

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

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

Wednesday 1 February 2012

**SWEARING IN CEREMONY OF
THE HONOURABLE JAMES STEVENSON
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **STEVENSON 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 Stevenson, on behalf of all the judges of the Court and my own behalf, I congratulate you on your appointment. Your appointment is a wonderful addition to this Court and I hope you will find judicial life satisfying and fulfilling.

- 3 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** If the Court pleases. Your Honour, on behalf of the New South Wales Bar and the State of New South Wales, it is my great pleasure to congratulate you on your appointment as a justice of the New South Wales Supreme Court. I also extend my congratulations to your family on this occasion. You have been described as a leading Australian litigator, particularly in the area of banking litigation. Your work with regulators is also particularly well regarded, leading to your reputation as an outstanding member of the profession. Your colleagues consistently

speak of your methodical style in court. You are known particularly for your effective cross-examination, where your favoured persona is of the polite inquirer.

- 4 It is said that everyone enjoys working with you, both for your legal skills and your humility and even temper. These qualities make you a sought after leader. Your colleagues also speak of your perseverance and dedication not only to your clients but to your fitness. You can often be seen in Sydney cafes clad in biking lycra after a two hour ride. You have organised a fitness group with your colleagues which has met three mornings a week for several years, rain, hail or shine. I would imagine you would need an Aqua Lung to have ridden in to work today. You received your primary school education in Melbourne and secondary school education in Canberra, going on to graduate with a degree in arts and law at the Australian National University with honours in 1972.
- 5 You began your career in 1973 as an associate to the Right Honourable Cyril Walsh, a justice of the High Court of Australia, an appointment which recognised your strong potential. You held this position only until he passed away in November of that year. You then began work as a litigation solicitor, first at Sly & Russell, now known as Deacons, until 1976, then at Smithers Warren & Tobias, now known as DLA Phillips Fox, until 1979. You then moved to Henry Davis York, still the same name, where you were quickly recognised for your outstanding talents and became a litigation partner in 1980. Over the years you have achieved excellence in many fields of the law, working not only in litigation but in commercial law, equity, trade practices, insolvency insurance and professional negligence, among many other areas. The strength of your reputation has led to you retaining many high profile clients.
- 6 You have advised every major Australian bank and also foreign banks in cases such as the *State Bank of New South Wales v Swiss Bank Corporation* in 1995. You read for the Bar in 1989 and then began practising from Eleven Wentworth, where you have spent most of your

career since, demonstrating your commitment and loyalty. In 2003 you took Silk and have since particularly excelled in matters of contractual law, litigation, equity and trade practices. During your career you have been involved in many significant cases; you have appeared before the High Court many times, and before the Privy Council in *Westpac v South Carolina Bank*. You have also appeared regularly in the Equity Division of the Supreme Court of New South Wales, the Court of Appeal, and the Federal Court.

- 7 You have contributed to cases across the nation, also appearing in the Supreme Courts of the Australian Capital Territory, Queensland, and the Northern Territory. You have frequently worked with regulators such as the Australian Securities and Investment Commission and the Australian Prudential Regulation Authority, for whom you appeared at the HIH Royal Commission. In recent years you have served as leading counsel for both organisations and appeared before the High Court in cases such as *X v Apra*. You have also appeared in proceedings before the Independent Commission Against Corruption, appearing in a case regarding corruption among driving instructors, in your first year at the Bar.
- 8 In 2010 you again appeared before the Commission, this time for Sydney Water. You also appeared at the special commission of inquiry into the Glenbrook train crash. Such appearances have demonstrated your integrity and commitment to the public interest. You have further demonstrated those qualities in your contributions outside of the courtroom. You have been a dedicated contributor to the New South Wales Bar Association, serving on the Bar Council in 2002. You have been a member of the Professional Conduct Committee since 1997, and I was a colleague of yours on one of those conduct committees for two years, I think in 2003/4.
- 9 Your colleagues in the Professional Conduct Committee have emphasised that you are a willing volunteer who is never afraid to roll up your sleeves and get stuck into complex investigations. They speak fondly of your good

humour, which I have experienced, your generosity in mentoring many junior members of the committee, and the exceptional quality of your reports. They say that your experience, diligence and affable nature will be greatly missed. They also praise your innate sense of what is ethical: a skill which cannot be taught. Additionally, you have given your time as a group leader for the Bar Association's Practice Course, giving valuable insight into the practice at the New South Wales Bar. You have also assisted in the growth of your colleagues, presenting papers and conducting workshops in a continuing professional development program.

10 You have developed strong relationships with your juniors, some of whom have become your lifelong friends. They speak very kindly of your patience and your openness as a listener and a teacher. It is said that you show respect to everyone, and remain confident that you will listen fairly to anyone who enters your courtroom, whether they are a renowned lawyer from the big end of town, or the most junior of solicitors nervously making their first appearance. These are fine qualities in a judge. I am certain that this distinguished history and the strong personal qualities you have demonstrated throughout your career will stand you in good stead in your new role, and that your contribution to the New South Wales judiciary will be an important one. On behalf of the New South Wales Bar and the New South Wales Government, I am delighted to be welcoming a person of your calibre to the bench of the Supreme Court. If it please the Court.

11 **MR JUSTIN DOWD PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. On Sunday, 6 June 1999, Tony "Plugger" Lockett kicked his way into the history books when he became the highest goal scorer in VFL/AFL history in the game between Sydney and Collingwood at the Sydney Cricket Ground. Such was your Honour's delight at the time, you readily joined the multitude of fans who ran onto the ground to celebrate. Acknowledging my obligation for full and frank disclosure to the Court, I, too, may have trespassed on the ground on that day. Today your Honour's elevation to the bench is also historic and a cause for great celebration. Your Honour is the first person from

Narrabundah High School to be appointed a judicial officer and the first graduate from the Australian National University to be appointed a New South Wales Supreme Court judge.

- 12 The solicitors of New South Wales are pleased to congratulate your Honour on your achievement and to offer our very best wishes to members of your extended family, including: your wife, Lyn; stepmother, Patricia; sister, Helen; children, Billy and Alice; and stepdaughters, Candice and Bridgina. Your Honour comes from a long line of studiously academic quiet achievers. Your Honour's great grandfather, William Saumarez-Smith, born in Jersey in the Channel Islands, was the first Anglican Archbishop of Sydney, a scholar, linguist and published poet. Like your Honour, he was a voracious reader and often joked that he was not to be trusted in a bookshop, for fear of the indulgence of buying.
- 13 Again in the interest of disclosure, it would appear that your Honour and my wife may have a common ancestor. Your Honour's grandfather, William Henry Stevenson, was the Anglican Bishop of Grafton; and your late father, Kenneth William Stevenson, served in the army for many years before joining Australia's intelligence services. We made more enquiries about this, but were told the rest is a secret. Your Honour's late mother, Grace, after whom your house is named, was a member of the Borovansky Dance Company, the predecessor of the Australian Ballet Company; and another aunt, Dorothy, was a prima ballerina. I am advised that these skills have apparently not passed on to your Honour, although you have been known to dance to The Beatles.
- 14 Rather than ballet, your Honour prefers classical music, opera and theatre and, particularly, performances at The Ensemble Theatre. I am also told that you can draw a very fine steam engine. Your Honour's interest in trains, particularly steam trains, has been described as bordering on an addiction. Your Honour's other borderline addictions include chocolate, an encyclopaedic knowledge of The Beatles music and early morning cycling. Your Honour's advocacy skills and passion for the law became apparent

well before you entered the profession. Alan Sullivan QC, who was instrumental in your Honour's move to the bar and with whom you read, was inspired to study hard after witnessing your Honour's debating skills at Narrabundah High. Australian Information Commissioner, John McMillan AO, also attests that after unsuccessfully competing against you in an interschool debate, that you were a force to be reckoned with.

15 Both Mr Sullivan and Mr McMillan attended ANU with your Honour and have remained your close friends. We are also advised that in those days, and sporting a well-worn army khaki flack jacket scarf, John Faulkner-like glasses, and long flowing white hair, your Honour was part of the anti-Vietnam war demonstrations but fell short of being known as an activist. After graduating with a Bachelor of Arts in 1971 and Honours in Bachelor of Laws in 1972, your Honour's residence moved from Bruce Hall at the ANU to sharing a flat with John McMillan. It was then, I am informed, that you honed your independent living skills, including the revelation that one needed to serve more than rice and soy sauce as a main course to successfully host a dinner party.

16 Your Honour was one of the first intakes of the legal workshop introduced in Canberra to replace articles of clerkship. Your judicial destiny seemed assured when your Honour became an associate to High Court Justice the late Cyril Walsh in 1973. As we have heard, your Honour's successful legal career progressed from being employed as a litigation solicitor at Sly & Russell, as it was then known, to becoming a partner at Henry Davis York within a decade of graduation, then joining the bar in 1989 and taking Silk in 2003. From representing major banks in litigation cases and regulators ASIC and APRA in enquiries into corrupt practices involving driver examiners and a newsagent employee who sought to deprive rightful owners of their winning Lotto prize, your Honour has appeared in many Supreme, Federal and High Court actions.

17 Your Honour is described by colleagues as concise, down to Earth, with a self-deprecating sense of humour, who is a delight to brief; someone who

will roll up his sleeves and get the job done. A great mentor and teacher, considerate and generous with your time; a good listener with an open-minded, forward looking approach, your champions say that you will be a 'breath of fresh air on the Bench'. I record this, of course, as a quote and not as a reflection on your Honour's brother and sister judges here today.

18 A devoted and proud family man your Honour is just as happy indulging in early morning cycling, attending the cricket with your step-daughter Candice or barracking for the mighty Swans. Then there are the European vacations, holidaying at Hyams Beach with friends or sitting in the dark contentedly listening to your Leonard Cohen collections and sipping your recently acquired taste, Mick's Hunter Shiraz. Your Honour, the big questions remain. Firstly, will your successor in 11 Wentworth see fit to retain those blindingly shiny red laminated panel cupboards or revert to more traditional barrister's chambers, will your Honour still participate in the exercise groups and lunchtime walks around Hyde Park and the gardens? Will your Honour reveal the source of your Honour's perpetual youthfulness, an observation that was noted by all those we contacted in preparing this speech? It seems your Honour may have, indeed, discovered that secret, although your wife, Lyn, assures us there is no Dorian Gray style painting withering away in a dark corner in an attic. Playwright George Bernard Shaw declared that youth is wasted on the young, but it seems your Honour has managed to marry youth with the wisdom of age and experience. On behalf of the solicitors of New South Wales I wish you every success in your new role. If the Court pleases.

19 **STEVENSON J:** Chief Justice, your Honours, dear members of my family, ladies and gentlemen. Thank you, Mr Attorney and Mr Dowd for your generous, if extravagant and, frighteningly at times, well-researched words.

20 It is a high honour for me to be appointed to this Court to take the position in the Equity Division made vacant by the elevation of Justice Barrett to the Court of Appeal. These are large shoes, indeed, to fill. Justice Barrett's

elevation was in turn caused by the retirement of the Honourable Roger Giles from the Court of Appeal at the end of last year. For me there is an element of serendipity about this. Let me explain why.

21 Roger, if I may call him that here, Roger's arrival at and departure from the Court have been the occasion of my arrival at and departure from the Bar. As I will mention in a moment, Roger's departure from the 11th floor Wentworth was the occasion I came to the Bar and his departure from the Court is, in the way I have described, the occasion for my appointment. I am today wearing the ceremonial robes that Roger wore whilst on this Court. I am honoured that Roger has passed them on to me. I should add that some minor adjustments were needed. They do not call him "thin Roger" for nothing. Roger has also passed on to me his Bench wig which had in turn been passed on to him by an earlier judge of the Court. I shall wear it with great pride, starting tomorrow.

22 This occasion marks a very big change in my professional life and to a large extent my personal life, so it is time for me publicly to reflect and acknowledge some of the people whose role in my life has led me here.

23 I must start first, of course, with my dear parents. Neither of them attended university. There is no legal ancestry in our family before I became a lawyer and, so far as I know, with the exception of my stepbrother and sister, I am still the only lawyer in the family.

24 My mother died suddenly 32 years ago. She played a central and formative role in my life at all times. I cannot recall her ever telling me that I needed to work hard or do well at school or university, but somehow it was implicit for me that I would do so. I am quite sure it was her doing.

25 She was a very outgoing woman, but she did find it hard to show directly affection. But I never, ever doubted her love for me or her expectations of me. She would have been very proud to be here today.

- 26 My father was, quite simply, a darling man. We became very close mates, especially after Mum died. I am not sure whether this is a good thing or a bad thing but I can hear myself sounding more and more like him as the years go by. I wish he were here today. He was, as I have said on other occasions at which some of you have been present, the luckiest man I ever met. One of the reasons – one of the many reasons for that – was that he had two very happy marriages, one to my mother and after her death to my dear stepmother, Patricia.
- 27 It is a great comfort for me that my dear stepmother, Patricia, can be here today. She was married to my father for 25 years. I have known her more than half my life. She cared for and loved my father in a way that brought him, and all of us, great happiness, especially in his declining years. She has herself had significant health challenges in recent times, so it is a great and very special joy for me that she can be here today to see this. I love her deeply.
- 28 As you have heard, I went to high school and university in Canberra. One person who made a very great mark in my life at school was my English teacher. In fact, he was the only English teacher I had in all of my six years at Narrabundah High. His name was Ted Smythe. To use an expression that my son, Billy, used to describe his Montessori teacher when he, Billy, was very young, Ted Smythe made me “want to know”. I cannot think of a better thing to say about a teacher.
- 29 Amongst many things, he encouraged me to participate in debating from an early age. That was my first experience, I suppose, in a relatively formal context, of developing logical thought and trying to make the best out of what you've got. Before every debate, every single debate, he would remind us of a quotation from Isaiah 30:15, which read:

“In quietness and in confidence shall be your strength.”

- 30 I will come back to that in a moment. What I learned from debating was a major factor in my decision, quite early, to go to the ANU and do law.
- 31 One other very important thing Ted Smythe did was to point out to we 15 year olds the connection between Chaucer's, *The Canterbury Tales*, and Procol Harum's, *A Whiter Shade of Pale*. I think I might otherwise have missed it.
- 32 I am a close friend with Ted's son, James, to this day and I am glad James is here today.
- 33 I had five very happy years at the ANU. I had many fine lecturers, including the great Leslie Zines. I think Leslie would be surprised to know of the interest that he engendered in the law for me, bearing in mind his comments from time to time about how seriously he seemed to think I was concentrating.
- 34 He lectured me in Constitutional Law and, more relevantly to today, in Trusts, which is what we called Equity back at the ANU. I had better get out my lecture notes again, assuming Jim Poulos won't lend me his. I am not joking. He has still got them.
- 35 As has been mentioned, I am honoured to be the first ANU graduate to be appointed here.
- 36 I had five short months with Sir Cyril Walsh at the High Court. I was very saddened to be his last associate, because he died while I was there. One thing I will always remember is finding my draft of his Honour's judgment in the case of *Wigan v Edwards*, now reported in (1973) 47 ALJR 581, neatly folded, unmarked, in the judicial rubbish bin after he left in chambers one night.

- 37 As you have heard, I then worked at Sly & Russell and Smithers Warren. My first appearances in court were as an employed solicitor. They were all pretty inauspicious.
- 38 The first was an adulterated sausage plea for a butcher at Penrith Local Court. I was told it was very, very important to go and visit the magistrate in chambers before appearing in court. I did that. I was shocked, nonetheless, to find that my client got the maximum penalty.
- 39 My first defended case was at Ryde Local Court. I was non-suited. It came as quite a surprise. I still do not know quite what happened.
- 40 My second defended case was at Waverley Local Court against a very recently admitted young barrister named Michael Slattery, who I am proud to say is here on the Bench with me today. He will tell you who won.
- 41 I had nine very happy years at Henry Davis York. There were many highlights. I want to mention two.
- 42 The first, and the major one, was the chance to work with George Weaver. George Weaver was then the leading banking solicitor, probably banking lawyer, in Australia. He was the co-author of the well-known text, *Weaver & Craigie*. And this was in the good old days when it was not looseleaf. His advice to the bank, who I could not possibly name, but who he always described as “the one true bank” – in those days solicitors only acted for one bank – were models of clarity and erudition. It was a privilege for me to sit at the feet of a master. If I am now a good lawyer it is as a result of what George taught me then. I am delighted George is here today.
- 43 Another highlight was going to the Privy Council. Mr Attorney, I did not actually appear in the Privy Council. I was instructing the late Theo Simos QC and Bob Macfarlan, as his Honour then was. And for those who are familiar with his Honour’s love of the King you will not be surprised to know that, yes, we did go to an Elvis show while we were there.

- 44 I have many good friends from my days at HDY and I am glad to see quite a few of them here today.
- 45 I left Henry Davis York with great reluctance and only after Alan Sullivan, who I am also glad to see here today, rang me in April 1988 several times to tell me that Roger Giles had taken an appointment to this Court and that here was my opportunity, he said: "James to do that which you have said you had always wanted to do, go to the Bar".
- 46 I have known Alan for a long time. We went to school together, and as has been said, Uni. He is very, very persistent.
- 47 And so at his urging I resigned from Henry Davis York, applied for the room. I did not get it. A promising young junior named Brian Preston, now the Chief Judge of the Land and Environment Court, got it. But the dye was cast and I applied for and luckily got the reader's room at the end of the year.
- 48 Thus I came to the Bar in 1989 with the support and encouragement, I wish to acknowledge here today, of my then wife Sandra. Our children Billy and Alice were then very young. They were six and three. Sandra then and later played the primary role in the care of our children. I wish to acknowledge that here.
- 49 I read with Alan Sullivan and Steven Rares, as his Honour then was. Because I was on the same floor as Alan I saw a lot more of him than Steven and a more generous tutor one could not ask for. He is a great barrister, he is a great lawyer, he got me into cases, he introduced me to solicitors and he taught me the golden rules of cross-examination. He remains a close friend.

- 50 From Steven Rares I learned the virtues of method and careful preparation and intellectual rigour. I also came across upon the sad realisation that some barristers actually work on Saturday nights.
- 51 I felt honoured to read on that floor. It was a great floor then. It is a great floor now, but then to a barrister just starting the line up of silks on the floor was formidable: McAlary, Staff, Simos, Hunter, Hulme, Sheller, Sperling, Conti, Emmett, Macfarlane, Holmes. I hope I have not missed anyone out. And a couple of promising juniors and many of whom are now on this and other Benches.
- 52 The 11th floor was my happy professional home for almost 20 years. I also spent 15 happy months on the 12th floor, but by and large I was on 11. I developed close friendships with my floor colleagues. It has been a most harmonious floor and I have had a very happy time there. I have received unstinting and generous support from many of those colleagues at times when I have travelled through some stormy weather. I thank them all.
- 53 Then there is Paul Daley. He would argue that he is “only a battler”, but there can be no doubt that he is the best clerk in Phillip Street. His motto was always that “nothing is a problem”. It never was. He was for me far more than a clerk. He was a friend, a confidant and at times a great mentor. I often sought his advice, often in tricky situations. I always took it. It was always right.
- 54 I was also wonderfully served by staff on the floor, Anne Deighton, Melinda Morris, Mandy Allen, Janelle Moser and more recently Paul’s co-clerk Mary Boneham.
- 55 I must make special mention of my secretary these last eight years, Jennifer Campbell. She and I worked as a very good team and I will miss her, although she is now free to pursue her dream as an actress and a film and play producer.

- 56 Over the years I have worked with many greats at the Bar. I want to just mention one, one special person in my life, Christopher Grenville Gee. I briefed him a lot in the 80s when he was a junior and as a silk and I became a very close friend of his, I would like to think. We were all shocked when he died, so suddenly, in 2003.
- 57 As Justice White said about Chris a few years ago at his swearing in, “Chris had an easy and elegant turn of phrase and his cross-examinations were courteous and deadly”. That is what I always aimed to do.
- 58 He taught me a great deal, including, of course, the famous Gee rules of litigation, which I should remind you about here today.
- 59 The first rule was that the correct answer to every question you are asked in litigation is “no”. The second rule was never say more than is absolutely necessary to any of your opponents. That is the rule I found hardest to follow. The third rule was that there is no case that cannot be improved by a good verbal, by which, I hasten to add, he did not mean make up stories. Often to get a narrative together, you can ask a witness, “Well, did someone say something?” The fourth was never pass the water bottle. The fifth, never smile at a jury trial. There was a special rule for banking litigation. The rule was that if you were acting for a bank and you had to call the bank manager you are in serious trouble. They are not the exact words of the rule. It is more brief.
- 60 I enjoyed every day of my 23 years of the Bar. I loved the life and I loved the work. I heard Bob Hunter at his swearing-in many years ago, say about leaving the Bar, that it was always a good idea to leave the party when you are having fun. I think I have done that. I especially enjoyed my years as a silk. That is because of the terrific juniors with whom I worked. And that is one thing I shall really miss about the Bar. The joy of talking through a problem with someone whose intellect you respect and coming to an understanding of the problem that very often was greater than either

one of us could have achieved alone. Many have become close friends and many have taken silk. All of them will take silk. Many are here today. They know who they are. I thank them very sincerely.

61 I have worked with many great solicitors over the years, both in the public and private sector and I wish to record my thanks to them.

62 I turn to my family and friends. Many of my near and dear friends are here today from school and university days. There are people here I have known 40 – or even in some cases 50 years. There are friends from my days as a solicitor, from the Bar, and from the Balmain Loop Group. Also the Evan Street sub-branch of the People’s Republic of Rozelle. Rozelle is the new black if you did not know.

63 I have a large loving extended and blended family.

64 I am very sorry that my children, Billy and Alice, are not here today.

65 Billy this week started teaching as an English teacher at St Clare’s College in Waverley and that is where he is. He is this year completing his PhD in the English Department at the Sydney University.

66 And my dear girl, Alice, is attending the final semester of her course at the Police College in Goulburn. They are beautiful children. I wish they were here. I love them and I am proud of them both.

67 My sister, Helen, is here with her partner George and her son, my nephew Lachlan. Our sister, Catriona, died in 2001, but her children, Louise and Andrew are here. My cousins are here, Jackie and Jeannie, who have known me all my life and Pip. Johnny, you can see the colours I am wearing. My sisters-in-law past and present are here. I am proud that my parents-in-law, Bess and John, are also here. And my two dear stepchildren, Candice and Bridgina and their partners, Mick and Dante.

Both you girls know how much you mean to me. And my dear stepfamily, the Brown clan, are here en masse.

68 Finally, and most importantly, my darling wife, Lyn. We have been together now for 12 years. We have been married for nine. She is the rock upon which my life is built. She is most certainly my sternest critic, but she is also my greatest supporter. Quite simply she is the love of my life. She said soon after we met, and that was at the Glenbrook train inquiry, in fact, "I recognised you". It was the same for me. Whatever I have done over the last dozen years could not have been done without her love and support. Thank you, Lyn.

69 I look forward to the challenge ahead. I understand the responsibility I have undertaken. I wish to thank the Chief Justice, the Attorney and the Government of New South Wales for giving me this opportunity to play my role in the administration of justice in this State. I have received a very warm welcome from my new colleagues on the Bench and I look forward to working with them over the next decade. I shall work hard, I shall do my best. I shall endeavour to bear in mind, as Ted Smythe used to say to us so many years ago, "In quietness and confidence shall be my strength". Thank you all for honouring me, and the Court, by your attendance here today.
