

Justice Marks' Farewell from the IRC of NSW 6<sup>th</sup> July 2012,

I am honoured to have been asked to say a few words of tribute at this occasion to acknowledge the retirement of Justice Frank Marks. In this place, one of our city's most glorious buildings he has been a fixture and an adornment for nearly twenty years. He has not just been a pretty face, but a respected member of the Bench who has brought to each case a unique style, great energy, wit and wisdom.

As an advocate one had to be well prepared to appear before his Honour. There was no somnolent start to proceedings. At the outset one was met with a fusillade of rapid-fire questions, well chosen to reveal the nub of one's case, its strengths its weaknesses. His Honour was a practitioner of the Socratic method, an approach he used to great effect to assist the parties to either reach agreement or to confine the litigation to issues at the heart of the dispute not those at the periphery.

This Commission had actively involved itself in conciliation decades before concepts of mediation or alternative dispute resolution became fashionable in other jurisdictions. It was as a conciliator that Justice Marks was particularly effective. He brought common sense, wide experience and energy to assist parties to resolve their problems. In one such case he recognised the barrier to settlement was the legal representatives. Over their joint objection he directed the litigants, without their lawyers to have a coffee and a chat at the Museum of Sydney Cafe and to return in an hour. Upon their return the matter settled. On another occasion I was being instructed by a solicitor who in his playing days was a half back for Randwick in the days when that club was at its best. Befitting that club he was self-assured and yappy. The conciliation had stalled after a few hours of

his Honour's cajoling but the parties were close. In a private session his Honour said "Another \$2000 will seal it, don't be miserable go and get it, a lousy \$2000." To which entreaty the attorney who had worn the myrtle-green said to his Honour, "There is no more money, we have been screwed enough this morning if you think another \$2000 will do it, you pay it." There was an audible intake of breath in the room. As we were leaving, his Honour drew me aside and said, "You can tell your old football mate that the next time he appears in my court he had better wear a mouthguard." The case settled half an hour later.

I have many great memories of having appeared before his Honour, except one. I came down here to apply for an adjournment by consent. One would have thought a mere polite formality. Half an hour into the application it was clear I wasn't going very well. Out of desperation I pleaded to his Honour's better angels "You can't do this to me. I'll be the laughing stock at Friday night drinks in chambers." To which he replied, "I'll think you'll cope Mr Phillips, application denied."

The great Roman poet Horace wrote about his own work,

*"I have built as monument more lasting than bronze,*

*And loftier than the royal structure of the pyramids"*

His Honour too has built a lasting monument. It can be seen in his many judgments that grace the law reports and can be found in the cherished memories of those who had the pleasure to appear before him in this great place. On their behalf I thank you for your courtesy and understanding. I wish you a long, happy and fulfilling retirement.

Jeffrey Phillips SC