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revised

IN THE DISTRICT COURT
OF NEW SOUTH WALES

THE CHIEF JUDGE
THE HONOURABLE JUSTICE D PRICE AM
AND THE JUDGES OF THE COURT

FRIDAY 7 OCTOBER 2022

**SWEARING-IN CEREMONY OF HIS HONOUR JUDGE MCHUGH SC AS A
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

Mr M Speakman SC MP Attorney General of New South Wales on behalf of
the NSW Bar Association

Ms J Ball, Treasurer on behalf of the Law Society of NSW

(Commission read)

(Affirmations of office taken)

PRICE J: The affirmations will be placed in the Court archives.

Judge McHugh, it is a very great pleasure to welcome you to the District Court and to congratulate you. You and I have worked very closely over the last two years, your role as president of the Bar Association in endeavouring to meet the various challenges we have had, the many challenges we have had with COVID-19, I am very grateful for the resilience and the adaptability which the members of the Bar have shown under your leadership as president of the Association. You bring to the Court a wealth of experience in both criminal and civil law, I am sure you will make a very substantial contribution. On behalf of all the judges, I wish you all the very best in your judicial career.

HIS HONOUR: Thank you, Chief Judge.

PRICE: Mr Attorney.

SPEAKMAN: I acknowledge the traditional custodians of the land on which we gather, the Gadigal of the Eora Nation, I pay my respects to their elders, past, present and emerging and I acknowledge our Aboriginal colleagues and

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friends who are here this morning. Your Honour Judge McHugh, on behalf of our State and the Bar, it is my great pleasure to congratulate you on your appointment as a judge of the District Court.

We are joined today by your Honour's partner, Cat Davey, your children, Connor and Ella, your mother, Jeannette and your father, Michael, your sister, Giselle and your brother, Richard, and their families.

Your Honour was born in 1962 in Newcastle and moved at an early age to Bondi, Bronte and then Tamarama. Your mother, Jeanette, was a languages teacher and a political activist for many years.

In 1983, she was the first woman from NSW elected to Federal Parliament and was the Minister for Consumer Affairs from 1992 to 1996. She retired from politics in 1996 and became Chair of the Jessie Street Trust, among other things.

Your father, Michael, was admitted to the NSW Bar in 1961 appointed Queens Counsel in 1973, joined the Court of Appeal bench in 1984 and was a judge of the High Court from 1989 to 2005. He currently practices as an independent mediator and arbitrator.

Your siblings, Giselle and Richard, are also highly skilled lawyers. One might think, given that history, that your path to the law was direct and preordained. But, as I will soon illustrate, that was not quite the case. Your mother says your childhood was spent at the beach, that you enjoyed the water and loved surfing and you loved to talk, even though it was sometimes hard to understand you. Your desire to engage and communicate was clearly present from an early age. To quote your mother, as a child who had a "lovely presence." You were and still are an avid reader, with *Bury my Heart at Wounded Knee* by Dee Brown an important early read.

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A gift from your mother, she says that it brought out your compassion, intelligence and thoughtfulness. Something that your family and friends attest are fundamental qualities today in your personal and professional life.

Your brother, Richard, describes you as anti-authoritarian, a lover of surfing and “very cool.” These qualities probably led to your lack of love for school. You attended Bronte Public School and then Sydney Boys High where you lasted until year 10. Post school, you had many, many jobs. You worked in pubs in the UK and in Australia. You were a packer and storeman at the ABC; you worked for a Chinese acupuncture clinic; and sold Butterworths law journals to universities and chambers.

During this time, you met your former partner, Karen, and started a family with Connor born in 1993 and Ella in 1999. During Connor’s first years, your professional ambitions changed and you studied law. In your early 30s, you studied to become a barrister, first through a commercial law course at Open University and then with the Legal Profession Admission Board in 1994.

You have been called a unique lawyer by your colleagues and family because of your life journey. You have been described as not being a “legal nerd” but a law professional in touch with people and the truth. This will be a great service for those who appear before you in your new role.

This is reflected in your initial work, when you called to the Bar in 1999. While other, more formally educated barristers were appearing for the ‘big end’ of town, you were appearing for the other end. You appeared on the side of the underdog and this can be seen in one of your earliest notable cases at Wardell Chambers, where you have been your entire career. The case was *Pacific Carriers Ltd v BNP Paribas* before Justice Hunter in the Supreme Court. Amazingly, you took on this case when you were still a reader. You

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only got the opportunity as your client, New England Agricultural Traders, had no money. The case concerned a cargo ship called MV Nelson and the construction of letters of indemnity that led to the vessel being arrested in Calcutta.

It was somewhat a modern David and Goliath story, being essentially little New England Agricultural Traders from Armidale against massive multi-million dollar companies from around the world. Everyone else had a junior barrister and a silk. Everyone else was paying top dollar. Your Honour was being paid nothing.

You ran this trial and cross-examined the main witness and succeeded by getting the most vital concession that the more senior silks had missed. This happened less than 18 months after being called to the Bar. Your work and cross-examination was cited in Justice Hunter's judgment.

It was an opportunity that any barrister would be lucky to have in the first ten years of their career but it has been said that you were able to handle yourself due to your hard work, dedication and experience gained at the other end of town. You had made your mark.

In 2011, you appeared for the Crown in the Court of Criminal Appeal and later in the High Court in *Monis v R*. In that matter, the appellants were charged in relation to conduct involving sending letters to the wives and relatives of military personnel killed while serving in Afghanistan.

The case examined the potential burden on the implied freedom of political communication by a Commonwealth Criminal Code provision directed to preventing individuals from using the postal service in a way that a reasonable person would regard as being in all the circumstances harassing.\

The CCA unanimously dismissed the appeal. In a testament to the

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complexity of the issue, the High Court was divided equally on the issue and as a result, the CCA decision stood.

In 2019, you appeared again for the Crown in the CCA in a novel case involving alleged breaches of UN sanctions, as codified in the Charter of the United Nations (Sanctions - Iran) Regulation 2008 (Cth). This was the first time an indictment on such a charge was brought. The Court was required to consider the elements needed to prove the alleged offence. These are just some notable cases in your broad trial and appellate career.

In 2012, you were appointed Senior Counsel. You developed a strong reputation in prosecuting and defending large and complex white-collar crime matters such as money laundering, tax fraud, misconduct in public office and perverting the course of justice. You have worked on shipping and aviation disputes. You are a BarADR arbitrator and mediator.

You have provided a huge service to the Bar through your work with the NSW Bar Association. You have served as a Bar Councillor from 2001 and became President in 2020 until moving on this year.

During your tenure as President, you helped develop a strategic plan that promotes the standing of the Bar, supports barristers in the conduct of their profession and helps them to develop successful practices. You dealt, and as the Chief Judge said, with the dislocation and disruption brought to your members by the global pandemic.

You also confronted ongoing evidence of sexual harassment within the Australian legal profession head on. This behaviour has long threatened the reputation of the Bar and discouraged some from making the decision to join the profession.

The NSW Bar Association with you as its leader responded to this issue

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by appointing a sexual harassment officer for those at the Bar. You made anonymous reporting mechanisms available. On your watch, the definition of workplace bullying in the Barrister Rules was updated.

Your love of the law is clear, but outside of work, your family and friends' anecdotes show a person that clearly has a love of life.

You met your partner, Cat, in 2008. She describes you as easy going and a brilliant blend of nostalgic and contemporary values and views. You both enjoy gardening. She values the effort you make in creating a good work-life balance. You have been described as a loyal friend, funny and understanding. Further evidence of this can be found in the many friends you still have from childhood. Reading is still a huge passion, with American history and politics being your favourites. Motorcycles are the other big passion in your life. Specifically, Moto Guzzi from Italy. I should correct myself here because while some have said it is your passion, others have said, it is your obsession and still others have said, it is your religion. Your motorcycle passion started at 18 when, at the dinner table, you told your mother that you were buying a bike and then whispered, "and there's nothing you can do about it."

Your friend and colleague, Dominic Toomey SC, recalls one of your proudest moments being when you were interviewed by *Who's Who Australia* on becoming a silk, when you were asked if you were a member of any clubs and associations, you confidently replied, "I am a member of the Moto Guzzi Owners Association of NSW." Its motto is, "Societas Honestae Limbus Pannuceus" which translates to "Ragged fringe of decent society."

You have toured the factory near Lake Como. You own three bikes and you are considering buying another and you have also used your sales

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background and convinced friends to buy their own Motto Guzzi to join you. And, of course, you always attend the club's annual Ragged Fringe Rally. Motorcyclists enthusiasts across Australia and the world have a shared mantra, riding is all about the journey.

Your Honour has been on an extraordinary journey. It is a journey that has informed and impacted you as a friend, a son, sibling, father and partner. It is a journey that has moulded you into a gifted law professional, admired by colleagues and opponents alike. And it is a journey that continues in your new role as a judge. Many people have commented on what you will bring to the role besides your intrinsic love of the law. You bring courage, fairness, flexibility, honesty, practicality and a wealth of knowledge.

Your mother says, your law career has never been "just a job." You have always had compassion and understanding for the people you have worked with and for. This will be clear to those that will come through your court.

Your Honour, my warmest congratulations and please keep enjoying the journey.

PRICE J: Thank you, Attorney. Ms Ball, on behalf of the Law Society of New South Wales.

BALL: 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. I also acknowledge and extend my respects to all Aboriginal and Torres Strait Islander peoples who are present today.

I come before the Court on behalf of the solicitors of NSW to offer congratulations and wish your Honour well in your appointment to the District Court of New South Wales.

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Your Honour, you were born in Newcastle and grew up in Sydney's sunny eastern suburbs. You were the first son and second child of former High Court Judge Michael McHugh AC KC, and Jeannette McHugh, a member of the House of Representatives for Labor and Minister for Consumer Affairs in the Keating Government.

Your father recalls that from an early age, you had a well developed sense of justice. You were outraged by the treatment of Native Americans by white settlers after reading the 1970s Dee Brown's historical account in "Bury My Heart At Wounded Knee." In an age when American popular media regularly depicted its First Nations People as cruel and merciless savages, your reaction to the treatment of the Native Americans stood out.

This heightened sense of justice was not, however, your siblings' experience. Your brother, Richard, said plainly that there were few people less judicial than you as a child. Richard recalls an instant where you broke his glasses or perhaps it was the time that you goaded him to throw a hammer at you. He recalls there were so many disputes, it is difficult to remember which one exactly, but regardless, it culminated with your brother leaving a desperate note on your father's desk saying, "IT'S EITHER HIM OR ME."

Your older sister, Giselle, recalls the countless dolls you abducted from her and detained until she pleaded for their safe return. Yet she still recalls these agonies as your mischievous energy and confirms that you never acted with any malice.

You were a clever student. From an early age, you showed intellectual promise and, as a primary school student at Bronte Public School, your father remembers that you wrote some excellent and imaginative fictional stories. You were also interested in art and photography and set up a dark room at

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home for developing photographs.

Your Honour, you grew up close to the beach. Your family would invariably be roused from sleep by your mates calling on the noisy landline seventies' phone to get an updated surf report at the crack of dawn.

High School, however, was less appealing. You made it a few weeks into year 11 but high school was not where you wanted to be. You left after a few weeks, ready to take the world in both hands. You took a job at the ABC as a storeman and a clerk, balancing work commitments with weekend surfing trips. You travelled to England and on return in 1982, you worked in the bars in clubs and pubs. No one could say, you were not prepared to give it a red hot go. You undertook an acupuncture course and would later pass the examination at the Sydney Futures Exchange where you would work as a sales representative. The Black Friday Crash in 1987 put paid to that so you worked as a sales rep for companies including the Yellow Pages. There is no doubt that you approached all of these jobs with enthusiasm and diligence, but each one left you unfulfilled.

The seeds that would flower into your legal career germinated when you started working at Butterworths. As a sales rep, you helped to train judges on some of the earliest forms of electronic legal research.

Your first application to the Legal Practitioners Admission Board, as it then was, was rejected because you did not have a higher school certificate. So you then enrolled with Open Learning, did a course in Commercial Law and obtained a Distinction, so you were definitely accepted the second time around. You continued to work for Butterworths and shortly before your admission, with Sparke Helmore.

After your admission in 1999, you weighed the financial pros and cons -

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solicitor versus barrister - and practice at the Bar. Your father has said that in conversations with you since your admission, it is obvious that you have a deep interest in the law and the administration of justice. It is fair to say that no one here would contradict him on that point - or any other.

Your Honour, you bring several lifetimes of experience to the bench with your experience and learning. Colleagues have long admired your capacity to speak to juries. What might be the common touch is, in fact, the common experience, because you have worked so many jobs in so many places with so many different kinds of people.

You have served the profession as the President of the NSW Bar Association. You have served the law through your tireless work as an advocate and a defender. When briefed by the Commonwealth, you have made difficult decisions whether to proceed with or withdraw matters before the Court. Your brother and sister have long forgiven - although clearly not forgotten - your transgressions as a sibling.

You balance your career with your children and partner, Cat, and the occasional trip on your Aprilla 'Tuareg' 660, an off-road so called 'adventure bike.' Those of us in the know recognise it as a masterpiece of Italian engineering.

Your Honour, you have bypassed the high road and the low road on your journey to the bench and instead forged your own path. You were blessed with parents who let you choose your own path, make your own mistakes and follow your heart. Today is the culmination of that journey. You have worked hard and made sacrifices to get to this place and in doing so remind us that while the destination may be important, so is the journey.

On behalf of the solicitors of New South Wales, I congratulate you on that

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remarkable journey to your appointment and wish you all the very best for your career at the bench. May it please the Court.

PRICE J: Thank you, Ms Ball. Judge McHugh.

HIS HONOUR: Thank you, Chief Judge. I too acknowledge the traditional owners of the land on which we meet and pay my respects to their elders, past, present and emerging.

Your Honours, distinguished guests, colleagues, friends and, of course, my beloved family. While I have loved being a barrister, I am truly humbled by this appointment and overwhelmed by the warm welcome from my new judicial colleagues as well as the many texts, emails and notes congratulating me from many of my former comrades in arms at the Bar and the solicitor branch. Your presence today, in person and online, is also much appreciated. All of this encouragement has allowed me to put aside some of my trepidation and allow the excitement of change free rein. Thank you all, again.

On Tuesday, I sent out my last fee note, the software tells me this was 907.495, the 907th memorandum of fees apparently from 495 briefs over some 23 years. Put like that, it has been a blur. I do, however, have great memories of my time at the Bar. As you all know well, one cannot attain any modicum of success at the Bar in particular without support and I wish to acknowledge that today.

Mr Attorney, Ms Ball, thank you both. You do me and the Court a great honour in attending and speaking today even if it seems some of your research has thrown up some well, I can kindly describe some of it as 'misdirection'. Unfortunately, time and perhaps a new found judicial restraint do not permit me to otherwise correct the record today.

At my brief stint at Sparke Helmore Lawyers, I was most fortunate to then

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read on and then stay on 16 Wardell Chambers. As you heard, I was the Butterworths sales rep to much of the Bar in the mid-90s while studying law and this was at a time when lawyers were moving from paper to electronic materials and I trained many of them. As such, I was already pretty well-known around chambers and, no doubt, assisted by my surname, believed I had the pick of chambers. I chose 16 Wardell as it had a great reputation, eminent leaders in Tom Hughes and Bob Ellicott as well as a broad range of practice areas and, of course, that force of nature and legendary clerk, the late Belinda Lyus.

I was a complete novice, however, the great strength of the independent referral bar, the open door policy, was and is alive and well in Wardell and I was able to bother my colleagues with questions and queries at all hours.

Since then, to some extent, the roles have reversed as the floor was blessed with truly talented readers, many of whom we have been able to accommodate since the move to Elizabeth Street. It is a great floor, with a great future, led by Agius SC with the extraordinary, Karen Walker-Flynn, as the clerk, who literally ran my practice. I am told that role will now go firstly to Rob Fornito.

I believe I made all my early solicitor contacts through Wardell.

Some solicitors, to my certain amazement, have persisted in briefing me ever since and given me some of my greatest cases. There have been many other fine instructors over the years, thank you.

I was also very fortunate to have been led by the great and the good. Bob Ellicott in Constitutional cases, Brian Rayment and Alan Sullivan in shipping, Jim Glissan and John Agius in crime and together with Andrew Morrison and Des Kennedy, Maurie Neil, Peter Neil in common law, Bret Walker, Noel Hutley, Stephen Gageler in commercial and administrative

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law and Lindsay Ellison in Equity. This is to name but a few. All were generous to a fault in the finest traditions of the Bar, they each taught me much about advocacy and being a leader.

It was Walker SC who as president put myself and Greg George on a New South Wales Attorney General's Working Party which culminated in the *Civil Procedure Act 2005*. Our remit, as barristers, was to hold the line on case management. Many people here will remember the *State of Queensland v JL Holdings* - the days where every default could pretty much be cured by a costs order. Well, those days are long gone because I lost all those battles on that committee. My 'opponents' were Justice Hamilton, Judge Tony Garling and Magistrate Cloran. My one salvation was the insertion of the words, "unless the Court otherwise orders" into many of the rules, so giving a discretion and the making of the much work for the Bar!

Of course, you learn much from your mistakes and my opponents over the years have given me some real lessons in losing. Among the many were Phil Boulten, Tim Game, Dean Jordan and Ed Cox. Cox still reminds me, I once lost on jurisdiction and the merits.

To the many juniors who have made me look much better than I ever could on my own, you know who you are, and I will always be grateful for your assistance and friendship. Filling out the equitable briefing review every year, the majority of my juniors have been women and the future of the Bar looks bright.

Then there are the judges I have appeared before. Needless to say, judicial temperaments vary. However, from the Local Court up, I have only ever witnessed women and men striving to fulfil their judicial oaths and those memories are today inspiring. Thank you.

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More generally, I also wish to thank the wider Bar and not just those who voted for me at Bar Council elections. Of course, my father will tell you, they thought they were voting for him!

The Bar Association, as the Law Society also, plays an important role in the administration of justice and thanks go to those working behind the scenes to ensure it continues to do so and the Legal Assistance Referral Service to the committees working tirelessly to send submissions to government, the Bar Council, itself, and, of course, its executive officers, I have had the pleasure of working with. The late, great Philip Selth, Greg Tolhurst and finally Andreas Heger. It was the highlight of my career to have had the honour of leading it and I know it is in good hands. I would encourage all legal practitioners to take an active role in their respective association, the rewards from volunteering are real.

To my many friends, in and outside the law, thank you for your patience when I was distracted and especially for giving me perspective.

Lastly, the extraordinary McHugh Clan.

Firstly, my parents. As one does, I never truly appreciated how fortunate I was in having such wonderful parents until I became a parent, myself. Apart from the privileged upbringing including living literally on the beach, they gave me a house full of books, a wide social awareness and a love of politics and history.

Although my father blames the American paediatrician and author, Dr Spock, both my parents gave me the freedom to make my own mistakes, yet were always there for me.

The Hon. Michael McHugh AC KC was, and if arbitrating counts, still is a great jurist. That fact is well-known. He was and is, however, also a loving

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father and grandfather, a brilliant punter, with a mischievous humour and is the giver of sage advice whenever I was smart enough to ask for it.

Perhaps lesser known to this assembly, it is to my mother the Hon. Jeannette McHugh that, as for many sons, I think I owe the greatest thanks. As you heard, she was the first woman ever elected to federal parliament from this State. I have watched in awe as she spoke passionately and persuasively to tens of thousands of anti-nuclear protesters on the streets of Sydney. Then come off that stage and ask me if I had washed that shirt since she last saw me - that is the thing, great as they are, my parents are still just Mum and Dad to me.

My sister, Giselle, and brother, Richard, have always also been there for me and put up with me. Thank you. Their partners, respectfully Richie and Kate, my many nieces and nephews have also enriched my life. Thank you all.

My own children, Connor and Ella, I would no doubt claim are my greatest accomplishment, they are both everything a parent could wish for. Yet again, the real thanks must go to others. The wider McHugh Clan certainly yet especially their mother, Karen, and her parents, Roy and Shirley, just wonderful people and I think they are watching online, thank you again.

For the last 14 years, Catherine, my Cat, the love of my life and another of the extraordinary women in my life. I could not be here today without you and I am so looking forward to our shared lives ahead.

I have read the oldest known advice to a new judge was Egyptian and some 5,000 years old. The sage, Ptah Hotep, from the Sixth Dynasty advised:

“If you are man who judges,” pausing there at least that has changed, “listen carefully to the speech of one who pleads, don’t stop him from unburdening himself from that which he planned to

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tell. A man in distress wants to pour out his heart more than his case be won. About him who stops a plea one says, 'Why does he reject it?' Not all one pleads for can be granted, but a good hearing soothes the heart."

I will strive to give a good hearing - at least within the bounds of the Civil and Criminal Procedure Acts!

I think for the last time, may it please the Court.