AUSTRALASIAN LAW REFORM AGENCIES CONFERENCE

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SESSION 8A

REMOTE AND INTIMATE JUSTICE: CHALLENGES FOR COURTS OF THE FUTURE

Commentary by Justice Hugh Williams

High Court of New Zealand

On the papers presented by Prof Graham Brawn and Dr David Tait

[1] The purpose of this commentary, had it been able to be delivered at the Conference, would have been to provide observations from a New Zealand viewpoint

on the gist of the two excellent papers presented by Prof Graham Brawn and Dr David Tait, outline the New Zealand responses to some of the problems they pose and, with them, to point to a possible way forward both in New Zealand and elsewhere.

[2] There are three distinctions to be borne in mind in relation to this topic. Though not profound, they are, equally, not often identified – though our paper writers cannot be faulted on that score. The distinctions are :

[a] In this area, there is a difference to be drawn between courthouses and courtrooms and physical access to either. They tend to be seen together as if inextricably parts of a single whole. But such is not necessarily the case. Their functionality differs markedly, particularly in relation courthouses or courtrooms where security becomes a dominant feature.

[b] There is a tendency to confuse form of courthouses and courtroom with functions. That questions the geographical access and accessibility to justice for the populace at large. Courthouses and courtrooms differ markedly not just in such things as location but also in the functions they perform and between structure and structure.

[c] That leads on to the third distinction which is that no one size of courthouse or courtroom fits all. Indeed, Dr Tait's presentation graphically illustrated the difference, showing us courthouses and courtrooms some of which were awesome - in the true sense of the word - and some of which were awful. As with form and function, size and layout affect accessibility to justice and are determined by the nature of the Court facility. It may be trite to draw distinctions between appellate Courthouses and courtrooms, multi-court metropolitan structures and single court structures in relatively isolated locations used infrequently. They may not be a "courthouse" in the traditional sense at all: Koori Courts in Australia are obvious examples, as are many examples where tribunals and courts such as the New Zealand's Maori Land Court and its Environment Court sit on

marae or in non-traditional locations where access to the project under consideration is available.

[3] Turning first to the distinction between courthouses and courtrooms, the New Zealand District Court sits at approximately 50 locations throughout the country. In 17 of those the District Court co-locates with the High Court. Many of those courthouses, both large and small, are in Heritage buildings, often over a century old. In a nation with only a modest built Heritage, refurbishment is often the only achievable modification.

[4] There have been a number of courthouse closures in New Zealand over the past 20 years or so. All have been met by strong local criticism since courthouses in provincial New Zealand are often in the most visible presence of Government in the area, indeed sometimes almost the only visible presence of Government. This is particularly the case because, since 1985, in common with many Western nations, local Post Offices have been closed or privatised, police numbers have reduced with station closures and demographic changes have led to school closures. It is difficult to think of a completely new location for a courthouse in New Zealand over the past 20 years which is anything more than building another courthouse "down the road".

[5] Courthouses are accordingly regarded by the community as evidence of stability, self-assurance, even nationhood. Many of them, particularly the Heritage buildings (and the four main Victorian Supreme Court buildings in particular) are regarded as a very visible testament to the past and harbingers assuring the future.

[6] Yet, in the Law Commission's most recent paper "*Delivering Justice For All"*, a major theme pursued by many submitters was that they wanted justice available nearer their locations and more attuned to the needs of their community. A second theme evident in the paper is that, although criminal filings have shown a relatively modest increase, civil filings both in the District Court and the High Court, have steadily declined over recent years. This may in part be due to the massive increases in Court filing fees imposed by Government in new Zealand nearly three years ago and patchy Legal Aid entitlement, but the figures clearly suggest the populace feels it is being shut out of access to justice in large measure in this country. And, a third

factor is that New Zealand, in common with many other jurisdictions, has had a sharp rise in self-represented litigants.

[7] What all this seems to be saying is that access to justice by the populace threatens being failed by New Zealand's present network of court facilities.

[8] And if this is the case in a relatively small country with a population of about 4 million, how much greater a problem must it be in vaster countries with large areas, sparse populations and inadequate communications?

[9] One does not have to be deeply immersed in the Doctrine of Separation of Powers to know that loss of public confidence in the court system - a system able to deliver justice accessible to the community geographically, procedurally and in a way that respects and balances individual rights - represents the possibility of a significant disturbance of the checks and balances so vital to our societies.

[10] It is a major challenge only partially capable of being redressed by technology.

[11] Staying with structures, what may not have come through the Conference papers clearly and what risks being overlooked in efforts to make courthouses more efficient, more friendly, more usable, is that courthouses are about the most intractable projects on which architects and designers ever work. Apart from specialised courts, no matter what the size of the structure, it must provide for several almost entirely separate means of access. They are :

[a] The public. The courthouse and, to a less extent, the courtroom, must be made as user-friendly as compatible with the uses to which the building is being put. Prof Brawn's paper (p11 ff) gives a number of examples of the detail to which attention must be paid. But there are several sub-sets of the public whose interest must also be catered for including :

[i] In many cases, jurors who need separate facilities and who may need separate access;

[ii] Complainants or victims and their supporters on the one hand and families and supporters of accused persons on the other who also need access to separate facilities;

[iii] Spouses following family breakdowns, who need a facility which enables them not to cross each other's path;

[iv] Witnesses (protected or otherwise) who often need separation both before giving evidence and when accessing the courtroom;

[v] Lawyers who need public access, access to witnesses and access to secure areas to see their clients.

[b] Staff and judiciary. They need secure access and fixed and regulated interfaces with public, witnesses, jurors and accused persons.

[c] Accused persons who need to be treated appropriately but with the recognition they can include some of the most brutal and dangerous members of society. Their points of contact with Judges, staff, warders, lawyers, jurors etc. must always be restricted and controllable.

[12] It follows that access to justice in a physical sense is extraordinarily difficult to accomplish appropriately. But this is particularly the case in smaller courthouses. The building becomes the capsule within which these difficult points of contact must be managed to ensure justice is served in the best possible way.

[13] New Zealand has developed a detailed set of Design Standards covering the main spaces found in courthouses. Overseas commentators have been laudatory of our efforts, but nonetheless experience has shown those Standards amount to no more than a broad template for individual constructions, refurbishments or modifications. Essentially, each project must be designed individually within the broad parameters of the Design Standards.

[14] This division of function also laps over into the question whether courtrooms should always be in courthouses. The answer must be "not all" or "not wholly".

[15] In New Zealand, as elsewhere, there is a movement towards resolving parties' disputes in an arena – sometimes the location of the dispute – where resolution can be managed more efficiently. There is also a movement for more informal arenas, and there is a movement – more advanced in other and bigger countries such as Australia – to divide courtroom and courthouse function by the use of techniques such as video conferencing for bail and remand hearings, protected witnesses, and to meet the needs of scarce witnesses such as scientists.

[16] What is being discovered, however, is that savings in those respects to agencies such as Police and Corrections, can result in increased costs in other areas: Legal Aid lawyers can no longer interview clients at courthouses on remand but need to be paid to travel to remand prisoners. More importantly, there is the detrimental effect on families and supporters of victims and complainants denied the chance (if they want it) to face their assailant, and the families and supporters of accused suffer if too much is done "over the wire". More importantly still, there is much to be said that it is part of access to justice if guilt should be declared, adjudicated upon and sentenced in the community in which the actions occurred and the community's access to justice is diminished if such does not occur.

[17] I mentioned our Design Standard template for all the common spaces within our courthouses and the fact we have found that, despite the Standards, each project essentially requires individual design for which the Design Standards can provide no more than guidance in spatial and mechanical terms. The essential determinant of many aspects of courthouse and courtrooms design is whether security is a concern. That applies as much to the construction of our new Supreme Court - where matters of lofty principle will be debated but which will have components of criminal cases argued by serving prisoners - as it does to a new development in New Zealand, a Hearing Centre which becomes a courthouse on one or two days a month. When not required for that purpose, the bench, dock and essential courtroom facilities are wheeled away and secured. The remaining space is used for State agencies such as

Work and Income New Zealand, Child Youth and Family Services, Inland Revenue Department and the like.

[18] We are also finding ourselves falling behind with demographic tends, and trends of criminal activity. A graphic example is that although a quarter to a third of New Zealanders live in the Greater Auckland region, the upsurge in multi-accused drug trials has caught us out; there is only one courtroom in the whole of that region able to accommodate trials of twelve or more accused.

[19] It follows that whatever the facility may be, at whatever level and whatever type of usage it provides, whether large or small, whether provincial or metropolitan, access to justice demands we do the best we can to create a facility which responds to the community's requirement and provides an appropriate forum where people and organisations can be brought to account for their past actions and they, and those affected by those actions, can be assisted to find a way forward.

[20] Graham Brawn and David Taylor made us more alive in their papers and presentations to the ways in which that challenge can be met.
