Speech Given at the Ceremonial Sitting to Mark the Commencement of the Legal Year 2023

30 January 2022

Supreme Court of the Australian Capital Territory

Chief Justice McCallum

I acknowledge the First Nations peoples of the land on which we meet and pay my respects to their Elders, past and present. I acknowledge that this land has never been ceded by them. I acknowledge and that many wrongs have been done to First Nations peoples in the name of the rule of law, and if anyone thinks that sounds like an overstatement, details can be found in a paper on the Court's website, "Making the Past Visible: The Fallacy of Protectionism".

Some of the judges of the Court including myself attended a conference in Christchurch last week of judges from the Australian Federal Court and the Supreme Courts of Australia and New Zealand. I was struck by the warmth and mutual respect in the relationships between the Māori and New Zealand's more recent settlers. The culture of the Māori thrives; their traditions are embraced; their language rolls off the tongues of judges and lawyers of all backgrounds. There are probably many reasons for the different experiences of our two countries: New Zealand has a treaty, the Māori have a single language, and they are a greater percentage of the population, to name a few. The Māori still face many of the challenges and disadvantages of First Nations peoples in Australia. They are dramatically overrepresented in the criminal justice system and in prisons, just as our First Nations peoples are.

What struck me was the honesty with which these problems are acknowledged and the enthusiasm with which they are addressed. What seemed to be absent in New Zealand was the inertia that has gripped our nation for too long. It is time for us to embrace the need for change. This is a personal view, not that of the Court, but I believe lawyers more than any have a moral responsibility to show leadership in the pursuit of change.

On behalf of the Court, I welcome you all to this ceremonial sitting to mark the opening of the new law term. Speaking of change, 50 per cent of the composition of the Court has changed since this time last year. The outstanding leadership of the former Chief Justice, Helen Murrell; the prodigious output and endearing good humour of Justice Michael Elkaim and the flash of brilliance that was Justice Geoffrey Kennett will all be sorely missed. Justice Kennett's resignation has elevated our representation of women on the Court to an all-time high of 80 per cent, and Justice Mossop has become a minority interest group. We will do our best to nurture him.

I want briefly to address three topics this morning.

The first is what the Court expects from the profession. As I have said before, the ACT Supreme Court is small but mighty. A silk from Sydney, Naomi Sharp, refers to it as the happiest court in the land. But we are down to five judicial officers at the moment and that is

going to be a challenge for the next little while. The Court expects the profession's support in the efficient discharge of the business of the Court at all times, but it is particularly needed now. The orders of the Court, including orders listing matters for hearing, are not aspirational. At the conference in New Zealand, the Chief Justice of Singapore was asked during a presentation he gave how his Court deals with practitioners and parties who fail to comply with the orders of the Court. He didn't understand the question. "If practitioners…*breach* an order of the Court??" I do not mean to cause fear – I will leave that to the Registrar. But I do ask lawyers to think about what they are doing when they fail to comply with orders of the Court, or come to Court unprepared, not knowing what orders they seek, or are unable at a hearing to give the Court the assistance we need.

Every minute wasted in Court or by a judge who has received confused submissions, or no submissions, on an issue to be determined in the proceedings is a minute of which every party waiting in the system is deprived.

Next, and this should go without saying, the Court expects honesty. In a speech on the occasion of an admission ceremony last year, Justice Mossop said that the temptations to be other than scrupulously honest are so great that this point has to be made expressly and often. His Honour said:

> The operation of the legal system generally, and the court system in particular, is fundamentally dependent upon the honesty of lawyers. It is the fundamental value behind your appointment as an officer of the court. If there is nothing else you understand about being an officer of the court it is that you can be depended upon to be honest. Scrupulously honest.

Justice Mossop concluded by commending "four words" you should understand about being a lawyer, "Be honest. Don't lie". After the ceremony, there followed an unseemly exchange between his Honour and Justice Elkaim as to whether that was in fact five words. Still, the point is sound.

The second topic I want to address is what the profession can expect of the Court. It should go without saying that, as a bare minimum, the profession can expect that hearings will be conducted in an atmosphere of respectful discourse and that legal disputes will be determined in a timely way with the publication of sound reasons.

As to hearings, the Court can be expected to be patient with less experienced members of the profession but also to take an active role in mentoring them. We can be expected to listen actively to adventurous submissions rather than assuming we know all there is to be known about the law.

Finally, we can be expected to do our best to achieve the timely resolution of disputes. To some extent, we are dependent on the parties here. The overriding obligation of the Court is to give a fair hearing. Sometimes that means matters cannot be heard, or have to go over part-heard, because a witness is unavailable or a legal issue has not been anticipated or the estimate for hearing was wrong. But the truncation of hearings is inefficient and inimical to the timely resolution of disputes. Just as the parties are expected to come to Court prepared to run a hearing to its conclusion, the profession is entitled to expect the Court to do the same. To that end, the Registrar and I have been revising listing procedures to ensure that judges are supported to do just that. That is a challenge in a small jurisdiction, but I think it is achievable. The profession can expect that the Court will keep parties to their estimates and, for its part, will conclude hearings within the time allocated and aim to deliver judgments promptly.

Finally, and most importantly, I want to address what the public can expect of the Court. The judicial branch of government depends for its institutional integrity on the respect of the people it serves. Respect for the Court as an institution in turn derives from the public's acceptance of the correctness and integrity of its decisions.

Today marks the 15th anniversary of my first appointment as a judge, in the Common Law Division of the Supreme Court of NSW. I have seen many challenges to the Court's integrity as an institution. Two have stood out in the past year, since my appointment here as Chief Justice.

The first is the exponential growth of disinformation and the apparent readiness of some members of the public to trust alternative sources of information. The Court is frequently attended by protestors in pursuit of their version of freedom. They seek freedom from the constraints imposed by the institutions of government, including the Court, and yet are apparently unwilling to get their own court. The answer to disinformation is not to meet it in kind; to trust in the capacity of our institutions, especially the Court, to scrutinise and analyse allegations with the utmost rigour in order to determine facts.

The second challenge to the Court's institutional integrity that seems to have become more acute in the past year is one the Court is obliged to take more seriously. It is the perception that the Court is too lenient in the sentences it imposes. There is a body of robust research to suggest that, in part, the public's acceptance of the correctness and integrity of the Court's sentencing decisions is a function of having complete information and a comprehensive understating of the principles of sentencing. Jurors who sat on cases overwhelmingly agreed with sentences imposed after being provided with all of the evidence on sentence, the submissions and an outline of sentencing principles. The Court's doors are always open. Members of the public are welcome and indeed encouraged to attend proceedings on sentence to engage in a similar exercise. I will be doing what I can this year to make the proceedings of the Court more accessible and an understanding of sentencing more available.

But in part, I have no doubt, dissatisfaction with the Court's sentencing decisions raises fundamental questions about punishment and rehabilitation. That is a larger question and one in which the Court must also be prepared to engage with the values of the broader community.

On behalf of the Court, I wish you all a happy and rewarding year.