

## **Speech Given at the Ceremonial Sitting for the Swearing In of Justice Baker**

25 November 2022

Supreme Court of the Australian Capital Territory

*Justice Baker*

I acknowledge the Traditional Owners of the land on which we sit and I pay my respects to their Elders past, present and emerging. I recognise that the land on which we sit is the land of Australia's First Nations people who have cared for this country for over 60,000 years, and by whom it has never been surrendered.

Uncle Billy, I am honoured by your presence here today. Thank you so much for your warm welcome and thank you especially for your inspiring song.

Distinguished guests and fellow judges, practitioners, and the academics, family and friends, and all of you who overlap in each of those categories,

Thank you, Mr Attorney, Ms Curran and Ms Choudhury for your kind and generous words. Thank you also to the ACT legal profession for your warm welcome, and thank you also to all of those who have travelled from interstate to be here today from places as far away as South Australia, and Sydney.

I am particularly honoured by the presence of the justices and judges of the courts of New South Wales, including the President of the New South Wales Court of Appeal, and the Chief Judge at Common Law. Thank you for taking the time out of your unrelenting court lists to travel here to share this day with me.

I commence my role today after what I understand to be the longest lead in time of any judicial appointment in the history of Australian Federation. My appointment was first announced in March, some nine months ago, long enough to gestate a baby or, in my case, to produce a baby judge.

Justice Leeming of the New South Wales Court of Appeal has described my long lead-in time as a period of purgatory, no doubt suggesting that my soul required purification before I could carry the heavy weight of judicial office. My purgatory has certainly provided me with much time for contemplation about the role that I have just accepted.

The contemplation began in this very courtroom on the occasion of the swearing in of the Honourable Chief Justice earlier this year. The Court's assigned seating placed me together with some other Sydney barristers in the dock. There is something very humbling about hearing the words of the judicial oath as sworn by the Chief Justice when one is seated in the dock. It was even more humbling for me to know that in a little over nine months' time I would be called upon to do right according to law to an accused who may be seated in that very same seat.

The task of doing right according to law requires careful adherence to legal method, particularly of precedent and principles of statutory construction. The recent experience of the United States demonstrates the importance of legal method, and particularly precedent to the integrity and respect of the court.

However, those words "according to law" are only one part of the oath that I have just sworn. I am acutely conscious of the need to not lose sight of the fact that justice involves people. It is not simply translating Latin phrases. Every decision that is made in this building - by the judges of this Court and by the magistrates of the Magistrates Court - irrevocably affects the lives of all involved, victims, complainants, accused, plaintiffs, defendants, applicants, appellants and respondents. The judicial oath that I have just sworn requires that, in acting according to law, I do right to each and every one of these people, who come from all manner of backgrounds, experiences and histories.

Of course, the task of complying with each and every aspect of the judicial oath is not always easy. The experience of the Aboriginal people of this country is an aching testament of the justice system's past failures to do right to First Nations people. Such failures have led to deep trauma, including intergenerational trauma.

I believe that cultural understanding and facilitating cultural connection is essential for courts to properly do right by First Nations people. As Vanessa Edwidge and Dr Paul Grave have so eloquently described, "The intergenerational wounds that have been wrought by dispossession can only be held by cultural medicine". Cultural connection is best achieved when courts engage and make use of the experience, the lived experience of Aboriginal elders such as occurs in courts like the Galambany Court. For this reason, it is my deep hope that we can extend the important work of the Galambany Court to this Court.

More generally, I believe that another important aspect of each and every aspect of the judicial oath is for justice to be delivered promptly. My experience as a Crown Prosecutor has given me first-hand experience of the harm that is caused to all - victims, accused, witnesses and the public - when justice is delayed.

Whilst my judicial oath is a personal one, I recognise that it will be impossible to achieve it alone, and I am very much looking forward to working with my new colleagues, in particular my fellow resident judges, Associate Justice McWilliam, and additional judges from the Federal Court, such as Justice Stewart, who is here with me today. Together they join compassion with a wealth of experience and knowledge across every aspect of this Court's broad jurisdiction and, as Justice Kennett said at his swearing in earlier this year, "they are also nice people to boot".

I am also honoured to be filling the position previously - actually currently - occupied by Justice Elkaim. I would say that I have big shoes to fill, except that he has not got out of his shoes yet. I am glad that I will have a couple of weeks where I can have the benefit of learning also from him.

Most importantly, I am particularly grateful for the opportunity to serve in this Court under Chief Justice Lucy McCallum. Her Honour is an inspiring jurist who is the very embodiment of the judicial oath.

She is also the most energetic person I have ever met. I suspect that the robes that I am wearing today were given this Adidas stripe as part of the Territory's secret plan to woo her to this jurisdiction. I am proud to serve under the Chief Justice most likely to win Australian Ninja Warrior - the Judiciary edition.

In her swearing-in speech, Chief Justice McCallum rightly described this Court as small but mighty. My purgatory period has given me plenty of time to consider why that may be so. My judicial colleagues, both in this and in the Magistrates Court, are a particular strength of this jurisdiction.

Another strength is the ACT profession. Like this Court, the ACT profession is small but mighty. You are led by two inspiring women, Ms Curran for the Bar, and Ms Choudhury for the solicitors. I look forward to working with both of you in my new role.

And Ms Choudhury, I must say, I am very pleased that as the most junior judge I will be taking on the role of the Patron of the Young Lawyers. As you have heard from the Attorney, and other speeches, one of my favourite aspects of practice so far has been mentoring young lawyers. When I heard at Justice Kennett's swearing-in that he was to be the patron as the most junior judge, I thought to myself, "Yes! I'll get to do it for longer than him".

You are also a profession that are committed to justice. I recently had the privilege of attending a round table discussion concerning Indigenous over representation in custody which was attended by the Attorney, the Director of Public Prosecutions, the heads of Legal Aid and the Aboriginal Legal Service and others. It was inspiring to be in a room where so many leaders of the profession were so personally committed to positive change. I am excited to be working with all of you in this task.

A third strength of this jurisdiction is the connection between the profession and the local universities. As you have heard, in 2003 to 2004 I had the privilege of attending Harvard University on a Menzies Scholarship. As with many American universities, Harvard had a particularly close relationship with the profession. I was taught administrative law by the then Dean of the University, Elena Kagan, who is now a Justice of the United States Supreme Court. As a student, I, in turn, assisted practitioners both in government practice and in pro bono litigation, in particular representing prisoners in Massachusetts jails, and together with Professor Carol Steiker, working with the public defenders to challenge the constitutionality of mandatory sentencing legislation.

This kind of close connection between the profession and academia is sadly absent in much of Australia and the chasm between them operates to the disadvantage of both. From the perspective of a new judge, I would like to particularly recognise the essential role played by academics, in particular, in assisting us to reconcile contradictory authorities and principles in imagining solutions to the recurrent issues that plague us (could one of you please explain to us how the proviso should operate?), and most importantly, in holding us to account when we fail to do right according to law.

Perhaps because of the physical proximity of the Court to the universities, or perhaps simply because of the absence of Sydney traffic between the two, the

chasm between the professional and academia is largely absent in the ACT. Whatever the reason, I am glad to be joining a jurisdiction where there are such close connections between academics, practitioners and the Court, and I am very much looking forward to working with both the Australian National University and the University of Canberra in my new role.

The final strength that I wish to mention has already been mentioned by the Attorney which is this Court's broad jurisdiction encompassing both first instance and appellate jurisdiction in both civil and criminal matters. I am very much looking forward to working in this broad jurisdiction.

Throughout my career, I have tried to avoid specialisation. At the Solicitor-General and Crown Advocate's Chambers, the Crown Solicitor's Office and at the private Bar, I was fortunate to be able to practise in a wide range of jurisdictions. Any given week could see me appearing in a prosecution of a person for keeping bees without a beekeeper's permit; as counsel assisting in an inquest, examining the adequacy of communications between police and ambulance officers; or in constitutional litigation concerning the validity of provisions of the Anti-Discrimination Act. In each of these places, I was fortunate to be supported by many talented and dedicated lawyers, particularly my tutors, Nick Owens SC, and now Justice Anna Mitchelmore of the New South Wales Court of Appeal.

As you have heard, over the past seven years, I have become more specialised, practising as a Crown Prosecutor within the Office of the New South Wales Director of Public Prosecutions, and as you have also heard, most of my time within that office was spent in the Appeals Unit. For my first years in that unit, I worked under Sally Dowling SC, now the New South Wales Director of Public Prosecutions.

Sally brings an elegance to the DPP which is not often seen in public practice. More importantly, she brings intellectual rigour to every case in which she appears; an intellectual rigour which I have, and will continue, to endeavour to emulate.

It is often said that the role of a Crown Prosecutor is a lonely one. I have not found it to be so. At the DPP I was surrounded by colleagues - the Director, my fellow Crown Prosecutors and my instructing solicitors - who each shared a common objective of achieving justice in each case, rather than a personal win. They generously shared their time and knowledge, experience and advice, and I have

learned much from them, all of which will assist me in my new role. I am honoured to have so many of my colleagues from each of these places, from the Crown Solicitor's officer, the private Bar and the DPP here today. Thank you all for sharing this day with me.

Dr Heather Roberts, an expert in swearing-in speeches, amongst many other things, has advised me that one of the most important qualities of a swearing in speech is that it should be short. She is watching on-line today and will no doubt be pleased to hear that I am almost at the end.

However, before I conclude, there are some people that I do need to particularly acknowledge.

First, Justice Sackville who, when I was his associate, taught me much about justice, the importance of hard work and precision in legal thinking and writing. I have also had the privilege of working with Justice Sackville in the past year as one of the counsel assisting in the disability Royal Commission. The work of that Commission is profoundly important. Addressing the systematic issues that cause abuse, violence and neglect and exploitation of some of the most vulnerable people in Australia. It was there that I had the honour to meet Sophie, a brave young woman who gave eloquent testimony about her experiences as a young woman living with disability.

Next, I wish to acknowledge the many judicial officers who have, during my gestation period, generously given me advice on matters ranging from judgment writing to court management to how to efficiently manage my computer systems. I particularly wish to thank Justice Anthony Payne of the New South Wales Court of Appeal for the many hours of judicial CPD, as well as the encouragement that he has given me over the last few months. I also wish to thank Dr Anthony Hopkins for introducing me to the Galambany Court, for his friendship and advice about all things Canberra, and for letting me have his associate, Abby.

Next, my friends. For a child who started life as a skateboarding, surfing and tree-climbing tomboy, in my adult years I have been fortunate to be surrounded by many women who have nurtured and supported me. Many of you are here today. In fact, a number of you are seated in the dock. I have been warned against the dangers of

thanking too many people by name, but I do need to single out three for specific mention.

First, Justice Natalie Adams of the Supreme Court of New South Wales, is my very good friend and mentor. She has encouraged me, supported me and taught me pretty much everything I know about criminal law. She is that rare friend who can do everything at once, and who somehow manages to convince you that you can too. Like a character in a Dr Seuss novel, she can mentor a young lawyer whilst delivering a home-cooked meal to an unwell friend, whilst personally catering the Court's Christmas party, whilst also writing a clear, definitive judgment on a complex question of law that will later be upheld by the High Court. She is the glue of many friendships, but most importantly, she has been the glue that has held me together when times have been hard, particularly over the last few weeks while my mother has been unwell.

My closest friends, Helen Roberts SC and Kirsten Edwards, from the DPP and Forbes Chambers respectively, you are two of the most talented counsel in New South Wales. You have been in my life now for close to two decades, providing me with legal advice, ethical advice, life advice and emotional support. I was fortunate to work closely with Kirsten when we were advocates at the Crown Solicitor's Office, and then with Helen in heading the Appeals Unit at the DPP. I am not really sure how to do professional life without one of you in the office next door and I fear that the ACT may find me to be a third of the person that New South Wales considers me to be.

Finally, I must turn from the dock to the jury box, where you will find the people who have most supported me in my life. My dad, Roger Sayers OAM, and his wife, Annette; my younger sister, Heidi; and as has been mentioned, my middle sister Kirsten and her husband, Guf, and their children, Jasmine and Chloe who are “virtually” in the jury box at the moment; together with my family-in-law, including my niece, Lauren and her partner, Dan, who we are very excited to be moving closer to.

With them you will see my husband, Bruce, and our children, Josh and Ellie. Bruce has supported me through law studies, legal practice and every aspect of my life. He has also been a stay-at-home dad for both of our children since they were very

young. Because of his dedication I have been able to pursue this career which I love. Bruce, I could not do this, or really any aspect of my life, with you.

Josh and Ellie, I am so proud of you both. Josh is a young man who carefully follows the laws of government but does not regard himself as bound by the laws of physics whenever he skis or mountain bikes. Josh, I know that you will love this city with its music and its mountains.

Ellie is a young woman with the cross-examination skills of at least a senior junior. It was her additional talents for written advocacy that resulted in our acquisition of Nigella, the guide dog puppy, last year. Ellie, I know that you will also love this city, particularly its vibrancy, its art and its proximity to pony riding schools.

Bruce, Josh and Ellie, I am very much looking forward to embarking on this new adventure with you.

My sister, Heidi, has supplied me with mascara which she assures me will not run if I cry, but to be safe, I have left the acknowledgement of somebody very special to me to last: my mum, who has always been my greatest supporter. Whilst I am sad that she was not able to be here in person today, I am grateful beyond words that she is able to watch this ceremony on-line. I love her so much.

All that remains for me to say now is that I am truly honoured by this appointment and to reiterate my commitment to every aspect of the judicial oath which I have just sworn. So now - to morning tea and then to work.