

**ADDRESS ON THE RETIREMENT
OF THE HONOURABLE JUSTICE G F K SANTOW AO
BY THE HONOURABLE J J SPIGELMAN AC
CHIEF JUSTICE OF NEW SOUTH WALES
BANCO COURT
SYDNEY 14 DECEMBER 2007**

We commemorate today over 14 years of service as a judge of this Court by the Honourable Kim Santow AO, more than eight years as a judge of the Equity Division and six years as a judge of the Court of Appeal. You were only the second solicitor appointed as a judge of this Court and swiftly overcame the lingering prejudices of your new former barrister colleagues by reason of the depth of your legal learning, your personal charm and your capacity for hard work.

As a trial judge, and perhaps even more so as an appeal judge, your Honour has dealt efficiently and fairly with the full range of this Court's jurisdiction. Your judgments have made significant contributions to the development of the law. Your extra curricular writings on legal matters have made significant contributions to the development of public policy and to the law. This has occurred over a broad field.

It is appropriate, nevertheless, to emphasise one contribution which your Honour has made of a character which simply could not have been made by any other person. You brought to the realm of commercial disputation a breadth and depth of knowledge of the world of commerce that few judges of this Court have ever had. Over decades as one of the most accomplished commercial solicitors in Sydney you acquired an understanding of the interface between law and commerce, especially of its creative potential, which was rarely if ever available to barristers, whose primary source of knowledge in these respects is cleaning up after a disaster.

From the time that your Honour assumed responsibility for the management of corporations law cases, this Court established itself as a pre-eminent Court in the corporate field. Supported by other judges, your Honour brought a unique combination of talent and experience to ensuring that the Court resolves disputes in corporations law at the highest quality of decision-making and with a full recognition of the commercial realities underlying the disputes, both in terms of the need for speed and the determination of the result. It is, accordingly, appropriate to highlight the special contribution your Honour has made to the development of corporations law as a judge.

For many years, you were the author of more judgments reported in the Australian Corporations and Securities Reports than any other judge in Australia. Your judgments covered the full range of corporations law including statutory demands, preferences, the Court's remedial powers, selective capital reductions, valuation of minority interests, schemes of arrangement, including such high profile cases as Advance Bank, the NRMA and James Hardie. Your Honour's judgments are, and will remain, the leading judgments in many areas of corporate law, e.g. on the prohibition of collateral benefits in takeover bids, in which I was the unsuccessful counsel, and on the imposition of civil penalty and disqualification orders upon defaulting directors. Your judgments are, and will remain, frequently cited throughout Australia.

Many of these judgments called for the exercise of discretions and an understanding of the need to reconcile different interests in a practical and positive way, perhaps most notably in schemes of arrangement. In this regard your background as a commercial solicitor made you more likely to look for solutions to problems, rather than to act only as the umpire of a fight.

Your behaviour in Court, as both a trial and an appellate judge, was characterised by your patience with counsel and unrepresented

litigants and your determination that all parties should have their opportunity to state their case fully. Your judgments manifest careful attention to detail, no matter how complex the issue, and a dedication to answering all points that were raised in the case. On no occasion did your Honour sidestep or evade a difficult point. Throughout your career as a judge you appeared to relish the intellectual challenge of the law and managed always to muster that enthusiasm for some arcane technical point that only those who love the law can manage, like a mother who alone can see beauty in an ugly baby.

Throughout your career on the bench your Honour continued to serve the community in numerous capacities, particularly in education and the arts. Perhaps your most distinguished contribution was your period of over five years as the Chancellor of the University of Sydney. All of us on the Court came to admire your extraordinary capacity to continue with the full burden of an appellate judge as well as discharging the office of Chancellor, which itself came close to being a full time job. This was only achievable by redirecting your entitlement to leave in the Court to the tasks of the University. The physical and mental determination and capacity that you displayed throughout this period was a wonder to behold.

Of particular significance to that great institution of learning was the way in which you acted as a peacemaker after some years of fractious conflict on the Senate. Your personality, together with the extraordinary breadth of your intellectual interests, as well as your interpersonal and commercial skills, were put to full use in setting the University on a more stable and successful path.

Throughout this period your Honour continued to make contributions to the law and to this Court. You served on the Appeal Panel of the Takeover Tribunal, an institution, whose role has now happily been declared to be constitutionally valid, the very existence of which owed much to your advocacy of corporate law reform over the decades. Your work on the Tribunal laid down important practical principles for the swift resolution of disputes in a commercial context which requires pragmatism and expedition.

In this Court you served for five years on the Rules Committee and an overlapping five years on the Legal Practitioners Admission Board, both of which are of critical significance to the effective operation of the Court and of the profession.

You also served, almost throughout your period as a judge, on the Education Committee of the Court, to the activities of which you brought the breadth of your general knowledge and interests, together with the depth of your understanding of social, economic and political issues and of the arts. This contribution was invaluable, not least by introducing to the Court a wide range of international contacts, particularly in the law but not limited to the law, many of whom at your invitation came to address the Annual Conference of the Court to the delight and education of all of your colleagues. This included a number of the most senior judges from England but extended to a wide range of others, including Pierre Rykmans, Australia's pre-eminent Sinologist and Margaret Marshall, Chief Justice of the Supreme Judicial Court of Massachusetts and her husband, the legally literate New York Times columnist, Anthony Lewis. They and others were introduced to us as your friends.

The intellectual curiosity, energy and sophistication of yourself and of your wife Lee, will be missed by us all. Together you have expanded all of our horizons. We will also miss the numerous personal kindnesses which your and Lee's generosity of spirit have provided to each of us over the years.

I cannot do justice, on an occasion such as this, to the numerous judgments, speeches and articles you have published over the years as a member of this Court, to which must be added your enormous output as Chancellor of the University of Sydney. Their breadth and depth stand as a testament to your intellectual powers.

I draw on one speech, which you gave shortly after your appointment as a judge, on the subject of “Transition to the Bench”. This speech, one of many subsequently published in the Australian Law Journal, was delivered to the Orientation Programme for judges from throughout Australia held in Sydney each year. You concluded a witty and learned address with the following: “May it be said of us, as of Lord Atkin: ‘Compassion and freedom from narrow prejudice was a quality which animated our work’.”

I have no doubt that the legal profession of this State, and your colleagues on the bench, are unanimous in joining with me to acknowledge that your work was indeed animated by compassion and that you never once manifested anything capable of description as narrow prejudice. On behalf of all of the members of the Court I thank you for your contribution to the law and to this Court and for enriching all of our lives.