

The Hon Justice John Nicholas

On 18 November 2009, the Hon Justice John Nicholas was sworn in as a judge of the Federal Court of Australia.

His Honour commenced studying for degrees in arts and law at the University of New South Wales in 1977. Whilst studying, he worked part-time at a small firm of solicitors, Paul A Brown & Co, in Bondi Junction. His Honour remained with that firm for a time after completing College of Law in 1982, before moving to Baker & McKenzie in 1983.

His Honour was called to the bar in 1987 and took silk in 2001. In 1991, his Honour established Nigel Bowen Chambers with John Ireland QC, David Catterns QC, Michael Rudge SC, Stephen Epstein SC and Ken Taylor.

Solicitor General Stephen Gageler SC spoke on behalf of the Australian Government. Tom Bathurst QC, spoke on behalf of the Australian Bar Association and the New South Wales Bar Association. Joe Catanzariti spoke on behalf of the Law Council of Australia and the Law Society of New South Wales. His Honour responded to the speeches.

His Honour referred to his early experience at Paul A Brown & Co:

I spent my first few years at a small firm in Bondi Junction where, under the supervision of a quite young practitioner, who I am pleased to say is here today, Mr Paul Brown, I was exposed to a wide variety of interesting matters, both civil and criminal. And it was during this period, as has been noted by speakers today, that I first realised that litigation was the area that I was most interested in and, from that point, it followed in my mind that sooner or later I would need to try my hand at being a barrister.

Looking back, I think those first few years were of immense benefit to me. I dealt with a wide variety of people who were weighed down by all kinds of problems. Many of them used to look at me of course - I was then aged 23 - and ask themselves, 'Is this guy truly old enough to be a lawyer?' It was in these first few years of practice as a solicitor that I learnt some pretty basic lessons.

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Most of my first year of legal practice was spent in local courts, mainly at Waverley, but also at Glebe, Newtown, Manly, and places further afield. I did appear from time to time in sentencing appeals in the District Court, but there I ran into the all too frequent problem of the customer not turning up, with him or her then becoming the subject of a bench warrant, and leaving me to ponder whether I should have been more positive when talking them through the prospects of their appeal.

I was introduced to the niceties of practice in country areas when I undertook the long drive to Narooma to appear in a civil claims case involving a very modest sum of money. As I was driving into the town the evening before the case was to be



heard, I was flagged down by a policeman who proceeded to give me a breath test. The next morning I saw the same policeman moving about the courtroom behaving as though he was the court attendant, which I soon realised he was. And very soon after the case started the same policeman was called by my opponent to give some evidence in the case against my client. Finally, when the magistrate adjourned for morning tea, the same policeman joined us for that too.

On being called to the bar, his Honour read with Lindsay Foster, now the Hon Justice Foster. Bathurst QC said:

'Your Honour read with Mr Foster, as his Honour then was, building a long association with him, first as a pupil, then as a junior, finally as an opponent, but always as a friend. His Honour was fortunately able to impart to you most of his good habits. I am told that, on occasions, he regarded you as stubborn, particularly when you disagreed with some of his more interesting views on the facts and the law. It will be interesting to see how this manifests itself when you are both sitting on a Full Court.'

One of his Honour's first briefs was as junior to Simon Sheller QC (as his Honour then was) and John Garnsey, representing the Charles of the Ritz Companies in the Australian Chapter of a worldwide trademark battle with the Ritz Hotel of Paris. The hearing before McLelland J occupied some eight or nine months, including time spent taking evidence in London and New York.

During his career at the bar, his Honour was known for his expertise in intellectual property, but also practised in general commercial litigation.

Mr Catanzariti said:

Your Honour is known at the bar for your skill, intellect, commitment and sound judgment in your areas of practice. Your Honour has appeared extensively in the Federal Court of Australia over the years, in a wide variety of other courts and tribunals, including the High Court, the Supreme Courts of New South Wales, Victoria, Queensland, the Copyright Tribunal and the Human Rights Commission. You have also appeared in various Royal Commissions, including most recently as Senior Counsel for two former directors of HIH in the Royal Commission into the collapse of HIH.

Gageler SC said:

Your Honour's friends and colleagues attribute many fine qualities to your Honour, all befitting your elevation to judicial office. These include: a genuine interest in a very broad range

of human activities; an eye for detail; a single-mindedness manifesting itself in a willingness assiduously to acquire new knowledge where new knowledge is required to master the case at hand; an innate appreciation of human nature; and an ability quickly to understand the human dimensions and dynamics that have led to any particular dispute.'

In response, his Honour said:

I am looking forward to serving as a judge of this Court. It has a relatively short, but distinguished history. I have appeared before many of its judges at one time or another over the last 20 or so years. Two whom I would like to mention are the late Justice Lockhart and the late Justice Lehane. Leaving aside their extraordinary intellectual powers, they both had well-deserved reputations for their unfailing courtesy on the bench. That is something for which I would like to be remembered too. Of course, as my former colleagues remind me, time will tell.'

The Hon Justice David Yates

On 2 December 2009, the Hon Justice David Yates was sworn in as a judge of the Federal Court of Australia.

His Honour was raised and educated in Wollongong, New South Wales, before moving to Sydney, initially to study music. His Honour subsequently commenced a law degree at the University of Sydney, but remains a fine pianist according to Tom Bathurst QC who spoke on behalf of the Australian Bar Association and New South Wales Bar Association. Mr Joe Catanzariti spoke on behalf of the Law Council of Australia and the Law Society of New South Wales. Mr Ian Govey spoke on behalf of the Australian Government. His Honour responded to the speeches.

Mr Govey, Mr Catanzariti and Bathurst QC all referred to the breadth of his Honour's practice at the bar. Mr Catanzariti said:

Your Honour is considered to be one of the leading barristers in patent and copyright cases. Your litigation work encompassing a diverse range of intellectual property cases and trade practices cases has seen your Honour appear in the High Court of Australia, the Federal Court, the Australian Copyright Tribunal, the Australian Competition Tribunal, the Patents Office and Trade Marks Office.

Your Honour has appeared extensively both on behalf of and against the Australian Competition and Consumer Competition. Your Honour's work has extended to federal law, general commercial law and corporate law. Described by colleagues as one of the true gentlemen of the bar, your reputation is one of both gracious mentor and inspiring role



model. Intelligent, caring, thoughtful and considerate in your approach, your Honour has the capacity to apply the letter of the law while maintaining a balance of empathy and compassion. Your Honour holds an enviable reputation amongst the solicitors of this country.

Bathurst QC said:

It is a tribute to your Honour's unassuming nature that although you have, for a considerable period of time, been recognised as one of the leading intellectual property lawyers