BENCH FAREWELL SITTING ON THE OCCASION OF THE RETIREMENT OF THE HON. JUSTICE CAROLYN SIMPSON AO

Court 12D

12 March 2024

Dr Ruth Higgins SC, President, New South Wales Bar Association

Ms Helen Roberts SC, Deputy Director, Director of Public Prosecutions

PRESIDENT WARD:

As all of you know, today is an auspicious day, a bittersweet day because it marks the last sitting day of Justice Carolyn Simpson, who is currently the longest serving judge of the Supreme Court. I have to say it has been an absolute pleasure and privilege to have worked with Simpson AJA and have been able to sit with her doing appellate work over the last few years. Her warmth and wisdom and wry humour have been much appreciated. I will sorely miss her, as will all of the members of the Court, I know. She has been affectionately dubbed by someone who shall remain anonymous, because he likes to be anonymous, but let us call him Andrew, as Dame Nellie Simpson.

Before we start her Honour's last hearing this morning, it would be appropriate for us to hear a few words and I would like first to call upon Dr Higgins, President of the Bar Association.

DR RUTH HIGGINS SC, PRESIDENT OF THE NEW SOUTH WALES BAR ASSOCIATION:

May it please the Court. I acknowledge the Gadigal of the Eora Nation, the traditional custodians of the land on which we meet and of culture, song lines and stories that stretch back to ancient times. I pay my respects to their elders past and present. I extend that respect to First Nations people present today.

Justice Simpson, it is an honour to speak on behalf the NSW Bar Association on the occasion of your retirement, having served as a justice, justice of appeal, and acting justice of appeal of this Court for three decades.

On the day you were appointed to the Supreme Court of New South Wales, 1 February 1994, the Sydney Morning Herald reported on many things. Page 6 expressed concern that the Federal Government's push to enforce the use of unleaded fuel in cars would ultimately fail. Leaded petrol was being discounted across the city. Page 3 reported the opening of law term speech delivered by then Chief Justice of New South Wales, the Honourable Murray Gleeson. His Honour warned that 1994 may be a difficult year for the legal profession.

On the day after your Honour's retirement as a permanent sitting judge of the Court of Appeal, 28 March 2018, the Herald dedicated a lengthy article to you. It noted that you were the second woman appointed to the Court and its longest serving female judge. It extracted the following passage from your Honour's own comments at the farewell:

> "To those young women contemplating a career in the legal profession, perhaps with judicial ambition, don't 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.'"

Your initial departure was exquisitely timed. 2018 marked to the Centenary of the enactment of the Women's Legal Status Act 1918 NSW which permitted the appointment of women as solicitors, barristers and judges of the Supreme Court. Your initial departure was also exquisitely short lived. Just 13 days after the occasion of your swearing out, you heard your first matter as an acting justice of appeal.

Now some six years later, having heard more than 400 matters as an acting justice, and having served 30 years on this Court, we gather to celebrate your singular contribution to the administration of justice in this State. 30 years is a long time. In this bicentennial year, it is nearly one-seventh of the life of this Court. It is the third longest period served by any justice of this Court.

In your Honour's swearing in speech on 1 February 1994 you observed:

> "Until very recently, appointment to this or any other court was properly seen as the last stage in a legal career. The professional equivalent of marriage. It was a commitment for the balance of one's professional life."

Your Honour has discharged that commitment with utter fidelity. That fidelity has, throughout your Honour's public life, been accompanied by qualities of creativity, courage and character. Your Honour's creativity emerged early and in telling ways. In sixth class at Cronulla Primary School you won a writing prize for a poem about the Russian Space Program. It concerned not spaceships, satellites or planets, but Laika, the stray dog found wandering the streets of Moscow, which became the first living creature sent by humans into space. Here perhaps can be seen the beginning of your Honour's affinity for both linguistic economy and the hard done by. These themes would recur.

Your Honour taught English and history at various schools, including Broken Hill High and Kogarah High before turning to the law. Once so turned, your Honour was, among many other roles, President of the Lawyers Reform Association, President of the Psychosurgery Review Board and President of the NSW Council for Civil Liberties. Giving the keynote speech at the 50th anniversary of the CCL in 2013, your Honour recalled aporetically: “What constitutes a civil liberty. Oh, what debates that phrase

gave rise to. And what energy and vitality and time your Honour gave to each of those and other organisations.

Your Honour's economy of expression has infused almost 2,000 judgments of this Court. Salient among them have been significant contributions to the criminal law and the law of evidence of this State and nation. The Deputy Director of Public Prosecutions, Ms Roberts of Senior Counsel, will address those matters today.

Let me focus then on one other area, defamation. Your Honour's judicial contribution to that jurisprudence commenced in *Megna v Marshall* [2010] NSWSC 686. In that case, your Honour considered the defence of qualified privilege in respect of volunteered statements. You found that a requirement of pressing need had been established in the law, relying, ingeniously, on obiter dicta in a High Court dissent.

A case then before the Court of Appeal considering the same principle was urgently adjourned following your Honour's judgment. A five member Court of Appeal agreed with your Honour's analysis, which decision was subsequently upheld in the High Court.

As an acting justice, that contribution has been sustained. In *Fairfax Media Publications Pty Ltd v Voller* (2020) 105 NSWLR 83 your Honour, alongside Basten and Meagher JJ, held that a person who maintains a public Facebook page may be liable as a publisher in respect of posts from third parties. That decision too was upheld in the High Court.

Your Honour presided over the defamation proceedings commenced by Craig McLachlan against ABC, Nine newspapers and Christie Whelan Browne which was ultimately discontinued. One of your last substantive decisions in the Court concerned defamation, the recently published *Whittington v Newman* [2024] NSWCA 27. That

judgment ended barring orders, with the pleasingly succinct observation about the applicant for leave: "The time has well and truly come for his defence to be filed."

Courage is not the absence of fear, but its mastery. Your Honour's courage is multifaceted. A striking extra-curial manifestation of it has been the many years you served as a volunteer firefighter. As a barrister your Honour was equivalently brave. You were called to the Bar in 1976 and took silk in 1989. Practising in crime, defamation, administrative, discrimination and commercial law. You undertook extensive pro bono work.

Your Honour's first appearance in the High Court appeared while you were a relatively junior, junior counsel. Halfway through argument your leader, whose name time has kindly excised, said, without warning, the words all juniors know they should celebrate, but also secretly dread, "My learned junior knows much more about this than I and she will deal with it." He sat down. Your Honour stood up. Your Honour argued the point with great skill. You sat down. You had, by any reckoning, arrived.

There is another species of courage exhibited by the judges of all State courts and acutely so by the judges of the Court of Criminal Appeal. Doing justice according to law in those jurisdictions necessarily involves exposure to fact patterns that disclose the worst of the human, to lives that have been broken before they were truly formed, and to dilemmas that lie too deep for tears. It involves carefully applying the law to those circumstances with as much compassion and yet objectivity as possible. It is a task that calls for moral imagination and intellectual fortitude and which must make a considerable demand on those who discharge it. It is a significant public service.

Be it the fury of fire in this hot land, surprise speaking roles in the High Court, or your Honour's 30-year tenure in this Court, you have demonstrated an unwavering

willingness to confront large and difficult tasks which you have then sought to resolve quietly and efficiently in the public good.

Can I come then to character. In researching for this speech today, I came again and again on the observation that your Honour is a private person, about whom it is notoriously hard to secure anecdotes. I treated that not as a challenge, but as a boundary and one that, in truth, imposed only a very small constraint. That is because of Aristotle. Let me explain why. Aristotle wrote that the function of rhetoric was not to persuade, but to see the available means of persuasion. Once these means are identified, "it is our decisions to do what is good or bad, not our beliefs, that make the characters we have." That is, character is action, and, character once formed, is "the most authoritative form of persuasion."

So it more than suffices to understand your Honour's character through the many decades of public activity in which you have engaged. In that connection it is necessary to recall one more time that in 1999, your Honour sat alongside her Excellency the Governor of New South Wales, then Beazley J and Bell J before her appointment to the High Court in the first all-female bench ever convened in the Common Law world. And my, what a bench. The hearing passed without event. The tempest preceded it.

In a story first recounted by the Honourable Peter McClellan AM, with permission, from whom I take a chain of permission, the night before this historic sitting, a significant hailstorm across Sydney resulting in widespread damage across the East Coast. The next morning your Honour sent Spigelman CJ an email in which you inquired, with reference to Genesis chapters 6 and 7:

> "Did we receive last night an expression of opinion from above at the enormity of the unnatural and wicked event you have ordained to take place today?"

The event of an all-woman bench happily occurs more frequently today than it did in 1999. Subsequent sittings have confirmed that the apocalyptic hail involved correlation and not causation.

Soon after your appointment as an acting justice, your Honour assumed the role of part-time Commissioner of the New South Wales Law Reform Commission and led the Commission's review of the law of consent in sexual assault matters alongside the Honourable Paul Brereton AM and Mr Alan Cameron AO. The New South Wales Government supported or supported in principle all 44 of the recommendations made by the Commission and largely effected them through significant legislative amendments enacted in June 2022.

It is then, perhaps, unsurprising that your Honour was awarded the Order of Australia in 2019 for distinguished service to the law and to the judiciary, particularly in the areas of criminal, defamation, administrative and industrial law.

Justice Simpson, may I say two final things on behalf of the Bar Association of New South Wales? First, thank you. Thank you for your singular commitment to the administration of justice in this State. Thank you for instantiating the things you valued and in so doing providing a lasting model for the generations of barristers, all barristers, and judges, all judges, who follow you. Thank you for carrying your authority with confidence and grace. Secondly, your Honour, to adopt and adapt the words of the 44th President of the United States, "Yes, you did." May it please the Court.

MS HELEN ROBERTS SC, DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS:
I do. May it please the Court. I too acknowledge the Gadigal of the Eora Nation, the traditional custodians of the land on which we meet. I pay my respects to their elders past and present and extend that respect to First Nations peoples here today.

It is a great pleasure to be called upon this morning to address the Court and farewell your Honour. Whilst I formally appear on behalf of the Director of Public Prosecutions and Crown Prosecutors of New South Wales, I hope and certainly intend that my remarks embrace and represent the sentiments of the Criminal Bar more widely and of criminal practitioners wherever they usually sit at the bar table.

Your Honour has made an extraordinary contribution to the development and elucidation of criminal jurisprudence in this State. Given the length of your Honour's service, I am making no claim to particular youth when I say that it was four years before I was admitted to practice in New South Wales that your Honour was appointed as a judge of the Common Law division of this Court.

Your Honour's judgments have accompanied me and so many of my colleagues throughout our careers. For reasons I will explain, I do not mean this only as a metaphor. Your Honour was an early authority on the construction, operation and application of the *Uniform Evidence Act*. One of the many important subjects upon which your Honour is written in the criminal law is tendency and coincidence evidence.

At your Honour's 2018 retirement ceremony, then Bathurst CJ said of that subject:

> "It may have taken the rest of us another ten years, but your analyses, particularly of s 97 in *R v Fletcher* and *R v XY* and s 98 in *R v Zhang* now garner the support of a majority in the High Court. Your judgments have not only stood the test of time, but can be seen as the first expositions of now accepted doctrine."

The judgment in *Fletcher* to which the former Chief Justice was referring was published in 2005. In that judgment your Honour reminded the reader of the need for precision in identifying the evidence which the Crown seeks to introduce as tendency evidence and the need for similar precision in identifying the evidence to which objection is taken.

Your Honour set out in detail the necessity to proceed logically through the *Evidence Act* provisions properly construed in determining whether to admit such evidence and demonstrated how to embark upon this task consistently with principle and by reference to the facts of the case at hand. Under these circumstances, it is not surprising that there was a generation of Crown Prosecutors and trial lawyers who ensured that your Honour's judgment in *Fletcher*, among others, was printed out and tucked inside our briefs or under our arms to accompany us as we rushed to court for pre-trial argument. It is not only your Honour's famously impeccable grammar which lends your judgments are such clarity. Your Honour has said that it was your period as an associate to Judge Robson in the District Court watching admissibility arguments and cross-examination in criminal trials that caused your Honour to first become “hooked” on the practice of law. This was followed by your many years practice at the Bar, including in crime. Even as a vastly experienced appellate judge, your Honour retained an understanding of the task and the challenges facing counsel seeking to understand and apply principles of evidence law in the dynamic environment of a criminal trial.

Your Honour has also made outstanding contributions to jurisprudence in the area of sentencing principle where you have consistently reasoned towards a holistic assessment of the circumstances that may contextualise or cause offending. In the judgment of *R v Henry* your Honour stated that, "Drug addiction is not always the disease. It is, as often as not, a symptom of social disease." Coincidentally, this judgment was delivered in the same year that the first Drug Court in New South Wales opened in the District Court at Parramatta. Your Honour's remarks in *Henry*, prescient as ever, captured the philosophy that has guided the Drug Court since its inception.

Further evidence of your Honour's insight can be found in *R v Millwood* where your Honour stated that you were not prepared to accept that offenders from disadvantaged and deprived background should bear equal moral responsibility with those who have had what may be termed a normal or advantaged upbringing as common sense, your Honour said, and common humanity dictates that these offenders will have fewer emotional resources to guide their behavioural decisions. This statement is echoed in the reasoning of the High Court in its later decision in *Bugmy v R* and has been cited or considered in over 100 published judgments, including those handed down in the superior courts in New Zealand.

Millwood is another judgment of your Honour's which many advocates have literally carried in their back pocket ready to refer to when required on behalf of their clients in courts all over New South Wales and I would venture Australia. Your Honour has provided judicial guidance on this subject for over a decade, writing again as recently as November 2023, explaining the application of what has now become well known as the "*Bugmy* principles" in *MJ v R* [2023] NSWCCA 306. These cases are, of course, but a very few examples of the very many important judgments that your Honour has published.

Turning to matters more personal has proved far more difficult to research. Your Honour has been repeatedly described as notably and unjustifiably modest concerning your achievements. This personal quality was given some life in a practical sense in your judgment writing work. I have been reliably informed that your Honour strongly preferred not to cite yourself. This preference, which may I respectfully observe is not a universally held preference, led to additional work for your Honour's tipstaves as they would be asked to locate a source of principle or point that your Honour had previously made, but which had been expressed by another judge.

This undoubtedly created no insignificant amount of work for your Honour's researchers given that your Honour is not only the original source for many fundamental principles, but also a much quoted source, no doubt because of the wisdom, humanity and elegance with which you express important ideas.

Your Honour has a reputation for hard work and diligence and is not known for excess in your hobbies and social life. Recently, however, your Honour started accepting invitations to participate in outings of an informal judicial film group. This group of predominantly, but not exclusively, women justices of this Court attended movies of interest. The first was a screening of Suzie Miller's play, Prima Facie. In a scene markedly different from one which would have been possible during your Honour's earliest days on the Court, a dozen women judges occupied an entire row of the theatre. More recently, the group attended a preview showing of the Barbie movie. I am given to understand that your Honour expressed a degree of scepticism or perhaps it was bemusement about the feminist credentials of the latter.

The retirement of any Supreme Court Justice is no small thing, but your Honour's is particularly noteworthy. May I respectfully agree with the Chief Justice who stated on Friday that your Honour is universally respected for your mastery of the criminal law, the wisdom of your judgments and the elegance of your written work. Your Honour has been an inspiration to generations of lawyers. To adapt your Honour's own words, if I may, your common sense and common humanity will be greatly missed. It has been an immense privilege to have the opportunity today to thank you for your exceptional contributions and to wish you well in your retirement. May it please the Court.

JUSTICE SIMPSON:

I start by saying that those who think the legal profession is a harsh and unforgiving master should attend events such as this. The generosity accorded to a departing judge is at a level ordinarily reserved for funeral and memorial services where convention demands that the deficiencies of the departed be swept out of existence and what remains transformed into virtue. I have now been the subject of three valedictories. I could get a taste for it. Another one and I might start to believe it. My family, some of whom have been regular attenders, wonder if they wandered into the wrong service honouring a paragon they do not recognise. Thank you, Dr Higgins, thank you, Ms Roberts, for your part in continuing the illusion. Thank you not only for your overly kind words, but for taking time out of your busy professional lives to mark this, my final sitting on this Court.

When I was sworn in as a judge on this Court on 1 February 1994, I noted, using the language of what was then the *Sentencing Act*, that I faced a term of 24 years and two months with a non-parole period of 12 years and two months. Little did I then know that before the expiration of that term, legislators would pre-emptively extend the maximum term and then dream up the notion of continuing detention orders. I served both the original term and the extension.

Lucky for the citizens of New South Wales that their prisons do not provide a custodial environment as congenial as that of the Supreme Court. Were it otherwise, property and personal safety would be at serious risk as the criminal element clamoured for admission. The analogy was uncalled for and misguided. There has been nothing punitive about my time in this Court.

From my first day on the Court, I have felt at home. I was generously welcomed by then Chief Justice Gleeson, by then Chief Judge at Common Law, David Hunt, and by the other members of the Common Law Division, all of whom, of course, have now left. I have had the privilege of serving under four Chief Justices, each of whom brought his own unique style and approach and new and innovative ideas to the administration of the Court. One common element is their preparedness in the interests of public service to leave behind successful professional practices where the rewards are great - and I do not mean merely monetary. Another common element is their outstanding intellect and their mastery of the law.

I have had the immense privilege of sitting with each of them on the Court of Criminal Appeal and, more recently, with the present Chief Justice on the Court of Appeal. I thank all of them for the tolerance they have shown when I have faltered, for the guidance they have given, for the wisdom they have shared and for their collegiality in the Court of Criminal Appeal and the Court of Appeal.

I have served under four Chief Judges at Common Law, alongside a fifth, the current incumbent Justice Harrison, and alongside countless judges of the Common Law Division. Chief Judges of the Common Law Division have onerous responsibilities, managing a large Division with competing demands, endless lists of cases, civil and criminal. I thank them all for their forbearance. I make special mention of Justice Peter McClellan, who remains a friend, and who left the Division to take on the important work of chairing the Royal Commission into Institutional Responses to Child Sexual Abuse.

I have also had the privilege of serving under three Presidents of the Court of Appeal, the first being her Excellency, the Governor of New South Wales, the second, the

present Chief Justice, and the third the incumbent, my friend and colleague, Justice Ward. The task they undertake in managing to divide a heavy workload among a small number of judges is truly awesome, as is the cooperation of the commitment of those judges. Under the stewardship of each President, the Court has retained its position as a, if not the, leading intermediate appellate court in the country. I anticipate a dissenting opinion from south of the border.

In coming months, as the Court moves into its third century, there will be many opportunities for reflection on its history and achievements. Under the guidance of Chief Justice Bell, much of that history and those achievements have been recorded in a captivating gallery which you can see in the public areas of level 13 outside the Banco Court. I do recommend a visit.

Much has changed in the administration of justice since 1824. I will confine myself to those changes I have personally observed in the last 30 years, principally in the Common Law Division. First, the nature of the work. In 1994 the civil work of the Common Law Division consisted largely of claims for damages for personal injury suffered either in industrial accidents or motor vehicle accidents. Through a progression - and I emphasise progression, not progressive - series of legislative interventions, what were established common law rights have largely disappeared. In place of claims for damages determined on common law principles are applications for judicial review of determinations of the same claims made administratively. It is not apparent to me that that has improved the quality of justice for injured plaintiffs.

Also, a significant part of the workload were claims in defamation and claims for damages for asserted professional negligence. Defamation too has undergone radical change as State and Territory legislatures sought, eventually with a measure of

success, to rationalise the jurisdiction that, with the advent of modern communication technology, called out for uniformity. As a result, much of that work has defected to the Federal Court - one theory at least being that this is to avoid jury trials.

The most difficult decisions in my experience involve the claims for professional negligence. I doubt that there are any among us who has not slipped up in some way in the discharge of our professional obligations. In our case, those slips are corrected by appellate review. Such a slip may have devastating consequences for the client or the patient. A finding of professional negligence will almost inevitably have devastating consequences for the reputation and self-esteem of the professional concerned. That is what makes these decisions so difficult.

The criminal work of the Common Law Division in 1994 almost exclusively consisted of trials for murder with an occasional trial for a large-scale drug importation. While that regrettably continues to constitute a large part of the criminal work of the Division, the load has expanded to incorporate trials of charges of terrorism. These are lengthy, difficult, emotionally demanding, and call for significant security measures imposing a level of stress beyond the normal for a criminal trial.

Also taking up much time of judges of the Common Law Division is the new jurisdiction of Continuing Detention Orders and Extended Supervision Orders. These were unknown in 1994, when it was assumed that a prisoner completed his or her sentence and was freed of restrictions.

Second, the impact of technology. I am starting to sound like Methuselah even to myself, but there was a time in living memory when we operated without computers and, indeed, without mobile phones. Technology means that anything and everything is retrievable. Medium neutral citations, an innovation of the late 90s, enables any

previous decision to be recovered and cited and exposed to minute examination of the reasoning. Judgments have to be carefully honed to avoid the perils of loose thinking or, worse, contradiction of or inconsistency with an earlier expressed view.

Third, the complexity of the law. Where once we applied principles of common law developed over years for the determination of disputes, much of the work of the Common Law Division is now regulated by the *Civil Liability Act* and the fiendish and demonic *Workers Compensation Act*. Section 115Z of that Act was the handiwork of a sadist set upon blighting the lives of Common Law Division and Court of Appeal judges and, no doubt, counsel. Where once and not so long ago the admission of evidence was governed by well-established Common Law Rules with a tiny pamphlet called the *Evidence Act* to which little regard was had, now the 1995 *Evidence Act* regulates the admission of evidence.

Fourth, the nature of evidence adduced in the Common Law Division. In 1994 the principal evidence was given orally. Opponents who had the benefit of pleadings could be taken by surprise by a detail included in evidence in chief. In the Equity Division, it was long the case that evidence in chief was given in affidavit form. Now detailed statements are exchanged, each side knows precisely what a witness is going to say and any departure provokes cries of ambush. Disputed evidence may be resolved by CCTV footage. In criminal cases, evidence may be derived from listening devices for which appropriate warrants have been issued. Criminals can be tracked through their mobile phones even when they are not switched on. The point is evidence is very frequently governed by the available technology.

Through all of this change, the collegiality of the Court has never wavered. The Court is, of course, constituted by judges of widely differing social and political views and

personality types. It cannot be gainsaid that all of them labour under intense pressure. The workload is demanding and relentless. No sooner is one case heard then another looms. Frequently they throw up difficult questions of law and/or fact. The outcome of many of those cases will have a profound impact on the lives of the litigants and their families, whether the case involves a claim for damages for personal injury, negligence of a doctor, lawyer or other professional or an accusation of crime that might result in a sentence of imprisonment.

Inevitably among the judges there will be areas of disagreement as to the resolution of those questions. Invariably those disagreements are resolved with courtesy and respect for differing opinions. For nigh on 200 years this Court has addressed these disputes. It is a credit to successive governments that almost without exception they have made appointments to the Court that maintain and continue the high standards that have long been set.

It would be remiss to confine these observations to the Supreme Court. By far the largest slice of the litigation work in this State is undertaken in the District Court and the Local Court. The judges and the magistrates of those courts work under sometimes crippling caseloads often with inadequate resources. As I mentioned at a previous function, the quality of their work is to be gauged not by successful appellate outcomes, but by the much larger proportion of decisions which never see the inside of an appellate court.

This Court could not function without its behind-the-scenes administrative staff. From Greg and James in the basement car park, to registry staff headed by Chris D'Aeth, currently on secondment as Acting Deputy Secretary Courts Tribunals and Services Delivery in the Department of Communities and Justice, and now Rebel Kenna ably

assisted by Nick Sanderson-Gough, Nathan Gray, assistant manager at Courts Operation and Communications. The administrative staff offer unstinting support.

I cannot speak too highly of the library staff. Thanks to the advances of modern technology, judges now seldom physically enter the portals of the library; all is done remotely. The library staff are unfailingly helpful, able to locate the most obscure references.

The Judicial Commission, at its inception reviled by judges as a threat to judicial independence, provides ongoing support. New judges are given an orientation program where they learn to avoid pitfalls lying in wait for the rookie judge. Education programs keep judges up-to-date with new developments in the law. The annual conference is educative, stimulating and fun. All of this from a body that was born out of a dark period in legal history when one judge was wrongly vilified for too lenient sentencing.

Over 30 years I have been supported by a stream of personal assistants, associates and tipstaves. Until 2018 I was for many years blessed with the assistance and support of Lynn Nielsen who has now found herself a home with Justice Adamson just down the corridor, so she is not lost to me entirely. More recently I have been fortunate to have the assistance of two experienced associates, Angela Flockhart, who sits in front of me, and Marie Miller, who job share. I thank them both for all they have done for me. They tolerate my endless scrawled pencil-written amendments to draft judgments. They do not complain, at least in my hearing, when I tell them I have decided to ditch one draft and rewrite.

It has been a joy to engage with the succession of bright, enthusiastic, energetic young lawyers as tipstaves. Most recently, and only because Justice Macfarlan made a sudden decision to take the retirement option, I was blessed with Sam Goldberg, about to go to Oxford as a Rhodes Scholar. I thank him for the work he did during the whole of the last year.

I joined a Court that was universally respected for intellectual rigour, its commitment to the standards of justice inherited 200 years ago and maintained throughout those two centuries. Although much has changed in the Court, adherence to those standards has never wavered. Because of the adherence to those standards, although with some notable exceptions, the decisions of the Court are accepted by the litigants. Stability of the society depends upon acceptance of decisions of Courts at all levels.

The Court I joined in 1994 was constituted, with the notable exception of the legendary Jane Mathews, only by men all, again with one exception, Justice Windeyer, appointed from the Bar, and all of Anglo-Saxon descent. All had taken the oath of office and allegiance on a Christian Bible. For a glimpse of the Supreme Court of the not too distant future, wander into the Banco Court on any admission day. There you will see the judges of the future. More than half of them female, from a wide variety of ethnic backgrounds, a wide variety of faiths. No longer does an admittee who wants to affirm allegiance stand out. These new admittees reflect the changing composition of our society and will, in time, be rightly represented at all levels of the judiciary. For myself, I look forward to the day when an indigenous judge will be welcomed to the Court. Already we are seeing the beginnings of ethnic diversity and the recognition of diverse lifestyles.

I cannot help noticing that all speaking roles at this function have been taken by women. So are we there yet? Not until such a circumstance passes without notice. I need not have mentioned it. It cannot be overlooked, however, that 18 of the 52 judges of the Court are women. Much, however, remains to be done in terms of wider diversity.

In 1994 I joined a court that had functioned uninterrupted for 170 years. Five years later the Court marked 175 years of operation. In one of the great moments in the evolution of the Court, in a ceremony in the Banco Court to celebrate that event, then Chief Justice Spigelman invited Aunty Ali Golding, an Aboriginal Elder, to give a Welcome to Country. That was ground-breaking. It established a tradition that has continued. It marks recognition by the Court that it, like the wider society, has been the beneficiary of historical wrongs. I was and am proud to be a member of a court that, however belatedly, acknowledges those wrongs. In saying that, I join in Dr Higgins and Ms Roberts in acknowledging the Aboriginal traditional owners of this land.

I am sad that the accident of my birth date means that I will be an onlooker rather than a participant as the Court moves into its third century. I first confronted judicial mortality six years ago, as it happened, on Good Friday in 2018. Then Chief Justice Bathurst stayed execution of the judicial death warrant and I was able to continue for another six years. As it also happens, my next confrontation with judicial mortality will come on Good Friday of this year. Not even the formidable and seemingly infinite talents of the present Chief Justice can stay that execution.

I depart the Court with gratitude that the people of New South Wales have entrusted me with the resolution of their disputes and with the management of accusations of

crime over the last 30 years. Those 30 years seem to have passed in a flash. I thank you all for your attendance at this informal event. I am honoured by the presence of the Chief Justice, many judges of the Court, former judges of the Court, those living in contented retirement, I think, and some judges of the Federal Court. I am grateful for the warm good wishes I have received from those who were unable to attend. I will now leave you to get on with your busy lives. Madam President, I think we have work to do.

WARD P:

Can I say in closing, Justice Simpson, that I am delighted that I will be able to have the honour of sitting with you in your final hearing shortly this morning. It is perhaps not a surprise that that is the case since I did have a hand in setting the coram list. I do hope your reference to dissenting opinions is not a premonition of what is to come. The Court will now adjourn.

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