

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

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

**Wednesday 30 January 2008**

**SWEARING-IN CEREMONY OF  
THE HONOURABLE LUCY McCALLUM  
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **McCALLUM 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 McCallum. Please be seated whilst your Commission is read. Principal Registrar, please read the Commission.

(Commission read)

Justice McCallum, I ask you to please rise and take the affirmations of office. First the affirmation of allegiance and then the judicial affirmation.

(Affirmations of Office taken)

Principal Registrar, I hand to you the affirmation so that it may be placed amongst the records of the Court.

- 3 Justice McCallum, on behalf of the judges of the Court and on my personal behalf, I congratulate you on your appointment and wish you a warm welcome to the Court. In an age of specialisation amongst barristers your Honour brings to the Court a practice of a particularly wide range from crime to civil to commercial matters. Your background experience will be

of great help to the Court and particularly to its commercial division and I look forward to serving with you in the years ahead.

- 4 **THE HONOURABLE JOHN HATZISTERGOS MLC ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honours, on behalf of the State of New South Wales and the Bar it is my great pleasure to congratulate your Honour on your appointment to the Bench of the Supreme Court. You bring an exceptional understanding of and passion for the practice of law in your new role. I have every confidence you will serve the people of New South Wales with the same dedication and skill that you've displayed throughout your professional life.
  
- 5 You completed your Bachelor of Arts degree at the University of New South Wales in 1983 being led by the deeply thoughtful aspect of your personality to pursue a Major in Philosophy. You graduated with a Bachelor of Laws in 1986 and you were admitted to practice later that year.
  
- 6 Your professional experience is notable for its breadth as well as your individual achievements. You started practicing with Mallesons Stephen Jaques where you were focused on commercial litigation. You then gained experience in criminal law as prosecutor in the Commonwealth Director of Public Prosecutions Office and the Queensland Director of Public Prosecutions Office. In 1991 you commenced practice as a barrister in New South Wales on the Sixth Floor at Selborne Wentworth Chambers where you remained until your appointment.
  
- 7 Since then your practice areas have expanded to include defamation, administrative law, environmental law, professional negligence, trade practices and competition law. The fact that you have maintained a highly successful, wide-ranging practice renders you very well suited to serving as a judge of this court.

- 8 Since joining the Bar you have been involved in a number of important cases and commissions of inquiry. Your involvement as counsel assisting HIH Royal Commission honed your ability to conduct an extensive and rigorous inquiry which will stand you in good stead in your new position. Incidentally, your colleagues recall that your time at the Commission was marked by both well-tuned advocacy and an impressive display of vocabulary. A large number of your peers fervently reached for dictionaries each time you rose to address the Commission. It is hoped that as a judge you will not often be compelled to deal with a gallimaufry of material. Nevertheless if you are presented with such a hotchpotch of evidence in submissions, I am confident that you will decipher it with an efficient and penetrating mind.
  
- 9 You also made an important contribution in the Special Commission of Inquiry into Medical Research and Compensation Foundation better known as the James Hardie Inquiry. You acted with Michael Slattery QC and Tiffany Wong for the Medical Compensation and Research Foundation representing asbestos victims. Together you successfully argued that James Hardie had engaged in misleading and deceptive conduct by allowing corporate reconstruction to proceed on the assumption that the foundation was fully funded.
  
- 10 As we know the Special Commission found the James Hardie Group restructure contributed in a practical sense to the funding shortfall of the Foundation. This finding was instrumental in encouraging the parties to come to the negotiating table. These negotiations have resulted in stable long term funding arrangements to provide fair compensation for victims of asbestos mesothelioma and other related conditions.
  
- 11 Even after leaving the Director of Public Prosecutions you continued to appear regularly before juries in your defamation practice. It is telling that when you were recently briefed as counsel in defamation cases your clients included a former appellant judge and many senior members of the bar. The fact that such illustrious people chose you as their advocate is

a testimony to your experience and professional reputation. When asked about your approach to your work one of your peers described you as the barristers' barrister.

- 12 You are known to be scrupulously fair in all that you do, never allowing court to be misled. At the same time your rigorous and efficient cross-examination technique, combined with a powerful courtroom presence, has earned you a formidable reputation. Your standing is such that your fellows at the Bar have known to spend a few extra hours in preparation when they discover who their opponent will be. This fusion of integrity and incisive, forceful advocacy has made you a barrister to be respected and admired.
- 13 Your excellence in the legal field was acknowledged in September 2005 when you were appointed Senior Counsel with the added distinction of being the only woman in New South Wales elevated to silk that year. Your election to the Bar Council in October 2007 demonstrates the high regard that you are held in by your peers.
- 14 You have actively lived out your belief that the law should be the servant of the underprivileged. From the beginning of your degree you volunteered as a legal assistant at the Redfern Legal Centre. Whilst still at university you help create the school's Legal Education Group for the purpose of organising law students to teach six week courses in legal rights for disadvantaged intercity schools.
- 15 In addition to your demanding schedule as a barrister you have devoted considerable portions of your personal time, including consecutive weekends, to pro bono work. You were engaged by the Public Interest Advocacy Centre to represent several refugees in immigration detention, successfully obtaining writs of habeas corpus. You have represented Greenpeace and the Environmental Defender's Office, pro bono.

- 16 This voluntary commitment of time and energy is evidence of your generosity and your passion for justice. Your actions speak for themselves as they convert your compassion into concrete results to take personal responsibility in areas where you perceive a social need. In addition to your impressive legal career you come to the bench with the benefit of having lived an energetically balanced life. More than one of your peers expressed their admiration for your ongoing pursuit of marathon running. You have run no less than five marathons including the Six Foot Track across 45 kilometres of the Blue Mountains in 2007. You also trained for six months before entering the Honolulu Marathon in 1993. It would appear your nickname, the Energiser Bunny, is well deserved. Your marathon running demonstrates your vigour and determination while your abiding interest in the physical challenge of endurance sport will keep you well grounded as you meet the challenges posed by life on the bench.
- 17 One central aspect of your life which is yet to be mentioned is your devotion to your children and your partner, Gerard Corben, a classically trained guitarist who is also a member of the band, the Lime Spiders. Lately Gerard has been playing in a band of your close friend from school, Rebecca Hancock, holding their shows at the family friendly timeslot of 5pm to allow children to participate.
- 18 You have successfully handled a demanding law practice, given your time pro bono and participated in numerous marathons while having fun playing Laser Zone with your three children. The dedication you have demonstrated in balancing the different aspects of your life is deeply commendable. Not only have you developed an enthusiastic approach to your diverse commitments but your intimate understanding of the realities of family life enhances your ability to emphasise with many different people who will appear before you.
- 19 Your family share in the honour you receive today. Your mother, Anne, imparted to you the public spiritedness that has inspired you throughout your professional life. From your late father, Professor Doug McCallum,

you inherited a keen and probing rationality. You have been enriched by the intellectual and artistic interests of your siblings: John, Peter, Bill and Kate.

20 Your Honour possesses a myriad of personal qualities that will enable you to make a valuable contribution to the judiciary of this state. You are recognised as a meticulous, well prepared, patient and hardworking professional who has a keenly developed sense of justice. Your eloquence, approachability and perspicacity will help you serve the people of this state wholeheartedly.

21 I extend to you my best wishes and congratulate you again on your well deserved appointment to the Bench.

22 May it please the Court.

23 **MR H MACKEN PRESIDENT, THE LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

24 On behalf of the solicitors of New South Wales and personally I am delighted to extend my sincere congratulations and best wishes to your Honour on your appointment to the Bench. We are really delighted.

25 Your Honour is an inspirational role model, not only for women aspiring to the Bench but for all women seeking to reach the pinnacle of their chosen profession. Your Honour has achieved this status without, in your own words, succumbing to the pressures 'that perpetuate rather than confront the workings of power'.

26 In 2005 your Honour was the sole female applicant to be awarded silk. Suffice to say this gender imbalance is slowly being redressed and the profession is seeing more women aspiring to, and achieving, elevation to the Bench.

- 27 New South Wales' court system will benefit from the depth of expertise and life experience that your Honour brings to the Bench, enhancing the diversity, equality and public confidence of the judiciary.
- 28 Your Honour would no doubt know better than I the reasons behind your parents' decision to call you Lucy but may I say that the name is particularly apt. Lucy is a derivative of the Italian, Lucia, which means 'bringer of light'. Of course your Honour's parents were 'bringers of light' in their own right. Your mother, Anne, was a social worker and your late father, Douglas, a war veteran, philosopher, and university professor of political science.
- 29 As has been mentioned, your Honour comes from a family of high achievers: your brother John, a theatre critic for The Australian and an academic at the University of New South Wales; Peter, a music critic for the Herald and an academic at Sydney University; Bill, a mathematician and academic working in Arizona; and Kate, a doctor.
- 30 Your Honour's mother has described her baby of the family as 'absolutely gorgeous' and said that rather than 'go under' competing in such a rowdy family, your Honour chose to take charge from the beginning.
- 31 These qualities were certainly part of the ethos at North Sydney Girls High School where your Honour was educated. The school's motto, Ad Altiora, towards higher things, and its mission to provide a stimulating and challenging environment for successful, high achieving girls, certainly offered your Honour many opportunities to grow. Perhaps your Honour was destined to fame as this school also spawned the likes of Nicole Kidman, Ruth Cracknell and Nancy Wake.
- 32 Your Honour's determination was evident from an early age and demonstrated when you and close friend, Rebecca Hancock were producing the school play. A teacher insisted that it be done a certain way

or she would not work with you. I believe your Honour waved her goodbye and it was 'on with the show'.

- 33 Another indication of your early drive was perhaps your reaction to the results of the 3 unit maths HSC trial paper where your Honour and Rebecca were just half a mark difference. Rebecca was overjoyed; your Honour burst into tears!
- 34 Completing your Higher School Certificate in 1980 your Honour attended the University of New South Wales achieving a Bachelor of Arts, majoring in philosophy, in 1983 before turning to the Faculty of Law.
- 35 In your final year of your Bachelor of Laws and Legal Practice degree when your Honour was President of the New South Wales University Law Students Society, you became friends with those who held similar positions at Sydney University. One of these friends was John Feneley. He has described your Honour as being 'unstoppable' and 'conscientious' and remarked you were always 'destined to succeed'.
- 36 In an aside he noted that you 'could definitely run faster than he could' and I imagine you could run faster than the majority of your colleagues! As has been noted, apart from the marathon running, that as a member of the Australian Mountain Running Association in the Six Foot Track Marathon earlier last year in Katoomba your Honour ran 45 kilometres in six hours 16 minutes and 12 seconds, an average speed of just over 8 kilometres per hour - a gruelling endurance feat which frankly makes me ill just to think about it.
- 37 Trish Henry, currently a partner at Mallesons Stephen Jaques, worked with your Honour for a short time in the Mallesons Commercial Litigation Division and later briefed you regularly at the Bar. Ms Henry recalls that your Honour was into everything at university: student legal education, law student president, law journal editing, mooted and was the 'star' of the soccer team.

- 38 Your Honour was cofounder of the Schools Legal Education Group which obtained permission from the Education Department to teach law in the schools. Other founding members were: barrister Gerard Craddock SC; Senior Lecturer in Law at Macquarie University, Simon Rice OAM; and Tony Woods, a partner at Henry Davis York. Mr Craddock shared a house with your Honour and Rebecca Hancock just across from the university.
- 39 Interestingly, all three of you have daughters named Charlotte. While Rebecca is a successful singer, your Honour's early influence on her would seem to have carried over with her as she went from fronting a band called 'Watusi Now' in the 1980s to the current 'Rebecca Hancock and the Prison Wives'.
- 40 Raising your three children, Anna, Max and Charlotte has also kept your Honour on the run. Ms Henry said your Honour had enormous energy and you were very disciplined with your time, leaving chambers to care for your children but working from home at night to ensure that matters were kept up to date. Your Honour's efficient use of time meant you could still manage to fit in a run at lunchtime.
- 41 From Mallesons your Honour moved away from commercial practice to concentrate on advocacy work working, as has been mentioned, with the DPP in Canberra and then Queensland before coming to the Bar in 1991.
- 42 From defending creators of crossword puzzles to the challenges of assisting the Royal Commission inquiring into the collapse of HIH and representing victims of the James Hardie asbestos-related matters, your Honour has still found time for pro bono work particularly in the immigration area.
- 43 Your Honour is a member of the Law Advisory Board at the University of Notre Dame's Sydney campus. I am also reliably informed that you have

a quirky habit of writing unsolicited letters of praise to those who deserve recognition.

- 44 Justice Nicholas with whom you shared secretarial resources described your Honour as 'extremely competent, meticulous and of sound judgment'. He noted that in addition, your Honour being an ardent runner - and joining you in a group that ran in Centennial Park - you were also a keen horse rider and agisted one of your four-legged friends for a while at his holiday home in the Blue Mountains.
- 45 Your Honour's early interest in horses began when you came into possession of a part Arab filly which you kept at Oxford Falls. Named 'Tehran' your fearlessness and marvellous sense of balance prevented serious accident given that the horse was not broken in for riding and shied away from vegetation, pebbles, animals and even puddles.
- 46 Justice Tobias with whom you also shared secretarial support - she was a busy secretary - admitted that he regarded your Honour as being 'one of his favourite people'; a 'bright, bubbly, focused practitioner' who 'would make a terrific judge'. Prophetic words indeed.
- 47 Both judges were quick to congratulate your Honour on a magnificent achievement in being appointed to the Bench. However they also lamented the early loss to the Bar of a potential leader and 'top class' silk.
- 48 And is there no end to your Honour's seemingly unquenchable thirst for new challenges? I hear your latest venture is in the farming arena with some of your Honour's property at Stanmore being converted into a chook run!
- 49 I know that your family, colleagues and friends are extremely proud of your Honour's elevation to the Bench, none more so than your mother, Anne.

- 50 Your Honour is in many ways reflective of a very common legal demographic. You are female and the overwhelming majority of lawyers under the age of fifty are female. You are young. The average age of lawyers is now lower than when you were admitted and getting lower every day.
- 51 You are hardworking. It is widely accepted that it is more difficult to achieve admission to a law degree and more difficult to finish it now days. The days of the single law degree are long gone. But in other ways you do not fit into any mould. You are supremely fit in a profession where physical wellbeing has not been traditionally highly prized.
- 52 You work harder than most. Perhaps because you have had to. Perhaps because you have wanted to. You are brighter than most. The skill set required to achieve senior counsel at such a young age is reflective not only of hard work and devotion but also intelligence. You manage a life outside the law caring for your children and dealing with bruising encounters at the Annandale Hotel. The increasingly large demographic of the legal profession welcomes your appointment as you can truly be said to be one of our own.
- 53 Anne has said that your Honour has always had a very strong sense of justice and a good knowledge of the law. She said your Honour had a burning sense that as a comparatively well-paid and privileged group, lawyers should be doing voluntary work and giving back to the community to the extent that at one stage she was concerned that you in fact earn no income at all.
- 54 In the oft quoted words of Marianne Williamson and echoed by Mahatma Ghandi in his inaugural speech, “as we let our own light shine, we unconsciously give other people the permission to do the same”.
- 55 Your Honour, may your own light continue to burn brightly in your service to the community. If I may be so bold as to steal a couple of title tracks

from that famous band the Lime Spiders, we hope that your Honour will never be a 'slave girl' or 'out of control'; you have always been, and will always continue to be the epitome of an 'action woman'.

56 As the Court pleases.

57 **McCALLUM J:** Chief Justice, your Honours, Mr Attorney, Mr Macken, members of the profession, ladies and gentlemen.

58 Thank you Mr Attorney and Mr Macken for your kind words. You have upheld the finest traditions of the swearing-in speech. Hyperbole is a form of rhetoric that I will discourage in my court; but not today. Mr Macken, you and I have known each other a long time and I thank you for your restraint.

59 Thank you all for taking the time to be here today. I am honoured and humbled by the presence of so many good friends, colleagues and members of my family, especially those who have travelled long distances to be here.

60 It is a great honour to be appointed to this Court which is so highly regarded, 'even by some Victorians', so a Victorian silk said in his note to me.

61 It is a particular honour to be appointed to the vacancy left by the formidable Justice Bell who is now a judge of appeal. Her Honour was the first lawyer I encountered in the practice of law when she was a solicitor at Redfern Legal Centre and I was a law student. Her prowess as an advocate was not yet shown; later it would be recounted by a floor colleague that she had persuaded a jury in a murder trial the deceased shot himself and buried himself in the backyard. I will not replace her, but I am honoured to succeed her.

- 62 I will miss private practice. I regret the fact that from today I will be constrained to cross-examining my children, particularly as they are already so adept at spotting my logical traps.
- 63 During my time in the legal profession I have enjoyed an extraordinary level of warmth, support and respect from colleagues. I learnt a great deal and formed lasting friendships at Mallesons. I am the third judge of this Court, after Justices Bergin and White, to acknowledge the benefit of the guidance of Gerald Rafterath who headed that firm's litigation division.
- 64 From my time as a prosecutor I learnt of the extraordinary courage and devotion of those who practice at the criminal bar on both sides of the bar table, whose conduct of trials is often vilified in the press and poorly remunerated but richly rewarding in more important ways.
- 65 I will miss the members of the Sixth Floor, everyone of whom I count as a friend. I have valued their camaraderie, wisdom and good humour and Sackar's eccentric gifts.
- 66 As to others, with the customary apology to those not named, I owe debts of gratitude to Justice Nicholas who encouraged me to apply for my room on the Sixth Floor and to run the Hawaii Marathon, equally gruelling events. And to Phil Greenwood, Richard McHugh, Kathy Merrick, and my old school friend, Rebecca Hancock, all of whom have been firm friends and given me steady guidance through interesting times.
- 67 I also wish to pay tribute to Justice Owen, the HIH Royal Commissioner, with whom I worked as counsel assisting. Justice Owen is one of the fairest and most decent gentlemen one could hope to meet, and it was a privilege to work closely with him and the talented array of counsel in that Inquiry, three of whom I now join the happy band of judges of this Court who cannot hear HIH cases.

68 I am indebted to all of my former clerks, most recently Lisa Stewart, and to all of my former personal assistants, most recently Meredith Burns, who can anticipate my every administrative, fiscal and nutritional need with alarming accuracy.

69 I hope I will discharge my duties of office fairly and with patience, courtesy and above all, impartiality.

70 I am perhaps peculiarly well-placed to show impartiality since I owe success to no person. I have lost trials for the Crown. I have had clients sent to jail. I have suffered verdicts in all manner of civil trials against both plaintiff and defendant. I have appeared for decision-makers whose decisions were quashed and for persons aggrieved, the decisions against whom were not. I have not lost a coronial inquiry but have otherwise been unsuccessful in such a variety of causes that I can think of no category of party to whom I might be said to owe fear or favour, affection or ill-will.

71 The first silk I briefed when I was a solicitor was the late Justice Peter Hely. At Hely's funeral Justice Jacobsen recounted Hely's three golden rules of litigation:

- There is no argument worth putting that can't be reduced to a page of written argument
- there is no such thing as a case that can't be lost; and
- just don't you muck it up.

72 I wish Hely were here to tell me the three golden rules of judging, but I suspect he would have retained the third, so above all I will try not to muck it up.

- 73 Finally, if you will forgive me I must thank my family. I regret that my father did not live to hear my thanks to him today. He conducted the McCallum family dinner table much in the same way the Chief Judge in Equity conducts the duty list. His intellect was a combination of rigour and passion. It was tempered by my mother's quiet wit and her strong sense of social justice. I am very grateful that she is here today.
- 74 Justice Palmer said at his swearing in that he has the best parents in the world and the best sister in the world. So much, we have in common, but I also have the best brothers. I have grown up in awe of my siblings' extraordinary and diverse talents. I am so proud of them and so grateful to have been their little sister.
- 75 My life would be nothing today without my partner, Ged, who has as strong a sense of justice as any lawyer, and our incredible children, my three, Anna, Max and Charlotte and Ged's son Tom. They fill our lives with music and laughter and stories and the brightness of youth. If you will picture the chaos on a school morning in our household perhaps you will understand why I am undaunted by the supposed isolation of judicial life.

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