

NOTES

Valedictory 2015

Justice Byrne, Judges of the Trial Division, President and Judges of the Court of Appeal, Justices Kiefel and Keane, Judges of the Federal and Family Courts, Chief Judge and judges of the District Court and Chief Magistrate and Magistrates, retired judges, Mr Dunning, Mr Doyle and Mr Fitzgerald, QCAT members and members of other tribunals, departmental officers, members of the professions, friends, acquaintances and, it seems at least possible, assorted hangers-on and vexatious litigants

Intro

I am grateful for and humbled by the remarks which have fallen from each speaker. When I was sworn in I adapted something Disraeli said about his dealings with Queen Victoria: that, when speaking to or of judges, flattery should be laid on with a trowel. It is heart-warming to see old exhortations remembered, and given full rein. But it is all, as General Grant said of the Battle in the Clouds at Chattanooga, just poetry, pure poetry.

It has been a privilege and a pleasure to serve on the District Court, in the Planning and Environment Court, at QCAT and, latterly, on the Supreme Court.

That diverse judicial career has been fascinating and, as the more unkind of my friends have noticed, both reflects and satisfies my alarmingly short attention span. The thing about flippertygibbet judges is that you have to keep us interested, or we start chewing up the furniture. Fortunately, we are exceedingly rare; the problem is usually detected before there is any risk of appointment to the Bench.

It has to be accepted that, having slipped into the building as it were, I have leapt about a bit. The presence of Justice Pat Keane here today reminds me that as members of a group of young barristers in Bracton Chambers we often met in the early morning to discuss meaty things. It is my recollection that Pat and I were the most vociferous in arguing that judges, once appointed to a court, ought never to be elevated to a higher one or have the hope or prospect of such. I will leave it to others to decide which of us should be the more abashed.

There are too many people to thank personally, and by name, and my nominal aphasia would guarantee that some people went wrongly unacknowledged. I wish to thank my many talented associates for their support, and friendship and the education they have provided me in technology, and in modern English usage. I'm, like, totally grateful?

I also thank all the dedicated departmental and court and tribunal staff with whom I have had the privilege of working, and my executive assistants over the years including Ms Manthey, who has lately had the added burdens of overseeing my dislodgement from this place.

It is a particular delight to know the identity of my successor, and to share in the universal approval and pleasure which has heralded his appointment. The common complaint is that judges live in ivory towers. The news that when soon-to-be-Justice Bond feels the need to supplement his non-legal library he does so at airports goes far to repair whatever damage has been done by my known propensity for reading poetry, and other weirdness.

The Court

It would border on the mischievous, or be unnecessarily tantalising, not to remark some unusual aspects of this proceeding. I am obliged to the Chief Justice for allowing this courtroom to be used for it. I also acknowledge and am grateful that the judges have agreed to proceed in this novel way.

I would not, however, have contemplated this proceeding had the Chief Justice insisted upon presiding. That is not the end of it. I wish to say some more things that will colour these proceedings in a way with which some may disagree, or find upsetting. . I have agonised about this. In saying what follows I speak entirely for myself, and express only my own views and opinions, without the foreknowledge or approval of any of the judges. None of them has seen these remarks, in draft or at all.

I want to speak about the leadership of the court.

Friends and peers will appreciate that for me to use a sporting metaphor about leadership would border on the grotesque, and all sportspeople everywhere could rightly take offence. I hope it is not too precious to compare a court to an orchestra. The conductor does not have to be the best musician but they must be good enough to have the respect, even the grudging respect, of all the members. They must also have some administrative, political and personal skills. In the case of a Chief Justice, they must also attract some respect for their legal ability.

Sadly the current experiment, involving a Chief Justice who frankly admits he lacks that ability, and has signally failed to manifest those skills, is not working – and there is no reason to think that it ever will.

You do not know of a number of things which stand behind that prediction. The Chief Justice has made many public pronouncements and given many interviews about his appointment, and his actions. The judges have said nothing.

It is the tension between what the Chief Justice has said and the things he has done, known only the judges, which to my perception at least partly explains a serious loss of morale in the court. I hear judges at all levels of seniority, including quite young ones, speaking seriously of resignation. The problem is bad and, in my view, getting worse. That is why I am driven to say something.

The first matter is the Chief Justice's removal of himself from all trial division sittings in Brisbane, and advice that he will only sit very occasionally in the Court of Appeal. Traditionally, what judges do is sit in courts and hear and decide cases. The Chief Justice has not sat in an actual hearing since 15 February this year. He has withdrawn himself from all published court calendars, so nobody knows when or whether he intends sitting again.

That is an extraordinary state of affairs. He does publish an engagements calendar, usually called 'Chief Justice Duties'. It contains social and professional engagements. The notion that there is scope for some kind of full-time public relations role for a head of jurisdiction, and little more, is surprising. So is the idea that judge-work takes second place, and must

give way to these kinds of events – which other judges do almost every day, but outside court sitting hours. It does not seem a good use of resources. It places a significant extra burden on the other judges.

The second was his recent shocking but unpublicised sacking of Justice Byrne, the Senior Judge Administrator – something which attracted unanimous condemnation and resistance from the judges, and which they managed to have reversed.

The third concerns the Court of Disputed Returns. The Supreme Court has for many years had a very sensible protocol which annually appoints judges to that court in strict order of seniority, to ensure there can never be any suggestion of political influence or motive in the appointment.

In the teeth of a possible contest about the outcome of the election in Ferny Grove, the Chief Justice's initial attempt to contest the automatic operation of that protocol and, then, his attempts to speak privately with the next nominated judge to that position about what he described in a memorandum as 'unresolved concerns' was rightly resisted by the judge, and unanimously condemned by the judges. The Chief Justice did, eventually, appoint the judge nominated under the protocol. It was the preceding events which caused the judges so much worry.

Finally it will be recalled that the Chief Justice, in his public remarks last Christmas, urged the judges to maintain civility and courtesy; but he has on different occasions referred to us collectively as 'snakes', and 'scum'. Both the remarks, and this kind of hypocrisy, have a devastating effect on morale.

These things (and others, like his failure to take any role in the administration of the Court by, for example, attending and effectively chairing judges' meetings) have distracted the judges from their work, which is busy and constant. To see press interviews being given telling only one side of the story when all other members of the judiciary are working hard while maintaining a proper and dignified silence is having a very dispiriting effect upon them.

I am proud to have been a member of this court, and proud to have been with these judges during recent upheavals. They will strive to continue to serve with the sense of duty, the diligence, the high ability – and the independence – that they have maintained through the current troubles. But the natural feelings of discouragement created by things like these, and being publicly represented by a Chief Justice for whom most now lack all respect, is beginning to tell.

The judges are entitled to your support and it is critical, at this difficult and unhappy time, that they have it.

Family and Friends

I happily turn to happier matters. This is the kind of occasion when men – I emphasise the male sex – say things in public that we usually lack the courage or wit to say in private. I have been very blessed. I am grateful, to a degree beyond adequate expression. Kind and loving parents and sister, good friends, a remarkable group of chamber mates at the Bar, and wise and supportive comrades on each court and at QCAT.

QCAT has, of course, a special place in my heart and memory. To be there in its exciting first days and years creates special bonds with its members, and its staff, never forgotten.

My two remarkable deputy presidents, Fleur Kingham and Sandy Horneman-Wren, were both better suited to lead it than me. It is in good hands under Justice Thomas.

It was fascinating to discover at QCAT (although my family and friends will not be surprised) that according to a well-known psychological test called Myers-Briggs I was best suited, in terms of leadership potential and ability, to be placed in charge of the stationery cupboard; and, at my very best and happiest if allowed to live in there. Yet somehow we muddled through.

Mostly, and rightly, this is an occasion to thank my close family. Those three little boys in the front row have, old friends will be surprised to discover, revealed a previously dormant – very, very dormant – rugged, outdoorsy aspect to my life. With their talented father sensibly in charge, we kayak up and down the South Maroochy River shooting rapids ideally constructed for small boys and old men, and generally having a whale of a time. Those are joyous times for me.

My stepchildren have always thought that the nicest thing you can do for a step-father is to treat him just the way natural children treat their natural fathers – that is to say with never-diminishing and, indeed, ever-growing incredulity at my ignorance, and foolishness. I could not be more grateful.

Lyndie has been my staunch and loving ally, and much more. My reasons for resigning before the allotted span for judges are personal to the two of us, but we have the hope of spending a lot of happy, relaxed time together. If we are lucky in our lives we meet someone who changes things hugely for us. Lyndie has made, and continues to make, my life an altogether happier place.

The attendance of so many friends and comrades here today is touching, and I am grateful.

It is not I think presumptuous to assume that it also reflects your expression of support for the Court, as a whole. It is also then, I hope, not presumptuous to thank you for your time and trouble both for myself and, also, on behalf of all the judges. Thank you.