



The Hon Justice Murray Tobias takes the Oath of Allegiance'.

The Honourable Murray Herbert Tobias

Murray Tobias QC was sworn in as a judge of the Supreme Court and a judge of appeal on 28 April 2003.

His Honour was welcomed to the court by Walker SC, speaking on behalf of the Bar. Walker SC recounted that his Honour had a long and distinguished career at the Sydney Bar, including as a member of the Bar Council from 1976 and as its president in 1993 and 1994. His leadership of the Bar came at a very testing time, particularly by reason of the introduction of what after many amendments would become the *Legal Profession Act 1987*. His Honour was also a member of the NSW Casino Control Authority and chaired a major inquiry by it in 1994 and 1995. He was also a captain in the Naval Reserves and presided over a number of inquiries as a Defence Force magistrate. On Australia Day in 1998 he received membership of the Order of Australia for services to the profession, particularly through the Australian Bar Association and New South Wales Bar Association, and for service to military law.

His Honour also maintained a busy practice in a broad range of work, including in administrative law, local government planning and development as well as equity and commercial law.

Walker SC, in welcoming his Honour's appointment, noted that in consulting authorised reports one comes up with case after case that not only settled the outcome of fortunes or government policy but also informed and

added to the development of principal in those areas. He went on to say that:

Two in particular stick out as having been decided some time ago, your Honour being victorious, that, no doubt being more than a mere coincidence, and of application to the position you are about to take. In *Heron v McGregor*, decided as long ago as 1986, your Honour successfully contended that even the pressing public interest of disciplinary action against professionals, like all other operations of the rule of law, would finally give way to the paramount dictates of fairness and justice in the administration and disciplinary system. The authority is a good one, the principal was age-old, the application was timely. A reminder of it is also timely.

And finally, joining a bench next after Justice Ipp in seniority, it is of course important to point out that *San Sebastian v The Minister* in which you appeared successfully for the council of the City of Sydney, was decided as long ago as volume 162 of the CLR. I'm not sure whether your erstwhile floor brother Justice McHugh would regard 162 CLR as still on the compulsory reading list or not, but it suffices to say that in *San Sebastian* matters were held, accepting your Honour's argument, in relation to the possibility of a duty of care with respect to governmental and quasi governmental actions of a kind which remain extremely current in the kind of doctrine which your Honour will be administering very shortly.

In reply his Honour was commendably brief, perhaps due to comments following his welcome address at the swearing-in of Justice Nicholas. Justice Tobias noted with pleasure that his fear of an empty courtroom at his swearing-in had not materialised.

The Honourable Ruth Stephanie McColl SC

The immediate past-president of the New South Wales Bar Association was sworn in as a judge of the Supreme Court and as a judge of appeal on 29 April 2003.

Her Honour was welcomed to the court by Bret Walker SC, speaking on behalf of the the Bar. Walker SC recounted that her Honour came to the Bar in February 1980 after receiving her education at Willoughby Girls High School and the University of Sydney and practice as a solicitor. Her Honour was on the Bar Council continuously from 1981 to 2001. Her Honour was secretary from 1987 to 1994, treasurer from 1995 to 1997, senior vice-president in 1988



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and 1999 and was its first woman president in 2000-2001. Her Honour spent some 16 years on professional conduct committees and was also editor of *Bar News* from 1985 to 1997. She also acted as chair of the ADA and Arbitration Committee and the Equal Opportunity and Gender Issues Committee. Her Honour has become the first senior counsel to sit on the Court of Appeal.

Her Honour also found time to act as a board member of the Public Interest Law Clearing House, as a part time commissioner of the NSW Law Reform Commission, the advisory board of the Faculty of Law of the University of Melbourne and the president of the Australian Bar Association, chairman of the Law Council of Australia's Advisory Committee on Indigenous Legal Issues and president of the NSW Women

Lawyers Association.

Her Honour of course, whilst serving the public and the profession, managed to find time to conduct a busy practice at the Bar as well as relaxing by running appallingly long distances. Some of the cases in which her Honour appeared include *Shevill v Builders Licensing Board*, *Attorney-General of NSW v Quinn*, *Kartinyeri v The Commonwealth*, and *ASIC v DB Management*. Her Honour also appeared as counsel and acted as an assistant commissioner in several ICAC inquiries and inquiries concerning the Thredbo Land Slip and the Glebe Morgue.

Her Honour's presidency of the New South Wales Bar Association coincided with what the current president described as a 'much less happy episode in the history of the Bar, over the rehabilitation of which your Honour ably presided'. That is, the publicity surrounding taxation and other offences of barristers. Walker SC went on to say:

I can speak for the Attorney General ... when I say that it was your Honour's role in rapidly denouncing that which should be denounced, with respect to the failure to honour their civic obligations in relation to taxation of certain members of the Bar, that led both to the rapid governmental, and later parliamentary and continuously professional response of a highly principled and, I know, painful kind over which your Honour so capably presided. The Bar will owe you a particular debt of gratitude into many years to come for the way in which you dealt with that extremely unhappy episode.

Walker SC ended his address by expressing the not uncommon view that her Honour's appointment to the Court of Appeal is 'not a culmination, but a beginning'.

In reply, Justice McColl began by acknowledging the Eora people, the traditional owners of the land on which the Supreme Court is located. Her Honour noted the opportunities afforded her by a 'vigorous, egalitarian democracy operating under the rule of law' which provided public education and scholarships at both secondary and tertiary levels.

As one would expect, Justice McColl had much to reflect upon after twenty years of service on Bar Council. Particular mention was made of the positive work done by the Bar Association's Equal Opportunity

Committee to promote real opportunity for women barristers, as well as the establishment of the Indigenous Barristers' Trust, the Mum Shirl Fund. However, her Honour used the occasion to call for more efforts to redress the unequal participation of women and Indigenous Australians in the legal profession.

In respect of the impact which her decision to accept appointment to the Bench would have on the gender imbalance at the Bar, Justice McColl concluded her speech by noting that:

after 23 years at the Bar, the time had come to give something back to the community which has given me so much. The appropriate way to do that was to move to the engine room of the administration of justice. I was acutely conscious that there was a tension on the one hand between the belief held by many...that the Bar needs women leaders and, on the other, the belief that the profession was well served by women accepting judicial office. These tensions were not easily resolved. They and other matters were the subject of much soul searching on my part. I will leave it to others to decide whether I made the correct decision.

The Honourable Justice Paul Stein

A farewell ceremony for Justice Stein was held in the Supreme Court on 11 April 2003 on the occasion of his retirement as a judge of the court. His Honour had a lengthy, varied and successful practice prior to his appointment to the Land and Environment Court and then the Court of Appeal. This included roles with the NSW Anti-Discrimination Board and as deputy ombudsman. His Honour took silk in August 1981. His Honour appeared in the trial conducted in 1972 of those accused of the murder of Mr Emmanuel, the district commissioner at Rabaul, a trial which was a very significant event having regard to the political and constitutional issues concerning the relationship between Australia and New Guinea at that time. There is an account of these matters in the Bar's history *No mere mouthpiece*.

His Honour was instrumental in the setting up of Forbes Chambers and the later transfer to Macquarie Street of Frederick Jordan Chambers.

Walker SC in speaking for the Bar on this occasion concluded his remarks with the following:

Finally, in relation to your demeanour on the Bench, a submission that cannot ever be made except on an occasion like this. Your Honour is most noticeable for a combination of penetration, humour and gentleness. It is not to be thought that the first and third referred to were in any way in conflict with each other, or contrary to each other because, like Mahoney J of the Court of Appeal, the quietest comment could be the most devastating. It was highly significant for counsel always to recall that, in what I would call the nicest possible way, the somewhat ironic comment your Honour would insist on inserting from time to time into ... discussions, the mildest inquiry as to how this might assist in the adjudicating ... of what some might recall are the merits of disputes.

It is your Honour's great capacity with courtesy, skill and ability to mediate which the Bar will long remember and which it appreciates as an example to your present and future colleagues and successors.