

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

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

Wednesday 10 August 2011

**SWEARING IN CEREMONY OF
THE HONOURABLE ANTHONY JOHN MEAGHER SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **MEAGHER JA:** 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 Meagher, on my own behalf and behalf of all the members of the Court, I welcome you. I know you will be a great asset to the Court from my past experience with you and I hope you have an enjoyable judicial career.

- 3 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** As the Court pleases. Your Honour on behalf of the State of New South Wales and the New South Wales Bar, I congratulate you on your appointment as a Judge of Appeal and a judge of the New South Wales Supreme Court.

- 4 You have long been recognised as one of Australia's leading practitioners with a commercial practice that has attracted everyone from disgruntled footballers to captains of industry. You have also frustrated your fellow barristers on a consistent basis with the obvious respect you have earned from the Bench. "It is very annoying" said one, "they take far more notice of what he says, he's regarded as very reliable". Whether those who

accompany you on skiing trips or on your weekly twenty kilometre run would agree is a matter of exploration.

- 5 At first I would like to record the journey your Honour has taken on the way to joining this Court, the oldest in Australia. You were born in Sydney on September 4, 1953 to Andrew and Jill Meagher. I am pleased to be able to acknowledge the presence of your mother in Court today. The genesis of your notorious competitiveness probably lies in the fact that you are one of eight children. You have told of how even the simplest act of eating Weet Bix would turn into a race, because whoever finished first could move onto toast before the others.
- 6 After leaving Saint Ignatius' College in 1971 you took on a commerce/law degree at the University of New South Wales. It was there that you first encountered the unforgiving regime of John Basten, now a Judge of Appeal on this Court. You managed to finish near the top of his exam for law lawyers and society but then the then Mr Basten took a dim view of your poor, some say it was zero, attendance at his lectures. He decided you should do some supplementary work before you passed which your Honour considered was a great injustice, on the basis that you probably contributed as much as those who actually attended lectures.
- 7 You graduated in 1976 and joined Minter Simpson as a solicitor but advocacy was always on the horizon and in 1982 you were admitted to the Bar. It did not take long before you gained a reputation for honesty, integrity, and an attention to detail that only comes from discipline and hard work. The admiration of clients was soon followed by a respect of your peers and the judiciary. In fact Justice Dyson Heydon of the High Court has asked that his congratulations and apologies for being absent today be passed onto your Honour.
- 8 In 1995 you joined the ranks of Senior Counsel and since then your stature has grown. You have been Chair of the Professional Indemnity Committee of the Bar Association which puts your unmatched expertise on

insurance law to good use. Brett Walker SC noted that at the time it was impossible to overstate the debt we all owe to Tony Meagher SC for his masterly efforts as our shepherd and perhaps sheep dog for the underwriters in a savagely cyclical market.

- 9 Your standing has ensured regular appearances in the media, whether the case involves trade practices, media law, merges and acquisitions, shipping, professional negligence or banking. In the marathon C7 litigation you represented Publishing and Broadcasting Limited. In the Lehman Brothers litigation you looked after seventy-two local councils in a class action aimed at recouping GFC losses. You acted for the former Chief Executive of David Jones in a sexual harassment case and then for the Seven Network as they attempted to prevent an employee joining the Ten Network as Chief Executive. In the CSR demerger you represented the Asbestos Injuries Compensation Fund. You also appeared for British Airways as they defended a claim by a passenger who suffered deep vein thrombosis after a four day return trip to London. It was in the case that your ability to master unfamiliar territory came to the fore, on this occasion the medical condition known as “economy class syndrome”.

- 10 Occasionally your work has been a labour of love. I speak in particular of your role in the Super League litigation involving News Limited and South Sydney and briefed to represent the NRL in their salary cap proceedings against the Melbourne Storm Rugby League Club and Wallaby, Lote Tuqiri. Some may have reminded the winger that he was getting exemplary service from a former outside centre of some note. Indeed your Honour played ninety nine first grade games for Eastwood Rugby Union Club in the Sydney grade competition. The ‘Woodies’ are actually my local team as the Member for Epping. One trait when you were on the field involved you putting both hands behind your back until the ball was approaching. So your Honour perhaps approved when one of your team mates at Eastwood, Mick Mathers, was involved in a notorious up-the-jumper try. The play involved one of the players stuffing the ball up his jumper and the remaining packs scattering and throwing confusion on the

opposition as they had no idea who had the ball. The practice was later banned for not being in the spirit of the game. A bit like the aluminium cricket bat. Another loophole closed. Mr Tuqiri's claim against the Australian Rugby Union for wrongful dismissal involved a frank exchange with Justice Einstein, another of your new colleagues. You were less than impressed when he asked you what your reaction would be to "reading out aloud the contents of the pleadings". You replied "Your Honour is joking". The good news for you and your opponent on that day, another new colleague in Justice Sackar, is that you now get to decide what is funny or not in Court.

- 11 One suspects some things will not change such as your panache for jumping out of helicopters on skiing trips with a number of fellow barristers. You only took up the sport relatively late in life but the juices soon began to flow. "He was determined to be very good", offered another of your new colleagues, "because Tony would compete with a lamppost". On one trip you decided to get some practice on the slopes before tackling the wild terrain that goes with heli-skiing. On your first run you were confronted with the choice of routes, double black or blue. More conservative thinking would opt for a warm-up but without a moment's delay you went double black. Forty-five minutes later you were in the infirmary getting treatment for various bumps, bruises and strains. Yet the following day armed with anti-inflammatories and painkillers you were back on the slopes. And when you moved to the heli-skiing part of the trip a couple of days later you were, as usual, first to hit the snow. "Tony doesn't like to wait for the helicopter to land", one companion said, "it's part of his 'go for it' personality". You bring the same attitude to your twenty kilometre run around the Eastern Suburbs on a Saturday morning with a posse of legal types be they instructing solicitors or fellow Silks. After a recent knee operation you were back on the road in no time at all and ensuring anyone who beat you up that final hill earned it.
- 12 Another thing that will not change is your devotion to your wife, Frances and your four children, Alexandra, Henry, Joanna and Saskia. All are here

today with Alex flying back from London where she now works as a lawyer for Magic Circle Firm. Frances or Fran has carved out a significant career in her own right as a long serving member of the Centennial Park Trust and coordinator of the annual Veuve Clicquot Business Woman Award.

13 Your Honour now enters a new phase of your career, one that will ensure the Bench is more than a match for the Bar. I wish you and Fran the best for the years ahead. Thank you.

14 **MR J CATANZARITI COUNCILLOR LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

15 Mike Parr is regarded as one of Australia's most gifted and controversial artists. Prepared to go to rather extreme lengths to make a point, his performances have included chopping into his prosthetic arm filled with mincemeat and fake blood, sewing his lips together in protest against Australia's refugee detention centres and nailing his arm to a wall for thirty hours.

16 His works, which include more than 1,000 in the 'Self Portrait' series, continue to receive critical acclaim in this country and abroad. One of these self portrait etchings can be viewed as you step out of the lifts on the fifth floor of St James Hall. It is indeed thought provoking or in the words of Kath and Kim "nice, different, unusual". Perhaps these qualities are also reflective of those who reside on the fifth floor although as of today, only one of the three Silks involved in the acquisition of this artwork now remains on site. Moving from the lift towards the various chambers, further insights about the residents are revealed from observing their rooms and furnishings. In your Honour's case the photograph of your great grandfather, the late Andrew Watts KC, proved significant. A very able counsel and first class cross-examiner, Andrew Watts' smooth and courteous manner was known to succeed where others failed. It was also Andrew Watt who gained approval from the then Chief Justice, Sir Phillip Street, to hold the first Red Mass on 29 February 1931 at St Mary's

Cathedral, to mark the opening of Law Term. The stories your grandmother recounted about your great grandfather's experiences no doubt had some influence on your Honour's decision to pursue a career in the law.

- 17 Your Honour also held in high esteem the late Lord Alfred Denning, 'the people's judge', whose judicial activism left an unprecedented mark on the development of English law. For whatever reasons, we are indeed grateful that you chose to enter the legal profession.
- 18 Today we welcome your Honour to the Bench and on behalf of the solicitors of New South Wales, may I congratulate you on your well-earned appointment. However while you were pipped at the post by Justice Latham for the first University of New South Wales law graduate to be appointed to the New South Wales Supreme Court, I understand you were the first to be appointed to the Court of Appeal. This is indeed fitting in my alma maters fortieth anniversary.
- 19 I do not wish to put your new colleagues on high alert but it must be said that your Honour does not scare easily. For someone who revels in being dropped from a great height into unchartered territory and then careers off at breakdown speed into the unknown, your Honour's learning curve on the Bench should not present too many problems.
- 20 Having pretty much recovered from knee surgery after tearing your cruciate ligament heli-skiing in Canada recently, perhaps you are ready to resume your Saturday morning runs along the footy stadium to the beaches and back. It is by most accounts a friendly run with a group of like minded pavement pounders, 'friendly' that is, provided your Honour is first up Paddington's Cascade Street hill. Of course there was one occasion some years ago where your Honour was so determined to record a personal best in the Sydney Half Marathon that you ended up in the medical tent wearing a facemask attached to a drip and wrapped in tin foil.

- 21 Prior to taking up running, your Honour was a nimble side-stepping five-eight first grade rugby player at Eastwood where your Honour honed your skills against the legendary Ella Brothers, Mark, Gary and Glenn who went on to play for Australia.
- 22 Perhaps your Honour's competitive streak comes from being the eldest of eight children. I am sure that they are all very proud of your achievements as are your mother Jill, your wife Fran, children Alexandra, Henry, Joanna and Saskia, not to mention Chad, your family's Labrador/Kelpie cross. Only one lawyer can be found among your offspring, Alexandra, but with such an abundance of Meagher relatives, I am sure there are many more to be found.
- 23 I believe you are a distant cousin of the late Supreme Court Justice Roddy Meagher, but I am not sure if there is a connection with the infamous lawyer and politician Richard Denis Meagher who was struck off the roll of solicitors in 1895 after being charged with conspiracy to pervert the course of justice. While the charges were later quashed, Meagher's repeated appeals for re-admission failed. It took an Act of Parliament in 1920 to restore him to the roll and enable him to practice.
- 24 A country boy, you grew up in Cootamundra, the birthplace of cricketing legend, Sir Donald Bradman and home of the wattle. Your late father, Andrew, managed the John Meagher and Company country stores. This company first traded at Hill End in the goldfields near Bathurst in 1867 and subsequent takeovers saw the company become Grace Brothers. Your father went on to manage the Sydney store.
- 25 After completing high school, where your Honour excelled in debating, you completed a Bachelor of Commerce and Bachelor of Laws at the University of New South Wales. You worked for a number of years at Minter Simpson as it was then known, first as a clerk and then a solicitor before taking leave to do a Masters in Law at the London School of Economics. In February 1982 your Honour was admitted to the

New South Wales Bar where you read with Roger Giles, now the Honourable Justice Giles, New South Wales Court of Appeal.

- 26 In your early days at the Bar, retired Court of Appeal Judge, the Honourable Simon Sheller was a Senior Counsel who worked closely with your Honour on several significant cases. He was delighted to hear of your Honour's appointment and could not speak highly enough with regard to your Honour's personal and professional character and work ethic. "A diligent, hardworking barrister", he said your Honour made an outstanding contribution to every case you worked on and he would take every opportunity to have you on board for a case.
- 27 Exhibiting a calm demeanour, your Honour has suggested to some that you are more akin to the proverbial duck-calm on the outside, but paddling madly beneath the surface. Meticulous in your preparation and research, rigorous in your thinking and extremely hard working, you are one of the first to arrive at work and often the last to leave.
- 28 You are also renowned for being a devoted family man and very generous and caring towards your staff. Indeed you must be doing something right, as I understand your associate of some twenty years, Mary O'Connor will continue to support you in your new role. Mary was with you when you became one of the founding members of Level five, St James Hall in 1992.
- 29 Your expertise, particularly in commercial and equity law, will be a great loss to the Bar, as will your significant contribution as a co-director of the Bar's Sickness and Accident Fund. Likewise I have no doubt that your clients will be lamenting their loss.
- 30 Kerry Packer considered your Honour his counsel of choice in many high profile media cases, including recovering the Logies for TV Week from Channel Seven but, ever objective in your dealings, your Honour also acted for Channel Seven in restraining one of their executives from joining Channel Ten.

- 31 Your Honour is undoubtedly a man of many talents. In addition to your sporting interests, your Honour enjoys both modern and classical music and contemporary art. A very generous philanthropist, your Honour is a keen supporter of the Sydney Symphony Orchestra. So it was with little surprise that I noted an article in the Kosciusko Alpine Club newsletter in September 2009, which said: “A small talent night saw a duet by Tony Meagher and House Captain Glen Hilleard singing ‘House of the Rising Sun’”. It also noted the original lead singer of the Animals, Eric Burdon, should not be worried about any competition. The latter comment could suggest that one or both of the duo was either off key or off piste. I am assured that ‘off piste’ is a well known skiing term.
- 32 While I am sure there will be more hills, thrills and spills to be had in heli-skiing in Canada’s Bugaboos and beyond, life on the Bench will provide its own excitement and challenges.
- 33 The solicitors of New South Wales wish you a successful and rewarding judicial career. As the Court pleases.
- 34 **MEAGHER J:** Chief Justice and judges of the Court, distinguished guests, colleagues, family, ladies and gentlemen.
- 35 Mr Attorney and Mr Catanzariti, I thank you for your kind words. I particularly thank you for mentioning my great grandfather, Andy Watt KC who was a fine barrister as I understand it.
- 36 I have attended however enough of these occasions to realise that much of what is said is, at best, exaggerated. What I had not appreciated was just how much. Indeed some of the things that have been said are simply not correct but I will not take the opportunity. There are some things that I want to respond to in relation to my so-called sporting activities. I am lucky to have been able to continue to engage in at least some of them. It is one of the very few areas where I was able to claim justifiably some

advantage over my third cousin, Roddy Meagher. It has also allowed me to make and maintain friendships beyond the law and I am pleased to see some of these friends here this morning.

- 37 As has been said, I studied law at the University of New South Wales' Law School which celebrates its fortieth anniversary this year. I join four other graduates of the University on the Court. They are Justices Fullerton, Latham, McCallum and Rothman. I commenced at the University in 1972 which was the second intake year of undergraduate students. The Foundation Dean was Hal Wooten QC. In the first couple of years the Law School was housed in rooms previously used for teaching wool classing and affectionately known as "the Huts". Whilst at the University I had many excellent teachers, both fulltime academics and practising barristers. The latter included David Bloom and Richard Kenzie.
- 38 I especially remember our advanced Constitutional Law classes with Michael Coper in late 1975, particularly in the short period from early October when Malcolm Fraser announced that the coalition would block supply until 11 November when Prime Minister Whitlam was dismissed by the Governor General. As events unfolded we examined the difficult constitutional questions which arose.
- 39 Mention has been made of the fact that one of my former teachers is a person who I join today. I should correct that story. Fortunately having given me nought out of fifty for class performance in the subject Law, Lawyers and Society, for the questionable reason that I had not attended any classes after the first, Justice Basten remained open to persuasion and allowed me to do a supplementary written assignment to earn the marks necessary for a pass.
- 40 As you have heard, I worked as a solicitor at Minter Simpson before studying law at London School of Economics. In the late 1970s there remained a significant connection between the firm name and the members of the partnership. Of the nine or so partners, there were three

Minters and one Simpson. I was articled to David Hill, one of the two litigation partners. He was careful, analytical and thorough and I learned much from him. At Minter Simpson I was introduced to the world of insurance and shipping and aviation law, areas in which I continued to practise as a senior barrister.

41 Whilst in London I worked for the specialist air law firm, Beaumont and Sons and made a lifelong friend in Sean Gates, who came to Australia in 2004 to instruct me for British Airways in the DVT litigation in the High Court.

42 Although I occupied the reader's room on the eleventh floor in 1982, I was unable to buy a room on that floor until late 1986. It was crowded at the top and at the bottom and there was no room in between. In the intervening period I occupied a room on the sixth floor where I made many friends, a number of whom are now members of this Court. I then purchased a room on the twelfth floor and I am particularly pleased to see a number of the retired members of that floor here today and sitting in the bleachers to my right.

43 As has been mentioned, I read with Roger Giles. Roger emphasised by example rather than by words the need for rigour and thorough research in approaching and resolving legal problems. I also made many lifelong friends on the eleventh floor. One I particularly wish to acknowledge and whose advice I have valued immensely is Arthur Emmett, now Justice Emmett of the Federal Court. However, there is one thing that Arthur did that I chose not to emulate. That is the way in which he disrobed and robed for Court in the sight of often surprised instructing solicitors and clients.

44 Since 1992 I have been a member of Level 5 St James, initially and unkindly referred to as 'Dame Joan Sutherland Chambers'. At the time the move was controversial because it involved junior but established barristers moving out of Wentworth and Selborne Chambers. Of the

original members of the floor, only two remain, Bret Walker and Noel Hutley. The other original members, and two of their successors on the floor, are either judges of this Court or of the Federal Court. I have enjoyed immensely my time on the floor and the friendship and company of each of its members, including the three who have joined most recently.

45 I will miss the Bar. One of the privileges of practising at the Bar is that with it comes the opportunity to work closely with other barristers, both senior and junior. I have enjoyed that opportunity for nearly thirty years – countless time spent in conferences and conversation with different minds addressing different legal problems. I quickly learned to appreciate the need for, and value of, the input and insights of others.

46 As a younger barrister I was fortunate to work with many fine advocates. Two I particularly wish to mention without offending others, are Simon Sheller and Peter Hely. I learned from them, and their own different styles, the importance of preparation, of identifying the relevant legal principles and of reducing the arguments based on those principles to their simplest form.

47 Over the years I have become more conscious of the responsibility that goes with the role of running trials. Michael McHugh recently drew my attention, in a different context, to a poem by the bull fighter Domino Ortega which was translated by Robert Graves. It conveys a sense of the position of the barrister in the trial:

“Bull fight critics ranked in rows
Crowd the enormous Plaza full
But only one is there who knows
And he’s the one who fights the bull.”

I do not want to take this analogy too far. I am conscious of where I sit today and of the usual fate of the bull.

- 48 However, I believe that it is critical for the efficient, yet fair conduct of cases that barristers strive, consistent with their obligations to their client, to see that only the real issues are litigated and need to be resolved.
- 49 It goes without saying that I have been supported by many good instructing solicitors from a range of firms, large and small. I have sought to encourage, and benefited most from, instructors who are prepared to question my judgment and views in the process of resolving a particular client's problem or advancing its cause. I have also expected much of my instructors and only on a few occasions have my expectations not been realised. At times I am sure I have been difficult to work with, however I am pleased that so many of the solicitors who I have worked with over the years have found the time to be present here this morning. I thank you for attending.
- 50 For most of my twenty years at the Bar my Clerk has been Paul Daley. Even when we moved to Level 5 St James, Paul continued to clerk for us. He is a friend and confidante. This year we celebrated fifty years of his service and friendship to the members of the eleventh floor. With one exception, his clerking has been exemplary. Unfortunately, I feel I must mention that one occasion. Paul asked me whether I would accept a brief which he described as "involving questions of construction". I was free and accepted the brief without further thought. When the twelve lever arch folders arrived accompanied by a Scott Schedule, I understood for the first time what Paul meant by "construction".
- 51 I also want to acknowledge the invaluable assistance and friendship which I have received from my secretary, Mary O'Connor. Not only has she been working with me for over twenty-two years, she has also taken on the position as my Associate. There are countless solicitors, clients and counsel who have come to appreciate Mary's calm and organised demeanour.

52 I also thank the staff on Level 5 St James, and especially our floor assistant Danny and receptionist Caroline. They have remained always patient and friendly, even in the face of the trying circumstances which exist from time to time in busy Chambers.

53 Finally, I come to the most important people in my life. Fran and I have been married for the whole of my time at the Bar. That is in itself an achievement on her part. She has always supported and looked after me. Our four children, Alexandra, Henry, Joanna and Saskia are here today. They keep me on my toes and I thank each of you for your love and good humour, even though most of the time the humour has been at my expense.

54 I am also pleased that my mother and five of my brothers and sisters are here today. As a family, and I have to correct you Mr Attorney, we grew up in Cootamundra. Our father was a very successful retailer with more than a passing interest in dressing shop windows. He would have enjoyed the splendour and colour of this occasion. My parents gave me a Jesuit education which through the influence of a man named Charles McDonald, put me on the course which I have followed.

55 Mr Attorney, I am grateful for the opportunity to serve on this Court and I thank all present for doing the Court, and me, the honour of being here today.
