

LAUNCH OF THE AUSTRALIAN ACADEMY OF LAW

17 JULY 2007

SYMPOSIUM ON THE ROLE AND FUTURE OF THE AAL - FRAGMENTATION OR CONSOLIDATION: FOSTERING A COHERENT PROFESSIONAL IDENTITY FOR LAWYERS

Your Excellency, Chief Justices, Judges, Attorneys-General and supporters of the AAL all.

First, I acknowledge the traditional landowners, the Turrbal People, and that for thousands of years before British settlement they lived on these lands and held meetings here not so very different from this.

I am so pleased that the Australian Academy of Law has been established. I apprehend it will make a very significant positive contribution to the legal profession in its broadest sense and to the wider community.

I sincerely thank David Weisbrot and his supporters who initially conceived the idea and then worked so hard and long to make the AAL a reality. I also thank Her Excellency the Governor of Queensland, Quentin Bryce AC, a foundation fellow, for providing this splendid venue for the launch.

In essence Professor Croucher has directed me to speak on two issues. First, what I do and do not do to advance the objectives of the AAL. Second, what could I and other branches of the legal profession do to advance those objectives through AAL.

WHAT DO I DO OR NOT DO TO ADVANCE THE AAL'S OBJECTS

You all have been given a copy of the AAL's objects. In essence, they are advancement of the discipline of the law; to provide scholarship and research grants; the promotion of excellence across the legal profession; law reform; the promotion of ethical conduct and professional responsibility; enhanced understanding and observance of the rule of law; and to provide a forum for the profession to advance these objects.

As an intermediate appellate judge in a busy court I hope that, both when hearing cases in court and when delivering judgments, in a modest way I do something to develop the discipline of law. (Others might have differing views on this!) But busy court lists, litigants' rightful expectation of timely decisions and the sometimes limited assistance from parties or their lawyers mean that striving for legal excellence must be balanced against the interests of delivering timely judgments.

In my administrative role I am able to promote, subject to the provision of adequate funding, best practice in court administration. Registry initiatives have recently led to the provision of easily searchable electronic appeal record books as well as hard copy appeal record books in all appeals. With the co-operation of the Bar Association of Queensland my court has a pro-bono scheme of experienced criminal lawyers available in murder and manslaughter appeals in which legal aid has not been granted. In a recent initiative of which the AAL would approve, my court is working across the profession with QPILCH, QUT Law School and government to establish a form of legal assistance for self-representing civil litigants.

Like all judges, my core function, in accordance with the judicial oath, is to independently deliver equal justice according to law to all litigants: the essence of the application of the rule of law.

The Supreme Court of Queensland has an active schools' education programme in which I and many other judges happily participate. When speaking to the students and to other community groups, I emphasise, in I hope a comprehensible way, the institutional importance of independent courts and an independent legal profession in our democracy in enforcing the rule of law. Like many other judges, I have close links with the local law faculties and their students and regularly participate in CLE programs with the profession. I have developed special links with indigenous students.

But is such community engagement enough to counterbalance the media's constant undermining of the legal profession and the judiciary? Perhaps the AAL can play a role here in helping to maintain public confidence in the courts and the wider profession. I will return to this when discussing the second issue.

The Queensland Court of Appeal has a statutory and inherent power and responsibility to establish and enforce proper standards for the conduct of legal practitioners, with the protection of the public the primary concern. In setting those standards, and I agree with Professor Michael Coper that competence is an essential aspect of professional ethical responsibility, I am able to encourage the highest of professional ethical standards. On admission days when addressing newly admitted practitioners or when speaking extracurricularly to law students or practitioners, I commonly refer to the high ethical standards which unify the various branches of the legal profession and separate it from a mere commercial enterprise. The court also has a role in setting proper standards of aspects of judicial conduct.

Although as a judge I have satisfying opportunities to incrementally develop the law, intermediate appellate courts are regularly reminded by the High Court that we have no role in fundamentally changing the law or in law reform. Individual cases, however, sometimes provide an opportunity to comment in a judgment on the undesirability of a result required by law and to tentatively suggest the need for legislative review.

Under-funded state courts scrambling for their share of limited public resources, are unpromising sources of scholarships and research grants, no matter how worthy the recipient or the field of research. Limited areas of research opportunity do sometimes arise: for example, in fields like jury habits, court-user satisfaction surveys, the cost of justice and the like.

Courts are for the resolution of disputes between parties. They do not and cannot provide a forum for meeting the objects of the AAL. In my view, a primary reason for establishing the AAL is as a forum for legal academics, practitioners and judges to discuss and promote the AAL's objects.

AREAS IN WHICH THE BRANCHES OF THE LEGAL PROFESSION COULD WORK TOGETHER TO ADVANCE THE AAL'S OBJECTS

For me the first of these areas is for the AAL to foster high ethical standards throughout the profession. As long ago as 2001 when Anne Trimmer (also an AAL foundation fellow) was President, the Law Council of Australia provided a thoughtful discussion paper on the likely challenges for the legal profession in 2010. It has proved remarkably prescient. It emphasised, rightly in my view, the unifying significance to the disparate branches of the profession of all legal professionals, including those in multi-disciplinary practices, remaining bound by their core commitment to ethical values. It recommended that ethics be integrated in all subjects in undergraduate law programmes. I know this has been implemented in the Griffith University law course. I am encouraging the newly forming law faculty of the University of Southern Queensland to do likewise. With guidance and leadership from the AAL, the embedding of ethics in all subjects in law courses could quickly become the norm. I am confident law students would appreciate the early application of ethics in all areas of their legal studies and would embrace the accompanying concept of professionalism.

The second area in which the AAL has a role of vigilance is in protecting the institutional independence of the legal profession and the courts. I see this presently as a watching brief rather than requiring a current project. As Justice Kirby explained to the Presidents of Law Associations in Asia Conference:¹ "The rule of law will not prevail without assuring the law's principal actors – judges and practising lawyers and also legal academics - a very high measure of independence of mind and action." Significantly, adequate funding and resources to the various branches of the legal profession, including academia, are essential to allow them to carry out their functions independently. As mentioned earlier, public confidence in the courts and the legal profession and public understanding of the institutional role of the profession and the courts are also fundamental to maintaining the rule of law.

The third area in which I see the AAL as having a role is in attempting to ensure affordable access to justice. A combination of sound academic research, the experience of practising lawyers and the perspective of the judges who ultimately hear and determine those cases which proceed to trial is necessary to tackle this difficult issue. In the UK, the

¹ Kirby J 'Independence of the legal profession: global and regional challenges' (2005) 26 *Aust Bar Rev* 133.

Woolf Report² recommendations on civil justice reform drew on all branches of the profession, including Professor Dame Hazel Genn's startling research on the cost of using the civil justice system to recover money.³ The AAL may be well placed to take on projects in this area.

The fourth area I mention is that hoary chestnut – sentencing. It captures the imagination of the media and the public and at times seems to place at risk community confidence in the courts. Empirical and longitudinal research is needed to establish whether longer jail sentences are a deterrent and if so for what category of offences. Are some sentencing options more effective than others in reforming offenders and preventing recidivism? Is society safer because of the imposition of indefinite prison sentences on sexual or serious violent offenders? The AAL would seem well placed to facilitate and co-ordinate such research, perhaps in association with the Australian Academy of the Social Sciences.

My final suggestion is that the AAL take an interest in the growing role of mediation in the justice system. Dame Hazel Genn, Professor of Socio-legal Studies in the Faculty of Law at University College London, delivered a fascinating paper - "ADR: what's justice got to do with it?" - at the University of London's most recent W.G. Hart Legal Workshop.⁴ She questioned whether mediation was after all a magic wand in improving access to justice. Does mediation detract from the opportunity for courts to develop the common law? Does it undermine confidence in the courts? Does it deliver justice, especially where the parties are in unequal positions, for example in personal injuries cases? A review of the role of mediation in the justice system could be an exciting AAL project with important community benefits.

These suggestions, although ultimately of a practical bent, are by no means inconsistent with Bret Walker's concern that the AAL as an Academy must place primary emphasis on the academic.

I fear I have suggested enough projects to see all of us into retirement and the nursing home. The difficulty will be choosing which of the many wonderful suggestions arising out of today's discussions to initially take on and then to develop that project or projects to a satisfactory conclusion. I wish the AAL every success in its important work. I hope I may make some small contribution to it.

² Woolf, HK Lord Woolf of Barnes, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*, July 1996, London: HMSO.

³ Genn, Professor Dame Hazel, *Survey of Litigation Costs for the Woolf Inquiry into Access to Justice*, (1996).

⁴ *W.G. Hart Legal Workshop 2007: Access to Justice*, 26-28 June 2007, Institute of Advanced Legal Studies (IALS), London.