

Swearing In Ceremony of The Honourable Patricia Anne Bergin, SC as a Judge of the Supreme Court of NSW

**Spigelman, CJ
and the Judges of the Supreme Court**

Monday 1 March 1999

BERGIN J: I have the honour to announce I have been appointed a Judge of this Court. I present to you my Commission.

SPIGELMAN CJ: Thank you, Justice Bergin. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read.)

I now ask you to rise and take the oath of office, the oath of allegiance and the judicial oath.

(Oaths of office taken.)

Mr Acting Prothonotary, I hand you the oaths to be placed in the Court archives. Mr Sheriff, I hand to you the Bible so you may have the customary inscription inserted in it in order that it may then be presented to Justice Bergin as a memento of this occasion.

On behalf of the Judges of this Court and on my own behalf I welcome you as a Judge of the Court. It personally gives me great pleasure to have you here. You were one of the few barristers to have a practice of distinction who could be appointed to either the Equity Division or the Common Law Division of this Court. May I also say it gives me particular pleasure that this is one step on the long road of correcting the gender imbalance in this Court.

IAN BARKER ESQ QC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION: Justice Bergin, the Bar applauds your appointment. I say that with mixed feelings. Firstly we will miss you at the Bar, secondly we will miss you at the Bar Council, thirdly I can no longer assert that 11 per cent of the Bar produced 33.3 per cent of the Bar Council. The women on the Bar Council have now dropped from 33.3 per cent to 28.5 per cent.

You have been school teacher, Judge's Associate, solicitor and barrister. Admitted as a barrister in 1984 you took silk in 1998, which is a further reason you will be missed. As a barrister you were highly competent and without fear and gave generously of your time to the Bar Association.

In preparing for this occasion I have been given information which contained three anecdotal threads, all of which coincide with what I knew already. Firstly you have the capacity to quickly get to the heart of an issue and deal with it incisively, secondly you have a splendid command of the language. I almost said masterful. Thirdly, you have a wicked sense of humour. I have been a victim of all three attributes.

You have a reputation for hard work and I can attest to that from our time on the Bar Council. It is said you are a private person. You read with Bathurst. It must have been a relationship where privacy approached invisibility.

Some part of your professional life in recent years was spent assisting a Royal Commission. A journalist once proclaimed that you were the beige clad Patricia Bergin. What beige had to do with the issue was unclear but not all journalists distinguish the relevant from the inconsequential.

In a professional sense you have now changed sides. I was relieved to see you come in with the other Judges and not from a rollover door.

As a Judge, your Honour, most of your work will be in public and will be subject to public scrutiny and that is how you will discharge what is frequently referred to as the duty of judicial accountability and you will do it well.

I am proud to congratulate you.

MS MARGARET HOLE PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court, your Honour, on behalf of the Law Society of New South Wales may I congratulate you on your appointment to the Bench of the Supreme Court of this State. It would appear to be the highest point yet in an already impressive law career that has earned your Honour much respect and admiration.

However, law was not your first career choice. Born into a close knit and academically talented family on Sydney's North Shore, your Honour was educated at Kincoppal Girls' School at Elizabeth Bay before attending

Sydney Teachers' College. You then worked as a school teacher for five years before undertaking a Law Degree at Macquarie University.

During your years of legal study your Honour worked as a Judge's Associate, first to the late judge Peter Leslie in the District Court and then when he retired, Judge Des Ward QC.

You then worked at what was then Pritchards Law Firm as assistant to a litigation partner. After graduating from Macquarie University in 1981 your Honour worked as a solicitor to Stephen Jaques & Stephen, now Mallesons Stephen Jaques.

You were assigned to one of the firm's senior lawyers what set you to work on complex Supreme Court Equity and Common Law matters as well as industrial relations matters. Your Honour is remembered by the firm for excellent work, great energy and for the impressive speed at which you completed each task.

Your Honour continues to be admired by solicitors for your clear, concise thinking and ability to cut right to the heart, as has been mentioned, of an issue.

As already mentioned your Honour was admitted to the Bar in New South Wales in 1984. Your reputation as a great advocate, coupled with your versatility to turn your mind to almost any area of practise, as one solicitor put it, soon resulted in an extensive network of instructing solicitors. This network extended far beyond Sydney and in 1987 you were admitted to the Bar of both Victoria and the Australian Capital Territory.

Your Honour is also known for your high standards, strong ethics and tremendous command of the English language. One solicitor who has briefed you a number of times over the years said that he had never seen you flustered even for a moment.

You have worked in many jurisdictions and appeared before the Supreme Court and Federal Court, the Land and Environment Court and a number of tribunals. You have also worked on many criminal cases. Probably the best known are the Wood Royal Commission, the coronial inquiry into the murder of Assistant Police Commissioner, Mr Colin Winchester and the extradition from England and subsequent trial of drug identity Bruce "Snapper" Cornwall.

Your Honour is known for being quick on your feet and for having a natural rapport with juries in both criminal and civil trials. You are also said to be without fear. This has been demonstrated many times not only in the courtroom but also on your favourite golf course where I understand you have dealt successfully from time to time with a determined and hostile flock of geese that dared to stand in your way.

As we have heard, your Honour has also been generous with your time in a number of areas promoting the law including three separate stints as a New South Wales Bar Councillor. You are also a visiting committee member of the Faculty of Law of Wollongong University and a member of the Legal Qualifications Committee of the New South Wales Legal Practitioners Admission Board. Your Honour has also recently served as Chairperson of the New South Wales Cancer Council.

In 1998 you were appointed Senior Counsel for New South Wales in recognition of your skill and dedication to the law. Your Honour is highly regarded for your determination to see that the law works well and that it achieves a result, which is just and able to bare scrutiny.

On behalf of the Law Society may I wish you many satisfying years on the Bench. No doubt you will relish this new opportunity.

May it please the Court.

BERGIN J: Chief Justice, your Honours, Mr Barker, Ms Hole, members of the legal profession, ladies and gentlemen, thank you Mr Barker and thank you Ms Hole. I am deeply grateful for the generous remarks that have been made.

It is most gratifying to be reminded of the interesting and important aspects of my life and career. One aspect to which reference has not been made directly is my abiding interest in the exercise of power and how it affects others.

This was first awakened in my formative years in my family environment, although at that time it wasn't so much identified as an interest but rather as a frustration, being the youngest of three children.

However, that interest flourished in my time in high school at the Sacre Coeur convent in Kincoppal. The Sacre Coeur nuns wore habits, or robes, which were quite unique and it seemed to me that their presence enhanced the nuns' authority. It was not just the individual with whom one was dealing with but an institution which commanded and might I say received, respect.

But luckily for me it was also an institution which accommodated the ever so gentle questioning of authority when

fairness seemed wanting. On the rare occasions when this occurred I always felt the nuns had this extra edge caused in no little part by the presence of their robes. Although the significance of their robes was understood they did at times cause some little curiosity. I suppose if the Sacre Coeur nuns were to see me today their curiosity may also be excited by my robes. But I have no doubt that they would understand their significance.

Mention has been made of my years as a teacher. It is interesting to reflect that those years included events that would touch upon my later life at the Bar. To this day I can vividly recall a young student on a hot summer afternoon take off his shirt to expose welts deep in his young back. When the government department was contacted to assist in the matter the school was informed that really little could be done because one had to catch the perpetrator in the act and that was a matter for another department. But for the innovative initiative of the head of that school in finding a way through the quagmire of red tape that abuse might have continued.

It is enormously satisfying to know that nearly 30 years later I was part of a process which I have no doubt was pivotal to the establishment of a more accountable and specialised system for the detection and more importantly the prevention of abuse of children in this State. It seems to me that the community will remain indebted to Justice Wood for his remarkable achievements in this area.

Reference has also been made to my years as an Associate. I felt I was extremely privileged to be appointed as Associate to Judge Peter Ayton Leslie and later with Judge Desmond Ward QC during the period I completed my degree. That opportunity to observe the administration of justice from such a privileged position in such a diverse jurisdiction was a wonderful introduction to the law. The consolidation of that at Stephen Jaques & Stephen in working with Ross Griffith Wagland and Gerald Ingram Raftesath prepared me well for the Bar. To all of those people I extend my gratitude.

It was to my delight that in practice as a solicitor and at the Bar I found once again that the ever so gentle questioning of the exercise of power was accommodated when fairness seemed wanting.

That interest was further enhanced in the mid 1980's by a visit to this country by Sir Robert Megarry who addressed the legal profession in Sydney. The profession had posed a question for His Lordship, "Whither Equity?". His Lordship disclosed to the audience that he felt a little shy addressing them because Mr RP Meagher QC, as he then was, with his immense learning on the subject, would be speaking when His Lordship concluded. Luckily for me I don't have to face that prospect - at least today.

His Lordship observed that equity seemed to go through periods of quiescence and periods of vigour. He concluded that at that time it was travelling through a period of vigour. His Lordship then fascinated the audience telling them about the Anton Piller order and the then very much in vogue Mareva Injunction and delivered his answer to the question posed that there was still much life left in equity.

However, RP Meagher QC then unleashed a concerted and cerebral attack on the life left in equity to which his Lordship referred. He analysed the then recent decisions on constructive trusts and concluded that equity in England was in a state of chaos and headed for doom. He expressed further anxiety about the intolerable state of confusion that had developed in the area of equitable damages.

And so in contrast to His Lordship's optimism his Honour's prognosis was that equity was in urgent need of resuscitation by the injection of a very large dose of precedent and principle.

My perception about the gentleness with which one could question the exercise of power was reassessed slightly when I observed his Honour call for the removal of Lord Denning's influence and a very much more drastic measure for dealing with Lord Diplock.

There was, however, one aspect of his Honour's analysis which was not lost on his audience. It was a statement about feminine logic. That statement was perceived by some as somewhat derogatory. This was not to be the only time that his Honour's statements on this topic were to be so perceived. But on analysis and with the application of a little feminine logic, that perception can not be justified. One need only observe the gender of the Judges in England, and the Law Lords of whose logic his Honour was so critical in reaching his conclusion of doom, to understand that on balance his Honour's public musings about feminine logic have been but well disguised pleas for the appointment of a woman to Equity.

I am indeed honoured and delighted to be that woman and to be appointed to Equity when it is so clearly in a period of vigour.

This is a wonderful ceremony made more so by the presence of my family, my friends and colleagues. It is, of course, not possible to thank you individually but I would like to say that the trust of my instructing solicitors in placing their briefs in my hands over the years has been enormously gratifying. It is that trust upon which a career at the Bar depends. For that I thank you.

Also in this regard I am most grateful to TF Bathurst QC whose delicate tolerance of feminine logic was quite masterful.

The friendship and support of a number of people in this room has assisted me in the development of the attributes necessary for a successful career at the Bar and the assumption of this high office. To each of you I extend my gratitude.

I would like to make some personal comments and perhaps have a vision into my privacy. It is about my family. I am very happy to say publicly that I am so proud of the Bergin family. Mary, my sister, Denis my brother and I had the extreme good fortune to be brought up in an environment of intellectual honesty which nurtured each of us in our lives and career paths. My mother, Olga, who died in 1976, was quite a spectacular individual with the capacity to combine directness and gentleness with perfect feminine poise. My father Denis, who died in 1994, was unique. His Irish ways are very much missed today. However, I am comfortable in the knowledge that Olga and Denis would be happy with what is happening here today. My sister Mary's concerted and dedicated medical work with the leukemic children of this State is an example to us all. There are no adequate words to express my gratitude for the great friendship and wisdom of my brother Denis. I look forward to the continuation of that friendship and my involvement very much in the lives of the next generation of Bergins, each of whom is a credit to their parents.

Before I depart I would like to say something about the profession I have grown to love. My life as a solicitor and as a member of the Bar has been fascinating and exciting. The denouement of my career at the Bar has of course been exhilarating with my recent appointment as a Senior Counsel for this State.

During my time at the Bar I examined and lectured the new barristers in ethics and during that period it was very reassuring to observe the enthusiasm with which they assumed their ethical obligations as new members of the Bar.

The history of the Bar demonstrates its resilience to attacks upon its integrity. I have no doubt that the Bar is an institution strong enough to repel any further attempts to diminish it as a profession. The continued success of the Bar in this regard is not only in the best interest of the Bar but of the judiciary and the community.

The wrench of leaving such a great institution is tempered by the knowledge of the greatness of the institution of which I am now part. However, I am acutely aware that the function of the Bar and the legal profession generally is essential to the efficient performance of my judicial function.

Cognisant of the sentiments of Oliver Wendell Holmes, of which the Chief Justice reminded us at his swearing in, that the law is not a place for poets or artists but for thinkers, your indulgence is sought today for my reference to the words which William Blake penned almost 200 years ago but which seem apt:

"Joy and woe are woven fine,
a clothing for the soul divine,
and under every grief and pine
runs a thread of silken twine.

It is right, it should be so,
that we are meant for joy and woe,
and when this we rightly know
safely through the world we go."

Thank you Chief Justice.