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PRACTISING LAW IN AUSTRALIA IN 2010

JOHN CHISHOLM^{*}

Thankyou very much for the kind invitation to talk to you briefly tonight on "Practising Law in 2010."

What a broad topic – where does one start? One thing about making future predictions is when I leave here tonight you will have absolutely no idea whether I am right or wrong, and all of you will have long forgotten about what I say to be bothered hunting me down in six years time if my predictions turn out to be bunkum.

A word of caution though, as a soothsayer my credentials may not be all that inviting. When clearing out some old papers recently I came across one I wrote in 1992 as a then Managing Partner for a partners' conference, and I made two bold statements to my fellow partners.

Number one. I told them that the paperless office was 'just around the corner' and therefore we should spend a significant amount of dollars in updating our firm's IT infrastructure, hardware and software. The cost of doing this would be in part be offset by future paper savings!

^{*} Chief Executive, Middletons Lawyers. The 2004 Deakin Law Review Dinner was held on Wednesday 17 November 2004 at The Windsor, Melbourne.

Number two. I predicted that the concept of billing clients on an hourly rate would not last and implored them to examine other ways of 'value' billing our clients.

How more wrong could I have been? While the IT spend in all law firms has - quite correctly I might add - increased anywhere from 3-10 fold in the past decade the use of paper and the cost of paper, if my office is any gauge to go by, has not decreased. While this trend maybe slowly changing many lawyers especially from the baby boomers plus still like 'hard copies'!

We are moving towards, but not yet to the position of, jurisdictions like Singapore where it is impossible to now file a single physical document. Of course our Federal Court and some other courts accept electronic filing, but it is not yet compulsory.

And hourly rates? Well as best as I can tell, at a maximum 20% of any major Australian law firm fees may come from billing clients in ways other than by hourly rates and while I am bold enough this time to predict by 2010 that percentage will (fingers crossed) nudge closer to 30% - 40%, it seems we are stuck with time based billing and therefore timesheets - albeit electronic timesheets now rather than paper ones - and we will continue to wrestle with the dilemma of explaining to our clients and the public at large that time based billing does *not* promote a system in which inefficiency is rewarded with higher fees - or in other words there is no financial incentive on a lawyer to undertake the job he/she is doing for a client as quickly as possible!

Perhaps before I move too far ahead of myself it is worth reflecting, if only for nostalgic reasons and so you can gauge how old I am, some of the changes which have occurred in the legal profession at least in Australia, and Victoria in particular, in the past 20 odd years.

When I graduated from Monash Law School in 1977 to the best of my knowledge there were only two universities and RMIT in Victoria to obtain a law degree. I do not have the data on how many law graduates there were in Victoria in 1977, or how many were admitted to practice in the following year, but on reflection I cannot think of one fellow graduate of mine that did not receive an articulated clerkship offer, although some undertook the Leo Cussen course by choice.

I am told that next year in Victoria alone there will be approximately 1350 law graduates who theoretically at least will be competing for the 900 or so articulated clerk or practical legal training positions available in Victoria. And this is not including the influx of students from universities in Tasmania and South Australia who regularly apply for articles in Victoria. What do the other 450 or more law graduates do?

This year nearly 30,000 students are enrolled Australia wide in law degrees. Apparently 10 years ago about 16,000 students were studying law in about 160 courses

on offer around Australia. Next year according to a recent *Business Review Weekly* article¹ there will be 345 law courses on offer. Do the private law firms soak up all these law graduates? No. They never have, and more and more graduates are undertaking law in conjunction with another, and some never had, or will have, any intention of ever practising law.

In 'my day,' if we ever thought about it at all in the 70s, we only ever contemplated studying law to join a private law firm or maybe go to the Bar. Even careers in the corporate world for lawyers was a relatively new concept. Oh, and another thing, in 'my day' we were interviewed *by* law firms for jobs – now graduates interview law firms for jobs.

I am astounded every year when my firm sifts through more than 700 applications for article clerkship – for our firm's 12-15 articulated clerk positions – at the quality of the students, not just academically (good academic results are just taken for granted these days) but what else they have done in addition to gaining top grade marks – the various part time jobs they have, the committees they are on, their sporting prowess, their pro bono work and even papers/books they have written. Given the marks I got when I was studying law, I am embarrassed to even have to interview these students.

What else has changed since I started law? The areas of law itself has changed enormously. When I started practising conveyancing and property transactions, contract law, wills & probate, 'private client services', and personal injuries litigation were the cornerstones of all but the very largest law firms. 20 years ago there were not the 'mega firms' that there are today.

Most of the junior partners in my firm plus all our employed lawyers only ever know of Mallesons Stephen Jaques, Allens Arthur Robinson, Freehills etc as mega firms. Those of us who have been around a while know that prior to the 1980s those firms were not even mid-sized by today's standards.

Telecommunications, intellectual property, IT law, biotechnology and all the changes to the traditional concept of 'family' (gender identification issues, same sex marriages etc) to name a few weren't even 'invented' 20 years ago. Remember there was no email, internet, laptops or PCs. Can you remember life without email? If you are still practising law today with the same clients in the same manner you were 5 years ago in less than 5 years time you will have become redundant and a 'dinosaur'.

Areas of law which I said were cornerstone of many law firms have either ceased to exist, have been 'commoditised' and are therefore unprofitable for many firms in which to practice, or indeed there are now several *non-law firm* competitors in the

¹ Gina McColl., 'A Wig & a Prayer', *Business Review Weekly*. 30 September 2004. <<http://www.bizreview.com.au/Edition.aspx?ediid=1116>>

market who can provide the service more effectively and at a cheaper cost than can a traditional law firm.

In 2001 the Law Council of Australia prepared a discussion paper headed coincidentally '2010 – Challenges for the Legal Profession'.² While nearly 4 years old, it still makes for interesting reading.

The Law Council report said that the 21st century promises to be a time of significant change for lawyers driven by 5 key factors:

- Advances in information technology;
- The effect of globalisation;
- Changes in competition and government regulations;
- Changes in demographics and social attitudes; and
- Advances in science.

That paper concluded that some of the key possible changes include:
(And I quote)

- The internationalisation of legal practice at the 'top end' of commercial transactions, with a small number of large multinational firms handling major commercial transactions world wide.
- The 'commoditisation' of law that is essentially transactional, and increased competition from non legal providers.
- Increased individual consumer awareness of legal rights, leading to better educated legal consumers with higher expectations.
- Deregulation of markets leading to increased competition from overseas and from non traditional providers of legal services.
- Increased difficulty in access to courts for lower and middle consumers as legal aid budgets shrink and direct court funding decreases and/or is linked to performance standards. A possible increase in 'user pays' approaches to access to courts and greater public expectations of pro bono services from the profession.
- An ongoing tension between business and professional aspects of legal practice, with focus on adequacy of existing ethical rules.

Well how true have these predictions proven to be even three years later!

There is simply not the time tonight to examine in detail the Law Council's predictions except to say that many of these changes are happening quicker than the 2001 prediction.

² Law Council of Australia, '2010: A Discussion Paper: Challenges for the Legal Profession', September 2001. <<http://www.bizreview.com.au/Edition.aspx?ediid=1116>>

While the legal profession is still very conservative compared to other industries, especially compared to the businesses of most of our clients, in order to meet clients' expectations; a more sophisticated client base; a business environment that for the last few years has known only good economic times; the increased globalisation of business generally and an increasing competitive legal market law firms have changed the way they practice especially in the delivery of their legal services. The huge and rapid advancements made in technology and, in relative terms the affordability of technology, has been a key implementer for such change.

What other changes and issues have we seen in the profession in recent years?

- The workplace itself will continue to change due to the expectations and aspirations of the lawyers themselves. Work-life balance; catering for GenX and GenY's view of the world; more reliance on performance based accountability; greater mobility of the workforce; a different concept of 'loyalty' both by employers and employees; attempts to deal with the gender imbalance and glass ceilings prevalent in the profession; 'baby boomers' trying to cope with 'retirement' to name a few.
- Huge increases in PI insurance premiums. For some firms a 10 fold increase has been a significant additional cost, which at the end of the day is passed on to clients.
- The ongoing heavily debated issue as to what extent should the profession be regulated or self regulated? As we speak a new *Legal Practice Bill* is before the Victorian Parliament.
- The 'corporatisation' of law firms including the ability in NSW in particular for law firms to incorporate.
- The rise, and fall, of Multi-Disciplinary Practices (or 'MDPs').
- And, my personal hobbyhorse, the much too slow evolution from a state based to a national profession which at last is starting to gain at least some momentum through the Standing Committee of Attorney-General (SCAG) release of the *National Legal Profession Model Bill*.³

So if you are still practising law – or contemplating practising law - in six years time what might you expect?

- A much more national profession (if not national at least eastern seaboard which represents 85% and growing of Australia's legal market) governed by national and some international rules and regulations.
- The increase in incorporated practices (once we get our heads around some of the tax issues and the concept of partnership = equity = management) and law firms increasingly run on corporate business lines.
- The slow re-emergence of, albeit limited, MDPs. Despite the *Sarbanes-Oxley Act* and Enron in the United States there will be a role for

³ Bob Gotterson, 'Framework for a National Legal Services Market' (2004) 78(7) *Law Institute Journal* 38.

MDPs – although I suspect it may not be at the worldwide mega firm level as was evolving in the late 90s.

- A growth in Asia Pacific rim mega firms. Look at how many international firms are now trading in China for instance – including Australian firms? Look at where most of Australia's mega firms are and have been positioning themselves for sometime? In the scheme of things at the top-end of business Australia is a mature market and to continue to feed their growth and the infrastructure they built for themselves in the mid-90s onwards international – read Asia – is the only way to continue to expand for these firms. Expect in six years time even the mid-tier firms in Australia to have international offices / connections especially in Asia.
- A greater polarisation and consolidation of law firms between those that essentially service corporate Australia and those dealing with essentially 'private client services'. The mid-tier generalist practices of the 1970's and 1980's are under threat and will be largely extinct by 2010.
- No more articulated clerks but nation wide practical training courses serviced by various 'accredited' agencies.
- Expect the percentage of women in senior positions in law firms to have increased but still be nowhere near representative of the percentage of women who actually commence working in private practice. Slowly but surely valuable organisations like the Australian and Victorian Women Lawyers will have got the message across to at least the more progressive legal firms.
- Even in private law firms there are increasing opportunities for lawyers to move out of mainstream (read 'billable') law into areas like Human Resources and Business Development. Being an "estimator" in a law firm is one of the fastest job growth areas as more and more firms grapple with other forms of "value" billing other than hourly rates but struggle to properly understand and accurately estimate their postproduction and profit margins.
- You can *only* electronically file documents in all courts.
- The law firm environment while still reflective of any professional services organisation where long hours and customer service is paramount will be much more attuned to 'corporate wellness' and it will be more the norm to provide to staff (and partners) facilities such as health clubs, weekly massages, health checks, health care etc.
- Docklands is where the progressive major law firms in Melbourne have their offices!
- Technology... I cannot even begin to predict what will happen in six years except 'real' time interface will actually mean 'real' time; more and more law firms will have two way email / internet simultaneous access with their major clients.

Oh and in 2010 our PM John Howard accompanied by a wheelchair bound Treasurer Peter Costello, about to enter his sixth term of office, is promising to bring home the last of our troops from Iraq by Christmas.