

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

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

Tuesday 6 April 2017

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE THOMAS GUY RADCLIFFE PARKER
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **PARKER 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 Parker on behalf of all members of the Bench can I warmly welcome you here. We are delighted that you have been able to join us and we hope you have a long and fruitful career on the Bench.

- 3 **MR N C HUTLEY SC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** I acknowledge the Gadigal people, the traditional custodians of the land on which this Court stands and pay my respects to their elders past and present.

- 4 From February 1991 until a few moments ago your Honour was one of us. You have practised from 12 Wentworth, 2 Selborne, 7 Wentworth and New Chambers. Despite that history your Honour is not flighty. Having read with Michael Pembroke as his Honour then was, supports that proposition.

Your Honour joins this Court and particularly the Equity Division as the first appointment since Justice Ward took up the position of Chief Judge on the retirement of Justice Bergin. The Bar offers these few remarks not only by way of congratulation to your Honour but hopefully also to assist her Honour in best deploying your capacities.

- 5 First, your Honour is not a bolter. On Wednesday 31 October 2001 you appeared before Justice Hamilton, then of the Equity Division, acting for his Eminence Metropolitan Petar (I hope that is correct) the Diocese and Bishop of the Macedonian Orthodox Diocese of Australia and New Zealand and the Reverend Father Milko Mitrev, the plaintiffs in a suit of some little complexity. As with many other great matters, your Honour found yourself resisting an application to strike out the statement of claim. The basis was that it was defectively constituted for want of the Attorney General's participation or authorisation.
- 6 Whilst the suit had been commenced in 1997, this hearing was a limbering up by your Honour for the ensuing thirteen years of litigation, necessitating somewhere between, as best guess of various persons at the Bar, fifty three and seventy one decisions, interlocutory, final and appellate, in this Court and in the High Court. The case saw off Judges through retirement, elevation, I pause, counsel such as Justice Leeming to the bench. Your Honour was the rock.
- 7 In 2008 the High Court in vol 237 of the CLR made reference to version 8 of the statement of claim before considering the scope of the power to give judicial advice to trustees. Again, like many truly great cases in a barrister's life it saw your Honour take silk in 2005. The saga was by no means solely a litany of dry esoteric equity. The very last judgment I have found was delivered in September 2014 and concerned a register maintained by a Parish of the Church called a domovnik. Justice Stevenson found it to be a farrago of fact, falsity and fabrication and as I read the judgment one of your Honour's clients was responsible for its maintenance.

- 8 This leads me to the second quality I wish to remark upon. Your Honour is steadfast in the face of adversity and defeat. All that need be said is that your Honour had a lengthy and distinguished career acting for defendants and insurers in the Dust Diseases Tribunal and courts dealing with issues arising out of the field which are the focus of that Tribunal's work.
- 9 The third asset you bring to the Court is the prodigious capacity for hard work. Geoffrey Watson warned me that your Honour despised cant and flattery. If true, I was confronted by the potentially insuperable barrier of delivering a speech of this kind. However, this love of labour was confirmed by all in sundry as I polled the beano thrown last night by New Chambers. I can personally attest to that quality as we were opponents for some four months before Justice Jagot in 2012 in a case between Bathurst Council and various other entities associated with collapses of financial instruments in the GFC. Your Honour's command of the detail approached that of the juniors.
- 10 Penultimately, your Honour is learned in the law. Less this be seen as a slip into hagiography this was volunteered by David Jackson who sits at the bar table or stands at the bar table.
- 11 Lastly, you have always conducted yourself with bone dry, good humoured politeness in your dealings with your colleagues. Your style has been that of calm, polite, precision and tenacity. No one has ever seen you ruffled. Your Honour does not ruffle. That skill and style has been deployed across wide fields of the law at trial and on appeal to the appreciation of all. Thus I am happily in a position to express on behalf of your former colleagues, both to yourself, to the Chief Judge and the Court as a whole the unqualified support of the Bar on your elevation. Of course today is one of pride and joy for a family and you and your wife Jane have five children. The two eldest Antonia and James are studying at University whilst Edward, Harry and Jack toil at High School. I am sure your Honour will

enjoy your new role as will your family. Your Honour we are sure will discharge it with distinction.

12 **MS PAULINE WRIGHT PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

13 I would also like to begin by acknowledging the traditional owners of the land on which this Court stands, the Gadigal people of the Eora nation, and pay my respects to their elders both past and present. I also acknowledge their youth, in whose hands is held our nation's hope for a truly reconciled future.

14 It was 193 years ago next month that the doors of the Court your Honour joins today opened for the very first time.¹ I congratulate you on this grand occasion, on behalf of the solicitors of this State.

15 The Court was established by a Charter of Justice itself based on statute passed at Westminster in 1823.² To the people of the Colony at the time, this Court was seen as a gift: a "*valuable extension of their liberties so graciously conferred,*" as the Sydney Gazette described it the following day; a recognition that those in the Colony of New South Wales were entitled to all the promise and protections of the rule of law, and of justice.

16 Today, the Supreme Court remains an institution at the heart of our democracy: upholding the essential principles that everyone is equal before the law and no-one is above it, hearing all manner of cases the people of NSW are entitled to bring.

17 As our State's first Chief Justice Francis Forbes described it, the Bench of this Court is a force for justice "*uncontrolled and independent, bowing to*

¹ http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleesoncj/cj_175anni.htm

² *Ibid.*

no power but the supremacy of law". It is into these traditions of independence and the rule of law that your Honour is sworn today.

- 18 Former Chief Justice of Australia Murray Gleeson once described the judicial task simply, as the responsibility "*to make a decision about the issues that have been presented for decision, and to express the reasons for such decision*".
- 19 These core tasks of decision-making and reason-giving will be natural ones for your Honour, equipped as you are by what colleagues describe as a "*razor sharp*" intellect and a facility for language, both written and spoken.
- 20 The sheer breadth of knowledge at your fingertips has seen you described as the "*most complete lawyer*" many colleagues have known. You seemed able to enter into deep discourse on any area of law at will, but what made your Honour so highly regarded was not just your encyclopaedic knowledge, it was your ability to explain the law to others in simple terms.
- 21 What made working with you such a cordial experience for your colleagues at the Bar and your instructing solicitors was the way you had of wearing your formidable intellect so lightly, an intellect that in others might have been intimidating.
- 22 Your Honour's voracious appetite for knowledge outside the law was another weapon in your armoury. Solicitors would watch you devour scientific and medical texts in preparation for cross-examination of expert witnesses. I'm told that one Friday, you requested a copy of *Epidemiology for Dummies*. In Court the following Monday, I'm told your Honour utterly demolished the plaintiff's expert witness on the topic. So effective was your performance, Sydney solicitors have been known to keep examples of "*Parker expert cross-examinations*" in their top drawers to use as templates.

- 23 No doubt your facility for science stems from your background in computer science, your Honour having graduated with a Bachelor of Laws and Bachelor of Science from the University of Sydney in 1985. It has been observed that on first meeting, your Honour has an air of one who, in another life, might have been a dishevelled computer programmer, more comfortable behind the wheel of a 1973 Ford Cortina than the bar table!
- 24 Following graduation, you were taken on as Associate to Mr Justice R W Fox and then headed to London, where you programmed in the technology department at Clifford Chance. Upon your return you spent 2 years as a solicitor with Allen, Allen and Hemsley (as it was then known) before being called to the bar in 1991.³
- 25 Described as a “*gentleman and a scholar*”, you are widely admired by your colleagues at the Bar. Your hardworking, helpful and humble nature also endeared you to many instructing solicitors. Your Honour has been described as “*everything a solicitor could hope for in counsel: comprehensive in preparation, calm in advice, and respectful in every circumstance*”.
- 26 It’s said your Honour always listened to others; even when they were obviously wrong or unreasonable! I’m told that your most serious rebuke, if something had not been properly done, was to give a slight and momentary frown.
- 27 The cases in which your Honour has appeared are notable not just for their prominence in the development of the law, but also for their sheer number.

³ <http://find-a-barrister.nswbar.asn.au/profile/thomas-parker-1874> and admitted as a solicitor 25/09/1987 as per Polaris records accessed 5.4.17

- 28 As has been mentioned, you devoted literally thousands of hours to representing the Macedonian Orthodox Church⁴ in a case which proceeded to the Supreme Court, the Court of Appeal, and then the High Court. Famously fair with clients, you were noted to have never increased your rates for that client – even after many years and taking silk in 2005.
- 29 You also appeared for many years in cases relating to the Cockatoo Dockyard that also went to the High Court,⁵ and appeared for Luna Park in a claim for injunctive relief and damages for nuisance regarding the noise from thrill rides in the park’s northern extension.⁶ It was held there was no relevant duty of care owed to residents by the park’s developers and that their relevant conduct was crucially not “*in trade and commerce*”. The deep respect you enjoyed in Court meant you could always handle any line of questioning from the Bench – or from witnesses you had just cross-examined.
- 30 Your Honour once cross-examined a former member of the Painters and Dockers Union. After the cross-examination, which had not gone easily for the witness, he said to you: “*Mate, you really grilled me in there. I’d like to take you out the back and see how you go out there*”, to which your Honour calmly replied: “*I do not think that would be appropriate*”.
- 31 As I’ve said, your Honour’s intellect is famously “*razor-sharp*”. Your attire, on the other hand, has always attracted a certain degree of amusement.
- 32 You are regarded by your instructing solicitors as possessing one of the most battered and bruised bar jackets in the whole of Sydney. At a recent hearing, after your comments about mislaying some post-it notes, one instructing solicitor (who shall remain nameless) managed to extricate 5

⁴ Macedonian Orthodox Community Church St Petka Incorporated v His Eminence Petar The Diocesan Bishop of The Macedonian Orthodox Diocese of Australia and New Zealand [2008] HCA 42 (4 September 2008)

⁵ Commonwealth of Australia v Cockatoo Dockyard Pty Limited [2007] HCATrans 150 (24 April 2007)

⁶ Joan Street and 4 Ors v Luna Park Sydney Pty Ltd [2005] NSWSC 1303 (14 December 2005) – Mentioned by clerk Ian Belshaw 5/4/17.

pens, 3 highlighters, \$5.65 in loose change, and a pair of glasses from the lining of your jacket. That led to an offer of the services of a seamstress, which your Honour politely declined.

- 33 Your Honour's love of travel has also informed and enriched your life. You will bring to the Bench your experience of a wide variety of global cultures – from Persepolis in Iran to Aspen, Colorado, which I am told you frequent in search of good snow.
- 34 Your Honour and your wife, Jane, met as teenagers through your grandmothers, who were friends, and you married in Tasmania some years later. In your home life, your Honour and Jane approach everything with good humour and grace – the kind of grace that must attend any household of five children. Antonia, James, Edward, Harry and Jack all join us today. In what may be something of a testament to your Honour's committed work ethic, it's said that when your twins came along, for the first few months of their lives they were described to fellow counsel as simply "*T1 and T2*".
- 35 I'm told you were adamant that the twins *would* be named eventually, but there were some very important and highly interesting cases that just had to be attended to first. When the twins arrived, you and Jane had four children under the age of five. I am told that it was your Honour's fantastic cooking and dedication to coming home to prepare dinner – even if it meant returning to chambers later on – that made life manageable.
- 36 You and Jane were very close to her parents, the late Quentin and Antonia Stanham, your father, the late David Parker, and of course your mother, Caroline, who is here today. She is also accompanied by your Great Aunt Win – a centenarian, I am told!
- 37 Your Honour, many of your instructing solicitors predicted your ultimate elevation to the Bench. They say a judicial dynamic was often evident in conference with you. Before forming your opinion, you would listen to

other perspectives and be open to persuasion, even by junior lawyers, if the evidence or the law supported their arguments.

38 This open-mindedness is essential to the judicial task you now undertake. Paired with your Honour's measured, thoughtful and legally precise approach, this quality will well and truly serve the citizens of New South Wales as they approach this Court in pursuit of justice.

39 I congratulate your Honour once again on behalf of the solicitors of New South Wales and I express, on their behalf, their pleasure and confidence in your appointment.

40 As the Court pleases.

41 **PARKER J:** It is of course a great honour to join this, the oldest Australian Court and I thank Mr Hutley and Ms Wright for their kind remarks. In the course of listening to what Mr Hutley had to say I detected a number of errors. As a trial judge I am not going to go through and make a catalogue of them. I wish I could say that your description Mr Hutley or your sketch, I should say, of the Macedonian Orthodox Church litigation contained some of those errors. Sadly in that area you were not wrong but what you did do was demonstrate a great skill of the Bar: you managed to present a whole series of facts, which in themselves were completely accurate, but which gave an utterly misleading impression of my conduct in that case and of my responsibility for its ultimate outcome (which I now choose to regard as only a small and rather minor part of the case as a whole).

42 I am very conscious on an occasion such as this, as Sir Owen Dixon said, that "*one story is good until another one is told*" and the other one is not going to be told, at least by me. I am not going to seek to correct all the erroneous factual statements that have been made, and more importantly perhaps some of the errors or the conclusions which are overly favourable to myself, but what I do need to do is this.

- 43 I have today many instances of good fortune to acknowledge and many people to thank. It is a long list. That is because no one gets anywhere in the legal profession without help and without good fortune. It is an essential requirement for success at any level. There are many who, for one reason or another, may not receive a particular brief, may not get involved in a particular case or who, because of some particular turn of events in their career, do not achieve the level of success that their skills deserve.
- 44 The first good fortune that I wish to acknowledge, which has already been referred to by Ms Wright, is the fact that I started (in those days, somewhat unusually) with a science degree and in particular a major in computer science. This came about because at school in Year 12 our headmaster took it on himself to offer us advice on what subjects we should look to do at University. He explained that we should select subjects that worked well with each other. He said "*of course there is no point in trying to do science and law together*". Now that particular year was the first year that science and law had been offered as a combined degree at Sydney University so I was certain, as a result, to be in the second year intake and I have always been very pleased that I was.
- 45 I do not claim of course to have any outstanding skills as a scientist and in particular Ms Wright's statement that I programmed Clifford Chance's technology department is a gross exaggeration. I am quite sure the software that I drafted at that time has not stood the test of time, in fact I rather suspect that when I finally left that place people looked at it, regarded it as incomprehensible and simply discarded it. I have experienced a similar feeling as I have handed over matters over the last few days.
- 46 I do believe though that the study of science and law together is a good thing and if anyone here is in a position of thinking about what they are going to do, some of the younger people perhaps, it is a great thing to do

and something that I found in my professional career to be very useful to me. Not so much for something that Ms Wright referred to, that is being able to understand scientific articles and to deal with complex technical evidence. I say that because my track record in asbestos litigation shows, with its conspicuous lack of success, that I must have slept through a whole course of lectures I needed in that area.

47 But I do believe, very strongly, that as lawyers we have something to learn from scientific method and in particular from the resolute empiricism of science. I have always seen a connection between computer science and the structured thinking that we have to do and I have always seen a broader connection between scientific empiricism and what we do in litigation. As it proved, although it was not at all designed, I have been very fortunate in the choice of my first degree.

48 My good fortune continued when at law school I had the privilege of being lectured in equity by Meagher, Gummow and Lehane; and also in equity and in company law by the then Professor Austin. Then I commenced my professional career after a long hiatus where I had been able to put off joining Allens for what I was told was at that time the longest time between accepting the position and taking it up.

49 Now litigation is a field of activity where you learn constantly and publicly; and, at least in my experience, usually by making mistakes. You learn from all the lawyers involved in the case, you learn from your solicitors, your leaders, your juniors and most of all from your opponents, both instructing solicitors and counsel, and (at least as it often was in my career) adversaries on the Bench. I cannot of course mention by name all those who have helped me but I do wish to refer to some; really to illustrate the enormous good fortune that I have had in my professional career in the people who I have worked with.

50 In mentioning those names I have decided that I am not going to say anything about any present member of the Court except for two necessary

exceptions, the first of which I will mention immediately; in fact he has already been referred to. The first stroke of good fortune that I had was to read at the Bar with Michael Pembroke and what I saw there was a practice dominated by urbanity and unflappability, a very successful practice as a result.

51 In my first year at the Bar I had the further good fortune to be briefed in the litigation arising out of the collapse of the Spedley Securities group of companies. This was a huge collection of pieces of litigation. There were I think at one point, twenty seven files that I had opened at Allens that related in some way to the matter; but the main proceedings, as Justice Slattery reminded me, produced a number of Judges, some of whom are on the bench with me; apart from Justice Slattery, Justice Macfarlan, and there is also Justice Foster in the Federal Court.

52 I had the enormous advantage to be the junior junior in a team consisting of Tom Hughes QC, David Bennett QC, Peter Hely QC and Michael Pembroke and just mention of those names should be enough to indicate to all what an astonishingly valuable learning experience that was. I mention in particular that that case exposed me for the first time to the advocacy, and particularly the cross-examination skills, of Tom Hughes QC. The hallmarks were complete control and self-discipline and in the course of the case (before the mediation which Justice Slattery was responsible for and which itself set some precedents) Tom had cross-examined the former managing director of Australian National Industries, our client, and the former finance director. I cannot imagine, even now, seeing better cross-examination than I saw on that occasion.

53 Later the Australian National Industries connection landed me in a very long running arbitration that ran for about 160 days and I had the great privilege of having been led first by Bob Ellicott and then by Tom Hughes who took over from Bob. It was like trying to learn to paint a landscape and watching Monet paint his impressionist masterpiece in the morning, followed by Claude Lorrain in the afternoon with his classicism. I cannot

imagine a better start and a more fortunate start to a career than to work alongside those people whose names that I have mentioned.

- 54 Another counsel briefed (not in the main Spedley case but in one of the other pieces of litigation which itself ultimately generated an appeal to the Court of Appeal) was Dyson Heydon and, as with Peter Hely whose name I have already mentioned, that was a challenging, and I must confess, somewhat scary, experience. I do not of course mean that either of them was formidable or difficult; they were the kindest of people but the sheer intellectual firepower and the sheer application was, for me, a very daunting experience indeed. It was simply a case of being in a situation where one was terrified of falling short of the standard of intellectual analysis that they set.
- 55 In Dyson Heydon's case there was a further problem. He used to begin work at a barbarically early time, barbarically for me and I think even for normal people. I found that of course uncongenial. I can vividly recall dragging myself half asleep into his chambers at 6 o'clock in the morning. He of course had been there for hours already. His idea of small talk was to berate me with the following question. He had obviously been catching up on a law report or something and he turned to me and said "*Have you seen what the six communists have done now?*" For those who are too young to remember the Mason Court, the reason why there were six communists is that Sir Darryl Dawson was sitting at the time. Working with Dyson was again something that was of enormous benefit for me and something that I am always grateful for.
- 56 This leads me to the other exception to my principle, that is Justice Richard White. I had the privilege of being junior to him I think on only one occasion but that was enough, because again, this was an intensely stimulating but humbling experience of being exposed to sheer intellect and application, and I emphasise "application". Richard, Dyson and Peter Hely were probably the only leaders that I was truly frightened of. In Richard's case the reason for the fear remains as he has gone to

the Court of Appeal. Even if he had not I would be humbled, I am humbled to think that I am occupying the vacancy which his departure from the Equity Division has created.

57 Finally, I should say that I have had the immense value of operating under the wise leadership of David Jackson, starting before the establishment of New Chambers of course, but it has continued since then, with him being the floor leader for most of that time. There have been occasions on which he had led me in the High Court and those were the most valuable lessons imaginable in appellate advocacy that anyone I think could possibly have. With that very small, incomplete, rollcall I am sure you will agree with me how fortunate I have been, how fortunate on multiple occasions I have been. But of course none of that would have counted for much if I had not had such support from family and friends.

58 May I particularly acknowledge today my sister Jocie and her husband Phil. I hope that he is enjoying the fact that he does not have to make a speech today. They have three children and Zara their daughter is here today as well.

59 Might I mention my brother John who is not able to be here because of work commitments. When I told him about the ceremony he put it in its proper perspective because, without congratulating me, he launched straight into his latest exploit which was to have caught an 18.5 kilogram dolphin fish on 3 kilogram tackle. This epic had taken 90 minutes and once I got over the fact that he had not even referred to my appointment, I realised that he had got it right; because, really, what professional success compares with catching an 18.5 kilogram fish on 3 kilogram tackle? I also acknowledge, and again she has been referred to already today, sitting almost opposite me in the blue suit is my Great Aunt, Aunt Win. She is 101 and sitting in the front row opposite as bright as ever.

60 It gives me great pleasure of course that my mother is here today. She is the great great granddaughter of one Chief Justice, the great great

grandniece of another, but much more importantly than that I credit her with inspiring my interest in reading and particularly history which I now see has played a major part in following law as a career.

61 That leads to the thought of course that my father did not survive to be here today. That is of course a matter of great regret. In our household, as I recall it when we were growing up, around the dinner table there was a constant expectation that one would have something to say and, far more importantly (this is if one could get a word in edgeways), one should be in a position to defend what one did say. Truth to tell I do not know whether he would have found this particular day one of unalloyed pleasure. He might have had mixed feelings. As some in this courtroom will know he got caught up in a long period of what is probably the most unpleasant and unprofitable way in which to get your name into the public domain: that is, by being a litigant. This ended badly and his family and friends witnessed the corrosive effect that litigation has on litigants. I believe that litigation affects even successful litigants badly. I think the most that you can escape from it with is a case, hopefully passing, of tunnel vision. But for those who lose and have a sense of grievance the result is much worse. It is in some ways a bitter memory and I hope that I will not forget it in my dealings with litigants in the future.

62 I come now to my children. This occasion offers an unprecedented, and, I expect, never to be repeated, opportunity to address them directly: You have heard me take the solemn and important oath. I look to you to help me fulfil it.

63 I am able to tell other members of the audience here today that they have made an excellent start. It has been forcibly explained to me that my sense of humour is hopeless; I think "lame" was the technical term that was used. I hope that will deter me at least for six months (and they will need to keep repeating it, of course) but at least for the next six months from any judicial witticisms or attempts at humour in Court. So I say to them: you have started well but I look to redouble your efforts, never let me forget that I am

here serving the interests of litigants, not some personal attempt to glorify myself.

64 Finally I come to Jane, my wife. Today's oath naturally brings to my mind vows made on another occasion in Hobart in the Botanical Gardens on a cold day in July 1995. You may ask, why Hobart? [**Beazley P:** Why July?] The answer to July is far more complicated than I have time for, it is to do with my incorrigible meanness, I will leave it at that but what I can tell you is that this was a quasi-elopement: we decided that we would get married without telling anybody else, family or friends, at all. The arrangements had to be made. Why then, you ask, the Botanical Gardens? Well Jane and I of course wanted to be married in church, however having made all the arrangements and having then approached the church we were firmly told that the bureaucratic requirements of giving appropriate notice under the Marriage Act had not been complied with and they could not possibly marry us. Who had overlooked these bureaucratic requirements? Jane quite properly refused to accept as an excuse that I had never been briefed in a Family Law matter. I cannot remember the details completely, I will not say there was not any asperity, there might well have been but the important point is that she went ahead with it. Out of all the good fortune that I have referred to today that surely has been the most important.

65 To Jane and to all those who have helped me, both those whose names I have mentioned and those who I have not, and to all of you who have done me the honour of coming to this ceremony, a simple thank you is not nearly enough, but will have to be sufficient.
