



Dr Andrew Scott Bell SC

Ceremonial Sitting President of the NSW Court of Appeal

In a ceremonial sitting on 28 February 2019, Dr Andrew Bell SC by affirmation before the Chief Justice TF Bathurst AC became the President of the New South Wales Court of Appeal. The appointment was made directly from the ranks of the inner bar. It was standing room only in the Banco Court to witness this occasion.

The attendances included the country's most eminent judges who had sat in Queen's Square over the past 30 years. The former Chief Justices the Hon Murray Gleeson AC QC and the Hon Jim Spigelman AC QC were in attendance. The four predecessors who held office as the President of the NSW Court of Appeal the Hon Dennis Mahoney AO QC, the Hon Keith Mason AC QC, Chief Justice Allsop and the Hon Justice Margaret Beazley AO QC (the NSW governor-elect), were in attendance. The Hon Sir

Anthony Mason AC KBE and the Hon Sir Gerard Brennan AC KBE were also in court for this event.

The Attorney General Mark Speakman SC MP spoke on behalf of the NSW Bar and Ms Elizabeth Espinosa, the President of the NSW Law Society, spoke on behalf of the solicitors. Both speakers mentioned the eminent scholastic achievements which developed into the career of a jurist and barrister for Dr Bell SC. Mention was also made of his eminent practice in international and commercial law at the Sydney Bar and his genial personal qualities.

The Judge recalled that he had spent a day's work experience with the late Justice John Kearney in the NSW Supreme Court when still a school boy, which experience gave him the impetus and inclination to aspire to be a barrister. The years that followed saw that

ambition come to fruition.

Dr Bell's *cursus honorum* was one of exceptional rarity and distinction. He was an alumnus of the University of Sydney, having been the double medalist in law and economic history in 1987 and in 1989 also receiving the Convocation Medal. He was Rhodes Scholar for NSW in 1990. He then read for the BCL (Oxon) with first class honours and was named the Vinerian Scholar in 1993. His Honour then was awarded the DPhil in his chosen area in 1994.

The period of time which his Honour spent at Oxford was noted as a matter of significance. It was an extraordinary opportunity to become an expert in private international law and be supervised by Professor Adrian Briggs QC who became his friend and colleague. His Honour's scholarship is known throughout the world.

Dr Bell was associate briefly to the late Hon Justice Beaumont of the Federal Court of Australia in 1990, before commencing work as the associate to Sir Anthony Mason. Dr Bell SC was called to the Bar on 9 February 1995 and read with Phil Greenwood SC and PLG Brereton (as his Honour then was). He practised from the 11th Floor for the entirety of his career at the Bar. During this time, his Honour had established himself as a preeminent authority in international law and specifically so in anti-suit injunctions. He would coauthor *Nygh* with his tutor, the Honour Justice Brereton, and authored many other scholarly papers on the subject.

His Honour recalled fondly memorable cases with Alan Sullivan QC and Stephen Gageler (as his honour then was). All had been associates of Sir Anthony Mason. He noted the changes in the landscape of the Bar and the way gender diversity will continue to improve its ranks particularly in respect of women.

His Honour observed 'I don't think it is fully or sufficiently appreciated or acknowledged just how many barristers devote so many hours of their time entirely voluntarily to the diverse affairs and committees of the Bar Association and how important that work ultimately is for the rule of law in this State and the maintenance of respect for the rule of law' and adding [it is that] 'dedication and sense of social obligation [that] lies at the heart of the Bar as a profession.'

His Honour recalled happily his years in practice on 11 Wentworth eventually serving as Chairman of the floor in 2010 and 2017-2018. It was a time when he created a fine practice in tandem with full involvement in the *Bar News* Committee, which he joined in 1997 and edited from 2005 – 2011 inclusive, his subsequent election to Bar Council, where he finished as Senior Vice-President in 2018, and countless other diverse committees, conferences and working groups.

His Honour acknowledged his colleagues and friends from his years on the 11th Floor,



especially the loyal and devoted staff and the legendary Paul Daley, his old clerk and friend.

Fondly, his Honour noted his immense pride in his late father who was born in 1921 and worked for the AMP and had seen active service in the Royal Navy in the Pacific Fleet for six years. His father was awarded the 7th Masters degree in Economics at the University of Melbourne. He earned a Doctorate at the London School of Economics in less than two years. He was a man who made the very best of what he was afforded in his circumstances. He became a foremost economic and public commentator. His mother was present in court that morning, and his Honour noted her academic achievements in being awarded a PhD and as an art curator and her strong influence upon him, especially her unfailing support of him over the years.

Justice Bell noted:

‘My parents gave and taught me so much – to seize opportunities, to value education, to think broadly, openly and compassionately, and that with privilege and opportunity comes social responsibility to repay that good fortune.’

His Honour’s spouse Joanna Bird, also the recipient of the University Medal in Law at the University of Sydney and first class honours for her BCL at Oxford, was a High Court Judge’s associate at the same time as his Honour. Ms Bird, now a brilliant and influential financial regulator, was in court that morning with their children Tom and Lucy, ‘the Bell Birds’, together with his brother David and his wife Michelle.

The Judge also recalled his memorable

association with *Sculpture by the Sea* as its chairman 2009-2016 (and director between 2006 -2016). It was an exuberant introduction to the world of arts politics, sculptors/artists, sculptures and the ebb and flow of an arts organisation.

Finally, Justice Bell remarked upon his good fortune to be joining the NSW Court of Appeal – an outstanding court known throughout the common law world for its jurisprudence. It is a distinguished court of outstanding and dedicated judges exhibiting their hard work, dedication and skill. Moreover, it was on the Supreme Court’s reputation more generally that rests the respect for the rule of law in NSW. That must never be taken for granted. It is something which the President earnestly undertook to advance and uphold as the Court nears its bi-centenary in four years and beyond. In the same vein, he greatly looked forward to discharging his judicial duties.

Kevin Tang



Justice Patricia Anne Henry

On Wednesday, 30 January 2019 Justice Patricia Anne Henry was sworn in as Judge of the Supreme Court by Bathurst CJ in the Banco Court. The Hon Mark Speakman SC MP the Attorney General of NSW spoke on behalf of the NSW Bar. Ms Elizabeth Espinosa the President of the Law Society spoke on behalf of the Law Society of NSW on this occasion.

Justice Henry’s appointment may be considered rare as it was an appointment directly from the ranks of solicitors to the NSW Supreme Court Bench. For more than 30 years, her Honour was a solicitor in the field of commercial dispute resolution at the largest of the firms King Wood and Mallesons (previously known as Mallesons Stephen Jaques and Stephen Jaques & Stephen etc...). Her Honour was admitted as a solicitor in July 1988 in the heady years of large-scale commercial litigation. Justice Henry loved working at the firm and was inducted by way of Perth as a seasonal clerk initially. She would rise to be a member of the Board.

There were many female solicitors in those years and fortunately her Honour grew up in

the firm among them and in their company. That experience was unique and invaluable. From the outset, her Honour showed great promise and passion for the law. It was an exciting time as most of those women rose to the rank of partner. The established partners who were part of the landscape in those years were David Fairlie, Julie Ward (now Chief Judge in Equity), Robyn Chalmers, Gerald Raftesath among many others. They were master solicitors of note. These partners taught her Honour much about the art of litigation. Her Honour was grateful for learning the importance of clarity and conciseness in the work of a lawyer among other matters in their company.

The public gallery was full of members of the profession, personal friends and family who had accompanied her Honour on the professional journey from the 1980s. Briefly, her Honour worked in London at Baker McKenzie venturing on a tour of the world with her spouse. However, even though London was a great experience, her Honour returned to the fold at Mallesons in Sydney. She became a partner nine years after commencing there in 1997. Justice Henry was a specialist in competition law and telecommunications law. Her clients included Telstra among other significant players in the Australian and international market.

Since that time, her Honour has held a swag of significant leadership roles in the firm. Practice Team Leader of the National Competition Law Team, Senior Partner Dispute Resolution as well as Staff Partner, Recruitment Partner. Her Honour's track record has attracted much affection and admiration from her colleagues at the firm. Justice Henry's life as a solicitor has been marked with the singular ability to deal with difficult problems head-on. Equality and diversity have featured highly on her Honour's list of major issues in recent years to inculcate in the firm's various strategies for professional progression and career growth of its members. This has taken a measure of courage, clear thinking and good sense. These characteristics bode well for life on the Court for her Honour.

Justice Henry thanked her family for their support and care throughout the years – especially her mother Beverly and late stepfather Guy and she remembered her father Barry who did not live to see the day. Her Honour was an only child raised on Sydney's north shore and was educated at Wenona at North Sydney, where a family tradition has taken hold, as her mother and now her daughter attended the school. In her Honour's early education, more than a touch of *To Kill a Mockingbird* and Atticus Finch propelled and inspired her to undertake a law degree at the University of New South Wales. Before commencing university, it is known that her Honour took some time to travel, she took a fabled gap year, to see the

world and to broaden her horizons – it was noted more than once that those experiences included a sojourn for her Honour in a kibbutz.

It is also known that her Honour is a games buff – a champion of card games. She is an enthusiast and winner at Scrabble, if not a creative wordsmith. Trivia features highly on the scale of favoured hobbies. Film, reading and theatre are noted as her favoured forms of entertainment. It was also made known that her Honour is a follower of the Roosters. Otherwise, Justice Henry's preferred destination for travel is New York City. Closer to home, her Honour is devoted to her family and enjoys holidaying at Hardy's Bay as well as spending time with the family Labrador Obi.

Justice Henry made a significant reference in her speech in Court that day, to the fact that her appointment was announced in the centenary year of the passing of the Women's Legal Status Act (NSW) in 1918. That statute allowed women to practise as solicitors, barristers and to be appointed judges and magistrates in NSW. However, it was not until 1924 when the first female solicitor was admitted, and not until 1980 that the first women would be appointed to the Supreme Court. Her Honour remembered all of those women who had gone before her and reiterated her commitment to the qualities of a judge of the Supreme Court. It is with confidence that her Honour steps forth to live out and work in the judicial role to the expectations and standards set by her fellow judges and the community at large.

Kevin Tang



Swearing-in

Mark Joseph Ierace

On Wednesday, 31 January 2019, there was a ceremonial sitting in the Banco Court for the swearing in of the Honourable Justice Mark Joseph Ierace as a judge of the Supreme Court of NSW. Mr Tim Game SC, President of the NSW Bar, spoke on behalf of the barristers and Ms Elizabeth Espinoza, President of the Law Society, spoke on behalf of the State's solicitors.

Mr Game SC commenced by remembering significant aspects of Justice Ierace's career. The Judge had been a Senior Public Defender for over a decade in a career which had spanned over forty years. Other various roles which his Honour has held include that of a teacher of the law, an author in disability and criminal law, a prosecutor of war crimes, a senior Public Defender and In-House Counsel at the Commonwealth Director of Prosecutions among other things. At various times he has been seconded to the NSW Law Reform Commission, and been an advocate at the Private Bar. His Honour took Silk in 1999. In each of the roles mentioned, his Honour has invested a significant degree of energy, engagement and enthusiasm, coupled with generosity of spirit, kindness and at times, a measure of stubbornness – which Mr Game SC noted as 'a wonderful thing.' At no time has his Honour been complacent.

Justice Ierace even had the time to complete a Master's thesis about 'Joint Criminal Enterprise and Common Purpose in International Criminal Law.' Not a moment of his time has gone to waste it would seem.

In the 1980s his Honour authored *Intellectual Disability: A Manual for Criminal Lawyer* and co-authored *Drug Laws in NSW*, a well-known textbook. He then started lecturing in international criminal law at the University of New South Wales.

However, his Honour's contribution goes far beyond that of an author. In terms of government and policy change, indeed policy and legislative reform, his Honour has made a significant contribution by faithfully representing the views of the Private Bar on such issues, while also preserving community standards and requirements which change over time.

Since before the time his Honour had qual-

ified as a lawyer and knowing something of the role of a Public Defender, he aspired to be one. His Honour Justice Ierace would come to spend some twelve years at the helm of the Public Defender's office, and was especially honoured by the presence that morning of the Hon Peter Hidden AM QC and his Hon Judge Peter Zara SC who had both occupied the position previously. His Honour observed that there is a symbiotic relationship between Public Defenders and the NSW Bar, and also with Legal Aid and the ALS. Each helps the other improve their performance and public service. His Honour's tenure will be remembered for his fervent commitment to establishing the services of the Public Defender as being of the highest calibre of advocacy available.

It was remarked upon that with a career of such significant length at the Bar as his Honour's, that he was an exquisite example of moderation and control. This has gone so far as to have the opportunity to go from a major criminal practice in Sydney to running international cases in The Hague – a remarkable trajectory, on any view.

Justice Ierace appeared as counsel in the international courts in The Hague in the prosecution for war crimes and crimes against humanity such as the trial of General Galic. In so far as Australian cases are to be mentioned, his Honour was instrumental in 'Scognamiglio' in 1991 and *Champion* in 1992. By 1995 his Honour had become In-House Counsel for the Commonwealth DPP in which position he succeeded the Hon Terry Buddin SC and Justice Elizabeth Fullerton in prosecuting major trials in that capacity.

His Honour made an insightful observation about the criminal law and how the roles of solicitor and barrister, defending or prosecuting, are always emotionally and physically draining. At times, it even tests one's faith in humanity. The Judge noted that the burden on the police force and other first responders is even greater and a thought must be spared for surviving victims of crime and for those who do not survive. His Honour also ventured to suggest that one way to weather this onslaught, without becoming hardened by the experience, is through the warmth and joy of family, friendships and humour.

On this occasion Justice Ierace reflected on the significance of his family's sacrifices, both that of his own parents and grandparents. He was grateful for their hard work and for the chances that they took and he made special mention of his wife Janet and son Dave (a recent graduate from the ANU). He thanked his large family for their support that had ultimately brought him to this ceremony.

Finally, his Honour vowed to acquit the responsibilities of his appointment to the best of his abilities – Of that, we have no doubt.

Kevin Tang



Retirement

The Hon Justice Ruth Stephanie McColl AO

On Tuesday, 4 December 2018 a ceremonial sitting of the NSW Supreme Court took place to mark the retirement of the Honourable Justice Ruth McColl. Mr Tim Game SC President of the NSW Bar Association spoke on behalf of the NSW Bar and Ms Elizabeth Espinosa spoke on behalf of the solicitors of the State. The Banco Court was full to capacity with well-wishers on this occasion.

In opening remarks, the Chief Justice TF Bathurst noted that Justice McColl had been a role model for many talented women. All speakers remarked upon Justice McColl's extraordinary life in the law. At the time of coming to the Bar, she was just one of twenty women in a profession of 750 barristers. Her Honour took silk in 1994 and then became the first female President of the NSW Bar Association from 1999-2001. The judge was also President of the Australian Bar Association between 2000 and 2001. She was the co-founder of the Australian Women's Lawyers.

For some fifteen years, she has been a member of the NSW Court of Appeal, only the second woman to have been appointed to that distinguished court in the common law world. Justice McColl remarked upon the fact that 2018 marked the centenary of the *Women's Status Act* which gave women the right to practise as lawyers in this state. Previous to that, women could pursue academic law but not admission to the profession.

Justice McColl remembered the other great female pioneers in the law such as Ada Evans – the first NSW female barrister, the Hon Mary Gaudron QC – the nation's first female High Court judge, and the first female judge of the NSW Supreme Court Justice Jane Matthews. Justice McColl noted that '[T]he fact is, there is still work to be done by strong men and women to the goal of true equality.' Ms Espinosa noted that this was an occasion to celebrate Justice McColl as a trailblazer for women in the legal profession.

The poignancy of the day was raised when Justice McColl noted that it had been forty-six years since she confidently strode

into the State Crown Solicitors Office with her then fellow junior graduate Justice Peter Johnson who, fittingly, sat on the Bench with her Honour for this ceremony.

Her Honour mentioned the paucity of Indigenous barristers at the NSW Bar – something which must change in time. This was reference to the important work which her Honour has developed as an interest area, encouraging Indigenous students and graduates into the legal profession. This had its genesis in the Indigenous legal strategy that her Honour formulated with Michael Slattery QC (as his Honour then was) through the Equal Opportunity Committee when at the Bar.

Justice McColl's appointment directly to the NSW Court of Appeal has resulted in more than a decade of significant judgments, which are finely researched, and which have contributed to the jurisprudence of Australian law. It was fitting that in 2003 her Honour was awarded the Centenary Medal which recognised contributions of individuals to Australian society in the first one hundred years of Federation. Shortly before her Honour's appointment to the Court she had made a significant contribution to the Bar as its first Madam President and was well-known as a Silk in commercial matters and in defamation.

It was significant that her Honour mentioned that although this was her retirement and it was some four years before the statutory age (which has now become sixty-seven years) she was adamant that it be viewed as a beginning to the next chapter of her life. Her Honour observed that 'it [gave] her a bit of faith about her durability for the next chapter of my life.'

Harking back to 2003 when her Honour was sworn onto the NSW Court of Appeal, her Honour noted her struggle between appreciating that the Bar required strong women leaders and that the profession was well-served by women in judicial office. In the sixteen years that followed, the evidence was overwhelmingly that her Honour's decision to move to the engine room of the administration of justice was indeed the correct decision. Her Honour's contribution to the Court has been significant as well as memorable.

All indications are that Justice McColl will indeed forge ahead with other causes close to her heart in the years to come, her Honour having become a member of the Legal Services Council Admissions Committee in June of 2018.

It is with much anticipation that we await her next contributions to the legal world.

Kevin Tang