

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BELL CJ
AND THE JUDGES OF
THE SUPREME COURT**

MONDAY, 28 MARCH 2022

**SWEARING-IN CEREMONY OF
THE HONOURABLE JUSTICE ANNA MITCHELMORE
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES
AND A JUDGE OF THE COURT OF APPEAL**

(Commission read.)

(Oaths of office taken.)

- 1 **BELL CJ:** Justice Mitchelmore it is an enormous pleasure on behalf of the Judges to welcome you to the Court. You have been a highly, highly respected member of the Bar for many years, a leader in every sense of the word of the Bar, and I have no doubt that your very significant contributions to the law will be continued in your new offices. Congratulations.
- 2 **MITCHELMORE JA:** Thank you, Chief Justice.
- 3 **BELL CJ:** Mr Attorney.
- 4 **THE HONOURABLE MARK SPEAKMAN SC MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** May it please the Court. I acknowledge the traditional custodians of the land on which we gather, the Gadigal of the Eora nation and pay my respects to their Elders, past, present and emerging, and I acknowledge Aboriginal colleagues and friends who are here with us today or tuning into the live stream.

- 5 Justice Mitchelmore, on behalf of the State and the Bar it is my great pleasure to congratulate you on your appointment as a Judge and Judge of Appeal of this Court. I welcome your husband, Dr Tung Vu, your parents, Dean and Joanne, your sister, Kylie, brothers Damien and Scott, and your nieces and nephews.
- 6 Your friends and colleagues have enthusiastically shared memories and anecdotes to help prepare today's address. They portray someone who works with diligence and passion and precision with a keen intellect and an abiding sense of kindness.
- 7 The second of four children, you grew up at Huntleys Point. The law is in your blood. Your grandfather was a lawyer and so is your father with his own practice in the inner west. As a child, you already displayed a predilection for doing a job right and doing it properly. This was evidenced in the care you took in colouring in, one of your favourite activities. Your specialty in this field was intricate designs that required careful attention and precision. Your mother has shared that upon starting kindergarten it was a disappointment to be provided with large designs your skills had long since surpassed.
- 8 From the start of your schooling, you displayed an eager curiosity and a quiet willingness to get the job done. The school library was a favourite haunt. Like a scene from Roald Dahl's *Matilda* where the intellectually talented Matilda takes herself off to the library and works her way through great tomes, you approached librarian Alice Zimmerman. She always had books she thought you would enjoy waiting for you.
- 9 Your great love of music was sparked in primary school, where you took up the violin and performed in school orchestras. At this time, your great love of developing an argument came to the fore. Your family learnt the hard way to research thoroughly before debating with you. You were already a formidable opponent on a range of topics.
- 10 High school was at Loreto Kirribilli. Here your academic achievements continued to soar, and your interests continued to broaden, including being a

devoted student of Latin and Italian.

- 11 After Loreto you studied Arts/Law at Sydney University. Here you pursued Latin with the passion and integrity that your family and friends admire in you, and expressed great pleasure when, on your first backpacking trip to Italy, you were able to see and read the monuments you had learnt about so well.
- 12 Your legal career began at Mallesons, initially as a summer clerk. You worked alongside now the Hon. Justice Ashley Black on a civil matter between Hungry Jacks and Burger King. This involved visits to many Hungry Jacks outlets, probably more than you hoped to make in an entire lifetime, and you became well familiar with the Court of Appeal.
- 13 In 2001 you became an Associate to the Hon. Justice McHugh AC QC in the High Court alongside fellow Associate, Judith Levine, and I understand both are here today. Your next role was as a policy officer and adviser to Federal Attorney General, the Hon. Daryl Williams AM QC MP, working in constitutional litigation, native title, and privacy.
- 14 You then broadened your experience by joining Gilbert + Tobin where you practised in dispute resolution. Before you were called to the Bar you instructed our Solicitor General, Michael Sexton SC, and then Crown Advocate, Richard Cogswell SC, and appeared as their junior.
- 15 You were called to the Bar in 2006 and you took your chambers in Sixth Floor Selborne Chambers from where you have practised for 16 years. Your experience before coming to the bench was wide. Your practice comprised administrative law, constitutional law, criminal law, local government and environment law, migration and native title.
- 16 In 2011 you appeared in a matter with the intriguing title of *Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts*. Here you appeared for the Minister in a matter concerning the safe management of bats or more specifically grey headed flying foxes which were destroying rare flora in the Botanic Gardens. Although the outcome saw each of the

- applicant's challenges fail, the flying foxes and the flora were managed safely.
- 17 You appeared for the Crown in the Court of Criminal Appeal in *Xie v R* in 2020. Robert Xie had been convicted of the murder of five family members. He appealed on conviction and made a complex submission concerning DNA evidence. The appeal was dismissed.
 - 18 The breadth and depth and expertise of your Honour's work was recognised in 2018 when you took Silk. Your final appearance before accepting these appointments was in the Federal Court in the matter of Ben Roberts-Smith.
 - 19 Your Honour is known as a powerhouse in the profession. Friends and family talk lovingly and in wonder of your dedication to the job, your endless intellectual curiosity, your devotion to those you love and those you have just met, and your generosity with your time, especially to those whom you mentor and especially young women.
 - 20 You are an early riser. You start work in chambers as soon as you can to address the tasks of the day while you are fresh and rested. I am not sure that your future associates and tipstaves will share that joy. A colleague has quipped on your appointment, "no more 3:00am starts".
 - 21 You have been active in the Bar Association, including as junior vice-president and serving on committees. You serve on the selection committee of the Bar Association's Katrina Dawson Award. This has special meaning for you as Ms Dawson was a loved friend. Through this work you honour her memory.
 - 22 You are admired for your friendly disposition and willingness to work hard to get the job done. Last September you were appointed to the Law Reform Commission of New South Wales. Your fellow Commissioners note that you have provided invaluable expertise and advice to the open justice review since becoming a Commissioner.
 - 23 Colleagues who have appeared against you in court insist that there is not a barrister they could hope for as a better opponent than you. Just in case you are worried and that may not immediately seem like a compliment, this is due

to your honesty, transparency and respect for the court and legal institutions.

- 24 You were known at school, and even now, to be reserved; but you make friends everywhere and you are recognised for your kindness to all people and genuine curiosity about their lives. You know the names and birthdays of all the people who work on your floor. You remember the names of their families and you know their interests and sometimes their troubles. Your friends note that you always know how to cheer someone up or thank them.
- 25 You are a patron of the art and of artists. You admire the work of Alessandro Ljubicic and you are one of his patrons. Not only do you hang huge examples of his work in your chambers, you have inspired other barristers on the floor to buy and to display his work. You have recently moved into a new home with your husband and took delight in the increase of available wall space for your collection. Your old home had none left.
- 26 I am told you take great pleasure in travelling and have visited many great locations, enjoying them all, whether it be Rome or Byron Bay. On a recent trip to Hawai'i you sailed to the outer islands, but uncharacteristically had not researched the local wildlife. Here you were met with flocks of wild fowl. This was an unfortunate mishap for someone whose dislike of fowls borders on phobia; but your travelling companion recalls that you had a much greater success at the Diane von Furstenberg boutique, making an impression on the sales associates and your wardrobe.
- 27 Wisely you enjoy your rest and recreation. You read widely. You enjoy the arts but through your husband you have developed an interest in kayaking and cycling. You recently bought a bike to join your husband on rides. You will soon join him on the water when your kayak finally arrives.
- 28 But among all your interests and passions, your family is top of the list. You enjoy a close and warm relationship with your siblings, all of whom take great pleasure in your appointment. Your mother has described your father as bursting at the seams at the news of your appointment.

- 29 From your earliest years you have been a diligent scholar with a quiet curiosity, a person of empathy and kindness with a pragmatic ability to get things done. In Roald Dahl's *Matilda*, the abiding sentiment is that somewhere inside all of us is the power to change the world. From your preschool days of colouring in detailed and intricate designs and visiting Alice Zimmerman in the library to arm yourself with knowledge, you had a sense of this power within.
- 30 You bring all of this to this new chapter in your legal career. We have searched for an appropriate Latin quote that might sum up your accomplishments to date and came across "*Ars est celare artem*". Literally translated, as your Honour will no doubt know, it means, "It is art to conceal art", but its actual meaning relates to true art concealing the means by which it is achieved. This is fitting for your calm and quiet nature which belies your many achievements and your skill as a legal practitioner.
- 31 Your skills, expertise and specialised knowledge, hard work, dedication and personal sacrifices (those 3:00am starts are not for the faint-hearted), all of these have culminated in an invaluable benefit to the judiciary, to the legal profession and to the broader New South Wales community. Congratulations, your Honour, on your appointment, and my warmest wishes for your career on the Bench. May it please the Court.
- 32 **BELL CJ:** Thank you, Mr Attorney. Ms Van der Plaat, President of the Law Society.
- 33 **VAN DER PLAAT:** May it please the Court. I too acknowledge the Gadigal people of the Eora nation, the traditional owners of the land on which this Court stands and pay my respects to their Elders, past, present and emerging.
- 34 I come before the Court on behalf of the solicitors of this State to offer congratulations and wish your Honour well in your appointment to this Court. Your Honour's ascension to the Bench brings your remarkable legal career full circle, having launched your career while serving as an Associate at the High Court.

- 35 Your Honour was admitted to the Roll of Solicitors in August 2000 and, like many solicitors destined for the Bar, developed your legal skills through litigation work. It was while working as a solicitor at Mallesons Stephen Jaques, now KWM, that your Honour impressed a colleague and a former Associate of the Hon. Michael McHugh AC QC, then a High Court judge. She strongly recommended your Honour for an Associate position and, in a foreshadowing of your frequent service to the Commonwealth, your Honour traded Sydney skyline for Canberra cycleways.
- 36 In time, your Honour would become the Counsel of choice for difficult, novel, and sensitive matters for the Commonwealth and the State, and their Ministers and statutory bodies. In reflecting on his brilliant Associate many years ago, the former High Court Justice said, “Anna’s work for me was of such high quality that I recognised from the beginning that she was an outstanding talent who would become one of the leaders of our profession”.
- 37 Your Honour’s strong sense of service and civic duty were evident in the roles you undertook afterwards before being called to the Bar and making a home at the Sixth Floor. Your Honour is much loved there. Your colleagues have universally praised your Honour’s incredible legal acumen as well as your sense of humour and infectious sense of fun. This might explain why one Silk was determined to get a false piece of biographical information into one of these speeches, concerning your undisclosed links to the Comanchero bikies while still a law student.
- 38 One story that is true concerns your early foray into CPD. A Silk on the Sixth Floor once delivered a CPD unit entitled, “How to be a good junior”. By his own admission this was about getting juniors to do what he wanted. Your Honour, then a junior yourself, was quick to respond by developing your own teaching material, “How to work with Silks”. This included advice, strategies, and helpful categories along the lines of “The Silk who can’t delegate” or “The Silk who isn’t as hard working as they think”. By all accounts it brought the house down, and I would like a copy please.

- 39 In chambers your Honour became a highly sought-after tutor. In the words of one barrister, “her mentorship guaranteed a successful start at the Bar”. During and after the reader year, your Honour was always available to provide a sounding board for her readers.
- 40 It is not just barristers who love working alongside your Honour. Solicitors loved working with you too. Your Honour has a reputation amongst the profession for being exceptionally collegiate. Instructing solicitors spoke of being on the same team when they briefed your Honour and were impressed on how widely and generously your Honour sought views other than your own. To quote a solicitor from the Australian Government Solicitor, “Not only does she bring an impressive legal mind to any problem, but she shows a huge degree of pragmatism and understanding of the many complexities of dealing with government clients”.
- 41 Your Honour’s sound judgment was a recurring theme with your colleagues. The judgment was evident when your Honour appeared for the Crown in *Xie v R*, a high-profile case that concerned the nuances of DNA evidence, and it has been evident over many years doing work for the Commonwealth, which one of your colleagues simply summed up as “spy stuff”.
- 42 Nor is this judgment limited to legal matters. I am told your Honour also has excellent judgment when it comes to recommending restaurants and travel destinations. At least one solicitor’s holiday in the Kangaroo Valley was immeasurably improved by your Honour’s travel advice, delivered pro bono, no less.
- 43 Not that your Honour’s own travel is always glamorous. While appearing in the Republic of Nauru in their Supreme Court your Honour stayed in accommodation that I am told was best described as “Shipping Container Chic”, but ever the glass half full type of optimist, your Honour returned to Sydney with stories of glorious sunrises and sunsets.
- 44 I would like to give a final word today to one of your colleagues at the Sixth Floor, the same Silk who wrote, “How to be a good junior”. In his telling, your

Honour was the perfect junior and a brilliant Senior Counsel, and well qualified for the task ahead.

45 Your Honour brings a wealth of knowledge, personal integrity, and discernment to the Supreme Court of New South Wales. The people of New South Wales are privileged to be served by you in this role and solicitors have every confidence that you will make an exceptional judicial officer. On behalf of the solicitors of New South Wales, congratulations your Honour. As the Court pleases.

46 **BELL CJ:** Thank you Ms Van der Plaats. Justice Mitchelmore.

47 **MITCHELMORE JA:** Chief Justice, your Excellency, Attorney, Ms Van der Plaats, your Honours, distinguished guests, colleagues, ladies and gentlemen.

48 I acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and I pay my respects to their Elders, past, present, and emerging. I extend those respects to all Aboriginal and Torres Strait Islander people.

49 I am always struck by the final words of the proclamation which was read at the commencement of the ceremony this morning: "Give your attendance and you shall be heard". The administration of justice in this country is founded on being heard, in courts the defining characteristics of which include the appearance and reality of independence and impartiality and the application of procedural fairness. It is a privilege to have been appointed a Judge in a system of law that recognises the significance of those characteristics and values and protects their continuing operation.

50 I thank you Chief Justice, President of the Court of Appeal Justice Ward, the Judges of Appeal and Judges of the Court for your universally warm welcome of me. I would like to thank everybody for attending in person and for watching online, particularly my grandmother, Ursula White, and, with an early start in Perth, Julie Taylor SC and Rohan Hardcastle. You all do me and the Court a great honour.

- 51 Attorney and Ms Van der Plaat, I thank you for your generous remarks. I am reliably informed that an agent for one of you spoke to Stephen Lloyd SC. Cognisant of his talent for delivering humorous disinformation with absolute authority, I was concerned that I would hear from one of you today that I had given up a scholarship with the Australian Ballet to study law at university. No doubt the dearth of information from other sources regarding any ability on my part in terms of physical pursuits alerted them to the falsity of this account.
- 52 On 25 August 2000, I was admitted as a solicitor in this courtroom. My father moved my admission. My mother was present as was my sister, Kylie. My brothers missed out on an invitation that day, but I am delighted that Damien and Scott are here. We are a very close family, and I would not be who I am, nor could I have achieved what I have, without their support, their love and their collective good humour.
- 53 I have slipped significantly down the family pecking order with the birth of each of my siblings' children. Sammy and Nick to Kylie and Dominic; Abbie and Darcy to Damien and Brodie; and, finally, Soraya and Augie to Scott and Claudia. The demotion has been more than compensated for by the joy they bring to all of us, and I am very proud of them.
- 54 Tung has been the most wonderful addition to my life along with his family, into which I have been warmly welcomed. He is such a special person and I know that whatever happens in our lives going forward we will face together.
- 55 As you have heard I was privileged to have received an education, first at Del Monte and then at Loreto Kirribilli. Both schools placed great emphasis on developing students as individuals with enquiring minds and broad interests who would engage with others with humility, integrity, empathy, and spirit wherever life might take them.
- 56 As to my studies at Sydney University, I found and continue to find that the hours I spent patiently puzzling out Latin text stood me in good stead for my study of and career in the law. As a general rule, even the most complex statute, evidence or submissions will come to make sense (or at least some

sense) if you break them down and build them up one sentence at a time.

- 57 In the years between my admission and now, I have worked for and/or with some truly exceptional people. In my second year following admission I had the incredible fortune of working as an Associate to Justice McHugh. The Judge was generous with his time, his knowledge, and the opportunities he gave his Associates to assist him with the variety of matters that come before the High Court.
- 58 He was also very down to earth and loved hearing Associate gossip, which my co-Associate, Judith Levine, was much better at sourcing than I was. I have a distinct recollection of the cheering which ensued when, as the last of the Justices to leave the annual dinner with Associates, and having released his COMCAR several hours before, the Judge not only hailed a cab, but was seen to get in the front seat. I am tremendously proud that I will occupy a room in this building that bears his nameplate on the back of the door.
- 59 I also spent a year working for Daryl Williams AC QC. My firsthand involvement in the Parliamentary process has proved to be an invaluable experience, along with learning how to adapt at speed to constantly shifting priorities and issues.
- 60 In my time as a solicitor at Mallesons, in addition to the excellent training I received I developed an appreciation of the significance in litigation of effective working relationships, both within the firm, with clients and with Counsel. As the most junior solicitor on a large appeal in my first year of practice, I observed the courtesy and collegiality which was the hallmark of conferences that my supervising partner, now the Hon. Justice Black, took me along to with Counsel, Tom Bathurst AC QC, Noel Hutley SC and Tim Castle SC. I was able further to observe and participate in such relationships across a range of matters during my time at Gilbert + Tobin, working with the late Steven Glass, Paul Reidy, and Kate Fitzgerald.
- 61 It is easy, as busy solicitors and Counsel, to overlook the impact of our behaviour on junior members of the profession. My own experience

emphasises the lasting impression those interactions can have. By way of example, I recall the patience, at least initially, with which the Chief Justice explained to me, in relation to a confidentiality undertaking for which Steven Glass had asked me to obtain his signature, that he could not construct a Chinese wall in his head. And I recall hearing the smile in now Justice Gleeson's voice when he explained, upon my ringing him to arrange a conference in a matter, that I had called the wrong Gleeson and suggested that I ring his brother.

62 I kept such memories in mind as I embarked on my time at the Bar. They were solidified in the first instance as Counsel Assisting the New South Wales Solicitor General, Michael Sexton SC, and Crown Advocate, Richard Cogswell SC, as he then was. Their differing styles could be seen in their approaches to conferences. Richard would offer a selection of leaf teas and water while Michael offered no refreshments of any kind. What they had in common, however, was their commitment to, and also their enjoyment of, the roles that they held. They continued to support me when I moved to the private bar in 2006, as did solicitors from the Crown Solicitor's Office and the Office of the Director of Public Prosecutions of New South Wales.

63 My time at the Bar would not have been what it was without the support of other senior barristers who took me on as their junior. I express my particular gratitude to Stephen Lloyd SC who was my on-floor tutor and who has continued to provide wise counsel over many years, save for on the subject of work/life balance. I also express my gratitude to the Hon. Justice Leeming who was my off-the-floor tutor. His Honour is no doubt grateful for the break he had from my questions for almost nine years, as in the last week and a half he has been subjected to a fresh onslaught of queries, which will doubtless continue for some time.

64 I would like to thank my solicitors, a great many of whom were instructed by or worked within government departments or independent agencies. Government work is challenging and, while it may not be as lucrative as other areas of the law, it is immensely rewarding. In addition to the Crown

Solicitor's Office and the State DPP, I would like to acknowledge the solicitors of the Australian Government Solicitor, particularly those within the Constitutional Litigation Unit, the Administrative Law and Migration teams, the Law Enforcement team and the in-house counsel team. It was an absolute pleasure working with you all.

- 65 My entire time at the Bar was spent on the Sixth Floor of Selborne Wentworth Chambers. Nothing has given me greater pleasure than watching the barristers who have joined us over time, not only as they develop their practices but more importantly as they develop the lasting and supportive friendships with each other that I consider a key feature of our chambers.
- 66 Since my arrival, Lisa Stewart has seamlessly managed the running of the floor and the diaries of more than 50 barristers. I am lucky to call her my friend. Lisa is ably assisted in chambers by Jeremy Williams, the assistant clerk, and juniors Patrick Ferguson and Edwina Bye. I thank them for all for their assistance.
- 67 I also thank the staff at the Bar Association with whom I have had the opportunity to work over the last several years as a member of the Bar Council. The Association does important and generally unsung work for the profession, in particular in a regulatory capacity. The COVID pandemic and the recent floods have demonstrated the commitment of the Association's staff, and I thank them for their extraordinary efforts during that period.
- 68 No doubt because of the time we spend working in this profession, many of my colleagues in chambers, fellow readers from the intake of May 2006, my own readers, and others with whom I have worked on cases and/or on the Bar Council and other committees have become dear friends. Rather than name you all, I will resort to the time-honoured option of "you know who you are". The use of the blanket terminology belies the great deal that you each mean to me and the manner in which you have sought to lighten the load of a difficult and demanding job over many years. I am particularly grateful for the way you quietly banded together in late-2014 and carried me through a period

of immense grief following the loss of my dear friend, Katrina Dawson. I hope that over time I have lightened your loads in some way.

- 69 Experience has shown me that the memory of all but the most significant cases fades with time, while the memory of even the smallest of positive exchanges, whether between colleagues or with a client, or indeed with an opponent, will linger. I have and will always keep this in mind as I roll up my long red sleeves and get to work.