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TRANSCRIPT OF PROCEEDINGS

O/N 120693

FEDERAL COURT OF AUSTRALIA
CEREMONIAL SITTING OF THE FULL COURT
TO WELCOME
THE HONOURABLE JUSTICE NICHOLAS

THE HONOURABLE MICHAEL BLACK AC, CHIEF JUSTICE

THE HONOURABLE JUSTICE GRAY
THE HONOURABLE JUSTICE LINDGREN
THE HONOURABLE JUSTICE EMMETT
THE HONOURABLE JUSTICE STONE
THE HONOURABLE JUSTICE DOWNES AM
THE HONOURABLE JUSTICE BENNETT AO
THE HONOURABLE JUSTICE EDMONDS
THE HONOURABLE JUSTICE GRAHAM
THE HONOURABLE JUSTICE RARES
THE HONOURABLE JUSTICE COWDROY OAM
THE HONOURABLE JUSTICE JESSUP
THE HONOURABLE JUSTICE TRACEY RFD
THE HONOURABLE JUSTICE BUCHANAN
THE HONOURABLE JUSTICE GILMOUR
THE HONOURABLE JUSTICE PERRAM
THE HONOURABLE JUSTICE JAGOT
THE HONOURABLE JUSTICE FOSTER
THE HONOURABLE JUSTICE NICHOLAS

SYDNEY

9.31 AM, WEDNESDAY, 18 NOVEMBER 2009

BLACK CJ. Ms Associate.

ASSOCIATE: Presentation of commission and swearing in of the Honourable Justice Nicholas.

NICHOLAS J: Chief Justice, I have the honour to announce that I have received a commission from Her Excellency the Governor-General, appointing me a Judge of the Federal Court of Australia. I now present my commission.

BLACK CJ: Mr District Registrar, would you please read aloud Her Excellency's commission.

DISTRICT REGISTRAR WALL:

The Federal Court of Australia Act 1976. Commission of appointment of a judge of the Federal Court of Australia. I, Quentin Bryce, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, and under section 72 of the Constitution and subsection 6(1) of the Federal Court of Australia Act 1976, appoint John Victor Nicholas, SC, learned in the law, to be a Judge of the Federal Court of Australia beginning on 16 November 2009 until he attains the age of 70 years.

Signed and sealed with the Great Seal of Australia on 22 October 2009, Quentin Bryce, Governor-General. By Her Excellency's command, Robert McClelland, Attorney-General.

BLACK CJ: Justice Nicholas, I now invite you to take the oath of office.

NICHOLAS J: I, John Victor Nicholas, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors according to law, that I will well and truly serve her in the office of Judge of the Federal Court of Australia, and that I will do right to all manner of people according to law without fear or favour, affection or ill will.

BLACK CJ: I now invite you to subscribe the form of oath that you have taken. Mr District Registrar, would you please take the commission and the subscribed oath of office and hold them in the records of the Court. On behalf of all the Judges of this Court, I extend to you a very warm welcome and invite you to take up your office.

NICHOLAS J: Thank you indeed.

BLACK CJ: Mr Solicitor, do you move?

MR S. GAGELER SC: May it please the Court. I acknowledge the traditional owners of the land on which we meet, and I pay my respects to their Elders, past and

present. It is my great privilege to represent the Australian government at this ceremonial sitting to welcome the Honourable Justice John Victor Nicholas as a Judge of the Federal Court of Australia. Parliamentary commitments, unfortunately, have prevented the attendance today of the Attorney-General, the Honourable Robert McClelland MP, and he has asked that I convey his own congratulations to your Honour.

The Attorney General's announcement of your Honour's appointment came as no surprise to your Honour's colleagues within the legal profession. The appointment is fitting recognition of your Honour's legal skills, honed over many years in both branches of the profession. Your late father Ken would have been immensely proud of the public recognition of your Honour's achievements that your Honour is receiving today. It is pleasing that your mother Betty and her husband Fred are here today. Here, too, are your sister Kim, her husband Peter, your wife Dawn, her son Jason, your son Oliver, and his mother Jackie. Your Honour's other son Tom is at school today, but is very much in your Honour's thoughts.

Your Honour was born in Sydney in 1958. Although genetically predisposed to a cricketing career, as the legendary Australian cricketer Victor Trumper, was your great uncle, your Honour, when growing up in Coogee and Clovelly, was more inclined towards surfing and rugby league. Your Honour was a devoted fan of the Eastern Suburbs rugby league team, cheering them on to consecutive premierships in 1974 and 1975.

Your Honour attended Clovelly Public School, and Randwick Boys' High School, before completing your secondary education at Kew High School in suburban Melbourne, where your Honour graduated top of the class. While still in high school, the opportunity to travel to London proved to be a life-changing event. In your Honour's words, it opened your eyes to the world and its opportunities, and it signified the beginning of your life-long interest in history, in travel and in current affairs.

In 1977, your Honour returned to Sydney to begin studying for your degrees in Arts and Law at the University of New South Wales, working part-time, while studying, as a clerk for the small law firm of Paul A. Brown & Co in Bondi Junction. In 1982, after completing the College of Law, your Honour commenced full-time as a solicitor with that same firm where you worked for some 18 months. It was during that 18-month period that you became involved in a considerable amount of civil and criminal court work, much of it pro bono, fuelling your Honour's desire, eventually, to go to the bar.

In 1983, your Honour moved to the firm of Baker & McKenzie where, for the next four years, you worked as a commercial litigation lawyer. The Sydney office of the firm of Baker & McKenzie was still, in those days, comparatively small, and the atmosphere, in your Honour's words, "exciting and convivial". Your Honour there established close and enduring personal friendships with colleagues Ron Webb and

Edward Cowpe, both of whom were later to join your Honour at the New South Wales Bar.

It was in 1987 that your Honour went to the bar, and your Honour got off to a very good start. In fact, one of your first briefs was about as glamorous as it gets in equity. As junior to Simon Sheller QC and John Ireland, opposed to Bob Ellicott QC, John Garnsey and Tony Bannon, your Honour was gainfully employed, appearing before McLelland J, representing the Charles of the Ritz companies in the Australian skirmish of a worldwide trademark battle with the Ritz Hotel of Paris. The hearing occupied some eight or ninth months, including periods spent taking evidence in London and New York. To top it off, your Honour was on the winning side. Charles of the Ritz was substantially successful before McLelland J. The Ritz Hotel started, but later abandoned, an appeal to the Full Court of the Federal Court.

May your Honours docket hold similar delights and, when it comes to appeals to the Full Court of the Federal Court, may your Honour's introduction to the bench be equally successful.

In 1991, with John Ireland, David Catterns and others, your Honour helped establish Nigel Bowen Chambers. In 2001, your Honour was appointed Senior Counsel.

Your Honour was known at the bar for your expertise in intellectual property, having appeared in some of the most significant intellectual property cases in the Federal Court and in the High Court in recent decades. Two of those cases are particularly remarkable because your Honour managed to conduct them simultaneously, one appearing for a group of multinational copyright owners seeking to enforce their copyright, and the other appearing for an individual seeking to defend allegations of breach of copyright in extraordinarily similar circumstances. As well as testing the cab-rank rule to its limit, your Honour's conduct of the cases illustrates your Honour's flexibility and capacity for hard work.

The appeal to the Full Court of the High Court in one case was fixed for a day during the middle of the final week of the trial of the other before the Federal Court in Sydney. Through the good grace of Tamberlin J, through the professionalism and courtesy of those appearing against you in the Federal Court proceedings in Sydney, and through the stimulant effect of a certain amount of caffeine and junk food consumed travelling in both directions along the Hume Highway, your Honour was able to do both cases, one in Canberra, one in Sydney, to win both cases, and to acquit yourself, it has been said, with particular distinction, during argument before the High Court in Canberra. A very big week, followed no doubt by a cup of tea, a Bex and a good lie down.

Your Honour's friends and colleagues attribute many fine qualities to your Honour, all befitting your elevation to judicial office. These include: a genuine interest in a very broad range of human activities; an eye for detail; a single-mindedness manifesting itself in a willingness assiduously to acquire new knowledge where new knowledge is required to master the case at hand; an innate appreciation of human

nature; and an ability quickly to understand the human dimensions and dynamics that have led to any particular dispute.

Your Honour's willingness to acquire new knowledge can be seen in the range of subject matters covered by your Honour's library. Books on law are arrayed alongside books on statistics, econometrics, organic chemistry, naval architecture, Chinese calligraphy and much more. The talent, skills, expertise and breadth of learning that your Honour brings to the Federal Court can only enhance its high standing.

Your Honour Justice Nicholas, on behalf of the Australian Government, on behalf of the Australian people, I extend to you my congratulations on your appointment to the bench of the Federal Court of Australia. May it please the Court.

BLACK CJ: Thank you, Mr Solicitor for the Commonwealth. Mr Catanzariti.

MR J. CATANZARITI: May it please the Court. It is an honour to represent the solicitors of New South Wales, adding my congratulations and remarks on this auspicious occasion. I am also pleased to speak on behalf of the President of the Law Council of Australia, John Corcoran, who is unable to join us today, but likewise applauds your elevation to the Federal Court bench and wishes you well in your new role.

Your Honour is one of five selected for appointment to the Federal Court of Australia from more than 200 nominations and expressions of interest presented to the judicial panel for consideration. It is indeed a reflection of the calibre, personal characteristics, depth of experience and expertise that your Honour has demonstrated throughout your career.

I also believe your Honour is the first member of Nigel Bowen Chambers to be appointed as a Judge of the Federal Court of Australia, a cause for further celebration.

I will continue the Victor Trumper theme. About this time last year, a free one-day festival, reminiscent of the 19th century, saw slatted pads, spiked sausage gloves and long-handled bats take pride of place in the Sydney Cricket Ground as the international cricketers and celebrities paid tribute to Victor Trumper, one of the true greats of the golden age of cricket. Victor Trumper was well before your Honour's time and, indeed, it is clear your Honour has no interest in cricket, so I raise the issue because of your heritage and that you come from excellent stock.

Victor Trumper was indeed your Honour's great uncle, a man renowned for playing his best innings in tight situations and on difficult wickets and unafraid to take risks. He had the fighting instinct of Ian Chappell, the grace of Greg Chappell, the inventiveness of Darren Lehmann and the philanthropic spirit of Steve Waugh, said one cricket tragic David Strange. With such hereditary genes running through your Honour's veins, I think we can expect great things from your time on the bench.

Your Honour was born on 9 August 1958, to parents Betty Jinks and the late Ken Nicholas. Your Honour spent your early years in the eastern suburb of Coogee with sister Kim. Your Honour attended Randwick Boys' High School, and later Kew High School in Victoria, before returning to Sydney for tertiary studies at the University of New South Wales where you graduated with a Bachelor of Arts in 1981 and Bachelor of Laws in 1982. I had the pleasure of being at University with your Honour and I am particularly delighted by your appointment today.

Admitted as solicitor in July 1982, your Honour practised with Paul A. Brown & Co and then Baker & McKenzie from 1983 through 1987. Your Honour was admitted as a barrister in August 1987, and appointed Senior Counsel in September 2001. Initially, a member of Blackstone Chambers, your Honour was one of the founding members of Nigel Bowen Chambers established in 1991. Your Honour's practice at the bar has covered general commercial litigation with a particular emphasis on intellectual property, copyright, patents and trademarks.

Your Honour is known at the bar for your skill, intellect, commitment and sound judgment in your areas of practice. Your Honour has appeared extensively in the Federal Court of Australia over the years, in a wide variety of other courts and tribunals, including the High Court, the Supreme Courts of New South Wales, Victoria, Queensland, the Copyright Tribunal and the Human Rights Commission. You have also appeared in various Royal Commissions, including most recently as Senior Counsel for two former directors of HIH in the Royal Commission into the collapse of HIH.

While your Honour may not be a cricket fan, you are known to enjoy other sports, including rugby league and, in recent years, sailing. Your Honour likes nothing better than to set sail on Sydney Harbour on the weekends or for some off-shore cruising. In fact, one of your Honour's more significant trips involved a hard-working, but rewarding journey from Tahiti to Australia in a large sailing boat alongside some experienced and hardened sailors. Happily, some of your practice at the bar has overlapped your interest in sailing.

Your Honour appeared in a series of cases in the Federal Court relating to a patent for multi-hull ships between the Swedish company Stena and the Australian company Austal Ships, where you also gained an understanding of aspects of naval architecture. One hopes you will have further opportunities to indulge in water sports during your career at the bench and to enjoy family life with your wife, Dawn, and boys Oliver, Tom and Jason.

On behalf of the solicitors of New South Wales, and the Law Council of Australia, I wish you well in your new career and trust your time on the bench will prove very rewarding. As the Court pleases.

BLACK CJ: Thank you, Mr Catanzariti. Mr Bathurst, do you move?

MR T. BATHURST QC: May it please the Court. On behalf of all members of the Australian Bar Association and the Bar Association of New South Wales, it gives me great pleasure to congratulate your Honour Justice Nicholas on your appointment to this Court. Your Honour was called to the bar in 1987, a fact that caused considerable grief to Baker & McKenzie where, in a relatively short period of time, you had developed a reputation as an outstandingly competent litigation solicitor.

Your Honour read with Mr Foster, as his Honour then was, building a long association with him, first as a pupil, then as a junior, finally as an opponent, but always as a friend. His Honour was fortunately able to impart to you most of his good habits. I am told that, on occasions, he regarded you as stubborn, particularly when you disagreed with some of his more interesting views on the facts and the law. It will be interesting to see how this manifests itself when you are both sitting on a Full Court.

For a person of your undoubted talents, your early years at the bar were not without their pitfalls. Early in your career, you were passed an application under a now superseded act, the Testator's Family Maintenance Act, by a barrister whose principal area of practice was building and construction work. That of itself should have made you a little bit suspicious but, on its face, the case seemed to be a good one. The applicant was the sister of the deceased, who had left all his money to the local dogs' home. The applicant had cared for the deceased and his wife until his death and her death shortly thereafter. The applicant was the sole remaining relative of the deceased and the only person who had any claim on his bounty.

It looked a good case, but your Honour, being a cautious person, decided to seek confirmation from a fellow floor member who had the rather odd reputation of being a TFM guru. His view was the same as yours. Your Honour confidently, in those circumstances, appeared before Justice McLelland, who took one look at the papers and told you you couldn't win the case. You looked puzzled, and he said, "*Re Bourke*." You still looked puzzled, and his Honour, being a kindly chap, explained to you that on the authority of that case, as the wife had survived the deceased, and it was a small estate, she had sole claim on his bounty at the time of his death and, therefore, the sister had no claim. Shattered, you returned to chambers and accosted the TFM guru. His only comment was, "Well, you didn't tell me you had a *Re Bourke* problem, did you?"

Justice McLelland proved somewhat of a nemesis early in your career. As the Solicitor has said, you were briefed as a junior in one of the most opulent pieces of litigation that this country has seen, the Ritz Hotel litigation. It almost stopped early on when, on the second day, after Mr Ellicott, in his usual thorough manner, had spent two days objecting to a five-page affidavit, your client wanted to pull out. It was dissuaded and the case proceeded. One witness was a very frail New York resident. The plan was that the judge, with counsel and solicitors, go to New York to take evidence on commission.

Unfortunately, you were sent over as an advance party to obtain an affidavit from the elderly resident. You did so and brought it back to Australia where it was read in Court. Mr Ellicott objected to the affidavit and it was all ruled inadmissible. The trip to New York looked like going out the window. Fortunately, the only problem with the affidavit was that in each paragraph the witness had referred to Charles and the Ritz activities. Mr Ellicott took the point that they weren't identified and, therefore, the whole thing was inadmissible. It was fixed up, of course, with a two-page affidavit describing those activities and the case proceeded in an opulent and leisurely fashion to a successful end for your client.

From then on, your career expanded rapidly. You were a founding member of Nigel Bowen Chambers, named, of course, after the first Chief Justice of this Court. You were a leading junior not only in the intellectual property field, but in all general commercial areas. I had the privilege of leading you on a couple of occasions, and it was an absolute delight and very easy because you did all the work. I was lucky enough never to have you as my opponent.

Your Honour took silk in 2001, and your practice continued to expand across all areas. It ranged from dealing with the intricacies of patent legislation, to appearing for directors in the HIH Royal Commission, and appearing as co-counsel in United States litigation in, of all places, Austin, Texas. Your Honour apparently liked the food in that area.

Your Honour has the distinction of being the only person I know who the High Court insisted appear in an appeal as a condition of a grant of special leave. In *Stevens v Sony Corporation*, your Honour appeared for the applicant in this Court, but Mr Stevens appeared in person in the special leave application. The High Court, in a generous mood, not only granted him leave to appear himself, but granted special leave on the condition that you appear in the appeal. Their judgment, as always, was impeccable. Your Honour did appear, and the appeal was successful.

Your Honour's appointment is well deserved and is of considerable benefit to this Court and to the community generally. On behalf of all members of the bar, I extend my warmest congratulations and best wishes for your future years. May it please the Court.

BLACK CJ: Thank you, Mr Bathurst. Justice Nicholas.

NICHOLAS J: Chief Justice, distinguished guests, family, friends and colleagues. As you have already heard, I didn't leave university and go straight to a large law firm. For that I'm grateful. I spent my first few years at a small firm in Bondi Junction where, under the supervision of a quite young practitioner, who I am pleased to say is here today, Mr Paul Brown, I was exposed to a wide variety of interesting matters, both civil and criminal. And it was during this period, as has been noted by speakers today, that I first realised that litigation was the area that I was most interested in and, from that point, it followed in my mind that sooner or later I would need to try my hand at being a barrister.

Looking back, I think those first few years were of immense benefit to me. I dealt with a wide variety of people who were weighed down by all kinds of problems. Many of them used to look at me of course - I was then aged 23 - and ask themselves, "Is this guy truly old enough to be a lawyer?" It was in these first few years of practice as a solicitor that I learnt some pretty basic lessons. I remember in my first few months making my first appearance in the Federal Court. It was a directions hearing, of course, and Sheppard J was presiding. The lesson learnt was to always think before you speak in court.

When the matter was called, I rose and announced my appearance for the defendant, only to be quickly and quite properly rebuked by his Honour saying, "In this Court, the defendant is referred to as the respondent. Is that who you appear for?" Gulp. His Honour then proceeded to interrogate me about the issues in the case, and the sound of my rather confused explanations rang in my ears for some time later. Later, at the bar, it was my great privilege to appear in many cases heard by Sheppard J who was, at the time of his retirement in 1997, one of the most respected and experienced judges in this country.

Most of my first year of legal practice was spent in local courts, mainly at Waverley, but also at Glebe, Newtown, Manly, and places further afield. I did appear from time to time in sentencing appeals in the District Court, but there I ran into the all too frequent problem of the customer not turning up, with him or her then becoming the subject of a bench warrant, and leaving me to ponder whether I should have been more positive when talking them through the prospects of their appeal.

I was introduced to the niceties of practice in country areas when I undertook the long drive to Narooma to appear in a civil claims case involving a very modest sum of money. As I was driving into the town the evening before the case was to be heard, I was flagged down by a policeman who proceeded to give me a breath test. The next morning I saw the same policeman moving about the courtroom behaving as though he was the court attendant, which I soon realised he was. And very soon after the case started the same policeman was called by my opponent to give some evidence in the case against my client. Finally, when the magistrate adjourned for morning tea, the same policeman joined us for that too.

This was also an occasion when I learnt the value of thorough preparation. For days leading up to this hearing, I had been pouring over every book and article that was then available on the law of restitution. What I didn't buy for myself I borrowed from the library. When the evidence was finished, I took a moment to remove them all from my briefcase so I could arrange them neatly at the bar table. I then commenced my address by informing the magistrate that the case raised complicated issues concerning a new field of law known as restitution. The magistrate would not have a bar of that, announcing that it was a contract case, and that it had nothing to do with restitution at all, but that my client should win anyway.

My good friend, Edward Cowpe, who sadly for me is starting at the bar just as I am leaving it, was working at Baker & McKenzie when we were both in our first and

second years of practice as solicitors. It was he who suggested that I leave Paul Brown & Co and join Baker & McKenzie. At this time, the staff partner there was Michael Coyle, a delightful man who has since passed away at much too young an age. He asked me for a sample of my written work, and since I wasn't doing many, or any, written advices, I asked him whether he would settle for a copy of my essay entitled "Unstamped Instruments and Section 29(1) of the Stamp Duties Act: Is an Unstamped Instrument Void?"

It had been marked by the late Graham Hill, later a judge of this Court, and he had written some flattering remarks across the front page. Michael Coyle flicked through the paper and said to me, "You know, I've always wanted to know the answer to that question." As remarkable as it seems, I actually believed him when he said that to me.

After some further meetings with his colleagues at the firm, I was hired and I joined Baker & McKenzie at a time when the comparatively small number of partners and associates working there enjoyed a steady flow of challenging commercial work, which was both interesting and varied and where, as a litigation solicitor, I worked with some fine legal minds, including, to mention only a few, Michael Ahrens, Geoff Tapperall and a then young Andrew Salgo.

It was there that I had my first dealings with some of the leaders of the bar, including Doug Staff, Roger Gyles, and Peter Hely. At about the same time I started at Baker & McKenzie, Ron Webb, now Ron Webb of Senior Counsel, did so too and we have been close friends ever since.

In 1987, I went to the bar and I was briefed by Ron when he was still at Baker & McKenzie in the Charles of the Ritz case, about which you have heard a little already. This very hard-fought piece of litigation provided me with a wonderful start at the bar. To be part of the team led by Simon Sheller and John Ireland and have spent what these days would be considered far too many days arguing with Bob Ellicott, John Garnsey and Tony Bannon, the most esoteric points of admissibility and trademark law, was a remarkable opportunity to learn on the job.

On top of that, the case was heard by that most superb judge, Malcolm McLelland and, yes, he is the same Malcolm McLelland who applied *Re Bourke* against me some years later. And since our opponents called in the order of 120 witnesses in their client's case, there were plenty of opportunities for me to try my hand at cross-examination. More often than not, my cross-examination of these witnesses would culminate in Simon Sheller gently tugging me on the gown and whispering, "That's good John, but I think you've done enough."

I read with Lindsay Foster, who is a great friend and mentor and someone who later led me in some very memorable cases. But in my early years at the bar a great deal of my time was spent being tutored by John Ireland, who I met through the Charles of the Ritz case. He introduced me to Blackstone Chambers and a small group of barristers with rooms there, including David Catterns, Michael Rudge, the,

until now, unnamed construction lawyer, Stephen Epstein and Ken Taylor. We were soon afterwards joined by Ron Webb.

In 1991, we left Blackstone Chambers and established Nigel Bowen Chambers, adopting the former Chief Justice's name. He was quite chuffed by the gesture, and offered us his best wishes. Since then, Nigel Bowen Chambers has flourished.

As a junior, I had the great privilege of being led and taught by people for whom I have the utmost respect and admiration: in particular, Tom Hughes and Roger Gyles. I am honoured by their presence here today. One who is not here today is the late Peter Hely, by whom I had the privilege of being led from time to time, and before whom, later, I also appeared when he was a judge of this Court.

These three leaders of the bar, together with David Catterns, John Ireland and Lindsay Foster, taught me over a period of many years how best to get at the facts of a case and how best to persuade the tribunal. Of course, their styles were very different. David is a great persuader, but with a soft edge. Before I had been around long enough to appreciate just how effective David's unfailingly polite and gentle style was, I would say to him when his junior and during slight pauses in his cross-examination, "David, stop saying 'thank you' to the witness every time he gives you an answer."

Nigel Bowen Chambers has attracted many talented juniors over the years, David Robertson, Nick Manousaridis, Christian Dimitriadis and Hamish Bevan, to name just a few. I single out these names in particular, not just because they are all talented juniors and friends, but also because I have had the great pleasure and advantage of leading each of them, sometimes in lengthy and complex cases requiring sustained concentration and effort.

I have to remind Richard Cobden that I led him, too, though he will also want me to remind you, only once. Since then he and I have been opposed frequently, almost always in hard-fought, sometimes fiery contests, but which, on a personal level, have always concluded on best-of-friends terms.

My clerk at Nigel Bowen Chambers was Susan Worth. She has been with the floor since its inception. She is a fine clerk and a good friend to all members of chambers. To Susan, I express my gratitude for her many years of loyal service.

Val Swift was my secretary for seven years. She is perhaps the most organised person I have ever known, unflappable and intensely loyal. She always did her best to keep me organised, though not always successfully.

And then there is Jill Carson, who has also been with me for seven years. Since she was trained by Val in their previous careers, long before either of them came to work for me, it is no surprise that Jill has served Ron Webb and myself so well. I am very pleased that Jill has joined the Federal Court as my executive assistant.

I am looking forward to serving as a judge of this Court. It has a relatively short, but distinguished history. I have appeared before many of its judges at one time or another over the last 20 or so years. Two whom I would like to mention are the late Justice Lockhart and the late Justice Lehane. Leaving aside their extraordinary intellectual powers, they both had well-deserved reputations for their unfailing courtesy on the bench. That is something for which I would like to be remembered too. Of course, as my former colleagues remind me, time will tell.

Sitting to my immediate left is Justice Kevin Lindgren who is to retire shortly. I want to take this opportunity to say to your Honour publicly: it has been a privilege to appear before you over the years, and I consider it a great honour to be your colleague, even if only for a short while.

In 2001 my father Ken died a little less than a year before I took silk, so I am as disappointed today as I was then not to be able to share the special occasion with him. My mother Betty and my step-father Fred are here, and I want to publicly thank them too for all the support and encouragement they have given me over many years.

To other members of my family who are here today - my son Oliver, my wife Dawn, her son Jason, my sister Kim, and her husband Peter. Thank you for being here today. Thank you also to my youngest son, Tom. He is not here today, but he is in my thoughts. I am immensely proud of both Tom and Oliver.

Thank you also to my many friends and colleagues who have come here today. Your support and good wishes are very much appreciated by me.

BLACK CJ: Adjourn the Court please.
