

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

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

Tuesday 21 March 2017

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE JULIA LONERGAN
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **LONERGAN 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 Lonergan, on behalf of all the judges of the Court can I warmly welcome you here. We are delighted that you have come and we hope you have a long and very enjoyable time on the bench.

- 3 **THE HONOURABLE MARK SPEAKMAN SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** On behalf of the New South Wales Bar, it is my great pleasure to congratulate your Honour on your appointment as a Judge of this Court. Congratulations too to your family, to your mother Josephine (“Jo”), to your daughters Grace and Josephine, to your brothers and sister. Each of you in some measure shares this achievement. The love, the support and the friendship you have shown her Honour during your lives together are all part of this very special moment and you must be very proud. Your Honour’s father, Tom, himself a much loved member of the Sydney Bar, passed away too early and many years ago now, but I

hope, your Honour, it makes you smile that one of your colleagues says today, "Tom will be sitting up there on a cloud so proud of Julia".

- 4 I wanted to share some remarks about your Honour this morning. Your colleagues were very forthcoming when asked a little about you, but do not be alarmed: one esteemed colleague says that there is not a single peccadillo that could be uncovered even in the interests of levity.
- 5 Beginning with your Honour's formative years, one could say that your Honour was born a child of the law and, depending on one's theology, predestined for the position to which you are being appointed today. Both of your parents were fine lawyers. Your mother Jo was a solicitor and your father Tom a barrister. I understand that Jo and Tom have been great influences throughout your life, personally as well as professionally, and great mentors.
- 6 Your Honour is a Sydneysider, having spent much time on the leafy North Shore at Gordon, and you are one of six children, a sister to Ellen, Tom, Peter, Sean and Patrick. I imagine this sextet of siblings created quite a proving ground for your Honour's formidable litigation skills.
- 7 Your Honour's early years were at St Patrick's, Parramatta, 60 to a class with the Sisters of Mercy at the helm. Your Honour progressed to Loreto College Kirribilli and, indeed, you have been described as a fine example of a strong Loreto woman.
- 8 After graduating from Loreto your Honour went on to receive a Bachelor of Arts at Macquarie University and a Bachelor of Laws from Sydney University. In 1983 your Honour was admitted to practice as a lawyer in New South Wales. In your fledgling legal career your Honour was indebted to your parents, Jo and Tom, for the experience you gained working with them at Parramatta. In 1997 you were called to the bar. You developed a very highly regarded broad common law practice. In 2012 your Honour was appointed Senior Counsel.

- 9 Over a career of almost 25 years you built an admirable practice and reputation. You are known to be a tough and fair opponent with no time for nonsense or game playing. Colleagues who appeared against you say that your Honour is very direct and that you are always keen to get to the real questions as quickly as possible.
- 10 These same colleagues say that counsel opposing Lonergan always knew the matter will be treated fairly, that all aspects of the law will be assessed and that you are eminently trustworthy. These same colleagues also commented that in opposing Lonergan you have to jostle for position. Your Honour's ability to voice the merits of your own case above a competing voice at the other end of the bar table has been described in the most venerating terms.
- 11 Your Honour is an expert in the area of medical negligence, appearing for both plaintiffs and defendants in this field. *Simpson v Diamond* is a case that many in this courtroom will know well. Your Honour was junior to Leonard Levy SC, as his Honour Levy DCJ then was, on this case appearing for the plaintiff. The damages awarded were a record in medical negligence and personal injury cases, \$14.2 million.
- 12 This case was novel not only because of the record sum awarded but because it pioneered the use of international expert witnesses in these matters. It was also a landmark case because it proceeded to completion rather than settlement. Your Honour's technical knowledge and refined skill were critical and, indeed, your Honour's work and that of Levy DCJ induced what has been described variously as panic and an outcry and then the *Health Care Liability Act 2001* the *Civil Liability Act 2002*.
- 13 In 2010 your Honour was junior counsel with Bret Walker SC in a leading Australian case on compensation for loss of chance and medical negligence. In *Tabet v Gett* your Honour appeared for the appellant in the High Court of Australia. There had been conflicting decisions about loss of

chance and *Tabet v Gett* clarified the law. Your Honour appeared also as junior counsel in one of the earlier matters *Rufo v Hosking*.

- 14 Your Honour's expertise in medical negligence law has been sought by organisers of professional conferences on the subject. Last year, for example, your Honour presented at the Australian Lawyers' Alliance Medical Law Conference and the Medico Legal Congress.
- 15 In 2013 and 2014 your Honour was Senior Counsel assisting the Special Commission of Inquiry into the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle. The Special Commission of Inquiry was extensive and, very important to note, heart rending for all those involved.
- 16 Bearing that in mind, I understand your Honour played a significant role in addition to that of counsel assisting during those months in Newcastle. I hear that many a late night was spent finalising documents at your place, complete with cooking, chatter and camaraderie between colleagues during a very intense period. The care, the friendship and the generosity of spirit that you extended to your colleagues was admired and of course your Honour's work as counsel assisting the Commission was invaluable.
- 17 As many people in this courtroom well know, your Honour's work in the law extends far beyond the courtroom. You are a great mentor to students and to your peers and a strong role model and advocate for women in the legal profession. Your Honour has been an advocacy coach for the Bar Practice course and I am reliably advised that your Honour has never ever turned away a young female barrister who has asked for your time or advice. Your generosity with your time to help develop up and coming lawyers is well known.
- 18 In 2013 your Honour was nominated by the Women Lawyers Association of New South Wales for the award of Woman Lawyer Advocate of the Year. Your Honour's nomination cited a work encouraging women in their

aspirations to serve the law. Your Honour's generosity and commitment to the law is evident in the pro bono work that you have conducted throughout your career. Your Honour is a foundation signatory of the national pro bono aspirational target launched by the Australian Pro Bono Centre in 2007.

- 19 Until very recently your Honour was a member of the Bar Council. You have held roles including the chairperson of Bar Association committees such as those on professional conduct and equal opportunity and the committee to select a new executive director. The Bar Association will miss your active insightful presence.

- 20 Without reservation all those who shared some thoughtful remarks about your Honour in the lead up today were utterly delighted about your appointment as a judge of this Court. Your colleagues and your friends warmly describe you as a devoted mum, a most loved and loyal friend and an enthusiast of the arts. It has been said that your tastes in music are eclectic and growing in refinement and that you have never been known to turn down a concert whether it rock and roll or opera or some genre in between. I believe your Honour is an enthusiast of all things Irish, including that most esteemed of books, Ulysses. I am advised that for your Honour Bloomsday verges on a holy day of obligation.

- 21 Your Honour, your friends and colleagues agree that you will be truly missed at the bar and a great asset to the Court. Your friends and colleagues cited your fine legal mind, your good sense, your intelligence, your sense of fairness, your ability to get straight to the heart of the matter, your superior advocacy skills, your no nonsense approach and your sense of humour as among your most valuable characteristics. What this tells me is that you will be an invaluable addition to the Supreme Court of New South Wales.

- 22 Justice Lonergan, thank you for your years of service and excellence. Congratulations on your appointment and I extend my and the bar's best wishes for your career on the bench. May it please the Court.
- 23 **MS PAULINE WRIGHT PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** I acknowledge the indigenous owners of the land in which we meet, the Gadigal people of the Eora nation and pay my respects to their elders both past and present and to their youth in whose hands is held our nation's hope for a reconciled future.
- 24 From the time the statute was passed on 19 July 1823, to provide for the better administration of justice in New South Wales and Van Diemen's Land and for the more effectual government thereof, the men and women of this Court have administered justice in cases of the worst criminality, the highest complexity and most immense consequence for the state of the law in New South Wales. It is an institution of profound legacy and weighty obligation which your Honour joins today and I am delighted to be before the Court this morning on behalf of the solicitors of New South Wales to welcome this significant appointment.
- 25 As we have heard, one of your Honour's great inspirations was your mother, long time solicitor Jo Lonergan who was admitted in 1958 at a time when at least 97% of solicitors were male and your father is, as we have heard Thomas Patrick Lonergan, was a prominent barrister and you drew inspiration for both career examples and loving guidance of your parents.
- 26 A solicitor from just before Christmas in 1983, your Honour started out alongside your parents at T P and J Lonergan at Parramatta before specialising in insurance litigation at the GIO for several years. You then practised at GIO Australia and Suncorp-Metway. Building on this practice at the bar to which you were called in 1997 your Honour practiced in medical negligence, personal injury, professional negligence as part of Maurice Byers Chambers.

- 27 In the case of *Simpson v Diamond*, which we have just heard of, you appeared for the plaintiff who had given birth to a child who suffered severe cerebral palsy following a period of hypoxia and associated with the use of forceps prior to birth and it was that case that really drew you to attention. At the time everyone thought that it would bring the insurance industry to its knees and many pointed to the case in explaining in the introduction to the *Civil Liability Act*.
- 28 Your Honour has served on the Equal Opportunity committees of both the Law Council of Australia and the New South Wales Bar Association and served as an advocacy coach for the Bar Practice course for several years, giving particular encouragement, as we have heard, to new female counsel and that has been something that has been very much appreciated.
- 29 The unflinching ethical standards and integrity you have brought to your practice of the law as an advocate will inform your life on the bench and whether it was the sheer force of hard work, your unmatched ability to scythe through the litigation thicket to get to the heart of a matter or your preparedness to make difficult decisions, your fellows and instructing solicitors alike have spoken of a barrister of exemplary ability with whom it was a privilege to work.
- 30 It has been said that your Honour is one of those rare people with the capacity to make a person feel at ease and good about their case right from the outset, if it had merit. Your Honour's ability to make people feel as though they mattered, coupled with your natural vivacity, produced a colourful working experience that was as high octane and exciting as it was engaging warm and funny.
- 31 Your Honour's warmth was not reserved for colleagues alone but was generously shared and extended to many of the people you encountered during the Special Commission of Inquiry into matters relating to the police

investigation of child sexual abuse allegations. Your compassion and generosity of spirit in keeping in touch long after the close of the inquiry left a lasting impression on these victims whose lives have been so affected by child sexual abuse. One survivor, Peter Gogarty, who wrote a book about his struggles made particular mention of the inquiry. In it he said,

“The Commissioner and those assisting her have created enormous goodwill in the Hunter Valley community with their decency, energy and professionalism. They have shown compassion towards all these people hurt by child sexual abuse and have been respectful of everyone in their orbit. On a personal level these people have done more for me that I deserve and far more than I can adequately describe. My journey to wellness is so much richer for my involvement with them.”

And they thank you.

- 32 Much has been made by my informants of your Honour’s engaging and strategic courtroom manner. One informant, who will remain nameless but it is a person who is now a judge and was former junior counsel to your Honour described your Honour’s examination technique as being akin to a piece of heavy machinery moving inexorably forward rolling over every last detail.
- 33 The Sydney Morning Herald covering the Special Commission of Inquiry starred your Honour as a flame haired and fiery advocate who was on your feet more than anyone else and never shied away from putting to a witness that their evidence defied belief. You were, nevertheless, always polite, firm and unaffected. Indeed, your dislike for affectation and game playing is an advocacy trait that colleagues believe will transition seamlessly into a judicial one.
- 34 In order to brighten those often trying days in the old and almost condemned Newcastle courthouse and the even less salubrious facility at the office in Wallsend, I am informed that your Honour would provide the most wonderful treats, freshly ground artisan coffee beans, chocolates and

pastries. It was in Newcastle your Honour would inadvertently make the lives of those working around you just that little bit more exciting.

35 It is said that your Honour is acutely conscious of your own shortcomings when it comes to driving a manual car but is perhaps less aware when it comes to the automatic variety. I am told that the staff who travelled with you to the Commission on one occasion decided they would sooner catch the train next time. After a white knuckle moment when your Honour suddenly chucked a U-ey on the Pacific Highway having just realised you had left your phone behind. You promptly missed the turn off to Newcastle, got what only can be described as hopelessly lost and missed the morning session.

36 The Commission's residential accommodation in Newcastle was spartan to say the least and none too clean I am told. Your Honour achieved a measure of notoriety for having written a withering letter to the proprietor referring, among other things, to the lack of a bedhead, the filthy windowsills, your reluctance to move anything in the bedroom lest the item be accompanied by a cloud of dust, the threadbare towels greasy to the touch and the lack of heating, save for what your Honour described as a death trap broken wheeled old thing in the cupboard which I am informed made a loud whirring noise and smelt of burning dust and, not least, was you having spied poking out from under your bed a previous occupant's under-things. The response came in decidedly icy tones, "Thank you for the information." It was decided alternative accommodation was required.

37 But no matter the ups and downs of working on the inquiry your Honour would always take things in good humour. But one day I am told that your Honour's customary aplomb escaped you as you tripped over some suitcases in the courtroom and fell heavily. Your colleagues gasped in horror fearing serious injury and fell silent. Then suddenly a sound was heard from beneath the bar table. It was your Honour's customary infectious laughter. Your friends were relieved indeed.

- 38 But it has been said your Honour that one of the reasons you will be such a decent and effective judicial officer is because, unlike many perhaps, you are not married to the law. Other interests, whether music, reading, watching Indy cinema or indulging in chick flicks, are important to you. Family time is cherished. You are a notably devoted mother. Your beautiful daughters Grace and Josephine will always come first in your life and your Honour may often be found haunting the Sydney International Regatta Centre at Penrith watching Jo row.
- 39 One colleague remarked that it was your move from what he considers the wasteland of Gordon to the paradise of Paddington that has made your Honour and that he only regrets that, for reasons only your Honour can explain, this appointment has meant that the pet galah is to be forced out of the home.
- 40 Although your Honour will be sorely missed by your fellow barristers and instructing solicitors there is a prevailing confidence that you will be an excellent judge, a diligent and careful hand on the evidence, actively but respectfully working against timewasting and prolixity. It is said those who appear before your Honour will quickly learn to get to the point but, equally, those who appear before you can always be confident yours will be a warm court, a friendly court and a just one.
- 41 On behalf of the solicitors of New South Wales I commend your Honour on this well-deserved appointment and wish you all the very best for your life on bench. As the Court pleases.
- 42 **LONERGAN J:** Chief Justice, Attorney General, distinguished guests, new colleagues, old colleagues, friends and family.
- 43 I acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation and I pay my respect to their elders, past and present.

- 44 I have attended a number of ceremonies like this one and I often wondered when I was sitting out there, whether it feels and looks as grand up here as it looks from looking in out there. The answer is yes, it most certainly does. I am so pleased to see so many friends and colleagues here today. I feel so very honoured to be appointed to the Common Law Division of this fine Court. I thank the Attorney General, and the President of the Law Society, for their kind comments. I thought that I would have an opportunity to review them and vet them before they were articulated, and I can assure everyone I did not have that opportunity but I thank them for their kind words and their research. They may be the only nice things said about me in this Court and so I will treasure this moment.
- 45 I have been so fortunate in my life. Every step of the way, I have had wonderful people to guide me. The most significant of these were my parents, Thomas and Josephine. Like a Spencer Tracey/Katherine Hepburn movie, they met at law school and fell madly in love. Anyone who has been to law school knows how difficult that is to achieve. Dad thought my mother came from a rich family. She did not. Mum thought dad was a, “bad boy”. He was but like many men, he improved with age. Their relationship of complete respect for each other, provided a rock of certainty and stability for me and my brothers, Sean, Peter, Patrick, Thomas and my sister, Ellen, for all our lives. Their personal qualities of fairness, kindness and intelligence, provided excellent demonstration of how to be a good lawyer as well as a good person. Neither came from wealthy families. Dad’s father, Thomas Bonavenutire Lonergan (Tom Senior), had been a shearer’s cook and a wharfie. In between those jobs, he served in the First World War and had the mustard gas cough and deep sabre scar on his cheek to prove it. He was a very tough man. He was built like a small tank. He often was asked to assist the local police with enforcement when the occasional domestic occurred in their then rough Darlinghurst neighbourhood. Things inevitably quietened down after a short visit from Tom Senior.

- 46 There are some aspects of Tom Senior's peremptoriness that I suspect I may have inherited. However, Chief Justice, I can assure you I have greatly mellowed. I do not think he ever did. Tom Senior married very late a kind and intelligent woman named, Julia and she died when my father was only ten. Dad always had great warmth and empathy for children, particularly those who had not been looked after well or who had been orphaned. I think his experience of the loss of his mother when he was just a boy, helped shape his particular all-pervasive humanity.
- 47 My mother's father was a cattleman and a bookie's runner as a young man and then a professional driver whose job it was to drive the Fire Chief to fires around central Sydney. His driving style never changed and perhaps I inherited that as well. I cannot recall what model of car he drove as it arrived and departed so fast, all you saw was a streak of red.
- 48 My grandma, Irene, was a huge influence in my life. She was only 5 feet tall with bright red hair and a huge crazy cackle. She was an amazing cook, a world class couturier and great fun.
- 49 My parents taught me the importance of truthfulness, respect and hard work. I was a shocking confabulator as a child and my father's deft cross-examination, relieved me of this tendency. He died far too young in 1993 but he is undoubtedly here in spirit today. The spirit of camaraderie of the Bar and of the Bench, as exhibited by the warmth of the welcome that I have been given, and in the presence of family and friends, and the shared happiness of this occasion. If he was here, he would no doubt be jostling between Mr Attorney and Mr Sexton, stage whispering inappropriate comments, to Mr Moses, down the end of the bar table, and passing illegible scurrilous notes and trying to make everybody laugh. He would have hugely enjoyed this day. He loved being a barrister and was an excellent and passionate advocate who made many friends, and was loved and respected by his colleagues because of his great legal knowledge, his wit and generosity. He always said I should go to the bar and like all ungrateful daughters, I told him he was wrong. He was not

wrong and I have loved the bar and am sad to be leaving its collegial trenches.

50 I am very happy my mother, Josephine, is here. She was my first boss in the legal profession. A number of the skills and approaches that she taught me over the years that I worked with her, I still use every day. When the going gets tough, I turn into my mother. So I have my mother to blame about any of what could be interpreted as seriously hard cross-examination. My mother taught me all of those skills. There is one particular skill of hers I am yet to master. She was a perfect draftsman, able to prepare a flawless affidavit, or set of proposed orders, or any document, in 10 minutes flat, and it would never need one single correction or redraft. She is also an excellent actress. For 40 years, I believed, that she loved getting up at 4.30am to take us all to swimming training five days a week. That she adored driving all over Sydney, all day every Saturday, while the six of us participated in various sports, and that she loved nothing more than picking us from parties at weird locations in the lower North Shore, in various states of disarray, at 1 or 2 in the morning, after a full week of court. My mother once had said about her, that she is a particularly fine example of a human and that is true, and I am proud to be her daughter.

51 The very best training for the cut and thrust of the bar has to be to have four brutally honest brothers. They always kept me on my toes. No sledging or collegial one-upmanship that the New South Wales Bar could deliver, could ever bother me. I have been proofed by experts. I have never doubted my brother's loyalty to me and we have all remained close. I know I can rely on them to help me in a crisis, calm me in what I think is a crisis but is not, cook me a great meal, or provide a bit of company and wisdom. My sister, Ellen, has been my loyal friend and supporter always. There is nothing like a sister. We have shared a great deal. I have even shared my birthdate with her daughter, and consequently, my name.

- 52 My sister and brothers showed excellent taste in their choice of partners and I have appreciated their addition to our family, Julie, Kathrin, Mark and Tina, and their loyalty and affection shown to me over the years. They have also produced lovely children who are all here today, Charlotte, Julia, Nicholas and Niamh, and I love spending time with all of them.
- 53 Now to my hilarious, infuriating, beautiful, clever daughters, Grace and Josephine Junior. You have both taught me more about patience and humility than anything else in my life although you no doubt would argue that on many occasions, I exhibit neither quality, possibly this morning included. All I can say to you is to bear in mind this story. Pablo Casals, the great cello maestro, was asked why at age 90, he still practised 4 or 5 hours every day and he replied, “because I think I am beginning to make some progress”.
- 54 My good fortune in life is extended to my professional life. I will not say the juggle of personal and professional obligations is easy. That would be perjury. However, it is made much more manageable by the friendship of my colleagues at the Bar. If I thanked everyone who has been a fine friend and excellent combatant, the list would be very, very, very long. They know who they are. I am grateful to them as they have made the Bar one of the great places to be. From the robust, blokey intelligence of Jack Shand Chambers, to the welcoming bosom of 2 Wentworth, to the decency and containment of level 8 Wentworth, to the culture and inclusiveness of 12 Selbourne Wentworth, to the egalitarian comradeship of Maurice Byers, I have enjoyed every chambers of which I have been a member.
- 55 I have had the benefit of a number of generous mentors, many of whom are now judges of this Court, who encouraged me and listened to me, and treated me with great kindness and professional courtesy. In the early 2000s, I had a number of leaders in long medical negligence trials, in particular, Judge Levy, Justice Garling of this Court, Judge Michael Bozic and David Higgs, Senior Counsel, who when my daughters were babies,

allowed me to vanish to attend to their needs at home, without ever questioning or raising any difficulty. I recall Justice Garling had a code he would use, where he would announce grandly in the presence of a witness or client, "Now Julia, could you go and do that urgent research we need for the morning?" allowing me to sweep out of chambers at 10 past 4 to go home. I could not have stayed at the Bar once my precious daughters were born, if it was not for the support of these particular barristers, and others, and the loving support of my partner, Michael, who has been and continues to be, an excellent father to our children.

56 I had two magnificent tutors at the Bar, Judge Charteris and Michael Windsor of Senior Counsel. They illustrated to me in spades that there is more than one speed and many, many ways to win a case, from the robust head-kicking style that I have emulated in some occasions, to the more subtle victory by stealth. I will not say who exhibited which style but I learnt a lot from both of them. I thank them for their unwavering faith in me.

57 I have had the benefit of working with many wonderful solicitors and I will break with tradition to mention two. Bill Madden, who has been a loyal supporter since 1997, despite my distraction levels. What Bill does not know about medical law is not worth knowing, and the brilliant Emma Sullivan, my instructing solicitor on the Newcastle Special Commission of Inquiry, who redefines the word, "tenacity". I am grateful for their belief in me.

58 I will miss all my great juniors. I make special mention of three. Judge Hunt, David Kell, now the New South Wales Crown Advocate and the perspicacious and ingenious Hilbert Chiu, fine humans as well as great lawyers.

59 Finally, a word about the most important people in the system and that is the clients and the people for whom we act and for whom now decisions will be made. I have never taken for granted the privilege we are given as

lawyers, to be entrusted with people's private lives. I greatly value the trust clients have placed in me. I have met many courageous and superb people through my 34 years of legal practice. Some of those people are here today and I am honoured by their presence.

60 Now I need to stop talking and do the job. A rather blunt friend suggested that when I am hearing a case, I should envisage the scales of justice, presented as a woman blindfolded with a set of scales in one hand and a sword in the other. I thought that was a rather grand thing for him to say about me, but then he continued, that I should imagine that the blindfold is lower down on my face, tightly applied around my mouth. I see if I can practice that skill, starting from now.

61 Thank you all for attending today.
