

## The Hon Justice Lindsay Foster

On 4 September 2008 the Hon Justice Lindsay Foster was sworn in as a judge of the Federal Court of Australia.

The popular and irrepresible Lindsay Foster SC was sworn in as a judge of the Federal Court of Australia at a heavily attended ceremonial sitting of the court. His Honour came to the bar in 1981 and took silk in 1994. He had a national practice and, as noted by Solicitor-General Gageler SC, speaking on behalf of the Commonwealth attorney-general, 'was widely known as someone who did factually tough, legally complex and often very long cases in this court, in the Supreme Court of New South Wales and in supreme courts throughout the country'. He also appeared as leading counsel in the recent important decisions of the High Court in *Baxter Healthcare v ACCC* (2007) 232 CLR 1 and *Butcher v Lachlan Elder Realty* (2004) 218 CLR 592.

Foster SC was for many years a member of the Eleventh Floor Wentworth Chambers before becoming a founding member of Fifth Floor St James Hall in 1994. Prior to his call to the bar, he had worked as a solicitor at Henry Davis York and Baker & McKenzie before a two-year stint as general counsel and director of real estate acquisitions at McDonald's Australia. He was educated at Knox Grammar, which he had attended on an academic scholarship and where he had been dux in each year as well as an outstanding sportsman and participant in the school's extra-curricular activities, and subsequently at University of Sydney from which he obtained a Bachelor of Arts and Law and a Master of Law. His Honour was also an extremely accomplished sportsman representing New South Wales in rugby at under 19 and under 20 levels and playing in the Sydney First Grade Rugby Competition as well as the senior levels of the Sydney Grade Cricket Competition. As the solicitor-general observed on the occasion of Justice Foster's swearing in – 'when your Honour's background is considered, it is hard to imagine someone who, by scholarship, training and simple depth of life experience, would appear better suited to the discharge of the functions of office of a judge of the Federal Court of Australia'.

Speaking on behalf of the Law Council, the Australian Bar Association and the New South Wales Bar Association, Bathurst QC observed:

Your Honour was a most dangerous opponent, both, I am told, at rugby and certainly, I know, at the bar. You retained throughout your career what appeared to be an innocent charm, which most people could only envy. That charm had a real tendency to lull your opponents and witnesses and even judges into a false sense of security.

Your Honour never hesitated to take advantage of this ability. You refined it at rugby with innocent glances at the referees to dodge penalties for your numerous infringements. As a junior at the bar, it was a constant source of amazement to your colleagues as to how you were able to convince hard taskmasters such as the then chief judge of the Commercial Division of the New South Wales Supreme Court, Rogers J and later, Cole J, that it really did not matter that your client was three months behind in complying with directions and did not intend to comply for another few months. As a silk, you used the same technique. You were able to present the most outrageous propositions with such charm that they were accepted by judges, even if only for a short time.

Your Honour was known as a vigorous and highly skilled cross-examiner. Once again, your Honour's charm stood you in good stead. I have seen many instances where witnesses were taken apart by your Honour without realising what was happening to them. I can recall a number of occasions being opposed to you, generally unsuccessfully, when my clients, after cross-examination, commented how pleasant and courteous you were. With gritted teeth, I would tell them to go away and read the transcript. They did and they came back with a somewhat different view.

Bathurst QC concluded:

Your Honour will be missed at the bar, not only for your ability but also for your social skills. Your own room was, if not a bar, at least a social networking site, particularly on a Friday afternoon. Your advice, particularly in respect of ethics and professional conduct, was often sought and generously given. Many readers have benefited from having you as their tutor and you have often assisted the continuing development program of the bar. ... All members of the legal profession are truly delighted with your appointment and wish you well in the next phase of your career. Like the Subaru, there is no doubt your speed and performance will be outstanding.

Speaking in reply, Justice Foster made particular acknowledgment of his colleagues on Fifth Floor St James Hall as well as inspirational former leaders including Palmer QC, Hely QC, Gyles QC, Hunter QC and Hughes QC. His Honour acknowledged his love of the bar but also emphasised that, for him, it was time for a new challenge to which he was very much looking forward.

His Honour observed:

For almost all of my life I have been fascinated by the courtroom and the law with, I hope, an ever-increasing appreciation of the role which the law and those who administer it are required to and do play in a healthy democracy. It was, therefore, almost inevitable that I would try to become a lawyer and in particular, a barrister. As you have heard earlier today, for a very long time now, I have been privileged to be a member of the legal profession, initially as a solicitor, then as junior counsel and for the last 14 years, as a silk. Despite its imperfections, the legal profession occupies a vital place in the administration of justice.

One of the things that has been said to me frequently by fellow judges since the announcement of this appointment is that the role of the profession is fundamental to the due exercise of this court's functions. The profession has afforded to me the opportunity to pursue a passion, to exercise my brain, to challenge my competitive spirit, to earn a comfortable living and hopefully, to do some good, all within an environment which expects and demands a high level of integrity and standards of professional behaviour.

But the time has come for a change. Some people thought that perhaps I was just a barrister who just could not let it go. That is not so. We must all embrace change, not for change's sake but in order to ensure that we remain vital and useful contributors to our society.