

2011

Truth and the law

The Hon Chief Justice JJ Spigelman AC

Introduction

Born in the Polish coal and steel city of Sosnowiec, Spigelman CJ emigrated, as a small child, with his parents from war ravaged Europe to Australia in 1949. From an early age Spigelman demonstrated a commitment to the pursuit of justice, both social and legal. At Sydney University he, along with Charlie Perkins, participated in the 1965 Freedom Rides, championing Indigenous rights throughout country New South Wales. After graduation, Spigelman became the principal private secretary to Prime Minister Gough Whitlam and later head of the Department of Media before being called to the Bar in 1976. Spigelman was appointed Queen's Counsel in 1986 and, on 25 May 1998, he was appointed Chief Justice of the Supreme Court of New South Wales where he remained until his retirement from the judiciary in 2011.

If truth lies at the bottom of a well,¹ then a lifelong pursuit for justice has inexorably led Spigelman to draw deep in examining the role that the search for truth plays in the attainment of justice in the administration of the law. It is this retrospective exploration that forms the subject of his lecture.

Spigelman readily admits to an evolution in perspective having occurred during his tenure as a judge: he has moved away from championing the adversary system as the most powerful mechanism for the identification of truth 'ever devised', towards a more pragmatic acceptance that, while this should nevertheless remain its primary goal as a matter of fundamental public value, it may, on occasion, collide with rules and norms designed to protect and enhance other public values founded on core notions of fairness or consistency of process. Or in other words, principles of justice.

Once this inherent tension in contemporary juridical fact finding is accepted, a framework emerges within which many of the rules of evidence and practice and

¹ Proverb attributed to Democritus: J Speak, *The Oxford Dictionary of Proverbs* (Oxford University Press, 2004), p 316.

This is a preview. Not all pages are shown.