

**ADDRESS ON THE RETIREMENT OF
THE HONOURABLE JUSTICE VIRGINIA BELL
BANCO COURT, SUPREME COURT OF NEW SOUTH WALES
19 DECEMBER 2008**

It is singularly fortunate in any personal journey to meet someone who simply lights up your life. Virginia Bell is such a person. You have done it for me and I am quite confident in saying that you have done it for every other member of this Court.

I wish at the outset to acknowledge on behalf of us all what a wonderful companion you have been. Not least because of your influence on all of us over the last nine years, the sense of collegiality to which you have made such an important contribution will endure. It may well be the case that where you are going the need for companionship is greater than ours. We are content to make that sacrifice.

Your contribution in this respect was to a substantial degree determined by your personality – your equable temperament, your interest in people, your broad range of interests, your penetrating intelligence, your wit and your wisdom.

You have long been the preferred commentator at all those collegial events such as dinners and celebratory occasions by which the members of any institution strengthen their bonds with each other. Your command of the language manifest on those occasions was as mellifluous as it was concise. The penetrating insights and the wit with which you always addressed us was characterised by a generosity of spirit. Your wit is never demeaning of others, it contains no needle, no undertones, no standing on dignity. It is, as one poet put it, “mirth that has no bitter springs”.¹

All the personal qualities to which I have referred were reflected in your judicial work where you manifested the generosity and fairness of someone who knows her roots and who is confident in her intellectual capacity. Your conduct in court was unfailingly polite. You brought to your work a high level of social consciousness, compassion for the unfortunate and a strong sense of justice, whilst recognising that those instincts could only be properly expressed within the bounds of fidelity to the law. If there was one word I would use to describe your approach it is “balanced”. Furthermore, your judgments reflect an exquisite

ability to cut incisively to the real point in issue. And you do it every time.

Over eight years as a trial judge and one year as a judge of appeal you have been involved in some of the most difficult cases which have come before the Court. The competence with which you have disposed of all of these cases is admired by all of your colleagues.

One case that comes to mind took the best part of a year in the high security court at the Downing Centre. It involved multiple murders in a family dispute, with four co-accused tried together. Few judges could have done this successfully.² This was only one of numerous criminal trials that you conducted to universal acclaim.

Your Honour also delivered landmark judgments on such matters as the validity of an indictment not signed by a Crown Prosecutor;³ on the failure to pay group tax deductions as defrauding the Commonwealth;⁴ the pioneering judgment on the application of the new system for detaining serious sex offenders

after their sentence had been served;⁵ and the applicability of the privilege against self-incrimination in the Coroners Court.⁶

Perhaps the judgment that stands out for me, and which has been relied upon in every subsequent case in the field, is your exposition of the structure of the Commonwealth Criminal Code. You accurately converted into a format capable of use, and even into a format capable of explanation to a jury, the convoluted circularity and cascading definitions of the criminal responsibility provisions of that Code, which deploy words in a manner hitherto unknown in the history of the English language. Subject to those provisions being amended, we will be forever in your debt in this respect.⁷

Your Honour also delivered important judgments in civil matters such as a medical negligence case where a doctor had not informed a woman that her husband had AIDS.⁸ And, in a fine example of the common law adapting to contemporary circumstances, your Honour held that it was not defamatory in this day and age to accuse a person of engaging in homosexual intercourse.⁹

As a trial judge and in the Court of Appeal your Honour became involved in the full range of this court's jurisdiction, particularly at common law. To the depth and intensity of your experience in criminal law as a practitioner, your years as a judge added breadth to your legal knowledge.

I was aware at the time of your elevation to the Court of Appeal, reinforced at the time of the announcement of your elevation to the High Court, that you are acutely conscious of the fact that your legal experience has primarily been in criminal law. Let me assure you that this is not a weakness but a strength, as the Commonwealth Attorney-General emphasised when announcing your appointment.

Every judge of this Court and, I have reason to believe, every judge in other Australian jurisdictions, who sits in criminal trials or on a Court of Criminal Appeal welcomes the appointment to the High Court of someone with your criminal trial experience and expertise.

One of the most significant developments in the Bar over recent decades has been the increased specialisation of legal practice, particularly in the field of crime where practitioners these days generally either do none, or do nothing else. The days of generalist practice, when most senior members of the Bar did a significant amount of criminal trial work, are gone.

If the High Court is to have judges with real experience of criminal trials then contemporary appointees will all have a background that is significantly specialised in that field. I assure you that your Honour's appointment is welcomed for this reason.

Your Honour had a unique Sydney upbringing. During your childhood years your naval officer father served as the General Manager at Garden Island. Your family lived in a house on the base. You and your brother were the only children on the island and had a unique, in the strict sense, Sydney Harbour frontage experience of exploring the rocks and waters with which you were surrounded.

As the only girl on the island you acquired some of the popularity of *The Daughter of the Regiment* and, as with Marie in Donizetti's Opera of that name, it has transpired that you are of aristocratic blood.

It is, therefore, appropriate for me to conclude with two lines from the most famous aria of that Opera, an aria which has been called the "Mount Everest" for tenors as it features nine high C's. I do not propose to sing the lines.

Ah! mes amis, quel jour de fête?

Ah! my friends, what a day of celebration?

In view of our prospective relationship it is also appropriate to mention the next line.

Je vais marcher sous vos drapeaux.

I shall march under your flags.

So be it.

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- ¹ Rudyard Kipling *The Childrens Song*.
- ² See *R v Darwiche & Ors* [2006] NSWSC 1167. See also *R v Darwiche* [2006] NSWSC 848, 878, 922, 923, 924, 926, 927, 928 and 929.
- ³ *R v Halmi* (2005) 62 NSWLR 263.
- ⁴ *R v Iannelli* (2003) 56 NSWLR 247.
- ⁵ See *R v Tillman* [2007] NSWSC 528; *Attorney General for the State of NSW v Tillman* [2007] NSWSC 605.
- ⁶ *Correll v Attorney General of NSW* [2007] NSWSC 1385.
- ⁷ *R v Sengsai-Or* (2004) 61 NSWLR 135.
- ⁸ *BT v Oei* [1999] NSWSC 1082.
- ⁹ *Rivkin v Amalgamated Television Services Pty Ltd* [2001] NSWSC 432.