SPEECH OF JUSTICE RICHARD REFSHAUGE ON THE OCCASION OF HIS SWEARING IN AS A JUSTICE OF THE ACT SUPREME COURT

Thank you Chief Minister and Mr Brzostowski and Mr Barnett for your kind and overly generous words of welcome. They are much appreciated, although it is always something of a surprise to hear the particular aspects of one's life and career that others see as worthy of mention – including, of course, those that one thought best forgotten.

I am exceedingly aware of the honour that the ACT Executive and the Attorney, have done to me in this appointment. With it, of course, comes important responsibilities and I certainly hope and intend to discharge them to the best of my ability. It is also a great privilege and enormously satisfying to be sworn in on the same occasion when this Court at last achieves gender diversity and fairness and I warmly, if I may, add my words of welcome, Justice Penfold who will bring great distinction to this Court. I look forward to working with such a distinguished jurist.

I am grateful, too, that two of us are being sworn in today so that direct lineage to our predecessors cannot be attributed. I have the utmost respect and admiration for the Hon Dr Ken Crispin QC and the late Justice Terry Connolly. Dr Crispin established the office of the DPP and laid firm foundations that I found a solid base from which I could develop it. I worked closely with Justice Connolly in the Canberra Chapter of the International Commission of Jurists and on the Harmonised Court Rules Project. They both have provided models of judicial conduct to which I can only aspire. I am very grateful for the Dr Crispin's presence here today. It is very moving for me that this important ceremony is combined with a tribute to the late Justice Terry Connolly.

I am also honoured by the presence of those Judges from the High Court, Federal Court and Family Court and Magistrates from the Federal Magistrates Court and the ACT Magistrates Court who have been gracious enough to attend today as well as members of the ACT Assembly and the Commonwealth Parliament, the Solicitor-General Dr David Bennett QC and the Commonwealth Director of Public Prosecutions Mr Chris Craigie SC, and so many members of the legal profession, the ACT Public

Service, the Universities and the community. I am very grateful for your attendance which has made this occasion very special and your generous support which is very welcome and heartening.

I perhaps need to be a little careful in what I say today. Already Justice Penfold's words have been quoted back at her. Further, a very bright young student I know at ANU has just written recently a Ph D thesis on the judgments of a distinguished High Court Judge considered in the light of his Honour's remarks made at his swearing in ceremony. No-one is likely to embark on a doctoral thesis of my future judgments in the light of these remarks, but there are so many law schools with so many students these days that some smart but desperate student might see that as a worthwhile honours thesis or just an essay. You never know how history will treat the careless remark, and the streaker's defence – it seemed like a good idea at the time – will hardly provide a viable excuse.

To borrow the phrase from AB Facey, but the phrase only and neither literary quality nor content, I have had a fortunate life and an interesting career and I like to think that I have been able to make some recompense to the community for that.

I lasted a long time at University, trying to better Jack Waterford's marathon attendance record, spending about twice the time most Arts/Law students stayed, certainly longer than I spent in secondary education or in primary education. This was not through poor academic performance, though as Professors Zines and Davis are fond of reminding me, my examination performance in Legal History and Practice and Procedure left much to be desired. I think I have since made up for that in interest and diligence. It was rather the lifestyle and the fondness for student politics. It gave me great experiences in which I was intricately involved, like the Aquarius Festival at Nimbin, the Day of Rage in Canberra, the establishment of the Aboriginal Embassy and the building of the ANU Arts Centre amongst many others.

After graduation, when I finally had to leave the ANU, I was most fortunate to have caught the eye of Mr Neil Macphillamy, then a doyen of the Canberra legal profession. In a move not an obvious choice for the young student activist, I joined his full-service but commercially oriented firm and worked closely with him for my first years of

practice. I managed to sneak in a quiet criminal practice on the side, with unkempt clients mixing it with corporate high flyers in reception, much to the consternation of the latter. To Neil I owe a real debt for he gave me the foundation of professional responsibility, client focus and ethical duty and I still remember with fondness his patience and erudition, generously shared. As they say in the acknowledgement section of books, his example is appreciated, but the faults in delivery are all mine. He has no responsibility for any of my procrastination, nor the perpetual state of my desk, but as they say, a clean desk is the devil's playground.

I have been very lucky to have worked with great partners in Macphillamy Cummins & Gibson, then Sly & Weigell and Deacons Graham & James each of whom taught me something important about the practice of law. I was also fortunate that we employed and trained so many who worked with us for a time and then left to join other firms or to establish their own, many of whom are now the leaders of the Canberra profession today and whom I am glad to call friends.

To my delight, however, I have had close involvement with nearly all the forms of the legal profession in Canberra. I have been closely involved with community legal centres particularly through my 20-year membership of the Board of the Welfare Rights and Legal Centre and have appreciated the outstanding commitment of the staff, both legal and non-legal, who contribute so much to the community, in particular, by alleviating distress amongst or asserting the rights of the most vulnerable and neediest in our community. Canberra is a rich and diverse community with opportunity and good fortune, but it has a significant number of poverty-stricken, homeless and disadvantaged people. One such is too many and while there are any whose potential and ability to exercise their human rights are compromised we are all diminished.

I have been proud to be associated with the Law Schools of our Universities, my alma mater, the ANU College of Law (as it now is) and the University of Canberra. I have tutored, taught a prescribed course, engaged in panels, given occasional lectures and been on review and interview committees. I have enjoyed the interaction with students, their training being, in my view, an integral and important part of the responsibility of a professional. I admire the intellectual excellence and teaching commitment of the faculty of both institutions and have prized the collegiality of the

ANU College of Law so freely and warmly extended to me. These teachers and researchers are so important to the future and health of the profession and to the community to which it is so important a contribution. I hope to keep a close association with them.

For nearly two-thirds of my career, I practised as a solicitor, pushing the bounds of our fused profession in practice as a solicitor-advocate and in-house counsel, never answering directly the oft asked "When are you going to the bar?" I had a fascinating practice, exploring arcane jurisdictions like the Security Appeals Tribunal, appearing in all courts and most tribunals including many domestic tribunals in the ACT and acting in a wide range of areas of practice.

I have formed close friends with many in the profession and I am grateful for their comradeship. I have also seen incredible acts of generosity and of commitment amongst Canberra's solicitors and the community is well-served by them. It is fashionable to denigrate lawyers and to portray them as greedy, opinionated and uncaring. There are bad bananas in every bunch but my experience is that by and large lawyers in Canberra are conscientiously committed to delivering high quality legal services to their clients.

While I have not worked as a legal aid lawyer, I have worked closely with them and their Chief Executives and can attest to the value they add to the legal services they provide, despite under-funding and excess demand. I was very pleased with the respectful relationship that the Legal Aid Office enjoyed with the Office of the DPP where both agencies could recognise each others' different imperatives and obligations yet co-operate and extend a high level of professional comity to the betterment of the criminal justice system.

The most recent phase of my career has been as a government lawyer and member of the bar, an apparent oxymoron. It has been a privilege to serve the community as Director of Public Prosecutions, following my distinguished predecessors, the Hon Ken Crispin, former judge and President of the ACT Court of Appeal, and Justice Terry Buddin of the NSW Supreme Court, who laid firm foundations and left the Office in a good shape. I found in my interaction with the Bar, especially as a member of the Bar

Council, the camaraderie and practice-style that I had never been bold enough to embrace for all those years. The Bar, with its cab-rank rule and its high ethical and professional standards is an essential contributor to the health of a liberal democratic society. I thank the members of the Canberra bar for their generosity in working with me while I was a solicitor-advocate and them accepting me so warmly when finally I joined their ranks.

I also count my time as a government lawyer as a prize. Public servants are good targets for ridicule and certainly there are some who do or appear to deserve it. The people I worked with and had the privilege to know were for the most part committed to serving the community as conscientiously as any lawyer I know in private practice or any journalist. The public servants I know and worked with could also be frustrated by rules and regulations which send the citizen demented, but endeavoured to be faithful to their obligation of loyalty whilst doing their best to be fair and just to the citizenry. There were obstacles, impediments, hindrances and obstruction; there were people who follow the letter of the law or policy with a rigidity that would make Stalin blush, but they are a tiny minority and not representative and usually a more senior person can unblock or sanitise.

Finally, there are the prosecutors, a group which I joined with some hesitation. I recall years ago in private practice actually shouting in frustration at a prosecutor who I thought had too robustly put his case leading to the imprisonment of my client for whom I had valiantly tried to retain his liberty. I think my client was less dismayed at the sentence than I was; it was almost as if I was to do the time. So many blackly talked of me going to "the dark side". If the alleged limitless resources of the Crown mean that a criminal trial is a David and Goliath contest, it is always much more romantic to be David than Goliath. It is always more satisfying, if not positively exciting, to be the lone defence standing valiantly between the oppressive forces of an autocratic police state and the rights deprived hapless defendant.

That is a not an entirely inaccurate, if colourful and partisan, description of the role of defence counsel. Such people are extremely important to the justice system and deserve to be celebrated.

Yet law and order is essential for the liberal democratic society; it is only when people feel that they, their families and possessions are safe that they can get an education for themselves and their children, go about their daily lives and be productive. We see that to be so from its absence in Iraq, Gaza, Afghanistan, Zimbabwe, Sudan and many other places.

For this, we need prosecutors to take cases to court and to ensure that those who break the law are held accountable. The office of a prosecutor has been described as quasi-judicial and there is great power and therefore great responsibility in the discretions exercised by prosecutors.

I found that for the most part, prosecutors discharge their duties well with integrity, rectitude and a proper concern for human rights. I am aware of its faults but was essentially proud of the work and achievements of the Office of the DPP in the ACT and of the staff, both legal and non-legal, in the Office during my time as Director. I also made good friends with and admired the work of many of the prosecutors around Australia and, indeed, across the world where, despite such different systems, prosecutors face the same challenges and dilemmas, and, despite some significant examples to the contrary, were for the most part fiercely independent, incorruptible, fair and rights respecting.

In my time in the ACT DPP, there were achievements of which I was particularly proud. I am inordinately proud of the Family Violence Intervention Program, which has received national awards, and which has done much to address the formerly unaccountable and almost accepted violence suffered by women particularly, within a family relationship. I also count with much satisfaction the contribution many in the Office made to the development of a comprehensive regime of Restorative Justice for juveniles, hopefully soon to be extended to adults, a professional witness assistance program, the Ngambra Circle Sentencing Court and the improved case management processes in both the Magistrates Court and this Court.

As DPP, of course, I also worked with the AFP, especially in ACT Policing. Indeed, I think I worked with 6 Chief Police Officers. I was impressed by the excellent way they and their officers carried out the duties with which the community charges them.

I have also been lucky to have been able to participate in a wide number of community activities, particularly in the arts and welfare sectors. To me the arts are an essential indicator of our humanness. While the concept of the isolated judge, immune from the corrupting influence of the real world has some attractions, it is not one to which I subscribe; I have been well rewarded by the experience I have gained through such involvement and the creative and talented people I have met and with whom I have formed strong bonds of friendship. I am proud to have been a part, albeit a small part of the process to establish and complement a rational and human policy of harm minimisation to respond to people with drug addiction and to assist in the effective reaction to the scourge of HIV/AIDS and other blood borne viruses and sexually transmitted diseases in Canberra.

So I have had a fortunate life. Perhaps these are the ramblings of a myopic, hopeless optimist, but I am satisfied that this is a fair and sustainable view of the many facets of the profession of law that I have experienced and to which I am devoted. Despite the varied nature of my practice and experiences, however, this is the Court which I regard as my real professional home where my skills were developed and where such distinguished judges as The Hon Russell Fox, Sir Richard Blackburn and the Hon Jeffery Miles taught me so much about law and practice. This appointment is, therefore, all the more exciting and satisfying. I am very grateful for those former members of this Court who have taken the trouble to join us today. From you all, I have learnt so much about the law and its proper and effective practice.

As has, I hope, been evident in what I have said, I see the law as a fundamental foundation to a truly civilised community. Regrettably, phrases like "the rule of law" can too easily become just slogans and can attract opprobrium as allegedly being aligned to particular political ideologies. We need to guard against these kinds of distortions and reclaim its true meaning and content.

We need to re-affirm to the members of the community that they are entitled to as much certainty as they can have about what is acceptable conduct and when they are truly liable for condemnation, to be held accountable and justly punished. We need to assure them so far as we can that the dealings which they wish to transact have the

meanings and consequences they know or of which they have been advised and will not afterwards be construed or analysed to be something else. We need to affirm that to avoid injustice discretions must be exercised but that they do not convert the rule of law into the rule of judges and that subjective or idiosyncratic exercise of discretion is no part of the justice we administer. We need to reassure them that while the courts are a part of government they are independent of the government and they can be confident that they will find remedy for abuse of executive discretion, illegality and breach of human rights. We need to demonstrate that those who fail to secure the remedies they seek have been fully heard, their claims fairly considered and their failures due to a proper application of the law to the facts and not to the fact they are a litigant in person or have a particular representation, or from their sex, race, religion, skin colour, financial circumstances or sexual orientation.

This is my ambition and this is how I intend to discharge the heavy responsibility that has been entrusted to me. I hope I can make a successful transition from advocate to judge and deliver justice to plaintiff, defendant, witness, accused, victim and the community.

There are so many I should thank for where I am today. I have mentioned many already and will not repeat their names.

I am grateful to the court staff, the Registrar, Deputy Registrar, associates, registry staff, secretaries and Sheriff's Officers with many of whom I have worked over the many years of my practice, who have valiantly endeavoured to adjust to my changed status but who have been entirely welcoming and helpful in the process of settling in.

I think my personal assistant for over 15 years, Mrs Annette Hawken, who has accompanied me from Macphillamy Cummins & Gibson, to Deacons Graham & James, the DPP and now here. She has tolerated my eclectic – some would say erratic – and accumulative work habits beyond the call of duty. The look on her face when I ask "where ever can I find …?" has stopped me dead but never taught me to be tidier.

I want particularly to mention my parents. My mother, who died some years ago, always kept my feet on the ground and amongst other things taught me that, no matter how high and mighty you were, or thought you were, everyone had the right to be treated the same as an important human being. My father (who, unfortunately, is unable to be here today) has been in inspiration. His commitment to public service has been outstanding, both at a national and international level particularly in medical administration, medical ethics and in responding to the problems of drug addiction. He was also responsible for building the Woden Valley Hospital, now the Canberra Hospital, and concluding negotiations with the Little Company of Mary for the Calvary Hospital, so I suppose he can truly be called a father of the ACT health system. He taught me duty, patience, integrity, loyalty and the intrinsic worth of each fellow human being.

I have been supported and educated by my faith and its teachings which have helped to form my approach to life and other people.

I have also been supported and encouraged by my brothers and sister who, I am delighted are all here today, and who in their own ways have reached success in private and public life that I envy and admire. They have all been very supportive of me and my family, especially during some of the more interesting medical experiences I have endured.

My children, Christina and Kim, are very special and I am immensely proud of them and their achievements. Having carefully observed their father and his habits, neither have any ambition to enter the legal profession.

Of course, my wife, life partner and best friend, Barbara, has been my strongest and best supporter. Her loyalty is unstinting and unreserved; her patience and forebearance are, however, not boundless – there are limits which I have over the years discovered by pushing beyond them. Nevertheless, those limits are hardly constraining and are generously and lovingly wide. Her love has been all-sustaining and I certainly could not have achieved what I have without it and her.

I look forward to the challenges of this appointment and to continuing to work with the legal profession and the community to do justice and right to all and to contribute to this great Canberra community of which we are so proud.

Thank you Chief Justice