

SPEECH
VALEDICTORY
FRIDAY, 24 MARCH 2017
BANCO COURT

Chief Justices, fellow judicial officers, Attorney, Shadow Attorney, retired judicial officers, members of the legal profession, officers of the Department of Justice, family and friends, I am deeply touched that each of you has made time in your busy life to attend this ceremony.

Like the Attorney, I acknowledge the traditional owners of this land once known as Meanjin, the Toorbul and Jagera people, and pay my respects to their elders past and present.

Chief Justice Holmes, Attorney, Mr Hughes, Ms McLeod and Ms Smyth, thank you for your generous words. I'm sure the Courier Mail will report them in full, with prominence, together with a flattering photo!

Many well-wishers, kind enough to express regret at my retirement seven and a half years prior to statutory senility, have asked why? The answer is multi-faceted. I was but 36 years old when appointed a judge. It was never my ambition to hold office for 34 years. My role as President over the past almost 19 years involves the demanding court workload of a judge of appeal and a significant administrative role which at times is onerous. I have wide community and cultural interests and a much loved large extended family. I have had to place many things I would dearly wanted to do on the back-burner. The position of President of the Court of Appeal demands and deserves nothing less than 100 per cent commitment. I wanted to leave at a time of my choosing when at least some would say, "Must you go?" I had long planned to retire after 25 years of judicial service but when that date approached, I did not consider it to be in the interests of the Court for me to leave. My decision to stay another 15 months was not all selflessness: it gave me the opportunity to participate in the Court of Appeal's 25 year ceremonial sittings last month, attended by the Presidents of the Courts of Appeal of New South Wales, Victoria, Western Australia and New Zealand. I hope that my departure from the Court at this time will allow me to build a productive post-judicial life, and the Court of Appeal to benefit from new energy and ideas.

Ms Smyth, you and your predecessor Mr Potts may be pleased that my first contact with the law was through the solicitor's branch of the profession to which my father, Joe Hoare, belonged. And I was inspired to study law by some bright young articled clerks at Brisbane solicitors, Thynne and Macartney, whilst working there in my summer holiday after finishing high school.

A few years later when volunteering as a law student with the fledgling Aboriginal Legal Service I realised I wanted to be a criminal law barrister. One episode of this volunteering is indelibly etched in my memory. Some fellow law students and I were instructing a barrister in a committal proceeding. The elderly female complainant gave evidence that an Aboriginal youth at her front door offered to sell manure for her garden. Meanwhile, others in his gang entered her house through the back door and stole her handbag. The police prosecutor asked whether she could identify the youth. She confidently stated: "She would remember that evil face anywhere", as she pointed to my cherubic-faced student colleague of pure Irish descent, now revered legal academic, National Treasure and Jesuit priest, Father Frank Brennan. An unforgettable early lesson in the dangers of identification evidence!

I am delighted to see retired Supreme Court Judge, Alan Demack, and his wife Dorothy, here today. As Chief Justice Holmes noted, he chaired the Bjelke-Petersen Commission of Inquiry into the Status of Women in Queensland. Chapter 4 of the Commission's 1974 Report dealt with women in public life and noted under the heading "Judiciary":

"There are no female judges in Queensland, and there is no immediate prospect of there being any. Persons appointed as judges must have acquired skill and understanding in Court procedures, as well as considerable knowledge of the law. This happens only through many years of practice in the Courts. ... There are no women practising as barristers in Queensland. Therefore it will be many years before a Queensland woman is in the position to be considered for appointment to either the Supreme or the District Courts. The most positive contribution that can be made at this time is for the Crown Law Office to encourage women to enter its ranks.... Since the practising barristers employed by the Crown Law Office act as Crown Prosecutors, this may seem to be an unsuitable role for a woman. However, this kind of thinking cannot be heeded in 1974.

The Commission sees it as an essential long-term aim that there should be many women practising as barristers as well as solicitors and that women should become Judges in Queensland. ...

Therefore the Commission recommends that the Crown Law Office encourage women to practice as barristers within its employment.”¹

Under the heading, Magistracy, the Report noted:

“The Commission understands that there are already women in Queensland who are working towards attaining the qualifications which will enable them to be appointed as Magistrates. The Commission applauds this step and recommends that the Public Service Board encourage women to qualify for appointment as Clerks of the Court and as Stipendiary Magistrates.”²

Judge Demack walked the walk and, knowing I wanted to be a barrister, appointed me as his clerk in 1975. I have been privileged to work full-time in the law ever since.

¹ Page 5.

² Above.

There have been great changes to the substantive and procedural law over that time, changes which, I think, debunk the urban myth that the law and the judicial arm of government are out of touch. Over time, the law and the courts do change, responding appropriately to valid criticism and changing community values, expectations and attitudes.

In civil law these changes include the dramatic shift from court-based litigation to mediation and alternative dispute resolution. The comparatively few civil cases which do progress through the courts are tightly case-managed to minimise costs for both litigants and the taxpayer. Our 2017 challenges will include dealing with class actions.

Perhaps the greatest changes to the criminal law concern sexual offences. In 1975 a person could not be convicted on the uncorroborated testimony of a child witness. Complainants in alleged sexual offences gave their evidence before strangers in open court, in full view of the accused and, often with lengthy, aggressive cross-examination of marginal relevance, including about previous sexual experience. And all this, including the names of complainants,

was liable to be reported in the media. It was only the courageous or the naive who pursued their complaints of sexual offences.

Nowadays the evidence of children is given by way of the child's initial statement to police, and cross-examination is pre-recorded in closed court, with a support person in a room remote from the court, and with limits on the nature and style of cross-examination. Adult complainants also give their evidence in closed court, where appropriate with a support person and with the accused screened from their vision. And unlike in 1975, men can now be convicted of raping their wives.

Another positive change for the legal profession and the judiciary has been the increasing participation of women. Despite the 1974 Demack recommendations as to the Magistracy, no woman magistrate was appointed in Queensland until 1990. But since then women have steadily increased their representation at all levels of the judiciary in Queensland. I am proud and delighted that today both Queensland and Australia have woman Chief Justices who have been my colleagues and friends over the past four decades.

A second irksome urban myth is that judicial officers are light on sentence. In truth, the vast majority of sentences are uncontroversial. Those that are manifestly inadequate or excessive are corrected on appeal. The myth has been convincingly debunked by two respected academic studies with jurors, first in Tasmania and more recently in Victoria. These show that when members of the public have all the relevant information, most would impose a lesser or the same sentence as that actually imposed by the judge.

Last year during Law Week, whilst speaking with legal studies high school students at Caboolture, I was asked for my career highlight. This answer was easy, not multi-faceted. It was standing with my sister and brother judges of appeal, the Senior Judge Administrator and the judges of the Trial Division, between 2013 and 2015, in successfully resisting a calculated and sustained attack on the independence of the Supreme Court of Queensland by some members of the legislature and the print media. They were dark days for the judges and their support and registry staff. To those, from both sides of politics, who suggested judges should get back to work, I emphasise that we never stopped hearing and determining cases according to our judicial oaths and affirmations. The support from your professional associations, Mr Hughes, Ms McLeod and Ms Smyth, from individual leaders and members of the

profession and from retired judges sustained us. But the real heroes of this battle were the people of Queensland. Exit polls conducted after the 2015 State Election made clear that ordinary Queenslanders cherish the independence of the judicial arm of government.

There are a great many things I will miss on my retirement from judicial life. First and foremost will be my loss of the privilege and responsibility of exercising judicial power and its ability to influence lives and develop jurisprudence. I will miss the daily contact with my fellow judicial officers, whether members of QCAT, the magistracy or the higher courts. All judicial officers are united in their daily, often grinding commitment to striving to do equal justice according to law to every litigant. The majority of matters before the Court of Appeal are from the District Court and the Trial Division of the Supreme Court. The people of Queensland are well-served by both these great institutions. Queensland has experienced considerable population growth since 1975 but the resources provided to its Courts have not grown commensurately. The Australian Bureau of Statistics' annual publications show that Queensland courts are amongst the nation's most productive yet the least costly to operate. This is due in large part to the industry and efficiency of its judicial officers. But it is also because the courts have long been under-

resourced. Whilst appreciating the many demands on precious funds, it is time for Queensland Courts to receive comparable funding to courts in other states.

It has been wonderful to have spent the past five years of my working life in this spectacular award-winning building. I will miss this stunning courtroom with Sally Gabori's evocative mural, the dignified light-filled Court of Appeal next door and my superb corner chambers' suite.

But buildings and judicial officers are only part of what makes the judicial arm of government function. The joys of my judicial life include the brilliant associates who reinspire me each year with their enthusiasm for the law and life. I am delighted that 9 of mine are present this morning, with Magistrate Ho watching on videolink from Gladstone.

In Queensland, the court and registry support staff are employees of the Executive rather than the judiciary. I hope that, one day, consistent with the seminal concepts of the separation of powers and judicial independence, this will change, as it has recently in Victoria. But despite this imperfect model, Queensland Courts, on the whole, have been well-served by their staff. I

particularly, note the assistance over the years of the Court Administrators and the talented appeals registrars with whom I have worked. I am delighted that so many of them are present today.

I will also miss my capable executive assistants with whom I have worked so closely. That no doubt challenging role has been filled by three people: Andrea Suthers who spent even more of her working life in the Court of Appeal than I, Vivienne Koroglu, and my current EA, the unforgettable and irrepressible Kelly Morseu!

And finally, my precious family, who have come out in numbers to support me today, as they have throughout the celebrations and tribulations of my career. I am joined by three of my five siblings, David, a retired solicitor and my sister-in-law Sharon, my sisters Diana and Rosalind, nieces Katie (a lawyer) and Sally (my flower girl), nephews Aram and Kieren (both lawyers), my nephew-in-law Cameron and my very patient great-nephew, Angus.

My dear children, Helen and James who have travelled from Sydney, together with Lachie, his wife Alexandra (a solicitor) and the original Alex McMurdo,

have taken time out of their busy lives to be with their Mum at her swan song. Thank you for sharing your lives with me. I am so proud of each of you.

And last, but never least, Philip. I am afraid that marrying me was not your best career move! But it was mine! Thank you for your unconditional love, support and wise advice – most of which I have accepted – over the past 41 years.

It is enormously comforting to be leaving the Supreme Court of Queensland in such a pleasing state under the thoughtful and steady leadership of my dear friend and clever, hard-working colleague, Chief Justice Holmes. But this is not a time for complacency. There may be future attacks on the independence of the judiciary. If so, I urge my judicial colleagues, the professional associations and individual lawyers to again be courageous in undertaking their ethical responsibility to defend the independence of both the legal profession and the judicial arm of government. In 1975 when I commenced my full-time career in the law the Queensland Law Society had never had a woman President and there were no Queensland women barristers to participate in such a defence. Today, we have our second female Attorney-General, our fourth female

President of the Law Council of Australia, our fifth woman President of the Queensland Law Society, and about 22 per cent of the Queensland Bar and about nine per cent of its silks are women.

With the adoption of the Law Council of Australia's latest Equal Opportunity Briefing Policy by the Executive and an increasing number of Queensland solicitors, the proportion of women barristers, silks and judges will rise. It cheers me to know, as I hand on the baton, that Queensland will increasingly have the benefit of intelligent, courageous, compassionate, hard-working women, together with men of similar qualities defending the institutional democratic role of its independent legal profession and judiciary.

My gratitude, admiration and warmest wishes are with you all.