



## The Supreme Court in World War One

*Remarks by the Honourable Marilyn Warren AC Chief Justice of Victoria to the Anzac Day Ceremonial Sitting at Banco Court, Supreme Court of Victoria*

24 April 2015

World War One touched each and every member of the Victorian community. We need only reflect on all the names on the war memorial cenotaphs in Victorian towns, cities and suburbs to gauge the breadth of loss. ‘A generation of Victoria’s finest young men, women and future leaders, were killed, wounded or impacted forever.’<sup>1</sup> The legal profession was no exception. More than one third of Victoria’s lawyers volunteered for service in World War One, from a legal profession of roughly 800 members. Those of you who entered via William Street this morning will have passed the large wooden honour board adorning, in delicately penned gold script, some of the names of those who fought. That board was unveiled by Sir John Madden, then Chief Justice of Victoria, in July 1917. The Argus newspaper reported:

Though the members of the general public might see in the ... members of the legal profession ... nothing more than the sacrifice that any other soldier had made, ... The opportunities that had been put aside, perhaps never to come again, ... were so great as to represent the difference between the success or failure of a lifetime.<sup>2</sup>

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<sup>1</sup> Michael McKernan, *Victoria at War 1914 – 1918* (NewSouth Publishing, 2014) ix.

<sup>2</sup> ‘Lawyers’ Honour Board’, *The Argus* (Melbourne), 18 July 1917.

For those remaining behind there was a preoccupation with the war effort and a strong intent to keep life going as normal. In the courts that is exactly what occurred. A reading of the Victorian Law Reports of the time shows the judges continuing to sit on trials and appeals as always. The cases covered the usual disputes over wills, fencing, property, personal injuries and criminal matters and the like. Interestingly, the War Precautions (Moratorium) Regulations were applied by judges to protect or at least grant a reprieve to mortgagors who faced foreclosure because of default during the war. The judges took the view they had an unfettered discretion.<sup>3</sup>

Keeping things normal was doubtless a way of coping but, also, of waiting and hoping for the soldiers' return.

Many lives and promising legal careers were lost in World War One. No-one was immune from the anxiety and grief for loved ones and colleagues, even judges.

Several judges' sons went to war. Supreme Court Justice Sir Leo Cussen's son, Maurice Cussen, enlisted in October 1915, just a couple of months before his law degree was due to be conferred. He departed for France as a member of the 4th Artillery Brigade. He returned to Australia in 1919. He was admitted to practice in April that year. He spent some time as associate to Supreme Court Justice Hood and went on to have a long and prosperous career at the Victorian Bar, often acting as a Crown Prosecutor. He was appointed to and later became the Chairman of the Court of General Sessions, these days the role of Chief Judge.

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<sup>3</sup> eg In the matter of Annie Rohs [1917] VLR 32 also In the matter of the World's Picture Theatre Company [1917] VLR 76.

Justice Henry Hodges, of the Supreme Court, lost his son Edward. A young barrister, Edward Norman Hodges was 27 and newly married when he enlisted. He was awarded a Military Cross for exemplary gallantry during active operations against the enemy. By 1918, Edward Hodges had risen to the rank of captain. Tragically, in June that year he took ill with pneumonia and passed away. Chief Justice Irvine received the official notification of his death. He summoned Justice Hodges to his chambers to break the news. The judge was sitting in Banco, this courtroom, at the time. His Honour's case was immediately adjourned. As a Chief Justice I find it hard to comprehend the grim duty; the anguish, pain and grief Chief Justice Irvine had to convey to a colleague on the loss of a cherished son.

These dreadful duties were carried out across the State constantly through the War. Judges shared the suffering like so many in wartime Victoria.

Among those Victorian lawyers who served in World War One, a number were future judges of the Supreme Court:

- Justice Sir Norman O'Bryan
- Justice Charles Leonard Gavan Duffy
- Justice Russell Martin
- Justice Sir Wilfred Fullagar (later a High Court Justice)
- Justice Sir Arthur Dean
- Chief Justice Sir Edmund Francis Herring.

Many of the courts' staff also went to war. Most of their names do not appear on the Honour List and have been lost to history. However, some stories lived on. We know that, following his son's death, Justice Hodges took returned soldiers as his associates up until his death,

including one James Borrowman. Now Borrowman served with the 5th Battalion in Gallipoli and was wounded by a gunshot to the shoulder on Anzac day itself 1915. He continued fighting at Gallipoli until another bullet wound to his arm saw him hospitalised, his arm amputated and his return to Australia. During his time with Justice Hodges, he became known as the "one-armed associate". He was later admitted to practice, and then to the Bar.

Another important soldier in the life of the Court was Eustace Coghill. He was a student when he enlisted and turned 19 on the ship over in October 1916. He saw service in France with divisional artillery columns and the field artillery brigade before influenza brought him home. Upon his return he studied law, winning the Supreme Court Prize in 1923. He went on to be the law reporter for the Argus and in 1935 was appointed as the Supreme Court Librarian. After 20 years in the role he was appointed as a master of the Supreme Court.

These are the poignant stories of some which tell us of the impact of war and those engaged in the law.

War is a terrible event. It inflicts pain and suffering at all levels of society. We acknowledge the bravery, tenacity, resilience and sacrifice of all who landed at Gallipoli on 25 April 1915. While we abhor war and endeavour to avoid it, Victorian / Australian soldiers and citizens when called upon have always inspired respect in times of war, none more so than the judges and lawyers of this State.

With Gallipoli, when soldiers sailed away they thought they were on an adventure. Yet even so, they wanted to challenge an enemy they believed confronted and threatened Victorian society and life as they knew it.

In their own way they were defending their democracy underpinned by the rule of law. The ultimate protectors of the rule of law are the judges and the lawyers. The commemoration of the Gallipoli landings and Anzac traditions also mark the commitment of those who fought to protect the rule of law.

We acknowledge them. We remember them. We will never forget them.