

**FAREWELL CEREMONIAL SITTING FOR THE HON. JUSTICE  
ROBERT BEECH-JONES, CHIEF JUDGE AT COMMON LAW**

**Banco Court**

**Supreme Court of New South Wales**

**The Hon A S Bell, Chief Justice of New South Wales**

**19 October 2023**

- 1 I begin by acknowledging the Gadigal of the Eora Nation and pay my sincere respects to Elders, past and present, and extend those respects to all Aboriginal and Torres Strait Islander people.
- 2 This ceremonial sitting of the Court is bittersweet.
- 3 On the one hand we lose the services and day to day company of a very fine and most respected judge, and someone whose brief but brilliant leadership of the Common Law Division has made a huge contribution to the general flourishing of the Supreme Court of New South Wales.
- 4 On the other hand, we celebrate Justice Beech-Jones' appointment to the High Court of Australia as the 57th justice of that Court.
- 5 There was a compelling case for the appointment to the country's apex Court of a Supreme Court judge, and one with deep experience in the criminal law. There was an equally compelling case for that judge to be Robert Beech-Jones.

- 6 Although much has been made of his Honour's expertise and experience in criminal law as a particular reason why his appointment has been so timely and well received, that should not obscure the fact that he is also a very fine public and constitutional lawyer, with his interest in those areas of the law stoked by his undergraduate studies at the Australian National University under Professor Leslie Zines AO and other distinguished members of that Faculty in the 1980s. At the ANU, he was awarded the Commonwealth Constitutional Law Prize as well as the Evidence Prize.
- 7 Earlier this year, his Honour delivered the 15<sup>th</sup> Whitmore Lecture on the topic of "The Constitution and State Tribunals" and he has been a participant in the biennial Zines Symposium organised by Professor Stellios and Acting Justice of Appeal Griffiths.
- 8 As a Tasmanian constitutional lawyer, Justice Beech-Jones' appointment perhaps also corrects an historical wrong, namely the passing over of Andrew Inglis Clark for a seat on the first High Court. Indeed, his Honour has recently described Inglis Clark as "the polymath's polymath".
- 9 Justice Beech-Jones has long held a candle for Tasmania, including in his well-known dissent in *R v Zerafa* [2013] NSWCCA 222; (2013) 235 A Crim R 265 where, in a masterly survey of Australian case law on an important question of federal sentencing, he memorably began a short paragraph with the sentence "Tasmania is too often overlooked". He then noted that there were no relevant Tasmanian decisions on point.

- 10 In all seriousness, his Honour’s dissenting judgment in that case was a superb piece of judicial analysis, and was vindicated last year in *Totaan v R* (2022) 108 NSWLR 17; [2022] NSWCCA 75 where his judgment was described as containing a “powerful analysis” and “compelling reasons”.
- 11 Returning to the ANU, his Honour was also awarded the AN Tillyard Prize for outstanding contribution to University life. If there were a similar prize for outstanding contribution to the Supreme Court of New South Wales, he would be awarded that also (although he would much prefer a Brownlow Medal – but that would be delusional).
- 12 As a solicitor, at the Bar and on the Bench, his Honour has been a true all-rounder, another reason why his elevation to the High Court is so timely and well warranted.
- 13 In these remarks, I will focus on his career on the Bench but the breadth of his experience as a solicitor and barrister should not be overlooked. As a solicitor, he spent two years at Freehills but then two years at Craddock, Murray and Neumann practising in crime and migration law. At the Bar, he did everything including long and important regulatory cases for ASIC against directors and or officers of GIO Insurance and James Hardie as well as being one of the counsel assisting in the HIH Royal Commission. These were all challenging briefs against the cream of the commercial Bar. He also practised in white collar crime and administrative law, notable cases including representing Guantanamo Bay detainee Mamdouh Habib against the Federal Government, and Ms

Christina Rich against PriceWaterhouse in one of the then largest sexual harassment cases in Australia.

- 14 Appointed to the Supreme Court on 12 March 2012 at the age of 47, Justice Beech-Jones sat in the Common Law Division until late 2021 when he was elevated to the position of Chief Judge at Common Law and also as a judge of appeal. While he has continued to hear matters at first instance since that time, he has presided regularly on the Court of Criminal Appeal and sat on the Court of Appeal, delivering many judgments of note, to which I shall return.
- 15 As a heavy-lifter in the Common Law Division, his Honour conducted many criminal trials including:
  - the trial and sentencing in a six month tax fraud in *R v Anthony James Dickson (No 18)* [2015] NSWSC 268);
  - the trial and sentence for murder in a case involving extreme domestic violence – the case of *R v Maglovski (No 2)* [2013] NSWSC 16;
  - the trial and sentencing in relation to charges of corruption in *R v Obeid (No 12)* [2016] NSWSC 1815);
  - the judge alone trial and sentencing for murder in *R v Quinn (No 2)* [2016] NSWSC 1244);
  - sentencing in relation to murder and wounding with intent to cause grievous bodily harm: *R v Villaluna* [2017] NSWSC 139);

- the trial involving a murder charge and cold case disappearance of 13 year old girl in 1998: *R v Tarantino (No 6)* [2019] NSWSC 1174);
- the trial and sentencing on a murder charge resulting in a manslaughter conviction involving the so-called “mercy” killing of an elderly mother in *R v Eckersley* [2021] NSWSC 562;
- *R v Officer A* – trial of a correctional officer charged with murder of escaping prisoner resulting in a hung jury (October 2022);
- sentencing for manslaughter in gay hate cold case in *R v White* [2023] NSWSC 611.

16 This is a small selection but even this collection of cases involved innumerable interlocutory and evidentiary rulings, voir dres and complex directions to juries. His Honour’s deep knowledge of the anatomy of a criminal trial, not only in terms of substantive principle but his mastery of criminal procedure and sentencing principles (at both trial and appellate level) will inform and underpin his judgments on the High Court in a way that will ultimately be of immense value to that Court and the profession whose confidence and respect he already commands.

17 On the Court of Criminal Appeal, his Honour has sat on more than 350 appeals, with significant decisions including:

- *Director of Public Prosecutions (NSW) v Tony Mawad* [2015] NSWCCA 227, a decision which has become one of the

most cited judgments in the Bails List of the Common Law Division.

- *R v XX* [2017] NSWCCA 90; (2017) 266 A Crim R 132 in relation to sentencing discounts;
- *Casella v R* [2019] NSWCCA 201 in relation to the statutory requirements for the imposition of an intensive correction order under the *Crimes (Sentencing Procedure) Act 1999* (NSW);
- *Hamilton (a pseudonym) v R* [2020] NSWCCA 80 where his Honour held, in a decision upheld by a majority in the High Court ([2021] HCA 33; (2021) 394 ALR 194; (2021) 95 ALJR 894) that an anti-tendency direction was not required to be given in a multi-complainant child sexual assault trial;
- *R v Dong* [2021] NSWCCA 82 in relation to the requirement for a sentencing judge to specifically address the need for protection of the community in sentencing an offender for a premeditated but motiveless murder and where the offender suffered from schizophrenia and had poor prospects of rehabilitation.
- *AK v R* [2022] NSWCCA 175 regarding the concept of a “miscarriage of justice” in the light of the High Court’s decision in *Hofer v The Queen* (2021) 274 CLR 351; [2021] HCA 36.
- *Sharma v R* [2022] NSWCCA 190 in relation to appeals from aggregate sentence and the utility or otherwise of comparing aggregate sentences imposed in other supposedly “comparable” cases.

- *Vella v R* [2022] NSWCCA 204 in relation to the limits on admissibility of reports by the Sheriff of post-trial interviews with jurors about what occurred during deliberations in the jury room, holding in accordance with *Smith v Western Australia* (2014) 250 CLR 473; [2014] HCA 3 that, absent any suggestion of improper conduct on the part of the jury, “necessity for free and frank discussions among jurors” and consideration of finality prevails over admissibility.
- *GS v R* [2022] NSWCCA 225, grappling with the implications of the High Court’s decision in *Dansie v The Queen* [2022] 96 ALJR 728; [2022] HCA 25, in relation to an unreasonable verdict appeal following a judge-alone trial.
- *Rassi v R* [2023] NSWCCA 119 where his Honour explained how the application of tendency reasoning in a cross-admissible, multi-count indictment does not involve “circular reasoning” when the statutory default position now is that tendency does not have to be proved to the criminal standard of beyond reasonable doubt.
- *MK v R; RB v R* [2023] NSWCCA 180, where his Honour led a five-judge bench in determining a conflict between previous decisions of the CCA as to the proper construction of s 66EA of the *Crimes Act 1900* (NSW) which provides for the offence of persistent sexual abuse of a child;
- *Xie v R* (2021) 386 ALR 371; [2021] NSWCCA 1 concerning DNA evidence; see, also, *Sloan v R* [2015] NSWCCA 279; *R v MK* [2012] NSWCCA 110

- 18 There have also been a multitude of CCA sentence appeals in which his Honour discussed a variety of aspects of resentencing in accordance with *Kentwell v The Queen* (2014) 252 CLR 601; [2014] HCA 37. They include *RO v R* [2019] NSWCCA 183; *Young (a pseudonym) v R* [2021] NSWCCA 163; *Christian v R* [2021] NSWCCA 300; and *Pearce v R* [2022] NSWCCA 68
- 19 On the civil side, his Honour's time on the Supreme Court has been equally demanding and productive. He spent 10 months hearing evidence and submissions in the massive Queensland Floods class action, one of longest class action trials to run in Australia and the longest in this Court. He also managed the *Lam v Rolls Royce* litigation in which around 500 passengers on a Qantas flight sued for psychiatric injury after the Rolls Royce engines failed on an A380 although disaster was averted. The case ultimately settled. More recently, he approved the settlement in *Ellis v Commonwealth of Australia* [2023] NSWSC 550, a class action involving members of the Stolen Generation in the Northern Territory.
- 20 Another excellent example of his Honour's industry and extraordinary efficiency was his decision in *Kassam v Hazzard* [2021] NSWSC 1320. That case involved an extensive challenge to various COVID-19 Health Regulations. Proceedings were filed at the beginning of September 2021. The matter was listed for final hearing within the month with a hearing including extensive evidence and submissions taking place over 4 days between 30 September 2021 and 6 October 2021. A comprehensive final



judgment was delivered 9 days later. The decision was upheld by the Court of Appeal a matter of weeks after that.

21 Although most of his appellate work took place on the Court of Criminal Appeal, Justice Beech-Jones has also delivered significant decisions on the Court of Appeal which demonstrate the breadth of his range. They include:

- *Attorney-General for New South Wales v FJG* [2023] NSWCA 34, considering whether the Registrar of Births, Deaths and Marriages of New South Wales is empowered to “correct” an entry in the Register in circumstances where one party to a marriage later changes their legal sex;
- *The Next Generation (NSW) Pty Ltd v State of New South Wales* [2023] NSWCA 159, considering the scope of the regulation making power under the *Protection of the Environment Operations Act 1997* (NSW) and the relevant principles of inconsistency;
- *Ausbao (286 Sussex Street) Pty Ltd v The Registrar General of New South Wales* [2023] NSWCA 18, considering whether compensation can be ordered from the Torrens Assurance Fund for an inaccuracy on deposited plans, and whether such inaccuracy engages the exclusion of compensation for “error or miscalculation in the measurement” of land; and
- *Sheppard v Smith* [2022] NSWCA 167, a valuable distillation of principle on the abandonment and obsolescence of easements, a topic which his Honour may never revisit!
- *Independent Liquor & Gaming Authority v 4 Boys (NSW) Pty Ltd* [2023] NSWCA 210 dealing with the question whether s

48(1) of the *Interpretation Act* implies into each relevant statutory function a power to revoke an earlier exercise of such a function;

- *Amaca Pty Limited (Under NSW Administered Winding Up) v Roseanne Cleary as the Legal Personal Representative of the Estate of the Late Fortunato (aka Frank) Gatt* [2022] NSWCA 151 involving questions of causation in the dust diseases context and epidemiological evidence of lung cancer;
- *Bronger v Greenway Health Centre Pty Ltd t/as Greenway Plaza Pharmacy* [2023] NSWCA 104 concerning the distinction between a "retail" and a "medical" pharmacy for the purposes of an occupation certificate; and
- *Li v Liu* [2022] NSWCA 67 concerning the defence of payment over in the context of an illegal contract claim.

22 The dutiful recitation of even a small body of his Honour's work does not do justice to his great industry and commitment to the work of the Court. It does, however, place on the public record some of his most significant decisions and illustrates the great breadth and depth of his Honour's learning.

23 For much of his time as a judge of this Court, his Honour also served on the executive and was ultimately President between 2016-2018 of the Judicial Conference of Australia, now the Australian Judicial Officers Association. This was not only valuable work but gave him an early lens into the whole of this

country's judiciary from which, original jurisdiction apart, the High Court's work originates.

- 24 Also to be acknowledged and indeed highlighted is Justice Beech-Jones' great contribution to this Court as Chief Judge of the Common Law Division. That is no small or undemanding job. The Division is large and the range of its work wide, from administrative law, possession, personal injury, professional negligence, defamation and institutional abuse on the civil side, as well of course the whole of the Court's criminal jurisdiction including Bails, High Risk Offenders, federal criminal jurisdiction and the Court of Criminal Appeal on top of the steady diet of murder, manslaughter, terrorism and serious fraud trials.
- 25 Also under the immediate supervision of the Chief Judge at Common Law is responsibility for surveillance device and warrant authorisations as well as overseeing the Court's response to proposed legislative and law reform initiatives in relation to our criminal justice system.
- 26 To manage this Division requires great skill, knowledge, close attention to detail and enormous energy. It also requires intellectual leadership and a high degree of EQ (which is different from, and not an abbreviation for, Equity!) On every count, Justice Beech-Jones' tenure as Chief Judge has been outstanding.
- 27 On a personal level, he and I have had a great deal to do with each other since my own appointment as Chief Justice, and I have greatly valued his advice, counsel, experience, humanity and shrewd and measured judgment. He is a very fine man who has

become, I trust, a good friend as well as a close professional colleague. He has my deep respect and admiration.

28 That having been said, in the robust tradition of the New South Wales Bar in which we both grew up and which some say carries through to its judiciary, candour requires me to observe that, with his Honour's appointment, the sartorial standards of the High Court are likely to plummet! His ink stained CCA robes (which resemble Jackson Pollock's smock) will soon be repossessed and may well adorn a mannequin for the purposes of our Bicentennial celebrations next year. In memory of his Honour's boyhood home, the mannequin might come to be known as "The Savage from Savage River".

29 "Savage River" was also the name of a 2022 ABC drama series. Three observations may be made in that regard. First, the series was not about his Honour. Second, it was not written by Suzie Miller, thereby putting it in a small category of recent literary works. Third, one reviewer described the series as "a gripping new take on the Australian Gothic" while *The Guardian* review described it as "never terrible but never surprising either".

30 Although his Honour is an avid reader of *The Guardian*, I have the utmost confidence that the reviews he receives at the end of his tenure on the High Court will be far, far better than that!

31 Justice Beech-Jones, on behalf of all the judges of the Court, I thank you for your outstanding and exemplary service to this Court and offer you every best and sincere good wish for the important work that lies ahead of you.

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