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## SPEECH

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**ADDRESS AT THE FAREWELL TO  
HER HONOUR JUDGE MARILYN HARBISON,  
JUDGE OF THE COUNTY OF VICTORIA  
IN THE COUNTY OF VICTORIA  
IN COURT 3-3 OF THE COUNTY COURT ON  
WEDNESDAY, 16 OCTOBER 2019 AT 4:30PM  
BY ANDREW MOORE**

May it please the Court, I appear on behalf of the Victorian Bar.

I acknowledge the traditional owners and custodians of the land on which we meet, the peoples of the Kulin Nation, and pay my respects to their elders past, present and emerging.

My purpose today is to pay tribute to your Honour on the occasion of your retirement as a Judge of the County Court of Victoria after a tenure of 23 years and 10 months. I am reliably informed that this extraordinary period of service makes you the longest serving female judge in Victoria. A truly remarkable achievement.

I acknowledge the presence of your Honour's beloved husband and Associate David, together with your father, your three sons and your extended family. Your Honour's long-time tipstaff Ron Royal (now retired) is also present. Further, it is an appropriate reflection of the professional esteem in which your Honour is held to see the court populated today by so many of your fellow judges, members of the legal profession and other interested people.

I would also like to thank your Honour for offering me the privilege of delivering this speech to mark this momentous occasion. The most difficult task confronting me today deciding what not to mention. Your Honour has simply taken on and accomplished so much in your professional life, and may I say, so much to assist so many.

Your Honour was appointed a Judge of this Court in February 1996. At the time of this appointment you were the partner in charge of commercial litigation at Wisewoulds Solicitors. Your Honour's glittering career as a solicitor will no doubt be touched on during by the President of the Law Institute of Victoria. It is enough for me to observe that you have had an abiding interest in and professional association with many worthwhile welfare and charitable organizations, including The Salvation Army, Save The Children Fund, YWCA and the Victorian Women's Trust. Notably, your Honour was a member of the original Legal Aid Committee.



Within two years of your appointment, your Honour commenced to take on key administrative roles within the County Court, in addition to your judicial role. Encouraged by the former Chief Judge Glen Waldron, your Honour managed the Damages List, the Business List and the Long Cases List. In fact, your Honour ran most of the civil jurisdiction of the Court until your appointment as Vice-President of VCAT in 2008. You served in that role for 10 years, sitting in all jurisdictions of VCAT, except planning. The decade your Honour spent as Vice- President of VCAT was challenging to say the least. You have been heard to describe the job as a roller-coaster, with many days presenting legal problems necessitating research of a new area of law which was completely unfamiliar, and which might never need to ever be looked at again. Still, your Honour has never shied away from hard work.

Dr Ian Freckelton QC, who appeared many times before your Honour at VCAT has provided a brief summary of his experience of your Honour at VCAT as follows: “Judge Harbison served as a Deputy President of VCAT for over a decade. She sat on many notorious disciplinary cases, working with children cases, case planning appeals in relation to children and broke new ground by imposing sentences of imprisonment for contempt in the Ordo Templi Orientis religious vilification case<sup>1</sup>. She often sat with members of other professions. Judge Harbison made an extended restraint order under the Vexatious Proceedings Act 2015 in relation to a notorious repeat litigant and made a precedent-setting decision in relation to the power to award compensation under the Powers of Attorney Act. Her decisions were always well organized, clear and logical, and she was unflaggingly dignified, focused and polite on the bench

Since 2008 your Honour has divided your time between VCAT and crime. Your Honour has always had a keen interest in the criminal law. Perhaps this was sparked when you instructed in a fraud trial as an articulated clerk. Your client was represented by the famed duo of Phillip Opas QC, leading Eugene Cullity (later an esteemed Judge of this Court). While details of the case itself are a little sketchy, what happened after the jury commenced deliberating is burned into your Honour’s memory. The jury retired at 10 to 12. They returned at 10 past 12 with a question. The problem was that counsel had taken your Honour to a restaurant for a long lunch. This was long before mobile phones and your party remained blissfully ignorant of the jury question. Your Honour recalls a sumptuous feast, following which you were presented by Opas QC with a bottle of rose. When your well-supped trio returned to the County Court, your Honour witnessed a very unimpressed Judge admonishing counsel, although you managed to emerge unscathed. The mood in the Defence camp was certainly not improved when the jury proceeded to convict your client.

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<sup>1</sup> This sentence was edited in May 2020 to correct a factual error.



Although your interest in crime endured through the years and you had defended people early in your career through your legal aid work, it was not until 2008, when freed of many of your onerous administrative roles, that you took to your role as a criminal judge with gusto. It was around this time that your husband David retired from his successful architecture practice and commenced in the role of your Honour's associate.

What really interested your Honour about crime was its unpredictability, and the necessity to make decisions swiftly. And it concerned people. A criminal trial is very much a living thing and woe be it to any counsel of even any Judge to predict what any day will bring. Further, you have suggested that you enjoyed resolving evidentiary issues, approaching such problems as a logical puzzle, to be solved rationally and in a common sense manner.

In your Honour's Court, accused persons were unfailingly the beneficiaries of any reasonable doubt. The same approach was also evident in the most difficult task of sentencing. Your Honour always found some hope for even the most heinous of offenders. Perhaps you drew on your experiences with his Honour Judge Cullity, and I am not referring to the unfortunate restaurant episode. Your Honour recalls being among your fellow County Court Judges on an occasion when Judge Cullity spoke to your group about his experiences as long time Chairman of the Youth Parole Board. Your Honour was apparently moved to tears as his Honour recalled some of the terrible upbringings of many child offenders, and also the inspirational examples of reform and redemption, achieved by a persistent theme of hope. This same theme, based really on common humanity, was constantly reflected in the many sentences delivered by your Honour.

However, your Honour's move to criminal work required considerable study and researching of this unfamiliar branch of the law. In one of your Honour's first criminal trials, the prosecutor handed a transcript of a Record of interview to your Honour and invited you to give "the usual directions" to the jury, without saying what those directions were. After furiously wondering what on earth this chap was talking about, your Honour rapidly and correctly surmised that the necessary direction related to the interview being the evidence and not the transcript. This was the first of hundreds of ex tempore directions and rulings that your Honour made in the many criminal trials over which you presided.

And that is how I first encountered your Honour in my role as prosecuting counsel during criminal circuit sittings of the court at Wangaratta and Wodonga. Usually instructed by the ubiquitous and now retired head of the OPP circuit section, Mr Bruce Horsburgh, I conducted many criminal trials, pleas and appeals before your Honour. More often than not, Geoff Clancy, a Wangaratta solicitor, conducted the defence of accused persons, briefing counsel, such as Charles Morgan. Your Honour was also very appreciative of Mr Clancy for organizing occasional circuit dinners at



the end of the sittings, usually generously sponsored by the North-East Law Association. Many fine evenings were had with your Honour and David, along with Ron, solicitors, counsel and court staff. These occasions were an opportunity to relax and socialize with the various people who had combined to facilitate the smooth running of the circuit.

I am confident that your Honour would appreciate mention of the hard-working court staff at both Wangaratta and Wodonga, especially Ms Paula Griffiths and Ms Jacki Roche. Most of the persons I have just mentioned are present today at your Honour's invitation.

Your Honour enjoyed your circuits in the North-East and many long-term friendships developed. It was your custom to stay at Beechworth. I was often amused at the transport arrangements. Typically, you and David would take two cars on circuit. One was for the animals and one was for the mountain bikes and skis. Perhaps another reason for the extra vehicle was because David showed absolutely no interest at all in getting to court at your ungodly hour. Instead, he would manage the dogs, which invariably accompanied you on circuit. David would check them into doggie day care each morning and dutifully collect them after court.

Your Honour was a herculean worker, beginning each day with early morning preparation. Many were the times that we crossed paths in the cold pre-dawn darkness of the Wangaratta or Wodonga Court carparks. By the time your Honour's Court opened, counsel were confronted by a Trial Judge who had all facets of the case in question at her fingertips, not to mention a list of curly questions.

Your Honour displayed an immaculate tranquility in court. Your demeanour rarely changed and I never once heard you raise your voice, regardless of whatever histrionic spat between counsel that you might be managing. Courtesy and respect for counsel were your hallmarks and all lawyers who appeared in your Court, whether baby barristers or experienced silk, could expect a patient and attentive audience.

Your Honour has a wonderful legal mind, and I often admired your ability to sort through complex legal and evidentiary issues, always exhaustively researched. I am far from alone in that view. Other counsel who regularly appeared before you such as Ian Freckelton QC, Jason Pizer QC, Peter Chadwick QC, Charles Morgan, Diana Price and Alan Marshall have echoed my observations. Of particular note was a rape trial over which your Honour presided in Wangaratta. The trial concerned a cold case historical attack on a woman in her own home. The accused was ably represented by David Hallows, now of Her Majesty's Counsel. The accused had been arrested decades after the offending when a DNA match was made between the accused and specimens collected during the investigation. In the trial, counsel challenged the admissibility and legitimacy of the DNA evidence and raised a number of complex attacks on the science of



DNA. Your Honour delivered a detailed pre-trial ruling, followed by an extremely clear and understandable explanation about the DNA issues during your charge to the jury. Your Honour was able to simplify complex scientific and mathematical evidence so that a jury of ordinary people could grasp its import. Both the ruling and the charge were later held to be unimpeachable by the Court of Appeal.

It was always a fatal blunder for counsel to mistake your Honour's quiet demeanour as inexperience or uncertainty as one particular member of Her Majesty's Counsel with a penchant for robust advocacy was to learn. This eminent silk breezed into Wangaratta, seemingly determined to exculpate his client and give your Honour a lesson on the finer points of the criminal law in the process. Your Honour quietly listened to counsel's often loud and sometimes condescending submissions. When the puff had ceased, your Honour proceeded to answer counsel, citing authorities not mentioned. In doing so you calmly and firmly established who was the judge and what law was going to be applied in Your Court. In the end, justice was done, and it was delivered Judge Harbison style, quietly, thoroughly and wisely.

On behalf of the Bar, I congratulate your Honour on an amazing contribution to this Court and this State. Your Honour, the Victorian Bar salutes you this and wishes you a long and happy retirement.

May it please the Court.