

Keeper of the standards: Retirement of the Hon Anthony John Meagher from the Supreme Court of New South Wales



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Anthony John (Tony) Meagher retired as a judge of appeal and judge of the Supreme Court of New South Wales on 12 August 2024, having been appointed on 1 August 2011.

At the ceremonial sitting held to mark Tony's retirement and acknowledge his major contribution to the Court and to the public, Chief Justice Bell noted with approval that Tony had been designated, by at least one of his colleagues, a 'keeper of the standards'.

That designation is apt. Throughout his career at the Bar and his time on the Bench, Tony exemplified and encouraged the rest of us to aspire to excellence in the practice and exposition of the law. He was a colleague from whom we learned much, and none of us wanted to disappoint him.

Prior to his appointment, Tony was among the best commercial silks in the country. A learned and precise technician, he wrote with surpassing clarity. As an advocate, Tony's words carried unusual authority in court, and witnesses soon learned that they had best be straight with him. At once a force to be reckoned with and a gentleman, Tony was a barrister's barrister.

Called to the Bar in 1982 and appointed silk in 1995, Tony developed a dominant practice in insurance law. He also appeared in significant cases traversing other areas of commerce. One gets a sense of the breadth of his experience by noticing that he played a leading role in cases such as *CanWest Global Communications Corporation v Australian Broadcasting Authority* (1998) 82 FCR 46; *McCann v Switzerland Insurance Australia Ltd* (2000) 203 CLR 579; *News Limited v South Sydney District Rugby League Football Club* (2003) 251 CLR 563; *Siemens Ltd v Schenker International (Australia) Pty Ltd* (2004) 216 CLR 418; *Universal Music Pty Ltd v Sharman License Holdings Ltd* (2005) 222 FCR 465; *Povey v Qantas Airways Ltd* (2005) 223 CLR 189; *CGU Insurance Ltd v Porthouse* (2008) 235 CLR 103; *Seven Network Ltd v News Ltd* (2009) 182 FCR 160 and *Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)* [2012] FCA 1028.

The success that Tony enjoyed at the Bar principally derived from his diligent preparation, critical thinking and sheer hard work. Tony did not take short cuts, engage in wishful thinking or adopt the assumptions of others. He attended meticulously to the facts of a case and rigorously tested the logic of an argument until he was satisfied that he fully understood the issues, the legal principles that applied to them and how they ought to be resolved. Tony then sought to reduce the argument to its simplest form and ensure that only the real issues were litigated. He sweated the details: Tony believed that imprecise language betrayed loose thinking and that seemingly minor inaccuracies in one's analysis of the facts or the law could easily lead one astray.

It was no surprise that the then Chief Justice, Tom Bathurst, recruited Tony for the Court of Appeal. His transition from the Bar was not entirely seamless, however. Within months, Tony relayed, with something approaching horror, that he may not be able to attend his annual heli-skiing trip since he had been compelled to 'put in a form' requesting leave and still had not 'heard back'. Eventually, leave was granted, Canadian powder was duly carved, and Tony settled into a rhythm that enabled him to keep his balance through more than 1,000 cases over the next 13 years.

It is not possible to do justice to that output in this short note. Vindication of Tony's dissent in *Globe Church* likewise awaits a more suitable vehicle.¹ One example of his judicial work will have to suffice for now. Tony's judgment (with which Macfarlan and Emmett JJA agreed) in *Prepaid Services Pty Ltd v Atradius Credit Insurance NV* [2013] NSWCA 252 was written when there was apparent disagreement between the Western Australian and Queensland Courts of Appeal as to the proper application of s 54 of the *Insurance Contracts Act 1984* (Cth).² In less than 20 paragraphs, Tony detailed how that elusive section should be applied, illustrated its proper application by analysing past authority, explained why the decision of the Western Australian Court of Appeal was correct and that of the Queensland Court of Appeal wrong, and resolved the issue that arose in the case before him.³ The High Court subsequently upheld the decision of the Western Australian Court of Appeal and said the decision of the Queensland Court of Appeal should not be followed.⁴ As the Full Federal Court later said, Tony's judgment supplies 'a clear analysis of what has been a difficult area for practitioners and judges'.⁵

Clear analysis is a hallmark of Tony’s judgments, and their high quality is one reason why the New South Wales Court of Appeal is held in such high regard. Another is the courtesy with which Tony treated counsel and the consideration he showed for the parties whose disputes came before him. Tony was always focused on achieving a just resolution for the parties, rather than on himself; no doubt his mother, the 94-year-old Mrs Jill Meagher, is partly responsible for this, and it may also have something to do with being the eldest of eight children.

For these reasons and many more, Tony will be greatly missed. With luck, he will now have more time to spend with his wife, Fran, their four children, Alex, Joanna, Henry and Saskia, and their grandchildren. With more luck, he will continue his longstanding support for, and involvement in, classical music and contemporary art.

A lazy retirement seems unlikely, however. It is not in Tony’s nature to be idle. Rumour has it that he will sit on the Singapore International Commercial Court and will soon be working as an arbitrator.

We are looking forward to Tony’s next chapter. It is now our job to keep the standards. BN

ENDNOTES

- 1 *Globe Church Inc v Allianz Australia Insurance Ltd* (2019) 99 NSWLR 470.
- 2 *Johnson v Triple C Furniture & Electrical Pty Ltd* [2012] 2 Qld R 337; *Maxwell v Highway Hauliers Pty Ltd* (2013) 45 WAR 297 (*‘Maxwell’*).
- 3 *Prepaid Services Pty Ltd v Atradius Credit Insurance NV* [2013] NSWCA 252: at [125]–[144].
- 4 *Maxwell* (n 2) [27]–[28].
- 5 *Watkins Syndicate 0457 at Lloyds v Pantaenius Australia Pty Ltd* (2016) 244 FCR 5, [38] (Allsop CJ, Rares & Besanko JJ).

