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Judges must show respect, make people feel they've had a fair go

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Judges can no longer rely on technical expertise but must also have the personal skills needed to make people feel as if they've had a "fair go" in their courtrooms, according to NSW Chief Justice Tom Bathurst.

The erosion of trust in public institutions worldwide meant courts could not be complacent; they needed to strengthen trust by treating litigants with respect and dealing robustly with judicial misbehaviour.

Chief Justice Bathurst, in an address to the NSW Law Society to mark the opening of the law term, said judges should be appointed not only on their technical expertise, but on their ability to inspire trust with the right personal or "so-called soft skills".

"Merit is not simply technical expertise. It is not the best cross-examiner at the bar nor the most skilful solicitor ... These soft skills are crucial to whether all individuals in the courtroom, defendants, victims or witnesses, feel as if they have had a fair go and been treated with the respect they deserve," he said.

His comments come after several Federal Circuit Court judges have come under fire for bullying litigants or dismissing cases without providing litigants a fair hearing. Chief Justice Bathurst said "justified concern and disgust by the public" at allegations of sexual harassment by a judge — alluding to former High Court judge Dyson Heydon — showed how easily trust in judges could be dismantled.

Bullying and sexual harassment by judges and lawyers were “deeply concerning”; they not only eroded trust but drove talented lawyers from the profession. “The pervasiveness of unacceptable workplace behaviour in the profession has stayed hidden for far too long due to the power imbalances inherent in many legal workplaces, the stigma associated with reporting and the importance of reputation to a career in the law,” he said at Sydney’s Hyatt Regency on Wednesday night.

Mechanisms were needed to prevent and respond to all unacceptable behaviour, he said. Fortunately, all branches of the profession had become acutely aware of the problem and the need to try to eliminate it.

Judges also needed to ensure equal opportunities for all lawyers who appeared before them — recognising and accommodating the pressures lawyers faced while juggling a career and family. “We must ensure that going to court isn’t a Darwinian experience where only the ones with thick skin or without children on their back survive,” he said.

Trust could also be strengthened by improving diversity; a judiciary seen to be drawn exclusively from a specific ethnic and socio-economic background, even with the best intentions and skill, could not convince those from other backgrounds they would do the right thing by all.

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