

## The Hon Justice Michael Ball

On 13 April 2010 Michael Ball was sworn in as a judge of the Supreme Court of New South Wales.

His Honour graduated from the University of Adelaide in 1978 with a combined degree in Arts and Law, and subsequently obtained a post-graduate degree in philosophy and formal logic. In 1981–1982 Ball J served as a senior law reform officer at the Australian Law Reform Commission, working on the ALRC Report 20, *Insurance Contracts*, with the commissioner in charge of the reference, David Kelly. The draft bill in the ALRC Report later became the *Insurance Contracts Act 1984*.

Ball J became a solicitor at Allen, Allen & Hemsley in 1983, and became a partner in the litigation department. His Honour was involved in high profile cases in competition and insolvency law including *C7*, *Antico v Heath Fielding Australia*, the *Linter* litigation, the *Pioneer and Giant Resources* litigation and *Trade Practices Commission v Australian Meat Holdings*. His Honour contributed to the Law Society of New South Wales Costs Committee, and was instrumental in drafting new chapters in the *Costs Guidebook*. His Honour was also a member of the Litigation Law and Practice Committee since 2008.

In welcoming Ball J, the chief justice referred to his Honour's experience particularly in commercial litigation, and said that his Honour 'will add considerably to the skill set available to this court in the years to come.'

The junior vice-president of the New South Wales Bar Association, Phil Boulten SC, spoke on behalf of the NSW Bar. Mary Macken spoke for the solicitors of NSW. His Honour responded to the speeches.

Boulten SC referred to his Honour's work over many years with the Bar Association reviewing barristers' professional indemnity insurance policies and negotiating amendments with underwriters, which could be said to give the bar an unfair advantage in its dealings with insurers.

Boulten SC also referred to his Honour's calm temperament and incisive intellect:

Practitioners in both branches of the profession are quick to praise your Honour's keen intellect, diligence and composure, 'He never lost his temper, never raised his voice' said one former member of the Bar.

...

Shakespeare's 'brevity is the soul of wit', is a standard proverb but many have mentioned your skill in drafting what they call concise correspondence, often as brief as one or two words. ... One senior counsel observed that briefs and letters drafted by your Honour consisted of little more than a series of essential propositions.



Ms Macken also referred to his Honour's reputation for succinctness:

While the veracity of the following story cannot be 100 per cent substantiated, it is certainly indicative of your Honour's personality and reputation for efficiency and excellent advice - and thus I repeat it. A potential client came into the office to seek legal advice about pursuing a claim against someone. An animated monologue ensured lasting about an hour during which time you listened quietly and took the occasional note. When the client ran out of steam you stated that, 'Nothing you say suggests that you have any basis for a claim under the law'. The statement encouraged the client to continue his monologue and at a suitable juncture you again calmly stated that 'nothing further you say suggests that you have any basis for a claim under the law'.

Ultimately, I am told that your client valued your succinct message that there was no merit in the client wasting money on a claim that could not succeed. Such succinctness and focus augurs well for speedy resolutions to matters that come before your Honour at the bench.

Both Boulten SC and Ms Macken referred to his Honour's involvement with Allen's art collection. Boulten SC said:

You worked with Allen's art collection founder Hugh Jamieson to help form one of the nation's iconic private collections of Australian contemporary art. For some years you and Hugh Jamieson were the odd couple of the corporate art world. Your Honour's preference was for abstract lyrical works, while Jamieson preferred bold gestural abstracts or figurative works. Together, you purchased early indigenous works by Adam Cole and Kathleen Petyarre which pre-empted the firm's

reconciliation policy. One of the Bar's art critics, of which there seems to be a surplus, described the Allen's collection as legendary. After succeeding Hugh Jamieson you were a one man committee purchasing work that met the criteria of being challenging and by emerging artists. It sounds like the sort of job many would dream of. Your Honour's choices for Allen's sponsored artist's projects could perhaps foreshadow the style of your judicial opinion writing. Maybe we should expect judgments that resemble Robert MacPherson's vernacular fruit stall signage or Kathy Temin's Alice in Wonderlandish soft toys.

Since your Honour has gradually accepted an invitation to become a member of the Bar Association there is hope and expectation afoot that you will provide similar guidance on its collection of art which some say is in need of direction now that the Honourable R P Meagher QC's services are no longer available.

Ms Macken said:

Colleagues on the Bench can expect to see some of your Honour's own collection adorning the chamber walls and with any luck, the corridor as well. Woe betide the hapless person who dares to breach the unwritten art works display policy by incorporating any sports memorabilia.

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In reply to the speeches, his Honour referred to his own early advocacy experience:

Now it is a little known fact, but I have some advocacy experience myself. When I was a first year solicitor at Mollison Litchfield I used to do parking prosecutions for the Adelaide City Council. As you might imagine they were normally fairly routine affairs. Mostly, the defendants did not even show up.

Unhappily, that was not true on one occasion. The defendant was a law student who was represented by one of Adelaide's leading criminal barristers. Suffice it to say that the prosecution did not go well. By the end of the first day of hearing, it became obvious to me that the complaint would have to be withdrawn, not least because of the many comments made during the course of the day by the magistrate whose name, Peter Kelly, I

still remember today.

It was equally obvious, or so I thought, that the defendant was guilty and it seemed to me, in those circumstances, some statement to the court was called for. When I stood up the following morning to announce my intentions, the magistrate's response was that if I was going to say something, then he would too; and I got the impression that it would not necessarily be all favourable. Even so, I had spent quite a lot of time preparing what I was going to say, I had passed what I proposed to say by my supervising partner. And justice after all required that something be said. Well, much to my horror, the ensuing exchange was reported quite prominently in *The Advertiser*, the local newspaper, the following day.

I feel that I learned one important principle of advocacy from this experience, and that is, that sometimes it is better to keep quiet.

His Honour attributed his training and litigation to one of the partners with whom he did most of his work as an employed solicitor, Fred Lind:

If Allens has a particular style of litigating, then that is largely Fred's style which continues in those he trained and now, increasingly, those trained by them.

One of Fred's qualities is his succinctness. One of my early experiences of this is when I got back to my office one day to find a pile of papers on my chair with a note from Fred written on a scrap of paper, there were no post-it notes back then. The note contained two words apparently written in the English language. I studied them anxiously trying to work out what on earth I was being asked to do. Then, it finally clicked. The words were, "please fix".

His Honour also said:

There are many things I will miss about Allens but perhaps most of all is the opportunity it provides to train lawyers and to see them develop and, in many cases, go on themselves to have successful careers. This is not an opportunity that is unique to large law firms but it is an opportunity that is difficult to match elsewhere. I take comfort in the fact that when I look at the quality of many junior lawyers of today, I think the legal profession must have a bright future and in the hope that, as a result of this appointment, I may be able to contribute to that future in another way.