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FEDERAL COURT OF AUSTRALIA

CHIEF JUSTICE

THE HONOURABLE MICHAEL ERIC JOHN BLACK

JUDGES

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(retired 8 January 1995)

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**Sitting to pay tribute to the late
SIR NIGEL HUBERT BOWEN, AC, KBE
first Chief Justice of the
Federal Court of Australia**

Monday, 24 October 1994

PRESIDING JUDGES:

The Hon the Chief Justice

The Hon Justice Sweeney, CBE

The Hon Justice Northrop

The Hon Justice Keely

The Hon Justice Gallop

The Hon Justice Davies

The Hon Justice Lockhart, AO

The Hon Justice Sheppard, AO

The Hon Justice Wilcox

The Hon Justice Burchett

The Hon Justice Gummow

The Hon Justice Foster

The Hon Justice Olney

The Hon Justice Hill

The Hon Justice O'Connor

The Hon Justice Whitlam

The Hon Justice Beazley

The Hon Justice Moore

The Hon Justice Mathews

The Hon Justice Lindgren

The Hon Justice Tamberlin

The Hon Justice Sackville

BLACK CJ. The Court sits this morning to pay tribute to its first Chief Justice, the Honourable Sir Nigel Hubert Bowen, who died here in Sydney on 27 September last. We sit also to express our great sorrow at his passing. Many people are present in court with us this morning but I should first mention Lady Bowen and Sir Nigel's daughter Mrs Pam Koroknay, his brother, Mr John Bowen and many other members of his family, including grandchildren, nieces and nephews. To all of them we extend our deepest sympathy.

Many judges and leaders of the legal profession are also with us. The Court greatly appreciates the presence of the Honourable Sir Gerard Brennan, a Justice of the High Court of Australia and a former judge of this Court, the Chief Justice of New South Wales, the Honourable Murray Gleeson, the President of the Court of Appeal of New South Wales, the Honourable Michael Kirby, Justices Mahoney, Priestley, Meagher, Sheller and Powell, of the Court of Appeal and Justices Young, Allen, Ireland, O'Keefe, Simpson and Bruce of the Supreme Court of New South Wales, the Solicitor-General for the Commonwealth, Dr Gavan Griffith QC, representing the Attorney-General for the Commonwealth, Mr Gary Crooke QC, representing the Law Council of Australia, Mr Murray Tobias QC, the President of the New South Wales Bar Association and representing the Australian Bar Association and Mr David Fairlie, President of the Law Society of New South Wales. Many other members of the profession are present as are many members of the public and the Court greatly appreciates their presence too.

We sit today as a court of 21 judges and I have received messages from many other members of the Court, expressing their regret that their judicial duties in other states and territories prevent them from sitting with us. We are very pleased that as well as Sir Gerard Brennan another former member of the Court, the Honourable Robert Franki, is present with us. Many other people who are unable to attend have expressed their regret. I should mention particularly former Chief Justices of Australia, the Right Honourable Sir Garfield Barwick and the Right Honourable Sir Harry Gibbs, the President of the Queensland Court of Appeal, the Honourable Tony Fitzgerald, the Honourable Bob Ellicott QC and the Honourable Trevor Morling QC. The Honourable John Howard MP and Mr Philip Ruddock MP, the Member for Berowra, send their apologies also.

Nigel Hubert Bowen was born on 26 May 1911 at Summerland in the Canadian Province of British Columbia. His family moved to Australia not long afterwards. He was educated at the Kings School, Parramatta and at the University of Sydney from which he graduated with Honours in Arts and in Law. After a short period of practice as a solicitor he was admitted to the Bar in 1936. His career in the law was interrupted by the Second World War during which he served with the Second Australian Imperial Force between 1942 and 1946, attaining the rank of Captain. During the war Sir Nigel was on active service in Papua New Guinea, notably with the No 43 Landing Craft Company.

In 1953, only seven years after resuming practice at the Bar, Sir Nigel was appointed Queen's Counsel. He had a national reputation as both an outstanding advocate and an outstanding lawyer. He was unquestionably one of the leaders of the Bar in this country, appearing in a wide range of

important cases in the Supreme Courts, the High Court of Australia and the Privy Council. He was an outstanding appellate advocate. The breadth and depth of his knowledge of our law was very great. His judicial writing later in his life was, of course, testimony to this.

His contribution to the law during this period of his life was not confined to his work at the Bar. He was general editor of the Australian Law Journal from 1946 to 1958, President of the New South Wales Bar Association from 1959 to 1961 and Vice-President of the Law Council of Australia from 1957 to 1960. He lectured in company law and taxation at the University of Sydney.

In 1964 Sir Nigel began a new career as a Member of the House of Representatives for the seat of Parramatta. It, too, was a career of the greatest distinction. He was Attorney-General from 1966 to 1969 and again in 1971. He was Minister for Education and Science from 1969 to 1971 and Minister for Foreign Affairs from 1971 to 1972. His work as Attorney-General in the 1960s laid the foundations for some of the most important developments that were to take place in Australian law in the next two decades.

It was he who introduced the bill that became the *Privy Council (Limitation of Appeals) Act*, 1968 which abolished appeals to the Privy Council from the High Court in federal matters and which was the vital first step in the process by which the High Court became the final court of appeal for this country. In that same year, seeing the need for a Commonwealth superior court beneath the High Court, he introduced a bill to establish such a court; that bill was not proceeded with but it provided the foundation for the *Federal Court of Australia Act*, enacted eight years later in 1976.

He had a great interest in administrative law and in the rights of the citizen. In 1968 he initiated the inquiry undertaken by the Commonwealth Administrative Review Committee, the report of which played a substantial part in the development over the following decade of what is one of the most advanced and comprehensive systems of administrative law in the common law world.

When he left Parliament in 1973 to return to the law as a member of the New South Wales Court of Appeal the Prime Minister expressed the appreciation of the House of the services he had rendered to the Parliament and, particularly whilst he was a Minister, to the nation. He said:

“Mr Nigel Bowen brought to the Parliament and his Party great distinction. He served them both with great distinction.”

On the same occasion the Leader of the Opposition, the Honourable Billy Snedden QC, spoke of some of Sir Nigel’s personal qualities. He said:

“He was a warm and humane man who was highly regarded in his electorate and by both sides of the House.”

After a short period as a member of the New South Wales Court of Appeal, Sir Nigel became Chief Judge in Equity, another office that he held with great distinction and in which he demonstrated his great abilities as a lawyer and his capacity for innovation in matters of procedure and administration. It was also an office that he greatly enjoyed and it would have been understandable if in 1976 at the age of 65, an age at which many contemplate a quieter life, he had declined to face yet another great challenge. That challenge was to establish the Federal Court of Australia and

to be its first Chief Judge. Sir Nigel decided to accept that challenge; it was a decision he never regretted.

It is appropriate to say something about the magnitude of the task that Sir Nigel so successfully undertook. It was to establish a national superior court; a court that would sit throughout this vast land. The new court was to assume the jurisdiction formerly exercised by the Australian Industrial Court and the Federal Court of Bankruptcy. Members of those courts were appointed judges of the Federal Court. The new court was also to hear appeals from the Supreme Courts of the Territories, a jurisdiction formerly exercised by the High Court, and the Territory judges were also appointed as judges of the Federal Court. The Court was to hear appeals from the Supreme Courts in taxation cases, relieving the High Court of that function. The jurisdiction of the new court was indeed very mixed.

The new court had no registries and very few staff of its own. In most of the capital cities in which it would sit, it had no court house. All these matters and many others had to be attended to and an effective administration established. As well, there were rules of court to be made and procedures to be set. Those who were to be its first judges resided in different states and some had not worked together before, either at the Bar or as judges. There was a degree of hostility to the new court as it was seen by some as a threat to the State courts. There were others who thought the court was unnecessary and the extent of its future jurisdiction was unsure.

When the Court first sat in February 1977 it had 17 judges. It quickly attracted new judges, so that by the end of 1977 the Court had 21 members. Under Sir Nigel's leadership the new court established itself very rapidly. In his address *The State of the Australian Judicature* in July 1981, the Chief Justice of the High Court, Sir Harry Gibbs, although one of those who had questioned the necessity for a new court, said that there was no doubt that in the 4½ years since its creation the Federal Court had "established itself as one of the great courts in Australia". It had done so under the leadership of Sir Nigel Bowen.

The challenges that faced the Court when it was established were met and the problems were overcome. There were, of course, other challenges such as the transfer to the Court in 1987 of some thousands of income tax appeals. Under Sir Nigel's leadership and with the strong support of the judges this and the other challenges were met.

Sir Nigel was responsible for much of the procedural innovation of the Court. His innovative spirit was present, not only in the early years of the Court, but throughout his time as Chief Justice. In 1987, for example, he supported the introduction of what was then the rather novel idea in Australia of court-annexed mediation. He supported the use of computers in the Court at a time when they were a rarity in judicial administration.

Sir Nigel was also an outstanding administrator. He worked hard and effectively to ensure that the Court had the human and financial resources necessary to enable it to perform its tasks to the very high standards he expected. In moving a motion of condolence in the Senate on 10 October last the Leader of the Government in the Senate, Senator the Honourable Gareth Evans QC, mentioned this aspect of Sir Nigel's work as Chief Justice, saying that he had nothing but the fondest memories of his encounters as Attorney-General with Sir Nigel. He said:

“He was a tough advocate for his court, as he had been for his clients at the bar, but he was always a charming, gentlemanly and wholly constructive person to deal with, never losing sight of the public policy goals that we were mutually trying to achieve in judicial administration at that time.”

Throughout his term of office Sir Nigel demonstrated his mastery of the law, writing notable judgments in many fields, including intellectual property, taxation, trade practices and administrative law. His pioneering work in the exercise of the new court’s jurisdiction in trade practices law and administrative law was greatly admired.

Equally admired were the courtesy, patience, modesty and good humour he invariably displayed both on the bench and when performing the administrative duties of a Chief Justice. It was these and his other like qualities, as well as his great intellectual capacity that enabled him to build the new court on such enduring foundations. He was able to bring the Court together as a truly national court, and a court of which, when he sat for the last time on 30 November 1990, he could say that there had been friendship and a team spirit of a rare degree.

In recognition of his outstanding service to Australia he was created Knight Commander of the British Empire in 1976 and was appointed a companion of the Order of Australia in 1988 for his services to the law.

Sir Nigel Bowen made a lasting contribution to the life of our nation. He did so in many ways. He was a great Chief Justice and a great Australian. We, who as a court owe so much to his achievements, mourn his passing.

The Court will now adjourn.