

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

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

Monday 6 December 2021

**FAREWELL CEREMONY FOR
THE HONOURABLE JUSTICE CLIFTON HOEBEN AM RFD
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BATHURST CJ:** I would like to begin today by respectfully acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respect to their elders past, present and emerging.

- 2 Let me warmly welcome you all this morning to mark belatedly the occasion of the Honourable Clifton Hoeben's retirement as a Judge of Appeal and Chief Judge of the Common Law Division of the Court. Today is an opportunity for all of us to show our gratitude for your years of commitment to the administration of justice and to express our best wishes to you. It is a shame we could not have done this at the time of your retirement, but this is the next best thing.

- 3 You have served this Court for 17 years, first as a Supreme Court judge, then as Judge of Appeal, and finally as Chief Judge at Common Law. Seventeen long years it may have felt, but your time was marked by an in-court efficiency that would put the High Court special leave hearings to shame. I am told as presiding judge, particularly the Court of Criminal Appeal, you would often speak these words to some barristers dreaded to hear, "We have read your written submissions, is there anything you wish to add?" Valuable court time is not to be wasted. Of course this was always done with your trademark politeness and respect.

- 4 For my part I have known you much longer than 17 years, closer to the order of six decades. At school you were a brilliant student, much more so than me, and you developed early on a great love and mind for Latin and ancient Greek. In fact Latin is so second nature to you that you seem to sometimes assume that everyone else has your same remarkable aptitude. I wish it was true. It was reported that when you would dictate, as you would so frequently do, you would take the utmost care to spell out words lest the typist make a mistake, things like “Smith S-M-I-T-H”, or “roman numeral i, that is lower case i”. However, you would forget to spell out whole lines of Latin which came so naturally to you, although I am told it did not necessarily come naturally to all your staff.

- 5 Of course I could not speak properly about you without mentioning your long-standing service to the military. After graduating as dux of Riverview, you enlisted in the Sydney University Regiment, rose to the rank of Sergeant then Captain. You were promoted Major whilst at headquarters 5th Task Force. You were promoted to Lieutenant Colonel and appointed Commanding Officer of the University of New South Wales Regiment. Professionalism was very important to you as has been evident in your judicial life. You had various other postings and was promoted Colonel and then Major General. You led the 8th Brigade in a complex defence exercise in the Northern Territory. You were appointed Commander of the Second Division where you prepared reservists for deployment in East Timor and provided 1800 soldiers to carry out security duties for the 2000 Olympic Games. I recall meeting you in the street one day and you told me what you were doing, I decided at that stage I wouldn't go to the Olympics, it was too dangerous. And believe it or not, photos from your earlier years reveal that you sported a glorious moustache, the likes of which people like me could only dream of.

- 6 During your time at the Bar you had a substantial advice practice which no doubt stood you in good stead for your appointment to the Bench. You also had a significant, if sometimes overlooked, personal injury litigation practice which provided some amusing anecdotes from your former colleagues on the 11th floor, not including the President I hasten to add. At one point your

reluctance to part with briefs, particularly those likely to settle, earned you the nickname of “Iron Claws” which I am sure was more affectionate than at first sight seems.

7 Jim Poulos and Paul Daley tell the story of a fishing expedition in chambers where the bait was a brief, the fishing line was pink legal tape and the fish was you. One day, while a group of your colleagues were having afternoon drinks, something I am told happened more on the 11th floor than anywhere else, you were still hard at work in your room and Poulos decided to put your fondness for new briefs to the test. Knowing you would soon leave your room at 5.30 he took a slim folder of foolscap brief, attached to it about four metres of pink tape and placed the brief in the corridor. He dubbed this “trolling for Hoebens”. Jim recounts, “Sure enough we heard the door shut and within a second or so I had a strong bite. After a brief struggle a catch was landed.” Of course you always maintained you were simply doing the right thing as always, and would never have retained the brief. I think that was true because you had so many of them at that time.

8 Putting your weakness for briefs aside, I am informed that these days you maintain a pair of weaknesses in equal proportions, or perhaps addictions would be a more accurate term. These addictions are of the Book Depository and JB Hi-Fi. You are an insatiable reader and have ordered and read hundreds of books. Your tippies reveal that you keep a list of authors in a notebook and one of their tasks was to check whether the authors had published anything new. A portrait of you would also be incomplete without the ubiquitous JB Hi-Fi bag that you carried around. This not only demonstrates that you buy far too many DVDs - I think you have heard of streaming now - but also your lack of pretentiousness. You put on no airs and graces, a plastic bag is a good enough bag for you.

9 I have already mentioned your efficiency, but you are also a straight shooter. One example of this comes from your military days in a speech which you gave at the conclusion of the University of New South Wales Regiment camp in 1982. You said professionalism should be the aim of all members of the UNSW

Regiment, you did not pull any punches, telling the camp we would be deluding ourselves if we said we have achieved the necessary level of professionalism. Likewise on the Bench, you are not afraid of letting any of those at the Bar know exactly how you are feeling and then letting them deal with it. You like to credit dialogue. Even then you are always known for your equanimity. When things went wrong you always managed to retain a level of calm and composure which some other members of the Court could do well to emulate.

10 Over the years you decided cases on topics ranging from high profile murders to terrorism to car-crashing rock stars. The search of the Caselaw website reveals you were involved in more than 1,500 published judgments. One of your most notable cases was brought by Gregory Wayne Kable against the State of New South Wales decided some years after the constitutional issues seemed to have been resolved. I note for interest's sake that Senior Counsel appearing for the defendant was one Mr Mark Leeming SC. Mr Kable had of course been previously detained under an Act which was found by the High Court to be invalid. He brought an action in the Supreme Court claiming damages for malicious prosecution, false imprisonment and abuse of process. You dismissed the claims holding that imprisonment took place pursuant to orders of a superior court which were effective until they were set aside. The Court of Appeal were not impressed. Sitting on the five judge bench, they did not agree with you on this point, and struck by what must have been a painful blow, overturning the decision five-nil and holding that damages should be assessed on the basis of the claim for false imprisonment. The High Court were more impressed, unanimously they overruled the Court of Appeal, there were seven judges, and reversed the decision. I understand that Leeming J was quite pleased too.

11 Finally, it is often said that a measure of a person is how they treat others. In this respect it is noteworthy that your staff in particular spoke of you with evidently high regard, not just as a judge and for your legal talents, but also as a person. It is a testament to your character that those who worked with you on a day to day basis, your long-standing Associate, Morna, and your past

tipstaves who must now comprise a small army or at least a platoon, considered you to be deeply humble and kind.

12 On behalf of all the judges of the Court we wish you the very best for your retirement, I am sure it will not be confined to your morning and afternoon walks along Balmoral Beach and your vicarious appetite for books. I know that Chrissie will encourage you to take on other pursuits if only to keep you out of the house from time to time. Once again, we thank you for your contribution to the Court and the administration of justice.

13 **THE HONOURABLE MARK SPEAKMAN SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** May it please the Court. I acknowledge the traditional custodians of the land on which we gather today, the Gadigal of the Eora nation, and I pay my respects to their elders past, present and emerging.

14 The Honourable Clifton Hoeben AM RFD, on behalf of our State and the Bar it is my great pleasure to wish you well on your retirement and to reflect on your 45 year career in the law. I acknowledge your family and in particular your wife, Christabel, daughter Emma who has followed in your footsteps in the law, son-in-law Duncan, and grandchildren Lachie and Chloe, each shares in some way with your achievements today.

15 You grew up in Bondi. Your parents, Patrick and Mabel, were not of great wealth and privilege, but when it came time for high school they sent you to the school that your grandfather had attended, St Ignatius Riverview. At school you were keen on all sports including rugby. You were also a keen debater, leading the Riverview team to first place in the 1964 GPS debating competition. You were also a school prefect and you had another love at Riverview, the classics.

16 Your devotion to the classics brought you to the army via a circuitous route. Ancient Greek was one of the last exams scheduled in the Leaving Certificate. You applied yourself to study. Meanwhile, your friends, free and unchained from the desk, nabbed all the part-time jobs. As it happened, the University of

Sydney Regiment was seeking reservists. They were paying £15 five shillings tax free a week. You signed up and at the same time graduated from Riverview as dux.

- 17 You intended to study law at the University of Sydney but somehow you were persuaded to study an entire degree in the classics, ancient Greek and Latin. Many classics scholars go on to be academics, but you went into the law. Between 1968 and 1970 you taught classics at Riverview, as well as attending university full time, and to no one's surprise you graduated with Honours in Law as well.
- 18 You served articles with Freehill Hollingdale and Page in 1971 and 1972 and you remained there until called to the Bar in 1976. You read on the 11th floor where you made many lifelong friends. One was Robert Grey who sadly died in 2007. Robert and his wife, Beatrice, liked those parties. On one occasion they insisted you come along even though you had already had other plans. After their cajoling you agreed to stop by for half an hour. Unbeknown to you, Robert and Beatrice had also cajoled another friend of theirs into attending, an airline stewardess who had only flown in from the US that morning. They told her if she did not come to this party she would not be invited to any more. She agreed to come for an hour. She was Chrissie, now your wife of 35 years.
- 19 You played for Eastern Suburbs Rugby Club in the lower grades and you achieved the milestone of 100 games and you coached the fourth grade team for three years.
- 20 In 1984 you completed your Masters of Law at Sydney University, again with Honours. Your thesis was in the interface between workers' compensation and common law, a difficult area. Some who have practised in it for decades still do not understand it. Sections 151G, 151H and 151Z of the *Workers Compensation Act* were a headache for many. Following the case of Leonard and Graham Smith you made a submission to the Supreme Court that solved a problem for everyone. You provided a formula for employees awarded workers' compensation damages. It was a significant contribution. As time

went by your work garnered the attention of authorities, including the State government.

- 21 As a barrister you were a prodigious worker. You also worked on some big cases. One was the appeal in the case of film star John Blake, catastrophically injured in a 1986 car accident. It was an important incurring exponential payout with what had been long, complex and protracted hearings.
- 22 You were active in serving the profession. Between 1990 and 1995 you were a member of the Bar Council. You were also chairman of a professional conduct committee as well as the committee that made law reform recommendations to government.
- 23 No one was surprised when you took silk in 1995. One important case was the Graham Barclay oysters case in the Federal Court, full Federal Court and High Court. This was a class action by group members who had contracted Hepatitis A from eating oysters harvested from Wallis Lake. It was an important case in terms of the responsibilities of council and the law of negligence.
- 24 You were a much respected chairman of the 11th floor. For those two years everything ran like clockwork. Again, no one was surprised when in 2004 you were appointed to the Bench. You were very much missed from the 11th floor after having been there for 28 years.
- 25 Your wide background in common law and personal injury work led to your appointment as Chief Judge in the Common Law Division in 2012. Once again, you surprised no one. The appointment also led to a broadening of experience into criminal matters and expert evidence. As Hoeben J you were a hands on judge who got on with things prodigiously, systematically and methodically, no doubt drawing on your army training.
- 26 Another thing your staff have noted from your army training is you always have perfectly shiny shoes. You were well known for never having outstanding

judgments. You kept on top of high volumes of administrative work, ran your own trials and attended to staff matters to make sure that all ran smoothly.

- 27 You are well known for absorbing vast amounts of information and distilling it down to a single point. You would often come on the bench and refine the issue to a single crystallised issue.
- 28 Some say that your churning through so many cases has earned you an early retirement, that you have already performed the work of two judges in one career. As a judge you were well known by those who worked with you as someone who was easy to approach, always personable and supportive of others in the division. You informally mentored junior staff and were known for asking their opinions on cases, inspiring them to think about what were the issues in the proceedings and sharing your thoughts to help them learn. Your upbeat approach kept the mood in chambers light-hearted, instigating banter while still taking the matters seriously.
- 29 As the Chief Justice has said, you sat in many notable cases. One was Dr Brian Crickitt, charged with murdering his wife by insulin injection. You conducted the judge alone trial and found him guilty. The appeal against conviction was dismissed.
- 30 In another unusual case you went to Queensland. *Carmody v The Information Commissioner* concerned the decisions of the Information Commission on applications for access to documents made under the *Queensland Right to Information Act* concerning Carmody J when he was Chief Justice of Queensland. You held that the Act did not apply to the documents in issue because they related to the judicial functions of the Court or judicial officer. You also held that the Information Commissioner had made legal errors in the application of the public interest balancing test in the Act that would have applied if the documents were not excluded from the Act by the judicial functions exception.

- 31 You had a particular interest in expert evidence and the giving of concurrent evidence by multiple experts through the hot tub method. For this you were once the subject of a cartoon, pictured in a hot tub in full gown and wig with four experts who, in response to your question, all agreed the water was a tad warm.
- 32 It is impossible to speak of your career without mentioning your military service. I wonder whether, when you enlisted in the University of Sydney Regiment in 1965, you had a sense of where or how far it would lead. You commanded the University of New South Wales Regiment for the Australian Army Reserves and were awarded the sword of honour in your TAC5 course, qualifying for promotion to Lieutenant Colonel. From 1997 to 2001 you commanded the Second Division. This saw you being in charge of deployment of reservists to East Timor and providing hundreds of reservists to security for the 2000 Olympics. In 1996 you were made a member of the Order of Australia for exceptional service to the Army as commander of the 8th Brigade.
- 33 Over many years you quietly and consistently supported a number of charities. You have been a member of the Royal Humane Society since 2000 and were chairman for three years. You were one of the instigators of the Riverview bursary program for indigenous students and have continued to support the program. Today there are 36 First Nation students at Riverview.
- 34 To relax you like to read great tomes of military history. There is little you do not know about significant battles and the strategies, tactics, successes and failures that define them.
- 35 When COVID permits you like nothing more than spending time with your grandchildren.
- 36 You studied the classics and then law and continued your dedicated work in the military. Some may say that is an unusual combination. Cicero said we should not be so taken up in the search for truth as to neglect the needful duties of active life, for it is only action that gives a true value and commendation to virtue. You have a formidable legal mind, the highest courtesy, and leave a

long legacy in the law. Thank you for your contribution as Hoeben J of the Supreme Court. Thank you for your service to the law for 45 years and best wishes for your retirement. May it please the Court.

37 **MS JULIANA WARNER PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

38 I too acknowledge the traditional custodians of the land on which we gather, the Gadigal people of the Eora nation, and I pay my respects to their elders: past, present and emerging. And I extend those respects to the elders of any other lands from which today's proceedings may be viewed. And I acknowledge and extend my respects to any Aboriginal and Torres Strait Islander People who may be present today.

39 Justice Hoeben, the honourable Justice Hoeben, it is my honour to come before you to pay tribute, on behalf of solicitors, to mark your absolutely remarkable service – to this Court, the profession, and the people of this State – over nearly five decades in the law.

40 I am particularly happy to do so because you are part of the extended Freehills family. As is your daughter Emma, and as I as a current partner of Freehills – Herbert Smith Freehills now (but then Freehill, Hollingdale & Page).

41 But before you went to Freehills, Your Honour grew up in Randwick, with sister Geraldine, father Patrick – who served as a marine engineer and Lieutenant Commander with the British Royal Navy during World War Two, and mother Maple (which is a lovely name), who after having children returned to work as a hairdresser to give you opportunities.

42 Graduating Dux of St. Ignatius Riverview, your interest in the classics was shaped by two legendary figures: the late Charles Fraser SJ, the '*Jesuit, classicist and larrikin*' who taught several future judges, and Professor Athanasius Treweek (and I must say, I'm not quite sure what his parents were thinking, when they called him Athanasius Treweek), the linguist,

mathematician and indeed code-breaker, at Sydney University. Graduating in Arts with Honours, you then taught classical languages at your *alma mater*. In 2009, a Judge, then being welcomed to this Bench, reflected on the '*curious life intersection*' that was your Honour teaching him Caesar's account of the Gallic War as a relief teacher.

43 You then arrived at Freehill Hollingdale & Page – and I'm going to read from your swearing-in speech, because you say it much better than I could. And I quote:

44 "I was again I was again very fortunate in obtaining articles at Freehill Hollingdale & Page. My master solicitor was the late Thomas Owens Jones. He also was something of a legend at Freehills. He was able to run his own practice which was not only focused on licensing – although that was its major area - but was in fact a general practice. One essential thing that Mr Jones taught me during that period was that clients were not interested in erudite legal analysis; they simply wanted answers they could understand.

45 I was admitted as a solicitor in 1973 and I worked for three years in the litigation section at Freehills. I worked under the guidance of Michael Rosser and Kevin Broadley. Again, much of what I have achieved since is due to their efforts and their instruction. It was an interesting time to be at Freehills. Of the clerks and the junior solicitors at that time, a number went on to become Judges and Silks."

46 And indeed, they did. Justices Lindsay, Palmer and Whealy and Judge Di Truss to name but a few. And I understand that Di Truss was in the office next to you at Freehills.

47 As a Partner of what is now Herbert Smith Freehills, I look back very fondly at the time – a few years after you left – when I started as a baby solicitor with Kevin Broadley (and also doing a little bit of work for Mr Jones). They were great solicitors and very great gentleman and wonderful people from whom to learn. But while Kevin might have been universally known as Kevin, Mr Jones

was always Mr Jones. And I bet you still think of him as Mr Jones because I know I certainly do.

- 48 After FH&P went to the bar, armed with the wit and generosity of Father Fraser, the military and philological *penchants* of Professor Treweek, the '*independence of mind*' of Mr Jones, and the committed capability of Kevin Broadley, and you went to the 11th floor, your Honour read with the late Honourable Justice Robert Hulme, a legendary Judge of this Court, known for his '*tenacious work ethic*' and discipline. 11th Floor was an amazing floor.
- 49 You were surrounded by iconic counsel such as Frank MacAlary, Tom Hughes, Doug Staff and William Deane. You worked with "*extraordinary people in extraordinary circumstances*" throughout your 28 years on the 11th Floor. You were inspired by, in your words, an "*understanding of the best traditions of the Bar and its ethical standards, [and] the essential trust which must exist between the Bench and the Bar.*" This understanding has informed your relationship with counsel on the Bench.
- 50 It was Benjamin Franklin who popularised the saying, 'Early to bed and early to rise makes a man healthy, wealthy, and wise.' And he also warned, 'Dost thou love life? Then do not squander time, for that is the stuff life is made of.' Your Honour's time at the Bar conformed to the 'Franklin school'. From the moment you entered Chambers at 6 a.m., no time was wasted; you were organised, assiduous and ruthlessly efficient. And with military precision, you would then leave on the stroke of six p.m.
- 51 In Chambers, you earned the appellation of '*Iron Claws*' or '*Iron Grip*', as you would seldom surrender a brief. It was said the only way a brief would leave your room was with a fee note attached to it. And you must have absorbed that from Kevin Broadley, whose mantra was, "The best people, doing the best work, for the best clients, who pay by return."
- 52 You managed a large and very busy practice in dust diseases, insurance claims, common law matters, personal injury matters and equity. You were a

tough but ethical negotiator, unfailingly well-prepared and focused in presentation. You appeared as the successful appellate's counsel in the seminal High Court case, *Graham Barclay Oysters v Ryan* as well as the appeal involving damages for the tragic Gallipoli film star Jon Blake.

53 Your Honour's transition to the Bench formed a natural extension of your success at the Bar, with your time as a Judge of Appeal and Chief Judge at Common Law exceedingly successful.

54 You have been known as an astute and practical Judge, running your courtroom in the manner of a benevolent senior commander, with your commanding officers around you. You expect counsel to be fully briefed and across what is happening in their theatre of operations. However, you are equally forgiving regarding the '*fog of war*' that crops up in litigation, acknowledging the element of the unpredictable.

55 You have engaged in judicial education overseas, including in New Zealand and China, where you presented to judicial colleges in Beijing and Shanghai. You have been prolific in contribution, serving as Common Law List Judge, managed the General Case Management List and the Defamation List, participated in the Rule Committee, Alternative Dispute Resolution Steering Committee, Building Committee, Common Law Civil Users' Committee, Education Committee, Court of Criminal Appeal/Crime User Group, Media Consultation Group (I haven't finished yet) Judicial Remuneration Committee and the Chief Justice's Executive Committee.

56 Your Honour's associates and tipstaves fondly recall your grace and generosity with your time, quick wit in conversation, dedication to the Monday crossword puzzle, and '*marching around the room*' dictating judgments. Part of the job involved making several cups of tea daily to facilitate your chain drinking of '*brew*' – tea.

57 Your Honour's military career was also characterised by excellence. Enlisting in the Sydney University Regiment after finishing school, you ultimately became

Commanding Officer of the UNSW Regiment – or *‘that other place’* to fellow graduates of the University of Sydney – before becoming Reserve Commander of Staff College and Commander of the Eighth Brigade. You were promoted to Major General, serving as the Commander of the Second Division. You deployed reservists to East Timor and helped manage security for the 2000 Olympic Games. And I went to the 2000 Olympic Games – there was absolutely no problem with terrorists there, so you did a good job.

58 Outside of the law, you are fond of reading and exercise, and often to be found walking the promenade at Balmoral (where undoubtably I’ll run into you). Your Honour is still keen on rugby, having played as a forward for the Eastern Suburbs Rugby Club, in early days, when the legendary Paul Daley OAM, happened to be working. Your charitable contributions are many, including to the Royal Humane Society of NSW and the Royal United Service Institution.

59 Your wife Christobel, daughter Emma, son-in-law Duncan, and grandchildren Lachie and Chloe, are immensely proud of you. In something of a full circle, Emma herself gained a wealth of experience as a solicitor at Freehills for a number of years. Your Honour is a doting grandfather, your latest habit the acquisition of Lego for six-year-old Lachie.

60 Our community owes you a great debt of gratitude for your magnificent contribution to it. You represent the best traditions of service to law, State and country. I pay tribute to your legacy and wish you the very best in a rewarding retirement (and watch out for those Lego pieces – they’re a killer if you step on them).

61 As the Court pleases.

62 **HOEBEN CJ at CL:** Thank you Chief Justice. Chief Justice, Mr Attorney, Ms Warner, colleagues and friends. Like the earlier speakers I also begin by paying my respects to the traditional owners of the land on which we meet and their elders, both past, present and emerging.

- 63 May I thank the previous speakers for their very generous words indeed. I think they have done more than justice to my career and I am quite humbled by the expressions that have been made here today. I was particularly pleased to be reminded, I have to say, of one of the great contacts I had over the years, and that was Professor Treweek, who was in my opinion a genuine genius, an amazing man to work under when we were studying ancient Greek, and also he was a most extraordinary history himself, being one of those eccentrics who worked out of Bletchley Manor and, as somebody said about Professor Treweek, somebody who has translated a 4,000 year old venery for the first time is not going to be stopped by a German naval code, and such is the case.
- 64 The less said I think about a particular brief and trawling for a Hoeben the better, may I simply say that sometimes people never let the truth distort a good story.
- 65 Moving on perhaps to more serious matters, on the occasion of my swearing in 17 years ago, I said that I hoped that I would be ready to take on the responsibilities of a judge in due course. Little did I know that I would be called upon to make such decision as early as I was. A mere matter of weeks after I had been sworn in the Supreme Court conference took place in Bowral. I should perhaps just add by way of background, while at the bar, I had never run a criminal trial, apart from the occasional appearance before a magistrate it was pretty much all civil work. So when the conference in Bowral commenced I was very, very keen to attend a series of sessions entitled recent developments in the criminal law. Unfortunately for my morale, reference was made to a number of recent criminal cases, which I had never read, there was also a very vigorous debate concerning a matter of *Way v the Queen* and also something which I knew nothing about, and that was a standard non-parole period. It made it very clear to me that I had a lot of catching up to do and I had to do it very quickly. Fortunately for me, the Common Law Division has a wonderful capacity for taking persons with little or no knowledge of the criminal law and, not only providing that knowledge, but creating a real enthusiasm for the criminal law and for running criminal trials, and certainly was the benefit of that particular approach.

- 66 I was allocated my first criminal trial in May 2005 in Orange. The trial lasted five weeks, the then Chief Judge at Common Law, James Wood, used to telephone me two or three times a week simply to find out how I was going. His confirmation of various steps which I had taken in the trial gave me enormous confidence and I was able to press on. As it turned out, I needed all that confidence. It was probably one of the most difficult trials, and I have run quite a few, that I have ever conducted. The principal Crown witness was deaf and used the Auslan sign language to communicate. That then had to be translated and interpreted for the jury. Provocation, self-defence and manslaughter were well in play. The trial also introduced me for the first time to country juries who I have found over the years to be somewhat more robust in making findings of guilt than their city counterparts. In this trial the jury was only prepared to deliver their verdict, this being on the sixth day of consultation, provided they were allowed to stay for lunch. We were so keen to obtain a verdict we were prepared to pay any price and we agreed that that was an appropriate step to take. Unfortunately the consequences were less than appropriate. It turned out that one of the reasons for the lunch was for the jury to celebrate the birthday of one of their number. We then had a somewhat extraordinary situation at the end of the trial with the words of "Happy Birthday" coming from the jury room and me trying to carry out the rather serious formalities associated with making a finding of guilty.
- 67 It would be fair to say, despite that experience, that like many judges who have little or no criminal experience in their practices at the Bar, I found that I enjoyed running criminal trials immensely.
- 68 This process was greatly assisted by the help and advice which I received from more experienced judges. The knowledge of the criminal law possessed by James Wood could only be described as encyclopaedic. Despite being busy he was always prepared to provide advice and assistance, as were the other judges of the division. But I should observe that I was particularly helped by John Dunford, Tim Studdert, and as already indicated, the late Robert Hulme.

- 69 The next couple of years passed quickly as I increased my knowledge of the criminal law and I honed my expertise as a judge. In due course James Wood retired and was replaced Peter McLellan. As has already been indicated, Peter, while he was Chief Judge of the Land and Environment Court, had pioneered a process of adducing evidence and delivering it in court, known as “concurrent evidence”. Peter was an ardent supporter of the process and he directed me to develop a protocol in the Division to ensure that the concurrent evidence methodology was used in civil matters. I was a little reluctant, as you could understand, not having had any experience managing concurrent evidence before. Eventually however, I had to say, I became an equally passionate supporter of the process, as was Peter.
- 70 The catalyst for becoming such a supporter was medical evidence case which had been listed before me with an estimate of six weeks. It involved a most unfortunate plaintiff who had initially been made a paraplegic and then in a subsequent accident, had been rendered a quadriplegic. There were five sets of defendants, the medical evidence was prodigious and primarily related to neurological causation issues. The case became something of a cause celebre, hence the cartoon in due course, in that the evidence of the neurosurgeons and neurologists was taken concurrently between 5pm and 9pm over four nights. This was necessitated because these particular specialists could not be spared during the day when they were carrying out life-saving work. The four nights of evidence involved, not only questions from me and from the barristers, but most importantly questions by the experts addressed to other experts. As a result at the end of the four nights of evidence I had a firm conclusion on the issue of I have reached a firm conclusion on the issue of causation. I assume that the parties were similarly convinced since the matter settled within a matter of days.
- 71 In early 2012 I was appointed to the Court of Appeal. At that time the Court of Appeal was under the leadership of President Allsop, now Chief Justice of the Federal Court. Judges of Appeal work at a high pace, the work is both constant and usually difficult. It is the unremitting nature of the work which can be particularly wearing. Both then and now the Court of Appeal was made up of

outstanding lawyers. It was a privilege to be an active member of the Court, albeit only for a year.

- 72 Towards the end of 2012 I was appointed Chief Judge at Common Law. As the Chief Judge I tried to implement what I had learnt from my predecessors. In addition I developed the practice of regularly visiting the chambers of all the judges in the division to assess not only how they were coping with their professional workload, but also whether they were affected by any personal issues. I refer to this practice as my pastoral visits which most of the Common Law Division would be familiar with.
- 73 The role of the Chief Judge at Common Law is without doubt one of the most interesting judicial roles in the Court. The Chief Judge can sit in both civil and criminal trials as well as in the Court of Appeal and the Court of Criminal Appeal. The Chief Judge is confronted with a fascinating variety of issues across significant areas of the law. In addition I found that it was most important that the Chief Judge regularly sit in criminal trials. The reason for this is obvious. If one is criticising first instance judges, particularly from the District Court, it is necessary to understand the pressures to which they are exposed and under which they work. There is no doubt that the task of a trial judge in a busy court imposes significant burdens. There will always be decisions with which others do not agree. Although the appeal process must correct error, it must also ensure the trial judges are supported and encouraged.
- 74 The work of the Court of Criminal Appeal, where I spent the majority of my time, provides a continuous and varying list of complex legal issues. Sentencing can present particularly difficult challenges. The Court of Criminal Appeal plays a fundamental role in establishing sentencing standards throughout New South Wales. Few people outside the Court appreciate how difficult the task of sentencing can be. While public discussion of sentencing is important, judges must sentence having regard to all relevant facts and of course statutory and common law principles.

- 75 In my years on the Bench I have served under two Chief Justices, Jim Spigelman to 2011 and Bathurst CJ thereafter. Both are outstanding lawyers. I have learned much from each of them. As Chief Judge I have worked closely with Bathurst CJ, I have greatly appreciated his practice of presiding in difficult Court of Criminal Appeal matters. His capacity identify key issues and reduce them to relatively simple propositions is something I have tried to emulate, with only, I might add, partial success. I have always admired the incisiveness of his thinking and his clarity of expression.
- 76 A significant challenge to the Court under the stewardship of Bathurst CJ has been of course the COVID virus. Social distancing requirements brought to an end the hearing of jury trials for a substantial period. Even so the Supreme Court was able to continue hearing bail applications, appeals in both crime and civil, and its own civil list. This was a remarkable achievement given the difficulties under which the Court was then operating.
- 77 In my time on the Court I have been assisted by a very talented group of young men and women who have been my tipstaves. Each has added something to the quality of my work over those years. It would however be unfair to name some without naming all. I have been able to watch their careers blossom and take some personal satisfaction in whatever contribution I have been able to make to their success.
- 78 I have been fortunate to have as my associate Morna Lynch. Words cannot adequately express how grateful I am to Morna for her unfailing good humour and the efficiency with which she has administered my chambers. Morna has always done more than has been asked of her. The simple fact is that the judges of the Court could not do their work without an efficient administrative support structure which, in my case, Morna provided. At the conclusion of a hearing I was able to leave the Bench knowing full well that Morna would complete all of the administrative formalities and leave nothing undone.
- 79 Finally I wish to acknowledge the love and support I have received from my family, not only as a judge, but as a barrister for 28 years and as a soldier for

36 years. I accept that my daughter Emma did not see as much of me as she was entitled to and that the clash between weekend military activities and her sporting commitments of netball and tennis was a difficult one. That having been said however, it was not every young girl who was taken to sporting venues in an army staff car with an army driver.

80 Lastly, and certainly not least, I acknowledge the extraordinary love and support which I have received from my wife. Over 35 years of marriage Chrissie has had much to put up with, even more so than ever she was entitled to see more of me than she did. For those 35 years Chrissie has put up with my early mornings and working weekends which took place for most of my time as a barrister and as a judge. This also included substantial absences when I was involved in military exercises. The longest of those was an eight week period during which I served with the British Army and, as has already been mentioned, deployments to East Timor in 2000 also involved significant absences. Like most careers mine has had its high points and low points. On the occasions of those low points Chrissie has always been there to provide encouragement and offer advice. I would not have achieved any of my goals without her love and wise counsel. I have been truly blessed by having her in my life.

81 In finishing, I have enjoyed immensely my years as Chief Judge. I hope that I have been successful in creating an atmosphere of cooperation, friendship and mutual respect in the Division. I firmly believe that the foundation of such an atmosphere is the working together of judges in good humoured and non-competitive relationships. Accordingly, while I look forward to retirement, it has been an honour and a privilege to serve the people of New South Wales in judicial office and to play a small part in the government of this State. May it please the Court.
