

Swearing-In Ceremony Of The Honourable Richard Weeks White As A Judge Of The Supreme Court Of New South Wales

1 **WHITE 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 White. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read.)

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

(Oaths of office taken.)

3 Principal Registrar, I hand to you the oaths so that they can be placed amongst 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.

4 Justice White, on behalf of all the Judges of the Court and on my own behalf I congratulate you on your appointment and welcome you as a Judge of the Court.

5 The High Court is sitting in Canberra and a number of their Honours have asked me to express their apologies for their inability to attend: The Chief Justice and Justices Gummow, Hayden and Kirby. Justice Gummow, in particular, asked me to express his sorrow that he could not be here because he was your master solicitor when you first became a legal practitioner at Allen Allen & Hemsley many, many years ago.

6 On behalf of us all I congratulate you again and look forward to serving the people of this State with you for many years to come.

7 **MR I G HARRISON SC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** If the Court pleases.

8 On behalf of the Bar of New South Wales it gives me great pleasure to welcome your Honour on the occasion of your swearing-in as a Judge of this Court. As I have said before - indeed quite recently - the extravagance and solemnity of these ceremonial occasions are important elements in the legal calendar.

9 Your Honour was born in 1954, the same year in which Ritchie Benaud, during a match at Lords, apparently nicked a delivery from Fred Trueman and was caught behind before he had scored. He did not walk, was not given out and went on to score 97 runs, leading Australia to their first victory in England for eight years. Benaud was much criticised. But for him, his failure to walk was for the most part informed by a legal and ethical positivism which was inculcated in him from his earliest cricket training. This could be said of your Honour. May I respectfully suggest however that, in giving judgment for a defendant it will be considered to be in poor taste to raise your index finger above your head.

10 Your Honour graduated from Sydney University with First-Class Honours in Law and the University Medal in 1976. Presumably you went to High School before this. I was tempted to ask your clerk for details of your secondary education but my recent experience suggests that he may not be the most reliable source for this type of information.

11 You were admitted as a solicitor of this Court on 11 February 1977. You worked closely with

Justice Gummow, or Bill Gummow as he then was, and as an associate to the late Justice Nigel Bowen in the Federal Court. You joined Stephen Jaques & Stephen in 1979 and became a member of the firm in 1982. You were called to the Bar on American Independence Day, 1986. You have practised widely and successfully since then establishing an extensive commercial practice. You took chambers on 7 Wentworth on 8 May 1989 and you were appointed Senior Counsel on 29 October 1998. Your Honour joins this Court with almost 18 years experience as a barrister at the Sydney Bar.

12 Your Honour has a reputation as a prodigious worker spending what was described to me as "crushing" hours in preparation for cross-examination of an actuary in the HIH Royal Commission in which you appeared as one of the counsel assisting. You have been depicted as a formidable taskmaster and as an aggressive, punctilious and dogged cross-examiner. It was suggested to me by one informant that you were robust, forceful and blunt in argument "to the point of being almost rude". Your Honour's appointment today presents you with the perfect opportunity indeed, the authority to be polite at all times. It is anticipated by those who know you, or know of you, that appearances before you are likely to be exacting.

13 As far as I can determine, your Honour has only two interests. These are cricket and the actuarial assessment of future claims liability. This is not surprising. How often in daily life does one meet an individual with precisely these passions.

14 I have already adverted to cricket. You were one of the first to buy Justice Young's book on declarations, but you refused to read it when you realised it wasn't a book on cricket tactics. Apart from your skill as an advocate your cricketing prowess is the thing about which most people wanted to speak when asked. It is said that you met Alan Border! When I inquired further about this, I discovered that you apparently met him following a famous stumping by you recently of a former Sheffield Shield batsman. The man to whom you were bragging of this feat listened quietly and said, "Richard, if you think that's good cricket, I am Alan Border." You can recite word for word Lord Denning's eloquent judgment on the importance of cricket and the meaning of life in *Miller v Jackson* [1977] 1 QB 966. David Fraser's book "The man in white is always right": Cricket and the law says: "Like law, cricket has dignity, stability and age". Your Honour has at least two of these.

15 Barristers should note that confrontations such as the O'Donnell/Wellham affair or the Hughes/Greatbatch incident should not be treated as examples of how to deal with opposing counsel in your Honour's Court.

16 Your Honour's second passion, actuarial assessment of future claims liability, is a logical accompaniment to your sporting interests. Most of us who have strapped on a pair of pads will at one time have been fascinated by this very topic. I am told by Greenwood that during the Silks against Juniors match your Honour took an outstanding catch on the boundary. Your Honour must have been thinking of *Bolton v Stone*, rather than claims incurred but not reported, at that time.

17 Finally, your association with the South Sydney Rugby League Club stems from your eloquent and enthusiastic representation of the club in the now famous Federal Court litigation against News Limited. Your clear affection for the team during that case, and the public demonstration of your powerful intellect on its behalf, are well known. Any further similarities between your Honour and Russell Crowe are not otherwise obvious.

18 This Court is the better for your Honour's appointment. May I wish you well in your important work in the coming years.

19 May it please the Court.

20 **MR G A SALIER PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

21 Your Honour, on behalf of the solicitors of New South Wales, I congratulate you on your appointment as a Judge of the Supreme Court of New South Wales.

22 As we have heard, you graduated from the University of Sydney with First-Class Honours and the University Medal in Law.

23 From 1977 to 1978, you worked as an associate to Sir Nigel Bowen, the first Chief Justice of the Federal Court.

24 From December 1979 to June 1986, prior to joining the Bar, you enjoyed a seven-year career as a solicitor working in what is now the major commercial law firm of Mallesons Stephen Jaques.

25 During your employment in the firm, you were involved in the high profile litigation that accompanied the launch of World Series Cricket in Australia. Although to the public World Series Cricket was about its coloured uniforms, fast pace, portable pitches and lights, you were involved in proceedings, some of which involved uncharted territory of the Trade Practices Act. These cricket cases have become an essential reading in every student's study of trade practices law.

26 I am told that one of the highlights for you at this busy time was taking a statement from the then Chairman of the Australian Cricket Board, Sir Donald Bradman.

27 Your interest in cricket was not only client-related. You were the wicket-keeper for the firm's XI and, I am informed, you are still playing today.

28 Those of your colleagues who worked with you at the firm are complimentary of your concentration, tireless hard work, diligence, seriousness and meticulous attention to detail.

29 In 1982, you became one of the firm's youngest partners and after four years as a partner you left to join the Bar.

30 In 2000, the Law Society was delighted when you were nominated as the New South Wales Bar Association's representative to the Board of the College of Law. You joined the Board at a challenging time when the College was in the process of transforming itself from an educational institution heavily dependent on external funding assistance. You played a key role in creating a College of Law which is now financially self-sufficient and the pre-eminent provider of practical legal training in Australia, offering students a series of on-line courses.

31 During your four-year term on the Board, you served as Chair of the Finance and Administration Committee and were a member of the Practical Legal Training, Audit and Building Committees.

32 Your fellow Board members and the staff of the College speak highly of your capacity to be across the detailed minutiae of College management, testing and inquiring about decisions and plans. You were at all times thorough, purposeful and insightful. You made a significant contribution to the College's corporate governance structures and processes.

33 You will be missed on the College Board and on behalf of the students, staff and your fellow Board members, I extend my sincerest thanks for your significant contribution to legal education in New South Wales.

34 Your Honour, on behalf of the solicitors of this State, I wish you a long and productive career on the bench.

35 As the Court pleases.

36 **WHITE J:** Chief Justice, your Honours, Mr Harrison, Mr Salier, ladies and gentlemen. Thank you, first, Mr Harrison and Mr Salier for those very kind words of welcome. I have to confess however, that your repeated references to cricket and the law and the suggested affinity between them, I find somewhat troubling. It has been my observation that those who play cricket most regularly and most devotedly are those with absolutely no talent for the game whatsoever. Still, I thank you for your words of flattery.

37 You encourage me, in particular, by setting as my first test as a Judge one which I have found I could pass: At least I did not interrupt your addresses on this occasion. That, I think, could have done no harm at all to the averages of the Equity Division. I am making no such promises however for the

future.

38 It is not quite 30 years since I started practice in the law and, as you have heard, I was privileged in 1975 to be articled at Allen Allen & Hemsley to a partner, then called Mr W M C Gummow. For a year I sat at a desk in the corner of his office and was able to watch him at work. He also taught me equity; and I fear, he taught me more than I learnt. But I absorbed his comments upon academics, upon judges, upon his fellow practitioners, upon my own incompetence. As I am sure all of you will appreciate, those remarks were always entirely charitable.

39 On his swearing-in Justice Campbell spoke of the aura of quiet order and efficiency which pervaded Mr Lehane's office in that firm. My recollection of a different master solicitor some years later is more of exhilaration laced with terror.

40 But above all, I was shown by daily demonstration a practitioner whose dedication was to the law as a profession. The aim and the result of the work which he did was always legal excellence.

41 The days of articles of clerkship are long over in this State. Today, thanks to the dedicated efforts of the College of Law and other tertiary institutions, legal practitioners have a wider and more structured education in practical legal training than many here once enjoyed. However, for those new practitioners who are fortunate enough to receive it, the advantages of personal tuition and example cannot, I think, be overestimated. It is, after all, in that way that the traditions, the wisdom and the ethos of the profession are handed down between generations.

42 Those solicitors who shoulder the responsibility of guiding new practitioners, and those barristers who assume the responsibility of tutoring readers, should perhaps be given more recognition and more honour within the profession than they currently have.

43 As you have heard, after graduating I was engaged by Sir Nigel Bowen as his associate at the time he took office as the first Chief Judge of the Federal Court. They were exciting times. Sir Nigel encouraged a judicial style of courtesy and receptiveness to counsel's arguments which was radical for its day and which had a profound effect on New South Wales' Courts.

44 I will, of course, be joining the most courteous bench in the country. Only time will tell whether I redress the balance a little.

45 I spent almost seven years at Stephen Jaques and Stephen and Stephen Jaques Stone James, as the firm then was. The first three of those years was under the tutelage of Gerald Raftesath. He brought years of experience as a South African Queen's Counsel to the education of the young solicitors who worked for him and I was fortunate to be in that number. Many of the friendships I made at the firm still continue.

46 I started life at the Bar on the Second Floor of Selborne Chambers, but spent most of my time on the Seventh Floor of Wentworth Chambers which I am now leaving with regret for the camaraderie which I will miss.

47 My thanks go to my clerks Jackie Moser, Bob Horne, Andrew Laughlin and Ian Belshaw, and to my secretaries, particularly Gwen Wilkins and Jill Oates.

48 I was lucky enough to be led by many of the finest barristers at the Commercial Bar, but I was even more fortunate with the pupils and juniors I have worked with. Whatever assistance I may have given them has been greatly outweighed by the ideas and other support which I have received from them. They have borne my dogmatism with great patience.

49 It would be impracticable to name all those for whose advice, example, friendship and work, I am indebted. However, it would not, I hope, be amiss on this occasion to make special mention of my late colleague Christopher Gee QC whose death last year was so untimely. Like all wise advocates he preferred not to be noticed unless it was absolutely necessary. But when it was necessary to speak, he had an easy and elegant turn of phrase which commanded the attention of the Court. His cross-examinations were courteous and deadly. He was for me the consummate advocate.

50 Finally, I should thank my family. A barrister's life imposes a great strain on his or her family - especially if he goes home. The debt which I owe to my family is too private for public display. I thank my wife Catherine and children Helen, Sebastian and Annabel. I look forward to their support in my new position, and I know I can rely on them to keep my feet firmly on the ground.

51 The challenge before me is very great. I recall that Sir Frank Kitto enjoins me to be constructive and reverent and I certainly do not lack examples to follow. When I think of those who have gone before me, there are names to be conjured with. Names such as Justice Needham, Justice Rath and Justice McLelland, to mention but three. Names which are calculated to inspire a proper sense of humility in a new Judge, or at least in me.

52 I feel the size of the task which awaits. But I am encouraged by the support and the felicitations which I have received from the Judges of the Court and from the profession.

53 I shall do my best. Thank you for your attendance here this morning and for your good wishes.