

FEDERAL CEREMONIAL SITTING

FOR THE CENTENARY OF THE BAR ASSOCIATION OF QUEENSLAND

FRIDAY 13 JUNE 2003

COMMONWEALTH LAW COURTS BUILDING

OPENING SPEECH BY THE HON. JUSTICE IAN CALLINAN, AC

This assembly of the Federal Judiciary has been convened to mark the Centenary of the Bar Association of Queensland. Present with me on the Bench are Chief Justice Black of the Federal Court, Justice Buckley representing the Chief Justice of the Family Court who regrets his inability to attend today, and other members of the Federal Judiciary.

We are all pleased to acknowledge and welcome the Chief Justice of Queensland, the Honourable Paul de Jersey, and other distinguished guests and friends who have graciously taken the time to be here today.

It is a particular pleasure personally and on behalf of those who are sitting on this Bench, Justices Spender and Cooper who cannot be here today, and the Federal Magistracy, to congratulate the Bar Association of Queensland on the attainment of its centenary, through two World Wars, the Depression, assaults from time to time upon its independence, and the many fluctuations in fortune that occur over such a long passage of time.

I am confident that so far, I have spoken for those who are sitting with me today. What follows is an expression of some of my own views which some may, and others may not share.

The Bar of Queensland, like all the functionally separate Bars in this country, and those in the United Kingdom upon which it is modelled is an old institution. As with any institution, it has its imperfections. Which institution, old or minted yesterday does not? No-one who has served on a Court can be unaware of the imperfectability of any human institution. And, as is the case with any old institution, there are no doubt aspects of it which would benefit from change.

But much may be said in favour of an institution, such as the Queensland Bar. The techniques, the practices, and the rules that the Bar follows were not inscribed on a tablet disinterred and carried from an ancient site. It is easy to forget that they have evolved, and as occurs in any process of evolution, those that have currency have it because they represent on the whole, good techniques, practices and rules. Perhaps the process of evolution has been too slow for some. The important thing is that the Bar remain receptive to new ideas and better practices without discarding those that deserve retention.

I would also reject any notion that the Bar in its present independent form would not have survived unless it were of real utility and benefit to society. The principal role of the Bar is to assist in the orderly and transparent, that is to say, public resolution of disputes in a civilised community. In performing this role the Bar is an essential arm of the legal system, and indeed of the court system itself.

So too, any notion that those who are not trained in, and dedicated to the work of advocacy can perform it as well should be rejected. That is not of

course to disparage any of the other branches, including the academic branch of the profession, all of whom make their own indispensable contributions, but is to acknowledge that there is no substitute for training, application, and specialization. The importance of the existence of a trained body of specialist advocates is emphatically being brought home to the Courts by the presence in them of an increasing number of unrepresented litigants. This is so despite the willingness of the Bars, including the Queensland Bar, to provide free services in deserving, arguable cases. The statistics of the High Court show that practically never have these persons been able to mount an arguable case, and that in the exceedingly rare instances in which they have been granted special leave, it is the Court that has identified the relevant argument.

The Bar offers another service to the community by providing a pool of people from whom the Judiciary has in general been appointed. True it is that there have been exceptions, and on occasions, happy exceptions to the selection of judicial officers from the Bar. Nonetheless, there is simply no ready substitute for the ability to recognise intuitively that a point is a good one, or a bad one, or that a piece of evidence is inadmissible, or that an argument may be much more concisely presented, that forensic experience teaches. A barrister who comes to the bench brings that ability with him or her. As the Chief Justice of the High Court pointed out as recently as a fortnight ago, the Executive and therefore those whom it represents, are saved the time and expense of judicial education that the public would otherwise have to bear.

The other point that I wish to make about the Bar is that like only two other professions that come to mind, the stage and Parliament, the Bar does much, and essentially its most important work, in public. It is no surprise therefore that like the practitioners of those other two professions it attracts a great deal of criticism. Were other professions and occupations so exposed they too might be obliged to endure the same, sometimes harsh judgments.

I have no doubt that the Bar will continue to serve the community for many years to come. It will serve not only the state community, but also the federal community. Today, is I think, a unique occasion, involving as it does the participation of every arm of the Federal Judiciary. It is appropriate that it be so. The Bar of Queensland is not only the Queensland Bar: it is also part of the national Bar which in turn is part of the whole of a national profession. In that observation I am sure that I am joined by those who are sitting with me today.