

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

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

Monday 8 April 2013

**SWEARING IN CEREMONY OF
THE HONOURABLE FRANÇOIS KUNC SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **KUNC J:** Chief Justice, I have the honour to announce that I have been appointed a judge of this Court. May I present my Commission.

(Commission read)

(Oaths of office taken)

- 2 **BATHURST CJ:** Justice Kunc, on behalf of myself and all the judges of the Court, I congratulate you and welcome you and wish you a happy and fulfilling time on the Bench. We all look forward to working with you.

- 3 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honour on behalf of the State of New South Wales and the New South Wales Bar, it is my great pleasure to congratulate you on your appointment to the Supreme Court. I would like also to extend my congratulations to your wife, Felicity and your two children, Anna and Thomas.

- 4 Having practiced law for 27 years, including 21 years as a barrister and six years as a senior counsel, you are known for your strong intellect, fair mindedness and hard work. You were born in Sydney in 1962 and

christened František Gregory Vladimir Kunc and known as François because people either cannot manage the pronunciation at all or pronounce it as 'frantic Czech'.

- 5 Your father, František Kunc, was born near Prague in the last days of the Austro-Hungarian empire. Qualified as an economist, he escaped from Czechoslovakia after World War 2 and fled to Paris. After spending some years there, he asked the International Refugee Organisation 'where is the farthest you can send me from Europe' and so came to Australia. Your father went on to start one of the first smallgoods manufacturing and wholesaling businesses in Sydney becoming known as Sydney's 'sausage king'. He met your mother in Australia in the late 1950s and sadly died after a long illness when you were 14 years old.
- 6 Your mother, Lidia, now 87 is, I understand, watching today's ceremony by video link. Born in the Ukraine, she spent most of the war as a prisoner of the Germans and later found her way to Australia in 1949. After your father became ill your mother qualified as a nurse.
- 7 Your early education was at Sydney Grammar Edgecliff Preparatory School. You then attended Sydney Grammar School after being awarded an entrance scholarship. Music was a significant part of your education and I understand that before becoming a legal practitioner you seriously considered a career in classical music and had ambitions to become an opera conductor. You studied piano, violin, voice and conducting. As a treble you sang solo and chorus roles with the Australian Opera, beginning what has been an almost lifelong association with that company. I understand your son Thomas now sings in the Opera Australia Children's Chorus and you are a very valued member of the bar choir.
- 8 You nonetheless decided to study law and in your last years of school and early university years worked in the holidays as an office boy for Glasheen & Quilty. On finishing school you studied Arts and Law at the University of Sydney and in your later years of law school worked as a

clerk at Paul Wells & Co Solicitors. You were always skilled in advocacy. While at law school you won the Australian Law Students Association National Witness Examination Competition and were senior counsel in the winning H V Evatt Moot team, defeating the University of New South Wales team led by Justice Lucy McCallum.

- 9 You were conferred a Bachelor of Arts in 1984 and a Bachelor of Laws in 1986. On finishing law school you were invited to be an associate by Justice John Lockhart, then of the Federal Court, and offered a position of conducting assistant in London by Sir Charles Mackerras. In the end you did not accept either role and instead worked as a solicitor with Allen, Allen & Hemsley, as it was then known, for six years.
- 10 You came to the Bar in 1992 joining the Eleventh Floor of Wentworth Chambers and took silk in 2007. You have always maintained a wide ranging commercial and equity practice. Your clients have included the Commonwealth Government and several of Australia's major companies. Prominent matters include acting for Paul Hogan in his dispute with the Australian Crime Commission.
- 11 You have also been involved in cases with significant international dimensions, coordinating related litigation and evidence gathering in America, Europe and New Zealand.
- 12 I am told that you also acted in an interesting matter which required you and a junior to travel to Queensland to extradite a man arrested on a warrant issued by the Equity Division of the Supreme Court of New South Wales, a very rare occurrence. After spending dinner earnestly discussing the finer points of interstate extradition, you and your junior both agreed to retire to your respective hotel rooms. Just moments later you both found yourselves at the ice cream store across the road from the hotel, having independently decided that ice cream was the final and necessary stage of preparation for the following day's proceedings.

- 13 A good administrator, you were asked by colleagues in the mid 1990s to oversee installation of one of the first computer networks in a barristers chambers. More recently, as head of chambers, you were clerk of works designing and implementing the largest refurbishment of the Eleventh Floor Wentworth Chambers in its history. You have also served as President of the Law and Literature Association of Australia and currently serve on the Editorial Board of the Journal of Equity.
- 14 You married Felicity Rourke in 1993. Felicity is a partner in Norton Rose and is recognised as one of the country's leading planning and environment lawyers. Your daughter Anna is in Year 10 and your son Thomas in Year 8. I understand you and Felicity have managed to put Anna off pursuing a legal career but Thomas is a keen debater and is showing dangerous signs of legal interest.
- 15 A deeply committed Catholic, you have held various positions in church organisations. You are a recognised expert in the liturgy of the Catholic Church and are currently deputy chair of the Roman Catholic Archdiocese of Sydney Liturgical Commission. You have also been a long-standing secretary of the St Thomas More Society and the former long term president of the society, now Ambassador to the Holy See, his Excellency John McCarthy QC, sends his apologies and would have loved to have been here but he is represented here today by his wife Christine and son Fr James McCarthy.
- 16 Fluent in six languages, you are known to have the worldly perspective that comes with being well travelled, just last year fulfilling a lifelong ambition to spend Easter in Jerusalem.
- 17 Currently a director of the Opera Australia Capital Fund, your love of music, particularly opera, has stayed with you throughout your life. You were cantor of St Mary's Cathedral for some thirty years as well as holding various directorships in musical organisations. Attempts to share your love of opera with colleagues have met with mixed success. While still at

Allens, you accompanied another solicitor and senior counsel to San Francisco in the Westpac v Halabi litigation. On a free night there was a choice, watch the San Francisco Giants take on the New York Mets at Candlestick Park or attend the San Francisco Opera. Outvoted you trundled out to Candlestick Park.

18 I understand that when on holiday your preferred itineraries are similarly outvoted by your family. Your vision of an ideal holiday involving visiting a minimum of one, though preferably two, museums a day.

19 Your colleagues describe you as born to be a judge, fair, considerate and somebody who will approach each matter before you on the Bench with a sense of balance and an open mind. You are also known to be quick off the mark. Recently, when asked about how you felt about leaving the Bar you responded “It’s all happening very quickly, my car has already found itself in the judge’s car park”.

20 I am delighted to be welcoming a person of your intellect, experience and character to the role of judge to the Supreme Court of New South Wales.

21 **MR JOHN DOBSON PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

22 Whenever the Law Society receives a short lead time to prepare for a swearing-in ceremony we consider the possibility that perhaps it is a deliberate move to prevent our researchers from having time to unearth any skeletons in the cupboard but in the case of your Honour I doubt there are many to be found.

23 Indeed your Honour lives the values you espouse, values which are reflected in four key passions, your family, the law, music and the church.

24 “Be as you wish to seem” is a saying accredited to the classical Greek philosopher, Socrates. It is an adage that your Honour appeared to adopt

from the start of your legal career and indeed even before you came to the Bar, your colleagues were referring to you as Judge Kunc. When your Honour left Allen, Allen & Hemsley in 1992, the late Gaire Blunt, then senior litigation partner, predicted in his farewell speech that your Honour would become a judge.

- 25 Indeed the high regard in which you are held by your colleagues, your dedication, passion, deep knowledge of the law, your generosity of spirit charismatic and calm temperament are eminently suitable qualities for a judicial role. On behalf of the 26,000 lawyers in New South Wales it is a privilege and an honour to welcome you to the Supreme Court Bench where you join several other former colleagues of the illustrious Wentworth Chambers Eleven.
- 26 Many have described your Honour as a true “Renaissance man” a man of many talents, widely read, multi-lingual, musically gifted, a significant contributor to your community and the church, a committed and loving father of Anna and Thomas and husband to Felicity.
- 27 However, your Honour is the first to admit you were in the school library when they were handing out sporting ability. Then again, it was not something to which you aspired. To avoid actually having to play rugby, your Honour demonstrated your team spirit by creating a role for yourself as a commentator on the videos taken of these sporting events.
- 28 To quote from renowned Harvard University strategist, Professor Michael Porter “The essence of strategy is choosing what not to do”.
- 29 Perhaps your ability for intelligent opportunism was an innate characteristic but regardless your Honour revealed a precocious talent for strategic thinking. Many decades later your Honour did score a medal for skiing during a family overseas holiday. The achievement was more in the realm of Olympic swimmer Eric “the Eel” and skier Eddie “the Eagle” as it was awarded for managing to complete two ski runs in a similar slow time.

Unlike the crowd applause that these Olympians received, work colleagues proved harder to impress when you proudly exhibited your medal. It is any wonder then that your Honour chose to go antique shopping with the wives of counsel during an inter-floor cricket match at Bowral and that the closest you have come to joining the Wentworth Wombats is to wear the cricket team's tie.

30 But I digress.

31 While studying law your Honour was employed as a clerk by Paul Wells whose office in Elizabeth Street sat diagonally opposite the Law School. This location enabled frequent journeys between the office and school. Your employer judiciously allowed after-hours use of staff facilities enabling your Honour to use the word processor and photocopier to produce minutes and agendas for the arts bodies you supported.

32 In turn your Honour's knowledge of languages proved useful to your employer when you were able to act as translator in one of the more obscure modern European languages to facilitate a resolution for an unhappy family law client.

33 Post admission, your Honour joined Allen, Allen & Hemsley in 1986 where you were noted for your ability to always stay on top of your brief, working with the top guns on takeover litigation and undertaking corporate commercial matters. Your Honour was also noted for your three-piece suit and fob watch in the waistcoat pocket which continued to have pride of place until you celebrated your fiftieth birthday. It was at Allens, shortly before you went to the Bar, that your Honour first met your future wife, now partner of a large law firm in Sydney.

34 Some of your juniors at Allens recall your office in the MLC building complete with harbour views, fully lined and fully stocked floor to ceiling bookshelves, impressive ceramic pottery and a Persian rug on the floor. They also commented on how generous you were with your time and effort

in mentoring and training them, agreeing to “settle” their work while explaining why you were making changes.

- 35 It was clear even then, one said, that you would soon go to the Bar and ultimately make a great judge.
- 36 Being a man of many talents, your enthusiasm encouraged you to take the opportunity to coerce the summer clerks at Allens in staging a Christmas review wherein they were required to parody the firm partners. They were given to understand they had no choice which of course made them particularly nervous, given they had yet to receive any confirmation of employment. Your Honour of course became chief conductor and orchestrator. There was also the Christmas carol choir your Honour created to perform in the office foyer.
- 37 On at least one occasion your Honour was able to combine two great loves, music and law.
- 38 When the director resigned and infighting continued behind the scenes, the future of Australia’s world premiere of the rock opera Lindy, based on the Azaria Chamberlain case, looked tenuous. Your Honour’s in-depth musical knowledge which included a page-turn of the full score, combined with your mediation talents ensured the production premiered as scheduled on 25 October 2002 at the Sydney Opera House.
- 39 As we have heard today, your Honour is a very proficient musician in your own right, a trained pianist and singer who has not only sung in and conducted choirs in churches but taken director roles with the Australian Opera and the Ballet Orchestra.
- 40 Like his father before him, young Thomas has been singing with the Australian Opera Children’s Choir most recently in a production of La Boheme. While perhaps not having the numbers of the famous Von Trapp family, the ‘Von Kunc’ members certainly enjoy the sound of music

with both your wife, Felicity and daughter Anna being competent flautists and your son playing double bass. Both children also share your Honour's love of languages.

41 Many community members and those in the legal profession have enjoyed your Honour's roles as a cantor and reader at St Mary's Cathedral, particularly at the annual Red Mass for the opening of Law Term and in the choir at The Sacred Heart, Mosman.

42 Members of the local congregation have described your Honour as having the most amazing voice, a very engaging and warm manner and the ability to mix with people from all walks of life.

43 And what better indication of a loving and adored father is there than to witness two teenage children who at an age where many would rather pretend their parents did not exist are not embarrassed to have their father in public.

44 I know your family are extremely proud of your achievements, none more so than your mother Lidia who will shortly be able to share in this celebration via video. This is a very exciting stage of your Honour's career, a role to which you have aspired and held in great esteem for a long time and one to which you are eminently qualified.

45 Your Honour's future has become your present. With apologies to Gilbert and Sullivan, today you became "A judge and a good judge too". The solicitors of New South Wales wish you every success at the Bench.

46 As the Court pleases.

47 **KUNC J:** Your Excellency Professor Marie Bashir, Governor of New South Wales, Chief Justice Bathurst, Your Eminence Cardinal Pell, present and past justices of the High Court, this Court, the Land and Environment Court, Federal Court, District Court and other jurisdictions, Mr

Attorney, Mr Dobson, other distinguished guests, fellow members of the legal profession, friends all.

48 Thank you for the honour which you do the Court and incidentally to me by your presence here today. Chief Justice, thank you for your welcome. Through you, I would like to express my gratitude to the Principal Registrar, Ms Murphy, the Support Services Manager, Mr Sanderson-Gough and the various IT, Court and Sheriff's personnel who have helped me with great professionalism, efficiency and courtesy in my transition to membership of the Court today.

49 Without any disrespect to the many other distinguished guests, I wish particularly to acknowledge two community leaders with us here today. For anyone like myself embarking on public service, there is no better and possibly unsurpassable exemplar than her Excellency the Governor. If I may say so, the dignity, intelligence and humanity you bring to your role, which I have had the good fortune to see at close hand on many occasions, is something for which the citizens of this State are truly grateful. It is very special for me and my family that your Excellency has made the time to be here today.

50 I also wish to acknowledge the presence of His Eminence Cardinal Pell, who I have been privileged to come to know well since he slipped the surly bonds of Melbourne some twelve years ago. I regret to say that the good Cardinal's acceptance of my invitation did spark one Phillip Street rumour, originated by either or both of Poulos or Maconachie that His Eminence was to be supervising the operation of a small portable stove that would emit white smoke during the course of this ceremony. Of course the OH&S laws make that quite impossible, demonstrating yet again their eccentric grasp of the law.

51 There have been a number of ceremonies such as this in the last few weeks in various jurisdictions. Like many of you, I have been to a lot of these in twenty one years at the Bar. I hope you will be charitable when

the inevitable post mortems of this morning take place in the lifts as you go back about your business. I think I was pretty charitable in my analyses over the years and as the Attorney and Mr Dobson have finished, it is now too late for anyone to say otherwise.

52 Nevertheless, I have wondered what might be done to make these events more entertaining than they already are, if that be possible. I canvassed some colleagues for their ideas. One suggested a sort of judicial Mexican wave as the new judge is greeted by the Chief Justice. Another thought the judges holding up score cards after each of the speeches might spice things up. Personally in this Benjamin Britten centenary year I was very tempted by George Palmer's kind offer to set my speech as a Serenade for Judge, Horn and Strings. Finally, I have to inform members of the Bar Choir here present that contrary to an email that circulated the other day, if Justice Hidden scratches his nose they are not to leap from their seats and start singing the Hallelujah Chorus.

53 But funny things happen on the way to the Bench and sitting here now all thought of reform of these rituals has passed from my consciousness. Like Cardinal Newman's Gerontius "Tis this new feeling never felt before". The visceral, if not quite ontological urge, has seized me to adhere strictly and completely to precedent. I feel constrained to say only what must be said and no more. And above all else my new prime directive is to avoid anxious parades of knowledge at all costs. I now realise that the form of this ceremony is beyond improvement. In particular where I was once concerned that the multiplication of speeches risked repetition, I found the laudatory effusions of today's distinguished speakers to be entirely pleasing and, quite possibly, a little short.

54 So you can all relax (I am not going to sing) or at least disguise your disappointment in the knowledge that I will now proceed in the traditional way to thank the many people, without whose help and support, I would never have got here. Please note, however, that I have made no such promise of orthodoxy to Philip Selth in relation to my 15 bobber.

- 55 Some things run too deep for words. I would embarrass myself and you if I did more than acknowledge the role of my parents especially my mother. My family and I are grateful that the ceremony can be recorded for her to watch later.
- 56 In a phrase which I first heard fall in this place from the newly-minted Justice Joe Campbell, whose ceremonial robes I am very proud to have inherited, I thank my wife and children for their qualified support, qualified in the best way possible. Whenever there has been any threat of my getting too mired in my work, other commitments or just my own ego, they call me back to what really matters with merciless efficiency. I have no doubt that will continue.
- 57 Felicity and I have been married for twenty years this year and she is everything to me. But what I must here record is my humble admiration for her capacity to multitask that I would challenge anyone, including any other women, to emulate. As has been mentioned, she is one of the country's foremost planning and environment solicitors, with all the demands of being a partner in an international law firm. She is also a gourmet cook, loving mother, wonderful wife, efficient manager, skilled flautist and demon competition tennis player who rightly reminds me that more often than not having me around just adds organising a third child to her burdens.
- 58 I am immensely proud of our children, Anna and Thomas. Being part of their journey into adulthood is one of the greatest gifts ever afforded to me. Their tolerance of a non-sporting, old-worldly and otherwise completely unfashionable father is as remarkable as it is precious to me. They have taken this latest development in my career in their stride. Thomas expressed some disappointment that my judicial regalia no longer included a black cap. I did ask Acting Justice Young when it might be that a judge sitting in Chancery or Equity last pronounced a capital sentence. His Honour, typically, instantly responded with a reference to a fifteenth or

sixteenth century authority which is the last recorded time when a springing use ran amok against a remainder interest in a corporeal hereditament which required the sentence to be pronounced.

- 59 Anna, on the other hand, like her mother has taken all this in her stride. She once paid me the highest compliment and it did not come upon my appointment as a judge. She will not mind me telling this story. When I started working with Layne Beachley in her Foundation I said to Anna what would she think if I had the opportunity of arranging for her to have a surfing lesson with Layne Beachley and she looked at me and she said "Dad if you can do that, you'd be almost cool". That is the highest praise I could ever expect from her.
- 60 Mention has been made of my attendance at Sydney Grammar School of which the Attorney is ex-officio a trustee. I can say with absolute certainty that I would not have achieved whatever I may have achieved in life without the remarkable education I received there. It was, to put it politely, a source of puzzlement to my debating opponents from the great Catholic GPS schools that they should find themselves opposed to a co-religionist. But there is a deep wisdom which I found entirely congenial in a school which by its constituent Act of Parliament is said to be founded for the better establishment of religion, is expressly non-denominational and has as its motto "Praise to God". As Dr Johnson wrote in *Rasselas* "Inconsistencies cannot both be right but imputed to man they may both be true".
- 61 I am grateful that the current headmaster Dr Vallance is here today. Also present is my Form 1 Master and friend John Sheldon. John introduced me to the glories of the Latin language and taught me debating in his capacity as Master in Charge of LSD, Lower School Debating, in case you were wondering.
- 62 Mr Dobson I thank you for your heavy gilding of the lily and expression of good wishes on behalf of the solicitors of this State. I count myself very

fortunate that as an office boy, rego clerk and then solicitor I worked in both small firms and a very large one. I very much enjoyed my time as a solicitor. Coming to the Court reunites me with two of my former employers at Allen, Allen & Hemsley, as it then was, Justice Ball and Justice of Appeal Barrett. After a gap of nearly a quarter century I can again look forward to Justice Barrett reviewing my work.

- 63 I started my life at Allens as his Honour's summer clerk and then worked closely with him as a junior solicitor. Perhaps appropriately for a future equity judge, I spent my clerkship at a small card table in the corner of his office under the shade of a large potted palm, the fronds of which I had to part whenever he wanted to talk to me. I also have to acknowledge, as has been mentioned, that the greatest gift Allens gave me was the introduction to Felicity who I met a few months before I left to come to the Bar.
- 64 At the Bar I had the chance to work with many outstanding solicitors from firms large and small, from the city and the country. There are some here today who briefed me throughout my career, became good friends and in some cases have travelled considerable distances to be here. They know who they are. My experience both as a solicitor and working with solicitors is that the State is more than well served by the skill, dedication and integrity of the solicitor's branch of the profession. This Court depends upon that as much as the community does. I am most grateful Mr Dobson for the sentiments you have expressed on their behalf.
- 65 Mr Attorney, thank you for your remarks on behalf of the Bar. Despite having known each other a very long time you deployed nothing of your knowledge of me which you gained from personal observation, I shall be forever grateful to you for your restraint. Having been good enough to recommend my appointment to the Court, I can only ask if it is too much to hope that you will one day accord me the ultimate accolade of providing backing vocals for your highly successful group, "The Tokens".

- 66 My professional good fortune certainly continued in spades when I came to the Bar. Throughout my career I practiced on the Eleventh Floor under the guidance and friendship of the legendary Paul Daley. The only non-Eleventh Floor component in my life at the Bar at that stage was my pupil master, Malcolm Oakes, to whom I am tremendously grateful and am very proud to be the first of his pupils to be appointed to the Bench. There will no doubt be others.
- 67 I will not even try to articulate what being on the Eleventh Floor has meant to me. I arrived there single, although assiduously courting Felicity, and still living at home. One does a lot of living in twenty one years. Deep friendships are formed, joys and successes shared, tragedies and vicissitudes endured. Every member of that floor, including its newest recruits, holds a very special place in my heart.
- 68 However, I do want to acknowledge that one of the secrets of the success of the Eleventh Floor is its staff, many of whom were there when I arrived. I will never forget the friendship and support of Anne Deighton, Melinda Morris, Mandy Allen and librarian, Janelle Moser. My good luck has continued in that Mary Boneham, who I first met at Allens and who then serendipitously came to the Eleventh Floor, has come with me to the Court as my Associate.
- 69 So much for my legal career. I am very appreciative that many of my friends and colleagues from outside the law have taken the trouble to be here today. As you may have gathered from the generous speeches we have heard, my life has been tremendously enriched by having the opportunity to contribute to activities where most of the people I meet are not lawyers. I have got far more out of such things than I have put in. For today's purposes I would like to highlight two.
- 70 For more than ten years I had the chance to work very closely with the late David Clarke, Executive Chairman of Macquarie Bank, in the interests of Opera Australia. For a company lawyer like me it was a huge privilege to

encounter someone like David who demonstrated that a strong moral compass, profound respect for the law, dedication to public benefit, entrepreneurship and humility could all work together for the public good. If I know anything about best practice in the operation of corporate boards or how to chair a meeting, I learnt it from David and I am very pleased to be able to say these things today in the presence of Jane Clarke.

71 In a complete change of pace from my other pursuits, I have more recently become involved in the work of Layne Beachley's Aim for the Stars Foundation. Last year we received 600 applications from girls and young women from all around Australia seeking support in fields as varied as horse riding, biology and classical music. Their stories are a reminder that the work of ensuring that people of talent and dedication get a chance to achieve their goals in the face of financial and educational challenges is far from over. This Courtroom is filled with people I know who work hard in the interests of others outside of their daily vocation. Most of us here have been very fortunate in one way or another, but forgive me if I use this occasion to reinforce the need for the legal profession to continue to build upon its already strong tradition of giving back to the community we are privileged to serve.

72 When my parents became Australian citizens, I believe in the 1950s, they each received a copy of the King James version of the Bible with a picture of the Queen inside the front cover. It would be wrong to think of that gift as the quaint or risible gesture of a politically incorrect or naïve era. It meant a great deal to them precisely because it symbolised, particularly in the person of the Sovereign, the stable institutions of government and respect for the rule of law which drew them, and hundreds of thousands like them, to a country like Australia. Because of the generally fortunate times in which we live, there may be a temptation to take the rule of law and the integrity of our institutions, of which this Court is one of the greatest examples, for granted. The stories of my parents, their contemporaries and others who continue to arrive on our shores, remind us that we should resist that temptation at all costs.

73 I am deeply grateful that each of you has taken the time to be here today. But quite apart from the courtesy you have shown me, I hope that this morning provides a small opportunity to remind ourselves of the trust reposed in our profession in the due administration of justice. I greatly look forward to playing my part as the newest custodian of the responsibilities vested in this Court and will endeavour to do so to the very best of my abilities. Thank you to each of you for being part of today.
