



Law Council
OF AUSTRALIA

The Future of the Legal Profession: Sailing into Cyberspace

Speech delivered online by Mr Tass Liveris, Law Council of Australia President, to mark the Opening of the Malaysian Legal Year.

13 January 2022

Good afternoon.

It is a pleasure to join you this afternoon – albeit virtually – to mark Malaysia’s Opening of the Legal Year for 2022.

As I begin my term as President of the Law Council of Australia, I am grateful for the opportunity to meet, and better get to know, distinguished bar leaders from across the Asia-Pacific region and further afield.

I am also grateful that the time-honoured tradition of marking the opening of the legal year again provides the opportunity to discuss current and emerging issues in our jurisdictions, and share our priorities and aspirations for the year ahead.

I’ve very much looked forward to today’s session – the digital transformation of our legal systems and the provision of legal services is an issue which will impact every lawyer in every jurisdiction.

I commend the Malaysian Bar for its selection of topic – which prompted me to pause and consider the often-discussed issues of modern legal practice in a different light.

It occurs to me that sailing is a very good analogy for looking into the future of our profession and exploring the impact technology may have on how we provide legal services – and how our clients and communities access and observe justice.

Although the word ‘sailing’ may imply a certain ease or effortlessness, in reality, sailing is full of uncertainty. We can carefully prepare for the journey and plot our course, but should the wind change, we have to respond quickly and either get back on track or adjust our course to the new conditions.

In the time I’ve been allocated to speak, I’d like to share some thoughts on what the future holds for the legal profession and the foundations I believe we need to have in place to make sure we can ride the cyberspace wave rather than be swept away by it.

The COVID-19 pandemic marks an undeniable paradigm shift for the legal sector.

The pandemic led to what has been termed the largest scale and most rapid change in work practices Australia has ever experienced. Seemingly overnight, we went from less than 8 per cent of our workforce working outside a traditional office environment to 40 per cent.¹

While this marked a huge shift for all workplaces and sectors, it required our courts to immediately pivot from a way of operating that has essentially been in place for hundreds of years.

In order to ensure continued access to justice, our courts needed to move decisively to facilitate virtual hearings and expand online registry and dispute resolution services. There was little time to ‘road test’ different platforms or commission purpose-built digital solutions.

While we commend, and are grateful to, our courts for their quick and concerted efforts to ensure Australians had continuity of access to justice and to legal services, it certainly hasn’t all been smooth sailing.

¹ Productivity Commission, Working from Home research paper, 16 September 2021

As I'm sure many of you have read in the news, on Monday a judge of the Federal Circuit and Family Court of Australia overturned the decision of Australia's border officials to cancel the visa of tennis star Novak Djokovic. This case has understandably attracted a great deal of attention, both in Australia and around the world.

The virtual hearing – which was available for the public to stream over Microsoft Teams – illustrates both the great promise and the many technical and procedural challenges associated with virtual court hearings. The Court has even set up its own Youtube channel, where anyone who wishes can still watch the Djokovic hearing in a four-part series.

In terms of promise, virtual hearings are more accessible to the general public, and the ability to tune into high profile cases has provided many Australians with a better understanding of how our justice system operates.

This promotes transparency in the conduct of court cases, which in turn enhances public confidence in the justice system.

Virtual hearings have also enabled time-strapped journalists to cover multiple cases in a day – something which would previously have been impossible where court proceedings were in different physical locations.

However, this accessibility also brings inherent challenges that our courts are still working out how to manage.

Djokovic's hearing attracted an enormous number of viewers, which at various points exceeded the bandwidth limit and interrupted the stream. Proceedings were also interrupted by viewers managing to turn on their microphones and share photos and links in the stream – which understandably was a source of great frustration for both the judge and the parties.

In the coming years, I suspect that our courts will settle on secure, reliable online platforms to conduct virtual hearings. Unlike existing videoconference platforms, these will be better tailored to the needs of our justice institutions, or even purpose-built for specific courts, tribunals and dispute resolution services.

To facilitate this, however, there is a critical need for sustained, appropriate court funding to support courts to improve the technological infrastructure in courtrooms (particularly smaller courts in regional, rural and remote areas), and to refine and scale up virtual hearings and registry services.

Similarly, there is a pressing need to develop guidance materials and training in areas of: technological competency for judicial officers and court staff; standard practice directions for the use of technology at all levels; guidelines for legal practitioners to ensure that appropriate levels of connectivity are utilised; and protocols for practitioners/litigants/witnesses dialling in to remote court events.

It is also vital that in the race to adopt online dispute resolution, we seek to mitigate the potential digital exclusion of people who have limited access to technology, unreliable internet connections, or who lack the skills to utilise technology and online services. These include older persons and people experiencing homelessness or poverty.

Of course, this is not the only eddy changing the direction of our profession.

Well before the COVID pandemic, a January 2017 report from the McKinsey Global Institute projected that half of current work activities could be automated by 2055.

There has been much speculation about the digital 'disruptors' that might revolutionise the provision of legal services.

This includes the adoption of new technologies, including artificial intelligence (AI), which can assist the legal profession to automate processes, and provide more efficient services to consumers.

Long-term, intelligent technology tools may even change the structure of future legal practices, including by using technology as a stand-alone legal service, and as a tool in legal practice.

The Law Council has maintained that the promotion of innovation has corresponding responsibilities: a commitment to fairness, ethics, accountability and transparency.

If consumers are to rely on new technology-based products and non-traditional providers of legal services, we need to consider:

- how to regulate and assure the quality of products and services delivered by non-traditional providers;
- what standards of responsibility should apply to product creators and service providers in areas such as legal liability, avenues for redress and other consumer protections when digitally assisted legal advice and the services of non-traditional providers goes awry; and
- the advantages, limitations and risks (including privacy and cyber-security concerns) of technology-based tools and new service provider models.

We need to think carefully about how we can preserve the 'quality guarantee' for consumers and the administration of justice provided by statutory regulation and professional ethics, while also fostering innovation and harnessing the opportunities and benefits of technology.

In May 2020, when speaking of the rapid expansion of technology by the Federal Court of Australia, Perram J doubted whether what had been achieved in 8 weeks could have been achieved in 10 years under normal circumstances.

His Honour commended the attitude of litigants, the legal profession and the judges throughout this process; observing that the "difficulties which are encountered are treated as obstacles to be surmounted rather than roadblocks to be surrendered to".

I'd like to conclude my remarks today with a similar sentiment. Despite the emerging challenges, uncertainties and frustrations of this digital shift, it is my hope that lawyers and our legal professional organisations continue to constructively engage in this process with patience, persistence, and integrity.

May the adaptability and resilience of our profession, and its dedication to the courts and consumers of legal services, continue to characterise our approach to these surmountable obstacles as we step bravely into the new era.

Thank you.

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