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LEARNING LEADERSHIP QUALITIES

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In this paper I aim to tell you about what the National Judicial College of Australia (NJCA) has done to help heads of jurisdiction improve their judicial leadership skills.

At times I will refer to the leadership skills of a Chief Justice because that is more convenient, but I am referring at all times to heads of jurisdiction, not only to Chief Justices.

What do we expect of a Chief Justice?

Before we answer that question, we need to identify to whom we are referring as “we”. It could be the Government that appoints the head of jurisdiction. It could be the judges of the court. It could be court administrators and court staff. It could be the legal profession. It could be the general public.

Each of these would probably give a different answer to the question: what do you expect of a Chief Justice?

We probably will agree that whoever answers the question, somewhere in the answer will be a reference to judicial leadership.

In the case of the judges of the court, or the court staff, judicial leadership will rate fairly high among the expectations.

In this paper my focus is on the expectations of a Chief Justice on the part of judges of the relevant court and court staff.

Before we can answer the question of what this group expects by way of judicial leadership from a Chief Justice, we need to have an understanding of what we mean by judicial leadership. To say that they will expect judicial leadership provokes that further question. The answer is not straight forward.

Assuming we know what we mean by judicial leadership, we then face the question of what can we do about helping Chief Justices learn what is required by way of judicial leadership, and how to provide good judicial leadership.

Until recently, in Australia little was done in this respect.

I remind you that in Australia judges and magistrates are almost always appointed from the practising profession, unless the appointment involves a judicial promotion. Promotions are, overall, relatively few in number. The practising profession embraces a wide variety of forms of legal practice. But the point I make is that in Australia we do not have a career judiciary of the kind encountered in some legal systems, where one trains to be a judge, and joins the judiciary as a career at a relatively early stage.

The Australian practice is consistent with what I understand to be the position in most common law countries.

Our practice reflects our belief in the concept of the talented amateur. One might say that our practice reflects a blind faith rather than a mere belief.

It also reflects a belief that by making appointments mainly from the ranks of barristers and solicitors, we will choose people who have had a chance to observe judicial leadership in action, who will be guided by that experience, and who do not need much assistance to learn what is required to demonstrate good judicial leadership.

Most of us realise that this is an optimistic view of life, although as it happens most heads of jurisdiction seem to manage reasonably well.

In Australia Chief Justices have to learn judicial leadership “on the job”. We have had little or no guidance or assistance.

I suspect that much of what we do is done intuitively, with an element of trial and error. To some extent the role of Chief Justice defines itself, and on appointment a Chief Justice takes up a position the duties of which and the tasks of which are reasonably well known.

So upon appointment, in a sense judicial leadership is thrust upon us. But it is another thing to say that we have a clear understanding of what is required, and that we know how to demonstrate good judicial leadership.

There is now only one course of which I am aware in Australia on judicial leadership. It is provided by the Judicial College of Victoria. There are no recognised experts that we can consult. There is no tradition of bringing in management experts to guide or train a new Chief Justice. Most of us learn a lot from heads of jurisdiction of equivalent courts, on an informal basis.

This is hardly satisfactory, although as I have already said, most of us get by. But the fact that we get by does not mean that we could not do better. It is likely that with sound guidance we would be able to do better. Probably all of us have made mistakes that could have been avoided.

Moreover, when we talk to judges and magistrates from other courts, we occasionally hear comments about how things could be done better by the judicial head of that court. My experience could not be unique. It must be that other heads of jurisdiction hear similar comments from judges of my court. Judges are a critical audience. But this common experience suggests that there is room for improvement. We owe it to the judges of our courts to do our best. We owe it to the staff of our court.

In 2006 the NJCA decided to provide some assistance to Chief Justices, and to other heads of jurisdiction. This was the first time anything like this has been done in Australia, as far as I am aware. I believe that the program that I am about to describe preceded the establishment of the program by the Judicial College of Victoria.

We organised a two day program. I was involved in its preparation, working with a small committee.

I take this opportunity to acknowledge the help that we had from the National Judicial Institute of Canada and in particular from Madam Justice Lynn Smith, its Executive Director.

Justice Smith provided materials from courses that the National Judicial Institute of Canada has presented for heads of jurisdiction. I drew on them in developing our program. They also helped us arrange for Chief Justice Richard Scott, Chief Justice of Manitoba, to participate in the program. He has been involved in leadership programs for heads of jurisdiction in Canada.

I will now outline the program for you.

The participants in the Program were the Chief Justice of the High Court, Chief Justices of State and Territory Supreme Courts, the Chief Justices of the Federal Court and of the Family Court, the Chief Judges of the District and

County Courts and the Chief Magistrates, with the exception of the Chief Magistrate of the Federal Magistrates Court.

It was a unique occasion, because all but one of the heads of the main courts of Australia were present. As far as I know, there has never been a meeting of this group. We found, not surprisingly, that our experiences in grappling with our leadership role were similar, despite differences between courts.

Also involved in the Program were the Chief Justice of New Zealand, the Chief Judges of the High Court, Family Court and the District Court of New Zealand. The Chief Magistrate of Papua New Guinea also participated.

The Chief Justice of Manitoba, Richard Scott, was present for the whole program, at the invitation of the NJCA. He has been involved in two judicial leadership programs presented by the National Judicial Institute of Canada.

The focus of the program was on identifying key leadership qualities; discussing their application and considering how we might improve our performance in relation to them.

The program ran over two days, finishing mid afternoon on the second day. We decided, rightly or wrongly, that this was long enough, at least for a first time program.

The program began with a short introduction from Scott CJ. Then we watched a very interesting DVD, in which a number of Canadian Judges talked about what they look for in a head of jurisdiction. We found the DVD very helpful. The judges who spoke expressed a wide range of views about judicial leadership. They spoke quite frankly. I think most of us agreed that this was an ideal way to begin the program, because it helped us focus our thinking on what judicial leadership involves.

The DVD provided a basis for us to discuss and to identify the most important leadership qualities. As I said earlier, the starting point in a discussion about judicial leadership is to identify the qualities and attributes that are part of judicial leadership. In discussion after watching the DVD we came up with the following list, in a rough order of priority:

- Developing a sense of the institution, a collective commitment to justice, and communicating this throughout the court and to the public.
- Developing a sense of collegiality.
- Carrying out a pastoral role in relation to the judges.
- Jurisprudential capacity or skills.
- Moral integrity.
- A commitment to all aspects of the work of the court.
- Engendering mutual trust and respect within the court.
- Treating judges fairly, and in particular allocating work fairly.

We spent about two hours on this.

We next broke into groups of five or six to discuss scenarios (distributed in advance) that raised issues of the kind to which a head of jurisdiction may need to respond. After each discussion the groups reported their conclusions, and the conclusions were discussed by the whole group. We worked through a number of scenarios in this way.

Time does not permit me to go into any detail about the scenarios that we discussed. I will give you the heading to each scenario, to give you an indication of the issues that we discussed. They are:

- Management of your own time – getting the balance right.
- Management of your judges – dealing with the outspoken judge.

- Management of your judges – the judge whose performance is slipping.
- Management of your judges – how to handle a complaint against a judge.
- Communication within the court.
- Dealing with attacks by the media on a decision by the court.
- The pastoral role of a head of jurisdiction.
- Winning resources from the Government for the court.

This took us to the end of day one.

The second day began with a focus on communication. There was general agreement that good communication underpinned a number of the important leadership qualities.

For the Friday we were joined by James Strong AO. He was previously the chairman of Qantas, Australia's national airline, and was then the Chairman of Woolworths, a major operator of supermarkets. He spent the whole day with the group, commenting from time to time on what we were saying in sessions after his session.

His underlying point was that communication depends upon what you do as much as what you say. Disconformity between words and deeds will quickly engender cynicism and rejection.

In his discussion with us about leadership, he posed the following questions that we might consider.

Who are our clients, meaning to whom are we providing leadership? Judges? Court staff? Others?

Who depends on us? On whom do we depend? How do we interact with each group?

What can we do about a particular situation? What can we do about leadership?

To whom can we confidently give responsibility when it comes to doing something about a situation?

How do we measure improvement? How do we acknowledge good work?

I am conscious that these questions do not capture the value of this session. All who participated commented on the value of hearing from a leader in the world of business, telling us how he showed leadership in his field. As you will appreciate, the issue of leadership is a well tilled field in the corporate world, and we realised that we had much to learn about that field, and that we could learn a lot about leadership from the business world.

After discussing this general issue with him, we again broke into small groups to discuss particular scenarios.

We then moved on to discuss the discharge of the pastoral role. All agreed on the importance of this issue, and on the range of skills that it demands. Then we talked about how one goes about winning resources for the court. The program concluded with the final comments from Chief Justice Richard Scott, and a final summary by Chief Justice Underwood of the Supreme Court of Tasmania.

All present agreed that the program had been worthwhile. They asked the NJCA to present a similar program in about three years' time. There was agreement that it would be desirable to have a similar program but this time also involving senior court administrators, if that could be organised. We recognised that our relationship with senior administrators is an important aspect of judicial leadership.

Since this event I have spoken to a number of heads of specialist and other jurisdictions that we could not include. We could not include them because we thought, correctly as the circumstances demonstrated, that the group was about as large as it could be if it was to be effective. The group numbered about 30. They have made it clear that they would welcome the opportunity to be involved in such a program.

I offer the following comments on the question of judicial leadership, and training judicial leaders.

I have no doubt that heads of jurisdiction in Australia will welcome assistance in improving the judicial leadership. I have no doubt that they will benefit from such assistance.

My involvement in the program that I have described to you led me to conclude that problems within courts are fairly similar, despite differences in size and structure. What we found was that heads of jurisdiction from courts of different sizes and differently structured courts were raising the same issues.

Not surprisingly, good communication, and keeping the lines of communication open and working well between the members of the judiciary, is vital. There is a tendency to be cynical about the term "communication" and

“good communication”. But the contribution of James Strong, and the general discussion, left no doubt about the importance of communication.

Identifying what is good communication is a topic in itself. Time does not permit me to deal with it here. Suffice it to say that the fact of communication is important. Judicial officers should not be isolated within the court in which they work. The content of the communication is important. Judicial officers should be informed about what is happening within the court, and should understand the basis upon which decisions, including administrative decisions, are made. Of course, I am here referring to what might be called “high order” decisions. There is no need for judicial officers to be involved in matters of detail. All judicial officers should have access to the same information. And the communication needs to be honest. Judicial officers should be able to disagree but to maintain professional relationships, and to remain civil.

The other point that I emphasise is that the program provided a rare opportunity for Australia’s heads of jurisdiction to discuss issues that concern them, and to draw on the experience of other heads of jurisdiction, in the course of a structured program, as distinct from through casual conversation. We all valued that opportunity.

In terms of helping heads of jurisdiction improve their leadership qualities, we have a long way to go in Australia. I hope that the NJCA will be able to find the time and resources to continue its work in this area.

It is in the public interest that it does so.