

NSW Bar Honours Justice Gaudron

On 8 May, 1985, the NSW Bar Association paid tribute to Justice Gaudron on her appointment to the High Court. Whealie QC and Noe proposed the toast

Whealie QC:

It is my privilege to speak to and about Justice Mary Gaudron. My link with Her Honour is that I was one of the "Happy Breed" - the class of '65. This was, as the song says, a very good year. It produced some able women, Mary herself, Bron Bishop, Kaye Loder and Daphne Kok - all of whom have gone on to great success. In deference to the male component of this audience, I should point out there were, in addition, a brace of successful men. These included Reg Blanch, Greg Woods, Col Phegan, Frank Walker, Ron Solomon, David Tonge and many others too numerous to mention. From the same year emerged many practising barristers, some of whom are Branson, Giles, Hastings, Jenkyn, Knight and Odling.

Perhaps, the most famous "old boy" of our era was Frank Nugan who, thanks to Frank Walker, was our only contemporary who had the distinction of being exhumed! (INTERJECTION FROM SIR HARRY GIBBS - "THUS FAR".) Many of our year claim to have been "Born Again", but exhumation is a different matter altogether.

Our lecturers from that year included Sir Anthony Mason, Mr. Justice Hutley, a great favourite with all of us, and a renowned "patron" of Mary Gaudron and Sir Laurence Street. I recall Mr. Street (as he then was) lecturing us in the theatre in the Stamp Duties Office. His suave athleticism caused a flutter among the female students. I well recall his habit of eschewing the staircase to the stage platform and leaping Douglas Fairbanks style from the floor of the auditorium to the stage. The ladies gasped, while the men simply gritted their teeth.

Another of our lecturers - part-time of course, was R.P. Meager. (INTERJECTION FROM HANDLEY Q.C. "He would have used the staircase!")

It was an unusual era in many ways. The Law School was small and outmoded; facilities for study were limited; the Catalina coffee shop was the Greenwich Village of the day. Down the road was Lorenzini's Wine Bar, and artiled clerks frequented a number of hotels which have long since disappeared. The smart garb of the day included Duffel Coats and shoes, gruesomely named, known as Brothel Creepers. There was the odd right wing conservative student attired in three piece suit and brown shiny briefcase - no doubt artiled at Minter Simpson. There were early signs of student protest - limited mostly to complaints, pallid at that, regarding the lateness of the Law School lift and similar matters of social consequence.

My first recollection of Mary Gaudron is seeing her engrossed in serious talk with her "circle" at the Catalina enshrouded by red hair and enveloped in thick cigarette smoke. She liked to appear a diletante but, of course, she worked, unlike we real diletantes, very hard indeed. She rarely missed a lecture and her prodigious academic success was won by sheer hard work. In fact, she was out of a different mold in many ways. Two of our best students I recall were quite unconventional. There was Branson, who in those days - he is quite different today - dressed

like a boilermaker's assistant and looked like a Council labourer; and Mary, who could swear like a trooper, and who was known to proclaim - and still does, I understand, such sentiments as "The Trots are the last bastion of the working class". I refer, of course, to the Harold Park Trots. The fact is she was not only an academic success, but a force to be reckoned with - a woman of strong feelings and the personality to go with it, and fearless, even sometimes foolhardy, in her expression of those feelings.

Details of her subsequent career are too well known to be repeated in detail. Her early appointment to the position of Vice President of the Conciliation and Arbitration Commission, and her controversial resignation - subsequent academic life, working briefly with Ron Sackville, and, of course, Solicitor-General with the State Government.

Her career at the private bar was comparatively short. One of her greatest credits was that she was chosen by Frank Hutley to appear to represent either his interests or interests close to him in a controversial piece of litigation. True to form, he told her, at the end of the case, she would **not** succeed because, in her submissions, she had not done exactly as he said. She had strayed from the path of intellectual righteousness.

Notwithstanding this lapse, we see her today as a Justice of the High Court of Australia. This vivacious, forceful, often troublesome but always exuberant personality has taken upon herself that which (in a different context - I think he was speaking of Death!) Dickens described as "The grim solemnity of the Sages and Patriarchs".

One of our Federal Judges, here tonight I am pleased to observe, told me (before his appointment) that life on the High Court Bench would be like serving 20 years hard labour. (He is now serving his sentence in another place) and I think that after all the ceremony has ended, and the congratulations have faded away, that his assessment was and is a chillingly accurate one.

It is a long and awesome task that confronts Mary Gaudron. It is also an important one, not only for her but for Australians and Australia too. It is my hope that in meeting the challenge of that task, she will retain her vivacity, her force and exuberance.

It is my belief that not only the good wishes of those who knew her in her subsequent career go with her, but that all members of this Association would earnestly wish to see her succeed in this appointment to her own satisfaction and to the benefit of Australia.

Noe:

It was very moving to be asked to make this speech tonight because the association between Her Honour and I goes back such a long time. Indeed, I can remember well the first time we met; it was at about 7.20 p.m. tonight.

My task is made no easier by being the last cab off the rank. Now that you have all heard my learned leader Whealy's sycophantic speech, I'll have to tone mine down and bore the socks off you in order not to outshine him.

I in fact had to undertake an exhaustive search in order to come up with those malicious tidbits which I knew would be expected of me tonight if I was to salvage my honour.

Indeed, so unrelenting was my search, that it prompted concerned words from a senior member of my floor to the effect that I used to have a practice until I started preparing for tonight.

However, disappointed Attorneys aside, I did find some material which was surprising, at least to me.

Take this recollection, for instance. And it came to me from someone who should know - claiming, as he does, to be a contemporary of Her Honour's. Of course, I had to give the usual undertaking not to disclose my source when I first spoke to him; but, since I have to soil my nest tonight I figured I might as well take him with me. So, John Trew, I'm sorry. Anyway, he told me that the most interesting thing about Mary Gaudron - aside from the fact that she once had her hair cut at Pymble - is that she used to live in a nuclear free zone.

Naturally, I accepted this unreservedly. Until I happened upon what has to be considered the definitive biographical work on Her Honour.

That treatise is to be found in (1980) WD & WW 34-35.

I am, of course, referring to the authorised report of the Woman's Day and Woman's World magazine and, in particular, to the edition of 17 July, 1980.

Lest there be any suggestion that I am misleading the audience, I show you the publication. This is the article which, you will see, is headed "Mary Gaudron's Brilliant Career".

You can take it from me, Your Honour, that this is an actual edition of the Woman's Day and Woman's World which was published in 17 July, 1980 and which retailed in Australia at the price of 50 cents.

You'll remember that I was telling you of John Trew's recollection that Mary Gaudron used to live in a nuclear free zone.

I take you to the second last paragraph on page 35 of the article which reads as follows:-

"While the legal world speculates. Mary Gaudron has another battle on her hands. She has found radiation at the bottom of her \$350,000 Hunter's Hill, Sydney home. Radioactive waste was dumped there some years ago and she found out by accident?"

There can't be any doubt that this is the correct version.

But, I hasten to add, that there is no suggestion whatsoever in the article that Ray Reynolds had anything to do with the dumping of the radioactive waste.

Whilst I'm referring to this exhaustive article on Her Honour, it would be remiss of me not to take you to some

of the highlights of the text.

The article poses this prophetic question:-
"Will Mary Gaudron emerge as the first woman to sit on the High Court?"

The clue to the answer is, of course, to be found in the article itself.

We discover, for instance, that Her Honour was known to certain colleagues who, you will be relieved to know, remain nameless, as "Mary the Merciless". To certain other persons who are described in the article as "friends" - but, who, in another context, might be described as utter crawlers - as "idealistic, loyal and, above all, fair."

I confess that I have some difficulty with the next paragraph; but it seems that she demonstrated this - presumably, either that she was "merciless" or a "crawler" when she resigned as Deputy President of the Conciliation and Arbitration Commission after she and certain other judges had somehow managed to strip Justice Staples with a letter. I for one don't know what to make of that. But I'm quite sure that the Grim Reaper would not approve of letters being used in that way.

The article goes on to reveal that the late Frank Hutley regarded Her Honour's appointment to the Conciliation and Arbitration Commission as a tragic waste of her capacity. According to the author, Hutley told Her Honour that judicial office was "only for the mature". She was, I believe, only about 31 at the time. Hutley went on to draw a somewhat unusual analogy. He said:-

"As with athletes, you can spoil them if you put them into competition when they're too young. You don't enter two-year-old horses in the Melbourne Cup."

Some of you might recall that Michael McHugh, as he then was, made a similarly flawed judgment (not about the Melbourne Cup that is ... I'm informed that His Honour's judgment in that sphere is rarely flawed) when he counselled Justice Kirby against taking his appointment to the Conciliation and Arbitration Commission in 1975:-

"Michael, you are only 35. If you take that job you will sink like a stone. Nobody will ever hear of you again!"

Personally, I'm hanging out for one of those appointments ...

The article goes on to say that:-

- Her Honour was proud of her working-class background and had a vocabulary to match;
- had flaming red hair - the remnants of which can be seen tonight; and
- was a bit of a tomboy - indeed, she is described on the front page of this publication as "The Tomboy Judge".

Further, it seems that Her Honour was educated by nuns at a Moree convent. But, she managed to overcome this impediment. So much so, that an unnamed Sydney judge said of her in this article:-

"She could outswear any man - although she never used this talent when it was not appropriate. But she could hold her own with shearers and labourers. She could even handle drunks" - which should come in mighty handy at afternoon teas with the High Court.

Oh, and she is recommended by leading dishwashing machine manufacturers for a beautiful finish.

Oh, sorry. That's the advertisement.

Having mentioned the word "finish", I propose to do so. □

Justice Gaudron responded:



I was quite surprised when the idea was first suggested to me for I have of recent years participated very little in the corporate life of the Bar. I was even more surprised when it was suggested that it was appropriate for me to respond or reply to a toast to my health.

During my association with the Law I have been disabused of a number of great certainties but one matter which I held certain perhaps for longer than any other was that never again, and no matter what, would the Bar Council entertain the prospect of my speaking at a gathering such as this. Were that the case the Bar Council would be guilty of nothing but eminent good sense. Given that it is not the case, it is I suppose at the very least powerful evidence of the courage for which the New South Wales Bar is rightly famed.

When acknowledging the undoubted quality of the New South Wales Bar, I think it is appropriate to refer also to their stamina and robustness, qualities which I have seen displayed on occasions such as this. Now perhaps

you will forgive me if I mention 'the great poisoned oyster debacle'; I was not present on that occasion but I read about it in Column 8 some several days later. I congratulated myself on my luck and several days later again I had occasion to ring a woman barrister. She was not in chambers. I rang her at home. I heard this very weak "Hello?" I said, "are you well??" "Oh," she said "I'm not at all well; no, no, I'm very poorly." I said "Did you eat some of the poisoned oysters?" "What poisoned oysters?" said this plaintive voice. So I explained what I'd read in the newspaper, at the end of which she said "Oh, thank God, I thought I had the world's longest hangover."

Because other people have referred to the Conciliation and Arbitration Commission perhaps it is appropriate if I also make some reference to that institution. It's an institution, the importance and the difficulty of whose work is frequently underated. I think it's fairly arguable that but for the Arbitration Commission there would not today be a High Court building in Canberra. In 1978 I remember being one of a bench of seven constituted to consider the introduction of maternity leave in Australia. After the case was finished we were locked up in the conference room at 415 Little Bourke Street, whereupon we proceeded to behave in varying degrees of unladylike and ungentlemanly like behaviour accusing each other of sexism, male chauvinism, radical feminism and the like. In the midst of that debate the phone rang in the conference room. I answered the phone, turned to Mr. Justice Coldham and said, "it's the Associate to the Chief Justice of the High Court?" Mr. Justice Coldham who is ever a gentleman, punctilious, properly respectful, took the phone call, remained speechless and visibly paled. He motioned for a pen and paper; it was brought to him; he still remained speechless. After a while he said "Let me make sure I have got this down correctly, the Chief Justice of the High Court wishes to notify the existence of an industrial dispute in that pickets - being striking members of the Builders Labourers Federation - today refused access to the High Court site to the Chief Justice and the Governor General." We immediately proceeded to give him helpful advice as to how this delicate matter should be handled; some of us had no doubt at all that the Chief Justice was a party to the dispute and should be summonsed to a compulsory conference forthwith. Wiser counsel, which was to the effect that the presence of the Chief Justice could only impede conciliation, prevailed.

The compulsory conference was duly called without the Chief Justice of course and it appeared during the course of that conference that the Builders Labourers were forwarding a claim for a disability allowance. Admittedly it was a somewhat generous disability allowance that they were pursuing but nonetheless it was distinctly identifiable as a disability allowance and it was pursued by reference to two arguments: one compelling, the other cogent. The compelling argument went something like this: "We've got the pickets in place and they're going to stay in place and we're going to keep the Chief Justice in place which is far away from the High Court unless and until we get our disability allowance." The cogent argument went something like, "Well he's always on the site. It causes an awful lot of tension and it's affecting site safety and we really don't know what the status of his instructions

are.' In short they said it really was a very considerable difficulty to have to work under the supervision of the Chief Justice. Mr. Justice Coldham thought about this for a little while and said "But I work under the supervision of the Chief Justice, he is most critical of my work but I don't get a disability allowance for that." The union rep was not at all fazed by this. He said, "Well if your Honour wants to make an industrial claim we would be prepared to support it with appropriate industrial action," and "We don't know what he's like as a Chief Justice, we just know he'd make a fine Clerk of Works on the Acropolis."

I think perhaps I might be permitted to say that I have always missed the Arbitration Commission. There was endless variety; the industrial situations were invariably hilarious so long as you maintained sufficient distance therefrom, and one had the opportunity for inspections to quite interesting places, although in retrospect I think I could have gone without my interminable inspections of sewerage works. Thanks to those, there is no doubt that I can claim to be the only Judge of the High Court with an intimate knowledge of activated sludge. My knowledge of activated sludge was not entirely gained in the Conciliation and Arbitration Commission. If any of you

would, contrary to my advice, travel in the middle East you will find that aeroplanes in that part of the world fly not be reference to a timetable but by reference to some unfathomable principle which on a Friday night translates roughly as "maybe if it is the will of Allah next Tuesday!" In consequence of that principle I spent three nights incarcerated with three American sewerage engineers bent on the introduction of activated sludge to Saudi Arabia. They were lavish in its praise, they thought it was a greater advance than the discovery of penicillin and they talked about it for three days. At the end of the three days my presence was acknowledged. One of the engineers detached himself, came over to me, asked my name, age, a few other personal particulars and my work activities. I told him that I was a Judge of the Conciliation and Arbitration Commission with a responsibility for the sewerage workers of the whole of Australia. That impressed him at least sufficiently to call to a colleague and say, "Say, Bud, this here chick's a Judge." Bud replied, "Sure that's interesting. Ask her if she knows anything about newfies." To which came back the answer "She not a goddamn dog Judge she's a goddamn Federal judge, a Federal aberration Judge." As the French say, 'plus ça change.' □

MR. JUSTICE SIMON ISAACS

Mr. Justice Simon Isaacs, a former Judge of the Supreme Court of New South Wales, died at Sydney on 17 June 1987 at the age of 82. He had retired from judicial office on 10 April 1975 having been a Judge of the Supreme Court from 19 October 1964.

Simon Isaacs was admitted to the New South Wales Bar in 1934 taking silk in 1950. His practice at the bar was in all jurisdictions.

He was an eloquent, learned and forceful trial and appellate advocate. He will be remembered for his fearless integrity. There must be few barristers who were singled out as Simon Isaacs was for special mention by a Prime Minister of the day. In describing Simon Isaacs as a "larrikin lawyer" the Prime Minister perhaps was conferring upon him both faint praise and an unintended accolade. Simon Isaacs would have appreciated the remarks and description.

Prior to his appointment to judicial office Simon Isaacs had a well deserved reputation for providing advice and help particularly to his more junior colleagues.

He was also a man noted for his generosity and particularly so to his juniors. Many enjoyed his hospitality at the annual end of year party being an event noted for its excellence and indeed lavishness.

In 1964 Simon Isaacs was appointed to the Supreme Court. It was merited and well deserved. The offer of the appointment came as a surprise to Simon Isaacs. He was on the eve of his sixtieth birthday. I can fairly say that he possessed an ambition to finish his career as a Judge of the Supreme Court. He was delighted to have the



opportunity of doing so and to serve the community in a judicial capacity.

On the Bench Simon Isaacs was noted for his courtesy, patience, knowledge and learning. He did not cease to be a compassionate and feeling human being. He was a believer in judicial independence and practised it. Simon Isaacs enjoyed judicial life to the full, regretting the need to retire from it in 1975. However his service to the community did not cease. He continued to be associated with community activities including those associated with the rehabilitation of ex-prisoners. At the invitation of the N.S.W. Government Simon Isaacs chaired the N.S.W. Commission into logging at Terrania Creek.

The legal profession, the community has lost a great member. I have lost a personal friend. □

Alan R. Abadee Q.C.