

A Tribute to Sir Laurence Street

AC KCMG QC¹

By Mary Walker

Sir Laurence Street served his country during navy service in World War II, as a barrister, a Justice of the Supreme Court of New South Wales (Eq), Chief Judge in Equity, Chief Justice of New South Wales, Lieutenant-Governor of New South Wales and after retiring from the bench, in mediation and alternative dispute resolution.² A Vale reciting his contribution to the Bar and as Chief Justice was published in the 2018 (Spring) *Bar News*.³

Described by the New South Wales Attorney General, the Hon Mark Speakman SC MP as 'a giant of the law in NSW'⁴ and by the Hon Michael Kirby AC CMG to have:

*...shining capabilities as a creative, energetic, imaginative judge ... he was swift and efficient, courteous and painstaking. He was equalled by none in his capacity to deliver extempore judgments which marshalled the facts, expounded the law and reached conclusions.... He is the very model of a modern Chief Justice.*⁵

His commitment to the rule of law and the administration of justice was paramount but included his analysis of the broader view of dispute resolution in society. This short note focuses solely upon Sir Laurence's contribution to Alternative Dispute Resolution which he termed as 'Additional' Dispute Resolution⁶ (ADR). In an article written for the *Australian Dispute Resolution Journal*, 'The Court System and Alternative Dispute Resolution' he stated that:

*...we recognise the need for, and we provide, additional mechanisms to assist the court system in the fulfilment of its sovereign dispute-resolving function. But these mechanisms ... are not, and cannot be, recognised as alternative in the true sense of the word, to the court system.*⁷

In delivering the 1989 F.S. Dethridge Memorial Address⁸ in Adelaide, Sir Laurence noted his concern:

It is in the field of domestic disputes that there is concern and lack of understanding about the role of ADR procedures. I have sought to dispel that concern. Increasing resort to arbitration, use of expert appraisals, references sent out by the courts and above all properly structured mediation are part of society's

*overall resources for resolving disputes. We must understand the symbiosis of their relationship with the court system, we must study their techniques, and we must be ready to practise them where appropriate if we lawyers are to discharge to the full our obligation to serve the peace, order and good government of our nation through the administration of justice.*⁹

Sir Laurence worked tirelessly to encourage the use of ADR and to educate practitioners. He was never too busy to speak at conferences or to teach in the NSW Bar Association Advocacy Course for Readers. He also published widely. In 2013, the NSW Bar Association librarian and I identified 106 articles, reports and speeches that Sir Laurence had written including many on the administration of justice and aspects of dispute resolution, particularly mediation. He described 'mediation' in the context of litigation in the following terms:

*The fundamentally important distinction between mediation on the one hand, and arbitration or litigation on the other, is that a mediation is aimed at achieving a resolution of the dispute by the parties. Arbitration and litigation are aimed at the imposition of a decision of the dispute. A mediator has no authority to impose a decision or determination on the parties. The mediator's role is essentially to create a negotiation environment which will enable the parties to reach their own determination of the way in which the dispute should be resolved.*¹⁰

Sir Laurence is the author of *Mediation – A Practical Outline*¹¹ which he provided to all who attended his mediations and seminars. He was generous with the provision of his mediation, arbitration, expert determination and confidentiality agreements which are still widely utilised by the profession. He advocated that legal practitioners must study mediation techniques and be ready to practise them where appropriate and to provide advice as to the most appropriate dispute resolution process or processes for the resolution of a dispute.¹²

Among other appointments, during his career as an ADR practitioner, Sir Laurence was an Honorary ADR Consultant to the Australian Defence Force Legal Office,

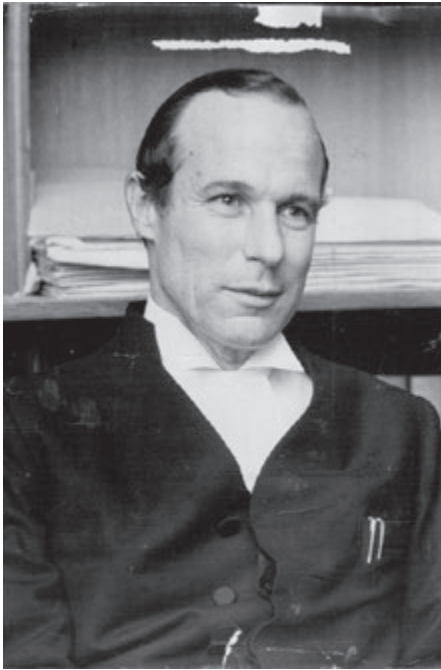
a Life Member of the Australian Centre of International Commercial Arbitration (ACICA), an Australian Government Designated Conciliator to ICSID, Washington, a Fellow of the Australian Dispute Resolution Association (ADRA), a Fellow of the Chartered Institute of Arbitrators (UK), an Honorary Fellow of the Institute of Arbitrators and Mediators Australia and a mediator of the Court of Arbitration for Sport, Lausanne. Until his ill health prevented him, I am told by past presidents of ADRA that he did not miss an AGM over a continuous period of at least 25 years.

Sir Laurence, when Chief Justice of the NSW Supreme Court,¹³ was instrumental in the establishment of the Australian Commercial Disputes Centre (ACDC) in 1986.¹⁴ He was the Convener and Chairman of the inaugural planning committee with the then Attorney General of New South Wales, the Honourable Terry Sheahan AO.¹⁵ ACDC was established to introduce non-adversarial dispute resolution processes into Australia as an independent, not-for-profit organisation established to advance the practice and quality of alternative dispute resolution services such as mediation, conciliation and arbitration in Australia and internationally.¹⁶

I was privileged to teach *Mediation and ADR* at the Bar with Sir Laurence and while I mediated 'down the corridor' he would chat and mentor in the 'old way' with stories and anecdotes. As with others, I witnessed his command of dispute resolution processes and his urbanity. He created a negotiation environment which enabled the parties to reach their own determination of the way in which the dispute should be resolved, he set the scene with his coin analogy and managed the mediation process in a way which retained the dignity of the parties. His skill as an exemplary mediator could not be overestimated.

The Honourable Robert McDougall QC, in a paper he presented in 2015,¹⁷ made the observation that:

In Australia, ADR has only really come to life in the past 35 years. Advisory, arbitral and other determinative processes existed in the 1970s and earlier. But it was in the 1980s and early 1990s that ADR



ENDNOTES

- 1 Born 3 July 1926 and died on 21 June 2018; a Companion of the Order of Australia, a Knight Commander of the Order of St Michael and St George, a Knight of St John and a Grand Officer of Merit of the Order of Malta, a First Class Honours Graduate in Law from the University of Sydney and held three Honorary Doctorates in Law and an Honorary Doctorate in Economics from Australian Universities.
- 2 <https://www.smh.com.au/nationanl/sir-laurence-street-remembered-as-an-outstanding-legal-figure-20180622-p4zn59.html>.
- 3 Journal of the NSW Bar Association, 2018 (Spring) *Bar News* 121 reproduced an obituary by Tony Stephens, 'Sir Laurence Street: the very model of a modern chief justice', *Sydney Morning Herald*, 22 June 2018.
- 4 <https://www.smh.com.au/nationanl/sir-laurence-street-remembered-as-an-outstanding-legal-figure-20180622-p4zn59.html>.
- 5 Ceremony of Farewell to the Honourable Sir Laurence Street KCMG Upon the Occasion of his Retirement as Chief Justice of the Supreme Court of New South Wales, 1 November 1988, Kirby P at p.4.
- 6 The Honourable Robert McDougall, Courts and ADR: A Symbiotic Relationship, LEADR & IAMA Conference, 7 September 2015 at 15; http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2015%20Speeches/McDougall_20150907.pdf
- 7 Sir Laurence Street, The F.S. Dethridge Memorial Address, 1989, Adelaide; later published as: 'Sir Laurence Street, The Court System and ADR Procedures', (1990) 7 *MLANZ Journal*, 5 at p.7.
- 8 *Ibid.*
- 9 *Ibid.*, p.13.
- 10 https://nswbar.asn.au/docs/professional/prof_dev/BPC/course_files/Mediation%20-%20Street,%20Sir.pdf, July 2007.
- 11 *Mediation – A Practical Outline*, 5th Ed., 2003.
- 12 See also, Legal Profession Uniform Conduct (Barristers) Rules 2015 Legal Profession Uniform Law (NSW), Rule 36, Duty to the Client (2015 No 243); <https://www.legislation.nsw.gov.au/inforce/5a7fbed4-700d-45da-84dc-b6f6b0fb2870/2015-243.pdf>.
- 13 The Honourable Sir Laurence Street was Chief Justice of the NSW Supreme Court from 1974 to 1988.
- 14 Now known as the Australian Disputes Centre (ADC).
- 15 <https://www.disputescentre.com.au/history/>
- 16 *Ibid.*
- 17 The Hon Robert McDougall, *op.cit.* at 14.
- 18 Sir Laurence Street, Editorial: The Courts and Mediation – A Warning (1991) 2 *Australian Dispute Resolution Journal* 203.
- 19 The Hon Robert McDougall QC, *op.cit.*, at 15.
- 20 Sir Laurence Street, *The Court System and ADR Procedures*, *op.cit.*, p.13.

really burst onto the scene, championed by Sir Laurence Street ... who saw it as an idea whose time had come. In 1991, he [Sir Laurence¹⁸] said: "Arbitration has come of age. Mediation is being taught and practised. The holistic inter-relation between the procedures in the dispute resolution spectrum is becoming more generally recognised and understood. Practising lawyers are now conscious of their professional obligation to advise clients on the selection of the procedures best suited to the case in hand".

Australia was at the forefront of developments in ADR during the 1990s and in the early

2000s.¹⁹ Sir Laurence led the way. The impact of Sir Laurence's contribution can be seen not only domestically but internationally. Sir Laurence was a visionary, a great competitor and a compassionate professional. He was well placed to advise in relation to the contribution that different forms of dispute resolution could make to the betterment of society and the administration of justice. He viewed this through the lenses of Chief Justice and as a leader in ADR. I commend his work and his publications to you.

If he were here today, I believe Sir Laurence would repeat the sentiments of his 1989 F.S. Dethridge Memorial Address.²⁰ **BN**