

**“Except by the lawful judgment of his peers or by the law of the land’:
the enduring relevance of the Rule of Law”**

Commencement of the Legal Year 2015

2 February 2015

Supreme Court of the Australian Capital Territory

Chief Justice Murrell

I acknowledge the traditional custodians of this land and pay my respects to their elders, past and present.

I welcome all practitioners to the first opening of the law year held in the Supreme Court – and (we hope) the last to be held in this courtroom.

2014 was challenging for all of us. It was my first full year as Chief Justice. I recognise that both the profession and the government worked closely with the Court to implement change.

But the challenges that we faced in the ACT paled in comparison to those faced by our sister state. 2014 ended tragically with the Lindt Cafe siege which struck at the heart of Sydney’s legal precinct and resulted in the death of two victims, one of whom was a fellow barrister, and a week of chaos in the courts. Many of us were only one or two degrees removed from that tragedy. Our sons and daughters frequented the Lindt Cafe, our friends shared chambers with the victim.

Then the New Year brought the Charlie Hebdo massacre and the “Je suis Charlie” phenomenon.

We had pause to reflect on the significance of these events for us, both as practising lawyers and as citizens in a democratic society.

The emotions aroused by the events sometimes clouded and confused the discourse about what are important issues. Would the political and public response have been the same if the perpetrators had claimed no association with Islam? Why do we call the violent acts of Muslims “terrorism” rather than criminal acts carried out by people who may be mentally disturbed?

And what were people saying when they asserted that “Je suis Charlie”? Undoubtedly, it was a statement of defiance, but in relation to what?

Members of the fourth estate were saying “Free speech is a fundamental value that we will courageously defend”.

Members of the public may have been saying “I sympathise with the Charlie Hebdo victims”. Some were certainly saying “The pen is mightier than the sword” (although it may have been more appropriate to say that the hashtag is mightier than the sword). Many were asserting that “our democratic system will not be cowed by random acts of politically motivated violence”.

What about the politicians who marched in apparent solidarity with the victims and the public? Some of those politicians represented nations with a poor human rights record and no Bill of Rights to facilitate the enforcement of rights by an independent judiciary. Some could hardly have been marching in support of free speech, let alone the right to ridicule religion. Most represented nations that have legislated to exclude those labelled “terrorists” from some of the rights to which other members of their communities are entitled. They have been waging a “war on terror” in which normal civil rights have been suspended during the period of warfare. The cynical lawyer might suggest that waging a “war on terror” is about as helpful as waging a “war on drugs”.

I suggest that for lawyers the key message from both tragic events was the importance of the rule of law. We need to separate that issue from hashtag enthusiasm and the politics of convenience. From the events and their aftermath a lawyer may see the need to proclaim the resilience of our criminal justice processes and their established capacity to deal with such events, rather than glorifying criminal conduct as “terrorism”, or labelling it in that way to excuse the abandonment of due process. The lawyer may compare the extent of the carnage in Martin Place or Paris with the daily extent of oppression, injury and death through domestic violence, both nationally and globally.

This year we celebrate the 800th anniversary of Magna Carta. It was in 1215 that King John I was forced by his barons to sign the “Great Charter” in Runnymede near Windsor, laying the constitutional foundations for government under the rule of law.

No (freeperson) shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.¹

Today, as we reflect on these matters and look forward to a new year practising law in the ACT, we lawyers may choose to consider:

- Our role as advocates for the rule of law;
- The need to ensure that our justice system is independent and quarantined from the politics of government; and
- The opportunities that we in the ACT have to uphold human rights through the *Human Rights Act*.

At a more prosaic level, for the Supreme Court this will be a year of consolidation, focussed on improving processes for litigants and practitioners, and improving the governance of the Court itself. We look forward to working with the profession to achieve a better justice system for the ACT community.

We hope that 2015 will be a year in which all members of the ACT legal community not only contribute to strengthening the rule of law, but also enjoy the camaraderie of their colleagues and relish their practice of the law.

¹ Magna Carta (1297) 25 Edw 1 cl 29.