

DRAFT SPEECH  
FOR  
LAW SOCIETY OF NEW SOUTH WALES  
PRESIDENT, HUGH MACKEN  
AT THE  
SWEARING OUT CEREMONY  
OF  
THE HON JUSTICE MASON AC  
PRESIDENT, COURT OF APPEAL  
SUPREME COURT OF NSW

TIME: 9:30AM

DATE: FRIDAY 30 MAY

VENUE: BANCO COURT

**May it please the Court.**

Your Honour, it is indeed a great privilege and a pleasure to add my remarks to the glowing valedictions that have gone before.

It is a little known fact that my great aunt, Marjorie Mackin married your Honour's uncle, Harold Mason at a time that pre-dates the Great Depression, so I speak not so much as the unworthy servant of 22,000 solicitors but rather...as a long lost brother.

Brilliance is a family trait! Evidence of your Honour's intellectual brilliance has been highlighted by a former 'tippy' who swore that your rather 'electrically charged' hairstyle was the result of your brain constantly emitting particularly high voltage currents. In fact he often wondered if, in the throes of deep thought, your Honour would indeed electrocute yourself every time you scratched your head. A head that could charge a mobile phone!

Your Honour, the task of preparing this speech was not so much anticipating that the preceding speakers today would poach the highlights of your Honour's illustrious career – which of course they did - but more about determining what aspects of your career I should focus upon given the abundance of anecdotal and published material available both by your Honour, and about your Honour.

Born in Scotland, your Honour grew up in Concord West with your parents Ted and Margaret and younger sister Louise.

Your Honour attended the local primary school and then won a scholarship to Kings, where you subsequently became Dux of the school.

From all accounts that scholarship was hard won as your Honour was called back to complete the interview because you hadn't properly met the Board members.

The story goes that you were missing a sock when you hurriedly presented yourself yet again but as you have recounted on several

occasions, you will 'always be extremely grateful to the men who waited for a little boy'. This generosity of time has become a trademark of your Honour's ever since.

I am in the dark as to just where or when your Honour developed a passion for the law as neither your late father, Ted, a merchant seaman, nor your mother, Margaret would appear to have paved the way.

Whether it was your Honour's intellectual drive, a calling to service or classiness, whatever the reason, the world is a far better place for your having chosen to do Law.

After you graduated from the University of Sydney with a Bachelor of Arts degree and Bachelor of Laws with First Class Honours, your Honour then completed a Master of Laws from the University of London whereafter you were admitted as a solicitor in 1970.

Your Honour's time as a solicitor was sadly short-lived as you were admitted to the Bar in 1972.

In the late 1970's when your Honour was in private practice you invited your current Associate, Meg Orr to 'fill in' as secretary on a three month trial. Twenty nine years later this remarkable woman is still reputed to be 'on trial' and perhaps should be described as 'long suffering' rather than 'long serving'.

Describing your Honour as a real 'people person' Meg has obviously relished your wonderful sense of humour, your joy in mentoring others, and your demonstrated kindness and care.

She remarked that never in her 29 years had she witnessed a litigant upset as your Honour always listened attentively, and handled them so well that they usually ended up thanking you instead.

On one occasion a self-represented litigant who had sued a council over a development issue and lost her appeal to the Full Bench in the Land and Environment Court, brought her files in milk crates to the Court of Appeal and insisted she 'was going all the way to the High Court'. Rather than take the easy option of just asking her to leave, your Honour took the time to gently explain that her arguments were unlikely to fall within the grounds of appeal required for 'special leave'. You were right!

Further insights into your Honour's character have been provided by your first tipstaff as President of the NSW Court of Appeal, Lachlan Wolfers. Upon his farewell, Lachlan included in a note of thanks to your Honour, a list of cases he believed had been wrongly decided by your Honour. He said:

*It was with great delight that I received over the ensuing year or so, at somewhat regular intervals, copies of High Court judgments in which a few of your judgments were overturned, each time marked with a simple 'with compliments' slip and a small note saying that I might find it interesting reading.*

*As time passes, I suspect the number of cases where I recall this happened will increase, in a not dissimilar way to how your golfing prowess improves after you reach the 19<sup>th</sup> tee. – A very unkind remark considering your Honour's recent form at Killara Golf Club.*

On a more serious note, your Honour's influence on Lachlan's professional career has been immense. He said:

*First and foremost, you taught me to love the law. Secondly, you taught me a lot about how happiness is not drawn from material possessions, and how success may be achieved through hard work, dedication to one's chosen field, and most of all, respect for others – This latter sentiment was the focus of your 2007 paper to the JCA Conference entitled 'Throwing stones: A cost/benefit analysis of Judges being offensive to each other.'*

Philip Kimpton who unfortunately didn't heed your Honour's caution and became an international lawyer, was your Honour's tipstaff in 2002. He recalls that, apart from regularly failing to provide your 3pm tea and biscuits to sustain you throughout the afternoon, your Honour particularly enjoyed quirky bits of legal trivia – the older the better – and finding antiquated words to insert into judgments, such as 'portmanteau' used in the case: *Victims Compensation Fund v Brown(2002)*. This particular case perhaps made it onto Lachlan Wolfer's subsequent 'hit' list.

Your Honour, every person my office contacted with regard to today's ceremony spoke about you with the utmost professional respect and admiration, as a friend, a mentor and an inspiration.

One of the hallmarks of your Honour's career has been your steadfast service and commitment to your staff, the profession and people.

A devoted husband to Anne and father to David and Pria, your family has always been your highest priority.

As a consequence your Honour built a career around maintaining regular hours, forsaking life as a QC at the Bar for Chairman of the NSW Law Reform Commission prior to your appointment to the Bench.

Your Honour would always make it home for the family dinner even if that meant leaving midway through a meeting, regardless of the bewildered faces left behind.

It seems, however, that as a bit of a night owl, your Honour never really adjusted to Anne's penchant for being an early riser - a trait that became particularly apparent when, in the course of one of your Honour's many official acting duties, you were obliged to attend the 4am Dawn Service. Your Honour got there but I am told it wasn't a good look!

From an early age your Honour was a 'believer' and strongly guided by Christian morals and ideals, a calling that has underpinned your whole approach to life and way of living.

Attending Sunday school at Holy Trinity in Concord West, your Honour went on to lead the parish youth fellowship, and like Henry Venn, 18<sup>th</sup> century founder of the influential evangelical 'Clapham sect' within the Anglican Church, your Honour found particular comfort in bible study groups.

As a member of the Sydney Synod from 1975 to 2001 your Honour was very vocal, particularly in championing the rights of women to be ordained as priests – and your Honour is no doubt delighted with the ordination of Archdeacon Kay Goldsworthy this month, the first woman in Australia to become Bishop.

The awarding of the Companion of the Order of Australia (AC) in 2003 is the mark of the man you are (service to the law and legal scholarship, to the judicial system in NSW, to the Anglican Church and to the community).

At the time Bishop Glenn Davies of the Sydney Diocese expressed delight with your commendation and was reported as saying your Honour 'was an outstanding Christian who had made a great contribution to the Anglican Church'.

These remarks have been echoed by your Honour's tippy of 1999, Penny Hood who said: *Justice Mason is a man of integrity and courage. We hosted lunch meetings of the Movement of the Ordination of Women in chambers and while he received a lot of opposition within the denomination for his stance, his persistence was admirable and testament to his strength of conviction and belief.*

Penny's following accolades encapsulate many of the virtues we have acknowledged here today. She described your Honour as '*a dedicated, diligent, funny, patient, humble, courageous, warm, intelligent, family-minded, Christian man*'.

Your Honour has maintained close links with the circle of friends you made during your university days. They include Supreme Court Justices George Palmer and Peter Hall, recently retired College of Law principal lecturer, Les Handler and co-author of *Handler and Mason Succession Law and Practice New South Wales* in 1985, and Balgowlah solicitor Brian Hamer – all of whom have the highest praise and regard for your Honour both as a friend and a colleague.

I know that your mother Margaret is extremely proud of your Honour's achievements and has kept all your commissions – well, apart from the ones you recently gave away to your tipstaves.

While your children, David and Pria, have not followed your Honour's legal inclinations I hear you could be looking forward to sumptuous feasts or at least 'practice' banquets in 'retirement' now that Pria has become an apprentice chef – or maybe not.

I use the word 'retirement' advisedly as by all accounts your Honour will be perhaps busier in retirement than on the Bench. I understand that having been appointed a visiting professor at the University of NSW your Honour will be doing some teaching and finishing Australian Miscellany of Law in conjunction with former Federal Court Judge Leslie Katz. In addition your Honour has indicated being open to 'small' government inquiries, mediation, and law reform projects.

Your Honour's work as an appellant Judge in this Court has been erudite, perceptive, intellectually rigorous and critical to enhancing the public perception of justice in New South Wales. It has also been a profound personal sacrifice on your part. As a man who is gregarious and sociable with a desire to engage with others, it may have been something of a lonely and isolated existence.

Your new calling to the ranks of academia and the imparting of knowledge to those around you will provide a tremendous outlet for your charm, grace, intellect and highly developed social sensitivity.

It is clearly a loss for the legal profession but there is no doubt that there is a profound gain for those who are blessed enough to come into contact with you in your future pursuit.

You are one of the most wonderful people to have graced these rooms. You will be sorely missed. We owe you our deep-seated thanks and the solicitors of New South Wales wish you all the very best for your future callings.

On behalf of the Law Society of NSW I wish to convey my best wishes to your Honour for a fulfilling, rewarding and joyous career change, fully sustained by your faith, family and friends.

**As the Court pleases.**