

LAW DAY 1983

OPENING SPEECH, MELBOURNE CITY SQUARE

22 APRIL 1983, 11 AM

TOWARDS COMMUNITY LAW REFORM

'LIFE IS NOT MEANT TO BE UNFAIR

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The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

LOOKING FOR THE LOOPHOLES

Visiting a critically ill lawyer in a hospital, a friend found him propped up in bed frantically leafing through the Bible.

'What are you doing?' the friend asked.

'Looking for the loopholes', the lawyer replied.

There is nothing like the prospect of the Pearly Gates (or somewhere rather hotter) to concentrate the mind. And that is what Law Day is about. Concentrating the mind on the purposes of the law and the way it can be used and abused.

Victoria pioneered 'Law Week' in 1980. It was continued in 1981, aimed at making the law accessible to the general public. This year the organisers are concentrating all their efforts on 'Law Day' and that is today.

As so often happens, the idea started here in Melbourne. New South Wales and Western Australia are this week organising similar functions. It is hoped that next year there will be a national Law Day throughout Australia, as there is in Canada and the United States.

The idea has a dual purpose:

- * to concentrate the attention of the community on the strengths and weaknesses of the legal system and on the personal responsibility of everyone to improve it;
- * to concentrate the minds of lawyers on how they can improve things : from the humblest articled clerk, through the solicitors and barristers, to the magistrates, judges and Supreme Court justices.

As Chairman of the national Law Reform Commission, you will understand how pleased I am that the chosen theme for 1983 is 'The Law — Let's Improve It'. I am not surprised that the enthusiastic team who organised Law Day this year chose that theme. People must be made more aware of all facets of the law, its personnel and institutions. Only if we can do this will the ordinary citizen feel that their lives are governed by something that belongs to them. The laws of Victoria are not like the laws of physics or the laws of the Medes and Persians : immutable and unchangeable. They are not like the laws of the Bible. They are made by men and women who serve us, the people. If we have a bad legal system, if we have inefficient courts, if we have expensive procedures, we have only ourselves to blame.

What are we trying to do on Law Day? The aims are:

- * to improve the community's understanding of the importance of the Rule of Law. This is one of the corner-stones of our society. It means that we are not subject to the whims of petty tyrants. Even the great and powerful must comply with the laws of the land;
- * to foster in the community a respect for the law : but not a blind, abject and unquestioning respect. The law should earn the respect of the community because it is just, in tune with the times and accessible to ordinary people;
- * to promote in the community a knowledge of laws and legal institutions. Here again, Victoria has given the lead. Teaching of legal studies in schools is now the third most popular optional course in this State. I doubt if anywhere else in the world more is being done in a systematic way to bring to the next generation a knowledge of the basic rights and duties that they will need to know;
- * encourage understanding of rights and duties amongst citizens : especially for those who were not given training in schools or elsewhere. You cannot turn people overnight into instant lawyers. Heaven forbid. But it is unacceptable that more and more laws should be passed, which we are all presumed to know, yet precious little is done to bring these to our notice in fact;
- * finally, there is the objective to encourage public participation in law reform and legal processes. This does not mean public participation by getting arrested. I understand that Ron Barassi is submitting himself to a charade by getting arrested later today, to be charged with armed robbery of a meat pie. That is not necessarily the kind of involvement in the law I have in mind. There is no need to get carried away by enthusiasm.

NEW COMMUNITY LAW REFORM

The involvement in legal processes and law reform I have in mind is no charade. People frequently come against what they see as injustice by unfairness to themselves or fellow citizens. They feel strongly that something should be done. Usually they just shrug their shoulders and put it down to 'experience'. They lament that 'life is tough'. Occasionally they write to an official or politician and get a bland reply.

Picking up the theme 'The law -- let's improve it', we must try to do something better. Life is NOT meant to be unfair. We must try to provide a routine solution to the problems of injustice in the legal system. It should not be surprising that the law is sometimes unjust or inappropriate. Some of our laws date back hundreds of years. Many of them were developed on the other side of the world, in England. Sometimes the law can offer no present guidance on new problems : such as test tube babies, computerised medical records and so on.

Law reform bodies exist both at a Federal and State level. Their job is to try to improve the law and its institutions and procedures. In the past, in the case of the Australian Law Reform Commission, we have been confined to working on matters referred to us by the Federal Attorney-General. All those matters have been large and controversial tasks.

Usually when injustice takes place, there is no public figure or powerful lobby to capture the television cameras. There is no-one to get the ear of the Attorney-General so that he will refer the matter to his department or the Law Reform Commission. Now we are in the process of changing all this.

One of the little-noticed promises by the new Federal Government in its election proposals was for the establishment of community law reform at the Federal level. This would be additional to the Law Reform Commission's work on large references given by the Attorney-General. I have spoken with Senator Evans and I am able to say that he proposes that community law reform on Federal issues should become a reality.

This will mean that instead of law reform projects being necessarily large tasks, taking years and involving the great controversial issues of the law, in the future, one of the activities of the Australian Law Reform Commission will be look at the complaints of ordinary citizens. Of course, we will be confined to Federal laws. We cannot enquire into State law. But in opening Law Day, with its theme 'The Law — Let's Improve It' I make a call for help in doing just that : in improving the Federal legal system. The call is addressed to ordinary fellow citizens who feel wronged by Federal laws.

Sometimes it will be necessary to send the suggestion for law improvement to some other Federal body concerned with law reform, such as the Family Law Council or the Administrative Review Council. Sometimes it will be a task for the Human Rights Commission. We have so many helping bodies nowadays that there is a danger of confusion and paper shuffling. We must have none of that.

Where a matter of Federal law is concerned, it is intended that if the proposal for law improvement is a small and self-contained one, the Attorney-General will authorise the Law Reform Commission to proceed promptly to attend to it. In this way, it may be hoped that a series of miscellaneous and small reports will come forward quickly with suggestions for improvement of the legal system. Combined with proposals for ensuring that these reports are promptly and attentively examined in Parliament, we may hope to see the day when rooting out injustices is an accepted feature of our legal system. Apathy and acceptance of unfairness are the enemy. Resignation and the feeling that it is all too difficult are the impediments to improving our legal system.

As we approach the Australian Bicentennial, if we are thinking of monuments, we should concentrate on our legal system. Building monuments to famous judges and explorers, such as we see around this great city, is the way of the past. Building living monuments that affect the lives of ordinary citizens is the name of the game today. I invite all those, in Victoria and indeed anywhere in Australia, with complaints about the Federal legal system, to put those complaints before me. They may be complaints about tax laws or procedures. They may be complaints about family law. They may be complaints about social security laws. They may be complaints about migration and deportation laws. The Federal element in our legal system is growing in importance and size. Our effort to improve it must also grow.

I congratulate the organisers of Law Day. I specially congratulate them on their choice of theme. I open Law Day 1983. I hope that the idea of community law reform will continue the theme that we all have a personal obligation to make our legal system work better.