

## **Farewell to the Honourable Robert Shenton French AC**

Speech by Australian Bar Association President Patrick O'Sullivan QC at the High Court of Australia on the occasion of the retirement of the Honourable Robert Shenton French AC, Chief Justice of the High Court of Australia.

May it please the Court.

On behalf of all the Australian Bars, I rise to congratulate Your Honour on an outstanding career and to offer the Australian Bar's deepest thanks for all Your Honour has done for the law and for the community over many years, both in practice and on the bench.

I, too, acknowledge the traditional owners of the land on which we meet and pay my respects to their elders past and present.

### **A successful career**

When Your Honour was appointed as Chief Justice of this Court, it was met with universal praise. Your appointment to the High Court was a fitting development in an already distinguished legal and judicial career.

Not only did Your Honour bring to this Court considerable experience and an outstanding reputation as a jurist, you also brought a strong commitment to both social justice.

As we have heard, it was the Justice Committee of the New Era Aboriginal Fellowship that established the Aboriginal Legal Service in 1973. You were keenly aware of the need for such a service and you wrote letters to the Minister for Police and the Minister for Justice suggesting special training for those whose work brought them frequently into contact with indigenous people.

Your Honour has said that this work was motivated by a recognition that Indigenous Australians were over-represented in the prison system and yet often legally unrepresented.

It is remarkable that these achievements, amongst others, were all whilst you were still aged in your twenties.

In 1983, Your Honour joined the bar and enjoyed a career as a barrister in what has been described as “short but spectacular”.

Your commitment to public service continued with your appointment to the Federal Court in 1986.

On the occasion of your swearing in as Chief Justice on 1 September 2008, the Honourable Robert McClelland MP, then Attorney-General for the Commonwealth of Australia, noted that your background, fine personal characteristics, wealth of experience and careful analysis and exposition of the law, together with your exceptional ability to communicate complex issues of law in an accessible form, would serve you well in the discharge of your important duties in the Office of Chief Justice.

So it is that the passage of time has revealed the accuracy of that prediction.

The then Attorney also noted that you would have the unique opportunity to influence the culture and development of the Australian Judiciary.

You have presided with distinction over an era during which the Judiciary has been beset with challenges from various areas, including an ever increasing work load, a high degree of public scrutiny, seemingly driven by personal and political agendas and rapidly changing social norms and technology.

### ***First West Australian Chief Justice of Australia***

When Your Honour was sworn in on 1st September 2008 you became the twelfth Chief Justice of the High Court of Australia and the first Western Australian to take on this most important constitutional office.

Your Honour was appointed from outside the High Court: a testament to your reputation as an esteemed constitutional law expert and a reflection of the high regard for your record as a Federal Court Justice of nearly 22 years.

### ***A fair and rational judicial approach***

Your Honour's judicial temperament has been influenced by what you call a "culture of courtesy" in the Western Australian judicial system which developed during your time as a legal practitioner there. You admired the Chief Justice of West Australia, the late Sir Lawrence Jackson KCMG, who was firm and authoritative but never impatient or ill-tempered.

Your Honour has described your own judicial approach as simply identifying the law in each case—and the facts of each case—and then applying the law to the facts. That sounds simple enough but as we all know it isn't.

In *Evans v New South Wales*, a matter in the Federal Court, your Honour considered the so-called "anti-annoyance laws" introduced ahead of World Youth Day. When contemplating possible interpretations of "annoyance", you asked:

"How about barracking for the Dockers while you are sitting in the middle of a bunch of Swans supporters? I've done that."

Your decision was that "annoyance", and I quote, "may extend to expressions of opinion which neither disrupt nor interfere with the freedoms of others, nor are objectively offensive."

### *Decision without fear or affection, favour or ill will*

Echoing the judicial oath, Your Honour has remarked that our system of justice requires an independent judge to have the capacity and the determination to make a decision without fear or affection, favour or ill will.

It was during your presidency of the Native Title Tribunal that you guided the Tribunal during what has been described as a “period of charged public and political debate”. You have commented on the differences you encountered during this time between public administration and judicial decision-making.

Your Honour has written and lectured about Native Title law and your judicial scholarship has contributed to knowledge and awareness of Indigenous Land Rights in Australia. You have been commended for your strong commitment to justice in the Native Title process.

As Chief justice of this Court, Your Honour has presided over matters which had the potential to polarise views. Your Honour has, of course met those challenges with the distinction we have come to expect. By way of example:

- In *Pape v Commissioner of Taxation*, Your Honour considered a challenge to the Commonwealth’s fiscal stimulus payments where a challenge to Commonwealth spending was dismissed; and
- In *Williams v Commonwealth*, it was a question of funding for the provision of chaplaincy services in schools where a challenge to Commonwealth funding was upheld.

### *Collegial leadership*

Another notable feature of Your Honour’s Court has been your collegial approach to judicial administration. As Chief Justice you have considered

yourself to be “One Among Equals” rather than “First Among Equals” and judicial decisions are preceded and followed by regular conferences with your fellow High Court Justices.

*Great communicator and educator*

In addition to your judicial responsibilities you have had a representational role as Chief Justice. You are a member of the Board of Governors of the Asia Business Law Institute which was launched in January this year.

Despite your workload and your substantial other commitments, you found time to present the Key Note address at the Australian Bar Association’s National Conference in October.

You have attended and addressed countless events, written scholarly articles and given dozens of lectures and interviews explaining Australia’s constitutional law to local and international audiences.

In doing so, Your Honour has at times used humour and popular culture references to engage your audiences. Perhaps this is a lesson learned from your days as a tutor in constitutional law at the University of Western Australia.

Your Honour has said that popular culture can sometimes help you to make a point in a pungent and succinct way. You had previously quoted Homer Simpson when explaining declaratory relief and used Sylvester Stallone’s character in the film *Judge Dredd* to illustrate the importance of a separation of powers.

Your Honour has compared intellectual property rights with biblical original sin, and demonstrated various other ideas making reference to:

- Douglas Adams’ book *The Hitchhikers Guide to the Galaxy*;

- The Webber and Rice musical, *Joseph and the Amazing Technicolor Dreamcoat*;
- And the Greek myth of Proteus, the “Old Man of the Sea”.

Your Honour has openly shared personal and family experiences in public communications and you have been generous and encouraging with your advice to students of law.

### ***A spectacular career***

Your Honour has held many other offices and positions over the course of your career, including:

- Council Member of the Australian Institute of Judicial Administration;
- Deputy President of the Australian Competition Tribunal;
- President of the Australian Association of Constitutional Law;
- Part-time commissioner at the Australian Law Reform Commission;
- Additional Justice of the Supreme Court of the ACT;
- A non-resident judge of the Supreme Court of Fiji;

### ***Many other honours***

You have further been honoured:

- As an Honorary Doctor of Laws at Edith Cowan University;
- and with a Companion of the Order of Australia as Chief Justice of the High Court.

Your Honour is:

- A Life Fellow of the Australian Academy of Law;
- Honorary Life Member of the Australasian Law Teachers Association;
- Honorary Life Member of the Law Society of Western Australia.
- and on behalf of the Australian Bar Association, we are honoured that you have accepted Life Membership of the ABA.

### ***Constitutional sunset and dawn of post-judicial life***

Given all of these achievements and your leadership over many years, the Australian Legal Profession is grateful that Your Honour abandoned the idea of becoming a theoretical physicist to instead forge an impressive legal and judicial career. Although perhaps the most significant moment was when your Science Dean remarked to you that “you express yourself magnificently but I am not sure you know what you are talking about”

In your opening address at the *Judicial Conference of Australia Colloquium* in October, Your Honour said of retirement, and I quote:

“The soft pink tones of the constitutional sunset are deepening and the dusk of impending judicial irrelevance is advancing upon me.”

Your Honour, may I suggest that after the constitutional sunset comes the dawn of continuing relevance and leadership in your post-judicial life.

Your Honour, once again thank you, congratulations on an outstanding career and we wish you and Mrs French all the best in your retirement.

May it please the Court.