

**Farewell speech by the Senior Vice-Chairman  
of the Victorian Bar Council, Kate McMillan SC  
on Thursday 17 February 2005 at 4:30 pm  
in the Banco Court on the occasion of the retirement of  
Master Charles Wheeler from the Supreme Court of Victoria**

I appear with great pleasure and affection on behalf of both branches of the Legal Profession to congratulate you on your 14½ years' service to this Honourable Court.

By happenstance, this morning, I was given an anecdote about your early days as a school boy. You represented Brighton Grammar against Caulfield Grammar in the Under 15 football team. You were described at the time as "a large youth – and full of exuberance". My informant was, and is, of much smaller build, and was playing for Caulfield Grammar. You were sent off for striking him. The lesson learned on the football field all those years ago has been to the advantage of the profession, as you have demonstrated more appropriate skills in your court room.

You studied law the hard way – part time, whilst working. You worked in the department of defence, firstly at Victoria Barracks and then in the Commonwealth Solicitor's Office. In *De Minimis*, the Melbourne University Law Students' Society magazine there was a column "Rumours to be quashed". There was a rumour to be quashed about you – that, studying only part-time, you took seven subjects in your final year Law. The fact is that you did pass all those seven subjects.

You served articles with the Commonwealth Deputy Crown Solicitor (Melbourne), Mr David Bell. Bell had been Crown Solicitor, but demoted himself to become the Melbourne Deputy Crown Solicitor to see the football in Melbourne – surely

any person's fantasy come true. Bell was Crown Solicitor, nominally in Canberra. He was, in reality, always in Melbourne for the footy.

In 1954 two journalists, Brown and Fitzpatrick, were before the House in Canberra for contempt of Parliament. Prime Minister Menzies called for his Crown Solicitor, and was told that Bell was in Melbourne. Menzies called Bell, and told him he could be Commonwealth Solicitor in Canberra or he could be in Melbourne for the footy. The Deputy Crown Solicitor position in Melbourne opened up and Bell took it.

After your articles, you read at the Bar with Justice Ken Jenkinson. He also had served articles with the Crown Solicitor and you were Jenkinson's first reader. He was the son of a journalist and inherited his father's ear for language which he passed on to you.

Both you and Jenkinson liked the apt word, the felicitous phrase. You spent happy hours polishing sentences and were critical of instructing solicitors who had not done so. You continued to see a lot of Justice Jenkinson after your reading and, in time, Senior Master Mahony began reading with Jenkinson. It was said that there was a book on how many weeks or months it would be before Mahony reacted to the Jenkinson/Wheeler cracks at solicitors. These were the less assertive mid-sixties, but Senior Master Mahony reacted in weeks rather than the predicted months.

Justice Jenkinson was a great expert in Commonwealth compensation law. And it was no surprise that your practice was, for many years, in compensation law, both State and federal. Justice Jenkinson was an expert in most things and appeared in all jurisdictions. He was literally in a suburban Magistrates' Court one day and in the High Court the next.

Like your master, you also developed a diverse and solid practice. You have said this was not so much by choice but at the behest of your clerk, Jack Hyland. Modestly, you once said that if Jack Hyland couldn't think of anyone else, he'd put anything in your pigeon hole.

In your court work as a barrister, flashes of humour lit up the room. You and Joseph Santamaria were opposed before Sir Reginald Smithers, arguing about some arcane provision of the Migration Act. Santamaria cited the maxim "Redendo Singula Singulis". Sir Reginald, in his inimitable high-pitched voice, said "What's that?" Less than helpfully, Santamaria said "It's Latin, Your Honour". You chimed in to Santamaria, "I thought you'd slipped into Italian".

Whilst at the Bar you had eight readers: Tom Topham, Michael Wilson, Gerrie Grabau, Lou King, Jacob Fronistas, Hugh Burchill, Bernie Sutherland and Mal Park. You warned them that they would not learn much law in your chambers – but they would learn the lore (L-O-R-E) of the Bar. Part of that lore descended even to the particulars of making coffee. You sent one reader off to get coffee for the two of you and he returned rather sheepishly a few minutes later to confess that he had four sisters and that he had never made coffee before.

Your readers were an interesting and varied group. Several of them were of mature years. Tom Topham, for example, had been in the Battle of Britain and had been awarded the Distinguished Flying Cross. He had also been with the Australian Wool Corporation before studying law part-time.

Topham joined you as co-editor of Butterworths "County Court Practice" – indeed, the 3rd edition was Wheeler & Topham. You edited, or co-edited, "County Court Practice" for about 15 years.

Frequently you took your readers to lunch at the RACV club. You also kept them physically fit. You always used the stairs – not only the four flights to your Chambers in Owen Dixon, but the 16 flights to the Workers' Compensation Board in Marland House. You sprinted up those 16 flights, followed by your much slower panting readers.

You were appointed to the Court on 31 July 1990, replacing Master George Brett. Master Brett had retired on 17 September 1988. The Senior Master hopes that he won't have to wait that same length of time for your replacement.

I am told that you still have on your desk in Chambers the framed two-up pennies given to you by your son upon your appointment. The frame is headed "Masterly Inactivity". The caption is:

2 heads: defendant wins

2 tails: plaintiff wins

1 of each: adjourn for coffee

A very early case you heard was an application to set aside a judgment for debt. The judgment debtor offered no explanation for the two-year delay in

applying to set-aside the judgment and you dismissed the application. You predicted an appeal and that you might be rolled. Your judgment was sustained – a good start to a notable 14 ½ years’ service.

Another case concerned a contract for the sale of a travel agency. It was a term of the contract that any action against the vendor be issued *and served* within 12 months of the sale. Towards the end of the 12 month period the wily vendor, knowing a suit was in the air, went to Greece. Within only a few days of the 12 month period, the unfortunate purchaser applied for an order for service in Greece. You did better. You ordered substituted service by fax to the hotel in Greece where the vendor was staying. The vendor was not pleased at the publicity of the suit resulting from the fax and appealed. Justice Beach gave him short shrift, and again your judgment was upheld.

Perhaps your most publicised decision was that in *Stern v Coutrelis* in 1999. It made the front page of *The Age*, with banner headline. You had made an order for substituted service on French defendants in a libel action – for posting of the writ to their Sydney solicitors. The Sydney solicitors asserted that article 15 of the French Civil Code deprived this Court of jurisdiction.

Article 15 provides: “A Frenchman may be brought before a Court of France for obligations contracted by him in a foreign country, even with a foreigner”. You had no difficulty holding that, even if Article 15 were construed to confer exclusive jurisdiction on the French Courts, it was no part of the law of Victoria and of no effect here.

Interlocutory judgment having been entered, you awarded the plaintiff \$500,000 general damages, \$250,000 exemplary damages, and \$30,000 interest – a total of \$780,000 – a record amount until the recent Ron Clarke award.

This served as a salutary lesson for the Sydney solicitors not to take frivolous objection on behalf of their fancy French clients to the jurisdiction of this Court.

It has been suggested by my learned colleagues that an appropriate gift upon your retirement would be a gold stapler. In your Court it is well known and understood that one should not tamper with affidavits. It has been made clear that documents should not be unstapled under any circumstances.

Some have grumbled about your attitude to unstapling. However, to those inclined to scoff at your attention to the detail of holes where earlier staples had obviously been, there is now a conclusive answer. One such affidavit was found to have an exhibit that had not been in existence on the date that the affidavit was sworn.

You modestly characterise yourself as a grey man – without the scarlet and ermine of the Judges of this Honourable Court – and out of the spotlight. Those who have appeared before you have always been met with courtesy and good humour. When you have taken a firm demeanour, it has always been with just cause.

On behalf of both the Victorian Bar and the solicitors of this State, I wish you, Master, the very best in your retirement and a long, satisfying and happy retirement.