1 REES J:  Chief Justice I have the honour to announce that I have been appointed a judge of this Court. I present to you my commission.

(Commission read)

(Oaths of office taken)

2 BATHURST CJ:  Justice Rees, can I on behalf of all members of the Court, congratulate you on your appointment. It is well deserved. We do hope you have a happy and fulfilling time over the next number of years here.

3 THE HONOURABLE MARK SPEAKMAN SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:  On the traditional land of the Gadigal People of the Eora Nation, Justice Rees, on behalf of our State and the bar, it is my great pleasure to congratulate you on your appointment as a judge of the Supreme Court of New South Wales.

4 By all accounts, your appointment surprises no one and is extraordinarily well deserved. I also congratulate your family, some of whom have shared their insights in preparation for today, many of whom are here to celebrate
I congratulate your family, not just because of their footwear, but because as your supporters and admirers over a lifetime, they share some of your Honour’s achievement with you today. Your Honour’s connection to Bellingen is strong. Your Honour spent your early years on the family cattle farm about 10 kilometres out of town. On that farm, your Honour learnt to fight, to argue, to ride a horse, to throw a cow. I am not sure in which order your Honour acquired those skills or in which order you may need to recall them on the bench, but they became part of the tough, resourceful, determined person you are now known to be. As you grew up on that farm, the only girl among a sea of brothers, you threw off the stereotypes of the time. You could run a chainsaw, split wood, and shoot a gun, which was a necessity for shooting goannas out of the chooks.

According to a family member, the acid test for any male suitors at university was the ultimate survival test of a return to the farm. If a fellow could come up from Sydney and split wood, or if he could go for a swim in the National Park and not freeze, he was, perhaps, worth his salt, but your Honour was much tougher than any of those poor, cold, young men. Indeed, it was this range of skills and the combination of country determination, courage and resilience, that saw you leave Bellingen and study in Sydney and abroad, and I will come back to that in a few moments.

As a student at Bellingen High School, you had a study timetable that would make a doctoral student nervous, and exhibited project management skills to mount a strategic campaign towards short, medium and long term goals, which were clearly documented and under glass on your desk. “Insanely determined” was how it was put by one of your family members. You excelled at school. You routinely came first in your subjects but you were dismayed by the annual conferral of a cookbook as the prize for your efforts, while those who came first at the swimming
carnival, received a trophy so big that mum and dad and to drive in and lug it home. No doubt this imbalance contributed to your Honour’s generous funding of two scholarships at Bellingen High School for many years. Your Honour funded one scholarship for the Dux of the school, an honour you had achieved yourself, and another for the best performing female student. On a number of occasions, both scholarships were awarded to the same student, a female Dux, and when the school questioned whether one of the scholarships should be offered to a male student in those years, I am told your Honour simply said, “no”.

Your Honour counts growing up in the country and your education at Bellingen High School as the foundation of your sense of personal responsibility and your resilience. Those characteristics served you well as you moved down to Sydney to study at the University of New South Wales. A fellow student from your years at Kensington commented that you stood out from your peers as, “brilliant”, “serious minded and ambitious”, “a person who was going to grab every opportunity and get the most out of it”, and all the while with good sense of self, and a great sense of humour. This same friend referred to the pair of you as “shocking law nerds”, partners in mooting who competed in Brisbane, Perth and Canberra and were runners up in Jessup, in the first year that runners up did not get to go to Washington DC. You represented UNSW and Cambridge, internationally in the debating field, ranking as the top female debater, top Australian debater, and member of the top debating team at various contests.

You left UNSW with a Bachelor of Commerce and a Bachelor of Laws, and the Sir Kevin Ellis Prize, and went on to earn a Master of Law from Cambridge with a First. Your Honour was admitted as a solicitor in 1992 and practised at Mallesons Stephen Jaques, as a senior associate in commercial disputes, and with a boutique London firm, Kingsley Napley, specialists in corporate fraud and white collar crime.
In 1998, your Honour was called to the bar. Over the past two decades, you developed a highly regarded practice in commercial disputes, property, insurance, professional negligence and discipline, and Inquiries and Inquests. Your Honour took silk in 2012, a testament to your skill, your work ethic and the esteem in which your colleagues hold you.

Those who watched the woman from country New South Wales win the England and Wales debating championship in the House of Lords, all those years ago, will find it no surprise that your Honour is known to be a highly skilled cross-examiner. One of your colleagues suggested that this is another manifestation of your no nonsense country upbringing, that you have never suffered fools gladly and that this extends to the witness box, which brings me to some of the noteworthy matters in which your Honour has appeared.

Your work in inquiries and inquests includes appearances in the Royal Commission into Misconduct in the Banking Industry, the Royal Commission into Institutional Responses to Child Sexual Abuse in 2014, and the Special Commission of Inquiry into Acute Care Services in New South Wales Public Hospitals in 2008. Your Honour was only one of two women briefed among the scores of barristers who appeared in the C7 case, though according to your Honour’s lead in C7, you were fortunate enough to have good reason to take your part leave way through the birth of your first child, but not to be stopped, you were still working on interrogatories for the case, on your laptop, baby in arms.

I would like to say something about your Honour’s wider contribution to the legal profession. Your Honour’s commitment to education, your own by virtue of your intimidating study timetable at school, or the scholarships you created at Bellingen, or your position until very recently as a Chair of the Education Committee of the bar Association, is widely respected among colleagues. A fellow member of the Education Committee described you as, “an industrious and organised Chair who has led the Committee through significant achievements, including refinements to the
bar exams, enhancement to the reading programs and the material for
tutors and readers, and measures to improve and streamline the CPD
programs that the bar Association offers”. Your Honour was a member of
the Association’s Senior Counsel Selection Committee in 2017. You have
been a tutor and mentor to many, and an instructor in advocacy and bar
practice.

14 For the last few years, you have provided an introduction to the practice in
the Equity Division, which will now be your home away from home. Your
commitment to education, to mentoring, and to nurturing your colleagues,
is not only demonstrated in these formal programs. You are known for
your kindness, for being accessible, and for being generous with your time.

15 Your Honour, your ability to distil critical issues from volumes of material
under pressure, inspires many. Your hard work is legendary as is your
expectation of the same from your peers. You are frank and honest, with a
high degree of forensic skill, professionalism and courage. You are
regarded professionally and personally as down to earth, compassionate
and humble, and a generally good person who is not afraid to call a spade
a shovel, and brings a fresh perspective to many an issue. Among your
former colleagues on 7 Wentworth you are known as particular
magnanimous. Among those who dine with you, you are known as a great
dinner party host, a terrific cook, a brilliant conversationalist and very
generous when it comes to your impressive collection of good wine, and
among those who know your hobbies, your love of renovating and of travel
are legendary. I have heard, for example, of detailed, complex, excellent
closing submissions, written from a perch on the luggage rack of a train
somewhere near the demilitarised zone in Korea.

16 Your Honour, I am delighted to congratulate you on your appointment, to
acknowledge your exemplary career of service to the law, and the hard
work and the sacrifices that you have made. Thank you for those years of
service and excellence. Congratulations on your appointment and the
bar’s and my warmest wishes for you career on the bench.
MR DOUG HUMPHREYS OAM PRESIDENT LAW SOCIETY OF NEW SOUTH WALES: May it please the Court.

I also acknowledge the Gadigal People of the Eora Nation and pay my respects to their Elders past and present. It is my privilege to come before the Court to congratulate your Honour on behalf of the Law Society of New South Wales and the some 34,500 solicitors it represents.

Your Honour’s appointment to this bench has been lauded. The enthusiasm which those at the bar and in the Solicitor arm of the profession have spoken of your Honour’s appointment, is well merited. The esteem in which you are held is clearly obvious from just the sheer numbers of people present here today; standing room only. In your Honour’s 20 years at the bar, you have gained a formidable expertise in commercial disputes, property, insurance law, and Commissioners of Inquiry that will be an asset to this bench.

Now as referred, you grew up in Bellingen as a child of cattle farmers with some four brothers. Your Honour rolled with the punches, rounding up cattle, riding motorbikes and helping out about the farm. I am told a favourite pastime was swimming in the Bellinger River when it was flooded which I am told is quite often, which was perhaps not a particularly safe pastime but no doubt great fun. Your Honour was known for your daring even regularly jumping off a perilously high place called Redbank, into the Bellingen River. This sense of passionate pursuit and courage, has followed you throughout your life and I have no doubt, growing up in Bellingen which in criminal law circles is well-known for, “green vegetable matter”, and a place where colourful racing identities lie low, will serve you well.

We have heard of your Honour’s success at school. By all accounts, from an early age, your Honour was a legendary debater. Your Honour would only need to fix your opponent with a look and all would know the other
side was in “deep trouble”. You would methodically plough your way through, demolishing the opposing arguments one by one but I am told your Honour even made good use of the, “even if”, argument, whereby one would tactically concede a premise of the opponent’s arguments, in order to render the central argument completely null and void. We have no doubt that the “even if” strategy will no doubt find good use from your Honour, sitting on the bench at this side.

22 Debating took your Honour to some interesting places throughout your life. Your High School debating coach remembers you going to Sydney to debate at the Opera House. Others recall you debating in the House of Lords while you were in the UK but no occasion is remembered with such vigour as the time when your Honour appeared as a University of New South Wales student debater on none other than Kerri-Anne Kennerley’s morning program. Never have more televisions in Bellingen, or in Kensington, been tuned to Channel 9.

23 While at Cambridge, your Honour became inducted in the tradition of refining and considering arguments for the debating team of which you were part, in the anteroom, I am told, over a brandy and maybe an occasional cigar. Whilst at Cambridge, you also became a first class punter. Now I might add, that is rowing on the river, and learned much of the history of Cambridge. In fact, you were in such great demand that when your parents’ friends arrived at graduation, you could give a perfect Cambridge tour, having discovered all the reasons for the expressions like, “Nosey Parker”, “Hobson’s Choice”, and the “Catherine Wheel Firework”. Your Honour’s tours became so popular, your friends were amazed that in fact you did not turn your back on the law and open a tour company.

24 After spending some time as a criminal lawyer, your Honour practised as a solicitor with Mallesons Stephen Jaques, where you became a Senior Associate. You also practised in the respected London law firm, Kingsley Napley, where you handled, as referred, corporate fraud and white collar crime, topics on which you have since published articles in the New Law
Journal, the Journal of International Banking Law, and the Insolvency Bulletin. Those who have worked with your Honour describe you as “an unassuming yet brilliant colleague”. They also describe someone of warmth, genuine human interest in those you meet, your beaming smile of which I have seen here today, and a sense that your Honour is always interested in people as people, has won many hearts.

25 Despite your extraordinary ability and the clarity with which others could see that you were going places, your modesty has always been genuine and refreshing, and you have always been the last to sing your own praises. From the moment you joined Mallesons Stephen Jaques, you had a determined and polished mindset that was never lost. You brought a confidence and strength of analysis to every task. While you were at Kingsley Napley, your Honour exhibited striking enthusiasm for law, people and life, and indeed, those who practice in the criminal law, regarded it as being a wonderful voyeuristic activity. You have engaged in cases with cleverness and tactical awareness and your relationship with your clients was characterised by a warmth of personality which actually comforted clients in what was likely to be the most stressful period in their lives.

26 Almost as soon as your Honour went to the bar, your former firms began briefing you in both firm related matters and in behalf of clients. As a Junior, your Honour was a great favourite of one Tom Hughes, of silk, with whom you formed, I am told, quite the defamation team. As your career went on, instructing solicitors appreciated your Honour’s meticulous preparation as counsel which always ensured a superhuman mastery of the details. One said:

“Kelly’s meticulous preparation of cases always begins with a detailed chronology which is expanded over the course of proceedings, as new facts or documents come to light. Her famous chronologies often run to dozens of pages and contain detailed references and cross-references to affidavits, evidence and other relevant material in the brief in the proceedings. If she takes a shine to the counsel for the other side, it is usually rewarded with the provision of a soft copy of Kelly’s chronology.”
Another instructing solicitor spoke of your Honour’s stunning ability to turn a case around. You took on one case where an unfortunate country practitioner of my branch of the profession had transferred the wrong parcel of land. There was a lovely parcel of land on a river with a beautiful soil, easy access, the type that you could build a dream home on. That was the parcel your client, “meant”, to transfer. The actual parcel that was transferred, was a rocky steep slope, with no water, no access and poor soil – mountain goat country. Notwithstanding advice to the contrary, the matter ran to a hearing. To everyone’s surprise, the defendant was successful, thanks to your Honour. It was this case that made early on, your Honour’s famous cross-examination capacity and that fatal phrase, after politely shutting gates around the witness, one by one, then reverting back to a particular answer and then saying, “let’s just examine that one, shall we”. The instructing solicitor likened this technique to the spider and the fly – all was gone.

Your sense of care has also been undiminished at the bar. One solicitor remembers you taking on the case of a vulnerable man in his mid-80’s who had fallen under the spell of a “cleaner/carer”, that person having encouraged his client to sell properties and buy a house in their joint names. Your client arrived for a conference and given his age, he managed to fall in the street in front of your chambers. By the time he arrived, he was beaten, bruised and somewhat bleeding. Your Honour, however, in the normal kindness that you exhibit, was there like a whirlwind, whipping out the first aid kit, reassuring him, and bandaging the injury. This compassionate and handiness is typical of your Honour. You have been known to whip up a themed costume on a sewing machine overnight, build a greenhouse from scratch for the vegie garden, renovate terraces and render a wall yourself, ready to hang a picture. It is clear from those on my right, that you are dedicated to your family and friends, and they support you enormously here today. Your new brethren on the bench will become familiar with your Honour’s fondness of jazz, the great outdoors, the regular Tuesday morning walks with a judicial colleague.
Your Honour, as we have heard, is well equipped with a razor-sharp intellect and efficient work ethic that will stand you in very good stead in your new career.

What will also bring just as essential, is experience of ordinary people, outside of what has been described as the rarefied world of the law and commerce. You bring to the bench a true independence of thought and the spirit, if I might say, as a former criminal lawyer, of great humanity. You will marry intellectual rigour with a down-to-earth common sense and always bringing your sense of integrity and fairness to the task, and you will dispense real, practical and reasoned justice. One instructing solicitor has anticipated that your Honour’s judgments are likely to be, “as pleasing to read as her submissions have been; clear, succinct, and incisive”. I have no doubt that your Honour’s tenure on this bench will be a stellar one. You will be an adornment to what is already a great bench. The citizens of this State are clearly very privileged to have you as a judge of this Court and I am delighted to congratulate you on your appointment on behalf of both the citizens of New South Wales and the solicitors of New South Wales.

REES J: I also acknowledge and pay my respects to the Gumbaynggirr People of what is now known as the mid north coast of New South Wales. Growing up, I had the benefit of the wealth of their lands and their waters while they had and continued to have, on the whole, a different experience. I acknowledge their ancestors and their spirits, their resilience and strength.

Chief Justice, your Honours, Mr Attorney, Mr Humphreys, members of the legal profession, ladies and gentlemen, I am honoured by your attendance today. Thank you Mr Attorney and Mr Humphreys for your kind words. I can only say that the law has been good to me.

You have heard about my Bellingen beginnings. Growing up on the land taught me the importance of two things. First, common sense: although
Latin was not big at Bellingen High School and I have had a suspicious relationship with it ever since, there is one phrase that appeals to me, “ex factis jus oritur”, which means, “the law arises from the facts”. I find great reassurance in that phrase because I find the facts endlessly fascinating and very approachable, and once you have ‘nailed’ the facts, I think the law becomes approachable too. Jonathan Sumption QC, as his Lordship then was, put it this way:

“Most law is only common sense with knobs on. Although we spend a lot of time looking through these ancient tomes, everyone knows what the answer is likely to be.”

The second thing I took with me from Bellingen is the importance of plain English – and there is no Latin phrase for that. Legal concepts can be subtle and complex. We as lawyers have an obligation, I think, to keep it simple so that the people who the law is here to serve can understand it. The law fails to serve if it cannot be understood.

You have also heard about my time at the University of New South Wales and the University of Cambridge. In fact, my old mooting team from New South is here today, comprising Adrienne Stone, now Professor of Law at Melbourne University, and Kim Sides, general counsel of Lendlease, who has flown in from Kuala Lumpur to be here today. Thank you ladies.

May I say two things about university. First, I would not have gone to university if it had not been free. The barriers to further study were, in my case, family culture and geography. To add the prospect of a debt which, to my young eyes would have been a staggering sum, would have made that path too scary to take at all.

I do not know if there is a way back to those time, maybe not, but I feel sure that the investment which the governments of the day made in me has been more than repaid by the additional value I have generated for the economy, the Tax Office if nothing else, and society by reason of my further education. I venture to say I have been a bargain.
Second, coming from a regional public high school to university, there was no easy way into the established social networks of the Sydney private schools. This proved to be a great thing, because I formed friendships with a large number of overseas students and those friendships continue to this day. Many of those students are now leading lawyers, academics, judges and business people, throughout South East Asia. Through their eyes, I have come to appreciate how the Courts of this State form an important part of commercial dispute resolution in our wider region, and also, how our courts have distinguished themselves in the region for their integrity, reliability and speed.

My six years as a solicitor, both here and abroad, proved an invaluable, practical education. As my supervising partner at Mallesons Stephen Jaques, Peter Stockdale, told me, “Make your mistakes at someone else’s expense”. Well I certainly did, but I also learnt how to do things properly from the best and I appreciate the attendance of Robyn Chalmers, my first long suffering boss and former chairperson of the firm who is here today. Thank you, Robyn.

As a judge, I will not forget what I learnt from being a solicitor. Three things stand out. First, in the supply of legal services, the solicitor has the widest of responsibilities, to work directly with the client, the witnesses, the documents and the finances, to give counsel what they need to do their job and to ultimately answer to the client. Second, sometimes, just sometimes, you, the solicitor, know the case inside and out, and your counsel has not familiarised themselves with the brief as much as you would have liked. This is why you are sitting like a wound up spring, wincing discreetly and uttering small pained sighs as your counsel makes their address. Finally, just because counsel is thrusting their hand madly in the solicitor’s direction for supply of a critical document, does not mean that the document exists, or the solicitor knows what counsel wants, or that counsel knows what counsel wants. I will not forget these things.
On coming to the bar, I was fortunate to have more of everything than most. I had three tutors not two, Richard White, as his Honour then was, who promptly took silk, handing me over to Adam Bell, now of Senior Counsel, and John Robson, now his Honour. I learnt a great deal from each of you, and appreciate the wise counsel you gave me then and in the years long after I was a reader. I thank you.

By reason of my impecunious start at the bar, I made more chambers’ moves than most before I could afford to buy a room. I read on 12 Selborne/Wentworth, then licensed on Ground Floor Wentworth, before being able to afford a tiny room on 5 Wentworth, then a larger room on 7 Wentworth, and finally, my “putting green”, on the most excellent 11 Wentworth. This means that I have had the amazing good fortune of meeting and getting to know well, from five sets of chambers not just one, a whole lot of barristers, and I have really appreciated the different friendships and perspectives this has given me over my 20 years at the bar. Without a deep circle of good friends, life at the bar would be tough indeed and I have been very fortunate.

I have been supported by and chastised by more clerks than most, Bob Rymer, Lyndall Robilliard, Karen Walker-Flynn, Andrew Laughlin, Paul Daley and most recently, Bob’s son, Zach Rymer. I thank you for your words of reassurance and direction over the years. I thank you all for coming today and Andrew Laughlin for making it back from Salzburg in time. Thank you.

I have also been blessed and impressed with the amazing people I have worked with at the New South Wales Bar Association, in particular, Arthur Moses SC, President, and courageous reformer, and more recently, Tony McAvoy SC, Chair of the First Nations Committee – what a generous and impressive human being.

As a judge, I will remember the things I know from being a barrister. Three things stand out. First, you, the barrister, have the responsibility for the
conduct of a case in court but if your case is in a shambles, you may not be responsible for all aspects of that disarray. Indeed, you may have been the voice crying in the wilderness for some time, asking that certain things be done. Second, a permanent attribution of that shambles to your reputation in a judgment or transcript is not usually appreciated by the bar. Finally, it is enormously frustrating when you thrust out your hand to your solicitor for the supply of a critical document and they look at you like they have absolutely no idea what you want.

I have been a new mother, a single mother and now a stepmother at the bar, each challenging in their own way. The bar is as good a place as any to do each of those things, although I would not necessarily recommend that you do all of them. It is a good place to be all types of a parent because the bar and bench is largely populated by decent people who support you in all kinds of quiet, practical ways that make completely impossible just happen. And if I may be permitted to offer this advice, if you are quietly determined to meet the double challenge of life at the bar plus whatever else life is throwing at you, your colleagues will be quietly committed to make sure you succeed.

Some things have been said about my gender. That simple, inescapable, and, one might have thought, totally irrelevant fact, has made my life at the bar both harder and easier, in two ways that I think are important. First, I suspect that I have been on the receiving end of more bad behaviour, presumably intended to intimidate me. This has been terrific. Growing up with as many brothers as I have, and a father of the conservative rural variety, I fancy myself as a connoisseur of sexist comments and I mark them for creativity and flair. Regrettably, I have to report that Sydney barristers continue to disappoint under my scoring system. I have rarely given a mark of more than 5 out of 10. However, the upside of being on the receiving end of these feeble efforts has been a terrific boost in my motivation to defeat my opponent utterly. I appreciate their efforts to excite my undivided attention in what would otherwise have been uninteresting matters.
Second, the briefing practices of the commercial bar do remain, to my observation, very gendered. This makes it harder for female counsel to get the opportunities to hone their skills and strut their stuff in the courtroom, which makes it harder for them to compete with their male contemporaries for further briefs, which becomes an unhelpful cycle. But there are some countervailing benefits to this as well. Perhaps by reason of the rarity of my species at the commercial bar, I have been actively supported and mentored by senior counsel and solicitors who have consciously and consistently given me good work, often going 'in to bat' for me with clients who felt a natural comfort in briefing a bloke. I thank my champions. You know who you are, and I bequeath to my champions, the plethora of talented, hardworking women counsel, coming up behind me, on which to bestow your vital patronage. Can I mention two champions who are no longer able to carry on that role, John Timbs QC, now retired but here today, and the Honourable Justice Garling.

I look forward to the day when the subject of gender becomes irrelevant in speeches such as this one. Multiculturalism at the bar is, of course, waiting just behind for attention as well. I am confident of a good outcome. Despite the conservative, traditional reputation of the law as a profession, I think it has great capacity to embrace diversity, of which I am but a very small example.

As a judge, I will remember the things I appreciated from my experience with judges so far and I will try and forget the bits I did not appreciate. I will try and emulate the graciousness and good humour of President Beazley and Justices Perram, Darke and Stevenson, to name just a few. I will replicate a small part of the conscientiousness of Justice McCallum, and the prodigious output of Justice Ward, Chief Judge in Equity. I will simply admire from afar, without seeking to resemble in any way, the articulate expression and intellect of Justice Leeming, to name just one of many impressive minds in the room. I will strive for the decisiveness of
Justice Hammerschlag but will likely fail to capture the thunder and lightning, very, very frightening.

50 I should confess one bugbear of mine, just so that you know. There is no subject at law school entitled, “How to serve all Documents at 11.59pm and Other Dirty Tricks”. Nor will you find Misleading and Deceptive Conduct as a course of study, in terms of, “How to do it”, as opposed to, “How to sue upon It”. That is because underhandedness forms no part of the legitimate practice of law. Rather it supplants fairness and unfairness. It is particularly unfair when visited upon those who are trying to work and do other things, like raise a family, maintain relationships, or health, or just get some sleep. As such, I reserve the right in those instances, to reincarnate the former Chief Judge in Equity, her Honour Justice Bergin, albeit for brief moments only. I assure you that this will have benefit for both of us. I will sleep well at night, feeling that I have in some way contributed to the world becoming a kinder place and you will get to tick the judicial bullying box on the next wellbeing survey of the NSW Bar. Although I must confess that I have engaged in some misleading conduct myself, in recent times. This became apparent to me when I received a card from my children, on announcement of my appointment. My son said this:

“OMG. Congratulations. Well done on become a judge. I am so happy you get more holidays and your job is easier, and you don’t work as hard. That means you won’t be as stressed and we will have more fun times.”

51 Whilst the realities of this job will, I fear, disappoint my son, I will endeavour not to disappoint each of you for the faith and trust which has been placed in me today.

*******