Association of Australian Magistrates

Justice in the 21st Century

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Good morning everybody. I'd like to first acknowledge the traditional owners of these lands, the Noongar people, and pay my respects to their Elders, past and present.

It is a great honour and a privilege to have been asked to give the Keynote address at this importance conference. It would, of course, be presumptuous of me to remind this distinguished audience just how important the Magistrates' Courts are to our community - I am sure you don't need me to tell you that you are the engine room of the justice system, and to many members of our community, will provide the only first-hand experience they have of that system. The things which occur in your Courts are therefore vital to the rule of law and to the public perception of the laws and procedures by which the community is governed.

So what does the 21st century hold for the justice system and your Courts in particular? My personal perspective of the justice system has changed fairly dramatically over the last 6 weeks or so with the transition from my role as head of the lawyers' union - The Law Society of Western Australia, to a role which carries responsibility for the delivery of justice to the inhabitants of about one-third of our continent. As a result of that transition, you will not be surprised to hear that I have been giving more than a little thought to the issue of justice in the 21st century. The rate of change recently experienced in virtually all aspects of our society, including social norms, technology and communication lead me to conclude that it would be a brave prophet indeed who would express

predictions as to the future of the justice system over anything other than the short term with anything approaching confidence. About the furthest I am prepared to go this morning then, is to tentatively venture a few thoughts on a few randomly selected topics and areas where change might be expected to occur.

A therapeutic problem-solving approach

This conference takes place immediately on the heels of an important international conference on the subject of therapeutic jurisprudence. Some of you will have heard me venture a few thoughts on that subject over dinner last Thursday evening. I will not repeat those observations this morning - particularly as you are to hear from much more distinguished speakers in this field than I later in the day. It is perhaps sufficient therefore for me to simply observe that the development of a therapeutic problem-solving approach to both the enforcement of the criminal law and the resolution of disputes between citizens is bound to occur, and *must* be encouraged. Experience with drug courts and circle or koori courts has been very positive, and reflects a trend in the development of courts specialising in solving particular problems which I think is almost certain to continue. From a personal perspective, some of you may not particularly welcome specialisation, as one of the things I have noticed about the Magistrates' Court is the extraordinary breadth of jurisdiction you are required to exercise - often in the course of one sitting day. In regional Western Australia it is not at all uncommon for a Magistrate to attend a regional centre on circuit, and then exercise criminal jurisdiction, sit as a Children's Court, then sit as a Civil Court and then complete the day by sitting as a Warden's Court. If variety is the spice of life, your taste buds must be well stimulated!

But the other thing about therapeutic jurisprudence is that I have no doubt that it will evolve from an approach which focuses upon special problems, like drugs, to a much more pervasive approach covering most, if not all, the problems which present in our Courts.

Technology

The information age is undoubtedly upon us, and the coming century will surely see further rapid developments in this field, which we cannot presently imagine or comprehend. The Courts are and must continue to take full advantage of the opportunities which this technology offers to improve our service to the community. In this State it has been decided that the Magistrates' Courts will be the first Courts to offer the facility of electronic lodgement of documents - essentially because they are the Courts in which the most advantage can be gained from that facility, because of the large number of documents that are lodged, relative to the superior Courts of the State. Not only does electronic lodgement offer significant advantages for the parties and users of Court services, of course it also offers significant opportunities for efficiencies in Court administration, by reducing the need for hard copy storage and the risk of document loss, and facilitating the easy transmission of documents around the Court and its officers in electronic form. It also enables management information relating to the operations of the Court such as its inventory or stock in trade, case load, time between milestone events and other vital management statistics to be extracted on either an accumulated or segmented basis.

This leads me conveniently to the next topic I wish to mention briefly, which is the subject of accountability. The Courts are the third branch of government. The accountability of the other two branches of government for their performance is taken for granted. The legislature must account to the electorate every three or four years. The Executive is held accountable through a variety of mechanisms, including through the Courts, through Ombudsmen, Auditors-General and parliamentary scrutiny. But the Courts are only accountable to a higher court in the appellate structure, and then only for the substantive decision, and not for the efficiency of their performance.

I do not believe that the community will tolerate this lack of accountability in the 21st century. In the past it has been justified by reference to the need for judicial independence, the importance of which cannot be overstated. However, for my part, independence and accountability are quite separate and distinct notions. Independence is the freedom to decide a particular case in a particular way without fear of recrimination or retribution. Accountability seems to me to have much more to do with service provision. When service provision is being assessed, the actual outcome of the case is not being assessed, but rather the time which has been taken and the efficiency with which the case has been determined. Another consequence of the development of the technology to which I have referred has been the raising of community expectations as to the time which is taken to do anything these days, including the time taken to prosecute and decide cases. In the 21st century, the community simply will not accept substantial delays in Court processes. Government will be placed under substantial pressure to

provide the Courts with the resources they need to meet community expectations.

But accountability must be accompanied by responsibility - it would be quite wrong to hold the Courts accountable without at the same time making them responsible for their own administration and organisation. So a new administrative model must evolve a model in which much greater independence, ideally autonomy, is devolved from Departments of State to the Courts.

The Media

Modern technology has also substantially raised community expectations in relation to access to information. In a few minutes on a computer, any child of seven can now compile more information than would have been compiled after days of research in one of the world's great libraries. And people expect to be presented with visual images of anything of interest that happens anywhere on the planet, at their option. One of the topics you will be addressing later today is the question of broadcasting of Court proceedings. While I would not, of course, seek to pre-empt your deliberations on that topic, my own view is that community expectations are developing to the point at which direct electronic access to the important events which occur in our Courts is inevitable. And this is no bad thing. In my view, one of the reasons the Courts have remained a viable institution over the centuries is their subscription to the fundamental belief that justice must be done in public. The transparency of the processes of the Court has been critical to the maintenance of public confidence in the judiciary, without which the institution simply would not have survived.

But not everybody can be physically present in the gallery of a courtroom, and as I have mentioned, there is an increasing expectation that the world will be brought into everybody's living room or study.

But, of course, there must be safeguards for vulnerable witnesses, in the higher courts for jurors, for third parties who are not given the opportunity to respond to allegations that might be made against them, and for the judicial officers themselves. The vital need for those safeguards seems to me to impose limits upon the extent to which third party broadcasters can be given open access to our courtrooms, and instead to point towards the Court itself retaining control over the sound and images which will be made publicly available. Fortunately, the technology enables that now to be done relatively inexpensively, via the internet and webcasting. The same technology will facilitate the steps that have already been taken to enable active participation in trials from remote locations. The taking of evidence by videolink is an everyday feature of Western Australian trial practice. The same technology is also used for security purposes, so that in trials which pose significant security issues, we have adopted the practice of setting up a public gallery in a location remote from the courtroom itself - reducing the risk of interaction between members of the gallery and jurors, witnesses or the accused.

Access to justice

All of these developments will substantially enhance access to justice, which will, I think, be one of the enduring topics of the 21st century. As I have already observed, the Magistrates' Courts are those Courts in our

judicial structure to which the public have the greatest access, but this is not, of course, to say that access to justice issues do not arise in those Courts. The self-represented litigant is here to stay and, I assume, a ubiquitous feature of daily life in a Magistrate's Court. The use of information technology to provide information to persons who are obliged to represent themselves should have some effect on their capacity to do so effectively, but it would, I think, be naïve to assume that a large proportion of the self-represented clientele of your Courts will undertake substantial inquiry or personal training or development before attending court. Thus, the Courts must develop programmes to assist and encourage people to present their own cases, and make it easier for them to do so. Simplifying our procedures, reducing the use of legal jargon and dead languages such as Latin are all steps in the right direction which I am sure will be taken in the years to come. I have no doubt that Court forms will be reviewed, simplified and expressed in plain and contemporary language. Interlocutory processes, which are the bugbear of the civil jurisdiction of the superior Courts in Western Australia will be actively discouraged. Case management by judicial officers will become the norm, if it is not already.

Alternative dispute resolution

On the civil side of the superior Courts, alternative dispute resolution and, in particular, mediation has become an integral and vital part of the services provided by the Courts. Many more cases are resolved by mediation than by trial.

I do not profess to have any particular knowledge of the extent to which ADR is practised in the Magistrates' Courts of either this State or the

other jurisdictions of Australia. However, I would be relatively confident that the position of all Courts in the very near future will generally be to the effect that it will be impossible for a civil dispute to get to trial without having first undertaken a process of mediation. And I use the expression "process of mediation" deliberately, because, in my view, mediation is definitely a process rather than a single isolated event. And its success is not to be measured simply in terms of whether a complete compromise is achieved, but also in terms of the extent to which issues might be narrowed, witnesses avoided, etc.

Conclusion

In these brief remarks, I have only touched upon a few randomly selected areas in which all the Courts of this country can expect a continuation of the changes which have already been occurring for some time now. I am sure there are many other areas of potential change, some of which will no doubt receive attention later in this conference. Perhaps the only thing we can say with complete confidence is that all judicial officers in this country appear to have been the beneficiary of the ancient Chinese blessing (or is it a curse?):

"*May you live in interesting times*".

The conference organisers are to be congratulated in putting together a fascinating programme, and I am sure you will reward their efforts with vigorous and stimulating discussion.

Thank you for your attention.