

Print Page

Close Window

Swearing-in Ceremony of the Honourable Clifton Ralph Russell Hoeben AM RFD SC as a Judge of the Supreme Court of New South Wales

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND THE JUDGES
OF
THE SUPREME
COURT

Monday 16 August
2004

SWEARING-IN CEREMONY OF THE HONOURABLE CLIFTON RALPH RUSSELL HOEBEN AM RFD SC AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 **HOEBEN 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 Hoeben. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read.)

Justice Hoeben, I ask you to rise and take the oaths of office, first the oath of allegiance and then the judicial oath.

(Oaths of office taken.)

3 Principal Registrar, I hand to you the oaths so that they can be placed amongst the records and the Bible so that it may have the customary inscription placed in it and presented to his Honour as a memento of this occasion.

4 Justice Hoeben, your appointment comes about after a long and distinguished career at the highest levels of the Bar and a significant element of community service in various areas of activities, particularly in the military.

5 On behalf of all of the Judges of this Court and my own behalf, I welcome you as a Judge of the Court and look forward to serving the community of this State of New South Wales for many years to come.

6 **MR I G HARRISON SC PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** If the Court pleases.

7 It gives me considerable pleasure, both personally and on behalf of the Bar Association of New South Wales, to speak on the occasion of your Honour's swearing-in. Your Honour and I have been floor members for many years and we were appointed Senior Counsel on the same day. With the benefit of such a close association, therefore, I am able to warrant that most of what I am about to say is true.

8 Your Honour was born on 7 June 1947. You attended Riverview in Sydney. You were awarded the

Cooper Scholarship, a prize for excellence in Latin and Greek. Latin, of course, remains important to lawyers even to this day. Latin is not a language in which I have a particularly strong background and your Honour's expertise in the language was demonstrated to me at an early time. I was inquiring of your Honour what the precise meaning was of that famous motto "carpe diem". We were in a restaurant at the time and your Honour put me right. Until then I had always thought that carpe diem meant fish of the day.

9 Your Honour matriculated from Riverview as Dux of the school in 1964. From Sydney University you graduated with a Bachelor of Arts Degree with First-Class Honours in Ancient Greek and Latin in 1968 and a Bachelor of Laws Degree with Honours in 1972. You were later awarded a Master of Laws Degree from Sydney with Honours in 1984.

10 You enlisted in the Sydney University Regiment in January 1965. You earned a commission in May 1967.

11 You served articles of clerkship with Tom Jones at Freehill Hollingdale & Page in 1971 and 1972 and remained with that firm as a solicitor until May 1976 when you were called to the Bar. You read on the eleventh floor with Bob Hulme, now Justice Hulme of this Court. As I noted earlier, you took silk in November 1995.

12 You have had a wide and successful practice from then until approximately 12.30pm last Friday. Your areas of practice revolved predominantly around medical and professional negligence and personal injury litigation. Your interests and skills, however, extended your practice into areas much wider than that. I seem to recall my first case against you many years ago was a *Family Provision Act* matter in the Equity Division. I remember being very confused when you kept asking me whether or not "owner/driver" was admitted.

13 You are known as a prodigious worker. You have for years churned out detailed and readable advices in a timely way for almost every insurance company or plaintiff's solicitor in New South Wales. You are the only man or woman I have ever met who understood and could explain s151Z of the *Workers Compensation Act*.

14 You had an extensive appellate practice, more particularly so in recent years. You were well regarded in that year for your no-nonsense advocacy and commonsense approach. The eleventh floor has been the beneficiary of a series of briefs in unheard appeals which your Honour's appointment forced you reluctantly to relinquish. It would have to be said that your Honour had a reputation as a man who formed a very close relationship with any brief that came into your room. The biggest obstacle in getting you here today was to convince you to loosen your vice-like grip on anything which looked vaguely likely to produce a fee note. Your Honour has a reputation for financial prudence, something which the Scots describe as "canny". I have heard members of the eleventh floor use other words as well. Bartley SC wondered this morning how many other swearings-in your Honour was attending today.

15 You were a member of the New South Wales Bar Council from 1991 to 1995.

16 In parallel with your successful career as a barrister was your remarkably successful career in the military. You rose to the rank of Major-General, Commander of the Second Division, Australian Army Reserve. You had been awarded the Sword of Honour in your TAC 5 course qualifying for promotion to Lieutenant-Colonel. You were decorated. From 1993 to 1997 you were the Commander of the 8th Brigade. You were in charge of deployment of reservists to East Timor and in charge of the Army Security for the 2000 Olympics in Sydney. You received an AM in the military division. It is no coincidence that your loyal assistant, Simone Fuller, types like a machine gun.

17 Army life has strongly influenced you for the whole of your adult life. As far as I am aware, even to this day, you still get your hair cut by an army barber. But then I probably should have mentioned that under the heading "canny". Your daughter told me that your army career even influenced the way you spoke. She reminded me that one time you were travelling in Europe with her, in France, and she asked you what a bidet was and you had no hesitation in telling her that it was two days before D-day.

18 For a long time your Honour wore a moustache. This was generally thought to be the reason for your popularity amongst Greek solicitors. You shaved it when it started to turn white. A white

moustache would immediately have qualified you for appointment to the District Court.

19 On behalf of the New South Wales Bar, may I congratulate you on your appointment, something which has been met with universal acclaim. I wish you well in your new career and earnestly look forward to appearing before you in the years to come.

20 May it please the Court.

21 **MR G A SALIER PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

22 Your Honour, it may be said that you are the very model of a modern major general. Indeed, it may be sung. Fortunately for those gathered here today, not by me.

23 However, unlike that other mythical and musical major general, I am sure that you have learnt what progress has been made in a modern gunnery and you do know somewhat more of tactics than a novice in a nunnery. As one of the highest ranking officers in Australia's Army Reserve since 1997, your military knowledge rises well above matters vegetable, animal and mineral.

24 Some might venture to say that those excellent skills which have served your career in the army have translated well to chambers and the Bar table.

25 Instructing solicitors talk of an enviable track record for accuracy and timeliness. They say that you brought a military efficiency to matters. Anxious solicitors who were advised by you to "just mark it 'urgent' and send it up", knew that all would be taken care of. But the synergy of your dual career paths did not end there. An ability to strategise, no doubt, assisted both your soldierly and legal pursuits. And your Army uniform, so dapper on the parade ground, could be pressed into civvy service.

26 Once again, one solicitor fondly recalls your arrival for the viewing of an accident scene, dressed in combat clothing as if you were off to boot camp. Because the site inspection was at the snowfields, your Honour's attire was augmented by Army boots, dark green over jacket and a beanie.

27 As the only route to the accident scene was over snow, and I am advised that your Honour's brief experience as a skier was some considerable time ago, you opted for a chauffeur-driven skidoo. You may have thought you were in for a sedate trip, but your colleagues had other ideas and instructed the snowmobile driver to give you the ride of your life. On arrival, your comment after alighting the vehicle: "I'm never doing that again."

28 Your Honour, in contrast, for the solicitors who have briefed you during your years at the Bar, the ride has been steady and true. All will be loathe to disembark. Some have been with you from the start of that journey.

29 I believe it was your first case in 1976 when, briefed by the late David de Carvalho, you had a win against another first-timer, Stephen O'Ryan. This was a fine omen, indeed. David de Carvalho went on to become a President of the Law Society which I represent; Justice O'Ryan is now a Family Court Judge; and your Honour, today, a Supreme Court Judge.

30 From your early years in the Compensation Court, you have had a prodigious ability to deal with work. The descriptions "super organised" and "a capacity to absorb voluminous information" as they have been given to me, no doubt allowed you to undertake so much.

31 You left the Compensation Court to focus all your energies on the Common Law. Said one solicitor, "He's done every significant Common Law case I've had for the past 15 years. He is the leader of the Common Law Bar. His ability to digest information and provide advice to clients is without peer. He is a brilliant advocate."

32 Yet another said, "He is the only person I have briefed. We are at a bit of a loss to see who we will use now." Clearly, your Honour's appointment to the Bench, freeing up all this work for others, will be

good news for the rest of the Bar.

33 For all the glowing accolades and the ranks to which you have risen, your Honour has remained a personable, down-to-earth human being. Certainly never to be found inhabiting ivory towers. Said a solicitor, "He is quite happy to work without juniors. He never stood on ceremony about that or anything."

34 However, your Honour, this is a ceremony at which I do find myself standing. On behalf of the solicitors of New South Wales, may I let the voice of one speak for all, when he said: "I can't remember in my legal career an appointment so well received by the profession at large. While we lament the loss of a fine appellate Counsel, we look forward to the day when we can appear before him."

35 As the Court pleases.

36 **HOEBEN J:** Chief Justice, fellow Judges, members of the profession, ladies and gentlemen, I thank Mr Harrison and Mr Salier for their generous and somewhat exaggerated remarks. The truth is often the first casualty on such occasions as this, but it was most kind of both speakers to describe past events in such flattering terms.

37 It is also customary and traditional on occasions such as this, when a change in profession takes place, to reflect on events which have led to this day. In my case, it provides a really excellent opportunity to acknowledge all of those people who, over the years, have provided such wonderful help to me.

38 I was born into a close, loving and supportive family. Neither mum nor dad attended university, but they were determined that both my sister and myself would do so. Dad died last year and mum today is too unwell to attend, but I know that they would both have been very proud.

39 Somehow or other my father managed to get me into St Ignatius College. It is one of those family mysteries I have yet to unravel. This required my mother to return to work. It was something that I did not learn until after I left school, but it was a sacrifice for which I will always be grateful.

40 I enjoyed my years at Riverview immensely and I made lasting friends and developed a respect and a love for the classics. It was as a result of the efforts of the late Charles Frazer SJ, who was something of a legend at the college. I also developed a love for debate and rugby. Subsequent events established I was not a bad debater, but a terrible rugby player.

41 My time at university was rather longer than I planned. That was because I was trapped by the erudition of Professor Athanasious Treweek, who was then an ancient Greek professor, who persuaded me to delay my entry into the study of Law by completing Honours in Ancient Greek. And as Mr Harrison said, "If you're doing Ancient Greek you might as well do Latin too", so I spent four years, four very enjoyable years, completing my Arts Honours course. It delayed my entry into the Law, but it is a decision I will never regret.

42 Although I did achieve Honours in Law, I think it would be fair to describe my academic prowess as being solid rather than spectacular. In fact, there was one remarkable black spot in that academic process and that was a credit which I received in Equity. The lecturer at the time was one Roddy Meagher and I am quite sure that that credit is the reason why I have been appointed to the Common Law Division and not the other.

43 I was again very fortunate in obtaining articles at Freehill Hollingdale & Page. As has been already indicated, my master solicitor was the late Thomas Owens Jones. He also was something of a legend at Freehills. He was able to run his own practice which was not only focused on licensing - although that was its major area - but was in fact a general practice. One essential thing that Mr Jones taught me during that period was that clients were not interested in erudite legal analysis; they simply wanted answers they could understand.

44 I was admitted as a solicitor in 1973 and I worked for three years in the litigation section at Freehills. I worked under the guidance of Michael Rosser and Kevin Broadley. Again, much of what I

have achieved since is due to their efforts and their instruction. It was an interesting time to be at Freehills. Of the clerks and the junior solicitors at that time, a number went on to become Judges and silks.

45 Having spent three years as a solicitor at Freehills, I realised, as no doubt those in charge at Freehills did, that I was not a very good solicitor and in May 1976 I came to the Bar. I was successful in getting the reader's room on the eleventh floor. I left Freehills, however, with a solid grounding in the practical aspects of the Law and an appreciation of how difficult it is to be a good solicitor. I hope that appreciation will remain with me and make me more sensitive to the difficulties that solicitors do confront when preparing litigation now in my new role.

46 The eleventh floor in May 1976 was an exciting place for a new barrister. I hope I don't offend if I use names rather than titles, but the senior silks included: Doug Staff, Frank MacAlary and Bill Deane. The senior juniors/junior silks included: Sheller, Giles, Dunford, Hulme, Hunter, Reddy and Conti.

47 There also developed over the next few years on the eleventh floor a cohort of new barristers of which I was one, such as: Poulos, Sullivan, Collins, Maconachie, Biscoe, Holmes and Gray. As relatively new barristers, we were confronting the same sorts of problems at about the same time and so the exchange of ideas and experiences was particularly valuable. That mutual friendship, I am glad to say, and exchange of ideas has continued to this day.

48 We also received from our seniors on the floor, not only the benefits of their forensic knowledge and experience, but also a real understanding of the best traditions of the Bar and its ethical standards; in particular, the essential trust which must exist between the Bench and the Bar.

49 I read with Bob Hulme, who was tireless and enthusiastic as a teacher. He was always approachable and prepared to make time available to deal with my problems. I still remember the horror with which he examined my first draft of an affidavit to be used in an equity trial. I recollect that we went through a number of drafts before he was satisfied. I also recollect that it was very late at night.

50 Within months of coming to the Bar, I realised I loved the life and loved the work. I must have, since I have been on the eleventh floor for over 28 years and have been doing that work.

51 Of course, no reference to the eleventh floor could be complete without mention of Paul Daly, that doyen of clerks. For those on the eleventh floor, Paul is not only an excellent clerk; he is a fitness instructor, a sports doctor and a confidante and, for me, a good friend. In my early years at the Bar, I had a tendency - which I note has been sorely exaggerated today, to put it euphemistically - to overcommit myself when it came to Court appearances. Somehow Paul was always able to get me out of those scrapes or I would not be here today.

52 I also wish to acknowledge the support staff on the eleventh floor who have helped me over the last 28 years, particularly Anne, our receptionist, who has been a monument of goodwill and self-control no matter how difficult the client. My secretary for the last 13 years, Simone, never let me down and was always ready to stay back to make sure those urgent submissions got in on time or, if not on time, at least not too late.

53 I have yet made no mention of my wife Chrissie and my daughter, Emma. It is amazing how the cycle turns. Emma has only, just two weeks ago, started herself at Freehills. The simple fact is this: Whatever achievements I have made could not have been done without their love and support.

54 Being the wife of a barrister is not always easy, particularly when the trial is not going well. In my case, despite my best efforts, there was often short temper, preoccupation, and matters of that kind which did intrude. In Chrissie's case the burden has been two-fold: Not only did she have to put up with the pressures of the Bar, which are themselves substantial, she also had to put up with the pressures of the Army. It quite regularly occurred that for three or four weekends in a row I would be away from home. Chrissie has never reproached me with this. One rarely gets the chance to thank one's wife in public for her love and support. I do so now unreservedly.

55 As has been indicated, together with the law, my other significant commitment has been the Army,

of which I was an active member for 36 years. Now is not the time to talk of that part of my life except to say this: I have been privileged, during that time, to work with some extraordinary people in quite extraordinary circumstances and I believe that has broadened my perception of life, has given me experiences that perhaps I would not otherwise have had in the ordinary framework of the law. I hope that those experiences will make me a better and more understanding Judge.

56 I enter upon this new phase of my legal career with mixed emotions. On the one hand it is something which I have aspired to for many years and I can't wait to start. On the other hand I am somewhat apprehensive. I am very conscious of the responsibility which has been entrusted to me, as the oaths which I have just sworn make clear. It is one thing to be a passionate advocate; it is quite another thing to be a dispassionate arbiter.

57 I am, however, encouraged by the comments of Justice Joe Campbell at his swearing-in: That my 31 years as a lawyer was, in reality, a preparation for this day. If I am not ready now, I never will be.
