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RON HEINRICH, A LAWYER OF PRINCIPLE

TressCox Lawyers, Sydney

Occasion to mark the professional service of Ron
Heinrich

14 February 2011

The Hon. Michael Kirby AC CMG

**TRESSCOX LAWYERS
SYDNEY, 14 FEBRUARY 2011**

**OCCASION TO MARK THE PROFESSIONAL SERVICE OF RON
HEINRICH**

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The Hon Michael Kirby AC CMG*



ON ST VALENTINE'S DAY

We meet on St Valentine's Day to celebrate the remarkable service to the law of Ron Heinrich, long time senior partner of TressCox Lawyers. We also celebrate the contribution to his service of his wife, Jeanie, who is here, and his children, of whom Andrew and Sonia are here with us.

* Justice of the High Court of Australia (1996-2009); member Eminent Persons Group of the Commonwealth of Nations (2010-2011); Gruber Justice Prize 2010.

We are honoured by the presence of the Hon Philip Ruddock MP, Minister in the Howard Government and Past Attorney General of the Commonwealth. I was present in Canberra today at the new offices of his old department. I saw in pride of place, on the wall, the photographs of past Attorneys General and Solicitors General of the Commonwealth. Since the 1960s, I have known all of them.

We also acknowledge the presence of Mr Tim Bugg, past President of the Law Council of Australia and now successor to Sir Laurence Street as Chair of ILSAC, the agency concerned with the outreach of Australian legal service to the region and the world.

Additionally, I welcome the presence of former partners of the firm, Alan Mylechreest, Ron Heinrich's early master solicitor, and Don Lawson, a partner who worked in Tress Cocks & Maddox, coinciding with Ron Heinrich's service. This is one of the oldest and most respected legal firms in Australia. Ron Heinrich has been a mainstay and remains involved in the varied commercial services in which he has earned his high professional reputation.

That work would have been enough for most lawyers, to satisfy their engagement with the law. But not enough for Ron Heinrich. He began a career that involved him in service to his colleagues in the legal profession of his state (as President of the Law Society of New South Wales), of his nation (as President of the Law Council of Australia) and of the world (as President of the Commonwealth Lawyers' Association (CLA)).

Others have paid tribute to Ron Heinrich's outstanding service to the law and to lawyers in Australia. This is right and proper. I will not add to what they had said. But I wish to add my observations about his international service, for it is there that I have come in closest contact with him. It is an unusual and notable association that we can celebrate on St Valentine's Day. What it lacks in romance, it makes up for in love for fellow human beings. Love is the great foundation of universal human rights. The reason why we respect the universal rights of others can be found in our empathy for them as fellow dwellers on the planet.

THE CLA AND PROGRESS

So let me start at the beginning. Ron Heinrich was born in Temora, New South Wales, in 1948. He has never quite shaken off his country upbringing. He is a genuine Australian and that makes him popular with people round the world.

It is a curiosity as to how the boy from Temora embarked on the journey at TressCox and rose in the ranks of the professional associations of this country. He did not have to give up all those hours in committee meetings and professional services. Yet he did so. And it was natural that he would eventually move to the international stage, on laying down his responsibilities as President of the Law Council of Australia.

Those who speak of his rise in the Commonwealth Lawyers' Association acknowledge the very practical improvements that he introduced during his term as President, between 2007–2009. These innovations included his introduction of teleconferences, of facilities for corporate membership and restructuring of the constitutional arrangements of the CLA. All of

these were very worthwhile and practical achievements. But it is not of these that I wish to speak. My purpose is more specific and particular.

I first saw Ron Heinrich at work in the CLA in 2007 at the conference held that year in Nairobi, Kenya. The conference, which was a great success, preceded by only a few weeks the chaotic uprising that coincided with the Presidential election of that year in Kenya. Many people were killed. We were unaware, at that time, that such unrest was brewing. The conference sessions went ahead quietly and the discussions were energetic but peaceful.

At one of the sessions, I joined that fine Judge, Edwin Cameron, now a Judge of the Constitutional Court of South Africa, as a speaker. In the audience were great judges from around the Commonwealth including Lord Phillips, now President of the Supreme Court of the United Kingdom. Also in the audience was Ron Heinrich. The subject we were addressing was the law and the human immuno-deficiency virus (HIV). This is the virus that causes acquired immuno-deficiency syndrome (AIDS). You could hear an intake of breath when Edwin Cameron disclosed not only his sexuality (as a gay man), but also that he had been living with HIV for more than a decade. In a continent ravaged by AIDS, where virtually no public officials ever admit infection, the power of this man's courage was almost unbearable.

Ron Heinrich took the messages of that session away with him.

Soon after, I received an invitation from him to take part in the Commonwealth Law Conference in Hong Kong. Queen Victoria would doubtless have been surprised, and even possibly unamused, at a

conference in the successor to her Empire, which began with the national anthem of the Peoples Republic of China. Yet the conference was also a great success. It even made a profit. This is always something that pleases Ron Heinrich's heart.

The invitation to me was to address specifically the issue of sexuality and the law within the Commonwealth. Amongst the many fine bequests of the British to their Empire and Commonwealth, there was one unlovely gift. It was the anti-homosexual criminal laws. In my youth, those laws persisted in Australia. Now abolished in the older Commonwealth countries, they remain steadfastly in place in 41 of the 54 newer Commonwealth nations.

If HIV is a special Commonwealth problem (with double the rate of infections compared with the rest of the world), amongst the causes can be found the criminal laws that place homosexual men at jeopardy and outside the range of essential information and access to necessary therapies. In that quiet, methodical way of his, Ron Heinrich had added this topic to the Hong Kong conference's agenda for a purpose. He was determined, as President, to get the CLA and its members to discuss issues within the Commonwealth where law was actually a source of injustice and derogations from modern acceptations of human rights. For Ron Heinrich, this included HIV AIDS, sexuality and also capital punishment. He was not deflected by the discomfort and opposition of some of his colleagues. He saw the issues as basic to revamping the CLA as a worthwhile instrument of justice and human rights throughout the Commonwealth of Nations. Doubtless, in the CLA Council, there was opposition to his moves. In all probability, his Council was not unlike the cabinet of John Howard. It contained some fine and

experienced people; but also a few homophobes and traditionalists for whom action on criminal law reform on these topics was 'not a priority'.

For Ron Heinrich, that was not good enough. By reason of his persuasiveness and sheer determination he secured the support of the CLA Council to adopt calls for removal of the colonial criminal sanction on homosexuals. He just kept at it and by quiet diplomacy won over a majority of the doubters and the objectors. The adoption of the policies on homosexual and capital punishment law reform were major achievements of his time as President of the CLA. He was not there just for the easy ride. He was not interested in office, for its own sake. He was there to do good things that spoke to the future. I thank him and congratulate him on his substantive achievements.

In 2009, in a path breaking decision, the High Court of Delhi in India concluded, in *Naz Foundation v Delhi* [2009] 4LRC 838, that section 377 of the *Indian Penal Code* 1860 was incompatible with the protections of individual privacy, equality and dignity contained in the Indian Constitution of 1950. This is the section that criminalises adult, private same-sex conduct. In the reasons for judgment of the Court, given by Chief Justice A.P. Shah and Justice Muralidhar, specific mention is made of the paper that I delivered to the Hong Kong conference of the CLA (*ibid* 879 [85]). Apparently, it had been picked up by that Court on the internet, which is now such a potent source of information and instructive analogy for judges and lawyers throughout the Commonwealth. The passage is worth quoting not only for its opening:

“[85] Justice Michael Kirby, a distinguished former Judge of Australian High Court, expressing in similar vein, said that criminalisation of private consensual homosexual acts is a legacy of one of three very similar criminal codes (of Macaulay, Stephen

and Griffith) imposed on colonial people by the imperial rulers of the British Crown.

‘Such laws are wrong:

- * wrong in legal principle because they exceed the proper ambit and function of the criminal law in a modern society;
- * wrong because they oppress a minority in the community and target them for an attribute of their nature that they do not choose and cannot change. In this respect they are like other laws of colonial times that disadvantaged people on the ground of their race or sex;
- * wrong because they fly in the face of modern scientific knowledge about the incidence and variety of human sexuality; and
- * wrong because they put a cohort of citizens into a position of stigma and shame that makes it hard to reach them with vital messages about safe sexual conduct, essential in the age of HIV/AIDS’

(See ‘Homosexual law reform: an ongoing blind spot of the Commonwealth of Nations’, speech delivered at the 16th Commonwealth Law Conference, Hong Kong, 8 April 2009.)”

Neither Ron Heinrich nor I could have foreseen how a conference paper, invited by him and delivered by me, could play a part in the evolution of judicial reasoning in India. But the consequence has been a greatly applauded liberation of thousands, probably millions, of people in the subcontinent, from a special bondage of colonial law. Although an appeal is pending before the Supreme Court of India, notably, no appeal was lodged by the Government of India which accepted the ruling.

LAWYERS AND A NOBLE CAUSE

Law is a noble cause. Justice and human rights are integral to our modern conceptions of the rule of law. It would have been easy for Ron Heinrich to have savoured his professional successes and to have sat back, in golden years, to enjoy the fruits of his devoted professional labour. But that was not how he was made in those robust early years in

Temora. He wants to make a difference. To add his own contribution to noble causes. To be engaged, as an Australian, in an outreach to our exciting region and to the world beyond. In these respects, he is a model and an example for all younger Australian lawyers and for some of us not so young.

I congratulate and thank Ron Heinrich for his service to his colleagues in the legal profession of Australia. But I congratulate him most especially on engaging with lawyers throughout the Commonwealth of Nations. His work in the CLA is of great assistance and support to work in which I am now engaged as a member of the Eminent Persons Group of the Commonwealth of Nations. On the wider stage of the political dimension, and in preparation for the Commonwealth Heads of Government Meeting (CHOGM) in Perth in October 2011, our group can call on, and derive strength from, the work of the CLA, stimulated by the leadership of Ron Heinrich, Australian lawyer.

I congratulate TressCox for supporting and encouraging Ron Heinrich's activity in the CLA and for helping him to set before the world an example of the best that the Australian legal profession can produce. Best for his adherence to principle, intelligence, subtlety of negotiation and respectful discourse with others, I have come to honour Ron Heinrich, his family and colleagues. His life of service is one that helps us to be proud to be with him. He is truly an Australian lawyer for our time, in our integrated world where injustice bends towards the universal principles of global human rights.
