

Opening of the Legal Year 2016

1 February 2016

Supreme Court of the Australian Capital Territory

Chief Justice Murrell

Attorney-General, judicial officers from other jurisdictions, Presidents of the Bar Association and Law Society, General David Morrison (Australian of the Year 2016), fellow members of the legal profession and friends of the Courts,

On behalf of the Court I acknowledge the traditional and continuing custodians of this land. I pay my respects to their elders past and present.

I thank Auntie Agnes for her warm welcome to country.

I thank the Attorney-General for his remarks and for the support that he has provided to me over the past two years.

The opening of the Law Year provides an opportunity to reflect on our roles and aspirations and to regroup before the hurly-burly of the law year descends upon us.

Today, I wish to reflect on the impact of change on the judiciary.

There is no doubt that “Change is the law of life.”¹ We live in a VOCA; a volatile, uncertain, complex and ambiguous world. And one that is burdened by acronyms.

But there is no option; we must accept the world as it is. We must embrace and guide change. This task may be easier for lawyers than for some others; we are a resilient and flexible profession, we are trained to search out, analyse and act on the evidence.

In embracing change, we must always remember that our fundamental task as lawyers and as judges is to advance the rule of law and protect it from executive and, to some extent, legislative interference. In this regard, I welcome the remarks of the Attorney-General about the need for legislative restraint and for legislative change to be evidence-based.

At the big picture level and at a local level we are facing two key changes that both challenge our justice system and have the capacity to enhance the rule of law: technological change and the internationalisation of law and the judiciary.

Information technology is driving change at all levels of our life. In the legal sphere, practitioners rely on technology to identify and connect with clients, communicate

¹ John F. Kennedy, Address in the Assembly Hall (Speech delivered at the Paulskirche, Frankfurt, 25 June 1963).

with clients, research and, in many courts, file e documents. The lawyer's office will increasingly become their iPad. In due course, all courts will operate as e courts from filing to decision-making.

Currently, the Sentencing Database provides judges with statistical information to help them make sentencing decisions. In large cases involving many documents, the Supreme Court has and will increasingly operate as an e Court.

With the introduction of ICMS – our information case management system – judges, court staff and court users will have immediate access to the information that is there but so frequently can't be found.

In the future, litigants and lawyers will be able to track the progress of their cases in real time. Proceedings will be broadcast on the Internet in real time.

Going beyond the mechanics of communication and process, to what extent will artificial intelligence be part of the justice system? Already, there are artificial intelligence systems that operate online to resolve disputes; eBay uses such a system.

Will we too use AI to provide online mediation, with litigants going to court only if online mediation is unsuccessful? Perhaps AI will be used to quickly resolve smaller and more straightforward claims, with a right of appeal to a real judge.

However, although AI will be able to predict judicial trends, it will never be able to advance and develop the law. Perhaps one should never say never.

We can see that IT offers opportunities for the speedy resolution of disputes, immediate litigant and lawyer access to the courts and transparency.

The second key change that I wish to mention is the internationalisation (or globalisation) of legal systems and judiciaries. Currently, internationalisation is most obvious in the commercial law sphere. For example, Singapore has established the Singapore International Commercial Court to resolve international commercial disputes. The judges of that court include 12 international judges (three Australians), who come from both civil and common law traditions. With the commencement of direct flights between Canberra and Singapore, perhaps we could establish a branch of the SICC here?

Of more immediate relevance to us is the global direction of judiciaries towards improving governance by using performance frameworks. Commencing this year, the ACT Courts will adopt the International Framework for Court Excellence. The IFCE is used by some other Australian and international courts to measure and improve court performance.

To date, in Australia it is the executive that has set court performance targets. Those targets have been quantitative, dictated by an agenda of economic efficiency.

However, the commercial goal of profitability cannot be transplanted into the justice system. On the other hand, speed of processing claims is one valid performance indicator; justice delayed is justice denied.

The IFCE has both quantitative and qualitative components. In implementing the IFCE, our goal is to achieve excellence, recognising that excellence is an ephemeral concept when applied to the administration of justice. The IFCE will provide a permanent framework that institutionalises the goal of excellence in our courts.

As with technological change, the internationalisation of the law and the judiciary offers opportunities to enhance the rule of law, such as through the creation of international judicial bodies and the development of internationally accepted performance standards for courts.

In 2016, the commencement of our new building is symbolic that the ACT judiciary and legal profession are moving confidently to embrace the future, providing a more independent, accessible and transparent justice system. “We shape our buildings, and afterwards our buildings shape us.”² Or, to put it in a more contemporary way, in the words of David Bowie we must “Turn and face the strange changes ... Time may change (us) but (we) can’t trace time”.³

² United Kingdom, *Parliamentary Debates*, House of Commons, 28 October 1943, 403-4, (Winston Churchill, Prime Minister)

³ David Bowie, “Changes” *Hunky Dory*, RCA Records, 1971.