



FAREWELL

FAREWELL ADDRESS BY DR MATTHEW COLLINS QC, PRESIDENT OF THE VICTORIAN BAR – FRIDAY 17 AUGUST 2018 IN THE FEDERAL COURT AT MELBOURNE UPON THE RETIREMENT OF THE HONOURABLE JUSTICE RICHARD ROSS SINCLAIR TRACEY AM RFD

May it please the Court.

I also acknowledge the traditional owners of the land on which we meet, the Wurundjeri people of the Kulin nation, and pay my respects to their Elders past and present.

I have the immense and rare privilege of appearing on behalf of the entire Australian Legal Profession.

Today I represent:

- The Victorian Bar—I might add, supported, in Court today, by no fewer than 9 former Chairmen—there may in fact be more;
- The Law Institute of Victoria and the Solicitors of this State—and I acknowledge the presence at the Bar table of the President of the Law Institute, Belinda Wilson;
- The Australian Bar Association, the peak national body representing all of the Independent Bars of the States and Territories of Australia; and
- The Law Council of Australia, representing all of the Independent Bars and the Law Societies in Australia, and the Large Law Firms Group.

I cannot recollect any occasion on which there has been such unanimity in the two branches, and the representative bodies of our Profession.

All have come together to join in paying tribute to Your Honour's service, to date, to the Law in Australia:

- as a Judge of this Court for more than 12 years;
- as a Barrister for more than 24 years, of those more than 14½ years as Silk;
- as a Solicitor, including as a Law Firm Partner, more than 7 years;
- as Associate to the Honourable Sir Richard Eggleston for 2 years;



- as a Legal Academic for some 15 years; and
- in Military Law, for more than 40 years and still counting.

I say “to date” because Your Honour has no plans to stop any time soon—and you are, as we’ve heard, in your “retirement”, continuing as:

- Judge in Residence at the Melbourne Law School in 2019;
- ongoing Adjunct Professor of Military Law at the ANU Law School; and
- Colonel Commandant of the Australian Army Legal Corps.

It is a great personal pleasure to speak at Your Honour’s Farewell today, because I have had the benefit of your support from the first day of my Reading at the Bar.

I read with David Beach and Your Honour’s room was adjacent to his. I had the benefit of your mentorship from then onwards—and the privilege of appearing and working with Your Honour as your Junior.

We appeared together in a number of significant cases, but the matter that stands out for me is our engagement, with others, over a period of almost two years, as Counsel Assisting the Honourable Terence Cole QC in the Royal Commission into the Building and Construction Industry, which ran from 2000 to 2002—at that time, I think, the largest Royal Commission in Australian history. Among my abiding recollections of that period are Your Honour’s unerring integrity, wisdom and professionalism in the context of a highly politicised, scrutinised and controversial inquiry. It was an example I have never forgotten.

A remarkable breadth and depth in the Law

There is a remarkable breadth and depth to Your Honour’s professional service in and to the law. Your industry, highly disciplined organisational skills, and high achievement in everything you do might be summed up, in modern parlance, as “multi-tasking”.

From graduation with an Honours Law Degree from Melbourne, you went directly to serve as Associate to Sir Richard Eggleston for two years, then straight into teaching at the Melbourne Law School.

You achieved what was then the career-grade in the Academy, that of Senior Lecturer; and you served as Sub-Dean.

While a full-time Teacher, Scholar and Academic Administrator, you were also a Law Firm Partner, practising as a Solicitor and as a Solicitor-Advocate at a high level—including both trial and appellate appearances in this Court.



At the same time, you were also a part-time Presiding Member of the Social Security Appeals Tribunal; where you heard over a thousand appeals.

You came to the Bar in 1982 and began practice at the Independent Bar while still a full-time academic, achieving increasingly high levels of responsibility.

That situation persisted for more than 4½ years, until you finally left the Faculty for full-time practice at the Bar.

Oh, I almost forgot one more thing. From shortly after admission to practice, you began your Legal Work with the Army, in 1976. You have made a very substantial commitment and contribution to the Army from then to the present day, something that will continue in your retirement from this Court. You were, as a Captain, both the youngest and most-junior-ranked Judge Advocate. You attained the rank of Major-General. Your citation for the 2014 Australia Day Honour of Membership in the Military Division of the Order of Australia records service in “the most senior and demanding roles in the Military Justice system”—“an inspiration to all Military Lawyers”.

In your time at the Bar, your Instructing Solicitors marvelled at your ability to draft even the most important documents—Statements of Claim and other Pleadings—in the most complex cases—just once, rather than working and re-working and re-working them again.

Your appointment to this Court in 2006 meant that you had a relatively short term as Editor of the Victorian Reports. However, you had served as a Reporter since 1982, continuing after you took Silk; and you’d served as an Assistant Editor in 2002. You also served as a Reporter with the Federal Reports from about 1988 to 2002 as a Junior and as Silk.

This represents a noteworthy dedication and commitment to the craft of Law Reporting—yet another facet of the breadth and depth of Your Honour’s contributions.

Your Honour and Tony Cavanough QC (now Justice Cavanough and in Court today) served as Human Rights & Equal Opportunity Commissioners from 1997 to 2000—another significant commitment over and above practice as Silks—and, on very modest sessional rates, a community service.
On the Court

Your Honour’s contribution as a Judge of this Court as a Trial Judge has been very substantial. It is remarkable how frequently your judgments have been cited and have influenced the explication and development of the law.



Your Honour has regularly sat on the Full Court—a substantial commitment, often requiring interstate sittings—and one Your Honour has taken on, even when in poor health, as in the recent 5-member panel in the Penalty Rates case—a measure of your devotion to duty and to the Law.

Perhaps the most notorious case that Your Honour tried was that of the Health Services Union v Katherine Jackson.

Kathy Jackson was an Official of the Health Services Union's Number Three Branch, then National Secretary of the Health Services Union of Australia.

She sought to present herself as the well-meaning whistleblower against the corruption of Michael Williamson, the General Secretary of the Health Services and Research Employees Associations, and the Health Services Union New South Wales and East Branches.

She spoke of exposing union officials “living an obscene millionaire’s lifestyle” off the backs of their members.

Michael Williamson went to jail for his corruption.

Eventually, however, the Health Services Union brought proceedings against Kathy Jackson.

After a tortuous couple of years, Your Honour gave judgment against Ms Jackson for contraventions of section 287 of the Fair Work (Registered Organisations) Act—improper use of one’s position to gain an advantage; and for overpaid salary—ordering her to compensate the Union in the amount of, in round figures, \$1.4 million.

Ms Jackson’s live-in partner, Michael Lawler, a Vice-President of Fair Work Australia, sought to assist her in defending the proceedings—in one hearing, by phone from their luxury house in Wombarra, New South Wales. A journalist in Court described the call as indistinct, “from the comfort of his Wombarra balcony with forest and ocean views”, hard to hear “over the sound of birdsong”.

Your Honour has been described as “staggeringly patient”, wholly imperturbable and calm.

In another case, *Marchesi v Apostolou*, the fiery and volatile husband of a “self-represented” party, who effectively ran all her cases, leapt up at Your Honour on the Bench.

Your Honour was at the time in the course of delivering judgment *ex tempore*. Paragraph 7 of your revised judgment records: “At this point, I



was interrupted when Mr Vasiliou left the Bar Table and approached the Bench”.

The judgment goes on: “He came onto the Bench and confronted me”—then, “He was removed from the Court. I asked that he be advised that he could return provided he undertook to be of good behaviour. He declined that offer and so the matter proceeded in his absence”.

A Red-Letter Day – Upheld by 10 Judges

The 7th of September 2012 was a Red-Letter Day for Your Honour. Judgments of yours were upheld on appeal by ten Judges on that day—ten/nil.

In Bendigo TAFE v Barclay, five Judges of the High Court reversed the decision, by majority, of a Full Court of this Court that had overturned Your Honour’s first instance judgment.

Justice Heydon wrote: “The trial judge possesses great learning in the present field. He has considerable experience of oral hearings”, and “Had the respondents seriously attempted to demonstrate any error vitiating the trial judge’s fact-finding process, they would inevitably have failed.”

In the subsequent judgment, unanimously awarding costs against the respondents, Justice Heydon added: “The respondents’ position is typical of the mindless and rancorous technicality which characterises litigation about industrial law. It is entirely without merit. That is particularly so in view of the extraordinary weakness of the respondents’ substantive case on appeal”, and “It was ... the respondents who took the forensic initiative by seeking to overturn, and overturning, an impeccable judgment of the trial judge, which it took an appeal to this Court to restore.”

The same day, a five-Judge panel of the Full Court of this Court in Jones v Chief of Navy unanimously dismissed an appeal from the Defence Force Discipline Appeal Tribunal, over which Your Honour had, as President, presided.

Not even the briefest account of Your Honour’s professional contributions would be complete without mention of Newman College within the University of Melbourne and what was its Sister College—now Co-Residential—St Mary’s.

Your Honour was a resident student and President of the Newman College Students Club. You were a Tutor at Newman as well as at the Law School.

At your Welcome, it was noted that you had, for more than 40 years, organised annual dinners of the General Committee members; and for



some 20 years, the last 8 as President, served on the Committee of the Newman Old Collegians Association.

You remain President and, in this Newman College Centenary Year, proposed the toast to the College at the Association's dinner in May.

You have also served on the St Mary's College Council since 1984, and are regarded as the de facto Vice-Chairman, the Archbishop being the ex officio Chairman.

Your Honour chaired the Selection Committee for the present Principal; and you have been a respected and valued advisor to successive Principals—always generously available.

Your Honour has been an outstanding Judge of this Court for more than 12 years, cut short only by the Constitution.

On behalf of the Victorian Bar, the Law Institute of Victoria, the Australian Bar Association and the Law Council of Australia, I wish Your Honour, and your wife Hilary, and your family, joy in your retirement from the Court.

May it please the Court.