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Swearing-in Ceremony of The Honourable Ruth Stephanie McColl SC as a Judge of the Supreme Court of New South Wales and a Judge of Appeal

THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

SPIGELMAN CJ
AND THE JUDGES OF
THE SUPREME COURT

Tuesday 29 April 2003

SWEARING-IN CEREMONY OF
THE HONOURABLE RUTH STEPHANIE McCOLL SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES AND
A JUDGE OF APPEAL

1 **McCOLL J:** Chief Justice, I have the honour to announce that I have been appointed a Judge of this Court and a Judge of the Court of Appeal. I present to you my Commissions.

2 **SPIGELMAN CJ:** Thank you, Justice McColl. Please be seated while the Commissions are read. Principal Registrar, would you please read the Commissions.

(Commissions read)

Justice McColl, I ask you now to rise and take the affirmations of office, first the affirmation of allegiance and then the judicial affirmation.

(Affirmations of Office taken)

Principal Registrar, I hand to you the affirmations so that they may be filed in the Court archives.

3 Justice McColl, on behalf of all of the judges of the Court and on my own behalf, I welcome you as a judge of this Court and congratulate you on your appointment.

4 The High Court is sitting in Canberra today. Four of the judges, all former judges of the Court of Appeal, have asked me to express their apologies for their inability to be here: Chief Justice Gleeson, Justices McHugh, Kirby and Hayden.

5 Your Honour having had a distinguished career at the bar, you matched that career with a considerable body of public service, particularly in the legal profession, most especially to the members of the Bar Council and, let me add, you were its first woman president.

6 I look forward to serving the people of New South Wales with you in this new capacity for many years to come.

7 **MR B WALKER, PRESIDENT BAR ASSOCIATION OF NEW SOUTH WALES:** May it please the Court.

8 Your Honour's elevation today is but the latest stage in an exemplary career - a career exemplary not merely because of the quality it has exhibited, but because of the practical illustration it provides,

both as to its past, its present and, in particular, as to its likely future for those who may be inspired to follow.

9 In particular, in light of what the Chief Justice has noted as to your presently unique status as a woman president of the Bar Association, it is unavoidable to note the example you set for women in the legal profession and, in particular, as I am bound to concede in relation to the Bar Association and the Bar throughout the country and in this state, for women who are inclined to come to the Bar.

10 I will leave to my colleague, Mr Benjamin, a reference to your work as a solicitor before you came to the Bar. But I go back in time, first, to note the importance of your schooling at Willoughby Girls and then the University of Sydney from which you graduated in Arts and Law before becoming a solicitor of this Court.

11 You came to the Bar in February 1980. You came to the Bar as it happened with a contact which was really important in the early years and, I venture to guess, has remained important ever since. Because following a tradition which continues and is as good as it is old, hospitality was afforded you on the eighth floor of Wentworth and, in particular, the mentorship and hospitality of Peter Young of Counsel, of Queen's Counsel, as he then became.

12 Not surprisingly, with that start, your Honour eventually developed an extremely busy practice of a kind which fits you for the generalist work of the Court of Appeal. It is invidious to select particular areas of your expertise which you exhibited both as a junior and as a silk, but it suffices to note that there will be no commercial law which will escape your probing scrutiny. In particular, there will be nothing in relation to that most pellucid and short statute, the *Corporations Act*, which will escape your attention and, in particular, those whose feeling for freedom of speech or lack of tarnish on the reputation, depending upon the brief, will take them into the Court of Appeal in the fields of defamation will find that they have stepped very often out of the frying pan into the fire.

13 It is impossible, as President of the Bar Association, to rise to speak to your Honour today without noting the tremendous record, both in depth and in scope of your Honour's service to the legal profession. And, before proceeding further, I wish to acknowledge the presence in Court, representing the President of the Australian Bar Association, Mr Glen Martin, of Senior Counsel, from Queensland. The Australian Bar Association presents its congratulations and compliments on this occasion. It is highly significant that the trouble was taken to indicate, at a national level, the pride the Bar feels in your Honour's elevation.

14 If you say the figures quickly, to state that your Honour was on the Bar Council every year from 1981 to 2001 sounds as if it was a relatively straightforward exercise. Service of that length and at the positions which I am about to recite, held, perhaps enjoyed, certainly exercised by your Honour, is to say something which requires a little bit of elaboration.

15 For a start that is an annual election. Well, that is one thing that, very early, for a barrister who was just one year senior, very early never troubled your Honour. However, it has to be said that the continued accolade of your peers, your seniors and your juniors by way of election to the Bar Council with ever increasing ballot demonstrated that, notwithstanding the principle stands you took on many issues, often bringing you in conflict with other strands of thought, the opinion of your peers remained that you should be at the very heart of the governance of the profession.

16 It suffices to note that you were the secretary of the association, '87 to '94, its treasurer '95 to '97 - I'd like to say those are the years where our enormous wealth was laid down, but alas that's not true. You became senior vice-president in '98, '99 and, as we all know and came to admire, you were our first woman president, 2000, 2001.

17 Importantly, apart from holding of those offices, your Honour was always engaged in works of active committees. The committee system of the Bar Association, being the method by which the lay community, the political community and the legal community are able to advance together and, with their differences and emphasises, conduct the administration of justice in this state.

18 There were 16 years of ethics complaints, or public professional conduct committees - different names for the same very wearying and important exercise. You were, most importantly - a position that is always thankless, but ought to be thanked very occasionally - editor of Bar News from 1985 to

1997, an extremely important contribution to the corporate and more permanent life of the Bar for which we are most grateful.

19 Your Honour's commercial experience led, of course, to a natural interest in alternative dispute resolution and related arbitration. And you indeed were, of course, the chair of the ADA and Arbitration Committee. Importantly, you were, notwithstanding your success at the Bar, unassisted by any favouritism of any kind, extremely generous in your time given eventually as chair of the Equal Opportunity and Gender Issues Committee, a committee which is both hard working and operates in a most invidious area of conflict and political controversy.

20 Of course, by reason of your office, you, in time, became the chair of the Senior Counsel Selection Committee, a matter which is of significance, given that when your Honour took silk in 1994, what was then not known, but today is clear, is that you are the first of the Senior Counsel to sit on the Court of Appeal. May that not be the last of the distinctions that you have as the first of Senior Counsel on the bench.

21 Following the reforms of the legal profession structure of which I spoke briefly in welcoming your brother Tobias yesterday, your Honour became a member of the Legal Profession Advisory Council, a group which, appointed under statute, is another attempt by parliament to link community, both professional and lay and political, in relation to the proper approach to the balance between professional elitism or quality on the one hand, and consumer interests on the other.

22 Significantly, for your work on the Court of Appeal, you have also seen the inside of the Supreme Court Rule Committee where you served as our representative from 1995 and then 1998-2003.

23 One of the most important aspects of what your Honour has done however, in your work for the Bar and the Bar Association, was to ensure that High Court legal work and election to the highest of offices never allowed more pressing social issues to be left behind from your attention.

24 Hence, you were elected to the board of the Public Interest Law Clearing House, a most important organisation for the provision of pro bono and special interest and special issue litigation in this State and now around the country.

25 You were a part-time Commissioner of the New South Wales Law Reform Commission appointed in October of 1998. Having been elected president of PILCH in 1999, thereafter you were appointed to the advisory board for the Faculty of Law at the University of Melbourne and then became, in 2001, President of the Australian Bar Association.

26 As the second woman president of the Australian Bar Association, you continued the work of your distinguished predecessors and, in particular, took the steps which were necessary to ensure that the Australian Bar was concerned, not only with the spread of the independent referral Bar organised throughout the country, but also to ensure that the ethical emphasis and the emphasis on being able to provide assistance pro bono on appropriate cases continued at the highest level and throughout the country.

27 Thus, for example, you chaired the Law Council of Australia's Advisory Committee on indigenous legal issues, spreading nationally the great influence you had locally on the Bar Council in relation to the strategy for Indigenous lawyers. It was entirely appropriate, therefore, that your recent award of the Centennial medal noted your service to Australian society, not just to the law.

28 Your Honour's other offices include, of course, having been President of the New South Wales Women Lawyers' Association. I put New South Wales first, not because it is the proper way to name it, but in order to say where that came from, that is, the older established body, but, importantly, from that base, you were one of the founders of the Australian Women Lawyers' Association and became its vice-president 1996 to 1999.

29 One of the most important aspects of your Honour's presidency is something which needs to be spoken of, not least because it will be, we are sure, a continuing concern of yours and we hope something with which you will continue to assist the Bar and, through it, the public.

30 When you first became president, you were determined to be consultative about strategic directions. One of the most important methods you adopted was to have what I remember as a rather long, but very thorough, seminar on a weekend of all times during which it was decided, as it happens unanimously, in a room filled not just with Bar counsellors, but with representatives from many parts of the Bar and, after advice from outside the Bar, it was decided - not by reference to any external pressure, or, let alone, any threat from the political establishment - that the Bar should organise, in a formal way, continuing professional development. Importantly, it was decided that this would be a program designed by the Bar for the Bar, but in the public interest.

31 And it was your Honour's leadership entirely, if I may say so, assisted ably by Justin Gleeson of Senior Counsel, which saw that program carried through to the fruition, which I hope to be able to report later this year.

32 Alas, it requires however, also to mention when mentioning your Honour's splendid achievements as President of the Bar, a much less happy episode in the history of the Bar, over the rehabilitation of which your Honour ably presided. And I venture to suggest I can speak for the Attorney General standing immediately to my left when I say that it was your Honour's role in rapidly denouncing that which should be denounced, with respect to the failure to honour their civic obligations in relation to taxation of certain members of the Bar, that led both to the rapid governmental, then later parliamentary and continuously professional response of a highly principled and, I know, painful kind over which your Honour so capably presided. The Bar will owe you a particular debt of gratitude into many years to come for the way in which you dealt with that extremely unhappy episode. Meantime, though it may be surprising to know, your Honour had practised.

33 Those of us who sat with you at Bar Council and tried to keep up with you at other work for the Bar and for the profession generally would be relatively appalled to learn from time to time that, whereas we were going off for a drink or we were taking the weekend off, you would be relaxing by running 30 or 40 kilometres preferably before breakfast and for all we know some time after dinner as well, but your Honour's long-distance running did not prevent you from having a practice which justifiably was the envy of many. I need to mention just a few in order to show the way in which things come around.

34 Perhaps one of the most important cases in the area of the relation between leases, the covenant of leases, the demise of leases and contractual principles, *Shevill v Builders Licensing Board*, is one where you were led by your mentor, Peter Young, of Queen's Counsel. You were opposed by your colleague on the Court of Appeal, David Hodgson, of Queen's Counsel, who led one of your colleagues on the Court, Greg James, of Counsel. Whether or not that is the case which is compulsory to have appeared in order to achieve professional mention is a matter for speculation.

35 Importantly, your new colleague, the President, led you in *Attorney General of New South Wales v Quinn* and when Mr Mason, Solicitor-General, as he then was and you put those arguments you were, of course, making law of a most important kind in relation to procedural fairness and natural justice.

36 An argument that you put on the most important kind which you lost, of course, was in *Kartinyeri v The Commonwealth*, a most important decision, of current importance, particularly in relation to the nature of the arguments you put, namely that international human rights, norms of a kind to which Australia had succeeded by a treaty, were matters which were proper to be considered in the interpretation of statute. Alas, you went a bridge too far and suggested they needed to be taken into account in interpretation of the constitution, a matter which rather put the cart before the horse historically.

37 Finally, of course, one needs to mention *ASIC v DB Management*, an important case in relation to that most peculiar of devices in the Corporations Act, whereby application can be made by affected parties for the so-called modification of laws to meet the exigencies of particular circumstances in takeovers, a case which illustrates the skill with which your Honour will be able to deal with the heaviness of the commercial work in this Court.

38 Apart from adversarial work at which your Honour excelled, one of the matters which will bring to your Honour's perspective on this Court a most important respect for administrative law and a skill in judicial review is the inquiry work at which your Honour became so skilled.

39 Apart from the Independent Commission Against Corruption, where you were a most important

counsel and Assistant Commissioner, particularly if I might mention in relation to the revolting habit of ratting at the morgue, your Honour went on to deal with one of the most sensitive of matters, the tragedy of the Thredbo landslip, as counsel assisting the coroner.

40 On a personal note as it happens, by sheer coincidence, I conducted inquiries which followed both your Glebe Morgue Inquiry at ICAC and your work as counsel assisting at Thredbo, and I can say that the work which your Honour and your team did in both of those cases - but, in particular, with Thredbo - represents extremely important public service to the State transcending the law in transcending the administration of national parks and going into some extremely important areas in relation to the balance between conservation, tourism and public safety.

41 Your Honour comes to the Bench with the best wishes of the Bar. We have no doubt this is not a culmination, but a beginning and we wish you all the best.

42 **MR R BENJAMIN PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

43 On behalf of the solicitors of New South Wales, the Law Society of New South Wales, and personally, I congratulate you on your appointment as both a Justice of the Supreme Court and as a Justice of Appeal.

44 As President of my professional body, the pleasure of wishing colleagues well in their careers is one which I am readily able to indulge.

45 Of course, your Honour has also enjoyed that privilege as recent president of our sister organisation in the Bar. This ceremony must, therefore, provide both a strong sense of the familiar, while, at the same time, being strangely new.

46 Your Honour undertook post-graduate articles in 1975 and 1976 and then, from 1976 to 1980, you practised as a solicitor all with the New South Wales Crown Solicitor's office. Your public service commenced at the very start of your career and remains with you. In 1980, you were called to the Bar; that part of your career has been well canvassed and I will not repeat it, for Mr Walker is far more erudite than I and further, as successor to your Honour, as President of the Bar Association, the pressure was really on him to ensure that he missed nothing of your impressive career to date.

47 As a qualified mediator and as a past chair of the Law Society Dispute Resolution Committee, it is apposite for me to note with approval that you have both trained as a mediator with LEADR and chaired the Bar ADR and Arbitration Committee. This reflects the broadening over our professions of dispute resolution skills and options which have occurred over the last two decades.

48 Your Honour is well known and well regarded as a defamation counsel. In researching this speech, I saw that you were involved in the Ettingshausen defamation case before Hunt J, which case involved significant technical aspects regarding imputations in defamation proceedings. I believe that Nicholas J appeared for the plaintiffs in that proceeding. However, as a Cronulla Sutherland resident, and residing near the local football stadium, the case and verdict brought about significant publicity and some money damages, but it did not bring my local football team any on-field success.

49 You have shown yourself capable of dealing with some of the most complex matters in law. One such matter was that relating to Giant Resources – “giant” by name and “giant” by nature. The most significant case of its type, there were five or six separate actions running at the same time and involving most of the major Sydney law firms.

50 Though you were the junior to Tom Hughes QC, who is to my right, you took on an enormous workload, writing submissions on some of the most difficult aspects. You were instrumental in developing the submission on how to determine the insolvency of a company. And it may interest you to know that elements of your work are now quoted at Cambridge Law classes.

51 This case was so big in terms of time, complexity and the level of the stakes involved, that you realised it would require a huge commitment. You made that commitment and it was clear to those around you that you were methodical and that you thrived on what you were doing. This dedication

greatly influenced the team of solicitors, many of whom looked up to you as a role model. No matter how heated things became, you remained calm and level-headed and rational.

52 One of your qualities to which solicitors who briefed you refer is your thoroughness and methodical approach - a powerful combination.

53 That thoroughness was evident when you were counsel assisting in the Thredbo Inquiry looking at the landslide that tragically crushed two ski lodges. You became an expert in the local terrain and conditions. When visiting the area some time later for a skiing weekend with friends, you went out walking with them on an afternoon too inclement for skiing. I don't know that there is such an afternoon too inclement for skiing, but apparently there was. As you literally knew every square inch of the valley and its recorded history, said one, who claims you were able to regale the group with comments such as, "This is lot 27 which experienced a landslide in 1967 coming from a south-westerly direction".

54 Your legal skills were and are recognised by your peers in electing you to the Bar Council and in your leadership of the Bar through some of its most challenging times. Solicitors speak of your thoughtful and well-balanced approach in respect of your former practice at the Bar and, in particular, leadership of the Bar.

55 What solicitors believe is of at least equal importance is the great deal of voluntary time you have given to the profession and the community. You are remembered by the Law Society for your efforts on the steering committee which helped set up the National Pro Bono Resource Centre.

56 In addition, you have led the Public Interest Law Clearing House, a body which attempts to coordinate the provision of pro bono services throughout the Australian community.

57 With the Law Council of Australia, as was noted by my colleague, Mr Walker, you pushed hard in the area of Aboriginal access to justice, chairing the Council's Advisory Committee on indigenous legal issues.

58 You have also turned your attention to the issue of women, looking at their career paths and question of equal opportunity.

59 The tenacity and persistence you have shown in your professional life has been mirrored in your commitment to running. One colleague informed me that you ran the pre Olympic marathon course around Sydney, cheered on by a team of friends who drove to various vantage points around that particular route.

60 One of your staunchest supporters, Mitzi McColl, is here to celebrate the importance of this occasion - described as "a fiercely independent person who has been the role model for her fiercely independent daughter".

61 Earlier I referred to Giant Resources as one of the great cases in your career. In that proceeding, counsel appearing for Standard Chartered Bank of Australia Ltd was Justice Murray Tobias. It is no small irony that, only yesterday, in this place, he too was sworn in as a Justice of this Court.

62 Your Honour, the solicitors of New South Wales and I wish you a long, happy and productive life on the Bench. As the Court pleases.

63 **McCOLL J:** Chief Justice, your Honours of this Court and of other Courts, Mr Walker, Mr Benjamin, Attorney General, members of the profession, ladies and gentlemen, I thank you all for doing me the honour of attending Court today to celebrate this occasion with me.

64 I acknowledge the Eora people, the traditional owners of the land that we are on today.

65 Thank you, Mr Walker and Mr Benjamin, most sincerely for your generous remarks, expressions of goodwill and for continuing the tradition of hyperbole for which these occasions are infamous.

66 Opportunity shapes destiny: and so it was for me. My destiny was shaped by the opportunities afforded to me as a citizen of a vigorous, egalitarian democracy operating under the rule of law.

67 Australia provided an attractive alternative polity to my paternal great grandfather who arrived from England in 1875 with his family in search of a climate more favourable than that in Oxford where he taught.

68 More importantly, Australia provided refuge to my mother, Mitzi, who was born in Vienna in the fading years of the Austro-Hungarian Empire. She arrived in Australia in January 1939, having fled Austria after the Nazi annexation of that country in March 1938. Eight months or so later, her mother joined her. Her two sisters fled respectively to the United States and Mexico where they remained and brought up their families.

69 It was this egalitarian society which provided my education through the public schools of this State and the University of Sydney aided by Commonwealth scholarships at both secondary and tertiary levels.

70 Ours was a close-knit family. Sacrifices were made by both our parents to ensure my sister, Christine, and my well-being and continuing education. My father, John Whitgreave McColl, was the eldest of 10 children. He got a job with a bank when he was 15 - his father could not afford to keep him at school. He remained with the same bank until the compulsory retirement age. Both my sister and I were still at high school when he retired. At that stage, my mother was pursuing her artistic talents through sculpting. My father's superannuation was insufficient to support two teenage girls remaining at school. My mother curtailed her sculpting to supplement the family income by resuming dressmaking, an occupation she had learnt when young in Vienna.

71 The abiding philosophy in our household, derived from my mother's assiduous study of child psychology, was that my sister and I should find our own level: no-one dictated the course we should pursue. The only injunction was that we should be happy.

72 No-one in my family was a lawyer, nor did we have any legal acquaintances or connections.

73 It will be apparent from this brief biography that I did not come to the law because of family influences, nor did I harbour any childhood ambitions to be a lawyer - let alone a barrister.

74 The various decisions I have made at the outset and during my legal career have been my own, albeit with occasional, and welcome, judicial advice, support and encouragement from various mentors.

75 My decision to pursue a legal career was made during enrolment week when, troubled by my decision to pursue an Arts degree alone, I recalled serendipitously the sage advice of a school teacher to study law. I changed my enrolment to Arts/Law at the eleventh hour and the rest, as they say, is history.

76 My first and only job in the law was first as a legal clerk while I was still a law student at Sydney University, then as a solicitor at the New South Wales State Crown Solicitor's office. I worked there from 1972 until 1980 when I went to the Bar. I undertook post-graduate articles there, as you have heard, and was admitted as a solicitor in 1976. The State Crown was an enlightened employer making sure I gained experience in almost all fields of law: constitutional, civil litigation, advisings, prosecuting corporate crime, conveyancing and summary offences. I gained my first advocacy appearance while still at the Crown in such matters as pursuing the proprietors of premises alleged to contravene the *Pure Food Act* and appearing in the Supreme Court to resist bail applications.

77 It is of the nature of the practice of law and, in particular, of life at the Bar that success is, to an extent, dependent upon meeting the right people at the right time. This means that any adequate account of one's personal history can become a lengthy recitation of names and more probably a glaring, but unintentional, omission of a deserving subject of gratitude. In the interests of restraint and avoiding any such egregious omissions, but as an essential part of a faithful recounting of the milestones of my professional life, I shall mention only a few of the names in this category.

78 The first is Ian Knight, now the New South Wales State Crown Solicitor, who, in 1978, recruited me from the Crown's civil litigation section to join the newly formed Constitutional and Advising section. I am pleased he is able to be here today. That section and the work to which I was exposed, particularly instructing counsel in the High Court, were a considerable impetus to the decision I made 18 months or so later to become a barrister.

79 My decision to go to the Bar, like my decision to study law, was, relatively speaking, a spur of the moment one - prompted both by the not so subtle hints from counsel I was instructing and an increasing sense of frustration that instructing counsel could not do full justice to my years of legal study. It was made however, with the strong encouragement of three of the then few women lawyers: Priscilla Fleming and Margaret Renaud, both then barristers, and Rosemary Cox, a solicitor at the Crown who brought us together. Neither Priscilla or Margaret knew me, but they went out of their way to propel me in the direction of the Bar. In due course, Margaret was appointed to the Family Court of Australia since. Priscilla took silk and practised extensively, but, regrettably, retired from practice. I was extremely sorry that she never accepted the appointments I have no doubt she was offered, for her talent was immense.

80 It was also in this context that I met Peter Young QC as he was in late 1979. I sought his advice as to whether I should put my, by then, tentatively formed decision to join the Bar into effect. He was then in charge of the Bar Association's Education program. I was a complete stranger to him. When I approached him, fewer than 20 or so of the approximately 750 barristers in practice, were women. It says much of Peter's confidence in his assessment of character that he not only encouraged me to go to the Bar, but, before our meeting had ended, had informed me that the space available for a reader in his second room on the Eighth Floor of Wentworth Chambers was about to become available and that, subject to his floor's approval, I could start my new career there, and so it was.

81 Peter moved my admission in this Court on 8 February 1980 in a Court presided over by the Chief Justice, Sir Laurence Street. I spent my first year at the Bar in his chambers. His extraordinary ability to apply himself seemingly untiringly to his practice and numerous extracurricular commitments, both to the Bar, through his work on the Bar Council, to law reporting and to the Anglican Church was inspiring. We have remained friends ever since. I owe him an immense debt of gratitude for which these paltry words of acknowledgment cannot do justice.

82 As you have heard, my practice at the Bar was as diverse as that of the Crown Solicitor's office. Indeed, the Crown remained loyal throughout my 23 years of practice, despite my rejection in my first year at the Bar of the brief as fifth junior in one of the early Barton prosecutions.

83 I appeared with leaders of the Bar too numerous to mention and in courts at all levels of the judicial hierarchy. I appeared in the Privy Council twice in *Lloyd v David Syme & Co Ltd*, a defamation case - one of the last Australian appeals to be heard there. I was privileged to hear one of the most inspiring pieces of advocacy and I am speaking in that respect of Tom Hughes who appeared in that case for the appellant, Clive Lloyd, the captain of his cricket team. I should say it was Mr Hughes who appeared for the plaintiff in *Ettingshausen v Australian Consolidated Press* at which again his sterling advocacy was witnessed to a large jury and the verdict which eventuated.

84 While I did not doubt my good fortune in my two trips to London, I did not regret the abolition of appeals to the Privy Council. It seemed to me to be offensive to the notion of a proud independent nation that the High Court and State Courts should be beholden to a body sitting in another land.

85 While I do not wish to sound nomadic, in my 23 years at the Bar, I have been on four floors, albeit some more briefly than others. I have already mentioned Eighth Floor Wentworth. I also spent two happy years in Edmund Barton Chambers on the 43rd floor of the MLC Building. Particular mention must be made of the Seventh Floor Wentworth Chambers, my floor for 18 years from 1983 to 2001, and finally the fifth floor in St James Hall for the last two years. On each floor I was fortunate to work with supportive colleagues whose advice and companionship I valued greatly.

86 On each floor I was supported by dedicated and loyal clerks: on Seventh Floor Wentworth by Bob Horne and Andrew Laughlin; on Five St James by Paul Daley. All contributed greatly to my practice, smoothing the way when, as regrettably happened, dates collided and replacement counsel had to be found urgently less clients and solicitors be prejudiced. They attended to an array of administrative matters with an enviable ease and in such a way as to allow me to concentrate on the main game. I

am indebted to them all.

87 I have also been assisted by dedicated secretarial staff, most notably in the last years by both Fiona Piercy on 5 St James Hall and on 7 Wentworth by Joanne Kite. Their cheerful capacity to cope with my idiosyncrasies and many demands was extraordinary. I am fortunate that Carol Richardson, Justice Stein's former associate, has taken me under her wing. With her expert guidance, my smooth transition, at least administratively, into my new role will be assured.

88 For the first five years I was on Seven Wentworth, Murray Gleeson, of Queen's Counsel as he then was, led the floor. He went out of his way to get me into cases as his junior, to introduce me to solicitors and encourage my practice. I will be forever grateful to him.

89 One hardly surprising characteristic of Murray's was his indomitable manner which commanded almost supine assent in all floor matters. A different approach to decision-making was taken on Five St James Hall. There, floor decisions emerged mystically from some sort of administrative ectoplasm I never really fathomed. I have no doubt that exposure to both these forms of decision-making will stand me in good stead in my new role.

90 I am grateful for the support I have received from all the solicitors who briefed me. After I took silk I appeared with numerous juniors and basked in the glow of their invariably immense skill and learning. I have no doubt, having regard to the quality of those juniors, that the future of the Bar is assured.

91 After deciding to go to the Bar, the next significant decision I made was to stand for the Bar Council in 1981. I made the decision at a time when proposals to legislate to regulate the legal profession were at their height, and were ultimately reflected in the 1987 Legal Profession Act. My original intention was to join the Council to have a bird's-eye view of that reform process. At some stage that original intention was submerged by a more general fascination with the Council's work.

92 Like my decision to become a barrister, I have never regretted my decision to stand for the Bar Council. The opportunity to work with the leaders of the Bar on the Council was priceless. The opportunity to work to advance the community of the Bar was rewarding, although, at times, slightly too invigorating. The opportunity to witness the process of law reform at close quarters was invaluable.

93 Particular mention should be made of the work the Bar Association has undertaken through the Equal Opportunity Committee to promote and achieve real opportunity for women at the Bar, as well as the establishment of the Indigenous Lawyers Strategy to redress inequality of indigenous representation at the Bar. That strategy included establishing the Indigenous Barristers' Trust, the Mum Shirl Fund, to provide financial support to indigenous barristers in their first years at the bar. The trust has recently survived a challenge by the Australian Taxation Office in the Federal Court. I should also mention the Indigenous Pre-Law program, which introduces indigenous law students to the Bar and which has just been highly commended at the Commonwealth Law Conference.

94 A while ago it seemed a simple proposition that increasing numbers of women graduating from Law Schools would see a concomitant increase in their representation in the profession and, in particular, its senior ranks. As I have already mentioned, when I went to the Bar, there were few women barristers - less than two and a half per cent. Twenty-three years later those figures have crept up to approximately 14 per cent of the Bar's number. Women have long since abandoned the idea that the sheer weight of numbers of women graduates will see a concomitant increase in their representation in the profession. Something more is called for.

95 The same but even more so is true for the indigenous community. On April 29, 1770, 233 years ago to this day, Aboriginals first saw Captain Cook and his crew sail in Botany Bay. Two Dharawai men resisted their landing and Captain Cook's men fired three shots. No doubt their weapons were vastly superior and their opportunity to do real damage far greater than any wound the Dharawai could have inflicted. The same disproportion has continued, reflected, in the context of the legal profession, by the minuscule numbers of indigenous lawyers. Bad though the figures of women barristers are, they are large in comparison to the number of indigenous barristers in New South Wales - three at last count, a number too small to translate into any meaningful statistic. It is simply a disgrace that newcomers to this country should have been able to translate opportunity into practice at a rate far in excess of its original inhabitants.

96 The numbers of any minority at the Bar will only increase in a climate that recognises and accepts diversity. The Bar Association programs I have mentioned are but a part, albeit an important part, of that process.

97 All members of the legal community play a vital role in addressing unequal participation in the profession. It is the leaders of the profession who act as critical change agents to demonstrate their rejection of factors which limit participation, whether by women, the indigenous community or, indeed, any minority. Some factors may be relatively easily changed, for example, by the provision of adequate funding to redress economic inequality. Other factors are more substantial. The recognition that merit comes differently packaged appears a relatively comprehensible concept. Yet experience tells that comprehension does not speedily turn into action. Leaders of the profession must drive the process of change from the top. Equally, those who must give practical effect to the changing face of the legal profession, whether in employment or in briefing practices, also act as real forces of change. And those who are given the opportunity to participate must grasp it and make the most of it.

98 I do not suggest that I am saying anything particularly original, but what I am saying bears repetition precisely because, despite historic recognition of these issues, there is still so far to go before it can be said that substantial equality has been achieved in the legal profession.

99 Since my appointment was announced some have asked why I decided to become a judge. Unlike the earlier decisions I have mentioned, this decision was not a spur of the moment one. It was the product of much deliberation. Ultimately I decided that, after 23 years at the Bar, the time had come to give something back to the community which has given me so much. The appropriate way to do that was to move to the engine room of the administration of justice. I was acutely conscious that there was a tension on the one hand between the belief held by many, including myself, that the Bar needs women leaders and, on the other, the belief that the profession was well served by women accepting judicial office. These tensions were not easily resolved. They and other matters were the subject of much soul searching on my part. I will leave it to others to decide whether I made the correct decision.

100 I could not have achieved any of that which Mr Walker, Mr Benjamin, and now I have briefly recounted without my family's support.

101 My father died in 1981, but was present at my admission to the Bar. He was not a renowned communicator, but before he died he conveyed to me how proud he was of what my sister and I had achieved. I treasure that memory.

102 My mother, who has just turned 90, is here today, as is my sister, Christine. Words are a poor vehicle to convey my gratitude to them for their unfailing love, support and patience in the face of what I know they, at times, regarded as the intolerable demands of my chosen career. My love for them knows no bounds.

103 I face the next phase of my legal career with what I believe is a sensible mixture of circumspection and excitement. My new colleagues and their predecessors on this Court have delivered justice to the New South Wales community and ensured respect for the rule of law for the last 179 years. I am both honoured and humbled to be able to join them in discharging those duties.
