



The Honourable Charles Simon Camac Sheller AO QC

Simon Sheller QC, the former Court of Appeal Judge, has died aged 84 years. He had a remarkable career in the law - he was the judge's judge.

Charles Simon Camac Sheller was born to Horace and Mary Sheller on 2 May 1933. He was an only child. He was educated during the Second World War at Cranbrook, Bellevue Hill and then at the King's School at Parramatta.

After he left school Simon travelled to England. He went up to Trinity College Cambridge where he read for the MA. He then trained as a Scots Guard (Second Lieutenant BAOR) in 1955. For a time, he served in the British Army in Germany.

In this busy time, there was even a brief appearance in the film *Around the World in 80 Days* with David Niven and Shirley MacLaine. He is depicted in a scene among his military colleagues in uniform near Buckingham Palace.

Simon was the last associate to Sir Dudley Williams on the High Court in 1957 and 1958 before returning to England where he was called to the Inner Temple (London) in 1958. Sir Dudley imbued Simon with the learning, diligence and care which would sustain him throughout his career. The intimacy of the High Court premises at Darlinghurst gave Simon a great exposure to the judges, in particular Sir Owen Dixon who was always willing to offer Simon advice which he enjoyed receiving.

Sir Dudley was steeped in the practice and procedure of the Equity courts and before that of the Chancery and was the finest equity silk. He confided in Simon that he preferred the work in the Equity Division of the NSW Supreme Court and should never have left that court.

Simon was called to the Bar in Sydney on 25 November 1959. The most significant moment in his time at the Bar occurred within four months of his calling when, on 31 March 1960, he took a phone call from someone he had never met before, Jan McDowell, seeking a lift to a party taking place the next day. His considered response was a critical step into a

married life that lasted 57 years.

As a reader his Pupil Masters were Bernard Reilly and Forbes Officer. Simon regarded their instruction as the foundation for his career at the Bar.

Simon's style of advocacy was polite, understated, and gentlemanly – an inimitable courtesy became his hallmark. He had an urbane style which stood in stark contrast with the rambunctious cohort of common law types which dominated the Bar in the years 1960–1980.

In his early days at the Bar, Simon assisted on inquiries and royal commissions in the 1970s, most notably when he was led by Bill Fisher QC in the Petroleum Inquiry in 1975 (the same year he took silk) headed by Mr Justice Collins. Thereafter, he had the greatest respect and fondest regard for Fisher.

There were also several appearances in the High Court starting with *Ravenshoe Tin Dredging Ltd v Federal Commissioner of Taxation* (1966) 116 CLR 81,

Simon practised at the Bar unstintingly for 32 years. He shared chambers with Poulos QC, Hunter QC, Staff QC and later Maconachie QC (his last pupil). They were members of the Eleventh Floor. That clerk of clerks, Paul Daley, became Simon's personal and family friend over 28 years of service. Simon fraternised with the great luminaries of Wentworth Chambers: Paul Donohoe QC, Bill Fisher QC, BB Riley QC, BT Sully QC, The Hon. TEF Hughes QC, FS McAulry QC, WP Deane QC, RJ Bainton QC, Dusty Ireland QC, Robert Shallcross Hulme QC and of course, a younger Maconachie QC. He led the likes of AJ Meagher SC, MA Pembroke SC and MB Oakes SC.

Simon's *cause celebre* was *Ritz Hotel v Charles of the Ritz* before Malcolm McLelland then Chief Judge in Equity which required 23 appearances. It was an arduous case about comestibles bearing the famous hotelier's name. The Hon. Bob Ellicott QC, an erstwhile opponent, complained that he knew the meaning of 'aggrieved person' in the aftermath of having lost to Simon.

By 1975, Simon was in silk and practised as a QC *par excellence*, in the heady commercial litigation which carried on through the 1970s and 80s. He never failed to help a junior counsel – as a guiding and reassuring light.

Many well-known cases followed including *Baltic Shipping v Dillon* and *Australian Broadcasting v Bond*. At his height, he argued *Cole v Whitfield* and the *Hammersely* cases. He was often in the High Court and in the NSW Court of Appeal.

Simon was offered a judicial appointment in 1991, directly to the NSW Court of Appeal. The Hon. Murray Gleeson AC QC, then chief justice, said at the time that he could not have been a more suitable candidate for judicial appointment. Indeed, as a judge he would sit with the likes of Spigelman CJ, Samuels JA, Meagher JA, Handley JA,

Hodgson JA, Beazley JA and Michael Kirby, Dennis Mahoney, Keith Mason as Presidents. It was a superb time in that Court and Simon felt a special honour to be part of the court.

On the bench, Simon was always polite and engaging. He remembered what it had been like to appear before intemperate judges. He would not emulate such judicial behaviour. As Kirby P noted, on the Court of Appeal Simon maintained a friendly visage.

Simon sat on countless committees over 13 years while on the Court, including the Law Court's Library Management Committee, 175th Anniversary Committee and the Law Court's Renovation Committee which supervised the renovation of the old Supreme Court. He was chairman of the Judicial Conference and Barristers Sickness and Accident Fund. He was also the chancellor of the Diocese of Grafton 1974–1996.

On the occasion of Simon's retirement from the court in 2005, the then chief justice, JJ Spigelman, said:

[...] In the 180 year history of this court there have been numerous judges who have displayed many of the judicial virtues: learning, wisdom, compassion, eloquence, robust independence, impartiality, attentiveness, diligence, common sense, clarity of thought and of expression, administrative skills and strength of character. Few have had all of these qualities and to the high level, that has been manifest by the Honourable Justice Simon Sheller [...]

The chief justice remarked upon Simon's 200 plus judgments not including those unreported. All bore the hallmarks of Simon's inimitable judicial voice '[His] command of the language [allowed] all of this to be expressed with force and clarity and in a tone of high sobriety'.

On retirement, Simon prioritised life at home and in the Southern Highlands with Jan, his children and, ultimately, 14 grandchildren.

Simon succeeded over a lifetime in eschewing the loneliness he had experienced as a child. Simon's large family with Jan, Mark, Jane, Sara, Emma and James – a barrister, all survive him. And all of his grandchildren. This is testament to this promise of convivial company. It was a rich and loving family life – to everyone's delight.

Simon died in Bowral on 16 April 2018 and was farewelled at a private funeral in the Southern Highlands. The legal profession gathered at St James King Street on 4 May 2018 to honour his passing. The church was filled with the profession, family and friends joined together in fond recollection of Simon's achievements, both personal and professional.

Kevin Tang