The Hon Justice Steven Rares

The Hon Justice Steven Rares was sworn in as a judge of the Federal Court of Australia on 3 February 2006.

Rares J was educated at Knox Grammar School in Sydney and at Sydney University, graduating with Arts and Law degrees. His Honour completed articles at Dudley Westgarth and Co and worked closely with its then young partners, Henry Herron and Andrew Stevenson. He was admitted to the Bar in 1980 and appointed senior counsel in 1993. His Honour practised extensively in the areas of defamation, media law, trade practices, commercial and corporations law, administrative law, maritime and aviation law. Rares J had been a member of the Judicial Commission of New South Wales, a member of the board of Counsel's Chambers Limited between 1995 and 2005, chairman of the board between 2002 and 2005 and a member of the board of Gofund, which raises funds to support research into and awareness of gynaecological cancer.

At Rares J's swearing in, Attorney General Ruddock spoke on behalf of the Australian Government, John North spoke for the Law Council of Australia, Glenn Martin QC for the Australian Bar Association, Michael Slattery QC for the New South Wales Bar Association, and June McPhie for the solicitors of New South Wales.

Of Rares J's early practice at the Bar, Slattery QC said:

> Your Honour immediately developed a reputation for prodigious energy, tenacity, legal creativity and a strong sense of justice and humanity. All of this was fuelled by a ferocious work ethic. At least two of your Honour's contributions to the law deserve special mention. Your Honour became one of a very rare group who has argued several cases as juniors in the High Court. One of these cases is *Tanning Research Laboratories v O'Brien*, decided in 1989, which still stands as a leading authority on the enforcement of international arbitration awards in Australian domestic law.
>
> In your Honour's case, necessity was ever the mother of legal invention. In your earliest years, one evening your Honour was passed a brief to appear the next day in a bail application in a criminal matter before his Honour Judge Joe Moore of the District Court. Faced with what appeared to be very serious charges, but over very longstanding events, the man's liberty seemed in jeopardy. With your Honour's typical thoroughness, your Honour then did what perhaps no other lawyer of your generation would have done. Your Honour went back to the words of Magna Carta:
>
> *And we will not deny or defer to any man either justice or right.*
>
> Your Honour sought a stay of the charges, and your Honour's client was granted bail. And that, as Mr Martin has said, became *McConnell's case.* As a result, your Honour founded a whole field of jurisprudence ultimately culminating in *Jago v The District Court of New South Wales*, decided by the High Court in 1989."

Rares J said of this case, and his interest in judicial independence:

> Indeed, I remember before I ran that argument that I rang Bob Ellicott up and said, 'Am I mad to do this', and he said, 'Well, why don't you look at the International Covenant on Civil and Political Rights', and gave me another line of argument to support it.
>
> The promise that was made in Magna Carta ensured that the king's courts would be open to all; that they would be impartial and speedy in hearing and determining any case brought before them. Today these values are enshrined throughout the common law world, including Chapter 3 of the Constitution of our nation. Thus, Lord Denning, who was the chairman of the Magna Carta Trust, could say that in *R v McConnell*, Judge Moore 'had made a decision after my own heart'.
>
> Our Constitution guarantees that judges and courts are independent not only from the parliament but from the executive and also all extraneous influences, including public opinion and the media. The only influences upon courts can be the requirements of justice, which must be done and must be seen to be done according to law.
>
> As has been mentioned, I have long had an interest in judicial independence because it is a bulwark of liberty. Its counterpoise is the principle of open justice; that is, the requirement that courts exercising judicial power must sit in public, exposed to full scrutiny by all. The right to know or criticise what goes on in courts and the decisions they make ensures that the community can be confident that the trust reposed in judges and the judicial process is transparent.
>
> This is vital, because a judgment in a case lays down the law as a means of resolving a dispute, whether it be between individuals or between an individual and government, or between governments. Where legislation governs the issue in dispute, courts interpret the legislation and apply it to the facts of the case, thus doing justice according to law.

> In other cases, the rules of common law or equity may need to be applied in order to resolve a dispute. But however the court decides an individual case, it does so as an independent arm of government acting according to law, as explained in the reasons for judgment. The Constitution establishes that independent status as an arm of government in courts such as this exercising the judicial power of the Commonwealth.

On this topic, Mr North quoted from a speech his Honour gave to the Inaugural World Congress of Barristers and Advocates in Edinburgh in 2002, entitled 'The Independent Bar and Human Rights':

> To be a barrister is a privilege. To fight someone's case to establish their right to be equal before the law is an honour members of our honourable calling accept every day, often times for little or no fee. This we do before courts which value our independence and whose independence we in turn revere. Neither judges nor members of the independent Bar can choose the easy case; we must take whatever comes and give our all. The hard won privilege of our independence should remind us of our responsibilities to seek to uphold fundamental human rights, however hard that may be, for if we are silent, who will speak?

Verbatim

Three Rivers District Council and others and Bank of Credit and Commerce International SA (in liquidation) v The Governor and Company of the Bank of England [2006] EWHC 816 (Comm)

Mr Justice Tomlinson: It may be helpful if I explain what moved me to remark that it had been a matter of surprise to me for about a year that the action was being pursued. This reflects the fact that towards the end of November or at the beginning of December 2004, after I had been listening for many weeks to Mr Stadlen's opening submissions in answer to the liquidators' claim, I became so concerned about the case that I decided both to consult and to warn the lord chief justice about it. I told the lord chief justice, then Lord Woolf, that the case was a farce. I told Lord Woolf that it seemed to me that allegations of dishonesty were being levelled against officials or former officials of the bank for no better reason than that if their conduct was presumed to have been honest it represented an insuperable obstacle to the liquidators proving their case. By the close of the liquidators' case the logic of that case as I have already pointed out had driven them to level accusations of dishonesty at over forty officials of the bank. I told the lord chief justice that the case as it was being pursued before me bore little or no relation to that which the House of Lords had considered fit to proceed to trial. I warned the lord chief justice that I feared that the case had the capacity to damage the reputation of our legal system. This was after Mr Stadlen had drawn to my attention many, as I thought, highly relevant documents in the material disclosed by the bank which I had not hitherto seen, and after he had ruthlessly exposed just some of the myriad hopeless inconsistencies and implausibilities in the liquidators' case. The lord chief justice and I discussed whether there were any measures which might be taken either by me or by both of us together in order to persuade the liquidators of the folly of their enterprise. I take full responsibility for the conclusion, which was essentially mine anyway, that there was nothing which could usefully be done. The liquidators were represented by a legal team of the greatest eminence. What was apparent to me as a result of Mr Stadlen's exposition must have been as apparent to them, although unfortunately Lord Neill and Mr Pollock absented themselves from large parts of Mr Stadlen's address so that the immediate impact thereof may have been lost on them. In the event the trial then proceeded for very nearly another year, hence my remark on 2 November 2005.

....

The foregoing are just some of the reasons for my conclusion that the entitlement of the bank to indemnity costs could not be more clearly made out. The bank also prayed in aid as one of many grounds upon which an order for indemnity costs is in this case appropriate 'the offensive treatment of the court, the bank's officials, former officials and witnesses, the bank and the bank's legal representatives and other natural and legal persons involved in some way or other with BCCI SA or its associated companies.' It will be apparent that the bank has no need to rely upon this ground and I do not propose to dwell on it. Mr Pollock was only infrequently rude to me and I ignored it. Not everything said by Mr Pollock is intended to be taken seriously and sometimes his offensive remarks are the product of a well-intentioned but ill-judged attempt to lighten the mood. I propose to say no more about some of the things said in the course of the trial about the bank, its officials and its legal advisers with the exception however of Mr Stadlen. Mr Pollock's sustained rudeness to his opponent was of an altogether different order. It was behaviour not in the usual tradition of the Bar and it was inappropriate and distracting. I should have done more to attempt to control it, although I doubt if I should have been any more successful than evidently were Mr Pollock's colleagues whom on at any rate one occasion I invited to attempt to exercise some restraining influence. Whether this is a ground upon which an award of indemnity costs should be considered I do not need to decide.