

**Speech Given at the Ceremonial Sitting for the Swearing In of
Chief Justice McCallum**

8 March 2022

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Supreme Court of the Australian Capital Territory

Chief Justice McCallum

10 I acknowledge that the land on which we are gathered today is the
land of its First Nations people who have lived here for over 60,000
years and by whom it has never been surrendered; not in 1788 and
not since. Thank you, Auntie Violet, so much for your warm welcome
15 to all the people here today to the country of the Ngunnawal. I pay my
deepest respects to you and the Ngunnawal people, your elders, other
elders past and present. I also acknowledge and pay my respects to
my former tipstaff and very good friend Teela Reid of the Wiradjuri and
Wailwan people, and to my friend Thomas Mayor, a Torres Strait
Islander man. I pay my respects to your elders.

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Your Excellency and Mr Wilson, distinguished guests, fellow judges,
lawyers, court watchers, friends and family, thank you all for taking the
time to share this day with me. I am honoured by your presence.
25 Thank you, Attorney-General, Mr Muller and Ms Carroll for your kind
words. I am deeply honoured to have been given the opportunity to
serve as the Chief Justice of the Australian Capital Territory Supreme
Court.

30 At her farewell last week my predecessor Helen Murrell CJ
acknowledged a number of people who were unable to attend due to
flood, plague and other vicissitudes, and today her Honour has herself
been trapped at home by a swollen creek, and a number of my friends
have similarly been detained by storms or pestilence. Chief Justice
35 Murrell was farewelled amidst the highest praise for her Honour's
achievements in improving the processes and efficiency of the court.
It is my good fortune to inherit a court in such good shape. I have big
shoes to fill and for once find myself wishing I had bigger feet.

40 Happy International Women's Day to all. Happy birthday to my
daughter, Charlotte, and any other Charlotte here today celebrating a
birthday. In recognising International Women's Day I do not mean to
exclude men or any other non-women. It is a day for celebrating
diversity and inclusiveness. I can't think of a better way to celebrate
45 International Women's Day, and Charlotte's birthday for that matter,
than by joining a Court on which I have an equal number of judicial
sisters and brothers in the residential judges.

Elkaim J, Mossop J, Loukas-Karlsson J and McWilliam AJ, you have all already made me feel so very welcome. I have also been warmly welcomed and supported by the Court's CEO, Amanda Nuttall, and the court's Registrar, Jayne Reece, two more amazing, strong women. Though we be but little, I believe we will be a mighty Court; indeed, the envy of the land.

Although I worked as a prosecutor in the ACT for several years at the outset of my career, I cannot lay claim to being a true local; at least, not yet. I want to begin by assuring my fellow judicial officers, judges and magistrates, tribunal members and the legal practitioners of the ACT of my commitment to immerse myself in your professional community, to be educated by you, to hear about what you are proud of and what you think could be done better, and to take every measure within my personal capacity and the institutional power of the Court to foster a culture of excellence and a continual exchange of ideas.

Perhaps I can begin that exchange – and it has been observed that I am an open book; it's true – by sharing some of my ideas and beliefs with people present today. In so doing, I recognise that the authority of the Court is institutional not personal to me. I do not and will not seek to impose my personal beliefs on others, but I also recognise that strong leadership demands a strong expression of where I hope to carry hearts and minds and for that reason I want to explain four of my core beliefs.

First, and I have to say foremost, I believe that the overrepresentation of indigenous people in custody is a national tragedy that demands urgent attention. More broadly, the overcrowding of prisons across Australia, including in this territory, reflects an approach to sentencing which prefers isolation of offenders in a custodial setting over early engagement with the endemic problems that contribute to the causes of their offending.

Addressing those issues is not something the Court can or should seek to achieve alone. I am not talking about introducing a culture of leniency in sentencing or exposing the community to unwarranted risk by taking an unduly generous approach to bail applications. I am not talking about setting at nought the hard work of police, who have perhaps the most difficult and thankless role in the criminal justice system. I am talking about the need for an exchange of ideas about the concept of moral culpability.

First Nations people have been wronged in a number of ways by the imposition on them of our rule of law. No longer can we suffer the

administration of justice to be the instrument of injustice. The High Court has recognised in a series of decisions that offenders who have experienced a childhood of profound deprivation may on that account have a lesser moral culpability for the offences they commit. The logical corollary of that recognition is to embrace the proposition that we in turn have a moral responsibility to seek to identify and address the causes of profound deprivation. I believe it would strengthen, not weaken, our criminal justice system to take some of the fear out of our conception of criminals and address offending conduct as a broader social issue.

Secondly, the Court of course expects practitioners and litigants to assist it to resolve the real issues in dispute in a manner that is just, quick and cheap, and not to waste its resources, which are finite and precious. However, we – and I mean 'we', the Court – must not lose sight of the fact that the role of these resources is to serve the public. The Court must provide its services in the recognition that the resources of litigants are also finite and precious. I am not talking only about financial resources. The experience of litigation for both individuals and companies drains more than a family's savings or a company's finances. The primary function of the Court in its civil jurisdiction is to bring an end to the often draining conflict that brings litigants before the Court. To that end, we have a duty to strive to implement procedures that are constant and immune from the vagaries of individual whim and to produce decisions that are clear and that are delivered promptly.

Thirdly, I believe that with the exercise of judicial power comes the responsibility to recognise its proper limits. That is, in part, a principle of constraint, but it is not only that. We must have the discipline, for example, not to succumb to the siren call of the merits when the task is judicial review for jurisdictional error. Equally, however, we must have the discipline, and indeed the courage, not to refuse to do right to any person under the guise of a constructed limit on power.

Fourthly, in all contexts, in Court and out, I believe that all those who play any role in the administration of justice have a fundamental right to be treated with respect. When the Court is convened the Court Officer traditionally announces, 'Any person having any business before the Court draw nigh, give your attendance and you shall be heard'. I am speaking of my experience in that other jurisdiction. There is more to being heard than being allocated time to talk. The Court must listen.

In a book I was given as a farewell present by Natalie Adams J, who I am very pleased to see here today with some of my other very good friends from that other jurisdiction, I found the word 'dadirri' from the

language of the First Nations people of the Daly River region south of Darwin, described by Auntie Miriam Rose to mean 'deep, respectful listening'. Many First Nations languages have their own word for deep listening or reflection. And, Auntie Violet, I will take you up on that offer we talked about last week of a cup of coffee and I look forward to discussing your language as well. I believe that deep listening, deep, respectful listening, reflects the Court's obligation to every person who has any business before this Court.

As I have acknowledged, the authority of the Court is institutional. Today is a day of institutional celebration, it is not personal to me. I hope I will, nonetheless, be forgiven for ending on a personal note. Before I was born my parents took the whole family to live in America without me. I was sorry to have missed out on that adventure and I am equally sorry today to be embarking on this new adventure neither of my parents is alive to see. But I am profoundly touched by the presence of Ged's mother, 'Mum from Taree' as she calls herself.

The spirit of my parents, with their unique synthesis of intellectual rigour, caring and good humour, carries on in my four amazing siblings, all of whom are here today, which I am beyond excited about. My brother John, who has read and seen more Australian plays than anyone in the world. My brother Peter, a musicologist with a PhD in the handwritten manuscripts of Beethoven, should anyone be interested in learning about that. My brother Bill, a brilliant mathematician whose method of teaching calculus is so successful it has made its way into popular fiction. And my favourite sister, Kate, a doctor here in Canberra who is much sought after for her compassion and her skill as a diagnostician. I am so grateful that you and your partners and children – or some of the children – are here today, along with a relatively small percentage of Ged's 10 siblings and their partners, all of whom have been so good to me.

Finally, to my kind and wonderful partner Ged, rockstar now turned farmer, and our four brilliant children, Ged's son Tom, who researches international relations, my daughter Anna, who teaches physics, my son Max, who is an engineer, and my daughter Charlotte, whose birthday it is today in case you missed that, who studies medical science and psychology, you mean the world to me. I have told you many times that I would defy the laws of physics to protect you. You and your partners make my life rich and messy and rewarding and fun. Thank you for being so supportive of this rather large decision I have made.

The Court will adjourn.

