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DRAFT

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

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

TUESDAY 3 OCTOBER 2017

**SWEARING IN OF HIS HONOUR TIMOTHY GARTELMANN SC AS A
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

The Honourable M Speakman SC MP, Attorney General, on behalf of the
New South Wales Bar
Mr Richard Harvey, Treasurer, Law Society of New South Wales on behalf of
solicitors

(Commission read)

(Oaths of office taken)

PRICE CJ: The affirmations will be placed in the archives of the Court. Judge Gartelmann, on behalf of all the Judges of this Court and on behalf of myself, I welcome you and wish you all the very best in your judicial career.

Mr Attorney.

ATTORNEY GENERAL: Your Honour, Judge Gartelmann, on the land of the Gadigal people of the Eora Nation, and 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 of New South Wales.

Congratulations too to your family, to your partner, her Honour Magistrate Ellen (Nell) Skinner, herself a valued judicial officer. To your mother, Roe, to your father Dieter, to your children, Sam, Alex and Eliza, to your sister Felicity who is also flying the flag on behalf of your brother, David, and your sister, Sally, who are South Australians and unable to join us this morning, and to

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your uncle Jorg. Each of you shares this achievement today. The love, the support and the friendship that you have shown his Honour have all contributed to that special moment.

I can reassure your Honour that every colleague who has shared experiences and anecdotes in preparation for today, did so with great affection and with the highest praise for Tim Gartelmann, the lawyer, and Tim Gartelmann, the man. Your Honour began life in the Adelaide Hills. The son of Roe, an artist, and Dieter, who worked in IT at the Woomera Rocket Range, at a time when computers were the size of aircraft hangers. Your Honour was the eldest of four children, a brother to Dave, Sally and Felicity. You had a scholarship to an Adelaide Private School but left school early, trying your hand at landscaping and labouring, and then applying to join the Army. However, your Honour failed psychological testing because you would not always follow directions but following your quite portentous and successful appeal, the Army relented and let you in. Upon your departure, your Honour could speak in Morse code. I look forward to scanning your Honour's judgments for meaningful clusters of dots and dashes, and then seeking your translation services.

Your Honour's introduction to the law came from an unlikely source, a journalism degree in the Northern Territory. There was a compulsory law subject in that course. The lecturer observed that your strength in this field and with teacher's encouragement, you transferred to law at the Australian National University, not that your Honour recognised your vocation at once. Presumably, in your mother's creative footsteps, you set up a studio as an artist, specialising in oil painting before accepting your calling as a lawyer and so now to your Honour's 25-year career in the law.

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In 1991, you graduated with a Bachelor of Law with Honours. In 1992, you were admitted to practise as a solicitor. You cut your teeth in criminal law with Trevor Nyman & Co, Watsons Solicitors and Andrew Quigley & Co, before moving in 1995 to Legal Aid New South Wales, and commencing two decades of service to the New South Wales community. After more than four years with Legal Aid, your Honour worked as a sole practitioner for several years, appearing in the District Court regularly as a solicitor-advocate, and then in 2003 you came to the bar. In 2015, your Honour was appointed a Senior Counsel.

Your colleagues herald you as a lawyer with excellent knowledge of the criminal law, excellent insight and a calm, measured temperament. You have appeared in bail applications, severity conviction appeals, sentence hearings, fitness and special hearings, and trials by jury, as well as before a judge alone.

Your Honour's criminal law practice has brought you before the Court of Criminal Appeal on many occasions and I might share a little about how it was that your Honour became such an expert in CCA work. Legend has it that your Honour is a cycling devotee but cycling is a risky business and after one of your more serious spills, careering down a mountain track, your Honour was laid up in chambers, wearing a moon boot and could not get to court. So you were forced to focus almost exclusively on your CCA work and, unsurprisingly, your colleagues say, you became an expert in it.

Your Honour is very well-liked and often briefed silk among the CCA team of your alma mater, Legal Aid New South Wales. Your Honour's patience and generosity with time are widely known. A barrister who read with you, for example, remembered many occasions of ringing you from court in a panicked state with an urgent question. Although you were often about to walk

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in to the Court of Criminal Appeal with your own matter, you calmed him down with a measured approach. You always knew the answer and more often than not, you even pointed him to the relevant authorities, and you continue to do so more than six years later.

This measured, pragmatic approach has come to categorise your Honour's courtroom manner. A judge before whom you appeared recently in the Supreme Court, described your Honour as one who does not waste time running points that have no substance and who does not waffle. Your Honour has appeared in numerous high profile and legally important matters, the murder trial of *Crickitt*, comes to mind but I would like to cite two cases in the Court of Criminal Appeal that testified to your Honour's character.

In the *R v RMC* in 2013, your Honour appeared for the respondent in the appeal against the respondent's acquittal by a jury at the direction of a judge of the District Court. The CCA quashed the acquittal and returned the matter to the District Court for further trial. Justice Hulme wrote, and I quote:

"With his customary frankness and candour, Mr Gartelmann, counsel for the respondent, accepted that an assertion that the trial judge had failed to apply correct principles in directing a verdict of acquittal, constituted a question of law alone."

In *CS v R* in 2014, your Honour appeared for the applicant in the sentencing appeal. The matter was a grave one. It involved multiple counts of aggravated sexual intercourse with a child. The appeal was allowed in part but in the section of his judgment where he refused to uphold certain grounds, Justice Hulme referred to your, "customary candour and responsibility", in accepting certain elements when the application was heard.

Justice Hulme's comments exemplify the esteem in which the bench holds you. Your Honour is trustworthy, considerate and fair, with a noble

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commitment to the law and to the service of the Court.

While your experience in criminal law is abundant, your Honour has practised in other areas, for example, as counsel assisting in the Independent Commission Against Corruption, and for the New South Wales Ombudsman, in coronial inquests, in NCAT and in the Mental Health Review Tribunal.

Judge Gartelmann, your appointment to the District Court bench acknowledges personal sacrifices you have made. These include attending court at all costs. A recent bout of pneumonia struck your Honour with such fear that you were walking around your house, holding onto the walls. You were too embarrassed to call in sick because you were in the middle of a murder trial, and so you went off to court quite grey. The Crown Prosecutor tipped off the Court and Justice Hulme sent you home. I gather that unless your doctor had banned you from returning because of the rash you had broken out in, you would have turned up for more the next day. Such a work ethic may be of comfort to Justice Price, as your Honour is very unlikely to trouble the Court's roster managers with early morning sick calls.

Your friends in the law were quite forthcoming when they were asked a little of Tim Gartelmann the man. Your penchant for cycling was mentioned numerous times. You take an ecumenical approach to this pursuit, mountain biking and road cycling in equal measure, depending on your surrounds. Your Honour gives new and quite literal meaning to the term, "bespoke", building your own wheels, spoke by spoke. Riding a bike is probably less risky than resuming the hang gliding for which you were once known. Some of your loved ones would only be too pleased if your hang gliding gear remained safely fallow and unfurled in South Australia.

Your Honour's commitment to your family is recognised and revered.

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You spent the last little while in Newcastle while Magistrate Skinner has been based there. Your Honour, without reservation, all those who shared some thoughtful remarks about you in the lead up to today, were utterly delighted about your appointment as a judge of the District Court. They all agree that the characteristics that make you an outstanding lawyer, and a well-liked person, will be genuine assets to the Court.

Your Honour, thank you for your years of service and excellence. Congratulations on your appointment and my and the bar's, warmest wishes for your career on the bench.

PRICE CJ: Thank you, Attorney. Mr Harvey.

HARVEY: May it please the court. I too acknowledge the Gadigal people of the Eora Nation, the traditional custodians of the land on which this Court stands, and pay my respect to their elders, both past and present.

Judge Gartelmann, on behalf of the Law Society of New South Wales, of which I am treasurer, I join with the Attorney General and the bar, in expressing my delight at your Honour's appointment to this Court.

Your Honour approaches this bench as an esteemed silk with almost 15 years' experience at the bar. However, as I speak on behalf of the solicitors under the profession in my remarks this morning, I will focus on your days as a solicitor and the high regard in which you are held by this branch of the legal profession.

As we have heard, your Honour was admitted to the Roll of the Supreme Court of New South Wales in 1992. The first decade of your life in the law was characterised by a solid grounding in both private law firms and Legal Aid New South Wales. As a solicitor, your Honour was known for the same things you have been respected for at the bar, an exceptional command of the law

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and its application, a dedicated focus on your work and your ability to consider every possibility which might arise in the case at hand. You became an accredited specialist in criminal law in 1999, just seven years after the program was established by the Law Society.

Your Honour has a balanced experience of this State and this country. You grew up in South Australia with your parents, Roe and Dieter Gartelmann, and your three siblings. You spent time in the Northern Territory. You have lived in regional areas and urban areas, and you did not grow up within a bubble, but did many interesting things which took you to many interesting places, before you threw yourself into a life in the law.

I will not re-tread familiar ground in repeating your Honour's early history, except to say, the solicitors of New South Wales appreciate your broad perspective and believe it will be to the benefit of all those who come before the District Court. Instructing solicitors have spoken exceptionally warmly of your Honour. According to them, your Honour's ability to translate a complex legal principle into a simple expression, was valued by clients and the bench alike. For solicitors, your Honour brought calmness to every situation. You are an intelligent hard worker, and always knew the brief backwards. The advice you provide is clear, crisp and succinct, and your presentation is collected and professional. It is said your Honour is chosen by instructing solicitors for a famed ability to have an answer to every question. Indeed, when a curly question cascades down from the bench, they say the bench cannot help but look down uncomfortably and scratch their heads, but before long, your Honour will deliver a calm but brilliant response. The solicitors also learnt to check the representation section on each relevant Court of Criminal Appeal judgment before providing it to you, as it was often one in which

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your Honour had appeared and knew it back to front.

Your Honour has appeared in high profile criminal cases. Inevitably, in this area of the law, many of the cases in which you have appeared, well-known or not, have taken a toll but just as the Attorney General said on your swearing-in, your Honour has become a familiar face in this Court and the Court of Criminal Appeal. One thing solicitors could rest assured of, was your honest commitment to remaining above reproach in conference with clients. During a particularly difficult murder trial, your Honour casually referred to a client as, "mate". When your Honour realised the mode of address you had employed, your face was awash with horror. You immediately apologised and spent a full 2 minutes explaining you had meant no offence. You had only meant the word in the same way that someone with mutual respect would refer to an equal friend or a colleague. Your Honour is always polite and warm. You bring calm and focus to every situation and always maintain a gentlemanly manner.

The bulk of your time in chambers, you spent on hard work on the matters before you, so that you could spend time with your family, and with your second family, the members of which I am told, each possess two wheels. Your Honour's passion for cycling has come at a high cost not to your work or to your rich family life but to the integrity of your Honour's bone structure. Despite a badly broken ankle and calamities which have consigned your Honour to what felt like years on crutches to everybody else, you have been undeterred if not a little daunted from your priority favourite of extreme mountain biking. Your love of cycling is something I understand, you are passing on to your eldest child, Samuel. Beyond cycling, your Honour has a noted artistic streak perhaps inherited from your mother, Roe Gartelmann, who

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is a celebrated landscape artist in South Australia. Today, your training as a decorator with your artwork, something you pursued seriously, and as the Attorney said, you considered pursuing professionally, before going to the bar in 2003.

Your Honour's greatest devotion is your family. You are an affectionate and doting husband to wife, Magistrate Nell Skinner, whom you met during your Legal Aid days, and father to children Sam, Alex and Eliza. Your children enjoy the time you are able to spend with them, especially your original stories. Your family is truly your number one priority, even if that priority is very finely balanced with getting your Honour's beloved bike rides in.

To the bench, your Honour will bring a pre-eminent knowledge of the law, a humble and unassuming nature and a fundamental belief that everybody deserves to be heard. Before deciding, your Honour will truly listen. Above all, you will work hard towards the ultimate outcome of diligent administration of justice and service of the people of New South Wales.

Once more, I congratulate you on behalf of the solicitors of this State.

PRICE CJ: Thank you, Mr Harvey. Judge.

JUDGE GARTELMANN: Chief Judge, Mr Attorney, fellow judges, family and friends - thank you Mr Attorney and Mr Harvey for your generous and kind words. Thank you, Justice Price, for the warm welcome you have given me on my appointment to this Court. I am grateful to everyone who has taken the trouble to be here today.

In the public's perception, barristers and no doubt judges, are meant to be naturals in the art of public speaking. However, in my case, the reality is a little different. I have been known to make great personal sacrifices in life to avoid having to speak publicly, for example, foregoing such events as an 18th,

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a 21st, even a wedding. Unfortunately, there is no getting around it on this occasion but you will be relieved to hear we have a mutual interest in my keeping this brief.

When the Attorney's press release about my appointment came out, I found it difficult to accept it was about me. As I settled down from that out of body experience, I saw that it described me as someone with 25 years' experience in criminal law. Of course, I knew that at some level but still, seeing it there in black and white was confronting. A quarter of a century, that is an alarmingly big slab of time. Apart from the implications it had for my delusion of perpetual youth, the main thought I had was that surely, by now, I ought to feel like I know what I am doing. Perhaps it is a case of the more you know, the more you know there is to know but there are a few things that I have learnt that have changed me, and now seems like an appropriate time for me to acknowledge those who have contributed to me being here today.

I apologise in advance if I get a little emotional but I am conscious that this is perhaps the most significant moment of my professional life, and as a lawyer, I am mindful of precedent. So I am consoled in the knowledge, I would not be the first new judge to cry.

I will begin my acknowledging my two influential tutors. In civil law, my tutor, Mark Lynch, was warm, generous and fun. Mark could not be here today. He is in Spain where he tells me an entire village named Gualchos, is celebrating my appointment. I never had plans to be a civil lawyer but Mark taught me one valuable lesson. I spent time with Mark in a defamation trial and as it neared its end, Mark asked me to prepare a closing address for the jury. Alarmed, I told him I had absolutely no idea. He said, "well you want to run jury trials, don't you". I drafted an address, figuring it was just an exercise

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and then I would see how he did it. The next day, I was horrified when Mark started reading it out to the jury - well, some of it anyway. Mark showed me that something apparently insurmountable could nevertheless be done. It was a good lesson for life as a barrister and it seems relevant as I face this new challenge today.

In criminal law, I was lucky enough to be John Stratton's last pupil before he took silk. John's encyclopaedic knowledge of criminal law is well known but it was the way he went about advocacy that really stuck with me. I am ashamed to say, I have never told him this. As a junior lawyer, I thought that a good barrister was theatrical and aggressive, all colour and movement, and I behaved accordingly. It was advocacy in its crudest form. After spending time with John, it dawned on me that a good barrister might be pretty much the opposite of what I had thought. I realised that method, preparation and above all, reasonableness, made for a far more effective kind of advocacy, and my own advocacy changed permanently as a result.

I did not often have the benefit of working with Senior Counsel but on about half a dozen occasions, I learnt from some truly inspiring people. I had the great privilege to work with the late Paul Byrne SC, when he all too briefly led Samuel Griffith Chambers. Paul's brilliance was at odds with his humility. I was in awe at Paul, dictating complex submissions for the Court of Criminal Appeal, over the phone, while on holidays in Europe, watching the Grand Prix. Yet he was gracious about the draft submissions I had written for him. Paul continues to remind me that competence and ego have nothing to do with one another.

I also had the benefit of working with Mark Ierace SC, who also briefly led Samuel Griffith Chambers before moving on to become Senior Public

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Defender. Mark has an extraordinary commitment to the Criminal Justice system but he has also been very thoughtful and generous towards me. There have been other mentors, justices - Latham, Hulme and Johnson - you probably do not know it but you have taught me a great deal.

As you have heard, Samuel Griffith Chambers or Sammy G's, as it is affectionately known, was home for most of my life as a barrister. Everyone there has been very good to me but there are a few people I will especially miss - Paul Johnson, my oldest friend in the law and one of my best friends anywhere, Michael Crawford-Fish who never failed to support me even as I came back from court time and time again, despondent. Michael recently reminded me of something I once said to him when I had been appearing in the Court of Criminal Appeal for a few years. Apparently I told him, I think I am finally starting to get somewhere, they are listening to me when I tell them something other than how long I was going to be. Even then, Michael believed I was right when it is now clear to me, the estimate is all that matters.

Carolyn Davenport SC, whose advice I repeatedly sought because of her great experience and common sense, and Craig Smith SC, whose path crossed briefly with mine at Samuel Griffith Chambers before he went on, to the Public Defenders. In recent years, we have become mutual sounding boards, and I have benefited greatly from your clarity of thought. My apologies Craig, for my treachery in abandoning you for the bench. I am going to miss my exchanges with one of the drier senses of humour I have known, even in the law.

Finally, in talking about the evolution of my advocacy, it seems opportune to mention the different ways it has been received. There have been times when I have come back from court and gone into a foetal position. No one

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knows this better than my long-suffering Nell, as time and time again, she has had to tend to my wounds. Yet there were times when I have been treated exceptionally well. As I look back now on life as an advocate, I see clearly that when I have been treated well, it has brought out the best in me, probably because I was terrified of disappointing those who thought well of me. I hope I retain this perspective as I make this transition to the bench and if I stray from that path, please remind me, with the time honoured, "your Honour, with respect".

I promised I would be brief but this would be incomplete without mentioning my family. To my parents, Roe and Dieter, none of us ever expected we would be here today. Despite my efforts at sabotage, you have made it possible through instilling in us the egalitarian idea that we could do whatever we wanted in life if we worked hard and put our minds to it. To my sister, Liss, thank you for your loyalty and generosity. It means a lot to me that you are here today. To my adoptive family, the Skinners, thank you for being as staunchly supportive of me as if I was one of your own. Your pride in me is probably best illustrated by Nell's mum Jan's screen saver on our mobile phone. For the last two years, it has been a photo of me in a full bottomed wig, outside the Supreme Court when I took silk. I am thinking Jan today might be time for an update. Thank you, Jess, for always finding a way to be there for us when we needed it most.

I have saved for last what I want to say, to my immediate family. To my gorgeous Nell, I cannot imagine life now without sharing in your optimism and humour, your down-to-earth nature and your delight in every day. I do not know what I would do without your companionship. With everything, we are in it together, and so we are in this today. To my wonderful Sam, Lex and Lizey,

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I hope this day makes you proud. I suspect, Sam, you might prefer it if I was a police officer, and Lex, well you just love me like crazy no matter what I do.

Eliza, your position was made clear yesterday, when she exclaimed, "daddy's going to be a real, live judge". Sam, Lex and Lizzy, you have given me more joy and less sleep than I had ever imagined would be possible. Thank you making clear to me what matters in life.

In conclusion, I am humbled by all of you being here today and the expressions of support I have received. It is an honour to be appointed a Judge of this Court. It is a privilege that comes with great responsibilities and I hope to do it well. Thank you.

PRICE CJ: Thank you, judge.

ADJOURNED