Two High Court judges 'knew of complaints against Dyson Heydon'

By Kate McClymont and Jacqueline Maley
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Two judges of the High Court allegedly knew of complaints of sexual harassment made against their colleague Dyson Heydon, according to an independent investigation conducted by the High Court that has sparked a national conversation about misconduct in the legal industry.

According to the confidential report, obtained by the Herald and The Age, Justice Michael McHugh, who served on the court from 1989 until 2005, and the then chief justice Murray Gleesoon, who headed the court for a decade until 2008, were told of their colleague’s alleged behaviour.

New details from the report reveal Mr McHugh’s then-associate Sharona Coutts told the investigator that in 2005 she was at the court when Rachael Patterson-Collins “came rushing - half walking, half running” towards her.
Ms Collins was one of six former associates whose allegations of sexual harassment at the hands of the former judge have been upheld.

The report said, "Ms Coutts stated that she could vividly recall that Ms Collins's cheeks were flushed pink, and that her eyes were wide and that she looked scared". Ms Collins said words to the effect of: "Heydon tried to kiss me and I had to push him off me!"

Ms Coutts told the investigator she was worried that Justice Heydon "who was then a large and strong man" may try to harass her friend again. Ms Coutts told the investigator called in to conduct the independent inquiry, Dr Vivienne Thom, that she informed Justice McHugh of his colleague's alleged behaviour. According to the report, Justice McHugh allegedly replied: "Well Sharona, it’s not easy to shock me these days but you have just truly shocked me."

Ms Coutts said the following day, after further discussions with Justice McHugh, that he left the chambers, returning later to tell her: "I’ve told the Chief. It’s his court. He has to deal with this."
It is not known what steps were taken by then Chief Justice Murray Gleeson about Justice Heydon's behaviour. Mr McHugh declined to participate in the investigation. When contacted by the Herald and The Age, Mr Gleeson, now retired from the bench, said: "I am unwilling to comment". Mr McHugh, also retired from the bench, did not respond to emails and phone messages.

Lawyers for Mr Heydon told the Herald/Age on Monday that "any allegation of predatory behaviour or breaches of the law is categorically denied".

"If any conduct of his has caused offence, that result was inadvertent and unintended, and he apologises for any offence caused. We have asked the High Court to convey that directly to the Associate complainants."

They added that Mr Heydon "denies emphatically any allegation of sexual harassment or any offence".

The revelations of the Court's investigation into sexual harassment allegations against Mr Heydon have sparked a national debate about sexual harassment in the legal industry and continue to reverberate through the legal profession.

A group of the most senior female barristers in NSW have lodged a complaint with the Office of the Legal Services Commissioner, following allegations of sexual harassment and indecent assault against Mr Heydon. The 14 silks took their action following the revelation in the Herald that a High Court investigation found Mr Heydon had sexually harassed six former associates of the court. None of the female barristers making the complaint allege they themselves were the subject of inappropriate behaviour by Mr Heydon.

The statutory body, which acts as the professional watchdog, has powers to investigate Mr Heydon's alleged misconduct. It can determine whether Mr Heydon is a "fit and proper person" under the official admission rules for the legal profession. It can also take disciplinary action against a barrister, or commence disciplinary proceedings in the NSW Civil and Administrative Tribunal. In the most serious cases, a practitioner can be disbarred.

Complaints to the Office of the Legal Services Commissioner are confidential.

The move came as the NSW Bar Association president Tim Game SC released a strongly-worded message warning "barristers who engage in sexual harassment can be investigated and disciplined for professional misconduct".

High Court Chief Justice Susan Kiefel said the findings of the independent report were of "extreme concern" to her and she and her fellow judges were "ashamed that this could have happened at the High Court of Australia".

A wider Herald/Age investigation has uncovered multiple further allegations...
against Mr Heydon from women, both here and in the United Kingdom.

Some of the more serious allegations, including one from a judge and another from Noor Blumer, a former president of the ACT Law Society, involve accusations of indecent assault.

The judge told the *Herald/Age* that Mr Heydon slid his hand between her thighs at a professional law dinner not long after he joined the High Court bench.

"He indecently assaulted me. I have no doubt it was a crime and he knew I was not consenting," she said.

Ms Blumer reported Mr Heydon started "feeling up the side of my leg" at a 2013 law ball and later tried to forcibly kiss her.

London barrister Elizabeth Houghton reported Mr Heydon felt her upper thigh at a restaurant in Oxford in 2014.

Mr Heydon was first admitted to the bar in 1973. He was appointed to the NSW Court of Appeal in 2000, and to the High Court in 2003, where he served for 10 years.

On retirement from the bench, Mr Heydon returned to the NSW bar, and currently has chambers at Eight Selborne, a ritzy practice in Phillip Street, Sydney.

The barristers' call for an investigation into Mr Heydon's alleged inappropriate conduct comes as growing questions are being asked in legal circles about who was aware of the judge's behaviour.

Following criticism its original statement on the Heydon allegations was "too
tepid” according to one senior female silk, Mr Game released his statement “to send a clear message” on sexual harassment and to "reaffirm the Bar Association’s absolute commitment to eradicating sexual harassment of any kind in the workplace”.

While not commenting on the official complaint, Mr Game said there were "mechanisms in place to deal with complaints of sexual harassment” and urged members to "refresh their awareness of their obligations” in relation to sexual harassment and workplace bullying.

He said "a singular event has occurred in recent days in our profession, namely the High Court’s publication of the findings of an investigation into the conduct of Dyson Heydon AC QC whilst a member of the Court”.

He said he was "constrained by circumstances” from commenting on the actual case but said "the gravity and significance of these issues for our profession are clear”.

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