



SPEECH

ADDRESS AT THE RETIREMENT OF THE HONOURABLE JUSTICE KEVIN BELL JUDGE OF THE SUPREME COURT OF VICTORIA

BY SIMON MARKS QC, SENIOR VICE-PRESIDENT OF THE VICTORIAN BAR

Opening, appearance and acknowledgement

May it please the Court.

I appear on behalf of the Victorian Bar to farewell your Honour as a judge of this court.

I also 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 and present.

Your Honour's service to this court will be remembered as one of remarkable achievement, dedication, commitment and focus.

Your Honour was educated at St Bede's College, Mentone, and then at Monash University, where your Honour undertook a double degree of Bachelor of Arts (majoring in Economics), and Bachelor of Laws (with Honours).

Your Honour secured Articles at Macpherson & Kelley in Dandenong then spent your first 2 years as a solicitor working in public interest law: at the Tenants Advice Service, Tenants Union Legal Service and the newly established "Poverty Law Practice" in Footscray, which was sponsored by the Brotherhood of St Laurence. This later went on to become the Footscray Community Legal Service.

Concurrently, your Honour tutored part-time in Administrative Law at Monash Law School.

It should be noted that these very beginnings of your Honour's career in the law clearly laid the foundations for the important themes which recur throughout it: public interest law, human rights and legal education.



Your Honour went on to work as a solicitor with G W Legge & Co at St Alban's before taking up an academic position as a lecturer in legal studies at Latrobe University, with half-time duty as supervising solicitor for the West Heidelberg Community Legal Service.

Somehow, your Honour also found the time to take up a part-time appointment as Member of the Small Claims Tribunal and Residential Tenancies Tribunal.

In May 1985, your Honour signed the Bar Roll. Your Honour's contribution to the Bar was significant, including serving on the Human Rights Committee, the Federal Court Migration List Users Group, and as a founding member of the Indonesian Legal Aid Committee.

In your Honour's practise as a barrister, you established yourself as an expert in industrial law, administrative law, human rights law and native title. Your Honour took Silk in 1995, continuing to work in broad areas of the law, your Honour always being concerned with the plight of people; as demonstrated by your considerable work acting for migrants and refugees, and in native title.

Your Honour is described as impeccably fair, incredibly energetic and possessing a drive and energy which is tiring to watch.

Your friends and colleagues at the Bar speak of your time there with warmth and admiration. They emphasise:

- a) Your sense of community amongst those with whom you shared chambers and worked;
- b) Your generosity of spirit – for example, your willingness to provide advice and direction to your colleagues, whether you knew them well, or were meeting them for the first time. Rachel Doyle SC recounts the story of your generosity to her when she first started at the Bar in Melbourne. Coming from SA, she said she really knew no-one at the Melbourne Bar; she had asked her father for some insights, he had said he didn't know any barristers at the private Bar in Melbourne but he did recall sharing a cab with you once after a High Court appearance in Canberra; that you seemed like a good person and that he was sure that you would give her advice. Rachel worried about whether, even a good person, would want to help her (and give advice about coming to the Bar on such a flimsy connection). – But she rang you in any event. She should not have been concerned. You agreed to meet for a coffee and hearing her



story, gave her advice and direction with an interest and enthusiasm that she remains grateful for, to this day;

c) With your clients, your courage in pursuit of the dignity of the individual in your provision of well-informed ethical advice to all who you represented (whether they be government, unions, companies, institutions or individuals) – the importance of the individual in our social context (and those, such as unions, who represent them)..

d) More generally, your strong sense of duty for and passion towards the law but your counterbalancing passion for other interests in your life, your wife/family friends and of course your winemaking;

These qualities that I have briefly articulated are fine ones; ones that we as a Bar commend to young barristers commencing their lives as advocates – that as barristers, we look for in our leaders – and try to emulate: -they are not to be passed over, on an occasion like this -

While your Honour had a very successful career at the Bar, and much more could be said about your many achievements, the focus of this reflection on your Honour's career must properly be on your time as a judge of this court.

Your Honour was appointed in February 2005. Your Honour threw yourself into your new life by embracing the challenge of sitting as a trial judge in the criminal division. It was not an area of your Honour's practise as a barrister. So, it is testament to your Honour's dedication to the law that you became very good at it, gaining the respect of the Criminal Bar and the profession more broadly.

Your Honour is described as a meticulous and focussed jurist, with many of your peers describing their appearances before you as 'fair':- so fair that a bystander would be unable to tell who in the court, you knew well as a colleague, and who you did not. That said, your Honour's ability to put people at ease when appearing before you is unrivalled. One friend recalls a time when, most unfortunately, their mobile phone rang during opposing counsel's submissions. Rather than blasting them from the bench, your Honour instead reassured them not to worry, as your phone had recently gone off while you were in the middle of charging a jury! These things happen – perhaps if it happened now, who knows? Perhaps right now – perhaps it would not be such a good time.

In 2008, your Honour was appointed President of the Victorian Civil and Administrative Tribunal, where you served for the next 2 years. During this time, the Attorney-General



at the time, tasked you with undertaking a substantial review of the tribunal. The context of the review was that it was the 10th anniversary of the establishment of VCAT, it had seen a gradual expansion of its jurisdiction and there was a need to investigate certain criticisms of the performance of the tribunal.

Your Honour completed, what can only be described as, a comprehensive review providing 78 recommendations to the government: an enormous undertaking and a long-lasting legacy of your time in the role. Of several of the major themes your Honour identified out of the review, the following are particularly reflective of your Honour's character: that VCAT needed to improve the quality, consistency and accountability of its decision-making, it needed to assist self-represented persons, including a positive statutory duty on the part of members and staff to assist all parties, and foster a culture of respect, both for processes and for human rights.

Your Honour's vision for the future of VCAT was: "a modern, flexible and unified tribunal of justice which is accessible to the whole Victorian community and resolves civil and administrative disputes respectfully, fairly and cost-effectively, by appropriate means and in a timely way."

Your Honour is described as dedicated to the law and its development, by being creative and dynamic and being genuinely curious about the law. Your Honour is focussed on achieving a right and just answer, through discipline and commitment. As your Honour always puts it: "Be just and fear not".

As a demonstration of this dedication, it would be remiss of any reflection on your Honour's career as a judge, to not go into your unparalleled work regarding the Charter of Human Rights and Responsibilities Act 2006 (Vic).

Your Honour came to the bench at the nascence of this pioneering piece of legislation. As your Honour had a keen interest in human rights, it seemed a natural fit that your Honour would be the one to plough the un-fallowed earth of this novel area of jurisprudence. Your Honour's knowledge and commitment to this area of law is incomparable.

Of many notable cases including *Kracke*, *Patrick's Case*, and more recently, *PJB & NJE*, your Honour has handed down decisions which make determinations about individuals' human rights which show great compassion for those affected. More importantly your Honour's decisions have had far reaching real-life consequences for those experiencing mental ill health, and the most vulnerable members of our community. Your Honour



demonstrates a deep awareness for the effect that the law has in the broader community.

Your Honour has been a member of the Forensic Leave Panel since 2014 (President in 2015); an independent statutory tribunal, supporting the rehabilitation of forensic patients and residents and assisting with their reintegration into the community.

This, no doubt highly challenging work, is testament to your Honour's commitment to the most vulnerable members of the community. Your Honour is known to speak directly to applicant(s), to try to empower them to take control of their own path, and in doing so, restoring their dignity.

It turns out that dignity is something your Honour affords to all creatures great and small, living... or not... On one occasion, your Honour was sitting in the old High Court building, well-known to be riddled with unwelcome inhabitants of the vermin variety. Your Honour had adjourned the matter and your Associate had joined you in the ante-chamber to inform you that there had been a gruesome discovery of a recently deceased mouse, located just behind the bench where your Honour was sitting. An offer was made to your Honour to remove the offending article, to which you replied that you were not too concerned, but did the Associate want for your Honour to get rid of it? The response was a definite yes, so a promise was made to 'deal with it later'.

Following the adjournment, your Honour could be observed in the Associate's monitor shifting in your seat and moving your chair. Shortly after, during a pause in submissions, your Honour leans over to your Associate and whispers triumphantly, "I've dealt with it, I've moved the body!" It later transpired that your Honour had quietly and unobtrusively picked up the dead mouse and gently placed it in the bin—and said a prayer for it—with those present in court being absolutely none the wiser.

To finish, it seems fitting that I should quote you, your Honour. In a speech you once gave to the students graduating from the Monash University Faculty of Law, about to take their first steps as law graduates, you said: "Above all, wherever the journey of life takes you, and especially if your journey includes the law, remember that an important measure of a system that aspires to be just – whether that is a legal system or a social system – is its capacity to show compassion." It is clear that your Honour's legacy is a shining example to us all, having done just that throughout your remarkable career as a judge.

And now, your Honour moves on to new and equally green pastures—perhaps greener; 'the grass on the other side' always is. You will leave the Court and take up a new



position as Professor of Law at Monash University and as Director of the Castan Centre for Human Rights. A fitting next move in an already illustrious career.

On behalf of the Victorian Bar, I wish your Honour a long and happy retirement, when and if, it ever comes. In the meantime, I sincerely hope, that you find joy and satisfaction in all your future endeavours.

May it please the Court.