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ON HIGH

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The Hon. Michael Kirby AC CMG

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Michael Kirby*

Retirement? What a joke. When people ask me how I am enjoying it, I tell them that I’ll let them know when I come across it.

Under the Australian Constitution, judges of the High Court have to retire at 70. This is a bit of ageism that came into the Constitution in 1977. It happened when Chief Justice Barwick, a spritely 74 year old, went to sit in the Privy Council in London. This meant that the senior High Court judge, Sir Edward McTiernan (then 85 and with a trembly voice but a life appointment), was called to Parliament House to swear in the new members. The MPs were shocked at the sight of this very old man. One of the few amendments ever accepted to the Australian Constitution was then adopted. It required future judges to depart at 70. So, as my seventieth birthday loomed in 2009, I had to get ready for the chopper. This was the case despite my youthful appearance and intellectual sharpness.

Some lawyers (mostly judges) kept telling me that they thought this was shocking. They wanted me to stay around on the bench indefinitely. Naturally, I was flattered. But, in my heart, I always supported compulsory retirement for judges. Judges are the third branch of the government. They are not subject to election. So drawing a line in the sand may be the only way to get them to go. Where they enjoy life tenure (as McTiernan did) they may not recognise when their time is up.

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Generational change is important, including the judiciary. So I was happy to make my exit.

But what new life awaited me? That was the puzzle I faced as my partner Johan and I drove out of Canberra on the day after my retirement. Motoring into the sunset, I asked myself “What lies over the horizon”? Lots of rose-smelling? Lawn bowls, perhaps? A bridge club to keep the old brain cells working? Do they still have village glee clubs? The Bondi Icebergs sent a shudder down my spine. Maybe sitting with Johan, overlooking Sydney Harbour and re-reading the books of my youth? Rose-smelling be damned! When I got back to Sydney, I immediately launched my new life. It was not quite Clark Kent in the telephone booth emerging as Superman. But there are certain parallels.

Take a typical week in my life. On Thursday, I returned from a conference of judges and lawyers held in Vietnam, to whom I had explained the remarkable decision of the High Court of Australia in 1951, upholding the right of people to join the Communist Party. Immediately on reaching Sydney, I chaired a teleconference of the Council of the Institute of Arbitrators & Mediators Australia, as I am now their president. The following day, I attended a ceremony in the Supreme Court in Sydney to farewell a judge who was not retiring but going on to another public post. In the afternoon, I addressed the closing session of a conference of the Legal Aid Commission in New South Wales on “values in the law”. After that, at Dymock’s Sydney bookshop, I launched a new guide for young lawyers on careers in the public service.

On Saturday morning, it was down to Melbourne to speak to a conference of teachers on the challenges of teaching values in Australian schools. On my return to Sydney, I went to a function to address a reunion of the first graduates in law of Macquarie University, where I was once Chancellor.

The next day, a Sunday, Johan and I enjoyed a splendid dinner in King's Cross with Ted and Margaret Thomas. He was recently knighted in New Zealand: so I must now learn to call them "Sir Edmund and Lady Margaret". In Australia, alas, knighthoods for judges were dropped thirty years ago.

On the Monday, there were meetings with journalists, and with leaders of arbitration and mediation. On the Tuesday, a gathering of a body connected with the Geneva-based Global Fund on AIDS, Malaria and Tuberculosis. Tuesday night was the launch of a new charity, The Pinnacle Foundation, at Bondi Beach. That body will give scholarships to young students, to make sure they reach their full potential. On Wednesday morning, I taped a film for the National Museum of Australia, on a project to support the "hundred defining moments" in Australia's history.

There followed a cocktail party offered in my honour by barristers' chambers in Sydney CBD. Then I rushed off to Gleebooks, to engage a professor of international law in a public dialogue about his new book on human rights and corporations. A report filtered up to our event that Prime Minister Rudd had come into the shop below, looking around for a few books to fill in his spare time! As I hurried home to Johan, I cast a glance to left and right at all the books I will never read.

Working hard is what A-type personalities do. I know that it is not something to be proud of. It is an infantile disorder. It is something I probably learned in school days. I cannot blame my parents or teachers. Some internal force has always urged me to do a lot. Perhaps it was all those Wesleyan hymns I sang at church, telling me that we all have a duty to try to improve the world. A psychiatrist would probably say that it is a quest for frequent gratification. A therapist might add that it is a desire for the endorphins of the long-distance runner or for a form of anaesthesia against those quiet moments when one comes face to face with the brevity of existence and the ultimate puzzle about what life is about.

It may be because of the busy life that I have lived since I “retired” that I have not missed the courts, even for an hour. Eight universities have made me an honorary visiting professor. A law publisher has appointed me its editor-in-chief of an encyclopaedia: *The Laws of Australia*. Many UN and other bodies have invited me to serve on their councils. Fourteen international trips have been scattered through the year. They have resulted in a million frequent flyer points.

When I come home, Johan sometimes says that he feels as if he is living “in a waiting room”. This is a fair criticism. So I have made a New Year resolution to get better in 2010 and to learn to say “no”. I keep telling myself that saying “yes” in 2009 was an intuitive effort to get myself over the hump of leaving my life in the courts that had stretched back to my earliest days as an articled clerk in 1958.

“You can’t teach an old dog new tricks”, says a quiet inner voice. “Let’s face it, you’re afraid of retirement. For you, it is a prelude to the big final journey into an end of consciousness”. “Maybe so”, I answer. “But I like people. I like meeting them. Lawn bowls is all very well. But it is just too passive”.

“What about concerts? What about plays? You know you loved these on your holidays. Why not make life one long holiday?” asks the quiet voice.

“I am just not like that”, comes the answer. “Too hyper-active. Too engaged with issues. Too keen to make Australia a better and kinder place”.

After Christmas, Johan and I will take a short holiday overseas, our first since my “retirement”. Johan will come in from Sydney, using up some of those frequent flyer points. I will fly in from Zambia, in Africa, where I must attend a conference with regional Chief Justices. We will walk along the beach and sit in the shade and read our books.

From our very first meeting forty years ago, I learned that I had a partner who loved history as much as I. Over those decades, he has been a kind of living *Reader’s Digest* for me. He reads the books I miss. Picks the eyes out of them and tells me what he thinks. From the early Etruscans, to the Tudor monarchs, the Nazi tyrants and the heroes and villains of Australian history, he has rescued me from total immersion in the narrow world of law. Sometimes he reads about the Dutch golden age. Just now, he is reading a book by Steve Pincus, about the Dutch king William III who came to England in 1688 with his wife Queen Mary

to rescue that country from Stuart absolutism. The history of England and The Netherlands then came together. It was a great moment for liberty. Johan is Dutch. They are very down to earth people and call a spade a spade. I have got used to this after forty years. Maybe, a bit of it has rubbed off on to me.

My father is still alive, and driving, at 93. So this “retirement” may well become a long haul. He cooks a dinner for his children every Sunday. Last week he warned me to be more attentive to Johan. “Don’t take your relationship for granted. Every day is precious. It’s later than you think”, he said. Good advice from a parent. As usual, I will probably not take it as seriously as it deserves.

To get the right work/life balance is important for everyone. But for me, it has always been elusive. To find a true life’s companion is a miracle. It is also critical for one’s physical and mental health. This was brought home to me in another engagement in the week past: the launch of a new book on *Dementia in Lesbians and Gay Men* for Alzheimer’s Australia. This book tells of the special problem of older people who are gay and whose companions begin to suffer mental decline. Often, these are people who have lived discreet lives in the shadows of secrecy because of the laws that once criminalised their relationships. Gradually, Australians are getting over such prejudice. Yet one person at the launch of this book told me that she had been forbidden to train staff to be sensitive to the problems of older gays and lesbians facing the challenge of Alzheimer’s. Apparently, some so-called religious people objected to the introduction of such policies. We all have to overcome our demons. Scientific reality and human kindness should be

our guiding stars. The world is made up of all kinds of people. We are all living longer. Many of us have special needs. Even workaholics.

Perhaps the coming holiday with Johan by the beach will prove an epiphany for me. Maybe next year, there will be a lot of rose-smelling after all. But, frankly, I doubt it. My immediate challenges are to become an expert with my i-Phone; to start a blog; and to learn *Twitter* so that I can tweet and text with the best of them.

The roller coaster of life goes on. It has many ups and downs. Suddenly it changes direction. It does seem to be going somewhere. I am lucky to have a loving companion next to me. We all know that the journey ends some day. Meantime, the carriages seem to be gathering pace. A kaleidoscope of colour and light and loud music flash by us on this journey. Every now and again I hear Johan say: "Let's get off at the next stop. Let's slow this helter skelter". But I cry out: "Not yet! Onwards! This way we know we're alive".
