

the emergency stop button, shutting down the entire plant. The major issue in that case was Your Honour's client's claim of interruptions in the availability of the plant. The weekly availability report for that particular engine recorded "plant stopped by QC".

In 1993, Your Honour was the first woman elected Chairman of the Victorian Bar. Your Honour was a courageous and effective leader in very difficult times. Under Your Honour's leadership, the Bar Council introduced significant reforms, including the introduction of limited direct access and co-advocacy. Those reforms were not without considerable controversy. Perhaps most notably, Your Honour led the way in constructively addressing the serious issues of access to justice by establishing a scheme for pro bono legal assistance in civil cases. The Law Institute supported and joined the Bar in the project and the government supplied seed capital.

In 1994, Your Honour became the first woman President of the Australian Bar Association. Your Honour has been described as a vigorous President who fostered national discussion on public interest pro bono work. At the Bar, in addition to service on the Bar Council and committees, most recently on Justice Nettle's continuing legal education committee, Your Honour has served as a senior mentor and taught equity regularly in the Readers' course.

Outside the Bar, Your Honour is a member of the Council of the University of Melbourne, Chairman of the

Independent Compensation Panel of the Archdiocese of Melbourne, and a member of the advisory board for the Graduate Program in Intellectual Property at the Melbourne Law School. For a number of years, Your Honour was a member of the Royal Women's Hospital Ethics Committee, and the Board of the Australian Book Review.

Your Honour's husband Michael is a senior counsel at the Victorian Bar. Your son Daniel is also at the Bar. One daughter, Brigid, is an historian and writer. Your other daughter, Kathleen, is studying arts and law at the University of Melbourne. Your Honour's children are in Court today, as is the senior of two grandchildren. Your Honour's mother and your five brothers and sisters are also here to celebrate Your Honour's appointment. Your Honour's father, sadly, died some years ago, but not before he had seen Your Honour well established.

David Bennett once described Your Honour as not at all a frivolous young person. Although those who have attended Your Honour's St Patrick's Day parties and been greeted at the door by Your Honour beating a bodhran, which is an Irish drum, might initially think otherwise. A moment's reflection on the breadth and depth of Your Honour's achievements shows that Bennett was quite correct.

The Victorian Bar and all of the independent Bars of Australia wish Your Honour a long, distinguished and satisfying service as a judge of this Court. May it please the Court.



bravado got the better of young Stephen. In the days when a fountain pen was a necessary part of early education, and perhaps to show his bravery in the face of disbelief, he up-ended a bottle of Swan blue ink — in his mouth. Some old friends knew him as "Kaye, the blue-tongued lizard".

He proceeded to Monash University where he undertook a combined course in arts and law. He graduated Bachelor of Arts in 1972 and Bachelor of Laws (with First Class Honours) in 1974, sharing the Supreme Court Prize. During his law course he won the prizes for the top student in the law of contract, administrative law, property law and constitutional law.

As a student at Monash University, he was known for his modesty, indeed humility, and excellence. When asked how he went in an exam, he would always say "I'm hopeful I'll pass, with a bit of luck", but inevitably he came through with a fine result, in many instances topping the subject.

He was articled to Mr G.E. (Eric) Permezel of Blake & Riggall and was admitted to practice in April 1975. He continued to work as a solicitor at Blakes for another year after admission, signing the Bar Roll on 26 February 1976.

He read with John Winneke QC (now Winneke P of the Court of Appeal). He had various chambers beginning with the salubrious Hooker chambers, with other struggling but now eminent barristers, such as Burnside QC, and finally moving into a room on the 5th floor of ODCW when that building opened in 1986. He had seven readers, Philip Marzella,

Supreme Court

Justice Stephen Kaye

THE appointment of Stephen Kaye QC as a judge of the Supreme Court on 16 December 2003 was a great loss to the Bar and a huge gain to the Bench of the Court.

His Honour was one of the few generalists practising at the Bar, and won the respect of the Bench, the Bar and the solicitors of Victoria. He is the second Kaye J to grace the Bench of the Supreme Court and, it is hoped, not the last.

Stephen Kaye was born in Victoria on 13 December 1951, the son of William Kaye, of counsel (as he then was) and Henrietta Kaye, neé Ellinson).

He attended Scotch College, Melbourne, matriculating in 1968 and was awarded the prize for Dux of the School, achieving four first class honours, a special distinction in Latin and a distinction for General Excellence.

But it was not all plain sailing. As a junior school boy at Scotch College,

Richard McGarvie, Gary Cazalet, Maree Kennedy, Warren Mosley, Boyd Cohen and Kerri Judd. They all testify to his Honour's industry, generosity and sound advice.

At the Bar, his work took him to all fields, although predominantly in the civil area. In his typically modest way, he described his practice as a general practice in civil law, personal injury (including medical negligence), commercial law, defamation and criminal law.

In truth Stephen Kaye specialized in many areas. His skill in the area of defamation was profound. His ability to deal with difficult questions in many areas was remarkable, from wills to property law, personal injury to professional negligence, insolvency to insurance, administrative law to general contract, crime to family law. Given time to prepare, there is nothing he could not, indeed did not, turn his hand to. His preparation was a legend. Every case was given his absolute commitment.

As a junior he appeared in some notable trials, including the case of the Silver Gun Rapist (let your imagination fill in the detail) as junior to Phillip Dunne QC, the Toxic Shock case¹ as junior to John Winneke QC, the *Waverly Transit* case² as junior to John Winneke QC (again and many more times as well) and the *Ken Morgan Toyota* case as junior to Bill Gillard QC³. He also appeared in the infamous and long running *Occidental and Regal Insurance* case before O'Bryan J.

He took silk in 1991 saying, at the time "I need a challenge and a new gown", typical of his modesty and self-deprecating wit.

After taking silk, he appeared in many long and particularly difficult trials. He acted for the auditors in the Estate Mortgage litigation before Smith J, in a hugely successful defence in the *Transport Industry Insurance Co v Masel*, before Eames J⁴ and for the CFA in the Inquest into the Linton fires. He appeared in many reported cases in widely different fields of law, including *Koorootang Nominees Pty Ltd v ANZ Banking Group Ltd*⁵ (trusts); *Registrar of Titles v Fairless*⁶ (Torrens system); *Linsley v Petrie*⁷ (estoppel-insurance); *Lew v Herald & Weekly Times Ltd*⁸ (defamation), and so the list goes on.

He is a keen supporter of the Hawthorn Football Club and played footy himself for many years for the Old Trinity Football Club. How he came to play for that club remains a dark secret. He was an aggressive and competitive sportsman, but always with a sense of fun and fairness. He went in hard, indeed so hard that he injured himself in many ways.

He is a great family man and a loyal friend. He met his wife Karen following a severe break of his leg brought about by his ferocious approach to amateur football, playing for the Old Trinity Football Club. The break was very severe and he was laid up in the Royal Melbourne Hospital. Karen was working at the Royal Melbourne Hospital and by pure chance was with a cousin of Stephen's at the time of a visit. That was the spark that lit a wonderful marriage. It also ended his football career. Not before time. There is hardly a body part that he didn't injure: back, arms, legs, head, nose, and all bits between.

Stephen and Karen have four children, Roslyn (third year Law Arts at Melbourne), Michelle (first year physiotherapy at Melbourne), Natalie (year 10 at MLC) and Michael (year 8 at Scotch).

He was elected to the Bar Council in 1996 and served until 2000. He was Chairman of the Aboriginal Law Students Mentoring Committee from 1999 until his appointment, a cause that he championed whilst a member of the Bar Council. That Bar Committee works with Justice Eames' Indigenous Law Students Mentoring Committee, and with the Indigenous Lawyers and Law Students Association (in the establishment of which the Bar Council provided considerable assistance). Some 29 students have entered the Bar Mentoring Program over the years since its establishment. He was Bar's representative on the Civil Litigation Committee of the Supreme Court from 1995 until 2003; and served as a Director of the Melbourne Bar Pty Ltd.

Stephen has always given generously of his time, skill and knowledge in the service of fellow practitioners, particularly members of our Bar. Indeed he was and is devoted to this institution and has given it his unswerving loyalty. He has always believed in serving and

promoting our collegiate spirit. The "open door policy" had real meaning for him. Many junior and not so junior barristers would appear unannounced at his door for counsel and assistance. Mostly he would give them time there and then. If he couldn't immediately assist, he would always remember to give the inquirer a call when he was free to do so.

He represented many fellow barristers before the Ethics Committee and the Tribunal. After one such effort a "stack" of cases of wine appeared in the middle of his chambers as a tribute to his advocacy.

Stephen was a member of List B, and was a tower of strength through the final illness of Barry Stone, both to Barry and his wife. He was a member of the List Committee for a number of years and a great supporter of Michael Green as the new clerk, providing loyal and dedicated assistance in his new role.

He is a dedicated walker. Most mornings he can be seen vigorously exercising around his home patch in Kew. At lunchtime he is always available as a companion in a turn around the Flagstaff Gardens. He even jolts those football knees in regular jogging.

No person is without faults. But it is hard to fault Kaye J. There is the annoying habit of leaving the pantry door open, or the light on; of opening the windows in the middle of winter (fresh air never hurt anyone!) of wearing those Australian icons — the rubber thongs — on any occasion, summer or winter; and discarding his shoes at the first opportunity and padding around chambers or home in his socks.

The Bar welcomes his appointment.

NOTES

1. *Thompson v Johnson & Johnson Pty Ltd*, Murphy J., 29 June 1989 (unreported).
2. *Waverly Transit Pty Ltd v Metropolitan Transit Authority* (1988) 16 ALD 253 (O'Bryan J, 2 June 1988); On appeal: [1991] 1 VR 181.
3. *Ken Morgan Motors Pty Ltd v Toyota Motor Corp Australia Ltd*, Ashley J 6 November 1992 (Unreported); On appeal: [1994] 2 VR 106.
4. [1998] VSC 114.
5. [1998] 3 VR 16.
6. [1997] 1 VR 404.
7. [1998] 1VR 427.
8. [1999] 1 VR 313.