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DRAFT

IN THE DISTRICT COURT
OF NEW SOUTH WALES

THE CHIEF JUDGE
THE HONOURABLE JUSTICE D PRICE AM
AND THE JUDGES OF THE COURT

WEDNESDAY 24 MAY, 2017

**SWEARING IN OF HIS HONOUR JUDGE DAVID RUSSELL SC AS A
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

Mr A Moses SC, President of the New South Wales Bar Association
Mr G Ulman, Immediate President, Law Society of New South Wales, on
behalf of solicitors

(Commission read)

(Oath of office taken)

PRICE J: Judge Russell, on behalf of all the judges of this Court and the
members of the Dust Diseases Tribunal, I warmly welcome you and wish you
all the very best in your judicial career.

JUDGE RUSSELL: Thank you Chief Judge.

PRICE J: Mr Moses.

MOSES: May it please the Court. I begin by acknowledging the Gadigal
people, the traditional custodians of the land on which this Court stands and I
pay my respects to their elders, past and present.

It is an honour today to speak on behalf of the New South Wales Bar.
Over 40 years as a barrister, your Honour has made a significant contribution
to the practice of law in this State and to the Bar itself. The Bar regards this as
a fine appointment by the Attorney General,
The Honourable Mark Speakman SC who cannot be here today but
your Honour is no judicial novice.

In 1997 and 1998 you were an acting judge of this Court as an effort was

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made to clear backlogs. It will not surprise you to learn that this Court still has a crushing workload. The Bar will continue to work with the government and the chief judge to secure more resources and judges for this Court because the administration of justice is best served by courts that are properly resourced and who are able to deal with matters in a timely manner.

Now some have queried why it has taken you ten years to return to the Court. Perhaps you were simply waiting for a fellow North Sydney Bear supporter to be made chief judge. Yes, I can now out the chief judge. He is a Bear supporter. Or you finally decided that an opportunity to wear the red and black at work and we will ignore the purple was irresistible. Now I am not sure whether you disclosed your passion for the Bears to the Sharks mad Attorney General but I can assure you that when he called to do the background checking I did not disclose your love for the Bears. That probably would have killed your chances of an appointment your Honour.

Now after attending Willoughby Primary School and North Sydney Boys High School your Honour proceeded to the University of Sydney. You obtained an arts degree in 1974 and your Bachelor of Laws in 1976. The following year you commenced to practise at 15 Wardell Chambers where you read with Jim Monaghan, later a common law master at the Supreme Court. Harvey Cooper, who would later become a judge of this Court was the floor leader.

In 1979 you became an inaugural member of Edmund Barton Chambers. I think I was ten years old then. Three years later you moved to 7 Garfield Barwick Chambers in 1982 and have been there ever since. It is no surprise that so many who have practised on that floor including Justice Bellew of the Supreme Court are here today. You also join on the bench of this Court, two

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former colleagues, Judge Hatzistergos and the kilt wearing Judge Sutherland, who I think joins you on the bench today. His Honour is nodding his head.

Your Honour has practised across many areas and conducted more than 50 jury trials. You are best known for your insolvency and common law work, most notably dust diseases cases. In fact, it could be said that you literally wrote the book on this difficult area of the law as the author of the Dust Diseases module in the LexisNexis online service. You are also co-author of Gooley, Zammit, Dicker and Russell's Corporations and Associations Law: Principles and Issues, which is now in its sixth edition. It is a great read. I take it to bed with me on a regular basis.

For almost 20 years you have been a lecturer on insolvency for the Legal Practitioners Admission Board, first with fellow barrister John Gooley and then on your own. The Russell notes have proven very popular and have remained on the shelves of many admission board graduates along with comments on assignments which reflect your warm personal style.

The Bar Association owes you a great debt. For many years now you have been a lecturer and tutor for the Bar Practice Course, our training ground for new barristers and you were a member of the Professional Conduct Committee for eight years from 2002 to 2010, a task you performed with diligence, compassion and integrity but you have been first and foremost an advocate who has enjoyed the respect of both the Bar and the bench.

You are from the old school. Quiet and unassuming with the focus on persuasion rather than theatrics. A mark of that respect came with your elevation to the ranks of Senior Counsel in 2002. Colleagues have admired your conduct of difficult dust diseases cases, some of them high profile such as the one involving the late Bernie Banton. The majority of plaintiffs in this

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jurisdiction are near death and the last conversation some of these people have before the slip into a coma can be during the hearing.

Your impeccable bedside manner helped not to escalate their trauma or the trauma of their family and you always treated plaintiffs with dignity. Your conduct has served as a template for other practitioners. You will be joining Judge Kearns and Judge Scotting to undertake the difficult work in dust diseases as well as the Work Health and Safety jurisdiction of this Court which often involves having to deal with persons who have been traumatised.

You will be a great loss to the Bar and to 7 Garfield Barwick.

Your Honour was a board member from 1999 to 2005 and chairman from 1999 to 2001. I understand you have been the steady hand in chambers when it came to financial matters and a welcome source of guidance in all matters especially to younger members on the floor who I have spoken to. You have also set the standard when it comes to having neat and tidy chambers. Nothing ever seems out of place. The antique furniture and the Aboriginal dot paintings also gave it a personal touch.

Your colleagues will miss your dry sense of humour and sometimes irreverent spirit. They recall the involvement of one floor member in a terrorism case. On top of the security checks that that member was required to undertake ASIO demanded their highly classified documents be kept in a safe which was delivered to chambers. One night your Honour snuck in and covered the safe of a colleague with Maxwell Smart and Inspector Clouseau stickers. Now one wonders at the reaction of our spies when they collected the safe and took it back to Canberra. Justice Bellew has still not figured out whether you were suggesting he was Maxwell Smart or Inspector Clouseau. I have got my views but I will keep them to myself. I still have to appear before

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his Honour.

They also remember with fondness the time when an instruction was issued that neat attire was to be worn to a chambers dinner. Now I did not know that Rick Burbidge was on your floor but your Honour did not like being told how he should dress so you turned up in a Sex Pistols t-shirt.

Your Honour actually has eclectic music tastes. Brian Eno is a favourite and you do not hide your admiration for Björk, the out there Icelandic princess. More easily understood is your enduring affection for the North Sydney Bears. Like all true Bears fans you refuse to adopt another team when the Bears lost their standalone place in the NRL competition at the end of 1999. You regarded the merger with Manly to form the Northern Eagles as a travesty and retain your hatred of Manly to this day. To soothe the pain you host a back to Bear Park day once or twice a year. After lunch at your home near North Sydney Oval, you lead a group of fellow tragics to the ground and watch the red and black colours go around in the New South Wales Cup or the Intrust Super Premiership, as it is now known. You have been counselled to accept the fact that the Bears will never return to the NRL, but on this front you cannot be persuaded.

Your Honour enjoys baseball but cricket consumes you during the summer months. You are an enthusiastic social player who values his long time membership of something called the South Turramurra and Neighbouring Suburbs Alcoholic Cricket Team. You have an extensive collection of cricket books dating back to the 1950s.

However the great joy in your life is your family. With your wife Dianne you had four children, Miriam, Briony, Evan and Kieran, and now like to indulge your five grandchildren. I am told that many years ago Dianne, an

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occupational therapist by trade, found a way to take advantage of your passion for cricket. She made a house rule that whoever was in charge of the ironing board was also in charge of the television remote control. The happy result for your Honour is that you get to watch a lot of cricket. The family is also content because you have become an expert ironer even one son-in-law drops off his shirts.

As I have said, you will see many familiar faces on the bench, including Judge Scotting. You worked with and opposed the judge in many cases before he joined this Court two years ago. In fact, someone who knows you both well who joins me at the bar table today said, "So the band is getting back together."

Your Honour the Bar believes you have every attribute that one seeks for judicial office. You are sound and wise with a calm temperament that will be reflected in the way that you manage your courtroom. We suspect your court will be a very pleasant place for barristers and litigants. Along with the Attorney General we look forward to the contribution you will make over the coming years to the administration of justice in this State. May it please the Court.

PRICE J: Thank you Mr Moses. Mr Ulman.

ULMAN: May it please the Court. I acknowledge the traditional owners of the land on which this Court stands, the Gadigal people of the Eora nation and pay my respects to their elders, both past and present.

Your Honour I am pleased to appear at this ceremony on behalf of the solicitors of this State on the occasion of your swearing-in as a judge of the District Court and as a member of the Dust Diseases Tribunal of New South Wales.

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The District Court is the largest trial court in Australia. Its judges preside over a range of specialised tribunals which form an indispensable part of our justice system. The Dust Diseases Tribunal was established in 1989 with a powerful purpose, to ensure vulnerable persons with dust related diseases would have their claims heard in their lifetimes. The then Attorney General, The Honourable John Dowd AO QC said at the time that the Tribunal is established in order to enable relief to be given to a group of needy workers in this State who belatedly have been found to have been let down by a society that has failed to recognise some aspects of dust disease.

The Tribunal has since then encouraged early settlement of claims and produced the administrative and legal costs of such claims in order to make the delivery of justice efficient and effective both for those affected by the dust related disease and for their dependents. Your Honour is today entrusted with these worthy aims, a sign for the faith placed in you by the government and this Court and I congratulate you on behalf of the solicitors of New South Wales.

It is significant that we celebrate your Honour's appointment this year, 2017 being your 40th anniversary of coming to the Bar. In those four decades your Honour has secured a reputation as an excellent black letter lawyer and exceptional jurist and a true advocate. The advice you have been able to provide clients and the support you have afforded instructing solicitors has extended across many different areas of law ranging from commercial and equity to common law and dust diseases.

The many publications concerning dust diseases law you have authored add to your valuable and enduring contribution to the profession and the broader community. This includes a paper I came across drawing an analogy

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between the terrible legacy of lung disease left by asbestos usage and the risks posed by increased use of nanotechnology. The paper, I might add, also gives a slight nudge to concerns about the long term consequences of mobile phone use. Reflecting on the broad range of your expertise and practice your Honour also co-authored the sixth edition of Corporations and Associations Law: Principles and Issues for LexisNexis in 2015.

I am informed that in working with your Honour's instructing solicitors your Honour's capacity to remain calm and ordered has been a standout feature enabling you to get to the heart of a matter quickly and methodically. Your Honour's style in working with those instructing you has been described as invariably inclusive. In particular you are highly regarded for your support even for the most junior of lawyers. Always quick with praise, generous with advice and gentle in critique.

Your appointment as an acting judge of this Court from 1998 to 1999 and Senior Counsel in 2002 are testimony to your legal knowledge and expertise. Many solicitors you have worked with also believed it was your willingness to sit with them and guide them in the right direction that explains your success at the Bar.

This was even during cases where things may have been, to use the colloquial term, somewhat undercooked. In those circumstances your Honour was always respectful, helpful and supportive and would do whatever it took to get a matter ready for trial. These qualities also underscored your interactions with terminally ill clients and their families.

Your Honour has been valued for your empathy as well as your professionalism. These reassuring qualities were visible during the bedside hearings at which you appeared and in the courtroom where you always held

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the confidence of solicitors, judges and clients.

Those who have seen your Honour in court describe you as a skilful counsel, one who is entirely in command of his brief. Your Honour today leaves behind your colleagues from 7th Floor, Garfield Barwick Chambers but I am sure they take immense pride in your appointment and that you now join the ranks of several eminent lawyers from those chambers who have gone on to serve this State in a judicial capacity in the Supreme Court, District Court and Local Court.

Your appointment to the bench of this Court is, I am sure, also a source of immense pride for your Honour's family. Your Honour has been described as devoted to your loving wife, Di, and your children, Miriam, Briony, Evan and Kieran as well as a proud grandfather to five grandchildren.

One solicitor suspected your long practice skill of wrangling the occasional recalcitrant lawyer has made you looking after five grandchildren a breeze and when it comes to interests outside of the law your Honour appears to be something of a paradox. On one level your Honour presents as a classic barrister with, I am told, an interest in antique furniture and book auctions and admirer of paintings of azaleas and birdlife.

Your chambers were once described by an interior decorator as like something out of Victoria and Albert museum but an interested observer in your Honour's chambers, if he or she looked a little further, would, I am told, find a curious collection of CDs. Those CDs feature a wide taste in music ranging from Neil Young to Talking Heads, the composer Phillip Glass, the Sex Pistols, The Brian Jonestown Massacre along with the works of the Icelandic singer Björk.

I must say, I did query why an American band formed in 1990 that takes

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its name from a long dead former member of The Rolling Stones and an infamous mass cult suicide that released albums titled, Spacegirl and Other Favourites, Methodrone and My Bloody Valentine and whose music style was described as shoegaze, was on your Honour's playlist, but my pent up anxiety did subside, just a little, following some research. I was able to discover the band's second album released in 1996 includes the song Straight Up & Down, which is better known as the theme music for the HBO television series, Boardwalk Empire.

I should add that your Honour's interests also extend to the WWF or the World Wrestling Federation to the uninitiated and as we have heard a dogmatic belief in the imminent resurrection of the North Sydney Bears. Your Honour's varied and eclectic interests reflect a down to earth person without any pretensions or illusions. These, along with your calm temperament and outstanding skill as a lawyer and jurist are qualities that will be sorely missed by many solicitors but they are qualities most suited to this next phase of your career and that from this day forward will be devoted to the public good.

Your Honour I congratulate you and wish you well for what I am sure will be a distinguished career on the bench of this Court. As the Court pleases.

PRICE J: Thank you Mr Ulman. Judge Russell.

JUDGE RUSSELL: Thank you. Well firstly thank you Mr Moses for your speech. I congratulate you on your recent election as President of the Bar Association. I think those at the Bar wonder why anyone would put their head above the sandbags for such a role but the Bar is grateful to you and your predecessors for the quality of leadership that we have had.

Mr Ulman thank you too for your kind words. The pain never stops, does

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it? You have been the President of the Law Society and now as the past President you are required to come along and make a speech but I am very grateful to you for that. I read, with some disquiet, a report you commissioned, The Future of Law and Innovation in the Profession. I think it will be a long time before we can feed the pleadings and the affidavits into a computer and press a button. At least it will see me out. But it is good that the Law Society is looking forward to challenges that will face us in the future.

I thank the judges and support staff of both courts for the welcome they have given me and the assistance they have given me in learning the ropes of the Court system. I particularly thank the Chief Judge in his role as President of the Tribunal and Judges Kearns, Scotting and Curtis and Registrar Chia for the warm welcome given to me and the advice and encouragement given so far. I also thank their associates for the practical guidance and for their patience with my apparently endless questions.

My first dust case was in 1995, a case called Raif and Sayer and it was the first case before Judge Curtis. I received that brief from Erin Devery although her employed solicitor, David Begg, rang me up and offered it to me. I recall, I said, "David, I don't know a thing about dust cases" and he said, "Don't worry mate, you'll pick it up as you go along." I have a feeling that is going to continue.

Judge Scotting, at his swearing-in, made a confession that he, too, had been briefed for the first time in a dust case by Erin Devery. Erin's take on that now is that she can really pick a winner but may I remind her that it has taken me 22 years to become an overnight sensation. Judge Curtis is retiring later this year and he is simply irreplaceable. He has decided some of the hardest cases in the Tribunal. The Tribunal will miss his encyclopaedic knowledge of

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the common law and barristers will miss that wonderful moment at the start of a case where you are expected to stand up and say in ten words or less exactly what the case is about.

Can I also pay tribute to Judge O'Meally, the inaugural President of the Tribunal who was good enough to attend today. Judge O'Meally really established the ethos of the Tribunal which is that everyone deserves a quick hearing, all counsel and solicitors who appear have to identify issues early and stick to them and the Tribunal will travel anywhere to take evidence from people in their lounge rooms or at their bedsides. Those of us who went to the Monday directions list know that we had just about the best entertainment in Sydney. Any entrepreneur could have sold tickets to Judge O'Meally's direction hearings.

An early appearance before his Honour both brought me up short and is something that has stayed with me. I turned up before Judge O'Meally and I was briefed on the morning of the case to run a hearing. Naturally my solicitors had not been dumped by a New South Wales barrister because they do not do that. I never enquired as to why the case was given to me that morning. I made an application for an adjournment, which was promptly and courteously refused, and in a petulant fashion I said, "Well, I'll do my best." His Honour then said, "Mr Russell, in the circumstances I'll expect no more from you than that." After a pause he said, "Then again, I'll expect no less."

I thank all of my instructing solicitors over the years. I would have had no practice without them. I thank them for the confidence they had in entrusting their clients' litigation to me. Often a piece of litigation is one of the most traumatic events in a client's life and I think that we forget that as we appear for people because to us it is an everyday event.

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I have often wondered why any particular barrister is briefed. Dianne's theory has always been that you are briefed by people that you get along with and on reflection I think that is probably right, not just on a personal level although that helps but also you are briefed by people who have a similar approach to you in running cases, you work in the same fashion and you have the same level of application and dedication for running cases. My own view is that the litigants of New South Wales are very well served by the solicitors of this State and the Law Society, Mr Ulman, has a lot to do with that particularly with their system of specialist accreditation.

I have thanked most of my instructing solicitors personally over the last couple of weeks but I am catching up today with Greg Kelly who holds a record of briefing me for 38 years. My thanks to Greg is that I have left him with a part heard case in the Federal Court and not only that, I am part heard in cross-examining someone on the other side, but thank goodness for the junior bar.

How I was first briefed by Greg shows the role that dumb luck plays in getting a start at the Bar. Greg briefed me on the extremely scientific basis that he went through university with my brother and the two of them used to go to the greyhounds together at Wentworth Park, and on that basis I must be all right too. Greg and I did a number of interesting bank cases. You could have written a TV series. I think it would have been called Bankers Behaving Badly. Based on the facts of each case we gave each case a name. We had the Swiss Bank case, we had the case of the incredible exploding farmhouse, we had a six week case that even the staid Sydney Morning Herald reported under the banner Sex and Banking in Chinatown, and we had a case where the customer's complaint was not that she had been lent too little, but lent too

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much. A further part of the complaint was that the loan had been granted after a dinner with the manager whereupon banker and customer had adjourned to the branch, turned off the alarms and the lights and the loan was granted. We gave that case a name too but my grandchildren are here so I cannot share it with you right now.

I thank my fellow barristers. My own view has been that the New South Wales Bar is of a particularly high standard across the board. The cab rank rule ensures that the humblest citizen can retain the best barrister in the land and my own personal view, if I may express one finally, is that the cab rank rule is worth keeping.

I have always had the impression in every case I have run that it is an even contest. No doubt that is because we have an independent and impartial judiciary but also because whoever you turn up against at the bar table can run the case on the other side as well you can run the case. Mr Moses, I think nowadays your Bar Practice Courses or, as we call them, baby barristers courses, have a lot to do with that. I have greatly enjoyed my involvement in the teaching and tutoring of new barristers.

The Bar is a curious profession, described as one of the last cottage industries. It attracts a fair share of obsessives, neurotics, misanthropes. Floors of barristers are even more curious because your fellow floor members are competing with you for the very same work.

As you have heard I have had 35 years on the 7th Floor of Garfield Barwick Chambers. It has been a very harmonious place to work, a very happy place, and it exemplifies what is known as the open door policy of the Bar, where you can walk into anyone's room and ask for their advice.

I would like to particularly thank Mark Grace who is, without a doubt, the

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best clerk I have ever met. Besides his administrative assistance I have been able to have absolute confidence in his discretion and his integrity and he has been a wonderful confidant for me, no matter how many horror stories I have burdened him with. I also would like to thank the receptionists and juniors we have had over the years because we could not operate without them, we being the Bar.

Sue Hampton, who I am pleased to see is here today, has been my secretary since 1985. We have never had a cross word or at least not one that I have heard uttered. She has made life very easy for me. She has done all my typing, my bookkeeping and my organising leaving me completely free to concentrate on every case that I have run and it is a great joy to me that she is going to join me as my associate on the bench.

Can I finally come to my family? My mother and father are deceased but my brother and I were brought up in a household where we were loved and we felt secure. Both parents left school at age 15 because they lived in very small country towns and they grew up straitened financial circumstances, but they brought us up to understand that no one was better than anyone else, that education was paramount and no matter what you achieved at school or university you could always do a bit better if you tried a bit harder.

My father was a man of few words. My children allege that that's a congenital condition. I do not see that, but my father in one of his few pieces of advice told me, the secret to work is to find a job which you like so much that you would do it even if no one paid you to do it and I was lucky enough to find that job at the New South Wales Bar.

I have been careful not to tell that story until today because my instructing solicitors have been remarkably happy to pay me for work that I

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would have done for free. My mother-in-law, Mary, is here today, and I thank you for accepting me into your family a long time ago. When I turned up on the doorstep I was not just the first non-Greek but I was the first person who did not come from the same island in Greece and you had to overcome a lot of opposition to me from the broader family but you judged me for who I was. Joining your family was a shock to me coming from my suburban white-bread Aussie background to join a loud and large Greek family.

But joining the family was a bit like, they say, joining the KGB in that it is hard to get in but once you are in you never leave. But I can say the cooking is a lot better. I hold Mary dear as a person who has lived a life based on unconditional love for all of us for which she asked nothing in return.

My brother, Paul, and his wife, Chris, have come from Melbourne for today. I think that we all grow closer as the years go by. We have got lots of interest in common, the main one being family but cricket is another topic and the Bears who have received more than one mention. Paul and I often discuss the Bears winning. By that, we do not mean the premiership, we just mean a match. Can I say Paul, we have been greatly assisted over the years by your advice in your chosen fields of banking and financial management. What is every day to you has been invaluable to us.

My children, Miriam, Briony, Evan and Kieran are here. I am amazed that you still love me. I was away during your childhood so much on country circuit. I had a lot of weekend work at that time but I think we too get closer as the years go by. Your mother and I are most proud of what you have achieved in your studies and your career but our greatest pride is the kind of people you have become. You are all kind, loving, considerate, close to each other and close to us and we are also very proud of your spouses, Neil, Serge and Kathy

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who have joined in the chaos of our loud family. There are sometimes family lunches or dinners where there will be 20 people around the table and only 18 are talking at the one time. Kathy and I are listening a lot to what is going on.

I mention my grandchildren by name, who have been good enough to come today. Leila, Zeeki, Ella, Zara and Ava. You are all a joy. You have made us even happier in life than we were before you came along and I can already tell on an objective basis that you are all incredibly talented.

Can I finally come to my dear wife, Dianne? You can all breathe a sigh of relief because we have a policy of no public declarations of affection, only we know of the strength of our love and the strength of our bond but in a limited way I thank you for all your support and assistance in my career. You have made sacrifices in your own career as an occupational therapist to love and care for our children, and for me, and you have been my greatest support and confidant when I have had doubts about what I was doing. By the way, that gig is not over. You have kept me grounded and you have taught me what is truly important in life.

I finish up by saying, I have been very proud of the career I have had at the Bar. I have observed the cab rank rule. I think I have appeared just about equally on both sides of the bar table. It has been a privilege to represent all of my clients and I believe I have brought dedication and enthusiasm to each brief in which I have appeared. Chief Judge, I can undertake to you that I will do the same with every case I hear that is allocated to me, including the one starting at 11.30 today. Thank you Chief Judge.

PRICE J: Thank you judge.