

## Judges: Angry? Biased? Burned Out?

2-3 MAR 2019 | Canberra

No video or audio recordings are permitted to be taken other than by staff of the National Judicial College of Australia or their authorised representatives. Attribution of questions asked or answers given is not permitted.

Saturday, 2 March 2019

8.30am Registration

9.00am Official Welcome and Welcome to Country

**Presenters**  
Ms Tina Brown, *Ngunnawal Elder*  
The Hon Chief Justice Helen Murrell, *Supreme Court of the Australian Capital Territory and Chair of the National Judicial College of Australia*  
Professor Sally Wheeler, *Dean, ANU College of Law, The Australian National University*

9.15am Keynote Address – “Human Judges”

**Chair**  
The Hon Chief Justice Helen Murrell, *Supreme Court of the Australian Capital Territory and Chair of the National Judicial College of Australia*

**Presenter**  
The Hon Justice Stephen Gageler AC, *High Court of Australia*

9.35am Session 1 Judicial Management of Emotion

**Chair**  
Professor Mark Nolan, *ANU College of Law, Australian National University*

**Presenter**  
Professor Terry Maroney, *Law School, Vanderbilt University - by Skype*

**Description**  
Professor Maroney examines how judges engage emotionally with their work, both handling the emotions of others and recognising and managing their own emotions. She has prepared a video presentation explaining the work which is expended in handling emotions; emotional regulation strategies (e.g., suppression/denial, avoidance, reappraisal, disclosure) which can be employed - and their pros/cons for judges; and avenues for further information on how judges might improve their emotion-regulatory skills, so that they can perform their emotional labor in a way that is most consonant with their professional goals and personal well-being.  
Professor Maroney joins us via video-link from the US for questions.

10.25am Session 2

**Dealing with the Dead, and What They Leave Behind: Managing complex family emotions outside family law**

**Chair** Dr Darryn Jensen, *ANU College of Law, Australian National University*

**Presenter** Dr Heather Conway, *School of Law, Queens University Belfast*

**Description** This paper looks at family disputes over a loved one's funeral arrangements and contested wills. Central to both are the loss of a loved one, a toxic mix of negative emotions triggered by the grieving process itself, and - more often than not - lingering family resentments. Such disputes present particular challenges for judges. Old grievances and familial power struggles pit one side against another. A 'winner takes all' mentality fuels bitterness and resentment on all sides, and the dispute cannot always be settled by discrete legal rules. The paper looks at how judges manage these emotions and misplaced expectations in an adversarial setting, outside the family law arena. A delicate balancing act is involved, in handling these cases in a way which limits the emotional fallout. While high levels of emotional intelligence are often displayed, the paper suggests there are times when judges are unable to remain emotionally neutral, and make subjective value judgments- especially in contested wills.

11.15am

**Morning Tea**

11.35am Session 3

**Implicit Bias**

**Chair** The Hon Justice Peter Murphy, *Family Court of Australia*

**Presenter** The Hon Andrew Wistrich, *former Magistrate Judge, United States District Court, Central District of California*

**Description** The term 'implicit bias' describes when we have attitudes towards people or associate stereotypes with them without our conscious knowledge. The presence of implicit biases is an uncomfortable acknowledgement to make but it is widely held that we all possess them. The presence of an implicit bias does not predict biased behaviour in the individual, but research indicates that it can predict average outcomes across larger populations. What can judges do to recognise and challenge their own implicit biases?

12.30pm Session 4

**Judicial Emotion and Impartiality**

**Chair** Dr Heather Roberts, *ANU College of Law, Australian National University*

**Presenter** Professor Sharyn Roach Anleu, *College of Humanities, Arts and Social Sciences, Flinders University*

**Description** The conventional image of judicial authority, emphasising detachment and impersonality, contrasts with the emotion which is inevitably part of everyday judicial work, especially in high volume lower courts where magistrates frequently engage directly with members of the public. Drawing on extensive empirical research, this presentation examines how judicial officers understand the meaning of impartiality and the place of emotion in their work.

1.30pm

**Lunch**

2.20pm Session 5 The Impact of Emotion in the Courtroom

**Chair** Her Hon Chief Magistrate Lorraine Walker, *Magistrates Court of the Australian Capital Territory*

**Presenters** The Hon Justice Jennifer Coate AO, *Family Court of Australia*  
Dr Ian Freckelton QC, *Barrister*

**Description** Judges and lawyers each have their roles to play in the courtroom. The court environment is often an emotionally fraught one in which the players are required to fulfil their roles whilst dealing with often confronting situations or subjects. This session will explore the impact of these experiences from the perspective of the judiciary and the profession, and what they can do to address such impacts.

3.25 pm Afternoon Tea

3.45pm Session 6 Judicial Stress: A HoJ's Duty of Care?

**Chair** The Hon Justice Glenn Martin, *Supreme Court of Queensland*

**Presenters** Her Hon Elizabeth Bolton, *former Chief Magistrate, Magistrates Court of South Australia*  
The Hon Justice Stephen Thackray, *Family Court of Western Australia*  
Professor The Hon. Marilyn Warren AC QC, *Vice Chancellor's Professorial Fellow, Monash University and former Chief Justice, Supreme Court of Victoria*

**Description** There is an increasing awareness and recognition of vicarious and secondary trauma as issues in society in general, and within the legal profession and judiciary more specifically. For the judicial officer, one can add the stresses of busy court lists, mounting reserved judgments, difficult litigants, and more. Underpinning the notion of judicial independence, judicial officers are not considered employees of the State. Does anyone owe a duty of care to judicial officers experiencing difficulties coping with the stresses inherent in their role? Does a Head of Jurisdiction have any responsibility in this area? And, if so, what is the content of that responsibility?

5.00pm Sessions Close

5.00pm  
–  
6.00pm  
Drinks and Canapés



Sunday, 3 March 2019

9.00am Mindfulness Practice – optional

**Presenters** Dr Craig Hassed, *Lecturer, Department of General Practice, Monash University*

**Description** The science of mindfulness is persuasive, but the benefits come from practice and are realised through personal experience. All conference participants are invited to attend a morning mindfulness practice session led by Dr Craig Hassed. This is an opportunity for those who have never tried mindfulness to explore how the practice may enhance their own wellbeing, and an opportunity for those who have, to practice with a leading mindfulness teacher and researcher.

9.30am Session 7 Emotion in Sentencing: Offender's remorse and victim impact statements

**Chair** Ms Wendy Kukulies-Smith, *ANU College of Law, Australian National University*

**Presenters** Dr Tracey Booth, *Faculty of Law, University of Technology Sydney*  
Dr Kate Rossmannith, *Senior Lecturer in Media & Cultural Studies, Macquarie University*

**Description** When sentencing an offender, judges are frequently required to assess the victim's experience as presented through a victim impact statement, as well as any evidence of remorse on the part of the offender. They may also have to attend to and manage expressions of emotion from those in the courtroom, as well as regulating their own feelings and demeanour. Two presentations report on findings from in-depth Australian research on these aspects of judging and emotion.

10.30am Morning Tea

10.50am Session 8 Wellbeing Literacy and Positive Psychology

**Chair** Dr Stephen Tang, *ANU College of Law, Australian National University*

**Presenters** Dr Craig Hassed, *Lecturer, Department of General Practice, Monash University*  
Prof Lindsay Oades, *Director, Centre for Positive Psychology, Melbourne Graduate School of Education, University of Melbourne*

**Description** Drawing upon the empirical bases of positive psychology, wellbeing science and the growing body of research into the effectiveness of mindfulness, this session will consider individual and organisational strategies to promote wellbeing, productivity and engagement. The session will explore the philosophy and practice of mindfulness across a wide variety of applications including managing personal stress, dealing with secondary trauma, coping with workload, enhancing mental and physical health, compassion and effective communication. The importance of language use in improving wellbeing in organisations will be explored, with reference to the new concept of wellbeing literacy.

11.50am	Session 9	Superhuman or Super humans? How structures and relationships can encourage wellness in the judiciary and the legal profession
	<b>Chair</b>	Dr Anthony Hopkins, <i>ANU College of Law, Australian National University</i>
	<b>Presenters</b>	Her Hon Judge Felicity Hampel, <i>County Court of Victoria</i> Magistrate Pauline Spencer, <i>Magistrates' Court of Victoria</i> Dr Stephen Tang, <i>ANU College of Law, Australian National University</i>
	<b>Description</b>	The final session will draw together various themes from the conference and invite participants to engage in discussion about what a wellness approach might look like for them personally and for their court or legal practice. The presenters will briefly survey the latest research on wellbeing in the judiciary and the profession, before suggesting a way forward that goes beyond a focus on the individual, to encompass structural, relational and systemic reforms that promote wellbeing. This discussion will provide a platform for participants to share their own insights about what works for them, their court or their legal practice.
1.00pm		Lunch
2.00pm		Close

A short survey will be emailed to each participant.

**Thank you**