

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

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

Tuesday 13 April 2010

**SWEARING IN CEREMONY OF
THE HONOURABLE MICHAEL BALL
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BALL 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 **SPIGELMAN CJ:** Justice Ball, on behalf of all the Judges of this Court and on my own behalf I congratulate you on your appointment. You have had a distinguished career in the solicitor branch of the profession. You have had a great deal of experience particularly in commercial litigation and you will add considerably to the skill set available to this Court in the years to come.

- 3 **BALL J:** Thank you Chief Justice.

- 4 **MR P BOULTEN JUNIOR VICE PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** It is a great honour to appear on behalf of the President of the New South Wales Bar Association, Tom Bathurst QC, to welcome the appointment of an accomplished and highly regarded solicitor. Your Honour's calm temperament and incisive intellect make you eminently qualified for a place on the bench of this Honourable Court and the community is fortunate that you have accepted this appointment.

- 5 Practitioners in both branches of the profession are quick to praise your Honour's keen intellect, diligence and composure, "He never lost his temper, never raised his voice" said one former member of the Bar.
- 6 A partner at Allens described you as a strategic thinker. Others caution that a swearing in speech about your Honour would almost certainly be brief. "It will be difficult" said one barrister, "he is neither a larrikin, nor a rogue". He is like the New Yorker magazine's "Ungoogleable man," no Facebook page, no MySpace page, no scandal, no rumours and yet he walks amongst us.
- 7 Shakespeare's "brevity is the soul of wit", is a standard proverb but many have mentioned your skill in drafting what they call concise correspondence, often as brief as one or two words. This may be a reflection of your Honour's undergraduate training in pure mathematics or your post-graduate degree in philosophy and formal logic. One senior counsel observed that briefs and letters drafted by your Honour consisted of little more than a series of essential propositions.
- 8 You are said to be the master of the long pause which no one should be quick to fill. Over many years your Honour has worked closely with the Bar Association reviewing barristers' professional indemnity insurance policies and negotiating amendments with underwriters. One could say that you gave the Bar an unfair advantage in its dealings with insurers as your Honour is one of Australia's best informed experts on insurance law.
- 9 Your Honour's patient but beneficial endeavours in this matter mean that collectively the Bar owes you a significant debt of gratitude. Some have been heard to paraphrase a well known insurer's TV commercial, it's lucky we're with Michael.
- 10 This should have surprised nobody. Your Honour graduated from the University of Adelaide in 1978 with a combined degree in Arts and Law. Your imprint on the law of insurance began early. In 1981-82 you served a

senior law reform officer at the Australian Law Reform Commission under the chairmanship of Michael Kirby. With guidance from David Kelly you worked on the ALRC Report 20 Insurance Contracts which contained a draft Bill. It later became the *Insurance Contracts Act* 1984. You are one of the few practitioners to ever receive the opportunity to help draft such a substantive piece of legislation.

- 11 Your early collaboration with David Kelly was a productive partnership and in the years that followed you co-authored the Insurance Legislation Manual, Principles of Insurance Law in Australia and the insurance chapter in Halsbury's Laws of Australia.
- 12 You became a solicitor at Allen, Allen and Hemsley, as it was then known, in 1983 and you rose to the rank of partner in the litigation department. You spearheaded a large number of high profile cases, not so much in matters of insurance but in competition and insolvency law. By any measure the list is impressive. *C7, Antico v Heath Fielding Australia*, the *Linter* litigation, the *Pioneer and Giant Resources* litigation. In the latter case your Honour briefed Justice Ruth McColl in what was described as the most significant case of its type involving five or six separate actions running at the same time. It became a seminal case in determining the insolvency of a company.
- 13 In *Trade Practices Commission v Australian Meat Holdings*, a merges and acquisitions case involving Queensland Abattoirs and foreign shareholdings, your Honour took the radical step of going to the United Kingdom to obtain an order from the Minister for Trade rendering the orders of the Federal Court unenforceable in England. The minutes of a board meeting at a vendor company in the UK record that following legal advice, "it was resolved that the company should not comply with any order of the Federal Court".

- 14 A colleague described you as the best dressed man in the legal profession. You have a consummate eye for a good suit and more is the pity that now your robes will hide the cut.
- 15 You are renowned for your attention to physical fitness. Your chosen sport of weightlifting will stand you in good stead in your handling of caseloads. Yet paradoxically you are described by many of your colleagues as a man almost without ego.
- 16 Your Honour also has a judicious eye for the complexities of contemporary art. You worked with Allen's art collection founder Hugh Jamieson to help form one of the nation's iconic private collections of Australian contemporary art. For some years you and Hugh Jamieson were the odd couple of the corporate art world. Your Honour's preference was for abstract lyrical works, while Jamieson preferred bold gestural abstracts or figurative works. Together, you purchased early indigenous works by Adam Cole and Kathleen Petyarre which pre-empted the firm's reconciliation policy. One of the Bar's art critics, of which there seems to be a surplus, described the Allen's collection as legendary. After succeeding Hugh Jamieson you were a one man committee purchasing work that met the criteria of being challenging and by emerging artists. It sounds like the sort of job many would dream of. Your Honour's choices for Allen's sponsored artist's projects could perhaps foreshadow the style of your judicial opinion writing. Maybe we should expect judgments that resemble Robert MacPherson's vernacular fruit stall signage or Kathy Temin's Alice in Wonderlandish soft toys.
- 17 Since your Honour has graciously accepted an invitation to become a member of the Bar Association there is hope and expectation afoot that you will provide similar guidance on its collection of art which some say is in need of direction now that the Honourable R P Meagher QC's services are no longer available.

- 18 Justice Ball the Bar congratulates you and wishes you well in this new and exciting phase of your career. No one is more highly regarded by members of the bar. May it please the Court.
- 19 **Ms M MACKEN PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:**
May it please the Court. In the Olympic sport of weightlifting, as your Honour would know, employing the correct technique to successfully execute a 'clean and jerk' requires great focus, discipline and skill. This multi-movement lift requires the lifter to arise steadily; then accelerate. The lift is complete when feet are in line and the bar is under control.
- 20 Having perfected the steady rise, your Honour has now accelerated to the bench, with the lift complete and the bar under control.
- 21 While the solicitors of New South Wales are sorry to lose you from our ranks, we are privileged and delighted to congratulate you on your appointment to the Bench.
- 22 When her Honour Justice Ward was appointed to this Court in 2008 the solicitors of New South Wales applauded the move describing it as a golden day and a cause for celebration.
- 23 The euphoria continues with your Honour's appointment, an appointment colleagues have described as the job you were born to do, a position that will fit you like a glove, and one that reflects your abilities, training, experience and demeanour. Of course, questions remain. Who is going to fill the shoes of Michael Ball at Allens Arthur Robinson? How will young William Ball, Allens' new law graduate, fare without his mentor? Who will now take on the office role of the cleanliness Mafioso, expounding the virtues of a clean desk being a reflection of an orderly practice? And, who will assume responsibility for Allens' massive modern Australian art collection?

- 24 Renowned for being an effective strategic thinker, intellectually brilliant and a practitioner of excellence your Honour is described as a very private and modest man, moderate in all things, calm, and with a tremendous capacity to distil and crystallise issues.
- 25 As a solicitor your Honour has made outstanding contributions to the Law Society of New South Wales Costs Committee, and was instrumental in drafting new chapters in the Costs Guidebook. Your Honour has also been a member of the Litigation Law and Practice Committee since 2008.
- 26 The extent and successes of your Honour's complex and high profile litigation and insurance law work have already been put on record by Mr Boulten, so I have chosen to focus on aspects of your Honour's life and interests that have contributed to the man you are today.
- 27 By all accounts your Honour's seemingly simple lifestyle masks a life enriched by intellectual rather than material pleasures and by the satisfaction of a sense of contributing to the public good.
- 28 Your Honour grew up in a highly stimulating family environment. Both your mother and father had strong characters, were extremely well read and well travelled. They encouraged debate and questioning.
- 29 Your Honour was surrounded by health professionals. Your father was an obstetrician and gynaecologist, your mother was a social worker and both brothers, David and Andrew, became doctors. We welcome them here today, Andrew from Melbourne and David from Geneva.
- 30 These formative years growing up in a medical household and your undergraduate studies in philosophy were no doubt good training for developing your analytical skills.

- 31 In these formative years the teenage Michael Ball would often be found in his room huddled over his prized Nakamichi sound system revelling in the sounds of Loudon Wainwright and Joan Armatrading.
- 32 Today it is more likely to be the sounds of Rubenstein's Chopin or Schnabel's Beethoven piped into every room of your Honour's apartment. An inconsolable Wagnerphile, your Honour is also patron of Opera Australia.
- 33 Your Honour has been the architect of Allens' huge collection of modern Australian art. Colleagues on the Bench can expect to see some of your Honour's own collection adorning the chamber walls and with any luck, the corridor as well. Woe betide the hapless person who dares to breach the unwritten art works display policy by incorporating any sports memorabilia.
- 34 Growing up in Adelaide your Honour took responsibility for the pets: cats Tammy and Melissa and dogs Clarence and Titus. Your brothers David and Andrew recall your perseverance and tenacity in taking Titus to dog obedience classes. Described as highly neurotic, antisocial and of minimal intellect, Titus, once off the lead would bolt, managing to collect an array of dogs from other classes on the way. The rest of the morning was spent rounding up all the strays. This became a regular phenomenon and finally Titus, and also your Honour, were expelled.
- 35 Chess and piano were your favourite types of physical activity while a student at Adelaide's Scotch College. I note that since your student days, your Honour has adopted a strict gym routine, with a particular passion for the classic Olympic weightlifting movement of 'clean and jerk.' I cannot help but be impressed and heartened that during the Sydney 2000 summer Olympics, your Honour chose to attend the weightlifting events, at which events women were allowed to compete for the first time. Your Honour attended the weightlifting events and keenly observed the 'clean and jerk' and 'snatch' techniques of the various international weightlifting competitors.

- 36 This strong body/strong mind credo is also reflected in your daily walks to work and Sunday power walks. Unfortunately, I am told the aerobics classes ended prematurely, after your Honour sustained a broken wrist, apparently perfecting the grapevine step.
- 37 Your Honour is a great traveller but spontaneity is not the rule. For your Honour every holiday needs a purpose. All travel destinations are thoroughly researched, history, culture, architecture, and full use is made of the array of Green, Blue and Red guides.
- 38 Up at the crack of dawn to witness the perfect sunrise your Honour will continue at full pace throughout the day and then insist on an after dinner stroll in case something was missed. Your Honour also favours some of the more challenging destinations. Whether it is Damascus, Lalibela, Patagonia, Persepolis, Angkor Wat, Bagan, Lake Titicaca, Leptis Magna, Saharan oases or the Yucatan Peninsula, the objective is to search out those most remote and hidden archaeological sites.
- 39 While the veracity of the following story cannot be 100% substantiated, it is certainly indicative of your Honour's personality and reputation for efficiency and excellent advice - and thus I repeat it. A potential client came into the office to seek legal advice about pursuing a claim against someone. An animated monologue ensued lasting about an hour during which time you listened quietly and took the occasional note. When the client ran out of steam you stated that, "Nothing you say suggests that you have any basis for a claim under the law". The statement encouraged the client to continue his monologue and at a suitable juncture you again calmly stated that nothing further you say suggests that you have any basis for a claim under the law.
- 40 Ultimately, I am told that your client valued your succinct message that there was no merit in the client wasting money on a claim that could not

succeed. Such succinctness and focus augurs well for speedy resolutions to matters that come before your Honour at the Bench.

41 Your Honour, the Law Society of New South Wales wishes you every success on the bench and trusts this next stage of your career will prove rewarding and fulfilling. As the Court pleases.

42 **BALL J:** Many thanks Mr Boulten and Ms Macken for those kind words and many thanks to everyone who is here today. I am very grateful for the support you have shown me by coming to this ceremony.

43 When I started at Allens, which, in one of those tricks of memory, seems both almost a lifetime and barely more than a moment ago, it was hard to imagine that solicitors would be appointed directly to the Bench. The view then was that only barristers had the necessary training to be a judge.

44 Now it is a little known fact, but I have some advocacy experience myself. When I was a first year solicitor at Mollison Litchfield I used to do parking prosecutions for the Adelaide City Council. As you might imagine they were normally fairly routine affairs. Mostly, the defendants did not even show up.

45 Unhappily, that was not true on one occasion. The defendant was a law student who was represented by one of Adelaide's leading criminal barristers. Suffice it to say that the prosecution did not go well. By the end of the first day of hearing, it became obvious to me that the complaint would have to be withdrawn, not least because of the many comments made during the course of the day by the magistrate whose name, Peter Kelly, I still remember today.

46 It was equally obvious, or so I thought, that the defendant was guilty and it seemed to me, in those circumstances, some statement to the court was called for. When I stood up the following morning to announce my intentions, the magistrate's response was that if I was going to say

something, then he would too; and I got the impression that it would not necessarily be all favourable. Even so, I had spent quite a lot of time preparing what I was going to say, I had passed what I proposed to say by my supervising partner. And justice after all required that something be said. Well, much to my horror, the ensuing exchange was reported quite prominently in The Advertiser, the local newspaper, the following day.

47 I feel that I learned one important principle of advocacy from this experience, and that is, that sometimes it is better to keep quiet.

48 It seems clear to me, however, that my appointment owes less to what I learned as an advocate and more to the success of those who have gone before me, not least of whom have been John Lehane and Reg Barrett, both of whom I am proud to say were once partners of mine.

49 Those of you who know me well know that I do not like giving speeches. But there is one thing about this speech which I welcome, and that is the opportunity to thank publicly those who have assisted me in my career. It is impossible to name them all but I would like to mention four.

50 First, there is Michael Detmold who was my honours law supervisor. Michael was a great mentor to me in my early years and no one has done more than him to foster my interest in the law.

51 Secondly, there is David Kelly. David will not remember this but he was, in fact, my first lecturer in law, teaching part of a course called Elements of Law. I think it was largely due to David that I obtained a position at the Australian Law Reform Commission where I spent a very enjoyable two years working for him. He was the Commissioner in charge of the Insurance Contracts reference at the time. It was David who asked me to co-author a book on insurance law following an approach to him by Butterworths. Even now, I study carefully David's writing style in the hope that I may improve my own.

- 52 I perhaps should add for those of you who are wondering, that David is Peter Kelly's brother.
- 53 When I started at Allens I was amazed by two things. The first was the beautiful offices and art collection. The second was the extraordinary number of talented lawyers. But the two who stand out for me are the ones for whom I did most of my work as an employed solicitor. One was Fred Lind. If Allens has a particular style of litigating, then that is largely Fred's style which continues in those he trained and now, increasingly, those trained by them.
- 54 One of Fred's qualities is his succinctness. One of my early experiences of this is when I got back to my office one day to find a pile of papers on my chair with a note from Fred written on a scrap of paper, there were no Post-it notes back then. The note contained two words apparently written in the English language. I studied them anxiously trying to work out what on earth I was being asked to do. Then, it finally clicked. The words were, "please fix".
- 55 Finally, there is Hugh Jamieson. The last public occasion on which I had spoken about Hugh was at his funeral; and, true to my training, I am not going to repeat now what I said then. It was through Hugh's efforts that I became a partner at Allens and he was a wonderful teacher and friend.
- 56 No list of thanks would be complete without some mention of my family and friends. I am very grateful for their support over the years, particularly that of my brother Andrew, who made the trip from Geneva to be here today.
- 57 There are many things I will miss about Allens but perhaps most of all is the opportunity it provides to train lawyers and to see them develop and, in many cases, go on themselves to have successful careers. This is not an opportunity that is unique to large law firms but it is an opportunity that is difficult to match elsewhere. I take comfort in the fact that when I look at

the quality of many junior lawyers of today, I think the legal profession must have a bright future and in the hope that, as a result of this appointment, I may be able to contribute to that future in another way.
