His Hon Judge Brian Donovan QC

Brian Donovan QC was sworn in as a judge of the District Court of New South Wales on 11 April 2005. His appointment was warmly welcomed. His Honour was admitted to the Bar on 8 November 1974 and took silk in 1988. In that period, he had made significant contributions to the Bar including service for a number of years on Bar Council including a period as the treasurer of the association. His Honour was also involved in numerous other committees of the Bar and led a delegation of the New South Wales Bar Association and Australian Bar Association in a series of advocacy workshops in Bangladesh in January 1996 (see (1997) 71 ALJ 70). Writing of that experience, his Honour said:

> The theme throughout was freedom and human rights. The experience created in me a sense of concern about our own relaxed attitude to democracy. Their history has involved a real struggle to achieve and maintain democracy.
> …
> The experiences of the election, the hartals, the rallies and the unrest all force a guest in this country to face the issues of freedom, human rights, rule of law and how we as disciples of the law and servants of our society can support these principles in both our own and other societies. It made me and our team understand something of the heated enthusiasm for us and support for our mission not just our teaching, but the fact that we were interested and involved in their country. Over and over again we were left emotionally exhausted by the way we were taken to the hearts of the advocates of Dhaka.

At the Bar, his Honour had a wide practice both at trial and appellate levels especially in the areas of medical negligence, family law, defamation and administrative law. Speaking on behalf of the Bar at his Honour's swearing in, Harrison SC described Judge Donovan as 'one of the most decent and fair minded opponents – not to say people – at the New South Wales Bar'.

The Hon Justice John Basten *(continued)*

> York Land Council; the Kimberley Land Council; the Aboriginal Legal Rights Movement in South Australia; and the Carpentaria Land Council through Chalk & Fitzgerald. As Andrew Chalk said on a recent occasion, none of us who knew him can forget the extraordinary contribution to this work made by the late Ron Castan, QC. In the 1970s Ron was led to wonder, while working on a case involving customary land law in Papua New Guinea, why the legal circumstances of Indigenous Australians were seen to be so different. The result, of course, was *Mabo*, which he argued for the claimants.

Turning to another topic, and perhaps giving a foretaste of things to come, his Honour drew attention to an increasingly prevalent theme, namely the importance of issues of statutory interpretation and, perhaps until very recently, the lack of recognition and of serious attention given to that subject matter. His Honour said, no doubt drawing on his extensive experience in the federal jurisdiction, that:

> It might surprise many, though perhaps not so many in this audience, to suggest that principles of statutory construction are of fundamental constitutional importance. In public law they define the proper boundaries between the parliament and the executive, and between both parliament and the executive on the one hand and the courts on the other. But how many legislators in conferring a statutory power on a government officer think about whether that power will be constrained by some implied principles of procedural fairness governing its execution and about what those principles may be? How clearly do we, when articulating a presumption that the parliament does not intend to interfere with fundamental human rights and freedoms, appreciate that we are formulating a principle with constitutional significance because it accords a certain level of power to the judiciary at the expense of the legislature?

When we are told that the state constitution embodies no principle of separation of powers, we should realise that such a statement cannot be taken too far. In a famous passage in *Quin's* case, Sir Gerard Brennan explained that to allow judicial review to question the merits of administrative action, as opposed to its legality, would be to permit the judiciary to impinge on the functions of the executive. That canonical statement, containing an inherent assumption about the separate spheres of the administration and the judiciary was made in relation to an exercise of state power.

The profession has little doubt that Justice Basten will, in his role on the New South Wales Court of Appeal, continue to make the same major and distinguished contribution to not only the legal profession but, more importantly, a civilised society governed by a rule of law that he has already made over the last 30 years.