

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

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

Thursday 20 June 2013

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE STEPHEN ROBB QC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **ROBB J:** Chief Justice, I have the honour to announce that I have been appointed a judge of this Court and a judge of appeal. I present to you my Commissions.

(Commissions read)

(Oaths of office taken)

- 2 **BATHURST CJ:** Justice Robb, on my behalf and on behalf of all members of the Bench, we welcome you. We look forward to working with you and wish you a long and happy career on this Court.

- 3 **MR P BOULTEN SC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** I appear this morning on behalf of the barristers of New South Wales to welcome the appointment of an eminent commercial silk of longstanding at the Bar, admired in equal parts for his modesty, discipline and incisive intellect, Justice Robb.

- 4 At this year's Bench and Bar dinner, Ms Junior put forward a taxonomy of silks which includes, but isn't limited to, the following: four storey silks because they have only four stories; fly-in and fly-out silks who take only

interstate briefs, preferably in Western Australia; celebrity silks wheeled in at the last possible moment because they will cost more than the rest of the team put together, and newly appointed silks who are relieved that the Senior Counsel Selection Committee is finally appointing on merit. All of which prompted one of your colleagues on 7 Selbourne to make the simplest, most succinct tribute of all, when he remarked that, "Stephen Robb is none of those".

- 5 To briefing solicitors, you were admired for being an approachable, reliable and focussed advocate. To junior barristers, you were an inclusive leader and a valued mentor. To your opponents, you were calm, collected and unerringly precise, with complete mastery of the law and facts in your case.

- 6 Your Honour attained a Bachelor of Arts in the heady year of 1973, a Bachelor of Laws with First Class Honours from the University of Sydney in 1976. Your pathway into the profession was auspicious to say the least. In 1975, while still an undergraduate, you were afforded the conspicuous honour of being named in the preface to the first edition of Meagher Gummow and Lehane's, *Equity: Doctrines and Remedies*. It reads, and I quote, "Unstinted praise is due of Mr S D Robb, who fulfilled the role of research assistant whilst also in the thrall of onerous articles of clerkship". As one would expect with such mellifluous authors, the word, "thrall" was well-chosen, it being the Old Norse term for a slave or indentured servant to the wealthy Vikings. The said clerkship was in the Scandinavian environment at Allens, under the guidance of that well-known Viking, William Gummow.

- 7 Your Honour was admitted as a solicitor of the Supreme Court in 1976 and in March 1980, you began practising at the New South Wales Bar. You had a room on Level 6 Wentworth, then in 1986 you moved to 7 Selborne, where you remained until your appointment. Indeed, such was your loyalty and so great was your contribution to the floor over such a long period of

time, John West QC and several others, each claimed sole credit for enticing you to the floor.

- 8 Your Honour took silk in 1992. That is to say you were among the last to be appointed Queen's Counsel in New South Wales, along with Justice Slattery whom you join on the Bench today. That group, the 1992 group, is known affectionately as, "The Dinosaurs". It's a sobriquet with connotations of extinction but my interpretation of the movie, Jurassic Park, and the Queensland Attorney General's recent announcement, leads me to err on the side of caution.
- 9 Your Honour built up a thriving practice in insurance, corporations and appellate cases. The great difficulty in preparing this speech is that you were renowned for not talking about your cases. Mostly, they were complex, long running and settled through hard-fought negotiations. My attention was drawn to trials involving the liquidation of the Bond group of companies and of One.Tel, a challenge to the constitution of the NRMA and perhaps most difficult and disconcerting of all, factional brawling in the Liberal Party of New South Wales. Others garnered little media attention but still affected noteworthy changes to the way regulators go about their business. For example, as a result of the decision in *Deputy Commissioner of Taxation v Soong*, in which your Honour appeared for a company director, the ATO issued a decision impact statement announcing a temporary halt to proceedings for the recovery of director penalty liability notices, until legislative changes came into effect.
- 10 Last year, your Honour became President of 7 Selborne Chambers, following the retirement from that role of Oslington QC. You instituted what Sir Humphrey Appleby would have called a courageous experiment with democracy by delegating managerial functions to committees made up of fellow barristers. "Stephen Robb believed in democracy", said one source. It has been noted that a counter-revolution is underway and the floor will revert to being a benign dictatorship very soon.

- 11 In addition to building a busy practice, your Honour gave time generously to the profession. You were a longstanding member of Professional Conduct Committee No. 1, from 2000 to 2002 and from 2004 to 2007. You represented the Bar as our counsel in difficult proceedings, involving a high profile former barrister who thought that paying tax was an optional extra that he could choose to dispense with. You served on the Bar Association's Senior Counsel Selection Committee in 2007. You have represented the Bar Association on the Supreme Court Commercial List Users Committee, and more recently you chaired a CPD seminar on hot tubbing.
- 12 Your Honour is known to be a committed and capable yachtsman. So much so that you have taken part in a Sydney to Hobart race, and in the much more sedate, Great Bar Boat Race. Apropos your taste in literature, I understand that your Honour enjoys reading science books and that you have a grasp of quantum mechanics. I remind the Court of the late, the Honourable David Hodgson, who also delved into the sub-atomic realm. From the point of view of a criminal lawyer, I am sure this will make you well suited for your new role in the Equity Division.
- 13 Members on 7 Selborne say that the your Honour was known to pace the corridors, thinking deeply about a case, usually without your shoes. Such are the habits of great and enquiring minds. It is said, for example, that the great economist and philosopher, Adam Smith, was once so lost in thought that he went outside in his nightgown to replenish his birdbath, and was so lost in thought, he walked more than 20 kilometres into town. So your fellow judges and court staff need not be alarmed if your Honour is seen pacing the halls of this building, deep in Socratic dialogue with yourself.
- 14 Your Honour, the Attorney General, the Honourable Greg Smith SC MP, has chosen very wisely. The New South Wales Bar is confident that you will discharge your new duties with all of the integrity and industry that has characterised your practice at the Bar. We all wish you well.

15 **MR JOHN DOBSON PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

16 As many of us have learned from experience, activities conducted behind closed doors can sometimes be open to misinterpretation. Take the 7th floor of Selbourne Chambers for example. Here the Head of Chambers calmly removes his shoes upon arrival and pads around in his socks before returning to his man-cave and closing the door. A short time later he can be heard intoning the words, “go to sleep”. Such a hypnotic skill perhaps could prove useful on the Bench for guiding counsel. However, I understand that in this case the ‘go to sleep’ instruction is used to shut down speech recognition software. Colleagues on the Bench can at least rest assured that their newest recruit has not inherited his early mentor’s preference for handwriting judgments.

17 Your Honour, the solicitors of New South Wales congratulate you on your elevation to the judiciary and wish you well in the next stage of your career.

18 Your Honour grew up on the New South Wales Central Coast and attended Gosford High School before commencing tertiary studies at the University of Sydney where you proved to be an outstanding scholar, completing an Arts Degree in 1974. You gained First Class Honours in the Bachelor of Laws in 1975. I am reliably informed that you were the runner-up of the University Medal that year.

19 When I read that your Honour chose to undertake the old articles of clerkship rather than complete an approved practical training program to gain admittance to practice I was a little surprised. For certainly it was a harder slog to be juggling university lectures and study while doing a full day’s work in the office. As I said, I was surprised until I discovered that you were articled to former High Court Justice, Bill Gummow AC, then a partner at Allen, Allen & Hemsley, and your lecturer in Equity at the

Sydney University. To have the benefit of such a mentor could only be described as a brilliant move. Indeed, I understand, you received mention for your assistance to Bill Gummow in the first edition of Meagher, Gummow and Lehane's, *Equity: Doctrines and Remedies*.

- 20 Admitted to practice in 1978, your Honour was called to the Bar in 1980, but you chose to spend two years as a lecturer in Contracts and Conflict Laws at Sydney University Law School prior to the Bar. You were appointed Queen's Counsel in 1992. Your Honour has been the counsel of choice and favourite "go to" person for many firms across a wide range of high profile and complex commercial litigation cases.
- 21 You are no stranger to long hours and hard work. In 2005, for example, your Honour spent most of the Christmas/New Year's break preparing written submissions for a major engineering case in relation to the third runway at Sydney Airport.
- 22 Solicitors who have briefed your Honour say you are extremely diligent and conscientious, very obliging and co-operative and have a great client manger. In the courtroom, you are organised and well prepared, able to present the pertinent points of the case with absolute clarity and succinctness, and to present arguments eloquently and in a measured way. Such deliberation makes for transcripts that are akin to reading a book.
- 23 Not only are you good on your feet in the courtroom, you are equally good on the snowfields or on the deck of an offshore racing vessel. As a former part owner of the 12-metre Bruce Farr designed yacht, "Sienna IV", and its predecessors, III and II, your partners described you as very strong and fit, competitive, level-headed and reliable, with an amazing ability to concentrate for hours on end, and who mixes extremely well with young people.

- 24 Your Honour has joined the big guns in races, like the Central Coast Bird Island Race. Possibly the only time sea legs deserted the crew was at Coffs Harbour in 2009 when seasickness and some problems with the boat saw you pull into Nelson Bay whereupon the consumption of bottles of rum ensured everyone was seedy for some time. However you were there to sail the boat back to its Kirribilli moorings.
- 25 One might say that the attributes of a skilled sailor translate well to that of a legal practitioner – being good on your feet, quick thinking, prepared at all times, possessing stamina and strength, good communication skills and team spirit. You start out by learning the ropes and doing time as a floor deckhand before moving on to positions requiring greater knowledge, experience and skill.
- 26 In between your regular gym regime and personal trainer, you are widely read, a keen traveller, and enjoy a sophisticated wine palate, honed during your university days.
- 27 Your Honour is also a strong family man. Your cooking skills are best noted for minestrone and spaghetti bolognaise and your handyman skills for fashioning doll houses for Miranda and Lucy. Your lawn mowing expertise has not been put to the test since you were boy growing up on a quarter acre block in Gosford.
- 28 A house full of lawyers must have brought its own unique challenges. Your wife, Angie, was at the Bar for a short time, and Miranda and Lucy followed in their parents' footsteps. Your Honour is also a very proud grandfather of Liam and Rhys who reside in the US, and Lucy's little princess, Lilly, which brings me back to your Honour's chambers, where one would naturally expect to find treasures and personal items.
- 29 Pride of place is given to the family photos and a little model sailing boat. Conspicuous among all the legal documents, reference books and files is a shelf filled with children's picture books for when Ms Lilly visits her

grandfather to discuss important matters. Regular travel to the US ensures your Honour is also kept up-to-date with the interests of your grandsons and I believe you have become quite informed about activities of The Wiggles and the heroes of the Chuggington series.

30 Your family – mother Marjorie, wife Angie, children Miranda and Lucy and your grandchildren must be very proud of you and, indeed, if your late father David could be here today he would be extremely proud to know the road you have travelled and what you have achieved in both your personal and professional life.

31 On behalf of the 26,000 solicitors of this State, we wish you every success on the Bench. As the Court pleases.

32 **ROBB J:** : For someone steeped as I am in the enduring Australian tradition of aversion to being the centre of attention or being required to speak publicly in my own cause, I confess to being a little daunted by my role in this august ceremony though it be the greatest honour of my life.

33 In accordance with this tradition and to the considerable frustration of my clerk, I have persistently refused to prepare a curriculum vitae which contains any useful information at all about the history of my involvement in the profession. Perhaps I did that intuitively as a protection against the day which has now come, when the Presidents of the Bar Association and the Law Society would have the unenviable task of trying to compose an informative and hopefully laudatory speech to welcome my swearing-in. I can only admire both of them for their success in meeting this challenge. I should acknowledge that a colleague who I suspect was a spy for one of them approached me, no doubt in jest, to see whether I could be persuaded to divulge any titbit of interesting information about my life in the law. Having managed to maintain an illusion of quiet respectability for some 35 years, I politely declined. I sincerely thank both Presidents for their very kind words.

- 34 Whatever may be the origins and purposes of the judicial swearing-in ceremony for the effective administration of the law, it is, I now see, to the appointee, a life changing right of passage. For all of the services that a barrister performs for his or her clients, the cardinal one is to represent the client before the Court. In that enterprise, the barrister stands behind the lectern at the Bar table at the focal point of an ancient process which might be called representative justice. Those of you who have shared this role may agree with me that it is an intensely personal and individual experience. When you are on your feet, you are absorbed in a world where it is you facing an impartial court and all the world behind your back becomes a temporary abstraction.
- 35 I sit here now at precisely the opposite focal point to that which I have occupied for more than 30 years. I am now looking from the Court towards the world. In looking, face to face, at all those who have gathered here today, I see my past and I hope my future. I have travelled a long road and it is humbling and uplifting that so many fellow wayfarers have done me the kindness to share this day with me.
- 36 It is fitting that I acknowledge collectively my debt to and respect for all my fellow practitioners who over the years have fought with me and against me, have shared the burden, borne the trial and tribulations and the occasional elation of success. Some may be inclined to see imperfection in the efforts of fellow practitioners. I have not. If the matter be considered fairly, in my opinion the New South Wales legal profession has honourably and effectively performed its duty to the law and the public.
- 37 While it may not be for me to say, I believe that I have generally enjoyed the friendship of colleagues and opponents, in some cases, ephemerally, because of the ebb and flow of practice, but in many cases, abidingly.
- 38 I am the grateful beneficiary of the advance in social conditions in modern Australian society where a young boy, born into the Australian working class, to whom at that time the Great Depression still spoke keenly,

should, by the grace and generosity of his fellow Australians, be given a Commonwealth Scholarship which has opened up to me the possibility of the professional life that I have been able to live and have led to this great day.

39 I honour the memory of my father who I lost before the end of High School. I wanted to make him proud of me in his lifetime but that was not to be. If it is true that anyone sees in me an ability to speak in the Australian way, to get on with those around me, they see Dave Robb in me.

40 I also honour my mother Marjorie, who is not able to be here today. She taught me to stand on my own feet.

41 There is no escaping from the fact that the demands of professional practice at the Bar weigh heavily on one's ability to devote the time to one's children to which they are rightly entitled. That is an offence for which I must admit guilt. Yet they have forgiven me and I bask in their love. The thrill they have expressed at my appointment is but a small compensation to them. They have both provided me with adorable grandchildren. In saying that my grandchildren are the delight of my life, I express the immemorial conclusion of men at my stage of life who look, sometimes forlornly, at the effect of the advance of time on their life's work but are preserved from doubt or despair by the glint in mischievous little eyes.

42 Lucy is here with her family but my other beloved daughter, Miranda, is marooned in San Diego in the thrall of the onerous duties of a partner in a law firm and the prior obligation to preside over the fourth birthday of my eldest grandson, Liam.

43 To my wife Angela, there is nothing adequate that can be said. This is not the time or place to speak about our time together personally. I should record that some 35 years ago, we sat together at the beginning of our relationship, on the seagrass matting that covered the floor of our first

house that we owned together, contemplating the enormous step of my coming to the Bar. You declared that you would support me and that support has never wavered, though as it is said, it has not all been beer and skittles. Though pregnant with Lucy, you yourself a qualified lawyer, sat at one of those ancient sit up and beg typewriters, to type for members of the Bar to supplement the inadequate income which I was able to bring in. You followed your own career at the Bar for many years and had great prospects of personal success but you selflessly gave that prospect up to nurture our children and support my practice. Literally, you gave up your own opportunities to support mine. It is my great hope that we will both find renewal together in the new life that beckons upon my appointment to the Court. I love you and I honour you.

- 44 I will speak briefly about a small number of my colleagues to whom I owe a special debt. The number will be limited by the desire for brevity which you would be pleased to know is my first judicial aspiration.
- 45 To the Honourable Bill Gummow, I owe the most profound debt as my effective master solicitor, mentor and teacher. Towards the end of my law degree, the long established practice of practical training by articles of clerkship, which in my case has correctly been called onerous, was passing into history. Imagine the benefit of receiving direct personal practical training as a novice from a person who I then thought would be and has since proved himself to be, a master of the profession. There is no time for me to explain or elaborate the lessons that I have learnt while under Bill Gummow's tutelage. No doubt, I was not the perfect student and did not learn every lesson. However, I believe that I can truthfully say that the source of all the rigour that I have always attempted to apply in my professional life, was his teaching and example.
- 46 I also acknowledge my debt to the Honourable Robert Hulme, my pupil master. Robert taught me exactly how busy a busy junior barrister could be but notwithstanding his great work, he managed to set me on the road to an understanding of what was required of a person to be a barrister.

- 47 There is also too much that could be said about my association with the 7th Floor Selborne Chambers. It is profoundly amazing how a group of such independent, strong and combative personalities could maintain such an amiable and agreeable concordance over the more than 25 years for which it has been my honour to be a member of the floor.
- 48 I am particularly pleased to record the presence of the two clerks who have provided me with so much guidance, support and friendship over most of my professional life, Brian Bannon and Nick Tiffen. Brian, I am particularly grateful for the effort you have gone to today to share this time with me. May I offer my unsolicited advice to the present Bar, that in my opinion, it would be a great and irremediable loss if the true clerks were allowed to pass into history. It seems to me that a good clerk is as close as a human being will ever get to being an effective cat herder which is a skill which is an irreplaceable accomplishment for a floor of barristers.
- 49 Many of you will be acquainted with the fictional work of my good friend, Lee Aitken, who occasionally contributes to Bar News stories about the life and times of Bullfry QC, who has a quaintly old fashioned attitude to the scourges of modern political correctness. In the latest Autumn Issue, it is observed of one of Bullfry's colleagues who had reinvented himself as a mediator that, "his practice was all gone as he had outlived his instructing solicitors". Happily, I can report that that fate has not befallen me - yet. I confess, however, that my pleasure at being able to accept the Attorney General's offer of an appointment was just a little increased by considerations of time and tide.
- 50 I have today made an ancient oath. The judicial oath lies at the sacred heart of the rule of law. In the coming years, I will do my utmost to fulfil that oath.
