

**REMARKS OF THE HON. MARILYN WARREN AC
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'The Politics of Court Architecture'

This session of the Third Justice Environments Conference is devoted to the topic, *Politics of building courts*. It provides an opportunity for judges, court administrators and architects to discuss the imperatives that lead governments to building courts. I will endeavour to contribute to the discussion by drawing on some of my Victorian state experience as a head of jurisdiction.

The modern Australian state court finds itself in a battle of political priorities, as distinct from civic priorities. The European experience and, indeed, Queensland, and part of the North American experience, demonstrates that significant civic architecture can be achieved that meets political priorities.

At present, state courts mostly find themselves competing in state budgets with funding for roads, schools, hospitals and public transport. There is a presumption at state political level that court buildings are not as significant to infrastructure as these matters. This view is misconceived. To address fundamental democratic principles, the citizen needs to be confident that the civic infrastructure contains an adequate

courthouse where a dispute against another citizen may be taken for determination. The citizen also needs to know that there is a courthouse where that citizen's dispute with the government of the day, the state, may be addressed. In other words, court buildings are places where justice is played out. The courthouse lies at the heart of democratic government structures. Whilst in totalitarian regimes courthouses are built, they are there to represent the power of the state over the individual. In democratic societies, courthouses are symbolic of the power of the courts and the rule of law over all citizens and, significantly, governments.

Yet in modern government structures a presidential style of government dominates as a consequence, Executive dominates the government structure without due recognition of the Montesquieu concept of the three arms of government: the Executive, the Legislature and the Judiciary.

In the Australian experience, the states are very persuaded by a presidential style of government where the Executive dominates. Simultaneously, Australian state governments are very attracted to discussions on the topic of law and order. It is an easy vehicle for governments to portray strong leadership behaviour by applying aggressive law and order policies. Hence, we see political commentary and intervention in sentencing laws and a pre-disposition to impose sterner sentences on criminals. We see increased construction of correction centres – prisons. We also see increased police numbers and construction of police buildings. All of these are seen by state

governments as symbols of safety to ensure law and order and to make the citizen feel safe and confident in the government of the day.

The challenge for the modern court exercising criminal jurisdiction is to persuade governments that the construction of courthouses is an important component of law and order. Indeed, the greatest physical symbol of justice and law and order is a significant courthouse. The Europeans have understood the symbolism of the courthouse. The French reference to *'Palais de Justice'* evokes the symbolism of the courthouse in civic infrastructure and modern democracy.

Drawing on the Victorian experience, we presently house the highest court of the state, the Supreme Court, in a very beautiful 19th century building. The main building, combined with five other buildings, is spread across three city blocks divided by two busy streets. The main building was built following a gold rush and is a glorious form of pre Federation architecture. It is one of the finest examples of its type in Australia and the world. When the judges moved into their new building in 1884 it was seen as a building for the ages. It was a building where justice was delivered from on high, and the judge in a majestic fashion looked down on the litigants. The design of the architecture was intended to instil fear and trepidation into criminals and the community. It was a very powerful symbol of law and order in its time. Interestingly, the judges of the 19th century had their own difficulties in persuading governments to commit to build the building. Eventually they arranged for a royal commission to be convened and delivered a very short report to the effect that a building should be constructed. The judges even nominated the site and contract

price. In turn, the steps taken by the judges led to the government committing to the construction of the present building. In those colonial times, there was a strong understanding of the need for significant civic buildings.

Melbourne is a glorious Victorian city with significant civic buildings that reflect the role of symbolism in architecture. They also reflect civic pride. The Victorian period architectural civic jewels are the main Supreme Court building, Parliament House, the Exhibition buildings and, built a little later in time, Government House. However, modern Melbourne has seen a shift from focus on civic architectural symbols to recreational and commercial symbols – sports stadiums, art houses and convention centres.

So today let us explore the imperatives that drive the modern government decision to design, build and locate significant court buildings.

In a different context, in Sydney a debate is underway about the urban development of Barangaroo. It is arguably Sydney's largest and most significant urban development for decades.

As with other architecture, there are politics involved. In *Architecture Australia*¹, there is a discussion *Politics and Process*². The discussion demonstrates the point that usually in architecture, the political debate

¹ May/June '10

² Simpson, P.57

relates to the design. We need only think about the politics that surrounded the design, construction, and eventual sacking of the architect of the Sydney Opera House to be reminded how political architectural design may become.

For the modern court, the politics of design come much later. The challenge is how to persuade a modern government to commit to the building in the first place. Let me tell you a little about the Victorian experience. For six years, the Victorian Supreme Court, supported by the Department of Justice, has endeavoured to persuade the State Government of the need for a new Supreme Court building. The need is undebatable:

First, the present complex is spread across five buildings within a clustered complex. The existing complex is dysfunctional, as judges, their staff and the public are spread all about.

Secondly, serious security issues prevail. The Court, the highest court in the State, is unable to conduct terrorist trials and other serious security cases, such as some underworld cases, within its precinct. It must go to a lower jurisdictional court building where prisoners may be delivered underground into a basement rather than transferred along public corridors, interacting with the public, witnesses, and potentially, jurors.

Thirdly, the Court does not have enough courtrooms to sit its judges. This is the position with Victoria's existing population. The Court

complex does not have enough courtrooms to meet the projected population demand for the city. The Department of Justice forecast Victoria's population will increase by 2.27 million, or 44 per cent, by 2036. The population is growing at a dramatic rate, court lists are blowing out, and there is pressure on government to provide more judges. The difficulty is it becomes a vicious circle, in that the more judges we have to clear the backlog, the more courtrooms are needed.

Fourthly, the Court building does not provide adequate circulation for the public. It is confusing. Visitors become lost.

Fifthly, the present structure is not readily accessible by persons with disabilities.

Sixthly, the Court cannot appropriately accommodate its core business – commercial litigation.

On its face, these factors create a compelling argument for political commitment to a new Supreme Court building.

However, over a six year period, the Supreme Court, through the Department of Justice, has argued unsuccessfully to the government for support for a new building. Whilst some funding was allocated to restore parts of the beautiful 19th Century building I have described, we have failed six times. Each time our bid has been defeated by higher prioritised capital expenditure for other infrastructure (one year the bid

did not proceed because of external political intervention). Recently, the Victorian government delivered its state budget for 2010. The general themes in the state budget were about safety and health. Thus, headings appeared in the budget papers:

- Standing up for families, building a healthy future
- Protecting the lifestyle of Victoria's families
- 1,966 more police to keep Victorian families safe
- \$4 billion health boost

For our discussion, it is relevant to examine some of the capital items in

- \$34 million for the Geelong Hospital expansion, \$408 million for the Box Hill Hospital redevelopment, \$69 million for the next stage of a cancer centre at the Austin Hospital, \$426 million in partnership with the Commonwealth government for the Parkville comprehensive cancer centre, \$162 million for school regeneration projects, with \$561.3 million over five years to recruit an additional 1700 'front line' police, \$98.1 million to upgrade the Victoria Police headquarters, and \$363 million to upgrade Melbourne Park – the home of the Australian Tennis Open. There was also \$290 million committed to the Revitalising Central Dandenong project, including the development of a main street and an echo-industrial park.

The Supreme Court was overlooked in a political focus on health and safety. \$2 million was allocated for a masterplan that has essentially been drafted now six times, supported by expert reports, and accompanied by an indicative design.

So how does a Supreme Court persuade government that it is part of the infrastructure and that there are votes in courts? It is a challenge. If we look to the Queensland experience, the Queensland government was persuaded to commit \$600 million to the construction of a magnificent combined Supreme and District Court building for Brisbane. The building followed an international competition. The successful architects, Architectus, have devised a sophisticated layered façade and a truly beautiful building internally and externally. Significantly, Architectus state:

'From the beginning of the design, we also were aware of the role of the public space within the courthouse. In the traditional single level European courthouse, this main hall is known as the *salle des pas perdus*, and more than any other space, establishes the dignity and significance of the courthouse within the public realm.'

Queensland is a model state example of the approach to court architecture.

Similarly, the Commonwealth Government of Australia has set the benchmark with the construction of significant court buildings around Australia, particularly the Commonwealth law centres in Melbourne and Adelaide. They demonstrate the understanding by Commonwealth Governments of the significance of the civic space of the courthouse and the modern approach to justice symbol. Whilst the Victorian Supreme Court building is a magnificent symbol of justice, it is a closed, majestic and imperious symbol of the 19th Century. The modern courthouse is

open and filled with light. Rather than intimidate, it conveys to the citizen that the purity of the rule of law is present to protect the community.

Drawing on the Victorian experience, what are some of the advocacy techniques applied to persuade governments?

1. The argument of community safety: in Victoria, the government has been informed that there is a security risk with important parts of the criminal list within the court. This argument relies upon governmental fear of a prisoner breakout, a killing (which has occurred in years gone by), violence (unfortunately it has occurred in courtrooms from time to time) and importantly the risk to the public. It is quite unsafe for members of the public to share corridors for the conveying of prisoners into courtrooms.
2. Appeals to the prospect of a political legacy, that is, political pride in a significant Melbournian civic building. In Melbourne, there are buildings that are attributed to the premier of the day who led the government when the construction occurred. So we have the Arts Centre attributed to Premier Hamer, the Tennis Centre attributed to Premier Cain, the Melbourne Museum and also the Convention Centre attributed to Premier Kennett. The Supreme Court would be a superb legacy for a premier and his or her government.
3. Identification of occupational health and safety risk for the public, court staff and the judiciary in using the buildings. We have had experiences, particularly after a recent serious storm, of ceilings collapsing in spaces used by jurors. We needed to close

courtrooms off because of fears of collapsing ceilings. These problems are not unusual as they arise from the problems of beautiful but old buildings and their vulnerability to climatic challenges.

4. Appeals to interstate rivalry and competitiveness, that is, the desire of a state government to have that state stand well on the national stage. So the argument runs, Brisbane should not out do Melbourne for a Supreme Court building, Sydney should not out do Melbourne, Adelaide should not out do Melbourne when it comes to beautiful, significant and functional court architecture.

5. Utilization of multi-disciplinary advocates to put the argument to government. Melbourne enjoys a number of firms of architects that have won international acclaim for the design of superb court buildings in Melbourne, across Australia and overseas. We have the Denton, Corker Marshall building in Manchester, the Daryl Jackson County Court building in Melbourne, the Bates Smart Children's Court building in Melbourne and the Lyon Parramatta building. Then of course there are the Hassall buildings of the Commonwealth Law centres in Melbourne and Adelaide. These architects understand the need for an iconic Supreme Court building in Melbourne. Sites have been considered, in particular, the preferred site to date has been the Old Mint building at the corner of Latrobe and William Streets. Preliminary designs have been prepared by Billard Leece. The architectural argument is

unassailable. It also occurs at a time when governments speak of stimulating the economy through the construction sector.

An architectural competition would be a wonderful event for Melbourne, the architectural sector, and, I am sure, of great

European experiences demonstrate the value of architectural competitions for significant courthouses.

The utilisation of multi-disciplinary advocates include support from the Committee for Melbourne, the Victorian Chamber for Commerce and Industry, the Victorian Bar, the big law firms and, significantly, their corporate clients.

6. Government departments are mostly pre-occupied with the accommodation of courts' criminal business. However, the superior courts, the Supreme and Federal Courts, conduct a substantial amount of civil and, in particular, commercial business. In Victoria, our commercial litigation dominates the Supreme Court's workload. So the next argument is that the Victorian business community should have its commercial litigation conducted in a 21st century environment. Civil litigation contributes over \$800 million to the Victorian economy. Indeed, no modern commercial law firm or commercial advocate would contemplate working with corporate clients in old fashioned, run down, 19th century facilities. In the Victorian Supreme Court, we have limited high standard commercial facilities – one sophisticated high tech courtroom³ I have informed

³ Court 15.

the state government that if we do not have proper modern facilities, business and its litigation will go elsewhere, potentially at a loss to the Victorian economy and its reputation for excellence.

Reflecting on the Victorian experience, where does that leave matters? Thus far, the arguments have not been persuasive. There is no doubt that the argument is understood and accepted. The difficulty is persuading governments to have the political will to build a new Supreme Court building.

The next strategy will be to highlight the incapacity of the court to actually hear cases in the way they are heard now. Let me explain. Recently, the Department of Justice conveyed to me that the Department of Treasury and Finance was not persuaded of the argument to build a new Supreme Court building because the courtrooms were not fully utilized. Accepting for the purposes of the discussion that this is an accurate statement, it would be wholly misconceived. The delicacy, sensitivity and complexity of litigation in the Supreme Court almost universally requires that a case be heard in the same courtroom. Of course there will be times when relocation has to occur. But, imagine if in the middle of a delicate, emotional and sensitive murder trial, when the judge has the trial proceeding at an even tempo and emotions relatively settled, everyone is required to relocate. This is the prospect we face. It would be highly disruptive and provocative. It would simply be inefficient for parties to pack up and relocate in complex commercial litigation where there are trolley loads of document folders, texts and law books, computers and operating technology. I have explained to the

Department of Justice that if we do not allow for accommodation for new courtrooms, we face the prospect of judges having to sit staggered hours. So, for example, starting trials, criminal and civil at 8 am until 12.30 pm, clearing the courtrooms out despite its inconvenience and disadvantage and resuming another case at 1 pm until 5.30 pm. It would make Melbourne highly uncompetitive as a forum of choice and drive those who have a choice to other jurisdictions. For those who do not have a choice, in criminal cases, they would face all the problems I have described.

Ultimately, the commitment to court architecture revolves around the leadership and recognition by political leaders that the courthouse of the highest court of the state is a desirable and significant symbol warranting architectural brilliance on a prominent location. The experience in the federal sector, Queensland and Europe demonstrate that what is required is a visionary government leader who understands the critical significance of the courthouse in the democratic structure.

Today will be useful for all of us to exchange ideas and experiences about the imperatives that underlie the politics of building courts.