Chief Justice Gleeson AC

On 29 August 2008, the High Court of Australia held a ceremonial sitting to mark the retirement of Chief Justice Murray Gleeson AC.

His Honour was appointed chief justice on 22 May 1998, having served as chief justice of the Supreme Court of New South Wales for the preceding 10 years.

Chief Justice Gleeson was born at Wingham near Taree on the mid north coast of New South Wales. Unsurprisingly, his Honour excelled at high school both academically and at debating and oratory. According to the president of the Australian Bar Association, Tom Bathurst QC, his Honour had also whilst at school 'performed more than satisfactorily at cricket'. Although since then, his Honour is perhaps better known for his tennis – of which Mr Ross Ray QC, president of the Law Council of Australia, observed:

> It has been said of your tennis playing that you attack a tennis ball with the same single-mindedness you apply to stripping away irrelevancies in the court room – that is, quick and deadly.

Chief Justice Gleeson studied arts and law at Sydney University, from where he graduated in March 1962 with first class honours. After completing a year of articles at Murphy & Moloney, his Honour was admitted to the New South Wales Bar in 1963 and joined Seven Wentworth. There he read with Laurence Street (as he then was) and shared chambers with Anthony Mason (as he then was). His Honour rapidly gained a formidable reputation as an advocate, taking silk in 1974. Although probably best known initially for his expertise in tax and commercial law, his Honour appeared in a wide variety of cases (including some well known and publicised cases) and jurisdictions, including the Privy Council. At the time of his appointment as chief justice of the Supreme Court of New South Wales in 1988 – the first appointment of a chief justice of that court direct from the ranks of the bar since Sir Frederick Jordan in 1934 – his Honour was recognised as the leader of the New South Wales Bar and pre-eminent advocate in Australia.

During his time at the bar, his Honour also served as a member of the Bar Council of the New South Wales Bar Association (including as president in 1984-85), as well as on the Law Council of Australia. In 1986 (and two years before his appointment to judicial office), he was made an Officer of the Order of Australia in recognition of his major contributions to law. In 1992 he was made a Companion of the Order of Australia.

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The extent of his Honour's practice at the bar (in particular in constitutional law) was not lost on the attorney-general for the Commonwealth of Australia, the Honourable Robert McClelland MP, who also spoke at the ceremonial sitting:

> In fact, I recall that part of your constitutional work included providing advice to the Liberal Party in 1975 on the dismissal powers of the governor-general.

As the son of one of Gough Whitlam's ministers, this is one occasion that I would have preferred your Honour's formidable legal mind to have been put to other use.

Of his Honour's practice at the bar, Bathurst QC also noted:

> Being your Honour's junior in cases was an occasion likely to induce shock and awe. Your Honour used conferences to refine your Honour's knowledge of the case by an extensive cross-examination of the junior who had the misfortune to sit on the opposite side of the desk. Many of those who survived the experience themselves forged distinguished careers in the legal profession. … Lesser lights rapidly came to the conclusion that the best way they could assist your Honour was by not turning up at the conferences.

This approach was carried over after his Honour's appointment as chief justice of the Supreme Court. As Bathurst QC recounted:

> Notwithstanding the difficulty inherent in presiding over a court of the size of the Supreme Court of New South Wales in a period of growth and increasing public scrutiny, your Honour took time to sit in every jurisdiction. This gave a wider range of barristers an insight into the technique that your Honour had used with your juniors.
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> I cannot say there was not a sigh of relief at the Newcastle Bar when your Honour said you were not going to do the next Newcastle sittings, but went back to resume normal duties in the Court of Appeal and the Court of Criminal Appeal.

Of his Honour's term as chief justice of the High Court, Bathurst QC observed:

> Your Honour's leadership and judicial qualities were recognised by your appointment to the position from which you retire today. That appointment was met, of course, with universal acclaim. Nobody doubted the nation would profit from having such an eminently qualified jurist, judicial administrator and fine person in the highest judicial office in the land.
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> You presided over this court in times of change, high level of public scrutiny and, again, enormous increase in the judicial workload. Once again, you have responded to those by introducing new procedures, including procedures to deal with special leave applications, the assessment and determination of which, of course, is a significant part of the court's work and a significant burden on all the Justices of the court.
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> The court in your period as chief justice has had brought before it, perhaps more than any other time, many of the more prominent issues of the last decade. The immigration and detention cases are of course one; the WorkChoices legislation; *Re Wakim* and significant public liability issues in cases such as *Brodie* and *Ghantous*.
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> The court dealt with all those matters in such a way, under your guidance, that maintained its reputation for fearless independence and intellectual rigour.
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> Your Honour has steadfastly maintained the court's independence, while at the same time avoiding any perception of entering into the field of political debate.
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> You have provided leadership to the legal profession generally over a whole range of areas, advocating the need for ongoing judicial education, the importance of the rule of law and the need for lawyers to be sensitive to public concerns about the profession. In a speech to the Australian Legal Convention last year, you pointed out to practitioners the pitfalls of employing disproportionate litigation procedures leading to unnecessary costs and complexity by succinctly noting 'litigation is a perfect example of Parkinson's law; work expands to fill the available time.' Perhaps it could have been put slightly less tactfully, 'the available billable hours'.
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> Your Honour's succinct approach to writing judgments is well known, and many counsel have had the benefit of your firm views on presentation of submissions.

These remarks were reiterated by the attorney-general, Mr McClelland, who stated :

> Over the last two decades, you have clearly made a substantial mark on Australia's legal system and, indeed, Australia's legal history.
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> In particular, as chief justice and head of the Council of Chief Justices, you have worked to foster and strengthen judicial institutions and the sense of a national judicial identity. You have placed a high value on judicial education and supported the establishment of the National Judicial College, which met here earlier this morning.
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> You are an acute observer of legal and judicial developments and their implications. I note recently at a speech to the Press Club you commented that a huge change in the work of the courts has occurred in the last 10 to 15 years and that most of the work of the courts now involves interpreting and applying Acts of parliament. You encouraged legal educators to catch up with this development. In fact, I recently visited a university in Melbourne which had clearly recognised the legitimacy of your comments and they were taking appropriate steps to address that matter.
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> You leave your current office with deep respect, admiration and gratitude of the judiciary, the legal profession and the people of Australia. You leave a very valuable legacy to this court and, indeed, to the entire Australian community.

In his reply, Chief Justice Gleeson made a number of observations about the role of the legal profession in Australia and its interplay with the judiciary:

> The participation in these proceedings of the presidents of the Law Council of Australia and the Australian Bar Association signifies the role of the legal profession in the work of the Australian judiciary. A strong legal profession, imbued with a spirit of independence, is vital to the work of the judicial branch of government.
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> We administer justice upon an assumption that a fair outcome is most likely to be achieved by hearing strong arguments on both sides of the case. That assumption is sometimes contestable and it may break down entirely when parties to litigation are inadequately represented or, for some other reason, unable to put their cases to their best advantage.
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> I am afraid that institutionally the distance between the profession and the judiciary may be increasing. Courts no longer retain the direct control over legal education and admission to the profession that they had in former times. The mercantilisation of some aspects

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of professional practice has altered the context in which bench and bar relate. Even so, in this country, we have maintained a strong association between the profession and the judiciary and I hope that this will remain so.

The establishment of a national legal profession, through arrangements of reciprocity and uniform standards of admission and regulation, has been beneficial. Ultimately, however, legal practitioners are officers of the courts. The historical role of the courts in setting the standards for admission, and in professional regulation, reflected a defining aspect of the professional status of lawyers. The ethical obligations and the privileges of lawyers are directly linked to their participation in the administration of justice.

His Honour also commented on the development of Australian judicial institutions over the period since his appointment as chief justice of the Supreme Court, their independence and the current state of the Australian judiciary:

One of the most significant changes since I became chief justice of New South Wales in 1988 has been the development of Australian judicial institutions. The independence of the judiciary from the political branches of government is essential to the legitimacy of the exercise of judicial power.

I am convinced that the capacity of the judiciary to develop its own organisational resources is essential to its independence. Twenty years ago, those resources were limited. The Australian judiciary was highly decentralised, with little institutional expression except the courts themselves. Every two years there was a meeting of state chief justices that was also attended by the chief justice of the Federal Court. That gathering had no permanent secretariat and its meetings were chaired by the host of the occasion. It disclaimed any formal representative role.

His Honour compared that with the current position, in particular referring to the formation of the Australasian Institute of Judicial Administration, the Council of Chief Justices of Australia and New Zealand, the Judicial Conference of Australia and the National Judicial College, and the work done by each of these bodies. His Honour then concluded his remarks by stating:

You leave your current office with deep respect, admiration and gratitude of the judiciary, the legal profession and the people of Australia. You leave a very valuable legacy to this court and, indeed, to the entire Australian community.

There is now a strong sense of national identity at all levels of the judiciary. Unlike the United States counterparts, all Australian judges, state and federal, are appointed. They come from substantially the same professional backgrounds. Movement of judges between state or territory and federal courts is not unusual. I came to this court from a state supreme court. My successor comes from the Federal Court.

Proposals are being developed to formalise arrangements for judicial exchange, which in the past has occurred, but on an ad hoc basis. All Australian governments now recognise the necessity of judicial education and continuing professional development. Inevitably, there has also been recognition of the importance of dealing with those issues on a national basis.

This sense of national identity, breaking down the earlier decentralisation, has both fostered, and been strengthened by, the development of the institutions I have mentioned. Since a primary object of that development has been to support and sustain judicial independence, it is self evident that it should not be permitted to undermine that independence.

The bodies to which I have referred were not created for the bureaucratisation of the judiciary. Judicial independence is both institutional and personal. Ultimately, it is not merely an attribute of judicial authority, it is a constitutional imperative. The challenge is to foster the judiciary's organisational resources without sacrificing the qualities they are designed to protect and I am confident that this challenge will be met.

It has been a great privilege to serve as chief justice of this court, and of Australia. It remains only for me to express my warm good wishes to my colleagues of this court, and to my wider group of judicial colleagues, the judges and magistrates of all Australian courts.