

2843A

AUSTRALIAN DICTIONARY OF BIOGRAPHY  
OBITUARY  
THE HON. JAMES FREDERICK STAPLES

The Hon. Michael Kirby AC CMG

AUSTRALIAN LAW JOURNAL  
OBITUARY  
THE HON. JAMES FREDERICK STAPLES

James Frederick (“Jim”) Staples, barrister, civil libertarian and controversial judicial officer, died at Gloucester Hospital in New South Wales on 27 April 2016.<sup>1</sup> He was 85 years of age.

Born on 2 June 1929, in Sydney, he was raised by his mother, after the death of his father in 1933 whose health had been affected by his service in World War I. His mother worked in factories to support Jim and his two brothers. He attended Canterbury Boys’ High School, where he excelled as a student, topping the State of New South Wales in Latin in the Leaving Certificate. He then attended the University of Sydney and graduated BA LLB.

At the University Staples joined the Australian Communist Party. He was a member when the *Communist Party Dissolution Act* 1950 (Cth) was enacted and successfully challenged in the High Court and in a referendum in 1951. This experience entrenched his attachment to defending civil liberties and his belief that law and the courts could be engaged to uphold basic civil rights. His early involvement with the Communist Party came to an end in 1956 when he obtained, and circulated in Australia, a copy of the speech of Nikita Khrushchev’s address to a secret session of the Supreme Soviet denouncing the crimes of Josef Stalin. This action led to Staples expulsion from the

---

<sup>1</sup> M. Steketee “Fearless Advocate in Defence of Battlers”, Sydney Morning Herald, 4 May 2016

Australian Communist Party. He never lost his commitment to libertarian causes.<sup>2</sup>

He was admitted to the NSW Bar on 29 July 1960.<sup>3</sup> He built a practice in a broad range of areas. According to his later colleague, Mary Gaudron, much of his work was *pro bono* and “in defence of the battlers”.<sup>4</sup> He enjoyed much success as a jury advocate and had notable briefs in that field, both at trial and on appeal.

In the late 1960s, Staples joined the newly established New South Wales Council for Civil Liberties (CCL) which included many notable members of the New South Wales legal profession, including R.M. Hope, N.K. Wran, M.E. Pile, R.J.B. St John and D.S. Kirby. He accepted many non-paying briefs allocated to him by the CCL. In one, concerning the death of George Tatar (1966), shot by police in Sydney, he was briefed with K. Holland QC in an inquest that helped to secure from a coroner’s jury recommendations for strengthening the rules governing police use of firearms.<sup>5</sup> He also appeared in the Royal Commission conducted by Justice John Nagle (1976-78) into the New South Wales prison system. As chair of the CCL’s committee on prison reform, he secured statutory declarations from prisoners concerning brutality by warders. These contributed to significant reforms in prison conditions.<sup>6</sup> He also successfully defended several medical practitioners on abortion charges, and took on other cases on alleged obscenity; and complaints against police; for conscientious objectors to military service in the Vietnam War.

---

<sup>2</sup> Steketee op cit.

<sup>3</sup> NSW Law Almanac 1972, 105.

<sup>4</sup> Steketee op cit.

<sup>5</sup> R.W. Harding, *Police Killings in Australia* (Penguin) 83 at 108.

<sup>6</sup> Steketee op cit quoting J.B. Miles.

In 1975, on the recommendation of Clyde Cameron, Minister for Labour in the Whitlam Government, he was appointed a Deputy President of the Australian Conciliation and Arbitration Commission with the rank and title of a federal judge. However, he proved unwilling to observe some of the conventions of industrial arbitration. Colourful language of his decisions eventually led the President of the Commission (Sir John Moore) to remove him from all panels and case assignments. It was this step that eventually led another Deputy-President at the time, Mary Gaudron, to resign from the Commission, although she conceded that “Staples had a capacity for bringing trouble on his head in some respects”.<sup>7</sup>

Staples was given an assignment by the Fraser Government to travel overseas to investigate law reform. When that concluded, he refused to resign his office, asserting that this would condone interference in judicial independence. He appealed for support of the New South Wales Bar Association. However, a general meeting of members was persuaded by the then President (R.P. Meagher) that, for constitutional reasons, the Arbitration Commission was not a ‘court’ and Staples was not therefore not entitled complain about interference in his to judicial independence. This approach was criticised at the time.<sup>8</sup>

His effective removal from office was finally achieved as a consequence of the restructuring of the national arbitral tribunal and the creation of the Australian Industrial Relations Commission by the *Industrial Relations (Consequential Provisions) Act 1988 (Cth)*. He was the only member of the previous commission not appointed to the new by the Hawke

---

<sup>7</sup> Steketee op cit.

<sup>8</sup> M.D. Kirby, “The Removal of Justice Staples and the Silent Forces of Industrial Relations” (1989) *Journal of Industrial Relations* 334.

Government. The President of the New South Wales Bar Association in 1989 (K.R. Handley) concluded that it was bound by the extraordinary general meeting of the Bar in 1980, to take no action in support of his claim. Other legal professional bodies and some judges issued statements critical of the federal action. Staples himself never brought judicial review to challenge his effective termination. But he never conceded that it was lawful.

His death from cancer in 2016 ended his controversial life. He was a maverick. But he was gifted and had a big heart combined with an old fashioned faith in the law and its protections. In the end, the law did not come to his rescue. He is survived by his wife Margot, sons Paul and Michael and daughter Brigitte.<sup>9</sup>

*Michael Kirby*

---

<sup>9</sup> Steketee op cit.