

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

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**CEREMONIAL SITTING ON THE RETIREMENT OF THE
HONOURABLE JUSTICE RICHARD REFSHAUGE**

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15 **TRANSCRIPT OF PROCEEDINGS**

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CANBERRA

9.30 am, THURSDAY, 11 MAY 2017

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COURT OFFICER: The Supreme Court of the Australian Capital Territory,
Ceremonial Sitting to mark the retirement of the Honourable Justice Richard
Refshauge.

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MURRELL CJ: Attorney-General, Chief Magistrate and Magistrates, Judges
of the Family and Federal Circuit Courts, other distinguished guests, members
of the profession, Barbara, other family and friends of Refshauge J, friends of
the Court.

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I acknowledge the traditional custodians of this land and I pay my respects to
their elders, past and present.

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Today there are close to 150 people present in this courtroom, a record
attendance for any ceremony at this Court. You've come because today marks

the retirement of the Court's most-loved judge – although admittedly, there is stiff competition.

5 Refshauge J, your absence will be keenly felt by your brother and sister judges, your chambers staff (particularly the long suffering Annette) and all the Court staff. In addition to taking a heavy case load you have chaired the Joint Rules Advisory Committee, the Criminal Advisory Committee and contributed in many other ways.

10 You have been generous – generous with your time, generous with your ideas and generous to all who have worked with you. Thank you for your enormous contribution to the work, and the life, of the Court.

15 At a personal level, I would like to thank you for all the support and guidance that you've given to me over the past three and a half years.

We will all miss you.

20 On the other hand, Barbara will be surprised – not unpleasantly I hope – to learn that she has a full-time husband.

25 This building has been your second home. You are often here until midnight. Even on Christmas Day, you are unable to tear yourself away from the Court library, spending five industrious hours there, perfectly fine, because you were home briefly to partake of Christmas lunch.

30 For the past nine and a half years, the library staff have had to allocate extra time on a Monday morning to reshelve the mountain of books that you have abandoned in the library after a weekend's work. But I'm told that they would willingly sacrifice their Monday mornings if you could remain here, a large and friendly fixture in their workspace.

35 Although you are invariably somewhere in the building, and often in the library, it is not always obvious where you are. You may be in the bowels of the building ferreting through dusty books in the hope of finding yet another old English precedent to be cited.

40 Or you may be buried under the avalanche of paperwork in your chambers. As you said in your swearing-in speech, "a clean desk is the devil's playground".

45 Your affinity for paper is notorious. Judgments are handwritten and must be interpreted with the aid of a magnifying glass and years of experience. At times, teams of associates have been called in to decipher your handwriting. And and in terms of lengthy judgments, you have broken record after record – each previous record set by yourself.

This building opened when you were a handsome lad, just starting to dream of your life in the law. Like you, this building is about to retire, but will be reborn into new life of service.

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In many respects you are of the old school, you are unfailingly courteous, you have a fierce work ethic, and only recently have you learned how to turn on a computer.

10 But you are also of the new school; you embrace new ideas, and believe that the judiciary should be diverse, accountable and supportive of human rights.

In your swearing-in speech you said:

15 *We need to demonstrate that those who fail to secure the remedies they seek have been nevertheless fully heard, their claims fairly considered, and their failures due to the proper application of the law to the facts, and not to the fact that they are a litigant-in-*
20 *person or have a particular representation, or from their sex, race, religion, skin colour, financial circumstances or sexual orientation. This is my ambition, and this is how I intend to discharge the heavy responsibility that has so generously been entrusted to me.*

25 You have exceeded your ambition. You have discharged that heavy responsibility with intellectual rigour and true compassion. You have enhanced the judiciary, the profession and the broader Canberra community in many many ways.

Long may you continue to do so. Mr Attorney.

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MR RAMSAY MLA: May it please the court. Chief Justice Murrell, Chief Magistrate Walker, judges, magistrates, distinguished members of the legal profession, my assembly colleague Alister Coe, ladies and gentlemen, and of course his Honour Justice Refshauge.

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40 As I start, I do wish to acknowledge the traditional custodians of the land on which we are meeting, the Ngunnawal people. I pay my respects to their elders past, present, and emerging. I recognise their continuing culture and the contribution that they make to the life of this city and this region. I'd like to acknowledge and welcome Aboriginal and Torres Strait Islander people who are present in today's event.

I also wish to welcome members of his Honour's family here today, including his wife Barbara, son Kim, daughter Christina and extended family and friends.
45 In a comment which I find inspiring and particularly apt given my combination

of portfolios, Julian Burnside once said, "Without the law you can't have society, but without the arts you can't have civilisation". An eminent member of the ACT legal community, and a long-standing patron of the arts throughout his impressive career, Justice Richard Refshauge has proven his dedication to ensuring that Canberra as a society remains a civilised one. Few Canberrans can claim the same degree of commitment to justice in Canberra as his Honour does.

After graduating from the Australian National University in 1975, his Honour joined local private law firm Macphillamy Cummins and Gibson where he demonstrated his diligence by become first a partner and then a senior partner. During this time, his Honour specialised in a wide range of legal areas, including litigation, administrative law, constitutional law, reconstruction and insolvency, industrial law, and criminal law.

After the firm's merger with Sly and Weigall in 1994, his Honour became chairman of the Canberra partners. That alone would have been enough to celebrate, but in 1998 his Honour decided to apply more than 20 years of private legal experience to public service, becoming the ACT's third Director of Public Prosecutions.

His Honour's time as Director was marked by his commitment to the proper administration of justice. He brought a humanity and a social conscience to both the discharge of his obligations as the Territory's senior prosecutor and his dealing and interactions with staff and other stakeholders. His Honour was collaborative in his dealings with government and colleagues, and prepared to commit significant personal resources to addressing legislative, law reform, and other policy issues. A sign of his Honour's collaborative approach, I am told, was not only his regular participation in, and contribution to, the senior executive group within the Justice and Community Safety portfolio, but his ready and willing participation in the annual report and estimates hearings before the Legislative Assembly.

His Honour's appearances were highly anticipated by other executives, not only for his erudite and elegant exposition on the issues of the day, but also because of their quiet confidence that his Honour's appearance before the committee was guaranteed to occupy the vast majority of the time allocated to the entire Department for his appearance. His Honour's legal scholarship and the depth of legal and procedural acumen became readily apparent; and that's a matter I will return to.

In 2008, after serving 10 years in that position, he was appointed as a judge of the ACT Supreme Court. During this role, his Honour has continuously demonstrated his commitment to the ACT as leading human rights jurisdiction. In his acceptance speech when receiving this year's award of the ANU Alumni

of the Year for Philanthropy, his Honour said that he holds humankind dearly, and that worth is universal and without distinction. He went on to say that,

5 *Every accused person, no matter how serious their alleged crime,
no matter how severe the punishment they may deserve, is, in my
court, Mr X or Ms Y, and entitled to be treated with the dignity due
to every human being.*

10 His Honour's actions demonstrate that these are not simply words, but the ethos
by which he has worked throughout his entire career: an ethos implied from
the individual level through to his work in the broader community. This has
included treating all in his courtroom with the highest dignity possible, such as
recognising the need for a disability assistance dog to help a young person give
evidence in court.

15 His Honour has also volunteered his time to many community organisations.
He is a founding member and holder of many positions at Directions ACT, the
Canberra drug and alcohol treatment and support organisation. He has chaired
the ministerial advisory council on sexual health, HIV AIDS, hepatitis C and
20 related diseases; the board of Australian Volunteers International, and the
Anglican Board of Mission (Australia). It was through his work with ACT
Anti-Poverty Week that our paths first crossed.

25 His Honour also contributed to court improvements, including his work at the
Australasian Institute of Judicial Administration and the Joint Rules Advisory
Committee of the ACT courts and the Supreme Court's criminal procedure
committee. His Honour has been a fierce advocate for restorative justice
during his time as DPP and while on the Bench, and I thank him for his
continuing support of this valuable initiative.

30 As I mentioned earlier, his Honour also has proved himself to be a generous
patron of the arts. In the words of Winston Churchill, "the arts are essential to
any complete national life. The state owes it to itself to sustain and to
encouraged them." As our city carves itself an identity as an arts capital,
35 his Honour has been at the forefront of this encouragement. For 10 years he
was chair of the ACT Cultural Council, and he has chaired the QL2 Centre for
Youth Dance. He has volunteered his time and expertise supporting many
other arts organisations in Canberra as a board member. Of all of the areas of
civic involvement, however, perhaps his lasting legacy will be his contribution
40 to the ACT's body of jurisprudence.

45 Unfortunately there is simply not enough time this morning for me to cover the
breadth of the matter his Honour has touched on while on the Bench. Some of
those critical decisions will undoubtedly remain as precedents for decades to
come. A colleague of his Honour of many years' standing has described the

collection of his judgment as "Refshauge on the Law", indicative of the depth of his legal scholarship and the enduring contribution to the ACT legal system.

5 His commitment to considering human rights matters from the commencement of the nation's first human rights Act was critical to embedding a culture of human rights protection in the Territory. This commitment extended not only to some of the most important early jurisprudence and legal texts, but also to gently advising those before him to refine their arguments beyond the "vibe" of the Human Rights Act, encouraging them to resist the temptation to rely on the
10 wisdom of Denis Denuto from "The Castle".

Although his Honour has been unwavering in his dedication to the interpretation and the application of the law in his judgments, he has also been fearless in his advocacy for law reform. Most recently in the decision in the
15 high-profile Supreme Court matter *Kaney v Rushton* has given the ACT Government cause to consider how ACAT orders are enforced. My office and my directorate have begun that work.

His Honour has also made it his priority to shape the future with his expertise
20 by mentoring the next generation of Canberra's lawyers. Whether lecturing in civil litigation at the ANU since 1986, or becoming an adjunct professor in law at both the ANU and the University of Canberra, he has generously shared his time and his rich experience. That same commitment has extended outside the lecture theatres to the courtroom. I'm informed that during admission
25 ceremonies, his Honour regularly encouraged freshly-minted lawyers to think outside the box of billable hours and large law firms and consider the breadth of careers that a law degree offers: a career path that could include work in community legal centres, legal policy roles, or broader endeavours. I am particularly grateful for that; as many of the officers who now work in my
30 directorate were inspired into applying for roles in the Justice Directorate because of his Honour's words. With that incredible career to date, I doubt very much that his Honour will walking away from his passionate vocations. I look forward to continuing to hear about his achievements in the coming years in the arts, the law, and broader public policy. On behalf of the ACT
35 Government, and on behalf of all ACT citizens from the most disadvantaged to those in the highest office, I would like to thank his Honour for his incredible contribution that he made to this city. May it please the Court.

40 MURRELL CJ: Thank you, Mr Attorney. President of the Bar Association, Mr Archer.

MR ARCHER: Attorney-General and Chief Justice, your Honours, retired judges of this Court, judges of the Family Court, Chief Magistrate Walker, other magistrates of the ACT Magistrates Court, members of the ACAT,
45 members of Refshauge J's family, Annette Hawken, ladies and gentlemen.

I too wish to acknowledge the traditional owners of the land we are meeting on, the Ngunnarwal people. I pay my respects to their elders past and present.

5 I rise to speak as the president of the ACT Bar Association. I also speak on behalf of the Law Council of Australia and the Australian Bar Association. Fiona McLeod, the president of the Law Council of Australia and Will Alstergren, the president of the Australian Bar Association, have asked me to speak on their behalf and they pass on their best wishes.

10 Your Honour, this event is styled as a ceremonial sitting to mark the retirement of his Honour, Justice Richard Refshauge. I think I speak on behalf of everyone who knows you at all by observing that we know that today marks a shift in focus, not a retirement, not for you enjoying a quiet retirement eking
15 out a pitiful existence on a judicial pension with the odd mediation to keep your legal mind occasionally exercised and the coffers filled.

It is, I think, significant that the Attorney-General in his speech, and the Chief Justice in her speech, has characterised your legal career in the way they have,
20 detailing not just your contributions as a judge of this court, but as a contributor to the law and to the Canberra community in a much wider sense. To speak of Richard Refshauge as just a judge is to seriously miss the point.

You spoke of yourself in a modest way, of course, at your swearing-in
25 ceremony as a judge of this court. You started from your student days. You talked of your participation in the Aquarius Festival at Nimbin, the day of rage in Canberra, involvement in the establishment of the Aboriginal tent embassy. It was all flared jeans and wild hair, and I observe, your Honour, it still remains reasonably impressive today.

30 Your legal career has been stellar, a career at Macphillamy Cummins and Gibson and then Sly and Weigall and then Deakin Graham Jones. His Honour Steve Walmsley J and Mr Peter Hayman were, I think, your first partners at those firms; but it was never about one career, it was about many, lecturer and
35 associate professor at the law schools at our universities, a long-term member of the board of the Welfare Rights and Legal Centre, involved in a leadership position with Directions ACT. Co-author of the standard text for civil procedures in the ACT, chair of the ACT chapter of the Australian Academy of Forensic Sciences and the chair of the ministerial advisory council on sexual
40 health, chair of the Australian Volunteers International, chair of the Anglican Board of Mission Australia, chair of the joint rules advisory committee and chair of the criminal procedure committee.

Your Honour always defied the stereotype, in the morning appearing before a
45 legislative committee dealing with a weighty law reform issue, in the afternoon

getting involved with sleeves rolled up in advocating in the Magistrates Court for the rights of those who are very much not of the powerful or disadvantaged. I, and I think many others of some seniority will remember your gift in being able to park clients in Ron Cahill's part-heard list, and to be able to keep them there for the next five years until their problems were solved.

A DPP, the third in line, I think you talked in your swearing-in ceremony that you adopted that role with some hesitation, but you embraced it, bringing to that organisation balance and a sense of integration into the wider legal community. The family violence intervention program developed under your leadership was an initiative ahead of its time. Restorative justice programs, the circle sentencing court are other developments that reflect upon your particular interest during that time; and then a judge. I will return to that in a moment.

Those who speak in ceremonies such as this are obliged, I think, to reflect upon the individual as well as the judicial officer. Kerry O'Keefe, raconteur and past test cricketer, just so everybody knows who that is, has been heard to say that you can learn something of an individual by the nicknames that they attract. Purnell, in the recent Bar Bulletin, referred to you as Ricardo. Others, including the now Gill J, referred to you fondly, at least in chambers, as "Ruffshavers".

Going back to Kerry O'Keefe's thesis, I'm not sure what that particular nickname says about your Honour. In preparing the address I have spoken to people who have known you over the years, and a continuing theme of what they talked of are your unusual work practises and your sentimentality about pieces of paper that you have written on or collected when pursuing a vocational or intellectual interest.

An informant from the Macphillamy Cummins and Gibson days spoke to me of being dropped off early at work because a partner started work around dawn. She enjoyed a quiet cup of tea before the office became busy. Then the sound of padding, unshoe'd feet, the sound of someone moving through the dim light of the office before it got busy. She looked up, a ghost-like figure, dressed in a caftan with unbrushed hair. "I couldn't sleep." As a solicitor, you were notorious for wanting to file documents out of hours.

The registry, I'm told, developed a special fee, an out of hours filing fee, which was to be paid by you, not with a trust cheque, but in kind. The indelible memory of one staff member is your Honour heaving cases of beer up the front steps of the Supreme Court on a day just before Christmas, as payment of the accumulated late filing fee.

It is a matter of legend that your Honour conducted your Magistrates Court

criminal practice from the boot of your car. Legend has it that you did so because you had to hide the extent of that practice from your fellow partners, who may have been concerned that, instead of billing at the exorbitant rate that you then charged, you were doing things for free in the ACT Magistrates
5 Court.

I was told of a message spike on your desk. It became fuller and fuller, the messages were left unreturned. When the point of overflow on the spike came, the messages were not discarded, but a rubber band was placed around them
10 and they were placed in the bottom drawer of your desk.

When you arrived at the DPP as its new director, I and the rest of the staff there were surprised to see you followed by a delivery of boxes filled with writings and books that stretched across the width of your office from floor to ceiling,
15 and it was a very big office. There they remained, I understand, for the duration of your tenure. I, like others, when we drive around Vernon Circle at night, look up to the Supreme Court building and look for that light. It's often on. Perhaps, in retirement, Justice Refshauge, you can take it a little bit easier.

20 I return now to you as a judge. As has been observed, you have been prodigious in your output, and in the quality of the jurisprudence you have developed. You, perhaps more than any other judge who has sat in this court, have been responsible for establishing a body of jurisprudence that has been cited throughout Australia.

25 Running your Honour's name through the online version of Odgers Uniform Evidence Law yesterday, I produced 23 hits, and not just as footnotes. The text of your Honour's judgments are in parts reproduced. "Persuasive" was an adjective that I found used by the learned author in dealing with a decision on
30 the extent of the entitlement to cross-examine unfavourable witnesses under s 38 of the Evidence Act.

In a prescient way, you said at your swearing in:

35 *"I perhaps need to be a little careful in what I say today. Already Penfold J's words have been quoted back at her. Further, a very bright young student I know at ANU has just written recently a PhD thesis on the judgments of a distinguished High Court judge, considered in the light of his Honour's remarks made at his*
40 *swearing-in ceremony. No-one is likely to embark on a doctoral thesis of my future judgments in the light of these remarks, but there are so many law schools with so many students these days, that some smart but desperate student might see that as a worthwhile honours thesis or an essay." If we take your judgments*
45 *as a reference point, your Honour, I think it's going to tend more*

towards the thesis, rather than the essay."

Speaking on behalf of the profession, I can say that appearing in front of you has been always a pleasure. A smile, rigorously fair, able to call a spade a spade. It always has been good fun. I know, your Honour, that over the years I have guilty of quoting your Honour's judgments back at you. There are few important legal principles that have currency in our courts that your Honour has not expressed an opinion on. I'm going to quote some words back at you again, and in part her Honour has already taken you to them.

10

You said this at your swearing-in ceremony:

As has, I hope, been evident in what I have said, I see the law as a fundamental foundation to a truly civilised community. Regrettably, phrases like 'the rule of law' can too easily become just slogans and contract opprobrium as allegedly being aligned to particular political ideologies. We need to guard against these kinds of distortions and reclaim its true meaning and content. We need to reaffirm to the members of the community that they are entitled to as much certainty as they can have about what is acceptable conduct and when they are truly liable for condemnation, to be held accountable and justly punished.

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We need to assure them, so far as we can, that the dealings which they wished to transact have the meaning and consequences they know of which they have been advised and will always afterwards be construed or analysed to be something else. We need to affirm that to avoid injustice; discretions must be exercised, that they do not convert the rule of law into rule of judges, and its subjective or idiosyncratic exercise of discretion is no part of the justice we administer.

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We need to reassure them that, while the courts are part of government, they are independent of the government, and they can be confident that they will find remedy for abuse of executive discretion, illegality and breach of human rights. We need to demonstrate that those who fail to secure the remedies they seek have been fully heard, their claims fairly considered and their failures due to a proper application of the law to the facts, and not to the fact that they a litigant in person or have a particular representation, or from their sex, race, religion, skin colour, financial circumstances or sexual orientation."

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As her Honour has observed, these are statements of principle and aspirations that you have given effect to in every day that you have sat in this court. You

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leave this court with the best wishes of the legal fraternity, who are enormously fond of you. You have many admirers and friends, and they all look forward to seeing you in the next phase of your life.

5 Take it a little bit easier, your Honour. We wish you well and we wish you well in your retirement. If the court pleases.

MURRELL CJ: Thank you, Mr Archer. President of the Law Society, Ms Avery.

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MS AVERY: May it please the court. My name is Sarah Avery and I'm the president of the ACT Law Society. I would also like to acknowledge the Ngunnawal people on whose land we meet today, and I pay my respects to their elders past and present, and to all Aboriginal and Torres Strait Islander people here today.

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I'm here on behalf of the ACT lawyers to thank Justice Refshauge for his service to the community and to wish his Honour well for retirement.

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His Honour has a long, long association with the ACT Law Society. Admitted in January 1976, he received his practising certificate in March that year, along with a welcome letter from our secretary at the time, Mr Rod Barnett.

His Honour commenced his legal career with his trademark diligence and courtesy. The Law Society's welcome letter was a standard letter sent to all members, and it included encouragement to take part in the Law Society's legal advice bureau, where members offer free legal advice to the public.

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Mr Refshauge, as he then was, wrote a very prompt reply stating, "Quite honestly, I do not feel competent to participate in the society's legal advice bureau at this early stage in my career. However, in a couple of months when I have a little more confidence, I shall be pleased to offer myself for the roster."

30

It did not take very long for that reticence to face. A year later, young Mr Refshauge was serving as a founding member of the society's brand-new young lawyers committee, chaired by John Faulks, late the Honourable Deputy Chief Justice John Faulks of the Family Court of Australia. Young Mr Refshauge went on to serve on the criminal law committee, including as chair, and on the civil litigation committee, and he made significant contributions to both committees over almost 20 years of service.

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His Honour's link with the territory's young lawyers also remained strong. When Mr Refshauge became Refshauge J, he accepted the mantle of patron of the ACT Law Society's young lawyers committee. His first official duty involved their great debate in 2008. His Honour has generously given his time to young lawyers, including me, who have sought his guidance about what it really means to be part of our legal profession.

45

As has been noted by previous speakers, his Honour has done a great deal of philanthropic work for the broader community, reflecting a deep concern for social justice issues and providing practical support for the most marginalised groups in our community. His Honour was a founding member of Directions ACT, then known as the Drug Information and Referral Centre, in 1973, holding positions on the board of management ranging from ordinary member to president, and he currently serves as patron of that organisation.

His Honour was also an integral part in establishing a national policy of harm minimisation to respond to and support people with drug addiction. This assisted in the effective diminishing of the prevalence of HIV-Aids in Australia. Refshauge J has been involved with Australian Volunteers International for more than 40 years, and for 10 years he was the chair of the ACT Cultural Council. He is a board member of Greater Good, and he has used his legal expertise to support many arts organisations in Canberra as a voluntary board member.

Refshauge J has over the course of a lengthy and varied career been a lawyer, a barrister, the Director of Public Prosecutions, a judge, a philanthropist, a volunteer, a patron and an arts lover, but most importantly his Honour is a lover of humanity. He embodies courtesy, he is gracious, he is generous and he truly values every person who enters his courtroom. No-one is above the law and no-one is beneath the courtesy and human dignity.

His Honour will not know this, but his influence is very heavy upon the choice of values, courtesy, collegiality and the primacy of the rule of law and access to justice that I have been promoting in my role as president of the Law Society. His Honour's exemplary courtesy informs the choices that I and many other practitioners make on a daily basis about how to communicate with our clients and our colleagues in the legal profession.

Your Honour, the ACT lawyer's greatly value your generosity and courtesy. We do not consider for a moment that retirement is going to stop you from engaging in your many pursuits; so rather than dwelling on the fact of your Honour's retirement from this honourable court, it is my privilege on behalf of members of the ACT Law Society to thank his Honour, Refshauge J, and to wish his Honour all the best for his roles in the future. May it please the court.

MURRELL CJ: Thank you, Ms Avery. Justice Refshauge.

REFSHAUGE J: Chief Justice, Chief Magistrate, Mr Attorney, Mr Archer, Ms Avery, judicial colleagues past and present, distinguished guests, fellow lawyers, my family, friends and all. I acknowledge the traditional owners of

the land on which we're meeting and pay my respects to their elders, past, present and future. I acknowledge the contribution that they make to Australian culture and I especially welcome any Aboriginal and Torres Strait Islander people who are present with us today.

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I was very humbled by the excessively generous comments of those who have spoken. I very much appreciate the sentiments that have been expressed. Clearly, however, none of the speakers were aware that one of the most recent judgments that I have delivered was concerned with misrepresentations and misleading and deceptive conduct, so that I can with confidence urge any who may seek to rely on what has been said to exercise great caution. It would be a grave mistake.

15 Those of you who know me will also know that I see an important part of the law as the collective wisdom of judges in which is found the common law. That led to my friend Bryan Meagher SC suggesting at the launch of the ACT Law Reports that a decision of mine reported in the first volume had more authorities cited than all of the other reported cases combined, and my case was only an appeal from a Magistrates Court decision on a sentence for a drink driving offence. Nevertheless, I do see the need to be very grounded in precedent as the bedrock for the rule of law and to distinguish it from the rule of individual judges; so I sought authority on today's sittings, and it is always good to start with one's own court.

25 I found [2017] ACTSCFC 1, a Full Court decision entitled *In Re A Ceremonial Sitting*. In it the subject of the sitting, Mossop J, was also the subject of some remarks which extolled his virtues in what I thought was a much more restrained and accurate way than those directed towards me. His Honour then said:

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It is only at funerals and swearing-in ceremonies that such kind things are said about the subject of the occasion. That puts the nature of these proceedings, not a swearing in, in a nice perspective. If eulogies they were, it was comforting to hear them and I hope that I may remain upright beyond the end of the ceremony.

35

40 It reminds me a little of the words that Shakespeare put in the mouth of Anthony in the famous "Friends, Romans and Countrymen" speak after the death of Julius Caesar. He had Anthony say, "The evil that men do lives after them, the good is oft interred with their bones." Fortunately, for those like me appearing quite spritely at this funeral, I think Shakespeare was being a touch ironic; I certainly hope so.

45 I have been warned this morning that morning tea is sumptuous, and so I

should not speak for my usual excessive length; 35 pages is likely to be enough. I had thought it proper to reserve my decision, but this assemblage cannot reassemble in 12 months' time. Crispin J said at his retirement, "It's customary to give retiring judges the luxury of boring people witless" - I think he said "witless" - "by talking about themselves and pontificating about the law and life in general.

I don't propose to do so, nor to set out an apologia of my life. My views have been set out in the judgments I've written and in the debates that I've had with counsel during hearings, welcome to me, but barely tolerated by long-suffering advocates who were nevertheless gracious enough to engage with me and not show their frustrations overtly.

I want to say a few things about the court, for it has been the focus of my pre-judicial practice as well as the court in which I have served. The building was where I commenced practice, for in those days it housed the Magistrates Court and the Conciliation and Arbitration Commission, as well as ancillary services such as the marriage room, where the sheriff's officers now congregate, I first entered with trepidation, now as though I own it, because from about 5 o'clock I do.

It is perhaps fitting that I retire just before the building, now creaking from its old age and struggling into the 21st century, is to be largely replaced and partially re-engineered into a more fit-for-purpose building. At the time when I joined the court it had been judicially populated by those elevated from the ranks of local practitioners after a period when most of the appointments came from interstate. This trend has largely been reversed and we are seeing the benefits, not only of local appointments, but that cross-pollination which is as welcome as the recognition of talent from within the local profession.

It has been a very collegial court, and I have welcomed - see, I can't read my writing - and flourished in the camaraderie of my colleagues, all of whom are very skilled jurists. I particularly enjoyed the passionate commitment of the Chief Justice to a creative and efficient court, the intellectual rigour of Penfold J, the pragmatism of Burns J, the wicked wit of Elkaim J, and the legal acumen of Mossop J. I enjoy the warm friendship of them all, as I did my past colleagues, including PNG Justice Higgins, the Honourable Malcolm Gray and David Harper.

I thank you, Attorney, for the appointment of such a distinguished jurist as Mossop J to succeed me, briefly to be first and, hopefully, the first of many, sixth judge of this court. His intellectual stature and legal acumen is of the highest order and he will bring distinction to the work of the court. It can be regarded as a compliment to the occupant of a position when the successor appointed to the post is so much more qualified and competent; at least I prefer

that explanation to the suggestion that we have to get in someone good to make up for mess that had been left behind.

5 Mossop J has already become a great addition to the court. Mr Attorney, you and my clerical friends, will well understand my allusion to those whose shoes I am not worthy to bear. The others will have to be satisfied with my observation that I could never reach his Honour's height.

10 The work of the court is demanding and the work continues to grow, as does the city. We are fortunate that we are still able to call on the Federal Court to make available judges from that court as additional judges to assist with our work, and I'm grateful for North J of that court who has been able to join us today. I thank too those from that court who have sent their best wishes to me but could not be here. I have enjoyed working with them and benefited from
15 their experiences and insights, their wise advice and examples, as well as their warm friendliness.

20 We have also been much assisted by acting judges, and I'm grateful that Ashford AJ is joining us today, who have been willingly undertaking much work alongside us. I was particularly delighted to be working again with Walmsley AJ, a former law partner of mine, but who has forsaken the delights of joining us this morning to visit South America. If that's what retired judges do, then I have a lot of good things to look forward to and enjoy.

25 My time in the court has been challenging. Having been the Director of Public Prosecutions immediately before my appointment, I had to take on largely civil work, which I had not done for about 10 years. One of the first cases I was allocated was the Commonwealth's claim against Davis Samuel and Ors to recover money, which I ultimately held had not been properly disbursed to
30 them.

The case started less than six months after I had been appointed and the hearing went for 51 days. The submissions by the parties were in large bound volumes and the exhibits occupied over 60 lever arch files. Unsurprisingly, it was
35 difficult to find a decent period of time to concentrate on the judgment, and the time I did spend delayed other judgments. It was unsurprising, but personally devastating when the result of that delay was a complaint by the Bar Association that I was not a fit person to be a judge. It is hard to hear such judgment of one's peers.

40 With generous assistance from the then Attorney-General, Simon Corbell, I was given time out of court and managed to complete the judgment and deliver all 500 pages of it, handwritten. No successful appeal has been able to overturn it, largely because no Appeal Court has yet managed to address the
45 issues. It is perhaps fitting that the case has spawned 11 decisions of mine, the

first of which was delivered in the year of my appointment, and the last in the year of my retirement.

5 Delay in delivery of judgments has plagued my term. I'm not going to provide a justification or an explanation. I know how problematic that can be for litigants, their lawyers, their families and, indeed, the court. I'm confident, however, that whatever failings I have in this area I cannot be accused of not working hard and not contributing to the court and the community. There are still some decisions that I have not delivered, and it's a matter of great personal regret, and I hope to be able to rectify that in the very near future.

Judicial work is challenging. The complexity of life in our society and the ever-expanding laws being made - and I still can't read my writing, even with the assistance of 'phone a friend' - and the ingenuity of litigants make that so. 15 None is more challenging than sentencing. I find it the hardest because a judge exercised a coercive power of the state, and it can be so common for sentence that it risks ceasing to require a careful thought, ensuring a balance of the need to vindicate any victim, to protect the community and to respect the interests of the offender.

20 Crimes can cause deep hurt and irremediable damage. The courts cannot repair or resolve those consequences, and revenge does not provide the solace that victims seek. Taking victims seriously, especially by respectful participation in the thought processes, is now an accepted part of sentencing practice. The development of restorative justice gives back to victims a degree of control and respectful participation. That, of course, doesn't replace the need for the community, through the court, to establish standards of conduct and ensure that bad behaviour does have consequences.

30 Let me say clearly that the constant barrage of commentary that says sentencing by Australian judges is weakly merciful or too lenient, is fake news; not in the sense that the leader of the free world uses the term, as meaning news that is true but not liked, it is in fact wrong to say that sentences by Australian courts are too lenient. We know that because, apart from anything 35 else, we know from comprehensive and rigorous expert studies, such as that headed by the present governor of Tasmania, that when the public is fully informed, when they know the facts of the case, the circumstances of the victim and the circumstances of the offender, they are more often likely to identify a less severe sentence than those severe sentences that are imposed by the judge.

40 That became clear to me, and these views are regrettably widespread, when a sentence of mine was criticised by a local senior academic, who had never read the judgment that I delivered, because it wasn't published for months after I had delivered it, had never been in court, had never heard the facts and

nevertheless, as a senior academic, felt it proper to publicly make that comment.

5 My approach to sentencing has been informed by my Anglican faith, a cradle
Anglican of the more reserved and private kind; I do not wear my faith too
clearly on my sleeve, and possibly to the despair of my co-religionists, do not
engage in prosthlytizing. What it teaches me, however, is the worth of each
individual. To put it in theological terms, I see in other people the image of the
10 divine. That doesn't mean that there are no sanctions, even severe sanctions,
for crime; but it means that I refuse to dehumanise other people and I accord
them the respect to which they're entitled as human beings, regardless of their
crimes, for which, of course, they must be punished. It's too easy to
discriminate, to treat people as less equal, to oppress them if they're
dehumanised and identified as "the other", the lesser. Differences are then
15 used to create a less equal world of the kind that we had when slavery was rife.
Now we use terms like, "Muslim", "boat-people", "refugee", "welfare cheat",
and "paedophile" to dehumanise them and justify treating them as less than
human. I will not do that.

20 I said I wasn't going to down the Crispin soapbox route. It was beyond
reasonable doubt that I could not resist the temptation. Let me now do what
should be done in such features and acknowledge the people that have made
my professional career and my life so fulfilling. I've had an extraordinarily
fortunate life, that I cannot cease to count my blessings. I have worked with
25 many amazing and dedicated people. I had some impressive teachers, I had
some great university lecturers such as the late, much-lamented, Leslie Zines. I
was inspired to take an interest in civil procedure by Alan Hogan, deputy and
then director of the ANU Legal Workshop, later first Master of the Supreme
Court and first editor of Civil Procedure ACT. I'm honoured, Alan, that you
30 are joining us today.

As I mentioned when I was sworn in as a judge - and those words come back to
haunt you, so be careful - I owe a great debt to my first employer Neil
Macphillamy who was a great mentor, an impressive solicitor and a great boss.
35 I learnt an enormous amount from Sir Richard Blackburn, first chief justice of
this court before whom I regularly appeared, especially on Fridays. He and the
Honourable Russell Fox and the Honourable Xavier Connor taught me much
about court craft, advocacy and the lawyer - and the law.

40 My first solicitor, who managed to persuade Joske J to award me substantial
damages for a broken leg, was the now-Honourable John Gallop, and I'm also
delighted to see him here with us. I instructed him when he went to the Bar in
many cases, appeared before him many times when he went to the Bench, and
was briefly his colleague on the Bench when we called him back to sentence
45 the absconder Peter Daniels Clarke II. He was also my pro bono client when

he asked me into incorporate the Judicial College of Australia. I have appeared before many of the judges of this Court, and they have all been of great assistance in teaching me how to conduct a practice and be a judge. I always enjoyed appearing before the Honourable Jeffrey Miles who has also honoured me by his presence today. Especially I used to appear before his Honour on Friday afternoons for urgent injunctions. They don't seem to be so common these days.

I recall one occasion when I was desperately trying to get a Mareva injunction for the X-rated video industry when his long-suffering wife Trish appeared at the back of the court, apparently impatient about departing on the weekend trip that they were about to engage in, and it rather limited my description of the subject matter.

I have also had the privilege of appearing before the magistrates of this Territory, and also learnt much of my advocacy and court craft before them. We are well-served on the Magistrates' Bench and I am proud to call them my friends. I am delighted to see so many of them here. I'm delighted also to see Peter Dingwall, Michael Soames and Maria Doogan who have been able to join us.

We have a great Registry team led by my long-time friend Philip Kellow who brings a breadth of experience from the Commonwealth sphere and has used it for our benefit. We have a friendly, efficient, and flexible staff in the Registry. We in the Supreme Court see them too infrequently since the integration of the one Registry, but a number do venture over to this building; especially when my orders are overly complex, indecipherable, or simply don't add up - which means most of the time. (I can't read my writing again.)

I have published more decisions correcting my sentencing errors than all the other judges put together. I do think such matters must be done publicly, but I do think that I do need to get my maths better. Still, yesterday I sentenced a young man to prison - yes, critics of my sentencing practice, I do sentence to people to prisons, and lengthy terms of prison if they deserve it - for 41 offences, and I got it pretty right - a bit late, but I did get it pretty right.

The court has been extremely well-served by the Supreme Court Registry team, the Registrar and her staff, who, for the most part, are dedicated, willing and able. I have no cause for complaint and every cause for gratitude, as do, I'm sure, my colleagues. I have had close personal friendship with all the registrars - Zedekiah Hartstein, Brian Proctor, Peter Dingwall, Alan Towe, Jill Secoster, and our present Registrar Annie Glover who has been so helpful to me as a new, and now as a retiring judge. Together with especially the Senior Deputy Registrar Grant Kenneally, the Deputy Registrar Willy Corbie, and the List Clerk and Secretary to the Legal Practitioners' Admission Board, Damien

Kerley, the court works extraordinarily well and I have been extraordinarily lucky to have worked with them. Together with the registrars' personal assistant Irene Brown, they have excellently supported the court, made my life a pleasure, and I'm privileged to call them friends. I thank them for everything they've done to make my judicial life easier.

We're also fortunate to have a most dedicated band of sheriff's officers under the leadership of Simone Heske, our Sheriff. I have had nothing but excellent assistance from them, in and out of the court, and I was honoured when they wanted to have me pose for a photograph with them all yesterday. They have a happy knack of making me sure that my status is assured but not over-inflated. I'm proud to be a member of the legal profession: it is essential to the health of a democracy to have an independent, robust, and active legal profession. I thank all my colleagues in the profession who have appeared before me and made the judicial task easier and more helpful. Many who could not join us today have sent their good wishes, and that is much appreciated.

My commitment to the profession has led to me participate as often as I am asked or can do so in learning and mentoring opportunities for members of the profession and I am proud to have taught pleadings to ANU students for over 30 years. I was chuffed when, at the Federal and Supreme Court judges' conference in January this year, a judge of another court came over to me and told me how he'd remembered and valued those lectures. (I think he works in crime.) The continuing legal education, moots for students, and introductory talks to visiting students from Alabama, have all, I hope, helped new lawyers, and certainly given me heart and satisfaction.

My editorship of Civil Procedure ACT produces, I hope, a valuable core resource to the profession and has eased the load of those who work through the complex rules now required for challenging litigation. My ten years as DPP was a - (something) - and challenging one, though I suspect that some who are still working there think of me sometimes as an apostate when I fail to give the maximum possible sentence for every offender who comes into my court. I'm proud of the work that the Office did in the time that I was there in actively assisting in the establishment of the family violence intervention Programme, the sexual assault reform programme, the Galambany Court, restorative justice, and the new Sentencing Acts, and the increase of women in the office, especially in senior positions.

I'm particularly delighted that all but two of my associates have been able to attend today. Oxford was too far away to expect Lilla Ti to travel for the occasion, and unfortunately John Nicolich has been stricken with the 'flu. The relationship between judge and associate is a special one, with the two working closely day by day. I've been well-served by my associates who were often much brighter - well, always much brighter - and smarter lawyers than I was,

but who generously put up with my pontifications about law and practice. They have all been a great support to me and I've appreciated their legal work and friendship. I enjoy the ongoing contact I have with all when I can.

5 Of all the workers with whom I've been blessed to spend my working life, the greatest thanks must go to my personal assistant Annette Hawken, who has followed me from my Macphillamy Cummins Gibson, to Deacons Graham and James, to the DPP, and to the court. We've worked together for over 30 years. It's been an incredible experience from which I have benefited much more than
10 she: after all, her writing is pretty easy to read. I thank her for her tireless productivity, her placid acceptance of my impossible demands, her efficiency, stability, and, most of all, her friendship. This is last parting of many; but this time it is a parting, not merely a transition.

15 How does a judge avoid going insane? I involve myself in community affairs, in a suite of activities that may resonate with you, Attorney: I'm involved in my church, the arts and social justice issues. Many of those have mentioned and I won't list them - it's boring to all of you - but what it has given me is an understanding of the fact that there is out there people of incredible talent,
20 incredible commitment that have nothing to do with law, who don't know and don't want to know anything about it, but who labour for the good of our community, underpaid, under-recognised, and it's the duty of all of those, like, me, to support them and to give them encouragement.

25 The most important support, however, is my family. I'm so proud of what my children Christina and Kim have achieved and can boast for hours - but morning tea comes on and I notice people fast falling asleep, as jurors tend to do when I instruct them. The greatest support of all is, of course, Barbara my wife whose patience would be worthy of a hundred saints. She has suffered
30 my unceasing work for years now: I'm back at weekends, late night forays in the office, early morning in caftans - I don't do that much now. It used to be said of women facing the prospect of a retiring husband that she married him for better or worse but not for lunch. The problem is, I'm fortunate to live close by and be able to go home for lunch most days. The challenge for
35 Barbara is having me around *between* meals, not just at meals; and even, horror of horrors, at the weekends. We may even have to talk to each other. She has been the most solid support and the love of my life and I certainly could not have achieved half of what I have done had I not been supported by her in sickness - and there has been enough of that - and in health. It is beyond
40 reasonable doubt that my commission ends at midnight and I will then retire.

Once again, I thank you all for the honour and generosity you've given in attending today, it's a great privilege to celebrate this occasion with you all, and I very much appreciate it.

45

MURRELL CJ: The court will now adjourn.

POPULUS ACCLAMAT

5 MATTER ADJOURNED AT 10.39 AM ACCORDINGLY