

“...an Ornament to this Bench”

A profile of retired Chief Judge of the Compensation Court, his Honour Judge F R McGrath AM, OBE

One of those in the front rank of judicial distinction, Compensation Court Chief Judge Frank McGrath, warned of “forces which are completely inimical” to the independence of the Bench at his recent retirement ceremony.

His Honour’s retirement ceremony on 16 December 1993 was an occasion of special note. For the first time in the Court’s distinguished tradition, the Chief Justice and President of the Court of Appeal sat on the Bench of the Compensation Court to mark Chief Judge McGrath’s farewell. Also present were the Chief Judge of the Industrial Court, the Hon. Justice Fisher, Chief Judge of the Land and Environment Court, the Hon. Justice Pearlman, Chief Judge of the District Court, his Honour Judge Staunton, and Chief Magistrate, Mr Ian Pike. There were many other distinguished judges, practitioners and representatives of the Executive among the body of the Court.

Chief Judge McGrath was the subject of memorable valedictions from his Honour Judge O’Meally RSD, of the Compensation Court and presiding member of the Dust Diseases Tribunal, and President of the Bar Association, Tobias QC, and Mr John Hunt, representing the Law Society.

But Judge McGrath’s reply sparkled wisdom. After noting the existence of inimical forces, his Honour said:

“There have been a number of glaring examples in both politics and in the press which demonstrates the desires of some very strong influences in the community to destroy judicial independence under the banner of alleged judicial accountability. Sir Alfred Stephen, on his retirement, issued the following warning: ‘I would beg those who may be disposed to think lightly of judicial office or its work to be assured of one thing - that nothing but evil can result from deprecating either.’

“In many cases widespread ignorance has been shown of the basic principles of the separation of powers which is the cornerstone of judicial independence. It is trite to say that judges must have security of tenure and security of salary. Subject to a referendum, the Government has moved to entrench security of tenure in the constitution of this State.

“I believe there is more to judicial independence than these two matters. In my view, the judges of the various courts must have control of, and responsibility for, the administration of their own Registries. The various courts should have control of and responsibility for their own day-to-day budgets, subject only to the overall supervision of the Auditor-General.

“Finally the judges of the various courts should have a major voice in the location and design of the courts in which they are expected to sit. They should not be directed by the Executive into unsuitable locations, having regard to the needs

of the court, nor should their wishes be ignored in relation to the particular allocation of space within the court buildings, or overridden by reference to some preconceived standard to which all courts are obliged to submit. What is suitable for one court is not necessarily suitable for another.”

Chief Judge McGrath was the longest-serving judge currently sitting in the nation when he retired. He commenced membership of the Workers’ Compensation Commission in 1966, being appointed Chairman in 1982 and was appointed first Chief Judge of the Compensation Court when it was constituted in 1984. About this, his Honour said: “With the drastic proposals which were made by Government at the time I was appointed as head of the jurisdiction, it was generally felt that I would be the last Chairman and Chief Judge, and that before I retired I would be presiding over the funeral of this Court.”

His Honour said: “As it has developed the Court has become one of the most efficient courts in the land and has been to the forefront in the development and utilisation of all modern means to ensure that justice is not delayed, and is swiftly but fairly administered.”

Last year, the Compensation Court disposed of 18,085 matters. Applications filed totalled 19,709.

Of Chief Judge McGrath’s career as a practitioner, Tobias QC said: “Your Honour was admitted as a solicitor of the Supreme Court in 1950 and



(l to r) Chief Justice Murray Gleeson AO, Judge O’Meally RFD, Chief Judge McGrath AM, OBE, Judge Moroney

then as a barrister in 1951. You moved onto the fourth floor of Wentworth Chambers when it opened in 1957, in company with many illustrious members of the Bar such as the late Justice Lionel Murphy, Neville Wran QC, his Honour Mr Justice Fisher, the late Mr Justice Sweeney. That floor has had a remarkable judge rate. Your Honour was the first appointment from that floor to the Bench and you were one of 17 judges who have now been appointed from that location.” Tobias QC noted his Honour’s “extremely busy practice at the Bar”.

The Bar Association President had noted that his Honour was “articled to Mr Cec O’Dea, of J J Carroll Cecil O’Dea & Co, and there was no more able, wiser, or for that matter wily, solicitor than that gentleman of very fond memory. He was a great character with a personality that is regrettably missing from the modern profession. The experience of working with Cec O’Dea must have been invaluable to you.”

His Honour had graduated with Bachelor of Law degree from Sydney University in 1949 with the Pitt Cobbit Prize for Constitutional Law. That had followed taking First Class Honours in the Degree of Bachelor of Arts with the University Medal in History in 1942. His Honour graduated with Honours in History in his Master of Arts in 1946. Tobias QC noted that

Chief Judge McGrath had his secondary school education at Canterbury Boys' High School "which immediately put you at odds with accepted doctrine with respect to judges in this country who are all assumed to have been the products of the non-Government education system, at least according to the Federal Attorney-General's discussion paper on judicial appointments and, I notice in this morning's paper, Mr John Marsden, and after all, one assumes they must have done their homework".

The Chief Judge worked vacations as a "blacksmith's striker" at Morts Dock where his father was employed as a shipwright.

He had been a member of the Balmain branch of the Federated Ironworkers' Union of Australia and was involved in extraordinary union struggles of that time. Chief Judge McGrath had been made secretary of the branch. According to Tobias: "This was a traumatic period as there was a great deal of violence on the waterfront, where your Honour was at times engaged in your secretarial duties. Although no coward, you were also no fighter in the pugilistic sense, and thus needed the protection of a bodyguard, but this notwithstanding, you were severely assaulted in June 1945."

Mr Hunt, speaking for the solicitors, also remarked with reverence his Honour's participation in union affairs of the time. He said: "Your contributions over the years to the successful campaign in the Federated Ironworkers' Association deserves, I suggest, appropriate recognition and acknowledgment, not least of all because it was made against the background of bullying, insults and actual physical violence." Mr

Hunt noted that "you never lost a reinstatement case. The significant feature was that you had the carriage of many of those matters when you were still an articulated clerk."

Of the 1950 ballot case, leading to Mr Short taking office in the union, Mr Hunt said: "You had the conduct of the case in the office of the solicitors, but you ultimately became the star witness as well. In the words of Mr Justice Dunphy: 'The X-ray vision of Mr McGrath detected indentations on certain ballot papers consistent with the actual marks made on the paper above it in the stack, an indication that the same person had filled in many ballots.'" Mr Hunt said: "This was a crucial element in the case. The interesting thing is that your Honour detected it with the naked eye, others needing a magnifying glass to see the same marks."

The ceremony heard of the Chief Judge's musical accomplishment, enthusiastic sailing, golfing and lawnmowing. According to Tobias: "You also hate gardening, which I find commendable, but love lawnmowing which I do not. It is asserted that your definition of gardening is running the lawnmower over whatever is within reach and so reducing it to ground level. You have thus recently purchased a new lawnmower so as to give further vent to this peculiar activity in your retirement."

Tobias QC noted that his Honour had applied to the University to read for his Doctor of Philosophy in History, the proposed thesis topic being the Legal and Philosophical Implications of the Constitutional Conventions.

Mr Hunt praised his Honour's grasp of the law, patience, whimsical sense of humour and "total intellectual integrity".

Of Chief Judge McGrath's humour, Mr Hunt said: "It did not flash out in many a golden phrase yet who can forget your comment concerning a very prominent citizen who was suing an even more prominent citizen for the alienation of his wife's affections. Your Honour observed that the case would never come to trial. 'The aggrieved plaintiff was mitigating his damage in the most delightful manner.'"

Mr Hunt said: "You have, sir, been an ornament to this Bench. You have been a highly active, literate adjudicator. You have brought to the Bench certain attributes which make for a good judge, and others which are the hallmarks of any highly respected man or woman."

According to Tobias QC: "Your Honour's temperament, legal skills, integrity and most importantly, humanity and compassion, have ensured your Honour's place not only in the history of this Court but in the history of the judiciary of this State. You have served the community with skill, dignity and selflessness, and we thank you for it. The Bar wishes you a long, happy, healthy and productive retirement and on 30 October next year, a very happy Golden Wedding Anniversary."

His Honour Judge O'Meally said: "Chief Judge, your colleagues on the Bench have depended upon you for leadership and help, and in these you have been staunch and constant. Your experience and knowledge, when sought, have always been made available to us. One never sought your advice without receiving a patient hearing.

"The tangible record of your work in court is embodied in your judgments which now you leave to posterity, and the intangible spirit of collegiality which was inherited from our predecessors you have maintained and amplified."

Chief Judge McGrath said: "Such success as I have achieved would not have been possible without the loyal support of my colleagues, the dedication of all levels of staff, the sympathetic support of the medical profession, and both branches of the legal profession.

"In the words of Mr Justice Pring, on his retirement: 'I have tried to do my duty. No man can do more nor should do less.'

"In handing over the helm to whoever will be my successor, I leave this place with pride, satisfaction, and a storehouse of very happy memories.

"With my sincere thanks to you all for a most fortunate life, I bid you all farewell." □

Anthony Monaghan



Chief Judge McGrath at the unveiling of the portrait of him to be hung in the Compensation Court.