

Refugee Legal:

Address for Justice Anthony North's Farwell Ceremony

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May it please the Court; I join in acknowledging the Traditional Owners and Custodians of the land on which we meet - the Peoples of the Kulin Nation - and pay my respects to their Elders, past and present.

I am truly honoured to be addressing this Court for Your Honour's farewell, on behalf of the Law Council of Australia and the Law Institute of Victoria. For Your Honour, it is clear that the law, at its heart, is a social instrument. A social instrument that not only can, but must, seek to do justice. For Your Honour, it also is clear that judicial decision-making is not merely a theoretical or technical exercise. It must respond meaningfully – and with flexibility - to the plight of people, whatever their station – and regardless of their race, their religion, their political opinion, membership of a particular social group, or their nationality.

I will briefly focus on your extraordinary contributions in refugee law: an area in which the ideas, the spirit, the values and the actions which are the golden threads of your brilliant judicial career are exemplified. I know I speak for so many in saying that Your Honour's contribution and achievements have been momentous.

Which brings us to events that unfolded in August and September 2001 in waters north -west of mainland Australia. Notoriously, 433 mainly Afghan people seeking asylum, en-route to Australia by boat, were rescued by a Norwegian cargo vessel – *the MV Tampa*. The Government refused the vessel, and its people, permission to enter Australia. These men, mostly fleeing the Taliban's violence and tyranny, were transferred by Australian troops to a naval vessel.

The matter soon reached Your Honour's bench. The legal challenge on behalf of the asylum seekers was heard amid a public atmosphere of fear and political hostility toward those seeking safety. We were told they were not people *with* problems, but people who *were* a problem. At the hearing, Counsel for the Commonwealth, the then Solicitor-General David Bennett QC, submitted that they were not detained or falsely imprisoned because they were free to go anywhere in the world except one place - Australia. At hearing, Your Honour famously referred to this as the "cruise ship" argument. Judgment was delivered on the morning of 9/11, finding that the asylum seekers had been detained and expelled unlawfully, and ordering that they be released and brought to Australia. Despite the Full Court overruling by majority (Chief Justice Black dissenting), some fundamental points stand.

Your Honour's judgment represents a classic example of fine legal reasoning, in which you applied orthodox methods and sources to unorthodox circumstances. It also epitomises an approach determined to consider these people not primarily *as* problems – but people *with* problems; with a case to be heard: people who have rights to be enlivened and who may well engage our protection obligations enshrined under international and domestic law. Laws with a protective purpose. Your judgment stands as a model of judicial courage at a moment of national crisis.

Your Honour's work has also been underpinned by a passionate commitment to the principle of a fair hearing as part of the very fabric of the law. Your vision here has been expansive. As observed by others today, this interest drove you to expand the parameters of a hearing beyond slavish adherence to technical rules, to demonstrate how the Courts could and should engage meaningfully, with understanding and respect to all. Faced with unrepresented asylum seekers who felt that they had not been heard by the Tribunal, on more than one occasion you Honour has examined the audio recordings, finding serial ridicule and belittling of an applicant amounting to a denial of procedural fairness and apprehended bias.

These are, of course, profoundly important decisions; the gravity of what's at stake cannot be underestimated. They frequently involve no less than genuine threats to life or liberty. Correspondingly, you have consistently approached these matters with utmost seriousness. As Professor James Hathaway has stated: "you epitomize the humanist jurist who cares as deeply for the subjects of law as for its rules."

At the heart of Your Honour's approach has been a rigorous application of traditional tools and principles of the law which can and should achieve just outcomes for all – including the most vulnerable and marginalised within our community. Time after time we have seen your judgments demonstrate the truth of this: the capacity of the law to be a bastion of protection and hope in the face of Executive overreach, underpinned by a conviction that the true test of the law as a social instrument is that it does not just serve the powerful and the privileged, but that all, including those on the margins, are on equal footing before the law. No matter who you are or where you're from.

Your Honour has elevated the judicial role well beyond daily decision-making in two key areas, both refugee-related: legal education, and international judicial leadership. They both reflect an enduring enthusiasm for the rule of law, borne of the belief in its capacity to do justice.

This is evident in your deep interest in legal education. You have been enormously supportive of refugee law students, and by all accounts, you have an extraordinary gift for teaching and engaging law students, including holding moot trials at law school. I've had the privilege of speaking with Your Honour in one of these classes, held in the Tampa Court, where you offered riveting insights into the anatomy of the law in action. It comes as no surprise that some have reportedly described Your Honour's classes as their "best experience in law school." You have, put simply, inspired a generation of law students.

Your Honour has also made an extraordinary contribution to the development of refugee law and decision-making beyond our boundaries. As President of the

International Association of Refugee Law Judges for eight years, Your Honour engaged, almost single-handedly, in a remarkable transformation of a notoriously Eurocentric Association, into one with genuine regional diversity, inspiring active participation from Asia, Latin America and particularly Africa. One tangible result, and a source of great personal pride, was the creation of what's now a dynamic Africa Chapter – a not insignificant development given Africa is where most refugees on the planet are produced, received and reside. Your leadership in expanding resourcing and mentoring of judges across the globe is testament to your unwavering dedication to a principled and genuinely international approach to refugee protection.

I will conclude with one of the refugee cases which I know to be most important to Your Honour, the case of X and Y of 1998. An urgent injunction was brought by lawyers for two unaccompanied Kenyan boys - aged 15 and 16 - who had been refused refugee protection and removed before the time limit to appeal had expired. There were still fears for their safety. The case came to Court with the boys already aboard a plane in the air heading for Singapore. Her Honour Debbie Mortimer was Counsel. Under threat by Your Honour that you would order the Singapore Airlines plane be turned around, an agreement was struck that the boys would receive legal advice in Singapore, and be brought back to Australia. Soon afterwards, they were returned here.

The Commonwealth then proceeded to take every legal point under the sun. On one of these points, the late, great Ron Castan QC was brought in for the boys. Eventually they prevailed. In the meantime, both boys fell madly in love with Geelong girls. They married and later became Australian citizens. The case has assumed such importance for Your Honour, I think, because it illustrates how the law can respond flexibly and justly to such a compelling human plight. But it also reveals Your Honour's driving generosity of spirit, his deep interest in and empathy with those before him.

There may be many measures of a judicial career. To my mind the greatest is the extent to which even the most vulnerable, the most marginalised – including those with unpopular causes – are meaningfully listened to and heard, treated with respect and dignity – and given justice. That’s the true test. Your Honour, the legacy you leave is profound. It will endure. It will inspire others to meet that measure. And in doing so, to follow the path in which you have changed the course of so many lives immeasurably for the better.

May it please the Court.