

Print Page

Close Window

Swearing-In Ceremony Of The Honourable Derek Michael Price As A Judge Of The Supreme Court Of New South Wales

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND JUDGES OF
THE
SUPREME COURT

Monday 28 August
2006

SWEARING-IN CEREMONY OF THE HONOURABLE DEREK MICHAEL PRICE AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 **PRICE J:** Chief Justice, I have the honour to announce that I have been appointed a Judge of this Court. I present my Commission.

2 **SPIGELMAN CJ:** Thank you, Justice Price. Please be seated whilst the Commission is read. Principal Registrar, please read the Commission.

(Commission read.)

Justice Price, I ask you now to rise and take the oaths of office, first the oath of allegiance and then the judicial oath.

(Oaths of office taken.)

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

4 Justice Price, on my own behalf, and on behalf of all the Judges of the Court, I congratulate you on your appointment. You are very welcome in this Court. I have come to know you quite well over recent years in our joint service on the Judicial Commission, and I look forward to you serving the people of this State for many years to come.

5 **THE HONOURABLE R J DEBUS MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** It is my great pleasure to be here today for this ceremony to swear in the Honourable Mr Derek Michael Price as a judge of the Supreme Court of New South Wales.

6 Your Honour, I congratulate you on your new appointment. You are one of the few people in this State who have been appointed to more than two courts. You have, to speak colloquially, struck the trifecta.

7 This is a somewhat more tasteful trifecta than those known to many defence lawyers, which is 1) offensive language, 2) resist arrest, 3) assault police. This trifecta seems to involve incarceration instead of celebration which, of course, is the purpose of being here this morning.

8 Your Honour began your judicial career as a Magistrate. You were then appointed to the District Court. In 2002 you were appointed Chief Magistrate of New South Wales. Today you begin your appointment as a Judge of the Supreme Court of New South Wales. To quote Mr Ian Harrison SC,

you can be described as "the Jerrold Cripps of the modern era". You bring a wealth of experience to this Court. This experience is laden with sound judgment, steadiness and intellect.

9 Following the completion of your secondary studies at St Ignatius College, you attended the University of Sydney. Not content with Bachelor of Laws, which you completed in 1972, you undertook further studies for a Master of Laws. You completed that with Honours in 1974 with a thesis entitled "The Efficacy of Parole as a Sentencing Method". Thirty-two years on that debate continues, albeit in slightly more ferocious tones.

10 Your Honour, during your university years you supported yourself as an articled clerk at J J Carroll, Cecil O'Dea & Co, a firm of solicitors in Sydney. Following your admission as a solicitor of the Supreme Court in 1972 you continued your employment with Carroll & O'Dea, now as a solicitor, until you went overseas in 1973.

11 You began to specialise in general litigation in 1972, appearing in more complex cases in the Local Court and in criminal and civil matters in the District Court.

12 In 1973 you married Patricia Lesley - Trish. That is a marriage that has now lasted for more than 30 years and, in between her involvement with nursing management and education, you and Trish have found the time to raise four sons: David, Nigel, Kevin and John. David has followed you into the legal world and is now a barrister. Nigel is working as a market researcher, Kevin has his own business in architectural perspectives and designs, and John is a marketing executive who has completed a business degree.

13 Upon your return to Australia you left the city for some country living in Dubbo. There you became an Associate Partner with Peacocke, Dickens and King. Clearly Gerry Peacocke or, to give him his full name, Gerald Beresford Ponsonby Peacocke - an amiable one time adversary of mine in Parliament - was impressed with your work and you became a partner in that firm in January 1974.

14 In Dubbo you were the President of the Dubbo Law Society and President of the Orana Regional Law Society. You brought your aptitude for civil actions to bear as an Arbitrator under the Arbitration (Civil Actions) Act and you were involved in many community activities in that town.

15 In 1988 you were lured back to Sydney and in that year you were appointed a Local Court Magistrate. In 1999 you were appointed as an Acting Judge of the District Court of New South Wales and your fine reputation led to that appointment being made permanent in February 2000.

16 In between hectic sitting times from 1997 to 2000 you also managed to serve as a member of the Governing Council of the Judicial Conference. On top of this, you held the position of chairman of the Legal Aid Review Committee from 1998 to 2000. You were appointed Chief Magistrate of New South Wales in 2002.

17 During your time in that office you have overseen many significant changes in Local Courts, which, as we know, deal with around about 90 per cent of this state's caseload. The changes include: changes to criminal procedures flowing from the repeal of the hundred year old Justice's Act; the continued increase in the number of women appointed to judicial office in the Local Court, now about 50 per cent of appointments; changes to civil procedures which now mean that Local Courts operate under the same set of rules as the Supreme and District Courts; and the change to the salutation of Magistrates and the introduction of the use of robes by them. Here we saw Magistrates move from being worshipped to being merely honoured.

18 The changes to criminal and civil procedures have had a massive effect on Local Courts and we are now seeing the benefit of streamlined and uniform procedures there.

19 Your leadership and support was critical to the successful implementation of these changes. In another guise your leadership and commonsense was, I understand, of great assistance to your fellow members of the Judicial Commission.

20 You have also studiously assisted the Government and your fellow court officers with a range of criminal justice measures that have created new ground in terms of sentencing. Here I speak of Youth Conferencing for those between 10 and 18 years of age; Young Adult Conferencing for those between 18 and 25, a system now operating on a pilot basis; and Circle Sentencing, for Aboriginal offenders

which is now operating out of a growing number of regional courts. Without the willing participation and skill of the Local Court, each of these measures may easily have foundered on the rocks of what passes for modern debate about crime and justice.

21 I believe these kinds of confronting processes have a greater and more lasting impact on offenders than brief incarceration in terms of rehabilitation, by way of yielding genuine remorse for misconduct that has harmed others.

22 I am grateful that you have worked closely with me and others to see these important measures produce effective justice. The proof of their success is that they appear now to have been accepted by all but the most bloodthirsty in our community, which is an exceptional feat.

23 Having said that, your Honour's tenure in the Local Court occurred at a time of incredible scrutiny by all manner of commentators. You, with your fellow senior court administrators, have maintained morale and passed all but the most bizarre and tendentious tests.

24 Your Honour, as you move to the next phase of your career I have total confidence that the same qualities that have led to your success so far will continue to serve you into the future. Like a good day at Randwick, this is a trifecta that is well worth honouring. I congratulate you, your Honour, on your well-deserved appointment and I do wish you every success in your future office. If it please the court.

25 MS J McPHIE PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court. As President of the Law Society of New South Wales it is my utmost pleasure to welcome you and applaud this appointment to the bench.

26 Your Honour's elevation marks an important milestone in what has been an exemplary career to date, and we would be hard pressed to recall another judicial officer who has served across all three tiers of our courts, as has been mentioned by the Attorney. It is an absolute honour to speak on behalf of the solicitors of New South Wales as we indeed applaud this appointment as one of our own.

27 As we have heard, your zest for country life saw you practice in the Central West for fifteen years, an interesting option for someone who held an honours degree in Icelandic Codwars. You made an outstanding contribution to justice in regional New South Wales and you have really never left that association with the bush. You were a rational voice for the legal profession in your lobbying role as President of the Orana Regional Law Society for many, many years. As has been said, you joined Peacocke Dickens & King and later became a partner there when the firm adopted your name. In that firm in 1973 you were considered a prize recruit, not for your legal knowledge, of which you had much, but because you addressed a particular lack of cricketing prowess in the solicitors' team at the time. Your Honour was responsible for evening up the scores between the Dubbo doctors, who couldn't believe their eyes when this new recruit came in and lashed the ball delivered by their best bowler. They uttered remarks like, "Where did they get this ring in from?"

28 Your Honour, the firm was named Peacocke Dickens & Price up until a few weeks ago, and I spoke to one of the partners of that firm just yesterday. They said they were considering renaming the firm, and given your Honour's appointment to this position thought that Price would be appropriate. Then they thought Flat Price, Fixed Price but they ended up Price-less, and considering the scrutiny under which solicitors' costs have come in recent times they settled to be Price-less and moved forward with the word Peacockes the Law Firm, and that itself has problems, I think.

29 In March 1993, twenty years onwards, your thesis on Iceland Codwars had finally paid some dividend. You were working on a very big case involving the impounding of Japanese fishing vessels for illegally fishing in Australian waters, only one of many cases which you dealt with in the Commonwealth section involving difficult customs matters, so that esoteric work really stood you in good stead.

30 After being appointed Chief Magistrate your Honour quickly became aware of the meaning of local in the Local Court of New South Wales, for which we appreciate your skills. Chairing the regular capital works meeting with representatives of the Attorney-General's Department called for decisions varying from the construction of new multi-court complexes to a new gas heater at the Cooma Local Court, for which I am personally grateful. Despite your best efforts, your Honour was unable to

relocate the Chief Magistrate's Office to what many people consider the courthouse with the best ocean view in the state, being Narooma. We are well aware that the golf course itself has one of the most interesting holes with the hole straddling the cliff, and there is an infinite trade in recovered and recycled golf balls for the local kids.

31 Overseeing the management of a court with 136 judicial officers who preside at 152 locations throughout New South Wales resulted in a continual stream of emails, letters and phone calls containing requests, demands and inquiries or a mixture of all three. I am told that one email in particular caught your Honour's attention. It was received from the magistrate at Broken Hill who advised that his work was being continually interrupted by the numerous magistrates who persistently contacted him to inquire whether or not he was going to vacate that position. The Chief Magistrate, yourself, seeing the humour in such a message, decided to send out an email to all Local Court magistrates on 1 April requesting that all magistrates cease calling the magistrate at Broken Hill for this purpose as the large number of inquiries were having a detrimental effect on the magistrate's workload and were clogging up the country service. Your Honour anticipated the usual witty responses from the bench that you expect, however, nothing happened. Perplexed and alarmed at the state of the bench, your Honour inquired has that email actually been received. The answer was yes. Still nothing happened. However, in the absence of noise and humour your Honour came to the conclusion that as far as the Local Court bench was concerned nothing even remotely connected to those two words "country service" has a humorous side.

32 Your Honour, you have been an exceptional Chief Magistrate, one who has shown tremendous leadership for the court and is genuinely an inspiration to all judicial officers. You always treat everyone fairly and with dignity. Universally you are held with such high regard by the profession as a whole. This reputation was aptly demonstrated at a recent magistrates' annual conference. The forum was opened by the Attorney General, who announced the appointment of your Honour to this Court. The news caused such a reaction that many claim they have never witnessed before a standing ovation by every magistrate applauding the wisdom of your Honour's appointment. I believe the celebrations didn't end there. Once the conference had been closed, yet again every magistrate stood and sang For he's a Jolly Good Fellow. That may or may not have been pleasurable.

33 Your Honour has also been described as a man who is always calm and measured in his approach. Even though pressured, I am told of one occasion which demonstrates this skill and talent of yours. You had been asked to present a session on Commonwealth offences at the magistrates' orientation programme. Whilst your Honour was delivering his lecture the audience was listening intently when someone passed around a little note to the effect of let's pay a trick on Derek. What happened was at the end of your talk one delegate had engaged you in a deep and meaningful question, during which you didn't notice that one by one they vacated the room. By the time you turned they had all disappeared.

34 But the joke was on them. Unperturbed, your Honour simply turned off the lights and exited. Subsequently when they returned to the lecture they found themselves in complete darkness and you had gone.

35 Your Honour, in closing may I once again congratulate you on this well-deserved appointment. Your distinguished career as a practitioner, together with your experience as a magistrate, District Court Judge and Chief Magistrate will make you a most fitting and appropriate addition to the Supreme Court bench. Your talent and commitment to the delivery of justice has been outstanding, particularly in rural New South Wales, for which I appreciate your diligence and application there.

36 On behalf of the 20,000 solicitors in New South Wales I am very proud to be here today and wish you well in this new judicial role.

37 As the court pleases.

38 **PRICE J:** Mr Attorney, thank you for your gracious comments. This is the second occasion when I have been honoured by your attendance at my swearing in. I express my sincere appreciation and thanks for your support, courtesy and patience during the last four years, notwithstanding my entreaties on behalf of the Local Court.

39 Thank you, Ms McPhie, for your generous remarks in support of my appointment. I completely

deny any of those anecdotes. I have enjoyed a close and cordial relationship with the Law Society and the Bar Association. I also express my thanks to Michael Slattery QC, the President of the Bar Association, and Ian Harrison SC, immediate past President, and past Presidents of the Law Society Kim Cull, Gordon Salier and John McIntyre. There have been occasions when their assistance helped me deal with difficult issues confronting the Local Court, particularly in the media.

40 It has been a great honour and privilege to serve the community as a magistrate, a judge of the District Court and as Chief Magistrate of New South Wales. It is an extraordinary honour and privilege to be appointed a judge of this court.

41 I have observed during my judicial odyssey that there is much that courts can learn from one another. The exchange of ideas between jurisdictions on issues of significance to the judicial system has indeed been encouraged by the Chief Justice and the Attorney. The Civil Procedure Act 2005, the Uniform Civil Procedure Rules and the "Equality before the Law" bench book are the product of cross-jurisdictional collaboration.

42 As the Attorney stated, innovative work has been undertaken in the Local Court in the field of sentencing. Programmes are being developed with the aim of diverting offenders from the crime cycle. These programmes include Young Adult Conferencing, which brings an offender and victim together, and Circle Sentencing, based on traditional indigenous forms of dispute resolution and customary law, with community involvement in the sentencing process.

43 Consideration might be given, in my view, to extending these initiatives in appropriate cases beyond the jurisdictional limits of the Local Court. For example, at the present time an indigenous offender who commits the crime of break and enter and steals \$14,000 from a dwelling house at Nowra may be sentenced with the assistance of a Circle Court, whereas should the same offender steal \$16,000, the offender is sentenced in the District Court.

44 I accepted the Attorney's offer of a secondment, I confess, to the office of Chief Magistrate with considerable circumspection. My three years as a trial judge in the District Court had been enjoyable. I had been warmly welcomed by the members of the court and had made many friends. It was with regret that I left the day-to-day camaraderie of the District Court, but I was reassured by my intention to return. I am honoured to have a number of the judges of the District Court present today.

45 Any reservations I may have held about the appointment as Chief Magistrate were rapidly dispelled by the scope and diversity of the office and the wonderful support of the members of the court. The continuing strong performance of the court has been due to the hard work of the magistracy and the spirit of collegiality which prevails. I am honoured to have a number of the judicial officers of the Local Court also present today.

46 I have been privileged as a head of jurisdiction to be a member of the Judicial Commission. The courts in this State are fortunate to be supported by the Commission. I express my thanks to Ernie Schmitt the Chief Executive Officer of the Judicial Commission, and Ruth Windeler, the Commission's Education Director, with whom I have worked closely.

47 May I also express my thanks to Laurie Glanfield AO, Director-General of the Attorney General's Department, and the senior executives of that department with whom I have had many dealings. Whilst we have not always agreed, our relationship has been convivial and much has been achieved.

48 I express my gratitude to my associate, Ms Lisa Freeman. Ms Freeman has accompanied me from the District Court to the Chief Magistracy and now to the Supreme Court. Her common sense, good humour and organisational skills have been invaluable.

49 I thank my dear wife Trish, my family and my parents for their support and affection. Trish's extensive experience in human resource management, I acknowledge, has been particularly helpful in my most recent role.

50 It is an extraordinary honour, as I have said, to serve as a judge of this Court. I have, however, some knowledge of the challenges that await me. In 1999 when I was an acting judge of the District Court I met the Chief Judge in a lift in the John Maddison Tower. It was a beautiful sunny day outside.

By way of pleasantry, I exclaimed: "What a lovely day, Chief Judge!" The Chief Judge, without hesitation, responded: "It is said that the judges of my court never see the light of day." I related this conversation at my District Court swearing in. The Chief Judge, I regret to say, was correct.

51 More recently, when I was thanking the Chief Justice for his support for my appointment, the Chief Justice said that I should not thank him as the workload of the judges of this Court is immense. I have come to accept without reservation the wisdom of heads of jurisdiction.

52 In conclusion may I very shortly quote from the 14th century allegorical poem "Piers Plowman", thought to have been written by William Langland (at Passus IX):

"Do well my friend, is to do as law teaches;
To love your friend and your foe, believe me that is Do Bet;
To give and to guard both young and old;
To heal and to help, is Do Best, the greatest."

53 I will do the best that I can to do well as a judge of the Supreme Court. Thank you, Mr Attorney, for the honour of this appointment.
