

# REFLECTIONS OF A SOLICITOR ON THE SUPREME COURT BENCH\*

*By Emilios Kyrou, Justice of the Supreme Court of Victoria*

These are my reflections as a solicitor on the Supreme Court Bench for just over a year.

From the initial approach by the Attorney-General's office to the appointment by the Governor in Council, the process of judicial appointment takes approximately four weeks. The appointment is approved by Cabinet and is formalised by an Order in Council.

My seven day notice period at Mallesons was very tight and physically exhausting. It was also quite exhilarating due to the avalanche of congratulatory telephone calls, letters and emails I received.

## **First impressions**

When I eventually joined the Court on 13 May 2008, I had a great sense of relief and anticipation. Any apprehension I had was immediately dispelled by the warmth of the welcome I received from the Chief Justice and the other judges of the Court. The initial introductions and well wishes were followed by individual judges visiting my chambers in the ensuing days to see how I was going and to offer assistance. Everyone made time for me when I needed guidance. I benefited greatly from the Court's open door policy.

The Court has a useful induction program which took up most of the first week. It also has a mentoring system. I was fortunate to have Justices Kaye and Ashley as my mentors. Both of them were very helpful in the initial few months and they continue to give generously of their time.

My transition to the judicial role was also made much easier by the fact that a bright young solicitor who worked with me at Mallesons, Howard Choo, and my personal assistant of 11 years, Yve Williams, followed me to the Court and became my associates. Having a trusted and reliable team around you is invaluable at a time of significant change.

However, the single most important factor in ensuring that my transition from solicitor to judge went smoothly was the friendly and collegiate culture of the Supreme Court. This culture pervades all levels of the Court, from the judges and the associate judges, to the associates, tipstaves, registry staff, library staff, CEO's staff and so on. It is a very positive working environment with a commitment to team work and a deep sense of community service. This culture is a key strength of the Court.

The Chief Justice has worked hard to achieve this culture and is committed to maintaining it. She has an inclusive and consultative style and encourages judges to discuss issues freely and offer new ideas.

I am very grateful to the Chief Justice for being personally involved in my induction process, in the selection of my mentors and in generally easing me into the role of a judge.

What makes the first two weeks following my appointment to the Bench particularly memorable are the swearing in ceremony at Government House and the Welcome ceremony in the Banco Court.

I was sworn in on 15 May 2008. The Chief Justice, the President of the Court of Appeal and the Solicitor-General attended the ceremony as well as my family. It may be of interest for you to know that apart from the Oath of Allegiance to the Queen and the Oath of Office as a Judge, new judges also take the Oath of Office as Administrator or Governor's Deputy. The oath is in these terms:

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\* This is an edited version of a speech delivered at the annual dinner of the Society of Notaries of Victoria, 20 June 2009.

*I swear by Almighty God that if and whenever, having become Administrator, I assume the administration of the Government of the State of Victoria or am appointed the Governor's Deputy, I will in administering the Government as Administrator or in acting as the Governor's Deputy, well and truly serve Her Majesty Queen Elizabeth the Second and Her Majesty's heirs and successors and do right to all manner of people after the laws and usages of the State, without fear or favour, affection or ill-will.*

This is clearly a very important role. However, as I am 36<sup>th</sup> in the judicial order of seniority, it is unlikely I will be called upon to administer the State any time soon.

My Welcome took place on 22 May 2008. Both the Bar and the Law Institute said some nice things about me on that occasion. My relationship with both sides of the profession has continued to be very cordial and this has also made my transition to judicial office relatively easy.

### **Hearing cases**

My greatest apprehension about becoming a judge concerned the procedures for conducting hearings and making rulings on objections to the admissibility of evidence. Although I had attended hundreds of hearings as instructing solicitor for over 20 years, I had not paid that much attention to the procedures and protocols governing hearings. As for the rules of evidence, like all solicitors, I had tended to rely on counsel.

Before conducting my own hearings, the Chief Justice suggested I sit on the Bench with other judges to observe how they conducted their hearings. I welcomed this opportunity and sat with other judges on three occasions. The experience was illuminating. I was able to observe the process from the perspective of the judge and test my ability to follow the events in the court room, listen to evidence and submissions, look at exhibits and take notes. I was able to form my own views on the best way to manage a trial.

As a result of this experience, when the time came to sit on my first trial on 20 May 2008, five days after being sworn in, I found it relatively easy. The reality is that with a good associate and experienced counsel, the administrative aspects of the Court processes usually run smoothly with little intervention by the judge. Also, with thorough out of court preparation by the judge, the in court processes overall tend to be very manageable.

I provided very positive feedback to the Chief Justice about the benefits of sitting with an experienced judge and she has given judges who have been appointed after me the opportunity to sit with other judges before conducting their first trial.

Mastering the rules of evidence takes longer than mastering court processes. The first book I bought with my judicial library allowance was the 1,382 page hardcopy of *Cross on Evidence* and I began reading it immediately. I was surprised to find that although I had not had the need to look at some of the rules of evidence – particularly those relevant to criminal trials – since I studied the law of evidence at University in 1981, I was able to recall many of the principles and leading cases.

It also assisted my transition that the Chief Justice allocated me to the Common Law Division and ensured that the first matters that were listed for hearing by me were judicial review cases and appeals from VCAT. In dealing with these initial cases, I was able to draw on my expertise in administrative law and did not need to make any rulings on evidence because they involved questions of law only.

Within a few weeks, I began to hear a variety of civil cases, including witness trials, and had to make immediate rulings on objections to questions being put to witnesses, objections to parts of affidavits and objections to the admissibility of documents. This proved less difficult than I had expected

because of the reading I had done and because the rules of evidence, while complicated, tend to reflect common sense and fairness.

### **Variety of cases**

The cases I have heard in the last year have included an application for an extension of time under the *Limitation of Actions Act*, an application for a non-custodial supervision order under the *Crimes (Mental Impairment) Act*, an application by a vexatious litigant for leave to commence a proceeding, a substantial commercial dispute between energy companies, several applications raising points of practice and procedure, several property-related applications dealing with caveats, restrictive covenants and trusts, several appeals from the Magistrates' Court under the *Road Safety Act* and *Accident Compensation Act*, appeals from VCAT involving equal opportunity, freedom of information, commercial and planning matters, judicial review applications relating to parole, medical panel and professional disciplinary body decisions and prosecutions for contempt of court. At the end of last year, I was given an opportunity to conduct a personal injury trial with a jury but the case settled before the jury was empanelled.

I have sat in the Practice Court on three occasions and am currently completing a two month rotation in the Court of Appeal as an additional Judge of Appeal.

The large variety of cases that come before the Supreme Court is one of its greatest attractions. The opportunity given to judges to hear different types of cases adds enormously to their job satisfaction.

Some cases are enjoyable because they involve in-court drama and excitement, while others involve novel and interesting legal issues and provide the judge with an opportunity to contribute to the development of the law. The latter is certainly the case with proceedings in the new Judicial Review and Appeals List that commenced on 1 January 2009. Justice Cavanough and I are the judges in charge of that List.

### **Judgment writing**

Writing judgments has proved less difficult than I had expected. There are probably two main reasons for this. The first is that I have written two books and numerous articles over the years and enjoy legal writing. Secondly, in the 10 years prior to my appointment, I had developed a large advisory practice and was accustomed to writing at least one major letter of advice per week on various areas of the law.

A major difference between a letter of advice and a judgment is that the former attempts to predict how a judge will decide an issue whereas the latter decides the issue. A judge cannot simply analyse what is arguable but must decide whether the argument is legally sound. That process requires intellectual rigour and is undertaken with a deep sense of responsibility.

Despite the heavy responsibility, I enjoy writing judgments. There is an enormous feeling of relief and achievement when a judgment is handed down.

### **Judicial life**

I have often heard it said that judicial life is lonely. After a year in the role, my view is that being a judge does not necessarily entail a lonely and isolated existence. By its nature, the judicial role facilitates loneliness for a judge who wants to be lonely. However, for a judge who wants to be active within the Court, the profession and the wider community, it offers tremendous opportunities for engagement.

I have not felt either lonely or isolated in my role as a judge. I have constant interaction with my two associates on a daily basis and regular interaction with judges whose chambers are close to mine. I am

a member of a number of internal Court committees which meet regularly and attend meetings of the Council of Judges every month. I am also a member of the Council of Legal Education.

The Court often invites guest speakers to address judges either at lunch time or in the evening. The Judicial College of Victoria and the National Judicial College of Australia conduct seminars throughout the year which are not only educational but also provide opportunities to mix with judicial officers from within Victoria and interstate. The Law Institute and the Bar also invite judges to educational and social functions.

I am very conscious of the need to keep in touch with the profession and the community and actively participate in various events, including moots for young lawyers, hosting visits to the Court by students, visiting schools, and speaking at functions organised by the profession. I am more engaged with the profession and the community now than when I was in practice.

### **Use of solicitor's skills**

As a solicitor, I was under some initial disadvantages in my role as a judge. They included not being up-to-date with Court procedures, the rules of evidence and some protocols as between counsel and between counsel and the Bench. I was also not familiar with the personalities of many of the barristers who appeared before me and did not have a personal library. However, these disadvantages have faded over the last 12 months and are no longer of any practical significance.

On the positive side, I have been able to use some of the skills I acquired as a solicitor. Most of these skills were developed in the context of the fiercely competitive market for solicitors' legal services. They include a sense of urgency in completing work, a keen awareness of client service, a flexible and down-to-earth approach in dealing with lay people and a simple and succinct writing style that they can understand.

All of my letters of advice contained an executive summary commencing on the first page so that clients could immediately see my conclusions. I have adapted this practice to my judgment writing. The introductory part of my judgments also contains a summary of my conclusions, usually on the first page.

I am pleased to say that other judges often ask me about the solicitors' perspective on various issues relating to the profession and the functioning of the Court. This is part of the inclusive culture that I have already spoken about.

### **Concluding comments**

I have to confess that at the time of my appointment to the Bench, I was apprehensive about how things would work out. However, this apprehension was dwarfed by the tremendous excitement I felt and the great expectations I had about the role.

A year later, the apprehensions are gone and my great expectations have not only been fulfilled, they have been exceeded.

The Supreme Court is a great court with a well deserved reputation for independence, fairness, integrity, excellence and community service. I am proud to be one of the judges of the Court. It is a privilege to have a job that is valued by the community and personally very satisfying.