

CHIEF JUSTICE TERENCE HIGGINS

Admission of Practitioners

14 December 2012

Ladies and Gentlemen, on behalf of the Court, which is today comprised of The Honourable Justice Refshauge and myself, I extend to you a warm welcome. I begin by paying my respects to the Ngunnawal people, the traditional owners and continuing custodians of the land on which we gather this morning.

I also feel I should offer an apology for the state of our court facilities, which are, to put it charitably, modest in size and excessive in age. In fact, this building existed prior to the moon landing and certainly prior to the birth of many of those who are newly admitted this morning.

To the newly admitted practitioners, I offer my congratulations. You arrive here today as a result of many years of hard work and sacrifice and you are entitled to be proud of your achievements. I am pleased to observe the presence of so many of your friends and family, for it is only proper that you share this occasion with those who have doubtless made an invaluable contribution to your success. More particularly, your parents and supporters have likely made repeated donations to your bank accounts, fed you, listened to no doubt hilarious anecdotes about snails in ginger beer and provided counselling during pre-exam panic attacks.

You enter the legal profession in what are interesting and challenging times. Many of you will have no doubt read or heard about the unacceptable delays faced by litigants and criminal defendants in this

jurisdiction. As you join this profession it is important that you are aware of the current legal environment which is why today I would like to raise some social issues existing in this jurisdiction; that is the high number of people remanded in custody and the high proportion of people experiencing mental health problems at the Alexander Maconochie Centre (the AMC).

Solutions to these problems will cost money. Unfortunately, we live in a society in which, for better or worse, success is increasingly measured solely by reference to rather crude commercial criteria. And while that may be fine for accountants, stockbrokers and the modern adherence to economic rationalism, lawyers and judges have traditionally been required to adhere to altogether more substantive and exacting standards of conduct, standards by which, as of today, you are bound.

Given that the Law Courts and Tribunals are just one of many sub-groups of the ACT Justice and Community Safety Directorate, vying for a portion of the same pie, it is not surprising that the budget is of constant concern. The perspective of one former ACT Attorney-General, subsequently a Judicial Officer, is illuminating. The late Justice Terry Connolly viewed the budget debate from both angles. Recounting his time in politics, his Honour described the potent cocktail which influenced the funding of particular causes, citing the ‘enormous pressure to fund high profile, media-driven causes’ such as schools or hospitals.¹ This comment in no way denies the importance of those causes. However, funding a seemingly under the radar cause may in turn alleviate larger social problems faced by our community.

¹ Master Terry Connolly, ‘Relations Between the Judicial and Executive Branches of Government’ (1997) 6(4) *Journal of Judicial Administration* 215, 220.

On Wednesday in the Canberra Times, David Biles wrote an opinion piece presenting an economic argument for appointing two additional resident judges.² Many of you would be aware that I have been advocating for the appointment of at least one additional resident judge for a very long time. Dr Biles raised this point with reference to the large number of people remanded in custody in the ACT in comparison to other jurisdictions.

As Dr Biles pointed out, it is shameful that, in a jurisdiction that prides itself on having the first legislated human rights, we have the highest proportion of remandees in our prison population. At 34.8%, we have a significantly higher proportion of remandees in our prison population when compared to the national average of 23.7%. (These figures are from the Australian Bureau of Statistics Corrective Services, September Quarter 2012 Report and reflect numbers on 30 September 2012.)

An increase in the number of judges would decrease the backlog of cases as well as provide a greater opportunity for current judges to more effectively manage their reserved judgements. Together, this would result in a reduction in the waiting times for people remanded in custody.

In order to match the national average for proportion of prisoners on remand, the number in the ACT would need to be reduced from 95 to 55 people out of a total of 233 prisoners.

This would require a reduction of 40 remandees. The Productivity Commission estimates that the average annual cost of keeping someone in prison is \$100,000.

Such a reduction would equate to a saving of at least \$4million per year which would be sufficient to fund two new resident judges and their staff.

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If this goal could be reached quickly, the need to increase capacity at the AMC would be delayed, another cost saving, even if only in the short term.

To strengthen his argument, Dr Biles also referred to research findings that a considerable proportion of people remanded in custody were acquitted after trial or were sentenced to the period of time they had already spent in custody.

You do not need a calculator or an economics degree to realise that appointing more judges would in turn reduce the number of people in custody, reduce delays in the court, easing the backlog which would in turn ensure more effective administration of justice in our jurisdiction. Smaller attempts at addressing the backlogs have been implemented by the ACT government such as the Judicial Blitz earlier this year and the appointment of additional and visiting judges. However, we are getting to the point where a more long-term solution must be introduced. As Dr Biles points out, ‘this option will pay for itself’.

So far I have only put the economic arguments for increasing the number of judges. There are, of course, significant social arguments for reducing the number of people in custody, not least that those people suffering mental illness are over-represented in this population.

The 2010 National Prisoner Health Census³ showed that 31% prison entrants had been told by a health professional that they had a mental health disorder. An inmate health survey conducted in the ACT in the same year found that majority of participants had mental health concerns, with about 70% having had a formal psychiatric assessment at some time in their lives.

³ The Mental Health of Prison Entrants in Australia, Australian Institute of Health and Welfare, Bulletin 104, June 2012

In 2008 the ACT Government promised to build a secure mental health facility. In 2010, the government delayed the decision on the construction to allow for more detailed study of demand requirements. In July this year it was reported that the AMC's crisis management unit is inappropriately being used as a mental health treatment centre.⁴ The purpose of this unit is to provide a temporary time out or treatment for those who are particularly unwell for a short period of time. However, in reality it is filling the role of a secure mental health facility. Human Rights Commissioner Helen Watchirs and Official Mental Health Visitor Anita Phillips raised concerns regarding the fact that those placed in the unit at AMC have no therapeutic programs and no multi-disciplinary teams to support them. The reality is that if these individuals are subsequently found not guilty, they are released despite the fact that they are not well enough to live in the community and are likely to return through the revolving door that the justice system has become for a number of people with mental illness. Particularly in a human rights jurisdiction, it is not acceptable that people with mental illness who are at risk of harming themselves and / or others are in gaol or the community. Such people may be unsuitable for other mental health facilities due to the risks they pose. They require a facility that is designed to house and support them, providing the appropriate protection both to them and the wider community.

I have not explored these issues with you today to lower the mood and lecture you on the woes of the system to which we are welcoming you. My purpose is to ensure that you enter the legal profession with open

⁴ <http://www.canberratimes.com.au/act-news/concern-as-mentally-ill-held-in-jail-not-hospital-20120722-22ij1.html#ixzz2Eos75EdJ>

eyes and with an understanding of the difficulties faced by the system and those in its midst. I do not plan to deliver a lecture on professional conduct however, today as you make your official entry into the legal profession, it is vitally important that you turn your mind to the reality that your admission to this Court brings with it significant responsibilities. Most notably, as officers of the court concerned with the administration of justice, legal practitioners have an overriding duty to assist the court in the doing of justice according to law. It is your role as a lawyer with duties to your clients and to the court to always do your best to ensure that justice is not delayed unnecessarily.

If your legal career involves interaction with the courts there are small but important ways that you can keep up your side of the bargain by ensuring that deadlines are met. Even though the court does not impose a loss of 10% per day rule as you had looming over you at law school for late submission, complying with court ordered timelines is a crucial aspect of maintaining your duty to the court and the effective and timely administration of justice. You should always consider the extreme pressure on the resources of the courts in how you conduct your legal practice and the impact of not meeting such deadlines.

I encourage you all to remain vigilant as you enter the legal profession. You now have a role to play in exercising your paramount duty to the court and to the administration of justice. There is much to be applauded in our jurisdiction, however, there are significant opportunities for improvements. Today I have touched on only the tip of the ice berg. As you venture out into your diverse careers, take with you the knowledge that nothing should be accepted because it is the way it's always been, that there are a will be opportunities to change the way the system operates. Constantly question the way things are done and strive to

improve the administration of justice for all. You have a new perspective, do not surrender it too easily to those who may be more experienced, but perhaps a little jaundiced in their views.

My congratulations once again to you and those who have supported you throughout your studies. I wish you all the best in your future careers wherever they may take you.

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