

# Obituary

## RON CASTAN AM QC

29.10.1939–21.10.1999

By any standards, Ron Castan was a remarkable man. His activities and interests spread far and wide across the nation's legal, commercial, political, artistic and philanthropic life — not to mention his family, and his prominent place amongst the Jewish community of this country, and overseas. Indeed, so wide were his activities, I doubt whether anyone beyond his wife Nellie, and immediate family, is familiar with them all. His contribution in all these spheres was outstanding — as was acknowledged in 1993 with the conferral of his AM, and as has now been recalled in a number of glowing obituaries since his untimely death on 21 October last.

But most of all, it was Ron's personal qualities that endeared him to his many friends, colleagues and associates. Blessed with acute intelligence and formidable abilities as a negotiator and lawyer, he was nevertheless unassuming in nature, always kind and considerate to others, especially those in need, always ready to hear and discuss ideas — however speculative or bizarre — and devoted to the purging of injustice wherever he saw it. To me, he demonstrated the highest principles of his faith, his profession, and of caring humanity. He showed us through his daily work and relationships, what a human being can achieve for the betterment of the community. We are all in his debt.

For readers of this journal, Ron epitomised the spirit and practice of law reform, the practice of pro bono law, and support for the underprivileged. Ron graduated from the Melbourne University Law School with the Supreme Court prize in 1961; obtained a masters degree at Harvard, commenced practice at the Victorian Bar in 1966, and took silk in 1980. He comfortably traversed, as a pre-eminent counsel of his day, both taxation, commercial and constitutional law, on the one hand, and 'poverty law' issues — discrimination, indigenous rights — on the other.

Over a working-relationship at the Bar of some 17 years, I observed his pro bono and public interest activities first hand on many occasions. Many beat a path to his door and once Ron was convinced that there was a proper argument to put — all be it one that no-body had thought of before — he would take on the issue, and think about the fees (if any) later. Over and over again, impecunious litigants were assisted in the superior courts through his wisdom and judgement, negotiation skills, and formidable advocacy — especially in the High Court. Indeed, it can be confidently said that without the different but vital contributions of both Eddie Mabo and Ron Castan, the *Mabo* cases would never have

survived their ten-year torturous course — let alone succeed. The same observation applies, in my experience, in relation to many other Federal Court and High Court matters. Through countless contributions both financial and intellectual over two decades, Ron kept these cases alive — and often won.

At the Bar, Ron had a great sense of advocacy as the art of persuasion: conferences with him inevitably concluded with ruminating about how this or that Justice of the High Court might respond to particular arguments — a topic which fascinated him. He was convinced that one should always remember that judges, however elevated, also read the newspapers and are human: one must, in appellate as in most other forms of advocacy, choose words and structure the argument with great care to appeal to this judge or that — particularly in difficult cases where judges had choices. Having said that, his style was loquacious, engaging, and oftentimes not at all reflective of his notes! And above all, he was a creative lawyer, seeking to adapt and develop established doctrine in a life-long search for justice.

He thrived on the cut and thrust of intellectual debate, especially in the High Court, and, in later years, was really not terribly interested in appearing elsewhere. This was the Court which, to him, really mattered in terms of the development of legal policy and principle. And of course, the tragedy is (like another outstanding Victorian lawyer of his generation, Sir Leo Cusssen, 80 years previously) that he was never appointed to take his rightful place on that court. For the past decade, nobody in the lifts of Owen Dixon (where the most important assessments are made — and re-made) doubted that his elevation was overdue and fully warranted. As Justice Kirby acknowledged in a heartfelt speech at a Melbourne dinner in Ron's honour recently, one of several such opportunities arose with the resignation of Sir William Deane in November 1995 — yet 'the call' came to Kirby J, who took his seat in February 1996. But this tragedy (that is, Ron's non-appointment), if tragedy be the right word, is the nation's loss: Ron was far too busy, and too interested in his many and varied pursuits, to worry about this obvious error made by those in high places who make such decisions, an error which persisted for a decade or more.

Another intriguing element in Ron's professional life, to my mind, is that though he accumulated vast experience and a deep understanding of legal principle across many fields, and though he, as a Silk, actively drafted, re-drafted and

Outside Court No 1, High Court Building, Canberra, prior to commencing final argument,  
April, 1991 – *Mabo (No 2)*



L–R: Greg McIntyre, Melissa Castan, Ron Castan QC, Robert Lehrer, Eddie Mabo, Bryan Keon-Cohen.

settled often voluminous submissions with his juniors (in *Mabo*, the final written submissions comprised six volumes), and though he wrote and delivered many speeches in many forums, he did not write a lot in the academic, technical, or journalistic sense — for example, in journals such as this. Ron was in his element when discussing ideas, particularly new and difficult ones, with others: not for him the isolated writer's garret to ponder and record. This too I regret, for he wrote well, and with passion.<sup>1</sup>

But relief was at hand — or so we thought. Just before his untimely death, Ron was beginning to mutter about taking a few months off somewhere convivial — of course with his beloved family and bicycle close at hand — to write his memoirs. This would have made fascinating reading — a bit like a modern version of Sir Owen Dixon's varied career. Some insights into the operations of the nation's senior levels of law, commerce, and politics might, for example, have been revealed, not to mention much heterogeneous exotica. A 30-year association with the Dalai Lhama; working with Sir Maurice Byers SG QC and Attorney-General Gareth ('Biggles') Evans in the *Dams* case in 1982; the resurrection, as President, of the Victorian Council for Civil Liberties during the 1980s; the workings of the Australian Constitutional Commission from 1986–1988; and of the Board of Governors of the Hebrew University in Jerusalem, which University annointed him Doctor of Laws; think tanks' thinking in the USA; lessons learnt through hearing discrimination cases as a sitting member of HREOC (the *Brandy* case for one); sitting as co-chairman of the National Inquiry into Racial Violence in 1989; bicycle riding around Victoria, the Grand Canyon or in China; assisting young artists with grants and encouragement; building family homes (sequentially) in Kew, South Yarra, and latterly, Somers; and much much more — especially the rich

panoply of family and friends who were always close at hand, and close to his heart.

Perhaps others can now pursue these various tasks — but I fear nobody can do it quite like Ron. He is greatly missed, he is irreplaceable, but his work and personal example will, I'm sure, inspire many to carry on regardless.

**Bryan Keon-Cohen QC**  
18 November 1999

*Bryan Keon-Cohen QC is a member of the Victorian Bar, an Adjunct Professor of Law, Monash University, and now works as the Principal Legal Officer, Mirimbiak Nations Aboriginal Corporation, the Native Title Representative Body established for Victoria under the Native Title Act 1993 (Cth). He was Ron Castan's junior in Mabo and other High Court cases during 1982–1998; and was Secretary of the VCCL (now Liberty Victoria) during Ron's term as President.*

#### Reference

1. See, for one of his last published speeches, Castan, R., 'Land, Memory and Reconciliation', (1999) 11 *Without Prejudice* 3–10, a speech delivered by his daughter, Melissa, to a forum organised by the Koori Research Centre and the Australian Centre for Jewish Civilisation at Monash University in October 1998.