SUPREME COURT
OF QUEENSLAND

Queensland Law Society Symposium 2015

Brisbane Convention & Exhibition Centre
Friday 20 March 2015, 8.40am

The Hon Tim Carmody
Chief Justice

Introduction

Good morning all. It is a privilege to be invited to participate in an event dedicated to sharing knowledge and pursuing excellence in the professional development of lawyers capable of, and committed to, meeting community needs and expectations.

100th Anniversary of Gallipoli:

Before launching into my prepared remarks, I would like to take a moment to acknowledge the significance of this time of year for all Australians as we draw closer to commemorating the 100th anniversary of the ANZACs at Gallipoli.

Justice Brereton has commented that the legal and military professions "provide [their] practitioners with skills and experience that serve them well in the other."[1] Similarly, the fierce loyalty, honour, courage, and selflessness characterising both professions reflect complementary underlying values.

These values, which underpin the moral and regulatory fabric of the legal profession, translated into unrivalled valour and bravery in combat. To take one example: on 26 April 1915, the second day of the battle of Gallipoli, solicitor Major Macnaghten of the 4th Battalion Headquarters received a direction, with no further instructions, that "the line is to make a general advance". Major Mcnaghten, without hesitation or trepidation, turned to his Commanding Officer, Colonel Onslow Thompson, and stated: "I'll take the right Colonel, if you'll take the left". Historian Charles Bean wrote that the 4th Battalion then,

[1] Justice Paul Le Gay Brereton, 'Not so Strange Bedfellows: The Professions of Law and Arms', paper presented at the Legal Profession and The Defence Forces: Historical Connections Conference held at the University of Technology Sydney, 24 March 2012.

"led by two of the bravest and most highly trained officers in the force, without the vaguest instruction or any idea as to an objective… went blindly on to Lone Pine."[2]

Against overwhelming Turkish forces, defeat was inevitable. Macnaghten was shot in the chest, but advanced towards the enemy line. After taking a second shot to the throat, he returned to an aid post and collapsed. Soon after, he revived, drew his revolver, and set off again at the enemy. But alas, in the midst of combat he succumbed to his wounds. The following day, Macnaghten's close associate, barrister Colonel Henry MacLaurin fell in action. Their deaths were a tragedy which reverberated throughout the legal community.[3]

Aside from their extraordinary heroism and gallantry in battle, solicitors served the ANZAC Campaign in less recognised, although equally important, ways. Many law firms offered free legal advice to soldiers on active service, often becoming involved in complex, expensive and prolonged legal matters, especially in respect of succession disputes. Similarly, the Red Cross Missing and Wounded Bureau, established in 1915, was principally supported by financial contributions made by the legal community. Solicitors were also active in Comfort Funds, which addressed the personal needs of soldiers.[4]

The 100th anniversary in Gallipoli is a milestone in our nation's social and military history and a time to note and truly admire – like never before – their monumental service, effort and sacrifices. It is also a time to reflect on the immense contributions made by the legal profession, whether in combat or auxiliary support, to Australia's military service.

I would like to pay my respects to the original inhabitants of this land and their elders.

[2] Charles Bean, *Official History of Australia in the War of 1914-1918*, Vol 1 (Sydney: Angus and Robertson), 54.
[3] Tony Cunneen, *Solicitors in World War One*, Forbes Society for Australian Legal History <http://www.forbessociety.org.au/?page_id=190>. See also Tony Cunneen, 'Barristers in the First World War' (Winter 2014) *Bar News* 67.

The indispensable (but underappreciated) role of solicitors

Having been happily married to a solicitor for 37 years, I have observed that solicitors tend to be relegated to the background in both the public domain (and perhaps more disappointingly) the professional arena. Barristers remain at the bow of the ship yet it is you who are sweating it out in the boiler room of general practice keeping the ship afloat and on course. If barristers are the *face* of the legal profession, solicitors are the backbone and vital organs.

While barristers present, it is the solicitor who prepares, and we all know from experience what happens without proper preparation. As my father used to say, there is no point putting a $1000 saddle on a $10 horse.

In a speech at the Bar Practice Course last year, former Queensland Supreme Court Justice Margaret Wilson QC referred to the relationship between the barristers and solicitors branch of the profession as a "symbiotic" one, and their differing roles as "complementary".[5] True professionals match need with service. It is only when our respective functions are carried out in perfect harmony that our clients' needs are fully met, and our true purpose of public service fulfilled.

However, being a solicitor these days is no easy feat. Apart from diligence, vigilance, self-learning (to keep abreast of issues and changes due to the dynamic nature of the law) and a thorough knowledge of specialty areas, there is the ongoing requirement of strict adherence to ethical and professional standards which many in other callings would find unreachable.

This is not, of course, an exhaustive list of skills, attributes or standards. And I do not have the temerity to lecture the veterans of the profession here this morning who still live and breathe the work of a solicitor day to day as they have done for many years.

---

[4] Tony Cuneen, *Solicitors in World War One*, Forbes Society for Australian Legal History <http://www.forbessociety.org.au/?page_id=190>; see also Bruce Oswald and Jim Waddell (eds), *Justice in Arms: Military Lawyers in the Australian Army's First Hundred Years* (Sydney: Big Sky Publishing, 2014).
[5] Justice Margaret Wilson, 'Barrister and solicitor: a symbiotic relationship in the interests of the client' (Speech delivered at the Bar Practice Course 62, 20 February 2014).

The importance of access to justice

An important aspect of professionalism, which is occasionally overlooked, is the ideal of open, accessible and practical justice. At the 800th Anniversary of *Magna Carta*, it is worth remembering that access to justice is a foundational principle of the rule of law. As doing public service is at the *core* of our profession, this issue deserves particular attention.

There is not a single method for ensuring access to justice, and no one branch can do it unassisted. A joint effort is required. On one hand, the courts must look towards improving access to justice by facilitating community engagement, rectifying deficits in public knowledge, addressing misperceptions regarding the legal process, and promoting judicial awareness of diversity and social justice issues. That is the judiciary's job, but the solicitors' arm can then build on this by promoting and supporting the courts, as well as continuing to engage in pro bono work.

The role of the courts in improving access to justice

Access to justice can be boosted enormously through more direct engagement between the courts and the community. Studies have revealed that the community is largely dissatisfied with sentencing outcomes and views judges as being "out of touch".[6]

The root of these negative perceptions can be traced to the limited and often distorted information available to the community about the work of the courts. Only a relatively smaller segment have engaged with the courts, for example, through litigation or jury participation. The majority are dependent on the restricted and sensationalised information conveyed by the popular media.

Indeed, a Canadian study indicated that where participants were presented with a media excerpt of a real case on manslaughter, in addition to the quantum of sentence, 80% were of the opinion that the sentence was "too lenient". However, when the respondents were provided with a full description of the circumstances relating to the case, 30% believed the

[6] Kate Warner et al 'Are Judges Out of Touch?' (2014) 25(3) *Current Issues in Criminal Justice* 729.

sentence was "about right", whereas 45% believed the sentence was "too harsh".[7] This reflects the conceptual and practical distinction between uninformed *public opinion* and informed *public judgment*.[8]

Pamela Schulz has done considerable research into the "tripartite" relationship between the courts, media and the community, and concluded that there is a growing "discourse of disapproval and disrespect" as a result of the consistently negative media portrayal of judges and the work of the courts.[9] This is partially owing to the markedly conflicting modes of operation between the media and the courts which make it problematic for the media to communicate our work accurately to the public.[10] Whereas the media is dictated by commercial drivers including deadlines, content simplicity, entertainment value, and profit, the work of the judiciary is often lengthy and grounded in tradition, precedent and reason.[11]

Another important consideration is the commercial reality of the mass media machine. Court decisions of a somewhat negative or more controversial nature are more likely to attract audiences than smooth and unobjectionable ones.[12] This leads to selective reporting, creating an information bias.

It is concerning that this longstanding state of media dependency is only serving to compound the negative public perceptions of judges and the courts, thereby undermining the key tenet underpinning the rule of law that justice must not only be done, it must be *seen* to be done.[13] It is my opinion that we should go one step further – justice must be both seen *and* heard to be done. But I will elaborate on this point later.

---

[7] A Doob & J Roberts, *Sentencing: An Analysis of the Public's View on Sentencing* (Canada: Department of Justice, 1983), 6. Similar results have been confirmed in later studies in other jurisdictions: see Karen Gelb, 'Myth and Misconceptions: Public Opinion versus Public Judgement about Sentencing' (2009) 21(4) *Federal Sentencing Reporter* 288.
[8] Ibid.
[9] Pamela D Schulz, 'Rougher than usual media treatment: A discourse analysis of media reporting and justice on trial' (2008) 17 *Journal of Judicial Administration* 223, 223.
[10] Sharon Rodrick, 'Achieving the Aims of Open Justice? The Relationship between the Courts, the Media and the Public' (2014) 19(1) *Deakin Law Review* 123, 136.
[11] Ibid 137.
[12] Ibid 135.
[13] Hon TF Bathurst, 'Community Participation in Criminal Justice' (2012) *Bar News: The Journal of the New South Wales Bar Association* 45, 46.

During an address for the presentation of Victorian Legal Reporting Awards, former Justice of the High Court Michael Kirby remarked on the "big gap between what the public is told (by the media) and the actuality at the workface"[14] and, as he so rightly pointed out:

> Sadly, if we wait for most media outlets to provide quality reports of what really goes on in our courts, we may wait a very long time. Media wants it short, sweet and interesting. Judges know it is often not like that. The age of infotainment is upon us. But the judiciary itself needs to help find a workable antidote.[15]

It is my vision for the future administration of the Queensland courts that the media should no longer be acting as an "intermediary"[16] between the judiciary and the public and that the *courts themselves* need to be exploring more effective ways and means of educating the public about what it is that we do on a daily basis. It is simply not a task that we can delegate to other entities and be confident that the message will not be lost in translation.

The introduction of cameras to courtrooms to facilitate live streaming is a possible mechanism for advancing public education and access to justice. Steps have already been taken to create the Broadcasting Court Proceedings Committee comprising Justice of Appeal Fraser and Justices Atkinson, Martin and Applegarth under the leadership of President McMurdo. It is currently investigating potential benefits and disadvantages of implementing this system in Queensland.

Another important means of bettering public understanding about the work of the courts and improving access to justice is enabling community access to simplified versions of judgments. I mentioned earlier that justice should not just be done, but be *seen* and *heard* to be done. This means that the public understand what happened in court and the underlying reasons. The information should be in a form that is simple and concise so that it permeates their consciousness and allows them to appreciate that a decision is a just

[14] Hon Justice Michael Kirby, 'Improving the Discourse Between Courts and the Media' (2008) 35(6) *Brief* 20.
[15] Ibid 21.
[16] Rodrick, above n 4, 132.

one. It is futile for the judiciary and the legal profession alone to be satisfied that the ends of justice are being achieved.

Judgments riddled with legal jargon not within the immediate comprehension of a layperson is not promoting access to justice. After all, justice cannot be seen to be done in a foreign language. This brings to mind the classic work *Bleak House* by Charles Dickens where the Court of Chancery is memorably described as "tripping one another up on slippery precedents, groping knee-deep in technicalities" and "running their goat-hair and horse-hair warded heads against walls of words."[17] But unlike the times of Dickens, we live in the technological age where the internet is one of the most (if not *the most*) important tool for disseminating information.

Other changes which may prove valuable for greater access to justice and community education via the internet include increased access to sentencing remarks, case notes, judicial addresses, law journals, jury information, annotated court rules and procedures for self-representing litigants.

The role of solicitors in improving access to justice

That brings me to the part that solicitors can play in improving access to justice in the brave new world I have described. Unlike the courts, you have direct and close relationships with a vast clientele. This gives you the practical ability to promote and give practical expression to many of the ideas for community education and engagement I have just outlined.

Solicitors can also advance the notion of accessible justice by continuing to break down the barriers for those disadvantaged sections of the community lingering on the fringes of the legal system. In the book *Lewis & Kyrou's Handy Hints on Legal Practice* (a book I strongly recommend to any practitioner seeking advice on attaining true professionalism) the importance of engaging in pro bono work is highlighted. The authors observe:

[17] Charles Dickens, *Bleak House* (Penguin Books, 1996) 14.

> "…it is sometimes easy to forget that being a lawyer means being a member of an honourable profession which has a strong tradition of protecting the rights of disadvantaged members of the community."[18]

I applaud the profession in Queensland for the work that has already been done on this front. Tools like the Queensland Law Society's Pro Bono Referral Service which is administered by QPILCH (the Queensland Public Interest Law Clearing House) are especially useful in facilitating the distribution of legal aid to those most in need.

I would also like to thank and acknowledge legal practitioners for their increased involvement in rural, regional and remote Queensland. A prime example of the growing efforts to assist regional areas is demonstrated by the opening of a Townsville QPILCH office as recently as March last year[19].

You are the backbone of professional law and justice service providers. I urge you to continue providing assistance to these regional areas where your help is needed most. Not only are you opening up the pathway to justice, you are also developing personally and professionally. In describing his experience working in regional Queensland, solicitor Anthony DeFraine said:

> "Working in regional practice I have learned how to deal with a variety of clients from differing socio-economic backgrounds and ethnicities. I believe that this has made me a better solicitor in that I have had a variety of clients early on in my career and feel that it has put me in good stead for a long career in the law."[20]

A central aim of these potential changes is to put the legal profession – media – community relationship on a firmer footing and developing a healthier and more resilient relationship characterised by:

[18] Gordon D Lewis, Emilios J Kyrou and Albert M Dinelli, *Lewis & Kyrou's Handy Hints on Legal Practice* (Lawbook Co, 3rd ed, 2004).
[19] Queensland Public Interest Law Clearing House, 'Annual Report 2013-2014' (Report No 2013-2014, QPILCH) 34.
[20] 'A Country Practice' (2008-2009) *Australasian Law Management Journal* 10, 11.

- Mutual understanding – do we get each other? Do we know what each other's wants and needs are?
- Mutual respect – are we treated as if we matter?
- Mutual trust – is the relationship built on truth and confidence?
- Open communication – are we able to talk freely and constructively about issues that are important to maintain the relationship without compromising our independence and institutional functions? And;
- Empathy – to what extent are we in touch with how the other feels about those issues and their impact?

Concluding remarks

In closing I would once more like to stress the importance of joint efforts from both the courts and legal practitioners for increasing access to justice in Queensland. This would strengthen the ideal of the rule of law which forms part of the very fabric of our legal system and contribute to true professionalism for practitioners.

I wish you all a productive two days. From what I have seen in the schedule, you are likely to have just that. Thank you.