

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

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

**Monday 29 April 2013**

**SWEARING IN CEREMONY OF  
THE HONOURABLE JUSTICE FABIAN GLEESON SC  
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES  
AND AS A JUDGE OF APPEAL**

1 **GLEESON JA:** Chief Justice, I have the honour to announce that I have been appointed a judge of this Court and a judge of appeal. I present to you my Commissions.

(Commissions read)

(Oaths of office taken)

2 **BATHURST CJ:** Justice Gleeson, on my behalf and behalf of all members of the Court, we wish you a very warm welcome. We are delighted that you have seen fit to join us and we hope you have a long and fulfilling career as a judge of this Court.

3 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honour, on behalf of the State of New South Wales and the New South Wales Bar, it is with great pleasure that I congratulate you on your appointment as a justice of New South Wales Supreme Court and Court of Appeal.

4 I would also like to extend congratulations to your wife, Sue Gleeson, your children, Tom, Kate and Sarah, your siblings Father Gerald, Catherine,

Justin and Damian, and your parents, Gerald and Frances Gleeson. I am sure they are all extremely proud of you today.

- 5 Your Honour grew up in Denistone, then Strathfield, in a family of five children. You attended St Patrick's College at Strathfield and then went on to study at the University of Sydney, and were awarded a Bachelor of Economics in 1978, and a Bachelor of Laws in 1980. In 1987, the University of Sydney conferred upon you a Master of Laws.
- 6 Your early career as a commercial solicitor began at Freehill Hollingdale & Page, as it was then known in 1980. Your colleagues described you as a very intelligent and gifted lawyer not to mention highly focussed. Exceptionally efficient, you managed to work fewer hours than anyone else, churning out high quality work in half the time that it took all the other mere mortals. You were invited into the partnership just five years later at the age of 27.
- 7 You were admitted as a barrister in 1991 and have maintained a private practice for the last 22 years. You have enjoyed an immensely successful career at the Bar, and have particularly excelled in matters involving corporations and insolvency, equity and commercial law, insurance and reinsurance and professional liability.
- 8 Regarded by your peers as a leading company law practitioner, your preparation for matters has been detailed and meticulous, aided by a mercurial ability to master a brief quickly. Solicitors recognise your key strengths as being that you are extremely numerate, and possess a deep understanding of commercial activities, along with an encyclopaedic knowledge of corporate and commercial law.
- 9 This has assisted in a number of key cases you have been briefed on, such as the James Hardie Inquiry, where you were required to cross-examine actuaries, the Australian Securities Exchange case, regarding

suspension of trading in the futures market, and a significant number of matters arising from the collapse of HIH Insurance.

- 10 Other strengths for which you are renowned amongst solicitors, include the clarity of your written work which is considered to be unsurpassed at the Bar, and your instances about where a case may or may not lead. Commercial litigators used to trudge up to your Honour's chambers with dubious and hopeful arguments, encouraged by their enthusiastic clients. Your Honour's fearless and incisive advice about those arguments has often led to a long trek back to the office where the unfortunate but always correct advice is delivered to the client. Even more difficult for commercial litigators has been the humbling experience of your Honour surgically dissembling dubious arguments of the client.
- 11 Although it is said that your Honour's bedside manner with respect to the giving of bad news has mellowed, there is finality and crispness to your Honour's advice which leave little room for reasoned dissent other than for the foolish and the brave. I am told the only things as unfailingly crisp as your arguments are your shirts.
- 12 Solicitors attending conferences with you have learnt to take provisions with them as you are disinclined to offer coffee or water for fear that it encourage people to stay too long. This is probably best understood in the context of your reputation for being notoriously busy. Your strengths have made you a most sought after advocate. Those practitioners in the know are aware that the best way to get a foot in the door with a brief, is to present you with an unsolved legal puzzle. You just cannot help but delve straight into it in search for an answer. As a barrister and colleague, your continued quest for legal solutions has meant you could always be relied on to give genuine, practical assistance and answers to colleagues who come to discuss their trickier legal conundrums with you.
- 13 However, I am told most of your colleagues expect that as a judge, your Honour will be in a word, 'terrifying'. Your self discipline is second to

none and you have always done your preparatory reading. Those barristers who intend to practise in the Court of Appeal should take this as a word of warning.

- 14 There is one chip in the armour however, and that is technology is not your strong suit. I am told you recently admitted to a Federal Court judge that you were somewhat old fashioned and preferred dealing with paper rather than barcodes. You can also be readily diverted from any legal topic by a rugby story, especially if it involves a forward crunching a back.
- 15 In 2005 you took Silk and continued to appear for many high profile clients. In 2006, you were a Senior Counsel at the Oil for Wheat Inquiry. You also appeared in court matters relating to the failure of Lift Capital Partners, and international derivative trader, MF Global, and have been described as, 'The King of Schemes of Arrangement'. Now that is a hook to mention The Tokens. When I was asked if I could weave in The Tokens, I turned to rock culture and thought that you were the true, 'Fabulous Fabian' - showing the age of the audience, very few of them remember or were born before that - but he is still on the website.
- 16 Your contribution to the law also extends to the criminal sphere. You recently appeared for Note Printing Australia in relation to foreign bribery charges and in 1999, were junior counsel for the merchant banker, Simon Hannes, in what was Australia's largest insider trading trial. You also appeared in relation to a number of disputes involving international arbitrations, have written for a range of legal publications and have worked as a part-time lecturer of law at the University of Sydney.
- 17 There must be something in the water in the Gleeson household. Your brother, Justin, is also a Senior Counsel and in February of this year was appointed Solicitor General for the Commonwealth. I can only imagine what debates over the dinner table must have been like in your formative years. Indeed, it is perhaps your Honour's early years at the Bar which

have left the most indelible impression upon hapless witnesses. I shall now refer to such an example.

18 Shortly after coming to the Bar, your Honour was approached by an inexperienced commercial litigation solicitor who had the unenviable task of preparing a public examination of a number of prominent law firm partners from two leading firms who had received substantial fees from an insolvent client. The forensic task was to establish that the partners knew, or should have known, about the imminent insolvency of the client, in order that the payments could be recouped. It was never going to be a pretty sight. Considerable difficulty was being experienced in securing the services of barristers who may be in a position to conduct the matter. Conflicts of interest and concerns about future workflows appeared to be in abundance. Your Honour, with the disregard for his own personal safety that has been a hallmark of your career as a flanker for Wests Rugby Club, leapt at the challenge. Prior to the public examinations, the view was put to your instructing solicitor by the relevant law firms that your Honour was perhaps a little green and inexperienced for the task. That complacency was short-lived. As each of the partners was examined by your Honour, self-assurance turned to doubt and then inevitably horror. Suffice to say, the matter was sensibly settled shortly thereafter. In early recognition of your outstanding forensic skills at that time, one of the solicitors acting for the law firms, said that she could not wait until the partners stopped cursing you at the partners' lunch table, so that she could start briefing you.

19 During your extensive arrange of achievements, many of your colleagues have described you as a humble and quiet achiever or as some have said, 'the modest Gleeson'. Your unpretentious style and drive to get to the relevant facts sees you by-passing most partners in law firms to get to the lawyer on the matter who really knows the facts, building close relationships from the most junior lawyer on the case to the senior partner. Even under pressure situations, I am assured you are courteous, measured and gentle. That is until you have set foot on the rugby pitch.

- 20 You first played for your father's old club, the Drummoyne 'Dirty Reds', and later for Western Suburbs. Rumour has it, you were one of the hardest, most vigorous, most ruthless first grade rugby players of the 1970's. I am advised that even today you appear to mistrust those who played in the backs. Practitioners who wish to get on your good side should keep it secret if they ever played for Randwick.
- 21 You were an incredibly brave breakaway - the first bloke into a ruck and in those days that was certainly not a safe place to be. While working as a solicitor, it was not uncommon for you to arrive at work on Monday morning with a bandage to some part of your head as a result of the weekend stoush. One of your colleagues has waggishly suggested, it is somewhat ironic that you will be sitting on the Court of Appeal, when you have never appeared in personal injury matters although you may well have inflicted and sustained your fair share on the rugby pitch.
- 22 I am told you are also a Rugby League fan and support in particular, that great and unlucky team, the Wests Tigers. In court, unlike on the rugby pitch, you are more of a polite assassin, with your peers describing your cross-examination style variously as 'controlled aggression' and as 'polite, economical and lethal'. Admirably, in ways involving vulnerable clients, I am advised that you go out of your way to assist those clients and are a true, 'man of the people'.
- 23 Perhaps what stands out the most is your integrity and sense of duty to the Court. Solicitors who know you expect to be put under considerable pressure to provide all possible assistance to the Court in any litigation, not only in terms of organisation of the material but importantly regarding its accuracy and timely delivery to the Bench for consideration prior to a hearing. Colleagues praise your innate sense of what is ethical.
- 24 Finally, I should note that in your departure from Banco Chamber, you will be missed by your colleagues and juniors who speak fondly of you as a

silk with a deep fascination with your subject matter and a pedagogical instinct and generosity to share it. This quote from one member of your floor, aptly sums up your skills as a mentor and teacher:

“Fabian repeatedly gave opportunities, and his backing, to the greenest of us. He was patiently receptive to his juniors’ ideas and arguments, even when as was inevitably the case, these were much less tutored than his own. His engagement was never dismissive and his disagreement was always delivered with such respect and thoughtfulness that it could take a few moments to realise how completely he had just dismantled an ill constructed argument. This intellectual generosity combined with his empathy for and eager new barrister, made him the most valuable of mentors.”

- 25 Your Banco colleagues also note that you have served an important role in chambers by taking charge of ‘border control’. Your Honour’s room was situated at the midpoint between the western end of Banco, known as Beirut, and the eastern end, known as Paris. ‘Checkpoint Fabian’ was responsible for ensuring that the Head of Chambers, Mr Newlands SC, was kept safely within the Beirut end of the Chambers when he sought to venture out and ‘cause trouble’, at the Paris end. I am told you enjoyed this role as it kept you fit and allowed you to maintain your rugby tackling technique, and that the great harmony in Banco Chambers is entirely attributable to your role as controller of the border. The Paris end of Banco Chambers is now in crisis as there is no ready substitute. Your ascent to the Bench has thus been described as being, I quote, ‘as significant an event in world history as the coming down of the Berlin Wall’.
- 26 With such a fine reputation, I have no doubt that your Honour will make an excellent addition to the Bench. The strong personal qualities, work ethic and integrity you have demonstrated throughout your career, will stand you in good stead in your new role, and the Supreme Court will benefit greatly from your skill and experience.

- 27 Once again, on behalf of New South Wales Bar and the New South Wales Government, I congratulate you on your appointment and wish you and your family all the best for the future.
- 28 **MR JOHN DOBSON PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** St Patrick's College in Strathfield has produced many high achievers, some famous, some infamous. In the interest of decorum and possible defamation, I shall focus on the 'famous' category which includes award winning author, Thomas Keneally AO, rugby union coach and former Wallabies hooker, Michael Foley, and your Honour's father, Gerald Gleeson AC, former Head of the Premier's Department and Chair of the Sydney Harbour Foreshore Authority.
- 29 St Patrick's tradition has continued with the sons and the grandsons of the Gleeson family, each of whom achieved considerable success in their chosen field of endeavour.
- 30 Today we welcome your family, friends and colleagues to this special ceremony to celebrate your Honour's well deserved elevation to the Supreme Court Bench. On behalf of the 26,000 solicitors of New South Wales, may I add my congratulations on your appointment and wish you well in your new role.
- 31 Despite having heard most references to rugby, already poached by the Attorney General, I can only offer that your legacy at St Patrick's and thereafter was remembered in terms of, 'a gentleman off the field and an animal on the field'. In the white and black-collared jersey emblazoned with the Number 8, your Honour's reputation as the breakaway in the school's first XV was legendary.
- 32 Perhaps the tactical responses required in the game translated well in a career of law.



- 33 What has been evident is that your Honour manages to incorporate rugby analogies into almost every speech you deliver, even at your daughter Kate's 21st celebration. The jokes department however, you leave to your wife, Sue, and your children believe you should also leave the dancing to her as well.
- 34 I understand that your Honour met your wife, Sue, a former pre-school teacher, at the Haberfield Rowing Club. The first time, your father-in-law saw your Honour in action on the football field, you were sent off. Not an auspicious start but you are now proud parents of son Tom, a doctor based in Orange, and two daughters, Kate, a legal secretary and Sarah, a primary school teacher.
- 35 Your Honour was one of five children born to Gerry and Frances and grew up in Denistone and Strathfield.
- 36 The eldest sibling, Reverend Associate Professor Gerald, is a Catholic priest. Catherine is mother to six children and a secretary. Then came your Honour, followed by Justin, Commonwealth Solicitor General, and the youngest Damian, a public relations and communications guru.
- 37 Your Honour excelled academically both at St Patrick's and Sydney University, graduating with a Bachelor of Economics in 1978, Honours in a Bachelor of Laws two years later, and a Master of Laws in 1987, following which you go back to the University by way of part-time lecturing in insolvency and Business Finance Law.
- 38 Your Honour was admitted to practice on 11 July 1980 and applied for a position as a solicitor at the firm, then known as Freehill Hollingdale & Page. The late Kim Santow was the partner at Freehills who interviewed your Honour and subsequently hired you. A better mentor could not be had.

- 39 Such was the esteem in which you were held, you became the second youngest partner of the firm. Kim Santow achieved partner status at 24.
- 40 I do not know that the following account was considered in determining your Honour's suitability for a partner status but perhaps it was further demonstration of your high efficiency. In those early days, your Honour competed with another colleague as to how quickly you could complete your allocated work and leave the office undetected. This was supposedly achieved by leaving an open file with a steaming cup of coffee on a stick on it, to give the impression you were both still hard at work in the office.
- 41 Your Honour was the first litigation partner to work closely with the leading corporate partners of the day, David Gonski and Kim Santow to name two.
- 42 Your Honour distinguished yourself as a top insolvency and commercial litigation practitioner in the 1980's, working on the most high profile corporate collapses in that period, such as BNZ, Spedley Securities and Equitcorp.
- 43 Your Honour was also instrumental in developing some of the firm's key governance structures and voting procedures.
- 44 Admitted to the Bar in 1991, you took Silk in 2005. You are a founding member of Banco Chambers where your Honour is noted for your encyclopaedic knowledge of corporate and commercial law, keen intellect and as a great mentor to junior members. Colleagues describe your Honour as very patient, respectful and thoughtful, a good listener who has always participated in the life of the floor, who was also happy to discuss legal problem and his was always open, especially on Monday morning to discuss the weekend's rugby matches.
- 45 Your Honour is recognised as one of Australia's top lawyers, as judge of your peers and published in Best Lawyers in Australia 2013.

- 46 Your Honour also features in Chambers and Partners List for 2013 as offering vast expertise in insolvency, insurance and professional liability matters, as having, 'a very good reputation'. Had your Honour risen to these illustrious heights as a fourth class junior barrister as a national newspaper reported it, it would have been unprecedented.
- 47 Outside of work, your early morning swims at Drummoyne pool keep your Honour fit and focused. So does 'Nina', your Cooper sloop, the Venice-inspired boat, especially when you get stuck on the sand coming into Watson's Bay.
- 48 You do not drink, smoke or indulge in sweets or biscuits and have a strong preference for Italian food.
- 49 Your Honour is a very strong family man and it is not unusual to find your Honour after a Sunday morning at work, happily traipsing round the shopping malls with your family members.
- 50 Perhaps in your new role, you may have more time to enjoy surfing holidays at Lennox Head, entice buskers in Noosa to play your favourite Deep Purple anthem, 'Smoke on the Water', or indulge in the overseas travel which you and Sue so enjoy.
- 51 Certainly the days of chasing briefs are behind you. When Kim Santow took his place on the Bench in 1993, he later recalled that the 'hardest thing he had ever done was to take a short walk from Martin Place to Phillip Street'. Your Honour will indeed be a massive loss to the Banco Chambers and missed by colleagues and clients alike. On the positive side, you will undoubtedly see many of your colleagues in court, albeit on the other side of the Bench, and perhaps, even some of your former clients as well.

- 52 On behalf of the Law Society and the solicitors of this State, I wish your Honour a fulfilling and rewarding experience as a member of the New South Wales judiciary.
- 53 As the Court pleases.
- 54 **GLEESON JA:** Chief Justice, Judges of the Court, distinguished guests, members of the legal profession, family and friends. First I thank the Attorney General and Mr Dobson for your very kind words. Those who know me well will appreciate that I am rather uncomfortable with being the recipient of such flattering remarks. Nevertheless, I do thank you for mentioning my rugby association with Western Suburbs, now known as West Harbour, of which I am proud.
- 55 One Senior Counsel recently remarked to me that he suspected I was the first Wests player to be appointed to the Court. The implication of this remark was somewhat unclear to me. More kindly however he observed that the skills I learnt at Wests would serve me well in my position as I scrum down with my new brethren. I am pleased to say that some of my former opponents, who in later years were kind enough to brief me at the Bar, are present today. One important lesson we learnt from rugby was the resilience to bounce back from defeat. Unfortunately in my case, this was all too often.
- 56 Secondly, I am both honoured and grateful, Mr Attorney, for the opportunity to serve on this Court. I am very conscious of the responsibility which has been entrusted to me and of the judicial oath I have given.
- 57 Thirdly, I wish to publicly acknowledge those who have been particularly influential in my education, training and development as a lawyer. In this regard, I was fortunate to have parents who placed a high value on education and learning as a means of both advancement in life and

service to others. They instilled in me an interest in learning, balanced with a healthy dose of competitive sports.

- 58 You have heard that my parents gave me a Christian Brothers education at St Patrick's College, Strathfield. It has served me well and I am grateful to the efforts of my teachers, many of whom were also sports coaches, such as the late Ted Healy, who was both my mathematics teacher and rugby coach. I was taught there was no shortcuts to hard work, both on and off the field. This has proved true throughout my entire life since then.
- 59 As has been mentioned, I studied Economics and Law at the University of Sydney. I benefited from many excellent teachers, both academics and practising barristers and solicitors. These included Bob Austin, the late David Harland and my equity tutor, Robert Macfarlan, who I will be joining on the Court many years after his weekly 6pm equity tutorials.
- 60 You have heard that I began as a solicitor at Freehill Hollingdale & Page in 1980. At that time, the family connection to the Page's and the Hollingdale's was still strong. Brian Page was the senior partner and Peter Hollingdale was a member of the firm's management executive. I commenced in litigation under the stern eye of the late Peter Perry, assisted by a young Tony Muratore. Together they trained me in litigation matters, both small and large. Tony Muratore corrected my written work endlessly until it reached the FH&P standard. I am indebted to him for his patience and training.
- 61 Whilst at Freehill's, I had the privilege of working with many fine commercial lawyers, including the late Kim Santow, David Gonski, Robert Nicholls and the late John Rothery. I gained valuable experience and understanding of the interaction of law and commercial life during the heady days of the 1980's and the subsequent but inevitable financial collapse towards the end of that decade.

- 62 As you have heard, I came to the Bar in 1991. I joined the 9th Floor Selborne, where I remained for 14 years. My floor members at that time included the current President, Justice Beazley, my new boss and the Chief Judge in Equity, Justice Bergin. I learnt much from the members of the Floor who had a wide variety of practices. In my early days, the Floor President, Michael Finnane, led me on a number of matters, both common law and commercial, including personal injury matters. I observed at first hand, his disarming manner in court, particularly how to deal with difficult judges. Michael demonstrated that confrontation with the Bench was sometimes best avoided. Thus I began to learn different approaches to the art of persuasion.
- 63 I read with Geoff Lindsay, who was both a friend and a mentor, and my other mentor was James Allsop whom I shared a common interest in teaching Insolvency in the Masters course at Sydney University for a number of years. Each of them in different ways, greatly contributed to my development as a barrister.
- 64 I have been fortunate to work with a number of Senior Counsel from whom I have gained much knowledge and insight into the preparation and conduct of matters, large and small, civil and criminal. These included the late Dan Horton, Dick Conti and Chester Porter.
- 65 As has been mentioned since 2005, I have been a member of Banco Chambers. My time at Banco has been most enjoyable, particularly the opportunity to discuss various legal problems and issues with those of likeminded interests, including one's younger brother. I should acknowledge that Justin has provided with wise counsel and advice on a number of occasions over many years. His support and encouragement is greatly appreciated by me. He has however warned me not to expect any lenient treatment in the High Court when my decisions are the subject of criticism, as undoubtedly will occur.

- 66 I have enjoyed my role as counsel, working with a variety of solicitors, ranging from sole practitioners, suburban and country firms to national law firms. I have benefited from their particular areas of expertise, greater knowledge of client affairs and attention to my numerous requests when preparing cases.
- 67 I have also enjoyed working with other professionals, particularly from the accounting and insolvency professions. They have provided me with significant assistance in better understanding the practical accounting and commercial aspects of various briefs. My interest in matters of accounting is primarily attributable to my Year 10 commerce teacher. He taught the fundamentals of double entry bookkeeping at a level far beyond that required by the Year 10 syllabus. Thus the principles have been firmly etched in my mind ever since that time.
- 68 I have been well served by a number of clerks and staff during my time at the Bar, including Nick Tiffen and Terry Funnell at 9 Selborne, and Amber Malone and Elizabeth Notman at Banco. My secretary, Jane Millar, has given loyal and invaluable assistance over the last 13 years and I am pleased that she has accepted the position as my Associate.
- 69 For over 30 years, I have observed a variety of judicial behaviours. I cannot pretend that I will easily be able to emulate the demeanour and approach of some of the best judges of this Court but I always will keep in mind in the years ahead, those qualities of the judges I have admired.
- 70 Finally, I should briefly mention the role of my family. Susie and I have been married since my first year at Freehills. She has provided great support and comfort to me during my entire working life, including at times of self doubt, which most barristers face on occasions when difficult cases seem impossible burdens. Our three children, Thomas, Kate and Sarah are here today. Each has made their own career choice in the fields of medicine, secretarial and teaching, of which Susie and I are truly proud. My appointment to the Court has not changed their views of their father.

They each warned me today not to try to be funny, as it is known in our family that is a gene passed on to each of them only from their mother.

71 I am pleased that my father three brothers and sister are also here today. Unfortunately, my mother is unable to attend due to ill health. No doubt she would have enjoyed the great ceremony associated with this occasion.

72 I thank the members of this Court who have so warmly welcomed me and I look forward to working with each of you.

73 I also thank all present today for honouring both the Court and me on this occasion.

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