The Centre for Democratic Institutions

Visit of the Chief Justice of Vietnam
Sydney & Brisbane
1-8 September 2004

The Chief Justice of Vietnam, Dr Nguyen Van Hien, together with four delegation members visited Australia from 1-8 September at the invitation of CDI and endorsed by the High Court of Australia. The program focused on maritime law and intellectual property as these were areas the Vietnamese side had identified as requiring strengthening. The delegation was hosted by a number of senior courts in Australia including the Federal Court, the Supreme Court of NSW and the Supreme Court of Queensland. At the conclusion of the visit the delegation had a deeper understanding of the complexities of maritime law and were also advised of recent developments in intellectual property law.

The delegation members were:
H.E Dr. Nguyen Van Hien - Chief Justice of Vietnam - Leader
Mr. Ngo Cuong - Deputy Director of the Institute for Judicial Science of the Supreme People's Court
Mr. Nguyen Xuan Thanh - Deputy Chief Judge of the People's Court of Hanoi city
Mr. Hoang Van Lien - Vice-Head of the Secretariat Board of the SPC
Mr. Tran Van Thu – Interpreter – Legal expert Institute for Judicial Science of SPC

A program is attached.

The first day of the program was spent at the Federal Court of Australia in Sydney where the delegation was met by Chief Justice Michael Black. A number of Federal Court Justices made presentations - Justice Michael Moore gave an introduction to the Australian legal system, Justice James Allsop spoke on Admiralty law and Justice Annabelle Bennett discussed recent developments in intellectual property law. The discussion threw up some interesting examples of ships arrests and protection of patents and trade marks, issues that are facing Vietnam concretely as it deepens its involvement in the global economy.

The Federal Court also provided a tour of inspection of some of the more practical aspects of running a court. This covered electronic lodgment of documents, electronic filing, barcode recognition of files, colour coded filing of physical files, computerisation aspects, voice recognition software for judgment writing, systems for search and discovery of documents and video conferencing facilities. The delegation identified a number of areas of interest that they would follow up.

The following day the delegation called on the NSW Judicial Commission to study ways in which the Commission assisted the judiciary. Mr Ernie Schmitt presented a history and description of the commission focusing in particular on judicial training, the production of bench books and the statistical information electronically available to the bench to assist it in maintaining consistency in sentencing. Some of the issues that arose in the discussion concerned the voluntary nature of the training provided and the high take up rate by the judges, the very broad use made of the bench books which were particularly helpful in crafting directions to juries and the time saving inherent in electronic information in which case summaries and reports were hot-linked.
Chief Justice James Spigelman hosted the delegation for lunch in the grounds of the historic Supreme Court building and Chief Justice of the NSW Land and Environment Court, Peter McClellan, received the delegation for a discussion of the merits of specialist courts. This was of particular interest in view of Vietnam's consideration of the establishment of a specialist court to handle intellectual property issues. Chief Justice McClellan gave his personal view that although he heads a highly competent and effective court, he believes the best solution to specialist jurisdictions is to have judges form a division of an existing superior court rather than establish new courts. This allowed judges to retain contact with the broader legal field and ultimately enhanced the work of the specialist jurisdiction.

The final three days of the study tour were spent in Queensland where Justice Anthe Philippides organised a most interesting day in which the delegation had ample opportunity to meet Supreme Court justices and compare notes. The delegation witnessed the empanelling of a jury which later led to an interesting comparison between the jury system and the Vietnamese practice of having people's assessors sit with judges in deciding cases. While the underlying philosophy of having ordinary people involved in the judicial decision making process was similar, the two concepts were quite different in practice. People's Assessors are selected by the Fatherland Front from upstanding members of the community and are then trained to sit on the bench, usually for a term of five years. Jurors on the other hand are selected randomly for a single trial, do not perform any judicial role and are restricted to a determination of guilt or otherwise.

Justice Philippides invited Chris O'Meara, Franc Assis, Michael Fisher and Phoung Duong, members of the Maritime Law Association, to brief the delegation on current issues. Mr Assis presented an interesting paper on Carriage of Goods at Sea and some of the jurisdictional problems being experienced with the attempt to change the regime from port to port to door to door. The day concluded with a tour of the Court's rare books room and Banco Court.

The following day was spent at the University of Queensland as guests of the Dr Michael White and Dr Sarah Derrington of the Centre for Maritime Law of the TC Beirne School of Law. Presentations were made on Shipping law (Michael White), Carriage of Goods at Sea (Sarah Derrington), Marine Pollution (Michael White), the UN Law of the Sea Convention (Roland Rich) and Underwater cultural heritage (Craig Forrest). Vietnam is an original party to the Law of the Sea Convention but of the other 55 major maritime treaties it is only a party to 17. In comparison, Australia is a party to 37. The importance of shipping cargo can be seen from that fact that well over 99% of the world's cargo transport goes by sea whereas less than one percent goes by air. The delegation met Vietnamese students at the Law school and lunch was hosted by Deputy Vice-Chancellor Professor Trevor Grigg and Dean of the Law School, Professor Charles Rickett.

The final morning of the visit was spent at the offices of Queensland Legal Aid where the delegation was welcomed by CEO John Hodgins and his senior staff. The briefing covered the size and scope of the world of QLA and the means test and merits test applied to determine their client base. There was considerable discussion on how a publicly funded legal aid body was able to maintain its independence both vis-à-vis the government and the courts. There was also discussion of the comparisons between legal aid lawyers and lawyers in private practice with a conclusion that the distinction had little substance in the criminal law area. Other topics covered included family law, domestic violence, Aboriginal Legal Services and restorative justice.

While the visit had been quite intense with many meetings and much discussion, time was found for a visit to Lone Pine Nature Sanctuary for some kangaroo feeding and koala cuddling.
Program - Sydney

Wednesday September 1, 2004

Program organised by Consulate-General of Vietnam

Thursday September 2, 2004
Federal Court of Australia

08.30 Welcome by the Chief Justice and an overview of the Australian legal system and, generally, the role of the Federal Court.

09.00 - 09.45 Preliminary discussion of the role of the Federal Court in intellectual property cases and Admiralty cases.

09.45-10.30 Morning tea

10.30-11.00 Visit of Court facilities including inspection of the registry, observation of cases and visit to Chambers.

11.00-12.45 Visit of Court facilities including inspection of the registry, observation of cases and visit to Chambers

12.45-14.15 Lunch with Sydney judges

14.15-15.15 Further discussion of the role of the Federal Court in intellectual property cases and Admiralty cases

15.15-15.30 Afternoon tea

15.30-16.30 Observe court proceedings

Friday September 3, 2004
New South Wales Judicial Commission

10.00-13.00 New South Wales Judicial Commission

13.00-14.30 Lunch with Chief Justice James Spigelman of the Supreme Court of NSW

New South Wales Land & Environment Court

14.00-17.00 New South Wales Land & Environment Court

Saturday September 4, 2004

Program organized by Consul-General of Vietnam
Program – Brisbane

Sunday September 5, 2004  Travel

Monday September 6, 2004
Supreme Court of Queensland

09.30 Welcome


10.30 – 10.45 Discussion with Judges about Benchbook

10.45-11.00 Morning Tea

11.00 - 12.00 Presentation on admiralty law

12.00 – 13.00 Meeting with Philippides J and Douglas J for a discussion re maritime matters

13.00 – 14.30 Tour of the Supreme Court

14.30 – 16.00 Lunch with Judges of the Supreme Court

Tuesday September 7, 2004
University of Queensland Centre for Maritime Law, T.C. Beirne School of Law

09.30-09.45 Delegation met at main entrance to the Forgan Smith Building, St Lucia Campus

09.45-10.15 Presentation on Australian shipping, commerce and Admiralty jurisdiction - Dr Michael White QC

10.15-10.45 Presentation – Australian carriage of goods by sea & marine insurance law Dr Sarah Derrington

10.45-11.15 Morning tea at the Colin Clark Rooftop Cafeteria

11.15-11.50 Presentation - Australian marine environment pollution law – Dr Michael White QC

11.50-12.30 Presentations on UN law of the sea Convention and underwater cultural heritage law – Roland Rich & Dr Craig Forrest

12.30-14.0 Lunch - University of Queensland Staff Club

14.30-17.0 Lone Pine Koala Sanctuary

Wednesday September 8, 2004
Queensland Legal Aid

10.00 – 12.00 Program organized by Queensland Legal Aid

Afternoon free