

The Hon Justice Simon Sheller AO

The following address was delivered by the Hon JJ Spigelman AC, Chief Justice of New South Wales on the retirement of Justice Sheller, in the Banco Court, Sydney, on 29 April 2005

In the 180 year history of this court there have been numerous judges who have displayed many of the judicial virtues: learning, wisdom, compassion, eloquence, robust independence, impartiality, attentiveness, diligence, common sense, clarity of thought and of expression, administrative skills and strength of character. Few have had all of these qualities and to the high level, that has been manifest by the Hon Justice Simon Sheller for the entire period of over thirteen years that you have served as a judge and judge of appeal of this court.

Regrettably the time has come to pass on the responsibilities of office to others. In the words of Lucretius - *et quasi cursores vitae lampada tradunt*: 'like runners they pass on the torch of life'. This state is losing a great judge. It is fitting that so many of us have gathered here today to mark your retirement.

From your Honour's first day in this court to your last day, not one of the many hundreds of litigants, whose affairs it fell to you to determine, had any doubt that they were treated with the utmost courtesy; that the assessment of the case for and against their interests was conducted with care and rigour; by a person of great dignity who also had an enormous store of legal knowledge and a compassionate understanding of their difficulties and wishes. No one left your Honour's court, whether during the course of a hearing or after judgment was delivered, with any doubt that they had received substantial justice according to law.



L to R: the Hon CSC Sheller AO QC, as he is now, and Chief Justice Spigelman.

Your Honour's contribution was not limited to sitting as a judge. It extended to the detailed administration of the court and more broadly to the service of the Australian judiciary. Your Honour made a contribution that is unlikely to be surpassed and which has justifiably been recognised at the

highest levels by the award of an Order of Australia.

Between 2000 and 2004 your Honour served as the president of the Judicial Conference of Australia where you represented the whole of the Australia judiciary at a time of considerable challenge, particularly in the context of the imposition of a taxation surcharge on judicial pension entitlements.

In this court your Honour served as the chairman of the Building Committee from its establishment in 1993 ensuring that the practical accommodation needs of the court were met and, perhaps most notably, supervising the transformation of the original Francis Greenway designed Supreme Court building in an award winning heritage project which, unusually for a heritage building, recycled an old building for its original use, whilst providing contemporary accommodation standards.

Your Honour also chaired the Alternative Dispute Resolutions Committee of the court since 1997. Your enthusiasm for mediation has led directly to changes in the court's Rules and in its practice with respect to mediation, which changes have considerably enhanced the dispute resolution process in this state.

Your Honour has served on the Law Court's Library Management Committee since 1995 and as chair from 2002 to 2004, maintaining the high level of quality of the service provided by the library, which is much appreciated by all judges. This service has been considerably enhanced by the resolution under your guidelines of longstanding budgetary difficulties with those who fund the courts and the reconstruction of the library itself.

Your Honour also chaired the 175th Anniversary Committee in 1999, organising a series of events including a ceremonial sitting, lectures, an exhibition and a dinner, by which the legal profession and, to some degree, the broader community came to better recognise the contribution that is made to this nation by the longevity of our institutions of the rule of law.

In all of these respects your Honour's past activities will continue to have effect to the great advantage of the administration of justice for many years to come.

Like any judge, your major contribution is the judgments you have delivered. Over 200 are published in the *New South Wales Law Reports* which, of course, represent only a fraction of your Honour's entire throughput in what was once called, when there was such a thing, unreported judgments.

I have, over recent years, on these occasions of the retirement of a judge of appeal noted a number of that judge's judgments which will clearly stand the test of time. On this occasion I



L to R: John West QC (back row), John McIntyre, President of the NSW Law Society, Ian Harrison SC, the Hon TEF Hughes AO QC and the Hon RP Meagher AO QC.

stand defeated. There are simply too many. It would be invidious to select some rather than others. There is no area of this court's jurisdiction that your Honour did not touch. There is no area that you touched that you do not adorn.

You have delivered leading judgments on the duties of company directors, on the law of options, on takeovers and winding ups, on the lifting of the corporate veil, on equitable setoffs and constructive trusts, on fatal accident claims, on the duty of care of local authorities and hospitals, on the effect of fraudulent conduct on insurance policies, on the requirements of procedural fairness in various statutory bodies, on the duties of executors, on the disbarment of legal practitioners, on the law of declarations, on the standing to obtain injunctions, on the rights of beneficiaries to have access to trust documents, on sentencing for sexual offences, on identification evidence based on photographs, on the withdrawal of a guilty plea, on the 'perils of the sea' exception to carriers liability and on the valuation of a dredge. There is no point in singling out any one of these judgments, nor in extending the list further.

Each of these judgments manifest your Honour's judicial style of comprehensive attention to all of the relevant facts, to the issues arising in the proceedings and to the arguments submitted by the parties. Notwithstanding the complexity or the size of the task, every one of your Honour's judgments deals with each of the requirements of the case at hand in a manner that is uncluttered by anecdote, literary reference or any other form of self indulgence, to which so many of us, including myself, sometimes succumb. Your command of the language allows all of this to be expressed with force and clarity and in a tone of high sobriety.

However, there is a side of you that is not manifest in your judgments and which is only available to those with the privilege of direct personal contact. Your Honour is a man of great wit, frequently of a kind that borders on the impish.

Interacting with you, as your fellow judges have had the privilege to do on a regular basis, has always been a delight. That delight has been considerably enhanced by the contribution that your wife, Jan, to whom you are devoted, has made to the collegial life of the court. I wish to acknowledge that contribution here this morning. I know how much you value her support. We are particularly grateful that she permitted you to stay until you were required to retire by statute.

Your Honour leaves us with many memories and with many contributions and insights, on which we will draw for some considerable time. There is one, however, that will abide for all of my time as a judge and I am sure, in this respect, I speak for all of those who have been your colleagues. Thank you for many things, but thank you most of all for providing all of us a role model as to how a judge should behave.

— ACCENT —

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