

Judicial College of Victoria: Introduction to Human Rights

Seminar

19 February 2007

State Library Theatrette

Opening Remarks: the Hon the Chief Justice Marilyn Warren AC

Let me repeat a statement from the report of *the Human Rights*

Consultation Committee chaired by Professor George Williams:¹

After six months of listening to Victorians of all ages and backgrounds across the State, it is clear that a substantial majority of the people we heard from want their human rights to be better protected by the law. While Victorians do not want radical change, they do support reform that will strengthen their democracy and Victoria's system of government. In this area, they see Victoria playing a leading role among the Australian States.

The Committee continues:²

Many people want to see their human rights better protected to shield themselves and their families from the potential misuse of government power. For even more people, however, the desire for change reflects their aspiration to live in a society that continues to strive for the values that they hold dear, such as equality, justice and a 'fair go' for all.

The idea of a community based upon a culture of values and human rights is one that we heard again and again during our consultations. Victorians sought not just a new law, but something

¹ The Human Rights Consultation Committee, Parliament of Victoria, *the Report of the Human Rights Consultation Committee* (2005), ii.

² Ibid.

that could help build a society in which government, Parliament, the courts and the people themselves have an understanding of and respect for our basic rights and responsibilities.

Law reform through populism is controversial. That said, the extensive consultation process engaged in by the Human Rights Consultation Committee in many respects proposes no more than a charter of human duties, many of which already exist within the criminal law in particular and the common law in general.

The *Charter of Human Rights and Responsibilities Act 2006* states principles that are largely well enshrined in our law. It is timely to visit the preamble of the Act:

On behalf of the people of Victoria the Parliament enacts this charter, recognising that all people are born free and equal in dignity and rights.

This Charter is founded on the following principles-

- human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom;
- human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community;
- human rights come with responsibilities and must be exercised in a way that respects the human rights of others;
- human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

Victoria is the first Australian State to enact a human rights charter. We know of the experience of the Australian Capital Territory.³ Overseas, we are informed by the jurisprudence of the United Kingdom,⁴ Canada,⁵ New Zealand,⁶ the European Union⁷ and Hong Kong.⁸ There is also the American experience of the interpretation of the Bill of Rights.⁹

This is not an occasion to debate the rights or wrongs of a rights charter. It is our function, as the judiciary, and as the third arm of government, to interpret and apply these new laws.

On reflection, most of us have considered and determined a human rights case. We might need to rule upon public interest immunity about important medical records; determine the impact of the lack of legal representation upon the prospect of an accused person receiving a fair trial; rule upon whether a record or interview of an accused has been conducted fairly; or determine whether there has been discrimination or

³ *Human Rights Act 2004 (ACT)*.

⁴ *Human Rights Act 1998 (UK)*.

⁵ *Constitution Act 1982, sch B Canadian Charter of Rights and Freedoms (Canada)*.

⁶ *Human Rights Act 1993 (New Zealand)*.

⁷ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950 (entered into force 3 September 1953).

⁸ *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (China) (1990 - 1997)*.

⁹ *United States Constitution*, amend I-X.

racial vilification in the context of citizens going about their daily lives.

Many of the female judicial officers present today may have encountered discrimination on the basis of sex either by way of determination of a dispute or even at a personal level.

But now we have the Victorian *Charter of Human Rights and Responsibilities*. We, as the judicial officers of the state of Victoria, stand here today and revisit the experience of childhood. I am sure that all of us might recall an occasion as a young child when we stood at the edge of the deep end of a swimming pool, took a deep breath and jumped in. For others, it might have been the experience of standing at the base of a tall tree and climbing up to a branch that had never been reached before, high above the ground. These types of childhood experiences can be extrapolated to the prospect that we now face. We have before us a whole new jurisdiction. We, as the judiciary of Victoria, have before us the opportunity to take the common law, foreign jurisprudence and every ounce of our intellectual capacity to develop the first Australian jurisprudence of human rights law. It is a moment of excitement and exhilaration but also one of trepidation and reservation.

However, the Judicial College of Victoria has seized the moment in judicial education in this State by providing a carefully considered programme to enable each judicial officer to participate in the development of Victorian jurisprudence in human rights law. Today marks the launch of that programme. We are indeed privileged by the presence of Sir Gerard Brennan, eminent jurist and Dr Julie Debeljiak as we embrace the opportunity provided by this new jurisdiction across all levels of justice in this State: the Supreme Court, the County Court, the Magistrates' Court and the Victorian Civil and Administrative Tribunal.

There will be no escaping the Human Rights Charter. As recently as January this year the Supreme Court was called upon to rule upon a charter issue in a murder trial in the Supreme Court. In the words of the President of the Court of Appeal, Justice Maxwell:¹⁰

[H]uman rights should not be seen as a special subject. Rather, it should be seen as informing almost everything which lawyers, and courts, do. What the courts do, every day, is to make decisions which affect human rights. This is true not only of the substantive rights which fall for decision but also of procedural rights, typified by the presumption of innocence and the right to a fair trial which are distinctive of our criminal justice system.

¹⁰ The Hon. President Chris Maxwell, 'Human Rights: A View from the Bench' (Address to the Annual General Meeting of the Administrative Law and Human Rights Section of the Law Institute of Victoria, Melbourne, 26 October 2005).

On behalf of the judiciary of Victoria I convey deep thanks and appreciation to the Executive Officer of the Judicial College of Victoria, Ms Lyn Slade and her staff. The programme over the year 2007 will be exhilarating and informative. The College has engaged international speakers and provided a programme of workshops to assist all of us in the new jurisdiction that lies before us. Come with me on a truly remarkable journey.

In launching the programme created for us by the Judicial College of Victoria, we are indeed very privileged to have as our first keynote speaker the Hon. Sir Gerard Brennan, former Chief Justice of the High Court of Australia.

In 1976 Sir Gerard was appointed as a judge of the Australian Industrial Court, a judge of the Supreme Courts of the Australian Capital Territory and the Northern Territory, the President of the Administrative Appeals Tribunal and Administrative Review Council. He was appointed one of the foundation judges of the Federal Court in 1977. Hence, Sir Gerard Brennan has had the benefit of sitting in all jurisdictions including trials at first instance and upon administrative tribunals. Sir Gerard was appointed a justice of the High Court of Australia in 1981. He was appointed Chief

Justice of Australia in 1995 and retired in 1998. He is currently a non permanent judge of the Court of Final Appeal of Hong Kong.

The judgments of Sir Gerard Brennan are well known to all of us. One need only think of his role in the High Court judgments in *Mabo*¹¹ and *Wik*¹² and also his capacity to inform jurisprudence when in dissent. His judgment in *Edwards*¹³ concerned with consciousness of guilt regularly falls before the judicial mind when dealing with that difficult topic in the immediacy of the criminal trial. In the commercial context the principles stated in *Walton Stores v Maher*¹⁴ inform our jurisprudence on promissory estoppel on an almost daily basis.

Would you join me in welcoming to our podium the Hon. Sir Gerard Brennan.

¹¹ *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

¹² *Wik Peoples v Queensland* (1996) 187 CLR 1.

¹³ *Edwards v The Queen* (1993) 178 CLR 193.

¹⁴ *Walton Stores v Maher* (1987) 164 CLR 387.