

The Hon Justice John Dyson Heydon

On 11 February 2003 the Hon Justice Dyson Heydon was sworn in as a judge of the High Court of Australia, the 44th such appointment since the court's establishment in 1903.

His Honour was welcomed to the Bench by the Commonwealth Attorney-General, the Hon Daryl Williams AM QC MP, the President of the Law Council of Australia, Ron Heinrich, the President of the Australian Bar Association, A J Glynn SC and the President of the New South Wales Bar Association, Bret Walker SC.

The Attorney recounted for the assembled guests Justice Heydon's considerable scholastic achievements. Born in Ottawa as the son of a diplomat, his Honour was educated in a number of cities around the world, including London, Wellington, Rio de Janeiro, and Sydney, where he attended Shore and St Paul's College at the University of Sydney. He graduated in 1964 with a Bachelor of Arts degree with First Class Honours and the University Medal in history.

In 1964, his Honour was awarded a Rhodes scholarship to study law at Oxford University. It was there that he was awarded the Martin Wronker prize for the top first-class honours degree in law in 1966. He completed the degree of Bachelor of Civil Law and was awarded the Vinerian Scholarship for the best results in that course.

Between 1967 and 1973 his Honour was a fellow of Keble College, Oxford, and lectured in evidence and trusts at the Inns of Court School in London from 1969 to 1972. In 1973, he returned to Australia as Professor of Law at Sydney University Law School, where he lectured in equity, evidence, commercial and company law, and restrictive trade practices. He became the youngest person to head a law school in Australia when he was appointed Dean of the Sydney University Law School in 1978.

Walker SC paid tribute to Justice Heydon's academic career with a personal recollection from his days as one of his Honour's law students:

An undergraduate population does not rise early in a good or eager mood. I share with many others, therefore, some wonderment at the way at which at 8.00am a crowded lecture hall, well underground, would

attend your Honour's equity lectures; not because it was compulsory and not because they were the only lectures, but because of your Honour's strong expository style was of a kind which even we...understood was not likely to be replicated to the same quality anywhere else.

Your Honour's teaching style could not be described as having succumbed to any new-fangled techniques of pedagogy. Conversation was not encouraged, of any kind, and there was no pretence on your Honour's part that there was any intellectual, cognitive, academic, scholarly or legal equality of interchange between lecturer and lectured. That approach had two great advantages: first, it was entirely accurate; and, second, it permitted those of us on the unfavourable side of the comparison to try and do something about bridging the unbridgeable gap. Those qualities of strong, clear, unsentimental exposition stood your Honour in great stead as an advocate at the Bar.

His Honour commenced practice at the NSW Bar in 1980, when he joined the eighth floor of Selborne Chambers. There he read with Peter Hely (as he then was) and worked with other senior barristers, including AM Gleeson and RP Meagher and WM Gummow, and the Hon TEF Hughes QC.

Walker SC commented on the transition from academia to practice, saying that 'it was then a remarkable thing for the Dean of the Law School to come to the junior bar. Your Honour carried off that remarkable feat remarkably well and your Honour soon came, figuratively, to tower at the Bar.'

His Honour developed a very successful practice based upon his longstanding specialties of trade practices, company law, equity and trusts. His Honour was appointed Queen's Counsel in 1987 after only seven years in full-time practice. He served as a member of the New South Wales Bar Council from 1982 to 1987

The Court of Appeal

In February 2000 Justice Heydon was elevated to the Supreme Court of New South Wales and the Court of Appeal, an appointment which Walker SC described as 'popular and well-regarded in legal circles' and noted that 'everything that happened in the night on three years since then from your Honour's activities as a judge on the Court of Appeal vindicated the applause for that appointment'.

The Attorney-General had earlier



Justice Dyson Heydon after his High Court swearing-in ceremony. Photo: News Archive

commented that during his three years on the Bench, Justice Heydon:

adorned volumes of the *New South Wales Law Reports* with written judgments that have had a profound impact on the law. Of particular note is your contribution to the law of expert evidence given in the *Makita v Sprowles* decision, in which you provided seminal guidance on determining the validity of expert evidence. I have no doubt that your background as an appellate judge, an advocate and an educator, your fine personal attributes and your extensive experience in careful analysis and exposition of the law will serve you well in the discharge of the important duties of your new office.

Publishing and editing

In addition to being a respected legal academic and practitioner, his Honour has been a prolific writer and editor of works which have long been essential reading for students and practitioners alike. *The restraint of trade doctrine*, published in 1971, was quickly followed by numerous others, including *Economic torts* (1973), *Casebook on evidence* (1975), *Heydon and Donald on trade practices law* (subsequently *Trade practices law*) (1978). For many years he was editor of Cross on evidence (Australian edition) the *Australian Law Reports*, the *New South Wales Law Reports*, *Australian Bar Review* and *Halsbury's Laws of Australia*. His Honour has also published a large number of journal articles on equity, expert evidence, torts, trade practices and trusts.

Walker SC capped off the welcoming speeches on a congratulatory note, saying that:

if a Bar may be permitted, however illegitimately, to feel pride in the preferment of one of its own, the New

South Wales Bar is unashamedly proud of what is happening today. We wish you well in all of your discharge of your onerous office, and we simply note that when your Honour wrote last year in a collection of essays, that...we live surrounded by a legal world drifting towards chaos. Your Honour is now at the apex of the system. It is an apex from which more than one broad field is supervised by this court. Your Honour's activities, we are confident, will do something to contribute to this court's arrest of that drift towards chaos.

In reply, Justice Heydon began by paying tribute to Justice Mary Gaudron. The resignation of Justice Gaudron, he said:

has left an immense hole in the ranks of those who administer the judicial branch of our federation. She stood high among those best equipped for the task by capacity, by training, particularly at the hands of the late Mr Justice Hutley, by experience and by achievement...Personal experience of her abilities in oral argument cannot survive oblivion in the minds of those who had it, but there is another benefit which will remain available for much longer. Any lawyer attempting to analyse a novel or difficult problem can do no better than examine any relevant judgments of hers. If they are read slowly, line by line, repeatedly, carefully and sympathetically, they create a much fresher and clearer vision of the issue. One might not agree with either her reasoning or her conclusion, though very often one would, but the question of agreement is not to the point. The value of her judgments lies not so much in compelling acceptance of a conclusion as in aiding readers to their own conclusions. For that reason they will be read as long as any parts of the *Commonwealth Law Reports* continue to be read.

Justice Heydon also paid tribute to the Honourable TEF Hughes QC and Justice Meagher, praising their high intellectual and professional abilities and their loyalty, and to the members of 8 Selborne Chambers, past and present.

The floor is not just to be compared to a group of Irish or Northumbrian monks vainly trying to preserve civilisation through the strife of a new Dark Age. Its leaders were masters at conducting the classical common law trial.

The Honourable Justice Annabelle Bennett

On 5 May 2003 Annabelle Bennett SC was sworn in as a judge of the Federal Court of Australia. The Commonwealth Solicitor-General, David Bennett AO QC, began his speech to welcome Justice Bennett to the court by noting that the Attorney-General, who would otherwise have delivered the address, was not there to speak in person because 'sometimes the first law officer accepts and acts on recommendations from the second law officer'. The following is an edited version of his entertaining and informative welcoming remarks.

When your Honour was in the third class of Wenona school for girls primary school a defining event occurred in your Honour's life. Your Honour came second in the class. This was a defining event because it was the only occasion in your Honour's primary and secondary school career in which your Honour did not top the year both overall and in every subject.

Ironically, your Honour never finished school. This is because you were in the first year of the Wyndham Scheme under which secondary education was increased from five to six years. At the end of fifth year your Honour decided to spend a long vacation studying and to sit for the matriculation examination in January. This enabled your Honour to proceed to enrol in science at the University of New South Wales, without completing the final year of school in a year when your Honour's only fellow students are people who are repeating the year and people who have taken the year off. Your Honour thus had the luxury of uncrowded lecture theatres and virtually individual tuition.

Your Honour had always intended to enrol in law but your Honour's father who had graduated in law in Poland before the Second World War advised you that law was unsuitable for women for two reasons; first, you would need to be better than the best just to succeed and, secondly, it was a career that did not travel. This was before women silks and judges and before travelling practising certificates. Hopefully, 36 years later we've moved a long way in the legal

profession to remedy both these deficiencies. Your Honour, however, would have satisfied his criteria in being better than the best.

Your Honour's father, incidentally, came from the small Polish town of Sosnowiec. There must have been something in the water, because four descendants of residents of that town have joined the Australian judiciary; Chief Justice Spigelman of the Supreme Court of New South Wales, Justice Hampel of the Supreme Court of Victoria, now Professor Hampel, Chief Justice Rosenes of the Victorian County Court and your Honour. Naturally, at the end of three years of science your Honour proceeded to do an honour's year. Your Honour wrote a thesis on *Mitochondrial populations in chick embryo livers*, a tome which no doubt changed the world. Your Honour proceeded to do a doctorate in biochemistry and delivered a thesis entitled *Some aspects of the nature and role of phospholipids in spermatozoa of ram, bull, boar, dog, fowl, rabbit and human* - that no doubt being their scientific order of importance. Nineteen scientific publications have flowed from your Honour's thesis.

Then as now your Honour was uninhibited in discussing such matters. In 1973 your Honour attended a dinner at Admiralty House where you were seated next to the then governor-general Sir Paul Hasluck. His Excellency inquired what your Honour did and your Honour told him in some detail the nature of the work you were doing for your thesis including the fact that the Department of Veterinary Physiology was prepared to pay students \$2 per ejaculate to be used for experimental purposes. Your Honour inquired whether he was interested in contributing, an invitation which His Excellency politely declined.

That was not the only occasion when your Honour made a *faux pas* when confronted by a senior dignitary. Some years ago your Honour was at a black tie function at a legal conference in Queensland. Your Honour was introduced to the chief justice of Queensland, Sir Dormer Andrews. Immediately after the introduction there was a silence. If there is anything your Honour dislikes it's silence. So in a desperate attempt to make conversation your Honour admired his bow tie and asked him 'Do you tie it yourself'. As you