

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

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

Monday 4 May 2009

**SWEARING IN CEREMONY OF
THE HONOURABLE ROBERT GABOR FORSTER
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

1 **FORSTER 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.

2 **SPIGELMAN CJ:** Thank you Justice Forster, please be seated while your Commission is read. Principal Registrar, please read the Commission.

(Commission read)

(Oaths of Office taken)

3 **SPIGELMAN CJ:** Justice Forster, on behalf of all of the Judges of the Court I congratulate you on your appointment. You arrive to the Bench after some thirty years at the Bar. During that period you have practiced in a wide area and in every single area of the Court's equitable jurisdiction to which you will make, I am sure, a significant contribution as a judge. I look forward to serving with you in that capacity.

4 **MR T BATHURST QC SENIOR VICE PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** The President of the New South Wales Bar Association, Anna Katzmann SC, regrets that she cannot attend this morning's ceremony and extends her congratulations to your Honour.

- 5 The Supreme Court's reputation for excellence surely will be reinforced by the appointment of a widely respected advocate who, over thirty years at the Bar, built up a prodigious practice in commercial law and equity. Your Honour has been one of the undisputed leaders of the commercial/equity Bar for many years.
- 6 Your Honour, the late, great Irish footballer George Best once was asked during an interview how he spent his considerable fortune. He replied, "I spent it on wine, women and song and the rest I wasted". That can hardly be said of your Honour.
- 7 It is customary in preparation of speeches of this nature to make inquiries of friends and professional colleagues of the person being honoured, perhaps more accurately described as the victim, for amusing or embarrassing details of his or her life. One then, after editing out the more salacious details, presents the rest not for the pleasure of the victim but to satisfy the appetite of those standing with me. My inquiries in this instance proved fruitless, they followed the same pattern. "Robert Forster is a devoted family man, a thorough gentleman and a delight to brief", said one solicitor, who added, "Did you know his wife is Scottish?"
- 8 Another solicitor said that he was, "Calm and collected, never raised his voice and he never left anything to the last minute", and added, "Did you know his wife is Scottish?"
- 9 A junior barrister then indicated, "He's a highly intelligent, gifted advocate, although he's never flamboyant. Did you know his wife is Scottish?"
- 10 Hardly surprising in those circumstances your Honour has grown attracted to Scotland, making repeated visits there. Although the country is known as the home of golf, there is no available evidence that your Honour has ever swung a club there, which was the only criticism I could find levelled against your Honour and that was only from Maconachie QC. I am not

aware if your Honour indulges in the Scots other favourite pastime although if you do I am sure it's only literally a wee dram.

- 11 In truth, a quiet, dedicated and highly competent barrister such as your Honour whose principal interests are his family and his clients will always present a smaller target at a ceremonial swearing-in than some of your Honour's more colourful contemporaries. Rumour has it that your idea of leisure, apart from travel, is to construe a good mortgage. It is that dedication to task however which has led to the reputation of the New South Wales Bar being enhanced by your work over such a considerable period of time.
- 12 One of your Honour's principal interests is of course your family. The obvious joy and strength you take from it, including the growing brood of grandchildren is proof for the profession, if any of it was needed, that work/life balance should never become a zero sum game.
- 13 When your Honour's son was appointed as a district medical officer in the far north-west of Australia, you seized the opportunity for a 5500 km road trip with him across the Nullarbor and through the heart of Western Australia. The prospect of such a long and hot odyssey with adult offspring may cause some in this room to blanch, or some simply to run away, but by all accounts your Honour never argued once with your son the entire journey. The only way most parents could do that with their offspring would be to impose a code of silence immediately one left the front door.
- 14 Your Honour was born in Hungary, but your family was forced to flee the country following the 1956 uprising, and arrived in Australia the following year.
- 15 You have said to your colleagues that you were always attracted to the intellectual challenges that the law presents, and from the age of twelve

you set your sights on becoming a barrister. You attended Neutral Bay Public School, the same one as Justice Macfarlan.

- 16 Your Honour attended Sydney University during the turbulent 1960s but hardly was a student radical. You kept your head down and concentrated on your study. You graduated from law in 1970 with first class honours.
- 17 Your Honour spent much time travelling in the United States, particularly in California which is, I think, fifth in your Honour's heart after your family, law, Scotland and Scotland. Your Honour was first there during a stint working and obtaining a Master of Laws from Stanford University and then worked in Chicago for the firm Baker and McKenzie. Before coming back to Australia you also worked in Hong Kong. That breadth of experience is going to assist your Honour in carrying out many tasks which have an international flavour in this Court at the present time.
- 18 Your Honour came to the Bar in September 1978 and read with Keith Mason who is here today, before taking up chambers on the ninth floor of Wentworth. Your Honour stayed there until 1993. In 1994 your Honour took silk and moved to the eleventh floor, where you remained until the time of your appointment to this Court. It says a lot for your dedication and probity that the persons on that floor such as Poulos QC, who is standing next to me, and Maconachie QC, could not tell me anything about you either salacious or otherwise.
- 19 In your early days at the Bar the most formative influences on your Honour's practice were, or included I am told, George Palmer as his Honour then was, Clifford Einstein, as his Honour then was and Peter Graham as his Honour then was. Two of them of course are sitting with you on the Bench today.
- 20 Your Honour's consultative style in conference set an example to us all, particularly those who cannot count patience amongst their finest virtues. Everyone around the table had their say and you would listen intently to

each one before making a decision. This practice has earned universal commendation from those who worked with you. Solicitors describe your Honour not just as a thorough gentleman, who never lost his temper, but a “delight to brief”. This practice also meant that juniors were fully involved in the case which explains that you were so popular with the junior Bar, particularly, I should say, the more hardworking ones.

- 21 Your Honour conducted many major commercial cases. Your Honour had a retainer for the Commonwealth Bank and engaged in litigation for the institution and others which was often hard fought and somewhat intellectually unrewarding. Identifying your Honour’s favourite cases is made somewhat difficult by your tendency not to linger over a case but to move efficiently and expeditiously on to the next. There was no Penge bungalow murder for your Honour.

- 22 What we have ascertained is that your Honour had a certain fond reminiscence for *Banque Commerciale v Akhil Holdings Limited*. That case involved a successful appeal to the High Court by a party which had not appeared at the trial. Your Honour appeared in the Court of Appeal and took the point which was ultimately successful in the High Court, notwithstanding the fact that counsel for the co-appellant, one A M Gleeson QC, said that your Honour was ‘crazy’ to argue it. He was right, your Honour did suffer at the hands of the Court of Appeal. Nevertheless, there followed a special leave application and your Honour persuaded an initially extremely reluctant Tobias QC, as his Honour then was, to take the same point. That itself was a feat of extraordinary advocacy as anyone who was led by Justice Tobias would know to be the case. Leave was granted and the appeal succeeded. With characteristic self-effacement your Honour reasoned that perhaps it was the way the argument was put that accounted for the different outcome.

- 23 Your Honour, the Bar’s loss is the Bench’s gain and the Bar wishes you well in the next phase of your career.

- 24 **MR J CATANZARITI PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** Your Honour on behalf of the solicitors of New South Wales, I have great pleasure in congratulating you on your appointment to the Bench.
- 25 Described as a “diligent, reserved, quiet, reflective and family-oriented man” the colleagues on the eleventh floor, Selborne Chambers, accordingly nicknamed your Honour, ‘Rowdy’. They were unanimous in applauding the announcement of your Honour’s appointment describing you as a dearly loved and extremely well qualified colleague who would make a great judge. However, despite much digging, no-one was able to share a single instance of erroneous behaviour or quirky mannerism that might lend itself to any amusing rendition at today’s ceremony. However, your early years proved more enlightening and gave some insight into your Honour’s career development.
- 26 Your Honour arrived in Australia from Budapest, Hungary in 1957 aged ten years of age with your two year old brother George and parents Ali, a jeweller and watchmaker trained in Switzerland, and Helen, an accounts clerk. Your parents came to Australia to give the family the best opportunities and I know if they could be here today they would be extremely proud of your Honour’s achievements. Settling in Cammeray and later Middle Cove, your Honour attended Neutral Bay Public School and then North Sydney Technical High School.
- 27 Perhaps your Honour’s focus in those days was more on becoming a champion chess player rather than any thoughts of pursuing a legal career. Indeed your Honour won the Sydney Under 13 Chess Championships in 1959 and the Australian Junior Chess Championship in 1960, at which time you also came dux of the year. Your Honour indeed upheld the school motto ‘carpe diem’.
- 28 The following year in 1961 your Honour again topped the class. From the outset your Honour was described as “a promising student”. I don’t know

that this description related to a tongue-in-cheek article you wrote that year entitled, 'How to do no work and get away with it'. This article published in the school magazine was about how to keep the teacher thinking you are smart and making a good impression in class. For example, and I quote,

"If the teacher asks a question, as soon as someone else is picked to answer, shoot your hand up immediately. If the answer declared is incorrect, make a disgusted grimace, and audibly whisper, 'How stupid could anyone be not to know that' but put your hand down immediately before you are asked. Where the right answer has been given by someone else, leave your hand up until last, and then bring it down slowly and with an air of dignity and knowledge."

- 29 Your Honour I have given this document to your brother George today and he will hand it over to you later so that it is in your safekeeping at the conclusion of today's ceremony.
- 30 Justice Michael Adams, whom you now join on the Bench, was also a contemporary at North Sydney Tech and indeed was your fellow debater in 1963. Your Honour matriculated in 1963 coming first in order of merit for the school. Your Honour was also school captain that year. Today only the historic Greenwood building remains at North Sydney Tech but the Old Lions Club for which you have life membership keeps those early memories alive.
- 31 After hitchhiking around Tasmania with a friend your Honour enrolled in a Bachelor of Arts at Sydney University. Around that time your Honour found his first car, a black FJ Holden. Nowadays your Honour's preference would be a motorbike, a mode of transport your family will not countenance. According to brother George, that is because of your 'general clumsiness', apparently a family trait. As the family cat would also attest, your Honour's prowess in the home handyman department is also sadly lacking with memories of your Honour, the cat and the ladder on which you were perched on the uppermost rung, plummeting to earth with the offending light bulb still not changed.

- 32 Graduating in 1967 your Honour went on to achieve first class honours in the Bachelor of Laws in 1970. Your Honour was admitted to practice that year and completed your articles with Allen, Allen and Hemsley as it was then known.
- 33 The following year your Honour married Dorothy whom you met when she was over from Scotland on a working holiday in Australia.
- 34 Employed by Baker and McKenzie you worked in the Sydney, Chicago and Hong Kong offices for the next five years. You subsequently completed a Master of the Science of Law at Stanford University in 1972. Your three children Kirsty, Cathie and David were all born abroad. Dorothy's influence was paramount in the career stakes with none of them following in their father's footsteps.
- 35 Kirsty, is a veterinary surgeon who incidentally married a vet, Steve. Cathie is a cardiologist and she married a nephrologist, Patrick, and the youngest David, a doctor, is married to a lawyer and recently moved to Karratha as a district medical officer. Your Honour now boasts six grandchildren, all under the age of five. Of course Kirsty's influence during her veterinary study years meant your Honour was subjected to a veritable menagerie which at various times shared the run of the house. These included kangaroos, rabbits, possums, chickens, ducks, and even a lamb, Rosie, for whom you developed a mutual dislike even before the woolly ruminant took to relieving itself on your shoes and on the tennis court. For those concerned about Rosie's welfare, rest assured Rosie is living a life of luxury in Camden and is as fat as a pig.
- 36 Since your Honour's admission to the Bar in 1978 when you read with former Court of Appeal judge the Honourable Keith Mason, you have been a much loved and respected resident of Wentworth Chambers, initially on the ninth floor and on the eleventh since 1993. Your expertise in equity and commercial law practice will be sorely missed on that floor but indeed a welcome addition to the Bench. Brother George can vouch that they will

be large shoes to fill, given his memories of the difficulties of fitting your rather generous feet into suitable school shoes.

37 Your Honour's influence saw George also enter the legal sphere. He is currently company secretary corporate counsel with Coca-Cola Amatil. Speaking of which, I am reminded of that company's sign in the vicinity of that prestigious piece of real estate, the Bennelong Apartments at Circular Quay, commonly referred to as The Toaster building, where your Honour resides with the likes of broadcaster Alan Jones. Perhaps your residence could be perceived as your only "crime against amenity", with apologies to the blog website 'Lavartus Prodeo' that developed The Toaster Awards in honour of this particular piece of architecture.

38 Your Honour, the solicitors of New South Wales wish you every success in your new role for which you are eminently qualified. No doubt you will quickly settle into the routine. As your nieces Clare and Nicole, who are both law graduates, might say "Bob's your uncle".

39 **FORSTER J:** Chief Justice, your Honours, distinguished guests, ladies and gentlemen. It is a great Honour to be appointed a Judge of the Supreme Court of New South Wales. Chief Justice, thank you for your welcome and I look forward very much to being a member of the Court.

40 Mr Bathurst and Mr Catanzariti, thank you for your kind words. You have greatly exaggerated any good attributes that I may be seen as having and have most thoughtfully ignored my bad ones. For that I am most grateful. As to my brother George, I will deal with you later.

41 I am gratified by the presence of so many of you here today. The fact that you have given of your time to attend this ceremony means a great deal to me and I thank you for being here.

42 As has already been noted, I was born in Hungary on the wrong side of the Iron Curtain, at a time when that curtain was at its coldest and most

unforgiving. My parents, young brother and I took advantage of the 1956 Revolution and escaped to neutral Austria. It is sad that both my parents have now passed away, as have my wife's mother and father. I know they would have been proud to have been here today. However, I am pleased that my brother is at least here today with his family.

43 It was then that this country opened up its arms to me and to thousands more like me. It provided me with schooling and an opportunity to go to university to become what I hope has been, and will hereafter be, a productive citizen. I have enjoyed a freedom that so many people in this world have never known.

44 But it was not only that. From the word go, I felt accepted in my new country. I never recall being called names that are sometimes used to stigmatize new arrivals. I never felt discriminated against. On the contrary, I often felt that there was, if anything, a desire by those around me to level the playing field.

45 One particular aspect of life in this country deserves special mention, if only because it does not receive the recognition it should have. We tend to take our freedom and democracy for granted. We grumble about our politicians but in doing so, we lose sight of the importance of being able to do so. We lose sight of the phenomena of free elections and the peaceful transition of power that follows. We lose sight of the significance that on election night, power either peacefully stays where it was, or it peacefully shifts. Nobody calls in the army, there are no riots in the streets and there are no retributions. The next morning, when we wake up, life goes on as before, no matter who wins.

46 The vast majority of people on this planet do not enjoy such privileges. For them it is but a dream that may at some future time, or may never, come true.

- 47 Whatever may divide us in this country, when compared with what unites us, is miniscule. We are really very fortunate and I myself never take our liberty and way of life for granted. Nor do I take for granted that which I have received from this country of ours.
- 48 My appointment today represents for me an opportunity if not to repay my debt to Australia, for that would be impossible, but at least perhaps in a very small way to reduce my indebtedness. I intend to do my level best to carry out conscientiously the task I have today sworn to do.
- 49 On a more personal note, I have now had almost forty years as a legal practitioner. Particularly in my over thirty years at the Bar, I have been enriched by my contacts with many fine lawyers, both barristers and solicitors. I have learned much from those who counselled me or led me in my early years, a number of whom are here today. I have also benefited greatly from various junior counsel with whom I have worked in more recent years. As they say, the perfect junior is one who is smarter than you but doesn't know it. I have had the assistance of many such juniors, who I suspect did know but were polite and diplomatic enough not to let on.
- 50 I have also learned much from the many judges before whom I appeared over the years. Many of them I join on the bench today. I look forward very much to working with them.
- 51 I have also received the gift of friendship of many fellow barristers. I spent my early years at the Bar on the ninth floor of Wentworth Chambers and my more senior years on the eleventh floor. I wish to thank both sets of my former floor members not only for their friendship but also for their companionship and conviviality.
- 52 I have now had almost sixteen wonderful years on the eleventh floor and I have enjoyed the camaraderie and support of the members of that floor. I thank them for their friendship which I know will continue long after today.

- 53 However, the person who stands out as the one who has assisted and guided all of us on that floor is the person I can best describe as the king of clerks, Paul Daley. He has been an extraordinarily reliable, discreet and wise friend to me and I wish to publicly record my gratitude.
- 54 Then there is my family. Those of you who know me know how close I am to our three children and how proud I am of them. They are, even though I say so myself, extraordinary people. All of them have chosen, and have succeeded in, rewarding and satisfying careers which have been already referred to, but even more importantly they are decent and kind human beings who give more than they take. We love them very much. Not surprisingly, all of them have married people like themselves, so we are fortunate to have two wonderful sons-in-law and a wonderful daughter-in-law.
- 55 We are proud to have here with us today our two daughters and their husbands Steven and Patrick. Unfortunately, our son and his wife Alison could not attend today as, as has already been noted, David has just taken up a responsible post in a remote part of Western Australia and his constant presence there is required.
- 56 Not only are our children a source of pride to us, but they have been generous enough to present us, all in less than five years with a six-pack of grandchildren. At least that is the score so far. They are a great joy to us and have given us a new lease of life, as well as sore backs and crook knees.
- 57 I have, of course, left the best until last. The person who has been my greatest source of strength, my soul mate and my very best friend is my wife Dorothy. She has given me everything I have ever needed in life. She has encouraged me in all my endeavours, she has given me her love and she has brought up our three children. She has always been the fulcrum of our family and she has done all this at great sacrifice to herself,

to her career and to her own extraordinary intellect. And she has done this without complaint and without reproach. Were it not for her, I firmly believe I would not be sitting here today. I am delighted that she is here to witness this ceremony, and Dorothy, you can stop crying now.

58 Not that Dorothy is without a sense of humour. While I could never tell a lie, I confess that I have recently been trying to persuade her that as a result of recent changes in protocol, Supreme Court Judges are no longer addressed as, “Your Honour” but as “My Lord” and that it is customary and indeed de rigueur for their wives always to address them as “My Lord”. Not surprisingly, I fear that my chances of getting away with that one are significantly less than zero.

59 Indeed, the other day, when she was helping me to pack up my law reports, and was leafing through some of them, her eyes suddenly lit up as she said to me, “Rob, I really like some of these judges. In particular I really like this one. He is obviously a very clever Scotsman”. She is Scottish, you know. She then continued, “He says something here that in all our married life you have never ever said to me. I wish I could just once year you say these words.” She then handed me the Law Report in question, where the undoubtedly Scottish Lord Keith of Kinkel said the words that Dorothy has been waiting in vain to hear from me, namely, “I agree, and I have nothing to add”.
