

CHIEF JUSTICE TERENCE HIGGINS

Admission of Practitioners

16 August 2013

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.

Those of you who have heard me speak before will know that I normally begin speeches with an apology for the state of our court facilities. We recently celebrated this building on its 50 year anniversary, meaning that this building was in operation prior to the moon landing, introduction of decimal currency and certainly prior to the birth of many of those who are newly admitted this morning.

We have been fortunate enough to be presented with preliminary plans for a new court building. I welcome this as a definite step in the right direction and we look forward to the day the upgrade commences, and even more to its completion. Unfortunately, the government is yet to commit to proceeding with the proposal or suggested arrangements for the Court to deal with its heavy workload during the building process.

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, including in many cases, making repeated donations to your bank accounts, feeding you and listening to no doubt hilarious anecdotes about snails in ginger beer bottles.

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 and the backlog experiences by this Court.

In recent months, the Court has been concentrating on decreasing the number of reserved judgments. This has been a successful initiative.

We are thankful for the assistance of visiting judge, Acting Justice Nield for his time with the Court and the relief that has provided.

It is interesting to consider the assistance provided by additional and visiting judges who are appointed to ease the pressure on our resident judges. I suggest that it is possible, although I have not done the sums myself, that the costs involved may go some way towards the cost of a permanent judicial appointment to the Court. Recently, criminologist David Biles' letter to the editor on 5 August 2013 in the Canberra Times, outlined the flawed methodology he believes the Government has applied in discussions about the inefficiency of the court and lack of legitimacy of the need for a fifth resident judge to be appointed.¹

Today I would like to share with you some information about the judicial system of the ACT and compare with the Irish Court Government System and how that jurisdiction dealt with a similar set of problems as faced here. Here in the ACT the Supreme Court is not self-administrated. While judicial independence is described as both "freedom from interference by the Executive and freedom from dependence upon the Executive", the reality in the ACT is that the Courts are administered by a Government department.²

I suggest that the introduction of self-administration for the Courts would result in improved responsibility, accountability and efficiency in Court operations. If this proposition were to be accepted, then it would be our responsibility to seek such improvements. It is time for those of us "who languish in the quicksands of executive dominated Court administrations systems...to extricate (ourselves) and establish regimes that have Judicial autonomy in administration as their core focus".³

In the 90s, the litany of difficulties and defects then plaguing the Irish Court system will be a familiar one:

- unacceptable delay in the determination of cases;
- unnecessary stress and anxiety to litigants and, at worst, grave injustice;

¹ David Biles, 'Courts cannot be judged using flawed methodology' *The Canberra Times* (Canberra) 5 August 2013.

² Sir Guy Green cited in Justice R D Nicholson, 'Judicial Independence and Accountability: Can They Co-Exist?' (1993) 67 *The Australian Law Journal* 404 at 405.

³ Sallmann P (2007) 'Courts Governance: A Thorn in the Crown of Judicial independence?' 16 *Journal of Judicial Administration* 139, 140.

- overworked and poorly organised court staff;
- overburdened judges who were routinely required to work long hours outside of court sitting times; and
- inadequate court buildings.

The solution proposed by a Working Group was the establishment, pursuant to statute, of an independent and permanent body to manage a unified Courts system known as the Courts Service Board. The Courts Service was to have sole responsibility for the management of the Courts system. It was to prepare its own budget, manage the budget and, out of it, provide all necessary services just as, in Australia, the High Court, the Federal Court and the Family Court do for their individual Courts though they do so separately, not as part of a unified system.

Ireland's efforts in the nineties have been successful. The Chief Justice and Chairperson of the Irish Court Services Board spoke of the service as a provider of a "commendable service to the people of Ireland" in their most recent Annual Report.⁴

Perhaps in presenting arguments for greater judicial independence and self-administration we should use the language of business and industry, and terms such as 'productivity' and 'efficiency dividends'. Those accustomed to making decisions based on market research and economic indicators may well be more receptive to such language.

We accept that they must uphold the principles of law and justice irrespective of its 'productivity' or 'efficiency dividend' on that day. This responsibility to uphold the principles of the law, will always be the most important consideration of the Court. However, there is room for the Courts' first responsibility to co-exist with economic principles such as cost efficiency. In other words, upholding legal principles, and acting in a productive and efficient manner, are not mutually exclusive. Furthermore, in my opinion, an improvement in output, quality, efficiency and accountability of the Courts would occur, under a system of self-administration.

⁴ Court Service Annual Report, (Ireland) 2012, 7 (available at [http://www.courts.ie/D5C1A0A0-D2FF-43B8-97AF-BEACBF3C2FDD/FinalDownload/DownloadId-CA874A38602EFD6DCB7370DADC196CBD/D5C1A0A0-D2FF-43B8-97AF-BEACBF3C2FDD/Courts.ie/library3.nsf/\(WebFiles\)/87BE463114EF96FF80257BA20033953B/\\$FILE/Courts%20Service%20Annual%20Report%202012.pdf](http://www.courts.ie/D5C1A0A0-D2FF-43B8-97AF-BEACBF3C2FDD/FinalDownload/DownloadId-CA874A38602EFD6DCB7370DADC196CBD/D5C1A0A0-D2FF-43B8-97AF-BEACBF3C2FDD/Courts.ie/library3.nsf/(WebFiles)/87BE463114EF96FF80257BA20033953B/$FILE/Courts%20Service%20Annual%20Report%202012.pdf)).

In 2005 the ACT Auditor-General completed a report on Courts administration. It recommended that the Government “establish a governance model for the ACT Law Courts and Tribunal (Courts Administration) that provides greater administrative independence and hence better alignment of Courts’ responsibility with public accountability”.⁵

In the follow up report of 2010, the Auditor-General noted that JACS had established a more collaborative relationship with the judiciary via more regular communication however, “there was no formal discussion or consideration of any future model of Court governance that may provide greater administrative independence and better alignment of Courts’ responsibility with public accountability”.⁶

The Government responded that “the relative cost of duplicating existing administrative resources to service the needs of the small judiciary in the ACT outweighs the potential benefit to be gained from establishing a full independent arm of Government”.⁷

In the current model, the ACT judiciary currently plays a limited role in generating budget proposals or approving expenditure. It is apparent that the independence of the Judiciary would be greatly enhanced by the adoption of a model that would see the Judiciary more responsible for its own Governance. Whilst this would enhance independence, the Judiciary would also be obliged to work co-operatively with the Government and the Legislature so as to ensure adequate resources and accountability. In promoting reform I am advocating a model that places the responsibility for the Courts’ administration in its own hands. Such reform would better position the Judiciary to more effectively involve itself in the budgetary process and more directly address the needs of the Judicial arm of Government. Not only would such a change improve responsibility of the Courts, it would also encourage the Courts to be more accountable and innovative in dealing with the public and with the Government of the day. This would improve the services offered by the Courts, which is inevitably in the public’s best interest. This aspiration is supported by the ACT Auditor-General’s Report on Courts Administration and the more recent Follow

⁵ ACT Auditor-General’s Office, *Courts Administration*, Performance Audit Report (September 2005), 8.

⁶ ACT Auditor- General’s Office, *Follow-up Audit – Courts Administration*, Performance Audit Report (November 2010), 17.

⁷ Ibid.

Up report of 2010.⁸ That is not to say that collaboration with the Executive should be abandoned. Indeed the Court Governance Committee that we have is a good first step towards a more empowered but still collaborative model as is the case in the Irish system.

Court administration is fertile ground for both research and reform. It is the place where legal notions such as the separation of powers and the rule of law meet ideals of business management. If the result is the improved delivery of service for 'clients' and 'stakeholders' – the community, then it should be encouraged.

I encourage you all to remain vigilant as you enter the legal profession. There is much to be applauded in our jurisdiction; however, there are significant opportunities for improvements. As you venture out into your diverse careers, take with you the knowledge that nothing should be accepted because it is the way it has always been, that there are and will be opportunities to change for the better the way the system operates. Constantly question the way things are done and strive to improve the achievement of the goal of effective administration of justice. You have a new perspective, do not surrender it too easily to those who may be more experienced, but perhaps a little jaundiced and set 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.

The Court will now adjourn.

END OF SPEECH

⁸ Ibid; ACT Auditor- General's Office, *Follow-up Audit – Courts Administration*, Performance Audit Report (November 2010).