

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

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

Monday 2 June 2008

**SWEARING-IN CEREMONY OF
THE HONOURABLE JAMES LESLIE BAIN ALLSOP
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES
A JUDGE OF APPEAL OF THE SUPREME COURT OF NEW SOUTH WALES
AND PRESIDENT OF THE COURT OF APPEAL OF THE SUPREME COURT
OF NEW SOUTH WALES**

1 **ALLSOP P:** Chief Justice I have the honour to announce that I have been appointed a Judge of this Court, a Judge of Appeal and President of the Court of Appeal. I present to you my Commissions.

2 **SPIGELMAN CJ:** Thank you, Justice Allsop. Please be seated while your Commissions are read. Principal Registrar, please read the Commissions.

(Commissions read)

(Oaths of office taken)

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

4 Justice Allsop, on behalf of all of the judges of the Court, I congratulate you on your appointment and welcome you to this important role in the Court. It is, as everyone here knows, a leadership role of great

significance. Your personal record at the Bar and in particular as a judge of the Federal Court has been such that every member of this Court is completely convinced that you will be able to exercise both the judicial duties and the leadership duties of this position with distinction. I look forward to serving with you in those positions in the future.

5 **THE HONOURABLE JOHN HATZISTERGOS MLC, ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honour on behalf of the State of New South Wales and the Bar it is my great pleasure to congratulate your Honour on your appointment to the Bench of the Supreme Court.

6 You bring a wealth of experience, exceptional understanding and passion for the practice of law and administration of justice to your new role. Your career to date is notable for its breadth as well as your individual achievements. You have distinguished yourself at the Bar and at the Bench as a scholar, as an author and as an academic.

7 Completing your Bachelor of Arts at the University of Sydney in 1974 you taught English and History for three years at Sydney Grammar School and Marist Brothers Kogarah. You then went on to study Law at the University of Sydney where you graduated with First Class Honours and were awarded the University Medal.

8 After graduating in 1980 you worked as an articled clerk at Freehill Hollingdale and Page, Solicitors, articled to Mr David Gonski and the late Kim Santow.

9 Your introduction to the courtroom was as an Associate to someone you came to admire as a truly great legal mind and a wonderful person, the late Sir Nigel Bowen, Chief Justice of the Federal Court of Australia.

10 In 1981 you were admitted to practice as a barrister of the Supreme Court of New South Wales and the High Court of Australia. You were later

admitted to practice in the Australian Capital Territory, South Australia and Western Australia. In your twenty years of practice you gained repute as a barrister of legendary diligence. One of your colleagues remembers an occasion when you first came to the Bar when you were sent to the Workers' Compensation Commission. You were the first barrister to put in written submissions and the judge adopted your submissions in his decision as they were.

- 11 Your practice spanned commercial law, insolvency, tax, trade practices, maritime, intellectual property, administrative and constitutional law. Your colleagues at the Bar sought your counsel and respected your intellect and meticulous method. In 1994 your excellence in the legal field was acknowledged when you took silk in New South Wales and in Western Australia in 1998.
- 12 In 2001 you were appointed to the bench as a judge of the Federal Court of Australia. Your well-reasoned judgments have contributed greatly to the development of the law across the full range of work at that court. In particular you have made vast contributions to the law of admiralty as the National Admiralty Convening Judge.
- 13 During your time on the bench you have convened and served on a number of court committees, including the Federal Court National Admiralty Committee and the National Practice Committee. You have undertaken an advisory role to the Commonwealth Attorney-General as Chair of the Statutory Rules Committee under the *Admiralty Act*.
- 14 Your passion for the law and the for the efficient administration of justice is well known, so too a continuing enthusiasm for legal education. Your love of teaching has certainly not faded since your qualification as a lawyer. Whilst at the Bar you resumed your first profession, devoting your time generously to the cause of legal education. Since then you have been a constant figure at the University of Sydney's School of Law. You were for a number of years the Challis Lecturer in Bankruptcy. More recently you

have lectured part-time in equity financing and since to 2005 you have coordinated and delivered post-graduate courses in Maritime Law and Admiralty.

- 15 You are regularly invited to present papers at conferences on admiralty and maritime law, commercial arbitration, maritime arbitration and international trade law to organisations within Australia and overseas. Indeed, such is your commitment that you regularly leave behind the pleasure of a Sydney summer to deliver a series of lectures in Swedish universities in the depth of winter. Since 2005 you have been a Governor of the World Maritime University in Malmo.
- 16 You are highly regarded by your colleagues who speak of you as bright, absolutely meticulous, a delight to appear before, and a model of courtesy to counsel. This much-attested sense of propriety you possess is in contrast with a report about you that once appeared in a scurrilous gossip column. As recalled by one of your colleagues at the bench the observer described your Honour as “Justice All-strop”, apparently offended by your Honour’s allegedly belligerent manner in the courtroom. Your colleague hastened to add that this was probably because of counsel’s failure to understand the intricacies of Federal jurisdiction or perhaps it was because counsel did not adequately deal with the multitude of issues that your Honour considered to be necessary for the proper determination of an admiralty proceeding.
- 17 Your Honour is known to be an accomplished whisperer. “Almost as inaudible as the whispered tones of the late Hely J, your good friend and colleague Justice Jacobson informs me. It is likely that this is because of your Honour’s numerous appearances in the Equity Division when you were in practice at the Bar. You are affectionately known as “The Whisperer” or “Whispering Jim”, nicknames infinitely more apt than Justice “Allstrop”.

- 18 Your colleagues also speak of you as a person with great empathy for the plight of those less fortunate. Anyone who saw the newspaper photo of you on the occasion of the recognition of a native title claim could not help but be struck by the warmth of your feeling. There for all to see was the fatherly figure of your Honour walking hand in hand with a group of indigenous children on a cricket field surrounded by the dense rainforest at Cape Tribulation in Far North Queensland. For those who know you well they know that the photo is a true reflection of the real Justice Allsop.
- 19 You are also not lacking in humour. On a recent return from a trip to India you produced a gift of a multi-coloured turban to one of your colleagues. Perhaps this implies that your Honour is in favour of replacing the wig and gown with something more appropriate in our multicultural society.
- 20 One of your last cases in the Federal Court was a hard fought claim for damages for a patent infringement. When the case was settled your Associate reported that there was dancing in the Federal Court's William Street premises. She added that the dancer was Justice Allsop. It is a shame that no photograph was taken. If it were the photo could be hung alongside the famous picture of your Honour's former colleague on the 11th floor of Selborne Chambers, "The Dancing Man", Frank McAlary QC.
- 21 One central aspect of your life which has not been mentioned is your devotion to your children, William and Julia, and your wife, Katharine. Your family share in the honour you receive today.
- 22 Your wealth of experience, knowledge and inimitable personal qualities make you one of the nation's most esteemed judicial officers. You are recognised as meticulous, well prepared, patient and hard-working and having honed a keen sense of justice.
- 23 We take delight in your decision to join the judiciary of New South Wales, knowing that you will serve the people of New South Wales wholeheartedly as the Court of Appeal's new President.

- 24 Congratulations once again. May it please the Court.
- 25 **Mr H MACKEN, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES:**
Your Honour on behalf of the solicitors of this State it is a great privilege to have the opportunity to congratulate you on your appointment and to wish you well in your new role.
- 26 On Friday I had the honour of adding to the valedictory remarks in respect to your predecessor, the Honourable Keith Mason AC, at which time it was suggested that his “shock” of white hair might be attributable to the high voltage electricity charging through his hair follicles as a result of his extreme intellectual abilities. It occurred to me that likewise, perhaps your Honour is renowned for keeping the overhead lights dim, not - as suggested by David Bennett at your swearing in as Federal Court judge in 2001 - to stop people who are hard of hearing from lip reading your Honour’s words of wisdom, but rather your perceptions are so heightened you have no need for further illumination. Maybe bright lights just give you a headache!
- 27 Your Honour I don’t wish to reiterate the details of your history and career that have already been covered today but I would like to pay tribute to the significant and long lasting impact you have made on some of those who have been fortunate enough to have crossed your path, and not all of them in the legal sphere.
- 28 As has been mentioned, during the period of 1974 to 1976 it was the History and English students at Sydney Grammar School and Marist Brothers in Kogarah who benefited from your Honour’s depth of knowledge and enthusiasm for subject material. Now in private practice, Phil Heyward, whilst not citing your Honour as directly influencing his decision to study law, clearly attributes his continuing interest in history to your dynamic and engaging teaching style. He said:

“I guess Jim, as we knew him, was not much older than his students when he took us on in 1975 but we learnt our ‘stuff’. I vividly remember studying Germany between the wars and he really brought it to life, he made history fascinating. The story going around the students at the time was that Jim was having a break from University because he didn’t think much of it, but given that he went back to study after teaching our year, perhaps he saw it as the lesser of two evils.”

- 29 As a post graduate student of Law your Honour completed your degree at the University of Sydney in three years. Undergraduates enrolled at that time took four years to complete the straight law course. One of those undergraduates was Joanne Seve, who described your Honour as “a clean cut, smartly dressed, softly spoken gentleman whose gentle presence belied a razor sharp intellect”. Coming straight from high school Joanne said that students thought your Honour had the advantage of age and life experience but it quickly became apparent that it was your incredible legal and intellectual capabilities that set you apart. She said:

“In lectures Jim could enter into discussions with the lecturer on tricky areas of real property law and jurisprudence. He talked way above our heads and we weren’t dumb! Our year included people like Margaret Cole, now global general counsel of Babcock and Brown, and barrister Robertson Wright SC who, despite strongly contesting the University Medal in 1979, was unable to wrest it from Jim’s grasp. In any other year Robertson Wright would have been a model. Jim was extremely dedicated and studious and after lectures he would head straight for the library, not diverting for a coffee in the canteen or a game of bridge.”

- 30 Your Honour it is disappointing to admit that no amount of digging could divulge anything untoward about your Honour’s behaviour during those student days. One of your lecturers, Stephen Robb asserted, “If Jim did anything wicked or outlandish, like we all did at some time in our youth, he kept it a watertight secret”.

- 31 The best another law student at the time and now a partner of Landerer and Co, Geoff Farland, could come up with was that he recalled that your Honour sometimes wore a cardigan, perhaps not common garb in those days but hardly an indictable offence. Clearly the best is yet to come.

- 32 As has been noted your Honour first worked at Freehill Hollingdale and Page where you were articled to the late Kim Santow, the former Justice of the Supreme Court of New South Wales, and David Gonski, now Chancellor of the University of New South Wales. David recalled that your Honour was undoubtedly the best articled clerk he had ever seen at Freehills and, he suspected, anywhere else. He said your Honour's "thinking and advocacy style no doubt reflected from your ability to entertain and educate young and very diligent minds".
- 33 Your Honour has sat on some landmark cases to which some reference has previously been made. The two that I would mention today are the Federal Court decision regarding *SZEEU v Minister for Immigration and Multicultural and Indigenous Affairs*. In conjunction with Justice Weinberg and Justice Murray, this particular case - apart from substantially increasing the workload of the Refugee Review Tribunal - was also instrumental in bringing about legislative change. The case centred on the legal issues around the operation of s 424A of the *Commonwealth Migration Act* and the Refugee Review Tribunal's refusal to grant an appellant a protection visa.
- 34 As has also been mentioned, in December last year your Honour facilitated what is understood to be the largest Aboriginal freehold transfer of land in Queensland history, following a special sitting on a cricket field at Cape Tribulation. That decision resulted in the return of almost 1300 square kilometres of World Heritage listed land to the Kuku Yalanji people of the Daintree rainforest.
- 35 Your Honour's service has not been confined to the practice and administration of law. Your Honour has made it your mission to impart your knowledge and expertise, and to mentor and educate others through tutoring and lecturing. Whether discussing jurisdictional issues, commercial or maritime law, law reform or the meaning of "matter", your Honour's diligence in comprehensively presenting issues in a meaningful

and thought-provoking way has made you a much sought after speaker in both the national and international arenas.

36 I have no doubt that your Honour will carry out your new role with the same diligence, commitment and strength of character which have typified your career to date and for which you have rightly earned the respect and admiration of all you serve and all those who serve you.

37 Today's formal ceremony is a cause for celebration and a source of great pride, for your Honour and those closest to you, your wife Katharine, son William and daughter Julia. It is also a cause for celebration for your friends and colleagues and the legal profession as a whole.

38 On behalf of the Law Society of New South Wales I wish your Honour every success and good fortune in the challenges that lie ahead as you cap yet another milestone in an illustrious career. May it please the Court.

39 **ALLSOP P:** Chief Justice and Judges of the Court, Justices of the High Court, Judges of the Federal Court, Mr Attorney, colleagues, family, ladies and gentlemen,

40 Thank you Mr Attorney and Mr Macken for your generous words.

41 A little over seven years ago, on 7 May 2001, at my swearing in as a Federal Court Judge, I thought that I was making a speech of a kind that I would not have to repeat. Though it is a daunting task, I am privileged to make another.

42 One necessary task involved in such a speech is the important expression of thanks to those who have made previous professional life both possible and enjoyable. Today, I will not repeat many of those thanks that I made then. I should at once, however, again express my love and thanks to my family: my parents for giving me opportunity, encouragement and support over my whole life, and my wife, Kate, and children, William and Julia, for

their love, encouragement and patience over the years. Without their love and support neither life as a barrister nor as a judge would have been possible. To my brother Richard go my thanks for his sage and to the point older-brother advice, particularly in recent months.

- 43 I would also like to thank my staff who have assisted me in my work as a judge – my personal assistant, Sharon Hodge, for her unstinting work and patience; and all my associates whose company has been an invariable delight and whose assistance has been invaluable. Many an insight would not have been recognised (such as the significance of the words “as packed” in *El Greco* or the simplicity of the concept of discrimination in the *Racial Discrimination Act* in *Walker*) and many an error would not have been avoided without them.
- 44 I recently looked at photographs of my swearing-in in 2001. My initial joy at seeing my children, William and Julia, looking endearingly angelic (at 11 and 8) was overcome by the confusion and difficulty in accepting the somewhat more youthful visage of the judge in the photograph being sworn in. I fear that the next seventeen years may incur a similar toll.
- 45 I was privileged to serve on the Federal Court for 7 years. The collegial friendliness of the Court (most of the time) was a source of much personal enjoyment and professional satisfaction. I made friendships which, I hope, will endure all my life. I would like to express my gratitude to my former Chief Justice, the Honourable Michael Black, who today is recuperating from surgery. He not only made life as a Federal Court Judge both interesting and enjoyable, but also by his graciousness and generosity, made the announcement of my decision to leave the Court an occasion of easy and well-meant congratulation.
- 46 I will miss aspects of the work of the Court which are exclusive to it. Many people might assume that the migration work done by the Court would not be one of those aspects to be missed. To the contrary; in particular when undertaking original jurisdiction, I found the work of dealing with

information about a multitude of countries and, in most cases, with the profoundly-felt fears and hopes of struggling, decent people both rewarding and important. Repetition and lack of legal merit were common, but almost invariably the cases were of life-changing importance to the litigants, however hopeless their cases may sometimes have been.

47 The second aspect of the Court's work that I will miss is native title. While the cases are sometimes difficult and, at times, exasperating to manage, I was privileged to be given the responsibility of managing a number of large claims in Far North Queensland. Those cases provided an illumination of the history of those parts of the country from the 1870s, and of the patient, but determined, confidence in the court system by the litigants, in particular indigenous Australians. These cases provided me with an insight (however distorted through the lens of a privileged white legal background) into the basal and complex task of reconciling history and injustice with present day realities, rights and responsibilities. It is an extraordinarily difficult national task, involving the need for good-will, patience and determination. I am grateful to have been permitted to play a tiny part as a member of the Court in the execution of this task.

48 The decision to leave the Court in which I have good friends and colleagues was not easy. This was particularly so when, the judges of the Court, especially in Sydney, had become recently bound together by the loss of so many colleagues in the space of such a short time. The loss in recent times to the Court of so many judges, in barely 2 years, was very difficult for the judges on the Court; not just because of the loss of talented colleagues, but because of the loss of close and dear personal friends: John Lehane, Richard Cooper, Peter Hely, Graham Hill, Bryan Beaumont and Brad Selway. The special talents of the four Sydney judges: Lehane, Beaumont, Hely and Hill are too well-known to a Sydney legal audience to need repeating (though, if I may say, I was recently one of the lucky handful to hear Roddy Meagher's prose poem portrait of Peter Hely at the University of Sydney). People here may not appreciate the talents of Richard Cooper from Queensland who was one of the finest maritime

lawyers in Australia in the last 30 years and Brad Selway who was one of the nation's great constitutional lawyers and, if I may be permitted to say, surely someone who would have been South Australia's first High Court Justice. I would like to think that I have spoken with them about my decision and that they all approve.

49 Upon the news of my intended appointment, I was graced with the most generous congratulations of my colleagues on the Federal Court. I was deeply touched by that. Only one letter commenced "Dear Rat", but that was followed by a quotation from Browning and the writer's warmest well meant wishes.

50 One of the important constitutional mechanisms of the prosaic, but successful, Australian Constitution is the structure of s 77, which permits the Commonwealth Parliament to use the mechanism of both Commonwealth and State Courts to exercise its authority in the deployment of the judicial power of the Commonwealth. This mechanism (absent in the United States Constitution) was placed in the Australian Constitution because of the anticipated trust, respect and comity among the Commonwealth and the States for each other, and each other's courts. The trust, respect and comity between the federal, state and territory courts for each other and each other's processes are matters of constitutional importance of the highest order. They should never be taken for granted, undermined or disparaged, in any way. The warm congratulations of my colleagues in the Federal Court on the news of my intended appointment made me reflect, not only on the quality of their friendship, but also on that respect and comity between the courts of the different polities of the Federation. I am deeply appreciative of their friendship, congratulations and graciousness.

51 I have also been warmly welcomed by my new colleagues, most of whom I have known the whole of my professional life. I am also very appreciative of that warm welcome. I am looking forward enormously to working with them, to returning to some of the work from which I hewed a living as a

barrister and to coming to grips with new areas. It will be a big change and a big challenge – but I am looking forward to it very much. One matter of great sadness to me, however, is not being able to compare notes about life on the Court of Appeal with my former master solicitor Kim Santow.

52 The statistics as to the Court of Appeal workload given last Friday at the farewell of Keith Mason illuminate the important role of this Court in the administration of justice in Australia. I admit to doing some mental arithmetic when the throughput figures of the Court of Appeal and Court of Criminal Appeal were mentioned until, as I looked around, and recalled the terms of the letter that I had written to the Governor-General, I realised that it was probably too late to be concerned about the precise arithmetical answer I was seeking. I would find out soon enough.

53 I am conscious of the magnitude of the task before me to follow in the footsteps of the seven former Presidents of the Court of Appeal. In particular, I am conscious of the responsibility in following such a truly great judge and scholar as Keith Mason. He is a great loss to the judicial system, but, Academe's equivalent gain. I had the good fortune to be his junior when he was Solicitor-General for New South Wales on a number of occasions before 1994. Sitting as a junior at the bar table, knowing the argument and being proximate to the Court and the telepathic lines of communication from bench to bar, one is able to judge the skill of the appellate advocate and the respect in which he or she is held by the Court. It is probably the best place to assess such matters. The deep respect and fixed and unswerving attention that his sophisticated, but clear and simply-expressed submissions always attracted from the High Court bench made me admire enormously his outstanding intellect and skill. That admiration has increased many fold in reading his work since 1997, being the work of as one of the finest appellate judges ever to have graced the bench of any Australian Court.

54 I was privileged to be given the opportunity to serve as a Judge on the Federal Court. I am likewise privileged to be given the opportunity to serve on this Court, as President of one of the most respected intermediate courts of appeal in the common law world.

55 Mr Attorney, thank you for the opportunity to serve the people of New South Wales in this role.

56 Thank you all for doing me the honour of being present today.
