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THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT



GLEESON CJ
AND JUDGES OF THE
SUPREME COURT

Tuesday 1 February 1994

SWEARING IN CEREMONY OF

THE HONOURABLE CAROLYN CHALMERS SIMPSON QC

AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

SIMPSON 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.

GLEESON CJ: Thank you Justice Simpson. I will have the commission read.

Mr Prothonotary, I hand to you the oaths to be placed amongst the Court's archives.

Mr Sheriff, I hand to you the Bible so that you may have the customary inscription inserted in it in order that it may be presented to Justice Simpson as a memento of this occasion.

Justice Simpson, on behalf of the Judges of this Court and on my own behalf, I congratulate you and welcome you as a member of the Court.

M TOBIAS ESQ QC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION: If the Court pleases. Early last Wednesday morning, Australia Day, I drove to the local shops to purchase some milk. What on earth has that got to do with today's proceedings, I hear you all mutter. Well, let me tell you. I had the radio on 2WS FM as one does, I am told, at that time of day. I was immediately greeted with the suggestion by the Federal Minister for Aboriginal Affairs, Mr Robert Tickner, that consideration should be given to moving Australia Day to a date other than 26 January. The reaction of the programme's host, Mr Steve Raymond, was that the Minister's comment was but another example of political correctness and, more ominously, an attempt to re-write history.

I do not stay to consider the merits of that response, particularly the latter. But the former, the requirement of being politically correct, currently pervades much of our society and, in particular, is regarded by some as the sine qua non of reform of our institutions such as the judiciary. The clarion calls of politicians and those who are aptly described by Hughes QC as "*other minnows*" to change the processes of selection of judges so the judiciary becomes representative of race, gender, ethnicity and even age within the community, might be regarded by some as resulting in, and the reason for, your Honour's appointment to this Bench. Nothing could be further from the truth.

One thing is crystal clear; your Honour's appointment has been made, as is proper, solely on merit. It was based upon your Honour's undoubted legal skills, extensive trial experience, and breadth of knowledge and understanding of the human condition gained from your experiences both inside and outside the mainstream of legal practice. These have provided you with a sense of proportion, a keen sensitivity to human and social problems, an understanding of the workings of government, and, perhaps most importantly of all, a great deal of

commonsense. These are the essential qualities of a judge and your Honour possesses them in abundance.

Interestingly enough, lest I let this opportunity pass without emphasising the critical importance of merit in the process of selection to judicial office, let me make short reference to the November 1993 issue of "*Trial*", the publication of the Association of Trial Lawyers of America. The author, in the context of an article entitled "*A Look At Practising Law in 1993*", refers to the current problems of the American judiciary and, in particular, those resulting from the processes of selection for judicial office. In asserting a lack of professionalism on the part of the judiciary brought about, at least in part, by the problems inherent in the United States in the political election of judges, he makes the point, and I quote, that "*Merit selection in appointment of judges would help correct shortcomings of the judicial system.*" In dealing with the lack of professionalism of judges he regarded as critical the "*appalling lack of quality trial experience among judges and those who seek judicial appointment.*" There are, in individual instances, of course, exceptions to this criterion, but they are rare. Your Honour's fulfilment of it has been amply demonstrated in your nearly eighteen years of intensive practise at the Bar.

Nor is there anything out of the ordinary in your Honour's appointment. Let me just quote a few statistics.

Your Honour was admitted to the Bar in May 1976. At that time there were thirty-one female members of the Bar Association out of a total of 601 ordinary members, some 5 per cent - a situation to be regretted. Since that time eight of that thirty-one have been appointed to judicial office, being one to the High Court, one to the Federal Court, two, including your Honour, to the Supreme Court, two to the Family Court, one to the Magistracy and one to the Administrative Appeals Tribunal, a

total of 26 per cent of the women at the Bar in 1976. The number of appointments would clearly have been nine had Priscilla Flemming QC not retired from practice some few years ago. I should add, for comparison purposes, that as at the end of 1993 there were 164 female members of the Bar out of a total of 1516, some 11 per cent - not enough, but getting better. With the passage of time more women of merit will be appointed to the Bench and that evolution is welcomed.

I have made but passing reference to your Honour's experience in the law. Lest it be suggested that there is nothing politically correct about your Honour's background as part of the judicial selection process, let it be noted that your parents correctly educated you at public schools, Cronulla Primary and then Gilgandra Intermediate High. Regrettably, you were then sent to a grubby private school, Presbyterian Ladies College, Croydon, and I hope no apologies are necessary to those at the back of the room. But, to your credit, it was said of you that you were not the most tractable of students for such an elite institution.

After completing your Leaving Certificate you embarked upon a teaching career, graduating from Bathurst Teaching College. Thereafter, you taught English at Broken Hill High and then English and History at Kingsgrove North High and Kogarah High. At the same time you studied part-time for a Bachelor of Arts degree at Sydney University, from which you graduated in 1971.

Having taught at politically correct public schools, you continued this trend when, instead of attending university to study law, you enrolled in 1972 in the Barristers' Admission Board course from which you duly graduated in 1976. You were engaged as an Associate to his Honour the late Judge Robson of the District Court for a short period and as a court officer in the Children's Court. You were admitted to the Bar, as I have

indicated, in May 1976 and you were appointed one of Her Majesty's counsel in November 1989.

Your Honour had a wide, varied and busy practice in the personal injury, criminal and equity fields. But you are probably best remembered for your significant work in the area of civil liberties and, in particular, before the Anti-Discrimination Board. In this context you were a committee member of the New South Wales Council for Civil Liberties from 1973 to 1990, being its President from 1976 to 1980. You were President of the Society of Labour Lawyers from 1982 to 1985 and, in 1989, you were elected President of the Lawyers' Reform Association. Your interest in the area of psychosurgery resulted in your appointment by the government as Deputy President of The Psychosurgery Review Board from 1987 to 1991 and as its President from 1991 to your elevation to the Bench. As if this was not enough, you have served as a director of Counsel's Chambers Limited since 1988. I have been told, however, that your Honour has yet to resign that directorship.

Your Honour is a very reticent and modest person - it was like drawing teeth to get the most rudimentary curriculum vitae out of you. But, unlike the late Clement Atlee, of whom Churchill spoke, your Honour has little to be modest about. In fact, your achievements are indeed enviable as evidenced by my recitation of just some of them.

In particular, your Honour had a formidable reputation in the area of civil liberties and, in particular, with respect to women's issues. You have been associated with a number of leading civil liberty cases which have received widespread publicity. Despite their notoriety, you did many of these cases either at legal aid rates or pro bono. As a result of the generosity with which you gave of your time and skills to these cases, you were the recipient of numerous gifts and mementos which, although they may have been a poor substitute for real money, resulted in your

chambers being filled with memorabilia of the most disparate kind, ranging from photographs of women demonstrating against rape in war to numerous Aboriginal paintings and other art works (of which you have a considerable collection), to a replica of a pistol (not a starting pistol, I am reliably informed) allegedly used in a hold-up. The eclectic nature of your collection and the way items were propped up on every bench, chair and available area of floor or wall, promised to make your chambers rival (but, I would emphasise, not surpass, as that would not be possible) those of Mr Justice Meagher when at the Bar.

You were a fierce and fearless advocate with a penchant, so it is reported, for radical causes. This description is not entirely fair for you in fact maintained a very balanced and objective view on all, or at least almost all, of the issues with which you have been confronted. The only exception, so I am informed, was that it took a long time before you were persuaded that a barrister who specialised in the provision of taxation advice was not in fact some kind of white collar criminal.

The width of your practice is exemplified not only by your appearance for one of the conservation bodies against Peko-Wallsend and in the Kakadu case, which was a precursor to the Franklin Dam case, but also in your many appearances for the Commonwealth and State Crown, including an extremely difficult and lengthy sales tax prosecution involving a "*black box*" scheme (whatever that might be) and for the Commissioner of Taxation in a case involving the fiendishly difficult fringe benefits tax legislation.

Your strength and purpose of character and unflappable nature is exemplified by your experience on your first trip to the High Court when, relatively new at the Bar, your leader (unnamed), after dealing with two of the three points to be argued, and without any prior warning to you, informed the court that the third point was one which, and I quote, "*My*

learned junior knows much more about than I and she will deal with it," and promptly sat down. You did more than physically rise to the occasion for, without any indication that you might have been unprepared for the experience, you argued the point with great dexterity and skill.

It appears that, at a personal level, you have but a few weaknesses, which it is my duty to reveal. The first is that it is asserted (although I have never experienced it myself) that you are given to what is euphemistically referred to as "*colourful language*" - at least you were during your youth. The second is that you have an aversion to wearing shoes, and it may well be - because no-one will be able to tell, bearing in mind one's observations today as to the copious nature of your Honour's robes compared to the rest of you, that you will become the first barefoot judge. There have, of course, been other judges who, it is alleged, sat, encased in their judicial robes, on the Bench without their trousers and, if this be so, it is difficult to see that there could be any objection to your Honour padding on to the Bench barefooted. There must be some substance to this because it is reliably reported that when recently on circuit on the North Coast, you, your junior, solicitor, opponents, and, I think, the judge, danced one evening until dawn. It must have been a sobering sight! The next morning your feet were so sore you had to seek judicial permission to address while remaining seated. You can dance as much as you like now for seated you will remain!

Your third weakness is that it is said you are so deficient in mathematics you cannot even use a simple calculator. Lest those who appear before you in Common Law matters think that they will be able to hoodwink you in the calculations associated with the assessment of damages in personal injury cases, it should be noted that your mathematical weaknesses did not prevent you, last year, in a very complex case involving the repossession of some large pieces of

agricultural machinery held under lease, from recalculating and demonstrating the inaccuracy of mathematical calculations made by your opponent's client - accordingly, common lawyers should perhaps be wary of this supposed reputation of mathematical ineptitude.

There is, on the other hand, one particular talent which you possess which, to date, has remained unrevealed; that is, the poet in you. When in the sixth class of Cronulla Primary you wrote a lengthy poem in praise of, and celebrating the Russian triumph of, putting a poor unfortunate dog in space. Whether this indicated that you were an animal lover - or hater - or just a science-fiction freak revelling in that fiction becoming a reality, I don't know. In any event, you won a prize for your efforts. It is therefore expected that your judgments will be peppered with findings of fact in iambic pentameter.

Your Honour was, with the former Mr Justice Enderby - present here today - a founder of your chambers, Ground Floor Wentworth. Your popularity amongst your colleagues generally and amongst the members of the Ground Floor in particular is exemplified by your unanimous election, prior to the announcement of your elevation to the Bench, as Head of Chambers for 1994. In large part, so I gather, this honour was due to the introduction, at your instigation, of a rule at all Ground Floor social occasions to the effect that anyone guilty of "*shop talk*", which involved discussing one's current forensic experiences or triumphs, resulted in the offender being immediately despatched to the basement bar to acquire an expensive bottle of French champagne with which to atone for their lapse. This rule was so well known and so strictly enforced by you that your floor colleagues have enjoyed relatively few bottles of champagne over the last few years. It is anticipated that this position will now change for the better in your Honour's absence.

I will leave to my learned friend Mr Nelson further revelation of some of your Honour's personal experiences, such as your pursuit of the art of photography. Suffice it to say that your Honour's appointment to this Court has the unanimous acclamation of your friends, your colleagues and the whole profession. I take some personal pride in your elevation for I only had to ask you once as to whether you would accept appointment, whereas my predecessor received a "*knock back*" for over a year. I never realised that I possessed more charm than he does. The whole Bar is delighted that you said yes and this Bench and the community it serves is richer by that fact. The Bar wishes you a long, contented and fruitful term of office.

J NELSON ESQ IMMEDIATE PAST PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court. Mr Tobias has mentioned the splendid township of Gilgandra, New South Wales. Thanks to the vast improvement in the content of school curricula, in contrast to the exclusive British view of the world taught to us in the 1950's, not only Gilgandraites, but most people, know about Australia 1915 and the now justly famous Cooee March and St Ambrose Anglican Church erected, with donations from the good citizens of Bournemouth to commemorate the remarkable efforts of this tiny, far-flung town of Empire during the First World War.

Your Honour, you and your brothers and sister attended the local school. Your father was the local accountant and mine, the local timber miller.

The fifties and Gilgandra hold certain indelible memories for me. After the Sara quads born in Bellingen a Gilgandra post hole digger's wife gave birth to quads which, unfortunately, did not survive, thereby denying the town a chance to get on the map. The great floods of the early

fifties were catastrophic events, and in your family's case the 1955 flood forced a relocation. At the start of that decade my father won ten thousand pounds in the New South Wales State Lotteries.

For your family the fifties were overshadowed by a tragic car accident in 1957. The whole family was involved and your mother was killed.

Because the local school was only an intermediate high, students went on to schools in Dubbo, Orange, Bathurst and Sydney. Puffing Billy, otherwise known as the Coonamble Mail, took us down and back. It was certainly great fun. I don't know what you did, apart from getting covered in coal dust. My friends and I always ripped off our school ties and substituted garish American creations. My favourite was a frightful combination of random colour and a full length portrait of Esther Williams - in a swimming costume, of course. The whole night was spent charging up and down the train, hoping to catch the eyes of female students, particularly those from all those grubby schools - helped by our gorgeous ties - and hoping that something might happen. Of course, it never did. Sadly, the Coonamble Mail was rationalised away many years ago.

Mr Tobias has spoken of political correctness. I agree entirely that your appointment has to do with nothing else but merit. Coming on to the Bench well on the sunny side of fifty, you have ample time to grapple from within the rapidly changing legal environment. I have absolutely no doubt that such current controversial matters as renting ex-judges, judicial activism and forthrightness will have settled into the norm well before you might be tempted to consider a post-Bench career.

Mention has been made of your time in Broken Hill. What hasn't been spoken of is the picture of the lonely young school teacher in a hot and dusty outback city. Shades of *"Wake in Fright"*. Maybe here the

education of young Carolyn really began - teaching by day and reading by night and, according to my usually unreliable sources, often frequenting the Pig and Whistle, listening to an uneasy mixture of social justice ideals and authoritarianism coming from the mouths of certain denizens of the Barrier Industrial Council.

I suppose there is a certain irony in the fact that not many years ago you spoke at a forum, "*The Criminal Injustice System*". Maybe there were more injustices then, but now that you are part of the system we can be sure that you won't stop doing your best to right what you see is not right.

Your interests include art and, in particular, pictures - mostly "*Barks*", photography, and you are something of a bibliophile as well as an extensive reader and country gardener. You recently assisted in choosing the art works for Frederick Jordan Chambers in its new guise.

Your love of native fauna has been severely tested by kangaroos attacking your much-loved garden at your Bilpin cottage. "*It must be so pretty with all those dear little kangaroos flying about,*" to borrow from the Duchess of Berwick.

Your capacities as an Outward Bounder - that's probably now an unacceptable, politically incorrect phrase - were proved beyond doubt when you and Mr Durack and one other person took a five-day canoe trip down the Deua River last year. That river flows into the sea at Moruya and it was your job, apart from looking after the victuals - surprising, given your wish for equalness - but perhaps not so if we assume that your companions knew nothing of the culinary arts - apart from being the cook you were also official recorder. Alas, on your return to civilisation it was found that the dozens of shots taken were in vain - you had overlooked loading the camera.

It is also said that on your recent Sri Lankan "*get away from it all*" visit this year exactly the same thing happened.

I propose to commemorate these events and interests and also your childhood. I have found an enlargement of a photograph of Gilgandra Post Office circa 1900 and I look forward to presenting it to you after this ceremony.

I would like to thank Mr David Fairlie, the current President of the Law Society, for giving me the opportunity to speak this morning. I would also like to commend my leader, Mr Tobias. After the passion - dare I say, the froth and bubble - of 1993 it is splendid to see him, as always, calmly coping with the new order. I refer of course to co-advocacy and it is indeed exceedingly civil and generous of him to refer to me as his learned friend.

It is said that a change is as good as a holiday. I think the saying is a fallacy. Your Honour is certainly taking on a huge, demanding and important job.

Your brothers and sisters are in Court this morning. I am sure they are as pleased with your appointment as we all are. I join with Mr Tobias in congratulating you on your appointment. Executive government is happy about it, the Bench I am sure is happy about it, Mr Tobias has said that barristers are happy about it, and I can assure you that all legal practitioners are happy about it. I too wish you a long and successful career.

SIMPSON J: An invitation to become a member of this, the oldest Court in Australia, is indeed an honour, and one of which I am fully conscious. In my case, it came at a time when the legal system is undergoing great changes. I leave the Bar and join the Bench at a time when each faces significant changes. Until very recently, appointment to this, or any other court, was properly seen as the last stage in a legal career - the

professional equivalent of marriage. It was a commitment for the balance of one's professional life. No longer does that seem to be necessarily so. The public might now be forgiven for seeing judicial appointment as merely a stage in a legal career. The implications of these new patterns on the administration of justice are not yet clear.

For more than 200 years this and other courts have offered an orderly means of resolution of disputes between citizens, and one which offers, progressively, a set of rules by which others who follow may predict the legal outcome of their affairs. The changing pattern of judicial and post-judicial life is accompanied by a vigorous exploration of alternative and extracurial forms of resolving disputes between citizens. Parallel private and public systems of justice are rapidly emerging.

The practising legal profession also is undergoing change, learning new methods of case management, problem solving, and even accepting new ways of organising itself.

I had looked forward to being an active participant in, and commentator on, these changes; my own change in status means that I shall be a mere onlooker - not, I hope, an officious bystander.

The author's preface to the most recent edition of McGregor on Damages, concludes, wistfully:

"There is sadly no-one to thank this time round, except of course my publishers for publishing. All aspects of the work are my own; so are the errors."

Had Sir Frederick Pollock ever produced a work on the law of possession, which of course he did not, he would, I feel sure, have been more gracious. Unlike Dr McGregor, I have many thank-yous.

From the moment of my first stumbling steps into the law I have received unstinting assistance from virtually all with whom I came in contact. It came initially from Judge Hugh Robson of the District Court,

who took me on as his Associate, though the study of law was no more than a glimmer in my eye, and I had completed no law courses at all. More generously, he permitted me to retain that employment, even after the exposure of the full extent of my gross misrepresentations about what was then called my typing ability, but now goes under the grander title of keyboard skills. He was generous with his time during my student days and a most understanding boss. My study finally completed, when I boldly and naively commenced practice at the Bar, Peter Kennedy Smith barely flinched as I squatted in his room for six months; Counsel's Chambers Limited, the company of which I was later proudly to become a director, developed the Ground Floor and let me have chambers there; the National Australia Bank, in a high-risk investment for those days, advanced the whole sum necessary for the purchase of those chambers.

The sheer hard work of practice at the Bar is leavened by the sharing of experience, knowledge and learning.

My colleagues on the Ground Floor, who have offered companionship and much of their time over seventeen years, I thank. I shall miss them greatly. To my clerk, Jan Joy, who is also my friend, I am indebted for the efficiency with which she ensures the chambers are conducted. I shall miss her too. Most barristers, including myself, have little notion what goes into their clerk's day; it is only when the smooth operation is disrupted that we even enquire. It has seldom been necessary to do so since Mrs Joy stepped into the role. As late as last night she handed me, in the usual form, a note reminding me of my commitments for today. I am to appear in the Banco Court, No 1 in the list, at 9.30 am. I don't know what I would do without her. My secretary, Julie Briese, whose intransigent refusals to accept my instructions whenever I told her to go home, no matter how late the hour, are legendary on the Ground Floor, I will not miss, because she comes with me. My two colleagues with

whom I shared her services as secretary, I thank for their noble attempts at accepting her departure and the reasons therefor with a good grace, wholly unsuccessful though those attempts were.

I have spent almost eighteen very happy and proud years in the legal profession, all of them so far at the Bar. I have been the recipient of much generosity from that institution. Amongst its members I count many good mates and a few close friends. I shall not miss them for I expect that that assistance and those friendships will continue into my new life.

To you, Mr Tobias, and you, Mr Nelson, freed as you are on these occasions from the usual rigorous demands of utter probity and of full, frank and unvarnished disclosure when speaking from the Bar table, thank you for the full extent to which you have seized upon that licence in gilding my history as you have. And I thank you, Mr Nelson, for undertaking one last and unexpected task of your presidency; and Mr Fairlie, President of the Law Society, for standing aside on this occasion so that the sentiment associated with our small country town upbringings could be given free reign.

And I thank those many women who have preceded me in the legal profession, who, by their integrity, ability and determination have made the passage of women who came later so much easier.

These occasions are, above all else, family occasions.

Afficionados of these events will recognise that I have reached the point at which thank-yous are delivered to parents, spouses and children. I have none of these. But I do have many thanks to offer. They are to a sister, two brothers, two sisters-in-law, three nieces, three nephews and an aunt, my mother's only sister, known formally as Dr Chalmers, but to all my friends simply as Aunty Clair. May I start with my thanks to her. It is now thirty-seven years since my mother, her only sibling, died. She

was left, from a distance of 300 miles, to try to bring some stabilising influence into four young lives suddenly become chaotic. She never gave up on us, though the temptations to do so must have been many. She strenuously sought, long distance, to knock the rough edges off her four country-bred nieces and nephews. That those efforts met with only modest success is no reflection on the strength of those efforts or her dedication to her task. She has never been thanked for her efforts on our behalf. I know I speak for my sister and my brothers and their wives and children in thanking her now for her unrelenting and frequently unrewarded contribution to our growing up.

The family bond I share with my sister and brothers is, I believe, quite special. Never has any of them denied another any help sought, no matter what it was - whether it is moving furniture, mending fuses, carting trailer loads of rubbish, or standing by in times of crisis. They are always there. We are fortunate indeed that my brothers married wives who tolerate being known in the family as ring-ins, had children known as spin-offs, all of whom fit so closely and accept so readily all that goes with being a member of the Simpson clan.

Their loyalty and friendship has been constant and unremitting, if not unquestioning (they are family, after all). We are an undemonstrative lot and I have never thanked them for, or even thought to mention, the important part they play in my life. I do so now. My brothers did not embark on procreation for my benefit, but I especially thank them and their wives for bringing into my life the constant pleasure of the new generation: My nieces and nephews, Scott, Nicole, Leeanne, Andrew, Katherine and Peter.

I said, and far too glibly, that I have no parents to thank. It is my parents who I have to thank for recognising early that girls can be

educated too, and for setting me on the path that brings me here today. I would like this occasion to be dedicated to their memory.

Today is the first time in my life that I have sworn an oath. As in any court, it matters not whether the pledge is made by oath or affirmation: The commitment is to the public, and to the Court.

I thank you all for being here today and for the faith which, by your presence, you display in me. I pledge to do my utmost to justify that faith.

I thank you all for your good wishes and your welcome.
