

## **“The Importance of Failure”**

**Admissions Ceremony – Friday, 18 October 2019**

**Supreme Court of the ACT**

The Court acknowledges the traditional custodians of this land and we pay our respects to their Elders, past, present and emerging. We extend our respects to all First Nations people, and acknowledge that sovereignty over this land was never ceded.

Today, I am joined on the bench by Justice Elkaim and Justice Mossop.

New practitioners, families and friends of the new practitioners – congratulations and welcome to the legal profession. We know that your journey to today has been long and difficult for all of you – intellectually, financially and, probably, nutritionally. But today is your day in the sun. Well done to all in this courtroom for getting this far.

We hope that all new practitioners will go on to have fulfilling careers in the law, or in other areas where your legal background will be valuable. After all, the law has something to say about every aspect of our lives; and knowledge of the law gives us power over our lives. Let’s never forget that it also equips us with the power to affect the lives of others.

Whether you go on to work in a commercial environment, the government or the desert, your understanding of the law, its virtues and its challenges is a resource that can support a successful life; however you define success.

Whatever professional – or indeed personal – journey you take, from time to time you may like to reflect on two things.

First, only you can decide what professional success means for you. Don’t let yourself be defined by others. Many of you will work in firms that require you to measure your working life in six-minute intervals. But your success can’t be measured by reference to the profit that you bring to others. Reflect on your own professional values and measure your success against those values.

Second, a successful professional life is built on failure. That is because – if we have the right attitude to failure – we learn and grow from failure, not from success. In your professional life – and in your personal life – what you really need is resilience. Resilience is built on failure, not success.

No one embraces failure easily, but we must try to process our failures as well as basking in our successes. Rather than brooding or blaming, we must rationally work through what occurred and decide how we will manage the situation better next time.

### **The Importance of Failure**

There is an understanding – or a misunderstanding – that successful lawyers have achieved success without making any substantial mistakes. Like most prominent people, prominent lawyers are very forthcoming about their successes and much

more reticent to discuss their failures. I find that to be particularly true of the male gender – present company excluded.

The laws of probability will tell you that for every lawyer who wins a court case, there is a lawyer who loses the case. But how often do we hear the losing lawyers discussing where they went wrong? Let alone posting their failures on social media. Generally, it's a narrative of happiness and success.

Speaking for myself – and I suspect for my fellow judges – it was not a straight road of success from law school to the bench. Some of my failures were due to my own mistakes and some reflected the mistakes of others.

As a junior advocate, I was told that my submissions were wrong or missed the point. In a packed courtroom, I was once told “young lady, I was doing this when you were still in nappies”. I missed out on jobs that I really wanted or chambers that I applied for because, as hindsight showed, the employer or the head of chambers didn't want a woman there. Many of those events were someone else's failure but, at the time, they seemed like my failures. Looking back, I now realise that I dodged some large bullets!

And seniority does not protect you from failure. As you know, decisions of single judges of this Court can be appealed to a full bench of three judges, so my decisions and those of my fellow judges can be reviewed and overturned by our colleagues. It's never pleasant.

Not to mention correction by the High Court. Just last year, Justice Mossop and I sat on an appeal and we overturned a decision of Justice Elkaim. But our decision was overturned by a majority in the High Court. Each judgment we write in this Court takes a lot of time and effort, and it is disappointing to be overturned by Australia's court of final appeal. On the other hand, the High Court decision represented success for Justice Elkaim – the High Court ruled that he had been correct in the first place. So, Justice Elkaim, Justice Mossop and I are grateful for the opportunity that you gave us to develop our resilience.

In Sweden, there is a Museum of Failure. It houses objects from successful companies that have failed. The museum aims to “convey that the acceptance of failure is necessary in order for innovation and progress to truly succeed”.<sup>1</sup> “If you are afraid of failure, then [you] cannot innovate”.<sup>2</sup> Or, in more human terms, if you are afraid of failure then you cannot improve and grow.

Some of you may know that Princeton Professor Johannes Haushofer published a “CV of Failures” on the internet. He listed his many applications for grants and positions which were rejected.<sup>3</sup> The final item on his CV of Failures - his “meta-failure” - was that his CV of Failures received more attention than all of his academic research combined.

---

<sup>1</sup> The Museum of Failure, “About Us” <<https://failuremuseum.com/>>.

<sup>2</sup> Christine Hauser and Christina Anderson, “At This Museum, Failures are Welcome” in *The New York Times* (25 April 2017) <<https://www.nytimes.com/2017/04/25/arts/museum-of-failure.html>>.

<sup>3</sup> Johannes Haushofer, *CV of Failures*, <[https://www.princeton.edu/~joha/Johannes\\_Haushofer\\_CV\\_of\\_Failures.pdf](https://www.princeton.edu/~joha/Johannes_Haushofer_CV_of_Failures.pdf)>.

## Resilience

Commonly, when sentencing for drug-related offences, we hear that “recovery from addiction is not linear”. That wisdom applies to many setbacks in life. Just as achieving recovery is not linear, so your career will not be linear either.

It’s not past successes that will project you beyond the setbacks, but resilience.

Research shows that the legal personality is characterised by high levels of scepticism and abstract thinking, but relatively low levels of resilience.<sup>4</sup> Apparently, we lawyers can dish out criticism but find it hard to take.

Resilience is built by facing and processing adversity, so that you are better equipped to handle it the next time; and there will always be a next time. Partly, it’s a case of “what doesn’t kill you makes you stronger”, but resilience is not about mere survival; it’s about learning through adversity and not taking it too personally. To quote professor, poet and Pulitzer prize-winner Maya Angelou, who was once a fry cook, sex worker, and nightclub dancer: “You may not control all the events that happen to you, but you can decide not to be reduced by them”.<sup>5</sup>

Australian Millennials have grown up in a very different world from that of the baby boomers. What worries us baby boomers is that, because of the different environment in which you have been raised, you may lack resilience. Your world of relentless technological connectivity may have isolated you from the physical world where many of my generation learned their early lessons in resilience through physical adversity; the old cliché of falling out of trees. Your childhood may have made it more difficult for you to develop resilience and, almost as a corollary, it may have exposed you to a higher risk of mental illness.<sup>6</sup>

This is not a criticism of you, the way that you were raised or technological connectivity. There may be some disadvantages to technological connectivity and proficiency, but there are many advantages.

## Conclusion

Your journey ahead is at least as much about failure as it is about success. It’s about how you use failure to build resilience and rise up again.

---

<sup>4</sup> Tom Lodewyke, “How to Fail Well” in *Lawyers Weekly* (23 October 2017) <<https://www.lawyersweekly.com.au/careers/22122-how-to-fail-well>>.

<sup>5</sup> Maya Angelou, *Letter to My Daughter* (2009, Random House). The quote continues: ‘... Make every effort to change things you do not like. If you cannot make a change, change the way you have been thinking. You might find a new solution.’

<sup>6</sup> See, eg, Suzanne Lucas, ‘Why You Should Be Terrified of the Rising Millennial and Gen-Z Workforce,’ *Inc.* (online), 28 September 2015 <<https://www.inc.com/suzanne-lucas/why-you-should-be-terrified-of-the-rising-millennial-and-gen-y-workforce.html>>; Rajvinder Samra, ‘Millennial burnout: building resilience is no answer – we need to overhaul how we work,’ *The Conversation* (online), 22 January 2019 <<https://theconversation.com/millennial-burnout-building-resilience-is-no-answer-we-need-to-overhaul-how-we-work-109759>>.

I have already mentioned the poet Maya Angelou, a woman who experienced failure many times, but got back up many more times. You may know her poem "Still I Rise".<sup>7</sup>

You may write me down in history

With your bitter, twisted lies,

You may trod me in the very dirt

But still, like dust, I'll rise.

...

You may shoot me with your words,

You may cut me with your eyes,

You may kill me with your hatefulness,

But still, like air, I'll rise.

That's enough of failure and resilience for today; now it's time to bask in the sun of your success, perhaps with a glass of champagne in hand. And what a sparkling day Canberra has given you for that celebration!

May the road rise up to meet you, wherever your journey leads.

---

<sup>7</sup> Maya Angelou, *And Still I Rise* (1978, Random House).