

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

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

Wednesday 12 June 2012

**SWEARING IN CEREMONY OF
THE HONOURABLE RICHARD BUTTON
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BUTTON 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)

(Affirmations taken)

- 2 **BATHURST CJ:** Justice Button, on behalf of all the members of the Court, I welcome you, and I wish you a happy and productive time on this Court.

- 3 **MR B COLES QC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** May it please the Court. It is a privilege to speak on behalf of the Bar on the occasion of the appointment of your Honour, Justice Button as a judge of this Court. Your Honour is a widely respected public defender, whose arguments in support of society's most disadvantaged appellants were always advanced with conspicuous ability. It is too infrequently noticed by public commentators that our system of justice is much dependent upon its ability to attract senior practitioners of the highest calibre. In that respect, the community should be very pleased that your Honour has taken this appointment.

- 4 Your Honour graduated from the University of Sydney with a Bachelor of Arts degree in 1982 and a Bachelor of Laws in 1984. You were admitted as a solicitor of the Supreme Court in July of that same year.
- 5 Your legal career began in July 1985 at what was then the State Bank of New South Wales. Debt recovery, security enforcement and insolvency were the staples of your commercial litigation practice. It appears, however, that your Honour had also heard the call to your attention of the claims of social justice because you served contemporaneously as a volunteer solicitor at the Redfern Legal Centre. Your contribution to their acclaimed publication, the *Debt Survival Guide*, must have supplied a welcome distraction to the demands of the daily practice in the banking world.
- 6 By November 1986, your Honour had moved to the Legal Aid Commission of New South Wales, and since then, your career has been focused exclusively in the criminal law.
- 7 Your Honour was admitted to practice at the New South Wales Bar in June 1989, and you read with Winston Terracini. You soon built up a specialised criminal practice in the Local and District Courts, and in May of 1991, you were appointed as a Public Defender.
- 8 In 1996, you were appointed as the Director of the Criminal Law Review Division of the New South Wales Attorney General, the body that is responsible for criminal law reform. Your Honour's commission marks another addition to the ranks of those who have held this appointment before going on to assume other high legal public office. These include Justices Latham and Howie of this Court, his Honour Judge Haesler SC, her Honour Judge Wells and the current Director of Public Prosecutions, Lloyd Babb SC.

- 9 In 1998, your Honour became an adviser to the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. This was but one of a number of committees and working parties in which your Honour participated, whose work was focused on issues of law reform in the criminal area, in particular in relation to offences against the person.
- 10 As part of your Honour's work on the Model Criminal Code Officers Committee, your Honour participated in the authorship of its final report regarding sexual offences. That report went on to form the basis of the sexual offences provisions of the *Criminal Code Act 2001 (Cth)* and was influential in the process of law reform in England and Wales.
- 11 Similarly, in 1998, you were the principal author of the final report of the working party convened by the New South Wales Attorney General to consider reform of the law relating to the "homosexual advance defence" in murder trials.
- 12 Your influence on the development of important aspects of criminal law has been considerable, not within New South Wales, but in other Australian jurisdictions and overseas. Your Honour's diverse contributions include the making of submissions to the Law Reform Committee of the Victorian Parliament in 2004, in its inquiry into warrant powers and procedures.
- 13 The breadth and extent of your Honour's grasp and insight into the criminal law and its need for reform is well illustrated by an article which your Honour co-authored, together with Andrew Haesler and Chrissa Loukas, in the winter 2003 edition of *Bar News*. In that article, you and your learned co-authors described the *Crimes Act (NSW)* as "an almost incomprehensible jumble of provisions old and new", which was "becoming more and more ramshackle" and was likely to produce the outcome that the criminal law would become "unworkable and unknowable". Many of the recommendations contained in your Honour's article have yet to bear fruit, but most would agree that the need to discern the law of treason and

piracy from a statute of the Westminster Parliament passed in 1351, might be at least inconvenient.

- 14 In 2001 your Honour was appointed to the Bar Association's Criminal Law Committee, a position you held until 2008. During that time, you drafted numerous submissions on behalf of the Bar Council in response to proposed legislative amendments.
- 15 In 2005, your Honour took silk. In 2009, your Honour appeared for one of the co-accused in what was to become Australia's longest running terrorism trial.
- 16 You have given your time to the cause of legal education, delivering numerous lectures before conferences organised by the Legal Aid Commission, the Aboriginal Legal Services, the Criminal Defence Lawyers Association, the Law Society, the Bar Practice Course and, of course, the program within the Office of the Public Defenders itself. In 2010, you represented the Bar Association on the DNA Review Panel. In 2011, your Honour was a member of the Bar Association's Senior Counsel Selection Committee. In that capacity, your Honour's calmly analytical and dispassionate contributions represented a model of those qualities which will be a hallmark of your Honour's judicial office.
- 17 Your Honour is one of the most highly respected and accomplished practitioners from the New South Wales Bar, with extensive experience in all aspects of conducting complex criminal cases. There can be no doubt that your Honour's appointment is an excellent one, and the Bar congratulates you. May it please the Court.
- 18 **MR J DOBSON SENIOR VICE-PRESIDENT THE LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. Today we celebrate your Honour's appointment to the Supreme Court of New South Wales. It is an acknowledgement of your intellect, skill set, experience and personal attributes that make you eminently suitable for the judiciary. On behalf of

the Law Society of New South Wales and the solicitors of this State, I am pleased to congratulate your Honour on a well-earned elevation to the bench. Unfortunately, Justin Dowd, the President of the Law Society, is unable to be here today, but he has asked me to pass on to you his sincere congratulations and best wishes on your appointment. Upon investigation, my sources have revealed your Honour's career path was always destined to be It can be seen even as early as your high school days; you attended Barker College as a young man of many talents, some of which included creative writing.

- 19 You were also involved in debating, public speaking, editing the school magazine and winning many prizes. And then in 1975, coinciding with your introduction to co-education classes, your Honour developed an interest in drama:

"To be or not to be" –

a judge; was that your question? Graduating from the University of Sydney in Arts/Law prior to embarking upon your legal career, you chose to have a break, advice you have given to students; even last year's careers evening at the University of Technology, you advised the students to time take time out if you need it. Continuing on, your Honour recalled to them, "After the College of Law, I was sick to death of studying. Against the wishes of my parents, I drove a cab for several months and went overseas by myself. I'm glad I did that." Your Honour, you have the ability to convey succinct messages to young, impressionable minds. In your final year at Barker, senior school speech night, whilst acknowledging the success and popularity of the Shakespearian production staged that year, you put the case forward that less conventional, more innovative plays be considered.

- 20 Admitted to practice in 1984, you worked, as said before, in the commercial litigation section of the State Bank. In 1986, you moved to the Australian Legal Aid Office in New South Wales, where your focus shifted

to criminal law. In your first year as a legal aid instructing solicitor, you learnt the importance of thorough preparation, particularly when, on one morning of a trial, the barrister you were instructing was struck down with a sudden illness. Apparently, it was something in the circuit water. However, your Honour not only conducted the jury trial before an exacting judge, you successfully won an acquittal for the accused! Continuing on your pathway to excellence in jury trial advocacy.

21 In 1989, you went to the Bar as a young counsel at Liverpool, you, effectively, conducted all criminal trials and pleas for the Public Defenders Office. In 1991, you were appointed as a public defender, and as I understand, your Honour's first jury trial in the New South Wales Supreme Court related to the famous McKinney matter. Breaking new territory and being involved from the committal stages, you led one of the longest-running terrorism trials, as stated by my friend. It was conducted over 181 days. The jury heard 300 witnesses, examined 3000 exhibits, watched 30 days of surveillance tapes, and listened to 18 hours of phone intercepts. Then after a further month of deliberations, the jury finally delivered its verdict.

22 In 2005, on a sleeper train to Shanghai, enjoying a love of trains and travel, you received an SMS advising your Honour you were appointed senior counsel. Your Honour is a great believer that preparation is the key to preventing poor performance. Don't rush to achieve milestones. Be competent about what you are doing before taking on another challenge. Perhaps this assertiveness has come from your inspiration from the former US football coach, Chuck Knox, who said:

“Always have a plan and believe in it. Nothing happens by accident.”

23 Your Honour, on heeding your advice on preparation, I would like to take this moment to share with those of my legal fraternity here your words:

“Know the bench and adjust accordingly. Don’t make jokes, but, of course, feel free to laugh at jokes from the bench.”

Very wise advice. Now, after saying that, your colleagues recall a bright, young solicitor walking into the Prisoners’ Legal Service, where one of your first tasks was very unusual in that you were asked to help inflate a Christmas decoration. Your Honour, I was not aware that a six-foot high, plastic Godzilla was a Christmas decoration. I could only come to the conclusion that, perhaps, Godzilla was a Christmas gift from the prisoners. Now, moving on, your Honour, no one could achieve so much without the encouragement, support and love from your family, and this has been the case in your accomplishments. Your parents, Phillip and Coralie, your sisters, Gillian, Linda and Elizabeth, and your partner, Dagmar have all been there for you throughout your achievements and now for your appointment to the Supreme Court of New South Wales. They must be extremely proud of you.

- 24 Your students have described you as down to earth, easy to understand, very encouraging, and generally interested in their careers and aspirations. As can be seen here today from the attendance of your family, friends, colleagues, the profession, and the distinguished speakers, it is evident you are admired, respected and have a great sense of humour. It should also be noted that I have received a message at the last minute which I have noted. Someone called “Tigger” or “Tiger” has sent a message. He says you will know him. The message reads:

“Bringing all my latest exhibits for you at all hours of the night.”

Says you will understand and congratulations. In conclusion, your Honour, our sincere congratulations. Your experience and integrity are the makings of a fine, excellent and respected judge. May it please the Court.

- 25 **BUTTON J:** Chief Justice, your Honours, members of the profession, family and friends, ladies and gentlemen.

- 26 I acknowledge the traditional owners of the land upon which we meet today.
- 27 I confess I approached the speeches of the President of the Bar Association and the Senior Vice-President of the Law Society with some trepidation. The last occasion on which my personal and professional lives were reviewed in a speech was at my 21st birthday party. At that time, with the sublime confidence of youth, I regarded my personal life as beyond criticism, and of course my professional life was completely non-existent. Some time has passed since then. In the event, I thank you, Mr Coles and Mr Dobson, and all of those whom you represent, for your gentleness, your good humour, and your warm wishes.
- 28 In 1984, a little nervous and rather honoured, I was admitted as a solicitor of the Supreme Court of New South Wales. Twenty-eight years later, again a little nervous, and this time deeply honoured, I have been sworn in as a judge of the same Court. The closing of such a circle in one's life does invite reflection, though not, I hope, to a tedious degree. I shall attempt to inject a little dry wit into my remarks, and I request that all members of the legal profession present obey that iron rule of advocacy of always laughing at the judge's attempted jokes, no matter how feeble.
- 29 My life has been an exceptionally lucky and happy one, and its story can be told shortly and simply. I was born into a home of emotional and material abundance. Hearing the life stories of clients over the past 25 years has taught me what a lucky hand fate played me in that regard. Only as an adult did I come to realise the great sacrifices that my parents had made to ensure my happiness throughout life. I am also fortunate to have three loving younger sisters, all of them here today, and all of them forthright and strong personalities. Accordingly, my skills in discussion, both reasoned and otherwise, developed from an early age.
- 30 I enjoyed an excellent education at two public primary schools, Barker College, and the University of Sydney. At Barker I took part in debating

and drama, and found that I liked the sound of my own voice. That is a taste that I propose to try to put aside immediately upon the end of this speech. It was at Barker as well that I made some friendships that have endured for four decades.

31 I cannot leave a discussion of my education without mentioning the three years I spent as a resident of Wesley College on the campus of the University of Sydney. I arrived there as something of a library nerd, and left there with what could be described as a highly developed sense of the enjoyment of life. Indeed, so great was the latter in my student days that those who knew me only then may be surprised to know that I managed to become a lawyer at all, let alone a judge. I hope that I have been able to balance a love of learning with an enjoyment of life in all of the years since then. In truth, the great gift that Wesley gave me was a circle of lifelong friends, now scattered around the globe, who have become a second family.

32 Those who know me only as a hard-bitten criminal lawyer may have been surprised to learn that my first position in the law was in the legal section of a bank, doing commercial work. I enjoyed it, and took pride in my consent adjournments before the registrar in equity and so forth. I look forward with alacrity to reacquainting myself with such things as summonses for possession and purportedly unconscionable contracts.

33 My period as a solicitor at Legal Aid was a very happy one. I was surrounded by committed lawyers, many of them young, who were determined to ensure that penniless people received the best representation possible. I also had the chance to instruct some very fine jury advocates. One of them was Justice Bell, who has done me the great honour of being present today. Another was Sean Flood. It was Sean who taught me above all that there is so much more to criminal law and, in particular, jury advocacy, than what is written in the dusty law books.

- 34 The private Bar was a time of challenge. Due to the need to earn a living, I became a jack-of-all-trades, and, within reason, tried my hand at various jurisdictions with which I was not overly familiar. I do recall receiving a last minute brief from a chaotic firm of solicitors to appear in some sort of costs argument in the Supreme Court. I prepared myself as best I could, and then at Court met my opponent for the usual pre-hearing discussion. He was obviously an experienced commercial solicitor, and knew a great deal about the matter. I felt that in our discussion I gave a good impression and acquitted myself rather well. As we sat down together, waiting for our matter to be called on, I glanced over as he was making a file note. I could not help noticing that it read, "Button for the defendant. Knows nothing of the matter". To add insult to injury, I do not believe that I was ever paid for my sterling performance.
- 35 Not surprisingly, shortly thereafter when a position as a Public Defender became available, I applied for it. Justice Hidden, then the Senior Public Defender, and the model for criminal defence lawyers of my generation, paid me the great compliment of recommending to the Attorney General that I be appointed.
- 36 Little needs to be said about how happy and fulfilled I was at the Public Defenders - the fact that I stayed there for 21 years speaks for itself. The work is difficult and stressful but very rewarding, the *esprit de corps* is very high, and the support staff are excellent. The Public Defenders Chambers is an institution with a storied past, a notable present, and a glittering future, and it has been my privilege to be a part of all of that.
- 37 In truth, it was no accident that I became a barrister and a Public Defender. My father, Phillip Button, who has been unable to overcome great infirmity to be here today, was a solicitor in the family firm of Robilliard & Robilliard, which my great-grandfather had founded in 1895. Although my father rarely, if ever, appeared in this Court, for over 40 years he was a faithful servant of the Supreme Court of New South Wales and its values.

- 38 My father was not involved in criminal law or advocacy. But he did have a large collection of books about famous British criminal trials of the late 19th and early 20th centuries, which I read with enthusiasm. He also had an interest in the rules of evidence. I remember very clearly a day when he and I were repairing our small sailing boat, after one of its regular disasters. My father discussed with me the appeal against the conviction for murder in Ratten's case, and the question of whether or not what the telephonist had heard in the phone call from the home where the deceased had been shot was to be characterised as hearsay. Even as a boy, it struck me as remarkable, gripping, almost incredible, that whether or not a man would spend the rest of his life in gaol could turn upon how an appellate court (or rather, in those days, a Judicial Committee) characterised a piece of evidence.
- 39 With the benefit of the hindsight of 40 years and from my new position, I venture to inform my father that he got one or two aspects of the rule against hearsay wrong. But in truth, at a very early age, a fierce flame of interest in the rules of evidence and the doctrines and drama of criminal law was lit in me, and it has never died out since.
- 40 The effect that my mother, Coralie Button, who is present, had on my life and career is no less powerful, but it can be stated more succinctly. For as long as I have known her, she has despised injustice in all its forms. She particularly abhors the bullying of the weak by the strong. Everyone in our family knows that she is incapable of standing by and seeing an innocent suffer.
- 41 In short, I am proud to say that my career has directly reflected the values that I learned from my parents. I hope that it will continue to do so.
- 42 Speaking of family, my three excellent nephews are here today. They are not used to seeing their uncle quite so formally dressed. They, along with my excellent niece, are a source of great happiness to me. Not only that, I

have for some time nurtured a quiet hope that the long connection between our family and the practice of the law has not yet come to an end.

- 43 I should mention the few years that I spent in law reform on secondment within the Attorney General's Department. Laurie Glanfield and Bill Grant helped me to tread carefully in the jungle of bureaucracy. It was also exciting to work with the late Jeff Shaw and his young staff. And it was invigorating to hear the growling of the bear pit from close range, though the experience did make me realise that the courts, with their slightly more refined atmosphere, are my natural home. During that time, I had the opportunity to work on the Model Criminal Code, with some of the finest academic and judicial thinkers about criminal law in Australia. As for the Code itself, I take responsibility only for the good bits.
- 44 The highlight of my career as an advocate was undoubtedly the terrorism trial at Parramatta. To appear in a criminal matter that extends for the better part of two years, including about nine months in front of the jury, in which the maximum penalty is life imprisonment, in which there are multiple accused, and in which the count is conspiracy, with all of its factual and legal difficulties - that was demanding, exciting, and, I must say, wearing. I have said to many colleagues since then that I regard being involved in such a trial as like climbing Mount Everest - a great achievement, never to be repeated. I may have spoken too soon. Justice Latham, the criminal list judge, may have other plans for me.
- 45 In short, I have had a very happy and satisfied life within the law. My life away from the law has been covered amply by the two speakers on behalf of the profession, and I shall avoid the sin of repetition and be brief. Sailing has been a source of relaxation, though as well the usual nautical catastrophes with attendant expense. Jazz and dancing have been a passion, and I must check with the Judicial Commission that a restrained modified foxtrot is consistent with judicial decorum.

- 46 It is also true that I have enjoyed American football as a spectator for many years. Quite apart from its intriguing stratagems, it also features, for one brought up on rugby union, the forbidden fruit of the forward pass. I accept that for most Australians the game is an interminable, incomprehensible, stop-start affair, punctuated by clashes of ferocious intensity. Let us hope that the criminal trials over which I preside do not come to resemble my favourite sport.
- 47 Whenever I addressed juries, I always left the concept of proof beyond reasonable doubt until last. It just seemed to me to be the best and most emotional point that I had. I have left my best point till last again today. Germany, that land of magnificent beauty and cultural richness, is also known for her aspects of darkness - her forests, her winters, her history. And yet one of the daughters of Germany is a woman who can bring sunshine and laughter to the bleakest January day in Berlin, or to the gloomy aftermath of the most crushing courtroom reverse. I refer of course to my partner, Dagmar. This honour that has been bestowed upon me today I share with her, just as I hope that she will share with me in the challenges ahead.
- 48 I come to my new role fresh with anticipation, a little daunted, and deeply humbled. The warmth of the good wishes that I have received from the profession, along with the warmth of the welcome I have received from the judges of this august Court, have fortified me for the tasks that lie ahead.
- 49 It remains only for me to thank all of you for your kindness in attending today. And to promise solemnly that I will do my utmost to repay the trust that you have reposed in me.
