

Tribute to the Honourable Justice Peter Johnson¹

I am honoured to deliver a eulogy for our esteemed colleague and friend, Peter Anthony Johnson.

From the outset I must say I am acutely aware of the need not to speak for longer than I should. Peter and I have been neighbours in chambers, and it followed that we would speak fairly frequently. When sometime in the future I look back on my judicial life, I will have fond memories of popping next door to have a chat with Peter, usually about some legal issue I was troubled about.

The problem was that our conversations were sometimes of such length that our associates became concerned. This concern first extended to the use of an hourglass to tell us our time was up. Then it dawned on them that something more aural was needed and they resorted to a bell.

Having a chat with Peter was always a good use of time. I always left with a solution to my problem; or at the very least with a lead on how to proceed. I am grateful. I know many of Peter's colleagues have enjoyed his advice and mentorship and they are enormously grateful as well.

On the subject of being chambers neighbours, as happens, the odd joke is shared. One was the occasion when Peter received a note from a colleague with whom he had sat on the Court of Criminal Appeal making comments and suggestions about a draft judgment. The note began, "Dear Dave". Henceforth, with complete disrespect, Peter was not referred to by my staff any more as "Justice Johnson", but as "Dave". I am afraid it caught on with me too.

Peter leaves us to take up the very important position as Chief Commissioner of the Law Enforcement Commission (LECC). He takes over from the Honourable Reg Blanch QC, also one of our esteemed colleagues and friends. Sadly, but not for lack of desire, Reg has been unable to join us this evening.

Peter has made it a habit through the course of his long career in the law to take on tasks and responsibilities of ever-increasing significance. That is who he is. Now at an age when many would consider retiring, he has decided to move on to a new challenge.

Peter was born in 1951. He breezed through his educational years, taking bachelor's degrees in arts and law before being awarded a master's in law.

His professional career as a lawyer commenced in 1976 with what was then called the Public Solicitor's Office ("Pub Sols"). He was a duty solicitor in Courts of Petty Sessions and a budding appellate lawyer in appeals to the District Court. Within 3 years he was the Solicitor in Charge of the Research and Advising section at Pub Sols.

¹ Speech made by the Hon Justice R A Hulme at a dinner to mark the retirement as a judge of the Hon Justice Peter Johnson on 16 June 2022.

Peter was called to the bar in 1982 and he practiced from 5th Floor, Wentworth Chambers. He took silk at quite a youthful age which was not surprising.

Peter's practice at the Bar was varied. He appeared in criminal trials and appeals. That is how I first met him. As a legal aid lawyer I was required to brief Public Defenders but on the then rare occasion one was not available I was allowed to brief out and a suggestion was made that I should try an up-and-coming barrister called Peter Johnson. I remember conferences in his chambers after hours; they would go on for some considerable time, such was Peter's thoroughness and attention to detail. There was no hourglass or bell in those days.

Peter's practice also included administrative law and health disciplinary matters. He soon became counsel of choice to appear on behalf of affected parties, or as counsel assisting, in Coronial inquests and inquiries as well as Royal Commissions, Special Commissions, the Police Integrity Commission (the precursor to the LECC), and the Independent Commission Against Corruption.

Peter was an Acting Judge of the District Court from time to time in 1998-1999. He was an Assistant Commissioner at an ICAC inquiry (2003-4) which recommended prosecuting a member of Parliament for having lied to the commission about using his official staff to help establish a private gaming consultancy. It was also found that the former MP had acted corruptly in taking stamps and stationery from his office when he resigned.

While at the Bar, Peter also volunteered his time to serve on various committees including the Justices Act Review Committee in 1990-1; a Professional Conduct Committee of the NSW Bar Association in the late 1990s-early naughties; and the Criminal Law Committee of the Bar Association from 1996 to 2004.

Peter was sworn in as a judge of the Supreme Court on 1 February 2005.

The Court had the good fortune of Peter having his secretary, Ciana Goodwin, continue to work with him as his Associate. Ciana first started working with Peter as his secretary in 1997. His resignation from the Court brings a welcome retirement for Ciana. She and Peter have been a great team over the past 25 years; 17.5 of them at the Court. We had the opportunity to sing Ciana's praises and extend our best wishes to her at a recent function at the Court.

Ciana contributed quite a number of stories from throughout the years in the hope that I might pass them on tonight. I am afraid that they were all far too salacious for this respectable occasion so I will keep them for another day. Maybe just a snippet. They included stories about a young woman named Leticia with whom they worked on the 5th floor. Another was about a blind date that led to something Peter thinks was marvellous. I had better leave it at that.

Very soon after his appointment as a judge, Peter's capacity for work was recognised with him accepting the task of managing the Court's "Possession List". I remember the very

first case I was allocated after my appointment. I was told it was a “possession matter”. With my criminal background, I was rather comforted by that because I had dealt with many cases of people being in possession of some illicit substance or another. I wonder whether Peter accepted the role with the Possession List with the same misguided sense of enthusiasm, only to have his hopes dashed as quickly as mine were. He soldiered on, however, and skilfully managed that list through the Global Financial Crisis and the burgeoning influx of cases in its aftermath.

Peter engaged with the full range of work of the Common Law Division both civil and criminal. He took to civil like a duck to water and handed down many judgments of significance. For example, who could forget his ground-breaking judgment in *Woolworths Limited v Walker* [2012] NSWSC 914 dealing with a fascinating cross-vesting issue? It is hard to understand why that one was not picked up for publication in the New South Wales Law Reports.

His Honour was said to be disappointed that there was no requirement for travel when he presided over *Hardaker & Ors v Mana Island Resort (Fiji) Ltd & Anor* [2018] NSWSC 1863. The fact that what was before him was confined to a question of whether the proceedings should be stayed for having been brought inappropriately in New South Wales probably limited the scope for that.

His Honour’s hopes to travel with a case were again dashed in *Apollo Kitchens (NSW) Pty Limited v Goway Travel Pty Limited* [2019] NSWSC 1913 when he learned that he was only being asked to determine a question of delay in progressing proceedings and the necessity for parties to comply with their duty under s 56 of the *Civil Procedure Act*.

Peter did develop a technique that had the potential to deal very neatly with the backlog of civil cases in the Common Law Division of the Court. In *Wollongong Coal Limited v NRE Resources Pty Limited* [2017] NSWSC 862, his Honour made various orders of an interlocutory nature including one by which the proceedings were transferred to the Commercial List of the Equity Division. It is rather a pity that his Honour’s innovative approach has not received a broad following among fellow judges of the Common Law Division.

Peter has been invited to sit on the Court of Appeal on a number of occasions – all too few for my liking however, and only where there was some criminal flavour to the case. As much as the Court of Criminal Appeal greatly benefits from having Judges of Appeal presiding over appeals in criminal cases – no matter the judge’s background – I can imagine Peter could have been the author of many landmark decisions in the Court of Appeal on the laws of contract, insurance, defamation, corporations and who knows what else. No-one could doubt his capacity; perhaps it was only a question of his enthusiasm.

But as much as Peter was valued for his contribution to the civil jurisdiction of the Court, his speciality was, of course, crime.

There were many prominent cases to which Peter was assigned because of his experience, wisdom, and expertise. In an earlier draft of this speech I started to include

a summary of some of them, but there are just too many. Suffice to say that Peter has been a stalwart of the criminal jurisdiction of the Court for his entire life as a judge. Cases were always in safe hands when they were allocated to him.

All up, Peter has been the author of 1248 judgments published on Caselaw. The vast majority are concerned with criminal law. A little more than half, 672, are judgments in the Court of Criminal Appeal.

There are a number of other aspects of Peter's working life that should be mentioned.

Peter has been the joint author with the Honourable Rod Howie QC of LexisNexis Butterworths' "Criminal Practice and Procedure NSW" since 1986. It has been the "go-to" criminal law resource for lawyers and judges in NSW and it is quite amazing that it is now in its 37th year of publication. It is a privilege that Rod has been able to join us in tonight's celebration.

A spinoff publication, "Annotated Criminal Legislation New South Wales" is now published every year by LexisNexis. It is widely available, including on Amazon where last year's edition received a richly deserved 5-star rating. The person who posted the most recent review was glowing in her praise. She awarded it 5 stars out of 5 and left the comment: "Very quick delivery and great price". I regret to say that hers is the only review, so I encourage everyone to get online and tell the world what you think.

Peter's writings have not been confined to this authoritative work. He has contributed many articles and papers for various practitioner and judicial seminars and conferences, and for publications including the Judicial Officers' Bulletin, on a wide variety of topics concerning the criminal law.

There some other extra-judicial activities worth mentioning.

Between March and May 2014, Peter was a participant with the Chief Justice and a number of other judges of the Court as well as senior members of the Bar in a number of "Sentencing Symposiums" arranged by the Court with community representatives, State Parliamentarians, and the media in order to facilitate a better understanding of the judiciary's work, particularly in relation to sentencing.

Peter has also involved himself in a number of committees including 15 years on the Criminal Trial Courts Bench Book Committee (2005 to 2019); the Supreme Court Education Committee for almost his entire time on the court; and the Committee established to review and re-write the Criminal Appeal Rules in 2019 to 2021. The latter sounded like a fairly straightforward task at the outset but turned out to be anything but.

Mr John Ledda, the recently retired, but never retiring, Deputy Parliamentary Counsel for NSW was involved in the Criminal Appeal Rules committee. His skills as a legislative drafter have no equal. He sends his best wishes to Peter with the following comments:

“It is a little-known fact, an alternative fact if you will, that there is a sect of legislative drafters who worship Peter Johnson as a semi-deity. They are known as Johnsonites. Each weekday morning, they gather in Phillip Street to light candles before an icon of him, though they are occasionally knocked over by bustling silks on their way to their lucrative defamation cases in the Federal Court.

Peter is worshipped because he appears never to have said a mean thing about drafters and because he understands legislation, unlike the Judges of Appeal.

Peter is a man of tremendous kindness, talent, and integrity. He has been a conspicuous success as a Judge. No doubt he will continue to be as successful, though likely more conspicuous, in his new role. I wish him the very happiest of days in this new role.”

Other appointments Peter has held include being a Part-time Commissioner of the NSW Law Reform Commission in respect of three references:

- “Sentencing”, Report 139 – July 2013
- “Criminal Appeals”, Report 140 – March 2014
- “Encouraging Appropriate Early Guilty Pleas”, Report 141 – December 2014.

If anyone is now confounded by this EAGP scheme that is now in place as a result of that report, in terms of the complex procedures for the processing of indictable offences through the Local Court, and for the strict and somewhat convoluted provisions now applying for discounts for pleas of guilty, Peter is apparently willing to answer any and all questions. And if he cannot, then I suggest you take it up with John Ledda.

Another appointment of note was Peter being the presiding member of the Conduct Division of the Judicial Commission of NSW at an inquiry into the conduct of a judicial officer.

Some of these activities with which Peter has been involved may not have been known generally within the Court. Another example of such an activity is the assistance Peter has given over a number of years in providing comment, suggestions, and advice to the Chief Justice in relation to various law reform proposals. The Chief Justice is often briefed by the Department in relation to various legislative proposals that do, or may, affect the law in respects with which the Court may have some involvement, interest or concern. For many years the Chief Justice provided the relevant material to a few judges, inviting their views as to the response that should be made. This is another extra-judicial activity that, on occasions, absorbed a considerable amount of Peter’s time and energy. The former Chief Justice has remarked that it is one of many things for which he was grateful to Peter.

A slightly related topic is that for several years as the Criminal List Judge (2014-2017) Peter attended Friday morning meetings with the former Chief Judge at Common Law and others. The former Chief Justice would attend when available. On a number of occasions the issue of the almost non-existent security of our courts at Darlinghurst and King Street

arose for discussion. The Chief Justice and Chief Judge would repeatedly indicate that the government had been asked to address the woeful shortcomings, but little was being achieved. Peter doggedly persisted in arguing for pressure to continue to be applied. I do not doubt that what has recently been achieved in terms of perimeter security finally being installed at both venues is in no small measure a result of that persistence.

I have received another testimonial for Peter. This one is from afar, from the Director of Public Prosecutions for the Northern Territory, Mr Lloyd Babb SC. He wrote:

“Peter and I have known each other for 30 years. I read with Peter when I went to the Bar, and we had chambers on the same floor – 5 Wentworth Chambers. He was a very kind and generous pupil master and I enjoyed working closely with him during my first years at the Bar.

He is an exceptional lawyer. He knows the criminal law of this state and has helped to shape it through policy work before his appointment and through his thorough and incisive judgments on the bench. Peter has been a wonderful friend to me – always supportive and encouraging. I wish him all the best in the next stage of his career.”

Standing by Peter throughout all his years in practice and as a judge have been Peter’s family, Joanne and their daughters Emily and Alexandra. It is abundantly clear from how Peter speaks of them that he cherishes their love and support. Much as he loves the sanctuary of chambers and being surrounded by his prodigious collection of books and papers, he richly treasures time at home with family.

To conclude, Peter Anthony Johnson has been a giant of the criminal law of New South Wales. As a solicitor, barrister, and judge, he has made an enormous contribution to the law, and to legal and judicial administration and education, for almost half a century. He could justifiably retire now and spend the years ahead in comfortable and satisfying reflection upon all he has done and all he has achieved. But he does not now retire. He goes forward to make a further contribution in his new role as Chief Commissioner of the Law Enforcement Conduct Commission.

Peter – “Dave” – you will be very sorely missed at the Court. But you go with our heartfelt gratitude and best wishes.