

Swearing in Ceremony of The Honourable Peter David McClellan QC

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND JUDGES OF THE SUPREME COURT

TUESDAY, 30 JANUARY 2001

SWEARING IN CEREMONY OF THE HONOURABLE PETER DAVID McCLELLAN QC AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 McCLELLAN 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.

2 SPIGELMAN CJ: Thank you, Justice McClellan. Would you please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read.)

Justice McClellan, I ask you now to rise and take the oaths of office, first the oath of allegiance and then the judicial oath.

(Oaths of Office taken.)

Prothonotary, I hand to you the oaths to be placed amongst the Court's archives. Sheriff, I hand to you the Bible so you may have the customary inscription inserted in it in order that it may then be presented to Justice McClellan as a memento of the occasion.

On behalf of the Judges of this Court and on my own behalf, I wish you a warm welcome to this Bench. As we will hear presently, your Honour comes to this Court after many years of achievement at the highest levels at the Bar. Your Honour has a record of public service second to none at the Bar, which will long continue. I look forward to years of such service with you on the Bench.

3 THE HONOURABLE R J DEBUS MP, ATTORNEY GENERAL OF NEW SOUTH WALES: May it please the Court. Your Honour, as Attorney General, and on behalf of the New South Wales Bar, it is my great pleasure to have the opportunity this morning to express my sincere congratulations and to speak on the occasion of your elevation to the Supreme Court Bench. The news of your appointment has aroused much enthusiasm amongst all of those within the profession to whom I have spoken.

Your Honour brings to the Bench a wealth of experience as a committed and active legal practitioner. The contribution you have made to the law and society during your career provides a most appropriate background to equip you for the challenges of your new position.

After completing your school education at Normanhurst Boys High School, you undertook studies in Arts and Law at the University of Sydney and you were admitted to practice in 1975. Your skill and reputation as a distinguished member of the Bar led to your appointment as Queen's Counsel in 1985.

During that extensive career at the Bar, your Honour was actively involved in the work of several important inquiries, including the Royal Commission into British nuclear tests. You supervised the statutory review of the Sydney casino licence.

You are undoubtedly best known to the general public for your role as Chairman of the Sydney Water Inquiry, where you rapidly became an expert on Giardia and Cryptosporidium. Your cogent reports on the water crisis restored community trust in the safety of the water supply system of Sydney, and you recommended comprehensive reforms to prevent any recurrence.

Your conduct during these appointments clearly demonstrated your strong commitment to the principles of fairness and justice, and your determination to allow all parties to receive a full and fair hearing.

The contribution you made as Assistant Commissioner at the Independent Commission Against Corruption and as an Acting Judge of the District Court further demonstrated your commitment to the delivery of justice according to law and your dedication to the protection of the rights of the individual.

Your Honour developed extensive experience in the areas of environmental and local government law, and held the position of New South Wales President of the National Environmental Law Association.

Throughout your career you have shown great generosity in sharing your acquired knowledge with other practitioners. Your frequent contributions to the College of Law Continuing Legal Education Programme over the last twenty years have been truly appreciated by your legal professional colleagues.

One of your Honour's greatest achievements, as I understand, is in the area of wine production. You are a devoted vigneron with vineyards at Gulgong and Broke. I am told that most of your spare time is spent with your grapes, and it appears that your effort has been worthwhile with the Wattlebrook wine from the Broke vineyard well established and coming up for its third bottling. The wine has done well at various wine shows, recently receiving the highest honour of best wine of the show.

Your Honour would be aware that the late W C Fields had a good deal to say about the superior capacity of wine to provide for our well-being over water, but your Honour has nevertheless demonstrated a mastery of the quality of both.

Your Honour, you have shown good practical sense as well as courage in critically reviewing the law and recommending legislative reform where you have found it wanting. I trust that, as a judge, you will continue to contribute your comments on contemporary issues and bring to the discussion the understanding and compassion you have consistently shown towards people in our community.

The community does demand a great deal of the judiciary. It is expected not only to possess exemplary legal skills and intellectual capacity, but also to demonstrate integrity, cultural sensitivity and, of course, independence.

Your Honour's record of achievement shows that you possess all of those attributes.

Your commitment to the improvement of our legal system and to assisting members of the community and the legal profession is widely respected.

I offer my personal best wishes for what I am sure will be the continuation of an exciting and fulfilling career.

4 MR N MEAGHER, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES: May it please the Court. Your Honour, on behalf of the Law Society of New South Wales, may I congratulate you on your appointment to the Bench of the Supreme Court of this State.

We have already heard from the Attorney General much about your Honour's achievements. However, on behalf of the many solicitors who have briefed you and worked alongside you over the years, I would like to extend my gratitude for the contribution you have made to the legal profession and the development of law in this jurisdiction.

Solicitors who have worked with you describe your Honour as one of Australia's top lawyers. They have long admired, and relied upon, your knowledge of law, particularly your expertise in land and environment matters, and your outstanding oratorical skills. Solicitors and clients on whose behalf you have worked appreciate your economic use of words and time. As one practitioner remarked to me: "You have provided excellent value for money", a matter which clients dearly appreciate.

Your contribution to the development of land and environment law in this State is your most significant contribution to jurisprudence to date. Your pioneering and provoking counsel has resulted in improvements to key laws such as the Environmental Planning and Assessment Act.

Those who have had the pleasure of working with you and watching you in Court tell of your remarkable ability to dismantle other persons' arguments. Many times you have demonstrated an extraordinary capacity to understand and reach into the heart of a matter with such speed and accuracy that other arguments simply fell away.

While the profession and the public lose a gifted advocate with your appointment, I am pleased that the community and the Courts will have the benefit of your knowledge and skills as you assume this new responsibility.

Your Honour, on behalf of the solicitors of New South Wales, may I wish you many years of professional challenge and great satisfaction on the Bench.

If it please the Court.

5 McCLELLAN J: Chief Justice, your Honours, Attorney, ladies and gentlemen. I thank the Attorney and Mr Meagher for their kind praise. I also warmly thank all of you who have come to Court this morning.

When I was at the Law School, I could never have imagined the life which was before me. I was always attracted to the role of an advocate, but I had no appreciation of the opportunities which would be given to me to participate in so many fascinating issues, and to play a part in some major events in other people's lives. The Bar has taken me to places and allowed me to share the company of people not otherwise available to me. I was fortunate whilst still a law student that I happened to come to live near Murray Wilcox, who was kind enough to take an interest in my future as a lawyer. With his patient encouragement I learned a little about the mysteries of environmental law and a great deal about the ways of the legal profession, particularly the Bar. He has remained a dear friend and has been important to me, initially as a guide and teacher, but always as an inspiration in many of the tasks I have undertaken.

I spent only a relatively short time as a solicitor but benefited significantly from that time at Hall & Hall. The wage of a young solicitor ensured the continuing erosion of my meagre capital and, rather than suffer a gradual decline, I decided to risk it all and go to the Bar.

Murray Wilcox, who knew my limitations, decided that I needed a common law education and asked John Brownie, then the leading common law junior, to have me as his pupil. John was a wonderful pupil master, generous of his time and, as we all know, a great teacher.

In my early days at the Bar, I had access to the late Ken Hall and Brian Bannon as Clerks. After about nine months, however, I was invited to become a licensee on the sixth floor of Selborne Chambers, which was to become for more than twenty years my permanent home. The floor was then blessed, as it is today, with many great talents. It was an inspiring group of barristers, led by Michael McHugh, which I was able to draw upon for guidance. I have many good friends amongst the present and past members of the floor.

When I joined the sixth floor, Les O'Brien was the Clerk. Les had an extraordinary ability to assess the capacity of young barristers and to encourage solicitors to place what commonly seemed to me to be foolhardy confidence in them. The success I have had at the Bar is due significantly to the contribution he made to organising my professional life. Approximately four years ago I moved to chambers on the eleventh floor of St James Hall, where I joined a group of mainly younger but exceptionally talented barristers. Many of them will, I expect, be among the future leaders of the Bar.

My early days at the Bar brought many challenges but the opportunity offered to me as counsel assisting the Maralinga Royal Commission was unparalleled. It was truly the brief of a lifetime. It allowed me to examine in detail the history of a significant post-war period of Australian life in which, although the development of nuclear warfare was central, many great issues emerged. One of the most significant was the treatment of indigenous people by the authorities of the time, and the need to define an effective response in the 1980s. The cruelty shown to aboriginal people, who were rounded up and put on trains going west from Maralinga to anywhere and thereby dispossessed of their land, with their tribal and social structures destroyed, remains as but one of the legacies of that era of Australian life. The anger expressed by Jim McClelland, sitting in the dust with aborigines at Maralinga, and the recommendations of the final report, could never repair the damage done to many individuals.

The Royal Commission had many other fascinating aspects. The opportunity to work with and question some of the greatest scientists of the day, including Lord Penny, the leader of the British expedition, would be allowed to few people. I also came to know mark Oliphant, truly a great scientific mind and blessed with an unusual insight into the human condition.

I learned many things from the Commission, not limited to the events requiring investigation. I was exposed for the first time to the political process, both national and international. Jim McClelland, a dashing figure with an acerbic tongue, well understood the role which publicity could play in achieving effective outcomes for the Commission. I maintain a vivid recollection of drafting an opening statement for him when we sat in

Brisbane, gently chiding the British government for its reluctance to provide classified documents from its archives. The reluctance, I later learned, was based on Jim's former active sympathy for the revolutionary ideals of Leon Trotsky. The Judge manifestly disagreed with my gentleness and, tearing up the draft, prepared a stinging attack, not only on the government of Margaret Thatcher but on the whole notion of the British empire. To ensure his statement would not go unnoticed, he finished by remarking on Henry VIII's matrimonial difficulties.

There have, of course, been many other issues which I have been fortunate to become involved with since Maralinga. Perhaps the most significant has been the problems we, as a community, have experienced in defining the role of water in the natural environment, and the difficulties in Australia, as with all developed and developing countries, in identifying appropriate principles for its use. The greenhouse issues are, without question, significant, and the subject of regular discussion in the press, but I believe that the effective use of water may be of equal significance. We may have difficulty with surviving global warming, but we cannot survive without access to adequate and safe water.

Many of the issues have arisen within the limitations of formal litigation, where the resolution of the individual problem will not always reflect an appropriate community outcome. For this reason I have welcomed the opportunities provided to me to participate in a range of inquiries dealing with matters as diverse as safety in domestic swimming pools and public sector corruption.

Although a critic of some of the early actions of the Independent Commission Against Corruption, I was invited by Ian Temby to contribute to its development as Assistant Commissioner. I learned a great deal from Ian about effective investigation.

Since my time at the Independent Commission Against Corruption, I have been retained to undertake investigations into a number of controversies. With the assistance of the many able people working with me, we evolved a method of inquiry which, although taxing of personal and professional resources, generally achieved an efficient resolution of the issues. Based upon a conferencing procedure with directed discussion, I believe the method, refined to meet the particular situation, can prove extremely useful, if not for the whole, at least for some portion of future inquiries. I adopted this method for the Sydney Water Inquiry, even when it involved the use of Royal Commission powers. In recent years I have had the opportunity to advise and represent many government agencies. Because of the broad range of issues to which government must respond in a rapidly changing political and social environment, it became an interesting and stimulating component of my practice. I formed an immense regard for the many senior administrators with whom I had contact, and thank them for the opportunity to understand and participate in the resolution of some of the issues with which they must deal.

My work within the Land and Environment Court has provided me with an opportunity to participate in many debates about the appropriate form of our natural and built environments. It is possible, given their confinement within the processes of litigation, to diminish the importance of the issues litigated in that Court. The reality is that more people have direct or indirect contact with the Court and its decisions than any other in the State, apart, perhaps, regrettably, from the Family Court. Individual developments may involve the expenditure of vast capital sums and often have direct and indirect impact upon a great many people.

Some years ago I was asked to appear for the wine company, Rosemount Estate, in a battle it was having to save some of its vineyards from the impact of coal mining in the Upper Hunter Valley. As many of you know, Rosemount litigated on various fronts, although, always, it seemed, as ultimately proved to be the case, against the odds. The experience was, as many forensic tasks are, both exhilarating and heartbreaking, but these events were to bring some special qualities to my life.

Although for many years I had contemplated developing a vineyard, I, like so many of us, had no idea how to even commence such a project. Encouraged initially by Sandy Oatley, but with inspiration from Bob Oatley and advice from Chris Hancock, we ventured down a path which has proved a fascinating and absorbing interest away from the law. I take this opportunity to express my thanks to Bob Oatley, his family and the wider Rosemount family.

For a barrister to succeed, he must have the support of the solicitors' branch of the profession. In this respect I have been fortunate in the many solicitors who have placed their confidence in me over the years. Many of them have retained me since my early days at the Bar and I am blessed by the friendships I have made amongst them. I have already mentioned the part played by Les O'Brien in the development of my practice. Equally important has been the contribution of my various secretaries, two of

whom I should personally mention. Julie Ormachea and June Foster have given me unstintingly of their considerable talents, each for a number of years. Julie left to have children and June says, although I have some doubts, that she will now reduce her working hours.

A busy life at the Bar does not come without burdens to the barrister's family. Only those who have shared that life can understand the sacrifices which must be made. To my children, Nick, Jo, Jack and Will, and my wife, Sue, I cannot adequately express my appreciation. Thank you.

My opportunity to practice law at all came from the education, stimulation and support I received both at home and at school. I am immensely pleased that my parents, Elaine and Mac, who provided me with the opportunity, are here today to share this occasion. I am aware, in accepting this appointment, that I will be asked to decide cases in some areas where I have not extensively practised. Although comforted by statements of assurance from others - I hope not misplaced - I am nevertheless conscious of the trust placed in me and the challenges I face. Thank you.

6 SPIGELMAN CJ: The Court will now adjourn.