

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

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

Monday 6 August 2012

**SWEARING IN CEREMONY OF
THE HONOURABLE GEOFFREY CHARLES LINDSAY
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **LINDSAY J:** Chief Justice, I have the honour to announce that I have been appointed a judge of this Court. May I present my Commission.

(Commission read)

(Oaths of office taken)

- 2 **BATHURST CJ:** Justice Lindsay, on behalf of all members of the Court and myself, I congratulate you on your appointment and warmly welcome you to the Court. I hope you find your career as a judge rewarding and stimulating.

- 3 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** If the court pleases, your Honour, on behalf of the State of New South Wales and the New South Wales Bar, it is my great pleasure to congratulate you on your appointment to the Bench of the Supreme Court. You enjoyed an immensely successful career at the Bar, specialising in equity, commercial and administrative law and you are highly regarded by your peers as a leading equity practitioner. Your ascent to the Bench is recognised as a great loss to the Bar. When the

Bar was informed of your appointment, it was suggested to me that it was a disappointing appointment, if only for the fact that the Bar will lose you.

- 4 Your Honour proudly grew up in Bankstown and when you were accepted to study at the Australian National University and experienced some trepidation at the thought of going away to Canberra to study law, particularly in winter, your father put this into perspective for you by saying, “The whole of the population of the ACT is less than that of the municipality of Bankstown”. You studied economics/law at the ANU and upon graduation in 1977, you took a position at Freehill Hollingdale and Page where you were articled to Thomas Owen Jones. You were admitted to practice as a solicitor of this Court in 1978 and admitted as a barrister shortly after in July 1979 where you read with Brian Rayment, now an eminent QC. You spent the vast majority of your 33 years at the Bar on the 8th Floor of Wentworth Chambers where you had a distinguished career.

- 5 You are a lawyer of great experience and legal learning, particularly in the field of equity. There are few at the Bar with your depth of knowledge and understanding of the historical role of equity and its current application to modern day legal problems. As a barrister you are extremely hardworking. Your peers regard you as careful, thoughtful and, when necessary, courageous in representing your clients. You have been heard to quote two comments about the Bar from time to time. Firstly, something that John Coombs QC said, following a period of some turmoil at the Bar, namely, “What is important for us at the Bar is for us all to be friends.” And, secondly, Lloyd Waddy QC’s comment to the effect that you end up loving your friends for their faults, which, I suppose, leaves plenty of room, or scope, for love of your colleagues at the Bar – and elsewhere, no offence meant.

- 6 You have had a long involvement with the New South Wales Bar Association serving as a member of its Council for several years and also as its nominated representative on both the Uniform Rules Committee and

the Supreme Court Rules Committee since 2005. You have also served as a Bar Association's nominee on the boards of directors of the New South Wales Legal Aid Commission and the Public Interest Clearing House for several years, as well as the chairman of the Council of Law Reporting of New South Wales. Books and legal history are your great passion and your colleagues tell me it would be fair to say that you find it hard to pass up the opportunity of the purchase of an old book on English, American or Australian legal history in an antiquarian book shop or library sale.

- 7 Your love of legal history led you to chair the Bar Association's History Committee for several years and eventually to help establish the Francis Forbes Society for Australian Legal History in 2002. You have done a tremendous amount of work for the Society as its secretary and have been a prolific author producing many of its papers on its website. The formation of the Society was publicised at the Centenary Dinner of the New South Wales Bar Association in connection with the publication of book of Centenary Essays which you edited with Carol Webster, *No Mere Mouthpiece, Servants Of All Yet Of None*. The book was dedicated to Sir Francis Forbes, the first Chief Justice of New South Wales after whom the Society is named and Sir William Portus Cullen, also a Chief Justice and who will be the subject of the Society's annual lecture to be given later this year. I understand you did want to have a third person to whom the essays were dedicated, Ned Kelly, but you were persuaded to listen to reason and abandon this idea.
- 8 To promote interest in and awareness of Australian legal history to both high school and tertiary students, you initiated Australian Legal History Essays Competition which is conducted every year by the Society. You have written widely and I understand you are somewhat of an authority on Charles Edwin Woodrow Bean, a barrister, judge's associate and journalist who became Australia's official war correspondent in World War I and editor of the official history of Australia in the war. You have served as

editor of the Australian Bar Review since 1996 and also edited the Australian Law Journal's People In The Law column, for many years.

- 9 You are not only known as a prolific author, you are also well-known for writing very detailed emails, although all around you there is a tendency for email to become the less formal form of communication, you have never succumbed to this. Your colleagues tell me your emails are always in the style of a formal submission, long, well considered, perfectly accurate and with no possibility for misconstruction or worry about cutting and pasting. While you are fond of email communication, you have not quite embraced the paperless office. Trees will breathe a sigh of relief, I am told, with your appointment. I shouldn't say that. Your colleagues tell me your chambers on the 8th Floor, including much of the available floor space, was always crammed full of books on law, history, legal history and philosophy and any other topic that caught your interest in Abbey's Bookshop.
- 10 I understand you once had a nickname of the Rainbow Warrior due to your patented highlighting system. Apparently you had an inordinately complex colour scheme for highlighting submissions and briefs. Once you were done with a page, it was a bright mix of blue, purple, yellow and pink. Perhaps, like Kermit the Frog, someday you will find it, the Rainbow Connection, the lovers, the dreamers and me. We will leave out the la la la la. Blue would mean something specific and yellow something else, but the meaning of the kaleidoscope of colours was only known to you. I wonder whether some of your judgments might come back covered in this rainbow of colours.
- 11 Your colleagues have no doubt that you will make an excellent judge of the Supreme Court; you will be careful and thorough and provide practical, effective and balanced judgment. Both legal representatives and parties can expect to receive a fair and courteous hearing and a genuine consideration of their competing claims. I am confident that you will make a great contribution to the administration of justice in this State and on

behalf of the Bar and the State of New South Wales, I wish you all the best in your new role. May it please the Court.

12 **MR JUSTIN DOWD PRESIDENT LAW SOCIETY OF NEW SOUTH**

WALES: May it please the Court. Your Honour, on behalf of solicitors of New South Wales I congratulate you on the very well-earned appointment to the Bench and wish you well in this stage of your career. Former US President, Ronald Reagan, started eating jelly beans when he gave up pipe smoking in the early 1960s. On his first day as Governor of California, candy maker, Henry Rowland gave Reagan a big jar of jelly beans which Reagan put on the cabinet room table to be handed out at meetings. That tradition endured through the Reagan administration. Jelly beans were served in the Oval Office, on Air Force One and even made it into space on the 1983 Challenger Shuttle. Your Honour, I am told that since 1979, a large glass bottle of jelly beans has been enjoyed by your colleagues on both the 13th Floor Selborne and 8th Floor Wentworth Chambers.

13 One assumes the jelly beans were all blue and white to reflect the ceramic Bulldog in Canterbury Bankstown colours that takes pride of place on your Honour's desk, only ever incarcerated in times of Bulldog's transgressions or misdemeanours. Your Honour's chambers have always been a storage room of files, folders, texts, with barely room to sit, but you always seemed to know where everything was. Still, after more than 20 years in your current room, packing up must have been quite an undertaking.

14 As we have heard, your Honour grew up in Bankstown, the home of the Bulldogs. Your Honour was a product of Yagoona Primary and Bankstown Boys High School and it was at that time that your Honour set your sights on a career in law prior to completing your secondary education. Your Honour undertook a combined economics/law degree at the Australian National University in Canberra where I am told you went on to win the prize for the best work done in income tax revenue law prior to your Honour graduating with Honours in the Bachelor of Laws in 1977.

- 15 Whilst your Honour's time as a solicitor was short, some 18 months, your Honour has continued to enjoy a close and positive relationship with solicitors in this State throughout your Honour's career. For the greater part of your Honour's time at the Bar, your Honour has undertaken a great deal of work for the Law Society. Indeed, our records indicate that your initial forays into disciplinary work were as a junior to the Honourable Peter Young AO. The first case your Honour handled on behalf of the Law Society was when you stepped in for Peter Taylor SC in the matter of professional misconduct concerning a solicitor in 1982. In that matter, your Honour was opposed to your master, Brian Rayment QC. That solicitor was subsequently struck off the Roll of Solicitors. For many years, your Honour was a regular junior to Rob Stitt QC, and in a great number of matters in both New South Wales and the ACT, with chartered accountant Jean Sayer.
- 16 A formidable threesome who saw yourselves as charged with the maintenance of professional standards. These were not personal issues, just standards. Many of the principles established in those early cases remain good authority today. On the odd occasion, your Honour appeared for solicitors, although this was rare. Perhaps the most famous case was one in 1994 in which your Honour was led by Rob Stitt QC all the way to the High Court in a special leave application. On occasions, your Honour would also appear for the Bar in disciplinary matters. Your last case for the Society was in late 2010 in a matter before the Court of Appeal. One of the three judges sitting was an earlier mentor, the Honourable Peter Young AO.
- 17 During your decades of attending to the Society's matters, your Honour has exhibited not only a detailed knowledge of the relevant law, but an understanding of it second to none. Solicitors at the Society who have briefed your Honour report that these briefings demanded perfection. Many a time they would be called to read and reread draft documents and submissions. There was always a better way to express things. Your

Honour's former secretary of some 22 years, Margaret Lewis, would testify – indeed, does testify – to the drafts and redrafts she was called upon to type. Colleagues have described your Honour as unassuming and modest, a great mentor, always prepared to stop and chat, particularly when it comes to a theological discussion or legal history.

18 Your Honour, I am informed that other dominant characteristics that your Honour exhibits include: reliability, your Honour could always be counted to arrive at a party with a book in hand in case the gathering became a little tedious; creativity and self-deprecating humour, traits ably demonstrated when your Honour appeared at a 30th birthday party in sports shirts, your chest plastered in green eye shadow whilst brandishing an Incredible Hulk place mat. I can, of course, only assume that it was supposed to be fancy dress. Your Honour demonstrates great determination, as evidenced in the 70s when your Honour and friends were locked in by rising waters in the Southern Highlands, but managed to drive part of the way, and then walk, to catch the train back to Sydney. Mud-caked, water-logged and bedraggled, commuters apparently feared that you were, in fact, an escapee from Goulburn prison.

19 Your Honour demonstrates practicality, as team mates discovered when they suggested you would never get your fitness up for Saturday afternoon soccer games if you didn't go to training. Your Honour's response was, "Mate, I'm going to soccer to get fit." Your Honour demonstrates loyalty to everything Bankstown related, including being a long-time supporter of the Canterbury Bulldogs – although I prefer to think of them as the Berries – who incidentally are looking good to get to the grand final this year, particularly after another good win yesterday.

20 19th century US President Abraham Lincoln said:

"I like to see a man proud of the place in which he lives. I like to see a man live so that his place will be proud of him."

I am sure that the Bankstown community, in addition to the legal profession, your family, and the many people you have mentored, represented and assisted, are proud of your Honour's achievements and your appointment to the judiciary. We wish you well in your new role. As the Court pleases.

21 **LINDSAY J:** Thank you, Chief Justice. My thanks also go to you, Mr Attorney, and to you, Mr Dowd, for your kind words as generous alike in all things said and those things left unsaid.

22 Distinguished guests, ladies and gentlemen, friends one and all, standing at the threshold of a judicial career with everything to prove and nothing to be taken for granted, I am reminded of the need for circumspection, if not modesty, on my part.

23 I do not know whether I will be a good, bad or indifferent judge; none of us can know. We can only hope. What I can say is that I enter upon my new duties with no mental reservations and with a determination to get the job done.

24 Today there are acknowledgements to be made and thanks to be recorded. And, I suppose, the new judge owes it to the profession and the public at large to expose just enough of "self" to allow advocates and critics to take their bearings.

25 The list of people to whom I am indebted for help and encouragement over three decades at the Bar is unknowingly long. I cannot today do more than acknowledge a few of the debts of honour I owe. For those who may be interested, an expanded version of this speech will be published on the court's website, with a transcript of today's proceedings, in the next few days.

26 My experience is that, as often as not, you cannot know everybody who has helped you along the road, or even when or why.

- 27 I *do* know that I owe a profound debt to my parents. Dad died in 1984 and mum in March this year.
- 28 Like most people – and, I must say, with a pride not always pardonable – I bear the marks of my origins. Bankstown looms large in that department and a plebeian predisposition is never far from the surface.
- 29 I was privileged to be born into a Christian family, more affluent than most, in a working class community of which we were all part and to which we were all devoted. Bankstown in general, and Bankstown Baptist Church in particular, were at the centre of our universe.
- 30 I decided to study law at the age of 15. I stayed at school and I impatiently attended university, entirely focused on doing whatever was necessary to practice law. It says little for my capacity for self-awareness that only in recent years have I come to realise that, for me, the law has been a vocation.
- 31 I obtained entry into the law faculty at the Australian National University on the recommendation of my school principal before sitting the Higher School Certificate. As it happened, my examination results would have been sufficient to get me there in any event. However, the kindness and confidence of the school opened a door through which I was invited to travel, and I did so.
- 32 I am deeply indebted to the staff of Bankstown Boys High School. I was a conscientious student at university, but not entirely comfortable or content with academic studies. I went to university to get beyond it, into the world of legal practice, as soon as I could. I may have flirted with other ideas, but the Bar always held me in its grip.
- 33 For me, the Bar has played the role historically served by the Inns of Court in England. It has, for me, fulfilled the role of a university. For me, the Bar

lives at the intersection between practice and theory. It is not wholly one thing or the other. At its best, it straddles both.

- 34 Since my university days, I have had three areas of interest that have informed most of my extra-curricular activities as a barrister. The first is the administration of the law and the legal profession, the second is why we think the way we do, and the third is the influence of the written word on the way we think.
- 35 Traces of these interests can be found in my early and consistent interest in law reporting, editorial work and legal publishing. My first experience in law reporting and editorial work was as the Case Note Editor on the Board of the Federal Law Review at ANU.
- 36 I have been privileged to be able to indulge these types of interests through the Bar Association, The Forbes Society and the Council of Law Reporting.
- 37 I am grateful to The Forbes Society, the Council of Law Reporting and the Attorney General Greg Smith for their tolerance of my incessant outpourings on the vital importance of law reporting to the development of Australian law.
- 38 For all but the first two years or so of my time at the Bar, I had some involvement in the administration or delivery of education programs of the Bar Association.
- 39 After I took silk in 1994, I was given a cascade of assignments that reinforced the tendency of the Bar to serve as a university experience for me.
- 40 That experience was enriched for me because I was able to observe the likes of Phillip Selth and Alastair McConnachie in dealing with the business of public administration.

- 41 Each of the assignments given to me as a barrister forced me more generally to reflect deeply on the conceptual, functional and historical foundations of law in Australian society.
- 42 All but one day of my time in the employment of Freehills was spent working under the tutelage of Mr Jones. I revere his memory. A number of his protégés went to the Bar, took silk and became judges. I am only the most junior of that fraternity. Its most senior member, Whealy JA, has recently retired from the Court of Appeal.
- 43 One of the friends I made at university was Andrew Tink. We endured together the sheer terror experienced by exposure to the real world as articled clerks. He served articles at Stephen, Jaques and Stephen. In recent years, we have been able to renew our friendship through a shared love of Australian history.
- 44 I celebrate the success of Andrew's two books, William Charles Wentworth and, most importantly, Lord Sydney.
- 45 Throughout my career at the Bar, I was a beneficiary of many acts of kindness. The 13th Floor of Selborne Chambers took me in and provided a home for me when I had nowhere else to set up a shingle. Janet Coombs mentored me, as she has many new barristers over many years. Cecily Backhouse and John McLaughlin were senior members of the Floor at that time. I spent my first six months at the Bar being deliberately confused with Phil Hallen, by old Clive Evatt QC, whenever Janet took me to his chambers for morning tea. I dare say, I must have made a big impression.
- 46 After three years at the Bar, I moved to the 8th Floor of Wentworth Chambers, beginning a happy relationship that spanned three decades of practice.

- 47 I went to the 8th Floor at the invitation of Peter Young. That was another act of kindness. I had met Peter a year or so earlier as a result of a cold call inquiry of Butterworths about how a young barrister could secure opportunities to edit law reports and rules of court.
- 48 I learned much working as a junior to Robert Stitt, especially in the many cases in which we were both led by Jean Sayer. (And that is no mere rhetoric.)
- 49 In the fullness of time, I took on readers and myself became a mentor to several barristers.
- 50 The opportunity that came to me through the Bar Association to represent the Bar on the Board of the Legal Aid Commission provided me with insights into legal practice that I might not otherwise have acquired. It also provided me with an opportunity to observe many talented public servants, not the least of whom was Bill Grant.
- 51 In more recent years, I have benefited from the professionalism of Michael Talbot, the AG's representative on the Council of Law Reporting. Michael has seen off two chairs of the Council to the Supreme Court. My predecessor, Christine Adamson, was appointed to the Court late last year. I follow in her footsteps today. I fear that the Council might find it hard to attract chairmen if it continues to lose them in this way.
- 52 It was through the Bar Association that I was able to develop my interest in Australian legal history.
- 53 I am very grateful for the support and encouragement I have received from the legal history community arising out of my connection with The Forbes Society.

- 54 I have been privileged to study law afresh through exposure to their work and teaching. My legal history activities have also introduced me to talent of the next generation.
- 55 Believing as I do that the study of Australian legal history is vitally important to the development of Australia's national story, The Forbes Society has provided me with valuable opportunities to engage with all branches of the legal profession and the public.
- 56 My first full-time secretary, Margaret Lewis, was with me for well over 20 years. She became and remains like a sister to me. Following her retirement, I was fortunate to secure the services of Shari Williams, and I am pleased to say that Shari has accepted an appointment as my Associate.
- 57 My heartfelt thanks go to all members of my immediate and my large extended family for their friendship. In particular, I thank my wife, Mandy Tibbey, for her ongoing love.
- 58 I have shared the highs and lows of a barrister's life with family, not always fairly to them. I am grateful to each of Jane, Kelly and Mandy for their love and support at different stages of my life and for their friendship generally. Robert, Emma and Sarah have grown to maturity with an independence of mind and compassionate heart that does their father proud.
- 59 I am blessed with a grandson who maintains our Scottish heritage through the Lindsay, Buchanan and Cowan family lines, and I am blessed with two granddaughters who can claim descent from Yarramundi, the indigenous leader who met Governor Arthur Phillip in 1791 and from his daughter, Maria, who married the convict, Robert Lock, in 1824. Their marriage was the first officially sanctioned marriage between an Aboriginal and a non-Aboriginal person in Australia.

60 I look forward to making a contribution, hopefully a constructive contribution, to the work of the Court. I regard myself as privileged to have been assigned to work in the Equity Division. If I have learned anything of equity, it has been largely under the tutelage of the judges of that Division, starting with Michael Helsham as Chief Judge and continuing to the present day.

61 From a new perspective, I now have much more to learn. I am grateful for the support I have received from all quarters to date. I look forward to developing a close working relationship with the profession in the discharge of my judicial duties. Thank you.
