

Justice Maxwell Retires

Justice Maxwell has retired, after many years of devoted service to the law, both at the Bar and on the Bench. A ceremony was held in the Banco Court on 26 July to farewell his Honour. After speeches from Chief Justice Murray Gleeson, the Attorney-General, John Dowd, and President of the Law Society, Mr Roberson, his Honour responded:

Chief Justice, Mr Attorney, Mr Roberson, of the New South Wales Law Society, my brother judges,

I thank you for your kind words and the extravagance of your praise of my performance as a judge of this Court. I have enjoyed my sojourn on the bench but my non-compensable motor car accident a few years ago constrained me to venture a little prematurely into retirement. There is abroad a rumour that I will not be replaced. This is not, in terms of measuring success, a pleasing feature of my retirement as I was, with due modesty, anticipating being replaced by at least four judges.

A retiring judge at his farewell is entitled to refer to those who have helped him on his way in the legal profession and on the Bench. Therefore, I seize the opportunity of thanking a few.

Time and space do not permit of specific reference to all. However, at the top of the list are my wife and family. My wife has been the power behind the throne, so to speak, and has given me great support when support was needed. She and my family accepted with grace my many absences on circuit both as a judge and barrister. She also has been of great comfort when I was presiding over some protracted and emotionally charged criminal cases

- one in particular which lasted for a year and called for the provision of close security. To see my children, including one daughter who lives in Japan, and my grandchildren here today adds greatly to my pleasure. I would also like to express my appreciation of the help over the past fifteen years of my associate, Beverley Dalley, and her devotion to duty. Such is her efficiency and tenacity that she is rightly known as my computer. I must, of course, make mention of Fred de Saxe, who was my clerk at the bar and is still my close friend. I also express thanks for the assistance of all those officers and clerks of the Court and the Common Law and Criminal Divisions who afforded me great help over my sixteen years as a judge of this Court. I am also grateful for the presence of so many of my friends. Finally, I would express my appreciation of the assistance over the years of the many court reporters who have been attached to my Court.

I have had the honour of serving under three Chief Justices - Sir John Kerr, Chief Justice Sir Laurence Street, and Chief Justice Murray Gleeson. Suffice it to say that in my view each of them has contributed much in different ways to the status and efficient functioning of the Court.

It is beyond doubt that even during the sixteen years since my appointment, let alone the much longer period since my first acquaintance with the judicial system, there has been a very considerable change in the expectations and attitudes held by the community in relation to the judiciary.

There is also, of course, an important element of continu-

ity in that regard. The community has always expected, and continues to expect, judges to be fearlessly independent, although I am sure that many people have only a rather hazy idea of exactly what is involved in judicial independence, and not all of those who do understand it always relish it. Nevertheless, I am quite sure that the community has a general understanding and acceptance of the importance of the idea that the judiciary is independent of the other two branches of government, that is to say, parliament and the executive.

Furthermore, judges always have been and still are expected to be learned in the law. It has been, and remains, the expectation of the community, and of the legal profession in particular, that leading practitioners will be willing and available to make the very substantial sacrifices involved in accepting appointment to the superior courts.

I have not observed any lowering of the community's expectations in that regard, although certain aspects of them are only rarely acknowledged. The health of our entire judicial and legal system has always depended, and continues to depend, upon the willingness of successful lawyers to give up their practices and devote a large part of their working lives to the service of the community and the

administration of justice. I am very proud that I, like my father before me, participated in that honourable tradition.

Finally, judges have always been expected to be people who submit to very strict standards of personal behaviour and integrity. That is the way it should be, and it is the way the community is entitled to expect it will continue to be.

However, there are important changes, imposing new, and in some respects challenging, burdens on judges. In recent years the community has come to expect judges to attend not only to making right decisions in individual cases, but also to the large problems of administration which arise as the courts have become increasingly burdened with additional work. Whilst the community has this general expectation I doubt that there are very many people who yet have any clear idea as to exactly how this additional responsibility ought to be discharged. I have no doubt that we are living in a time of change in relation to a number of aspects of the administration arrangements relating to the operation of courts and I expect that the next ten years will see a good deal of change in that regard. With the modern emphasis in all aspects of public affairs on management and administration, people are beginning to realise that attention needs to be paid to the enormous increase in the demands that are being made upon the court system and to the resources made available to cope with that demand.

A lot of work is being done by the judges and those concerned with the administration of the courts in that respect. It is important that people realise the extent of the problems and

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the nature of the responses that are being made to those problems. For example, the workload of the Common Law Division of the court in which I have been involved has increased enormously in recent years. The number of cases disposed of by the Common Law Division in 1989 was approximately double the number of cases disposed of in 1988. The number of appeals filed in the Court of Criminal Appeal in 1989, in which I regularly sat, exceeded the number of appeals filed in 1988 by 30 per cent. I understand that it is projected that the number of appeals filed in 1991 will exceed the number of appeals filed in 1990 by a further 30 per cent. This is nothing more than the inevitable result of extra activity at the level of first instance criminal trial work. But the number of judges available to deal with criminal appeals has not increased. The existing judges are simply on an ever-increasing workload.

I suppose that in a perfect world judges would be able to lead a scholarly and reflective life, taking all the time they need to decide over cases in a calm and unhurried fashion. I can remember when it used to be something like that, but I doubt that it will be like that again in the lifetime of anybody present today. Modern judges work, at least in this court in this State, under a great deal of pressure and the modern judge is a long way removed from the idea that many people have of an elderly semi-retired barrister spending the twilight years of his life patiently sorting out the problems of disputing citizens.

Finally, may I adopt and echo the words uttered by my learned father some thirty-five years ago on the occasion of his retirement from this Bench after twenty-one years service upon it. I quote:

"It is well that we remember that the judges come

essentially from the ranks of the bar and, to some extent, from those of the solicitors. With that in mind, may I be allowed to address to them words, assuredly not of admonition, but of encouragement. The legal profession is an honourable one, with great traditions and high standards. We bear reminding that the members of both branches of the legal profession are all part of the machinery of the law and all bound to help in administering that justice to the members of the community to which they are entitled under the law of the land. For the efficient administration of justice the courts expect, and they need, the co-operation of both bar and solicitors. It is permissible to say that to the attributes of learning, integrity and high-mindedness should be added that of fearlessness - fearlessness not only in court but by resistance to improper pressure outside the courts, from whatever source. But rudeness is not to be mistaken for fearlessness, nor is courtesy the badge of timidity. It has been wisely said that the administration of justice is not a machine, however hallowed by antiquity, for the purpose merely of earning a livelihood, and perhaps a little more, for the members of the legal profession, but that it should be kept as the well tempered and sharp instrument of doing business of the community. Members of both branches are entitled, and indeed obliged, to appreciate that their first duty is to their clients, but not to the exclusion of every other obligation".

I recall, once again, that I concluded my remarks on the occasion of my being sworn in as a judge of this Bench that if there were present upon my retirement as many people as were then present I would be content.

I am content and I bid you all farewell. □

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