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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

MONDAY 3 APRIL, 2017

**SWEARING IN OF HIS HONOUR JUDGE DAVID MICHAEL WILSON SC AS
A JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

Mr P Khandhar on behalf of the New South Wales Bar Association
Ms P Wright, President, Law Society of New South Wales, on behalf of
solicitors

(Commission read)

(Oath of office taken)

PRICE J: Judge Wilson, congratulations. On behalf of all the judges of this Court I very warmly welcome you and wish you all the very best in your judicial career.

JUDGE WILSON: Thank you Chief Judge.

PRICE J: Mr Khandhar.

KHANDHAR: May it please the Court. I begin by acknowledging the Gadigal people, the traditional custodians of the land on which this Court stands and pay my respect to their elders past and present.

It is a privilege to speak on behalf of the Bar Council and more than 2,300 practising barristers in the State of New South Wales. This morning I am very pleased to welcome the appointment of his Honour Judge David Wilson SC to the bench of this Court.

The District Court holds a key position in the State's judicial hierarchy. As both a trial and appellant Court it disposes of an enormous volume of matters involving all manner of legal disputes in a wide ranging criminal and

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civil jurisdiction. The New South Wales Bar welcomes the appointment of one of its senior counsel, learned in the law who has a quarter century's experience in motor vehicle claims, occupier's liability and insurance litigation as well as criminal work.

The benefit to the community is obvious and the Attorney General is to be congratulated. I personally feel honoured that your Honour has asked me to speak on this occasion to mark the beginning of your career but hope it does not mark the end of mine.

An orthodox approach to preparing a swearing-in speech is to do a quick check of the online legal resources. Your Honour's name appears in many significant trials, Court of Appeal decisions and in the Motor Vehicle Reports. They are just a fraction of a much larger body of work. Having said that one particular case caught my eye. It was heard in the Taree Local Courthouse. Your Honour was junior to Letherbarrow SC as his Honour then was before Price DCJ as the Chief Judge then was.

History remembers it as the Tontine pillow case. It was a negligence case in which the plaintiff, a paramedic, sued his employer, the New South Wales Ambulance Service for its failure to protect him from workplace bullying at the hands of a somewhat culturally underdeveloped co-worker known locally as the "Missing Link".

Indeed in evidence the Missing Link agreed he was proud of that nickname and happily answered to it. The Court heard that the Missing Link for reasons best known only to him had taken a set against the plaintiff and nightly applied what he called "Tontine therapy" which involved smothering his poor co-worker with a pillow just short of suffocation. Whilst your Honour won the case the people of New South Wales lost the services of an excellent

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paramedic and here I am referring to the plaintiff, not Mr Link. After the case the plaintiff quit his job in preference for working with much less needy clients. He is an undertaker now.

I asked one of your Honour's ex-floor leaders about the wisdom of your accepting an appointment so young, after all given your Honour's age it will be a long time on the bench and he replied, "Is David really that young? You'd never have known." That may be saying more about that fellow's poor eyesight than your Honour's general attractiveness.

Your Honour's colleagues, however, invariably describe you as confident, capable and extremely diligent with a calm, polite and highly effective cross-examination style about which I shall later return. Hugh Marshall said with his unmistakeable and soothing Belfast lilt, "He's slow to anger, has a wonderful temperament and an ability to see things from many angles". I trust your Honour will not be too disappointed that I decided against trying to replicate Mr Marshall's beguiling accent. I attempted it during rehearsal but my wife said I sounded rather like a leprechaun suffering 25% of a most extreme case.

Your Honour was educated at De La Salle College and then Benilde High School at Bankstown though strangely when asked I am told your Honour is in the habit of reporting that you matriculated from South Western Beaches Grammar. Then as now Bankstown had a richly diverse multicultural population. McCarthy of Counsel was in your Honour's cohort at high school and recalls that your Honour was the obvious choice for captain of the inaugural debating team being one of only two students who spoke English at the school.

Your Honour then attended the University of New South Wales where

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you graduated with a Bachelor of Commerce majoring in Accounting and a Bachelors of Laws. After completing your practical legal training you were admitted as a solicitor of the New South Wales Supreme Court in December 1992. You commenced work the following year at the firm of Abbott Tout in their litigation department.

You were mentored by John Edelman and briefed many members of the Bar including Bob Stitt QC who is here beside me and Ross Letherbarrow as his Honour then was in personal injury cases, usually involving catastrophic injury claims in motor vehicle accidents but also arising out of medical negligence and occupiers liability.

Your Honour was called to the Bar in February 1998. You read with Hugh Marshall and Mark Williams and took a room at State Chambers. About you Mr Marshall has said, "Without doubt he's the best reader I have had and perhaps the best I'm ever likely to have". Comments by Mr Williams portray a reader who emerged more or less a fully formed barrister. Your Honour became very busy very quickly.

Your Honour was always meticulous with preparation for Court and implemented a practice hitherto unknown amongst the Bar of leaving a clean desk at the end of the day. One colleague at Elizabeth Street Chambers was said to be flabbergasted, constantly so, by the sight of your Honour's barren desk to the point of making enquiries as to whether you had retired from practice.

Your Honour took whatever work came your way, initially mostly for plaintiffs but as I alluded to earlier your practice went from strength to strength. Over time you did increasing amount of work for defendants and became counsel on a number of insurer panels. In 2005 your Honour moved to

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7 Wentworth where you remained until 2012. Thereafter you practised from Elizabeth Street Chambers. Your Honour has also practised a great deal in Canberra and had a room a Burley Griffin Chambers. Indeed your practice has been characterised by plaintiff based in Canberra and defendant based in Sydney.

Your Honour's skill as a cross-examiner is amply illustrated by a case which ran before Elkaim DCJ as his Honour then was a few years ago. You were for the defendant. The plaintiff a taxi driver was a recidivist litigant who had had strikingly similar and reportedly catastrophic reactions to two motor vehicle accidents occurring six years apart but after receiving a very large settlement in the first he made a miraculous recovery until, of course, the second.

The plaintiff by all accounts very much disliked being cross-examined by your Honour. One interesting example in the transcript is as follows:

"Q. Mr Mokbel were you living at that address at all?

A. Sometimes.

Q. Sounds like you were living at a lot of places sometimes?

A. Yeah, so what's it to you?

Q. Well is it accurate?

A. What's it to you? You think my name's bodgie too, don't you? How can it be bodgie it's on my driver's licence? I've been going by this name since 2011.

Q. Mr Mokbel what address appears on your licence?

A. You're putting lies into my mouth Mr Wilson.

HIS HONOUR: Just wait, just everyone calm down.

WILSON

Q. What address appears on your licence?

A. Just get it over and done with man. I'm sick of you. I'm going to get up and just lose my mind. I think I've lost my mind. Somebody help me. Anybody please help me.

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Q. Sir what address appears on the licence that's in your pocket at the moment?

A. Your address.

Q. My address?

A. Yes your address.

Judge: Are you happy now Mr Wilson?"

But your Honour was not happy and did not relent and such was the force of your Honour's continued forensic technique that the plaintiff at one stage upended a water glass over his own head. Whether this was an attempt to stop the flow of difficult questions or the plaintiff symbolically hosing himself out of Court we shall never know. Those in the gallery have reported that your Honour's voice dropped an octave with each hour of cross-examination. A verdict for the defendant ensued after a long hearing.

In September 2015 your Honour took silk and continued to remain very, very busy. Away from the cut and thrust of forensic battle your Honour is regarded fondly as a delightful raconteur with a wicked sense of humour.

Judge Wilson, the Bar expresses its absolute confidence that you are well prepared for the role that you are about to undertake. Indeed if any more evidence were needed one of your fellow judges expressed it more succinctly, "He'll handle whatever this Court can throw at him". Your Honour on behalf of the barristers of New South Wales I congratulate you and wish you every success in your new role. May it please the Court.

PRICE J: Ms Wright.

WRIGHT: May it please the Court. I would also first like to acknowledge the Aboriginal owners of the land on which the Court stands and pay my respects to the elders both past and present of the Gadigal people and to their youth in whose hands we hold the future of our nation for a reconciled future.

It is my great pleasure to be before the Court this morning and to add my

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congratulations on behalf of the solicitors of New South Wales to those of Mr Khandhar for the Bar. Got to say it is a hard act to follow.

The appointment of a judicial officer to the bench of this Court is always a welcome occasion but today particularly so, your Honour's path to the bench having been paved by so many long-lasting and effective relationships with your instructing solicitors. The input the Law Society has received regarding your Honour from the solicitors is a convincing testament to the strong and vibrant relationships your Honour has developed and maintained with those instructing you while at the Bar.

The collective opinion of those who have worked with your Honour over your more than two decades in the law is that the Court is welcoming as a judge today an exceptionally gifted advocate with a sharp and capable legal mind.

Before going to the Bar we have heard your Honour spent six years as a solicitor commencing employment as an associate in the Litigation Department at Abbott Tout Russell Kennedy as it was then known. You regularly appeared in Court whether as a solicitor advocate or instructing counsel in damages claims often stemming from catastrophic injuries. It was your experience as a solicitor in these cases that would lay the foundation of your Honour's principal practice as a barrister which you began almost 20 years ago in 1998.

Working with your Honour has been a great experience for counsel and instructing solicitors alike during your years at the Bar and my informants paint a picture of a witty and urbane character who is not only good company but a generous, caring and loyal friend. It is said you could always be relied upon to break the tension which often develops in contested litigation with a light-hearted or even mischievous remark. Ultimately, whatever the circumstances

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your Honour has always spoken and written both persuasively and fearlessly.

You have also been a mentor to many young barristers and instructing solicitors and have gone out of your way to assist them in their careers. The expertise your Honour built up, particularly in the areas of personal injury, medical negligence and insurance law, saw you become highly regarded by solicitors, fellow counsel and clients. One of the many cases you appeared in was for the respondent in *Serrao v Cornelius* which concluded among other things that intoxication may not always be the primary causative factor in an accident even when both parties are intoxicated. And that decision has, of course, proven instructive also when calculating reduced damages for contributory negligence.

In the field of personal injury your Honour has conducted a balanced practice appearing for both plaintiffs and insurers. When briefed to act for an injured party your Honour would, of course, valiantly pursue their interests to ensure they would be duly compensated for their injuries and receive all damages to which they were entitled under the law.

Equally when briefed for a defendant your Honour would carefully and conscientiously conduct the case with a view to ensuring your insurer client did not have to pay anything more than they ought.

Together with your wide knowledge of the law and steadfast ethics, the energy you have devoted to your cases as counsel will, no doubt, prove a great asset to the bench of this Court with its notoriously heavy caseload. Given your profound legal insight your Honour always carried the enviable ability to reduce a complex case to a series of relatively simple propositions. This proved persuasive and it is a skill that will be sure to stand you in good stead as you undertake your judicial role.

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Your calm and charismatic presentation in Court frequently thrilled your clients and more than one witness I am told has been beguiled by your Honour's charm over the years to their detriment under what turned, unexpectedly for them, into what could be only be referred to as a "searing cross-examination".

And this persuasiveness has made itself known in other areas of your Honour's life too. As we have heard you spent considerable time in Taree over the years where the well-known Stacks law firm began. And it was in Taree that a friend of your Honour's practice but also where she hosted a community FM radio station focused on jazz music. Although some would say your Honour has not a musical bone in your body, you made an immensely entertaining contribution as this solicitor's co-host one evening about jazz, a subject of which you had absolutely no direct knowledge. It is said you were able to slip into such a convincing radio persona that those listening were lulled into believing they were being treated to the thoughts of an eminent world-class aficionado of jazz and this feat was carried off with great ease for over three hours.

There is an old solicitor's practical joke of planting a surprise, perhaps a bazaar news article or an unexpected picture into the middle of a brief. In the case of the ill-prepared barrister this could prove embarrassing on the morning of the hearing if they had not until that moment actually opened the brief. Such an instructing solicitor informs us that your Honour is no such person. That informant says, "Your Honour is no wing and a prayer man, quite to the contrary. Your Honour would always be thoroughly familiar with the material well ahead of time, knowing your brief inside and out." The surprise came early for your Honour.

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This famous preparation was reflected in the welcome proactive feedback your instructing solicitors would receive at very early stages following your receipt of the brief.

Your Honour and your wife, Elizabeth Wild, a highly successful lawyer in her own right are completely devoted parents to Amelia, Nicholas and Charlie. And one informant described your Honour as a listener, “an efficient and well-practised receiver of information” were the words. And that is another quality that will serve you well as you embrace the duties of judicial office.

Many have said that yours is an exceptionally strong appointment to the bench of the District Court of New South Wales especially considering the vital balance of practice that your Honour brings to the role. For all the knowledge of the law one might have, it is necessary but not sufficient to the task before you. In the words of Alfred Binet, French psychologist and inventor of the first IQ test, he once remarked, “the rest of the intellectual faculties seem of little importance in comparison with judgment” and beyond wide knowledge of the law it is your Honour’s capacity for good judgment that friends and colleagues say will make you an exceptional addition to the bench.

It is expected that your Honour will unhesitatingly adjudicate disputes before you fairly without fear or favour notwithstanding that there may well be circumstances in which you will be aware your decisions may prove unpopular. It is also believed your wit and affability will ensure that those appearing in your Court will be met with civility, good grace and as much humour as the nature of the proceedings and the issues in dispute will permit.

It is my privilege once again to convey the congratulations of the 30,000 solicitors of the State of New South Wales and wish you nothing but the best for your life on the bench. As the Court pleases.

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PRICE J: Thank you Ms Wright. Judge Wilson.

JUDGE WILSON: Yes. Chief Judge, the honourable judges of this Court, distinguished guests, ladies and gentlemen. It is a great privilege to become a member of this Court which was established in 1858 (as said) to relieve the Supreme Court of a backlog of work and to sit in regional areas. Over that period of almost 160 years I have appeared in this Court for just 25. First as a solicitor when the Court was located on Macquarie Street in Sydney and for the last 19 years as counsel.

The Court has a rich history and is now thriving under the guidance of the Chief Judge. I thank his Honour for the opportunity he has given me to be part of the exciting future of this Court. Our Chief Judge is an experienced jurist at all levels of the judiciary in New South Wales. I look forward to benefitting from his experience and working under his guidance.

I also thank the Attorney General, the honourable Mark Speakman SC for entrusting me with this very important job. At the time when the Attorney was appointed in the recent cabinet reshuffle he said that he would be a decisive Attorney General. I thank him for being decisive on this occasion and appointing me to this bench. I will do my absolute best not to let him down.

When I first started at the Bar, Sir Gerard Brennan QC was the Chief Justice of Australia and Murray Gleeson was the Chief Justice of New South Wales. It never ceases to amaze how quickly things change in the legal profession and my appointment is another example of that and I am humbled by it.

This is a busy Court. I am looking forward to the many challenges it will present. The Court has a strong reputation in the metropolitan areas but it is often in the regional areas where it is the most celebrated. In my early days at

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the Bar, Letherbarrow SC, now Judge Letherbarrow SC and I would appear in the Taree sittings often retained in over 80 matters in a two week list. Local car dealers and other retailers would celebrate the Court coming to town. The cash injection for the local economy following settlements and judgments would sustain a town until the next sittings of the Court. It was also the attitude of witnesses which differed in the country.

There is a sense of respect for the Court that people in the city do not show as readily. In responding to a question from the bench in a case in Taree, I recall a witness referring to the presiding judge as "Your Highness". The presiding judge did not pause but merely thanked the witness for his answer.

May I thank the Court staff and other judges of the Court for the messages of congratulations and warm welcome that I have been given since my appointment was announced. There is a sense of collegiality which binds those who work within this Court which is not necessarily obvious to members of the profession.

I particularly thank my predecessor Judge McLoughlin, not only for retiring and creating a vacancy but for his contribution to the legal profession over many years and this Court over the past 14 years. He set very high standards which I hope to meet. I wish Judge McLoughlin and his family every happiness in the future.

I have had the advantage of many mentors at the Bar. I read with Mark Williams, now Judge Williams and Hugh Marshall. They provided me not only with access to work but guidance at a critical time of my career. With the greatest respect to those practitioners my real mentors were the many silks with whom I appeared as a junior, in particular Judge Letherbarrow SC,

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Mr Robert Stitt of Queen's Counsel who is kindly here today and Linton Morris of Queen's Counsel.

Over the past decade there has been an unfortunate trend for silks to appear alone without juniors. This deprives the junior bar of access to more senior members and the inner bar of the assistance which its members need to properly prepare and present a case. In my view that trend ought to be reversed.

I have had several clerks over my time at the Bar. I would like to thank them collectively for their dedication and for their assistance. Similarly I would like to thank my long-serving secretary Lisa Twomey. Due to the commitments of her young family and the great demands of this Court Lisa is unable to come across as my associate but in the past she has effortlessly managed my practice making herself available at all hours for the last minute typing of submissions and the like. I wish her the very best.

May I also thank those who have spoken this morning. Ms Wright for the Law Society and Mr Khandhar for the Bar. You were both very kind. Perhaps one more than the other. I look forward to a close association with the Law Society of New South Wales of which I was a proud member for six years in the 1990s. Without the cooperation of its members the administration of justice in New South Wales would suffer. A lot is expected of solicitors these days in terms of preparation of matters and the like. The running of hearings would be slow and justice delayed without that preparation and assistance.

Mr Khandhar is a long-standing member of the Bar Council. He enjoys speaking publicly and is fond, as some others are, of his own sense of humour. When he offered to speak today I felt compelled to accept as what he might otherwise have said behind my back would be far more cutting and

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damaging. It is privilege not afforded to many judges, that is to have counsel speak for the Bar who is a colleague who knows the judge. I sincerely thank Mr Khandhar for his kind words and wish him all the best in the next Bar Council election. He is, as he tells me every October after the voting has been completed and the tally has been added, the most popular member of the Bar in New South Wales and that he commonly attracts the majority of voters. Long may that continue.

I would like to acknowledge the presence of my family here today. There are three generations from mum and dad down to my three children and young nephew. If mum is asked and I do not suggest you do unless you have the rest of the day free, she would tell you how proud she is today and I know dad feels the same. It was the strong foundation and encouragement which they provided in circumstances which were by no means privileged that afforded me the series of opportunity which have led to today.

It would be remiss of me not to mention my three children Amelia, Nick and Charlie. They provided the motivation for me to work hard at the Bar and they tolerated the disadvantages of me doing so. In my time at the Bar I worked at least part of every weekend, often all weekend. I would miss out on attending weekend sport and many other activities. I must admit, however, that the threat of standing on a muddy field in the rain, made even the reading of briefs enjoyable.

Amelia, Nick and Charlie have had the great advantage of a very dedicated and loving mother, Liz Wild. Despite her own rapid rise to great heights in private legal practice at a young age Liz has always been there to take the kids to sport and the like. She has also supported me at every stage of my career and for that I shall always be in her debt.

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I also want to acknowledge and thank my close friends and companions, many of whom are here today, who have kept me sane during many challenges one faces in life, in particular I would like to mention and sincerely thank Dale, Anna and Liz and thank you all for being here today. It has made this occasion memorable and very special.

But finally may I again thank the Attorney and the Chief Judge for the confidence they have shown in me. I will do all things within my power to comply with the oaths that I have taken today and would ensure to do all things possible to assist this Court in delivering justice to the people of New South Wales. Thank you.

PRICE J: Thank you Judge.