

THE HON T F BATHURST AC

CHIEF JUSTICE OF NEW SOUTH WALES

**FAREWELL CEREMONY FOR THE HONOURABLE JUSTICE CLIFTON HOEBEN
AM RFD UPON THE OCCASION OF HIS RETIREMENT AS CHIEF JUDGE AT
COMMON LAW OF THE SUPREME COURT OF NEW SOUTH WALES**

MONDAY 6 DECEMBER 2021*

1. I would like to begin today by respectfully acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging.
2. Let me warmly welcome you all this morning to mark belatedly the occasion of the Honourable Clifton Hoeben's retirement as a Judge of Appeal and Chief Judge at Common Law of the Supreme Court of New South Wales. Today is an opportunity for all of us to show our gratitude for your years of commitment to the administration of justice, and to express our best wishes to you. It is a shame that we could not do this at the time of your retirement, but this is the next best thing.
3. You served this court for 17 years, first as a Supreme Court judge, then as a Court of Appeal judge, and finally as Chief Judge at Common Law. Seventeen long years it may have felt, but your time was marked by an in-court efficiency that would put High Court special leave hearings to shame. I am told that as presiding judge, particularly in the Court of Criminal Appeal, you would often speak those words that some barristers dread to hear: "We've read your written submissions, is there anything else you wish to add?" Valuable court time was not to be wasted. Of course, this was always done with your trademark politeness and respect.

*I express my thanks to my Research Director, Ms Rosie Davidson, for her assistance in the preparation of this address.

4. For my part, I have known you for much longer than 17 years, closer to the order of six decades. At school, you were a brilliant student, much more so than me, and you developed early on a great love and mind for Latin and Ancient Greek. In fact, Latin is so second nature to you that you seem to sometimes assume that everyone else has your same remarkable aptitude. If only that were true. It is reported that when you would dictate, as you would so frequently do, you would take utmost care to spell out words, lest the typist make a mistake: things like “Smith, S-M-I-T-H”, or “Roman numeral 1 – that’s a lowercase i”. However, you would forget to spell out whole lines of Latin, which comes so naturally – to you, if perhaps not to your staff.
5. Of course, I could not speak properly about you without mentioning your longstanding service to the military. After graduating as Dux of Riverview you enlisted in the Sydney University Regiment and rose to the rank of Sergeant, then Captain. You were promoted Major whilst posted at Headquarters 5th Task Force. You were promoted to Lieutenant Colonel and appointed Commanding Officer of the University of New South Wales Regiment. Professionalism was very important to you, as has been evident in your judicial life. You had various other postings, and were promoted Colonel, then Brigadier. You led the 8th Brigade in a complex Defence exercise in the Northern Territory. You were promoted Major General. For those of you not familiar with military rankings, this rank is what is colloquially termed a “big deal”. You were appointed Commander of the 2nd Division, where you prepared reservists for deployment in East Timor, and provided 800 soldiers to carry out security duties for the 2000 Olympics. Photos from your earlier army days reveal that you sported a glorious moustache, the likes of which some of us can only dream.
6. During your time at the Bar, you had a substantial advice practice which no doubt stood you in good stead for your appointment to the Bench. You also had a significant – and often overbooked – personal injury litigation practice, which provides for some amusing anecdotes from your former colleagues on the Eleventh Floor. At one point, your reluctance to part with briefs, particularly those likely to settle, earned you the nickname of “Iron Claws” – which I am sure was more affectionate than it sounds.

7. Jim Poulos and Paul Daley tell the story of a fishing expedition – in chambers, where the bait was a brief, the fishing line was pink legal tape, and the fish was you. One day, while a group of your colleagues were having afternoon drinks – you were still hard at work in your room – Jim decided to put your fondness for new briefs to the test. Knowing you would soon leave your room at 5:30 pm, he took a slim folded foolscap brief, attached it to about four metres of pink tape, and placed the brief in the corridor. He dubbed this “trolling for Hoebens”. Jim recounts, “Sure enough, we heard his door shut and within a second or so I had a strong bite. After a brief struggle, our catch was landed.” Of course, you always maintained you were simply doing the right thing and would never have retained the brief.
8. Putting your weakness for briefs aside, I am informed that these days, you maintain a pair of weaknesses in equal proportions. Or, perhaps “addictions” would be a more accurate term. These addictions are to The Book Depository and JB Hi-Fi. You are an insatiable reader, and have ordered and read hundreds of books. Your tippies revealed that you keep a list of authors in a notebook, and that one of their tasks was to check whether the authors had published anything new. A portrait of you would also be incomplete without that ubiquitous yellow JB Hi-Fi bag that you carried around. This not only demonstrates that you buy far too many DVDs – have you heard of streaming? – but also your lack of pretentiousness. You put on no airs and graces – a plastic bag is a good enough bag for you.
9. I have already mentioned your efficiency, but you are also a straight shooter. One example of this comes from your military days, in a speech you gave at the conclusion of a University of New South Wales Regiment camp in 1982. You said, “Professionalism should be the aim of all members of UNSWR.” You then didn’t pull any punches, telling the camp, “We would be deluding ourselves if we said we had achieved the necessary level of professionalism”. Likewise, on the bench, you were not afraid of letting those at the bar table know exactly how you were feeling – and then letting them deal with it. Even so, you were also known for your equanimity. When things went wrong, you always managed to retain a level of calm and composure which some other members of the Court could do well to emulate.

10. Over the years, you decided cases on topics ranging from high-profile murders to terrorism to car-crashing rock stars. A search of the Caselaw website reveals you were involved in more than 1500 published judgments, no small feat indeed.
11. One of your notable cases was brought by Gregory Wayne Kable against the State of New South Wales, decided some years after the constitutional issues had been resolved. I note for interest's sake that senior counsel appearing for the defendant was one Mr M Leeming SC. Mr Kable had, of course, been previously detained under an Act which was found by the High Court to be invalid. He brought an action in the Supreme Court claiming damages for malicious prosecution, false imprisonment and abuse of process. You dismissed the claims, holding, inter alia, that the imprisonment took place pursuant to orders of a superior court which were effective until they were set aside. Unfortunately, the Court of Appeal, sitting as a five judge bench, didn't agree with you on this point and struck what must have been a painful blow, overturning that part of the decision 5-0 and holding that damages should be assessed on the claim for false imprisonment. I hasten to add that I was not a member of that bench. You had the last laugh however, when the High Court returned a decision where all seven judges agreed with you and reversed the Court of Appeal's decision. I'm sure Justice Leeming was quite pleased too.
12. Finally, it is often said that a measure of a person is how they treat others. In this respect, it is noteworthy that your staff in particular spoke of you with evidently high regard, not just as a judge and for your legal talents but also as a person. It is a testament to your character that those who worked with you on a day-to-basis, your longstanding associate Morna and your past tipstaves (who must now comprise a small army, or at least a platoon), consider you to be deeply humble and kind.
13. On behalf of all the judges of this Court, we wish you the very best for your retirement. I'm sure it won't be confined to your afternoon walks along Balmoral Beach and your voracious appetite for books. I know that Chrissie will encourage you to take up other pursuits, so if only to keep you out of the house from time to time.

14. Once again, we thank you for your contribution to this Court and the administration of justice.