

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

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

WEDNESDAY 1 FEBRUARY 2023

**SWEARING-IN CEREMONY OF RICHARD HOWARD WEINSTEIN SC AS A
JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

(Commission read)

(Affirmations of office taken)

BELL CJ: Justice Weinstein, on my own behalf and on behalf of our colleagues on the Supreme Court of New South Wales, I congratulate you. I observe that your dynamism, energy, dedication and essential humanity are attributes which are much admired in the legal profession and you will bring those attributes and many more to the discharge of your duties. I speak for all of our colleagues when I say we look forward to working with you for many years to come. Mr Attorney.

ATTORNEY GENERAL: May it please the Court. I begin by acknowledging the traditional custodians of the land on which we gather, the Gadigal people of the Eora Nation and I pay my respects to their elders past, present and emerging. Your Honour Justice Stern, on behalf of our State and the bar, it is my great pleasure to congratulate you on your appointment as a justice of this Court. I acknowledge your Honour's husband Richard Benedict who joins us today. This is usually the point where I provide the Court with further and better particulars of families and friends that the new judge has invited. However, apparently when his Honour the Chief Justice offered you an open invite, you grabbed that opportunity with gusto, so I simply say welcome -

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welcome to everyone and I hope you manage to find a seat.

Unfortunately a few people cannot be here in person today. They include your sister Sally and her family watching from Westchester County, New York; special mention to your parents, Sylvia and Lionel, who are sadly no longer with us; and someone else who will be greatly missed today is your friend, colleague and mentor, the late Justice Roddy Meagher. Described by former Chief Justice Spigelman as one of the most beloved judges of his time, he was a great inspiration to you and this would be a proud day for him.

I had the privilege of welcoming your Honour on behalf of the State and the Bar to the Bench of the District Court three years ago this month and unlike that occasion which was shared with the swearing-in of his Honour Judge Turnbull, this occasion is entirely yours. Your Honour was born in 1957 to Sylvia and Lionel. Your younger sister Sally followed and you spent your childhood in Montreal, Canada.

As a child you have been described as energetic and precocious. It has been said that your parents were always kept on their toes during your early years. The arts were your focus and passion. You loved performing. After attending local elementary and high schools, this love took you to Concordia University in Montreal. You completed a bachelor of arts in 1978 graduating magna cum laude. You continued pursuing your artistic passions and moved to the University of California Berkeley where you completed a masters of arts in 1979. In 1981 you travelled to London to study at the Drama Studio obtaining a diploma in acting.

Fully trained, you then began the process of turning your acting dreams into reality. This next stage of your adventure brought you here to Sydney.

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You quickly made friends and found work initially in hospitality at the Opera House and then at the Bourbon & Beefsteak. You persevered with acting and at one stage starred in a cabaret in Kings Cross. Sadly, your performing career ended as you reached the grand old age of 30. This was a milestone year put forward by your mother Sylvia as part of an earlier deal struck. You would go back and study law if you had not made it as an actor by that stage.

Your Honour agreed and returned to the University of New South Wales as a graduate. Your passion for law soon exceeded your passion for acting. You threw yourself wholeheartedly into your studies. You worked as a summer clerk with Allen Allen & Hemsley and in 1991 you graduated with a bachelor of laws. Soon after, you worked as a tipstaff for Justice Meagher and began a long friendship with him. You also worked as a research assistant and proofreader for the third edition of Meagher, Gummow and Lehane's Equity: Doctrines & Remedies.

In 1993 you were called to the Bar and joined Eight Selborne Chambers where you remained until appointment to the Bench. You took silk in 2011. At the Bar you took on a diverse range of matters including criminal law, common law, equity, and professional negligence. Your colleagues remember you as a man of immense intellect, extremely competent, and well prepared with a talent for advocacy. Many have witnessed your drama school training being used to great effect in the courtroom. They miss you and they also miss your chocolate Labrador Gertie whom you brought to chambers regularly.

Outside of the courtroom you were a leading proponent of alternative dispute resolution. Your Honour's ability to act calmly with impartiality made you an exemplary mediator. You have made many significant contributions to

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the legal profession. They include as the lead author of Uniform Evidence in Australia and as an adjunct associate professor at the University of New South Wales sharing your knowledge and expertise across the law of evidence, court process, civil procedure, and litigation. Your husband Richard has said that teaching and nurturing the career of young law professionals gives joy and brings balance to your professional life.

Three years ago this month I had the honour of speaking at your swearing-in as a judge of the District Court. Your empathy and decency combined with your legal acumen, rationality, and ethics have made you an outstanding judge. You found judicial life challenging and rewarding. Your work has included sitting as the Walama List judge, working with elders and respected community members, government and non-government services to provide a therapeutic and holistic approach to sentencing eligible Aboriginal and Torres Strait Islander offenders.

As a District Court judge you have also been involved in the Child Sexual Offence Evidence Program which aims to reduce the stress and trauma experienced by children and young people who are complainants and prosecution witnesses in child sexual offence cases by pre-recording their evidence and providing witness intermediaries such as a psychologist or occupational therapist to address their communication needs.

Connection is one of the defining words of your Honour's life: your connection on stage, your connection in the courtroom, your connection with colleagues and clients, your connection to your family overseas and your adopted Sydney family here today. The best connection you have made has been with Richard or "other Richard" as he sometimes calls himself. You met

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Richard on a trip to see your sister in New York in 1994 and it was love at first sight. You have said previously that it was the luckiest moment in your life meeting him. He moved to Australia in 1996 and you have made a wonderful home here together ever since. You were married in 2013.

You love walking Gertie every day usually in a pair of shorts whatever the weather. Your fashion has been politely reviewed by many as "adventurous." You are a keen swimmer. You are an avid reader and you are obsessed with collecting art. Your home and chambers have been described as part art gallery part library. You are proudly non-minimalist, a style choice shared with your late friend and mentor Roddy.

Travel plays a huge part in your life. Richard and you love visiting family in the United States and friends in Delhi and you have walked the Himalayas many times. You are a much admired husband, friend, colleague and family member. You were an outstanding barrister for 26 years. You have been a highly respected judge for three years. You have been a loving partner and husband for 27 years and a dedicated friend to many for life. Your Honour, my warmest wishes to you for your forthcoming career on the Bench. May it please the Court.

BELL CJ: Thank you, Mr Attorney. Ms Banks, President of the Law Society of New South Wales.

BANKS: May it please the Court. I too acknowledge the Gadigal people of the Eora Nation, the traditional owners of the land on which this Court stands and pay my respects to their elders past and present. I acknowledge and extend my respects to all Aboriginal people who are with us today.

Justice Weinstein, I am honoured to come before the Court on behalf of

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the solicitors of New South Wales to offer congratulations and wish your Honour well in your appointment to the Supreme Court. Your Honour has taken the road less travelled on your journey to the Supreme Court. As we have heard, you were born in Montreal and you took your undergraduate degree in California and were then accepted into drama school in London. In those days your chosen path was the stage or screen. As we have heard, you made an agreement with your mother that if you were not successful by the age of 30 you would continue with law.

Your Honour travelled to Australia in the early 1980s and it was love at first sight. Success is subjective. You had parts in small productions and you kept working but luckily for us you decided to undertake your law degree. By 1991 you had attained your bachelor of laws from the University of New South Wales. From this point you were objectively successful. You contributed to the Australian Law Reports and served as an associate to Justice Roddy Meagher. From there you went to the Bar and took residence at number 8 Selborne in what were to become the most beautifully decorated chambers in the Southern Hemisphere.

Your Honour hit the ground running as a barrister. You practised in as many jurisdictions as possible and gathered as much experience and knowledge as time would allow. You maintained a diverse practice while specialising in professional negligence, medical negligence and law of damages. Just as your practice was diverse, so were your contributions to the profession. You took many roles in the Bar Association including the professional conduct committee, diversity, and equity and education. You were also a member of the legal qualifications committee of the Legal

Profession Admission Board.

Surprisingly, you still made time to serve as an adjunct professor of law at the University of New South Wales and run a busy practice. Solicitors who worked for you praise your gentle and courteous nature and are forever grateful for the guidance and mentorship that you provided. You took silk in 2011 and in 2019 you were appointed as a judge to the District Court of New South Wales. Your time at the District Court included the most severe period of the pandemic including lockdowns, remote working, and strict guidelines for those who could attend their workplaces. Many matters were heard judge alone. Despite this, you presided over a wide range of matters including defamation, State and federal drug matters, gun possession, and charges arising from the Royal Commission into Institutional Responses to Child Sexual Abuse.

Friends and colleagues marvel at your ability to be so precise in your legal reasoning and so very well prepared for your daily work yet just as determined not to take yourself too seriously. You have brought these gifts to the District Court and will now take them together with your experience and expanded knowledge to the Supreme Court. While the nature of your work will change, three things will remain constant.

First is your chocolate Labrador Gertie who has sat in on more conferences, court cases and meetings than many of the people here today. Gertie is well-known to your family, friends and colleagues and would likely warrant admission as a solicitor if only she could speak. The second thing is your loving and admired relationship with your husband Richard - two Richards - with whom you have been a couple for 28 years. The third is your love of

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theatre. You can take the boy off the stage but you cannot take the love of the stage from the man. You regularly attend theatre and maintain a close interest in local and international productions.

Your Honour, you are admired and respected by solicitors throughout the State and have been instrumental in supporting the careers of many people who have worked for you. You have said that you owe your career to the kindness of the solicitors of New South Wales and that they gave you all the opportunities that helped you get to where you are today. You viewed the cases that you worked on as corroborations with solicitors. You were known to take juniors under your wing and according to one colleague, you were an example of a great boss who ticked all the right boxes.

To this day, solicitors who worked with and instructed you still remember you with fondness and ask your close friends if you might return to the Bar. Your Honour's appointment today puts paid to that fragile hope once and for all. You are a great admirer of the playwright Robert Lepage who was quoted in an interview as saying "the best way to learn you who really are is to break walls and open doors."

Your Honour, you have opened many doors and windows and left them open for the solicitors of New South Wales to follow. On their behalf I congratulate you for a remarkable career so far. Thank you for your support and guidance and we wish you the very best for your career on the Bench in the Supreme Court. As the Court pleases.

BELL CJ: Justice Weinstein.

WEINSTEIN J: Chief Justice, Judges and Magistrates, Mr Attorney, Ms Banks, distinguished guests, friends and colleagues. I was born and raised

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on the unceded territory of the Kanien'keha ka nation on the island known as Tiohtia ke, commonly known as Montreal in Canada, where my ancestors settled about 125 years ago. I pay my respects to Kanien'keha ka elders past and present, and I acknowledge their continuing stewardship over those lands and waterways which are historically known as an important meeting place for First Nations people.

As a young man I emigrated to this country and settled on the unceded lands of the Gadigal people of the Eora nation, where I have lived and worked for more than 40 years. I acknowledge the elders of our First Nations people: past, present and those coming forth. I acknowledge their unending connection to and care of the lands and waterways surrounding the place upon which we meet today. I acknowledge their living culture and its essential contribution to the diverse nation we have become on their land. It is now more than 30 years ago since the High Court in *Mabo* acknowledged what was self-evident: that Aboriginal and Torres Strait Islander people have had a continuing connection with this land from time immemorial.

Nothing in my professional career has been more rewarding than my involvement with the Walama List at the District Court of New South Wales. I acknowledge the extraordinary contributions made by those engaged in that List: my colleagues Justice Dina Yehia, Judge Warwick Hunt and incoming Justice Deborah Sweeney, our Associates, the Aboriginal Service Unit of the Department of Communities and Justice, the Elders and Respected Persons (whose wisdom knows no bounds) and the Walama participants, each of whom who has given me insight into the dynamism of indigenous culture and its essential connection to country.

That Aboriginal and Torres Strait Islanders are over-represented in our criminal justice system is well-known and tragic. What is less well-known and is cause for hope, is that some of our future leaders and elders will come from those currently participating in the Walama List. I am humbled by their kindness, their sharing of culture and their tolerance of my ignorance.

Just before my last swearing-in, Justice Bellew told me that I should enjoy what people said about me at that event because the next time they were going to be so publicly complimentary would be when I was eulogised at my funeral. One does not need to sit on a bench of five to know that Justice Bellew's comment was plainly wrong, and I thank you, Mr Attorney and Ms Banks, for your kind words today. It is even better the second time around. I thank all of you for coming today to celebrate this very special occasion with me.

As many of you know, after several years as a WAM, that is, waiter/actor/model, I graduated from the Law School at the University of New South Wales, and then I came to work in this building as tipstaff to Justice Roddy Meagher. As Justice Leeming once said to me when we were young barristers, we started our career at the top working in this building and then when we left we went right to the bottom, only to inch our way back up. I know this building very well. With a nod to my previous career, I quote from a well-known musical:

"I know my way around here. The cardboard trees, the painted seas, the sounds here. There's a world to rediscover, but I'm not in any hurry. Everything's as if I've never said goodbye."

I have lived a very lucky life. I had an exemplary legal education at the institution where I have now lectured for the past 15 years. I then worked for

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RP Meagher who taught me a lot about life and then I read with Justice Brereton and Noel Hutley SC who taught me at least half of what I now know about the law. I then practised on the 8th floor of Selborne Chambers for the entirety of my career with colleagues whom I still call my friends. I pause here though to remember my friends and colleagues Peter Comans and Katrina Dawson whose lives were cruelly cut short.

I was briefed during the entirety of my career, in particular by the women solicitors of New South Wales. I am ever grateful for the many opportunities they afforded me. Some of them are here today, and I mention only a few: Lynn Boyd, Kerrie Chambers, Melinda Conry, Eliza Faulk, Tiffany Fozzard, Cathy Hogan, Lisa Robinson and Kerry Stewart.

Then I have been fortunate to have been a Judge of the District Court of New South Wales for the past four years where I have dedicated much of my time to learning the criminal law, which Judge Flannery says makes me equal to a reader at Forbes Chambers. I have thoroughly enjoyed my time with my District Court colleagues and a special shout-out to the registry staff, all of whom welcomed me and generously gave me their time.

For many years at the Bar and on the Bench, I have devoted myself to promoting diversity in the law. I am happy to say that today, the Bench and the Bar are far more diverse than when I was admitted as a barrister in this very Court 30 years ago. There is, of course, still a way to go. As a white, gay, cisgender male, I have diminishing diversity value. This is a good thing. However, Justice Beech-Jones recently reminded me that I speak with an accent that is not typically recognised as Australian. I believe that I am the first Canadian Australian to be appointed to this Court, although Justices Katz and

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Pepper preceded me in the Federal Court and the Land and Environment Court respectively.

Many of our citizens speak in ways that reveal their countries of origin. I am very proud to be amongst the few to be appointed to this Court who speak with a distinctive foreign accent, and I hope that the Bench will continue to look and sound more like the community it serves, as it is essential to instilling confidence in the administration of justice. To paraphrase Justice Elena Kagan of the United States Supreme Court, part of what it means to be Australian is that our institutions are reflective of who we are as a people - in all our variety.

Finally, I do not think that it is really appreciated by people outside of this precinct just how much of a toll life in legal practice takes on our spouses. My husband Richard Benedict has made many sacrifices on my behalf because of my career. We have been together for almost 30 years. By far the luckiest day of my life was meeting him. It has been grand, every step of the way. And now, to the next chapter. May it please the Court.

BELL CJ: The Court will now adjourn.