

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BATHURST CJ
AND THE JUDGES OF THE
SUPREME COURT**

Thursday 8 December 2016

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE MICHAEL WALTON
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **WALTON J:** Chief Justice I have the honour to announce that I have been appointed a judge of this Court. I present to you my commission.

(Commission read)

(Oaths of office taken)

- 2 **BATHURST CJ:** Justice Walton on behalf of all the judges of the Court and particularly myself, I congratulate you on your appointment and I hope you have a happy and fruitful time on this Court.

- 3 **MR ARTHUR MOSES SC, SENIOR VICE PRESIDENT, NEW SOUTH WALES BAR ASSOCIATION:** May it please the Court. Justice Walton the New South Wales Bar warmly welcomes your appointment as a Justice of the Supreme Court. I also welcome your family, friends and distinguished guests who are in attendance today. On behalf of the Bar I pay my respects to the traditional owners of the land on which this Court now stands, the Gadigal people.

- 4 The logic of your Honour's appointment to this Court is compelling. In September of this year Parliament legislated to invest in the Supreme

Court the dwindling judicial functions of the Industrial Court. We can surmise that the Supreme Court had the need for an accomplished industrial and employment lawyer, one with a wealth of experience as a Vice President, then President and Judge of what was once a busy, specialist Court with a significant industrial and criminal jurisdiction in occupational health and safety prosecutions. Who knows? You might persuade the Chief Justice to establish an employment list similar to the one established by the Supreme Court of Victoria. I think I can see the Chief Justice under his wig furiously nodding his head in agreement.

- 5 My purpose this morning is to express the Bar's absolute confidence that your Honour is eminently suited to your new role. When contacted in connection with this speech one past President of the Commission said this:

"Walton is a person of undoubted ability. By nature and experience he brings to the Supreme Court the qualities of leadership, strategic thinking and managerial skill."

- 6 The Industrial Law Bar in particular is delighted that you have accepted this appointment. Notwithstanding our congratulations there are many in the profession whose views are tinged with a degree of sadness and regret. The Industrial Court was first established by the Industrial Disputes Act 1908 (NSW). Over more than a century the Industrial Relations Commission and Industrial Court built an impressive reputation for balancing the needs of employers, workers and government in a modern and dynamic economy. Some view the system of conciliation and arbitration as one reason why Australia developed into a fair and just society.

- 7 The Commission and Industrial Court's workload has been in decline since 2006 when the Commonwealth took over the State's industrial relations powers in relation to the majority of the private sector. In 2011 the Court's Occupational Health and Safety jurisdiction was transferred to other Courts. At one time there was a proposal for the Commission to be merged into NCAT. Thankfully, that did not proceed.

- 8 Your Honour is the last of your kind. In February 2014 you were sworn in as the twelfth and final President of the Industrial Relations Commission and Industrial Court. You now join on the bench of this Court Justice Schmidt who previously was a longstanding and respected Judge of the Industrial Court. By the time the State Government called stumps on the Industrial Court its workload had decreased significantly and the Commission's jurisdiction is now limited to the public sector and Local Government. The remaining members of the Commission will leave their majestic accommodation in the Chief Secretary's building in Bridge Street later this month to be ensconced in a downtown office tower - above the Masonic Centre. I am told that some of the Equity Judges who are presently situated in the Hospital Road complex are making noises that they should be transferred to the Chief Secretary's building with its beautifully decorated Judge's chambers and courtrooms. It is really nice down there, so I would suggest your Honours get down there quickly.
- 9 I digress. Justice Walton you bring to this Court considerable breadth of learning and life experience, not just in the art of industrial advocacy but in the dismal science of economics as well. My friend from the Law Society will talk about the papers that you have given at the London School of Economics, the University of London and Oxford University.
- 10 Your Honour does not come from a privileged background, you are descended from three generations of tradesmen. Your father was a plumber and your paternal grandfather and great grandfather were bricklayers. The Jesuit influence on this Court has been diluted by your appointment as you were educated at Christian Brothers High School, Lewisham. Your Honour graduated with a Bachelor of Economics degree from the University of Sydney in May 1979. You became increasingly interested in industrial relations and you completed a fourth year Honours thesis on Shearers' Communities in the late 19th and early 20th century. Upon graduation you worked as an Industrial Officer at the Australian Workers Union, then Senior Industrial Officer at the Gas Industry Salaried

Officers Federation. It was there that you first impressed Jeff Shaw QC with your advocacy before the Industrial Relations Commission. Jeff became a close friend and mentor of yours. He introduced you to the world of opera. As we know Jeff was a compassionate man, a giant of the Industrial Bar, a great Attorney General of this State and a Judge of this Court until his sad resignation. He is sadly missed.

- 11 It was clear that your fascination with industrial relations had translated into raw ability at the bar table and you enrolled to study law and attained a Bachelor of Legal Studies from Macquarie University in May 1987. Your Honour worked for a short time as a legal clerk at the specialist law firm of Turner Freeman Solicitors. Your Honour was called to the Bar in March 1989. You read with Paul Blackett and took a room in H B Higgins Chambers where the late Jeff Shaw was then head of chambers.
- 12 Your Honour appeared in a number of significant High Court cases such as *Nationwide News Pty Ltd v Wills* in which you were led by Jeff Shaw QC and David Jackson QC, in *Re: Australian Education Union Ex parte the State of Victoria and Printing and Kindred Industries Union Ex parte Vista Paper Products* with Stephen Rothman against Ian Callinan. Justice Rothman, who you join on the bench today, was most noted for the volume of his voice. You have said that the Court would remind him that they did not have a hearing problem when he was addressing them. In this building you will probably be able to hear Justice Rothman's voice even though he may be in a courtroom on a different floor - usually when I am appearing before him.
- 13 Your Honour was counsel assisting the Cash In Transit Industry Inquiry in 1995-96 as well as the Inquiry into Pay Equity in November 1997 to August 1998. Your Honour once appeared supporting Bob Hawke in submissions to the Full Bench of the Conciliation and Arbitration Commission because it was rumoured that Bob was becoming a little bothered by some of the legal arguments as he was used to making his

submissions in the form of a speech and would defer to you when the questions were technical in nature.

- 14 In addition to your Honour's career at the Industrial Bar in New South Wales, you worked closely with Jeff Shaw QC in Papua New Guinea providing pro bono advice to local trade unions in significant cases before the Papua New Guinean Supreme Court. Together with John Hendy QC you appeared pro bono for disadvantaged workers in other countries right up to the time of your appointment. I note that John has travelled to Sydney from London to be here for your swearing in.

- 15 Your Honour was appointed as Vice President of the Industrial Relations Commission in December 1998 and in the ensuing years industrial relations in this State benefitted greatly from your insight and innovation. An excellent illustration was the resolution of a significant industrial dispute at Port Kembla Steelworks in 2001/2002. Your Honour has delivered hundreds of learned decisions, both as a first instance and appellate court judge. However one of your decisions, that of *Lawrance v The Commissioner of Police* attracted significant media attention as any industrial relations case does that involves a penis and a bottle opener. Sergeant Lawrence had been removed from the Police Force for attaching a bottle opener to his Prince Albert piercing and allowing a colleague to use it at a Christmas party. I did not know what that was until your Honour described it in some detail in your judgment. I am told that these things never happen at gatherings of barristers or judges. At one stage counsel for the Commissioner suggested you should direct the Sergeant to drop his pants so there should be an inspection as to how the bottle opener was to be affixed to his penis. Your Honour suggested that was not a good idea nor was it necessary. Your Honour ordered the re-employment of Sergeant Lawrence which was ultimately confirmed by the NSW Court of Appeal.

- 16 Before I finish it would be remiss of me not to mention your Honour's most important appointment and one that you are probably most proud of as

President of the Sydney University Tennis Club. You are a tennis tragic and have twice won the Bench and Bar Tennis Competition's Barbour Cup with your good friend and Crown Prosecutor Frank Veltro. I am sure that the Bar could raise funds for a suitable charity, perhaps the Eat Drink Give charity of which you are a patron, if you are able to set up a match between yourself and the Chief Justice. I am told the Chief Justice is quite an aggressive tennis player despite being a former commercial silk.

17 Justice Walton, today is less of an appointment and more of a transition from one judicial role to another and from one era of industrial relations to another. Your Honour enters this new phase of your judicial career well suited to the challenges ahead. The people of New South Wales can be assured that your considerable expertise and skill honed over many years in the Industrial Relations Commission and Industrial Court, will continue in your new role for more years to come. May it please the Court.

18 **MR G ULMAN PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:**
May it please the Court. Your Honour I am delighted to convey to you the sincerest congratulations of the solicitors of this State upon your appointment to this Court.

19 Your Honour was probably destined to be interested in facts, details and forensic accuracy. Growing up in Earlwood, your father John, in addition to his career as a plumber, was a private investigator. I sometimes wonder whether he mixed both. Your mother Colleen was a paralegal. As one of four children you attended the Christian Brothers High School at Lewisham. Other notable alumni from that School include the late Dr Victor Chang, actor David Wenham, Justice Michael Grove RFD and the Federal Attorney General George Brandis QC.

20 I am reliably informed that your Honour was a smart student at school and you respected your mother's wish in attending the University of Sydney. Your first degree was a Bachelor of Economics with honours awarded in 1979. Your Honour had by then developed an interest in how economies

worked and the dynamics of business and industrial relations. With your new degree your first approach to an employer was to that larger than life trade union official Charlie Oliver, then Secretary of the New South Wales branch of the Australian Workers Union. You wanted to write a history of the Union. Charlie Oliver did not want you to write a history of the Union. Instead he offered you a job as an Industrial Officer. You took the job, quickly forging a reputation, so quickly that before 1979 was over you had made your first appearance in the Industrial Relations Commission. And so began your career in advocacy. Not that you underwent extensive training, your first brief was handed to you by Charlie a few minutes before the hearing involving bowling greenkeepers which was due to commence. Despite what might have been viewed as a hospital pass your first advocacy appearance was a success when you convinced the greenkeepers to return to work, even if it annoyed Charlie Oliver who had been manoeuvring for a strike. The greenkeepers episode demonstrates an early style, not only very clever and brave but also learning to conciliate. At a time of ideological barricades you were a pragmatist who sought a resolution.

- 21 You were also interested in fairness in the workplace. You saw no conflict between fairness and the efficient operation of a business. Your Honour was very well known for arguing the difficult cases that other advocates might choose to settle. As the former Attorney General and later Judge of this Court Jeff Shaw QC put it:

“You had the capacity to argue the most tendentious points with a straight face.”

- 22 After five years with the AWU you became a Senior Industrial Officer with the Gas Industries Salaried Officers Federation. I understand your mother had not given up on you becoming a lawyer and in the mid-1980s you enrolled at Macquarie University Law School to study law part time. You graduated in 1987 and, as we have heard, you practised at Turner Freeman lawyers under the wing of Roy Turner. And as mentioned, in 1989 you were admitted to the Bar and then moved into H B Higgins

Chambers. Your Honour's career at the Bar is filled with highlights including those that we have heard and also the Bell Bay case and the National News v Wills case. You forged your reputation in the cut and thrust of Industrial Relations but you were instrumental in equity development that many might thank you for.

- 23 In 1996 you were appointed counsel assisting the Industrial Relations Commission Pay Equity Enquiry. You researched the historical records of salaries for librarians and found that librarians were well paid when it was a male dominated profession and were poorly paid as more women entered that profession. You are remembered in that Inquiry for your insistence that a gender pay gap be a matter of historical record rather than as a matter for debate.
- 24 In 1999 you were appointed a Judge and Vice President of the Industrial Court Industrial Relations Commission of New South Wales. This appointment by my measure means that you were the first graduate of Macquarie Law School to be made a Judge and here started another successful career. From the beginning you developed a formidable reputation on the bench. Even in the cut and thrust of sometimes heated courtroom exchanges you demanded decorum and looked unfavourably on parties who thought they could frustrate the process. You brought not only a technical mastery of the law but experience in industrial relations disputes. Your style was built on fairness and pragmatism and your reputation for those qualities emerged quickly amongst lawyers, employers and Unions. Not that your Honour ever held parties captive in your courtroom but you certainly held their feet to the fire. Counsel knew that they had better have a resolution in mind when they appeared before you.
- 25 As Mr Moses has touched on, one of your notable successes was the so called Blue Scope model. The Port Kembla Steelworks in the late 1990s and early 2000s was in a state of internal strife. Negotiators from both sides of the dispute have praised your Honour for your leadership which eventuated in a system of bargaining and collaborative negotiation.

26 It takes more than just a legal intellect to find a way ahead. It requires leadership and the result of this period was the Co-operative Employment Relations Framework. The Industrial Relations Commission President you once worked for, Justice Lance Wright, has said of you and the Blue Scope model:

“He saved the joint. There is no doubt that Port Kembla would have otherwise closed.”

27 In 2014 your Honour was appointed President of the Industrial Relations Court of New South Wales and President of the Industrial Relations Commission. So just as you were the first Macquarie University Law School graduate to ascend the bench, so you are the last President of the Industrial Relations Court with your Honour’s name top and tailing two distinguished roles.

28 Amid this stellar career you have involved yourself with social justice and equity issues both here and around the world. Mr Moses has reminded us of your pro bono appearance in the Papua New Guinea Courts and your affiliations are truly international and include close ties with human rights groups, labour groups and legal associations.

29 You have been an executive member of the Governing Council of the Judicial Conference of Australia since 2002 and a member of the Executive Committee since 2006. As an active writer and speaker with numerous published articles under your belt your Honour is also on the Editorial Committee of the Australian Journal of Labour Law. Your Honour speaks widely on Industrial Relations and Work Trends from globalisation and automation to borderless labour and the two tiered workforce. Where your Honour finds the time for all these activities is anyone’s guess. Your continued success as we have heard in A grade tennis in your role as President of The Sydney University of Law Tennis Club are themselves achievements amid the demands of such a hectic workload. Throughout

you have been a husband and a father and you managed to fit in charity work too, foremost as a patron of Eat, Drink, Give.

30 Now with all your Honour has achieved your stellar career enjoys another milestone with your appointment to this Court. What style might we expect? As a Justice on the Industrial Relations Court you presented a strong personality, one which tolerated no nonsense. You also regarded workplace fairness not as a cost or an inconvenience but as part of an efficient economy. And you see the rule of law playing a central role not only in the existing conditions but the trends that are unfolding. In other words the law and the Courts must be strong and independent but also able to adapt to a changing society and the way people work and employ.

31 During your time as President of the Industrial Relations Commission I was privileged to participate in a number of credentials visit to your Honour at the beginning of the new law term. Your Honour was most welcoming to the members of the Society's Executive and we greatly appreciated the opportunity to speak with you and have an ongoing and constructive dialogue over the years.

32 Your Honour, today you embark on a new path and a new journey and it is a new path for which you are well prepared and eminently qualified. May I on behalf of the solicitors of New South Wales wish you every success for all your work ahead. As the Court pleases.

33 **WALTON J:** Chief Justice, your Honours, Mr Moses, Mr Ulman, ladies and gentlemen. I thank all of those who have come to Court this morning. I appreciate that as this is a hectic time of year this is not an easy task.

34 I am grateful for the generous words spoken on behalf of the Bar by Mr Moses and the Law Society by Mr Ulman. There is a neat symmetry in Mr Moses speaking, he having commenced his path into the law as a tipstaff to the late then Justices Michael Sweeney and Charles Cullen in the Industrial Court of New South Wales.

- 35 Their speeches, of course, contain some hyperbole and flattery which is customary practice on occasions such as this, although I am appreciative of what has been said today. Parenthetically, I think the observations regarding tennis are largely correct.
- 36 My early attentions were drawn to economics in equal measure to the law. Aside from my family the encouragement to embark upon the latter course came from the late former Justice Vernon Watson of the Industrial Commission of New South Wales and my dear departed friend, the Honourable Jeffrey William Shaw QC. Jeff was a mentor throughout most of my professional life, facilitating my entry into the law at the firm of solicitors Turner Freeman (under the stewardship, as has been noted, of Roy F Turner), and providing me support at the Bar as Head of HB Higgins Chambers.
- 37 A good deal of my professional career prior to the Bench was occupied with the development of ideas and theories regarding work and employment (which I later gave vent to in the Forum I established as President of the IRC with Professor Paul Gollan) and a practice in Industrial law and Employment law. These pursuits were rich and fulfilling, not only because of the diversity of legal issues falling under the rubric of 'employment law', but because the field involved both an interaction with a wide section of the community, business and government and the gaining of knowledge about those persons and things. Work is virtually a universal human experience, not only productive of economic reward but intellectual and social fulfilment. Industrial laws, since their inception in the beginning of the 20th century, have formed a significant part of social policy, if not economic policy, in this country.
- 38 I have enjoyed eighteen years as a member of the oldest Industrial Relations Tribunal in the world. I thank all members of the Commission, many of whom are here this morning, for their support and advice during that period. I would like to mention, in particular, the former President,

Lance Wright QC, for his support on that bench for ten years and his continued support and friendship beyond that time.

- 39 Recognition must be given to the passing of the Industrial Court. The Judges of that Court have, over that long period of time, each given distinguished service to this community in the interpretation, application and enforcement of the rights provided by employment statutes and the awards and orders of Industrial institutions established by them. The embodiment of the jurisdiction of the Industrial Court in the Supreme Court should be taken as a recognition by the State of the importance that it attaches to those laws.
- 40 I am sure Jeffrey Shaw would not mind me borrowing the reference he made in his swearing in speech to the English historian, E P Thompson, who, when referring to some of our old legal terms, said that the rule of law is an unqualified human good and supported institutions which have proved to be flexible, capable of modification through centuries of conflict and after protracted studies of reform.
- 41 To assume the position on a Bench of this Court is of course an honour but at the same time is a significant responsibility having regard to the traditions of the Court and its status as a pre-eminent Court in this country. I do not assume those duties lightly. On the contrary, I intend to apply myself “assiduously to the adjudication of claims between citizens and between citizens and the State” in a manner which is cognisant of the central doctrine of a liberal democracy – the independence of Courts and the impartiality of judges who constitute them.
- 42 I note that five of the judges of the Industrial Court of New South Wales or its predecessors have been appointed to this Court, namely Justices Kenneth Whistler Street, Edwards, Kinsella, Shepherd and Schmidt. I hope to follow their path with the distinction displayed by those judges.

- 43 It is customary to give thanks to colleagues, friends and family for the support they have provided over time. I wish to show my appreciation of the clients who placed their trust in me at the Bar. Without their support I would not be here today. I also acknowledge the solicitors who have briefed me at the Bar. In particular, I mention Justice Robert McClelland, Judge Greg Keating and the Honourable Conrad Staff, who later sat with me on the bench at the IRC.
- 44 As to the Bar, those who have contributed to my experience and growth in the law are too many to mention. However, I must express my great appreciation for the friendship of Mr John Hendy QC of Old Square Chambers, London, who travelled to Sydney from London specifically for this ceremony.
- 45 I am very thankful to my immediate family who are here with me today. My wife, Jayne, has given me unswerving support in my professional and personal life and, as is so often the case, has done so sometimes with significant sacrifice. It is very pleasing to me that she is now well underway in achieving her goal to be an artist.
- 46 I am enormously proud of my children, Daniel, Jacqueline, Sophie and Rebecca, and my stepchild, Hayley, who are progressing very well in their professional and personal lives and who are a constant source of joy. Mention should also be made of my delightful and favourite daughter-in-law, Natalie Walton (although, I should mention, I only have one son), and my son-in-law of two weeks, Peter Grant. Sitting in the body of the Courtroom today are my wonderful grandchildren, Jacob and Emma. Hello, Jacob and Emma.
- 47 I will address my penultimate remarks to my mother and late father, Colleen and John Walton. My mother left school in third form and sat for the School Certificate as well as studying secretarial duties at St Patrick's College at the Rocks with the Mercy nuns. After her graduation, she eventually assumed a position as a legal secretary with the law firm,

Maddocks Cohen and Maguire (a position which has, by a recent appointment, gained some real significance). Later, she was seconded to work in the practice of the late John Ferrari before he became a judge of the Workers Compensation Commission. This instilled in her a strong ambition for her son to become a barrister, which she persisted with notwithstanding his flirtation with economics. I am delighted my mother could be here today at the age of eighty five. I thank her for her unwavering encouragement and assistance and the outcome it has borne. My only regret is that this ceremony has clashed with ladies mid-week tennis.

48 My father was a plumber, and, as has been noted, also a private detective. He was also a strata unit manager. You might say he had a slightly varied career. He gave me no less encouragement, although with a slightly earthier tinge, suggesting that I not get carried away with myself and could do a lot worse than emulating “Burnsie’s” legal practice in Earlwood which consisted, as far as I could see it, of a practice representing Earlwoodites charged with DUI offences in Campsie Local Court and dealing with probate. I recognise the logical connection between those things but, I am afraid, it was never meant to be.

49 In conclusion, I assume this position with a strong sense of the intellectual and legal traditions of this Court and the privilege of being part of a Court constituted by esteemed judges. I am very conscious that I will be asked to decide complex and challenging cases. I am also acutely aware of the substantial obligation to live up to the Court’s rigorous standards in the adjudication of matters. In the final analysis, I hope to repay the trust in me by this appointment.
