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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 88927

FEDERAL COURT OF AUSTRALIA
CEREMONIAL SITTING OF THE FULL COURT
FOR THE SWEARING IN AND WELCOME OF
THE HONOURABLE JUSTICE FOSTER

PRESIDING JUDGES

THE HONOURABLE MICHAEL BLACK AC, Chief Justice

THE HONOURABLE JUSTICE MOORE
THE HONOURABLE JUSTICE BRANSON
THE HONOURABLE JUSTICE LINDGREN
THE HONOURABLE JUSTICE DOWNES AM
THE HONOURABLE JUSTICE JACOBSON
THE HONOURABLE JUSTICE BENNETT AO
THE HONOURABLE JUSTICE LANDER
THE HONOURABLE JUSTICE GRAHAM
THE HONOURABLE JUSTICE RARES
THE HONOURABLE JUSTICE BUCHANAN
THE HONOURABLE JUSTICE FLICK
THE HONOURABLE JUSTICE PERRAM
THE HONOURABLE JUSTICE JAGOT
THE HONOURABLE JUSTICE FOSTER

BAR TABLE

**MR STEPHEN GAGELER SC, Solicitor-General for the
Commonwealth**
**MR TOM BATHURST QC, President of the Australian Bar
Association**
MR HUGH MACKEN, President of the New South Wales Law Society

COURT OFFICIALS

Associate to Chief Justice
District Registrar
Court Officers

INVITED GUESTS

Family and friends of Justice Foster

SYDNEY

9.30 AM, THURSDAY, 4 SEPTEMBER 2008

ASSOCIATE TO BLACK CJ: Presentation of commission and swearing in of the Honourable Justice Foster.

5 FOSTER J: Chief Justice, I have the honour to announce that I have received a commission from His Excellency, the Governor-General, appointing me a Judge of the Federal Court of Australia and I now present my commission.

10 BLACK CJ: Mr District Registrar, would you please read aloud the Commission.

DISTRICT REGISTRAR:

15 *Commission of appointment of a Judge of the Federal Court of Australia, I Philip Michael Jeffery, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the Constitution and subsection 6(1) of Federal Court of Australia Act 1976 appoint Lindsay Graeme Foster, of Senior Counsel, to be a judge of the Federal Court of Australia beginning on 4 September 2008 until he attains the age of 70 years.*

20 *Signed and sealed with the Great Seal of Australia on 24 June 2008, Philip Michael Jeffery, Governor-General, by his Excellency's command, Robert McClelland, Attorney-General.*

25 BLACK CJ: Thank you. Justice Foster, I now invite you to take the oath of office.

30 FOSTER J: I, Lindsay Graeme Foster, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law, that I will well and truly serve her in the Office of Judge of the Federal Court of Australia and that I will do right to all manner of people according to the law without fear or favour, affection or ill-will.

BLACK CJ: I now invite you to subscribe the Form of Affirmation that you have taken. Justice Foster, on my own behalf and on behalf of all the members of our Court, I extend to you our congratulations and a very, very warm welcome and I now invite you to take your seat on the Court. Assume that you sit on the right. Mr
5 Solicitor - do you move?

MR S. GAGELER SC: If the Court pleases. I acknowledge first the Gadigal People, the traditional owners of the land on which we meet, and I pay my respects to their Elders past and present. The Attorney-General, the Honourable Robert
10 McClelland MP, very much regrets that he is unable, by reason of his ministerial commitments, to be present today. The consequence is that he has entrusted to me the honour and the pleasure of welcoming your Honour Justice Lindsay Foster as a judge of the Federal Court of Australia. He has asked that I convey his own
15 congratulations to your Honour.

It is reported that since the announcement some weeks ago of your Honour's forthcoming appointment as a judge of the Federal Court of Australia, your Honour has approached today, the 4th day of September, 2008, with entirely uncharacteristic apprehension and indecision. Your Honour is reported to have expressed uncertainty
20 as to whether your Honour should wait up until midnight to feel the judicial power of the Commonwealth descend upon you or, rather, just go to bed without judicial power and wake up with it. Judging from your Honour's characteristic sprightly and alert appearance this morning, your Honour chose the latter option.

The story is true, of course, only to the point of accurately recording what your Honour said and it was chosen from a veritable reservoir of stories to illustrate, in a manner not entirely inappropriate to the occasion, one of your Honour's other most notable and notably enduring and endearing characteristics and that is your Honour's
30 mischievous and at times even provocative sense of humour. Other speeches and perhaps other occasions associated with your Honour's appointment to the Court are or will provide a more appropriate forum to tap more deeply into that reservoir of stories. Your Honour can, so far as I am concerned, relax.

Your Honour's appointment to become a repository of the judicial power of the Commonwealth is amongst the first to be made under the Australian Government's
35 new transparent process for making appointments to courts constituted under Chapter III of the Constitution and your Honour and the Australian people have the confidence and satisfaction of knowing that your appointment is on merit and that your Honour has been appointed from a wide field of candidates, which have
40 included, along with barristers, solicitors and academics, serving judges from a variety of Australian jurisdictions.

Indeed, when your Honour's background is considered, it is hard to imagine someone who, by scholarship, training and simple depth of life experience, would
45 appear better suited to the discharge of the functions of office of a Judge of the Federal Court of Australia, whether sitting as a member of a Full Court on an appeal on an important but perhaps esoteric question of law, or sitting alone at what is often

the more terrestrial level of a trial discerning the facts through the dust of a hard-fought forensic battle.

5 Your Honour was educated at Knox Grammar and then the University of Sydney, where you gained a Bachelor of Arts in 1973 and a Bachelor of Laws in 1976. You majored in Latin and deflected any suggestion that you were studying a dead language by embracing it as a pathway to history, philosophy, logic and, I quote, “the essential qualities of mankind.”

10 Throughout your studies you excelled not just academically – and I am told that your Honour particularly wanted this mentioned today – but also at cricket, an ability you appear to have endowed genetically to at least one of your sons, and especially at rugby, representing New South Wales no less at under-19 and under-20 levels and playing in the Sydney first grade competition. Injury, unfortunately, eventually
15 ended your Honour’s rugby playing career but you retained a great interest in the game and subsequently refereed for many years.

Your Honour was admitted to practise by the Supreme Court of New South Wales in 1976. You worked as a solicitor first at Henry Davis York, where you practised
20 mainly in banking law, and then your Honour worked for Baker & McKenzie, where you specialised, albeit more widely, in commercial litigation.

From 1979 to 1981 your Honour worked in business as General Counsel and Director of Real Estate Acquisitions at McDonald’s Australia. In 1981 your Honour
25 returned to the mainstream of legal practice. You were admitted as a barrister of the Supreme Court of New South Wales. The following year, your Honour completed a Master of Laws, also at the University of Sydney, specialising in trade practices law, public companies and administrative law, all topics which were to feature in your Honour’s later practice. In the quarter century that followed from those events, your
30 Honour built up one of the most extensive commercial practices at the New South Wales Bar, indeed, at the broader Australian Bar.

Your Honour took silk in New South Wales in 1994 and progressively thereafter, as the occasion of your increasingly frequent interstate appearances required, in most
35 other jurisdictions in Australia. Your Honour, who, as an advocate and especially as a cross-examiner was no shrinking violet, was widely known as someone who did factually tough, legally complex and often very long cases in this Court, in the Supreme Court of New South Wales and in Supreme Courts throughout the country. Your Honour’s more colourful cross-examinations were not infrequently the stuff of
40 headlines in publications as diverse as The West Australian and The Illawarra Mercury.

Your Honour’s reputation and extensive experience naturally created further opportunities outside your strictly curial advocacy work. In 2004 you were
45 appointed as Senior Counsel assisting the Inquiry into the Centenary House lease. In 2006 you managed to mix your love of rugby union with your passion for the law when you were appointed by the New South Wales Rugby Union to chair a hearing

into the behaviour of Wendell Sailor while he was on tour with the Waratahs in South Africa.

5 It is said that stuck to your Honour's fridge – this is not my own research, your Honour, but it is said that stuck to your Honour's fridge is a quotation from the earlier twentieth century United States President Calvin Coolidge. The quotation begins, "Nothing in the world can take the place of persistence," and your Honour's career to date illustrates that consistent hard work, combined with focus and determination, is a path to success.

10 Your Honour's appointment brings with it the exciting prospect of a Holden Caprice, which I am told is to be added to your Honour's existing fleet of mainly Japanese vehicles, which your Honour currently owns, garages and fastidiously maintains for the benefit not only of you and your wife Anne, but also of your four fairly grown up children, to whose educational, sporting and driving development your Honour is known to be devoted. Your Honour, I am told, actively maintains the fleet of vehicles with the regular assistance of the family panel beater, Greg.

20 Your Honour, on behalf of the Attorney-General of Australia, the Australian Government and the people of Australia, I extend to you and your family my congratulations on your appointment and I welcome you to the bench of the Federal Court. May it please the Court.

25 BLACK CJ: Mr Bathurst - do you move?

MR T. BATHURST QC: May it please the Court. Your Honour Justice Foster was always able to outwit me at the Bar. I did not think you could do so today until about two days ago when I opened the bound volume 167 of the Federal Court Reports, which had been published a few days before. That publication listed your Honour as a sitting judge of the Court. I thought: He has done it to me again, he has got sworn in behind my back and here I am sweating over this speech for nothing. Fortunately, or perhaps unfortunately, I was wrong.

35 On behalf of the Law Council, the Australian Bar Association and the Barristers of New South Wales, it is my great pleasure to welcome your Honour's appointment to the Federal Court of Australia.

40 Your Honour is widely regarded among the Sydney Bar as an accomplished advocate, albeit a mischievous one, with an exemplary sense of public duty and a commitment to the cause of justice. Your Honour's appointment is lasting proof of the old adage, "The more things change the more they stay the same." I commented two weeks ago on Gyles J's retirement on his ability to sniff out dissembling and prevarication as an advocate; in short, to smell a rat. Your Honour's forensic cunning amply qualifies you as a replacement rat catcher.

45 Your Honour had an interesting and varied career before the Bar. In the midst of playing rugby, which occupied most of your Honour's legitimate waking hours, you

attained a Bachelor of Arts, a Bachelor of Laws and a Master of Laws. You were admitted as a Solicitor of the Supreme Court of New South Wales in March 1976. After a brief sojourn at Henry Davis York your Honour moved to Baker & McKenzie where you remained for another three years doing complex commercial litigation and rising to the rank, at a relatively young age, of senior associate.

In 1979 your Honour went to McDonald's – not for the food, but for the experience. There you held the title of General Counsel and Director of Real Estate Acquisitions. Your CV does not elaborate on this rather entrepreneurial role. My inquiries have not really discovered what you did there. It does say you did some legal work, presumably hounding unfortunate franchisees of that organisation. I understand you were not paid in kind for your services, although you did lose a considerable amount of weight when you ultimately came to the Bar in 1981 from that occupation.

Your Honour began practising as a barrister in January of 1981 and took up a room on the 11th Floor of Wentworth Chambers. There you read with John Trew and Vince Bruce. Your Honour was a most dangerous opponent, both, I am told, at rugby and certainly, I know, at the Bar. You retained throughout your career what appeared to be an innocent charm, which most people could only envy. That charm had a real tendency to lull your opponents and witnesses and even judges into a false sense of security.

Your Honour never hesitated to take advantage of this ability. You refined it at rugby with innocent glances at the referees to dodge penalties for your numerous infringements. As a junior at the Bar, it was a constant source of amazement to your colleagues as to how you were able to convince hard taskmasters such as the then Chief Judge of the Commercial Division of the New South Wales Supreme Court, Rogers J and later, Cole J, that it really did not matter that your client was three months behind in complying with directions and did not intend to comply for another few months. As a silk, you used the same technique. You were able to present the most outrageous propositions with such charm that they were accepted by judges, even if only for a short time.

Your Honour was known as a vigorous and highly skilled cross-examiner. Once again, your Honour's charm stood you in good stead. I have seen many instances where witnesses were taken apart by your Honour without realising what was happening to them. I can recall a number of occasions being opposed to you, generally unsuccessfully, when my clients, after cross-examination, commented how pleasant and courteous you were. With gritted teeth, I would tell them to go away and read the transcript. They did and they came back with a somewhat different view.

Your Honour's court craft sometimes obscured the fact that you were and are a very fine lawyer and a person with enormous capacity for hard work. You appeared in a number of significant cases and inquiries. The Solicitor-General has mentioned the Royal Commission into the Centenary House lease. In 2004 and 2005 you appeared for the Director-General of Planning at the ICAC inquiry into the Orange Grove

Centre. You have appeared regularly in the New South Wales Court of Appeal and conducted a number of very important cases in the High Court, including two significant trade practices cases, Baxter Healthcare and Butcher v Lachlan Elder Realty.

5

In the first case, your Honour acted as senior counsel for the appellant and successfully argued that the doctrine of derivative Crown immunity did not operate in the circumstances of that case to prevent the application of the provisions of Part IV of the Trade Practices Act to the activities of a private corporation in supplying goods and services to the Government. That was no mean feat, seeing that the ACCC had, on a number of occasions before, tried to convince the High Court of that proposition and had, up to that stage, conspicuously failed to do so.

10

In the second case, your Honour was senior counsel for the respondent and successfully defended the decision of the Court of Appeal that a statement contained in a brochure prepared by real estate agents did not constitute the engagement by the agent of a misleading or deceptive conduct, because in the circumstances of that case, the agent merely passed on information in respect of which the agent expressly or impliedly disclaimed any belief in its truth or falsity. It is always difficult to maintain that case, that type of point, particularly in a court such as the High Court.

15

Your Honour took silk in 1994 and shortly thereafter moved across Phillip Street as one of the foundation members of the 5th Floor, St James Hall Chambers, otherwise known as the 11th Floor Branch office, otherwise known as Joan Sutherland Chambers. It says a lot for the loyalty of members of your floor that they are all here today, both past and present. It says even more for their loyalty that notwithstanding offers of alcohol, lunches and similar inducements generally attractive to members of the Bar, including them, they steadfastly refused to engage in any malicious gossip about you. That is why your Honour can relax. The only thing I can find is this: they are somewhat irritated in having to clear out a colony of Bogong moths which bred in that part of your chambers where your Honour stored your outstanding chamber work.

20

One thing is certain. Your Honour will be missed at the Bar, not only for your ability but also for your social skills. Your own room was, if not a bar, at least a social networking site, particularly on a Friday afternoon. Your advice, particularly in respect of ethics and professional conduct, was often sought and generously given. Many readers have benefited from having you as their tutor and you have often assisted the continuing development program of the Bar.

35

No one at the Bar has any doubt of your ability to meet the challenges ahead of you. However, there is some curiosity as to the type of car you will drive. By contrast to your two immediate predecessors' passions for computer games and military history respectively, your Honour, I am told, loves hot cars. I have heard that prior to your appointment you were described as a rev head. No one could believe that you would take an appointment that would involve driving a white Toyota Prius.

40

45

Your Honour's preference, I am told, is for a vehicle known as a Subaru WRX STi. I have only been in one once when Bloom QC drove the present President of the Court of Appeal of New South Wales and me to a football match. It was terrifying. However, for aficionados, I am told the car is described as follows:

5

The WRX STi is more than a car, it is a culture. Built upon a rally car heritage, the Impreza WRX STi is for those who want to be part of a brotherhood of speed and performance. When you are part of the fraternity of STi you feel like you are tearing up the track, even when you are sitting at the lights.

10

Having regard to the state of the airlines at the present time, such a car will no doubt be of great assistance to your Honour in going to interstate Full Court appeals.

15 All members of the legal profession are truly delighted with your appointment and wish you well in the next phase of your career. Like the Subaru, there is no doubt your speed and performance will be outstanding. May it please the Court.

BLACK CJ: Thank you, Mr Bathurst. Mr Macken – do you move?

20 MR H. MACKEN: May it please the Court. Your Honour, the accolades have been flowing following the announcement of your appointment to the Federal Court of Australia and on behalf of the solicitors of New South Wales, I have much pleasure in adding my congratulatory remarks upon your elevation to the bench.

25 I think the following description contributed by one of your colleagues best sums up the skills, intellectual acumen and personal attributes you bring to this jurisdiction. You can probably guess who said it:

30 *Lindsay is a barrister's barrister, an outstanding advocate, the life of the party, at any party, a wonderful family man and a proficient sportsman.*

From an early age, your Honour demonstrated tremendous aptitude in academic, athletic and artistic endeavours and a notable degree of social responsibility. This was particularly evidenced when you won the open academic scholarship to attend
35 Knox Grammar School and subsequently became dux of every year in the senior school. Your Honour also excelled at cadets and sports as has been mentioned, especially cricket and rugby, winning the coveted sports and studies prize in your final year. Not only were you a great sportsman, your Honour also participated in debating, school plays, school choir and the glee club, which I am assured is more
40 about musical form than it is about merriment. Luckily for your Honour the school conductor, Kreston Clingan, held choir practice at lunch time, which enabled you to continue your athletic pursuits.

45 Your Honour went on to gain an arts degree, a law degree and a Master of Laws at the University of Sydney and it was at the university that your Honour met your wife to be, Anne, who shares your calling to the law. Anne was one of the privileged girls who were invited to join what was dubbed The King Table at the university library,

along with the likes of Sue Charny, Helen Bojko, Jeff Hilton SC and your old friend Leo Muggleton.

5 Fortunately, as a lawyer your wife of some 30 years has an understanding of the demands of the profession and had the flexibility to support you and your four children, even through the times you slept in chambers when deadlines were approaching. It was obviously not enough to deter your eldest son, Andrew, and daughter, Fiona, from pursuing a career in the legal profession and I understand that Mark, Cameron and Fiona have also inherited your sporting genes.

10 Your wife, Anne, speaks quite highly of you. She says you have always been a hands-on dad. She says, “When the children were growing up, Lindsay always made sure his busy practice did not keep him from their many sporting, cultural and other activities.” Those who stood in the Foster kitchen would know that the fridge is covered with family photos, useful information and even more useful homilies and pieces of accumulated wisdom.

20 Lindsay is a glass half-full person rather than a glass half-empty person, and a passionate person of uncompromising integrity and mostly good humour. He has always maintained the highest professional standards, never communicating the stresses of work or urgent family matters in his dealings with clients or solicitors. And that is a skill. Such was your Honour’s energy and detachment.

25 As I have previously mentioned, solicitor Leo Muggleton met your Honour at law school. He describes your Honour as very practically minded, someone who always had his feet on the ground and whose practical common sense meant he could appraise a situation within seconds. An example, Leo advised, was of a Christmas Eve meeting, an urgent dispute between a franchisor and a franchisee, which took you away from a festive lunch, whereupon attending at the meeting, you spotted a missing signature. That was it. Disaster avoided. The problem solved and a return to the celebratory lunch.

35 You have that tremendous capacity to make the difficult look easy. An astute eye has served your Honour very well – in cricket, rugby, practising law and raising children. Now it serves us all following your wonderful appointment to this court.

40 Your Honour has always managed to stand out from the crowd, none more so than in the late 1970s when you were often spotted at the airport with a rather striking gold coloured plastic suit bag which was kindly donated by your then employer, as has been mentioned, McDonald’s Australia, the home of the Double Whopper.

45 Your Honour has been described as amazingly tidy, organised and diligent, an astute financial manager both at home and in the workplace. It has been noted that your Honour has efficiently shouldered the bulk of the administrative tasks relating to the management of Level 5 St James Chambers since the floor’s inception in 1992. Your Honour has devoted a great deal of personal time to helping others out pro

bono and you have been truly generous in sharing your time and talents with younger practitioners and barristers.

5 One aspect of your new role will be the opportunity to enhance your written or chambers work, as your mastery of advocacy and cross-examination is something your writing skills can only hope to emulate. In your spare time – and I use that word reservedly – your Honour indulges in your love of history, reading extensively for pleasure and listening to music of all types of genres.

10 I leave your Honour today with the content of an unsolicited note that recently passed across my desk and divulges other pursuits close to your heart. Of course, the source of these cannot really ever be revealed. These occasions demand discretion and in your case, more than most. That said, your abhorrence to having your dessert pilfered and being given out leg before wicket appears to rankle much more than any
15 professional loss which I have had described to me in presenting today.

Your Honour, on behalf of the Law Society of New South Wales, I wish you every success as a Judge of this Court and again, congratulate you on your appointment. If the Court pleases.

20

BLACK CJ: Thank you, Mr Macken. Justice Foster.

FOSTER J: Chief Justice, I thought I had better wait that time. Chief Justice, my new colleagues – newest best friends, as I say – everybody here and in particular
25 Mr Gageler, Mr Bathurst and Mr Macken. I do not think I will disclose what happened at midnight last night.

In 1956 television came to Australia. Television pictures in those days were, believe it or not, black and white. The television sets came in elaborate cabinets. They were
30 the centrepiece of many lounge rooms at the time. In 1956 only the well-off could afford to have a television. Those less well-off visited their well-to-do friends for television viewing parties, which usually involved some snack or another, coupled with some hours of television watching as a group – a sort of primitive home cinema.

35 By 1958 or 1959 television ownership had become far more widespread. At about that time the device came into the life of a particular eight year old boy. Fortunately for him, he had by then learned the pleasure of reading, otherwise he never would have. In those days television programs included weekly dramas, comedies and variety programs. Movies were also shown. The movies shown in those days were
40 very often Hollywood movies from the 1930s and 1940s. The weekly dramas were police detective stories, private detective stories, World War II stories – now disappeared from the screen – westerns and legal dramas.

45 Perry Mason was a popular legal drama of the time. It was shown every Friday night. Every Friday night Perry and his offsiders Paul Drake and Della Street would investigate a crime, usually a murder, represent the falsely accused defendant and through Perry's brilliant advocacy, break down the true villain in the witness box and have him or her confess to the crime, all within the space of the allotted television

hour. The actual courtroom scene was always very short and the villain somehow was always conveniently called as a witness, sometimes even by Perry himself – a lesson which I learned very early. Then there were the famous movies - A Tale of Two Cities, The Paradine Case and the great Charles Laughton drama, Witness For
5 The Prosecution, which I hope some of you have seen.

Many people watched, enjoyed and were impressed by these fantastic programs. The eight year old boy, whom I have mentioned, in particular was invited into the world of the advocate by these programs. As time went on and as we moved through the
10 1960s, this boy's fascination with the law grew and, as one would expect, matured. What had begun as a cultural interest grew into a multifaceted, deep, personal interest in the law, the administration of justice and in particular, the role of the judge and advocates in the courtroom.

15 As is obvious, I was that boy.

For almost all of my life I have been fascinated by the courtroom and the law with, I hope, an ever-increasing appreciation of the role which the law and those who administer it are required to and do play in a healthy democracy. It was, therefore,
20 almost inevitable that I would try to become a lawyer and in particular, a barrister. As you have heard earlier today, for a very long time now, I have been privileged to be a member of the legal profession, initially as a solicitor, then as junior counsel and for the last 14 years, as a silk. Despite its imperfections, the legal profession occupies a vital place in the administration of justice.

25 One of the things that has been said to me frequently by fellow judges since the announcement of this appointment is that the role of the profession is fundamental to the due exercise of this Court's functions. The profession has afforded to me the opportunity to pursue a passion, to exercise my brain, to challenge my competitive
30 spirit, to earn a comfortable living and hopefully, to do some good, all within an environment which expects and demands a high level of integrity and standards of professional behaviour.

35 But the time has come for a change. Some people thought that perhaps I was just a barrister who just could not let it go. That is not so. We must all embrace change, not for change's sake but in order to ensure that we remain vital and useful contributors to our society.

40 This Court itself is only 32 years of age – not very old, really, and much younger than me. From its inception, it has been a modern court, born into a modern but rapidly changing society.

45 Notwithstanding these circumstances, it derives its very existence, functions and powers directly from the Australian Constitution. This Court continues to strive to remain modern and forward-looking and not to get bogged down in ancient procedures which may no longer be useful in the resolution of disputes in the 21st
50 Century. This is not to say that modern dispute resolution techniques should not have regard to tried and true practices from the past, but rather, simply to direct those involved in the resolution of disputes within the Court to concentrate on only the critical matters.

In 1956 this Court did not exist. Litigation in Australia was essentially conducted in State-based courts. The extent of Commonwealth legislation was nothing like it is today. The desire of the Australian Parliament to legislate in respect of a wide range of activities and subject matter has grown significantly since that time. In particular,
5 in the last 10 to 15 years there has been a proliferation of Commonwealth legislation touching almost every aspect of the lives of Australians. As part and parcel of this proliferation there has been a tendency to centralise government functions. The inevitable consequence of this growth in the reach of Commonwealth legislation has been and will continue to be an expansion of this Court's jurisdiction. It will also
10 involve a greater resort by litigants to this Court's existing jurisdiction and remedies, especially in the area of administrative law.

These are exciting times for this Court. Indeed, they are exciting times for a new judge who has had such a long love affair with the law.
15

I well understand, of course, that in every sense I am just passing through. It is the institution itself which matters and I have been honoured for a short time with the responsibility of maintaining and enhancing the institution as best as I can. I will certainly try to do so.
20

I sincerely hope that my contribution will be worthy of the faith, confidence and trust placed in me by the representatives of the Australian people who have appointed me and by so many who have communicated their good wishes to me.

It is customary on occasions such as this for the new judge to acknowledge those who have been the most significant influences in his or her life and I wish to take a few moments now to do that.
25

As you have already heard, I attended Knox Grammar School for a 10 year period, commencing in 1960. In the 1960s that school was blessed with the great headmaster Dr T. Ross McKenzie, followed, at the end of that period, by another great headmaster, Dr Ian Paterson.
30

These men were outstanding team builders and leaders and gathered around them interesting and thoughtful teachers, men who knew how to deal with schoolboys and how to get the best out of them. In every sense of the word, there were gurus there. These were socially conscious men, almost non-conformist individuals. They embraced open debate and freedom of thought and demanded of their students that those students look outwards rather than inwards. The 1960s, of course, was a time
35 of great turmoil in the world and this, together with the matters to which I have just referred, provided a challenging but fertile environment for all those who were fortunate enough to attend the school at the time. And I was no exception.
40

As you have heard, in my early years as a lawyer I was closely and expertly tutored by experienced solicitors at Henry Davis York and at Baker & McKenzie.
45

At the Bar, I came into contact with a large number of wonderful people who gave freely of their time, their thoughts and their expertise and I have benefited greatly from my dealings with these men.
50

I do wish to say a few words about some of them, although these remarks are not intended to be exhaustive about individuals mentioned, nor intended to cover adequately all of those who have mentored, helped and influenced me. I beg forgiveness from those who take offence at either being mentioned or not being mentioned.

When I first came to the Bar I was immediately torpedoed into a complex corporate and commercial dispute between brothers, being led in that case by George Palmer, who I am pleased to see is here today, now Justice Palmer and composer extraordinaire. It was, at this time that I met Peter Jacobson, now Justice Jacobson, with whom I have had a congenial and delightful friendship ever since.

Justice Palmer is and was a colourful character with a volatile temperament, a sharp mind and a love of the arts. He educated me to trust my subordinates and to delegate wisely.

In the same context, I encountered Peter Hely, who, of course, later became Justice Hely of this Court. The stories about Peter Hely are numerous and all favourable. He showed me the power of brevity, although as may be apparent already, I have not necessarily embraced his lessons fully. Peter was a wonderful man with a wicked wit who exercised it frequently at my expense but who gave me confidence through his respectful dealings with me.

As time went on, I began to deal with Roger Gyles, later Justice Gyles of this Court; Bob Hunter, later Justice Hunter of the Supreme Court; Dick Conti, later Justice Conti of this Court and Tom Hughes.

Roger, whose farewell from this Court was held just three weeks ago, is a great Australian whose achievements are truly astonishing. He was, to me, the quintessential barrister. I used to say and still believe if ever I was in serious trouble it would be to Roger to whom I would first turn.

Roger taught me many things but probably the most important was to be courageous in cross-examination and as an advocate generally. He was never afraid to let a witness talk. Adventure was not a no-no in Roger's world. Perhaps I have taken that lesson a little too far.

Bob Hunter and I became very close very quickly. In 1982 my father died suddenly and Bob became, to me, a cross between a second father and an elder brother. He taught me many things about being a barrister, too numerous to mention here, but he also kept me in line as best he could – a difficult task, let me tell you - particularly during times when I was clearly out of line. Best of all, he introduced me to French Champagne. Initially it was vintage. In recent years, regrettably, by dint of economic circumstances, it has become non-vintage. However, the consumption of French Champagne is a delight which I still pursue with gusto.

Dick Conti epitomises all that is good about Australian mateship. As a barrister, he worked extremely hard but always had time for me and others. Whenever I needed to talk something through, he was always there.

50

The great barrister Tom Hughes always offered the perfect example. Impeccably prepared, emitting a powerful courtroom presence, coupled with a delightful wit, he was a giant to whom I looked up and from whom I learnt many of the finer skills of the advocate.

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I have been blessed over the years with the support and assistance of some of the smartest and best juniors around: John Nicholas SC, now, of course, an outstanding and experienced silk, Mark Steele and Ian Pike, to name but a few.

10 I have worked with and for many solicitors, not just in Sydney but in other cities around the country. I will not attempt to mention favourites, although I do have a few. Not that many.

15 My favourites I think are those who brought to bear integrity, thoughtfulness and care to the matters which they sent to me both in the interests of their clients and as a matter of professional pride. Many of them are here today.

20 With very few exceptions, my opponents at the bar have been skilful, intelligent and honourable. I have truly enjoyed the cut and thrust of life at the bar but I have to say I am very keen to make the change which has now been offered to me.

25 I must make special mention of my colleagues at Level 5 St James Hall. James Allsop, now President Allsop, formerly Justice Allsop, was the instigator of the idea that ultimately found fruition in the establishment of this floor. He enlisted me and I came on board enthusiastically. We then set about putting the floor together, which turned out to be remarkably easy. Many thought we would not succeed because it was very, very different. Some perhaps even hoped that we would not succeed.

30 James and I have been close friends since 1981, when we practised from the very same room in the fashion of the Bar of long ago.

35 Each member of Level 5 is a powerful individual with a significant reputation in the profession. Often, combining people such as this can be a recipe for disaster on barristers' floors but this has not been the case at Level 5 and as the modern lingo goes, we have always been very tight.

For me, it has been an engaging and enterprising venture with many positives and very few negatives.

40 In particular, I will miss Tony Meagher, whose birthday it is today. I did choose this day with that in mind - and if you believe that you will believe anything. Tony I regard as a close professional colleague and a very close personal friend. He is someone to whom I have spoken pretty much every day for most of the last 28 years. We have been on the same floor for most of that time. Lately I have observed he
45 seems to be suffering some sort of serious separation anxiety.

I have been supported for almost 18 years by the most wonderful personal secretary that any professional could possibly have, Mary O'Connor. Mary's discretion, loyalty, steadfastness, calmness under pressure and skill are legendary in Phillip Street and everything that has been said about her in the past by others is both true

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and well-deserved. The other staff at Level 5, especially Caroline Davoren and Danny Mason are treasured and I will miss you all. The same may be said of Paul Daley, the only clerk I have ever had.

5 It remains for me to say a few words about my family. My father left school at the
age of 14 years and nine months with an intermediate certificate. He went straight to
work in a mixed glass and paint business. He received no further formal education.
He was, however, the most wonderful man, who had a gentle nature, but a strong and
decent core. He was a talented sportsman who, in different circumstances, might
10 have achieved a great deal in sport.

My mother also left school at intermediate level and received no further formal
education. My mother was volatile and highly intelligent but under-utilised in many
ways. She was extremely ambitious for her sons. She identified early in her life the
15 importance of education. She worked very hard in the home sacrificing many things
for her sons and her husband. She taught me the value of education and the
importance of respect for others, no matter who they are. They both made huge
sacrifices for my brother and me. They were not well-off but they were happy and I
am sure they would both be very proud of me today.

20 I have known my wife Anne for over 35 years. We have been married for over 30
years. Everything worthwhile that I have done since meeting Anne has only been
possible because of her. She has given me love, loyalty, companionship and support
throughout our life together. She has been wise and tolerant of my many faults,
25 whilst nonetheless appreciating the few positives which she has found in me. She
has always kept her eye on the main game, for which I am eternally grateful. We are
moving in sync in this last phase of my full-time working life and I wish to say
publicly that I do not think that I have ever been happier.

30 To our four children, Andrew, Fiona, Mark and Cameron, I say that I am immensely
proud of each of you and despite the grizzles which come from me from time to time,
I really would not turn back the clock and send you all back. Only some of you.
Anyway, I cannot do that. You have managed to prove to me, however, that life is
never predictable.

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BLACK CJ: Adjourn the Court please.

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