Looking forward looking back: The wisdom of the Magic 8 Ball

Linda Crebbin AM

This speech was delivered by Linda Crebbin AM at the ceremony on 12 September 2019 to mark the 25th Anniversary of the Canberra Law School. Among other achievements Ms Crebbin was the first President of the Australian Capital Territory Civil and Administrative Tribunal (ACAT). She has tirelessly made a major contribution to the life of the Law School and to justice in the Territory over many years. Participants at the event were delighted to hear her thoughts about the past and future of legal practice, delivered with a characteristic verve and engaging humour. The Editors appreciate her generosity in providing a copy of her speech for this issue of the *Review*.

I acknowledge the traditional custodians of this land and pay my respect to their elders, past and present. I pay my respect to all elders, and all first nation people including the young people that I see doing remarkable things each day.

It is a surprise to find myself speaking to you in this context. First, I'm not a UC alumnus; though I have had a bit to do with students and graduates undertaking placements at Legal Aid ACT and the ACT Civil and Administrative Tribunal. I've been a guest lecturer from time to time. I've employed UC graduates.

Secondly, I am not by any stretch of anyone's imagination, an academic; though like most lawyers I'm full of curiosity, love learning, and am happy to share that learning with any audience I can capture. You are my victims, oh … I mean captives, of course, tonight.

So, I come at my task tonight as something of an imposter, or perhaps, an innocent abroad.

Ben suggested that I could talk to you about changes I have observed in the legal profession. When I think of changes I think about them at a superficial (that is, self-centred) level.

As an articled clerk, the firm I worked for had a telex machine; secretaries typed documents on manual typewriters using carbon paper for copies – two copies of everything – one for the file and one to go into the folder circulated to each partner to read and pass on at the end of each day. Typing required a high degree of accuracy - correcting errors meant re-typing the whole document and that was just too time consuming. Each letter I drafted was meticulously and agonizingly checked by partners with an inexhaustible supply of red pens. I gave clients the benefit of my amateurish wisdom, never expecting them to challenge or ask questions – and indeed, they did not. Such was the authority and mystic of the lawyer.

As an articled clerk I perfected the art of pounding the pavements of Melbourne to deliver letters, and clambering up the ladder in the magnificent Supreme Court library to check exactly what the Lord Chancellor, Lord Cairns, said in *Rylands v Fletcher* in 1868.

We were gobsmacked when the fax machine arrived. We gathered around as someone explained its magical operation. I still don't quite understand - put paper in one end, press a button, the words float through the air and pop up on a piece of paper somewhere else.

About 18 years later, in 1999, one of my favourite jurists, then NSW Chief Justice James Spigelman, spoke about the opportunities technology gave women to change the paradigm of 'normal conduct' in the practice of the law by agitating for flexible work arrangements. When addressing the NSW Women Lawyers Association about the paradigm of conduct he said:

> That paradigm requires immediate and continuous availability in the form of physical propinquity…Modern technology makes physical presence or propinquity optional in many circumstances.
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> Over recent decades there have been numerous predictions of the imminent arrival of the paperless office or of telecommuting by modems, faxes and telephones. Whilst all of these phenomena have progressed to some extent – more limited than many predictions – the idea of what is 'normal' has not changed. However, it may.
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> The principal idea I wish to propound this afternoon is that women have an interest in changing the paradigm of 'normal' conduct of workplace relations in a direction which creates an alternative paradigm that does not require physical propinquity. All of the technologies that I have mentioned will assist in that regard.

Funny now, 20 years later, to reflect on those words. Email was in use in 1999 but not recognised as an appropriate mode of communication in a formal or professional context. Faxes? Who uses those anymore? His honour went on to talk about the usefulness of video conferences. OMG. I've been known to tear my hair out in frustration during video conferences. If you've not seen it I encourage you to watch the video 'A conference call in real life' by comedians Tripp and Tyler. It sums up every tortuous video or phone conference in which I have participated.

Work arrangements certainly did become more flexible after 1999 but not, I think, in the way the then Chief Justice envisaged. As an articled clerk I worked in the office more or less from 8am to 6pm Monday to Friday, and on the last Sunday of each month to get bills issued. Sometime in the 2000's that changed to something much more flexible – work was anytime between 8am to 8am, in the office, at home, in the car, in the bath, wherever; up to a maximum of seven days a week.

No need for articled clerks to wear out shoe leather delivering letters, or to climb ladders and battle silverfish in the search for ancient wisdom. Indeed, no need for articled clerks.

While my workplaces were not academies, I have kept some contact with the world of legal education through students and as a result, know something of the significant changes to the mechanisms used for delivering legal education in our universities. But I have not thought more deeply about the purpose, nature or structure of legal education until now.

Professor Richard Susskind, the IT Adviser to the Lord Chief Justice of England and Wales, recently declared the 2020's to be the decade when many of the radical tech-led programs being designed now – namely, AI and on-line courts – will really come to life. He said that these programs will replace our old ways of working and that lawyers will focus less on advising clients and more on building systems to advise clients. And he has questioned whether we are adequately preparing trainees for the coming decade of transformation.

That is a damned good question. It is perhaps easier to identify the need to ask the question rather than to answer it.

Like all reasonably trained lawyers I decided to immerse myself in a bit of research so as to come to my appearance before you prepared to have a go at some answers. I read the published papers from the 2017 Australian Academy of Law conference on the future of legal education. They're easy to find on-line and I urge any of you with an interest in the topic to look for them.

Wow. What great thinkers. More of my favourites; Martha Nussbaum, Dennis Pearce, Sandford Clark, John Basten, Simon Rice – and others whose names I don't know but whose writings and thinking challenge and provoke thought. I have to admit to being alarmed by the title of Associate Professor Cathy Sherry's paper listed under the category 'Experiential Learning' – 'Fertile Octogenarians in Cyberspace'. I felt an overwhelming need to call my gynaecologist to seek reassurance that the experience of diving into these papers in cyberspace was not likely to result in an embarrassing (for my children) late-age pregnancy.

I read about the need for academies to adjust teachings to take account of technological possibilities, and to take account of the demystification of science, to adjust to globalisation; to focus on learning new methods of solving legal problems, on developing analytical skills, and on understanding words and their interpretation. Separately from the papers, I read a lengthy article in *Forbes* magazine exhorting the need for universities to address a skills gap in what the article described as 'the business of law'.

At the heart of most contemporary writing about legal education is a debate about whether the role of a law school is to train lawyers for professional practice or to educate in Jurisprudence, the philosophy and discipline of law – presented at times as aims that can only be pursued separately.

It is clear, on reading Martha Nussbaum's excellent paper titled 'Why Lawyers Need a Broad Social Education', that this is not a new debate for law schools. She writes about Ernst Freund's approach to the design of a new law school for the University of Chicago in the late 1800's. I encourage you to seek out the paper and read it.

If this is such an old debate, do we need to keep having it? Of course. We should always check that lawyers are being trained to do their work, whatever that may be, in whatever context, properly. We should always challenge our thinking with such debates and check our progress – changing and adapting when needed.

One conference paper, Professor Sandford Clark's 'Regulating Admission – Are we there yet?', struck a chord because it reflected my own recent experience as a practitioner. He noted that changes in the way people seek access to the law and obtain legal services are profound and challenge prevailing models of what lawyers do and how they organise their work. Dr John Boersig PSM, the CEO of Legal Aid ACT, talks far more eloquently and knowledgably about this than I do.

A rise in scepticism about experts, increased access to information about the law, increasing costs, the rise of DIY culture encouraged by YouTube and the helpful staff at Bunnings, disillusionment with, and mistrust of authority and governance structures including courts and lawyers, and even acceptance by the legal system itself that the system should re-organise so as to facilitate self-representation and adopt a more inquisitorial than adversarial approach to decision-making evidenced in the growth of multi-jurisdiction tribunals such as ACAT (which has the broadest jurisdiction of any such tribunal in Australia) – as a result of these things lawyers are required to be not only representatives, advocates and advisers but also coaches, facilitators, drafters of documents and assistants to individuals and organisations seeking to advocate for, or represent themselves.

This occurs every day at Legal Aid ACT where people seek advice and assistance to draft correspondence, navigate legal problems and advocate for, or represent, themselves. You see it also in multi-jurisdiction tribunals which are established with direct or indirect barriers to participation by lawyers – many require that lawyers obtain leave to appear, others such as ACAT, have legislative restrictions on costs orders, which have the indirect result of discouraging use of lawyers in proceedings. In these scenarios lawyers sit in the background, explaining the law and its systems and processes, coaching clients, guiding them through processes, teaching them and directing them to relevant resources.

Are the knowledge of the law and the skills needed to practise law in these new ways any different than they were 40 years ago when I left law school? I think so. How do we adjust legal education to ensure both knowledge and skills are relevant? Do we abandon the teaching of practical knowledge and practice skills at law schools and focus only on educating in the discipline of law? Do we train lawyers to be teachers and facilitators, do we train lawyers to set up DIY systems that will do the teaching and advising? I do not know.

Here I return to Professor Sandford Clark's paper. He identifies a

> need to re-conceive legal education as a continuum, and allocate responsibility for sequential components to other elements of the

> profession, after law schools and PLT providers have made their initial threshold contributions.

When I read this I looked back to my own education - at university there was a mix of jurisprudence and practice skills, then passed to the profession for 12 months of articles. This served me reasonably well.

So what is the answer? Are we adequately training people for the coming decade of transformation? Are we adequately training people for current purposes? After all this reading I am more informed but as an innocent abroad, I have no idea where the information leads. I thought I should consult the Magic 8 Ball.[1] I have been known to have recourse to it in the past. Its non-committal answers to the questions - cannot predict now, concentrate and ask again, I can't say – were somehow comforting. If the Magic 8 Ball isn't certain what hope have I? Fortunately, it is not up to me to work it out.

But I will watch the Canberra Law School's review and re-focussing of its work with interest from a more informed position, and encourage you to do so as well – watch, support and join in where there is an opportunity to do so. Because what I do know, what I am convinced of, is the importance of the role of lawyers in our society, of producing lawyers who are curious people, who like to learn, to think deeply, critically and boldly, and who can apply their knowledge and their skills to the important task of furthering social and economic justice for every person, in all spheres of life.

I congratulate Canberra Law School for its initiative and wish it well on its journey.

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[1] A toy developed in the 1950's and manufactured by Mattel, used for fortune telling or seeking advice: ask it a yes/no question and turn it over to reveal an answer.