Retirement of Justice Richard White

from the Court of Appeal of the Supreme Court of New South Wales

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On 19 December 2024, a farewell ceremony was held in honour of Justice Richard Weeks White, who retired after 20 years of service as a judge of the Supreme Court of New South Wales – 13 in the Equity Division and seven as a judge of Appeal. At the ceremony, the Chief Justice remarked that the exceptional body of judicial work that his Honour produced over those 20 years is 'marked by meticulous attention to detail, technical brilliance, great scholarship and a deep and abiding sense of justice'. That body of work is also vast: it comprises approximately 930 published judgments at first instance and approximately 130 as a judge of Appeal.

His recognisable and often-cited cases as a judge of the Equity Division include *Slack v Rogan* [2013] NSWSC 522 and *Mayfield v Lloyd-Williams* [2004] NSWSC 419 (both of which are arguably some of the most frequently cited family provision judgments in this state); *Shepherd v Doolan* [2005] NSWSC 42 (on resulting trusts); *UNSW Global Pty Ltd v Chief Commissioner of State Revenue* [2016] NSWSC 1852 (on the reach of the employment agency contract provisions in the *Payroll Tax Act 2007* (NSW)); *New Cap Reinsurance Corporation Ltd (in liq) v Renaissance Reinsurance Ltd* [2007] NSWSC 258 (on loss of client legal privilege); *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* [2010] NSWSC 233 (most often cited for the clear statements of principle on shadow directorship); *Scope Data Systems Pty Ltd v Goman* [2007] NSWSC 278 (on setting aside statutory demands and how statutory presumptions of service operate alongside proof of actual service); *EK Nominees Pty Ltd v Woolworths Ltd* [2006] NSWSC 1172 (on equitable estoppel); and *Short v Crawley (No 30)* [2007] NSWSC 1322 (on too many equitable and other principles and issues for this short article to set out. That 1330-paragraph judgment might aptly be described as a sort of textbook of aspects of equity, corporations law and other things).

Significant decisions on the Court of Appeal include *Sgro v Thompson* [2017] NSWCA 326 (family provision), *Deigan v Fussell* [2019] NSWCA 299 (on the position of executors before grant of probate), *Turner v O'Bryan-Turner* [2022] NSWCA 23 (on *Barnes v Addy* liability).

White J's judicial career first crossed international lines in 2019 when his Honour began sitting as a judge of the Court of Appeal of Tonga. His Honour's decisions spanned matters of Tongan criminal law (*Attorney General v Fa* [2023] TOCA 10), commercial law (*Royco Shipping Services Ltd v Matson South Pacific Ltd* [2021] TOCA 17) and public law (*Helu v Electoral Commission* [2023] TOCA 6).

As the Chief Justice noted in his address, the occasion of White J's retirement marked the end of his Honour's fifth decade in the law. His Honour completed his articles of clerkship in 1975 under Bill Gummow at Allen Allen & Hemsley (now Allens) and graduated from the University of Sydney with first class honours and the University Medal in law in 1976. From 1977 to 1978, White J was an associate to Sir Nigel Bowen in the Federal Court of Australia and then joined Stephen Jaques and Stephen (now Mallesons) in 1979. He became a partner in 1982, was called to the Bar four years later in 1986, and took silk in 1998.

His Honour had not even taken silk when, in 1998, he so ably argued *Chief Commissioner of Stamp Duties (NSW) v Buckle (1998)* 192 CLR 226 in the High Court. This was (and remains) an important case on the law on the trustee's right of indemnity. Buckle was clearly not enough for his Honour given the extrajudicial focus he has subsequently given the topic, first in a speech delivered to the Supreme Court of New South Wales Annual Conference in 2007 titled 'The Nature of a Beneficiary's Equitable Interest in a Trust', and then in 'Insolvent Trusts: Implications of *Buckle* and CPT Custodian' (2010) 34 *Australian Bar Review* 71.

As former tipstaves, we can say it is an enormous privilege to have worked for White J. Much about the law and its workings was learned in that short year. We could not, in good conscience, write an article about his Honour without including a reminder to the profession of a golden rule he taught us, and that we will never forget: proof before pleadings. We witnessed how law can be practised with true humanity, through his Honour's patience with those who needed to be heard but did not know how to approach their case, and his patience with nervous junior members of the profession appearing

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before him. The balance of humanity, patience, decisiveness and intellectual honesty with which his Honour approached his task – always – taught us things about the practice of law that cannot be learned in any judgment or text. His ex temp judgments were a thing to behold. We heard the things other judges said about him too – 'Mighty Whitey' and 'The Clever Judge' are two examples. Each week would be punctuated by a Friday 'debrief' over a glass of wine, and there was much to unpack.

As members of the junior Bar, we are grateful for his Honour's exhortation to the profession to brief the junior Bar early, and for foreshadowing potential costs consequences for not doing so, in *April Fine Paper v Moore Business Systems* [2009] NSWSC 867. Having seen up close the way his Honour approaches litigation, we know his focus there was on the efficient running of cases and reducing parties' costs. We embrace the inevitable benefit to the Bar of that approach if those comments are heeded.

Little is yet known about what lies next for White J, although his Honour will be returning to his old floor as a door tenant (Seven Wentworth, now known as 7 Wentworth Selborne since the merger of those two floors in 2015). It is certain that his Honour's rigorously reasoned written work, intellectual honesty, and sense of justice on the Bench will be missed. **BN**