

The Hon Justice David Davies

On 29 June 2009 David Davies SC was sworn in as a judge of the Supreme Court of New South Wales.

His Honour obtained a music scholarship to Trinity Grammar School and then studied arts/law at Sydney University, also obtaining a postgraduate qualification in theology. His Honour was admitted as a solicitor in 1975 and practised for a year, having been employed as an undergraduate with the firm Stephen Jaques and Stephen. His Honour was admitted to the Bar in 1976, joining the 13th floor of Selborne Chambers, and was appointed senior counsel in 1996.

Davies J had been a member of one of the Bar Association's Professional Conduct committees since 1994, a member of the Education Committee, a member of the Equal Opportunity Committee, convenor and chairman of the Examinations Working Party since 2003, and was involved with the approval of the Professional Standards Scheme.

In welcoming Davies J, the chief justice referred to his Honour's breadth of practice at the bar, which the chief justice described as 'actually quite unusual in these days of specialisation'.

The honorary treasurer of the New South Wales Bar Association, Alexander Street SC spoke on behalf of the bar. Joe Catanzariti spoke for the solicitors of NSW. Davies J responded to the speeches.

Street SC compared the modes of transport chosen by respectively Harrison J and Davies J:

Your Honour has arrived for this morning's ceremony at what was hitherto known as the judges' car park but which must now hereafter accommodate a new chapter of law lords by a means of transportation that Justice Harrison has described as 'a monster'. It is rumoured that Harro said, 'Davies' wheels are possibly more powerful than the yellow Monaro'.

I have identified the sales pitch that appealed to your Honour: there's no going back; the line of the toughest, naked bikes, combined with the performance of fair powered bike; high handlebars for top precision handling; a long wheelbase for maximum riding stability; brakes like anchors; engine speeds which will give you goose pimples; high precision handling at all speeds; ultimate dynamics; maximum control in any situation and unique technical features.

The words 'precision handling', 'maximum control', 'ultimate dynamics' and 'unique technical features' tell us much more about the rider than they do about the 1200cc machine. Precision handling, your Honour's care and attention to your Honour's briefs; maximum control, your Honour's craft and command of witnesses; ultimate dynamics, a versatility of style, pace and content in the sanguine and measured path for successful advocacy; unique technical features – here the accolades of juniors, colleagues, bench and solicitors are too numerous to list.

Street SC referred to his Honour sharing a room with Harrison J on 13 Selborne:

I gather that your Honour developed what I am told is a healthy



ritual of sustaining the morning and afternoons with scones and tea, which I assume is a habit that your Honour quickly adopted to overcome the burdens of co-sharing a room shortly after you joined the 13th floor with a dour and droll colleague, the fabled Harro, as his Honour was affectionately then known. I believe your Honour's penchant for scones and tea probably developed from his Honour Justice Harrison's renditions of the Monty Python's Flying Circus lyrics that included 'and have buttered scones for tea'.

Your Honour formed a powerful triumvirate with Harrison and Hallen, vanquishing opponents in the courtroom and wielding control in the spiritual corridors of camaraderie at the bar. At this stage only the duumvirate has been restored on the bench.

Mr Catanzariti referred to having briefed his Honour:

in one of your most famous cases, *Perpetual Trustee Co Limited v Groth & Ors*, where your successful representation on behalf of the Trust of the Art Gallery of New South Wales saw the administration of the Archibald Prize monies transferred to the Art Gallery.

Justice Powell did not accept the argument that these works of art had become little more than cave paintings. He said, 'Then it matters not that the popularity of portrait painting, as such, may have declined over the years, or that, in the view of some, the quality of any particular winning portrait may have been dreary and uninspired or negative, indeed quite insipid, or that those who may have attended any particular exhibition were motivated to do so, not by any desire to improve their appreciation of portrait painting but by some current controversy as to the winning portrait, although I would suggest that even those who came but to stand and stare

must learn something'. I am sure that the last statement is also true of your Honour's art collection, which I believe includes two-times Archibald Prize winner Judy Cassab.

Mr Catanzariti also referred to his Honour's interests outside the law:

A man of many talents, your musical and liturgical interests could have also taken you into a different field of endeavour. Your many years as an organist and choirmaster at St Peter's Cremorne and as assistant organist at Christchurch St Lawrence, coupled with appointments as parish counsellor, Synod representative and nominator, have given expression to both your musical interests and religious beliefs, as has your membership of the New South Wales Bar Choir and your lesser known but well-developed skills as a trombonist.

In replying to the speeches, Davies J referred to his interview for the position of associate to Sir Garfield Barwick:

I was short-listed for the position and went nervously to be interviewed by him at his chambers in the old High Court in Darlinghurst. The interview went swimmingly, and then he asked me what I thought about the Woodward Commission report into the desirability of a national compensation scheme to replace tort law for personal injury. Being still full of Whitlamesque zeal and assuming that national compensation was part of the zeitgeist I waxed lyrical about the benefits of such a scheme, justice and compassion for all, the minimisation of lawyer involvement, et cetera. A chill fell on the room, and in a matter of minutes I was told rather abruptly that I would be notified about whether or not I had been successful.

His Honour also adverted to his early days at the bar:

The first brief arrived in a matter of days from my friend and fellow solicitor at Stephen Jaques, Geoff Pike. You can imagine my trepidation to find that it was a brief to appear before the full High Court without a leader, and my opponent was Peter Hely, and of

course that interview had only been a few months earlier. It was one of those then prevalent applications under the Judiciary Act to remove a matter that had been legitimately commenced in the High Court by a resident of one state against a resident of another to a more appropriate state Supreme Court, and I was for the applicant/defendant.

I managed to sit at the wrong end of the bar table and I did not move to the centre lectern when I rose because I had no idea that was where the recording microphone was. But Sir Garfield, presiding with four others, was infinitely kind. He gently gestured me into the correct position. I said who I appeared for. He said, 'And you are seeking an order under s 44 of the Judiciary Act remitting this matter to the Supreme Court of New South Wales?' I mumbled a Yes, but before I could utter another word he turned to someone I supposed was Mr Hely and said, 'And why should this order not be made?' This hapless person said, 'Mr Hely will tell your Honours why when he arrives.' Sir Garfield said, 'But I should like to know now'. The perspiring creature at the end said, 'Mr Hely asked me to say that he should be here by 10.30'. Sir Garfield said, 'Mr Doe, if you or Mr Hely can't tell me now we will have to make the order' and the order was duly made.

But it was not a complete triumph. Perhaps because he remembered the interview or perhaps because I was looking a bit too smug, Sir Garfield asked if I sought costs of the application. I hadn't even thought of it but I remembered that someone had told me, 'Always ask for costs', so I did. Sir Garfield smiled very sweetly and said, 'An applicant does not get costs on these applications. Costs in the cause'.