

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

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

Friday 25 October 2013

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE ROBERTSON WRIGHT
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **WRIGHT 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 Wright, on my behalf and on behalf of all the Judges of the Court I welcome you. You have a very exciting time coming up as the President of the new tribunal. I wish you all the very best for that and we hope to see you here often.

- 3 **THE HONOURABLE GREG SMITH MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honour, on behalf of the State of New South Wales and the New South Wales Bar Association, it is my great pleasure to congratulate you on your appointment to the Bench of the Supreme Court and on your appointment as the inaugural President of the New South Wales Civil and Administrative Tribunal. I hope affectionately it will become known as NCAT and it will be the top cat.

- 4 I understand that today is something of a family affair for you. Your wife Ann and four daughters, Alex, Anna, Soph and Pip, are all here as well as your parents, James and Mavis, and your brother Peter. I am sure this must be an extremely proud moment for the entire family.
- 5 I have discovered that you actually started out as a Queenslander attending the Anglican Church Grammar School in Brisbane, also known as 'Churchie', before transferring to Knox Grammar when the family moved to Sydney.
- 6 You went on to study Arts and Laws at Sydney University, graduating with first class honours in 1980. You were admitted to practice that same year.
- 7 A short stint at Cambridge followed where you completed a postgraduate degree in law, again graduating with first class honours. You were admitted as a barrister in 1983 and have been at 12 Wentworth Selborne ever since, taking silk in 2001.
- 8 Today marks the beginning of a new and exciting chapter in your Honour's legal career. However, you already have much to be proud of. During your more than 30 years in practice, your commitment and dedication to the law has won the respect of your colleagues and opponents alike.
- 9 Your practice has focused on commercial law, consumer protection and corporations matters. However, your interest in the law extends beyond the commercial realm. Your practice has also covered administrative and regulatory matters, and you have a keen interest in administrative law.
- 10 In your early days as a barrister you appeared before the High Court in *Corporate Affairs Commission of New South Wales v Yuill*, a case relating to the abrogation of client legal privilege in corporations law investigations, and in *Kleinwort Benson Australia Ltd v Cowl*, an important case in the history of insolvency law.

- 11 However, given the nature of your practice as a barrister, it is not surprising that you have spent a fair bit of time, in fact a great deal of time, in the Federal Court. Your Honour has appeared in consumer protection matters on both sides of the fence, appearing for high profile corporate clients and ASIC in various cases.
- 12 You appeared for Qantas in *ACCC v Qantas Airways*, and for Warner Music in *Universal Music Australia v ACCC*, both of which involved alleged contraventions of the *Trade Practices Act*.
- 13 You have a strong working relationship with ASIC. You represented ASIC in *ASIC v Bank of Queensland Limited*, a case relating to the collapse of Storm Financial which I understand is still continuing.
- 14 You are no stranger to the Supreme Court either where you have recently appeared for ASIC in *Tonto Home Loans Australia v Tavares*, relating to unjust contract terms, and *Permanent Trustee Company Ltd v O'Donnell*.
- 15 Your colleagues describe you as an excellent diplomat, with unlimited reserves of patience and a real talent for getting people to see things your way. With these skills, it is not surprising that you are a strong believer in the use of mediation to achieve the best outcomes for your clients.
- 16 You are a qualified mediator and have become involved in a number of mediations and negotiations across a wide range of disciplines. You have acted for clients seeking compensation arising from alleged breaches of consumer protection legislation, participated in a number of high level commercial negotiations, and even represented the New South Wales Government in relation to compensation claims arising out of murder convictions set aside after inquiry.
- 17 However, patience is not your only virtue. You are a dedicated family man who has always demonstrated a great deal of kindness and generosity to

those around you. You are also known for your efficiency and technical ability and the ease with which you relate to your colleagues and staff.

18 Your colleagues describe you as endlessly forgiving and optimistic, traits which I am sure will come in handy when you are leading the biggest tribunal in the country through its formative years.

19 I refer to the fact that in addition to joining the Bench of the Supreme Court today, you will also be starting a five year term as the inaugural President of the New South Wales Civil and Administrative Tribunal.

20 That Tribunal, or NCAT, will be the largest tribunal in Australia when it commences operations on 1 January 2014. As President, you will be responsible for overseeing around 400 tribunal members who deal with up to 80,000 matters per year.

21 Your extensive knowledge and experience of consumer and commercial law will no doubt help you greatly, as consumer and commercial disputes will make up the bulk of NCAT's business.

22 However, you are no stranger to other areas of the tribunal's business either. You have been a member of the Administrative Decisions Tribunal since 2007 where you have gained a great deal of experience in both professional discipline and anti-discrimination matters. This has given you an understanding of public protection principles, as well as experience dealing with novel and complex legal issues.

23 You have dealt with a number of complex and challenging matters in the ADT, while I understand that you were a bit hesitant at first joining the Equal Opportunity Tribunal Division. It does seem that they threw you in at the deep end and I hear that the first matter you heard in that division generated extensive media coverage and brought you face to face with one of the most challenging self-represented litigants the ADT has ever seen.

- 24 Although it appears that what did not kill you certainly made you stronger, you have since taken to anti-discrimination and human rights work like a duck to water.
- 25 This broad range of experience will be important in managing the range of matters that NCAT will hear. NCAT will hear an astounding variety of business, from reviews of government decisions-making, to high value commercial matters and minor civil disputes, to financial management and guardianship matters.
- 26 Becoming the first President of such a large organisation might seem like a daunting task. However, your Honour should not be worried. As President, you will be assisted by a highly experienced and talented leadership team who have already demonstrate on a number of occasions that they are committed to making NCAT a success.
- 27 Your Honour will also have the support of your colleagues on the Supreme Court Bench. Appeals from NCAT's internal appeal panel will be directed to the Supreme Court. You will also be able to refer questions of law to the Court where you consider it necessary.
- 28 You also have a proven track record in management. After all, you got 12 Wentworth Selborne through a renovation of its premises without a full-scale rebellion. Having survived the Queen's Square renovations, I am sure the Chief Justice knows how challenging that can be.
- 29 You have also regularly shown that you are willing to help and support your colleagues and juniors. You have spent some time lecturing in practice and procedure and tutoring equity at Sydney University. You have also had a number of articles published over the years on competition and intellectual property law and have regularly delivered papers and presentations to both the College of Law and the Law Society's Continuing Legal Education programs.

- 30 But, of course, your interests extend well beyond the law. Like many of your colleagues on the Supreme Court Bench, your Honour is a keen historian. You have a particular interest in Julius Caesar, I understand you even have a very imposing Roman centurion's helmet that will be travelling with you to your new chambers. Whilst it has been suggested that you should wear it when presiding to give yourself some extra authority, I have a feeling that this is one look that might not come into fashion on the Bench.
- 31 Your 15 years of experience in the Army Reserve also left its mark, your colleagues describe your knack for keeping recalcitrant barristers in line. But they are quick to point out that you are more than capable of appreciating the finer things in life, like good wine and good tea. In fact I understand that your Royal Crown Derby tea set is the envy of 12 Wentworth Selborne, they will be sorry to lose it.
- 32 You are also a keen gardener and a dedicated family man and, like me, you like singing; although I understand that your taste in music tends more towards the classical side. Although Justice Francois Kunc will be keen to recruit you for the Supreme Court concert, I am sure you will walk the line with the Tokens if you know any Johnny Cash songs.
- 33 But on a more serious note, your colleagues are genuinely sad to lose you from chambers. In fact, I hear that there have even been some tears. But everyone who knows you is extremely pleased that you have been given this honour, by all accounts it is well deserved.
- 34 NCAT represents a new era of accessible justice for the people of this State. Becoming the inaugural President of a new tribunal is an opportunity that does not come around every day. This will be a challenging role and a rewarding one. But I have no doubt that you have the experience, the temperament and skill necessary to excel in this role.

- 35 Your Honour has already demonstrated an energy and enthusiasm for shaping this new organisation that gives me great confidence that NCAT will be a success.
- 36 The New South Wales Bar and the O'Farrell government are convinced your Honour will serve the State of New South Wales well.
- 37 I wish you and your family well in this exciting next phase of your career. If it please the Court.
- 38 **MR GARY ULMAN TREASURER LAW SOCIETY OF NEW SOUTH WALES:** Over the years the Sydney University Regiment has enjoyed notable success in training army reservists for a career in the legal profession. A good number of them currently reside on the Council of the Law Society and on the Bench.
- 39 Today we welcome another former Army reservist to the judiciary – the Honourable Justice Robertson Wright. On behalf of the solicitors of New South Wales, it is an honour and a pleasure to congratulate you on your appointment to the Supreme Court Bench and as the inaugural President of the New South Wales Civil and Administrative Tribunal.
- 40 Your Honour grew up in south-east Brisbane in the semi-rural, poultry farming community of Birkdale which, in the 1960s, boasted a population of around 650 people. I have it on good authority that Birkdale has produced a number of well know identities - well, four to be exact - and with the exception of one, rugby league legend Wally Lewis, I have to admit that the names of the other three were not immediately recognisable to me. However, I have no doubt that from today the almost 14,000 residents of Birkdale will be counting your Honour amongst its most notable citizens.
- 41 The local school, Birkdale State School, accommodated some 200 students at the time of your enrolment.

42 Good teachers can serve as role models, influence career choices and enable students to reach their full potential. In your Honour's case the teacher who introduced you to British constitutional history appears to have had such an impact. From the Battle of Hastings to the signing of the Magna Carta, Oliver Cromwell's 'Commonwealth' and the creation of the Kingdom of Great Britain, these stories fired your Honour's imagination and the quest for knowledge – an appetite for, and keen interest in history that endures today.

43 According to your Honour's lecturer in jurisprudence at Sydney University Law School, the late Professor Alice Tay AM:

“We investigate history and civilisations to help us know more about ourselves. ... For many of us, the Greeks are as close and alive as our friends and colleagues”.

44 Indeed your Honour's chambers at 12 Selborne displayed a variety of artefacts, and we have heard the horse-hair plumed Roman helmet which visitors were invited to don – on the condition they submit to a photo.

45 [As we've heard], your Honour began secondary schooling at Church of England Grammar School in East Brisbane before moving to Sydney with your family around the age of 14 and enrolling at Knox Grammar School.

46 At Sydney University and as a residential member of St Paul's College you were described as very bright, focused, outgoing and entertaining, with an ability to structure an argument seemingly with little effort. You were aided and abetted by Professor Tay who would happily engage you in witty exchanges and observations, often to the entertainment of your fellow classmates. Such entertainment also extended to your stage performances in the St Paul's college plays.

47 As a senior and philosophy tutor at St Paul's, your recruits would invariably be summoned to your room where, after carrying in the coal for your fire, they would be offered a glass of port to lubricate their lively legal

discussions. One participant recalled that your Honour would take the Socratic method to the 'nth' degree, challenging beliefs and concepts but always in an engaging manner.

- 48 In your final year at Sydney University, your Honour suffered a bout of glandular fever which resulted in you missing a number of lectures.
- 49 One of our Law Society members came to the rescue by providing you with notes from the lectures you missed and is of the opinion that they were of such excellent quality that you were runner-up to the 1980 University Medallist. [As we've heard], you were just pipped at the post Chief Justice Allsop AO.
- 50 Admitted as a solicitor in July 1980, your Honour undertook postgraduate studies at Cambridge University before joining Malleson Stephen Jacques, as that firm was then known. Holding soirees in your room was not enough inducement for you to warm to the life of a solicitor and colleagues were not surprised when you moved to the Bar in May 1983 where you read with former High Court Justice, the Honourable Bill Gummow AC.
- 51 Since that time your Honour has enjoyed an extremely busy and broad practice undertaking work for Australian Securities and Investment Commission, the Australian Competition and Consumer Commission, Qantas, Australasian Performing Right Association and others; undertaking mediations and disciplinary actions, as well as performing considerable work for the Administrative Decisions Tribunal.
- 52 Your passion has always been in competition law, an aspect of your former life that you will undoubtedly miss in your new role. So too will be leaving the camaraderie of your colleagues at 12 Selborne.
- 53 At the Bar your Honour has been incredibly generous with your time. You have lectured at Sydney Law School on practice and procedure and spoken at numerous seminars and professional development courses,

including the Law Society's CLE program. While the College of Law invariably managed to hold their seminars to coincide with your birthday, you never let them down. On one particular occasion, you were asked to step in for a speaker who had pulled out within an hour of addressing 100 delegates. In a mighty sprint from Selborne Chambers to the Tattersalls building in Elizabeth Street you duly presented on the topic of Section 46 of the *Trade Practices Act*.

54 Your Honour committed some 15 years to the Army Reserve:

- As a company commander and then major of the Sydney University Regiment where among other things, your name became synonymous with 'gin and tonics' and cherry ripers in the Mess hall.
- As company commander of A company, 2nd 17th battalion in the Royal NSW regiment where you were, I am reliably informed, a fetching sight in your Scottish kilt.
- And serving in the light infantry as a member of the Royal Green Jackets in England while completing your post graduate studies at Cambridge University.

55 Your creative approaches to training recruits were not always appreciated by the regular army who felt your methods lacked a certain seriousness.

56 For example: On a specialised course for intelligence duty soldiers which was held in sweltering heat at Bardia barracks in Ingleburn, your Honour felt it imperative to develop a model for a whisk to swat the abundance of hovering flies. You then proceeded to instruct the attendees to fashion a similar fly swat as part of their education.

57 In the military a parachute jump was all part of your officer training. Today your Honour's feet tend to be closer to the ground – working on your

personal fitness regime, spending time in the garden with your family: wife Anna, daughters Alex, Anna, Sophia and Pip, consuming historical tomes and reading news online in French.

- 58 Your work colleagues and friends describe you as very personable, modest and generous, and of the utmost integrity; that you are also unrelentingly both intellectually and analytically; and very much your own person. These attributes should stand you in good stead for the task ahead.
- 59 The functions of the President as outlined in s 20 of the *Civil and Administrative Tribunal Act 2013* provide for a significant level of discretion in directing the business of the Tribunal and while there will be many challenges, the overwhelming consensus is the Government has made an inspiring choice in appointing your Honour to the role. The Law Society and the 26,000 solicitors of this State wish you every success in your new role and look forward to working with you.
- 60 As the Court pleases.
- 61 **WRIGHT J:** Chief Justice, Judges of the Court, Justices and Judges of other Courts, Tribunal Members, Mr Attorney and other members of the legal profession, my friends and my family, your presence brings home to me the gravity of the responsibility I have assumed today and how much I owe to so many of you.
- 62 Mr Attorney and Mr Ulman, thank you for your generous words. To the extent that it might be thought that success is deserved, it is perhaps useful to be reminded of the wisdom of the Teacher recorded in Ecclesiastics. He observed:

“The race is not to the swift or the battle to the strong, nor does food come to the wise or wealth to the brilliant or favour to the learned; but time and chance happen to all”.

- 63 Well, time and chance have happened to me and I now find myself confronted by challenges that are exciting and daunting as both a member of this Court and as inaugural President of the New South Wales Civil and Administrative Tribunal.
- 64 Judging by what has been said on previous occasions, it is my customary duty to give some insight into my origins, acknowledge my debts and express hope for the future.
- 65 I cannot claim to be a self-made man. My parents, who are here today, can attest to that. In many senses, they made me. For the life, upbringing, education and love they have given me, I honour them. My sister, Sue, and my brother, Peter, both medicos and therefore the caring members of the family, have shared my life with me and I owe them a great deal.
- 66 You have heard of my education. I need say no more than that my teachers and my school masters gave me an education of the highest standard. My university and college days involved some study, many fine lecturers, firm friendships and great enjoyment. Service in the Army Reserve taught me many things about myself and about others. I retain many true and loyal friends from that time.
- 67 My first brush with the law occurred soon after we moved to Sydney. At the age of 15 I started gardening for Sir Victor and Lady Windeyer. Lady Windeyer said that I was better at conversation than gardening. I offer no comment. Nonetheless, as I progressed to university, Sir Victor encouraged me to raid his library when I needed legal texts and discussed my essay topics with me. A Justice of the High Court, a scholar, a soldier, an historian and a gentleman, he established for me the benchmark against which lawyers should be measured.

- 68 My time as a solicitor was short. But I am grateful to Bill Beerworth, who was my supervising partner, for the significant efforts he made to guide and inspire me.
- 69 I came to the bar somewhat naïf and inexperienced and read with Bill Gummow of junior counsel, as he then was. He introduced me to judges, to solicitors, to other barristers. He kept me busy devilling and took me to court. He gave sound advice on what to do. Indeed, only last week he gave me more sound advice: “Keep the swearing in speech short”, he said. I have attempted to follow this advice as well. The support and encouragement he gave me was generously given, in the best tradition of the Bar, and I am indebted to him and his floor, 8 Selborne.
- 70 It is a truism that practice at the Bar is impossible without the support of solicitors. Like all barristers, I owe a great deal to those solicitors who have briefed me over the years and I thank each of them, not merely for their support but also for their practical commonsense, their intellectual rigor and principally for their friendship.
- 71 I have been troubled by the fact that I could not in fairness name all those solicitors to whom I owe a substantial debt of gratitude. Nonetheless, I believe it is incumbent on me to identify at least some significant firsts.
- 72 The late Tremaine Permewan from the Government Insurance Office of New South Wales gave me my first brief to do anything, a Local Court arbitration at Terrigal.
- 73 The distinguished solicitor, Master and Judge of this Court, Bill Windeyer, gave me my first brief to appear in court; it was before the District Court for the insurers of the owner of Butch the Dog who had an unfortunate run-in with a motorcycle.
- 74 The solicitor who gave me my first brief in a competition law matter was John Kench. My task as third junior to Arthur Emmett QC, as he then was,

was to help count how many cattle were transported for sale from North Queensland to Southern Queensland over many years. There were many such cattle, but not enough to convince Justice Wilcox that there was a Queensland cattle market as opposed to a separate North Queensland cattle market.

- 75 As I look around at the members of the Bar, it brings home to me how fortunate I have been to have practised with you. It has been an enjoyable privilege.
- 76 Like many before me, I have benefited from the support of a strong floor in the building next door: Ground Floor Wentworth Chambers for 15 years, and 12th floor Wentworth Selborne Chambers for 14 years. Having reached the point of leaving the Bar, I now realise how deep are the friendships which I formed working together with and, in a very significant measure, sharing my life with my fellow floor members. You have been most gracious and generous to me and I thank each of you.
- 77 An important part of the collegiality of the Bar in this State has been our accommodation in Wentworth and Selborne Chambers. The time and effort that the staff, the General Manager, the board and the Chairmen of Counsel's Chambers Limited have devoted to looking after the inhabitants of the building are something for which I am grateful.
- 78 The 12th floor has been a harmonious, generous and innovative floor, but it would not be the same place without Bob Rymer, our clerk. He has provided to me unfailing support, especially when I needed it. As Floor Chairman, I came to appreciate how much Bob did that was unrecognised because he simply made it happen. Bob has been assisted by Jeh Courtino and the floor staff who have held our lives and practices together and put up with us. They all deserve much praise.
- 79 It is also my duty to acknowledge the contribution of my personal assistant, Mrs McDermott, sometimes familiarly referred to as JoAnna. Her

organisation, food and support have been invaluable and words cannot express my appreciation.

- 80 In addition to my practice as a barrister, it has been my responsibility and honour to serve as a Judicial Member of the Administrative Decisions Tribunal on the Legal Services Division and the Equal Opportunity Division. I should acknowledge the support and encouragement I have received from the President, the Deputy President and the Registrar of the ADT, as well as the assistance of the lay members of the Tribunal and the hardworking and cheerful registry staff.
- 81 My professional life is but a part of my existence, so it is appropriate to turn to my immediate family. Let me say, in my experience, a man cannot have too many daughters. Alexandra, Antonia, Sophia and Philippa, you each bring a unique joy into my life and your own specific challenges. Your mother and I are very proud of each of you. Occasions such as this are not appropriate for the expression of what my wife Ann means to me, but this day would not have come without her.
- 82 Having recognised my debts, I should now turn to consider how I should repay them. Mr Attorney, I acknowledge that I have been entrusted with responsibility for establishing the New South Wales Civil and Administrative Tribunal as well as being a Judge of this Court.
- 83 Serving as a Judicial Member of the Administrative Decisions Tribunal has led me to appreciate the importance of the role played by tribunals in the administration of justice in this State and the benefit of having distinguished lay members of the community participate in the decision-making processes. For many people in New South Wales, making application to NCAT will be their sole or principal means of obtaining access to justice. As President of NCAT, I see it as my duty to do all I can to ensure that the Tribunal's processes are efficient, transparent and proportionate to the subject matters of the claims. The effectiveness of the

Tribunal will be judged, and rightly so, by the quality, consistency and timeliness of its decisions.

84 Finally, I hope and pray that I may be given the gifts necessary to carry out my duties.
