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Swearing In Ceremony Of The Honourable Ian Gordon Harrison

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND JUDGES OF
THE
SUPREME COURT

Monday 12
February 2007

SWEARING IN CEREMONY OF THE HONOURABLE IAN GORDON HARRISON AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 **HARRISON 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 Harrison. Please be seated whilst the Commission is read. Principal Registrar, please read the Commission.

(Commission read)

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

(Oaths of Office taken)

Principal Registrar, I hand to you the oaths so that they may be placed with the records of the Court and the Bible so that it may have the customary inscription placed in it and presented to his Honour as a memento of this occasion.

3 Justice Harrison, on behalf of all of the judges of the Court, I congratulate you on your appointment. You have come here after many years of exceptionally successful practice at the bar and as a leader of the profession, not least as President of the Bar Association.

4 In a sense you are an early replacement for Justice Studdert. Two weeks ago at the Opening of the Law Term Judges' Dinner, you sat next to Justice Studdert. He was sitting next to the former Justice Slattery who delivered the address on that occasion. Justice Slattery was replaced by Justice Studdert many years ago. It is wonderful to have had a dual baton change of that character on that evening.

5 I know I speak on behalf of all of your new colleagues to say that we look forward to serving the people of this State with you for many years to come.

6 **THE HONOURABLE R J DEBUS MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** It is my great pleasure to be here for this ceremony today. On behalf of the New South Wales Bar and the legal profession as a whole, I congratulate you on your appointment, which gives due recognition to the integrity, intellect and humanity that your Honour has demonstrated throughout an illustrious legal career.

7 I have every confidence that you will be a highly valuable addition to the Bench of the Supreme Court.

8 Your peers are gathered here today not only in support of your progression to the Bench, but also to pay homage to your remarkable achievements to date. You have led a distinguished career in the law and public life. Those who know you professionally, admire your dynamism, your commanding intellect, and your razor wit. You have excelled in your career and you are also dedicated to your family, having met your wife Julie, I believe, in kindergarten. When you were both in kindergarten I should quickly clarify.

9 Your one known defect is your lack of attention to physical fitness, but no doubt your new colleagues on the bench can encourage you by their example to lift your game.

10 You have the great good sense to spend the weekends in Blackheath, without doubt one of the most beautiful but certainly the best electorally represented town in the state. You travel there in what has been said to be the true love of your life, your yellow Monaro.

11 The sales slogan for the first Holden Monaro (in 1968) was "Out to Drive you Wild", which your Honour then was. In younger, less responsible times, the Blue Mountains highway patrol had a creed, "Only God can make a tree, and only Ian Harrison can drive past it at 160 kilometres an hour". Your Honour is a reformed man in that respect - sort of.

12 But such is the environmental destructiveness of your chosen method of transport that you have your own chapter in the Kyoto Protocol. It is now easy to check with the Environment Protection Authority on the impact one's car has on our precious environment. Your Honour's "muscle car" emits over 10 tonnes of greenhouse gas per year and scores 3 out of 10 in terms of limiting pollution. (A Toyota Prius scores 9 out of 10.)

13 A little known fact is that as partial repayment to the planet you thus despoil, you do spend many weeks a year in a rustic hideaway on Mount Freycinet in Tasmania, documenting the habits of Australia's largest honeyeater, the Yellow Wattle Bird. This bird is described in reputable texts as a repellent looking, streaky grey with two long yellow wattles, one hanging down each side of its face and a call reminiscent of a violent hacking cough.

14 Another favoured object of your ornithological pursuits is the Orange Bellied Parrot - the third most endangered parrot in the world. (There are only 128 left anywhere.) It too inhabits Tasmania and is attracted to the Yellow Wattle Bird. On one occasion your Honour took your car to the Apple Isle on The Spirit of Tasmania. The subsequent drive down the coast saw an Orange Bellied Parrot mistake your Yellow Monaro for a Yellow Wattle Bird. The parrot was, as John Cleese might say, "deceased". To say the least, your Honour had a Road to Damascus experience.

15 Your Honour attended Normanhurst Boys High School, where your fellow students became accustomed to seeing you at school assemblies, receiving innumerable sporting awards. In 1967 you won a scholarship to a high school in Montana USA to Grid Iron.

16 After graduating in law from Sydney University, you obtained Articles from Hall & Hall Solicitors in 1974, and were admitted in 1975. In recognition of your superior academic performance you were appointed as a lecturer at the University of NSW Faculty of Law. You spent the next five years in academia, during which time you realised your desire to go to the Bar. You had the distinction of reading with the Honourable James Wood, Chief Judge at Common Law. Perhaps it is from him that you learnt your aversion to exercise.

17 Your capacity for leadership is evidenced from the many representative positions you have held throughout your career. In 1994, you were made a member of the NSW Chief Justice's Costs Assessor's Rules Committee. In 1995 you were promoted to Senior Counsel.

18 Your integrity and professionalism are well known and highly regarded. In recognition of that, in 1996 you were appointed by the Commonwealth Attorney General to conduct an Inquiry into allegations of corruption in the Australian Federal Police. You led that Inquiry scrupulously and with great skill. In recognition, the then Commonwealth Attorney General, Darryl Williams, said this:

"I take this opportunity to publicly acknowledge the work of Mr Harrison and his team in the conduct of this important Inquiry. The standing and

reputation of the AFP is a matter of public importance. His contribution to ensuring the basis for continued public confidence in the AFP is significant.”

19 Your Honour, as evidence of the high esteem with which you were held, in 2004 you were made Assistant Commissioner to the ICAC. Around this time, you were also Chairman and Director of the Neuroscience Institute for Schizophrenia and Allied Disorders. In 2003 you were made Director of the Law Council of Australia, and were also a member of the Legal Practitioners' Admission Board.

20 Your wide-ranging experience, and demonstrated ability to manage a highly demanding workload, ensure that the community will be well served by your appointment.

21 Over the years you have had a long and prominent involvement with the NSW Bar Association. From 1998 to 2001, you were Chairman of the Association's Professional Conduct Committee. During that period you also served as Treasurer and Junior Vice President, and in 2004, in recognition of your many years of distinguished service, you were elevated to the position of President of the NSW Bar Association. As Attorney General I had the privilege of many robust exchanges with you over issues relevant to the welfare of your members, as well as issues of principle in the civil and criminal law.

22 At contentious late night meetings in parliament house to debate tort law reform to which the Bar had taken exception, we would try to break your spirit with cups of weak instant coffee or - the ultimate weapon against a noted connoisseur - lukewarm parliament house moselle. Even Philip Ruddock would define that as torture within the meaning of the Act. Your politeness in the face of these insults was unfailing but the next morning you would be back on the radio denouncing the government in tones as reasonable as they were compelling.

23 I found you to be a fearsome opponent in public debate, but a steadfast and persuasive ally when you believed the cause was just.

24 Your friends - or whom there are many - refer to you as “Harro”. There is a historical underpinning to this shorthand reference that our mutual friend, Poulos, has drawn to my attention. He recalls your delight upon reading an article in the Sydney Morning Herald a month of so ago, which described the small, idyllic island in the English Channel by the name of Sark. In times gone by, if a resident of Sark felt wronged by another, they would have the right to invoke the ancient statute book and sound what was called the Clameur de Haro. This would involve the complainant dropping to one knee, throwing their hat upon the ground, reciting the Lord's Prayer, and then exclaiming in Norman French, “Haro, haro haro, Help me, my prince, someone does me wrong!” I trust your Honour will not find any claimant or accused that appears before you in contempt for uttering such a plea, however dramatically it is relayed, and there should not be a sentencing discount.

25 Your Honour, I mention that you have spoken out, as have many luminaries of the Bar and indeed the judiciary, about the escalating travesty of justice being perpetrated against an Australian citizen, David Hicks. Today is not a day to dwell upon that unhappy scandal, but the Bar Association under your presidency and since has been resolute in its denunciation of a purported system of justice under which an Australian citizen may be held without charge, in solitary confinement for five years, and then belatedly to face a kangaroo court under which evidence obtained through cruel, inhuman or degrading treatment is admissible although the prosecution has extensive powers to withhold evidence, including exculpatory evidence from the defence. Such Orwellian refinements as “free access” to a library from which all the books have been removed and “intellectual stimulation” from posters of the execution of Saddam Hussein are the icing on that judicial cake.

26 I am confident that the intellect, courage and somewhat notorious independence of the Supreme Court which you now join will stand as a defence to the citizenry of this country against such abominations of the criminal law being perpetrated here.

27 Your Honour, throughout your career, despite the pressures of controversial cases and heated debates, your professionalism and integrity never faltered. I have every confidence that the same qualities that have led to your success so far, will continue to serve you well in the future. I know that you will continue to command the highest respect in your new judicial office.

28 On behalf of the Bar, I extend my warmest congratulations to you, and your wife Julie, and your

four children, Bonnie, Claire, Holly and Andrew, and with some misgivings, your Monaro. I wish you every success in the endeavour before you as you embark upon the next stage of your legal career.

29 MR G DUNLEVY, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES: It is an absolute privilege to speak today at this ceremony to celebrate your Honour's appointment to the Supreme Court of New South Wales.

30 This elevation has sparked great support amongst members of the legal profession - and I speak today on behalf of the solicitors of New South Wales to convey their goodwill and offer our warmest support to your Honour in your new role.

31 As we've heard, your Honour's journey to the Bench began at Sydney University, where you distinguished yourself not only as an outstanding academic - but also as a competent middle distance runner.

32 You had the privilege of being taught by Meagher, Gummow and Lehane, and completed your Articles with Hall & Hall Solicitors, before being called to the Bar in 1977.

33 As a barrister, your Honour earned a strong reputation as an objective, respectful counsel who 'knew the law back to front', and you had a unique ability to see both - indeed, all possible sides - to any case.

34 You remain composed and considerate in all situations - I'm told that conference with your Honour is characterised by an 'almost old fashioned' politeness and respect which brings out the best in clients and colleagues alike.

35 Other colleagues at the Bar who know you interminably refer to your impish sense of humour and your 'apparent' golfing prowess, well, that is according to your Honour, others may harbour a differing view.

36 On a trip to Coolumb, on the Sunshine Coast, on the 12th hole - some 350 metres long - your Honour nearly drove the green on one occasion but it's said that you had a huge tail wind behind you. Your critics vouch that, however, it was the only decent drive that you hit all day.

37 Perhaps your Honour's steady, calm approach to the madness that can, at times, be 'The Law', is due to maintaining outstanding levels of fitness. Your Honour is in such good physical state that your pulse rate could rival an elite athlete's - or, as one friend and colleague put it, "He's got the lowest pulse rate of anyone who's still standing!".

38 Rumour has it, that following the retirement of the Honourable Justice Roddy Meagher, your Honour will now be classed the fittest Judge on the Bench of the Supreme Court of New South Wales.

39 Just quietly, I will disclose that we solicitors are hoping that your commitment to fitness will rub off on your Honour's new colleagues on the Bench and we'll see a 'Judicial Boot Camp' in Hyde Park in the very near future.

40 This ceremony is somewhat of a different experience for Your Honour. In the past your Honour has stood here at the Bar table to deliver one of your many skilful and entertaining performances, customary to celebrating the appointment of our new judicial recruits.

41 A former President of the Law Society of New South Wales, Gordon Salier, has reminded me of your Honour's address at the retirement of the then Registrar Berecny. at the time your Honour said that like the Income Tax Act the Registrar would be a very hard act to follow. The solicitors of new South Wales are confident that a similar rationale will not apply to your Honour's judgments.

42 Similarly, at another judge's swearing-in ceremony your Honour was quick to remind that judge on the ways to avoid adverse publicity in any event. I thought it was incumbent as the President of Law Society to echo your Honour's remarks on that ceremonial occasion, and so I reiterate your Honour's remarks, in order to avoid controversy - a judge should avoid going to conferences and should never

take annual leave.

43 Under no circumstances should your Honour travel overseas. In fact it is probably best to avoid travel at all costs, except for the purposes of country sittings. When I last enquired, country sittings were considered to be an act of judicial duty and not a 'judicial perk'.

44 Your tenure as President of the New South Wales Bar has already been explored, but your parting legacy will not be forgotten. In the words of your Honour, there are two occasions in which counsel should not talk to the media; the first is when it concerns a case in which the counsel is involved, and the second is when it concerns anything else.

45 Your Honour, in closing, may I once again congratulate on this wise and well-deserved appointment. With your unique objectivity; calm and measured approach; and strong commitment to humanity and justice; you'll be a true asset to the Supreme Court of New South Wales.

46 On behalf of the 20,000 solicitors of this State I wish you all the very best in your new judicial role. We look forward to seeing your beloved yellow Monaro parked outside the Supreme Court of New South Wales for many years to come!

47 **HARRISON J:** Thank you, Mr Attorney and Mr President, for those kind remarks Needless to say I entirely agree with them! However, I should like to add some short observations of my own.

48 As you've already heard, I started out as a barrister in 1977. I didn't have any preconceptions or expectations about where such a career might take me. I certainly had not the slightest idea that I could be sitting here today. In support of that I observe that my admission to the bar was very kindly moved by John Basten, now Justice Basten. If, in 1977, I'd suspected that I might one day join this court, by which time John Basten would be sitting on the Court of Appeal, I'd have made sure that I bought him a more expensive bottle of scotch.

49 For any number of reasons, barristers commencing practice these days don't seem to get quite the same opportunities to appear in trials that existed when I started out. This is unfortunate, as there is nothing that quite compares with being thrown in at the deep end. I well remember my first trial. It was in Wagga Wagga and my opponent was Tim Studdert, now Justice Studdert. If ignorance were bliss, then in 1977 I was teetering on the brink of ecstasy.

50 I appeared for a plaintiff claiming damages for personal injury suffered by him in an industrial accident. I think I managed to open the case to the judge without apparent incident and to ask a few preliminary questions in the same way. Then, from memory, I asked the following question:

"Q. Mr O'Neill, is it the fact that on 29 June 1971 you were employed by the defendant as a sheet metal worker at its premises in Junee when, in the course of performing that work, you were injured as the result of the negligence and/or breach of duty on the part of the defendant, its servants and agents, when your hand became trapped in a vice which had not been properly maintained or guarded, as a result of which you suffered severe and continuing injury and disability, loss and damage including loss of enjoyment of life, pain and suffering and loss of income and you have otherwise been greatly damnified in your domestic, social, cultural and sporting activities for the rest of your life so help you God?"

51 Studdert objected. I couldn't believe it! Whatever happened to the camaraderie of the bar, which I had heard so much about! As if to make matters worse, the judge rejected my question. I thought he must have been one of Studdert's old mates off the Seventh of Wentworth! During the remainder of the day I had cause to reflect upon the wisdom of my career choice. My bliss was receding at about the same rate as my ignorance. I wish I didn't know now what I didn't know then!

52 I suspect I'm not alone in having had such an experience. Fortunately, things got better after this. However, in my early years as a barrister I had the re-occurring misfortune of always coming before judges afflicted by what seemed to me to be a form of judicial Tourette's syndrome: whenever I stood up to ask a question or to make a submission, they would manage to blurt out a series of

inappropriate obscenities. But what I noticed was that the more experienced I became the more these judges seemed to get over their problem. After my nearly thirty years as a barrister, the judges with that condition have almost completely disappeared. Although I do recall a judge recruited to our Court of Appeal, from interstate I think, some few years ago, who had the problem quite badly. Fortunately for him, he retired and became a mediator and his awful affliction seemed to clear up almost overnight.

53 My father was a great influence upon my life. He gave me wonderful advice in all things. In one sense, it is in the face of his advice that I'm sitting here today. He always joked that his dream was to live to 100 years of age and be shot by a jealous husband, but he died, far too young, over a quarter of a century ago. As was all too common for women and men of his era, opportunities to choose rewarding and satisfying careers were not as plentiful as they were to become for later generations. And so he routinely encouraged me to "Be my own boss". Until now, I'd always taken his advice. As the Americans say, if he were alive today he'd be turning in his grave.

54 My mother is still alive and almost 93 years of age. Unfortunately, ill health prevents her from being here. In one sense it is perhaps just as well. My mother had a wonderful and irreverent sense of humour and was never slow to say something humorous, but inappropriate, in public. She would no doubt have seen today as a perfect opportunity to do just that if she could have been here. It must run in the family!

55 It is very gratifying for me to see so many and dear friends present. Many have come a long way and I appreciate that. I am also pleased to say that my wife and our children are here. Of course I expected that they would be, but they all lead such frantic and busy lives that I couldn't be sure. It is very unusual for them all to be in the one room at the same time. I think the last time that happened was at the reading of Aunt Agnes's will. She was the one from Scotland who lived alone in a castle and had no other living relatives! I'm very fortunate that their love and support has always been strong and unqualified.

56 Through my involvement with the New South Wales Bar Association over many years I've had the most wonderful opportunities to speak in this room on occasions like this before. It is a privilege not many people are afforded and something for which I will be forever grateful. However, it is appropriate that I clear up one small matter, which many have caused some confusion. On the occasion of the ceremony to mark the retirement of Justice Meagher I suggested that when I was appearing before him in court one day he had told me that he was going to go to sleep and that he didn't expect me to be there when he woke up. Some sections of the media seized upon that anecdote as fact and ran it in support of a vigorous campaign apparently aimed at raising the standard of judicial conduct. The story, of course, was completely false, blatantly invented by me for comedic effect. I'm terribly sorry if it caused inconvenience to anyone.

57 There are a number of people I need to thank. When I came to the Bar I joined the Thirteen Floor of Selborne Chambers. David Davies had come to the Bar the year before. He generously permitted me to share his room. It was a great kindness to me, which I number among many of his other great kindnesses. He was, and remains an inspiration to me as a barrister and as a man, and it is only right that I should thank him publicly.

58 I remained on the Thirteen Floor of Selborne for 17 years until 1994. During almost the whole of that time my clerk was Ruth Ross. Her recent retirement is a great loss not only to the Thirteen Floor, but to the Phillip Street precinct. I will be grateful to her always for her professional service and her friendship.

59 I joined the Eleventh Floor in 1994. What a wonderful place to work. In the nearly 13 years that I was there I cannot remember one incident of serious disagreement or disharmony between or among any of the floor members. Without any doubt, one of the reasons for that - perhaps the principal reason - is that the clerk of the floor is Paul Daley. It is not possible to say enough in praise of Paul. I doubt that I'd be sitting here today if it weren't, at least in part, for the encouragement and support that I have received from Paul over the years. He lives and works by the motto "Nothing's a problem" and regularly insists that he's "Only a battler". Paul is a great student of life and that's his strength.

60 I also have to mention Philip Hallen SC. We've been great friends and colleagues since 1978. He's a leader in his field. Philip knows more about the affairs of dead people than anyone living. That's why

he's such fun to be around. I greatly admire his legal knowledge and I treasure our friendship, and I've very pleased that I will no longer have to run cases against him.

61 It is occasionally been considered fashionable to portray judges as privileged, elitist, pompous, and out of touch. If there were ever any truth in these stereotypes, there is not now. Judges, to my observation, are drawn from the ranks of everyday people and life rarely misses anybody when it hands out random doses of sadness or tragedy. The women and men sitting on this court and others like it are no different. I suspect that none has escaped a share of outrageous fortune. It is a humbling experience to have been asked to join them.

62 In doing so I leave a life at the bar, which I have greatly enjoyed. As I said, my time on the Eleventh Floor was a particularly wonderful period for me. I trust that the friendships I made there will endure. More widely, the women and men who make up both branches of the legal profession, and all those who work with them, have truly enriched the last thirty years for me. This includes, as well as solicitors and barristers, the staff in the courts themselves, who have always been most helpful and courteous to me over the years. Associates, tipstaves, court officers and members of the Court Reporting Branch, Sheriff's officers and security personnel have all worked hard and professionally for as long as I can remember. It has been my pleasure and privilege to work with you all, and I look forward to doing so in the future.

63 In passing I should note that I had rather imagined that the call I received from the Chief Justice, asking me whether I would accept an appointment to this court, would have been a vaguely formal affair. Instead, the Chief Justice's Associate called and said that Chief Justice Spigelman would like to speak to me. The Chief Justice came on the line. To my surprise and delight, he commenced the conversation with "Hello'oo"! So of course I replied with "Hello'oo"! I thought that was wonderful. All my life my father regularly emphasised, by his own quiet example, that none of us should take ourselves too seriously, and there was a real echo of my father in that conversation.

64 It goes without saying that I'm truly honoured to have been appointed as a judge of this court, and I've been equally flattered and encouraged by the many messages of support that I've received from colleagues on both sides of the profession and from current and former members of the judiciary. I hope that I'm able to perform my new role in a way that justifies the warm and generous remarks that have been made. These include, I suppose, a curious message that was left on my internal voicemail only this morning, it said, "You may be taller and more handsome than Justice Hammerschlawg, but he is too fawst for you, wasn't !!"

65 On occasions like this it has become popular, if not quite customary, for the new judge to include in this speech some snippets of scholarly analysis. For example, I recall a similar ceremonial occasion in the Federal Court last year when much attention was given to Magna Carta, and to the fundamental role it has played in the free society we enjoy under the rule of law. However, I can only recall at the time thinking of the famous lines of Tony Hancock in an episode of "Hancock's Half Hour" entitled "Twelve Angry Men" when he played a member of a jury trying to persuade his fellow jurors to his particular point of view. It reaches a point where he says with great passion: "Does Magna Carta man nothing to you? Or did she die in vain?"

66 For this reason I will limit myself to noting that we have in this country a system of justice that is second to none in the world. It is the nature of its work that it will produce results with which not all, and sometimes not any, parties or observers are happy. We should, however, be slow to embrace the notion, that the extent to which the outcome in a particular case manages to satisfy various sections of the community is always, or ever, an important indicator of the standard of justice which is delivered.

67 Finally, I cannot conclude these remarks without making mention of John Maconachie QC and James Poulos QC. There are at least two reasons for this. First, each of them has been a dear and loyal colleague and friend to me for many years and I sincerely wanted to thank them for that. Secondly, however, they each asked me specifically to mention them by name and I no longer have the stamina to cope with another one of their petulant outbursts.
