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SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

THE HONOURABLE CHIEF JUSTICE McCALLUM
THE HONOURABLE JUSTICE ELKAIM
THE HONOURABLE JUSTICE MOSSOP
THE HONOURABLE JUSTICE LOUKAS-KARLSSON
THE HONOURABLE JUSTICE KATZMANN
THE HONOURABLE JUSTICE BROMWICH
THE HONOURABLE JUSTICE THAWLEY
THE HONOURABLE ACTING JUSTICE BERMAN
THE HONOURABLE ACTING JUSTICE BALLA
THE HONOURABLE ACTING JUSTICE REFSHAUGE
THE HONOURABLE ACTING JUSTICE ROBINSON
THE HONOURABLE ACTING JUSTICE NORRISH
THE HONOURABLE ACTING JUSTICE McWILLIAM

CEREMONIAL SITTING

ON THE SWEARING IN OF CHIEF JUSTICE LUCY McCALLUM SC

CANBERRA

9:30 AM, TUESDAY, 8 MARCH 2022

MR SHANE RATTENBURY, Attorney-General, appeared.

MR ANDREW MULLER, President of the Bar Association of the ACT, appeared.

MS ELIZABETH CARROLL, President of the Law Society of the ACT, appeared.

ELKAIM J: Your Excellency the Honourable Margaret Beazley AC QC, Governor of New South Wales, and Mr Dennis Wilson. The Honourable Justice James Allsop AO, Chief Justice of the Federal Court. The Honourable Justice Julie Ward, President of the New South Wales Court of Appeal. Mr Shane Rattenbury, Attorney-General of the Australian Capital Territory. Mr Jed Corban and members of the Chief Justice's family. Members of the judiciary, members of the profession, ladies and gentlemen. Welcome to this wonderful occasion of the swearing in of a new Chief Justice. It does seem to be happening a lot lately, but it is still very special. We will begin with asking Auntie Violet Sheridan for a welcome to country.

AUNTIE VIOLET SHERIDAN: Thank you so much. It is a pleasure to be here this morning to perform a welcome to country and welcome our new Chief Justice, Lucy McCallum, along to the land of the Ngunnawal people. But if you don't mind, Chief Justice, I would just like to say a few words. This has been chewing on my bottom lip since last week. I just want to give a little bit of history in regards to who are the traditional owners of the land that we are meeting on this morning.

I am a 67-year-old Ngunnawal woman and also a proud Aboriginal woman. My ancestors have been here for many, many years. My family have lived here for many, many years. My knowledge holder, who was my uncle, Bruce Merritt, has passed on now, which was my mother's brother, who have passed on the knowledge to me which I now pass on to my second – to my eldest son. This is the land of the Ngunnawal people. Always was and always will be. If you don't know the history of this land, I am prepared to sit down and enjoy a cup of coffee and tell you the history of this land. But until then if you found out something different, please tell me.

So until then I swear to tell the truth and the whole truth and nothing but the truth. This is the land of the Ngunnawal people and I would love to welcome our new Chief Justice, Lucy McCallum, along to the land of the Ngunnawal people. And you know what? It is appropriate that we are swearing in a new justice and it is International Women's Day today. So I say welcome along to the land of the Ngunnawal people and all of you here, and I have also met your beautiful husband and your mother-in-law. So I would like to also welcome them on behalf of my people, who are the traditional owners.

And I would like to acknowledge all the special guests here today; all the judges and other distinguished guests and ladies and gentlemen. I would like to pay my respects to my elders past, present and emerging, and extend that respect to other Aboriginal and Torres Strait Islander people present here today.

5 In keeping the general spirit of friendship and reconciliation, it gives me great pleasure to welcome you here this morning on behalf of my people, who are the traditional owners of the land that we meet, the Ngunnawal people. On behalf of my family and the other Ngunnawal families, Lucy, we welcome you to the land of the Ngunnawal people and God bless. And for all the women in the room, happy International Women's Day. Thank you so much.

10 McCALLUM CJ: Acting Chief Justice, I have the honour to announce that I have been appointed Chief Justice of this court. I present to you my commission.

ELKAIM J: Thank you. Registrar, please read the commission.

15 THE REGISTRAR: Supreme Court Act 1933 commission. The Australian Capital Territory Executive under section 4 of the Supreme Court Act 1933 appoints Lucy McCallum as Chief Justice of the Supreme Court commencing on 8 March 2022, dated 3 March 2022, signed Attorney-General Shane Rattenbury and Chief Minister Andrew Barr.

20 ELKAIM J: Registrar, please hand me the affirmation.

Chief Justice, I invite you to take the affirmation of office under the Australian Capital Territory Supreme Court Act of 1933.

25 McCALLUM CJ: I, Lucy McCallum, do solemnly and sincerely affirm that I will well and truly serve in the office of Chief Justice of the Supreme Court of the Australian Capital Territory and that I will do right to all manner of people according to law, without fear or favour, affection or ill will.

30 ELKAIM J: I invite you to subscribe the affirmation and I will witness it.

McCALLUM CJ: (sotto voce) This pen doesn't work. I was joking.

35 ELKAIM J: (sotto voce) This is a very good pen. I direct the Registrar to take this document and enter it in the records of the court.

Chief Justice, I welcome you to this court. Your colleagues assure you of their support and good will.

40 McCALLUM CJ: Thank you, Elkaim J.

Attorney-General.

MR RATTENBURY: Darwa ngunna. Darwa Ngunnawal.

5 This is Ngunnawal country. I acknowledge the traditional custodians and I
thank Auntie Violet as always for her very generous welcome and her
continued support for this court and the broader citizenry of the ACT. And it
is very important that we understand the true history of our region and
acknowledge the long enduring culture that remains as part of our city. The
10 Vice Regal couple of New South Wales, Chief Justice, members of the
judiciary from the Federal Court, New South Wales courts and, of course, our
own members of the judiciary here in the ACT, colleagues, members of the
legal profession, and the many members of the Chief Justice's family who
have been able to join us today, welcome to this very important occasion. It
is my pleasure to be here today and to welcome the new Chief Justice. On
15 behalf of the ACT Government and the Canberra community as a whole, I
welcome Chief Justice McCallum back to the ACT to take up her
appointment as the ACT's new Chief Justice.

Chief Justice McCallum has an extensive legal career spanning more than 30
years. Her Honour has most recently been a judge of appeal in the New
20 South Wales Court of Appeal. Chief Justice McCallum was admitted as a
lawyer in the Supreme Court of New South Wales in 1986 and commenced
her legal career in 1987 as a solicitor in Sydney, before being called to the
Bar in 1991. Chief Justice McCallum practised as a barrister in Sydney,
appearing regularly on behalf of the Commonwealth Director of Public
25 Prosecutions, including for prosecution of fraud, people smuggling,
importation of narcotics, and breaches of banking regulations matters. Chief
Justice McCallum was appointed as a judge of the New South Wales
Supreme Court in 2008 and as a judge of appeal on the New South Wales
Court of Appeal in 2019.

30 Her Honour becomes the ACT's sixth Chief Justice of this Supreme Court
and the second woman to take on the role. As has been noted, it is fitting we
take this step on International Women's Day to honour the formidable women
of industry and justice in the Territory. As we start to find a new normal in
35 this post-pandemic world, I look forward to Chief Justice McCallum finding
ways to ensure the court continues to adapt and be flexible to the evolving
needs of our Canberra community. And though the winds of change are
always blowing, I am confident that it will be for the better.

40 As her Honour's track record indicates, I know that the courts will not be
buffeted and weathered, but rather will harness the winds to find even better
ways to improve the way we do justice. As the ACT's first law officer, I look
forward to partnering with McCallum CJ to ensure our justice system is the
best it can be. As I mentioned here only last week, the government remains
45 committed to its justice re-investment agenda where we build communities,
not prisons. This will rely on the creativity and commitment of all of us here
today and beyond. I am heartened by her Honour's comments upon being

5 announced as the new Chief Justice that she is committed to better outcomes for Aboriginal and Torres Strait Islander Canberrans in our justice system. It is also of great value to our community that her Honour is interested in exploring a commercial list to make sure that business disputes also have timely access to justice.

10 I am pleased to welcome the Chief Justice into the ACT's state-of-the-art law courts facility. I am proud that the building respects and celebrates the heritage of the existing Supreme Court building while now accommodating the Court of Appeal, Supreme Court, Magistrates Court and Children's Court in the new four-story link building. The new building provides enhanced justice support through additional courtrooms, hearing rooms, mediation suites, remote witness facilities, a combined custodial facility, and updated jury deliberation rooms. And it will be of no surprise to those in attendance that I am particularly pleased that the building has achieved a 5 star green energy rating through a series of innovative designs.

20 But as impressive as this building and its facilities may be, it is people who make our justice system work and I would like to offer a reflection on how all of us here today contribute to that. It is tempting to view the courts, and indeed many aspects of executive government, as mechanical things divorced from people constituting them and processing inputs inevitably into outputs. Of course this is not true, and nor should it be. As I have learned over years as a government minister, it is people's experience that makes the difference. 25 When somebody writes a letter to me, they care a lot less about the fine detail of contract law and much more about the possibility that they and their family might be homeless.

30 We are all products of our experiences and though it is incumbent upon us to be evidence based, it is also important to interact with people on a human level, to know when we use our experience and relate to some and to know when to set aside our experiences, recognise that somebody does not see life the same way we might, and do our best to see it from their point of view. Understanding your experience means drawing on it to assist understanding, 35 but also knowing its limits. It is often said that hard cases make bad law. This can often feel the case in the legislature, as I am sure it sometimes may among the judiciary. If I may offer my own perspective, however, it is not that hard cases make bad law, that those in hard cases do not feel listened to. And when one is not listened to, you can never reach a satisfactory conclusion. 40

45 In exercising dispassionate judgment, it is neither advisable nor possible to set aside your humanity in the process. For us, in serving our communities our task is to take what strength and wisdom we can from our experiences and listen to the experiences of others.

5 We cannot know everything and only through listening first can we learn. I am confident that the new Chief Justice has exemplified and will continue to exemplify in the highest degree the understanding, compassion and solution-focused jurisprudence that we all aspire to be the benchmark of the ACT justice system. Chief Justice, welcome back to Canberra.

McCALLUM CJ: Thank you. President of the Bar Association, Mr Muller.

10 MR MULLER: The Vice Regal couple of New South Wales, Chief Justice, judges of this court, judicial officers, Attorney-General, Auntie Violet, members of the profession and other distinguished guests. I acknowledge that the Aboriginal residents of this country were dispossessed in a manner which right-thinking people now regard as inappropriate and unfair.

15 For many thousands of years prior to that dispossession our nation's first peoples dwelt and met upon the land upon which we meet today, and I am conscious of our debt to those custodians of the land and to their elders, both past and present. The Bar Association of the Australian Capital Territory urges governments at all levels within our Commonwealth to do more to achieve reconciliation, to address issues of poverty, disproportionate rates of incarceration, and blighted education and employment opportunities so as to
20 give proper meaning to the word 'Commonwealth'.

25 Chief Justice, I had the pleasure of watching the farewell ceremony for your Honour in the New South Wales Supreme Court recently. I was tempted for these purposes to simply adopt what was said there regarding your Honour about what has been a remarkable career to date. Instead, I encourage those present today to watch the YouTube recording of the event. All of the comments from the learned speakers at that event are worthy of repetition,
30 but I propose to highlight just a few.

Of your personal qualities it was said that your Honour is fair and unfailingly courteous, an open book, a great leader, has displayed a lifelong commitment to excellence, a commitment to social justice, and has a bleeding heart. Of
35 your achievements – and they are many, but a few highlights: a stellar career in the law with the taking of silk in 2005, an appointment to the Bench in 2008, both at a remarkably young age, elevation to the New South Wales Court of Appeal in January 2019, a demonstrated capacity to produce judgments that are beautifully written, displaying care, precision and elegance, and reflective of the principle that brevity is a virtue but not a
40 shortcut.

45

5 Your Honour's service as a role model for women lawyers is significant, as is the extensive work you have undertaken on the study of Aboriginal customs and cultures. In that regard I highlight your Honour's paper appearing in the New South Wales BarNews in 2021, authored jointly with Erica Timmins, entitled 'Black Letter Law'. That article is intended to foster critical thinking about the role of lawyers in unravelling the impact of colonisation on our First Nation's people, with particular focus on the question of bail, and I commend it to all present.

10 Your Honour's commitment to seeing a reduction in the grossly disproportionate incarceration rates for Aboriginal people, as the Attorney has just mentioned, is something you have identified as a continuing project in your new role. Your Honour has made a significant contribution as a committee member of the Judicial Council on Cultural Diversity, an independent advisory body established to assist Australian courts, judicial officers and administrators to positively respond to evolving community needs arising from Australia's increasing cultural diversity.

15 In commenting on your achievements in your time on the Bench in New South Wales, the Chief Justice noted that a measure of a judge worthy of respect and admiration is how they spend their time away from the Bench. Your Honour's commitment to fitness and exercise was also noted. Perhaps judicial yoga classes will be an ongoing event.

20 In speaking on the topic of confidence in our courts, the former Chief Justice of the High Court, the Honourable Murray Gleeson, observed:

25 It is important not to confuse confidence with popularity. It is not the business of judges to try to please when they make their decisions. Doing justice without fear or favour requires from time to time making decisions that will displease some, perhaps many, people. The public understand that. Confidence in the courts includes trusting them to pursue justice, not applause.

30 And more recently, speaking on the same topic, Chief Justice Kiefel stated:

35 Trust and confidence in the role of the courts is sustained by ensuring that courts are independent, that its processes are rational and fair, and that the rule of law is observed.

40 She went on to observe that:

45 A strong and independent legal profession is a mainstay of a strong and independent court.

5 It is abundantly clear from all that your Honour has achieved to date and from all that your Honour holds dear that the community of the ACT will have access to a court in which, under your guiding hand, they can place their confidence and trust. In the words of the Chief Justice of New South Wales, the ACT is very fortunate to have you and on behalf of the ACT Bar Association may I warmly welcome your Honour to your new role.

10 McCALLUM CJ: Thank you, Mr Muller. President of the Law Society, Ms Carroll.

15 MS CARROLL: Vice Regal couple of New South Wales, Chief Justice, members of the judiciary, members of the legal profession, and members of the community. Thank you to Auntie Violet Sheridan for your welcome to country. I join with our previous speakers to acknowledge the Ngunnawal peoples on whose land we meet. I pay my respects to their elders past, present and emerging, and also to all Aboriginal and Torres Strait Islander people here today.

20 On behalf of the ACT Law Society I am very pleased to welcome your Honour as the Chief Justice of the Supreme Court of the ACT. Your Honour is remembered fondly in Canberra from your work here as a prosecutor in the late eighties, and we are happy to welcome you back. Former President of the ACT Law Society, Martin Hockridge, who was then at Legal Aid ACT, recalls your ability to deal adeptly with complex issues and difficult matters, and it was apparent even then that you were destined for greater things.

30 Our lovely green city has changed enormously since your time here; most obviously through an exponential rise in the number of coffee shops. More significantly in relation to your new role, the refurbishment and expansion of the Supreme Court building has seen the completion of a project very dear to then Chief Justice Miles' heart, and the building is a now more fitting location for the court.

35 I would like to say that your Honour's appointment was met with universal acclaim, and this has certainly been true in the ACT legal profession. However, I must admit that several of my New South Wales colleagues have been less enthusiastic, expressing much sadness and regret at your departure from that jurisdiction. They have spoken of you as not just a great judge, but an even better human. They also commended your contribution to jurisprudence for the indigenous community, as has been mentioned, and I can only say that New South Wales' loss is our gain.

5 The Law Society strongly supports your Honour's commitment to addressing the high rates of incarceration of indigenous people. Unfortunately, the ACT is no exception when it comes to the disturbingly high levels of Aboriginal and Torres Strait Islander people in prison across Australia. It is our hope that this jurisdiction can be a leader in respectful engagement and long-term solutions to address this issue. We also applaud your Honour's commitment to further cementing the ACT's place as a centre of excellent jurisprudence.

10 On a lighter note, I understand your Honour is a committed long distance runner. Your Honour will certainly find many like-minded people in the Canberra community, although you may need to look to the Attorney-General, Mr Rattenbury, rather than myself for a training buddy. Whatever your interests you choose to pursue as Chief Justice, on behalf of the members of the ACT Law Society I wish your Honour all the best in your new role.

20 McCALLUM CJ: Thank you, Ms Carroll. 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 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.

30 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. 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.

35 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 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.

45

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
5 can't think of a better way to celebrate 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.

10 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.

15 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
20 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.

25 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
30 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.

35 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.

40 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
45 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.

5 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
10 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
15 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
20 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
25 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
30 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.

35 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
40 that other jurisdiction. There is more to being heard than being allocated
time to talk. The court must listen.

45 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 Jed'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 Jed's 10 siblings and their partners, all of whom have been so good to me.

Finally, to my kind and wonderful partner Jed, rockstar now turned farmer, and our four brilliant children, Jed'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.

ADJOURNED

[10.06 am]

45