

The Hon Justice James Allsop

On 2 June 2008, Justice James Allsop was sworn in as a judge of the Supreme Court of New South Wales, as a judge of appeal and as the eighth president of the New South Wales Court of Appeal. He had been a judge of the Federal Court of Australia since May 2001 (see *Bar News* Winter 2001) and since that time has rapidly established his name as one of the leading judicial figures in the country, known for the depth of his learning and scholarship, his prodigious industry, his civility, his commitment to the fair and efficient disposition of judicial business and his devotion to legal education.

His appointment was widely regarded as a coup for the Supreme Court of New South Wales and one of the more successful outcomes of cross-vesting. It has been mischievously observed that his Honour's well known views as to the breath of the Federal Court's jurisdiction may be shortly revisited! His Honour already commands enormous respect, and he is a worthy successor to the Hon Keith Mason AC QC.

At his swearing-in speech, Justice Allsop spoke warmly of his time on the Federal Court and of his judicial colleagues:

I was privileged to serve on the Federal Court for seven years. The collegial friendliness of the court (most of the time) was a source of much personal enjoyment and professional satisfaction. I made friendships which, I hope, will endure all my life. I would like to express my gratitude to my former chief justice, the Honourable Michael Black, who today is recuperating from surgery. He not only made life as a Federal Court judge both interesting and enjoyable, but also by his graciousness and generosity, made the announcement of my decision to leave the court an occasion of easy and well-meant congratulation.

I will miss aspects of the work of the court which are exclusive to it. Many people might assume that the migration work done by the court would not be one of those aspects to be missed. To the contrary; in particular when undertaking original jurisdiction, I found the work of dealing with information about a multitude of countries and, in most cases, with the profoundly-felt fears and hopes of struggling, decent people both rewarding and important. Repetition and lack of legal merit were common, but almost invariably the cases were of life-changing importance to the litigants, however hopeless their cases may sometimes have been.

The second aspect of the court's work that I will miss is native title. While the cases are sometimes difficult and, at times, exasperating to manage, I was privileged to be given the responsibility of managing a number of large claims in Far North Queensland. Those cases provided an illumination of the history of those parts of the country from the 1870s, and of the patient, but determined, confidence in the court system by the litigants, in particular Indigenous Australians. These cases provided me with an insight (however distorted through the lens of a privileged white legal background) into the basal and complex task of reconciling history and injustice with present day realities, rights and responsibilities. It is an extraordinarily difficult national task, involving the need for goodwill, patience and determination. I am grateful to have been permitted to play a tiny part as a member of the court in the execution of this task.

The decision to leave the court in which I have good friends and colleagues was not easy. This was particularly so when, the judges of



the court, especially in Sydney, had become recently bound together by the loss of so many colleagues in the space of such a short time. The loss in recent times to the court of so many judges, in barely two years, was very difficult for the judges on the court; not just because of the loss of talented colleagues, but because of the loss of close and dear personal friends: John Lehane, Richard Cooper, Peter Hely, Graham Hill, Bryan Beaumont and Brad Selway. The special talents of the four Sydney judges: Lehane, Beaumont, Hely and Hill are too well-known to a Sydney legal audience to need repeating (though, if I may say, I was recently one of the lucky handful to hear Roddy Meagher's prose poem portrait of Peter Hely at the University of Sydney). People here may not appreciate the talents of Richard Cooper from Queensland who was one of the finest maritime lawyers in Australia in the last 30 years and Brad Selway who was one of the nation's great constitutional lawyers and, if I may be permitted to say, surely someone who would have been South Australia's first High Court Justice. I would like to think that I have spoken with them about my decision and that they all approve.

Upon the news of my intended appointment, I was graced with the most generous congratulations of my colleagues on the Federal Court. I was deeply touched by that. Only one letter commenced 'Dear Rat', but that was followed by a quotation from Browning and the writer's warmest well-meant wishes.

His Honour continued by noting that:

One of the important constitutional mechanisms of the prosaic, but successful, Australian Constitution is the structure of s77, which permits the Commonwealth Parliament to use the mechanism of both Commonwealth and state courts to exercise its authority in the deployment of the judicial power of the Commonwealth. This mechanism (absent in the United States' Constitution) was placed in the Australian Constitution because of the anticipated trust, respect and comity among the Commonwealth and the states for each other, and each other's courts. The trust, respect and comity between the federal, state and territory courts for each other and each other's processes are matters of constitutional importance of the highest order. They should never be taken for granted,

undermined or disparaged, in any way. The warm congratulations of my colleagues in the Federal Court on the news of my intended appointment made me reflect, not only on the quality of their friendship, but also on that respect and comity between the courts of the different polities of the federation. I am deeply appreciative of their friendship, congratulations and graciousness.

I have also been warmly welcomed by my new colleagues, most of whom I have known the whole of my professional life. I am also very appreciative of that warm welcome. I am looking forward enormously to working with them, to returning to some of the work from which I hewed a living as a barrister and to coming to grips with new areas. It will be a big change and a big challenge – but I am looking forward to it very much. One matter of great sadness to me, however, is not being able to compare notes about life on the Court of Appeal with my former master solicitor Kim Santow.

On joining what he described as one of the ‘most respected intermediate courts of appeal in the common law world’, Justice Allsop observed that:

The statistics as to the Court of Appeal workload given last Friday at the farewell of Keith Mason illuminate the important role of this court in the administration of justice in Australia. I admit to doing some mental arithmetic when the throughput figures of the Court

of Appeal and Court of Criminal Appeal were mentioned until, as I looked around, and recalled the terms of the letter that I had written to the governor-general, I realised that it was probably too late to be concerned about the precise arithmetical answer I was seeking. I would find out soon enough.

I am conscious of the magnitude of the task before me to follow in the footsteps of the seven former presidents of the Court of Appeal. In particular, I am conscious of the responsibility in following such a truly great judge and scholar as Keith Mason. He is a great loss to the judicial system, but, academe’s equivalent gain. I had the good fortune to be his junior when he was solicitor general for New South Wales on a number of occasions before 1994. Sitting as a junior at the bar table, knowing the argument and being proximate to the court and the telepathic lines of communication from bench to bar, one is able to judge the skill of the appellate advocate and the respect in which he or she is held by the court. It is probably the best place to assess such matters. The deep respect and fixed and unwavering attention that his sophisticated, but clear and simply-expressed submissions always attracted from the High Court bench made me admire enormously his outstanding intellect and skill. That admiration has increased many fold in reading his work since 1997, being the work of one of the finest appellate judges ever to have graced the bench of any Australian court.

Recent appointments to the District Court

There were three new appointments to the District Court of New South Wales in the first half of this year.

The appointment of Judge Paul Lakatos SC was announced late last year, and his Honour was sworn in on 4 February 2008.

His Honour had a diverse practice, appearing before disciplinary tribunals, the Industrial Relations Commission and including coronial and ICAC inquiries, inquests and Police Integrity Commission hearings. He served as counsel assisting coronial investigations, including the inquests into a police shooting at Turnut and two fatalities at Macquarie Fields and, with Johnson J (until his Honour’s appointment) represented the ACT Government during the Bushfire Inquiry. His Honour had worked with Johnson J in the Public Solicitors Office, along with Howie and Johnson JJ, Murrell and Payne DCJJ, and many other senior and junior counsel.

Their Honours Judges Leonard Levy SC and Michael Elkaim SC were both sworn in on 15 May 2008.

His Honour Judge Levy SC had practised at the Bar for over 30 years, specialising in medical, criminal and disciplinary cases, and appearing

in a number of significant cases of cerebral palsy litigation. In addition to his successful practice, he had served as a director of Counsel’s Chambers Limited, and had made a significant contribution to the profession through his involvement in Bar Association committees and various Supreme Court consultative committees for Practice Note development. In addition, his Honour was a member of the British Royal Society of Medicine and a member of the Editorial Advisory Board for the journal, *Clinical Risk*.

His Honour Judge Elkaim SC began practising at the Bar in June 1980. He had graduated in Law at the University of Rhodesia and then studied, amongst other things, air and space law at London University, graduating as a master of laws. One of his Honour’s first major briefs was in the Advance Airlines of Australia Inquiry, as a result of his knowledge of air law. His Honour’s practice more recently was mostly in common law, including significant appellate work. In his speech at their Honours’ swearing in, the attorney general noted that his Honour Judge Elkaim SC was known as an advocate whose easy-going charm could disarm unsuspecting witnesses during cross examination, to such devastating effect that an allegedly injured plaintiff would happily admit they’d never hurt themselves at all, and then thank him for asking.