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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

MONDAY 30 MAY 2016

**SWEARING IN OF HIS HONOUR ROBERT MONTGOMERY AS A JUDGE
OF THE DISTRICT COURT OF NEW SOUTH WALES**

Mr N Hutley SC, President, New South Wales Bar Association, on behalf of the
New South Wales Bar
Ms A Lumsden, Councillor, Law Society of New South Wales, on behalf of
solicitors

(Commission read)

(Oaths of office taken)

HUTLEY: It is both an honour and a pleasure to express the congratulations of the New South Wales Bar to a newly appointed judge of this vital court, whom I have both admired and liked for many years, and as a singular fortuity to speak of myself in addressing your Honour, as your Honour almost killed me some 20 years ago, introducing me to an impossible but honestly named ski run in Verbier Switzerland, Stairway to Heaven.

Your Honour is a proud product of Sydney's Northern Beaches and an alumnus of Balgowlah Boys' High and consequently a keen and adept surfer. After studies at the University of New South Wales, you worked as a solicitor until February 1986 when you started at the bar practising from 4 and then 9 Selborne. You read with George Palmer, the former judge and now impresario, and Martin Einfeld.

At the bar, your Honour had a distinguished career, you seemed to have been instrumental in defending the interests of Perisher Blue Pty Ltd on

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numerous occasions. You, in fact, were half the Australian chapter of the International Association of Ski Defence Attorneys, they may close now there is but one.

Your Honour's practice was diverse, covering common law, commercial law, consumer protection, bankruptcy and insolvency. Your Honour appeared regularly before the Mental Health Review Tribunal, you acted pro bono on a number of occasions for the New South Wales Volunteer Rescue Association. Your Honour also appeared in a number of leading cases in the Court of Appeal including *Drotem Pty Ltd v Manning* which is an oft quoted case on the ambit of occupiers' duties in commercial premises.

At the bar, your Honour contributed to the development of our profession as a regular assessor in the bar's mock trials for readers. Your Honour has been involved in public service for over 40 years as a member of the ski patrols at Perisher and Thredbo. That service was recognised by a National Medal with clasp. Peter Wood of the bar, a man sparing in his praise of anything and anyone describes you as a great skier. Your Honour glories further in a wife of great character and wit, Michelle, and is the devoted and proud father of Matthew and Olivia.

The bar is delighted at your elevation and expects the very best of your Honour. Our Attorney General is to be commended for her choice.

LUMSDEN: It is a privilege to address the Court this morning on behalf of the solicitors of New South Wales to commend an excellent choice of appointment to the District Court. By all accounts your Honour is not only a seasoned advocate, but a thorough gentleman of the bar who will make a significant contribution to the life of this Court. A highly respected counsel who has appeared in many cases in broad areas including insurance, personal injury

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and commercial matters, your Honour has demonstrated great admiration for the best traditions and customs of the law, values of fairness and transparency, efficiency and accessibility to all.

Those who have watched your Honour's career closely observe a strong belief that the legal system and broader community should afford everyone a fair chance. On a personal level, your Honour is the larger than life character whose booming voice, flowing conversation and warm communication of your views, stories and jokes have endeared you to all. Your Honour has a heightened sense of propriety and you are always unswervingly courteous.

Growing up on the Northern Beaches where you were at the local public school, your Honour's experiences in the suburbs and regional areas, including Newcastle, where you lived for a time, brings a down to earth perspective to bear on your practice of the law.

Your Honour's extremely proud parents, Sydney and Noeline, last year celebrated your father's 100th birthday and their 73rd wedding anniversary on the same day. I understand that news of this doubly delightful occasion was even detailed within the venerable pages of the Manly Daily. Your father was an export director of Reckitt & Coleman, and your mother, interestingly, was the private secretary to the head of Civil Defence for Sydney during World War II.

In the Winter of 1980, your Honour began work with the firm Cutler Hughes & Harris in Martin Place, a firm which now forms part of Thomson Geer. It was here that your Honour cut your teeth on a most peculiar first case. As a young lad in his early twenties, your Honour waited in the reception as a little old lady called Mrs Chisholm sauntered into the reception, walking stick in hand. This was at the time when China was in the process of

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recovering Hong Kong from the United Kingdom, and as part of these negotiations the Chinese Government had promised reparations to those westerners who had lost out from the Communist takeover of 1949. As it happened, Mrs Chisholm was a cosmopolitan Russian who had operated a sizable chemist in Shanghai, the Paris of the East, a chain of pharmacies which had been lost as a result of the Communist takeover. She wondered what your Honour could do to help her secure compensation for this loss. Your Honour thought, "This is different; this is fascinating". Promptly, your Honour and the secretary of the time pulled out a fresh manila folder, whipped out a black marker and called the file "Anne Sophie Chisholm v The People's Republic of China". As it so happened, Mrs Chisholm won and your Honour, buoyed as you were by this first curious victory, went on to practice successfully within the firm until 1984 when you began with Westgarth Baldick, now Corrs.

Although you were admitted to the bar on 20 December 1985, Westgarth Baldick were so taken with your Honour's abilities that they asked you for a "special dispensation" so that you could stay in their litigation department until February 1986, at which time you started at the Bar.

It was Sir John Latham, former Chief Justice of the High Court, who said of another Chief Justice, Isaac Isaacs, that it was his "remarkable equipment of legal knowledge" which set him apart for a future career while at the Bar, the "close and detailed attention which he paid to his cases". This is pertinent given the way in which your Honour has conducted cases; you have brought to every matter a remorseless understanding of the facts. Your deep preparation and thorough organisation allow for a style of delivery which is clear and confident.

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Your Honour's particular liking for a good chat is well adapted in the courtroom, where your Honour has the ability to put submissions in such a way that they sound more like a fireside chat than a stiff, legal submission. Indeed, one colleague wagers that, on the bench, shortness of judgments will probably not be your signature feature.

Your Honour is known for the work you did in relation to the 2001 "Black Christmas" bushfire, which saw your Honour set up a settlement process system which enabled scores of litigation arising out of injury and loss to be settled.

Apart from the law, every barrister has, or perhaps would like to have, another life, apart from the law. The life you share with your beloved wife, Michelle, and your children, Matthew and Olivia, is filled with regular family holidays, mutual support and much happiness.

Your Honour is frequently heard to refer to your home in the Northern Beaches as the "Haven of my Family Unit". But equally you are in paradise on the slopes of Thredbo, where your Honour has devoted 40 years of service to the world of skiing as a ski patrol volunteer.

It is an interest which rears its head in the courtroom; at any opportunity, your Honour will deploy skiing or highly specific ski patrol analogies into the mix. Although impossible to estimate the number that your Honour has helped in the course of mountain rescue activities, it must be in the hundreds.

I am informed your Honour has left his stamp upon the lives of many whom you rescued. I am further advised that many of those persons were also touched by your Honour's famous - or infamous - jokes when you maintained patients' spirits while waiting for a rescue sled.

Mercifully, I am told, pain relief was able to be promptly administered in

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the surgery at the bottom of the mountain, which also served as an effective amnesiac and allowed people to forget the content of these jokes considerably quickly.

In your early days, your Honour was famous for piloting your beloved MGA Roadster south from the family home in sunny Seaforth to the cold of the Snowy Mountains when each season began. Not all of these journeys saw your Honour's Roadster pull up at the foot of the mountains without mechanical help or the aid of an appropriate tow truck. But your Honour's friends from that time query whether perhaps your Honour called for assistance upon realising that skiing was a sufficiently cold activity and that driving 500 kilometres to Thredbo in a vintage convertible with no functional heater was not the best idea. I am told that your Honour also enjoys gardening, with a particular pride for your Crepe Myrtle.

On the bench, your Honour's colleagues say you will be a picture of humanity, courtesy and hard work. The earnest dedication which your Honour has to the rule of law and access to justice will assure everyone who passes through your courtroom that they have had a fair hearing. Your Honour's overwhelmingly patient and generous approach to all manner of people will, I have no doubt, make your Honour an excellent judge.

I wish you the very best for the future as you embark upon your service on the bench.

PRICE J CJDC: Judge, may I add to the welcoming remarks from Mr Hutley and Ms Lumsden, a very warm welcome on behalf of all the judges of this Court and I wish you every success in your judicial career.

JUDGE MONTGOMERY: Chief Judge, your Honours, members of the profession, friends and family, I am honoured by the attendance of you all, it

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does mean a great deal to me. I am deeply honoured to be joining this Court, or as it was described to me recently by her Honour Justice Bergin, Chief Judge in Equity, this “great” Court.

The jurisdiction of the District Court of New South Wales entertains the life and business conflicts of the mainstream of our community. The distinguished bench of the Court carries on the work of fine lawyers who have populated it over time. I will do my best to also meet that high standard. I want to thank Mr Hutley and Ms Lumsden for their kind words. Exaggeration by compliment is always greatly received.

Tradition permits me to reflect upon the influences in my life which have brought me here, this is my opportunity to express gratitude. The foundation of all good that has come of me is the sound and loving family in which I grew up at Clontarf with my mother Noeline, father Sydney, and brothers Steven and David. My parents are here today. As you have heard, my father will be 101 years old in June. My mother Noeline is 97 years young.

My father rose from truck driver to associate director of Reckitt & Coleman.

My mother worked as an executive’s personal assistant, and after launching us into our adolescence, worked at David Jones where she loved the interaction with customers.

Whilst not pressing any career path, my parents instilled in me and in my brothers a want to succeed.

During the Second World War, my father fought at Papua New Guinea, Bougainville and the Pacific Islands. My mother was secretary to Colonel Maxwell Lorenzo, head of National Emergency Services, working from an underground bunker below Wynyard Railway Station despatching Civil

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Emergency Services during the attacks on Sydney including the mini submarine attack in the harbour.

By the example they set throughout their lives, my parents instilled in my brothers and me, appreciation of the community in which we live. I feel privileged that my appointment to this Court gives me the opportunity to give back to our free and generous society.

I was a late discoverer of confidence in my professional career path and I owe a great deal to some people who apparently saw more clearly than I did, that path.

At the University of New South Wales, I enrolled in Arts but after the first year was at a loss as to my future career. My Year Master, Sociologist, Professor Bettina Cass, whilst with charge of thousands of students bothered to counsel me to apply for other courses at a variety of universities.

I chose BA/LLB at University New South Wales. After obtaining my BA and with two years of law remaining I still did not picture my future life as a lawyer. The Administrative Officer of the Faculty of Law, Mr Peter Wildblood, a man I only met that one time but who had considered by grades, took interest in my achieving my potential by persuading me to travel and experience the World over a gap year rather than to drop out.

In Switzerland, during late 1976 to early 1978, I befriended the famous Bergführer, Fritz Gertsch and the two nation Olympic ski coach Rene Seiler. They introduced me to my ever after loves of mountains and of skiing.

Just when I was contemplating whether my horizon had a mountain peak in it, they sat me down somewhere beautiful in the Bern Oberland to tell me that my future was in law and not on skis.

While some might in an unkindly fashion think that I returned to complete my

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study at law and become a lawyer in consequence of that frank assessment of the inadequacy of my skiing; the truth is that my experience of the World taught me the value of the opportunity available to me.

I was first employed as a solicitor by Messrs Cutler Hughes & Harris, there I was afforded the opportunity to observe quintessential professional courtesy as practiced by the partners of that then leading firm, most notably, Mr Keith Harris. The modern style of aggressive, client passion servicing correspondence too often seen in litigation would never have earned Mr Harris's signature.

Subsequently, work at Messrs Westgarth Baldick, exposed me to large commercial litigation and to briefing leading commercial barristers.

At the Bar I read principally with George Palmer on what is now Tenth Floor Chambers. Those early years of working with, learning and receiving guidance from Palmer, Gyles, Walker, Handley and Einstein (if I may refer to them by surname only), excellent counsel as each of them was, set the standard which I have pursued throughout my practice at the bar.

The bar is identifiable by its reputation for excellence which, in my personal experience, owes a lot to practice of the "open door" policy by which experienced counsel provide guidance to more junior counsel and counsel of all levels of experience enjoy the invaluable opportunity to test on a colleague their enthusiasm for a particular approach to a question or submission.

I remember one early days lesson in cross-examination given to me by Brian Morris of Fourth Selborne.

Morris had been breached for overstaying the sign posted time limit when he parked his classic MGB sports car in the Whistler Street car park at Manly. Morris briefed me as he drove me to Manly Local Court; that he was innocent

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because he had, in fact, moved his car during the alleged infringing time period.

As I cross-examined the parking officer, he conceded he could neither be sure the car was in the one position when he first attended and marked its tyre, and when he later checked and issued the infringement notice; nor that the chalk mark he had made on the tyre was at the same angle to his view at each of those times.

Before I could take another breath I was dragged down to my chair with such force that but for my knees catching under the bar table I would have crashed backwards to the courtroom floor.

Morris had grabbed the back of my jacket and pulled me down.

I looked up in bemusement and embarrassment as the magistrate and police prosecutor roared laughing. Morris simply said, "Let that be a lesson to you. Know when to sit down. Do not ever ask the question too many".

I am delighted to see here today so many of my floor colleagues present and past who made my floors of Fourth and Ninth Selborne comfortable, professional places at which to spend so much of my life.

It is my view that the New South Wales Bar Association, by its professional distance and high standards is a most influential protector of a foundation upon which the freedom and generosity of our society is delivered. That foundation is each person's right to equal representation of their interest, in a dispute determined by an unbiased court or tribunal, applying laws formulated from democratic consensus.

A judge of this Court owes no apology for servicing the demands of his or her office to the best of their ability according to those laws and with good conscience.

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It would be remiss of me was I not to mention the assistance of Mr Terry Fennell, my clerk for most of my career, and more recently Simon Walker and Imogen Thomas.

I want to also to acknowledge the excellence of service delivered by my most experienced receptionist, Jenny Elgee, and by Sydney's best barrister's typist, Sandy McDonald.

I feel honoured to see here today many solicitors who paid me the great compliment of entrusting me with briefs to represent their clients. Of course, each of them knows that at times, even of the greatest intensity which litigation delivers; I personified patience, quiet composure and offered only tempered relations.

Intensity of contribution, between skilled solicitor and barrister, promises focus on good conduct of the case. The greater is the skill of the solicitor's contribution, the greater is the barrister's pleasure and privilege of holding the brief. I am indebted to the solicitors who have supported me.

The Attorney General's media release mentioned my work for the mentally vulnerable. Solicitors of the Mental Health Advocacy Service of New South Wales Legal Aid have delivered to me expertly prepared briefs, representing vulnerable persons in cases addressing the difficult to find balance between the fundamental principles of those persons' entitlements to civil liberty and the protection of the public. I have enjoyed that important work immensely.

I would like to conclude with reference to two very important influences that have maintained me.

My volunteering in rescue with the Australian Ski Patrols as Specialist Squads of the New South Wales Volunteer Rescue Association, has throughout my

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legal professional life provided my life with a balance and broader perspective.

As counsel pro bono for the VRA, I represented volunteer rescue at the highest levels amongst the professional emergency services and to government on the drafting of legislation, including the Good Samaritan and Volunteer provisions of the Civil Liability Act. This employment of my legal skills in causes I felt worthy gave me great satisfaction.

I am grateful to see here today the Commissioner and the Secretary of the New South Wales Volunteer Rescue Association.

Finally, and most importantly, my solicitors and their clients would not appreciate how much of the success of their cases is owed to the support I have received from my brilliant wife and best friend, Michelle. Michelle has not only managed our life so as to make my barrister's commitment to work sustainable, she has been my practice manager for the 27 years of our marriage. I adore Michelle for managing our family life, so often without a fair contribution from me.

Our children Matthew and Olivia, have generously accommodated, if understandably on occasion not completely tolerated, my being late home, unavailable after dinner and often on weekends, whilst I prepared for court and always absent when they awoke in the mornings. Each of them inspires me with their personal achievements in study, work and life. I love them for every part of that.

I could not have succeeded as a barrister to the extent I have done, without the beautiful sanctuary of my home, which they provide. Thank you.