

The Hon Justice John Ellis

The following is an edited version of a speech delivered by Ian Harrison SC at a ceremony marking the retirement of the Hon Justice John Ellis of the Family Court on 16 August 2004.

It is with great pleasure that I speak on behalf of the Australian Bar Association and the New South Wales Bar Association to farewell your Honour on the occasion of your retirement from this Bench.

My pleasure is, however, tinged with trepidation of the prospect of honouring, in such a short period of time, a judge who has been the keystone in the arch of this court since its inception in 1976. The longevity of your service is matched only by your contribution to family law. Many of the principles enunciated in your judgments have become hallmarks of practice in this court and are cited and applied by practitioners on a daily basis.

Your Honour was born – as opposed to Justice Nicholson, who was quarried – in Dubbo on 23 August 1934. Your family later moved to Wollongong and you attended Scots College, before studying law at the University of Sydney in 1952. You were articled with Adrian Garling for three years and for a further two years at Abbott Tout Greer and Wilkinson.

You were admitted as a solicitor in 1957. One year later you were called to the Bar. There you remained until 1967, when your Honour moved to Canberra.

Your Honour was indeed a prolific writer of judgments, and it is through those that you have spoken. Reported judgments written by you, in whole or in part are too numerous to count accurately. There are at least 168 judgments in the *Family Law Reports* alone. Some that stand out include *Black v Kellner*, which related to full and frank disclosure and the adverse inferences that are made from a failure to do so. Another was *Davidson v Davidson*, which related to discretionary trusts and the powers of this court to set aside transactions. Your judgment at first instance was upheld on appeal.

Other well known judgments include *Cilento, De Lewinski, Flannagan, Figgins* and *B v B*. But perhaps your most notable recent decision was *Bachtiari*; in which the full court claimed jurisdiction over children in immigration detention centres. In that appeal you were the dissenting judge, but your opinion was upheld in the High Court.

Your Honour will be missed by this court. There is widespread praise among your judicial brethren and beyond for the manner in which you readily and generously spared the time to give recent appointees the benefit of your enormous experience. There is also a sense of gratitude for what some have called your 'proper appellate practice': that is, the presumption that the judge in first instance should be supported.

Complementing your Honour's long standing list of noteworthy cases is your reputation for quickly grasping the facts of the matter and effectively managing the case. All those I have spoken to noted your Honour's adherence to procedure and legal principle.

Your Honour had a reputation, no doubt confined to counsel who were unprepared, for being somewhat formidable. One practitioner described his appearance before you as being 'a near death experience'. I told him it could have been worse. Perhaps it is not altogether surprising that in a survey by the *Justinian* in June 1995, your Honour was listed as being among the best judges in the country. Regrettably, my only appearances before you have been ceremonial.

On behalf of the Australian Bar Association may I wish your Honour well in your retirement. I trust that you and your family enjoy the next stage of your life.