

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

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

TUESDAY 11 OCTOBER 2022

**SWEARING IN CEREMONY OF SARAH MCNAUGHTON SC AS A JUDGE OF
THE SUPREME COURT OF NEW SOUTH WALES**

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

(Commission read)

(Affirmations of office taken)

2 **BELL CJ:** Justice McNaughton, you have already spent many years in the service of the public in your role as Commonwealth Director of Public Prosecutions. Today, the nature but not the importance of your public service changes to a new chapter. You bring to the Court a reputation not only of the utmost integrity but of a capacity for very hard work which will stand you in good stead. The Court is delighted to welcome a barrister of your eminence to its ranks. We wish you well and congratulate you once again.

3 **THE HONOURABLE MARK SPEAKMAN SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** I begin by acknowledging the traditional custodians of the land on which we gather, the Gadigal of the Eora Nation and I pay my respects to Elders past, present and emerging and acknowledge Aboriginal colleagues and friends that are here this morning.

4 Your Honour Justice McNaughton, on behalf of our State and the Bar, it is my great pleasure to congratulate you on your appointment as a Justice of this Court. We are joined today by your Honour's husband, Robin, your children,

Rebecca and Amy, your mother, Jenny, your sisters, Catriona and Josephine, and their families. Special mention to your late father, Kenneth, who will be sadly missed today.

- 5 Your Honour was born in 1963 in Perth but spent your early years in Caringbah. Your mother Jenny was an English and History teacher. Your father Kenneth was a mathematician and musician. You were the youngest child. You loved reading, with Pippi Longstocking being a personal favourite.
- 6 Your sisters describe you as being a good girl, disciplined and dedicated to your passions and interests. Music has been a major passion throughout your life. You learned to play the piano at age 4 and continue playing to this day.
- 7 From kindergarten to Year 4 you attended Caringbah North Public School. For Years 5 and 6 you moved to Sutherland Public School where you were school captain. In Year 7, you moved to the UK for your father's work and attended Whyteleafe Girls Grammar School in Surrey. This move was short, and you returned to Australia first to Victoria and then back to Caringbah to complete Year 7. From Years 8 to 10 you studied the flute and piano at the Conservatorium High School. You were class captain in Year 9 and junior prefect in Year 10. Years 11 and 12 were at Fort Street High School where you were a school council member in Year 12.
- 8 In 1981, you started studies at the University of Sydney graduating with a Bachelor of Arts (Honours), Bachelor of Laws (Honours), and a Master of Laws. You served on the Law School board as a student representative.
- 9 In 1987, you were a research assistant to the late Professor Alice Tay, in particular assisting her work on the Chinese legal system.
- 10 In 1988, you became an Associate to the then President of the Court of Appeal, Justice Michael Kirby AC CMG, who joins us today. He recalls you being a hardworking member of staff in his chambers where you all worked with heroic energy. He remembers your interview for the role vividly and I quote him, "After

the pleasantries, she fixed me with a cross-examiner's sharp stare and said, 'It's very good of you, Justice Kirby, to grant me an interview because I know you always appoint men to this position.'" And Mr Kirby says, "I knew I had been justly criticised but in the politest possible way. Her comment was well targeted. I gave her the job and I immediately changed my practice in appointments so as to always take one male and one female appointee."

- 11 You were admitted as a solicitor in 1989 and worked at Freehill Hollingdale and Page, later Herbert Smith Freehills. It was obvious to Rebecca Davies, your senior colleague at Freehills, that you were a very smart and talented lawyer. You quickly became her go-to person in the team.
- 12 In 1990, you arrived at the office of the Commonwealth Director of Public Prosecutions (CDPP). In the space of one year, you moved from legal officer to senior legal officer and then to principal legal officer, a role you excelled in until 1995.
- 13 During this time, you developed a unique relationship with the Australian Federal Police (AFP) and Operation Caribou, which at the time was the biggest and most resource-intensive transnational organised crime investigation the AFP had ever attempted. The investigation involved some of Australia's most notorious criminals, involved the seizure of 10 tonnes of cannabis resin, the largest amount ever seized at the time, and the greatest concentration of electronic surveillance ever undertaken on one investigation.
- 14 You worked closely with AFP officer, Nicholas McTaggart, who recalls your relationship being special as the office of the Commonwealth DPP was engaged at the beginning of the investigation instead of after interdiction.
- 15 The investigation and prosecution were cutting edge at the time due to the use of electronic software to manage the evidence as well as the CDPP assisting in the planning, direction, and execution of the case. Officer McTaggart notes that your energy and professionalism were instrumental in the success of

Operation Caribou. For your work with the AFP, you were awarded the Commissioner's Certificate by Commissioner Palmer.

- 16 In 1995, you co-wrote the LexisNexis Federal Criminal Law service and have continued to co-edit that service ever since with Justice Anthony Payne and Neil Williams SC.
- 17 In 1996, you were called to the bar. You practised initially as in-house counsel at the Sydney office of the Commonwealth DPP.
- 18 In 1998, you came to the private bar at Forbes Chambers and read with now Justice Elizabeth Fullerton and Neil Williams SC. Also in 1998, your Honour spent three months in the USA on a Churchill Fellowship studying the conduct of complex prosecutions.
- 19 As junior counsel and then senior counsel in 2011 at the private bar, you appeared in numerous long and complex trials and appeals while giving advice in many others. Your areas of expertise included the management of and appearance in large, complex, multi-accused, multi-agency conspiracy matters, in particular white collar fraud, taxation offences, corporations offences, drug importation, and terrorism offences.
- 20 In 2014, your Honour was briefed to appear on behalf of the State of New South Wales in the Royal Commission into Institutional Responses to Child Sexual Abuse.
- 21 You were a full-time working mother at this point, with Rebecca born in 2000 and Amy arriving two years later.
- 22 Instructing solicitors at the Commonwealth DPP welcomed the opportunity to work with you given your warm and pleasant nature, your respect for others no matter their role or station, and your willingness to support, to educate, to coach and to mentor others.

- 23 Your colleagues at Forbes Chambers and in the Commonwealth DPP say that you were a counsel always willing to do the hard yards in difficult cases.
- 24 In 2016, your Honour was appointed Commonwealth Director of Public Prosecutions for a five-year term. In May last year, you were re-appointed for a further two years. As Director, your appearances included the prosecution of Wallenius Wilhelmsen Ocean AS for serious cartel offending, the prosecution appeal against the sentence in MHK (a pseudonym) which set a new benchmark for terrorism sentences in Victoria, and the High Court decision in Abdirahman-Khalif which clarified the elements of the offence of being a member of a terrorist organisation.
- 25 Your colleagues at the Commonwealth DPP fondly recall you speaking to the office and staff about the importance of grit. Grit, a word that you love, and it is also a handy acronym. You said the G stands for generosity, first to yourself, then to others. Be kind to yourself and others. You said that R stands for respect. Treat ourselves, our colleagues, those we prosecute, their representatives, our witnesses, the Courts, and our partner agencies with respect. You said that I stands for intelligence, both technical and of the wisdom variety. And the T stands for tenacity, the resilience and courage which is what grit is.
- 26 The staff at the office of the CDPP witnessed and experienced these as your own traits in your role as Director throughout your terms, including through the challenge of COVID-19. Not only was your focus on keeping the work of the office on track in courts across Australia, but also on supporting those who were accessing briefs of evidence and appearing in court from home, working on complex matters in isolation.
- 27 Throughout this difficult period, your Honour regularly connected with the staff at the office. Your Honour brought to the office of the Commonwealth DPP the same traits you always displayed as counsel, including your eye for detail, strong work ethic, independence, and absolute commitment to the rule of law.

- 28 Your work as a researcher, solicitor, counsel, and Director has taken commitment, passion, and endeavour. Those characteristics are also evident in your personal life and the love you have for your family and friends. Robin has noted how dedicated you were in finding the correct work-life balance. You rose at 4am to prepare briefs, got the girls ready and walked them to school before heading to court. You were always home for dinner and along with Robin you have been an active and loving parent.
- 29 You have a beautiful singing voice, in fact, the whole family have wonderful singing voices and have been known to harmonise at family gatherings. Music continues to be a passion. During your professional life, you sang in the Philharmonic Choir. That's where you first met Robin in 1995. You also sang in the New South Wales Bar Choir, the brainchild of Justice Peter Hidden.
- 30 You are still an avid reader, with biographies being one of your go-to genres.
- 31 Robin describes your television watching as light, fluffy and relaxing with Love It or List It and Say Yes to the Dress being your favourites. However, you do watch Insiders so that you can have a thorough review with your mother afterwards.
- 32 Your love for animals continues. You take your dog, Winnie, for long walks and have two beautiful cats called Mitty and Jubs. Your family and friends describe you as the rock of the family.
- 33 Your Honour has lived a life full of personal and professional achievements. Your love of the law is clear. Your love of family and friends and your compassion for the community are clear. Your colleagues' admiration is clear and what you'll bring to the bench is clear. You'll bring integrity, intelligence, curiosity, and tenacity, as well as the many skills honed over 34 years. Your husband Robin says you'll give this role everything. Everyone who knows you wholeheartedly agrees.

- 34 Your Honour, congratulations, and best wishes for your forthcoming career on the bench. May it please the Court.
- 35 **MS JOANNE VAN DER PLAAT PRESIDENT OF THE LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. I too acknowledge the Gadigal of the Eora nation, the traditional owners of the land on which this Court stands, and I pay my respects to their Elders past and present. I also extend those respects to all Aboriginal people who are here today.
- 36 I come before the Court on behalf of the solicitors of this State to offer congratulations and wish your Honour well in your appointment to the Supreme Court of New South Wales.
- 37 Your Honour earned your Arts and Law degrees at the University of Sydney where you would later take a Master of Laws. There was absolutely no doubt as to where your passion lay.
- 38 In 1990, freshly graduated, you sought an Associate role. Now here is where I would normally scribble out anything that my colleague has already said but I think this is worth repeating again.
- 39 You had the knowledge and nerve to take on Michael Kirby AC CMG, reminding him politely in your interview that he generally employed men. Your gumption helped break that pattern, causing the judge to reconsider his views and employ you. He remembers you as a hardworking Associate with excellent focus. He recalls that your use of evidence and grasp of a well-timed submission would serve you well. He was right.
- 40 After a brief stint at Freehills, you would take on a role as a solicitor at the Commonwealth Director of Public Prosecutions. Justice Robert Bromwich, who you eventually succeeded, recalls that you were always regarded as an exceptionally versatile and hardworking prosecutor on the coalface, right from your first day.

- 41 You would develop a particular talent for large scale and complex cases involving many volumes of evidence. Your practice would cover areas such as Federal drug offences, white collar fraud, and later at the bar, terrorism.
- 42 You would also be one of the early adopters of technology in the courtroom, including digital materials and the use of display technology.
- 43 You also had a notable talent for working in litigation teams and having your evidence of law very well organised.
- 44 Your Honour enjoyed a stellar reputation as an instructing solicitor at the Commonwealth DPP, as the leader of a team of solicitors, and also as a supervisor. These skills would serve you later as both junior and senior counsel.
- 45 When you went to the private bar, you would continue to take criminal matters, including terrorism.
- 46 You also developed a skill for alchemy, turning a young commercial law barrister into a fully-fledged criminal barrister. Although she was not your reader, you took this young woman under your wing, recognising the shared skills and the company law and Federal criminal law barrister. With your mentoring and guidance, she would discover, as you suspected, that she was indeed a talented criminal law barrister and has practised as such from that time.
- 47 With your experience, skills, and willingness to mentor younger practitioners, it must have been an easy choice for the government to appoint you in 2016 as the Commonwealth Director of Public Prosecutions. At the Commonwealth DPP, you maintained the important practice of frequently appearing in person in intermediate appellate courts and in the High Court. You were called upon as Director to exercise daily in the public interest dispassionate judgment and independence.

- 48 You also used your time to make a broader contribution to the justice landscape through your membership of and participation in various forums and committees.
- 49 Colleagues at the Commonwealth DPP recall that you displayed a relentless commitment to embracing the digital future. Galvanised by your experience as counsel in many complex and long-running cases, you committed early in your term to upskilling staff in the use of new technology and encouraging the use of databases to manage large cases.
- 50 Under your leadership, the Commonwealth DPP invested in a range of new technologies and hardware. These investments, together with your commitment to more flexible working environments, made the pivot to remote working during the pandemic relatively painless.
- 51 Most importantly, you were a role model to those and showed how to support and interact with colleagues in a courteous and respectful way. You provided a consistently strong voice for diversity, more opportunities for women, and respect for all. You were a remarkably supportive and empathetic leader who always looked to support colleagues and staff to find solutions to complex problems.
- 52 Under your leadership, the CDPP developed a supportive and respectful culture which will continue long after your departure.
- 53 Having served as the Commonwealth Director of Public Prosecutions for more than six years, along with having appeared on both sides in civil and criminal litigation at the private bar, you are well prepared for a very successful judicial career on this bench.
- 54 On behalf of all the solicitors of New South Wales, I again congratulate your Honour on your appointment and wish you all the very best for your career. As the Court pleases.

- 55 **MCNAUGHTON J:** Thank you Chief Justice, fellow Judges, and honoured guests both here and online. I too would like to acknowledge the Gadigal people of the Eora nation as the traditional custodians of the land on which we are assembled this morning.
- 56 Thank you Mr Attorney and Ms Van Der Plaat for your very generous words. They say never to believe the best or the worst things said about you and that advice will continue to stand me in good stead today and into the future.
- 57 I am honoured and humbled to be appointed to this Court. Everyone on the Court and the executive has been incredibly welcoming and I am very pleased to join this highly collegiate Court.
- 58 So far, it has felt a little similar to starting a new school, an experience with which I have some passing familiarity. On that theme, I must say, it is nice that I am joining a court which is now co-ed, though I have also noticed that it appears that the uniform committee hasn't met in a while.
- 59 But if you would allow me to switch to a more ponderous tone, this ceremony is important not only for me but for the community. Along with the ancient and magnificent jury trial, ceremonies such as this provide an opportunity for members of the general community to join with the legal community to participate publicly in the continuation of our robust and independent legal system. I am honoured by each of you who attend here today.
- 60 As to why I became a lawyer in the first place, it was perhaps in part a subliminal thought planted by a careers poster in my Year 10 classroom depicting a female barrister, which must have been something of a rarity in 1978. Indeed, the person behind that careers poster should be well pleased with their work.
- 61 But law was not unknown, at least in my extended family in Victoria where I gradually became aware of cousins of various degrees of remove being involved in the law. Paula Lazarus being an early female solicitor, Leo Lazarus, a County Court judge, and Bill Ormiston, a Judge of the Victorian Court of

Appeal. But ultimately, what probably decided me was that I thought I could be a lawyer and do music in my spare time, but I couldn't do it the other way round. And that has happily proved to be the case, at least some of the time, with my involvement in choirs including my ongoing membership of the Bar Choir led by the Honourable Peter Hidden KC.

62 I of course come to this point as a result of a good few dollops of luck, but also by being the recipient of the support and encouragement of a number of truly extraordinary people.

63 Starting with my family. My mother, born Jenny Lazarus, is happily here today. Coming from a secular Jewish background in Melbourne, she endured the loss of her brother and father in her mid-teens. Her resilience has continued throughout her long life. From the beginning of my teenage years, she was a single parent working as a full-time teacher while being a mother of three children. She taught mainly in the State high school system but also in the Catholic system. She also worked for a time at what was then known as Boys Town, led intensive language units in the western suburbs of Sydney, and was involved in language testing at the tertiary level. Having a broad knowledge of many things, including Gilbert and Sullivan, I am delighted to finally give her an excuse to sing The Judge's Song on repeat. My maternal grandmother, born Marjorie Ormiston, would have joined in with gusto if she had still been alive.

64 It is also lovely that my two sisters, Catriona and Josephine, are here today as is my nephew Daniel, with Josephine and Daniel having travelled here from Brisbane. My sisters' respective partners Scott (who is currently in Perth) and John (in Brisbane) will see this online. I have always been buoyed by my sisters' unfailing support and encouragement in everything I have done.

65 My brilliant but troubled father, Ken, died by suicide in 1989 in England only a few weeks after I was admitted as a solicitor here in Sydney. Born in Albany, Western Australia, he was a mathematician and musician and worked from the late 1950s onwards in the very early days of computers as a computer programmer, including at ICI and then ICL in Sydney. My father shared with

me a love of music and is missed. I would like to acknowledge his sons, my half-brothers, Laurence, Matthew and Reuben, and their mother, Elizabeth, who all live in England.

66 To move to sunnier climes, my husband, Robin, has been the most incredible support to me right throughout my barristerial career and I am very grateful to have had someone to share the good and the other moments with. He is a true Renaissance man who not only is the founder of a software company, but is also a boat builder, a pilot, a robotic greenhouse builder, and a very fine singer. He and I are the parents of our wonderful children, Rebecca and Amy. They continue to make us so very proud as they develop into hardworking and compassionate adults. They are my greatest source of pride and joy and I am so incredibly lucky to be their mother. I am pleased too that Amy's partner, James, is here today.

67 I would also like to thank my in-law side of the family for their continued support over the years, especially those based in Sydney who are here today but also the extended family elsewhere in Australia, Indonesia and the United States.

68 And I must not leave out the wonderful carers of our children over the years whose care and support has been so incredibly important.

69 I have something of a long connection with this part of the CBD as I went to school for several years just down the other end of Macquarie Street when this building was being completed and opened in the latter half of the 1970s. My years down the road at the Conservatorium High School taught me a lot about time management and discipline and I am incredibly pleased to have three of my classmates from the Con High honour me with their presence today, Lyn Williams AM, Katherine Selby AM and Professor Lyndal Trevena.

70 I would like to take this opportunity to pay special tribute to the arts industry for its incredible contribution to our society which helps to keep those of us in the law and other professions and industries refreshed and replenished.

- 71 I also thank all my friends from inside and outside the law including those from my local community who have been a significant source of support and friendship throughout what have been some very busy times.
- 72 There are many to thank in my professional life too. Of course, I cannot name them all but I must name some. I met the late Julie Shouldice when I was a summer clerk, and it was because she later moved to the Commonwealth DPP that I first became aware of that office and its work. She was a fierce, funny, clever, and disciplined mentor. Another important mentor in my early career was the late Professor Alice Erh-Soon Tay, for whom I worked as a research assistant in the Jurisprudence Department at Sydney University. Physically diminutive but huge in stature, she was a visible senior woman when there were hardly any. She was a true trailblazer.
- 73 I went from working for Professor Tay to working as an Associate and Tipstaff to the Honourable Michael Kirby AC CMG in 1988 when he was President of the New South Wales Court of Appeal. That he advertised those positions publicly such that they came to my attention was lifechanging. I could obviously talk about Michael Kirby for some time but of all the many qualities of Michael Kirby one could list, I would highlight his huge discipline and also his grace and dignity under pressure. Indeed, I have called upon my memory of his conduct at various times during my career to help me respond calmly to challenges over the years. He honours me by his presence today.
- 74 All of the other judges of the Court of Appeal from that time of the late 1980s were also important early exemplars of judicial conduct for me, including the late Honourable Gordon Samuels AC, CVO, QC, whose family I now count among my friends.
- 75 My first solicitor's job was at Freehills and there I met a number of inspiring people some of whom are now colleagues on this Court. From there I moved to the Commonwealth DPP. I now come to the staff of that office, many of whom are either here or online. As you have heard, a good chunk of my professional life has been spent there, first as a younger lawyer and later as

Director. The people of that office, both the legal and non-legal staff, exhibit dedication and professionalism of the highest order. The community should be grateful to have public servants of that calibre working for them. May I also pay tribute to the equal dedication and skill shown by other public servants including the lawyers of the Legal Aid Commission, the Aboriginal Legal Service, and the Public Defenders Office, as well as those from the New South Wales DPP, the New South Wales Crown Solicitor's Office and investigators and others from the police services and other agencies. As Commonwealth DPP, I was also fortunate to meet, and to some extent get to know, some of the senior members of the Australian Public Service. And again, the community is well served by those dedicated and talented individuals.

76 I am also honoured by the presence of two of the former Commonwealth Directors of Public Prosecutions, the founding director Ian Temby AO, KC, and Justice Robert Bromwich.

77 To turn now to Forbes Chambers where I spent all of the 18 years I was at the private bar. I learnt so many things from so many of the barristers there who are too numerous to name, but some of whom I am now fortunate to count as colleagues on this Court. The clerks, Christine Darne (now retired) and Ryan Coleiro, as well as the librarian Michelle Crozier, also became very dear to me. My many years there will remain some of the most important times of my professional life.

78 That I am replacing a former colleague from Forbes Chambers, Justice Elizabeth Fullerton, is wonderful in a range of ways. Not least because she was my tutor when I first came to the Bar, as was Neil Williams SC. I remain grateful to them for their support in those critical early years. Regrettably, they are unable to be here today.

79 Justice Fullerton was also my neighbour for many years in chambers and provided me with ongoing guidance to help fashion me into a viable barrister. I had to learn though that what worked for Justice Fullerton would not necessarily work for me as she really was a rock star and I was, well, a chorister.

80 I was also exposed to other styles of barristering over the years. The cool, less-is-more jury style of both Peter Hastings KC and David Staehli SC made a huge impression on me. I first met them in the 1990s as instructing solicitor when the CDPP briefed them in a 15-tonne cannabis resin importation case, (that is, 15 tonnes all up and 10 were seized) involving 35 accused known as Operation Caribou, which was also my first serious foray into using databases to wrangle large swathes of evidence.

81 I was also very fortunate to have had the opportunity to work with many other wonderful leaders and also stellar juniors, some of whom are now silk, from this and other States, as well as talented instructing solicitors from the private profession.

82 I also must thank Justice Wendy Abraham, someone I first met when I opposed her in a proceeds of crime matter and went on to appear with her in a number of difficult and large matters on both sides of the fence. She has become a good friend and I am looking forward to working in the same building as her.

83 I am more than a little daunted to start this next chapter, but I have already felt the warm support of my new colleagues, including someone I first worked with at Grace Bros Broadway back in the 1980s, Justice Natalie Adams, while we were both at uni. I was a cashier, but you may or may not be surprised to learn that her job involved having unfettered access to the store microphone for announcements. I am so genuinely grateful for her and others' generous welcome and practical tips.

84 As I am about to start my judicial career, I realise how much I will rely on the talented women and men of the profession to assist me to make good and just decisions. I pay tribute to those at the Bar who appear for all sorts of people who require their services. They appear whether or not the actions or reputations of those people resonate with their own personal values, according to the critically important cab-rank rule. It is the operation of that rule, together with the giving of respect to all involved in the legal system, which will ensure that the rule of law will continue to remain strong in this country.

85 Again, I thank you all for attending this ceremony today. Thank you, Chief Justice.

86 **BELL CJ:** Thank you, Justice McNaughton. The Court will now adjourn.