

**Australian High Commission, Malaysia – 8 March 2018**

**"The Rule of Law – What We Share and Must Defend"**

**The Hon Justice Michelle Gordon<sup>1</sup>**

The rule of law can be understood, I think, as making two distinct, but closely related claims: that the legal system is marked not only by the absence of arbitrary power, but also by universal subjection to the law.

Those claims may be understood as being achieved when three conditions are met. First, there is a system of general rules from which there can be identified the rights, duties, powers and immunities of those entities which the legal system regards as right and duty bearing entities. Second, those general rules, and *only* those general rules, are applied and enforced. Third, disputes about the content and application of those rules are adjudicated upon fairly, meaning those rules are, in turn, enforced fairly.

Those three conditions – general rules; enforcement of *only* those general rules; and *fair* enforcement of those rules – may be seen as necessary conditions for the absence of arbitrary power and for universal subjection to the law.

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<sup>1</sup> Justice of the High Court of Australia.

But why are those conditions important?

The rule of law underpins the way a society is governed. Everyone – including citizens and the government – is bound by, and entitled to the benefit of, laws. The absence of arbitrary power and the universal subjection to the law – the two claims referred to at the outset – bring about certainty. Certainty has a number of facets: certainty of *content* of the laws, certainty of *application* of the laws, and certainty that the laws will be applied impartially.

If the laws are stated and known, conduct can be ordered according to reasonably confident predictions about whether proposed conduct is lawful or not lawful. As with any case in which boundaries are to be drawn, there may be difficult cases at the margin. The boundaries are not always drawn with perfect clarity or precision. But, for the most part, the boundary between conduct that is lawful and conduct that is not lawful can be discerned.

Equally important is that those subject to that system of law can *order* their affairs on the basis that there are known remedies available for contravention of norms of behaviour. That is, if sought by proper processes in the Courts, those norms will be enforced – and those remedies awarded – fairly.

Notions of certainty therefore require an effective *judicial system*, as a necessary element for the proper government of a society. That effective judicial system is the third condition. If the

laws are stated and known, and conduct can be ordered according to reasonably confident predictions about whether what is proposed is lawful or not lawful, what is necessary for an effective judicial system? In addressing the effectiveness of a judicial system, it is useful to identify some important principles.

First, access to the courts is a defining feature of the rule of law and an effective judicial system. Without an accessible judicial system for the identification, application and enforcement of previously ascertainable norms of conduct, there will not be that absence of arbitrary power or universal subjection to the law, which are central attributes of the rule of law.

Second, access to the Courts should be reasonably available to any person whose rights are infringed or liberties threatened.

Third, judicial independence lies at the heart of our democracy; that is, the independence to act as a check and balance on government power – by which that power may be constrained. There is a need for separation between the executive and the judiciary. That separation is most evidently seen in the availability of judicial review of administrative action, accountability of the Government for human rights abuses, and judicial scrutiny of other areas of executive conduct affecting citizens.

Fourth, the necessary identification, application and enforcement of relevant norms of conduct must be reasonably

prompt. Rights and liberties almost always lose their value very quickly. In Australia, we struggle. The Australian legal and judicial system is very labour intensive, not only because of the number of persons and the amount of time devoted to performance of tasks but also because of the levels of training and skill required of those performing the tasks. Cost and delay are the symptoms.

The problems of cost and delay raise the question of whether the law has become too complicated. What do we do about the increase in the number, size and complexity of statutes?

If a court has too many cases waiting for trial, some solution has to be found. If no solution is found, prisoners may spend longer in jail than they would serve if the maximum sentence were imposed. Civil cases become moot because circumstances change. And even if these outcomes are avoided, the value of remedies awarded is almost always lessened by the effluxion of time.

Further, if a case has been heard, it must be determined promptly. The longer it is allowed to stay undetermined the harder it is for the judge to decide, and the greater the risk of the parties thinking that the judge has no useful recollection of what was said and done at the trial. Further, there is a tendency for a delayed judgment to be far longer than a judgment that is delivered soon after hearing. Consciously or not, the length of a judgment is used as an implicit explanation for the time that has been taken in consideration. And that length is another factor contributing to the

increasing complexity of the law, affecting coherence and accessibility.

As Professor Adrian Zuckerman, of Oxford University, has observed:

"the court is a vital component of the rule of law, without which we can have no security, no welfare, no prosperity and no civilisation. For the court to fulfil its role it has to be *reasonably accessible* to all those whose rights are infringed or liberties are threatened, and not just to some subsets of society."<sup>2</sup> (emphasis added)

Put in different terms, a less effective judicial system has serious consequences not only for the rule of law, but also for the prosperity of a country and its citizens.

There are challenges to the rule of law that are relevant to both Malaysia and Australia.

The first of those challenges is maintaining the independence of the judiciary.

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<sup>2</sup> Zuckerman, "The Law's Disgrace", on UK Constitutional Law Association Blog, 27 February 2017, available at <<https://ukconstitutionallaw.org/2017/02/27/adrian-zuckerman-the-laws-disgrace/>>.

## Independence of the judiciary

Judicial administration in common law countries has changed dramatically over the last thirty years, influenced to some extent by the substantial increase in legislation and executive action, as well as the adoption of inquisitorial procedures. Put simply, the nature of the work and the task of the judiciary is far more complicated, and political, than ever before.

An aspect of judicial independence is that, subject only to the most limited exceptions<sup>3</sup>, civil and criminal litigation is conducted in open court throughout all interlocutory stages and at trial. And the decisions which judges make, both at interlocutory stages and at trial, must ordinarily be disclosed to the world and supported by reasons which are open to public scrutiny.

But what do we mean when we speak of an independent judiciary? It is more than an open court system. Judges must be independent and impartial, and the independence and impartiality must be both actual and ostensible.

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<sup>3</sup> The two main exceptions would now be family law and cases concerning children.

In Australia, a test to determine whether a Judge has the requisite independence or impartiality was set out in *Ebner v Official Trustee in Bankruptcy*<sup>4</sup>. That case decided that:

"Where, in the absence of any suggestion of actual bias, a question arises as to the independence or impartiality of a judge (or other judicial officer or juror) ... the governing principle is that ... a judge is *disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide*. That principle gives effect to the requirement that justice should both be done and be seen to be done, a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial." (emphasis added)

The reason that justice must not only be done but must also be *seen* to be done is that the appearance of partiality, based on relationships or otherwise, undermines confidence in the rule of law. But what does this principle mean in practice? And how does it operate?

Judges must be careful to avoid conduct or relationships which could give rise to an apprehension of bias. Allegations of corruption or lack of independence have been made against some judges in Malaysia. Australia too has had judges who have faced allegations of corruption or lack of independence.

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4 (2000) 205 CLR 337 at 344-345 [6]; [2000] HCA 63 (citations omitted).

Allegations of corruption or lack of independence are very serious. Judges must not abuse their influence. Judges must conduct themselves in a manner that is above reproach. However, it is not just the responsibility of *judges* to guard against an apprehension of bias. It is also part of the role of members of the legal profession, academics and students to ensure that the judiciary is independent and, when that independence is challenged, to defend the judiciary. Why? Because we share a responsibility in upholding an impartial and independent justice system, both in appearance and in fact.

An incident that occurred in Australia is a reminder of the extent to which judges must be, and must be seen to be, independent. A magistrate in one of our states was hearing an appeal from a declaration by the state's Housing Commission that a certain house was not fit for human habitation<sup>5</sup>. When visiting the house to view it for the purposes of the appeal, the magistrate travelled both to and from the house with the counsel for the Housing Commission – who was the respondent in the appeal – and a witness for the Housing Commission. Following the dismissal of the appeal, the applicant challenged the magistrate's behaviour in the state's Supreme Court, arguing that the magistrate had not observed the requirements of natural justice. The Court found that the magistrate's conduct, in accepting transport to and from the

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<sup>5</sup> *R v Magistrates' Court at Lilydale; Ex parte Ciccone* (1973) VR 122.



viewing of the house with the Housing Commission's counsel and witness, constituted grounds on which a reasonable person might conclude that the applicant was not receiving or was not likely to receive a fair and unbiased hearing<sup>6</sup>. That is, even though there was no *actual* bias on the part of the magistrate, the behaviour of the magistrate was enough to raise a perception of bias, and therefore fell for condemnation.

This decision demonstrates that we need to take the utmost care in ensuring not just a lack of actual bias or influence, but a lack of *appearance* of bias or influence. An independent judiciary is essential to the rule of law.

### Separation of powers

Judges also need to be independent in a further sense. Judges and the judicial system need to operate independently of the executive. This reflects the operation of a principle with which you will be familiar, and to which I have already alluded: that of the separation of powers.

One of the chief functions of the legal system is to determine and enforce the legal limits to the exercise of *public power*. No one is above the law; everyone must respect it and abide by it, including

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<sup>6</sup> *Magistrates' Court at Lilydale* (1973) VR 122 at 131.

the executive. In *Attorney-General (NSW) v Quin*<sup>7</sup>, Brennan J (as his Honour then was), a former Chief Justice of the High Court of Australia, said:

"The duty and the jurisdiction of the courts are expressed in the memorable words of Marshall CJ [of the Supreme Court of the United States of America] in *Marbury v Madison*<sup>8</sup>:

'It is, emphatically, the province and duty of the judicial department to say what the law is.'

The duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power. ... The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone.

The consequence is that the scope of judicial review must be defined not in terms of the protection of individual interests but in terms of the extent of power and the legality of its exercise."

There is one limitation – the concept of reasonableness. The merits of a decision or action by the executive will be unaffected *unless* "the decision or action is such as to amount to an abuse of power"<sup>9</sup>. Put in different terms, administrative power must

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7 (1990) 170 CLR 1 at 35-36; [1990] HCA 21.

8 5 US 137 at 177 (1803).

9 *Quin* (1990) 170 CLR 1 at 36.

be exercised reasonably but, at the same time, the court must not usurp the discretion of the public authority which the Parliament has appointed to make the decision. At once, the triangle reappears: certainty of laws (what are the laws as identified by the courts); certainty of application, free from actual or ostensible interference or bias; and certainty of review by an independent judiciary.

Litigants may not always be happy with the decisions of the courts. That does not mean that the courts can or should abdicate their role. It is important that the public has confidence that judges decide cases fearlessly and independently. Someone will inevitably be unhappy with the result, but in order to maintain confidence in the rule of law, cases have to be decided in accordance with the law.

The judiciary is more exposed now than ever before. Proceedings are televised and – in high profile cases – subject to intense scrutiny both by traditional media and by private individuals on social media platforms such as twitter. Younger generations understand the tremendous impact of social media more than any other.

The courts must also zealously guard their judicial functions against interference or usurpation by the executive. The form and content of that interference or attempted usurpation is limited only by the human imagination.

In Australia, a need for fearless and impartial judges can be illustrated by reference to specific legislation passed by our state Parliaments. A number passed legislation which provided for the making of what is called a "control order" by the courts. Control orders are directed against participation in criminal organisations and impose restrictions on the freedom of association of individuals. In the state of South Australia, the relevant court *had* to make the control order if it was satisfied that a defendant was a member of a "declared organisation"<sup>10</sup>. A declared organisation was an organisation so identified by the Attorney-General of that State<sup>11</sup>.

The High Court held that the power to make the control order was invalid, on the basis that "the ... Court is called upon effectively to act at the behest of the Attorney-General to an impermissible degree, and thereby to act in a fashion incompatible with the proper discharge of its federal judicial responsibilities and with its institutional integrity"<sup>12</sup>.

A key aspect of the rule of law is that courts must make decisions impartially and free of interference from the executive.

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<sup>10</sup> See s 14(1) of the *Serious and Organised Crime (Control) Act* 2008 (SA) (as made); *South Australia v Totani* (2010) 242 CLR 1 at 23 [12]; [2010] HCA 39.

<sup>11</sup> See ss 3 and 10 of the *Serious and Organised Crime (Control) Act* 2008 (SA); *Totani* (2010) 242 CLR 1 at 21 [2].

<sup>12</sup> *Totani* (2010) 242 CLR 1 at 67 [149]; see also at 52 [82], 92 [236], 160 [436], 173 [481].

Public confidence cannot be maintained in the courts if they are to make an order largely pre-determined by an executive declaration for which no reasons are given, and the merits of which cannot be questioned<sup>13</sup>.

### Cultural and religious practices and the rule of law

As stated earlier, the rule of law underpins the way a society is governed. Everyone – including citizens and the government – is bound by, and entitled to the benefit of, laws. But this raises the question of how we treat cultural or religious laws and practices that may clash with, or be inconsistent with, the common law and statutes.

In Australia, many different language, cultural and nation groups of the continent's first peoples are collectively referred to as indigenous Australians or Aboriginal and Torres Strait Islander peoples. Indigenous customary or traditional laws differ between those groups<sup>14</sup>. And those traditional laws and customs intersect with and impact on the application of statute and common law in Australian courts.

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13 See *Totani* (2010) 242 CLR 1 at 21 [4].

14 See generally Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws*, Report No 31, (1986) at [37]; Western Australia, Law Reform Commission, *Aboriginal Customary Laws: The Interaction of Western Australian Law with Aboriginal Law and Culture*, Final Report: Project 94, (2006) at 64-66.

Historically, the Australian judicial system has been poor at recognising indigenous laws, practices, rights and entitlements. This is particularly so in relation to land. It was only in 1992 in the *Mabo* decision<sup>15</sup> that the High Court recognised that Australia was not "terra nullius" (that is, land that belonged to nobody) at the time of colonial settlement, but rather that rights and interests held by indigenous Australians in relation to land survived settlement and should be recognised at law.

Tensions remain today in relation to the intersection between indigenous legal practices and norms, the common law, and laws that the state and federal Parliaments might pass. Australia is trying to address these issues politically, culturally and legally. To take just one example, the intersection between the sentencing practices of criminal courts and the extent to which, if any, considerations such as indigenous tradition, community accountability and custom can be taken into account remains a contentious area and, in some Australian jurisdictions, these considerations have been expressly excluded by statute<sup>16</sup>. Some states<sup>17</sup> have established specialised indigenous sentencing courts which are able, to an extent,

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15 *Mabo v Queensland (No 2)* (1992) 175 CLR 1; [1992] HCA 23.

16 See Maxwell, "'Two Systems of Law Side by Side': The Role of Indigenous Customary Law in Sentencing" (2015-16) 19(2) *Australian Indigenous Law Review* 97.

17 For example the Galambany Circle Sentencing Court, located in the Australian Capital Territory; the Murri Court at various locations in Queensland; and the Koori Court located in Victoria.

to accommodate indigenous belief systems, values and ways of being<sup>18</sup>, by, for example, involving Elders and respected persons in the sentencing process<sup>19</sup>. These courts are provided for, and governed by, the laws of the relevant state<sup>20</sup> and although the specific aims differ from state to state, they include providing culturally appropriate and effective sentencing options, making the offender and the community more accountable, and reducing recidivism<sup>21</sup>. However, in this space and many others, tension remains in relation to the interaction between customary laws and statute and the common law<sup>22</sup>. These are still issues that the Australian legal system is grappling with.

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18 Marchetti, "Nothing Works? A Meta-Review of Indigenous Sentencing Court Evaluations" (2017) 28 *Current Issues in Criminal Justice* 257 at 257-258.

19 See New South Wales, Indigenous Justice Clearing House, *Indigenous Sentencing Courts*, Brief 5 (December 2009); King, "Judging, Judicial Values and Judicial Conduct in Problem-Solving Courts, Indigenous Sentencing Courts and Mainstream Courts" (2010) 19 *Journal of Judicial Administration* 133 at 139.

20 Marchetti, "Nothing Works? A Meta-Review of Indigenous Sentencing Court Evaluations" (2017) 28 *Current Issues in Criminal Justice* 257 at 260.

21 King, "Judging, Judicial Values and Judicial Conduct in Problem-solving Courts, Indigenous Sentencing Courts and Mainstream Courts" (2010) 19 *Journal of Judicial Administration* 133 at 139.

22 See generally Kelly, "The Black and White of Wunungmurra" (2012) 2 *Northern Territory Law Journal* 227.

### Access and Cost

The importance of the three issues dealt with so far – an independent judiciary, separation of powers, and intersections between systems of law – cannot be underestimated. But there are other issues which cut across, and have the potential to severely undermine, the rule of law in our countries: access, cost and delay.

Lawyers, and their knowledge, need to be accessible. One challenge to accessibility is that of cost. The costs of access to the courts are of three kinds. First, there may be court fees payable to the government. Second, there will be costs and disbursements paid to lawyers and legal service providers. Third, there will be the opportunity costs incurred for the time and energy devoted to the litigation.

Court fees have risen over recent decades, including in Australia and Malaysia. Rises have been justified on the basis that users of the civil justice system should pay for it. Professor Adrian Zuckerman of Oxford University has said of court fees that<sup>23</sup>:

"[c]ourt service is a pre-requisite to the rule of law; where there is no court to apply the law, there is no law. If the court is open only to the few who can afford the high fees, it means that equal protection under the law is

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<sup>23</sup> Zuckerman, "The Law's Disgrace", on UK Constitutional Law Association Blog, 27 February 2017, available at <<https://ukconstitutionallaw.org/2017/02/27/adrian-zuckerman-the-laws-disgrace/>>.



denied to the rest of the population. No other vital public service is expected to recover its full cost from the users. The immediate beneficiaries from health, education, transport, or police services are not asked to stump up the entire cost of these services. There is no reason why court users should do so, especially since many of them are victims of breaches of the law and cannot be blamed for seeking court redress. There is no greater justification to charge them for the entire cost of court services than there is to charge the victims of crime for the cost of policing."

"[W]here there is no court to apply the law, there is no law"<sup>24</sup>. But if you cannot afford to access the courts, the result is the same: there is no court to apply the law, and there is no law.

Court fees are not the only cost. Lawyers' costs and disbursements appear to represent the greatest financial barrier to going to Court. The fees charged by lawyers – indicative of the countless hours required to prepare a case for litigation – again raise the question of whether the law has become too complicated.

Long and incomprehensible judgments only contribute to this complexity further. A decision of the Family Division of the High Court of England and Wales<sup>25</sup> is instructive. The trial judge delivered a judgment of 484 paragraphs about an issue called "ancillary relief"

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24 Zuckerman, "The Law's Disgrace", on UK Constitutional Law Association Blog, 27 February 2017, available at <<https://ukconstitutionallaw.org/2017/02/27/adrian-zuckerman-the-laws-disgrace/>>.

25 *J v J* [2010] EWHC 2654.

in divorce proceedings – "ancillary relief" being orders disposing of matrimonial property. A barrister, writing about the judgment in the *Family Law* journal<sup>26</sup>, introduced his article by saying that "[t]here are certain challenges each of us should attempt in our lifetime and for most these involve a particular jump, a mountain climb, etc"<sup>27</sup>. He went on: "Akin to these in the legal world would be reading from first page to last"<sup>28</sup> the judgment of the trial judge in question.

The Court of Appeal did not ignore what had been written. Instead, Wilson LJ said that<sup>29</sup>:

"[The author's] introductory sentences were witty and brave. In respect at any rate of the judgment in the present case, they were also, I am sorry to say, apposite. The judgment is a monument to the intellectual energy of the judge. Nevertheless, notwithstanding my extreme personal discomfort in saying so, I feel driven to describe it as far too long, too discursive and too unwieldy. I have devoted days to trying to understand it. So have the parties' advisers, at substantial further cost to the parties themselves. With respect to a colleague whom I greatly admire, I refuse to accept that our modern principles of ancillary relief are as complex as the content of the judgment ... implies."

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26 Murray, "A Judicial Safari Tour of Ancillary Relief: *J v J*" (2010) 40 *Family Law* 1111.

27 Murray, "A Judicial Safari Tour of Ancillary Relief: *J v J*" (2010) 40 *Family Law* 1111 at 1111.

28 Murray, "A Judicial Safari Tour of Ancillary Relief: *J v J*" (2010) 40 *Family Law* 1111 at 1111.

29 *Jones v Jones* [2011] 3 WLR 582 at 585 [3].

Access has a number of different facets. The law, that is applicable to all, needs to be able to be understood by all.

The cost and complexity of our legal system means that vulnerable people or those without the means to afford legal representation can encounter difficulties in accessing – and, indeed, understanding, engaging with and navigating – the legal system. The barriers faced by disadvantaged and minority groups are multifaceted and vary between communities. The problem is particularly marked in relation to the Australian indigenous population. Communication differences (both language and cultural), socioeconomic disadvantage, geographic isolation, and lack of familiarity with legal systems and options for redress are all factors which can impact access by Aboriginal and Torres Strait Islander people to legal systems and services<sup>30</sup>. Although this can be seen across many areas of the law, it is perhaps most heavily felt in family and criminal law. In the latter case, inadequate advice or defence can contribute to disproportionate incarceration rates within particular communities. Aboriginal and Torres Strait Islander people represent just 3 per cent of the Australian population, but account for 27 per cent of the adult prison population<sup>31</sup>. Aboriginal and Torres Strait Islander women represent 34 per cent of the female

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30 See Productivity Commission, *Access to Justice Arrangements*, Inquiry Report, (2014), vol 2 at 762-765.

31 Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, (2017) at 26.

prison population while comprising just 2.2 per cent of Australian women<sup>32</sup>.

Assisting vulnerable populations to access and engage with the justice system presents difficult challenges for the Australian legal system. But, to some extent, technology is starting to help address these problems.

One such technological initiative – "Robot Lawyers" – was launched by an Australian criminal defence law firm last year. The free online service is designed to assist unrepresented persons at sentencing hearings. The website allows users to input information relating to the offence with which they have been charged – be it traffic offences, assault, theft or otherwise – and the website then produces a document which the unrepresented person can hand up to the magistrate<sup>33</sup>. At the time the tool was launched, Associate Professor Lyria Bennett Moses of the University of New South Wales aptly summed-up what it meant for the future of the legal profession. She said: "People entering the legal profession should not only know and understand the law, they should be

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32 Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper 84, (2017) at 26.

33 See generally Robot Lawyers AU available at <<https://www.robot-lawyers.com.au>>.

proficiently skilled to be able to understand these kinds of systems and *ideally build them*"<sup>34</sup> (emphasis added).

In Malaysia, the Mobile Court initiative was introduced in 2007 to facilitate access to justice for those living in remote areas<sup>35</sup>. It hears cases as well as provides various documentary services<sup>36</sup> such as birth certificate registration<sup>37</sup> for people who might otherwise not be able to access the Malaysian Court system. These are positive practical initiatives that facilitate access to justice in real terms. We can learn from each other.

### Delay

We have talked about cost. But there is also the law's delay.

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- 34 See Krynda, "Robot lawyer designed to help unrepresented people state their case in court", ABC News, 29 November 2016, available at <<http://www.abc.net.au/news/2016-11-29/robot-lawyer-will-help-those-unable-to-afford-legal-fees/8074382>> .
- 35 Jalil, "Challenges and Prospects on Access to Justice in Malaysia", paper delivered at the International Conference on Access to Justice, Promoting Public Awareness, Participation and Action, 11 November 2015.
- 36 "How the Mobile Court Works", Daily Express, 3 December 2017, available at <<http://dailyexpress.com.my/news.cfm?NewsID=121469/>> .
- 37 "Mobile Court resolves 95 per cent of late birth registration", Borneo Post Online, 26 June 2012, available at <<http://www.theborneopost.com/2012/06/26/mobile-court-resolves-95-per-cent-of-late-birth-registration-2/>> .

As mentioned earlier, consciously or not the length of a judgment is used as an implicit explanation for the time that has been taken in consideration.

Now almost every judgment in every superior court is reserved for consideration. There was a time – and I am speaking of the 1970's and 1980's – that almost every interlocutory decision was delivered at the end of argument, and most trial judgments were given at or very soon after the close of final argument. Now, modern judgments are much longer, they take a longer time to write, and they are almost always accessible via electronic databases. This means parties to later litigation have to look at what has been said in the judgments that are now recorded in the databases, in case there is something that goes beyond the application of known and accepted principles to the particular facts of the case.

Tan Sri Haidar Mahomed Noor, Former Chief Judge of Malaya, writing extra-judicially, advised that a good habit for judges to adopt is to immediately write down their thoughts whilst hearing a case, and to write a judgment as soon as practicable so that they do not lose the momentum of the case<sup>38</sup>. This is excellent advice that all judges, including Australian judges, would do well to bear in mind. First thoughts are often the simplest and best thoughts.

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<sup>38</sup> Tan Sri Haidar Mohamed Noor, "A Judge's Musings", in *The Malaysian Judiciary Yearbook 2016*, (2016) at 113.

The legal profession has a significant and equally important role to play in reducing cost and delay in the legal system, and facilitating access to justice. This role may include involvement in developing new technology or programs to bring the Courts within the reach of litigants who may otherwise be shut out. It may simply be developing efficient practices as a lawyer and utilising technology where appropriate to minimise "grunt work" and maximise outcomes for clients in the shortest possible time. It may be providing pro bono advice to litigants, improving access to justice, engaging with different cultures and thinking creatively about how to resolve issues of cultural clashes, simplifying the law or explaining the law in clear terms.

The only guiding principles must be – does what I propose to do enhance the rule of law and, in particular, the three conditions – general rules; enforcement of *only* those general rules; and *fair* enforcement of those rules? They are the principles we share and must defend.