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ARTS LAW CENTRE OF AUSTRALIA

20TH ANNIVERSARY CELEBRATION

ART GALLERY, SYDNEY, 31 OCTOBER 2003

ARTS & LAW IN THE WHIRLIGIG OF TIME

The Hon Justice Michael Kirby AC CMG

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HONOURING ARTISTS

It is convenient to the human mind to divide limitless time into segments. Only that makes time, and its infinite capacity, comprehensible for us. And so we impose upon the whirligig of time, years, decades and other jubilees. We celebrated the foundation of the Arts Law Centre of Australia when it occurred in 1983. We celebrated its growth in 1993. Now, in 2003, we celebrate 20 years of fine achievement.

I start by paying my respects to the people of the arts who join in the celebration. Their names must come before the lawyers. Even lawyers know that. To David Malouf AM, from the world of literature. To Ian David, from the world of film. To Margaret Olley

* Justice of the High Court of Australia. One-time President of the Arts Law Centre of Australia.

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AO from the world of painting. To Peter Sculthorpe AO from the world of music. They and other distinguished Australian artists partake in this occasion. They join us in celebrating a highly practical body that has given defence and support to artists, and to the arts, throughout Australia.

Gustav Mahler was one-time conductor of the Budapest Imperial and Royal Opera and later the Vienna Opera. Between seasons, he would steal away to the mountains to write his immortal compositions. He once explained that, when composing, he felt as if an external force was pushing his hand to write the notes. Perhaps many people of the arts find an external stimulus to express the spiritual world in which their minds dwell. That world seems to be deeply imprinted in our genetic makeup. A desire to rise above mortal flesh and bones. To aspire to images, visions, sounds and thoughts greater than ourselves.

We are truly blessed in Australia to have so many mighty spirits. It is fitting that the law, which also searches for the spirit of justice, should come together with the worlds of art, music, literature and film in this Centre. If we look around and see the creative people in our midst, we must pay them due honour. In a hundred years when the writings and thoughts and efforts of the rest of us are no longer remembered, their creative works will continue to inspire the human family. Truly, the arts provide their exponents with a kind of immortality.

It makes me as mad as hell to think that my colleague, Justice Ian Callinan, will outlive us all on the High Court. When our earnest scribblings in the judgments of the Court are forgotten, his artistic works, including his most recent *Appointment at Amalfi*, will doubtless give pleasure to readers. To the lawyers present I say: It is easy to think that immortality belongs to the High Court of Australia. But experience teaches that it does not. It belongs to the world of the arts. Lawyers, therefore, are privileged to be associated with the arts, as they are in the Arts Law Centre. Perhaps some of the inspiration will rub off onto us.

ON NEVER RUSHING THINGS

In the law we do not tend to rush things. Progress comes, in W B Yeats' words "dropping slow". This week, in England, a remarkable event occurred. Dame Brenda Hale, Lord Justice of Appeal, was elevated to the House of Lords. She was appointed a Lord of Appeal in Ordinary. In hundreds of years of the judicial activities of that noble House, she is the first woman law lord (sic). It is a mighty achievement for her and for women lawyers. It cannot be said to have happened with breathless haste.

So it is in the objectives of the Arts Law Centre. When I look back at the *Annual Report* for the first year of its operations in 1983, we were speaking then of the need for legal protection for the

moral rights of artists in Australia. We called to attention the international developments in the World Intellectual Property Organisation and in UNESCO. The Arts Law Centre continued to lobby, cajole and persuade. Now, in 2003, following twenty years of effort, federal legislation to provide certain moral rights for Australian artists has been enacted at last. It may not be perfect. But it is a beginning. It is a sign that the law is now respecting and protecting the rights of artists in our country. The Arts Law Centre has played a notable part in this achievement.

TWENTY YEARS OF ACHIEVEMENT

This achievement is by no means alone. I recall how I became involved as the first President of the Centre. The remarkable Shane Simpson, a lawyer of great talent, came to see me in my offices in the Australian Law Reform Commission. It is true that he came at 5 a.m. But there was a difference. He was coming home from partying, doubtless in the company of artists. I was starting my day's work. We laboured over the establishment of the Centre's first offices. They were set up in Surry Hills, a beautiful tribute to myself. I was born in Surry Hills, at the Crown Street Women's Hospital. Actually, my birth had been expected in an expensive private hospital; but even at birth I presented difficulties. So it was, in the blessed suburb of Surry Hills, Sydney, that the Arts Law Centre first arose.

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Shane Simpson's mother worked with many others to clean the place up. To rid it of the cockroaches that threatened to be even more numerous than the artists and lawyers. Soon Shane Simpson was joined by the Deputy Director (later Director) Natasha Serventy. Scott Berry was the secretary. The idea of the Centre was modelled on one that had been established earlier in the United Kingdom. It was founded in the belief that artists were vulnerable in respect of their legal rights. The Australia Council from the beginning gave great support. Shane Simpson brought his prodigious efforts to bear in building the Centre. He made even more speeches than I did. He was dynamic and enterprising. He wrote books. He lobbied for law reform. He reached out to artists in every discipline. He helped set up an Advisory Board. He incorporated the Centre. The *Annual Report* for 1983 told of the many initiatives established in that first year. Most of the credit for those early achievements, and for the original inspiration for this organisation, belong to Shane Simpson. I pay a fulsome tribute to him.

Ten years later in 1993 we met to celebrate the first decade of achievements. Natasha Serventy was there with her successor Michael McMahon. They had pioneered low cost services, including standard form contracts, manuals and other practical and useful services for artists. They instituted seminars and education workshops of specific use for people in the arts. However, in life one never knows the problems that lurk around the corner. By 1993 we were in the midst of the HIV/AIDS epidemic. It revealed new

needs. They included the problems of preparing wills and managing estates for artists. We hope that we have overcome the worst of those dark times. But they taught how the Arts Law Centre must be ever alert to new issues, however unexpected and unwanted.

The Centre established a mediation service. It organised advice nights. It produced handbooks, such as the one on insurance. After my term as President, it was led by most distinguished Australians, Justice Evatt, Justice Mathews, Justice Cripps, Justice Whitlam and now Justice David Levine.

In 1993 we were on the brink of the debate about the republic. I recall that I denounced the effort to introduce poor little Blinky Bill into that debate. But we will not talk of things that divided us. Tonight we celebrate in unison the achievements of twenty years. Most of those achievements belong to the Directors and staff of the Centre. But they also belong to the pro bono lawyers and to the people of the arts who worked with them. They belong to the sponsors and supporters, especially the Australia Council that has been a faithful supporter throughout. And to the Government of New South Wales that facilitated the splendid new facilities now enjoyed by the Centre in a part of Sydney that is fast becoming dangerously fashionable. To the Australian Film Commission, the Copyright Agency Ltd, Arts South Australia, the State of Western Australia through Arts WA and also Arts Tasmania.

THE CENTRE TODAY

The Arts Law Centre is not a body to rest on its laurels. Under its most recent directors, Delia Browne and Robyn Ayers, it has launched out into new projects of contemporary relevance. The Centre's website which has been established can boast of nearly 800,000 visits a year. This is a mighty service. It provides legal information to artists everywhere in the nation, and indeed across the world. This is something we would not have anticipated twenty years ago. It shows the need for artists and lawyers to go with the flow. Who knows what a world of art lives, in potential, in cyberspace?

Robyn Ayers is also steering the Centre towards involvement in important contemporary issues concerned with international trade. The negotiation of the proposed Free Trade Agreement with the United States of America presents a number of dangers for Australian artists. There is a need to protect of their capacity to speak uniquely to the Australian people of the culture that arises in the midst. We must be alert, as a nation, to the great power of the United States to impose not only its full price pharmaceuticals upon the world but also its culture. It seems inevitable that Mickey Mouse will never come out of copyright protection in the United States. They are foremost in protecting their own culture. We should be equally insistent in protecting ours.

The *Newsletter* now distributed by the Centre is newsworthy and readable. The Centre gives a huge amount of advice to people in the arts. It now looks to a panel of 170 pro bono lawyers. It organises seminars. It has supported the introduction of a university course at the University of Technology, Sydney on law and the arts. It has secured several beneficial partnership arrangements, as with KPMG Legal whereby skilled lawyers work with the Centre for a time in discharge of the principle of pro bono service. It is foremost in lobbying for tax reform and law reform. One of the latest projects concerns the protection of indigenous artists. This is now receiving great emphasis, once again not before time.

The law of Australia concerning the arts is increasingly complex as copyright, business and contractual legislation impinge upon the world of artists. It is an area of high expertise in the law. I congratulate the President, the Executive Directors, the staff, the pro bono lawyers, the sponsors, governmental and corporate and indeed all who have played a part in mobilising all this talent.

THE COUNCIL OF PATRONS

To mark the maturity of the Arts Law Centre, a Council of Patrons has been created. The Patrons will be available for advice and encouragement. They will certainly be ready to attend celebrations such as this. On occasion, they may be able to steer

the Centre in particular directions and to encourage public and governmental appreciation of the importance of its work.

In the list that I was provided, the Patrons were arranged in two categories, as those associated with the foundation governance and promotion of the Centre and those who come from great achievement in the arts. However, out of respect for the primacy of the artists, I will put first the Patrons chosen from their ranks. They are:

Robyn Archer AO - music
 Jan Chapman - film
 Ian David -film
 Peter Garrett AM - music
 Frank Moorhouse AM - literature
 Professor Sally Morgan - literature
 Margaret Olley AO - art
 Peter Sculthorpe AO - Music
 William Yang - visual arts

With these distinguished Australians come lawyers who are honoured to be included in their company:

The Hon Justice David Angel
 The Hon Justice Terence Buddin
 Mr Julian Burnside QC
 The Hon Acting Justice Jerrold Cripps
 The Hon Elizabeth Evatt AC
 The Hon Justice Malcolm Gray RFD
 The Hon Justice Michael Kirby AC CMG
 The Hon Acting Justice Jane Mathews
 Mr Shane Simpson
 The Hon Justice Antony Whitlam

We therefore rejoice in the twenty years of practical service. I declare now that I will be available for the next celebration of thirty years, and of forty, fifty and possibly more decades. We little knew that the enterprise that Shane Simpson founded in a dingy room in Surry Hills would grow and flourish to a body known through Australia and far beyond. It is a small thing for lawyers to do to support and defend the arts. But it is a practical enterprise. It enriches everyone who is associated with it.