

Land and Environment Court of New South Wales
1 July 1999

The Chief Judge the Honourable Justice Pearlman and the Judges and Commissioners of the Court
Ms R McColl SC, Senior Vice President, New South Wales Bar Association
Ms M Hole, President, Law Society of New South Wales

COWDROY J: Chief Judge, I have the honour to announce that I have been appointed a Judge of the Land and Environment Court. I present my Commission.

PEARLMAN CJ: Thank you Justice Cowdroy. Please be seated. Mr Registrar would you please read the Commission.

(Commission read)

Thank you. Justice Cowdroy would you take this Bible and please stand with me and take the Oaths.

(Oaths of Office taken)

Thank you Justice Cowdroy. Would you please be seated and sign the Oaths and then I will attest your signature. Mr Registrar would you please place the Oaths in the archives of the Court and please have this Bible inscribed as a memento of this occasion. Thank you.

Justice Cowdroy I welcome you as a Judge of this Court. We have had the pleasure of your company and indeed the benefit of your advice for the previous twelve months and so your presence here today to us is welcoming an old friend. On behalf of the Court I extend to you our warmest welcome and wish you well.

COWDROY J: Thank you Chief Judge.

PEARLMAN CJ: Ms McColl.

Ms McCOLL: May it please the Court. It is my privilege to speak today on behalf of the New South Wales Bar to welcome and congratulate your Honour on your appointment to the Land and Environment Court. Your appointment has met with universal acclaim.

Your Honour graduated in Law from the University of Sydney in 1967. You then studied at King's College at the University of London where you were awarded the degrees of Master of Laws and a Diploma of Air and Space Law.

You briefly joined the Diplomatic Service but, fortunately for the Law, chose to return to a legal career. After a year as a solicitor you were called to the Bar on 4 June 1971. You read with Theo Simos. Your practice flourished. You found immediate favour with the Commonwealth Attorney General. You appeared as junior to the late and much revered Sir Maurice Byers in numerous High Court cases concerning the constitutional validity of the Trade Practices Act and the Family Law Act. Within four years you had appeared in the Privy Council.

Your forensic history is littered with appearances in landmark cases: *Walker v Wimborne*, the *Amman Aviation* litigation, the *Mudginberri* litigation and *Fountain v Alexander*, to name but a few. Yet, such cases were just a part of your extensive practice which ranged across the fields of land and environment law, common law, equity, family law, industrial law, bankruptcy and indeed international arbitrations. You appeared in many large cases where you put your prodigious memory for documents to great use. You are known to have been very well prepared, conscientious, a master of detail, methodical, speedy and disciplined in all aspects of your practice.

As a junior you had some notable triumphs, not least of which was your Honour's role in the 1988 decision of the High Court in *Hawkins v Clayton*, a decision which transformed the law concerning a solicitor's duty of disclosure to the executor and sole beneficiary of a will. This was a case which many might have thought had little prospect of success. A solicitor had taken six years to locate the executor and sole beneficiary under a will. The principal asset was a house which had deteriorated substantially in the intervening years. The cause of action was in negligence and breach of contract. The only damage was economic loss and most practitioners were still trying to identify the ratio in *Caltex Oil v Willemstad*. Your Honour held a strong belief in the plaintiff's cause and urged her to persevere in the litigation. Your leader, Cummins QC said that it was you who devised all the points which led to Mrs Hawkin's ultimate success. On a like vein, Justice Callinan, who led you in substantially all of the *Mudginberri* litigation, informed me that your Honour was the architect of the winning points in that case too.

You took silk in 1989. At the time you were appointed Queens Counsel your clerk, Greg Isaac, said you had the practice of three busy juniors. As a silk, too, your practice was extensive. In this Court you appeared in numerous environmental matters, including prosecutions under the Environmental Planning and Assessment Act. Wider afield you appeared in the Permanent Court of International Arbitration at the Hague representing the government of Papua New Guinea.

Your Honour is known as an inveterate traveller and it was perhaps this wanderlust which led you to becoming one of the first members of the New South Wales Bar to be admitted to the Irish Bar in 1989, an exercise you undertook with your great friend, then Ian Callinan QC. Another one of your Honour's overseas triumphs was to be admitted in 1991 to the English Bar where you are a member of Lincoln's Inn and a Tenant of Chambers in the Temple.

Your Honour is the Chairman of the Council of International House at the University of Sydney and a member of the National Council of Opera Australia.

You have contributed to the life of the Bar in many ways, not least in service on several of the Bar Association's committees. All on the twelfth floor of Wentworth and Selbourne Chambers speak highly of the leadership you showed in the successful amalgamation of that floor.

Your Honour has represented and advised the Returned and Services League of Australia in numerous matters in a pro bono capacity since your early years as a barrister.

You are said to be a man with great visions. It was perhaps this which led to you being instrumental in promoting to the Australian government the idea that there should be established at the War Memorial in Canberra, a tomb to the Unknown Soldier. After much effort on your Honour's part, that idea was put into effect and on 11 November 1993, the seventy-fifth anniversary of Armistice Day, the body of the Unknown Soldier which had been disinterred from the Adelaide Cemetery at Villers-Bretonneux in France was entombed in the Australian War Memorial's Hall of Memory. Prime Minister Keating acted as chief pall bearer. It tells much about your Honour that you spent so much time pursuing this ideal of providing a lasting memory for the benefit of all Australians and a symbol of those who had sacrificed their lives for this country.

It was a fitting recognition of your Honour's services that in 1995 you were awarded the Order of Australia Medal for services to the Returned and Services League of Australia, the community and the practice of law.

It is unusual to be able to say at a swearing in that one has appeared both against and before the new Judge but such is your Honour's experience that I am able to make that claim. As an opponent it was my observation that your Honour was in complete command of your brief and an extremely genial and pleasant opponent. No matter what problems arose your Honour's serene disposition did not alter. You battled through every travail with total equanimity.

Such observations were, of course, consistent with all that I had known before I appeared against you and with all the information that I had been able to glean from numerous informants contacted for the purpose of preparing this speech. The overwhelming impression one receives from such informants is that your Honour is the epitome of urbanity, decency, honesty and fairness. Your Honour's hallmark is said to be unflappable geniality, a quality which I have no doubt will make you a superb judge. You have no enemies. You have that rare quality of being able to make everyone feel important and welcome. All of those qualities are, of course, essential to the holder of judicial office.

In 1996 you undertook what became the first of several stints as an Acting Judge. You served for three months in that capacity in the Equity Division of the Supreme Court. It was there that I appeared before you. In the words of Gilbert and Sullivan my observation was that your Honour was a model of a modern Australian judge. You controlled the courtroom, both counsel and witnesses with supreme confidence, courtesy and charm. In a case which was hard fought on the facts, in which substantial issues of credit arose and where the law was complex, your Honour heard the case over seven or eight days and delivered a detailed and perfectly crafted judgment the day after submissions concluded and, if I recall correctly, on the last day of your term as an Acting Justice in the Equity Division. I have no doubt that both parties in that case left the Court feeling justice had been well and truly served. Since then your Honour has served two terms as an Acting Justice of this Court in which role again the Bar has nothing but praise for your Honour's discharge of your judicial duties.

Your Honour, the New South Wales Bar welcomes you to the Bench of the Land and Environment Court. It is confident that you will meet the demands of office with the same distinction and with the same attachment to principle, to hard work and to independence of mind that has marked your service as a barrister. We wish you a long, happy and successful tenure as a Judge of this Court. May it please the Court.

Ms HOLE: May it please the Court. Your Honour on behalf of the Law Society of New South Wales may I congratulate you on your appointment to the Bench of the Land and Environment Court of this State.

A good listener who pursues the fairest outcome with vigour is how your Honour is described by those who have appeared before you in your capacity as an Acting Justice, first of the Supreme Court between October and December of 1996 and then of this Court from July 1997.

A lawyer who first met your Honour at the University of Sydney in the 1960s say you have not changed since your student days when you were not just a good listener but a scholar and in his words, extraordinarily polite. Indeed your Honour attended the University of Sydney on a Commonwealth Scholarship after completing much of your secondary education at Shore where you are still highly regarded as an interested and supportive member of the Alumni Association.

Your Honour won an International Commission of Jurists Scholarship while still studying for your Bachelor of Laws at Sydney and after graduation you left Australia to study at the University of London as a Rotary International Foundation Fellow. There you completed both a Diploma of Air and Space Law and a Master of Laws.

You returned to Australia and worked as an articled clerk and then a solicitor before being called to the Bar on 4 June 1971. During your career at the Bar you enjoyed a varied range of practice areas, from common law, equity, family law and industrial relations to corporations law and defamation. You have been briefed by the Commonwealth and State governments on many occasions.

A highly skilled advocate, respected by your peers as well as those who have appeared before you, your Honour's professional achievements were recognised in 1989 when you were made a Queen's Counsel. You have appeared in many jurisdictions including the Privy Council and the Permanent Court of International Arbitration at the Hague.

Solicitors who have briefed you over the years say one of your many career highlights occurred in the 1980s when you acted in significant cases pursuing the secondary boycott provisions of the Trade Practices Act and common law tort claims before the Federal Court countering industrial action. I was told that a great many of the judgments dealing with the ambit of the boycott legislation feature your Honour's name.

You have also made a considerable contribution as counsel to the Returned and Services League of Australia since 1971, so much so your Honour was awarded an Order of Australia Medal in 1995.

Solicitors describe your Honour as professionally generous and always quick to point out to clients the contribution made by a briefing solicitor to a case.

Your Honour, on behalf of the solicitors of New South Wales may I wish you many more satisfying years on the Bench. As the Court pleases.

COWDROY J: Chief Judge, might I thank you and the Judges of this Court, the Commissioners and all the staff for the welcome which I received not only as an Acting Judge but also as a permanent Judge. I have been made to feel exceptionally welcome in this Court.

Ms McColl and Ms Hole I thank you very much for your remarks on behalf of the legal practitioners, barristers and solicitors. I have greatly valued their support over many years and I regard members of the Bar and of the profession generally as my friends.

I am also honoured by the presence here today of the Chief Justice of New South Wales and other Judges and retired Judges. All of you present have in some way contributed to the fact that I am now being sworn in as a Judge of the Court.

This Court is a new court in the sense that it is less than twenty years old but the effect of its legislation will be widely felt.

Before I deal with that might I simply say that there are certain people here today who I would particularly like to recognise and express my gratitude.

My master solicitor to whom I was articled between 1962 and 1965, Mr James Moors, is present in court. He taught me the trade of being a solicitor, much to his exasperation over many years. Mr Moors has the distinction of now having two judges on this Bench who were his articled clerks. Justice Talbot who sits in front of me, to my right, was also his first articled clerk in the 1950s.

There is also present in court the solicitor who briefed me in my first month at the Bar, Mr Russell Nash MVO whose assistance and loyalty I greatly value, as I do Mr Hedley Proctor, who, now retired, also briefed me in my earliest days at the Bar and remained with me as one of his chosen barristers over many years.

There is the wonderful organisation, Rotary International, who I should honour. Had it not been for the fact that I was awarded a scholarship I would not have gone to the Bar and it would not have ultimately led to this appointment. Mr Ian Hudson, who was the Chairman of the selection panel in 1967, is also present in court and I acknowledge with gratitude the work of him and that organisation.

My clerks, Greg Isaac, Di Strathdee and Bob Rymer, have also greatly contributed to my career and I will have undying gratification for their services to me.

My family has always been a total support. My wife and three daughters, two of whom have followed in the Law, have been with me in effect as a partnership. It has been wonderful to have the encouragement of a family when one is a sole practitioner, either a barrister or solicitor. My greater family, that is my relatives who are here today, have always taken great interest in my career and I thank them for their support also.

Lastly, for the acknowledgments I should record my gratitude that my late parents instilled into me a religion which has been the cornerstone of my life.

I am looking forward to the challenge of serving as a permanent member of this Court. It represents the adaptation of the law to meet the community's needs. It is a superior court. It is a court which exercises exclusive jurisdiction over all matters pertaining to planning and development throughout this state. It exercises jurisdiction over more than thirty-three statutes dealing with planning, heritage, pollution and a wide range of matters.

It has excited the interest of countries other than Australia. The Chief Judge has just returned from delivering a talk on this Court and its operation in Israel. Next week she travels to New Zealand. England is also looking with great interest at the operation and workings of this Court. It is the first court in this country, that is the first superior court, which deals with planning issues. I have no doubt that as the law of the environment expands we will have in this state and in the country the operation of a national environmental law. I feel in that area this Court can play ultimately a very significant role.

One case recently, to give you an example of the breadth of the jurisdiction, involved pollution of the sea in Norfolk Island. This Court has jurisdiction over it and is being dealt with now by this Court.

The environment belongs to us all. It is a recognition that has come to us as lawyers somewhat late in the day, yet the Indians recognised the beauty of the environment and its protection more than one hundred and fifty years ago. In 1854 the American President wrote to a Red Indian tribe offering to buy their lands. Their chief, Chief Seattle, responded. He was puzzled at the concept that someone could offer to buy the land and the environment which had been the ancestral home of the Red Indians. He responded in a statement which is regarded as the most beautiful and profound statement on the environment ever published. One statement in it reads:

How can you buy or sell the sky, the warmth of the land. The idea is strange to us. If we do not own the freshness of the air and the sparkle of the water how can you buy them. This we know. The earth does not belong to man. Man belongs to the earth.

This Court within the law will do its utmost to protect and foster the environment as a place for the benefit of all the residents in this state. I am proud and privileged to be a part of that process in this new and expanding area of the law. It is an exciting area and one in which I am pleased to have the opportunity to now serve in permanently.

I would like to conclude by giving a word to the new practitioners who may be coming to this exciting area of the law. The continuity of the law depends upon the knowledge which we have gained from our superiors. There is present in court today a number of retired Judges, all of whom have set a wonderful example to us all. There are some retired practitioners, both barristers and solicitors, they have also set an example for the younger practitioners to follow. We have the opportunity in New South Wales to excel in this area of the law.

I am reminded of the motto of my old school which reads in Latin, "*Vitae Lampada Tradunt*", which means we hand on the torch of life. The torch of life has been handed on by those Judges who have retired. I gladly accept the torch and I pass on the torch as a practitioner to those who follow.

May I thank you for your attendance today and wish you the best of everything.

PEARLMAN CJ: The Court will adjourn.