

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

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

Monday 16 September 2019

**SWEARING-IN CEREMONY FOR
THE HONOURABLE JUSTICE RICHARD CAVANAGH
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **CAVANAGH 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 Cavanagh on behalf of all the judges of the Supreme Court can I warmly welcome you. We are delighted that you agreed to join us and we look forward to many happy and productive years in the future.

- 3 **THE HONOURABLE MARK SPEAKMAN SC MP, ATTORNEY
GENERAL OF NEW SOUTH WALES:** May it please the Court. I acknowledge the traditional custodians of the land in which we gather today the Gadigal of the Eora nation and pay my respects to the elders past, present and emerging.

- 4 Your Honour Justice Cavanagh on behalf of our State and our bar it is my great pleasure to congratulate you on your appointment as a judge of the Supreme Court of New South Wales. One of the loveliest things about this

celebration is that your family, friends and colleagues are here to share it with you. So to your Honour's family, members and friends, welcome. First and foremost, to your mother Mary Cavanagh, a very warm welcome and congratulations to you on what must be a very proud moment.

5 Mrs Cavanagh I acknowledge your late husband his Honour's father Kevin. I am sorry that he is not here today to celebrate with you and your family and to Francine his wife of 36 years welcome and to your children Thomas, Harry and Rose. Rose is not here today because she is studying acting in New York but Tom and Harry are both here on stage left. Welcome to you both and to Tom's wife Isabelle and baby Isla Rose on occasions like this we often hear that an appointee's first love is the law, but from what I have heard these last couple of weeks Justice Cavanagh's first love is actually Isla hands down.

6 And to your Honour's siblings to Peter and Judy, Sue and Jo and their partners welcome. I know that family is a big part of Justice Cavanagh's life and it is marvellous that so many of you are here to celebrate today.

7 I also mention the late Tony Edwards also a barrister of Newcastle Chambers. Tony your Honour's brother in law was married to Judy and passed away suddenly in 2014. Tony was a great supporter and adviser in your early years at the bar and before that in moving your admission as a solicitor and he is sadly missed.

8 For the next few minutes I would like to share some insights into your Honour's career and I can assure your Honour that I would have left no stone unturned, nothing alarming has come to light. And I will start at the very beginning which is a very good place to start especially for a person who grew up to like musicals and Sound of Music in particular.

9 Your Honour was born at a petrol station en route to hospital near where the Anzac Bridge is now. Your Honour grew up on Sydney's North Shore as the middle child of five. The son of Mary a nurse which I am sure

served you well at the petrol station Mrs Cavanagh and Kevin who was involved for many years in the concrete industry. In fact such was Kevin's service that the Concrete Institute of Australia confers an annual award for excellence in concrete design and construction named for your Honour's father.

- 10 You proudly followed in your father's footsteps as a student at St Aloysius' College or Aloys as it is known in Milsons Point. Tom and Harry are Aloys old boys too and speaking of proud traditions Tom, Harry and Rose have all followed you in the law. Tom is a senior associate, Harry is nearing the end of his legal qualifications on top of his career in social work and Rose is a legally qualified acting student. Tom I trust you have baby Isla briefed and ready.
- 11 But back to your Honour's legal education, your Honour studied arts and law at the University of New South Wales and you were admitted as a solicitor in 1982. In 1988 you became a partner at Henry Davis York. At HDY you established a very strong insurance practice. You were the partner in charge of the insurance group for almost ten years. And from Henry Davis York your Honour moved to the bar eventually.
- 12 You were admitted to the bar in 1998 and you were immediately busy. All of the insurance clients who sought your advice as a solicitor were confident in having you briefed at the bar and so your practice took off almost at once.
- 13 You were appointed senior counsel in 2010 and you became one of the go to silks in complex insurance litigation spanning personal injury, property, construction, professional indemnity, life insurance and fraud claims. Your expertise in insurance law extends to your involvement as a director of Bar Cover. Your cross-examination skills are legendary in particular your ability to unravel a witness's evidence starting with just a single thread.

- 14 Many people are ruining your appointment because of the great gap you will leave at the bar. You are widely regarded as the leading counsel in life insurance law in New South Wales. More than a few solicitors are scratching their heads about whom to brief now that you have been called to the bench.
- 15 I will mention a sample of the cases that have defined your Honour's career at the bar and in which important legal principles have been established. The first one I will mention is not one we describe as commonplace at all. Comancheros yes, commonplace not exactly. Stealth Enterprises and Calliden Insurance is one from which two principles may be gleaned. First in relation to non-disclosure in insurance and second in relation to the cab rank rule.
- 16 In that case you represented Stealth Enterprises, that is the name of the company not a general description of their operations, however accurate that might be. Stealth Enterprises operated a legal brothel in the ACT, a legal brothel with a director and a manager who were members of the Comancheros Outlaw Motorcycle Gang, although your Honour may have preferred the terms outlaw motorcycle club, but either way the brothel went up in flames in 2012 and the principle that went up to the Court was about whether the insured should have disclosed their colourful associations to the insurer.
- 17 The principle that went to the cab rank rule was your Honour's staunch adherence to that rule and adherence that meant that you accepted that brief and ran that case commonplace or Comancheros. In fact your Honour's involvement in this case resulted in a sell-out event hosted by the Australian Insurance Law Association. It was standing room only at the Bikies, Brothels and the duty of disclosure, Spotlight Seminar in 2017. Counsel for Stealth Enterprises was a star panellist that evening.
- 18 Your Honour has appeared in several significant cases regarding total and permanent disablement, including appearing for the plaintiff in MX and

FSS Trustee Corporation. One of the cases relating to the Police Superannuation Scheme and Metlife. The TPD matters you have appeared in have answered questions regarding the interpretation of total and permanent disablement and how the views of a reinsurer may impact on the insurer or the insured.

19 Your late brother in law Tony Edwards represented many police officers in TPD cases in his last decade at the bar and I understand very dutifully and as a mark of abiding respect for Tony and his practice you oversaw some of these briefs after Tony passed away.

20 Your Honour is known as a generous tutor and mentor. I am told that:

“it’s great to be Cavanagh’s junior, you learn a lot but he never throws you in the deep end and he will often mention your contribution in the course of proceedings so that you receive recognition with the bench and in the transcript.”

21 You tutored seven readers and your colleagues have said that it is quite clear that you thoroughly enjoyed working with junior barristers. You have lectured in the Bar Readers course over the years, you have presented at Bar Association seminars and you are a past member of the Bar Council.

22 Your dedication and service to the law are widely respected and, while speaking of service, I will return to this for a few moments. I mentioned St Aloysius’ College earlier and I am sure that Tom and Harry will recognise the credo that is at the centre of Aloys college life and that is creating a man for others. This credo speaks to an outward looking life of service and of commitment to justice for other people. This ethos is clear in your Honour’s life. Your service to others is as unassuming as it is generous.

23 Most people here probably will not know that for many years you have gone to Matthew Talbot Hostel one morning a week 6 to 8 and served

breakfast to people who are homeless, or would be involved in a mentoring project that links less privileged school students to successful professionals and that you donate an annual bursary to that program and mentor four students through high school each year, or that you are a generous donor to Kick Start Kids which supports children in Kenya through sustainable development and to the Cancer Council.

- 24 Your Honour's commitment to social justice and charity to being a man indeed a person for others is admired and to be admired. Your commitment to service will be invaluable to all who come into your court.
- 25 Your Honour is a man of fine character, a lawyer of distinction and in the words of one of your colleagues a genuinely humble guy. Notwithstanding your confidence and great ability, I won't sing or yodel but to stretch the Sound of Music metaphor as your Honour walks over the mountain into what is perhaps our closest equivalent to neutral Switzerland, I wish you all the very best for your career on the bench. May it please the Court.
- 26 **MS ELIZABETH ESPINOSA, PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court, I too acknowledge the Gadigal people of the Eora nation, the traditional owners of the land on which this Court stands and I pay my respects to their elders past, present and emerging.
- 27 It is a privilege to come before this Court as President of the Law Society New South Wales on behalf of the 34,000 solicitors in this State to offer sincere congratulations and wish your Honour well in your appointment to the Supreme Court of New South Wales.
- 28 I am also mindful of the important role family has played in your Honour's life and I would also like to acknowledge your mother Mary, your siblings Peter, Judy, Susan, Joanne, your wife Francine, your children Tom, Harry and Rose who we have heard is with us in spirit from New York and the

many extended family and relatives and friends joining us today including the new edition to the next generation.

- 29 To fully understand the story of your Honour a gifted barrister who has been called to the highest bench in New South Wales it pays to reflect on the brilliant solicitor that came first. Your Honour served faithfully as a solicitor for New South Wales for nearly 16 years, many of the things which your Honour was renowned, the pre-eminence in insurance law, the unflappable courtroom presence, the sparkling conversationalist with a reputation for courtesy can be traced back to your Honour's early years as a solicitor.
- 30 A partner who recently instructed your Honour described you as a super lawyer and it is my pleasure today to revisit your original story. As we have heard you attended St Aloysius' College from 1967 to 1976. The College's motto Ad Majora Natus or born for greater things is what the young St Aloysius reportedly told his father when he opted for humble service over worldly goods and power. Humility and this sense of service have been defining characteristics of your Honour's personal and professional life.
- 31 By Year 11 your Honour had made it to the First XV Rugby and the First XI cricket teams as well as the swimming and athletic squads. In your final year at school a back injury interrupted your Honour's sporting career. This raised the question 'Where's a good insurance lawyer when you need one?' Now the injury did not end your lifelong love affair with sport, far from it. It did draw to a close your aspiration of becoming a PE teacher. Your Honour embarked on a career in law instead.
- 32 After completing the Arts Law Degree at the University of New South Wales in 1981 your Honour attended the College of Law. While there, Tom Goudkamp, who has played a significant role on the Law Society's Specialist Accreditation Personal Injury Advisory Committee, back then a partner of Henry Davis York, circulated an advertisement for a junior

solicitor. This coveted position received some 40 applications, most applications stressing their ambition to make partner.

33 Your Honour took a different approach. You wrote that your ambition was to improve your tennis. Now whether your Honour knew that Tom was a tennis tragic and with a soft spot for a good joke or whether your Honour did indeed want to work on his tennis game is now a matter for debate. What is not a matter for debate is that your Honour was immediately shortlisted and in the interview your command of the law and steady presence shone through.

34 Your Honour would start at Henry Davis York or HDY as we all know, the same year you were admitted to the role of solicitors in 1982. Your Honour began with those personal injury cases before moving onto the Family Law Division and finally to insurance and this last move was significant. As it was at Henry Davis York that your Honour began to develop a reputation as a pre-eminent solicitor practising in insurance law. Your Honour once told a colleague that you felt genuinely lucky to start work in a firm that gave you that opportunity to litigate.

35 Your Honour excelled at insurance litigation and your advice on complex insurance issues became highly sought after. In 1988 your Honour was appointed partner achieving this milestone in just six years, what so many of the original applicants had set out to do. This meteoric rise was given uplift by your obvious aptitude and genuine kindness. A mediator familiar with your own mediation remarked that your Honour is and I quote:

“never one to raise his voice, belittle anyone or gossip. He always conducts himself with utmost honesty and civility, he is respected and genuinely liked and appreciated by both branches of the profession.”

36 Barristers have spoken about how much they enjoyed being briefed by you. Your briefs were clear, concise and direct, delivered punctually and by a kindly face and solicitors have spoken about how much they enjoyed

instructing you. As prepared as humanly possible, mindful of the pressures they faced and devastatingly effective in the Courtroom.

- 37 Your teachers at St Aloysius' College couldn't have been prouder for an Aloysian true to his name does not graduate for himself alone or for his own needs and fulfilment. Everyone we spoke to said the same thing, your Honour is great with people, just not always at remembering their names.
- 38 In 1989 two partners in the general insurance litigation group at Henry Davis York left, as did the two largest clients and about 50% of your Honour's practice. "He was left with an employed solicitor, a law clerk, and enough work for about one" said one lawyer familiar with your predicament at the time. In the lexicon of today this began a period of hustle and it showed that your generosity, so widely loved, was backed up by a rugby player's level of grit. With the support of your remaining partners, in particular the partner in charge of banking litigation, your Honour set about building a specialist insurance practice.
- 39 Along the way your Honour did a range of other litigation including trade practices, commercial, contractual disputes, property related disputes and intellectual property and by the time your Honour was admitted to the Bar, some ten years later, the insurance group had grown to more than 15 solicitors and your Honour was acting for five major insurers, additional statutory authorities and corporate clients. Your Honours pre-eminence in insurance law owes a lot to your decade's worth of experience as partner in charge of the insurance group and your warm welcome to the Bar to the way in which you handled yourself for many years as a solicitor.
- 40 It is perhaps unsurprising considering how frequently sport has been woven throughout your career that sport and physical activity are one of the key ways your Honour unwinds. Your Honour plays golf each weekend and recent improvements have seen you knocking on the door of A grade with a very respectable handicap of 13. According to one of your

regular Saturday morning trio your Honour's preparation involves relaxing with the paper over an egg and bacon roll and coffee and perhaps a couple of hits in the net while the other two frantically practise on the range only to routinely finish the round well below your Honour on the leader board.

41 Your Honour is also a keen swimmer taking part in the annual Palm Beach to Whale Beach Big Ocean Swim and regularly works out at the gym. For many years your Honour cycled to chambers, stopping only briefly after an unfortunate incident with a shopping trolley, an unlikely fate for a silk that successfully represented Woolworths.

42 In all things your Honour's commitment to excellence, to pushing yourself that little bit harder, to going that little bit further comes through. May I conclude today with an observation made by her Excellency, the Honourable Margaret Beazley AO QC Governor of New South Wales. Her Excellency said, "You can be very, very good at this game without being aggressive, you just have to know when and how to stand your ground". Your Honour's accession to the Bench affirms this statement. Your peers have been effusive in their praise but not only when but the way in which you have stood your ground. Your approach to the law is a reminder that in our common law traditions civility should be at home in our adversarial system and that lawyers like athletes ought to value team work, resilience and fair play. Your Honour will bring a wealth of knowledge, personal integrity and courage to the Supreme Court of New South Wales. The people of Australia are privileged to be served by you in this role and solicitors have every confidence that you will make an exceptional judicial officer of the Supreme Court of New South Wales and again on behalf of the solicitors of New South Wales congratulations, your Honour.

43 **CAVANAGH J:** Chief Justice, Attorney General, fellow judges, colleagues, friends and family. I acknowledge the traditional owners of the land on which we meet, the Gadigal People of the Eora Nation, and pay my respects to the Elders past and present.

- 44 Thank you all for coming along today. I have been somewhat overwhelmed by your messages of best wishes and congratulations over the past ten days. Thank you very much.
- 45 The Chief Justice kindly invited me up for a chat a couple of weeks ago. During our meeting I asked whether it would be possible to have advance notice of what might be said about me today. He answered in the negative. If only he had answered in the affirmative I would have been able to tell you, Mr Attorney and Ms Espinosa, to take some of the stories you might hear about me with a grain of salt, particularly the overly complimentary ones. Nevertheless, I do appreciate your very kind and generous words.
- 46 To quote, without comparison, the Australian author A B Facey and, indeed, my father who often used the line in his speeches, 'mine has been a fortunate life'. I have been presented with many opportunities during my life for which I will always be grateful.
- 47 There are many people to thank. Firstly, can I thank my wife, Francine. She has supported me at every stage of my career even when at the age of 39 I decided to throw in a perfectly good job with three kids under ten and embark on a career at the Bar. She has been the mainstay of our family life and always put everyone else's interests before her own. Who would have thought when I used to bump into you in the law library at the University of New South Wales at the age of 20 that we'd end up here. Of course I was never quite sure what you were doing in the law library at 7.00pm most nights bearing in mind you were doing science at the other end of the campus. Anyway, I suppose things turned out for the best in the end.
- 48 I am very proud of my children. They have kept me grounded. I have learned a lot from them in terms of modern and different ways of looking at things. Only last week they explained to me another possible way of

thinking about a certain well-known case. My eldest son, Tom, is rather following in my footsteps and is doing very well at Wootton and Kearney. Harry, a social worker, having worked for four years in a homeless centre is now working with victims of sexual abuse and studying law with the intention of working in the penal system. Rose, having completed her law degree, is currently pursuing an acting career overseas. Of course I have said to her that if she wants a career straight from central casting where she could get the lead role, where she could go off script occasionally and even get to dress up in fancy clothes and a wig from time to time there is something else she could do.

49 I would like to mention their partners, Isabel, Camille and Mike. Thanks so much for looking after them and, indeed, taking them off our hands. I am delighted that my granddaughter, Isla, is here and has so far behaved quite well, Isabel.

50 My mother is here today. She is only 90. She says she's got a few good years in her yet. She's been an inspiration to all her family in terms of her commitment to care for others, indeed as was my father. My parents instilled in me values which I believe have stood me in good stead throughout my life. I still remember my father sitting me down at the age of ten, following some misdemeanour or bad school report (my sisters would be laughing about now I suspect), and telling me that the main thing in life was that I always had to be honest and that I should always work hard and do my best in everything that I attempt. I suspect he would have enjoyed the occasion.

51 I would like to thank my brother, Peter, and sisters Judy, Susan and Jo, as well as all my brother-in-laws and sister-in-laws, aunts, uncles, cousins, extended family and friends for all being there, I am very pleased you have made the effort to come along.

52 As I said, I have been fortunate to have been presented with many opportunities in my life. I enjoyed my time at St Aloysius College and was

given the chance to achieve academically, pursue my interest in sport as well as make some life-long friends, some of whom are here today. I went to a very good university and benefited from a relatively new approach to teaching law and justice. In those days UNSW was a hot bed of radicalism compared to Sydney Uni with lecturers such as David Brown and one John Basten, now Justice Basten. I was in the first group of students to work at the Kingsford Legal Centre when it opened in 1981. My good friend, Professor Simon Rice, ended up running the centre for many years.

- 53 As you heard, my first job was with Tom Goudkamp at Henry Davis York. He taught me a lot about personal injury law. I met and worked with many outstanding lawyers whilst at Henry Davis York. I spent time working with John Lloyd, now John Lloyd SC, one of Sydney's leading family law barristers. John taught me a lot, although the main thing he taught me was that I did not want to do family law.
- 54 I ended up working in commercial or general litigation in part under the supervision of James Stevenson, now Justice Stevenson. James and I were partners for precisely one month in 1998 before he went to the Bar. I ended up reading with James and I have appreciated the guidance and example that he gave me in that he took the first step. As many of you will know, he was the senior litigation partner at Henry Davis York and left that very good job to go to the Bar. I seem to be rather following in his footsteps at this stage.
- 55 I also read with Jak Callaway. I first came in contact with Jak working side by side at HDY. I briefed Jak when he went to the Bar. I read with him. I have had cases against him and appeared with him on a number of occasions. Jak advised me to go to the Bar. He also forced me to join his golf club at some considerable expense. Thanks Jak for the advice, assistance and friendship you have given me over the years.
- 56 As you have heard, in the late 1980s I was afforded an opportunity to develop an insurance and general litigation practice. I again benefited

greatly from having some very talented young solicitors working for me such as James Riley and John Van de Poll who ultimately went on to establish their own successful practices. I worked most closely with and jointly developed the practice with Paul Caporale. Paul and I first worked together in 1986. We worked together ultimately as partners throughout the nineties and Paul took over the leadership of the practice when I went to the Bar. He was a great support to me, particularly in my early years at the Bar. As many of you will know, Paul ultimately retired from the partnership at an early age and became a very successful mediator.

57 I enjoyed my time at Henry Davis York. It was a great firm to work at with a lot of very good people. I often reflect on how practice has changed for solicitors from the time that I started work. For those young solicitors who may not know time costing was only introduced in law firms in the early 1980s. It started at Henry Davis York in 1984. We used to work out what seemed fair and appropriate at the end of the matter. Now time costing appears to be the guiding principle for many young solicitors. When I started at HDY there were ten partners and 15 employed solicitors. That made it a leading medium-sized firm in the Sydney market. There were over 50 when it merged with Norton Rose. With the rapid growth in the number of employees in the mid-1980s we formed something called an Associates Union. I bet they don't have that in law firms anymore to make demands on the partners. The only problem was that at the time when Bob Hawke was preaching consensus and conciliation we elected as our shop steward a young militant named Frank Corsaro, now Frank Corsaro SC. Precisely none of our demands were ever met and I think we abandoned the union after the Frank experiment.

58 In those days people used to smoke in their offices. My first law clerk was Robert Newlins, now Robert Newlins SC. He was very good, even then. We, not him, decided that we would allocate his office, yes he even had an office as a law clerk, as the smoking room. Everyone would pile in there in the afternoon and smoke away. James Stevenson named the room I think Smokey Bob's Stink House. I'm not sure that Robert would necessarily

put up with that now. Times have changed somewhat and we have all moved on.

- 59 I have also enjoyed my time at the Bar both as junior and senior counsel. When I first started my brother-in-law, the late Tony Edwards of the Newcastle Bar, helped me enormously introducing me to his solicitors and providing me with regular advice. I have worked with many good juniors, too many to mention, but I might just mention those that I have worked with very frequently over the past ten years who have also showed me the new way of working at the Bar with expert use of technology such as Stephen Walsh, Olivia Dinka, Tony Bowen and Terry Willis. I have valued the assistance of all of my juniors and am glad that I won't have to compete with them for work over the next ten years.
- 60 I would like to mention in particular Larry King SC. I used to brief Larry in the 1980s for specialist insurance advice in certain areas. I then appeared as his junior in cases and have appeared against him on a number of occasions. When there were ethical questions I always relied on Larry for advice. I consulted him about coming to the Bar. I know that there are many young barristers who have benefited from Larry's advice and experience over the years. Just two weeks ago I was acting as a mediator and chatting to one of the counsel. He mentioned to me that he had been having some issues in his practice and that Larry was mentoring him to help him overcome his difficulties. This is typical of Larry. You should know, Larry, that I still have some of those advices you gave me in the late eighties and nineties and I hate to say I might have copied them in some of my own advices from time to time.
- 61 Of course with my background as a solicitor I have always perhaps considered the solicitors' branch of the profession very important in litigation. Barristers are often only as good as the case they are presented with by their solicitors. Well, that's the excuse I've used when things have gone horribly wrong over the years.

- 62 Again I have worked with and been briefed by many very good solicitors. I have had the distinct advantage of continued 20 years of support from quite a number, again too many to mention but such as Julia Brabant, Peter Ford, Patrick Thompson, Kevin Emanuel, Claire Tingey and Joanne Scott. I thank you in particular for that 20 years' worth of work and presenting me with so many good cases.
- 63 Finally I would like to thank those who have worked closely with me on a day to day basis and been of such great assistance to me. Christine Robertson has been my typist for 20 years, working all hours of the night to turn around submissions and advices. She has been invaluable. I would like to thank my bookkeeper of 20 years, Victoria, who was never late with the BAS statements (when she handed it over to me a month ago I was late) and my clerks, in particular, Trish Hoff, Loraine Byrnes and, most recently, Melissa Brown, all of whom have done a stellar job in managing my somewhat busy practice.
- 64 I am honoured to be replacing Justice Monika Schmidt. Her Honour served on the Bench firstly in the Industrial Court then in this Court for 27 years and she still hasn't reached retirement age. I appeared before her Honour on quite a number of occasions. I was always treated fairly with considerable courtesy. I hope to emulate her Honour's fair, patient but firm manner in court.
- 65 The practice of law is challenging and stressful but very satisfying. We are privileged to have jobs that involve a process of continuous learning which makes the job more interesting. Indeed, one of the great challenges is to absorb as much as possible about other disciplines such as engineering, medicine and accounting in a short space of time, as well as learn about many interesting topics such as why fires start, why buildings develop defects, why products fail and, more significantly, why people behave in a certain manner and, most importantly, learn about human frailty and the difficulties that so many members of our society face on a daily basis. I

have also come to see that in my other activities which have been mentioned.

66 I am looking forward to my new role. It is an honour and a privilege to be appointed to this Court. I expect that the process of learning will go on. I can only say that I will do what my father suggested I do 50 years ago, which is to work hard and do my best.
