

CEREMONIAL SITTING OF THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA

FOR THE HON. JUSTICE MORDECAI BROMBERG

AT MELBOURNE

ON FRIDAY 17 NOVEMBER 2023

Speech by Róisín Annesley KC, Vice-President of the Australian Bar Association

May it please the Court. I appear on behalf of the Australian Bar Association to recognise your Honour's enormous contribution to the law over forty years, and more particularly as a judge of this Court. The President of the Australian Bar Association, Mr Peter Dunning KC, regrets that he is unable to be here, and has asked me to extend to you his very best wishes.

As the Attorney-General has outlined, your Honour's contribution to industrial and employment law has been exceptional. In this area, your Honour is widely regarded and respected as the most experienced judge on the Court, and your departure will be a significant loss to the Court, the law and the profession as a whole.

The industrial law bar, although encompassing a national practice, is generally a fairly small one. One could say, a closed shop. Whilst in most areas of the law, barristers are prepared to, and indeed, expected to act for both sides, plaintiff or defendant, turn and turn about, this is not the case in the often hotly-contested area which occupies the industrial law. In industrial law, one must choose a side, either union or employer. Perhaps stemming from your Honour's childhood influences, your early days in the law at Slater & Gordon, or your lifelong interest in social justice, your Honour has always been on the side of the unions.

Notwithstanding the partisan nature of lawyers in industrial law, your Honour was highly regarded by both sides at the bar table for your intellect, your court craft, your sensibility, your capacity for hard work, and your good manners. As evidence of the high esteem in which your Honour is held, Malcolm Harding SC tells me that when he sent a note to members of the Industrial Bar Association advising of today's ceremony, the first email in response described your Honour as "a giant of our area of practice". This email was from Stuart Wood KC, a man perhaps slightly further right politically than your Honour, and one who never appears for unions.

Malcolm Harding had the dual pleasure of being your Honour's junior and appearing before you on many occasions. Malcolm describes your Honour's approach to every case, both at the bar and on the bench, as follows: "His Honour was always actively interested in the issues. He liked to solve a problem. He mainly did this by getting to the nub of it, turning it on its head, and then turning it around six different ways." At the bar, it meant that Malcolm always went into conferences with you quietly confident that he had the case figured out, only to be flummoxed when your Honour, with a far more creative approach, would turn the

issue on its head and come at it from a different angle completely. A very uncomfortable position for most juniors.

On the bench, your Honour's approach to an issue usually led to a request for further submissions from the parties, just when they thought the case was over.

Your Honour's approach to problem-solving bespeaks a deep consideration and understanding of policy, statute and the issues at hand. You were never afraid to question the status quo. You were courageous in pushing boundaries.

Time does not permit me to traverse the many landmark decisions of your Honour's tenure on the bench. Of note, perhaps, is the decision of *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment*. The applicants in the case were eight Australian children. In short compass, the children sought a declaration that the Minister for the Environment owed them a duty to take reasonable care to not cause them and other children personal injury while exercising her powers under ss 130 and 133 of the *Environment Protection and Biodiversity Conservation Act*.

Although overturned on appeal, your Honour's reasons were treated with a considerable degree of respect by the Full Court. Moreover, if the social media pages of the eight applicants and their multi-thousand follows are anything to go by, your Honour, in one decision, won over a whole generation of young Australians. It is fair to say that some regarded Justice Mordy Bromberg as a real-life superhero.

On the occasion of your Honour's appointment to the bench, you gave three reasons for accepting your appointment. Since that December morning in 2009, your Honour has been committed to ensuring that your actions matched and fulfilled those reasons. Over the past 14 years, your Honour has maintained a fervent passion for the rule of law; been a leading jurist across the complex and large terrain of this court, particularly in the area in which you have made lifelong contribution, industrial and employment law; and ensured as far as practical that those seeking justice were able to access it in this Court.

No doubt your Honour's commitment to exploring ways in which our legal system can be improved, as well as its boundaries, will be at the forefront of your Honour's mind and daily work in your new role as President at the Australian Law Reform Commission.

I am confident that others today will tell of your Honour's stellar football career with St Kilda. Without descending to the stats of your Honour's on-field performance, I understand that your Honour was secretly pretty chuffed when, many years after you had hung up your football boots, your colleagues at the bar stumbled across the Scanlens footy cards for St Kilda circa 1981, in which your Honour appeared considerably more hirsute, and with a mop of dark, curly hair. Your Honour feigned embarrassment when your colleagues pinned the card to the wall of your regular coffee haunt.

As the Attorney-General alluded to, your passion for mountain biking is well-known. I am reliably informed that a base level of fitness for cycling was a prerequisite for employment as an associate to your Honour, although I am also reliably informed that notwithstanding the disparity in years between your Honour and your Associates, you could beat them uphill every time.

On behalf of the Australian Bar Association, may I congratulate your Honour on an outstanding judicial career. May I thank you for your selfless service to the administration of justice and wish you every success and happiness in your new role as President of the Australian Law Reform Commission. May it please the Court.