



Monash University Law Review annual dinner

Address of the Hon. Chief Justice Anne Ferguson

- Good evening.¹
- I would like to begin by acknowledging the traditional owners of the land on which we meet.
- I pay my respects to their Elders past, present and emerging, and extend that respect to any Aboriginal or Torres Strait Islander persons present.
- It is a pleasure to be here tonight at the 2019 Monash University Law Review annual dinner.
- I would like to thank the editors of the Review for organising tonight's event and kindly inviting me to speak.
- I also extend my thanks to and acknowledge Professor Bryan Horrigan, Dean of the Monash University Faculty of Law.
- Professor Horrigan has done much here and overseas for legal scholarship, to advance corporate social responsibility, and to create strong pathways to legal careers for students from all backgrounds.
- I am a Monash University Law graduate, and was an editor of the Review in my final year of study.
- Things worked quite differently when I was involved.
- Back then, you were tapped on the shoulder to join the committee and later to take over as one of the editors of the Review.
- While it never would have occurred to me to apply for such a position, I am pleased to say that the experience of working on the Review won me over.
- I remember enjoying working alongside and forging friendships with my co-editors.
- I also remember exploring areas of the law that I would not otherwise have come across.
- In preparing to speak tonight, I went back to look at some of the articles that were published while I was an editor.

¹ This is an edited version of the speech given by the Hon. Chief Justice Anne Ferguson at the Monash University Law Review annual dinner at the Park Hyatt Melbourne on Thursday 21 November 2019.

- To my delight, I saw how forward thinking we were as editors; how we picked the issues that would emerge in the decades to come.
- For example, there was an article entitled ‘Nationality Qualifications for Members of Parliament’.
- I do not remember it being topical in the early 1980s, but it has certainly been topical in the last couple of years!
- In any event, it was an enriching experience being a member of the editorial committee and one I am sure those involved in the Review here tonight will remember fondly after you have moved on.
- When the editors of the Review invited me to speak tonight, they told me I could speak on any topic of my choosing.
- A generous invitation on its face, but one that left me stuck.
- But when it came down to it, there was an obvious answer – and something I feel we cannot talk enough about.
- And that is communication – good communication, to be precise.
- As Chief Justice, communication is one of the things I am most passionate about.
- I see it as a fundamental part of my role to ensure that the community understands how and why the Supreme Court makes the decisions it does.
- This includes writing clear judgments with plain language and preparing judgment summaries.
- It also includes finding ways to make our Court and its work more accessible to the community.
- One of the most unexpected things I have done as Chief Justice is to make a podcast.
- We launched *Gertie’s Law* in March this year.
- We felt relatively confident it would be well received by the legal profession.
- But we were less certain how our intended audience – the community – would respond to it.
- We made *Gertie’s Law* to help unravel lesser-known, complex or misunderstood aspects of the Supreme Court’s work in an easily digestible format.
- I was not sure whether the judges of our Court would want to be involved.
- But it worked.
- The judges spoke clearly, sometimes with legal gravitas, sometimes with humour.
- *Gertie’s Law* has now been downloaded over 160,000 times, and the feedback has been overwhelming.

- As one person said:

'I never thought I'd enjoy learning about this topic but I couldn't speak higher of this podcast'.

- And this, in a hand-written card from a woman in Brisbane:

'I'm over 50 years old and have never been to university. I'm so interested in law but not confident enough to study it.

I was touched by how much the Court shared. Those smart, educated people made me feel welcome'.

- Gertie's Law worked because we applied a few basic principles of communication practice.
- First, we identified our audience, and tried to understand them more.
- Who are they, how many of them are there, and where do they come from?
- We thought about it from their perspective.
- Second, we focused on the point we wanted to make: that there was more to the Court than met the eye; more than what people read in the media.
- We then confined ourselves to that point, trimming the fat and leaving out anything that was not necessary.
- And finally, we used language, structure and a medium that helped us reach people in a way that they understood.
- It was heartening to see and hear the responses from our intended audience.
- Most of you here tonight will, of course, have heard this sort of thing before.
- But I believe it bears constant repeating.
- Thinking about your audience, focusing clearly on the point you want to make and getting the language, substance and structure right.
- From the Court's perspective, it is important that people understand what we do, so they can be confident that decisions are fair and just.
- In short, it helps to build trust in the courts, which are a vital part of our democratic society.
- But good communication is equally important for you as law students, academics and lawyers, albeit for different reasons.
- So – what is good communication?
- In the words of Jack Kerouac:

'One day I will find the right words, and they will be simple'.

- The challenge, as we all know, can be finding the right words.
- What I have found is that great communicators are clear thinkers.
- They consider the point they want to make and the language and structure that will best suit their audience.
- In some cases, excellent communicators are born.
- But for the most part, they are made.
- As with any skill, good communication can be learned.
- The best advice I ever heard about communication was, fittingly, communicated with remarkable clarity.
- The advice was to ‘be well structured, use simple language and short sentences’.
- It reminded me of a quote attributed to James J Kilpatrick, an American columnist and grammarian, who said:

‘Use familiar words – words that your readers will understand, and not words they will have to look up.

No advice is more elementary, and no advice is more difficult to accept.

When we feel an impulse to use a marvellously exotic word, let us lie down until the impulse goes away’.

- Verbosity does not fool a judge.
- In my experience, Counsel’s strongest points are often expressed simply, in a way that is both logical and precise.
- A great example of simple, clear legal communication comes from *Donoghue v Stevenson* [1932] AC 562 in which the ‘neighbour principle’ was laid down.
- Lord Atkins described the duty of care in these terms:

‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour’.
- Lord Atkins went on to describe in simple terms who in law is a neighbour.
- As you would all know, Lord Atkins’ words provided the foundational and conceptual cornerstone for the development of the law of negligence in the twentieth century.
- Just by looking at that simple principle, we see that clear, concise legal communication is far from a modern concept.
- But why is good communication so important, and what does it achieve?
- To answer that question, we need to look at what happens when we do not communicate well.

- In my view, many misunderstandings and mistakes are the result of poor communication.
- It can create unnecessary angst and lead to inefficiencies.
- In the context of legal proceedings, it can lead to unnecessary expense.
- By contrast, good communication leaves no-one surprised and encourages respectful relations between individuals and organisations.
- It is also more likely to persuade and influence.
- If you are here tonight, chances are you know how important effective communication is.
- In the law, being able to make yourself understood is a critical skill.
- Without it, you are likely to struggle.
- In my role, it is important that I make the Supreme Court's work understood.
- In your roles, it is equally important.
- You have readers, students, clients, colleagues and judges to inform and persuade.
- And I want to challenge you to go away from tonight asking yourselves how well do you communicate? Can you be more effective?
- Read everything you write and question, question, question.
- Who is your audience? Have you distracted your reader with complicated prose? Have you got things in the right order?
- In an age when we are bombarded by words and information, clear communication is more necessary now than ever.
- Writing with precision, saying exactly what you mean, is critical.
- Because that is how we influence, develop understanding, and bring about change.
- Thank you.

The Hon. Chief Justice Anne Ferguson
21 November 2019