



**SUPREME COURT
OF QUEENSLAND**

**North Queensland Law Association Conference 2011
Jupiter's Hotel, Townsville
Friday 27 May 2011, 9.25am**

**The Hon Paul de Jersey AC
Chief Justice**

Mr President, Chief Justice Keane, your Honours, ladies and gentlemen,

This is Kaye's and my 14th consecutive annual North Queensland Conference. We have always appreciated being invited, and the opportunity to interact with practitioners in these important parts of the State. You have been gracious enough to invite me to fill this berth at each Conference, and in doing so this year, I must at once note some peculiar features of the law year 2011.

The first is its catastrophic beginning. I express sympathy to all North Queensland practitioners who have suffered directly or indirectly through recent natural disasters. Some have lost practices, or at least important records. No doubt some have lost clients. Many have endured the heartache of clients suffering irreparable losses. Physical losses aside, the emotional toll on some practitioners will have been substantial. We empathize with those practitioners.

I use the occasion wholeheartedly to commend all practitioners in the North who have assisted, and are assisting, flood and cyclone disaster victims, especially when they are doing so for no or substantially reduced financial reward. The profession has greatly distinguished itself State-wide, and did so from early in the piece, with QPILCH coordinating the profession's response from as early as 4 January. I express profound thanks for the profession's generous response to these difficulties.

Other aspects of this year were foreseen, as floods and cyclones were not, and there lies a basal distinction between humanity and the forces of nature. Approaching the year 2011, we anticipated both regret and celebration, as to the former regret at the forthcoming



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retirements of the Northern and Far Northern Judges, and as to the latter, some degree of exhilaration over the approaching and significant sesquicentenary of our Supreme Court.

Justice Cullinane will retire on 16 July when he reaches the age of 70 years; Justice Jones on 10 September for the same reason. Justice Cullinane will have served almost 19 years on the court, all as Northern Judge; and Justice Jones just short of 14 years, all as Far Northern Judge. Each period of judicial service has been exemplary. Each has certainly, in terms of the Conference theme, "made a difference".

More will be said of this at their Honours' valedictory ceremonies, at Townsville and Cairns, on 15 July and 2 September respectively. I will be privileged to preside at each of those ceremonies, at which I will note the unique features of their judicial positions, where the Judge has opportunity to lead a large regional profession, and represent the work of the judicial branch of government actively in substantial regional communities.

Justice Cullinane and Justice Jones have met those important opportunities very productively over many years, and they will leave judicial office with the enduring respect of the profession and the community alike.

In relation to our immediate endeavour, I note their Honours' enduring support of this Conference over many years, and I record again my appreciation that they have welcomed me as Chief Justice into their regions not only for the Annual Conference, but on many occasions in the life of the court in North and Far North Queensland. Their judicial contributions will in an immediate sense be greatly missed, and in an enduring sense, long remembered and valued.

It is interestingly coincidental that such long-standing distinguished members of the court should be leaving its ranks in such an historically significant year for the court.

The Supreme Court commenced on 7 August 1861, with assent to the *Supreme Court Constitution Amendment Act 1861*. A Supreme Court had sat in the colony before that, in



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fact in May 1850, the Presiding Judge being Mr Justice Therry, but of the Supreme Court of New South Wales; and as then Justice McPherson in his history of our Supreme Court noted, Mr Justice Therry then adjured the future Queensland public against "the hotbed from which crime springs", noting the colony's then reputation for drunkenness (Supreme Court of Queensland, Butterworths p 8).

The sesquicentenary of the Supreme Court is an achievement of which the State as a body politic may be proud, for, obviously, the feature of the court's predictable reliability. It is a sesquicentenary which we will mark appropriately, although not over-zealously. We Judges presently intend a ceremonial sittings in Brisbane with the profession on 5 August, a Friday, because the actual anniversary falls on a Sunday, the 7th. This will be modelled on what occurred in 1986, for the 125th anniversary of the court, when I had been a Judge of the court for but one year. There will be a dinner, and on another occasion, the launch in the Banco Court of a high quality book on the history of the court. We hope also to stage a lecture in Rockhampton, Townsville and Cairns on the history of the court. It will be noted that it is the sesquicentenary of the Supreme Court of Queensland, not a Supreme Court confined to South-East Queensland.

Now it is a pity that the new metropolitan courthouse will not be complete and able to be opened until probably mid-2012. That opening will however be a major public event, probably on a Friday with the Supreme and District Courts not sitting. The opening would be followed by a public inspection of the building. I hope the opening will be characterized by a degree of flourish – expect something memorable. Then the next day we presently intend a seminar looking forward, with prominent overseas presenters, perhaps the Master of the Rolls for example, and distinguished Australian judiciary commentators, a seminar open of course to the profession and the public. That would, looking prospectively, sit symmetrically with the historical perspective delivered in the previous, this the sesquicentenary year.

Over 150 years, the significance of the Supreme Court has been assured by the independent support of the legal profession. The new metropolitan courthouse will signify



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the vibrancy of that profession in all its branches, and our best way into the future. Importantly, that courthouse is the result of substantial consultation between the Judges and representatives of the professional associations. It will, of course, be the metropolitan courthouse not just for South-East Queenslanders, but for all Queenslanders, including Queenslanders resident in North and Far North Queensland.

The sesquicentenary celebrations, and the ceremonial opening of the new metropolitan courthouse, will remind us of the desirable tradition of the law, tradition which in turn reminds us of our historical roots and goes on to inform our professional development. I look forward very much to our joint participation in the marking of the sesquicentenary this year, and the opening of the metropolitan "headquarters" of the judicial branch of government of this State in mid-2012.

There are two particular matters I wish to mention in this significant historical year for the court, and they concern how we do things.

This year the Rules Committee completed the task committed to it legislatively as long ago as in 1998, to reform the *Supreme Court Act 1995*, which is an omnibus hotchpot Act combining a host of procedural provisions on vastly disparate subjects, much of it archaic and unnecessary, but a lot of it bearing centrally on jurisdictional and other important issues. The draft *Civil Proceedings Bill 2011* has been published for consultation, and I am hoping the Attorney-General will be able to introduce it into the House this year. This will be the most noteworthy legislation bearing upon the constitution, jurisdiction and powers of all three State courts to have been enacted in at least two decades.

The second item of particular current interest is the work of the Senior Judge Administrators' "better outcomes" committee, which is charged with exploring optimal approaches to matters like unmanageable document disclosure, and technologically based trials.



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You may or may not know that Queensland leads the nation in the provision of an in-house e-trial facility. These trials will become the norm for large scale litigation, because of their capacity to preserve resources, and to foster more reliable and predictable outcomes.

The new courthouse in Brisbane will showcase modern technology to facilitate streamlined litigation. Of the 39 courtrooms in the new building, there will be 14 courtrooms set up for e-trials, including 7 civil courtrooms and 7 criminal courtrooms. All 39 courtrooms will have in-built facilities for electronic evidence display with 18 of these capable of appearance by video-link

Let me remind you of the present technological capacities in Townsville and Cairns. In Townsville, video facilities are available in one courtroom in the Magistrates Court and two in the District Court, and audio video facilities are available by mobile trolley for two courtrooms in the Supreme and District Courts, and two in the Magistrates Court. In Cairns, four audio video trolley facilities are available, with two video set ups in the Magistrates Court and two in courtrooms of the District Court. Two remote witness facilities are available in Cairns and one in Townsville. You will let me know of any inadequacy in these facilities: they are regularly monitored. I consider the absence of a permanent set up in the Townsville Supreme Court courtrooms an inadequacy which should be remedied, and I have taken that on, following recent discussion with the Northern Crown Prosecutor and the Northern Judge.

As to the matter of disclosure of documents, the "direct relevance" test, although critically important, has generally failed to engender a really disciplined approach to the disclosure of documents in mammoth litigation. There has to be a better way, and the cross-court and profession committee led by the SJA is actively exploring this and a raft of other procedural issues: watch this space.

Our joint mission is timeless, but we must continually reassess the means we employ to discharge it. That we actively engage our attentions at this stage in the history of the court



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should reassure both members of the profession, and those outside the profession who observe its initiatives.

Now in dwelling earlier on the new courthouse in Brisbane, I am acutely conscious of the need for substantial further development of the Edmund Sheppard courthouse here in Townsville, which has now been on the books for some years. Some comfort may be drawn from the circumstance that the need for a new courthouse in Brisbane was really acknowledged only from the commencement of my Chief Justiceship in 1998: the gestation periods for these developments are usually lengthy and vulnerable therefore to intervening phenomena like the global financial crisis. We were extremely fortunate that Brisbane development was well under way before that hit.

The Edmund Sheppard building, opened in 1975, is in my view an excellent courthouse, other aspects apart an early example of the welcome introduction of natural light. In contemporary times, it is interesting to note that the original courthouse on Cleveland Terrace suffered cyclone damage on three occasions: in 1896, again in 1903, and then very extensively as a result of Cyclone Althea in 1971 – ultimately being burnt down in 1974.

The Edmund Sheppard building is structurally, I would think, as close to invulnerability as can be achieved – though it needs substantial extension. It is a pity the government has not accomplished this during the term of the 10th Northern Judge, Justice Cullinane, but now the previously long-overdue reworking of the Toowoomba courthouse has been completed, this should certainly be next on the books.

Mind you, speaking historically in this 150th year, we have come a long way in terms of courthouse accommodation. The Librarian drew my attention to a par in the Rockhampton Morning Bulletin of 23 February 1928, which reported, of a Townsville sitting the day before, under the headline “Black hole”:

“Owing to the heatwave Mr Justice Douglas and Counsel yesterday dispensed with the ceremonial robes in the Supreme Court. The



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Counsel even discarded their coats, and with rolled shirt sleeves, carried on their cases.

During the afternoon a petition signed by every jury man was presented to the Judge, who agreed to forward it to the Justice Department. The petition complained of the conditions in the Townsville courthouse, particularly during the summer months, and especially of accommodation of jurors locked up for the night. It was declared that the plight of jurors locked up on hot nights such as at present being experienced in a bare room, 22 feet by 20 feet, was pitiable."

The Cairns courthouse remains, after almost 20 years of operation, a superb working courthouse which meets contemporary needs very well, including importantly those of a local profession which dates back to 1884. I nevertheless remain disappointed over the commercial fate of the splendid previous courthouse, which had been in use for only 70 years.

I began by expressing my delight to be included at this important Annual Conference, lent added significance this year by the historical circumstances to which I have referred. The Conference theme hints at change. As mentioned earlier, what is changeless about our profession is its timeless mission, changes tending to be confined to the way we fulfil it. The Conference programme reflects some of those changes, the best example probably being the way we take the evidence of children. I look forward to Justice Jones' exposition on expert evidence: will that highly experienced Judge be supporting the lone expert regime? And also to Justice Cullinane's exposition on the appointment or election of judges – I certainly hope we never in this country go down the latter route.

With cynicism towards our political leadership at a substantial level if not increasing, and with doubt as to its capacity and willingness to confront the major social issues bearing down upon our communities, people tend to turn to other stable institutions which endure entirely independently of political influence.

Properly regarded as the third branch of government, the courts of law fulfil a very important role in ensuring peace, order and good government, and the courts are



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substantially dependent upon and assisted by a legal profession driven by expertise and integrity.

Speaking of change and making a difference, there is no doubt that the condition of 21st century society is dramatically different from, say, that of the Queensland of my youth. But the mission of the courts of law, and role of the legal profession, are aptly termed immutable, emphasizing their pivotal significance. Conferences like this are important in providing the occasion for some reflection upon that significance, an opportunity which the busy-ness of day-to-day practice otherwise excludes. It is important to remember, in the end, that an apparently humble case will nevertheless be of great importance to your client. To serve all clients with integrity and efficiency is the essential privilege of our professional lives.

I wish you all well as you proceed through another year of practice, and as you reflect upon the particular historical events which occur in this year 2011 in the life of the northern profession, and the Supreme Court which serves us all. I hope this year will be, for you all, fulfilling, and dare I add , enjoyable.