

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

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

Friday 16 August 2013

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE ROWAN JAMES HUNTER DARKE SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **DARKE 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 Darke on behalf of all members of the Court, welcome, we are delighted you have agreed to join us. We hope you have a long and happy association with the Court.

- 3 **MS JANE NEEDHAM SC SENIOR VICE PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** May it please the Court. I welcome this opportunity to speak on behalf of the barristers of New South Wales. The President of the Bar Association, Phillip Boulten SC, is unable to attend, but he has asked me to congratulate the Attorney General for making such an astute appointment and to convey his best wishes to you, Justice Darke.

- 4 Having said that, some members of the bar are a little surprised at your appointment. Your Honour is renowned for being such a frugal person.

Indeed, when you purchased new carpet for your chambers with a pattern described by some as “functional”, rumours of your impending appointment were as good as scotched. Opinion is now divided evenly as to whether this was merely out of character or part of an elaborate ruse by your Honour to foil the Bar rumour mill.

- 5 Your Honour was born and raised in Bathurst. Your parents were both school teachers, regarded highly by all in the local community. You studied economics and law at the University of Sydney and lived at Wesley College, I am told in company with the Hon Justice Richard Button. It was there that you played second grade rugby league for Sydney University coached by the then principal solicitor at the Aboriginal Legal Service, Stephen Norrish, now Judge Norrish SC of the District Court. When asked about your skill on the wing, his Honour describes you as “lithe and elegant, quick on his feet and courageous” and “he never questioned the coach’s judgment and was definitely the soberest person in all five grades”, all of which are of course fine qualities for a judge to have.
- 6 You graduated with a Bachelor of Economics and a Bachelor of Laws in 1985. Your Honour served as associate to the Hon Justice Lockhart and during the long-running matter of State Bank of New South Wales v Commonwealth Savings Bank of Australia, you saw many luminaries at the bar table, such as Handley QC, Hulme QC, Gaudron QC and later Chief Justices Allsop and Spigelman. Your Honour did not seek admission as a solicitor, but instead came directly to the New South Wales Bar and commenced practice in September 1986.
- 7 Your Honour read with Dyson Heydon and Paul Donohoe, as they then were. As one member of your floor put it succinctly, Dyson Heydon does not dispense compliments lightly, but he has nothing but praise for your Honour. In 1987 you took a room on what is now the Tenth Floor of Selborne Wentworth and remained there until your appointment to the Court. Your principal areas of practice were commercial, equity, insurance and trade practices law, as well as professional negligence, but you were

always regarded as a versatile advocate. When, for example, a personal injury or workers compensation case was passed to you at late notice, you handled it with aplomb. In court you were always efficient, polite and courteous to the bench, opponents and witnesses alike.

- 8 Your Honour took silk in 2001. Your knowledge of the law is matched only by your remarkable efficiency both in and out of court. You have been compared to a Swiss watch, that is to say, precise, reliable and durable. For as long as anyone on 10 Wentworth Selborne can remember, each morning your Honour has caught the 377 bus from South Coogee at 5.30am and opened your chambers' door at 5.55am. As a silk on your floor has said:

“Your Honour’s ability to attend to all chamber work within promised times, to give concise, legally precise and commercially sensible advice to solicitors and clients from behind an impossibly tidy desk and in a courteous and polite manner, has been a boon to his solicitors and clients”.

- 9 It is not uncommon for your colleagues to remark that your Honour never seems to age. That could be attributed to your enthusiasm for exercise which at one stage included going for regular runs with Jeremy Stoljar who, as one of your former Readers, was required to give the appearance of being slightly slower than your Honour.
- 10 Your Honour is said to be a cautious consumer rather than an early adopter, preferring to wait for early trends to plateau before rushing in. The mobile phone is one such innovation. Your Honour is a devotee of American politics and history. You have firm convictions about domestic politics and for a time you were a regular contributor to the Sydney Morning Herald's letters column, although it must be said that you were nowhere near as prolific nor as whimsical as David Ash.
- 11 If your Honour can be said to have a weakness it is for your beloved South Sydney Rugby League team. It didn't escape the attention of your

colleagues that you tend to use the royal plural “we” as a sign of deep and abiding commitment to the Rabbitohs. I am told this commitment became expressed by an involvement on a generously pro bono basis in the South Sydney litigation. I am told that this is a passion that has been passed on to the next generation. As a then 7 year old standing at your side at Homebush on a pouring wet and cold Friday night watching the Rabbitohs, your daughter is said to have looked around at the dismal empty stadium, the dismal weather, the dismal scoreboard and then up at her father’s hopeful face and said “Dad, we’re diehards aren’t we”. When the Cardinal and Myrtle were dumped from the league your Honour is said to have cancelled your Foxtel subscription.

- 12 Your Honour has always shared generously your time and expertise for the benefit of the profession and the wider community. The door has always been open to junior members of the floor who sought your professional advice. You were a director of the South Eastern Sydney Area Health Service and chaired its audit committee. In 2001 your Honour was the Bar Association’s representative on Terry Sheahan’s committee for the review of workers compensation in New South Wales. As often seems to be the case, the result was a radical restriction of the rights of injured workers but the view among senior members of the common law bar at the time was that the experience would have been worse were it not for the presence on the committee of someone of your Honour’s calibre.
- 13 More recently in September 2011 you joined the board of the Barristers Sickness and Accident Fund, now BarCover, and with your knowledge of insurance law you are regarded highly for having made a tremendous contribution to the modernisation of the fund.
- 14 Justice Darke, you bring to the bench of this honourable Court more than twenty five years of experience in the law and the bar is satisfied that you are admirably suited for the role which you are about to assume. The community has been well served. May it please the Court.

- 15 **MR JOHN DOBSON PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May the Court please. When RAAF Flying Officer Roy Darke returned home after serving in World War 2 Battle of Britain, he had two main ambitions.
- 16 One was to facilitate a more stable and nurturing environment for young people and to increase their access to educational opportunities and learning experiences. This he did through teaching.
- 17 His other ambition was to read at the Bar. It was a pact he had made with Flight Lieutenant Roy Woodman and Pilot Officer Bruce Moore that if they survived they would not only go to the Bar, they would set up in partnership together.
- 18 The late Professor Roy Woodman taught generations of young law students at Sydney University Law School; the late Bruce Fraser Moore also went into practice. Sadly, Roy was unable to fulfil this ambition.
- 19 One can only imagine his pride if he were able to be here today to witness his son's success, not only reading at the Bar and taking Silk in 2001 but joining the judiciary in the State's highest court.
- 20 It is a proud and happy occasion also for your mother June who has travelled down from Bathurst to be here, your sister Jennifer, wife Lisa and children Madeline and Henry.
- 21 On behalf of the Law Society of New South Wales and the twenty-six thousand solicitors of this State, it is a privilege to extend my congratulations and well wishes on your Honour's appointment to the bench.
- 22 As we have heard, your Honour grew up in Bathurst in the house your father built because there were no builders available at that time. Politics and sport were dominant topics around the dinner table, interests that

have endured and in some cases become fanatical. Some children might have found it a bit daunting to have both parents as teachers, but your Honour obviously thrived as did your sister Jennifer who also took up teaching and recently retired as the principal of Yass Public School.

23 Your mother was head teacher of languages at Bathurst High School when your Honour began your secondary schooling there. Prior to that time your late father was the mathematics master at Bathurst High School.

24 Not only did you top the year coming into secondary school, you blitzed it again in your first year. Such was the impact, you later confided that you didn't want to come top again because you 'couldn't be bothered with the stir' and you were true to your word, you didn't.

25 However, you continued to excel particularly in commerce and mathematics and I believe you were also school captain in your final year. You proved to be a very capable athlete and league player.

26 In the latter sport you had plenty of opportunities to witness the professionals and to take your cues from the Rabbitohs, a team you have religiously supported throughout your teenage years and adult years. That includes campaigning to have South Sydney reinstated in the competition when they were dropped in 1999 on the premise that there were too many Sydney based teams. One trusts that your Honour will not see the need to adopt the recent tactics of one of their players to mete out justice.

27 One of your university contemporaries and now Bench colleague, Justice Button, remarked at his own swearing-in ceremony last year that some people might be surprised that he became a lawyer, let alone a judge as the high spirits he enjoyed at the Wesley Campus saw him quickly shed his perceived "library nerd" persona.

28 While your Honour shared digs with Justice Button, and I don't intend to tell tales out of school, I do have it on good authority that you were never

distracted to the extent that you would jeopardise your study regime, that is apart from when you met your wife to be, Lisa, also a Wesley student at a party in Glebe.

- 29 Working at the university's Grandstand bar, enabled you to combine several sports close to your heart. Your Honour's activities included cricket and rugby league but being mindful of the fact that there was a fair chance you could wind up in casualty, the last item of your gear to be packed into your sports bag was always your Medicare card.
- 30 Such was your league agility in playing wing, centre or full-back you gained the nickname "utility back".
- 31 It is still heard around chambers today and one colleague remarked that as a barrister you exhibited similar skills in being able to turn your hand to any matter.
- 32 As earlier noted your Honour spent a year as the Associate to Federal Court Justice Lockhart. You went straight to the Bar and came under the excellent mentorship of former High Court Justice, the Hon Dyson Heydon AC QC and Paul Donohoe on the Eleventh Floor.
- 33 When the Law Society's researcher contacted 10 Selborne Chambers for information the first comment they received was akin to a wail "They always take the good ones and it is so sad, Rowan is just one of the loveliest human beings you would ever meet. He has a delightful temperament and will make an excellent judge".
- 34 As a member of the judiciary, there may be one significant change you will have to seriously consider, a change that flies in the face of a true Renaissance man and that is to embrace technology and buy your very first mobile phone.

- 35 Reputed to be a man of great application and dedication, your Honour's main practice has been generally equity work with a focus on insurance cover and professional negligence claims.
- 36 Your Honour has appeared in the Court of Appeal, Supreme Court, Federal Court and High Court, the most recent being the successful appeal before the High Court in relation to personal injuries damages in the case of *Certain Underwriters at Lloyds v Cross* in which your Honour represented the appellants.
- 37 As the years have gone by, some of your sporting activities have been curtailed due to wear and tear. It's been a while since you have been seen jogging around Centennial Park or the Domain and Mrs Macquarie's Chair with chamber colleague Lachlan Giles bringing up the rear. It doesn't seem to have slowed you down as far as skiing in Europe or participating in inter-floor cricket matches.
- 38 Your family also shares your love of sporting activities and your Honour is a keen supporter. Wife Lisa is into running and tennis, Maddie is a promising cricketer, Henry has taken up rugby league and both children are strong South Sydney supporters – I doubt they dare show any other allegiance. I am not sure if they would have yet formed an opinion as to whether they support your Honour's preference for the more progressive side of politics.
- 39 There is probably only one celebration that could eclipse this morning's ceremony and that is if the beloved Rabbitohs succeed in knocking off the Sea Eagles tonight at Bluetongue Stadium. And who knows in the weeks to come, the Roosters may be forced to stop crowing.
- 40 Your Honour the solicitors of New South Wales wish you well in your new role on the Bench. As the Court pleases.

- 41 **DARKE J:** Chief Justice, your Honours, members of the profession, family and friends, I am deeply honoured to join this venerable institution. This Court is not only the oldest in Australia, it enjoys the very highest of reputations, one built upon the hard work and skill of so many fine lawyers. I will endeavour to live up to the standard expected of this Court.
- 42 I want to thank everyone present for taking the trouble to witness today's ceremony. It is greatly appreciated. I want to particularly thank you, Ms Needham, and you Mr Dobson, for your very kind words. You have both remained true to the tradition that on these occasions the picture painted of the new judge is a somewhat rosy one, but I make no complaint about that.
- 43 Also in keeping with tradition I wish to reflect a little upon the course which has brought me to this point and to acknowledge some debts of gratitude. As has been mentioned I went to school in Bathurst before attending the University of Sydney. I received an excellent education at Bathurst High which prepared me well for university life which I enjoyed immensely. When that agreeable period came to an end I was unsure about whether to pursue a career in the law and had given no thought whatsoever to the possibility of becoming a barrister.
- 44 I was lucky enough to secure a position for twelve months as associate to Justice Lockhart of the Federal Court. This was a wonderful experience for me. Justice Lockhart was indeed a gifted man who, with apparent ease, combined a top level intellect with abundant personal charm and grace. He managed his courtroom in such a way that no matter how intense the controversy, civility always prevailed. Towards the end of my time with him he suggested that I should think about going to the Bar. I had not taken any steps to find employment and the counsel I had seen in action, such as Ken Handley, appeared to do it with ease so I decided I would give it a go.

- 45 I managed to obtain an interview for the Eleventh Floor. The interview seemed to go quite well although as I recall it most of the talking was done not by me but by a senior junior on the floor by the name of Maconachie. At any rate, I was told that I could “float” on the floor. I remain to this day very grateful for being given that opportunity.
- 46 I arrived at the Bar as a young and single man burdened only by a truly enormous lack of experience. As has been mentioned, Paul Donohoe and Dyson Heydon agreed to be my tutors, or masters as the position was then known. I spent a lot of time in Paul Donohoe’s chambers in my Reader’s year. Despite the considerable demands of his practice he gave up many hours to instruct me on all aspects of “How to be a Barrister”. There was a strong emphasis on ethical rules and the courtesies of the profession. He was also very strong on *Browne v Dunn* and making sure affidavits were in admissible form. At the end of a long day there was often champagne. I was only one of many young barristers to have had the great benefit of Paul’s tutelage. His untimely passing in 2001 was keenly felt by all of us.
- 47 As a Reader I didn’t see so much of Dyson Heydon. That was entirely my fault and my loss. Although exceptionally busy, he was always available early in the mornings but that was well before I became an early riser. I am glad to say that I subsequently had the privilege to work with Dyson on a few cases. I greatly enjoyed those occasions, not least due to his incisive observations upon the attributes of opposing counsel, instructing solicitors and especially judicial officers.
- 48 At the end of my Reader’s year I became a member of the 10th Floor of Selborne as a somewhat inadequate replacement for James Allsop. Again, I remain extremely grateful for the opportunity given to me. In my early years there I learnt so much from the leaders of the Floor, Roger Gyles, Brian Rayment and the late David Officer, and later from Tom Jucovic and Francis Douglas. Very different styles indeed, but all extremely good barristers. More importantly the 10th Floor has been a place where I have made so many good friends. I have thoroughly

enjoyed my almost 26 years on the 10th Floor and I know that I will miss it and the Bar generally.

- 49 I am fond of saying that “the Bar is not for everyone”. There are undoubted stresses and strains involved. There is fierce competition. Yet it gives to each of its members an independence which is truly rare in today’s world. That is something to cherish.
- 50 I wish to acknowledge the considerable support given to me over the years by the many solicitors who have briefed me. I thank you all. Although I never practised as a solicitor, I do appreciate that good solicitors are of vital importance to the effective running of litigation. I was very lucky in this respect.
- 51 I also wish to acknowledge my clerks, especially Paul Daley, David Griffiths and Trish Hoff in the early years and also Margaret McLennan and Di Strathdee who has been my clerk for the last nine years. She is a great asset to the 10th Floor, an excellent clerk and wonderful person. Thank you for looking after me.
- 52 Finally, I want to express my deep gratitude to my family for the great support they have given. My wife, Lisa, is here today together with our children, Madeleine and Henry. In my absences during the working week Lisa manages the affairs of the family with ruthless efficiency. She is a very talented person, utterly devoted to the upbringing of our children. She gives her time more than generously to a great number of school and sporting activities, yet somehow finds the time on top of that to volunteer for community and charitable causes as well. Lisa, I am truly indebted to you. At a practical level your efforts have made it so much easier for me to pursue my profession, but above all else, having a loving family to return to in the evenings is, to me, priceless.
- 53 Also present today is my dear sister Jenny and our mother June, to whom we both owe so much. After our father Roy died, far too young in 1972,

June was left to carry the burden of our upbringing. The support and encouragement she gave to us was boundless. She instilled in us, by her own example, the virtues of hard work and good citizenship. We could not have asked for more. Thank you for everything.

54 Now it is time to go back to work. By that I mean it is time for all of you to go back to work. Justice Bergin has kindly given me some time off today, but I will be in court on Monday doing my best to discharge my new responsibilities.
