

Chapter 32

Some Legal Scenery*

It used to be said of some elderly judges that they owed much of their legal knowledge to the fact that anyone who regularly makes the same journey for a sufficient time will become acquainted with some of the scenery along the way. Having been a Chief Justice for 19 years, I have become acquainted with some of the features on the legal landscape. I will take advantage of this opportunity to record, with the directness that is a prerogative of age, how they appear to me, before I forget what they are. Two of the most prominent are cost and delay. I will begin with delay.

The law's delay

Almost always and almost everywhere, the administration of justice has been associated with complaints of delay. Delay can be both a form and a cause of injustice. It may involve a denial of rights, or remedies, when they are most needed. It may make it more difficult, at the time of judgment, for a court to make a fair decision, especially if establishing a legal entitlement, or imposing a legal sanction, depends upon an accurate assessment of disputed facts. Delay often increases the difficulty of making such an assessment.

No one expects instantaneous justice, and there are few circumstances in which peremptory decision-making is valued. Lapse of time is not the same thing as delay. Depending upon the nature of the jurisdiction, the orderly progress of pre-trial procedures will involve some time, and should contribute to a fair outcome. What I mean by delay is the difference between the time required for such procedures and the time that is actually taken.

Standards of tolerable delay change. Everyone agrees that criminal justice should be administered with reasonable speed. Yet modern criminal justice moves at a pace very different from that of earlier, or even fairly recent, times. One of the best known 20th century criminal cases is *Woolmington v Director of Public Prosecutions*,¹ concerning the onus of proof in homicide. The law reports show that the appellant shot and killed his wife on 10 December 1934. He was indicted for murder, and tried before a jury on 23 January 1935. He was convicted, and applied unsuccessfully to the Court of Criminal Appeal for leave to appeal. The case then went to the House of Lords, where it was argued on 4 April 1935. On 23 May 1935, the House of Lords allowed the appeal and quashed the conviction. The period from the alleged homicide to the decision of the court of final resort was six months. In Australia, a leading case on murder and

* An address to the Judicial Conference of Australia Sydney, 5 October 2007.

1 [1935] AC 462

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