chairing the Council of QIMR Berghofer, I have been struck by the brilliance and dedication of my co-Councillor medical science members, and that reminded me of my years with the Queensland Cancer Fund, as the Council was then known.

I will come to you, my lawyer colleagues! I leave you, with particular regret.

But as I have been at pains to say, my becoming Governor will not end this interaction, and no doubt our paths will cross as Kaye and I traverse the State. Please always say hello – we may be feeling lonely!



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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But enough of me! Even as only a 65 year old, I have endured more than a lifetime's fill of egotistical addresses, many of them I am afraid from me.

The legendary Cedric Hampson told me many years ago that the secret to a successful after dinner speech was not necessarily to be amusing (though that may help), but to be unremittingly complimentary to your audience. Cedric was of course being tongue-in-cheek, and he was not counselling insincerity. What I say tonight is in truth heartfelt.

May I speak for a moment about the role of our Society?

In bringing these two great professions together, the Society fulfils a most productive role, especially in easing some tensions. Some of those tensions concern the notion of non-medical Judges determining questions of alleged medical negligence. It is interesting though to note that a concern in the early days of the Society, was having lay juries, rather than Judges, determining such claims. It seems the doctors of those days, accepted Judges as the adjudicators. But of course there may then have been no realistic alternative. Now we are blessed with ombudsmen and mediators!

The Society has promoted serious discussion over many years. It has never been a mere lobby group. Though I suspect the lively and serious character of that discussion will have contributed to change, and an example is the way we do things in the courts.

Members of the Society were in the early days keen to bring about more civilized interaction in the courtroom between barristers and doctor witnesses, especially through curbs on unnecessary intensity from the bar. In those days, damages claims often ended up in the courtroom, with doctor witnesses effectively pitted against each other, and the Judge having to iron out their differences, with varying degrees of assistance from cross-examining Counsel.

I recall the days when many at the bar demanded a doctor being cross-examined should be required to give a "yes" or "no" answer without qualification. That was absurd in



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matters of opinion. It did little for favourable impressions of the law. The Judge often acceded to the demand. The vice was of course the perception the judgment may then have hung on a required simplistic answer to an unduly restrictive question, avoiding appropriately disciplined analysis of the point.

I hope there is a view the courtroom experience is now more civilized and courteous and frankly, realistic, than it was in those earlier days; although with the almost overwhelming frequency these days of effective mediation, it may be we are becoming a bit rusty in this arena.

My having said those things, I do think that engagement through Society meetings led to a more acceptable approach in that sort of area.

The Society's thrust has been constructive and diverse. I was particularly interested to be informed, at last year's annual conference, of the huge cost of close to death care, raising deeply philosophical questions about the destination of public monies. That was new information for me, and most enlightening.

The Society both educates and entertains, and has now been doing so for as we like to suggest 62 years, but strictly speaking, 40 years allowing for the interregnum. Its social reach is very important and should not be dismissed as merely peripheral: deep cross-profession friendships have been forged through these meetings, and they also have fostered greater mutual understanding, which has informed the way the professions work together, serving the public interest.

(I regret I cannot claim to have a close personal relationship with my extremely able and highly respected gastro enterologist, so that when in the course of a recent deluge of unusually complimentary correspondence, I noticed a letter from him, I thought – how kind of you! But then, as I read, it was notice that I was due for my next colonoscopy. I would like to name him, but it may be an ethical breach for a patient to disclose the name of his doctor)



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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I came from a family of school teachers, not doctors, although my very clever elder brothers are a nephrologist and a biochemist respectively. They enjoyed high academic success, and with my being in the humanities and with but patchy success in Maths II and Physics, I regarded myself within the family as something of an intellectual minnow. Although I should add, my parents were very concerned that I should not have that perception. My brothers and I enjoy a very affectionate, if necessarily occasional, relationship.

While obviously enough I have great affection and support for the legal profession, whose crucible – with the injection of extraordinary good luck, explains my 16½ years in this present office, I have immense respect for the medical profession.

While lawyers and Judges can make monumentally significant contributions and decisions, it is in the end the doctors who keep us healthy and alive, provided we cooperate, and it is the doctors who ease, for most of us, the ultimate inevitable decline.

A respected journalist interviewing Kaye and me for a piece to be published mid July asked me why as a student I chose the law. I was qualified for law or medicine. I chose law because of my humanities bent, and I told him that. But I thought later that may have unfairly suggested a view that doctors are mere clinicians. The doctors I know exhibit a commanding appreciation of history, the arts, culture...life!

And those features also of course characterize the most effective lawyers. So equipped, those lawyers are the ones who best meet challenges.

The practice of the law has become greatly more challenging over even the last 16 years, the term of my Chief Justiceship, with the rise of technology, the increasing complexity of the subject matter, and the challenging nature of the topics to be addressed – and I offer as but one example, of relevance to both professions, the separation of conjoint twins where one will necessarily die.



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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With the abolition of the death penalty in Queensland in 1922, relieving Judges of the burden of condemning in that way their fellow human beings, I would regard determining the fate of conjoint twins as right at the top of the scale of extraordinarily difficult judicial decision-making in this State. How does one determine the operation will be in the best interests of the twins where one will consequently die? I put it that way because the best interests of the twins is the criterion, the governing consideration to prevent the exercise of this particular discretion from becoming idiosyncratic.

Justice Chesterman confronted the issue in 2001, in I think the most recent of these fortunately rare cases in this State: *Nolan* (2001) QSC 174. He quoted these words from an English case:

“...an operation to separate them would be in the best interests of each...

In this case the purpose of the operation would be to separate the twins and so give J a reasonably good prospect of a long and reasonably normal life. M’s death would not be the purpose of the operation, although it would be its inevitable consequence...She would die, not because she was intentionally killed, but because her own body cannot sustain her life.

Continued life, whether long or short, would hold nothing for M...

The proposed operation would therefore be in the best interests of each of the twins. The decision does not require the court to value one life above another.”

Sometimes we struggle in the court to fit unexpected cases within the established paradigm.

That fraught issue, fraught for the court, fraught for the surgeons, fraught fundamentally for the infants and their families, will never admit of an easy adjudicative resolution. In advisedly saying “never”, I have in mind the interesting observation of John Griffin QC in his historical article in 1985, where he points out that burning issues of interest to Society members in one decade or another have tended to fade as time goes on. Witness the



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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evolution from “artificial insemination”, a hot topic in 1956, to the very widely accepted and commended contemporary practice of in vitro fertilization.

But I suggest that the complexity of medical practice has increased even more than in the case of my own profession. And there is the added administrative burden of satisfying governmental regulation. The days are long gone of the family GP making home visits carrying the doctor’s black bag: those were the days of my childhood in the country. Medical practice these days is technically complicated and demanding, and not necessarily appropriately remunerated, although I know that is not most doctors’ primary or even incidental focus.

But may I assure you, doctors, that notwithstanding your own occasional doubts, you are in fact very highly regarded by the people. And I am gratified by the regard in which you are held. Yours is a fundamental, primary, vital profession, and those who apply themselves to it with dedication should be applauded as great servants of the people.

Now lawyers...I have been rather effusive in my respectful commendation of the doctors. I need not further express my support for you, which is well known.

If you are in doubt, then the doubt may be assuaged by what you may hear from me, if you are there, at my valedictory ceremony. I know it is said that at such events, rather as at funerals, no-one speaks ill of the departing, and the corpse is present with a right of reply, but what I say then will certainly be meant, and it will express my deep respect and affection for the legal profession.

The importance of occasions like tonight is the coalition of two such significant professions, professions focused on addressing and alleviating human problems and difficulties, with the development of what the 50 year history of the Society described as a “friendly concord” between the two professions. The Society is pivotal in providing a valuable platform for the interaction which so substantially aids the achievement of these goals.



Medico-Legal Society dinner meeting  
Thursday 5 June 2014, 6:45pm

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Ladies and gentlemen, as I leave this role which I have appreciated so much, and in which I hope I have done some little good, would you please rise now and join with me in drinking a toast to: “The Medico-Legal Society of Queensland”.