



Remarks of the Hon Marilyn Warren AC, Chief Justice of Victoria

On the Occasion of a Farewell Sitting in the Banco Court

Wednesday 27 September 2017

Aunty Joy Murphy, Solicitor-General and Presidents of the Victorian Bar and the Law Institute of Victoria. I thank you most sincerely for your extraordinarily generous remarks.

Tradition has it that these are occasions when the Bar and the profession generally come and tell a judge how wonderful he or she has been, thanks them for their service and, I have sometimes suspected, confirmed that the judge in fact departs. Well, I will, very soon.

It is my intention this morning to turn the tables. You see, I wish the centre of attention to be not me, but the Court, the Bar and the profession. My thesis is that the Court needs and relies on those who bring the cases.

I will commence with the Court. It has been an extraordinary honour and privilege to serve the administration of justice in this State for 19 years, 14 as Chief Justice. I think there is no better legal job in the State, and possibly the country, than being a judge of this Court, except being Chief Justice. There are abundant opportunities to sit on the most significant, complex and serious criminal and civil trials and appeals. There are opportunities to hear some of the best advocates in the land, assisted by cases impeccably prepared and managed by an outstanding legal profession. There are opportunities to be a part of the wonderful collegiality of this Court. Being a Supreme Court judge is also an opportunity to determine the jurisprudence which contributes to the rule of law and the shaping of the State and the nation. Any barrister or lawyer who has the chance of appointment should jump at it.



Victoria has long been a leader in the law. This Court has grown since I joined, in numbers of judges, associate judges and judicial officers. The work has increased exponentially. However, it is the nature of the work that has really changed. The business of the Court is now replete with commercial and common law class actions, *Charter* cases, expanded criminal work and some of the most significant commercial and common law litigation in the country. This is no accident. I believe it is because of the quality of the bench that the Supreme Court of Victoria offers to the litigation community and the desire of the judges to serve that community.

Yet judges are only as good as the cases that are presented to them. It is the barristers and lawyers who prepare and provide the cases to the judges to be determined. Inevitably, there is a synergy or symbiosis between each of the roles in the administration of justice.

In that respect, I acknowledge the extraordinary diligence, rigour, creativity, application and resilience of the Victorian commercial barristers and lawyers. Then there are the clever, resourceful and devoted common law barristers and lawyers who cover everything from catastrophic injury to environmental cases to public law. Thirdly, there are the criminal barristers and lawyers for whom I have so much respect because of the gravity of the work they perform, prosecuting the interests of the State and ensuring that justice is delivered to accused persons. I thank all the barristers and lawyers who have conducted cases before me. If I was too demanding – I hope you know my heart was in the right place.

An outstanding attribute of the Victorian Bar and profession is their commitment to providing pro bono assistance when needed. I acknowledge that there have been countless cases in the Supreme Court when, after only a phone call, representation has been provided in needy circumstances. A senior lawyer was heard to remark about pro bono public law one day in the High



Court before the bench entered: “What is it about Victoria? There must be something in the water”. This Court, both the Court of Appeal and the Trial Division, have been constant beneficiaries of members of the Bar and the profession stepping in, sometimes in quite large cases, to provide assistance and service at no fee or benefit to themselves. I express my personal appreciation and gratitude for the many times I have been assisted by that pro bono support.

Yet, the Bar and the legal profession face change and challenge.

I have reflected on some of the changes have I seen in my almost two decades on the Court. First, the increased application and intensity of case management. Judges supported by judicial and public administrators are extremely productive but demanding. Secondly, technology. It has expanded and will transform this Court, but again be demanding for all, because the coming generations of lawyers will be dominated by technology. Thirdly, expanded and novel jurisdictions. Fourthly, the establishment and expansion of judicial education opportunities to enable judicial officers to be their very best, including culturally aware in our multicultural society. Judges, in turn, are a step ahead because of the Judicial College of Victoria. Fifthly, a significant shift in the provision of information by the Courts about what they do. For example, the Supreme Court is extremely active in social media. Sixthly, the growth in the numbers of self-represented or unrepresented litigants (due to increased community awareness of rights and redress, the growth of administrative tribunals and VCAT, and the paucity of legal aid). Seventhly, the massive growth of alternative dispute resolution, especially judicial mediation in which the Supreme Court offers an important service. Fewer cases run to trial, verdict or judgment.

Eighthly, the presence of women on the Supreme Court bench and in court. In that respect, there is much more to be done. We have so many excellent women barristers and lawyers, we should see more of them in court and more often. Ninthly, recognition of the significance, relevance and



importance of the indigenous peoples and awareness of their over-representation in the criminal justice system.

All these phenomena and more will press barristers, lawyers and judges. Practice and judging have changed.

The Courts and lawyers have been around for millennia and have proven highly adaptable and flexible especially in the modern era. I have no doubt the barristers and lawyers of this State, together with the judiciary, will rise to the challenges.

The final change that I have seen is the shift of the media and community attitudes towards the Courts. Community interest in judges' work, particularly criminal work, has increased. Conventionally, judges do not speak out and defend or explain their decisions beyond their written reasons. This has been a difficulty.

Sentencing attracts much public comment. Nearly everyone has an opinion. I have found sentencing the hardest part of the job, trying to reach the correct sentence for the circumstances. Dealing, as this Court does, with homicide cases, it is hard confronting the pain and grief of family and friends who have lost a loved one. As judges, we feel that grief. I have not found the answer as to why judges' reasons for sentence are not read widely. Judges cannot really rely on the media for communication. It is up to us to write more simply and briefly with accompanying summaries and all published in an accessible way on the internet and through social media. This is an achievable goal which will help community understanding of what we do and why.

It is forecast that, in decades to come, Victoria will emerge as the most populous State in the country. It necessarily follows that the Bar and the legal profession will need to expand and adapt to



meet that growth. Similarly, the judiciary will meet significant challenges in the years ahead.

I have many more thank you's to give.

The generous statements emanating from the Bar table today are an acknowledgement and a celebration of my colleagues with whom I sit, Justice Maxwell, the President of the Court of Appeal, Justice Hargrave, Principal Judge of the Commercial Court, Justice Lasry, Principal Judge of the Criminal Division, Justice J. Forrest, Principal Judge of the Common Law Division and Associate Justice Derham, Head of the Associate Judges, and all the judges within their Divisions. I acknowledge and express my deep gratitude to each of them for their constant refinement of what they do and their implementation of change and commitment to the administration of justice. I thank them for their constant support of me. I thank every judicial colleague for helping me along the way.

Mentioning reform leads me to express my appreciation for the contribution made to the Court during his time by Justice Nettle when a member of this Court. His Honour's reputation as a jurist is well known. However, he was an important contributor to judicial administration, particularly through the implementation of the very successful civil appeal reforms. Furthermore, as you might imagine, Justice Nettle was a powerful counsel to have seated beside me, when I was arguing for independence or resources with public administrators.

So many judges, staff, personal staff, public administrators and people generally have helped and supported me along the way. I am very grateful.

The office of the Chief Justice of Victoria has become a very busy role, indeed, one of the busiest in the country. The office is responsible not only for the judicial administration of the Supreme Court, but also heads the Courts Council of Court Services Victoria, the Judicial College of Victoria and the



Judicial Commission of Victoria. I have been blessed to have had four outstanding Chief Executive Officers to assist me in that regard: Louise Anderson, David Ware, Samantha Burchell and Richard Besley.

It might be thought that I have been remiss in not casting my gratitude more widely. Be assured that family, friends, colleagues and staff have been thanked at another time. On the other hand, my departure has been the subject of an extraordinary number of celebrations, many of which were hosted or attended by the Bar and the Institute, which has led me to conclude I am shortly to overtake Dame Nellie Melba's farewell reputation.

That said, I cannot leave without acknowledging two special supporters. Justice Maxwell, who has worked with me now for 12 years and travelled much of the journey. He has supported me and helped in countless ways.

The other person is my Executive Associate Vivienne Macgillivray, who has been with me almost the entire period of my term as Chief Justice. She has been unfailing in her devotion, loyalty and hard work, often having to deliver unhappy news and help to triage the complex problems that invariably arise from day to day.

I also extend my very warm congratulations to my Chief Justice sister, the Honourable Diana Bryant. She, too, will shortly retire, and I wish her a long and happy retirement.

Finally, there is my family, sometimes I have been unable to devote myself to them the way I would have wished, but now they will have me back and I will endeavour to make up for lost time. They should be prepared.



I thank each and every one here for coming today and for your generosity. The honour you bestow on the Supreme Court and me is very generous. I am so very glad you came.

However, may I make one request of you?

Almost everyone here is a Victorian. This is the courthouse and the courtroom where Victorian lawyers mostly commence their careers. She is a Court to be loved, cherished and protected, our Supreme Court. Look after her, and pledge your support. I regret I was unable to achieve a new Supreme Court building. However, the Court will soon finalise a concept plan which, hopefully, will enable the Government to understand and embrace the chance to construct a beautiful, functional court building for the highest court of the State. I will watch with curiosity and wonder.

I extend my warmest wishes to Justice Ferguson, who will assume the office of Chief Justice shortly. Her Honour will take the Court forward, together with her colleagues, to a whole new era. Mine now closes.

Mr Tipstaff, the Court will now adjourn sine die.