

## Welcome to the new chief

The following speech was delivered by Attorney General Greg Smith SC at the swearing in of Chief Justice Tom Bathurst in the Banco Court on 1 June 2011.



Photo: Courtesy of the Supreme Court of New South Wales.

Your Honour, on behalf of the State of New South Wales – and the New South Wales Bar – I congratulate you on your appointment as chief justice of the NSW Supreme Court.

You are now custodian of one of the oldest public offices in Australia. The first chief justice, Sir Francis Forbes, took his place in 1824 – and you will be the 17<sup>th</sup>. However, No 5 – Sir Julian Salomons – stepped down after 15 days, before he even got to hear a case. His problem was that his appointment was not well received.

This is not a problem facing your Honour. In fact your elevation has been widely acclaimed – particularly among the Sydney commercial bar. One such beneficiary said: ‘Tom was simply briefed in every commercial matter of any significance going – so much so that his appointment has resulted in the release on to the market of the workload of two or three silks combined.’

Your Honour was born on 17 March 1948, in Richmond, Surrey in the United Kingdom – the son of an engineer and a champion tennis player. Your mother, Joan Hartigan, won the Australian Open, or Championships as it was then, three times, in 1933, 1934 and 1936. You also have a great interest in tennis ...and the combination of prowess on court and an unmistakable gait earned you the nickname of ... the Shuffling Assassin.

You were educated at St Ignatius College – and in that

respect you are not alone at the Supreme Court. In fact your addition takes the figure to nine out of 49 full time judges now on the court. This approaches the critical 20 per cent, which requires a takeover bid to be announced under companies law. For the regulators among you, the number will fall to eight when Justice George Palmer retires on Friday.

You then went on to the University of Sydney and after graduating with degrees in arts and law in 1971 you were admitted as a solicitor in New South Wales in February 1972.

When you completed your articles, you joined the city firm of EJ Kirby and Co, where your mentor was Anne Plotke. Ms Plotke says you thrived at the firm, which specialised in commercial work. And they kept you busy to such a degree that you celebrated your 21<sup>st</sup> birthday in New Guinea while working on a matter. Ms Plotke also mentioned that she tried to teach you that it was important to show courtesy and respect to your fellow practitioners and clients. By all accounts she clearly succeeded.

So it was no surprise that the firm continued to brief you when you were called to the bar in 1977. Only 10 years later, you were appointed queen’s counsel ... proper recognition of the skill you exhibited and the respect you earned. Like your mentor at the bar, the late Peter Hely, you showed rare skill in being able to reduce complex matters to their very essence. Because you see things so clearly – and offer commercial commonsense

and sound judgment – your opinions have been widely sought ... and valued. You have also commanded huge respect from the Bench because of your ability to get to the heart of the matter, and do it with great clarity and economy of language. Not a word is wasted. Although on occasion the three points you informed the bench you would be making turned into five – but only when circumstances intervened. And your skills as a cross-examiner were behind many courtroom triumphs. You were always logical and polite – and usually devastating.

As a result, your practice covered almost every aspect of commercial and corporations law, including trade practices, administrative law and revenue law, as well as commercial arbitration. It would be difficult to name a corporate or commercial case, of any size or substance in the last two decades, with which you have not had some involvement. You acted in one of the first matters in the era of blockbuster director's duties cases, *Daniels v Anderson* – a case which set out a statement of principles of the duties of non-executive directors. You have also been involved in a number of important cases on behalf of State and Federal governments. You appeared for the State of NSW in several cases involving ticketing for transportation systems and for the Reserve Bank of Australia in a case related to credit card interchange fee reforms. Then there are the landmark cases concerning the concept of good faith, liability for professional advice, the ranking of shareholder, claims in administration, and the ability to bind third parties with deeds of company arrangement.

That didn't mean you could escape some affectionate barbs from your colleagues, many of which focussed on your walk – or shuffle. At the 1998 Bench and Bar dinner, Ian Barker QC was president of the Bar Association and MC for the night. Your Honour was Mr Senior and Nicole Macfarlan (nee Abadee) was Madam Junior so it was 'Tom and Nicole' playing the lead roles. Coincidentally, James Spigelman was the guest of honour, soon after his appointment as chief justice. Mr Barker mentioned that his running sheet said that he was to call on Tom Bathurst to speak at 8.38 pm and that he would arrive at the lectern at 8.43. I am advised Your Honour got there with moments to spare.

You are lucky to have friends like Mr Barker. When asked if there was any 'scandal' about your Honour, he replied: 'Stacks. But it's all subject to suppression orders'.

Those who remember you from the EJ Kirby days say you haven't changed much. You still have the same dry wit, but are not given to self-promotion. One senior judge suggested you offered a reminder of Sir William Deane, as a shy, retiring person who is very succinct in his observations.

This economy of words – and movement – means that when you speak, people listen. Thankfully, this has been put to good effect with your mentoring of countless young lawyers and the vital role you have played in issues concerning the legal profession. You are the immediate past president of the Australian Bar Association. You were president of the New South Wales Bar from 2009 until your appointment.

As president of the Australian Bar you proved a strong leader at time when the move to a unified national legal profession was in doubt. Should this ultimately come to pass, the contribution of your Honour – who helped draft rules which have been adopted by all state bar associations – should be acknowledged.

As president of the New South Wales Bar, you went out of your way to go to legal education events in regional, and rural or remote areas so that you could hear first-hand the concerns of people in these areas. So it was not surprising to see you have declared one of your priorities will be to continue efforts to make the justice system more accessible at a reasonable cost.

You have also said you want to make the best use of technology in the courts – which shows you are prepared to embrace change. But some things will stay the same; such as the morning swim followed by the crossword on the way to work. On the home front, you are a devoted husband to wife Robyn and father to daughters Emma and Sophie, who will no doubt be very proud of you on this occasion. But Emma, a lawyer who works on refugee cases, was puzzled at your career transition. She asked: 'Why do you want to be the referee, when you can still be a player?'

She chose a metaphor that would get through to her rugby-mad dad, who has shown laudable – if not tragic – devotion to the NSW Waratahs. You might also have mentioned to her – as you did to others who asked why – that it was 'your duty'. It is this attitude of public service that will serve the court – and the people of NSW – well over the next decade.

We all wish you well.