

## Russell Francis Wilkins (1948 – 2007)



Russell Wilkins, of Henry Parkes Chambers, died on Thursday, 8 February 2007. The following is an edited version of a eulogy delivered by the Hon Justice Michael Adams at St James Anglican Church.

My friend Russell Francis Wilkins was born just over 59 years ago at Neutral Bay. His father, also called Russell, was a businessman in a small way who died in 1989 at the age of 79. His mother, Una Jessie Wilkins, known for many years – certainly as long as I have known her – as Jessie, is here today. She is 88 years old. Jessie was a teacher and then a lecturer at what used to be called the Sydney Teacher's College. The family was by no measure a wealthy one. Russell has a younger brother Kim, who followed Russell into the law and practises as a solicitor in Wollongong.

I first met Russell at Neutral Bay Primary School, where we were pupils together, though separated by a year as he was a year younger. I did not really get to know him, however, until he came to North Sydney Technical High School, then a selective high school, where we both completed our secondary schooling.

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Russell obtained the Leaving Certificate in 1964 and immediately commenced an arts-law degree, assisted as many of us were, by the Commonwealth scholarships, then fairly freely available. He went on to take a master's degree. The study of law suited, I think, the cast of his mind. He was an excellent debater and enjoyed language as a clarifier of ideas. He continued his interest in debating at university. Surprisingly, since he suffered badly from asthma all his life, he played tennis aggressively and well through his school days and on for much of his life, playing competition at district club level.

Russell undertook his articles at the firm of Turner Jones, where he was articled to Roy Turner, a very significant mover and shaker in the Labor Party in the state, moving to work for the legendary Jim Comans when he was admitted. It was at this time that he developed his interest in personal injury law, a field in which he worked for all his professional life. After his admission as a barrister in 1976 he found himself on the Fourth Floor Wentworth Chambers, a floor that was notorious for the refinement of its members and the possibly excessive politeness of their intercommunications, although it obtained this reputation, I think, after the departure to loftier environs of Lionel Murphy and Neville Wran.

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Russell quickly established a substantial practice in personal injury law, particularly workers compensation, both with metropolitan and country solicitors. He enjoyed traveling to country NSW, frequently visiting Goulburn, Lismore, Broken Hill, Dubbo, Orange, Wollongong and Newcastle.

In his later career he moved to 43<sup>rd</sup> Floor MLC Chambers and more recently Henry Parkes Chambers and in each case had one of the more extensive practices on the floor. He continued in active practice until the last few months when the deterioration in his health forced him to stop.

It is fashionable in some parts of the legal profession to denigrate those who practise in this field – especially for plaintiffs – as somehow being less skilled or less

sophisticated and calling for less learning than practice in the refined atmosphere of the equity or the commercial division. And, of all personal injury work, that of the Workers Compensation Commission, where Russell spent most of his time, was most despised by the intellectual snobs whose interest in the law was largely absorbed by the arcane niceties of the Income Tax Act or the Companies Code and where the whispering didn't quite drown out the rustle of lots and lots of money. In the personal injuries cases, the plaintiffs were not down to their last \$10 million, they were all too frequently down to desperate reliance on friends and relations just to get through the day, in chronic pain and disability, scarcely cared for in an inadequate public hospital system and attempting to get compensation that might give them a modicum of care and restore the dignity of comparative independence from charity. And, of course, just as in the Federal Court, there was a full contingent of fraudsters and hucksters – the substantial difference being that they rarely wore suits and ties and their counsel rarely wore silk.

The fact is, as anyone who bothers to read the reported decisions both of the Compensation Court and on appeal to the Court of Appeal will readily see, the legal and factual issues thrown up in the jurisdiction are as complex and difficult as many in the other fields of litigation. In terms of the significance of the outcomes, the genuine plaintiffs (as most of them were) were frequently facing catastrophe, both personal and financial, for the rest of their lives.

It was no mere accident that led Russell Wilkins into this area of the law, at which he excelled. He had a real sympathy for his clients and a firm belief about their entitlement to compensation. Their ability to litigate depended on solicitors and counsel who agreed to charge no fees if they lost and only the specified fees if they won. The temptation, therefore, to settle – even for an inadequate sum – was great in cases where there was a real risk of a loss and a potential of days of hearing going unpaid. Russell had the reputation of never surrendering to this temptation.

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One solicitor who briefed him a lot told me that, aside from his intellectual gifts and legal knowledge, she briefed him for his courage. It was a matter of indifference to him that the judge was unsympathetic and his opponent was sniping and that the case looked as though it would go for days – after all, he was a survivor of Fourth Floor Wentworth Chambers floor meetings – and anyway he was never minded to give his client up. He would say to the respondent's counsel, 'That's not enough' and to his solicitor, 'Well, Kitten, let's go' and march into court to continue the battle.

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Russell married Nea Goodman in April 1988. They were and remained very much in love. Shortly before his death Russell said to me that as he came close to the end he had come to love Nea even more than he ever had. Russell and Nea have two children, Rachel now 17 and Rebecca now 15. His love for his children was unbounded.

In 1991 while Nea was pregnant with Rebecca, Russell suffered a major stroke which at one stage appeared life threatening. It was probably Nea's insistence on immediate treatment when he came to hospital after it seemed that it was proposed to observe him in the ward for a while that, if it didn't save his life, enabled his extraordinary recovery. I remember visiting him with other friends

in hospital, where he spent some time. We read to him and watched his struggle with speaking and using a knife and fork. Nea was constantly by his side, nagging him back to health. During the entire period of his recovery, he exhibited what seemed to me great courage and the most amazing calm patience, an extraordinary toughness of which even those who had known him well were until then unaware.

It seemed a miracle that Russell was able to return to practice at the Bar. It is true that his knife-edge concentration had lost its razor sharpness and his memory was not quite so complete and instantly available as it had been. But these things were noticed only by those who knew him well. It is difficult to assess, but I would guess that he recovered to 95 per cent of his previous capacity. Yet that 95 per cent was the equal of most and better than many of the barristers with whom he competed daily in the courts. We noticed, however, that he tired more easily and never quite recovered his physical agility.

Russell was pretty well a life-long member of the Australian Labor Party, which he passionately supported and passionately criticised, especially when over recent years, the ALP government of NSW serially removed workers rights to decent compensation for injuries at work and then moved on to destroy the protection given by the common law to ordinary people

hurt and sometimes badly hurt by the wrongful conduct of others. He regarded economic rationalism as just so much cant that undermined the essential decencies of community life in favour of the rich and powerful. As a judge I do not comment, but Russell knew what injustice was when he saw it.

I do not know the nature and extent of Russell's Christian faith. He had too sceptical a cast of mind to accept easily, or perhaps at all, the orthodoxies of organised religion. Towards the end, he asked to see an Anglican priest and Father Kurti was good enough to minister to him on a number of occasions. He was not a hypocrite and I am sure that his heart, if not his mind, was open to receive the consolations that Christianity at its most pure is able to give. This much I do know: Russell was brave, loving, honest, generous and kind. If it is true that by their fruits shall we know the godly, he was a godly man.

In his unpretentious, quietly courageous, hard-working and skilful way and in his unflinching integrity, Russell was an adornment of the NSW Bar. We should be proud that he was one of us. Russell was my friend. If there is a heaven, I cannot imagine that he is not there. And if God is, amongst other things, a judge, I do not doubt that Russell is quite brave enough to make some submissions about some things down here that need attention.