

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

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

Tuesday 1 February 2011

**SWEARING IN CEREMONY OF
THE HONOURABLE JOHN SACKAR QC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **SACKAR 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 **SPIGELMAN CJ:** Justice Sackar on behalf of all of the judges of the Court I wish you a warm welcome to the Court. Most of us have known you for many years, some more than others. I had the pleasure of sharing chambers with you for many years and I look forward to working with you on this bench.

- 3 **SACKAR J:** Thank you Chief Justice.

- 4 **MR T BATHURST QC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** It gives me great pleasure, both personally, and on behalf of all members of the New South Wales Bar to congratulate your Honour on your appointment as a judge of this Court. It is always the way with judicial appointments that the bar's rumour mill reaches fever pitch when it becomes known that one is imminent. Your Honour's appointment was no exception, however when your Honour's name was mentioned in those rumours I was quite incredulous. That was not of course because I had any doubt about your capacity for the position but

rather because I regarded you as the epitome of a confirmed barrister, not a confirmed old barrister, merely a confirmed barrister who would have to be carried out of his room in Selborne Chambers. The Court and the community are fortunate that I was mistaken.

- 5 Your Honour was educated at Sydney Boys High and went to Sydney University with the initial intention of studying medicine. Fortunately for the legal profession, perhaps for the medical profession, you abandoned that idea and graduated from Sydney University Law School in 1972 and was admitted to practice as a solicitor of this Court in 1973.
- 6 Notwithstanding your Honour's career choice, you retained a real interest in matters medical. It reflected itself not only in a number of cases in which you appeared but also in your habit of diagnosing various forms of ailments and recommending appropriate treatment. Fortunately you used to qualify your advice by suggesting an appropriate doctor to give a professional opinion. Your diagnosis were right about fifty per cent of the time.
- 7 Your Honour practiced as a solicitor at Blake Dawson Waldron for some two years. One of the partners with whom you worked was Mr Nick Carson. Your association with him was one of the reasons why you developed very early in your career an acute ability to judge the merits of a case even at its initial stage. That was one of the reasons why even from your early days at the bar you were not only a formidable opponent but an extremely effective representative of your client in any negotiations whether those negotiations were of a formal or informal nature.
- 8 Your Honour was called to the bar in 1975 and read with David Bennett QC who is at the bar table today. You rapidly developed an extensive practice in all areas of the law. Initially your Honour did a considerable amount of industrial law, appearing in major cases with Philip Powell QC and Andrew Rogers QC both of whom of course were subsequently judges of this Court. Your Honour then moved to the

medical negligence field. Your Honour appeared as a junior in most of the major cases in that area at the time including *Albrighton v Royal Prince Alfred Hospital*, a case which established once and for all the importance in civil litigation of the business records provisions in the *Evidence Act*. That case was one that could euphemistically be said to have been hard fought. Indeed its conduct raised some controversy at the time. That controversy I believe was unjustified but irrespective of that your Honour there demonstrated the professionalism and courtesy to your opponents which is a mark of your whole professional career.

- 9 In the early 1980's your Honour moved into the defamation field. Your Honour retained the junior retainer for News Limited when your long term friend and colleague, Justice Nicholas, took silk and from that time on, first as a junior and subsequently as a silk yourself, your Honour appeared not only for that organisation but for all major media companies and many plaintiffs in most of the major defamation cases which were heard in the 1980's and early 1990's.
- 10 Your Honour was appointed a Queens Counsel in 1987. Among those who were appointed at that time was another of your close friends and colleagues, Justice Hayden. Justice Hayden has asked me to convey his regret that due to court commitments he is unable to be here today. He has also asked me to assure you that he will be paying even closer attention to your work in the future than he has done previously.
- 11 Your Honour's practice continued to grow after taking silk and to the concern of those who had a monopoly in the area you moved increasingly into the commercial field. You eagerly appeared both for and against major corporations and financial institutions and on a regular basis advised regulators, such as the Australian Securities and Investment Commission and the Australian Competition and Consumer Commission on the more difficult cases which came across their desk.

- 12 You appeared in a wide range of cases including representing Biota in a case in relation to the drug Relenza, the Commonwealth in support of the claim against it by Pan Pharmaceuticals, the mother of Michael Hutchence in defamation proceedings against the Sun Herald, the Australian Rugby Union in relation to the sacking of Lote Tuqiri and John Curtin House and Robert Hawke, the then secretary of the Australian Labor Party, in the Centenary House Inquiries. All those cases, one way or another resulted in a manner satisfactory to your clients. They exhibit the extraordinary wide range of areas which your Honour practiced, something that can only be done by a really outstanding senior counsel.
- 13 Your Honour of course also appeared regularly in the Court of Appeal and the High Court of Australia. In addition your Honour had an international practice. In 2006 your Honour was called to Middle Temple taking chambers in Gray's Inn Square and for many years your Honour appeared regularly in the courts of Brunei and occasionally on appeals from those courts the Privy Counsel.
- 14 Your Honour participated fully in the life of the bar. Your Honour for most of your career was a member of the Sixth Floor. I understand that for many years a number of members of that floor, who should probably remain nameless, gathered on a regular basis in the room of one of them to do what barristers do best, swap gossip, often malicious, occasionally accurate. That room was colloquially known as the tavern.
- 15 Your Honour was the head of the chambers of that floor for a number of years and has been accurately described as the glue which held the floor together. Your Honour at that time went out of your way to encourage and assist young barristers to develop their practice and to deal with problems that confronted them at the bar. There are a number of members of the junior bar and for that matter a number of silks who profited enormously from your Honour's advice and assistance.

- 16 Your Honour has many outside interests and I will only mention two. The first is art. That interest extended to lining your chambers with exotica including skeletons, statues and other material of a like nature. Solicitors, I am told, had to regularly assure their clients not to be deterred, they were in fact coming to see a highly skilled barrister not a serious eccentric. I also understand that those responsible for moving your Honour from Selborne Chambers to this building almost rebelled when they saw the task which confronted them and it was only your Honour's charm and good humour which persuaded them to carry out the move.
- 17 Your Honour also engaged in agricultural pursuits for many years, in particular in partnership with Justice Nicholas in breeding, what I am told are called Aberdeen Angus cattle. The high point of that activity was in 1994 when your prize bull was named grand champion at the Sydney and Brisbane shows. The bull interestingly enough was called Magistrate, I don't know why, I don't think it was a premonition.
- 18 Your Honour is leaving a career in which you are not only highly successful but more importantly universally admired for your intellect, integrity and courtesy. The bar's loss is the Court's and communities gain. We wish you every success in your new career. May it please the Court.
- 19 **Mr S WESTGARTH PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** : May it please the Court. According to a 2004 study by Kansas State University there are a number of factors which influence the selling price of pure bred Angus bulls. These include age, yearling weight, breeding and expected 'progeny differences' in the 'rib eye' area. As a successful breeder of black Angus cattle, your Honour will be aware that this last factor roughly translates to the volume of rib eye steak one can expect prospective steers to yield. While I offer no opinion on your Honour's age, weight or breeding, I respectfully submit that the view that your Honour will yield not only the optimal quantity but also prime quantity of judicial product.

- 20 On behalf of the solicitors of New South Wales, it is an honour and a privilege to welcome your Honour to the Supreme Court bench. Solicitors who know your Honour describe you as a pleasure to work with and always good company. They say that you can speak authoritatively on virtually any legal topic seemingly without preparation. When it comes to in house solicitors your Honour shall forever be regarded with affection for your success in securing the Supreme Court's confirmation that in house legal costs should be assessed on a basis comparable to the costs which would have been allowed had an independent solicitor been engaged.
- 21 Recognised by both solicitors and barristers as one of Australia's best cross-examiners, your Honour's technique has been variously described as flexible, powerful, subtle and ruthless. Many have witnessed first hand your ability to weave elaborate webs into which you lure unsuspecting commercial executives who rise bemused from the witness box to find that they have revealed all. All observers agree that they would not wish to be on the receiving end. With skills such as these your Honour has had great success across Australia and you have been appointed Queen's Counsel in no less than six states and territories.
- 22 Your Honour, as we have heard, has gone further afield establishing an international practice in Brunei and in London. Brunei, on the island of Borneo, is known as the abode of peace. It was also the abode of the Sultan of Brunei and I have been told that your Honour has amongst your clients one of the Sultan's close relatives. In deference to the Muslim community, alcohol is not sold in Brunei but private consumption by non-Muslims is allowed. Visitors are allowed, what is described as a generous duty free allowance of two bottles of wine or spirits per entry. This would allow your Honour to bring in just one bottle each of your favourite Sauvignon Blanc and single malt whisky.
- 23 Although London could never be referred as an abode of peace, it is the home of your Honour's favourite dining and retail establishments. You are a loyal patron of Simpsons on the Strand, a serial shopper at Harrod's

Food Hall and a dedicated wearer of TM Lewin shirts. Your Honour has even been described as TM Lewin's unofficial sales agent in Australia, at least for the New South Wales Bar.

- 24 In 2006 your Honour was called to the Middle Temple in London and can now claim a link with the Knights Templar who were in possession of the temple for some 150 years before the inns were established in the 14th Century. I do not know whether your Honour counts amongst your clients any members of the British Royal family.
- 25 Your Honour is a great family man and is no doubt delighted at the imminent arrival of your second grandchild. Each of your three grown up children can be said to have followed your Honour's footsteps to some degree. Timothy is a senior associate at Blake Dawson, the very same firm, albeit renamed, where your Honour began your practice as a solicitor. Nigel is a member of the teaching profession, an endeavour in which your Honour has had some experience having lectured part time in law at the University of New South Wales.
- 26 Your daughter, Harriet, works in the fashion industry, obviously inspired by your Honour's own love of finely tailored TM Lewin shirts. It is a little too early to tell what career path your Honour's younger son, Charlie, might choose. At six years old I suspect his main mission in life is to keep you and your wife Alison constantly on your toes.
- 27 In a career at the bar as successful and as varied as your Honour's has been, it is impossible for me to give an accurate account of even the most well known cases in which you have been involved. I did in fact begin a survey of the case list published with your Honour's CV but fell short at the first hurdle with the 200 page Federal Court judgment in *News Limited v Australian Rugby League*. In that case your Honour made submissions on behalf of three hundred players and ten coaches of the rebel clubs in the super league split. Amongst other eminent counsel a certain J J Spigelman QC represented the loyal clubs who remained committed to the

ARL. In explaining the lengthy judgment the Court was scrupulously fair in sharing the responsibility across all of the represented parties. The Court noted in particular the lengthy replies that had been made to detailed submissions in response to the extensive earlier written submissions by the parties.

- 28 I understand from my Chinese friends that this year is the year of the rabbit. Whether that has any meaning for the Rugby League competition remains to be seen. I believe your Honour prefers Rugby Union to Rugby League with my sources describing you as a very keen follower of the game. Your Honour was involved in another high profile case when you acted for the Australian Rugby Union in relation to the alleged dismissal of Mr Lote Tuqiri.
- 29 As we've heard your Honour is a passionate collector of eclectic array of antiquities and artefacts as any solicitor who has visited your chambers will attest. It is rumoured that one client, somewhat dissatisfied with your Honour's advice, told his solicitor on exiting your chambers that he did not appreciate the advice and certainly did not appreciate receiving it in an annex to the British Museum.
- 30 Your Honour's chambers are also known for the open door policy which you have instituted for the benefit of more junior colleagues and practitioners. Your Honour's generosity of both time and experience exemplifies one of the best traditions of the legal profession. Perhaps among your Honour's lesser known talents is said to be an uncanny aptitude for mimicry. So impressive are your abilities in this area that your Honour has been described as delivering a truer likeness of the person than the person himself. I hope that no idiosyncrasy of mine today has attracted your Honour's attention.
- 31 Your Honour it is my pleasure on behalf of the Law Society and the solicitors of New South Wales to once again offer my congratulations and very best wishes for your appointment. As the Court pleases.

- 32 **SACKAR J:** Chief Justice, Judges of the Court, judges of the Federal Court, Mr Solicitor, Mr Bathurst, Mr Westgarth, my family, distinguished guests, ladies and gentlemen.
- 33 Thank you Mr Bathurst and Mr Westgarth for your most kind, indeed overly generous remarks.
- 34 I have sat in this Court on many occasions over the years for swearings-in and indeed swearings-out and it has been my great pleasure to have attended the welcome ceremonies of many of the judges I am sitting with this morning. So many of them I know so well. Some are friends and colleagues from my chambers. Some have lead me, some I have led in their earlier lives. Some I have opposed and so many I have had the privilege of appearing before and I am immensely proud now to be joining all of them.
- 35 This occasion provides me with an important and timely opportunity to thank and acknowledge the guidance, loyalty and support provided to me by many people during my career, some in particular.
- 36 As you already have heard law was not my first choice as a career. My father was bitterly disappointed when I told him I was giving up medicine and taking up law. After telling me I was making a monumental blunder he said “All the lawyers I know are walking the racecourse”. He added “They clearly have nothing to do”. In order to test the proposition I dared him to name one. After a moment or two he said rather triumphantly, “Michael McHugh”. It was at that point that I knew that I had made the right career change.
- 37 As I sit here today I must confess somewhat tragically that I have spent the entirety of my legal career in Phillip Street, whether as a student, articled clerk, solicitor or barrister.

- 38 Hickson Lakeman & Holcombe where I was articled, had a small but dynamic litigation section dominated for a goodly time by the Kirby family. The Honourable Michael Kirby was a partner until he went to the bar in 1967. I was articled to Jim Poulos and remarkably survived. When he went to the bar, I was articled to David Kirby who was at the same time my lecturer in Evidence at the Law school. I am so pleased that Justice David Kirby is sitting with me this morning. The experience I gained there was invaluable.
- 39 When I joined the then Dawson Waldron (now Blake Dawson) I was very fortunate to work for Nick Carson then a partner. I think it is fair to say that I have never met a shrewder solicitor or forensic strategist. I owe much to Nick. He played a significant part in teaching me the importance of the role of the solicitor.
- 40 When I left the bar it was Nick who suggested I read with David Bennett, then the leading equity/commercial junior, who had also been at Dawson Waldron. He could not have done me a greater favour.
- 41 David is one of the most intelligent and generous persons it has ever been my privilege to work with. He hardly knew me but genuinely delighted in creating professional opportunities for me and for that matter his other pupils. It was entirely unsurprising that so many people wanted to read with him. I went as his junior to the Privy Council a few months into my reading. I can happily blame him for my longtime desire to travel especially to practise off shore.
- 42 Through David's efforts I was briefed by Les Taylor, then general counsel of the Commonwealth Bank. The bank's legal department was as big as many large law firms. Indeed he ran what was in those days, one of the first national practices. He was not only fiercely loyal and supportive as an instructing solicitor but he was also that as a friend. He supported me over many years as a junior and as a silk.

- 43 I was also privileged to have worked extensively with Tom Hughes QC. He was an inspiration to be with. He is the complete barrister who it seems is entirely indestructible. I have never heard a more elegant, influential and concise advocate. I used to think to be paid to work with him was a bonus. His power of cross-examination was not an art, it was simply natural genius.
- 44 Michael McHugh led me in many libel trials. His knowledge of the law generally, let alone libel, was truly extraordinary. He put it down, rather modestly, to long hot Newcastle summers with not much to do, but read the CLR's. Clearly there was little more to it than that. He was as much at home before appellate courts as he was speaking to juries.
- 45 Through him I met Henric Nicholas who at the time had just taken silk. I was privileged in turn to be led many times by him. I am delighted this morning that he is sitting on the bench with me.
- 46 One person I had all too little exposure to was the extraordinary Doug Staff QC. He was often not well especially in the latter part of his career. That said his intellect, integrity and courage were in such abundance. On one occasion and over our daily ritual of whisky he somewhat casually presented me with my red bag, a tradition which I am sad to say has all but disappeared. I was rather overcome with the gesture until I realised that the tradition also involved having the initials of one's leader, not mine, embroidered on the side. Clearly an early form of product placement it was nonetheless an important vote of confidence which I have cherished the whole of my professional life.
- 47 It was also my good fortune to have done one or two cases against the late Peter Hely who was then the leading commercial silk of his generation. He had such a sense of fun. We were attempting to negotiate a settlement in a largish matter. I told him I would be out for a short while and he might like to call me if he had a response to my offer. When I got back to chambers, I looked down on my cross-examination notes and

realised there were a number of jottings, not mine, in the margin adjacent to some of my more brilliant thoughts, such as “hopeless question, “you’ll never get him to concede this” and “rubbish and irrelevant”. I have never before or since settled a case quite in that way. The troubling aspect of it all was that his comments were, upon reflection, probably accurate.

48 It was also my great pleasure to have worked with so many talented and resourceful juniors over the years from my own chambers and otherwise, many of whom have taken or indeed I am certain will take silk. I thank them for their dedication and professionalism.

49 I wish to thank my many clerks over the years. Les O’Brien in particular who died some years ago but whose efforts on my behalf were so significant in the early days. I would also like to thank my current clerk, Lisa Stewart, who has managed my professional life with calm if not completely ruthless efficiency.

50 I am delighted that my very dear friend the Honourable Donald Stewart, who notwithstanding considerable difficulties, is here today.

51 My four children, Timothy, Nigel, Harriet and of course Charlie, I am so proud of you all. They assist me in ensuring that my life remains entirely in perspective, with humorous but sometimes less than gentle reminders of my many failings. My wife Alison whose eternal optimism and unqualified support cannot be measured is ultimately the reason why I am sitting here today.

52 It is a great privilege for me to be joining an institution of some antiquity, whose doors opened for business in the afternoon of Monday 17 May 1824. It was then a very different world. George IV was on the throne. Sydney was a bustling colonial town with a population of some 40,000 citizens. It was a mere nine years after the Battle of Waterloo. Napoleon was dead but the Duke of Wellington was very much alive as was Lachlan Macquarie (but then not very well) and Thomas Jefferson was still

tinkering with Monticello. I look forward to participating in its future and I am very excited by the challenge.

53 That said, I have one not insubstantial regret and that is, try as I may, I have never made it on to the first page of the Law Almanac. This is something I will simply have to live with.

54 Thank you all very much for sharing today with me and my family.
