



Ceremony to mark the appointment of the Chief Justice and Flanagan J
Banco Court
Friday 1 August 2014, 9:15am

**The Hon Tim Carmody
Chief Justice**

Introduction

I begin by acknowledging with pleasure the presence of Major-General the Honourable Peter Arnison AC CVO, Sir Llew and Lady Jane Edwards, the Honourable Attorney-General Jarrod Bleijie MP, the Honourable Bert van Manen MP representing the Federal Attorney-General, Senator George Brandis QC, who personally rang me to offer his apologies for his inability to attend this morning due to cabinet commitments in Canberra - and Ms Desley Scott representing the Leader of the Opposition and Shadow Attorney-General of Queensland.

I am especially delighted to note with gratitude the presence of Federal and Family Court Judges, her Honour the Chief Judge and Judges of the District Court, his Honour the Chief Magistrate and Magistrates, retired Judges and Tribunal members.

I am also pleased to see the Police Commissioner Ian Stewart APM, the Director of Public Prosecutions Tony Moynihan QC, the Director-General of the Department of Justice and Attorney-General and his staff in attendance. I look forward to continuing to work closely with him and them for the benefit of the Court.

There are, of course, many other honoured and distinguished guests deserving of personal recognition but regrettably time does not permit.

Opening remarks

Justice Flanagan was sworn in as a Judge of the Trial Division of this Court on 27 June 2014. I congratulate and warmly welcome him to the Court.



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I was appointed as a Judge and Chief Justice on 8 July 2014.

As foreshadowed after my private swearing-in, this event is being held in public to give the other arms of government and both branches of the legal profession the opportunity of formally recognizing our recent appointments.

The keen-eyed among you may have noticed that there are fewer judges sitting up here than some might have expected.

Following the practice elsewhere in Australia, the more customary fanfare and ceremonial aspects have been dispensed with in favour of a distinctly low-key and much more personal and informal affair. Appearance on the bench has been limited to Justice Flanagan and myself so that, as it should be, the focus is fixed firmly on the two of us as the newest additions to the judicial ranks.

Mr Attorney

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Mr Solicitor-General

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Mr President, Bar Association of Queensland

...

Mr President, Queensland Law Society

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Justice Flanagan



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Closing remarks

Thank you all for the grace and respect of your remarks. They mean a lot to me and are very much appreciated.

As I look out I can see many familiar faces who also attended the investiture of my predecessor, his Excellency the Honourable Paul de Jersey AC as the 26th Governor of the State. It was a proud day for this Court to see his promotion to that esteemed and prestigious office.

His Excellency is a loyal servant of Queensland and was a model Chief Justice.

When Justice Flanagan and I took our oaths in chambers, we promised to serve to the best of our ability, skill and knowledge and, in all things associated with the office, to duly and impartially administer justice in the overall best interests of the Court and the people of Queensland.

That is exactly what I will dedicate myself to doing as Chief Justice of this great State.

The office that has been entrusted to me is a high and honourable one. It is both a great privilege and a great responsibility to hold. Just as those before me have been, I am, in a sense, a mere trustee of the position.

My pledge to you in this solemn place is that I will remain true to my oath. I will work hard every day of my tenure to prove worthy of the trust and confidence reposed in me.

Since the 8th of July my first, ongoing, paramount and overriding duty has been to the Court and the community it serves and so it will remain – come what may.



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The appointment of a Chief Justice is a rare thing. There have been only two in the last quarter of a century. It is appropriate, therefore, that I make some remarks about the role of the Court, the law, the legal profession and how I intend to discharge the duties of office.

The Court

The Supreme Court plays a central role in defining and enforcing the legal limits of the exercise of governmental and judicial power. This means it is imperative that a proper distance is maintained between it and both the executive and the lower courts.

In discharging its constitutional mandate the Court must function independently. In doing so it does not seek to please, appease or offend either the Legislature or Executive. The Court respects the important but different roles that the other branches of government play, including the constitutionally valid exercise of legislative power.

As the 1st Chief Justice of New South Wales Sir Francis Forbes put it, “the judicial office itself stands uncontrolled and [apart]...bowing to no other power but the supremacy of the law”.¹

These are bedrock principles that Chief Justices should repeat from time to time. The community’s confidence in the exercise of its jurisdiction is dependant on it.

In these sentiments, I strongly believe. They are entrenched in the Constitution. I will give them practical expression, without fear or favour.

I am also committed – all willing – to lead a collegiate, constructive and cordial Court – one that makes the best use of the very considerable intellectual talents, learning and experience of the judges across both civil and criminal jurisdictions.

The profession

¹ J M Bennett (ed), *Some Papers of Sir Francis Forbes* (Parliament of New South Wales, 1998) 134 at 143.



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Likewise, I affirm that I will – regardless of the water under the bridge – strive to build and strengthen a respectful working relationship with the legal fraternity. Each branch of the profession plays a pivotal role in assisting the Court in the administration of justice by providing quality and affordable legal services based on need. All lawyers do this, regardless of where they are, the circumstances in which their clients live, their resources, the level of their income, or their heritage.

Access to equal and individual justice for indigenous Queenslanders, especially those in remote locations, is a particular concern.

I will continue, and perhaps even build on, the custom established by Chief Justice de Jersey of travelling widely to represent the Court on circuit throughout this vast State. In doing so, I will endeavour to meaningfully engage with the local community and the profession in both major and smaller regional centres.

I am, after all, the Chief Justice of *Queensland*, not just of Brisbane or the south-east corner of the State.

The law

The law is “deeply rooted in the past”.² It is “one of the great achievements of the human spirit”.³ It transcends the legislators, State and judges that make and enforce it from time to time.⁴

The law’s ideals, traditions and customs are much more than “fossils representing the dead weight of the past”.⁵ On the contrary, traditions and customs are “the main carrier of shared values [and] the most effective agent of social control...”⁶

But new challenges can also be a catalyst for change within the law.

² Sir Anthony Mason AC KBE, ‘The Art of Judging’ (2008) 12 *Southern Cross University Law Review* 33, 35.

³ Alice Tay, ‘The Role of the Law in the Twentieth Century’ (1991) 13 *Syd LR* 247, 247.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ A Bozeman, *The Future of Law in a Multicultural World* (Princeton UP, Princeton, 1971) 38.



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As the great American legal educator Dean Roscoe Pound, said: “Law must be stable and yet it cannot stand still”.⁷

In other words, unless it changes to meet new challenges, conditions and circumstances it will gradually lose its social relevance, centrality and authority.

Change is a gift. It moves us forward, always.⁸

The community

There is an unprecedented level of community interest these days in the general business of the State’s legal system and Supreme Court criminal trials in particular. Yet in many ways the business of the Court remains a mystery for most and is difficult for the public to find out about.

The Judges of the Supreme Court have indicated that, as part of their commitment to the International Framework for Courts Excellence, they would like to remedy the inaccessibility of the law to the community at large. This will be achieved by improving communications with the community, including – but not solely – through the media. This will ensure that relevant and meaningful information about the work and performance of the Court is both available and accessible.

It is essential that the Court has the confidence of the community in its ability to fairly and impartially administer civil and criminal justice within the State. Transparency in the workings of the Court and accountability by providing adequate reasons for its decisions are no less important to achieving this than is judicial independence.

In fact, as Mr Brown points out, judicial independence does not exist for the benefit or protection of judges so much as the protection of the community that they serve.

Whatever genuine concerns may be held or expressed in the past, I will – without apology

⁷ Dean Roscoe Pound, *Interpretations of Legal History* (The MacMillan Company, New York, 1923) 29.

⁸ Nikki Gemmell, *Weekend Australian Magazine*, July 12-13, 2014.



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– be a fierce and formidable warrior against any threat to that independence, whether it comes from within or without.

I will do my best to restore and maintain right relations with the other arms of government in the spirit of mutual respect, cooperation and understanding but not at the expense of surrendering or compromising the courts' independence or traditional values such as the rule of law.

It is also important for the Court, within proper constitutional bounds, to address the criticism or perception that it is too remote and that its decisions are out of step with reasonable community expectations or inconsistent with its contemporary values.

Personal remarks

May I end by thanking all of those who have supported and encouraged me through my career and personal life, especially my wife and children – today and every day.

I am sorry that my appointment has caused you distress but I want you to know how proud I am of your courage and dignity.

Thank you for your unconditional support and forbearance. Through your example in this episode I have, at least – even this late in the game – learned a valuable life lesson: to be truly free, you have to forget what other people think or say about you.

In hard times I take comfort in my family, my friends, and my God. I will look to them for support and guidance in the discharge of my office.

Let the proceedings be recorded.

Adjourn the court.