

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

**THE CHIEF JUDGE
THE HONOURABLE JUSTICE B PRESTON
AND THE JUDGES AND COMMISSIONERS OF THE COURT**

MONDAY, 13 MARCH 2006

**SWEARING IN OF THE HONOURABLE PETER MELDRUM
BISCOE AS A JUDGE OF THE LAND AND ENVIRONMENT
COURT OF NEW SOUTH WALES**

The Honourable R J Debus MP, Attorney General

Ms June McPhie, President, Law Society of New South Wales

(Commission read)

(Oaths of office taken)

PRESTON CJ: Justice Biscoe, on behalf of myself and on behalf of the Court welcome to the Land and Environment Court. Mr Attorney, do you move?

DEBUS: May it please the Court. Your Honour, as Attorney General it is my great pleasure to congratulate you on your appointment to the bench of the Land and Environment Court of this State. At the present rate of Land and Environment Court swearings in we should have a completely new bench by October. The Court is presently undergoing more change than the Victorian Branch of the Labour Party. I am confident that the professional and personal qualities that you are known for, your extensive legal knowledge, your calm temperament, your inquiring mind and your

strong work ethic will ensure that you serve the people of New South Wales as well as a judge of this Court.

You have travelled far and wide during your life having begun it in Delhi. Your great-grandfather, your grandfather and your father were all officers in the British Army and Diplomatic Service throughout India and the Persian Gulf. After independence in India your family emigrated to Sydney where you lived until the age of eleven and then moved south again to Tasmania where you grew to be a keen sportsman. Tasmania has produced many prominent cricketers including the present Australian captain but I had hitherto not been aware of that State's contribution to surf lifesaving. Some may go so far as to question the sanity of somebody who so enthusiastically embraced water sports so close to the Antarctic. The British yachtsman, Tony Bullimore, was forced to chance his arm in the Southern Ocean but that was by accident. You instead leapt willingly into it so that you could represent the island state in surf lifesaving. I am also told that you represented Tasmania in water polo and won several State swimming titles. A great achievement though David Jackson QC once rather unkindly asked, when he discovered that you had been the freestyle swimming champion of Tasmania, "Who was the other person swimming?".

Your sporting endeavours on land were also notable and you represented the University in Rugby Union. Let it not be said though that you were more brawn than brain. At University your success in debating and mooting hinted at your future career in advocacy. You twice represented Tasmania in intervarsity mooting competitions where your team vanquished a New Zealand team which included at the time the future Prime Minister of New Zealand, David Lange. You won the trophy for the best individual speaker at the 1966 intervarsity competition beating Justice Roger Giles of the Court

of Appeal and Chief Judge Blanch of the District Court though they had not yet of course risen to that eminence. I trust they have forgiven you since.

After completing your law degree in Hobart you won a scholarship to Tulane University in New Orleans where you studied Civil Law and completed a Masters Degree and you remained abroad for a number of years working in London as a commercial solicitor, a very fashionable profession in the swinging sixties, and in New York in an international bank. In this time you also published a book on the Law and Practice of Credit Factoring. One can only speculate on the vibrancy of dinner party discussions you participated in during that enervating period. But as we all know the surf in London is not to everyone's liking and so you returned to the golden sands of Sydney where you worked as a solicitor for two years before being admitted to the Bar in 1974. One of your first appearances was as counsel for an injured worker in a Workers Compensation case, a brief that Poulos QC, a colleague in Selborne Chambers, passed on to you. Unfortunately you lost. Still more unfortunately this meant that you did not get paid. Poulos then took the matter to settlement and kept the fees. I understand that you have never let him forget that fact otherwise I would not have known of it. Evidently your luck at the Bar did improve and in 1991 your work was recognised in your appointment as a Queens Counsel.

Outside of work you have long been a regular competitor in Sydney's annual ocean swims including the big swim from Palm Beach to Whale Beach and the Bondi Rough Water. The organisers of an ocean swim at Bondi Beach a couple of years ago surely had no idea what they were in for when they decided to exclude swimmers aged fifty and over from the race because of the rough surf conditions. Little did they know that among the swimmers they had excluded was one very fit and very unimpressed QC

who in characteristic style had a strenuous word or two to say about the matter.

You have brought similar energy, determination and fondness for a good argument to your work in your thirty years as a barrister. You have acted in a wide range of cases and earned a reputation as a great all rounder. Those who know you professionally admire your inventive mind and your great determination. That said there may have been times when your juniors have had cause to rue your steely determination to master the material in a case. On one occasion at least you invited an unsuspecting junior to come in when he had a moment and the junior duly did so, expecting a brief chat only to be released very late that night with strict instructions to be back by seven in the morning. Other juniors could only pat him on the back, advise him to telephone his best regards to his children and whisper that he'd been "Biscoed".

Your proficiency at Administrative Law and your expertise in commercial practice are well known and you bring a great breadth of experience to your new post. As a barrister you prepared extensively for cases which you could master in a short time even if it was a brief that one of your colleagues had had to drop. You are known as a great trial advocate, unflappable in court, with a dignity matched by few. Last year you published a book on Mareva orders and Anton Piller orders which you called 'The Laws Two Nuclear Weapons'. You have brought your extensive knowledge of these topics to bear when you assisted a committee of Australian and New Zealand judges investigating the harmonisation of court rules, practice notes and forms of order in the Mareva and Anton Piller areas and you have also shared your extensive knowledge of this topic with other practitioners through presentations and lectures.

I understand that your wife Alison is also known for her keen legal mind and is a fellow ocean swimmer. With three of your children studying at university and another still at high school I am sure that there is no shortage of lively discussion when you all get together. Throughout your career you have displayed great diligence, intelligence, integrity, humour and dedication to the law and I am confident that these qualities will stand you in good stead in your new office on the bench of the Land and Environment Court. Your Honour I wish you well.

PRESTON CJ: Thank you Mr Attorney. Mrs McPhie, do you move?

MCPHIE: May it please the Court. It is my privilege to speak today on behalf of the solicitors of New South Wales to welcome and congratulate your Honour on your elevation to the bench of the Land and Environment Court. While I will not repeat what has already been comprehensibly covered by Mr Attorney in relation to your Honour's personal history, experience and eminent reputation I will make some brief remarks about your Honour in perhaps a lesser known personal capacity.

Your Honour's swimming prowess has already been mentioned and while your swimming in Tasmania has already been spoken about it is worthy of note that by the age of sixteen you were crowned King of the Derwent. The Trans Derwent which was carried out in even rougher conditions than those known to Bronte and Bondi and freezing Tasmanian seas had that year experienced a recent shark scare. Every swimmer including your Honour was given a bag of shark repellent to attach to their swimmers. I am sure that was of great comfort to you but of even more comfort was the fact that there was an official boat carrying someone with a rifle just in case the

situation turned perilous. What more perilous could that be? As you can surmise the times were particularly fast that year.

Of note and in reference to Mr Attorney's remarks about your exclusion from the Bondi to Bronte swim your Honour went to press in the comments which I will repeat here because not only do they apply to decisions of swimming organisers but to many, many other jurisdictions. I will read in part. "He", being your Honour, "was among about ninety swimmers aged over forty-nine who were excluded from the one kilometre swim because of rough surf (age)." Your Honour remarked, "Age is an extremely arbitrary and irrational basis on which to exclude people". So we applaud that view and note it is applicable in other jurisdictions as well.

Your wife Alison tells me although you may not be highly skilful in the kitchen you were very accomplished on the outdoor barbeque. Your entrepreneurial ideas have included "smoggles", a simple but ingenious invention where swimming goggles are modified to wear to keep the smoke out of one's eyes. We will wait for a manufacturer to pick up this idea and duly adapt the goggles for this sole purpose. Your Honour has been known to wear his swimming goggles while cooking steak and snags and we will see how you can apply that philosophy and those tools to your transition to the bench. Your wife describes you as an extremely courteous and polite man. Indeed she tells me that your Honours good manners once took him to gastronomic extremes and extreme discomfort for one Saturday evening you had a barbeque at home and yes you wore the smuggles. Steak and sausages aplenty and fruit salad and ice-cream to follow after which you received a call from a friend reminding that you were running a bit late for his dinner party. Horrified that this engagement had slipped your Honour's mind both you and Alison scrambled to get ready and managed to arrive at

the host's house in record time. You sat down to an extravagant three course meal of lentil soup, salmon fillet and hollandaise sauce and chocolate mousse so not wishing to offend somehow you consumed the whole three courses. How you did that still remains a mystery to Alison.

I am told that your Honour has an extremely strong sense of family community. Teamwork is one value which your Honour has gone to great lengths to instil in your children. From a very young age your Honour and all four children practising the "Biscoe move", as it was called, better described as a Rugby tactic which consisted of a series of complicated manoeuvres involving each one running in directions before the pass was made. Your children recall having to practice the tactic over and over again on innumerable occasions at your command, presumably so the demonstration would be flawless when performed for the Wallabies. We look forward to your Honour applying similar management techniques in this new role.

In your professional capacity your Honour has been described as industrious and an extraordinarily hardworking gentleman. You are a prodigious producer of output and one who does not shirk from getting the job done and putting in long hours where necessary. One colleague from Wentworth Chambers speaks of your ability to master a difficult brief and present it in the finest detail. Your submissions are not renowned for their brevity but they are indeed renowned for their thoroughness.

It is desirable that judges are able to draw upon varied backgrounds and experiences when administering justice. Your presence will add a breadth of experience and knowledge on this particular bench having previously established a broad practice encompassing most facets of the law.

Your intellectual brilliance has been praised. Indeed you had won fee paying scholarships to both Harvard and Tulane Universities but selected to study in the latter because this was the only civil state in the USA once belonging to France and your Honour was interested in the opportunity to study civil law. You had begun your studies in the United States at an interesting period of that history. This was the year of the Kent State University shootings. The National Guard shot and killed several students at a peace rally and that sparked riots in numerous campuses across the United States and forced the closure of university campuses for a while. Your Honour was involved in one of the largest peace demonstrations of that time involving 500,000 people held in Washington.

Your Honour I am confident the community of New South Wales will be well served by your dedication, intelligence, vigour and determination and on behalf of the solicitors of New South Wales I congratulate you and your family on your appointment and wish you well in the years ahead as a judge of this Court. As it pleases the Court.

PRESTON CJ: Thankyou Mrs McPhie. Justice Biscoe, I invite you to reply.

BISCOE J: Chief Judge, your Honours, ladies and gentlemen. I am grateful to you all for your kindness in attending today at this important turning point in my professional life. It is a pleasure to see among you many friends I have made during almost thirty years at the Bar. I am honoured by the presence of the Chief Justice of New South Wales. Thankyou Mr Attorney General and Mrs McPhie for the generosity of your remarks and your expressions of goodwill from those you represent. I fleetingly considered that my first judicial act should be to direct disclosure of the

sources of certain of your information but I think it is better that I do not know.

It is an honour to have the opportunity of serving as a judge of the Land and Environment Court of New South Wales. Established a little over a quarter of a century ago it has come to be viewed nationally and internationally as a model which other jurisdictions have adopted or have considered adopting for a specialist court or division of its type.

I join the Court as it faces and deals with the challenges of the twenty-first century. One of the challenges is to develop the jurisprudence concerning the concept of ecologically sustainable development. Since the early stirring of the germ of this idea some forty years ago, it has become entrenched in the law. Its elements are now to be found in the object sections and sometimes in other sections of numerous Australian environmental statutes. A body of case law has begun to emerge in this and other countries. The content and application of the emerging principles will be important to present and to future generations.

This is an occasion for looking back as well as forwards. Let me first acknowledge with gratitude some of the persons who helped to shape me as a lawyer. On an occasion such as this it is impossible to name them all. At the University of Tasmania the teachers who particularly influenced me included the late Professor Peter Nygh, the late Professor Pat Higgins, and the then young lecturer and later Dean of the Faculty, my friend Max Atkinson.

I worked first as an advocate in the fused Tasmanian profession in the firm of Crisp Wright & Brown and was sometimes led by the stern, Dickensian

Reg Wright QC who was well known at the time as a backbench rebel in the Senate before he became a Federal Minister. After six years in the United States and England where I learned something of the peace movement as well as finance and commerce and a brief period as a solicitor in Sydney, it was my privilege to become a member of the robustly courageous and independent New South Wales Bar, bound by the cab rank rule to act even for unpopular or less than meritorious clients. The importance of the cab rank rule is sometimes overlooked. It helps to ensure that everyone has access to legal assistance to resolve differences under the rule of law.

On coming to the Bar in late 1976 I was a licensee for few months on the distinguished Sixth Floor Selborne. It was then my good fortune to secure permanent chambers on the Eleventh Floor Wentworth/Selborne which was and continues to be replete with distinguished barristers. There I developed my practice and made many lasting friendships during an entirely happy three decades. Half that time was spent as a member of the junior Bar and half as Silk. Many members of my floor have been appointed to one court or another. Two of them became Chief Judge of the Court that I have just joined. A third was a judge of a predecessor court, the Land and Valuation Court. Those who went from my floor to the bench in my time were among the leading Australian barristers of their generation and I was fortunate to have worked with virtually all of them. They included the likes of Justices Sheller, Giles, Lindgren, Hulme and Conti, the last of whom who could charm opponents into a settlement. Another who influenced me was the 'Dancing Man', Frank McAlary QC, who enriched the Bar for over fifty years between the time of his famous VE Day news clip appearance and his recent retirement. In 1984 he was responsible for renaming the building where the Land and Environment Court is now located as Windeyer Chambers.

There was a group who joined my floor at around the same time as myself. My friends Poulos, Maconachie, Hoeben, MacFarlan, Sullivan, Collins, Gray, Holmes and the late Paul Donohoe. We have spent innumerable hours in and out of each other's chambers developing professionally and in other convivial ways. The late Justice Dennis Needham of the Equity Division and Theo Simos QC, later a judge of the Equity Division, who unfortunately is too unwell to be here today, took a particular interest in me as a young Equity junior. They were exemplars. Both possessed the grand judicial qualities of great learning, sound judgment and invariable courtesy and patience. Justice Needham would get the best out of an advocate by raising an eyebrow but never his voice.

A former Chief Judge of the Equity Division, Malcolm McLelland, who unfortunately cannot be here today, was an enduring influence on my generation because of the elegance, wisdom and conciseness of his judgments and the atmosphere of calm he generated in his court, an atmosphere which I believe to be in the best interests of the participating public as well as practitioners. Justice Andrew Rogers had a significant influence on the administration of justice by pioneering in the 1980s in the cauldron of the Commercial List of the Supreme Court, where I practised, a standard of efficient case management that has been widely influential.

I would like to acknowledge that my work as a Silk was made much easier by the talented junior bar with whom I appeared and by the support received from solicitors who entrusted me with their work over many years. Perhaps no name has been mentioned more often at swearing in ceremonies in this State than that of my clerk and friend, Paul Daley. "Not a problem" is his motto and he is true to it. I am grateful to him for all that he has done.

Simone Fuller was my secretary for the last fifteen years. Her readiness to work long hours enabled me to meet deadlines. She has my sincere thanks. I thank too the staff of the Eleventh Floor for their assistance over the years, particularly the longest serving, Anne Deighton.

Now I would like to mention my family. My late parents came to this country from India soon after the end of World War II to a very different life than they had known before but one which presented their children with greater opportunities. I am deeply grateful to them for their sacrifices and for the values which they instilled. To my wife Alison, for your love and support I say simply thanks for everything. My children, Amber, Richard, Diana and Nick, have tried to keep me young in spirit and are a constant source of joy and pride. I am very pleased that my extended family have all come from interstate to be here today. My brother Bill, sisters Patsy and Gillian, cousins Sheena and Clara, brother-in-law Brian and parents-in-law Keith and Linda, as well as Peter and Jack.

The way ahead has been smoothed by the warm welcome that I have received from all my colleagues on the Land and Environment Court for which I am grateful.

The oath of judicial office taken this morning “to do right to all manner of people according to law without fear or favour, affection or ill will” has been sworn by judges for almost seven centuries. It gives me as a new judge a powerful focus as well as a sense of humility about the tasks that lie ahead.

Finally I thank again those at the bar table for what they have said and I thank you all for attending.

PRESTON CJ: The Court will now adjourn.
