



FAREWELL

ADDRESS ON THE OCCASION OF THE RETIREMENT OF THE HONOURABLE JUSTICE PETER VICKERY FROM THE SUPREME COURT OF VICTORIA BY DR MATTHEW COLLINS QC, PRESIDENT OF THE VICTORIAN BAR ON TUESDAY 8 MAY 2018 AT 5 PM IN THE BANCO COURT

May it please the Court.

I appear on behalf of the Victorian Bar, to pay tribute to Your Honour's more than 45 years' service in the Law since, in your Articles-year, Your Honour was a foundation volunteer at the Fitzroy Legal Service.

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.

It is a particular pleasure for me to address Your Honour today because, not only did I regularly brief you while your Honour was still a junior and I was a solicitor at Mallesons Stephen Jaques (now King and Wood Mallesons), but also because many years later I was your Junior, representing the Australian Submarine Corporation in the Collins Class Submarine Arbitration in South Australia before the Honourable John Lockhart, a former Federal Court Judge. There were a lot of Collinses in the dispute. In some satellite litigation heard in this Court, we were opposed to David Collins QC.

But I digress. I remember as if it were yesterday our "view" in the confined-spaces of the submarine, on dry dock in Port Adelaide. We moved from the torpedo-room to look at the cavity between the outer hull and the inner shell. Characteristically direct, Your Honour said: "I don't do cavities".



Ever the diligent junior, into the breach I went – however, I was not, I’m afraid, of very great assistance – all I could say when I emerged was that “It was very dark in there.”

From

- volunteering nights in the basement of the Fitzroy Town Hall in your Articles-year at Madden Butler; to
- the famous “flick-pass” pro bono brief in the High Court in the Racial Discrimination and Human Rights application in *Ex parte Ngyuen*; to
- the proposal to establish the Technology, Engineering and Construction List in the Commercial Court when “the ink on [your] Commission was barely dry”

Your Honour has, in your professional life, always “hit the ground running”; you’ve done good works; and you’ve brought about, and been part of, innovation and lasting change for the better.

At the Bar – Reading and Heritage through His Honour’s Bar Pedigree and his Father

Your Honour came to the Bar in March 1978. You read with Michael Black (now-retired Federal Court Chief Justice and Chair of the Legal Services Council that oversees professional regulation under the Uniform Law in Victoria and New South Wales). Michael Black had been your Tutor in Evidence; and had moved your admission to practice.

This was before the Bar Readers Course. There was a two-months no-briefs period – and you learned literally in your Master’s Chambers –



sitting in on conferences; researching and drafting; working through drafts; and going to Court with your Master. In the four-months balance of your Reading, you were able to take briefs – and had your Master’s guidance and coaching.

Other greats on the tenth floor of Owen Dixon Chambers included E D “Woods” Lloyd QC, Neil McPhee QC and Jack Winneke QC (later first President of the Court of Appeal).

The last month of your Reading was with Michael Dowling (later Silk; and now-retired Master of the Supreme Court), when Michael Black went to England and, no doubt, also to Florence.

Through Michael Black, Your Honour has a distinguished Bar pedigree. Michael read with E. D. (“Woods”) Lloyd (later QC), one of the great Common Law advocates of our Bar ; “Woods” read with John Nimmo (later QC; and Sir John Nimmo, a foundational Federal Court Judge); Nimmo read with Len Read (later a Judge of the County Court); and Read read with Leo B Cussen (not Sir Leo Cussen – another Leo Cussen) – who signed the Bar Roll as number 103 in 1907.

Your Honour handed on the torch to your five Readers.

Your Honour’s late father was His Honour Judge Vickery of the County Court – Major-General Vickery; known in the Court as “the General”, and in the Army as “the Judge”.

Your father was an Artillery Officer in World War II – he saw action in the Middle East, Ceylon, New Guinea, Borneo and the Philippines – and began his Law course at Melbourne in 1946.

Judge Len Read – one of your predecessor Pupil Masters – four Bar-generations removed – Read begat Sir John Nimmo, who begat “Woods”



Lloyd, who begat Michael Black, who begat Your Honour – left his Articles for World War I – and was a Gunner in the 4th Australian Field Artillery in Egypt and on the Western Front.

Your Honour practised at the Bar for more than 30 years, some 12 ½ of those years as Queen’s Counsel.

You began at the Bar in challenging times. In 1974, the Practising List numbered 528; in 1980, when you were out of your Reading and starting out, it numbered 870 – an almost two-thirds increase in 6 years. The sheer number of very junior barristers made for tough times.

Your Honour succeeded.

You emerged from what you described at your Welcome as “the age of want” into, as a junior, “the age of bondage” – thence into “the age of renaissance” when you took Silk.

Your Honour established what you have described as an “eclectic” practice – mainly in Commercial and Administrative Law – Engineering & Construction Law – Environmental & Planning Law – and Human Rights Law; at Trial and on Appeal; also in major Arbitrations, such as the Collins Class Submarine Arbitration; and in Court-appointed References in your specialist area of Engineering & Construction.

Your Honour was of 5-years Call when you served as Secretary of the Bar Ethics Committee. This was before the substantial revisions in the 1996 and 2004 Statutes. The Bar Ethics Committee was, under the 1978 Act, directly responsible for the investigation and summary dismissal or summary hearing of professional conduct matters and complaints against barristers – and, although there were not a lot of complaints, this was a substantial commitment and responsibility. The late John Barnard QC, who died last year, was Chairman of the Ethics Committee.



There were, however, occasional eccentricities in the professional conduct the Committee had to assess which, at least softened by time, can be seen as having an element of humour.

A barrister eventually lost patience with overdue fees and had a letter of demand written to his Instructor. The Solicitor had apparently been unimpressed by Counsel's performance, but decided, in the end, to pay-up anyway.

However, the Solicitor's cheque arrived, attached to a dead fish.

The barrister complained to the President of the Law Institute. It was perhaps an error of judgment on the part of the barrister that he enclosed the dead fish (now in an advanced state of decomposition) as "Exhibit A" in his letter to the Law Institute President.

The Law Institute President was not amused and complained to the Ethics Committee about the barrister.

Your Honour participated in mediating this dispute – good practice, perhaps, for your later role on the Court – leading to the extremely grudging withdrawal of both claim and counterclaim and, presumably, the final disposal of the poor fish.

In *Leading Synthetics v Kilpatrick Green*, Your Honour represented a New Delhi-based Plaintiff in a case on the construction of Australia's first polyester plant in Campbellfield.

In *the State of Tasmania v Leighton Contractors*, you represented Tasmania in the case on the construction of the Bass Highway through a protected cultural landscape in front of Hagley House. This ran about 7 months and was then the longest civil trial in Tasmania.



In the Collins Class Submarine Arbitration in which I was your Junior, Your Honour's opening was remarkable – a detailed exposition of the engineering principles in the construction of a diesel-electric submarine – neutral buoyancy, positive buoyancy, and ballast system technology.

I had the privilege of being Your Honour's junior in another case in this Court, in which I marvelled at Your Honour's own technological proficiency. Your Honour prepared, as an aide memoire for the Court, an animated presentation to explain how the complicated joint venture structure that had been entered into for the design, construction and commissioning of an ore treatment facility in Murrin Murrin, in Western Australia had changed over time. The matter was a separate trial of three questions, heard before Justice Bongiorno. We not only won the case, but the client, to thank us, presented us with a splendid piece of curved glass, on which the client had etched...Your Honour's elucidation of the corporate structure, together with Justice Bongiorno's answers to the three separate questions.

I opened this address with a reference to the famous "flick-pass" pro bono High Court brief in *Ex parte Nguyen*.

Mr Nguyen, a Vietnamese immigrant with, he claimed, poor English, had pleaded to armed robbery and received a Community Based Order.

Represented by Counsel at all times, alleged breaches of the Community Based Order were admitted and he was re-sentenced to imprisonment.

He had never asked for an interpreter – indeed, the County Court Chief Judge had asked whether an interpreter was required and was told not.



In the High Court, he claimed Racial Discrimination arising out of the International Convention and the Act; and denial of natural justice and procedural fairness because he had no interpreter.

His Senior Counsel fell ill. Your Honour was called on the Friday night, and received the several large boxes of materials on Sunday for the final hearing in Canberra on the Wednesday.

Your Honour took this last-minute, very substantial pro bono brief out of duty: duty to the Court and to the Profession; to the Cab-Rank Rule and Access to Justice – and, as I've said, you hit the ground running.

You did everything you could for your client. Over two all-night working sessions, you wholly re-wrote the submissions.

Your several opponents – including, intervening, the Acting Commonwealth Solicitor-General and the Victorian Solicitor-General – protested forcefully; but the Court granted leave – and on you went – a long day.

Towards the very end of that very long day, Justice Kirby peered down: “Mr Vickery, if you are correct, every citizen with a racial discrimination complaint will be able to come to this Court direct – and there will be no nasty little orange or red lights to stop them will there?”

Your Honour knew that if, as was evident, you'd not succeeded in winning Justice Kirby, it was all over.

It was time for the “disarming-retort-courteous”: “Your Honour – and when they all do come before this Court, no doubt, they will all receive such fair hearing as I have received today” – with a flourish, you resumed your seat.



You were right – it was over.

At the conclusion of the hearing, on the issue of jurisdiction, the Court dismissed the application with costs, with reasons for decision to follow – which they did a few months later.

Another of your “cab-rank” principle cases was to represent the Coffin Cheaters Bikie Gang – which Your Honour delicately described to the Court, more neutrally, as a “Motor Cycle Tour Club”.

The legal question was whether a notice by the Minister was a valid reference to the National Crime Authority.

Your Honour won in the Federal Court at first instance; lost by a majority in the Full Court; and were instructed to seek Special Leave in Canberra.

Your Honour asked for a First Class Return. The hard-riding, brothers of the Road offered a car with tinted-windows and a full motor-cycle escort along the Hume to Canberra. You compromised on an Economy Return.

Nor was Your Honour able to deter your clients from packing the Courtroom in full club regalia in support of their case and their Champion.

For more than 30 years, some 12 ½ of them as Silk, Your Honour was a principled and courageous advocate at the Victorian Bar.

You served the community of the Bar as Secretary of the Bar Ethics Committee and you continued on the Bench to contribute Articles to Victorian Bar News – and a poem on the death penalty (just prior to the execution of Andrew Chan and Myuran Sukumaran).



You were the International Commission of Jurists's Co-ordinator of its East Timor Evidence of Crimes Against Humanity Program; and an ICJ Special Rapporteur on Guantanamo Bay and Military Commissions.

Your Honour's good works beyond the Law have been substantial, though, in the time available, I've been able only to speak about what you've done at the Bar.

Your Honour's contributions to the Court have, as the learned Solicitor, has recorded, been immense.

On behalf of the Victorian Bar, I wish Your Honour all the very best in your retirement from the Court.

May it please the Court.