

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

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

Tuesday 27 March 2018

**FAREWELL CEREMONY FOR
THE HONOURABLE JUSTICE CAROLYN SIMPSON
UPON THE OCCASION OF HER RETIREMENT AS A JUDGE
OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BATHURST CJ:** We are here this morning to mark the occasion of the Honourable Justice Carolyn Simpson's retirement as a Judge of the Court of Appeal. This ceremony gives us the opportunity to show our gratitude for the 24 years of service you have given to the administration of justice in this State, first in the Common Law division, and more recently in the Court of Appeal.

- 2 You became a judge in 1994. It is with no disrespect that I note you were appointed three months before your current tipstaff was born. You have served this Court tirelessly since then. There is only one complaint I can make. Your Honour is far too humble and reserved about your own achievements. It made the construction of this address rather difficult. Predictably, I firstly turned to your swearing in speech, marked Tuesday the 1st of February 1994. It is, of course, reflective of your humility.

- 3 You spent the entirety of it thanking those who had helped you along the way. You also noted that your oath of office was a commitment to the public, and the Court, and you pledged to do your utmost to justify the faith that had been placed in you. You can be rest assured that the vow you made at that time

has been more than fulfilled. And thankfully you have colleagues and friends who have witnessed its fulfilment and were more than happy to share with me the things that your humility prevents you from publicising.

- 4 Firstly, there is your character as a judge. Many judges display judicial virtues of independence, impartiality, clarity of thought and expression and legal ability. Few express them all and to such a high degree as your Honour. You are unfailingly polite to those who appear before you. You are open to entertain arguments and are not possessed of the weakness attending many clever people of leaping to a conclusion that there is nothing in a particular line of argument. You are always willing to listen to its explanation and in doing so, give the person appearing before you the respect to which they are entitled. That is not to say you are easy to appear before. Once giving ample time for explanation, the sense that you are about to ask a question should strike fear in the most experienced of counsel, as it will immediately reveal the flaws in the arguments put.
- 5 Secondly, and in a similar vein, there is your commitment to the rule of law, access to justice, and the protection of civil liberties. I was told that on the occasion of the swearing in of one of your colleagues, whilst encouraging the new judge, you also gave the following warning: “you don’t want to overestimate the amount of times you’ll think you are doing good in this job”. Now, you probably did enough good prior to coming to the bench to last you a lifetime. You were President of the Council for Civil Liberties, and as a barrister you frequently represented people on a *pro bono* basis.
- 6 On the bench you have maintained your concern for people interacting with the law in the way you deal with the matters before you. All the epithets that are trite about judges are true of you. You are fair. You are concerned about individual rights. It is evident that you feel a great sense of responsibility and understanding of the importance of these issues to the individuals involved. Ultimately you are concerned with justice. Perhaps some of us should not have overestimated how much good we can do, but for you it is the opposite.

No one leaves your Honour's court with any doubt that they received a fair hearing, and following judgment, substantial justice, according to law.

- 7 Thirdly, you maintain with ease the delicate balance between independence of thought and collegiality. You are "definite in your views", but certainly not obstinate. Even when your opinion differs you are not one to just say "I'll write separately" but instead discuss your views at length with your colleagues. You are always available to them for advice or as a sounding board. You are also very influential in your views, particularly those in the Court of Criminal Appeal.
- 8 In that respect, on a personal note, I cannot thank you enough for the help, advice and guidance you have given me since I came to the bench. You are always available, always firm in your views but prepared to discuss them, and I think I can say, you are almost always right. My job would have been much more difficult without you.
- 9 Now the other thing of note in your swearing in speech was your confession as to a distinct lack of typing ability. Your associate of over 11 years, Lyn Nielson, informed me that nothing has changed. This would be fine, except that your dictation "corrections" should more accurately be called "hieroglyphics". Of course this came with the caveat, corroborated by your band of tipstaves, that this is the only area in which you are not entirely self-sufficient.
- 10 You pay meticulous attention to detail and have mastered the art of statutory construction. Your ascension to the bench coincided with the introduction of the *Uniform Evidence Act*, so naturally, these abilities were indispensable. You have, since its introduction, had a consistent and leading role in working through its provisions. You were also doing this at a time when neither the Bar nor the Bench were quite prepared to accept that the *Evidence Act* meant what it said. It may have taken the rest of us another 10 years, but your analyses, particularly of section 97 in *Fletcher*¹ and *XY*,² and section 98 in

¹ *R v Fletcher* (2005) 156 A Crim R 308; [2005] NSWCCA 338, [33]-[48].

Zhang,³ now garner the support of a majority in the High Court.⁴ Your judgments have not only stood the test of time, but can be seen as the first expositions of now accepted doctrine.

11 Your contribution to the Court of Criminal Appeal is not confined to the *Evidence Act*. While in the division you probably sat in the Court of Criminal Appeal as much as the Chief Judges who came and went during your time. In fact, according to a computer search, you have sat on over 1500 published cases. I note in particular your helpful elucidations about sentencing young offenders⁵ and the weight to be given to drug addiction at sentence.⁶ The following passage from your Honour's judgment in *Henry* exemplifies those judicial attributes I spoke of before, where you said: "Drug addiction is not always the disease; it is, as often as not, a symptom of social disease ... this Court should not close its eyes to the multifarious circumstances of disadvantage and deprivation that frequently precede and precipitate a descent into illegal drug use."⁷ As the longest serving judge of this Court, you have been a significant source of consistency and continuity, and a good measure of common sense, in CCA decisions for over two decades.

12 Your influence is not confined to crime, but also includes the civil sphere and particularly defamation. Your Honour ran many high profile defamation cases during your time in the Division. It is rumoured you actually enjoyed running civil trials. I highlight the following series of events as an example of your quiet yet considerable influence on the common law. In the case of *Megna v Marshall*⁸ you considered the defence of qualified privilege as applied to volunteered statements, and following careful analysis, found that a requirement of "pressing need" had been accepted as orthodoxy by reference to what was in fact an obiter comment in a dissenting High Court judgment.⁹

² *R v XY* (2013) 84 NSWLR 363; [2013] NSWCCA 121, [158]-[178].

³ *R v Zhang* (2005) 158 A Crim R 504; [2005] NSWCCA 437, [139]-[141].

⁴ See *IMM v The Queen* (2016) 257 CLR 300; [2016] HCA 14; *Hughes v The Queen* [2017] HCA 20.

⁵ See, eg, *Cowan v R* [2015] NSWCCA 118, [5]-[6]; *MS2 and Ors v Regina* (2005) 158 A Crim R 93; [2005] NSWCCA 397, [9].

⁶ *R v Henry* (1999) 46 NSWLR 346; [1999] NSWCCA 111.

⁷ *Ibid* [337]-[356].

⁸ *Megna v Marshall* [2010] NSWSC 686.

⁹ *Ibid* [153]-[166].

Judgment was delivered on 25 June. On 29 June, Mr McClintock SC successfully argued for an adjournment in separate Court of Appeal proceedings as he wished to challenge a line of authority – the precise one you had pointed out as flawed 4 days prior.¹⁰ The adjournment was granted, the line of authority not followed by a five judge bench,¹¹ and that decision later upheld by the High Court.¹²

- 13 Your time in the Court of Appeal has been no different. I note in particular your interesting discussion in *Bartlett v ANZ*¹³ considering the issue of good faith in employment contracts, and in *AG v DPP*¹⁴ concerning the nature of an appeal to the District Court.
- 14 Your judgments are also widely known to be particularly lucid – to the extent that District Court Judges have approached you to thank you for finally explaining this or that rule of evidence in an understandable way. I of course make no comment on whether that is more of an indictment on the rest of us than a compliment towards you.
- 15 The clarity of your judgments perhaps stems from your command of the English language. This in turn perhaps, stems from your first career as an English teacher. What I am sure stems from that career is your Honour's fine eye for punctuation in a judgment – you demand the correct use of a semicolon, you loathe unnecessary capitalisation of headings and you share with Justice Ward a distinct horror at the sight of a split infinitive.
- 16 Another habit you share with your fellow judges is that of inveterate collecting. Unlike some of your fellow Judges, who shall of course remain nameless, your collections are not confined to things of worth. Along with art and textiles which cover your walls from floor to ceiling, you are also known to collect things like the insides of old washing machines, which you claim will one day be useful. You have never thrown out a jar in your life, and it does seem that

¹⁰ See *Holmes a Court v Papaconstuntinos* [2010] NSWCA 329.

¹¹ *Holmes a Court v Papaconstuntinos* [2011] NSWCA 59.

¹² *Papaconstuntinos v Holmes a Court* (2012) 249 CLR 534.

¹³ *Bartlett v Australia & New Zealand Banking Group Ltd* [2016] NSWCA 30, [108]-[136].

¹⁴ *AG v Director of Public Prosecutions (NSW)* [2015] NSWCA 218, [50]-[107].

all of the depression-era green-glass ornaments produced in the first half of the twentieth century have wound up in your hands. You are many things, but you are not a minimalist.

17 What we hope is that your new role gives you more time to spend collecting the things that bring you joy, and particularly, more time to escape back to the country, where we know you are valued member of the local community, and continue your habit of service as a volunteer fire fighter. Not too much time, though, as we look forward to a continued association because of your appointment as an acting judge. I could not be more pleased personally that this offer has been accepted. That is not in the least because it means continued enjoyment of your dry humour, stimulating conversation and quick wit. Thank you.

18 **MR ARTHUR MOSES SC, PRESIDENT NEW SOUTH WALES BAR ASSOCIATION:** I begin by paying my respects to the Gadigal people of the Eora Nation, the traditional owners of the land on which we meet, and I pay my respects to their Elders past and present.

19 Justice Simpson, it is my privilege to appear as President of the New South Wales Bar and on behalf of members of the New South Wales Bar to acknowledge your contributions to the law in this State and your life-long dedication to justice. The Attorney General passes on his apologies for not being able to attend the ceremony this morning.

20 Your dedication to justice was evident in your early work with the Council for Civil Liberties as a committee member from 1973 and President from 1976. It has been said that your Honour led the Council through turbulent times, encouraging it to address emerging and tough civil liberty issues in the seventies. In your keynote address to the fiftieth anniversary of the Council for Civil Liberties you gave an historical overview of the Council, including the tensions between it's more progressive objectives and more conservative members during your time on the executive and your Honour shared an item from a Council newsletter from 1976. It was a note from a member concerned

that the executive, of which you were a member, appears to have been taken over by a radical left-wing, anti-establishment, homosexual, criminal-loving executive. Similar things have been said about the Bar Association so I feel the love but I digress.

21 Of course the 1970s was the period in which the Council for Civil Liberties was prominent in advocating for prison reforms and better treatment of prisoners. This advocacy contributed to a Royal Commission being established in 1975 and reporting in 1978 it exposed and condemned the brutal conditions in New South Wales prisons. Now with characteristic humility I expect your Honour is likely hearing this and thinking of other Council members who contributed to prison reform efforts including those who appeared before the Commission but your Honour, whether by chance or good intention, this significant development towards the humane treatment of prisoners in this State coincided with your leadership of the Council and, if I may say, that is a notable legacy of which you should be proud and of which the Bar is proud.

22 Council legacies aside, as the Chief Justice has said, you contributed greatly as an advocate of the Bar through extensive pro bono work. Your Honour was called to the Bar in 1976 and took silk in 1989. You had a wide and diverse practice. You practised in crime, administrative law, common law and discrimination law. In judicial office your Honour has been respected by members of the Bar who have appeared before you. You have been open-minded and always willing to entertain an argument by asking searching questions and myself, and including members at the bar table, have been on the receiving end of a few of those questions and we have been left searching for the answers but, your Honour, as the Chief Justice has said, has always had a pleasant manner in court and a strong sense of fairness and propriety.

23 Your Honour, since being appointed to judicial office in 1994 you have presided over a number of high profile matters. In 1998 as a justice of the court your Honour sentenced a convicted murderer to penal servitude for life. The matter was *The Crown v Arthur Stanley Smith*, also known as Neddy

Smith, and the sentence was upheld by the Court of Criminal Appeal in 2000 with both judgments attracting a great deal of public attention due to the notoriety of the prisoner who was a frequent flyer before this Court.

24 In 1999 your Honour was featured in the press for sitting on the first all women bench in the history of an Australian Court together with Justice Beazley and Justice Bell. It was the Court of Criminal Appeal and one of the cases you heard was *The Crown v James*, a matter of appeal of a sexual assault conviction. Any random thoughts that the appellant might have been disadvantaged by facing an all-female bench on a sexual assault appeal were quashed by a split decision . Your Honour wrote the leading judgment with a verdict of acquittal entered, a decision by a majority, with a dissenting judgment by Justice Beazley. This decision may have been otherwise unremarkable but certainly the hearings were a milestone in the history of diversity in the judiciary in this State.

25 Another case heavily reported by media was *Cox v The State of New South Wales* in 2000, a matter your Honour heard in the Supreme Court as a single judge. The plaintiff claimed damages for personal injury suffered as a consequence of the breach of duty of care when he was a student. The verdict for the plaintiff and an award of damages for economic loss estimated at \$1 million was reported in the press as being the biggest school bullying damages awarded in New South Wales and prompted reform within schools as to how to deal with such matters.

26 Your Honour, the judgments though for which your Honour is most admired within the legal profession are those which are not necessarily high profile but certainly highly influential. As a judge of appeal your Honour's judgments have been the subject of enthusiastic commentary and analysis within the profession.

27 *Ewen v The Crown* in 2015 heard in the Court of Criminal Appeal was notable for correcting the convention of a *Murray* direction being given in sexual assault matters. Deriving from *The Crown v Murray* a *Murray* direction is

given by a judge to a jury when the sole evidence relied upon by the prosecution to implicate the accused is that of a single witness. The direction is for the evidence of that witness to be scrutinised with great care before a guilty verdict can be found and, as your Honour wrote in your judgment, sexual offences are typically committed in private when only the perpetrator and the victim are present and a direction concerning the absence of corroboration suggests unreliability on the part of the complainant. Your judgment highlighted that such a suggestion was prohibited by the *Criminal Procedure Act*. Given the volume of sexual assault matters heard by the courts and more to come following the recent Royal Commission into child sexual abuse this has been an enormously important judgment.

28 Another of your recent influential judgments in the Court of Criminal Appeal was the 2017 matter of *Robinson v The Crown* in which your Honour clearly demonstrated problems with the so-called *Clark* principle. Attributed to the 1990 decision in *Crown v Peter Michael Clark* the principle was that drug trafficking alone in any substantial degree should normally lead to a custodial sentence. Your Honour determined the *Clark* principle to be without legislative authority and incompatible with the judicial discretion to mould a sentence to fit the circumstances of each case. Subsequently a Court of Criminal Appeal hearing the matter of *Parente v The Crown* agreed with you and found that the *Clark* principle should no longer be applied in sentencing for drug supply cases.

29 The influence of your Honours judgments can be credited to your powers of analysis and your great communication skills. You are widely regarded as being a skilful writer. As the Chief Justice has said, you are known for your lucid judgments and careful and precise use of language and, indeed, as the Chief Justice reminded us, you are a former school teacher and some of your brother and sister judges have described you as a bit of a pedant when correcting grammar in some of their draft judgments. Indeed, you have stopped some of the more verbose members of the Bar whilst in full flight in argument to correct their grammar or pronunciation of words including a

previous President of the Bar, who will remain nameless but his first name may be Noel.

- 30 Colleagues say your Honour embodies all the qualities of a good judge in spades. You are a strong, logical thinker with independence of mind. You have a great deal of humanity with a wisdom about people and a feel for the circumstances in which they live. Your insight into the human condition together with your knowledge and deep understanding of the law has made you an outstanding judicial officer.
- 31 Your Honour, it is conventional at this point to remind a retiring judge about the extra time they shall have in retirement for pursuing hobbies and interests and whilst I gather you are a keen gardener, an enthusiastic cook and an avid reader, I am reliably advised that you do not see yourself swamped in domestic duties, nor retire in an armchair, and it is more likely that in between stints as an acting justice of this Court you will be sending postcards from your travels in India and elsewhere and venturing to add to your impressive collectables described by the Chief Justice.
- 32 Your Honour, I am told that such is your desire for collecting items that no horizontal surface is safe. One of the drawbacks of being known as a collector is a tendency for friends to gift you with mantelpiece items they think you will like which for a time saw you being the unwitting recipient of a series of snow globes, what can you do with friends, your Honour?
- 33 No doubt, your Honour will enjoy time with family and friends and I acknowledge the presence in Court today of your sister, Janet, brothers Ian and Grahame and their wives Fay and Carolyn along with some of your nieces and nephews. Your Honour, wherever your travels take you and however you direct your energy, the Bar wishes you well in your post-judicial life and we are indebted to you for your service to the State. May it please the Court.

- 34 **MR DOUG HUMPHREYS PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court, I too acknowledge the traditional owners of the land upon which we meet, the Gadigal people of the Eora Nation and pay my respects to their elders past and present.
- 35 It is my honour to come before the Court today on behalf of the solicitors of New South Wales to mark the departure of a salient and brilliant contributor to the life of the law in this State and indeed I do so with great trepidation less my grammar be corrected.
- 36 We've heard the story your Honour's background, I will not advance upon that well-trodden ground except to say that your Honour's rich and varied experience prior to the Bench as a school teacher, your leadership of legal associations and, of course, your career at the Bar gave you a firm grounding prior to your appointment as a judge. It was at the Bar that your Honour's reputation was forged as an able opponent, an excellent public lawyer and a strong analyst in statutory construction. I am told that in those days it was very hard for a woman to survive at the law but your Honour just did not survive, you thrived and you took silk in 1989 although I am told that around that time you were excluded from a function simply because you weren't one of the chaps. As a result your Honour has formed an integral part of the forefront of women on the Bench. Driving your Honour's 24 year contribution as a member of the judiciary has been your devotion to fairness and defending the rights of all. As a keynote speaker at the 50th Anniversary for the New South Wales Council for Civil Liberties, your Honour observed that what ought to be provided by members of the judiciary is, "Provision of basic fairness to the weak and vulnerable." This observation has been underscored by your Honour's whole contribution and service to this State and to the law.
- 37 Your Honour's outlook on social context within which judicial officers must adjudicate was illuminated in *Kennedy v The Queen*. In that judgment, your Honour explained that the case of *The Queen v Fernando* in 1992 was a decision not about sentencing Aboriginal people but about the recognition in sentencing decisions of social disadvantage that frequently, no matter the

ethnicity of the offender, proceeds the commission of the crime. Your Honour's statement in that case was actually endorsed unanimously by the High Court in *Bugmy v The Queen* in 2013. Indeed, your Honour, I actually appeared along with John Nicholson in the original first instance case of *Fernando* and let me assure you I was much relieved that your Honour's statements were indeed endorsed. This is but one instance of your Honour's views being upheld in the High Court.

38 In the case of *Jared v Commissioner of Police* in 2005, your Honour held that then the Deputy Commissioner Jared's dismissal from the New South Wales Police Force constituted, "A denial of natural justice to the applicant, that his purported removal was invalid and his discharge from the Police Service constituted a repudiation of his contract of employment." The New South Wales Court of Appeal in its wisdom overturned the original decision, however, the High Court then upheld an appeal with costs, this resulted in an award of \$643,000 in damages to Assistant Commissioner Jared. Of course, the Government's response to this decision was to immediately change the legislation to provide that senior executives in the New South Wales Public Service may be dismissed for any and no reason and indeed, this remains the case today.

39 Many of your Honour's other judgments have been touched upon by both the Chief Justice and my learned friend, Mr Moses, but allow me to say that all of your Honour's judgments were, as one senior member of the judiciary has put it, a model of thoughtful analysis grounded in common sense and strong respect for the parties involved.

40 Of course, equally throughout this as has been remarked is your Honour's beautiful writing and that is exactly how it was described to me, "beautiful writing." Possibly because of your teaching background, your Honour's English, as has been remarked, is informative and lucid. It is an enormous skill to be actually able to write with clarity. Writing long judgments is actually quite easy, writing a short clear judgment that gets to the heart of the matter and is lucid is an incredible skill and one that has not been lost upon me.

41 You are a much admired and revered figure in the judiciary. Indeed, in President Margaret Beazley's 2016 address to the Women's Lawyers Association of New South, she cited a memorable acrostic poem made up by female members of the judiciary according to the virtues starting with each letter of the alphabet. Your Honour was filed under "C" for calm and cream of the crop. Amongst the judicial officers and members of the Bar that have given evidence for the purpose of this particular speech, one anecdote looms large. It's thanks to the former Justice, The Honourable Michael Kirby AC CMG, I am able to relate this anecdote below and, yes, he is responsible for it.

"Justice Simpson joined the Council for Civil Liberties in the late 1970s, it was certainly a turbulent time. Neville Wran had just been elected to government and became premier in 1976. He personally favoured getting rid of the criminal laws against adult private consenting same sex activity but he faced much opposition within the ALP and other areas.

He attended the Council for Civil Liberties Annual Dinner in 1994. John Marsden then became president of the CCL. At the dinner, Premier Wran was hissed, booed and heckled and attacked to the rafters. John Marsden in his indomitable way, gave you the poisoned chalice of having to move a vote of thanks at the end.

It's on report it became the turning point of the law, Neville Wran went away determined never to go through such a barnyard brawl again. Within weeks reforming legislation was introduced and pushed through the parliament. Some people blamed the then young Carolyn Simpson for the unleashing the rage of rowdy libertarians and for the outfoxing of a wily politician. But the outcome was overdue reform and reform to protect vulnerable minorities has always been close to the heart and mind of Carolyn Simpson."

42 You were described by Justice Kirby as "The midwife of major law reform with a little help from your friends."

43 According to observers what shone through on that night when your Honour was given the delicate task giving the vote of thanks following the address was your Honour's cool head, the objective approach and your steadfast commitment to civil liberties. These are qualities that have shone through during your Honour's entire time, your entire time on the Bench.

- 44 We have heard that your Honour enjoys eclectic pursuits in your spare time and that your family are here today. The staff will attest that your Honour has always been supportive, fair and a generous mentor, always giving.
- 45 The solicitors of New South Wales and the citizens of New South Wales congratulate you on your long and distinguished career to the law and indeed we look forward to your continued contribution as an Acting Judge and we wish you well for the next chapter of your career. As the Court pleases.
- 46 **SIMPSON JA:** Chief Justice, my friend Justice Bell of the High Court, Mr Moses, Mr Humphreys, fellow judges of the Supreme Court, members of my family, friends, ladies and gentlemen.
- 47 I also acknowledge that we meet on the traditional land of the Gadigal people of the Eora Nation and I pay my respects to their elders past and present.
- 48 I thank you for taking the time out of your busy schedules and the trouble to attend today, almost my last day as a judge of the Supreme Court and the Court of Appeal and I thank you, Chief Justice, Mr Moses and Mr Humphreys for your kind words of which I will say more later.
- 49 I first sat in this place on 1 February 1994, more than 24 years ago. I joked then that I had, in the language of the then Sentencing Act, a minimum term of 12 years and an additional term of another 12 years. I have never sought parole and now I am to be released, although not without supervision. My associate has suggested that I am about to embark on a sentence to be served by way of periodic detention. Those words might mean little to my colleagues in the Equity Division but the criminal practitioners will know what she means.
- 50 It remains a matter of wonder that I find myself sitting here. I came to this place by a series of strokes of good luck and some acts of extreme generosity. I stumbled into law entirely by accident - what the creators of Disneyland might call the happiest accident of all. Well, I would. My first

career as you now know was as a school teacher. I did not like it and I was not good at it. Which was cause and which effect I do not know. I lasted five years.

- 51 I left with a burning ambition to be a journalist. But nobody would employ me as a journalist, although I did come second in an interview with the late Donald Horne of the now defunct Bulletin. Although it did not seem so at the time, failing to secure employment in the world of journalism was my first stroke of luck. A friend told me of a law course that was, he said, so easy that nobody ever failed. Not much use to you, he said, but you might as well have it on your CV.
- 52 It was the Barristers Admission Board Course conducted by the Law Extension Committee under the auspice of Sydney University. My friend's advice was my second stroke of luck. We both enrolled. He never sat for a single exam. Instead he became a successful businessman and a famous restaurant critic, calling himself a "public stomach". I sat for the exams and surprisingly enough passed.
- 53 Unaware of my own audacity I marched into the District Court and asked for a job as an associate. I did not know what an associate did but I had met one once and it sounded good. I lied about my typing skills which were in truth non-existent. The late Judge Robson kindly took me on despite my lack of suitable qualifications for the job. That was my third stroke of luck.
- 54 There, watching the conduct of criminal trials and the never-ending parade of motor vehicle personal injury damage claims, I began to get a sense of how the rules of evidence worked, pre-*Evidence Act*. I learned a lot about cross-examination. I watched advocates with varying degrees of skill and success attempt to work magic on juries. I gradually became hooked.
- 55 I managed to get through those exams which were not as simple as my friend had led me to believe and found myself admitted to the Bar. There were then separate admissions as attorney, solicitor and proctor and as barrister.

Before passing over the next 18 years I would like to acknowledge the role of the Law Extension Committee Course. It provides to mature age students and to aspirants who do not live in large metropolitan centres, and others who need to work for a living and cannot satisfy the requirements of even the part-time courses offered by the universities, an opportunity to study, to qualify and then to practise law.

56 It is not an easy task because it must be fitted in with employment, personal and other commitments. To a large extent, through no fault of the administrators, students have to make their own way. I am far from the first judge and certainly not the most senior, who has qualified in law through this worthwhile facility. It is an entirely egalitarian course not dependent on stellar ATARs. Long may it provide access to legal practice to those who otherwise would not have the opportunity to qualify.

57 In those days, having gained even a basic law qualification, it was possible hang up a shingle and wait hopefully for the briefs to roll in. There were then no pesky bar exams to supplement the academic qualifications already held. It seems to me that the quite onerous requirements now required to practise at the Bar have immeasurably improved standards of competence, but I am rather glad they did not apply then.

58 And so without having to pass Bar exams and with a minimal qualification I did hang up my shingle. For the first six months Peter Kennedy-Smith, then practising on the 13th Floor of Wentworth Chambers, allowed me to sit in his room and introduced me to many solicitors. That was my fourth stroke of luck and an act of real generosity for which I thank him again. Members of the 13th Floor were also generous in allowing me to use their chambers for the rare conferences I needed to have.

59 The fifth and sixth strokes of luck came at the beginning of 1977. In those days it was difficult, if not impossible, for aspiring women barristers to secure chambers. Initially many chambers simply would not allocate rooms to woman applicants. Gradually some came dimly to understand that this

attitude was not quite kosher. They no longer rejected women applicants at the outset. "We're not" they said "against women - but we have one".

60 The ground floor of Wentworth Chambers had been occupied by government offices whose lease had expired. Counsels Chambers Limited developed the floor into new chambers. Initial interest was strong and there was a long waiting list but as the time for occupation came closer interest waned. I put my name down. There was no floor committee to persuade. Counsels Chambers wanted to offload the rooms and so they did, eventually allocating one to me. But I had no money.

61 The National Australia Bank which had a branch next door in the Law Society Building was generous in lending to ambitious new barristers. Without any idea of my prospects of making a success at the Bar it funded my purchase, in what might now be branded irresponsible lending practice. I was lucky too in the solicitors I gradually met who had sufficient faith to put the legal affairs of their clients in my hands. And so I practised at the Bar for 18 years.

62 My final stroke of luck came when the tide of resistance to the advancement of women in the legal profession turned and I was offered appointment to this Court. I received many letters of welcome from serving judges, almost without exception advising me that the work was demanding and rewarding. They were right on both counts. Only one woman was then a member of the Court, Justice Jane Mathews. I thank her for her generous assistance in easing me gently in the Common Law Division and the Court. But she soon deserted me for the Administrative Appeals Tribunal and the Federal Court. She left me with the wig that I am now wearing, which I will shortly return to her as now surplus to my requirements.

63 I have done many things in the last 24 years. I have directed juries on the principles on which to act in deciding the fate of a person accused of murder and sometimes of other serious crimes. I have - once only- imposed a life sentence. I have been called upon to constitute myself as a jury for the purpose of deciding the guilt or otherwise of a person charged with murder. I

have had to decide whether dedicated, competent doctors have failed in their duty of care to patients. I have been roused from slumber by the phone at 2am to be asked to make an order so that a child of a recently deceased, much loved husband could be posthumously conceived, and again, in another middle of the night phone call, asked to make an order that would permit doctors to perform a blood transfusion on a child whose parents' religious beliefs prevented them from giving consent. I have been asked repeatedly to work some magic that would avoid defaulting mortgagors being evicted from their homes.

64 Few of these decisions come easily. Some are exceedingly painful. The competing claims of a patient who has suffered a devastating outcome after medical treatment and those of an ordinarily attentive and committed doctor, whose attention may (or may not) have momentarily lapsed, are among the most difficult of decisions. So too sentencing. It is necessary to balance the legitimate claims of victims or their families and the sometimes harrowing details of a life that has brought the perpetrator to the crime committed. These are decisions that forever and profoundly affect the lives of those concerned. The work of the Common Law Division exposes its judges to aspects of life in this State that most would never contemplate. Young lives marked by physical or sexual abuse or both, neglect, alcoholism, drug abuse and poverty.

65 Sitting on the Court of Criminal Appeal and more recently on the Court of Appeal I have inflicted on hard working, careful judges the indignity of being told that they were wrong. I have myself suffered the indignity of being told that I was wrong - even when I was not. I have made many mistakes, although not, perhaps, as many as the Court of Appeal has sometimes thought. After two decades one of my early reversals stands to this day as the leading authority on taking family hardship into account in sentencing. With a marked lack of tact it is cited to me with depressing frequency. A tip to advocates: If you want to make a point, try to find an authority that does not expose the frailty of the judge you are endeavouring to persuade. Apart from

anything else, the chances are that he or she is familiar with the principle and painfully aware of the authority.

- 66 In the last 24 years I have served under three Chief Justices, four Chief Judges at Common Law and one President of the Court of Appeal. The dedication and commitment of each of them is nothing short of remarkable. For the first four and a half years I sat at the feet of Chief Justice Murray Gleeson from whom I learned much. I count sitting with him on the Court of Criminal Appeal as one of the great privileges of my life.
- 67 I marvelled at the incisiveness of his thinking and his clarity of expression. I yearned to emulate both, and the efficiency with which he disposed of complex factual and legal issues. I never came close. He administered the Court with the same cool efficiency and it was said, correctly I think, that the judges of the court would have walked barefoot over hot coals had he asked them to do so. Fortunately, he did not.
- 68 Chief Justice Gleeson was succeeded by Chief Justice Spigelman. His style was entirely different but his intellectual leadership was also a thing of wonder. He brought a refreshing measure of informality to the Court while retaining its innate dignity. Then the current holder of the office, Chief Justice Bathurst, who brought a different style again, but also a breathtaking capacity for intellectual and personal leadership. He nurtures his personal staff. To enter his precinct is something like walking into a warm and friendly home where everyone is working together.
- 69 Each of the Chief Justices under whom I have served has taught me much. It is too often not recognised that each of them has sacrificed a good deal of material success for nothing more nor less than public service. The administration of justice is well served indeed when lawyers of such capacity are at the helm and willing to sacrifice their own material interests for public service.

- 70 I was welcomed to the Common Law Division by the then Chief Judge at Common Law David Hunt who was endlessly generous in answering the cries for help of a rookie judge, while writing definitive judgments on all aspects of the criminal law. His door was literally always open. His catalogue of judgments is a legal resource in itself. Justice Hunt retired in 1998 after 19 years of service and was soon snatched by the International Criminal Court.
- 71 He was replaced by Justice Jim Wood freshly returned from his sterling efforts reforming the New South Wales Police Service by his ground-breaking Royal Commission. Notwithstanding the level of corruption his work exposed, he was accused by one journalist of destroying the morale of what the journalist described as a fine Police Service. He brought to the Common Law Division intellectual leadership that maintained the great tradition of David Hunt. He retired, he said, to spend time with a small grandchild but has, it seems, rarely been left alone long enough to do that. He seems to go from one enquiry or commission or board to another.
- 72 When Justice Wood departed, Justice Peter McClellan, who had been plucked from a position on the Common Law Division to take up a role as Chief Judge at the Land and Environment Court, was plucked again by Chief Justice Spigelman to return to the Common Law Division, this time as Chief Judge. Not only did he lead the Common Law Division both intellectually and personally, he undertook a significant role in taking an understanding of the way the law operates outside the legal profession. He did this by delivering speeches and papers to organisations in the hope of explaining the work of the judiciary. He was justly recognised for this with an Order of Australia. As everyone knows, he was again plucked, this time to take on the important and arduous task of the recently completed Royal Commission into Institutional Responses to Child Sexual Abuse. Most of all I thank him for his personal friendship.
- 73 Each Chief Judge has been both a guide and a mentor and a sounding board on which to explore ideas. They have all saved me from error. I had little time in the Common Law Division under the leadership of Chief Judge

Hoeben because I was enticed away to join the Court of Appeal under the leadership of President Beazley. In that short time he too gave generously of his time and expertise. I was dubious about the transition to the Court of Appeal, having enjoyed the work of the Common Law Division, its variety, its demands and even its frustrations.

- 74 Those middle of the night calls are not the highlight of the life of the Common Law Division judge. The highlights are the satisfaction of working through sometimes complex factual disputes, deciding what the facts are, applying the law to those facts and producing a judgment still warm from the printer, to be savoured like a loaf of freshly baked bread. Sheer bliss - at least until it works its way through the judicial hierarchy, when it might turn into chook food.
- 75 On translation I found the Court of Appeal a very happy and united group of friends. The output is prodigious, as are the demands. I thank them for welcoming me. I have had to reacquaint myself with legal issues I had not thought of in 21 years. I was always generously assisted by my new colleagues. In many ways I have had the best of two worlds. Sitting as a single judge in the Common Law Division, I was very much left to my own devices. I started from scratch finding the facts, working out the law to be applied and bringing the two together. The collegiality of the Court of Criminal Appeal and Court of Appeal gives a different experience altogether, one in which ideas are discussed and results worked out. Both have been a source of enormous satisfaction.
- 76 There have been many other colleagues on the Court from whom I have been fortunate to receive guidance. Sometimes they did not know that I was using them as silent mentors. Two beacons of whom I would like to make special mention are Justices Simon Sheller and Bill Priestley, both members of the Court of Appeal when I wandered into this institution. Their personal styles and the manner in which they went about their judicial tasks was inspirational. I remain amazed at the capacity of those I have mentioned and others to offer themselves in the service of the public.

- 77 I cannot pass on without mentioning the work of the many judges on the District Court, some of whom have been the victims of my appellate decisions. Sitting on appeals, civil and criminal, I have had ample opportunity to observe at close quarters the work they do. I know them to be hardworking and I know the workload of the District Court is mountainous. I know that the heavy demands means that mistakes will inevitably be made. They undertake the enormous task of the bulk of the more serious criminal work of New South Wales. They have an endless diet of trials of sexual offences, of drug offences and of serious offences of personal violence. Their resources are often inadequate with daily transcripts not always available. From my observation they manage under difficult and stressful conditions to dispose, on the whole unimpeachably, of a massive amount of work. The District Court and the Local Court could be called the workhouses of criminal law and, increasingly, civil law. They make thousands of decisions each year, only a small proportion of which are subject to appellate scrutiny.
- 78 The judges of the District Court bear the brunt of the most intractable sentencing cases. The community rightly demands that serious crime be met with adequate retribution. That community does not often see the personal and family circumstances that precede the commission of crime. How does a sentencing judge balance the need to denounce the conduct of a culpable driver against a personal history that includes that offender having, at the age of 14, witnessed his mother's death from a drug overdose, powerless to save her? The judges of the District Court wrestle with these decisions day after day, year after year. That these decisions are ordinarily accepted, even if unpopular, is one mark of a truly civil society.
- 79 It would be remiss of me not to acknowledge also the assistance I and the judiciary generally have received from another organisation. In 1987 in the wake of serious allegations against certain judges, the Judicial Commission of New South Wales was established. I was not then a member of the Court but I well remember the fear engendered at the perceived threat to judicial independence that it was thought to pose. Those fears have proved to be groundless. The Judicial Commission has, if I may express a view, been a

resounding success. It has done nothing but good for the judiciary. By its educational function, it effectively operates to keep judges apprised of new developments in the law. When called upon to do so, it deals sensitively and discreetly with complaints against judicial officers. In all its years it has done this under the skilful management and leadership of Mr Ernie Schmatt who was justly recognised for his contribution in the most recent Australian Honours list.

80 Not surprisingly, in 24 years I have been assisted by many tipstaves, too numerous to mention or even to count. Most have been enthusiastic young law graduates setting out on their careers. It is always a joy to see them when they find time to pay a visit and to watch their success from afar. Some of them are here today. They are a testament to the education they receive in the various universities from which they graduate.

81 For the last 11 years I have been blessed to have as my Associate, Lynn Nielsen. She has typed most of this speech, but not this bit. She made an early appearance in the world of the Courts when she was discovered in the office of the Land and Environment Court by then Chief Justice Mahla Pearlman who recognised her potential and made her her Associate. Words cannot adequately express how grateful I am to Lynn for her unflinching good humour, even when correcting the latest of the numerous drafts of a judgment, the efficiency with which she administers my sometimes chaotic chambers and the way she does far more than can reasonably be asked of her. She even laughs at my jokes. Well, Associates have to do that, it is part of the job description, but she does it as if she means it. She goes to take up a position with Justice Lee in the Federal Court. In time to come, he will appreciate how wisely he has chosen. For my part, I will miss her terribly.

82 The judges of the Court could not do their work without an efficient administrative support structure. The registry staff are unflinching courteous, efficient and helpful. There are too many to name individually and some do their work so self-effacingly that they are hardly noticed. We would notice if they did not. I make special mention of the Executive Officer, Chris D'Aeth

who holds the ship together and ensures that things go smoothly, assisted by Nick Sanderson-Gough. I make mention of Jerry Riznyczok who manages the Court of Appeal and Katrina Curry the Court of Criminal Appeal Registrar.

83 The Registrars ensure that matters are ready for hearing. You only have to look at the daily lists to see the volume of work they dispose of. I would like to also thank the library staff under the guidance of Vanessa Blackmore. Nothing seems to be too much trouble although, in this digital age, it is seldom necessary for judges physically to enter the library, the library staff maintain an exceptional service. I would like to name more but we would be here forever.

84 At my swearing in all those years ago, a dozen members of my family gathered. The youngest was Peter, then four, who squirmed through the photography sessions but was brought under control for the ceremonial sitting. He has now grown up and is a successful engineer and better behaved, although he is still slow to answer his old auntie's text messages. We have lost one beloved family member, although she did survive to 101, and we have acquired some welcome new members. The younger generation, Jacinta and Daniel, two year old Millie - hello Millie - and some partners. Not all have been able to be here today but there is a fair contingent. I am delighted that all my siblings and my two sisters-in-law have made the effort to be present. I thank them all for remaining an important part of my life throughout the years and indeed the decades. My three nieces and three nephews have been an unremitting source of joy, except perhaps when as children they tried to force me to eat peanut butter. It has been a delight to be part of their growing up into the gorgeous adults they are today.

85 It has been an honour and a privilege and mostly a pleasure to serve the people of New South Wales as a judge of this Court. But sometimes on a sunny Sunday afternoon when mired in the mysteries and the miseries of the *Civil Liability Act* or the *Workers Compensation Act* or trying to untangle the apparently conflicting statements of legal principle or statutory construction or sifting through the psychological reports in a sentence appeal and aware that

in the outside world people are gardening, sipping coffee, reading, reading not for work but for fun, books they are not paid to read, it becomes necessary to remind myself - this is not drudgery, Carolyn, this is an honour and a privilege. And it is.

86 The work of the Supreme Court is arduous and unrelenting. It is demanding intellectually and it can be demanding emotionally. Some of those who choose to comment on decisions of the Court, especially sentencing decisions, do not know enough about the efforts made by judges to do justice according to law. It sometimes seems that those two concepts sit uneasily together but it is best not to be too specific about that.

87 I said that I would return to the kind words of the Chief Justice, Mr Moses and Mr Humphreys. One of the first things I learned on assuming this role is that there is always another side to every story. A plaintiff's case that sounds unanswerable collapses when cross-examination begins. Thankfully, this is an occasion when the other side is not told.

88 As we used to tell juries in the days of the old dock statement, what the Chief Justice, Mr Moses and Mr Humphreys have said is not on oath, it is not subject to cross-examination. You should give it such weight as you think it deserves. All have been generous in taking advantage of the licence afforded to them. They were not obliged to tell the truth, the whole truth and nothing but the truth. They could gild the lily and they have done so. Family members have been warned that they may hear a version of their relative that they do not recognise, but that protocol forbids interjection.

89 Regrets? Unlike the late crooner, Mr Sinatra, I have had more than a few, but if anybody thinks I am going to tarnish the picture of unalloyed virtuosity that has been painted today, they should think again. This is not an occasion for the warts to be painted on the portrait, at least not by me.

90 Notwithstanding my occasional Sunday afternoon doubts, it has indeed been an honour and a privilege and a pleasure to serve in this role. I still

sometimes pinch myself at the thought that the people of New South Wales through their elected representatives have entrusted me with the resolution of their various disputes.

91 I have taken up too much of your time. But before I relinquish the microphone, I have one last thing to say. When I came into the legal profession all those years ago, it was said to be, and it was, the domain of privileged males. The adjective “white” did not come into it, that was a given. Those who did not fit the pattern had no prospect. That was not – not quite - the full story. Sitting before you is exhibit A. I am a country girl. When I was admitted to the bar, my only legal connection was my brother who was a solicitor in a small practice. He was generous in his support but he alone could not give me entrée into the elite world of litigation.

92 There were real hurdles for women aspiring to be successful barristers, not only being allocated chambers. There still are. In a chance conversation in the lift last week with Justice Gleeson, I learned that in her four years on the Federal Court – two per cent of the silks who had appeared before her were women. This is 2018. The figures are bad, but my message is nevertheless one of optimism. I refer to exhibit A. Sitting alongside and behind me are exhibits B to H, and, while it might seem impertinent to pin an exhibit tag on a High Court judge, sitting on the cross benches to my right is exhibit G, Justice Bell, one of three women on the High Court, one of whom is the Chief Justice of Australia.

93 To the young women and, I add, to young men without the preferred connections and to those of different ethnic origins, I say the task is not impossible. Yes, it will be difficult, there is no doubt about that. Yes, you will encounter injustice, prejudice and bias, usually unarticulated. You will encounter resistance, sometimes overt, sometimes so subtle that you will hardly know where it is coming from. You will have to struggle more than your male counterparts - but give it a go. Look at the bench beside and behind me. The task is not impossible. I am not saying that you will not face obstacles, you will. The women I have crudely referred to as exhibits are not proof that

the obstacles do not exist, they are evidence that the obstacles can be overcome. You owe it to yourselves to give it a go and you owe it to the next generation who will, by your efforts, find it a little easier.

94 To those young women contemplating a career in the legal profession, perhaps with judicial ambition, do not be daunted. The obstacles are there, your challenge is to surmount them. To adopt and adapt the message of the former President of the United States, yes, you can.

95 It remains only for me to thank you, Chief Justice, for the patience, forbearance, tolerance and generosity you have shown me, for having the faith in me to recommend my appointment to the Court of Appeal where I found myself warmly welcomed, made new friends and enjoyed the different nature of the work and for your leadership of the Court.
