

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

**MASON ACJ
AND JUDGES OF THE
SUPREME COURT**

Monday 5 May 2008

**SWEARING-IN CEREMONY OF
THE HONOURABLE NIGEL GEOFFREY REIN
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

1 **REIN J:** Acting 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 **MASON ACJ:** Thank you Justice Rein. Please be seated while your Commission is read. Principal Registrar, please read the Commission.

(Commission read)

(Oaths of office taken)

3 Principal Registrar, I hand to you the form of oaths so that they can be filed with the records of the Court and the Bible so it can have the customary inscription placed in it and presented to his Honour as a memento of this occasion.

4 **MASON ACJ:** Justice Rein on behalf of the judges of this Court I welcome you to the Court and congratulate you on your appointment.

5 **MS A KATZMANN, PRESIDENT, BAR ASSOCIATION OF NEW SOUTH WALES:** If the Court pleases.

- 6 On behalf of the New South Wales Bar may I congratulate your Honour on your appointment. It is ironic that your Honour was elevated to the Bench. When you first left school you were asked why you didn't become a judge. This is what your Honour said, "Yes I could have been a judge but I never had the Latin, never had the Latin for the judging. I just never had sufficient of it to get through the rigorous judging exam. They're noted for their rigour. People come out saying, 'My God, what a rigorous exam'. And so I became a miner instead, a coal miner. I managed to get through the mining exams. They're not rigorous. They only ask one question. They say, 'Who are you?' and I got 75% on that. I would much prefer to be a judge than a coal miner because of the absence of falling coal". Well your Honour finally got your wish.
- 7 Actually of course your Honour did not leave Vaucluse Boys High School in order to become a coal miner. I drew my opening remarks as your Honour will recognise from a Peter Cook monologue entitled *Sitting on the Bench*. Your Honour is an avid fan of Peter Cook and Dudley Moore and is reputed to do a mean impersonation of both Pete and Dud. Curious that. Peter Cook once described Pete as the informed idiot and Dud as the uninformed idiot. Cook added, "They're both idiots but Pete is always slightly superior. In fact he knows nothing either". Your Honour could never be accused of knowing nothing.
- 8 Your Honour grew up in the Eastern Suburbs of Sydney and after attending Woollahra Primary School and then Vaucluse Boys High where you were head prefect you graduated from the University of Sydney in arts and law and then undertook post graduate articles at Minter Simpson and Co in 1976 and 1977. Your Honour then took what now might be called a gap year, working in Haifa in Israel at the special maritime and insurance firm S Friedman and Co. On your return to Australia you worked for three years as an employed solicitor at Stephen Jacques and Stephen in Sydney before joining Dudley Westgarth and Co. That firm, alive to your Honour's talents, albeit in a different incarnation, offered your Honour a partnership at the tender age of thirty. Your Honour was called to the bar

in 1984. Your mentors were the late great Chris Gee QC and Bob McFarlane QC who stands beside me and with whom you read and with whom you retained a close friendship. In turn of course your Honour became a mentor to others, many of whom are present in Court today. Your Honour practised for the most part from ground floor Wentworth Chambers and latterly from the eleventh floor of St James Hall. You specialised in the areas of insurance, professional liability, building and construction law, general and commercial litigation and also maritime law and carriage of goods. You quickly established yourself as a much sought after junior before taking silk in 1999.

- 9 As an expert in the field of insurance contracts your Honour would appreciate Chico Marx's insight into contractual capacity in *Night at the Opera* when he told Groucho, playing the part of Otis B Driftwood or the party of the second part, "Sanity clause, you can't fool me, there ain't no sanity clause". The Marx Brothers were never far off your Honour's radar. One of your Honour's former readers recalls sitting with your Honour in your rather large room on ground floor Wentworth Chambers. He recalls you discussing membership of a particular club. Your Honour remarked as Groucho Marx famously did and, I gather, in precisely the way he would have said it, "I don't care to belong to a club that accepts people like me as members". Just then a fellow - let that be a lesson to the Supreme Court - just then a fellow floor member popped his head into the room and said, "I thought I heard Groucho Marx in here but I see it is only his moustache". But I digress.
- 10 As a barrister your Honour attracted a great deal of praise for the breadth of your intellect, for your discipline, your capacity for hard work, for the meticulous nature of your preparation and the precision of your advices. Woe betide the poorly prepared barrister who appears in your Honour's court.
- 11 Your Honour's time at the Bar was also characterised by your unselfishness and generosity, both through your involvement in conducting

continuing legal education sessions and as a fine and caring tutor in the best traditions of the Bar. Those barristers who were lucky enough to work with your Honour all comment on your Honour's sense of humour. Your talent for mimicry is legendary. You are also renowned for your love of music. In particular folk and blues. But more of that later.

- 12 The New South Wales government had the good sense to appoint your Honour to the Bench, not once but twice or five times if you count the acting appointments to this Court. In 2002 your Honour was elevated to the Bench of the District Court. There you have earned the widespread respect of the profession and your fellow judges, a good number of whom are here in Court today. I am sure that your Honour's expertise in commercial law in particular will be sorely missed.

- 13 Apart from your Honour's decision to restore a \$50,000 award of damages to a young offender (something that apparently scandalised the *Daily Telegraph*) perhaps the most talked about of your Honour's decisions to date was a case involving the legal effect of eBay transactions, a case your Honour heard whilst acting as a judge of this Court. The case involved a purported eBay sale of a World War 2 RAAF *Wirraway* aircraft. Despite the fact that the plaintiff's bid had matched the reserve, the vendor refused to honour the deal after having received a better offer. He didn't count on your Honour. Your Honour held that the eBay transaction constituted a binding contract and granted specific performance preventing the vendor from backing out of the deal. The judgment struck a blow for compulsive eBay bidders the world over and your Honour now features on numerous international blogs and websites from Moldova to the United States. The long term economic implications of the decision are no doubt being factored into the Federal budget process as we speak.

- 14 As a judge of the District Court your Honour also served as a deputy chairperson of the Medical Tribunal, a responsibility ordinarily assigned to the most senior judges of the court and in which capacity I can personally attest your Honour served with distinction. Now that the government has

very sensibly chosen to elevate you once again, no one could doubt that your Honour will prove to be a valuable addition to this Court.

15 Earlier I referred to your Honour's affection for the blues. It seems fitting therefore that I conclude my remarks with a reference to one of the many reflections on the judiciary by the downtrodden singers of that genre. This one comes from the late Furry Lewis' tribute to the judiciary, *Judge Harsh Blues*. There Furry pleaded for mercy on an allegedly trumped up murder charge: "Please Judge Harsh, make it light as you possibly can. Please Judge Harsh, make it light as you possibly can. I ain't did no work Judge since I don't know when. My woman come running with a hundred dollars in her hand, crying 'Judge, Judge please spare my man'. People all talking 'bout what they will do. Judge all talking about what they will do. If they had justice, he'd be in penitentiary too". Fortunately as a judge of the Equity Division your Honour will have to deal with less troubling pleas.

16 On behalf of the New South Wales Bar and for my own part I wish you well and I offer our warmest congratulations.

17 **Mr H MACKEN, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES:**
May it please the Court. Your Honour on behalf of the solicitors of this State I'm delighted to convey our congratulations and best wishes on your appointment as a Judge of the Supreme Court of New South Wales.

18 Your Honour comes to the Bench with a wealth of experience and skills; some eight years as a practising solicitor, eighteen years at the Bar and most recently as a Judge of the District Court.

19 Today your Honour enters a new court with new friends and new challenges ahead. It's a whole new league. A bit like playing league for Australia after cutting your teeth on State of Origin footy – both being hard work, occasionally brutal but the pinnacle of mass appeal and social and community service. For our profession this is pretty well as good as it gets and we are really pleased that you're able to serve in this Court.

20 Your family, your late father Alan an amazingly well read publisher with Collins books, your mother Joan and sister Rosalind emigrated from England to Australia in the early 60's. Far too precious to be ten pound Poms and probably a bit too late. Your Honour attended the selective Woollahra Opportunity School and then Vacluse High. Your notoriety in secondary school however was not so much your elevation as head prefect or your outstanding debating ability but your penchant and talent for mimicry; an unrivalled ability that's almost been rivalled by your tremendous academic and judicial capabilities. As has been mentioned, from Alf Garnett renditions, excerpts from Pete and Dud, Steptoe and Son, the word perfect recitals of Monty Pythons' The Four Yorkshire men your Honour's characterisations have always been held in great awe by your colleagues and friends. Some of these colleagues attended Vacluse High with your Honour and are also current members of the legal profession, Philip Meissner and Robert Levitus to name two. These two colleagues with the addition of your Honour and publican Bruce Solomon comprised the sixth form debating team that won the prestigious Hume Barber Trophy, a combined round robin and knock out competition for New South Wales secondary school debating. Philip Meissner recalls that you were a very strong debating team having honed your skills grappling with somewhat obscure topics such as The Answer is a Lemon. In addressing this issue perhaps your Honour's exploration of the Californian Lemon Law rather than the efficacious nature of citrus whetted your interest in legal affairs. The Vacluse boys of that year also made a lasting impression on your Honour's sister Rosalind who subsequently married one of your peers, Jacob Tasiz. Quality to a man!

21 While your Honour was obviously destined to perform, it was the courts and not the stage on which you focused your attention although I believe you also gave a police force career some consideration. We are really glad you're a judge and not a policeman. With arts and law degrees from Sydney University under your belt your Honour took post graduate studies at then Minter Simpson and Co. Your Honour's career path has been ably

covered this morning and I don't wish to reiterate too much in that regard. Suffice to say many practitioners and clients have benefited from your professionalism, diligence, expertise and knowledge of commercial practice particularly insurance law during your career.

- 22 During the early 80's your Honour worked as a senior associate with Henry Herron who was a partner at Dudley Westgarth and Co, a busy insurance practice, acting primarily for Lloyds Underwriters. Your Honour became a partner in the merged practice of Westgarth Balding which is now Corrs Chambers Westgarth and it's said your Honour was recognised by clients and colleagues alike as an outstanding insurance lawyer and a specialist in the field but despite numerous attempts and vigorous attempts to keep you in the partnership your Honour chose to go to the Bar. Henry recalls your Honour's persistent sense of fun pervading the stresses and strains of everyday practice and made the following observations: "On the first day in April Nigel phoned Henry from an adjoining office with a perfect Texan accent announced that he wanted the firm to act in an enormous piece of oil litigation. He asked Henry how good a lawyer he was and whilst Henry waxed lyrical on that subject much to the mirth of people in the office Nigel then poked his head into the office and ended the charade. It took some time to mend that particular fence".
- 23 Geoff Conlan a partner at Moray and Agnew first came in contact with your Honour in the late 80's on a case involving a construction dispute and some concrete 'slinkage', an area of law which may become relevant to your Honour given the environment which you have now entered. Your Honour's handling of this particular case did not go unnoticed by Moray and Agnew and they were quick to harness your talents and knowledge of commercial law and engage your services on numerous subsequent occasions for insurance disputes. At the conclusion of this construction case Geoff saw another side to the hard working barrister when your Honour launched into a Monty Python skit during dinner. He said: "Nigel is a very genuinely funny bloke and a great joke teller. In the work environment he was always very diligent, covering every angle when he

was being briefed". Similar observations were made by Oscar Schubb who worked with your Honour shortly before your appointment as a judge of the District Court in 2002 describing you as a great thinker and debater and a barrister who truly engaged with people. He said as an instructing solicitor you knew he was really listening and applying his mind to the issue at hand, he was always hard working and quick on his feet. Your associate Tori Edwards speaks as knowingly of you and she does glowingly. She said from the outset it's been a real pleasure working for and with the judge. He has such a broad and in depth knowledge of the law but at the same time is really committed to teaching his associates. He loves nothing more than to answer questions, discuss a current case or judgement or best of all, regale with tales of cases from his time at the Bar, going back even further, his time as a solicitor. It's great to work with someone who clearly has such passion for their chosen profession and relishes exploring concepts and their impact on particular cases. Your Honour's interests are certainly not confined to the law although I hear the little pad and pencil, which is permanently ensconced in your top left pocket, gets a regular workout. This forty cent outlay is extremely versatile and probably a cheap alternative to the palm pilot. As well as an ear for mimicry your Honour boasts a smattering of many languages, French, Hebrew, Japanese, Portuguese to name but a few and I understand you're currently learning Spanish. Perhaps as you enter this new court the farewell from your Honour's colleagues in the District Court is most likely to be Hasta la Vista.

- 24 Your Honour's family is an incredibly important part of your life and a source of great pride. Your wife Marianne is an architect and your children, twenty two year old twins Gabi and Michael. Gabi obviously knew better than to follow in her father's footsteps and is pursuing an arts degree. Michael shares your passion for music and is currently studying music full time. I believe Michael sometimes plays a guitar with your Honour, electric of course, and you apparently have six guitars in the house to choose from. Keith Richards eat your heart out. Perhaps you need six guitars as they're sometimes hard to find due to the fact that your

Honour's shed, traditionally used for hoarding unused household items, is swept clean while the house has, according to your wife, accumulated a volume that would fill your garage seven times over. Personal friend and colleague Stuart Hetherington says your Honour's mimicry is legendary and there are some solicitors in this state who are concerned that should your Honour be assigned to the commercial list the ghost of one of your most renowned targets, the Honourable Andrew Rogers, may well rise again from the Bench. Confusion and fear in equal parts.

25 Your Honour on behalf of the Law Society and its members I wish you every success in your new role and trust that it will be an enjoyable, rewarding and fulfilling career move. Your ability to 'always look on the bright side of life' will continue to win you many friends and your experience, integrity, diligence and sense of justice will serve the people of this State as they deserve to be served.

26 **REIN J:** Thank you Miss Katzman and Mr Macken for the generous and flattering inaccuracies with which your speeches were laced.

27 The nature of the work on the District Court has been varied and the task at times challenging, particularly when, to the consternation of both prosecution and defence, I ventured into the uncharted sea, for me, of the criminal law. The whole experience of life on the Bench however was made so much more enjoyable by virtue of its wonderful camaraderie. Many who were colleagues have become friends, and many who were friends have become good friends. I am grateful to Chief Judge Blanch who permitted me to take on the role of an Acting Justice of the Supreme Court on three occasions. These periods were long enough to gain some experience in the Equity Division and short enough not to reveal the deficiencies in my knowledge.

28 I know too that without the support of the Chief Judge in Equity, Justice Peter Young, and of course Chief Justice Spigelman I would not be sitting here today. The uncharitable inference that the absence of the Chief

Justice overseas and the imminent retirement of the Acting Chief Justice are causally connected to my appointment can be rebutted on the facts.

- 29 Fortunately, my three commissions as an Acting Justice demonstrated not only the enormous breadth of work that the Equity division is engaged in, but also enabled me to experience an atmosphere of considerable collegiality and warmth.
- 30 I did however have some cause for concern on this topic when a few days after my appointment was announced I received a mysterious unsigned letter in Spanish, but helpfully with an English translation, purporting to be from a person I had met in Bolivia in January. The letter warned me about the foibles of some of my new colleagues in the Equity Division. There were two features of the letter that led me to conclude who the author really was. First, curiously, the letter singled out only one judge as worthy of emulation, Justice Einstein. Secondly it was very lengthy, even without the footnotes. Justice Einstein has made no admissions about any of this. I have counted him as a friend since I was a final year law student. His Honour introduced me to Minter Simpson which lead me to be engaged as a post graduate articled clerk with that firm. Subsequently I was involved in a number of cases with him, both as his instructing solicitor and his junior.
- 31 There are others on this Bench who have also played an important part in my career. Justice Austin lectured me brilliantly in three subjects at that excellent institution of learning, Sydney University and Justice Hamilton lectured me in practice and procedure with great enthusiasm. Justice Giles lectured me in evidence in his inimitable fashion and I have had a professional association and friendship with him for many years.
- 32 I have known many other Justices of this Court well for a long time whether as colleagues on the District Court Bench in the case of Justices Latham and Price or as a colleague on the Ground Floor Wentworth,

Justice Simpson or 11 St James Hall in the case of the Chief Judge in Common Law, Justice McClellan and Justice Hammerschlag.

- 33 Speaking of Justice Hammerschlag, over the years that we have been friends I have come to realize that beneath that tough and confident public exterior there lies an inner person who is, well, very tough and confident.
- 34 Justice Rothman I have known the longest. I took over the possession of the prefect's room from him at Vacluse Boys High some 38 years ago. What a coincidence then, that last week I moved into the chambers he had been occupying in this building. Just as before, he left me nothing of value.
- 35 Incidentally Justice Einstein had also, but much earlier, attended at Vacluse, a non-selective State school, as did three current silks and a good number of solicitors. In recognition of what the school has done for, or some might say to, the law, it has been decommissioned and will shortly be demolished.
- 36 A headmaster has said of me in his report to the New South Wales education authority on my departure from England at the age of eleven, "The way in which Nigel plays soccer leads me to predict that he will be a very good rugby footballer". The coach of the school 15A rugby team with which I later played must have said something very similar as the following year I became a member of the debating team.
- 37 My extensive familiarity with comedy scripts was only slightly more use in debates than it was on the playing field and it was not the kind of learning that my father had in mind for me but the quality of teaching at all the schools I attended and the very high calibre of my fellow students, some of whom remain close friends and are here today, assisted me to achieve sufficient success to embark on the study of law which I decided at the age of 16 was of great interest and appropriate for me should I attain the necessary marks.

- 38 I was privileged as a solicitor to have worked with some fine practitioners at Minters, Friedmans, Stephen Jacques and Westgarths, and at the Bar I had the opportunity to appear with many excellent barristers, in addition to those I have already mentioned. I would, without causing offence I hope, single out two for mention. The late Christopher Gee QC, whom I had briefed in a number of aviation matters was extremely generous in introducing me to his solicitors when he took silk in 1984. We had many cases together and even one opposed and it was fitting I think, that I was asked to pass to him my brief for one of the reinsurers in the HIH Royal Commission when I accepted appointment to the District Court.
- 39 The second person, who is seated at the Bar table today, is Rob MacFarlan QC. Happily for me accepted me as his pupil in 1984. No one could have had a better teacher and mentor in the law. Not only did I learn a great deal from him then and in the years following but he also became, and I am glad to say remains, a true and constant friend.
- 40 It is now over 30 years since I was admitted as a solicitor of this Court. I look back over a most diverse and interesting range of work, starting as an articled clerk and you have heard mention of the other elements. The notion of a shifting use is not limited to property law. I now join this illustrious Court, to sit in its Equity Division.
- 41 Many of the uninitiated have asked me, "What is Equity?". A complex topic. Students at law school learn that it is one of the maxims of Equity that he who comes to Equity must come with clean hands and secondly that Seldon in the 17th Century said with a degree of scorn, that the grant of remedies by Equity was as uncertain as the length of the Lord Chancellor's foot. I'm not sure how one measures the Lord Chancellor's foot these days but if called upon to do so at least I now have the gloves to assist in the maintenance of clean hands.

- 42 If I have had some small measure of approbation as a judge, a fair measure of that has been due to having had worked for me, associates of a very high calibre, Ms Jillian Cook, Ms Sara Anderson and now, Ms Tori Edwards all with legal, secretarial and managerial skills. Mr Frank Stewart, my Court officer for six years and my Tipstaff Mr Bill Martin who I am pleased to see here in Court today, have provided me with splendid assistance. All have been most loyal.
- 43 Aboard the steamship P&O Orsova as it sailed into Sydney's magnificent harbour on a bright May day, much as this, 44 years ago. I had no inkling of the future that awaited me but I was fortunate indeed, to have come to this land of generous opportunity.
- 44 I am deeply sorry that my father could not be spared to be with us in this Court room. His own academic aspirations were cut short by a lack of funds and then six years in the British Army but our home was rich in books and the love and learning and literature. My parents showered me with love and affection and my father took a great interest in my practice at the Bar, which career, he felt, vindicated his decision to accept a company position in Australia. I know how much today would have meant to him.
- 45 My mother is very proud of my elevation but unfortunately cannot be here to join my sister Rosalind and other family members today.
- 46 Finally, and I hope without unduly embarrassing her or our children, I would like to pay tribute to my wife Marianne. No wife could be more supportive and less demanding of a husband than she. I could have no finer companion and our children, no better mother. Gabi and Michael, our twins, have greatly enriched our lives and I hope that they are able to find occupations that will give them as much pleasure as I derive from the law, and Marianne does from architecture.
- 47 I sincerely hope I can justify the enormous trust placed in me by this appointment. To my fellow justices from all quarters of the Court, I thank

you for the warmth of the welcome I have already received. I am very much looking forward to becoming better acquainted with you. Whether you are family, friends, judges, practitioners of the law or from wider circles, you have honoured me by your presence today and I thank you all.
