SUPREME COURT
OF QUEENSLAND

Annual Gold Coast Legal Conference
The Star Gold Coast Hotel, Broadbeach
Friday, 10 June 2022
Opening address

The Hon Helen Bowskill
Chief Justice

Good morning everyone. It is my great pleasure to join you this morning, at the start of the Annual Gold Coast Legal Conference. I acknowledge Kara Thomson, the President of the Queensland Law Society; Dean Evans, President of the Gold Coast District Law Association; and all the participants in and presenters to this conference today. I also acknowledge the traditional owners of the land where you are and where I am, and pay my respects to their Elders, those who have spoken for this land in the past and who do so today.

I am so sorry not to be down there in person. I was really looking forward to it.

A review of the program for the Conference reveals that it is both comprehensive and practical. Although you may be weary at the end of the day, having started very early today! So for my address to you, I thought I would be practical too and say something about the partnership between the courts and the profession, the return to business as usual in the courts, post-Covid, and some tips about advocacy and etiquette in the courts.

As you might imagine, I have had a lot of "firsts" in the last couple of months of my new job. When I spoke at another event about six weeks ago, I mentioned that in my naïve enthusiasm upon commencing in this role, I was quick to say yes to all who asked me to speak, and referred to the panic that subsequently set in when I actually had to do it. Well, now at the 11 week mark, I'm happy to say that I feel I'm getting close to the top of the mountain, which is a good feeling. But the last 11 weeks has reminded me, can I say, of the pressures of the Bar, in a way that my work as a judge did not – in particular the stress and pressure of specific deadlines to meet; sometimes more than felt comfortable. But, as with the stress and pressures that you all experience in practice, all you can do is get through one task at a time and do your best.

One of the "firsts" was this week, when I presided over my first admission ceremonies for brand new lawyers. I said some things to them about what it means to be an officer of the

court. We are all familiar with the concept that lawyers, as officers of the court, owe their paramount duty to the court – but perhaps we sometimes leave out the additional, and important words "and to the administration of justice". Because that is really what the import of the duty is.

In that context, in the High Court's decision in *D'Orta-Ekenaike v Victoria Legal Aid,* a decision about advocate's immunity, McHugh J described barristers and solicitors, as officers of the court, as being "as indispensable to the administration of justice as the judge".[1]

That is true. In my words, that is because the role of a lawyer, in protecting and arguing for the legal rights and duties of members of the public, facilitates the efficient and economical administration of justice. We, the judges, cannot do our job, without you.

Just over 30 years ago, Justice Margaret White was sworn in as a judge of the Supreme Court, having then served for about two years as Master of the Supreme Court. At her swearing in as a judge, her Honour observed that, out of her very busy time as Master had come "a clear understanding of how much the Court relies upon the integrity, industry and learning of the legal profession" and said that "without these virtues the business of the Court would move very slowly."

Another trailblazing judge, Justice Margaret Beazley, formerly the President of the New South Wales Court of Appeal, now Governor of New South Wales, has described the relationship as a "partnership between the courts and practitioners in the administration of justice".[2]

And one of the finest lawyers and judges, Justice Pat Keane, described the importance of your role, when speaking on the occasion of his swearing in as a judge of appeal of the Supreme Court, in the following way:

> "To all the members of the profession … you are the heart and soul of the adversarial system of justice. This system depends on the willingness and ability of lawyers to fight their client's cases as well as they can be fought, and, though easy to say, this is no easy task to accomplish. The adversarial system … is under increasing scrutiny and criticism. The extent to which it survives that criticism is dependent upon the ability of the profession and the Courts together to justify public confidence by ensuring the juridical decisions always reflect the great values of our common law inheritance: the values of openness, fairness, equality and rationality. These goals cannot be easily achieved. The process demands much of the participants in the great endeavour which is the administration of justice."

The duty to the court and the administration of justice is paramount, and where there is a conflict, that duty must prevail over the duty owed to the client. However, as has been

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1 *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at [105] per McHugh J.

2 "Advocacy: A view from the bench", the Hon Justice M J Beazley AO, 27 March 2013.

observed by Pagone J, a judge of the Supreme Court of Victoria, "the duties owed by the advocate to the client and to the law are owed simultaneously and are directed to the same outcome".[3] Reflecting what Margaret White had said, his Honour also observed that "the chief attribute of good advocacy is reliability".

That partnership, to use Margaret Beazley's word, really came to the fore when we, the courts and the profession, were required to deal with the exigencies of the Covid pandemic. There were many necessary, temporary, changes to the way things were done in courts. Remote hearings were facilitated; flexible arrangements were accommodated, including for providing material to be relied on in court; and direct communication was encouraged.

We collectively demonstrated our strength and resilience by responding to the challenges in a cooperative and practical way.

Queensland courts, and all legal practitioners, can feel very proud of the fact that we kept the wheels of justice, and commerce, turning, notwithstanding the disruptions that Covid lockdowns brought.

The acute need for those adaptations to usual practice and procedure has passed. Although, we are all, in our courts and your practices, and the community more broadly, still dealing with the practical consequences of Covid in various ways – as evidenced by the fact that I'm speaking to you through a screen today. But despite the fact that there seems to be a lot of Covid around, the courts are certainly getting on with business as usual, and there is very little disruption.

In terms of the level of work in the Supreme Court, in the civil jurisdiction we have well and truly returned to pre-Covid levels, in fact there is an increase of about 16% in the number of matters lodged, and an increase of about 12% in the number of matters finalised – in comparison with 2018-19. In the criminal jurisdiction, we have not quite returned to pre-Covid levels – the lodgments and finalisations are around 9% to 11% lower than in 2018-2019, but that is increasing.

I have previously observed that there were some silver linings to come out of the clouds of the last couple of those years. One of those is the establishment of regular and direct lines of communication between the court and the profession.

Another is flexibility that we now know we have in terms of how court proceedings can be conducted. But almost all judges, and many lawyers, will say that conducting substantive court hearings remotely should not become the norm; that there is simply no substitute for all involved being present, in person, in the court room. I agree with that. Technology is a tool, to be utilised in appropriate circumstances when that is in the interests of the administration of justice, but should never become the default. But what necessity showed us is that, when needed, it can be done, and the wheels of commerce and the justice system do not have to stop, or slow down.

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[3] "Advocacy", Justice G T Pagone, Judge of the Supreme Court of Victoria, 24 March 2011.

There was one perhaps less shiny consequence, which is some increased informality in the manner in which some practitioners engage with the courts, and some neglect of the ethical rules which do advance the efficient administration of justice. I emphasise that in making that observation, I am generalising based on experience that I have had in Brisbane, and based on things other judicial officers from all levels of courts have mentioned to me. I do not suggest that this applies to other than a minority of practitioners. However, I do think the following things are worthy of mention.

The first is the need to be at the right court, at the right time, and not double book yourself. There is an increasing tendency for judges' associates to receive informal messages from legal practitioners saying "I'm appearing in the *[insert name of place other than where the judge whose associate you are writing to is sitting*] *[insert another court*] tomorrow. Please tell the judge I won't be there until [*insert a time other than when the matter is listed*]." I am serious; this actually happens, and not uncommonly.

That is simply not acceptable. If you are appearing, whether as solicitor or barrister, in a matter listed in a court at a particular time, you are expected to be there at that listed time, unless there is a very good reason not to be (and taking two briefs in different courts on the same day is not a good reason). The lawyer's absence or delay causes inefficiency and inconvenience, and may cause additional costs to be incurred. It is inconsistent with the lawyer's ethical obligations and the duty owed to the court and the administration of justice.

The second is the need to come to court prepared, with the relevant legislation and authorities that will assist the judge or magistrate to make the decision. You should always be able to answer the question "where do I get the power to do that?" by referring to the legislative power – whether in an Act, Regulation or the Rules. The decision-maker needs to be able to rely on the lawyers who are appearing to assist them to identify the relevant legal principles. That is what makes the system work more efficiently. This is one of the express obligations of solicitors (see rule 19.6 of the Solicitors' Conduct Rules) and barristers (see rule 31 of the Barristers' Conduct Rules).

The third relates to communications with the court. If you need to communicate with the court, in relation to a court proceeding, make sure you comply with the established ethical rules. Those rules are contained in rule 22.5 of the Solicitors Conduct Rules and rule 53 of the Barristers Conduct Rules. Rule 22.5, for example, provides:

> "A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:
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> 22.5.1 the court has first communicated with the solicitor in such a way as to require the solicitor to respond to the court; or

22.5.2 the opponent has consented beforehand to the solicitor communicating with the court in a specific manner notified to the opponent by the solicitor."

This rule is, to my observation at least, often overlooked. Simply copying your opponent in to an email to the court is not sufficient. Could I make another practical request? When you are communicating with a court, please always say in the first line of your letter or email "I/We act for the [name the party]." This is a small thing, but will save the associate, or judicial officer themselves, time looking up who you act for.

The fourth is to remember that emailing a document (affidavits, submissions etc) to a judge's associate is not the equivalent of filing the document – you still need to file the document, or seek leave to file it in court. In saying that, can I also add that I do appreciate that it is frustrating that the State courts do not have a system of electronic filing yet. That is one of the main priorities that I see for the courts – the introduction of a reliable civil case management system, which will among other things facilitate electronic filing and storing of court documents. There is a project underway, but it is some time yet before we will see that implemented in the Supreme and District Courts in particular. But it is in progress, and I will give this close attention.

The fifth is the need to maintain appropriate formality in your dealings with the court. What appears to have crept in, perhaps as a result of more remote appearances, is some familiarity of language and conduct which does not advance the administration of justice, including the importance of actual and apparent impartiality and objectivity. I encourage practitioners to "speak like a normal person", using ordinary, simple, plain and direct language. But language which is not appropriate to the formality of the court environment should be avoided. This includes saying things like "I think"; "I believe" or "I reckon", rather than "I submit".

Also, please avoid speaking over your opponent, and for that matter the judicial officer. And follow the established practices of standing when addressing the court, and remaining seated whilst your opponent addresses the court (or otherwise, even if not standing, just waiting your turn while your opponent is speaking). Another tip is to avoid muttering things under your breath, whether to yourself or to your opponent …. the bench can see and hear everything.

These things are all integral to good and efficient advocacy, which extends beyond just what you say when you are at the Bar table, and also contribute to the dignity and order of the proceedings, which is appropriate having regard to the serious matters that are being dealt with.

Lastly, although it is good that we have learned we can be more flexible about court hearings when required, please do not make assumptions, or proceed from an expectation, that you will be given leave to appear remotely. As I have said, the default position is that matters should be dealt with in person in open court; not that they will be dealt with remotely.

However, for situations where a remote appearance is permitted, there are some very good tips to be found in the QLS' Guidance statement no. 25 "Professional Standards when Appearing in Court Remotely".

Those are just some practical matters that have been observed. Overwhelmingly, though, the courts remain grateful for the hard work and dedication of the legal practitioners who daily appear in courts to assist the judicial officers in their role. It is a partnership, and we are all participants in the great endeavour which is the administration of justice. We, the judicial officers, rely upon you and are assisted greatly by your integrity, industry and learning.

I wish you all the best for an interesting and stimulating conference today, and thank you for the opportunity to speak to you.