

Remarks for launch of Luke Nottage and Mokoto Ibusuki (eds),
Comparing Online Legal Education: Past, Present and
Future

The Hon. A S Bell, Chief Justice of New South Wales

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Introduction

- 1 May I begin by acknowledging the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation, and pay my respects to their elders past, present and emerging as well as to all First Nations people present today.
- 2 It is a great pleasure to return to the Sydney Law School and to celebrate the work of scholars, especially when it relates to a topic of great interest and importance.
- 3 Quality legal education is of course vital and closely linked to the quality of the legal profession and feeds directly into the maintenance of the rule of law, for without well educated lawyers, our system of civil and criminal justice would quickly break down. The connection between legal education and the legal profession is reflected in this State in the work of the Legal Profession Admissions Board.
- 4 This year has seen the launch on a wide and commercialised scale of AI which of course brings with it huge challenges for society in general, and specific challenges for the legal profession and legal education. It may well be the next book in the series of which *Comparing Online Legal Education* forms part, namely the International Academy of Comparative Law congress series, focuses on that subject.

- 5 Before turning to the topic of the book that is launched this evening, I want to make a few general observations as to the impact of technological change on the legal profession and legal education and scholarship. And, before its advent, the increased use of audio-visual and then web-based conferencing or on-line facilities represent two of the three most significant technological changes that have occurred during my life in the law.
- 6 The first was something most people in this room take for granted and never had any exposure to. When I started at this law school in 1984, mobile phones, laptop computers and email did not exist in any meaningful sense, law libraries had hard copy catalogues, law reports were “noted up” manually to record whether particular decisions had been applied, doubted, criticised or overruled, judgments were not published electronically and the vast majority remained practically inaccessible to the profession, and foreign legal material, whether in the form of journals or statutes or case law was difficult, cumbersome and expensive to access. Search engines such as casebase and the development of electronic databases were still more than a decade away.
- 7 The changes in those areas were largely beneficial although they were and have not been without their costs as well: the vastness of the material now so immediately accessible has, I suspect, contributed to the lengthening of written submissions and judgments and related increase in costs.
- 8 This brings me to the on-line world.
- 9 In the profession, and before covid, courts were beginning to use audio-visual links and on-line technology in certain hearings but many judges at least were slow to embrace it for a variety of reasons eg poor technology; difficulty of assessing matters of credit; potential unfairness because of different treatment of witnesses; difficulty of putting documents to remote witnesses etc.
- 10 Others saw it as the way of the future.

- 11 The advent of covid had at least two consequences. There was an immediate impetus and indeed imperative to skill up and improve facilities. Secondly, the possibilities and advantages of on-line engagement were revealed in an accelerated way. But the on-line world was thrust upon us by necessity. The same occurred with the academy.
- 12 On-line communication, on-line work and on-line education provided a solution to an immediate and pressing problem. Various advantages were revealed which were salutary. But the changes wrought, unlike the advances in technology which undoubtedly have improved research, accessibility of information and knowledge, were externally imposed out of necessity rather than adopted as and where appropriate.
- 13 Moreover, we are still many years off, I suspect, from fully understanding the impact of the pandemic and the consequences of the shift to life on-line. Views and assessments at the moment are largely impressionistic and anecdotal but not the result of any systematic study.
- 14 In terms of the work of the courts, post-pandemic, there is less scepticism with use of online mechanisms for the receipt of at least certain types of evidence, and value in use of technology for practical matters such as directions and other short hearings. But for the most part, we have returned to life and litigation in person. That is certainly something which I am on record as favouring. This is not because I am a technophobe – which I am not – but because of a deep belief in the importance (for all sorts of reasons) of personal human interaction.
- 15 Within the University sphere, there is, I suspect, a similar appetite to return predominantly to teaching in person (although there may be a divide in this regard between teachers and university administrators who see significant cost savings potential with the on-line model). But just because legal education can be taught on line, does not mean that it should be or that this should be the default model.

- 16 This is where the value and interest of the book comes in. It discusses the transformation of legal education during three timeframes: pre-pandemic, pandemic and post-pandemic, by exploring 13 different civil and common law jurisdictions, namely Australia, Canada, Malaysia together with Brunei and Singapore, Hong Kong, Macao, Japan, Pakistan, the Seychelles, Croatia, Cyprus and Italy.
- 17 Each jurisdiction is examined in a report which discusses online legal education with reference to contextual factors such as the impact of the pandemic, the legal profession and legal tradition, ICT access, law faculties and funding for universities. The findings of each of the 13 reports are summarised and reflected upon in a Special Report.
- 18 The book joins a growing body of comparative work on legal education by editors Professor Luke Nottage and Professor Makoto Ibusuki which importantly draws on international experience to shape and improve legal education and the legal profession in Australia and the Asia-Pacific region more broadly.. As they observe in the Special Report which opens the book, “there clearly remain challenges as well as opportunities with this still novel pedagogical approach”.¹
- 19 The continuation of online legal education post-pandemic is no doubt in part attributable to its various advantages. including for rural students who can learn by distance education and those who must access content flexibility due to work or caring commitments during typical teaching hours.²
- 20 The book also notes the fact that online delivery of legal education has allowed academics to increasingly collaborate with those based in other parts of the nation or globally to deliver new and exciting courses for law students.
- 21 Nonetheless, I share the concerns expressed by the various authors of this book about the challenges for students of appropriately engaging with and truly

¹ Page 17.

² Pg 45.

absorbing content when it is delivered solely or even predominantly in online or recorded formats. It is rightly emphasised throughout the book that being in an on-campus physical environment can enhance the ability of students to focus on and appreciate the significance of what they are learning.

- 22 In this vein, the study of law is more than the completion of the Priestley 11 Courses or the mandatory components of a PLT program and rather, as said in relation to online legal education in Macao, should be “rooted in human interaction”. On this point, the Hon. James Douglas KC said the following in his Foreword to the book:³

“There is so much to be learned also in informal discussion with lecturers and other students and from an environment where the social interaction and physical facilities are focused on what you are studying.”

- 23 I quite agree. I should also add that, from an academic’s point of view, the joy of teaching classes of young, energetic and enthusiastic students, is surely diminished when it is conducted on-line. This personal dynamic can be highly rewarding not only for students but teachers also.
- 24 Returning to a focus on students, the practice of law involves many soft skills which cannot be acquired by watching a recorded lecture, posting in a discussion forum or attending a Zoom tutorial. Interpersonal skills and connections critical for full participation in the profession can be formed by participating in on-campus extra-curricular activities, socialising with peers, and having informal conversations with teaching staff before, during and after classes.
- 25 There is also a question as to the pedagogic costs of on-line learning. As I have said elsewhere, at least where lectures are recorded and accessible to students at a time of their choosing, one of the risks with on-line teaching is that some (and may be many) students will be tempted to “bank” a series of lectures, thinking that if they just listen to them over one or perhaps two sittings, they will

³ Pg v.

have the same experience as if they went to the in person lectures at the designated time. But they will almost certainly not.

26 Students need to do the reading before and after lectures properly to understand a subject. Whilst that can never be guaranteed, I think that it is more likely to be achieved if teaching is undertaken with sufficient breaks in between lectures, seminars or tutorials in order to allow the proper absorption of the material, together with extended discussion before and after classes.

27 Further, as Professor Adrien Habermacher in his report on online legal education in Canada writes:

“Law school in Canada is orientated, even if implicitly, as much towards the acquisition of legal knowledge as toward the development of social skills and attitudes specific to the legal community. As lawyers form a profession, a distinct social group in society, legal education is the cradle of the professionalisation of future members, i.e. their socialisation into the norms of the legal community.”

It is also noted that for first-generation law students and those from disadvantaged backgrounds, these connections in the legal community may be invaluable.

28 Professor Habermacher also draws attention to the consequences of online learning for the mental health of law students. As students spent an enormous amount of time online during the pandemic, many experienced what Professor Habermacher calls “screen exhaustion”, in addition to financial, health and personal stressors. Although some universities put strategies in place to minimise this phenomenon, the report suggests that approaches such as mandated screen breaks were not always successful and were sometimes seen as counterproductive.

29 Therefore, as Professor Mirela Zupan comments in her report on Croatian legal education, technology is “educationally neutral” in that it will not contribute to educational improvements unless used properly.⁴ In this respect, *Comparing*

⁴ Page 274.

Online Legal Education provides some commentary on “dual”, “hybrid” or “blended” teaching as a means of capitalising on the advantages of online legal education, while minimising its disadvantages and providing students with agency over their learning. Professor Rossella Esther Cerchia and Assistant Professor Barbara Vari in their report on online legal education in Italy write that:

“To transform the difficulties in higher education caused by the pandemic into a valuable learning opportunity, it is important not to solely view online teaching from the perspective of the pandemic experience. In fact, there are a multitude of studies, knowledge and experiences in the field that can be exploited. On this basis, it should be possible to design innovative educational solutions that are more widespread, accelerating the existing trend towards ... hybrid learning.”

30 Two other topics canvassed by the *Comparing Online Legal Education* are also of note. First, some interesting observations are made in the Australian report with respect to law libraries and the changes brought about by the increasing availability of textbooks, cases and journals online. While this has improved the accessibility of resources for students with diverse needs, it has also altered the role of libraries which, as noted by Justice Douglas in his Foreword, have long been central to legal education. Law libraries, in a post-pandemic world, may instead play a greater role as a social space for shared learning and law librarians may become critical in assisting students with the use of online resources, especially for conducting research.⁵ The rapporteurs on Australian legal education write that:

“far from disappearing in favour of pure online availability of source materials, law libraries will continue to transmogrify into more social and interactive spaces for learning.”

31 Secondly, some interesting questions are raised concerning the move towards online assessment tools⁶ including obvious issues of potential collusion and cheating.

⁵ Pg 47.

⁶ See, pg 49 generally.

32 The book properly emphasises that legal education globally should not be reduced to mere “online delivery”. Rather, the future of online legal education must be focused on the use of “online blended learning” where online tools are deployed in combination with a primary focus on in-person teaching and on-campus activities to promote greater access to education, flexibility for students of diverse backgrounds and to prepare students for life outside law school. As Professors Nottage and Ibusuki conclude:

“Although the pandemic-induced experiences of online legal education have generally improved the environment for further initiatives, and ongoing more informed discussions among stakeholders, the awareness of the disadvantages as well as advances in e-learning make it foreseeable that only some (mostly higher-income) jurisdictions will keep significantly expanding online legal education. Even then, whether such further shifts will prove truly optimal for students and teachers, rather than administrators, remains to be seen.”⁷

⁷ Page 5.