



SUPREME COURT  
OF QUEENSLAND

Queensland Law Society Symposium 2016  
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**The Hon Catherine Holmes  
Chief Justice**

Before thinking about what I wanted to talk to you about this morning, I looked back to the address given by former Chief Justice de Jersey, now His Excellency the Governor, in 2014. He observed that at that stage he had just completed 16 years as Chief Justice. I come before you having just completed six months as Chief Justice. The adjustment process has been significant. I have moved from the calm life of a Court of Appeal Judge, to having to think a great deal about the Court and the profession and the way we go about doing things. I am not so keen on talking about what George Bush called the vision thing; I think it's often an excuse for a lapse into jargon-filled platitudes. But I am very happy to talk to you about some things the Court is doing, often with the help of the Law Society and some things we plan to do, and I also want to say a little about the subject of stress and depression, which seems to me a major concern for the profession.

I'll start with some background on the courts' current workload. Last year civil lodgements in both the Supreme and District Courts went down, between three and four percent. That's not remarkable, it's fairly typical across the country. Here, it probably has something to do with the Moynihan changes and the jurisdictional limit alterations. But probate applications went up by about the same percentage, and in fact over the last 10 years the annual number of probate applications has about doubled. On the criminal front, the District Court had an increase of six percent in criminal filings last year. This is interesting, particularly given that our criminal jurisdiction has shrunk: the Supreme Court's criminal lodgements went up about 32 percent during 2014/15. It had gone up about 50 percent over the two years previously.

So the nature of our workload has really changed in that time. We are, in the short term at least, becoming a court with a serious crime load. The change in jurisdiction has left us



with the most serious matters, which are more likely to go to trial or contested sentence. Combined with that, inevitably, moves to mandatory sentencing in the last couple of years, such as the 80% non-parole eligibility requirement for drug traffickers, have increased and will continue to increase the numbers of matters going to trial, since there's not much to be gained from a plea. The Supreme Court is already, according to the Productivity Commission, managing with fewer judicial officers per head of population than any other state or territory in the country, so we are going to have to get better and better at doing more with less.

Which brings me to the court's move into the electronic age. There are a number of aspects to this. The first and most obvious is the advance of the eTrial. We already do a number of trials as eTrials in the sense that the parties' documents are made available in electronic form and uploaded into the court's eTrial database. Then the parties, judge and jury, if there is one, can view them on screens in the courtroom. There are 14 courts equipped for this. The Cowan trial, of the Daniel Morcombe killer, proceeded in this way. Usually the process is chosen for trials involving large numbers of documentary exhibits. At any given time there are usually a couple of eTrials under way, and as I understand it, all the Planning and Environment Court trials are electronic.

That's a start, but what we really want to do is get to the stage where everything from go to whoa is done in electronic form, so that you have electronic lodgement of the initiating documents and there is never any need really for a paper file. So, at the moment, the Rules Committee is looking at changes in the rules to allow filing of electronic documents and the issue of court orders with electronic seals and no need for signatures.

The court has an eTrials and Court Technology Committee which includes judges, members of the profession, the Department of Justice, the DPP's and the police. Members of the Queensland Law Society are on that committee and are giving sterling help. As I mentioned, the court's criminal workload is a major consideration. That committee is looking at a system in which the Queensland Police and the Australian Federal Police would provide the briefs in criminal matters in electronic format to the Magistrates Court and the parties; and then those depositions again would be provided to the District and



Supreme Courts, with disclosure based on electronically provided documents and any resulting trial proceeding as an eTrial. There are many challenges and obstacles to overcome, one being to induce the prosecution to refine the discovery documents so as not to smother the defence in an avalanche of extraneous material, and, of course, like everything, it needs funding. But it is exciting.

There are advances already made on the criminal front, besides the existence of the eTrial capacity I've spoken about. There is a facility which allows the DPP to make online electronic requests for subpoenas, which obviates an enormous amount of paperwork. There is an option now available for jurors to complete jury questionnaires online. And the thing about online formatting is that you can design it so that the number of questions the person has to answer is limited according to how their answers develop.

One of our success stories has been the development of an online interactive form to enable people wanting to search and get copies of material held on civil files. I should say for this initiative that the court got the assistance of QLS members in designing the service. The service now includes all of the Supreme and District Court files and the Magistrates Court as well. It lets people make search and copy requests from anywhere online and get hold of their documents without ever needing to enter a courthouse. We have had more than 8,000 requests so far.

Also relevant in the electronic context is the court's Committee on Electronic Publication of Court Proceedings. It produced an Issues Paper in June 2015. It outlines the competing considerations in relation to any possible streaming televising or internet broadcasting of court proceedings, and sets out some of the experiences of other jurisdictions. It's available online; it's thoughtful and extremely readable and I recommend that if you haven't already had a look at it you do so. The committee has taken submissions and is likely to report in the next couple of months. In connection with the question of communication I should mention, too, that the court expects that with the assistance of the Justice Department we will shortly be able to employ a media or communications officer on a trial basis.



Another area I want to mention where the courts have had some help from the Law Society is this. There is currently an audit underway of courthouse facilities across Queensland from a number of perspectives: acoustics, disability access, security, and the adequacy of public areas, pre-recording facilities, jury facilities and rooms used by duty lawyers and other agencies. The audit is taking place across the State, from Stanthorpe to Weipa. That's the result of QLS representations to government before the last election, so that the audit currently underway is the product of an election commitment on the part of the current government. I have hopes for significant resulting improvements which will be of benefit to the public and the profession. And it goes to show what the QLS can do when it brings its influence to bear.

So that's my news. I want to turn now to another topic that has been exercising my mind, because I'm now in a role where I have to concern myself with the wellbeing of my fellow judges, their associates and the staff of the court and also really, the wellbeing of the broader profession. That's the issue of stress, anxiety and depression. It seems a bit of a jump from what I've just been talking about, but it isn't totally unrelated to our electronic age. Although I have only been Chief Justice for six months, I have been in the legal profession for three and a half decades. When I began at the bar, if someone wanted to get hold of you they'd ring your chambers. When you came back from court, there'd be a bit of paper on a spike and you'd try and remember to get round to returning the call in the morning. Now if I talk to a barrister in George Street, they chat with one eye on their iPhone for emails and texts. It is a more pressured age, there is no doubt about it, and that does have implications for our mental health.

It's only in the last decade, I think, that this subject has started to be taken at all seriously. Consciousness started to be raised in 2007 with the Beaton Consulting "Annual Professions' Survey"<sup>1</sup> which found higher rates of depressive symptoms for Australian professionals, as compared with the general Australian population, and higher levels again in those working in law firms. Correspondingly, legal professionals also reported that they were more likely to use alcohol and other drugs to manage their feelings of depression. Lawyers were doing worse than a range of other professionals, including insurance

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<sup>1</sup> Research summary, beyondblue, April 2007.



brokers and engineers. Those findings have been replicated in other surveys. In 2009, the Brain and Mind Research Institute at the University of Sydney conducted a survey<sup>2</sup> funded by the Tristan Jepson Memorial Foundation, of which you might have heard. It found that not only solicitors and barristers but law students reported high levels of psychological distress and risk of depression compared with other Australian community groups. And in 2014 the UNSW Law Journal carried a report of a national survey of a thousand Australian legal practitioners, which similarly found a high level of stress and negative emotional states<sup>3</sup>.

Now there are some things to be said about survey results. The first is that some of us may feel that the best way of not adding to work stress is to avoid distractions, such as completing surveys. It is difficult to tell how many people are drawn to answering the survey because they are experiencing the difficulties with which it deals, thus skewing the results. It may also be noted that two-thirds of the survey respondents in the UNSW survey were female, which of course does not reflect the legal population. I suspect that doesn't reflect a greater level of suffering from stress in women, but rather a greater willingness to talk about it.

At any rate, it may be far from certain exactly what percentages of lawyers are suffering from stress, anxiety and depression, I think it is pretty clear that a lot of us do. Why is it so? There are theories about the personality traits associated with lawyers: pessimism and perfectionism as predisposing to anxiety and depression. But I think the nature of the profession itself provides ample explanation without having to go there. To start with, law school is now an intensely competitive place, with the depressing knowledge that there are very few jobs to be had on the other side of graduation, so it's essential to pack in as much work experience as possible with study time in order to be competitive on the market. Then practice has become increasingly pressured; I've already mentioned the stress of virtually full-time accessibility through email and phone. Some firm environments are most certainly more stressful than others with long working hours, high billable hour targets,

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<sup>2</sup> "Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers" January 2009.

<sup>3</sup> "Lawyering Stress and Work Culture: an Australian study" Chan Poynton and Bruce UNSW Law Journal 2014, 37(3) 1062.



oppressive performance review procedures and at the higher end of the market, an expectation of availability to clients around the globe on a 24-hour basis. From my personal perspective, there's nothing more damaging to mental health than the feeling that you no longer have a private life with time which is exclusively your own for leisure. Significantly, John Briton, the former Commissioner for Legal Services, has estimated that emotional distress featured in 30 percent of the disciplinary matters dealt with by the Legal Services Commission<sup>4</sup>.

Well, what are some of the initiatives underway to deal with these problems? The Tristan Jepson Memorial Foundation was set up in memory of a young lawyer who took his own life. It has developed guidelines which are aimed at improving the culture of legal workplaces. It identifies a number of what are called "psychosocial factors" and proposes policies and practices designed essentially to make employees feel supported and respected with a recognition of the need for balance between work and personal life. The Queensland Law Society is a signatory, as are a number of law firms. That's an encouraging sign, although I add this caveat, one of the things that participants in the UNSW survey I referred to expressed cynicism about was wellbeing initiatives. It is plain that without actual changes in the way employees are treated, commitments to guidelines are not much help.

The Law Institute of Victoria in 2014 produced a report on mental health and the legal profession<sup>5</sup> which made a number of recommendations, including the establishment of a wellbeing in the law programme to undertake research and awareness-raising in relation to stress, depression and anxiety. That programme is underway this year. It also recommended a 24 hour telephone counselling service for lawyers, seven days a week, which is in place. The Western Australian Law Society produced a number of recommendations on mental health and wellbeing in December last year, including mentoring programmes and mental health seminars. The Queensland Law Society offers counselling services to its members, it holds seminars and provides a number of fact

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<sup>4</sup> "Lawyers emotional distress and regulation" paper delivered to Bar Association of Queensland 2009 Annual Conference.

<sup>5</sup> "Mental Health and the Legal Profession: a preventative strategy", L HeIn, 11 September 2014.



sheets. For example, there's one to help in identifying mental health problems in employees.

Interestingly, the University of Queensland Law School has introduced a programme for first years to help them manage stress and anxiety, which includes things like giving them access to tutors to discuss their study and personal problems, stress seminars, exercise tips and videos with advice for getting through law school. It sounds like a refreshing change from law school as I knew it, where nothing could have been further from the academic staff's concerns than the problems of undergraduates.

Another significant thing which has changed is the willingness of lawyers to break the silence and speak about their own experiences. Justice Shane Marshall of the Federal Court broke new ground last year when he spoke about his struggle with depression. Last year, James Bell gave the Queensland Tristan Jepsen Foundation lecture for the Law Society in which he talked about his experiences. That seems to me extraordinarily important and valuable, that those who have had the experience be prepared to talk to others about it.

Generally speaking, our culture as a profession needs to change so that the things that really matter in life don't run a very poor second to demands of work and so that practitioners don't feel it's a career damaging step to disclose difficulty. That's not going to happen tomorrow, but on an individual basis we can look out for each other. We older practitioners particularly have got to look for the danger signals amongst our young people and not be dismissive of their unhappiness, simply because back in the day we managed to get through our own troubles. And while I haven't had the experience of depression, I have had the experience of being under extraordinary stress in the workplace, on occasion quite publicly, and I can say that what made all the difference was the occasional friendly call from a colleague asking how I was. So I hope you will all give that some thought.