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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

TUESDAY 12 JULY 2016

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

Mr M McHugh SC, on behalf of the New South Wales Bar Association
Mr G Ulman, President, Law Society of New South Wales, on behalf of
solicitors

JUDGE DICKER SC: Chief Judge, I have the honour to announce that I have
been appointed a judge of this Court. I present my commission.

PRICE CJ: Thank you, I will have the commission read.

(Commission read)

(Oaths of office taken)

The oaths will be placed in the Court archives and the Bible will be suitably
inscribed and presented to Judge Dicker as a memento of this occasion.

Judge Dicker, 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 DICKER SC: Thank you Chief Judge.

MCHUGH SC: May it please the Court. Chief Judge, I rise to speak on behalf
of more than 2,200 practicing barristers in New South Wales, many of whom
appear regularly in the District Court. The bar welcomes the appointment of
his Honour Matthew Dicker SC, a man of great intellect, integrity and sense of
public service, and who just as easily might adorn the bench of the Federal or
Supreme Courts. This appointment will greatly benefit the District Court and

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the people of this State, and the Attorney-General is to be commended.

Before I proceed further, I wish to acknowledge the Gadigal people of the Eora nation, the traditional custodians of the land on which this Court stands, and pay my respects to their elders both past and present.

Judge Dicker, the people of New South Wales are doubly fortunate that we are gathered here this morning because it is said that your Honour nearly gave away the study of law to become an historian. Indeed, your Honour's academic awards at the Australian National University were shared between history and law. In 1981 your Honour was awarded the Lady Isaacs Prize for History, the MacPhillamy, Cummins and Gibson Prize for Commercial Law and the Butterworths Prize for Criminal Law and Procedure. That said, your Honour has retained a lifelong passion for history, military history in particular. That passion must have been in evidence when you persuaded your wife Judith to tour the World War 1 battlefields on your Honour's European honeymoon.

Your Honour was born in Manly and at an early age your family moved to Canberra. Now, while you can take the boy out of Manly, apparently you cannot take Manly out of the boy, and your Honour is a supporter still of the Sea Eagles Rugby League Team. Your Honour attended Lyneham High School, Dickson College and then the ANU and graduated with a Bachelor of Arts in 1982 and two years later with a Bachelor of Laws, First Class Honours. The other two First Class Honours graduates that year, Graham Johnson and Quentin Digby are partners at Freehills. I think that is what it is known as these days or something like that.

The fact that your Honour persevered with Law is perhaps due to the privilege of being lectured by some of the leading law professors this country

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has produced, notably Leslie Zines AO, Dennis Pierce AO and JLR Davis.

Your Honour's final year thesis titled, *The Tort of Intimidation in Industrial Law*, was perhaps a portent of some more recent developments, indeed, the Victorian Supreme Court confirmed the tort of intimidation as part of the law of Australia in 2014 in a case involving the CFMEU amongst others.

At about this time your Honour began a very productive relationship with the *Federal Law Review* after your graduation, first as a case note editor and member of the editorial board in 1981 and then as joint editor in 83 and 84. Your Honour's interest in legal publishing endured, having been a reporter for the *Australian Law Reports*, the *Australian Corporation and Securities Reports* and the *Australian Administrative Law Service*. In 2011 your Honour was the joint author of *Corporations and Associations Law, Principles and Procedure, 5th Edition*.

Your Honour was admitted to practice as a solicitor at the New South Wales Supreme Court and the Supreme Court of the ACT in December 1984. The following year your Honour was associate to the Honourable Justice J F Gallop of the ACT Supreme Court, a time that I understand your Honour recalls fondly, including when your Honour flew as associate to Christmas Island for a half day appeal and then had to stay a week to catch the next flight home.

Your Honour then worked as a legal officer and senior legal officer in the General Counsel Division of the Commonwealth Attorney-General's Department. There your Honour prepared opinions on employment law, broadcasting law, superannuation and security matters. Your Honour also provided legal advice on Cabinet submissions. In 1986 your Honour went to work as a solicitor at Freehill, Hollingdale & Page, as the firm was then, in

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Sydney. Your Honour settled into their busy litigation department, advising on or having substantial carriage of matters involving trade practices, contracts, professional disciplinary matters, professional negligence and increasingly your Honour worked on insolvency cases. Your Honour briefed counsel appearing before the District Court, the Supreme Court, the Court of Appeal and the Federal Court.

In 1988 and 1989 your Honour was awarded a Commonwealth postgraduate scholarship and completed a BCL at Worcester College, Oxford. There your Honour studied restitution, evidence, conflict of laws and public international law.

In September 1989 your Honour returned to Australia and to Freehills. As senior solicitor you led a team representing banks in the Equiticorp litigation in the Supreme Court of New South Wales, and it was around this time that your Honour entered into the orbit of many of the eminent silks at the Commercial Bar including D E Horton QC, Murray Gleeson QC, Roddy Meagher QC, and Peter Hely QC. Horton QC in particular would later become a valuable mentor during your Honour's first years as a junior barrister.

Your Honour married Judith in 1992 and have had three daughters, Louise, Emily and Ingrid. Louise is overseas I understand at Disneyland at the moment.

Your Honour was called to the New South Wales Bar in March 1993 and read with Dermot Ryan SC. Your Honour found a room in Blackstone Chambers where Horton QC was also the head of chambers, and that is where your Honour has remained until the time of this appointment. In doing so, your Honour has followed in the footsteps of your former colleague at

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Blackstone Chambers, the Honourable Justice Yates.

Your Honour's first case was as a junior to Horton QC acting for Touche Ross in the Tricontinental proceedings before the Victorian Supreme Court, and over the next two decades your Honour built up a thriving commercial law, equity, professional negligence and property law practice, and was always prepared for new challenges. And your Honour was junior to Joe Campbell QC in the first Australian challenge to an Olympic selection before the 1996 Olympics.

Your Honour has appeared in a number of significant and long-running cases including Idoport and NAB, Storm Financial and the Westpoint proceedings. In Idoport your Honour was led by John Garnsey QC and your Honour prepared and ran many of the arguments against a team led by the cream of the commercial Bar, including Bathurst QC as the Chief Justice was then, Sackar QC, Gleeson SC, Bell SC and Insall SC. Your Honour took silk in 2012 and since 2015 has been a part-time member of the New South Wales Civil and Administrative Tribunal.

Colleagues in both branches of the profession regard your Honour as unflappable, even under the most extreme pressure, "He is good humoured but has a core of steel", said a fellow silk, and I saw that first hand in a difficult case against your Honour in the Court of Appeal a couple of years ago in late 2013. The Bar expresses its absolute confidence that your Honour has the experience, the expertise and the judicial temperament to take your Honour's place on the Bench of the District Court of New South Wales. This is a fine appointment. All that remains is for me to wish you every success on behalf of the Bar and I do so wholeheartedly. May it please the Court.

PRICE J: Thank you. Mr Ulman?

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ULMAN: May it please the Court. It was the American jurist, Oliver Wendell Holmes Jnr who said that,

“The life of the law has not been logic, it has been experience. The law embodies the story of a nation’s development through many centuries and cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics”.

As a practitioner steeped in our common law heritage, and as an advocate with deep practical familiarity with the areas in which you have specialised, it is indeed the principle of experience that underwrites the story of your Honour’s journey to the bench today. Across the legal profession your Honour’s reputation is that of a first class lawyer with whom great care, great skill and sound reasoning are synonymous. This is a truly fine and justly deserved appointment, and it is my great pleasure to congratulate you on behalf of the solicitors of this state with whom you have done so much work.

Your Honour’s appreciation for history means that the great figures of the law, at home and abroad, in recent time and times past, loom large for your Honour. In the spirit of your chamber’s namesake, Sir William Blackstone, your Honour has been a barrister distinctly conscious of the Common Law and centrally of the classical, Socratic reasoning in the art of advocacy.

The spirit of Blackstone has not ended there. It was in his footsteps that your Honour chose to undertake the same qualification as Sir William, Bachelor of Civil Law at the very same university, Oxford University, shortly before taking up a position with Freehill, Hollingdale & Page as Herbert Smith Freehills was then known.

At Oxford I understand another great individual influenced your Honour, the highly respected Francis Reynolds QC, now Emeritus Professor of Law who is the current editor of *Bowstead and Reynolds on Agency*. In a

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profession so often characterised by speech, writing is a central means by which lawyers and judges may gift a legacy of legal knowledge for future generations. Just as Francis Reynolds edited his tome and Justice Blackstone put pen to paper with his famous commentaries, your Honour has plied your own knowledge for the benefit of students in Australia and beyond as co-author of *Corporations and Associations Law: Principles and Issues* alongside your friend, John Gooley, as well as David Russell SC and Michael Zammit.

Your Honour has had a particularly strong relationship with instructing solicitors. I am told that, when they instruct you, the solicitors appreciate the very prompt manner in which your Honour would read a brief. I am also told that as soon as you had finished reading, your Honour would call the instructing solicitor to relay preliminary thoughts. As soon as the solicitor saw your number flash up on their phone, he or she would grab notepaper and pen before picking up the phone and setting aside a good half hour to jot down the methodical, logically-ordered issues which your Honour's initial phone call always covered in great detail and accuracy.

Many barristers have commented that when they first arrived at Blackstone Chambers, your Honour made a point of approaching them to introduce yourself and assure the newcomers that professional help was only a knock on the door away. Accordingly, countless colleagues have taken you up on this offer, peppering your Honour with difficult ethical and professional conundrums. In a profession filled with murky waters and ethical quagmires, the principles of navigation your Honour recommended to more junior colleagues furnished you with a reputation for being straight as a ruled line and even a beacon of light in the darkness.

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Within chambers, your Honour fostered a sense of esprit de corps. You were always the first to mark the occasion when a chamber member took silk or to arrange the sending away of flowers when the loved one of a colleague had passed away.

As the President of the Law Society, I would like to emphasise that your Honour has always been held in high regard by Lawcover, from whom your Honour received many briefs over the years. In combination with the professional negligence work your Honour took on, this professional interest has linked the fraternity of solicitors with your Honour in a very real way. It was Sir Owen Dixon who said that good advocacy remembers the Greek precept: Nothing too much. Accordingly, in the courtroom your Honour makes points firmly but not repeatedly, you never overstate your case and you will readily concede a weaker point in order to advance a much stronger one.

Balance, tact and fair-mindedness characterise the courtroom manner for which your Honour has been so highly sought and so often emulated. Indeed, junior barristers are known to have retained copies of your Honour's submissions as models for their own future work, knowing the great extent of preparation that has gone into their formulation.

As a famously patient, methodical and clear advocate, your Honour has always commanded the ear of the bench, whose distinct trust in you has been evident. Over the years your Honour has been aided by the opportunity, as we have heard, to appear with some high profile senior counsel in the 1990s and 2000s, including the late Dan Horton QC, John Garnsey QC and Michael Slattery QC, now Justice Slattery of the Supreme Court.

As a father and a husband, your Honour is absolutely devoted to your family. Your late father, George Dicker, was Registrar of the Australian

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National University following a very successful career in the New South Wales and Commonwealth Public Services. Your mother, June, who forms a large part of your Honour's life, I am told, regards today's occasion as a matter of enormous pride. Your Honour's wife Judith is a tremendous support to you and your daughters, Louise, Ingrid and Emily.

In addition to your family life there are a number of matters which directed and diverted your Honour's attention away from the stressful workload of an advocate. Your Honour, as we have heard, is a great devotee of history, in particular military history, and even more in particular, military history pertaining to the Napoleonic era. Your collection of British Naval medals for gallantry is a testament to this interest.

The next passion has been argued to stem from this devotion to history, although some have instead diagnosed it as a reversion to the passions of childhood. I am referring of course to your Honour's large collection of what I am assured are not toy soldiers, but indeed miniature soldiers. While others in your profession might blow off steam in different ways, your Honour and your colleague, John Gooley, are known to make a weekly pilgrimage on a Friday afternoon to the Queen Victoria Building, drawn like an irresistible magnet to the centre of the universe for all respectable miniature soldier collectors. I am of course referring to Peter Nathan's toy soldiers. On your way home to your respective wives, your Honour and Mr Gooley reportedly set about preparing formal pleadings for your arrival, with the all too obvious Peter Nathan bag in hand. I am informed that the substance of these pleadings is what might be termed "a set-off", taking the form of an assertive reference to their comparable passions for Wedgwood plates and Royal Doulton figurines.

It is no secret that your Honour has considered the former Chief Judge in

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Equity, the Honourable Malcolm McLelland QC, to be something of an exemplar in approaching an office such as this. Your Honour's admiration for Justice McLelland has been described by the recently retired Justice Biscoe of the Land and Environment Court in the following terms:

"An enduring influence on my generation because of the elegance, wisdom and conciseness of his judgments and the atmosphere of calm he generated in Court".

This, paired with your Honour's own equitable and fair-minded disposition, will set you in good stead as you seek to generate the same atmosphere for which Justice McLelland was famed.

Your Honour is the fifth advocate from Blackstone Chambers to be appointed to the bench after Judge Taylor of this Court, Justice Yates of the Federal Court, Justice Levine of the District Court and later the Supreme Court, and Justice Adamson also of the Supreme Court. Your Honour will truly be a superb addition to this Court. Your colleagues, your instructing solicitors, and the wide community of New South Wales have every confidence and faith in you as you approach this next chapter in a career of service and dedication to the common law and on their behalf I wish you well. As the Court pleases.

PRICE CJ: Thank you, Mr Ulman. Judge?

JUDGE DICKER SC: Your Honours, ladies and gentlemen, thank you Mr McHugh and Mr Ulman for your kind words. It is very pleasing and a relief to see that the tradition of highly complementary swearing-in speeches has continued today. Your best wishes are much appreciated. My claimed idiosyncrasies, which have been mentioned, have of course been exaggerated by your informants.

It is a great honour and privilege to be appointed to the District Court of New South Wales, Australia's busiest intermediate trial Court. I have been

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made very welcome by the Court staff and judges since my appointment was announced, for that I am most grateful. Some of my most enjoyable trials in my career were in the District Court, and I will be glad to be able to make a contribution, however small, to the Court's ongoing success in the future.

When we start out as lawyers we all have high hopes of what we want to do in our career. I was no different 32 years ago. However, instead of wanting to be a solicitor or a barrister, or a solicitor and then a barrister, I had a list of things which I wanted to do. I wanted to be a government lawyer, a judge's associate, work in one of the big law firms in Sydney city, complete a post-graduate degree overseas, go to the bar and perhaps one day be a silk. I even thought of the faint chance of a judicial appointment one day.

Perhaps I was naïve or could not make a firm decision as to the path I wanted to take first, or was overly ambitious. I have been very fortunate to have achieved all these objectives with much support and help, and some real luck, which is needed in the course of a career at the bar in particular, as many present know. The variety in legal experience has been illuminating to me.

I first worked in the General Counsel Division of the Commonwealth Attorney-General's Department. The work was high level, interesting and challenging. My supervisor was Peter Clay, the former Solicitor-General for New Guinea, and he was an excellent black letter lawyer. I did not have to worry about facts as we were always briefed with assumed facts. I learned to have great respect for the lawyers there and soon realised how important government lawyers were to the development of legal policy and high level advice on complex and often sensitive matters. The quality of the team there is shown by the fact that when I left, the person in the room next to me was Stephen Gageler, now a judge of the High Court of Australia.

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I then became associate to Justice John Foster Gallop, an excellent and robust common lawyer. Gallop J had more judicial commissions than anyone I had ever heard of, including as a judge of the ACT Supreme Court, a judge of the Northern Territory Supreme Court, a judge of the Federal Court of Australia and a Judge of the Christmas Island Supreme Court which, as has been indicated, I visited with him.

Gallop J soon set me straight about the law and the facts. "You win most cases on the facts, not the law", he told me. The evidence is everything. I had a fascinating year watching all types of cases, dozens of criminal trials, two murder trials, personal injury cases and commercial cases of all types. I soon realised three things: First, I had up until that time led a sheltered life; secondly, that the Court system depended on a wide range of people for its day-to-day operation, judges, Court staff, registry staff and sheriff's officers, all were important; and thirdly, cross-examination was real art which could win a case which appeared otherwise lost.

In 1986 I joined Freehill, Hollingdale & Page in Sydney. The 1980s were in full swing and Freehills was a leading commercial law firm. Freehills in the 1980s was not a place for the faint-hearted, and people worked very hard at a relentless pace. This was before the notion of work/life balance. Days merged into nights. In one transaction, one lawyer's secretary allegedly waited outside David Jones two mornings running to buy underwear and a shirt, as he never made it home.

I was part of legal teams who briefed the then leaders of the commercial bar, including T E F Hughes QC, D E Horton QC, Murray Gleeson QC and R P Meagher QC. Mr Gleeson appeared to me to have the unnerving habit of staring at me when I was in his chambers when he posed to himself, aloud,

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very difficult legal questions which were quite beyond me to answer on the spot as a young solicitor. He also often waited for Court lifts about a centimetre from the door, which was enough to make a young solicitor very nervous indeed if you were the first one out.

My time at Freehills showed to me the importance of big firms in the law in handling the large cases and enormous commercial transactions relating to things we take for granted, like jets, bridges, large buildings, mines, huge loans to companies and massive development projects.

After receiving a post-graduate degree overseas, I returned to Freehills and then went to the bar in 1993. That was 23 years ago. What a great experience it has been: from slips and falls to company collapses, from cases over billions of dollars to cases over hundreds of dollars, from cases over properties to cases over engagement rings, from cases over strange wills or trusts to every type of professional negligence and disciplinary matters.

I have in the first 19 years at the bar, been fortunate to have been junior to some of the great silks, both in equity and in the common law, and you always learn something in such briefs, even if it is not to do something again. It has also led to me having plenty of contact with the solicitor arm of the profession, and in particular sole practitioners and firms with only a few partners. What a tremendous service they provide to members of the public.

A few things have become clear to me over the time at the bar. The bar motto "Servants of all yet of none" is most apt. The bar plays a crucial role in representing clients fearlessly and independently. Secondly, all types of people can make a career at the bar if they are hard-working, competent and can get on with people even slightly. Thirdly, a good solicitor and a good barrister working as a team can really help a client when things are looking

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decidedly grim.

As I have recounted, I have experienced many different arms of the legal profession and the Court system. It is like a large mosaic. Each judge, lawyer, whether it be counsel or solicitor, member of Court and tribunal registries and court staff and sheriff's officers is a piece of the mosaic which we call the administration of justice. Each has an important role in that mosaic, no matter what their position or place is in the legal hierarchy.

One cannot be a lawyer for 32 years without having a lot of people to thank and acknowledge for their help, guidance and support. I have already acknowledged Mr Clay of the Attorney-General's Department and Justice Gallop. When I came to Blackstone Chambers in 1993, I had as a solicitor briefed the late D E Horton QC, a giant of the law, and also Dermot Ryan SC and Howard Insall SC in Blackstone Chambers. Each was of great help when I came to the bar. I read with Dermot Ryan SC. Dermot is famous as the last counsel to address the Privy Council in an appeal from an Australian Court. He and Howard Insall have remained good friends of mine, and a lunch with them is always amusing and informative.

I have had great assistance and friendship from many other barristers, both in Blackstone Chambers and in other chambers. I will not mention them all and they know who they are, and many are here today, but it would not be proper if I did not mention a few specifically. John Garnsey QC, John Whittle SC, Tim Hancock, Rabih Alkadmani, John Gooley, Robert Titterton, John Paul Redmond, Graham Connolly, Crown prosecutor Max Pincott and Daniel Crowley from the London bar.

I would like to thank all those who briefed me and supported me, particularly since I took silk, which is a challenging time for barristers, as many

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of us know. I mention Justin O'Connor of counsel in particular for his good-humoured help as my junior on a number of occasions. I would like to thank my current clerk, Kristen Sproule, and my previous clerk, Lynette MacDonald.

I also mention the junior clerks of longstanding on the floor who have kept me up-to-date with all sporting matters, Sean Senior and Damien Ross.

I have had enormous help from my secretaries. Rowena Eastman was my secretary at Freehills and we remain friends, and Annette Collibee has helped me for many years at the bar. Both were always helpful and particularly patient.

I would like to acknowledge the members and staff at NCAT, who have been so welcoming to me over the last year when I was a part-time senior member. Justice Wright and Stuart Westgarth and all who assist, do a tremendous job at the tribunal. Just, quick and cheap should be their motto. Senior Member Robert Titterton again has been of great help to me in relation to matters of practice and procedure.

I should mention my good friend Graeme Johnson who has been a friend at school, through law school, at Freehills and beyond. Many world and local issues and problems are discussed in our lunches, even though Australian and world leaders seem not to take action in response to our views.

There are three final groups who deserve special mention. First my parents. They were very supportive at all times. My mother, June, who is elderly but still young at heart, and who cannot be here today because of a back condition, has always had great common sense, and I thank her sincerely for her support and advice. Whenever I complained about the heavy studies at law school or those early challenging years of practice, she would often say to

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me in a firm voice, "Well, at one time Sir Garfield Barwick was in your position and no doubt found it as difficult as you do". I must admit, it was always very difficult to visualise Sir Garfield Barwick sitting there with a furrowed brow and doubt in his wig and gown preparing my early cases, but I suppose all of us have to start at the beginning.

My three daughters, Louise, Emily and Ingrid, have always kept me on my toes. Louise is travelling overseas at present and cannot be here. The girls try and keep me informed of important social media developments and the need for young ladies to be well-dressed and provided for. Their success in the technology department with me is measured by the fact that I call the tablet computer device which lurks menacingly in our lounge room, "the machine". Thank you, girls, for your love and support.

The final thank you is to my wife, Judith, who has given me complete support and affection for over 24 years. Anyone who accompanies me on European battlefield tours on our honeymoon is my type of person. There is one job which is harder than being a barrister and that is being a barrister's spouse, and Judith has excelled at that in every way possible while undertaking her own important duties at the Sydney Children's Hospital.

To everyone present, thank you all very much for attending today. I am truly honoured by it. I look forward to fulfilling the oaths I have sworn today, in my future judicial role.