

coherent, consistent interpretation and application of statutes

- Contribution to development of a learned, practical body of doctrine
- Chair of Practices and Procedures Committee and member of the Court's Rules Committee

1973-1978

Queen's Counsel (Australia and the United Kingdom (Privy Council))

1960-1978

Barrister

1958-1960

Solicitor

Private practice

Sydney

MEMBERSHIP OF PROFESSIONAL SOCIETIES

1996-1997

Chairman, Judicial Conference of Australia

1974-1980

Member, Committee of Inquiry into Legal Education in New South Wales

1961-1974

Member, Bar Council of New South Wales and its committees

Order of Australia (AO)

1994

Appointed Officer of the Order of Australia (AO) for service to the law and the to the community in the areas of education and the arts

concluded case, the US was ordered to scrap a tax break providing \$US4 billion (\$8.2 billion) in tax exemptions to America's largest companies, including Boeing and Microsoft.

Australia has won cases against the US on lamb restrictions and against Korea on beef trade restrictions, while losing to Canada on quarantine restrictions and the US on illegal subsidies to a local leather manufacturer.

Mr Lockhart is presently Australia's executive director at the Asian Development Bank in Manila. He served on the Federal Court bench for 21 years before retiring in 1998 to take up a position with the World Bank in Washington.

Speaking from Manila, Mr Lockhart said the new post was a natural extension of his interest in the intersection of law and commerce.

'International law has always been an interest, international trade has always been an interest, and the WTO, and before that the GATT [General Agreement on Tariffs and Trade], has always been an interest,' he said.

The appointment followed an intensive lobbying effort that started last year, when Australian officials in Geneva identified a dearth of Australian nationals in key WTO secretariat and legal positions ...

In early September, the selection committee held a series of 'confessionals' with WTO ambassadors seeking their preferences before it submitted its final recommendations.

Those recommendations were adopted by the Dispute Settlement Body this week.

The appointment comes amid a push for reform of the rules and procedures of the dispute settlement process.

Non-government organisations, especially environmental groups, are pressing for the right to lodge *amicus curiae*, or 'friend of the court', briefs in WTO cases.

Developing countries have objected to the practice, which has been permitted by the Appellate Body only on a case-by-case basis so far.

The right of private practitioners to represent WTO members in disputes is also contentious.

The Caribbean island of St Lucia was recently allowed to have a Washington trade lawyer, Mr Chris Parlin, represent it in the EU Bananas Case.

Other groups have been calling for open hearings.

World Bank as an important indicator of stability.

'I have been asked to apply my legal training and skills in assessing judicial systems but to do so in such a way that is mindful of a country's tradition and culture,' he said.

'The task might entail the building of a courthouse, the training of judges and the legal profession and the provision of judicial administration.'

Justice Lockhart, who has been a Federal Court judge since 1978, is the first Australian appointed to the World Bank job.

Full Federal Court backs Super League

Kathryn Bice

6 October 1996

The Australian Financial Review

Super League and its parent company, Mr Rupert Murdoch's News Ltd, are free to establish an alternative rugby league premiership competition following Friday's court finding that the NSW Rugby League and the Australian Rugby League had tried illegally to monopolise the professional game.

The Full Federal Court overturned the findings of Justice James Burchett earlier this year that the Commitment Agreements and Loyalty Agreements signed between the ARL and the 20 clubs were 'commercially proper'.

These agreements, signed in late 1994 and early 1995 when the ARL became aware of the looming threat posed by Super League, bound the clubs to participate only in the ARL's competition for five years. Previously, the clubs had been admitted only for a year at a time.

The appeal judges accepted the claim put forward by Super League that the agreements were void because they contained 'exclusionary provisions', which are prohibited under section 4D of the Trade Practices Act.

They therefore overturned the orders made by Justice Burchett forbidding the clubs to join any non-ARL competition until 2000.

The Full Court's acceptance that the agreements breached s 4D meant it did not need to rule on Justice Burchett's findings regarding definitions of the 'market' for rugby league, which was another key issue in the original hearing.

The appeal court, comprising Justice John Lockhart, Justice Ronald Sackville and Justice John Von Doussa, found that the only contracts between the clubs and the ARL were for the 1995 season.

The court agreed with Justice Burchett that the 'rebel' clubs had breached an implied term in these contracts by releasing their players to Super League for the 1995 season, and that News and Super League had induced the clubs to breach the term.

The ARL was therefore entitled to claim damages for the losses it suffered that year, they said.

The court rejected the alternative view put forward by the ARL that the ARL and the clubs were engaged in a joint venture which gave rise to reciprocal fiduciary obligations between the parties.

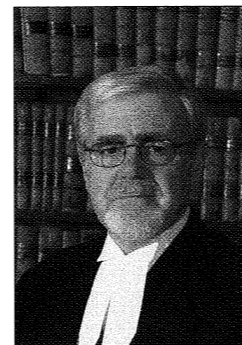
To the contrary, the appeal judges said, the NSW Rugby League, the ARL and the clubs 'had conflicting commercial interests'. Moreover, the clubs could withdraw from the ARL competition each year.

The clubs did not, therefore, have any obligation to use their assets, such as grounds, colours and logos, 'for the benefit of the national competition' and had not breached any duties by offering to those assets to Super League.

Although the Super League players and coaches were not parties to the original case, Justice Burchett made several orders affecting them, particularly the 'no pay, no play' order which forced Super League players to participate in the ARL competition in 1996.

The Full Court found that this breached the principle that persons should be joined as parties to litigation if orders are to be made directly affecting their rights and obligations, and accordingly overturned the orders.

It sent back to Justice Burchett several issues for decision, including any damages to be awarded to the ARL for the disruption to the 1995 season and other claims by the ARL that News and Super League engaged in misleading or deceptive conduct, passing off and infringement of trade marks. ■



THE HON JUSTICE
DAVID BYRNE
Honorary Fellow

Member's Question The Hon Justice David Byrne

This Member's Question elicited some unusual enquiries (and the usual Rottweiler/lawyer jokes ...). Was it a requirement to read the *Companion Animals Act*? Or its predecessor, the *Dog Act*? ... Readers may consider *McKenzie v McKenzie* (1971). The *Oxford Dictionary of Law* defines a McKenzie's Friend as 'a person who sits beside an unrepresented litigant in court and assists him by prompting, taking notes and quietly giving advice'. The original McKenzie's Friend, no mere hanger-on, is profiled in the November 2004 issue of the national newsletter. Our grateful thanks to Justice David Byrne and contributors. Congratulations to Robert Fenwick Elliott whose winning response earns him a copy of Ronald Fitch's *Commercial Arbitration in the Australian Construction Industry* (The Federation Press).

Question

You have been appointed the sole arbitrator for the resolution of a major building case. It concerns many millions of dollars and you have set aside ten weeks for the hearing. It has no prospect of settling. Incidentally, the arbitrator's fees are likely to be very substantial. With this in mind you have directed that each party deposit \$200,000 as security and also engaged a builder to renovate the north wing of your home, as your wife has wished for some years.

It is Day 1 of the Hearing.

Mr Brown argues that there is nothing in the Act which prevents him from appearing with a canine companion, and, further that the presence of McKenzie gives him confidence. Without the dog, he says, his client will be denied effective representation. He also says something about natural justice.

Before you, supported by many solicitors, articulated clerks and clients, are the barristers who wish to conduct the arbitration. You have previously made an order under the *Commercial Arbitration Act* s 20(1) permitting the parties to be represented by a legal practitioner.

Members' Response John McMullan,

Robert Fenwick Elliott, RB Traiter

Ruling 1

I have nothing against dogs – or even less cats for that matter – but for the reasons that appear below, I rule in favour of the claimants.

One has often has to balance precedent and the immediate exigencies of justice. Here they are in harmony.

As to precedent, the basis in common law of the McKenzie friend rule is *Collier v Hicks*, (1831) 2 B & A 663, in which Lord Tenterden CJ said at page 669, 'Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice.' But this McKenzie is not a person, and is incapable of taking notes, or making suggestions or giving advice. Similarly, it is implicit in s 20(2) of the *Commercial*

Arbitration Act that a representative must be human. Unless and until Mr Spock or Dr Who appears before this tribunal, no useful non-human status for representatives is tenable. Further, what if McKenzie were a brown snake, or a salt water crocodile? The appeal courts have better things to do than to distinguish between species of McKenzie friend.

For the respondent an appearance is announced by Mr Brown. He is a small, quiet person who is accompanied by a very fierce-looking Rottweiler dog, called McKenzie. You blink.

Mr Smith protests at the presence of McKenzie, saying that his junior is very nervous about these dogs as she had been attacked by one of the breed when a small child. He asks that you direct that he be removed from the hearing. You can see that the junior is upset and already coming out in a rash.

Mr Brown argues that there is nothing in the Act which prevents him from appearing with a canine companion, and, further that the presence of McKenzie gives him confidence. Without the dog, he says, his client will be denied effective representation. He also says something about natural justice.

The mention of this sends a tremble through your limbs, as does the presence of the fierce looking animal. You are a cat person and have never felt comfortable in the presence of big dogs.

Write the arbitrator's ruling. ■

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Australian judge appointed to World Bank

Chris Merritt and AAP

12 February 1998

The Australian Financial Review

Senior Federal Court judge Justice John Lockhart has been appointed to a prestigious job with the World Bank – an organisation headed by his old colleague from the big Sydney law firm Allen & Hemsley, Mr James Wolfensohn.

Justice Lockhart has been appointed judicial consultant to the bank, which involves assessing the stability of legal systems in countries seeking financial aid.

He and Mr Wolfensohn first met when they were both articulated clerks at Allens in the mid-1950s.

However, the offer to join the World Bank did not come from Mr Wolfensohn, who is believed to have first learnt of the appointment when he bumped into Justice Lockhart in the World Bank's offices in Washington.

Justice Lockhart, 62, has been among several senior judges touted in legal circles recently as possible replacement members of the High Court when the Chief Justice, Sir Gerard Brennan, retires in May.

He will take leave from the Federal Court for the one-year appointment. It is understood this does not mean he has ruled himself out for the High Court.

He will be based in Washington but will spend at least four months visiting developing countries, mainly in Asia, Africa and eastern Europe. Justice Lockhart said the integrity of a country's judicial system was regarded by lenders of funds through the