DISTRICT COURT
OF QUEENSLAND

Induction for New Members of the Legislative Assembly

Parliamentary Annexe - Wednesday, 18 March 2015

Chief Judge K.J. O'Brien

I join the Chief Justice in expressing pleasure at having the opportunity to meet and to speak to Queensland's newly elected Parliamentarians. I am also grateful to the Speaker, Mr Peter Wellington and to the Clerk of Parliament, Mr Neil Laurie for this opportunity.

I am sure that this is an exciting time for you, a time no doubt tinged with mixed feelings of pride, hope, anxiety and ambition for the future. A significant number of your fellow citizens have indicated they hold you in considerable esteem, and believe that you are worthy of their trust. They have high hopes for you. There may be moments when some of you are troubled about your ability to fulfil that trust and meet those hopes. Those are natural human reactions shared by all of us.

The Judges feel them too. We are not, I assure you, aloof, unresponsive people from an alien culture. We are fellow Queenslanders, like you. We are ordinary people just like you, with the same strengths and weaknesses and hopes and aspirations. Parliamentarians and Judges have both been placed in a position of public trust and responsibility and we each seek to do our best by the people of Queensland.

The tasks that you are charged with as a result of your election to your new office are expressed differently to that of the judiciary. While you take an oath under s.22 of the *Queensland Constitution* to "serve the people of Queensland", Judges swear to apply the law "without fear or favour, affection or ill-will". The differences in our roles however go beyond the

important words of those Oaths. The three arms of our system of government form the very foundation of our democracy and society.

In a democracy it remains the responsibility of the legislature and the executive branches of government to enact and administer the laws, subject of course, to the will of the people. But the impartial application of the law is the responsibility of the judiciary which must be completely immune from political pressure. Judicial independence, as a former Chief Justice of the High Court has said, "does not exist to serve the Judges nor to serve the interests of the administrative and executive arms of a government. It exists to protect 'the governed' or, to put that in other words, it exists for the protection of our community."

It is probably for that reason that Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights both require that the rights and obligations of individuals in a civil suit and in any criminal charge laid against an individual should be determined by an independent and impartial tribunal.

Our Court system is a complex hierarchy of jurisdictions. There are many different courts such as the Magistrates Courts, the District Court, the Supreme Court and the Court of Appeal. We also have Federal Courts, not to mention QCAT and the plethora of Tribunals and alternative dispute resolution bodies. Within each court the subject-matters that we deal with are determined by reference to legislation that you, the Legislature, have enacted.

My Court, The District Court of Queensland, was first established in this State in 1865. There were three Judges, with the Colony being divided into three districts – the Metropolitan District which comprised Brisbane, Ipswich, Toowoomba and Warwick, the Western District was comprised of Dalby, Condamine and Roma and extended from the Western Downs to the Western Borders, and the Northern District which effectively extended from

the Maroochy River to all places north. In 1922 the District Court was abolished and its jurisdiction and its judges were incorporated into the Supreme Court. The court however was re-established in 1958 with three judges, one being in Townsville and two in Brisbane.

Today the court has 39 judges, 12 of whom are based in the larger regional centres. The court is the main trial court in Queensland. It hears all major criminal matters, save for homicide and certain major drug offences. It has a significant civil jurisdiction up to $750,000. It encompasses the Childrens Court which involves a dedicated group of judges dealing with the troubling area of youth crime, and the Planning and Environment Court which hears town planning cases of vital importance in a fast growing state.

The Judicial Role

Every day right across this land, there will be breaches of road rules, acts of violence or of theft, sexual assaults, or of homicide. Individuals charged with those offences will appear in courts where they are entitled to have the issue of their guilt or innocence determined by an independent court. If they are to be punished for breaking the law, then their guilt must be established before such a court. A court presided over by a judicial officer bound by an Oath to do equal justice to all men and women, without fear or favour, affection or ill-will. Judges do not decide cases according to their own agenda. They do so free of any external influence other than the law itself.

But of course it is not simply about controlling the behaviour of citizens. In the Family Court, Judges make important decisions which have an enormous impact on the lives of people and the future welfare of children. Every day in our courts civil cases will be heard involving disputes between citizens, between corporations and between citizens or corporations and the government. What is certain is that whatever the court each party will be treated equally; the wealthy litigant, the government or the large and

powerful corporation enjoys no advantage or special favour before the court.

Given this division of responsibility it is to be expected that there may be occasions when there is tension between the executive arm of government and the judiciary. In 1388, for example, all the Judges of England were impeached and the Chief Justice of the day was executed. In 1609, when James I was arguing with his Chief Justice, Sir Edward Coke, it is recorded that the King became so incensed that he threw a punch. Fortunately, or fortunately at least for our present Chief Justice, things are not as bad as that today.

Nevertheless there are occasions when the executive arm of government may feel frustrated by the setting aside of a decision which the government of the day sees as being politically important or even as being politically popular. During the Cold War, for example, the Commonwealth Parliament enacted laws effectively dissolving and outlawing the Australian Communist Party. The Federal Parliament had no power to make laws with respect to unincorporated associations; but it did have power to make laws with respect to the Naval and Military Defence of the Commonwealth. In a purported exercise of this power, the legislation contained a preamble setting out the reason why the Parliament thought this law to be necessary for the defence of the Commonwealth. The High Court however held that it was for the Court, not the Parliament, to determine whether the law was properly characterised as being a law with respect to the defence of the Commonwealth. Parliament, said the Court, could not act as the Judge of the extent of its own power. That was a question for the courts to determine and the legislation was subsequently held to be invalid. The Prime Minister of the day, Mr Menzies – himself a Queen's Counsel – made no "legal criticisms" of the decision but did say that it caused "grave concern for some millions" of Australians.

More recently, in this State, the government had passed certain laws, the effect of which was to empower the executive to make decisions based upon its views of the public interest, the merits of which were not reviewable by any court, on whether or not to nullify Supreme Court Orders by imposing detention on certain persons. Put another way, those laws would have justified detention by executive order in certain situations. The Court of Appeal held those laws to be invalid in that they would have the consequence of requiring the Supreme Court to exercise powers repugnant to or incompatible with its institutional integrity in exercising judicial power under the Constitution.

That decision would no doubt have displeased the Executive Government, but it provides a clear example of the Court exercising its constitutional role as the third arm of Government.

Decisions made by Judges particularly in the area of criminal sentencing, are not infrequently the subject of criticism in some sections of the media and it is perhaps in this area that there exists the greatest misunderstanding of the role played by courts. Let me tell you that sentencing is the hardest thing that a Judge does. The purpose of all good sentencing is to make the punishment fit the particular crime. The circumstances under which crimes are committed, and the circumstances of the offender are infinitely various. When a Judge imposes sentence, he or she knows all the relevant facts and circumstances. The Judge has seen the accused in the dock, has heard all the evidence, knows all the circumstances, and is aware of the defendant's antecedents and criminal record. In this State, we have a Sentencing Act which contains almost 250 sections and which sets out all of the matters which the sentencing Judge must take into account. In addition, a Judge must know of and apply the sentencing laws as they are determined and clarified by the Courts of Appeal. There are the complexities of aggregation, of parole eligibility and of parity. In the public debate however these matters are often ignored if they are in fact ever known.

Sentencing is not about the Judge simply imposing what he or she thinks the sentence ought to be – sentencing is about applying principles of law.

Judges are criticised as being out of touch, as being detached from the real world. Sentences are perceived as being too lenient, and as being out of touch with community expectations. These perceptions are almost invariably based on a few paragraphs or even a few lines, in a media report concerning the court proceedings or upon television footage of Judges wearing robes in a ceremonial procession, or upon the words of an agenda driven yet uninformed participant in a talk-back radio programme. The media of course cannot be expected to report in full all the detail whether of fact or of law involved in a particular case. That would be an unrealistic expectation. But the fact remains that media reporting is sometimes tendentious in nature and too often community opinion is based upon little more than a brief précis, often focusing on the more sensational aspects of the case, of what occurred in the sentencing proceeding and that too often that opinion is indicative of a lack of understanding of the judicial role.

The reality is that only a very small number of sentences are ever the subject of challenge. The vast majority are entirely uncontroversial. Recently, the Australian Institute of Criminology conducted a jury sentencing study in Tasmania. The jurors were allowed to sit through the sentencing process in the trials in which they had, as jurors, returned guilty verdicts. It was an extensive survey based upon a large number of criminal trials. The study found that more than half of the jurors surveyed would have imposed a more lenient sentence than that which the trial Judge actually imposed. Moreover, when informed of the actual sentence, 90% of the jurors said that the Judge's sentence was appropriate. The substantial majority, some 83%, considered the Judge to be in touch with public opinion. Remember, this was a survey conducted with members of the public who had engaged directly with the criminal justice system and whose opinions were not formed second-hand through the mass media.

Recently a distinguished Queensland jurist and High Court Judge, Justice Patrick Keane, made the observation that in1Australia at this time the judiciary is more of the people that it has ever been. He made the point that the general experience of life of a modern Judge is no narrower than the members of other occupational groups and he asked why anyone would doubt that in the open and egalitarian society which has flourished in Australia since the Second World War. Those observations I would suggest are confirmed by the study to which I have just referred.

Most judges today are probably the first members of their family to attend University. That has occurred, not because of any privilege of upbringing, but rather because of sacrifices made by parents determined to offer their children an opportunity in life that was not available to them.

Well I have probably spoken for long enough ladies and gentlemen but the request that I would make of you is to ask that you think very carefully before passing criticism on a Judge or on the Courts system itself. Of course, no one should be above criticism, indeed informed criticism is healthy in a democratic society. As a Judge, however, I invite you to be temperate and thoughtful when you have to consider a matter which involves the Courts – just as, I promise you, the Judges will do their utmost to deal fairly, temperately and justly with all the matters that come before them.

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