

## FAREWELL CEREMONY FOR THE HONOURABLE JUSTICE CAROLYN SIMPSON

- 1      **SIMPSON JA:** Chief Justice, my friend Justice Bell of the High Court, fellow judges of the Supreme Court, members of my family, friends, ladies and gentlemen:
- 2      Like the Chief Justice, I acknowledge that we meet on the traditional land of the Gadigal people of the Eora Nation and I pay my respects to their elders past and present.
- 3      I thank you for taking the time out of your busy schedules and the trouble to attend today, almost my last day as a Judge of the Supreme Court and the Court of Appeal. I first sat in this place on 1 February 1994, more than 24 years ago. I joked then that I had, in the language of the then Sentencing Act, a minimum term of 12 years and an additional term of another 12 years. I have never sought parole, and now I am to be released, although not without supervision. My associate has suggested that I am about to embark on a sentence to be served by way of periodic detention. Those words might mean little to my colleagues in the Equity Division, but the criminal practitioners will know what she means.
- 4      It remains a matter of wonder that I find myself sitting here. I came to this place by a series of strokes of good luck and some acts of extreme generosity. I stumbled into law entirely by accident – what the creators of Disneyland might call the happiest accident of all – at least, I would.
- 5      My first career was as a school teacher. I didn't like it, and I wasn't good at it. Which was cause, and which effect, I don't know. I lasted five years. I left with a burning ambition to be a journalist. But nobody would employ me as a journalist, although I did come second in an interview with the late Donald Horn of the now defunct Bulletin. Although it did not seem so at the time,

failing to secure employment in the world of journalism was my first stroke of luck.

- 6 A friend told me of a law course that was, he said, so easy that nobody ever failed. Not much use to you, he said, but you might as well have it on your CV. It was the Barristers' Admission Board course conducted by the Law Extension Committee, under the auspices of Sydney University.
- 7 My friend's advice was my second stroke of luck. We both enrolled. He never sat for a single exam. Instead, he became a successful businessman and famous restaurant critic – he called himself a public stomach. I sat for the exams, and, surprisingly enough, passed.
- 8 Unaware of my own audacity, I marched into the District Court and asked for a job as an associate. I didn't know what an associate did, but I had met one once, and it sounded good. I lied about my typing skills, which were, in truth, non-existent. The late Judge Robson kindly took me on despite my lack of suitable qualifications for the job. That was my third stroke of luck.
- 9 There, watching the conduct of criminal trials and the never ending parade of motor vehicle personal injury damage claims, I began to get a sense of how the rules of evidence worked. I learned a lot about cross-examination. I watched advocates, with varying degrees of skill and success, attempt to work magic on juries. I gradually became hooked.
- 10 I managed to get through those exams, which were not as simple as my friend had led me to believe, and found myself admitted to the Bar – there were then separate admissions as “attorney solicitor and proctor” and as barristers.
- 11 Before passing over the next 18 years, I would like acknowledge the role of the Law Extension Committee course. It provides to mature age students, and to aspirants who do not live in large metropolitan centres, and others, who need to work for a living, and cannot satisfy the requirements of even the part-time courses offered by the universities, an opportunity to study, to

qualify, and then to practise, law. It is not an easy task because it must be fitted in with employment, personal, and other commitments. To a large extent, through no fault of the administrators, students have to make their own way. I am far from the first judge, and certainly not the most senior, who has qualified in law through this worthwhile facility. It is an entirely egalitarian course, not dependent on stellar ATARs. Long may it provide access to legal practice to those who otherwise would not have the opportunity to qualify.

- 12 In those days, having gained even a basic law qualification, it was possible to hang up a shingle and wait hopefully for the briefs to roll in. There were then no pesky bar exams to supplement the academic qualifications already held. It seems to me that the quite onerous requirements now applied to practice at the Bar have immeasurably improved standards of competence – but I'm rather glad that they did not apply then.
- 13 And so, without having to pass Bar exams, and with a minimal qualification, I did hang up my shingle. For the first six months Peter Kennedy-Smith, then practising on the 13th Floor Wentworth Chambers, allowed me to sit in his room and introduced me to many solicitors. That was my fourth stroke of luck, and an act of real generosity, for which I thank him again. Members of the 13th Floor were also generous in allowing me to use their chambers for the rare conferences I needed to have.
- 14 The fifth and sixth strokes of luck came at the beginning of 1977. In those days it was difficult, if not impossible, for aspiring women barristers to secure chambers. Initially, many chambers simply would not allocate rooms to women applicants. Gradually, some came dimly to understand that this attitude was not quite – kosher. They no longer rejected women applicants at the outset: we're not, they said, against women – but we have one.
- 15 The Ground Floor of Wentworth Chambers had been occupied by government offices, whose lease had expired. Counsel's Chambers Ltd developed the floor into new chambers. Initial interest was strong, and there was a long waiting list, but as the time for occupation came closer, interest waned. I put

my name down. There was no floor committee to persuade – Counsel’s Chambers wanted to offload the rooms, and so they did, eventually allocating one to me.

- 16 But I had no money. The National Australia Bank, which had a branch next door in the Law Society building, was generous in lending to ambitious new barristers. They funded my purchase, in what might now be branded irresponsible lending practice.
- 17 I was lucky, too, in the solicitors I gradually met, who had sufficient faith to put the legal affairs of their clients in my hands. And so I practised at the Bar for 18 years. My final stroke of luck came when the tide of resistance to the advancement of women in the legal profession turned, and I was offered appointment to this Court.
- 18 I received many letters of welcome from serving judges, almost without exception advising me that the work was demanding and rewarding. They were right on both counts. Only one woman was then a member of the Court, Justice Jane Mathews. I thank her for her generous assistance in easing me gently into the Common Law Division and the Court. But she soon deserted me for the Administrative Appeals Tribunal and the Federal Court.
- 19 I have done many things in the last 24 years. I have directed juries on the principles on which to act in deciding the fate of a person accused of murder and, sometimes, of other serious crimes; I have – once only – imposed a life sentence; I have been called upon to constitute myself as a jury for the purpose of deciding the guilt or otherwise of a person charged with murder; I have had to decide whether dedicated, competent doctors have failed in their duty of care to patients; I have been roused from slumber by the phone at 2:00am to be asked to make an order, so that a child of a recently deceased much loved husband could be posthumously conceived; and, again, in another middle of the night phone call asked to make an order that would permit doctors to perform a blood transfusion on a child whose parents’ religious belief prevented them from giving consent; I have been asked,

repeatedly, to work some magic that would avoid defaulting mortgagors being evicted from their homes.

- 20 Few of these decisions come easily. Some are exceedingly painful. The competing claims of a patient who has suffered a devastating outcome after medical treatment, and those of an ordinarily attentive and committed doctor whose attention may (or may not) have momentarily lapsed are among the most difficult of decisions. So too, sentencing: it is necessary to balance the legitimate claims of victims or their families, and the sometimes harrowing details of a life that has brought the perpetrator to the crime committed. These are decisions that forever and profoundly affect the lives of those concerned. The work of the Common Law Division exposes its judges to aspects of life in this State that most could never contemplate: young lives marked by physical or sexual abuse (or both), neglect, alcoholism, drug abuse, and poverty.
- 21 Sitting on the Court of Criminal Appeal, and, more recently, on the Court of Appeal, I have inflicted on hardworking, careful judges the indignity of being told that they were wrong. I have myself suffered the indignity of being told that I was wrong – even when I wasn’t. I have made many mistakes, although not, perhaps, as many as the Court of Appeal has sometimes thought. After two decades, one of my early reversals stands – to this day – as the leading authority on taking family hardship into account in sentencing. With a marked lack of tact, it is cited to me with depressing frequency.
- 22 In the last 24 years I have served under three Chief Justices, four Chief Judges at Common Law, and one President of the Court of Appeal. The dedication and commitment of each of them is nothing short of remarkable. For the first four and a half years, I sat at the feet of Chief Justice Murray Gleeson, from whom I learned much. I count sitting with him on the Court of Criminal Appeal as one of the great privileges of my life. I marvelled at the decisiveness of his thinking and his clarity of expression. I yearned to emulate both, and the efficiency with which he disposed of complex factual and legal issues – I never came close. He administered the Court with the

same cool efficiency and it was said – correctly I think – that the judges of the Court would have walked barefoot over hot coals had he asked them to do so. Fortunately, he did not. Chief Justice Gleeson was succeeded by Chief Justice Spigelman, whose style was entirely different, but whose intellectual leadership was also a thing of wonder. He brought a refreshing measure of informality to the Court, while retaining its innate dignity. And then the current holder of the office, Chief Justice Bathurst, who brought a different style again, but also a breathtaking capacity for intellectual and personal leadership. He nurtures his personal staff. To enter his precinct is something like walking into a warm and friendly family home where everyone is working together. Each of the Chief Justices under whom I have served has taught me much. It is too often not recognised that each of them has sacrificed a good deal of material success for nothing more nor less than public service. The administration of justice is well served indeed when lawyers of such capacity are at the helm, and willing to sacrifice their own material interests for public service.

- 23 I was welcomed to the Common Law Division by then Chief Judge at Common Law David Hunt, who was endlessly generous in answering the cries for help of a rookie judge, while writing definitive judgments on all aspects of the criminal law. His catalogue of judgments is a legal resource in itself. Justice Hunt retired in 1998 after 19 years of service, and was soon snatched by the International Criminal Court. He was replaced by Justice Jim Wood, freshly returned from his sterling efforts reforming the NSW Police Service by his ground breaking Royal Commission. Notwithstanding the level of corruption his work exposed, he was once accused of destroying the morale of what was described by one journalist as a fine police service. He brought to the Common Law Division intellectual leadership that maintained the great tradition of David Hunt. He retired – he said to spend time with a small grandchild – but has, it seems, rarely been left alone long enough to do that, or to smell the roses. He seems to go from one Inquiry or Commission or Board to another. When Justice Wood departed, Justice Peter McClellan, who had been plucked from a position on the Common Law Division to take up a role as Chief Judge of the Land and Environment Court, was plucked

again to return to the Common Law Division, this time as Chief Judge. Not only did he lead the Common Law Division both intellectually and personally, he undertook a significant role in taking an understanding of the way the law operates outside the legal profession. He did this by delivering speeches and papers to organisations in the hope of explaining the work of the judiciary. He was justly recognised for this in one of the Honours lists. As everybody knows, he was again plucked, this time to take on the important and arduous task of the recently completed Royal Commission into Institutional Responses to Child Sexual Abuse. Most of all, I thank him for his personal friendship. Each Chief Judge has been both a guide and a mentor, and a sounding board on which to explore ideas. They have all saved me from error.

- 24 I had little time in the Common Law Division under the leadership of Chief Judge Hoeben because I was enticed away to join the Court of Appeal under the leadership of President Beazley. In that short time, he, too, gave generously of his time and expertise. I was dubious about the transition to the Court of Appeal, having enjoyed the work of the Common Law Division, its variety, its demands and even its frustrations. Those middle of the night calls are not the highlight of the life of the Common Law Division judge. The highlights are the satisfaction of working through sometimes complex factual disputes, deciding what the facts are, applying the law to those facts, and producing a judgment – still warm from the printer, to be savoured like freshly baked bread. Sheer bliss – at least until it works its way through the judicial hierarchy, when it might turn into chook food.
- 25 On translation, I found the Court of Appeal a very happy and united group of friends. The output is prodigious, as are the demands. I thank them for welcoming me. I have had to reacquaint myself with legal issues I had not thought of in 21 years. I was always generously assisted by my new colleagues.
- 26 In many ways, I have had the best of two worlds. Sitting as a single judge in the Common Law Division, I was very much left to my own devices. I started

from scratch, finding the facts, working out the law to be applied, and bringing the two together. The collegiality of the Court of Criminal Appeal, and Court of Appeal gives a different experience altogether, one in which ideas are discussed and results worked out. Both have been a source of enormous satisfaction.

- 27 There have been many other colleagues on the Court from whom I have been fortunate to receive guidance. Sometimes they did not know that I was using them as silent mentors. Two beacons of whom I would like to make special mention are Justices Simon Sheller and Bill Priestley, both members of the Court of Appeal when I wandered into this institution. Their personal styles, and the manner in which they went about their judicial tasks, was inspirational.
- 28 I remain amazed at the capacity of those I have mentioned offer themselves in the service of the public.
- 29 I cannot pass on without mentioning the work of the many judges on the District Court, some of whom have been the victims of my appellate decisions. Sitting on appeals, civil and criminal, I have had ample opportunity to observe at close quarters the work they do. I know them to be hardworking, and I know the workload of the District Court is mountainous. I know that the heavy demands means that mistakes will inevitably be made. They undertake the enormous task of the bulk of the more serious criminal work of NSW. They have an endless diet of trials of sexual offences, of drug offences, and of serious offences of personal violence. Their resources are often inadequate, with daily transcripts not always available. From my observation, they manage, under difficult and stressful conditions, to dispose, on the whole unimpeachably, of a massive amount of work. The District Court, and the Local Court, could be called the workhouses of criminal law, and, increasingly, civil law. They make thousands of decisions each year, only a small proportion of which are subject to appellate scrutiny.

30 The judges of the District Court bear the brunt of the most intractable sentencing cases. The community rightly demands that serious crime be met with adequate retribution. The community does not often see the personal and family circumstances that precede the commission of crime. How does a sentencing judge balance the need to denounce the conduct of a culpable driver against the personal history that includes that offender having, at the age of 14, witnessed his mother's death from a drug overdose, powerless to save her? The Judges of the District Court wrestle with these decisions day after day, year after year.

31 That these decisions are ordinarily accepted, even if unpopular, is one mark of a truly civil society.

32 It would be remiss of me not to acknowledge also the assistance I, and the judiciary generally, have received from another organisation. In 1987, in the wake of serious allegations against certain judges, the Judicial Commission of NSW was established. I was not then a member of the Court, but I well remember the fear engendered at the perceived threat to judicial independence that it was thought to pose. Those fears have proved to be groundless. The Judicial Commission has, if I may express a view, been a resounding success. It has done nothing but good for the judiciary. By its educational function, it effectively operates to keep judges apprised of new developments in the law. When called upon to do so, it deals sensitively and discreetly with complaints against judicial officers. In all its years it has done this under the skilful management and leadership of Mr Ernie Schmatt, who was justly recognised for his contribution in the most recent Australian Honours list.

33 Not surprisingly, in 24 years, I have been assisted by many tipstaves, too numerous to mention or even to count. Most have been enthusiastic young law graduates, setting out on their careers. It is always a joy to see them when they find time to pay a visit, and to watch their success from afar. Some of them are here today. They are testament to the education they receive in the various universities from which they graduate.

34 The judges of the Court could not do their work without an efficient administrative support structure. The Registry staff are unfailingly courteous, efficient and helpful. There are too many to name individually and some do their work so self-effacingly that they are hardly noticed. We would notice if they did not. I make special mention of the Executive Officer, Chris D'Aeth, who holds the ship together and ensures that things go smoothly, assisted by Nick Sanderson-Gough, of Jerry Riznyczok who manages the Court of Appeal, and Katrina Curry the Court of Criminal Appeal Registrar. The Registrars ensure that matters are ready for hearing. You only have to look at the daily lists to see the volume of work they dispose of. And, for the library staff, under the guidance of Vanessa Blackmore, nothing seems to be too much trouble. Though in this digital age it is seldom necessary for judges to enter the library, the library staff maintain an exceptional service. I would like to name more, but we would be here forever.

35 At my swearing-in all those years ago a dozen members of my family gathered. The youngest was Peter, then 3, who squirmed through the photography sessions, but was brought under control for the ceremonial sitting. He is now grown up, and a successful engineer and better behaved. We have lost one beloved family member – though she did survive to 101 – and acquired some welcome new members – the younger generation, Jacinta and Daniel, 2 year old Millie, and some partners. Not all have been able to be here today, but there is a fair contingent. I am delighted that all my siblings, and my sisters-in-law – have made the effort to be present. I thank them all for remaining an important part of my life throughout the years, and, indeed, the decades. My three nieces and three nephews have been an unremitting source of joy – except perhaps, when as children, they tried to force me to eat peanut butter. It has been a delight to be part of their growing up into the gorgeous adults they are today.

36 It has been an honour and a privilege (and, mostly, a pleasure) to serve the people of NSW as a Judge of this Court. But sometimes – on a sunny Sunday afternoon, when mired in the mysteries – and the miseries – of the *Civil Liability Act*, or the *Workers Compensation Act*, or trying to untangle

apparently conflicting statements of legal principle or statutory construction, or sifting through the psychological reports in a sentence appeal, and aware that, in the outside world, people are gardening, sipping coffee, reading – reading not for work but for fun, books they are not paid to read – it becomes necessary to remind myself: this is not drudgery, Carolyn, this is an honour and a privilege. And it is.

- 37 The work of the Supreme Court is arduous and unrelenting. It is demanding intellectually and it can be demanding emotionally. Some of those who choose to comment on decisions of the Court – especially sentencing decisions – do not know enough about the efforts made by Judges to do justice according to law. It sometimes seems that those concepts sit uneasily together. Best not to be too specific about that.
- 38 One of the first things I learned on assuming this role is that there is always another side to every story. A plaintiff's case that sounds unanswerable collapses when cross-examination begins. Thankfully, this is an occasion when the other side is not told. As we used to tell juries in the days of the old dock statement, what Chief Justice, Mr Moses and Mr Humphreys have said is not on oath, and it is not subject to cross-examination. You should give it such weight as you think it deserves. All have been generous in taking advantage of the licence afforded to them – they were not obliged to tell the truth, the whole truth and nothing but the truth. They could gild the lily, and they have done so. Family members have been warned that they may hear a version of their relative that they don't recognise, but that protocol forbids interjection.
- 39 Regrets? Unlike the late crooner, Mr Sinatra, I have more than a few. But if you think that I'm going to tarnish the picture of unalloyed virtuosity that the Chief Justice, Mr Moses and Mr Humphreys have painted today, you should think again. This is not an occasion for the warts to be painted on the portrait – not by me, in any event.

40 Notwithstanding my occasional Sunday afternoon doubts, it has indeed been an honour and a privilege, and a pleasure to serve in this role. I still sometimes pinch myself at the thought that the people of NSW, through their elected representatives, have entrusted me with the resolution of their various disputes.

41 I have taken up too much of your time. But before I relinquish the microphone, I have one last thing to say.

42 When I came into the legal profession all those years ago, it was said to be – and was – the domain of privileged males. The adjective “white” did not come into – that was a given. Those who did not fit the pattern had no prospect. That was not – quite – the full story. Sitting before you is Exhibit A. I am a country girl. When I was admitted to the Bar, my only legal connection was my brother who was a solicitor in a small practice. He was generous in his support, but that did not give me entrée into the elite world of litigation. There were real hurdles for women aspiring to be successful barristers. There are still are. In a chance conversation in the lift last week, with Justice Gleeson, I learned that, in her four years of the Federal Court, two per cent – two per cent – of the Silks who had appeared before her were women. This is 2018!

43 The figures are bad. But my message is, nevertheless, one of optimism – I refer to Exhibit A. Sitting alongside, and behind me, are Exhibit B.

44 And while it might seem impertinent to pin an Exhibit tag on a High Court judge, sitting on the cross benches to my right, is Exhibit C – Justice Bell, one of three women on the High Court, one of whom is the Chief Justice of Australia.

45 To the young women – and, I add, to the young men without the preferred connections, to those of different ethnic origins – I say the task is not impossible. Yes – it will be difficult – there is no doubt about that. Yes – you will encounter injustice, prejudice, bias, usually unarticulated. You will encounter resistance, sometimes overt, sometimes so subtle that you will

hardly know where it's coming from. You will have to struggle, more than your male counterparts. But give it a go. Look at the Bench beside and behind me. The task is not impossible.

- 46 I am not saying that you will not face obstacles. You will. The exhibits are not proof that the obstacles do not exist. They are evidence that the obstacles can be overcome.
- 47 You owe it to yourselves to give it a go, and you owe it to the next generation, who will, by your efforts, find it a little easier.
- 48 To those young women contemplating a career in the legal profession, perhaps with judicial ambition: don't be daunted. The obstacles are there: your challenge is to surmount them. To adopt and adapt the message of the former President of the United States: Yes, you can.
- 49 It remains for me only to thank you, Chief Justice, for the patience, forbearance, tolerance and generosity you have shown me, for having the faith in me to recommend my appointment to the Court of Appeal where I found myself warmly welcomed, made new friends and enjoyed the different nature of the work, and for your leadership of the Court.

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