

The swearing in of The Honourable Justice Anthony Whealy

as a judge of the Supreme Court of New South Wales.

Address by Ruth McColl S.C. at the swearing in ceremony on 26 June 2000.



May it please the Court. It is my honour to appear on behalf of the New South Wales Bar to welcome and congratulate your Honour on your appointment to this Court.

You come to this Bench with the unique distinction of having already been the subject of a Ceremonial Sitting of a court in celebration of your appointment. Only six weeks ago, the Licensing Court of New South Wales convened a Ceremonial Bench to farewell you, not as a member of its Bench but as the eminent practitioner in that jurisdiction. It is rare, indeed, for a person in my position to be able to read, in effect, a dress rehearsal of this morning and to

find such an abundant richness of source material.

However, to start at that the beginning.

Your career as an advocate started in school debating. You were captain of the Senior Debating Team at Riverview in 1958 and 1959, in each of which years you were the winner of the Laurence Campbell Trophy. In those years, you argued against the proposition 'that a thing of beauty is joy forever' and also successfully opposed the proposition that 'love makes the world go around'. From all that is said about your Honour, it is unlikely that your heart was in either topic. It is a tribute to your early skills as an advocate that your team triumphed on each occasion.

You studied Arts/Law at the University of Sydney. While undertaking your studies you did articles at Murphy & Moloney during the period Murray Gleeson was the senior articulated clerk at the same firm.

The seeds of your future were sown during your time at Murphy & Moloney. That firm acted for Cahills, the restaurant chain and you were engaged in work on their behalf seeking liquor licences throughout the length and breadth of this State.

After you graduated you joined Freehill Hollingdale & Page where in your final year as a solicitor you worked in the liquor licensing area with Mr. Tom Jones. It was Mr. Jones apparently who sagely advised you that you would be better off as a barrister than a solicitor. It was good advice. Mr. Jones proved his faith in you and has continued to brief you to this day.

You were admitted to the Bar on 4 June 1971. You joined the Fifth Floor of Wentworth Chambers where you remained until your appointment. You were the leader of the floor at the time of your appointment.

You read with Murray Gleeson. In your early days your practice, as would befit one reading with Gleeson, was broadly distributed through commercial, equity and common law.

Gradually your work became more concentrated in the licensing area. You appeared with notable success for the late Claude Fay and the rest, as they say, is history. This does not mean you spent the rest of your career in the Licensing Court. Your work there took you to such lofty climes as the Privy Council, the High Court and the Court of Appeal.

I think I can say without committing an indiscretion because I am quoting from your speech at the Ceremonial Sittings of the Licensing Court that you took silk in 1984 with the intention of trying to broaden your practice. That of course did not occur. Instead you got even more work in the liquor licensing jurisdiction than you could have imagined was available. Such was inevitably going to be the case for a counsel whom solicitors and clients alike perceived to be the master of that universe.

It is hardly surprising that your Honour was a success.

Your Honour's style has been characterised by manifest civility and courtesy to the Bench, to fellow practitioners, to clients and to court staff. That elegant style conceals exceptional court craft. You have been described as the most dangerous of opponents – intelligent, far-sighted, quick-witted and as having an ability to put outrageous propositions in a very appealing manner. Another describes you as a 'brilliant tactician blessed with a wonderful turn of phrase.' You were always fully conversant with the law yet to some your success appeared to be achieved with what one peer described as an economy of effort. Another former colleague described your style as 'laidback'.

You did 'break out' of licensing work at one stage. You were an acting District Court Judge between 1988 and 1991. It might be noted that

appeals from your Honour's judgments were singularly unsuccessful. You also served as a member of the Legal Services Tribunal between 1995 and 1997 and again in 1998.

Your fellow practitioners say there is no doubt that you will bring to this jurisdiction your sound common sense approach of the application to the principles of law. You will focus on the essential rather than getting caught up in the minutiae. You will apply your great capacity for decision making and your intellectual courage to the problems which come before you.

One of your recent submissions to the Licensing Court was:

'The Court should not be gulled by forensic tactics.'

Those who appear before you would do well to recall that you will no doubt view all submissions in that light.

You are known as a compassionate man with a great understanding of human frailties. Although it may make some insurers uncomfortable, it should be noted that you are a tremendously generous person.

At the Ceremonial Sitting you gave an insight to your approach to your fellow practitioners. It bears repetition. You said:

Try to be a gracious winner – because it is easy to perhaps be gracious when you win – but also try to be a good loser. Our clients aren't always right, we do the best for them but we can't always win.

The generous spirit inherent in those words have epitomised your Honour's approach to your career. They have stood you in good stead if the high regard in which you are held is any measure.

Your Honour, if you bring but a few of the qualities for which you are so highly praised by all before whom you have appeared and with whom you have appeared, this Court will be well served.

We wish you a happy and successful life on the Bench. May it please the Court.