



WELCOME

**ADDRESS AT THE WELCOME TO
THE HONOURABLE JUSTICE TIMOTHY MCEVOY,
JUDGE OF THE FAMILY COURT OF AUSTRALIA
IN THE FAMILY COURT OF AUSTRALIA
IN COURT 8A ON LEVEL 4 OF THE
OWEN DIXON COMMONWEALTH
LAW COURTS BUILDING,
305 WILLIAM STREET, MELBOURNE,
TUESDAY, 30 APRIL 2019 AT 4.30PM
BY WENDY HARRIS QC,
VICE-PRESIDENT OF THE VICTORIAN BAR**

May it please the Court.

I appear on behalf of the Australian Bar Association and the Victorian Bar to congratulate Your Honour on your appointment to 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 appointment to this Court has been greeted with much joy by your colleagues and friends, and in particular by members of the Victorian Bar.

Your Honour comes to this Court with unrivalled academic achievements. You were educated at Parade Christian Brother's College, where you were awarded Dux of the school in 1987.

From there your Honour went to Ormond College to study a Bachelor of Laws (Hons) and a Bachelor of Arts from the University of Melbourne, graduating in 1994.

In the year immediately after your undergraduate studies, you accepted an offer to take up the role of Associate to the Honourable Michael Black AC, then Chief Justice of the Federal Court of Australia.

In 1995 you undertook Articles of Clerkship at Freehill Hollingdale & Page (now Herbert Smith Freehills), with Peter Mitchell as your Principal. You were admitted in April 1996 and remained as a solicitor and senior associate at Freehills until 2002.

While working as a solicitor, your Honour continued to undertake academic pursuits completing a Master of Laws at the University of Melbourne in 1998 and a Doctor of Juridical Science from the University of Virginia in the USA in 1999. Your dissertation dealt with provisional and protective measures in international litigation and their recognition and enforcement in private international law. That all this was done while ostensibly an employee of Freehills says much about your Honour's ability as a strategic thinker and negotiator.



Your Honour's relationship with the University of Virginia was established and you succeeded in gaining an ongoing position in 2001 as a Visiting Professor of Law teaching Conflict of Laws. You continue to teach there every year, most recently earlier this month. Your Honour's commitment has been unwavering, given your very busy practice at the Bar and the logistical challenges of being in the States every year.

Your Honour's longstanding connection has led to your Honour being admitted as a member of The American Law Institute. The significance of that body, and membership of it, is not always understood in Australia. The American Law Institute is responsible for, among other things, the Re-Statements which play an important role in the American legal system. Membership of it is prestigious, and a mark of great legal skill. Other Federal judges who are members of that body include Justices Keane, Gageler and Edelman of the High Court and a small number Federal Court judges.

In 1998, your Honour was appointed by the Attorney-General's Department to the Australian Delegation of Experts to the Special Commission of the Hague Conference on Private International Law. The Special Commission was charged with drafting the proposed Hague convention on jurisdiction and foreign judgments in civil and commercial matters. Your Honour also assisted the Permanent Bureau of the Hague Conference with a comparative study of provisional and protective measures, during your time at the University of Virginia.

In 2002 you were called to the Bar - doubtless causing a measure of disappointment among the patient partners of Freehills. However, your Honour was in truth, always an excellent candidate for the Bar.

You were the first of a number of readers of Michael Wheelahan, now The Honourable Justice Michael Wheelahan a Judge of the Federal Court of Australia.

On 22 November 2002 your Honour signed the Bar Roll, and set about establishing your practice. In a time where most barristers specialise in a particular area of law, your Honour developed a broad practice in many different areas: from administrative law to competition and consumer law, equity and trusts to property disputes and environment and planning law to probate.

Your Honour's work ethic is excellent. Your legal work is exemplary bringing a deep understanding of the legal and factual foundations of each problem. Your Honour's advocacy style is charming and persuasive and always well-received by your clients, instructors and the Court alike. You are regarded as a fantastic advisor; shrewd and strategically adept.

Your Honour has been involved in many notable class actions, including: the Longford Gas Explosion class action, acting for the Victorian State Government in a negligence class action involving abalone, and the Bonsoy soy-milk class action.

Your Honour developed a strong defamation and media practice, following in the footsteps of your mentor Michael Wheelahan QC. One notable case included acting for Fairfax Media Ltd and successfully defending an action involving Fairfax's use of its Domain app. And in the best traditions of the Bar, your Honour also had a notable success acting against Fairfax in *Australian Football League v The Age*, where you successfully obtained orders restraining publication of confidential health information relating to some of the AFL's players.

Your Honour has also appeared in many medical regulatory and disciplinary proceedings involving medical practitioners, which often involved complex legal and medical issues.



Your Honour took Silk on 22 November 2016 and you have continued to work in a wide variety of areas, including increasing work in crime and family law. Most recently you acted as Senior Counsel Assisting the Royal Commission into Aged Care Quality and Safety.

Your Honour is described as being exceptionally bright, sensible, kind and very fair; all of which speaks to your fundamental humanity. These traits will all serve you well in your new role. In a jurisdiction that demands compassion and empathy, these are qualities that you will bring in spades.

In the wide consultation that takes place for a speech of this kind, it has also been remarked that no matter how difficult the case, or how choppy the water, your Honour never lost your good humour and sense of fun.

Having said that, it has not all been smooth sailing. Early in your career as a barrister, your Honour was briefed as a junior in a very large matter for an international client that involved a huge team and ran for a long time. It was very hard work, involving long hours and a great deal of travel. The case was made more difficult by a Decree made by the solicitors in the name of efficiency: no barrister would be permitted to have hard copy documents. There were many thousands of complex documents in the case, and your Honour had a strong view the Decree was like the celebrated decision of an apocryphal bus company to help its busses run on time by not stopping for passengers. The Decree achieved a false economy, at best, in your Honour's view. A battle commenced between you and your instructors over the provision of hard copy documents to counsel when requested. A particularly recalcitrant solicitor was issued an ultimatum to provide hard copies of 15 critical documents. A tense standoff ensued.

At this point, Wheelahan QC intervened. He advised that he too regretted the Decree and was much inconvenienced by it. He counselled, however, that there was no utility in waging war on the instructors. The answer was to buy a high-speed printer and a good quality computer screen. This was advice that your Honour ultimately took, albeit reluctantly.

This intervention was typical of the support and assistance your Honour received from Wheelahan QC (as he then was) and from all your colleagues on the 29th Floor of Aickin where your Honour has had chambers for many years. In fact, on this occasion, the assistance did not stop there. Your Honour's frustrations having become known to your colleagues, someone accessed the settings on your Honour's new computer so that the offending instructing solicitor's photograph appeared several dozen times as the background on your Honour's large, new, computer screen. Your Honour found the sight of this instructor, smiling repeatedly and smugly at your Honour, quite - shall we say - vexing. But not, yourself, having over-developed IT skills, your Honour was helpless to do much about it. And regrettably, none of your more IT-literate colleagues felt able to assist.

The situation remained stable, if irritating, for several days. Then one morning a gentleman from the relevant firm's IT department arrived to assist your Honour with a failing connection to the enormous document database that had caused all the fuss in the first place. The IT man arrived when your Honour was momentarily out of chambers but was shown in by your secretary. Your Honour walked in just as the IT man knocked the mouse, causing the dozens of portrait photographs of his boss to appear plastered across your Honour's computer ...

The IT man was visibly surprised to see his boss splashed across the screen like the head of an autocratic dictatorship, but apparently decided not to say anything ... Nor



did your Honour say anything. As your Honour later mused, the situation was not one which was capable of easy explanation...

[And so, the great case continued... One afternoon Michael Wheelahan QC returned from a conference with the client's most senior international executives, completely furious. The solicitor who had so vexed your Honour had interrupted The Wheelahan QC Advice, mid-stream, to correct his grammar. The solicitor contended that the plural of prospectus was prospecti. He believed Wheelahan QC had misused the plural, and apparently wanted that noted. Although Wheelahan QC had counselled your Honour against making war on your solicitors, at this point he was having trouble taking his own advice. No doubt keen to repay Wheelahan for all his assistance, your Honour happily diverted from re-organising the international legal system and other less significant matters, to prepare a comprehensive memorandum on the disputed plural. A short time later the solicitor received several pages of thorough analysis comprehensively demonstrating that Wheelahan was right. No response was ever received.

Another case from which we can draw some lessons about your Honour is *Schib Packaging Srl v Emrich Industries Pty Ltd* (2005) 12 VR 268. As a new barrister, your Honour won the case before a County Court judge at first instance, persuading the Court not to dismiss the proceeding on forum non conveniens grounds. The losing party sought leave to appeal. Your Honour organised for Wheelahan QC to be briefed for the appeal – in fact his Honour's first appeal as a silk.

Wheelahan QC took a typically laid-back approach. By the morning of the appeal, after several hours of pacing and lathering, he had persuaded himself that the learned trial judge was wrong and your Honour's client really ought to have lost the case. He criticised your Honour for winning the case in the first place, accusing your Honour of not understanding the difference between offer and acceptance. He also expressed great concern that your Honour had placed him at risk of losing his first case as a Silk in the Court of Appeal!

Your Honour, as it happens, had not spent the previous night pacing and lathering. In the face of the tornado of Wheelahan before you, your Honour calmly explained that the offer and acceptance point had a ready answer in Article 19 of the Vienna Convention; you suggested what would really assist at this point was a good breakfast in the Essoign Club. You then adjourned the conference for that purpose, leaving Wheelahan in chambers to look up and annotate the history of the Vienna Convention – just in case.

Two points are worth noting. First, the VRs reveal that the Vienna Convention point was a winner, which illustrates your Honour's great learning. Second, the decision to adjourn for a meal marked a style of preparation for a case; or celebrating after a case; or indeed a way of passing time between cases or even during a case; for which your Honour is rightly famous.

As it happens there are some anecdotes that further amplify this second point. Your Honour had a significant practice in Tasmania, where you appeared in the Federal and Supreme Courts in administrative, civil and criminal cases. On one trip to Tasmania, in the thick of the trial, the lunch adjournment was called and your instructor was directed back to the office to copy authorities. Your Honour was holed up, working and sent your junior out to get some much needed sustenance. Back at the office, your instructor recalls receiving a text message, sending her into a panic about what else you could possibly need, as she was already frantically photocopying. She opened the message with trepidation to find a picture of a bottle of water and a plastic container of alfalfa and bean sprouts. Your Honour's text read: "This is what he gets me for lunch. He thinks I am a rabbit. Please bring me a hutch and take me



home.” Criticising a junior was something your Honour almost never did, but we all have our limits.

Your Honour is in fact a total “foodie”. Everyone who knows you, knows of your love of food, eating and dining out. Your Honour is always looking for the next great dining opportunity. Your passion for food is legendary. An early high point involved an attempt by your Honour to import into Australia a large wheel of stinking French cheese. When the cheese was stopped at customs, your Honour went out to remonstrate with officials. When they still refused to allow entry of the cheese, your Honour took urgent action: producing a packet of crackers from your pocket, you commenced an attempt to eat the whole wheel of reeking cheese in the customs office, at 10 in the morning. Great passion, indeed.

As noted, your Honour has a formidable, even intimidating, academic record. Perhaps because of this, your chambers’ colleagues have at times sought to even the field. At some stage a mock Bar profile was prepared, and cases in which your Honour appeared were replaced with restaurants at which your Honour had ordered. A list of the esteemed silks for whom you had ordered dinner or lunch also appeared. A specialty in Chinese dining was noted. Returning to your Honour’s fraught relationship with technology: on the eve of your Honour’s appointment, your Honour received word that the Commonwealth intended to do a routine search for publicly available information about your Honour. This led to an urgent scouring of the internet for copies of this notorious, albeit largely accurate, profile.

Your Honour is described as a great mentor and a great friend. You have a fundamental interest in people and it is said you have the capacity to make friends in an empty lift. Your Honour’s friendship circle is wide and varied and yet you somehow manage to make time for them all. As several of your friends and colleagues know, when the chips are down, your Honour is a wonderful support and a great person to have in your corner. Your capacity to deal with very difficult problems in an empathetic but clear-eyed and practical way will doubtless serve you well on this Court.

Your Honour had six readers and was a mentor to many more juniors. Your generosity is legendary; you are utterly selfless with your time and go out of your way to assist, irrespective of any personal inconvenience. You have never failed to answer your phone when it rings. You are always available (except if you happen to be mid-way through dining) and incredibly supportive.

Your Honour would also ensure that any junior being led by you would develop a relationship with the instructing solicitor beyond the current brief. And your Honour would give juniors a significant opportunity to be on their feet.

All your juniors have appreciated your Honour’s qualities as a great raconteur and story teller, although it has been observed that very occasionally you let yourself down by telling the same story more than once to the same person; but this seldom happens at the same lunch.

Your Honour has been married to Libby for nearly 20 years and together you have two daughters, Emily and Alexandra (Ally). All your family are present in Court today. You are very much a family man and they have been an incredible support to you. You in turn are very supportive and always up for a challenge, so when your daughter Emily decided that she wanted to take up sailing, having never been near a boat yourself, you took an active interest and learnt how to sail with her.

Your family has been on plenty of adventures with your Honour, particularly accompanying you on your many trips to the USA. In 2011, the whole family spent a prolonged period in Virginia as both you and your wife, Libby took up Fulbright



Scholarships at the same time; an incredible achievement that made the restaurateurs around Georgetown and the University of Virginia very proud.

Your Honour has a great love of the British Monarchy and the protocol and pageantry that surrounds it; no doubt the reasons underpinning your love of the Courtroom draws parallels.

Your Honour has many, many friends and admirers at the Bar, and I am personally lucky to count myself among them. On the announcement of your Honour's appointment we were all delighted, and many of us will have reflected that your Honour has always stood out as an ideal candidate for judicial office. Partly, this was a consequence of your great academic achievements. But it was also a result of your character and demeanour. It seems very fitting that your Honour has been appointed a judge, and particularly apt that your Honour has been appointed to the Family Court, whose work often involves such difficult problems. The combination of your Honour's intellectual rigour and inherent compassion and decency make you an excellent person to do that important work.

On behalf of the Australian Bar Association and the Victorian Bar, I warmly congratulate Your Honour, and I wish you long, satisfying, and distinguished service as a Judge of this Court.

May it please the Court.