



THE CHANGING FACE OF THE SUPREME COURT

**Paper delivered by Justice Emilios Kyrrou at the North West Victorian Law Association
Dinner, Mildura**

28 August 2019

On behalf of my colleagues Karin Emerton and Mark Weinberg and our staff, I would like to thank the North West Victorian Law Association for hosting this dinner and for the warm welcome we have received.

This evening, I will make some observations about the changing face of the Supreme Court. But before doing so, I would like to acknowledge the traditional owners of the land on which we meet today and pay our respects to their elders past and present.

I also need to make a confession. This is my first visit to Mildura. I do not know why I did not make an effort to come here earlier. When I was growing up, I was very much aware of Mildura because I lived at 15 Mildura Crescent, Broadmeadows between 1970 and 1973. However, the only knowledge I had of Mildura was that some of the delicious fruit that I ate came from there. This visit has shown me that there is much more to Mildura than its produce. It is a picturesque and vibrant city with warm and hospitable residents. I am enjoying this visit very much and am confident that it will not be my last.

Now to my topic.

The Supreme Court has operated out of the same building since 1884. The physical features of the building have not changed much since that time. It is as imperious as ever. Prison vans continue to bring prisoners to the Court through the Lonsdale Street lane as they have done for many decades. However, when one looks behind the bricks and mortar, one finds that there have been significant changes in the demographic characteristics of judicial officers and their attitudes, even by comparison with the 1970s.

In the 1970s all the judges were men who, prior to their appointment, were Queens Counsel. Most of them were born in Australia and had a private school education.

A key milestone in the recent history of the Court was the appointment of Rosemary Balmford as the first female judge in 1996. Now, 17 of the 54 judges and associate judges, or 31%, are women. Of course this is still a modest proportion. Importantly, the Court has had a female Chief Justice since 2003, when Marilyn Warren was appointed. She was succeeded by Anne Ferguson in 2017.

The monopoly that Queens Counsel previously enjoyed in relation to appointments to the Court was broken in 1987 when Bernie Teague was appointed directly from the solicitors' branch of the profession. The Bar did not like this development, but learnt to live with it.

Since Bernie's retirement in 2008, a further three solicitors have been appointed as judges of the Court. They are myself, Anne Ferguson and Joanne Cameron. In addition, Melissa Daly, Rita Zammit and Mary Jane Ierodionou were appointed associate judges. Rita was subsequently appointed a judge of the Court.

There is now greater diversity in the ethnic, cultural and educational backgrounds of judges. Some judges were born overseas and were educated in government schools. For example, I was born in Greece and attended government schools. Mark Weinberg was born in Sweden and Michael Sifris was born in South Africa. Former judges George Hampel and Alex Chernov were born in Poland and Lithuania, respectively. Obviously, Mark, Michael, George, Alex and I do not have an Anglo-Celtic heritage, which continues to be the dominant Australian demographic. Karin Emerton has an Anglo-Celtic heritage but she was born in Geneva during her father's posting to a United Nations agency. Pamela Tate was born in New Zealand. Rita Zammit has an Italian heritage. Associate judges Efthim and Ierodionou have a Greek heritage whereas associate judge Mukhtar was born in Iraq and has an Armenian heritage.

I hasten to add that I am not suggesting that the cultural diversity within the Court adequately reflects the diversity within the community. There are no judges of the Court who have an Aboriginal background or who are of the Muslim faith. Except for Paul Coghlan, who had a Chinese grandfather, there are no judges with an Asian background. The position of the Supreme Court is to be contrasted with that of the Magistrates' Court, where a small number of individuals with such backgrounds have been appointed in recent years. We have a long way to go before the Supreme Court comes anywhere near reflecting the diversity in the community.

A number of judges were born in regional Victoria. Of particular interest is that William Crockett and Andrew Keogh were born in Mildura and Geoffrey Flatman was born in Mortlake but attended Mildura High School. Bernard Bongiorno was born in Geelong and Peter Riordan was born in Shepparton. Two current judges live in Geelong and commute to work.

There have been important structural changes in recent decades. The Court of Appeal was established in 1995. However, that does not mean that the Full Court is redundant. It continues to sit for ceremonial purposes, including the admission of lawyers. We also have a Commercial Court and a Costs Court within the court structure.

The archaic title of Master has been replaced by the more modern title of associate judge. There is an exception in that one of the associate judges has the formal title of 'the Associate Judge who is the Senior Master'. The reason for retaining this title is that, as the Senior Master has legal control of funds in court exceeding \$1 billion, abolition of the title would have required extensive legislative changes.

We also now have judicial registrars who exercise some judicial powers.

The way that judges look has also changed. In 2016, we discarded wigs and the separate red criminal robes and black civil robes have given way to new all-purpose and gender neutral robes. These changes have resulted in judges appearing less anonymous and formal than in the past.

Apart from these physical changes, in recent years, there has been a significant shift in the attitudes of judges. In the past, it was almost fashionable for judges to be formal, aloof and

gruff. By and large, today's judges do not behave in this manner. Most judges are now very practical. They are focused on substance rather than form and on hearing and determining disputes as expeditiously as possible. Exchanges with counsel tend to be courteous and business like rather than confrontational or condescending.

Whereas judges in the 1970s were sceptical about the need for judicial training courses, today's judges enthusiastically support the work of the Judicial College of Victoria.

The outlook of the Court as an institution has also changed. For example, the Court has embraced technology.

In 2015, the Supreme Court embarked on a digital strategy to use technology to deliver a more efficient and accessible justice system. Each courtroom will have ultra-high definition video-conferencing capability, an upgraded evidence presentation system, livestream and webcast capability, as well as amplified acoustics. The Mildura Court has been upgraded to include video conferencing to any other court across Victoria, which enables witnesses, complainants and defendants to give evidence or participate in a hearing remotely.

A successful pilot program has been completed for directions hearings to be conducted electronically over the internet. The first matters heard electronically were conducted out of a commercial judge's chambers with practitioners and transcript services connected. Once concluded, the e-hearings were uploaded to the Supreme Court website for public viewing.

Electronic filing (or e-Filing) is being progressively implemented across the Court and has already been completed in the commercial, common law and criminal divisions, as well as the Costs Court. Practitioners can lodge documents and view the court file using the online system, RedCrest, at any time and from any location as long as they have an internet connection.

Webcasting and live streaming enable the public to view high profile hearings and the handing down of important sentences and judgments from their electronic devices. For example, the Court of Appeal live streamed the Cardinal Pell appeal hearing and the handing down of judgment. These initiatives increase the Court's accessibility, help raise the community's understanding of the sentencing process and provide access to victims and other parties who are connected to the proceedings but are unable to attend court. The initiatives also enable the community to hear directly from the Court rather than through the filter of the media.

The Court is also more outward looking and engages with the community to a greater extent than in the past. Judges visit schools and community groups to explain the role of the Court and to receive feedback. During the current Mildura circuit, we have visited the Mallee Regional Office of Victoria Legal Aid, the Murray Mallee Community Legal Service and The Orange Door. Tomorrow, students from Mildura Senior College will be visiting the Court and we will be visiting Redcliffe Senior College.

The circuits that the Court conducts in regional Victoria are a fundamental part of its community engagement. After all, it is the Supreme Court of Victoria rather than the Supreme Court of Melbourne. The Trial Division has historically conducted circuits in key regional centres. The Court of Appeal intends to conduct more circuits in the coming years.

The Court's community engagement has also focused on effective use of the media, including social media. The Court has an active public affairs and media services department which

distributes newsworthy items such as judgments to the media and the community, including via Facebook and Twitter. It has also produced a podcast titled 'Gertie's Law' which explains the workings of the Court. The podcast has proved very popular and I highly recommend it.

Community engagement is important for the Court because the Court serves the community. It needs the community's support to properly discharge its function of upholding the rule of law. In some other countries, judges live in official enclaves with high security walls and are driven to court in bullet-proof vehicles. Soldiers stand guard outside some overseas courts. That is not the case in Australia. Here, although judges exercise vast powers, when they leave court, they go to their homes in the suburbs and blend into the community. Many judges, including myself, travel to work by train. When we do so or visit the shops or attend a football game, we do not wear a judge's badge and no one around us knows what we do for a living. In a very real sense, judges are members of the community that they serve. This underpins the legitimacy and power of the judiciary.

Thank you.