

## A CONVERSATION WITH HIS HONOUR JUDGE JOHN CAIN

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**VULJ** Considering the degree of political influence your family has had over the years, what was it like having both a father and a grandfather who were political leaders?

**JUDGE** It meant that you were always very engaged and interested in developing political and legal issues. For most of my adult life, there were always lively discussions about political and legal issues.

**VULJ** Did you ever consider going into politics?

**JUDGE** Only briefly, I pursued a career in the law rather than politics.

**VULJ** You studied law and economics. What inspired you to gravitate towards law rather than economics?

**JUDGE** I probably did a bit of both, I have practised the law and, I was a managing partner of two law firms over my career. In these roles, I had an economic or commercial interest. The combined course enabled me to not only practise law but also to work in the management of the law. In private practice, as a managing partner, there are a lot of commercial aspects to running those businesses and having an economics qualification as well as law was a good combination for me. It helped me to work on a range of business development and financial aspects of running legal businesses as well as practising law.

I have been lucky throughout my career. I spent 20 years in the first place I worked, Maurice Blackburn, but thereafter I have moved around every four or five years, taking on something new and a unique set of challenges.

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- VULJ** Did you have any role models or major influences during your studies?
- JUDGE** Growing up in a family where my father was both a lawyer and a politician, there were people I came across all the time who were interesting and helpful in understanding what the law was about. My father had many friends that were judges and senior lawyers, and I knew them. This created a familiarity with the law and lawyers. It was helpful to have that context. It was more familiar than it would have been, had I come to it cold.
- VULJ** You have had a broad legal career from being the managing partner of Maurice Blackburn and Herbert Geer, the Chief Executive Officer at the Law Institute of Victoria ('LIV') and the Victorian Government Solicitor and now you are a Judge. What can you tell us about the different dynamics of each of those roles?
- JUDGE** You missed one I was also the Solicitor for Public Prosecutions immediately prior to my appointment as the State Coroner. I have enjoyed all the jobs I have done, they had different challenges. I did my articles at Maurice Blackburn. I continued to work there for 20 years. While I was there, I had a stint in Traralgon, which I thoroughly enjoyed. That experience gave me a great grounding for the other things I went on to do. I practised law and managed the firm for several years. This helped me to better understand that the law is about people and that it is about how it interacts and affects people. You should never lose sight of that. I chose mostly to do things where there was a flavour of making a contribution to the community.
- For me, that started at Maurice Blackburn, and continued through to other roles as government solicitor, at the Office of Public Prosecution, and at the LIV. All those roles had a strong emphasis on making a contribution to the community.
- In the government solicitor role, I found it interesting to work on matters that were at the intersection of law, policy and politics.
- In short, I have been lucky to do a variety of jobs and each one has been a learning experience. That is the thing about a career in the law, you never stop learning. You never get to the point where you know it all. Things always change, which makes it interesting and dynamic.
- VULJ** Like many professions, the legal profession is getting better at acknowledging and supporting mental health issues. What tips can you share with law students and graduates to help them maintain their mental health and a good work/life balance?

**JUDGE** Well, I think the trick is to maintain a diverse range of interests, maintain friendships and relationships outside the law as well as within the law and understand what a good balance looks like. You need to accept that from time to time it will get out of balance, but do not let that persist for too long. Work out if you feel as though it is out of balance, then do something to change the situation. Having a diverse group of friends and interests helps that. Being self-aware and being conscious of when things are not in balance and doing things to rectify that balance helps too. It is difficult. It is not straightforward.

You know, the pressures of workload and practise mean that you are under the pressure to put more time into that, but there is a diminishing return on that eventually if you do not put enough time into yourself.

**VULJ** What makes someone more suitable to be the State Coroner in Victoria?

**JUDGE** That is a good question, I am not sure yet! I have only been in this role for 18 months, so I am still working that out. That said, there are 7,000 reportable deaths each year in Victoria. The critical thing to remember, I think, is that behind each one of those reported deaths is a family. Often for the family, the Coroners Court is the last place they want to be. They did not plan to be there. They do not understand it. Having empathy and seeing the role as explaining to families what the system is all about and how it works is important. The role is about investigating the cause and circumstances of the death and being able to provide some answers to the family where it is unclear what happened.

Of equal importance is being able to identify where there are prevention opportunities, so that where deaths that occur in particular circumstances that were preventable, that recommendations or comments are made to ensure that the risk of that occurring again is at least reduced, if not eliminated. As it is an important inquisitorial jurisdiction, you have to be interested in getting to the truth of matters and turning over all the rocks and stones to find out what has happened and why and how it has happened. I am lucky to have the job. It is a very interesting job.

**VULJ** What does a typical day for the State Coroner look like?

**JUDGE** No two days are the same. Some days I am the Duty Coroner working with the pathologist from the Victorian Institute of Forensic Medicine to triage all new admissions (of which there may be up to 25 per day).

The duty coroner also makes decisions about whether autopsies need to be done, whether the cause of death can be established and what investigations need to be commenced at that time. In addition, the duty coroner may visit the scene of a murder or other death where it is deemed to be helpful. In my time, I have attended a number of murder scenes. I have attended scenes where trains have been derailed and aircraft have crashed. As the duty coroner, you never quite know what the day will entail.

Then there is the day-to-day court work. Our jurisdiction does not have a heavy court load. Lots of matters are resolved by way of Chambers findings, but there is a brief on most matters. It is about determining from the brief or through a hearing the cause of death and the circumstances in which it occurred, as well as any prevention opportunities. It is a diverse and interesting role.

**VULJ** As part of your role, you may submit recommendations to prevent death by a certain cause. Can you tell us about any recommendations that you have made and the process it involved?

**JUDGE** To start the process in the investigation of a death you might identify that some processes, for example within hospitals, have some shortcomings or other aspects that require further investigation. There might be recommendations about that. In my role, I also deal with a lot of the family violence deaths that occur. In those cases, there are often recommendations about the way in which various arms of government (e.g., the police, or Corrections Victoria, or the Department of Human Services) are providing services and whether they could do things differently, or better, to try and reduce the risk of death.

There is no one particular type of recommendation. It is really about looking at where something has gone wrong, what could have been done to avoid the risk of death. One of the more well-known recommendations from the coronial jurisdiction is the requirement that domestic swimming pools be fenced. This recommendation arose out of coronial investigations and inquests into children drowning in backyard swimming pools.

In another example, following a series of cases around young children swallowing button batteries and dying, recommendations are being made.

**VULJ** The Coroners Court releases important statistics. Would you tell us about a significant finding from the past few years?

**JUDGE** Suicide data is a significant area of work for the court. Ten per cent of all reported deaths are a result of suicide (about 700 per year). We produce a report and in it our statistics show that men are more likely to commit suicide than women, and particular age ranges are more likely or at greater risk. Recommendations are often focused on what other services can be provided to reduce the risk to those particular cohorts, or how existing services may be improved.

We released our report last month on overdose deaths, identifying particular drugs – some lawfully prescribed and others that are illegal. An example or recommendation arising out of our overdose data is the introduction of the SafeScript real-time prescription monitoring system. SafeScript requires that prescription data be kept and for it to be searchable by general practitioners and pharmacists as a preventative measure to check patients are not ‘doctor shopping’ for prescription medication. The system was developed out of information maintained by the coroner on the number of suicides or overdose deaths that were occurring as a result of people obtaining multiple prescriptions.

**VULJ** Please tell us about a particularly challenging case or aspect of being a Coroner you have encountered and why it was challenging for you?

**JUDGE** Well, I am in the preparation phase of the inquest (which will start later this year) into the deaths at St Basil’s aged care facilities where 50 residents died during the pandemic this time last year. There is significant work to be done in preparation for that. Fifty families are directly interested in that case. The investigation has been extensive. It will take some weeks for the hearings to occur. The challenge is to understand how and why it occurred and then consider recommendations that possibly reduce the risk of death, in aged care facilities, from the outbreak of a contagious virus. This is an example of a significant current case that I am working on.

**VULJ** How has COVID-19 affected the functions of the Coroners Court?

**JUDGE** It took all courts, including ours, time to adjust to the working-from-home environment, to move from a paper-dominated environment to a paperless one. We quickly built a new system to enable most of the work to be done remotely and with the use of electronic files and electronic findings. There were some enormous challenges in that initially. There was also the challenge of how we managed the court work and being able to

adapt, transitioning from in-person face-to-face court work to doing court work via electronic means. It is certainly capable of being done but it takes practice and some adjustment to get used to it! Inevitably, the gremlins in technology seem to be exposed at critical moments!

Nevertheless, I think most people have adjusted very well, including the interested parties. The challenge lies with families – they do not feel quite as connected to the proceeding when it is dealt with electronically compared to when they are sitting in court and listening to it. When we are not in hard lockdown periods, we try and balance it out so that we can enable people to attend court if that is going to be a better outcome. In the end, we do try and adjust things to accommodate the needs of families and also a number of the expert witnesses we have. It has been challenging. Pleasingly, we have not created long delays or fallen further behind. There is still a delay in the system, but it is not significantly worse as a result of the pandemic, which is blazing. So, when we get back to whatever COVID-normal looks like, I am sure we will be well-placed to catch up.

**VULJ** What role do affected family members play in the Coroners Court process?

**JUDGE** It varies. Some families obtain their own legal representation and are represented in the court because they have particular issues that they want to pursue. Other families are assisted by counsel assisting. As well as assisting me in an inquest, counsel assisting is a voice for the family. After all, we want to provide a voice to the family. It is their loved one whose death we are investigating. Families have questions and they are entitled to be involved and have their questions answered to the extent we can. It is quite important that through their own counsel, or counsel assisting, that they are able to access the system.

**VULJ** What are some stereotypes or misconceptions about the Coroners Court that you would like to clarify (either to law students or to the public)?

**JUDGE** Sometimes people think that the coronial process is a practice run for their civil case. It is not. It is an investigation into the death, and it has a very different role to the matters that would be dealt with in a civil or criminal matter. It is an investigation. The scope of the investigation is determined by the coroner. The other difference is that it is intended to be an informal environment. The rules of evidence do not apply. There are processes and systems and natural justice requirements that we, of course, adhere to.

The other misconception is that all deaths end up in a court case or an inquest, but they do not. The vast majority are dealt with on the papers or through a chambers' finding and they are not dealt with in a court case. It is really only in those cases where an inquest is mandatory or where you need to test the evidence, that a court case is required.

**VULJ** As someone who has held multiple leadership roles across the legal profession, what skills have you constantly relied on in those roles?

**JUDGE** I think the key to it is to be nimble and think laterally and look for different solutions, different ways to do things. Within the law, people can become fixed and set in their ways. In my view, it is a disadvantage if you do that. Be nimble and look at where other opportunities are and at what the evolution of law is likely to be, particularly as we are coming out of the pandemic. How law is practised is probably going to change forever – so being at the forefront of that is a great opportunity. When I started practising, mediation and alternative dispute resolution was not a popular thing. It became more popular during the late 1980s and 1990s and now it is part of the way the business is done. Therefore, it is about anticipating where the opportunities are and how you might position yourself to take advantage of the opportunities.

**VULJ** You have been in law for some time, how do you feel the legal profession has evolved over the years?

**JUDGE** It has become more segmented. There are clear differences between the half dozen very large firms, the so-called mid-tier firms, and then suburban and regional firms. The most recent development is the prominence of specialist boutique firms. There were not any mega-firms when I started practising and there certainly were no national or international firms. Most firms were state-based. A firm with 12 partners was probably a big firm when I commenced practice. So that is a significant change.

The areas of practice have changed also. Traditional areas of Magistrates Court crime and conveyance or property work for smaller firms is not as prominent as it used to be, but other areas have evolved and developed. Again, it comes back to being nimble in identifying where the opportunities are. Those that are successful are generally able to identify the next or emerging opportunities and get on board with those.

**VULJ** On a more general note, is there any advice you would like to give to law students or recent graduates as they step into the legal profession?

**JUDGE** I think the best advice I can give you is that it does not matter where you start. Do not get worried about having to start in a particular firm or place, or what work you are going to do. The pattern has been that people can start in a variety of different places. Get a toehold in somewhere – it does not matter where – then leverage the next position from where you started. There are no bad places to start because it is a mobile profession now. Opportunities arise to move, it can be within commercial organisations, it can be within government departments or the private profession. Many lawyers are working outside of private practice, or outside of government legal practice, that are working in mixed legal positions. If you have an idea about whether you would like to end up, that is good, because you are then poised to take advantage of opportunities that might arise. Focus on getting a start somewhere and it does not much matter where it is.

Also, of importance is that once you are admitted to practice, you are in a unique position where the law allows you to do what not many other people are allowed to do, and that is practise law. With that privilege comes an obligation. The obligation is to make a contribution to your community, be involved in volunteer work through legal services or for community organisations. You will get enormous dividends from this over time.

**VULJ** Your Honour, thank you for your time and insights.