



VICTORIAN BAR

WELCOME

ADDRESS AT THE WELCOME TO HIS HONOUR RUSSELL KELLY TO THE MAGISTRATES' COURT OF VICTORIA IN COURT ONE OF THE MELBOURNE MAGISTRATES' COURT, ON TUESDAY 25 SEPTEMBER 2018 AT 9.15 AM BY ÁINE MAGEE QC

May it please the Court.

I appear on behalf of the Victorian Bar to congratulate Your Honours Michael McNamara and Russell Kelly on your appointments to this Court.

I begin by acknowledging the traditional owners and custodians of the land on which we meet, the Peoples of the Kulin Nation. I also pay my respects to their Elders past and present.

In accordance with the practice in ceremonial sitting Welcomes in this Court, I defer to the Law Institute to address the Court in relation to Your Honour Magistrate McNamara – Your Honour having been appointed from the ranks of the Solicitors; and I address myself to Your Honour Magistrate Kelly – Your Honour having been appointed from the Independent Bar.

Before I do so, however, I would like to record the gratitude of the Bar to Magistrate McNamara for his Legal Policy work as a member of the Law Institute Criminal Law Section – for many years as Deputy Chair and then as Chair – some 10 years in those key positions.

Your Honour would, from time to time, be called by the Bar Legal Policy Officer. We had but one, in contrast to the several on staff at the Institute – and he was not a Criminal Lawyer. Your Honour was unfailingly prompt, expert, and generous with your time – in explaining current Criminal Law issues and the perspective and position of the Institute and of the Solicitors' branch of the profession.

The Bar thanks you for your assistance.

I turn now to Your Honour Magistrate Kelly.

Your Honour's appointment to this Court is a recognition of your many years of service to the law and to policing, especially in the Bendigo community.

Your appointment has been welcomed among your friends and colleagues, and the Bar thanks Your Honour Chief Magistrate for arranging video-links this morning to the Courts at Bendigo, Echuca and Swan Hill – a generous gesture recognizing the substantial contributions of Magistrate Kelly as a Solicitor and as Counsel in Country Victoria.

Your Honour was born in Auckland, though you came to Australia at a young enough age that those friends who don't know this fact would never guess it and, therefore, cannot hold it against you.

You completed your secondary schooling at what was then St Johns College for Boys in Braybrook, now Caroline Chisholm Catholic College, and you gained entry to study chemistry at La Trobe University.

And while that may have seemed a good idea at the time, it quickly became apparent that it wasn't for you.



You left the course and several jobs followed, including one as a Bank Officer. These were good times – you were a young man with the time and freedom to have a good look around before deciding what to do.

So it was that at the age of 22 Your Honour joined Victoria Police. I'm told that, working as a junior constable in the divisional vans of tough suburban police stations, as you did, one develops a rapid insight into the ways of the world.

After four years on the beat Your Honour took another decision that would change the course of your life – you became a police prosecutor.

It was the intellectual element of this vital policing role that appealed to Your Honour. You soon found yourself on your feet before magistrates in Sunshine, Broadmeadows, Moonee Ponds and elsewhere. Your Honour's uniform was the same but your view of the administration of justice now came from a different angle.

The other profound change in Your Honour's life came in 1996. After eight years in the job and four of those as a prosecutor, you moved to Bendigo for family and lifestyle reasons.

It was an environment that suited Your Honour then and still does. One of your colleagues says Your Honour is acutely aware of how regional courts run. You also immersed yourself in the community in different ways, and I will return to that shortly.

After several years as a police prosecutor Your Honour enrolled at Deakin University, continuing to work full-time, and studying by distance-education nights and weekends, with weekend on-campus intensives. You had then also young children. You graduated Bachelor of Laws with Honours in 2004.

The police force had set your direction but was now necessarily behind you.

Your Honour was articled to Tim Rogers at the firm of Rogers and Every in Bendigo in 2005. You stayed on there as an employee solicitor through 2006.

Mr Rogers says he was very happy to take you on, describing Your Honour as very competent and very personable.

He also concedes the firm did not have a substantial criminal practice. In fact, Your Honour was it.

Whenever a client approached the firm with a criminal matter, there was finally someone to handle it. For your part, your time at the firm gave you one of the few things you didn't yet have – that is, defence experience.

Mr Rogers says he was sorry to see you go, but not just because the firm's crime practice left with you. He says that, back then, he thought of Your Honour as a fine young stamp of a man – and really, deep down, he still does.

Your Honour came to the Bar in 2007, reading with the indefatigable John Lavery. Given your work history it was a natural and logical progression.

It was the variety of work and greater personal independence that attracted you to the Bar. You were set to build a practice at a more advanced age than might be usual, but you didn't want to die wondering.

Your Honour wasn't under any illusions about the life of a regional barrister.



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You had chambers in Bendigo but, unsurprisingly, you found yourself on the road frequently. Your Honour has appeared in courts from Bendigo to Shepparton, and from Mildura to Melbourne.

Your personal circuit has taken you to Griffith, Sydney and Wagga Wagga or “Wagga” as the locals call it.

You have appeared in the Magistrates’ Court, the County Court, the New South Wales District Court, the Children’s Court, the Family Court and the Coroners Court in a varied range of matters.

Luke Docherty of Docherty Legal in Bendigo has briefed Your Honour regularly.

He says the benefits of doing so were many. Your Honour is described as a hard worker, quick to give straight advice with no qualms, and with your local knowledge giving you a headstart in many matters simply by knowing so many people in town.

Mr Docherty also notes Your Honour’s everyman ability to engage with all comers.

He is among those applauding this appointment.

Outside of work, much of Your Honour’s life revolves around family and football.

Between you and your partner Sally you have five adult children.

You are feted as great entertainers. One friend says that Your Honour is one of the best friends anyone could ever have. You will take the lead in a celebration of just about anything.

In the AFL you are a passionate North Melbourne supporter. Your preference in the Bendigo Football League has never been made clear, perhaps because for many years you have been a member of the League’s tribunal. You have filled a similar role in the adjudication of indiscretions on the soccer field.

This led to one memorable incident. A goalkeeper appeared before you after losing his temper and grabbing the match referee in a headlock.

You handed down a five-year suspension. When the player then declared his intention to retire from the game regardless of the penalty, you doubled the suspension to ten years – in the name of general deterrence.

On the day of that soccer hearing you had also appeared in court in a high profile matter. This gave rise to a rare event: on the following day, the 16th of August, 2011, Your Honour was one of the stars of both the front and back page stories of the Bendigo Advertiser. Hopefully, a feat that need never be repeated.

Friends cite one further anecdote as proof of Your Honour’s character and sense of humour. One weekend, Your Honour spotted a friend’s work shirts on the washing line in his backyard. The friend in question was a police prosecutor.

You seized your chance and made off with all five shirts. Not only would your friend have nothing to wear on Monday but he would have to explain the theft of his police uniforms.

Your Honour’s guilt was only revealed some two years later when another colleague accidentally made admissions on your behalf at a social function.

Up until then, your involvement had been suspected but could not be proven. An impressively executed heist if ever there was one.



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The fate of the shirts is perhaps more telling: on the Monday morning following the theft, your victim arrived at work and opened his locker to find all five shirts hanging there, all neatly pressed.

Your Honour managed to carry out a prank that went down in history in your circle but without inflicting any real harm.

Your friends and colleagues believe your experience, diligence, your real-world outlook, and your sense of fair play make you abundantly suited to your new role.

On behalf of the Victorian Bar, I wish Your Honours McNamara and Kelly joy in your appointments and long, satisfying, and distinguished service on this Court.

May it please the Court.