

THE FOLLY OF PREDICTION

OPENING OF LAW TERM DINNER 2013

LAW SOCIETY OF NEW SOUTH WALES

ADDRESS BY THE HONOURABLE T F BATHURST

CHIEF JUSTICE OF NEW SOUTH WALES

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- 1 In 1932, Albert Einstein said “there is not the slightest indication that [nuclear energy] will ever be attainable.” Just twenty years later, US manufacturers were predicting home reactors and nuclear-powered vacuum cleaners by the end of the decade.
- 2 In 1929, Yale professor of economics Irvine Fisher predicted that stocks had reached “a permanently high plateau”, and in 1959 the CEO of the World Bank predicted that world inflation was over.
- 3 In 1905, US President Grover Cleveland said that “sensible and responsible women do not want to vote”. Sixty years later, Margaret Thatcher predicted that she would not see a woman Prime Minister in her time.

- 4 The invention of machine guns, tanks, aeroplanes and the radio were each thought to have made war impossible. Not to mention Neville Chamberlain's "peace for our time" prediction.
- 5 This is the folly of prediction: in retrospect correct predictions look merely predictable, while incorrect ones seem laughable. Or, in the words of Niels Bohr, "prediction is very difficult, especially about the future".
- 6 And yet something compels us to do it. Perhaps it is because prediction allows us to express hopes and fears for the future. It is also the necessary first step in planning for positive change.
- 7 So it was that in 1995, Chief Justice Murray Gleeson gave a speech at the Annual Supreme Court Conference titled "The Supreme Court in Twenty Years' Time." It gives me relief to say that on the whole, his Honour's predictions were remarkably accurate. Not all of them, of course – or there wouldn't be any fun in reviewing them this evening. But for the most part, he was right on the money. And whether it was luck, conservative guessing, or uncanny foresight, his success has inspired me to have a go for myself.

8 And so this evening I would like to take stock of the past 20 or so years – I realise I am jumping the gun slightly on the Chief Justice’s predictions which were for the year 2015 – and make some predictions about the following 20 for the Supreme Court of New South Wales.

Setting the Scene: The Mid-Nineteen Nineties

9 I should begin by setting the scene. What was happening at the Supreme Court and in the profession more generally when the Chief Justice made his predictions in 1995?

10 On the one hand, the mid-nineties are extremely familiar. Take the 1994 winter edition of the *Bar News*. Chief Justice Gleeson appears on the cover. The credits for the photo go to editor Ruth McColl. Murray Tobias writes the President’s Foreword. It is reported that John West, Ron Sackville, Henric Nicholas, John Sackar, Brian Donovan, David Bennett and Geoff Lindsay participated in an advocacy seminar in Singapore.

11 The 1995 cohort of appointed silks included Cliff Hoeben, Ian Harrison, Stephen Rothman, Michael Pembroke and Tony Meagher – now all of the Supreme Court. (I might mention at this point that there is some excellent hair on display in those old

editions of the Bar News. I will leave it to you to figure out which of those new silks was then sporting a moustache commonly known as “the Tom Selleck”). Also in that cohort, which numbered only 16, were Alan Robertson and Richard Edmonds, now Justices of the Federal Court, Leslie Katz formerly of the Federal Court, and Helen Murrell and Robert Keleman of the District Court. All familiar names still.

- 12 A year earlier, Sir Anthony Mason had noted the worrying increase in litigants in person, and reported on the difficulty of attracting the best qualified people to accept judicial appointments, citing among other things the Judges’ daunting and difficult workload, increased public criticism and judicial remuneration that was out of step with the higher reaches of professional remuneration.¹ Some things never change. The first hints at national regulation of the profession were also being made, and even then resistance was present.
- 13 On the other hand, significant changes were on foot. The first batch of Priestley 11 graduates was entering the profession. The ban on advertising had just been lifted, and the profession was making changes to its rules to accommodate the *Trade Practices*

¹ Bar News 1994.

Act. The *Evidence Act* had just come into force and was receiving, to put it politely, a mixed reception. Around that time I was appearing in Melbourne and in the course of argument on a point of evidence remarked to the judge, “now of course your Honour hasn’t had the misfortune of dealing with the Evidence Act”, to which his Honour replied, “I was on the Commission that recommended that Act, Mr Bathurst.”

- 14 However, what this overview doesn’t portray is the sense of crisis in the Courts in the mid-nineteen nineties. In 1996, the Chief Justices of Australia and New Zealand took the remarkable step of saying, jointly: “It is not an over-statement to say that the system of administering justice is in crisis... Ordinary people cannot afford to protect their rights or litigate to protect their immunities. To that extent, the coercive force of the law is undermined.”²
- 15 The legal community didn’t need reminding of this. The conferences, publications and law reform inquiries of the mid-nineties are overwhelmed with the theme of crisis. Delays in listing in the Supreme Court were measured in years, not months. In the District Court’s civil jurisdiction median delay between filing the

² F G Brennan and T Eichelbaum, “Key Issues in Judicial Administration”, Address to the 15th Annual Conference of the Australian Institute of Judicial Administration, Wellington, 20 September 1996.

Praeipice for Trial and disposition by a judge was 50.8 months.³

The Australian Law Reform Commission was conducting a serious inquiry into whether the adversarial system should be abandoned altogether. There was real discussion about the merits of and the possibility of a shift to the inquisitorial system.⁴

16 This was the atmosphere in which Chief Justice Gleeson made his predictions. And this, in a nutshell, is what he forecast:

17 In the year 2015, Australia would still be a federation, and the mainstream courts in New South Wales would still be arranged in a three-tiered system; so far so good.

18 He predicted that as the workload of the courts increased so would the size of the NSW Court of Appeal. In fact, he said it would not just increase, it would double. Well, we had 10 Judges of Appeal in 1995 and today we have... 11. Even with his anticipated 20 Court of Appeal judges, in order to cope with the increased workload more classes of appeals would require leave, and significantly fewer classes of cases would be appealed by way of re-hearing.

³ As reported by (then) Judge A F Garling of the District Court of New South Wales in "Litigation Reform: The New South Wales Experience" in *Bar News* Summer 1996 p 12.

⁴ DMJ Bennett QC "From the President" *Bar News* Summer 1996.

- 19 He predicted the formal administrative law structures and procedures in the State would grow and the Supreme Court would take on an administrative law function corresponding to that exercised by the Federal Court under the *Administrative Decisions (Judicial Review Act) 1977*.
- 20 The District Court's jurisdiction and workload would increase; criminal trial work would devolve to the District Court and the Chief Justice would have power to remit any criminal trial to it. Actions for damages for personal injuries arising out of industrial actions or motor vehicle collisions would not be dealt with by the Supreme Court except by leave in exceptional cases (and that was only if, he noted, motor accidents were still dealt with by the ordinary process of litigation and not by the no-fault scheme he predicted).
- 21 The Chief Justice predicted that the principal civil trial work of the Court's Common Law Division would involve claims for professional negligence, product liability and actions in tort against public authorities. The Equity and Commercial Divisions would have merged, but Equity would maintain a separate commercial list in order to give speedy hearings by specialist judges to major commercial cases.

- 22 The major expansion, he said, would occur in the work of Administrative Law Decisions, resulting from the development of both substantive law and of procedures for judicial review of administrative decisions.
- 23 Up to this point, with very few exceptions, his Honour's predictions were remarkably accurate. His Honour then went onto make predictions in relation to technology, and here we get into the "where's my flying car?" territory. The Court, the Chief Justice said, would be "paperless". Solicitors would institute proceedings electronically. There would be no need for people to attend a court registry in order to file documents. And the court would be both unable and unwilling to act as a repository of masses of paper...
- 24 If wishing only made it so. Let me just interject at this point to put on the record: The Court runs on Microsoft Office 2000 and the version of Windows released in 2001 for which mainstream Microsoft support ended completely in 2009.⁵ "Paperless" is still a ways off; trolleys of paper, ever increasing, remain the vogue.
- 25 Chief Justice Gleeson also predicted that judges would no longer have libraries or use hard copy law reports. Judges, he said, would

⁵ Albeit possibly upgraded as late as April 2008, when the earliest Service Pack not installed on Court computers was released.

be drawn from a wider professional group, although most would continue to be senior advocates. There would be more women on the court, and a much higher proportion of judges would retire before reaching the end of their working lives; many going onto work in alternative dispute resolution. ADR would be available in all courts, and a flourishing system of private arbitration and mediation would operate alongside them. This system would provide fast tracked and private dispute resolution for those who could afford it.

26 There are more women on the Court, a change which has only been to its benefit. I will say a little about the expansion and operation of ADR in a few minutes.

27 In civil litigation, the Chief Justice foreshadowed s 56 of the *Civil Procedure Act*, predicting that the object of civil litigation would be to make the administration of justice less costly to the parties and more efficient, whilst preserving the essential qualities of justice. In appeals, the bulk of argument would be presented in written form, there would be time limits for oral arguments and ex tempore judgments would be given in a much larger proportion of cases. When dismissing an appeal it would be acceptable for appellate

judges who found no error in the decision below to say that and nothing more.

- 28 Similar limitations would apply below, with time limits on cross-examination and oral argument, and evidence in chief given in written form. His Honour did not believe rules would be uniform between the Supreme and District Courts, although he expected appropriate differentiation would make litigation in the District Court simpler, quicker and cheaper. Finally, he said, the District Court would have no money limit and an expanded equity jurisdiction; all other first instance civil work would be allocated by a judge to the appropriate court.
- 29 In the years immediately following the Chief Justice's predictions the Courts were indeed transformed and the crisis was handled. This was achieved not by drastic changes like abandoning the adversarial system, but by the adoption of case management procedures, uniform civil procedure, and, yes, a reorganisation of work between the Supreme and District Courts; by and large, those changes predicted by the Chief Justice.
- 30 First, in 1995 the Court of Appeal had a tremendous backlog. Although the power to enter appeal judgments in short form was introduced into the *Supreme Court Act* in late 1996, the court did

not, and has not yet, taken advantage of this provision. However, in 1996, **48 per cent** of appeal judgments were given ex tempore. That was a rough time to be an appellate advocate, let me tell you. But it got the job done. The Court was also assisted by the new powers of registrars to deal with ordinary interlocutory motions.

- 31 Next, by 1997 Chief Justice Gleeson's predictions about the expanded jurisdiction of the District Court and reorganisation between the courts were partially realised. Nearly one third of all matters in the Common Law Division were transferred to the District Court that year pursuant to the *District Court Amendment Act* 1997, which also tripled the Court's jurisdictional limit to \$750,000 and included all motor accident claims of any amount.
- 32 Finally, the number of judge-managed specialised lists began to increase in 1998. By 1999 all divisions save for Common Law and Equity were abolished, and the previous divisions organised as lists within these.
- 33 I should add two things. First, these changes were only achieved with the cooperation of the profession, and as a result of the gentle, and sometimes not so gentle, promptings of Chief Justice Gleeson, who as you all know can be particularly persuasive.

- 34 Second, there are still some who predict the demise of civil litigation as it is presently conducted. The most notable of these is perhaps the former Chief Justice of South Australia John Doyle.⁶ I do not agree with him, but what he says serves a salutary reminder that we are a long way south of perfection. Delays in court hearings are still too long, and are lengthening. Access to justice for middle-income earners remains horrendously expensive. Without giving my predictions away, I can say that the courts will focus in the next 20 years on developing a culture of cooperation to alleviate those problems.
- 35 Returning to our history, in short between 1995 and the year 2000 the Court underwent the changes that brought it more or less into the position it is in today. The early naughties saw increasing standardisation, resulting eventually in the Uniform Civil Procedure Act and Rules. Overall litigation rates increased slowly but steadily, and referrals to Court-annexed mediation roughly doubled. The early naughties also brought comprehensive tort reform resulting in a decrease in the total number of personal injury actions

⁶ The Hon John Doyle AC, Chief Justice of South Australia, "Imagining the past, remembering the future: The demise of civil litigation" (2012) 86 Australian Law Journal 240.

commenced in New South Wales by at least 60 per cent.⁷ Those reforms also imposed obligations directly onto legal representatives, as well as introduced the possibility of disciplinary sanctions and personal costs orders, which I think, on the whole, have made better practitioners.

36 In criminal law, standard non-parole periods were introduced in 2002,⁸ although it may be said that they only had a brief flowering. The rule against double jeopardy was modified in 2006,⁹ and this year changes to the accused's right to silence are under consideration. Federal funding for legal aid was also cut drastically in the late nineties by almost fifty percent over three years, and that loss has never been recouped.

37 The use of tribunals has expanded exponentially, and this has made review of administrative decisions one of the fastest growing areas of litigation in the Supreme Court, particularly since the High Court's decision in *Kirk*.¹⁰

⁷ E W Wright, "National Trends in Personal Injury Litigation: Before and After 'Ipp'" Justice Policy Research Centre and Law Council of Australia, 26 May 2006, at 17.

⁸ *Crimes (Sentencing Procedure Amendment) Standard Minimum Sentencing Act 2002*.

⁹ *Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006*.

¹⁰ *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531.

- 38 I will make three more observations about our present circumstances before moving rashly on to make my own set of predictions. First, unlike the mid-nineties, and contrary to the views of Chief Justice Doyle, I do not believe there is an overwhelming sense of crisis in the courts or profession. This is not to say there are not serious and ongoing challenges. There is no doubt the Supreme Court is incredibly hard working; we work to the very limits of our capacity and remain ever vigilant, seeking to improve processes and services through case management and jurisdictional organisation. This is not easy, particularly with the constant pressure of limited resources.
- 39 My second observation relates to our new relationship with information. Technology has exponentially grown our expectation that more and more classes of information will be knowable, useful and accessible. We expect to do less work to retrieve relevant information and have less patience for questions that go unanswered. This has implications for how the Court and judiciary communicate with the wider community, and how the community participates in the administration of justice.
- 40 Finally, and somewhat related, I am pleased to say that those responsible for court administration seem to be making a real effort

to achieve, if not a paperless court, certainly a more electronically accessible and far less paper-dependent court. The recent increase in court fees announced by the Government, which I am pleased to say are far less than the Federal Court increases, are to assist in ensuring that at least the present level of judges is maintained and that there are funds available to facilitate electronic filing. The increase in fees and the allocation of the funds in the manner to which I have referred strikes a fair balance between the need to ensure justice does not become increasingly, overwhelmingly, expensive and the need to maintain the efficiency of the courts.

- 41 Now I have delayed as long as possible: it is time to make my predictions. I have made them in three principle areas. These are: the work of the courts, rights and freedoms, and the law and profession in New South Wales. I will leave technology well alone; I am not that eager to so quickly be proved a fool.

Work of the Courts

- 42 Over the next 20 years, consistent with the increasing specialisation occurring in the profession, there will be more specialised judges, and judges will be assigned to cases according to their particular skill set. This does not mean that the existing list

structures will change, however there will be more flexibility and opportunities for judges to deal with their interest areas. The reality of the present situation is that with the exception of criminal work, and the limited amount of personal injury work done by the common law division, there is a substantial overlap between the work done in the two trial divisions of the Supreme Court. I think having regard to this reality, that even within my time as Chief Justice, the Court will move from a rigid allocation of work depending on which particular division an originating process is filed in, to a system where cases will be allocated to judges depending on their particular skills and preferences.

43 Judges will continue to be drawn from an increasingly diverse professional background. Judicial interaction with the public and press will continue and increase, in line with changing community expectations about access to information. We may even follow in the United Kingdom Supreme Court's footsteps, by uploading videos of judgments being delivered to YouTube and tweeting outcomes.

44 There will also be increased emphasis on clear and concise judgment writing and the use of short headnotes and summaries,

particularly as the number of self-represented litigants increases in response to decreases in legal aid.

45 The President of the United Kingdom Supreme Court, Lord Neuberger, made suggestions this past November that judges take a more rigorous approach to cutting the length of their judgments.

In his words:

“I am not thereby suggesting that we follow the lead of Judge Murdoch, a judge of the US Tax Court. ... ‘It is reputed that a taxpayer testified,

“As God is my judge,

I do not owe this tax”.

[To which] Judge Murdoch replied, “He is not, I am; you do.”

I cannot imagine such an approach ever catching on here, nor should it. Brevity is a virtue, but, like all virtues, it should not be taken to excess. Judges should weed out the otiose. We should, for instance, remove unnecessary displays of learning, or what the Lord Chief Justice, Lord Judge, recalls his history teacher marking on his essay, APK, anxious parade of knowledge.”

Let me say that I whole-heartedly endorse his Honour’s pronouncement.

46 Case management, which was largely responsible for saving the courts from the crisis of the mid-nineties, will continue but the focus will shift to electronic management by specialised judges. The level of case management will continue to depend on the nature and complexity of the case in question, but I hope and believe that cooperation between the courts and profession will minimise the expense involved whilst preserving its advantages.

47 I should add that case management is not an end in itself. The less time required to be spent by a judge in case management, the less cost to the litigant and the more time the judge has to attend to his or her primary function of resolving disputes between the parties. However there will always be a minimum requirement for case management. Cooperation between courts and the profession in determining what issues need to be addressed at case management hearings, and compliance with courts' directions, will not only reduce cost to litigants and ease the pressure on judges, but importantly it will lessen the overall cost of justice which the community ultimately has to bear. I envisage that case management will in future years be conducted on a more informal basis than it presently is, with greater use being made of the

technological facilities the court now has, to eliminate the need for physical appearances.

- 48 The Supreme Court will not adopt a docket system, but cases may be allocated to particular specialised judges to deal with contentious matters at the interlocutory stage. There will also be an increasing number of panels which judges will have the opportunity to join. Where possible, cases will be allocated by reference to those panels irrespective of whether the judge in question is notionally a Common Law or Equity judge. If this can be achieved it will lead to two very real efficiencies. First, judges will be working in areas where they have particular skills and interests, and second, bottlenecks in the system will be readily identified and judges moved across divisions to alleviate them.
- 49 Alternative dispute resolution will reach critical mass, if it has not done so already. It will continue to complement traditional Court structures – but it will not replace them. Mediation will always have a place for conciliatory parties, and arbitration will remain important for those who prefer privacy to transparency. However, the importance of transparent public justice will not be compromised. Indeed, in some ways, arbitration’s greatest contribution to justice is that it keeps the courts on their toes in delivering services.

50 In the international arena, the success of the New York Arbitration Convention in the enforcement of international arbitral awards will, I think, lead to an increasing focus on international cooperation between courts, both in relation to administration of cross border disputes and, most importantly, in the enforcement of judgments. There is no reason why governments with comparable legal systems – or for that matter well established but different systems, such as the civil system – should not cooperate in relation to the enforcement of judgements in the same way as they were able to in relation to arbitral awards.

51 The jurisdiction of inferior courts will expand again – which is only sensible. It has been 15 years since the District Court's jurisdictional limit was increased, it will no doubt be time to increase it again soon. It is also possible that smaller claims will increasingly be handled by tribunals – however, this will present its own set of problems for the courts in the form of ever increasing demand for judicial review of administrative action. As is already happening, the Supreme Court's administrative review caseload will grow exponentially, and the process of judicial review will necessarily become streamlined.

52 In relation to appeals, there will be increasing emphasis on leave, and we may finally dust off s 45(4) of the *Supreme Court Act* which provides for short form judgments. However, unlike Chief Justice Gleeson, I do not think the Court of Appeal will or should expand significantly. The Court of Appeal functions at its best as a select collection of the state's finest legal minds. I can say that because I am not a member of that Court. Rather than expanding the Court to accommodate the increasing workload, the workload should be reorganised to preserve the Court of Appeal's role as the final stage of appeal, practically speaking, for most litigants.

53 It will be necessary for the Court of Appeal to accommodate increasing specialisation among lawyers. It will be important that appellate judges are selected having regard to the type of work being undertaken by the appellate division and that appellate benches comprise at least one, and preferably two, judges with expertise in the field in question. This is not to say that an appellate bench should be made up entirely of specialist judges. Some of the most compelling insights in a case come from those who have brought a fresh mind to bear on the problem.

54 I would also like to mention that the Court of Appeal has, for at least the past 20 years, been highly dependent on the work of

Acting Judges who are drawn from the ranks of retired appeal judges and are of the absolute highest calibre. While I expect this to continue, it is my hope that in future we will be able to better recognise their invaluable contribution to the Court of Appeal.

55 Finally, in relation to criminal appeals there will be more significant changes, particularly having regard to the increasing burden placed on the Court of Criminal Appeal and the Common Law judges who sit on it by the increasing volume and complexity of criminal appeals. To ensure the efficient disposal of cases, it will be practical and increasingly necessary to sit two judge benches on sentence appeals, particularly as the number of Crown appeals continues to increase. There will also, controversially, be a greater emphasis on the real issues in dispute in criminal trials. This leads me conveniently to my next area of predictions: Rights and Freedoms.

Rights and Freedoms

56 Although certain pragmatic steps will be taken to increase efficiency in the criminal justice system, there is a danger of over-all focus on efficiencies. In this state there is already movement away from the accused's right to silence. The Government announced in September that it plans to introduce amendments to

the *Evidence Act* allowing juries and judges to draw adverse inferences against alleged criminals who refuse to speak to police but later produce evidence at trial, or who refuse to speak at trial.¹¹ Proponents of these proposed changes point to similar provisions introduced in the United Kingdom in the mid-nineteen nineties. That legislation has proven problematic, to say the least.¹²

57 There are also a few fundamental differences between the New South Wales and United Kingdom criminal justice systems. First, the United Kingdom has the safety net of the European Convention on Human Rights. We have no such protection. I am not saying one way or the other that an equivalent convention would be desirable in this country, but merely emphasising the different legislative context. Second, in the United Kingdom a legal representative must be present to ensure that the suspect understands the significance of the caution and the consequences should they remain silent. This would be a necessary safe guard should such legislation be introduced here, but would require significant increases in legal aid funding that does not, at present,

¹¹ The Honourable Greg Smith SC MP, Mcdia Release, 12 September 2012, accessed at http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/LL_Homepage_news2012#callsupp on 18 December 2012.

¹² Bernard Coles QC, President of the New South Wales Bar Association, Letter in Response to the NSW Government's Proposal, 28 September 2012 at 7, accessed at <http://www.nswbar.asn.au/circulars/2012/sep/r2s.pdf> on 18 December 2012.

appear likely. I am not prepared to make a final prediction as to how this issue will resolve. I do understand that the Government is aware of the difficulties and unfairness that could result from substantial inroads into the right to silence, particularly in relation to unrepresented persons.

58 That is not to say that efficiencies will not or should not be justified in the criminal justice system. As trials become more complex, involving increasingly sophisticated scientific evidence or complex commercial activities, it may well be appropriate to require a degree of disclosure of an accused person's defence prior to the commencement of the trial, so as to ensure that the trial operates efficiently and expeditiously. There is a difference between requiring disclosure of what might be called exculpatory material, as distinct from material which may tend to incriminate. Such measures are not entirely new; alibi defences for example already require prior disclosure.¹³ However even in this area, the legislature and rule making bodies should tread with particular care, to ensure that the fundamental rights of the criminally accused are not threatened.

¹³ *Criminal Procedure Act 1986* s 150.

59 The right to privacy will also find a permanent home in the next 20 years; probably not as a human right as such, but perhaps as an application of the equitable principle of unconscionability or, more likely, as a statutory tort.¹⁴ It will be necessary to balance any such right against the implied freedom of political communication, which will itself be refined in the coming years.

60 The debate surrounding an Australian Bill of Rights will continue, but progress in the next twenty years will focus on state-based Acts, as in Victoria. Many reform themes have cycles such as these. Republicanism, adversarial justice and the fusion of the profession were all reform themes of the mid-nineties that are presently lying dormant, and will no doubt be reignited one day. As to republicanism, I do think that there will be significant debate as to our Constitutional structure at some point during the period of my prediction. On the other hand, I do not anticipate any drastic changes in relation to the issues of adversarial justice and the fusion of the profession in the next twenty years. This leads me to my final area of prediction: the law and legal profession in New South Wales.

¹⁴ See eg the discussion of Gleeson CJ in *Australian Broadcasting Corp v Lenah Game Meats* [2001] HCA 63 at [41]-[55], and per Gummow and Hayne JJ at [106]ff and per Kirby J at [185]ff.

Law and Legal Profession in New South Wales

- 61 Speaking of reform themes, codification has made an appearance again lately, last year in relation to the proposed codification of contract law. I made a submission opposing that codification, as did many others. Certainly there has been a tendency in the past twenty years to subsume the common law into statute, and statute is desirable in certain areas. However, I do not believe we will be seeing restatements or significant formal codifications in the coming two decades.
- 62 National regulation of the legal profession, on the other hand, is coming, albeit slowly. This will not affect the method of practice or the ethical standards of practitioners. And it will not involve (and never has involved) ceding control of the profession to the Commonwealth government. We will remain a divided, self-regulated profession. But there is nothing wrong with common national standards in a country of only 22 million people, and despite familiar patterns of resistance, national regulation will be a reality well within the next twenty years.
- 63 Finally, it will be necessary in the next two decades – and probably much sooner – to confront the issue of continuously decreasing funding on all justice fronts – to the courts, to legal aid, and to

complementary support services. There is nothing wrong, in principle, with requiring litigants to contribute to the cost of justice through court fees, for example. However this shouldn't mean that the cost of fees shut people out or force them into other forums of dispute resolution that are not as transparent as the public court system. It should go without saying that access to justice is an absolutely fundamental tenet of a free and prosperous society. Whatever economic crises or budgetary shortfalls we may face, justice is not optional. The quality of our judiciary, of our courts and of our public services and legal aid professionals must, at all costs, be maintained. Unfortunately, I am not prepared to make a prediction that legal aid will be maintained at a sufficient level to ensure equal access to court facilities – but I will express my hope that there will be political will to fight for it in the coming years.

64 I have come to the end of my predictions. I do not think they are particularly earth shattering, but perhaps they may act as a springboard from which plans for positive change can be drawn. If the last twenty years are any gauge, the Supreme Court bench in twenty years time will be composed of many of the men and the unprecedented number of women who took silk last year, and from the ranks of senior solicitors in this State. What we can be sure of

is that we will carry on, we will manage crises, we will make changes and we will strive for improvement. Above all we will continue to uphold the rule of law in this State as custodians of its best legal traditions. And I look forward to it.

65 Thank you, and good night.