

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**ALLSOP P
AND JUDGES OF THE
SUPREME COURT**

Tuesday 31 May 2011

**FAREWELL CEREMONY FOR
THE HONOURABLE JAMES JACOB SPIGELMAN AC
UPON THE OCCASION OF HIS RESIGNATION
AS CHIEF JUSTICE OF NEW SOUTH WALES**

- 1 **MR MICHAEL WEST:** Good morning Justice Spigelman, brothers and sisters, my fellow members of humanity.

- 2 We have gathered here today on the land of the Gadigal People of the Eora Nation, one of the twenty-nine clans of the Eora Nation, the Eora meaning “here”. Other clans across this beautiful harbour we have are Cameragal where the suburb of Cammeray has taken their name from. We also have Burramattagal out where the City of Parramatta resides. In Aboriginal culture we believe everything is connected from the particle of dust to the drop of water to the dugong, the whale, the kangaroo, the wombat, to me, to you, the person sitting next to you. We are all connected in this Universe.

- 3 It is also very important that we do pay our respects to the elders and custodians and not only this land, the Gadigal of the Eora, but to all Aboriginal Torres Strait Islanders elders and custodians, for they have looked after this land, spirit of country and culture for more than 50,000 years. We should also pay our respects to the elders, those who have passed before us, back to our Mother Earth. In Aboriginal culture we respect our mother, Mother Earth. We all come from her. We will all return to her. That is a fact. We have her in us every day, in the water we

drink, the air we breathe, the food we eat, in our hearts and in our minds, in our very souls of beings, we respect our Mother Earth.

- 4 It is also very important to think that we do live on a living planet. Recently that has been demonstrated in New Zealand and Japan so we should also consider our brothers and sisters over there, the struggles they have had and what has happened recently. And also to our journey in this point in time in the continuum, where we are here right now, paying our respects to a very respectful individual, a man who decided to take that bus, the Freedom Bus, saw similar what happened in America, he took the steps, he climbed up the steps on that bus with Charles Perkins going around New South Wales. He understood that, I guess with his background, what happened to people of Jewish faith in World War II, that you do have to stand up, you do have to take the opportunities you have and make change, make a difference.
- 5 It is also very important, as I said, that we do pay our respects to this gentleman. He is taking a different path now, but I am sure he will continue using his heart as a compass for what he is going to do. If we just pause for one moment, silence, just to pay our respects to the elders, the custodians, reflect our journey here and to pay our respects to those who have passed back to our Mother Earth, just for a moment. Thank you.
- 6 To the north we have the Hawkesbury River. To the south, the Georges River. To the east, the Pacific Ocean and to the west, the Nepean River. Within these four aquatic boundaries lies the mighty Eora Nation. To my Aboriginal and Torres Strait Islander brothers and sisters I welcome you from the land, clan, tribe, nation you come from. To my non-Aboriginal Torres Strait Islander brothers and sisters, my fellow Australian brothers and sisters, I warmly welcome you from the land, family, neighbourhood and community you come from to Gadigal land, Eora land, Aboriginal land, always was, is and will be Aboriginal land. Whether you, and this is in the context of the individuals I see sitting in front of me and your family tree, where you have made your way across this beautiful old city town, across

this Waratah State of New South Wales, this sunburnt country Australia we share with beautiful jewels like Uluru, The Kimberleys, outback, red centre. Or your journey or your family's journey may have been further afar, across the seas and oceans around this wonderful world, this blue planet as we do share, as humanity from the other islands and continents, coming here to this land, the largest island and the smallest continent, the place we call Australia, we share as Australians.

7 To this land right here underneath the land of Gadigal People of the Eora Nation, Aboriginal land, I welcome all my brothers and sisters to this land on behalf of the Metropolitan Local Aboriginal Land Council, we wish that you have a safe stay, a safe journey on this land, respect the land, respect the history, respect each other and for Justice Spigelman, continue a journey as I said and use your heart as your guide. Thank you.

8 **ALLSOP P:** Your Excellency, this sitting of the Supreme Court marks the end of 13 years and 13 days of James Jacob Spigelman in the office of Chief Justice of the Supreme Court of New South Wales.

9 I have been asked to tender the apologies of Justices Heydon, Bell, Beazley, Campbell, Whealy, Handley, Hall, Brereton and Rein and the Hon Simon Sheller.

10 The privilege and honour fall to me to speak about you, Chief Justice, on this occasion. The fulfilment of that task is made difficult by the shortness of time permitted to me. There is so much that should be said. Most people here know of your extraordinary achievements and service in your life since coming to Australia with your parents from war-torn Europe in 1949 as small child of 3 before coming to the Court as its Chief Justice in 1998. Reference should be made to the speech of the then Attorney, the late J W Shaw for an insight up to 1998. My principal task is to speak of your work on the Court.

11 That undertaking, however, cannot be done adequately without appreciating the features and characteristics which, up to 1998, had marked your life as a brilliant student (double honours in one year in Arts, the Medal in Law, with only a passing acquaintance with the lecture rooms), nascent politician, author, brilliant lawyer and advocate and participant and administrator in so many aspects of this society's cultural and intellectual life and which continued to mark your work as a judge, a leader of this Court and a colleague, these features being:

- courage and boldness of approach;
- a huge intelligence and an enormous capacity to express yourself with clarity and pungency;
- a deep sense of justice and a strong antipathy to any form of meanness or bigotry;
- a strong belief in the capacity of our legal system based on the rule of law, rigorous judicial technique and parliamentary democracy to provide a just framework for a healthy, fair and diverse society;
- an international and not provincial outlook, based on a deep appreciation of the widest range of cultural, artistic and social life in society, but an outlook that never lost sight of the essential task of those in public life of serving the people of Australia or of the fact that it is the lives of ordinary people that matter; and
- a consummate political skill (using that phrase in the broadest sense) based on all the above characteristics, made effective by a calm decency and fairness with which you treat everyone.

12 Your work on the Court has been remarkable. I propose to finish, not start, with the judgments you have written in both criminal and civil law. Let me say, however, at the outset, that your work as a jurist in the primary task of crafting judgments has produced one of the finest bodies of judicial work in Australia's legal history. You stand as one of the best judges ever to have served this nation. I use no hyperbole here.

- 13 It is first necessary to say something of your work as an administrator of the Court. You have managed the Court during an important period of change. The *Civil Procedure Act 2005* has brought about important modernisation and reform of procedure in this State. Your energy and perception of the need for cost and time reduction in litigation was instrumental in bringing forward statutory, professional and cultural change. The process had begun in this Court in the late 1970s. The *Civil Procedure Act* took those changes to the level of written law. There remains work to be done, but it was never a one-person task and you played more than one person's role.
- 14 Though you have a well-known suspicion of statistics, you have in fact marshalled them to be used wisely in the management of the two divisions and two appeal courts that comprise this Court. Your skilled and careful management has been marked by calmness and an intimate grasp of detail. You also have a remarkable skill of perceiving conflict emerging amongst people, defusing it and solving the problem, never letting it lie to fester and arise on a later and more bitter occasion. You do not impose your will, but your choices, always wise, usually prevail.
- 15 Underlying this skilful management of the Court has been your perception of the need to develop collegiality and congeniality within the Court. The carrying on of judicial education and judges' conferences, the latter involving partners of judges attending, has been feature of this. May I take this opportunity at this point to pay tribute to your wife Alice, who has played such an important part in this process. This has created a happy court in which mutual respect is the pervading social and working ethos. And as you no doubt appreciate, such a milieu tends to promote productivity in judges and to provide a more civil and civilised experience for litigants and the profession than perhaps was the case during some periods in the preceding forty years.
- 16 Secondly, this managerial skill has been matched by your skill and acumen in dealing with government and Attorneys-General. Your ability to

work with them, but maintaining independence from the executive, has led to the healthy working relationship between the Courts and the other branches of government, consistent with judicial independence, to the great advantage of the people of New South Wales.

- 17 Thirdly, and I exclude myself from this comment, you have been able to influence critically the appointment of a remarkably talented body judges. This is a court of international stature and reputation. That is based on that judicial talent. This was a legacy you inherited, which you pass on enhanced.
- 18 Fourthly, you have been instrumental in taking the Australian legal system, through this Court and its judges, into the Asia Pacific region and the wider world. You understand the importance of the Australian judiciary being recognised around the world for its quality and taking its place in the training of, and engagement with, the judiciary in other countries. This is not an exercise in legal jingoism or judicial hubris or the promotion of judicial holidays. Rather, you recognise that if the Australian legal system does not embrace and engage with counterparts in Asia and the wider world, it, its judges and its practitioners will be left to their life of tranquil provincialism, over time eroding the quality of justice administered by them.
- 19 To this end, you have been active in developing and strengthening the relationships between the Supreme Court and Chinese courts and judges. Judges from the Court have, on an annual basis, taught at the National Judicial College in Beijing. You have recently effected memoranda of understanding with the courts of Hubei and Shanghai to co-operate on judicial exchange. Similar memoranda of understanding are likely with Guangdong courts and the Chinese National Judicial College.
- 20 Together with the present Chief Justice of Hong Kong you began and developed a regional conference of commercial law judges every eighteen months to two years. These meeting have involved commercial judges

from China, Japan, Korea, Hong Kong, Singapore, Malaysia, Thailand, India, Pakistan, Bangladesh, Australia and New Zealand. The next conference is in Singapore. This is now a standing forum for commercial law in the region.

- 21 You have put in place memoranda of understanding with Singapore and New York courts regarding the proof of foreign law by judicial declaration rather than the use of expert evidence.
- 22 As President of the Judicial Commission you have supervised and guided the important work of that body in particular in encouraging and fostering its role as a judicial educator in New South Wales and in many other places in the region and in fostering greater awareness of the issues affecting indigenous people in this State and the legal system.
- 23 You have fostered a regular exchange of judges between the United Kingdom and this country to maintain and broaden the bonds that lie between our two systems.
- 24 All this, and I have yet to mention your work as a public intellectual through your many speeches and publications as Chief Justice since 1998 and as a commandingly great judge.
- 25 You have in thirteen years delivered dozens of speeches. All have been of the highest intellectual quality. They range over many topics – history and historical reflections, the rule of law, judicial administration, the legal profession, criminal and civil law, public law, human rights and other issues important to our society. Some, such as your speeches on construction and interpretation of contracts and statutes, have been influential in affecting the law's direction. All have been influential on the profession in this country and wherever jurisprudence in the English language is read.

- 26 Your historical works on Beckett and Henry, Bacon and Coke are not only significant historical interpretations in themselves, but they also speak to modern society and those interested in its development. When I read the book on Beckett and Henry some years ago the only comparison I thought appropriate to draw was with the work of the great medievalist Professor Richard Southern. The comparisons were clear – his work and yours revealed a simply-expressed grasp of power, law, government, history and humanity. It awaits a further occasion to explore the extent to which these works of history illuminate your work as a great Chief Justice.
- 27 Your judgments have been outstanding. All crafted with great intellect and remarkable speed. They reveal the strongest possible attachment to precedent and legal principle. Never, however, did that see them take the form of gnarled shapes of weather beaten rules determined by the ratio decidendi of past cases. Rather, your sense of principle and insightful intelligence always produced a clearly written and elegantly formed piece of work reflecting the common law as it stood by reference to precedent or with incremental change born of contemporary legal policy. Your judicial technique was founded on a respect for the intellectual labour of others, including colleagues and predecessors and was directed to the creation of coherent legal principle, not merely to the destruction of contrary views or the expungement of error.
- 28 Within months of your swearing in you initiated a series of important criminal sentencing judgments. Over the years, this body of work (*Jurisc, Henry, Ponfield, Wong and Leung, Whyte, Attorney-General's Applications No 1, 2 and 3 of 2002*) has had a lasting significance on the law of sentencing.
- 29 Numerous other notable decisions on the criminal law reflect your important work on the Court. Perhaps your decisions on open justice (*John Fairfax Publications v District Court* as an example) best illustrate your capacity to write commanding and comprehensive judgments that state the field. Other cases, such as *JW*, reveal not only a consummate

command of legal technique, but your humanity towards those unfortunate enough to be the necessary subject of legal technique in criminal law.

- 30 You also took the Court of Criminal Appeal to regional centres of New South Wales bringing the work of the Court to the people it affected.
- 31 Your work in civil law in the Court of Appeal has been similarly influential. You sat over the full range of the Court's jurisdiction and have contributed to the jurisprudence of this country in many subjects, administrative law, constitutional law, corporations law, contracts, equity, environment and planning law, evidence, industrial law, contractual and statutory interpretation, private and public international law, real property, torts and workers compensation.
- 32 The important series of cases concerning the Industrial Commission and Industrial Court and its jurisdictional relationship with this Court, ultimately endorsed by the High Court, are of immense importance to the administration of justice and the resolution, in particular, of commercial disputes in this State.
- 33 Your judgments and other writing on statutory interpretation have given penetrating and sure guidance to the principles, as well as explaining the, at times, less than clear expressions of others in the legal firmament on the subject.
- 34 Your command of principle and logic allowed you to write the great judgments of *O'Halloran* and *Seltsam* in the fields of equity and common law, both dealing with the questions of causation, now made less intractable by your work, and the illuminating expression of equitable principle in *Rob Evans* on equitable remedies.
- 35 This is an entirely inadequate expression of the breadth and quality of your judgment writing.

- 36 Your decision to have a welcome to country at the beginning of this sitting reveals that you still recognise, just as you did in 1965, the year of the Freedom Ride, the existence of a foundational issue confronting this society: the just reconciliation of those who have come to this ancient land in the past 223 years, and their descendants, with the original inhabitants who lived here for tens of thousands of years, and their descendants. This is a profound and difficult issue, involving, in part, the recognition that a legal system founded on the rule of law and constitutional traditions of centuries must provide a framework of justice, fairness and human dignity for all, so that all may commit their loyalty to the legal system out of respect and consent, not imposition of will of others. These notions, together with those aspects to which I referred earlier, have attended your work and time on the bench.
- 37 Australia is an immeasurably better place for your work as a judge, as a leader of this Court and as a public intellectual.
- 38 On behalf of all judicial officers in this State and those who play their part in the administration of justice, I thank you for your work and time as Chief Justice of this State.
- 39 On behalf of the Judges of this Court and their partners, I thank you and Alice for all that you have both done in and for the life and well-being of this Court.
- 40 **THE HONOURABLE GREG SMITH SC MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** May it please the Court, it is my privilege to speak not only as Attorney General but on behalf of the New South Wales Bar Association.
- 41 Today we gather to farewell your Honour as Chief Justice of New South Wales and to thank you for thirteen years of energy, commitment and leadership, both on and off the Bench.

- 42 Your Honour's journey to this place was extraordinary. You were born on New Year's Day 1946 in Sosnowitz, a coal mining and steel city in Poland. At age three you came to Australia with your parents and two brothers and settled in the beachside suburb of Maroubra in Sydney's east. You were educated at Maroubra Public and then Sydney Boys High where you showed the first hints of your passion for justice. You formed the Asia Society to counter prejudices against Chinese students and in the school magazine you condemned the White Australia Policy. Then at Sydney University you were one of thirty members of student action for Aborigines who went on the Freedom Rides through some of New South Wales most notoriously racist country towns in 1965.
- 43 In 1971 you were awarded the University Medal for Law despite what a former Attorney General, the late Jeff Shaw described as frenetic activity in extra curricular matters and very sporadic attendance at lectures. Your first years out of University were indeed frenetic. You published your first book, "Secrecy, Political Censorship in Australia" and became a senior advisor then principal private secretary to Prime Minister Gough Whitlam. You also served as head of the Department of Media before deciding to try your luck at the Bar in 1976. You soon had a busy practice and took only ten years to be appointed a Queen's Counsel. It showed the quality of your work had won the respect of your peers.
- 44 One suspects the case which gave you the most satisfaction was acting for the National Rugby League in the Super League litigation, that is because you admit being a long-time fan of the South Sydney Rabbitohs Rugby League Club. Indeed you remarked at your swearing in that it takes a lot for a Souths supporter to willingly wear rabbit fur. With your successor also declaring his allegiance, some might be wondering whether support for the bunnies is a prerequisite for Chief Justice.
- 45 There is a tale perpetuated in the New South Wales Parliament that David Williamson was attracted to the idea of writing his play Top Silk on your Honour's days at the Bar. A check with Mr Williamson led to the

following response, “I’m not sure that I wrote Top Silk as a result of Jim’s stories but I certainly used one of his lines in the play”. The line was “the cab rank rule was”, and I quote the play and Jim, “a rule devised to maximise a barrister’s income and minimise his conscience”. Mr Williamson said it always got a big laugh.

46 Away from the law you also served on numerous cultural boards including the Film Finance Corporation, the New South Wales Art Gallery, Powerhouse Museum, Brett Whitely Foundation and the National Gallery.

47 When you took your oath of office thirteen years ago you said you would be dedicating your life to the law to a degree that you had hitherto managed to avoid. The State is grateful that you did. You have been instrumental in creating links with legal and judicial bodies in Asia and the Pacific region including the Asian Judicial Seminars. Because of you, there are now bilateral judicial cooperation arrangements with Singapore and New York which allow a question of foreign law to be referred to a foreign court for determination.

48 Your push for reform of domestic commercial arbitration legislation based on United Nations model laws have been vital in promoting Sydney as the venue for commercial dispute resolution in the Asian Pacific. You have overseen changes to case load management including the introduction of the *Civil Procedure Act 2005*. You reminded all of the importance of litigation being just, quick and cheap and the importance of the comma. The results have been impressive. The New South Wales Supreme Court has had a civil clearance rate of more than 100% every year for the past five years. The Court has the second lowest costs per matter in the country and it leads the nation in resolving commercial disputes.

49 In the field of criminal law you were the driving force, in fact the creator of guideline judgments on sentencing. The first of which was *The Queen v Jurisic* on dangerous driving. This led to greater consistency in sentencing. Your judgments on negligence law, revenue law and

constitutional issues were rarely challenged and often adopted by other courts.

50 Though you ran a busy and productive Court you also ran a happy Court. Morale was high, due in part to initiative such as the Annual Supreme Court Conference, concerts produced by Justice George Palmer with young opera singers and the much lauded Bar choir led by Justice Peter Hidden and other bonding sessions. And your reputation as a scholar with a penchant for challenging conventional wisdoms grew. Your McPherson Lecture series on statutory interpretation and human rights received deserved acclaim. Your lectures on Thomas a Becket and Henry II to the St Thomas More Society became a book that was lauded as fascinating and precise.

51 In your Australia Day lecture of 2008 you suggested the overthrow of Governor William Bligh in 1808 was not a result of too little rum but the first attempts at town planning in Sydney. So your Honour has helpfully pointed to us the origins of the city's preoccupation with real estate. There have been many other times when you have stirred public debate. It might have been about matters in society or the obligations of the legal profession or reminder about the importance of judicial independence and the rule of law. You have undoubtedly been a leader who has justified the public's confidence in the judiciary.

52 Your Honour still had seven years before you would have been forced to retire. But one suspects this State's loss will be the nation's gain. After all you are still a young man. Last year you were appointed as Chair of the National Library Council, then there are your preferred pastimes as listed in Who's Who of tennis, swimming and recumbency. There might also be many more chances to show off your liking and knowledge of Buddy Holly tunes.

53 Chief Justice we are all in your debt and it is a large debt, yet I am sure that debt will be repaid with interest as future generations acknowledge

your contribution for the political, legal, cultural and intellectual life of New South Wales and Australia. All that is left is to wish you, your wife Alice, and your family well for the future. The Court pleases.

54 **MR STUART WESTGARTH, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. The Court has conferred on the solicitors of this State a signal honour by inviting me as President of the Law Society to speak on behalf of the 24,000 solicitors who practice in New South Wales. I acknowledge that this is an historic occasion and not one that I imagined would occur when I became President in January. For your Honour has retired voluntarily at the peak of your powers, years before the statutory age of senility.

55 I am of course honoured to be afforded this opportunity to pay tribute to your Honour for your work, your service to the people of New South Wales, to the judiciary and the legal profession generally. As only the sixteenth Chief Justice in 187 years, an occasion like this rarely occurs.

56 The position of Chief Justice is one of the oldest and most important positions in our State. It dates back to 1823 with the signing of the third “Charter of Justice” and the appointment of the first Chief Justice, Sir Francis Forbes. Your Honour came to the position with the challenge of having to fill some very large shoes, those of your predecessor the Honourable Murray Gleeson AC, former Chief Justice of the High Court of Australia. But filled them you did. On the occasion of your swearing in May 1998 your Honour said of your immediate predecessor, Chief Justice Gleeson, “No successor could wish for a better inheritance. The Court is in good shape”. May I say that all who have familiarity with this Court would agree that the Court has continued under your Honour’s leadership to be in good shape.

57 As the State’s chief judicial officer, your Honour has proved to be an outstanding servant of the fair administration of justice, a defender of the

profession and the judiciary and steadfastly committed to the maintenance and enhancement of our system of justice. The hallmarks of your Honour's stewardship of the Court's timeliness, efficiency, good management, encouragement of alternative dispute resolution processes and most critically reasoned judgments of the highest order. From the outset your Honour has actively sought to engage the solicitor arm of the profession. This has occurred in countless occasions of consultation with Law Society representatives and by your annual addresses at the Law Society's opening of Law Term Dinners.

- 58 One of your Honour's early tasks was to consult with the representatives of the Law Society as well as the Bar with the aim of ensuring clarity in terms of the duties of the parties to the courts, the objective being to ensure greater cooperation, efficiency and expeditious resolution of cases. However your Honour was always been cognisant of the fact that "justice takes time", to use your Honour's words, and a focus on processing cases must never be at the expense of compromising the quality of justice. From your appointment in 1998 your Honour worked on reducing the Court backlog. By close of law term 2000 you were able to report that in every division of the court virtually every case ready for hearing had been given a date for hearing and your Honour said that for the foreseeable future there will be no holding list in any division of the Court.
- 59 Changes to court rules have been duly backed up by the issuance and revised detail practice notes to "facilitate the just, quick and cheap resolution of the real issues". The *Civil Procedure Act* of 2005 and the Uniform Civil Procedure Rules brought uniformity to practice across the Supreme, District and Local Courts and assisted in the effective management of case loads.
- 60 In 2008 on the occasion of your Honour's tenth anniversary as Chief Justice, the Law Society was honoured to launch a book edited by lawyer, Tim Castle, comprising a collection of your Honour's speeches over the preceding ten years. Mr Castle noted that underpinning all of

your Honour's public speeches was the fundamental message of the continuity of institutions in an era of rapid and revolutionary change. Last year the Law Society was equally proud to publish your Honour's Opening of Law Term speeches from 1999 to 2010. As the former Chief Justice of the High Court of Australia, Sir Anthony Mason, AC KBE wrote in the Foreword, the speeches reinforce the impression of your Honour, "as a commentator who has a clear appreciation of the place of the legal system in society" and "who has always been careful to take account of the interests of all of the stakeholders in the system while at the same time encouraging International linkages".

- 61 Your Honour's most recent Law Term address focussed on harnessing the strength of our legal system and quality of our lawyers to proactively and strategically expand our global engagement and to build our International reputation. Reflecting the need to look beyond our own borders your Honour has put in place, by way of Memoranda of Understanding, with both New York and Singapore, mechanisms to resolve cross border legal issues and determine questions of foreign law.
- 62 Of significant importance are your Honour's views on the national reform of the legal profession, and in particular the paramount need to ensure the "independence" of the justice system and their judiciary. Your Honour steadfastly defended the profession from regulation by a National Legal Services Board where its members would be appointed by the executive arm of government. In respect of the National Legal Reform Project, your Honour has said "my principal concern in this matter has been the institutional integrity of the legal profession. Legal practice is a profession. It is not simply the provision of services to consumers. The consumer/service provider model of economic activity has become a feral metaphor". Your Honour's views on the national legal reform project coincided with those of the Law Society and our stance was strengthened by knowing that the Chief Justice held the views just quoted. For that alone we express our gratitude.

- 63 Your Honour has ruled without fear or favour and displayed great leadership in ensuring that the court system has run well. In fact such is the quality of the bench and the administration of the Court that New South Wales is regarded by some as perhaps the vortex of litigation and where people prefer to commence proceedings. By all reports the Court is a very happy and collegial court. This situation has come about through your Honour's leadership and genuine interest in your judicial colleagues. Your Honour has described this collegial atmosphere as "the glue that makes this Court function more than anything else".
- 64 Notably under your Honour's stewardship the number of women and the number of solicitors elevated to the bench have also increased. With Justice Julie Ward's appointment in 2008 (27/09/08) we hit the jackpot. One of the appointments during your Honour's stewardship went on to the High Court, the Honourable Justice Bell. On her final day on the Supreme Court Bench, Justice Bell paid tribute to your Honour. Her Honour said "I must thank the Chief Justice for the privilege of working with him. As a dilettante medievalist it is a pleasure to have been in his outer orbit. That he can write the judgments of the quality that he writes, while completing a scholarly history of Becket among his many intellectual pursuits, can dazzle lesser mortals. His move into the 17th century with Lord Ellesmere and Coke is a lapse into modernity with which I have come to terms".
- 65 It is well known that your Honour has had a keen interest in Thomas Beckett and Henry II and indeed you have described it as an "obsession" akin to "a secret drinking problem". It was an obsession that attracted your Honour because of the then institutional conflicts and their possible relevance to contemporary times. That is aside from your constant need to challenge yourself, as your Honour explained to students at the University of New South Wales in 2005. Your Honour said, "My technique for adapting to the pressures of information overload was to choose one area of intellectual inquiry about which I could read in-depth, preferably an area not directly connected to my daily activities".

- 66 In the 1960s when your Honour was a student at Sydney University, rumour has it that you dared to argue with your lecturer over issues relating to company law and subsequently incurred his wrath. In later years that lecturer reputedly said he did not recall the incident but it was possibly true. He added that he was more surprised that your Honour would have even been at a lecture in the first place. Perhaps this was an unstated reference to your Honour's activities at the time, as secretary of student action for Aborigines and the well documented Freedom Rides through rural New South Wales. The lecturer was of course the former Chief Justice and your predecessor, the Honourable Murray Gleeson. Any perceived or indeed validated failure to attend lectures obviously did not hold your Honour back. In 1971 you graduated with first class honours and the University Medal.
- 67 The late Charlie Perkins and fellow activist Freedom Rider, when interviewed for the Australian biography projects said "Jimmy was a brilliant mind, a brilliant intellect". Not long after your Honour was appointed as Chief Justice, your Honour addressed students at your old stomping ground, Sydney Boys High and remarked that what you did at nineteen years of age in championing Aboriginal rights, "may well be the most important thing I have ever done".
- 68 The enthusiasm with which you Honour embraces every aspect of your life and your voracious appetite for learning underpins a deep and abiding commitment to social justice. So too is your Honour's strong belief in the virtue of the rule of law, the importance of traditions and the continuity of institutions in our ever-changing times.
- 69 Nineteenth century politician Henry Ward Beecher once said that "Laws and institutions, like clocks, must occasionally be cleaned, wound up, and set to true time". This, your Honour has done. You leave the court in a strong and healthy condition; a Court that has witnessed great efficiencies and improvements.

- 70 One of your Honour's contemporary interests is the affairs of the mighty Rabbitohs who in the year of their centenary were awarded the National Trust's first ever "community icon" title. If the National Trust were to consider conferring such a title upon a member of the legal profession your Honour would be a worthy candidate.
- 71 The Law Society and the solicitors wish your Honour well in your future endeavours and reminiscent of the Freedom Fighters' farewell song to the Aboriginal members of Walgett community in February 1965, I conclude with the following lyrics from the song written by Woody Guthrie "So long, it's been good to know you". As the Court pleases.
- 72 **SPIGELMAN CJ:** Your Excellency, your Honours, Attorney, fellow lawyers, ladies and gentlemen, you do me and the Court great honour by your attendance. Thank you for the observations of the three speakers. I am reminded of the comment by one person that "to praise a man for qualities he does not possess is to insult him with absolute impunity".
- 73 The welcome to country which this ceremony began, has a particular significance for me. As each of the speakers has mentioned, association with the cause of indigenous Australians was an important part of my personal journey. However the welcome has an additional symbolic significance. Just as the elders of the Gadigal clan of the Eora people have been the custodians of the land on which we meet, the sixteen Chief Justices of New South Wales including myself, have been the custodians of the institutional traditions of the rule of law since this Court was established almost exactly 187 years ago.
- 74 Most people in this audience will have heard me speak, probably more than once, of the significance for our society of the longevity of our fundamental institutions of governance. It was a theme of my first address upon my swearing in as Chief Justice. It has featured as a basic theme in the address I have given at each of the 400 ceremonies I've conducted for the admission of legal practitioners during the course of which just over

23,000 lawyers were admitted, half of whom you will be pleased to know do not have practising certificates. The point might by now seem belaboured but it is a point worth belabouring.

- 75 Many of you would have been present on the occasion of the ceremony to mark the Court's 175th Anniversary in May 1999. I addressed on this theme as did the then Premier Bob Carr. At my request the two Presidents of the professional associations stood aside and permitted the former Prime Minister, E G Whitlam QC to speak on behalf of the Bar and the then serving Prime Minister, John Howard to speak on behalf of the solicitors. A feature of that occasion was a welcome to country.
- 76 I believe that that was the first time at any official ceremony in this nation that a welcome to country had been delivered. The then presiding officers of the two Houses in the New South Wales Parliament informed me that it was that occasion which gave them the mantle of respectability to introduce a welcome to country in some Parliamentary ceremonies.
- 77 Only the speakers on that day and the then President of the Court of Appeal were aware of my intention in this respect. You could have heard, to use still serviceable cliché, a pin dropped during the course of that welcome. Most of the people in the room had never heard one and had no idea what was happening. The position is different now. A welcome to country has become a familiar mode of commencing many public events. Contrary to the practice of some I have not adopted it as universally applicable but best reserved for occasions such as this where it has for the reasons I have mentioned, particular relevance.
- 78 I wish to make it clear early in this address that I have not come here to get anything off my chest. Having once before in my career made the transition from rooster to feather duster, I do not intend to emphasise my imminent powerlessness by exploiting the presence of an audience of this size. In my address on the occasion of my swearing in as Chief Justice, I indicated that I looked forward to the intellectually creative process of

writing judgments because I regarded the judgments of this Court as part of a broader public discourse by which our society and polity affirms its core values, applies them and adapts them to changing circumstances. My expectations in that regard were fulfilled. The process was intellectually satisfying in the way I anticipated.

- 79 What I did not then anticipate was that I would also develop a substantial body of written work in the form of speeches to which reference has been made. During the term of my office I delivered 180 speeches before this one, that were of sufficient substance to justify a recording on the Court's website. In this respect also I sought to make a contribution of the public discourse on a wide range of matters, not limited to the law but extending particularly to history which, for a serving judge is a comparatively safe haven.
- 80 Expressing my views in the form of public addresses had two distinct advantages. First I choose the topic rather than have the subject matter determined by the issues about which litigants choose to appeal. Secondly, the High Court cannot do much damage to a speech.
- 81 In my speeches I developed a number of themes. One theme was the significance for the legal profession and the nation of global engagement by the Australian profession, particularly engagement with our region, culminating in my address that has been mentioned to the Law Society's Annual Opening of Law Term Dinner this year.
- 82 The skills that our lawyers and judges, together with their reputation for professionalism, competence and impartiality is a significant national asset. It is what the economist call a sphere of comparative advantage.
- 83 The initiatives I undertook in this respect included reinforcing our traditional ties with the judiciary of England with the result that English senior judges have attended each annual Supreme Court Judges Conference during my term of office. In the Asian region I negotiated, with the support of Chief

Justice Gleeson, with three successive Chief Justices of India leading to the first now regular exchange between the judiciaries of our two nations. I organised the first judicial exchange with the Supreme Court of Japan. I initiated the Asian/Pacific Judicial Seminar on Commercial Litigation to which reference has been made, the third such seminar having been held in Sydney two months ago, jointly organised by this Court, the High Court of Hong Kong and the Supreme Court of Singapore.

84 Perhaps the relationship I have worked hardest to establish is the exchange with the judiciary of the People's Republic of China. I have led several delegations to China and judges of the Court have participated in a judicial training at the National Judges College of China, virtually every year for the last seven years.

85 There was always a prospect that this relationship was personal rather than institutional. I am very pleased therefore that after my most recent visit to Beijing I was able to negotiate a number of Memoranda of Understanding on Judicial Exchange which will ensure that this relationship continues. It is necessary in a nation as large as China to select particular regions and with the support of the Supreme People's Court of Beijing, I approached three provinces and the National Judges College. In the last week I have signed Memoranda of Understanding with the Presidents of the High Courts of Hubei Province, Guangdong Province and Shanghai and anticipate that a Memorandum with the National Judges College will be finalised soon.

86 From the point of view of our nation, this is one of our most important relationships. The significance of developing our understanding of China, including its culture and institutions cannot be underestimated.

87 An occasion such as this gives me a public opportunity to thank all of those many people with whom I have engaged in the course of serving on this Court. My first and most significant recognition is to all of the judges including those who have retired. Without exception these are men and

women of considerable capacity and dedication, many of whom I have had the closest of interchanges of a jurisprudential character while sitting on the Court of Appeal and the Court of Criminal Appeal. All of those judges made substantial contributions to my own understanding of the law during the course of that interaction.

- 88 I have interacted with every member of the Court when organising the affairs of the Court, whether it be in a context of legislative proposals, drafting rules and practice notes, developing case management, attending conferences, seminars and involvement in the full range of committees through which the Court maintains and improves its capacity to serve the people of the State. As a collective and collegial body of men and women, I could not have asked for a richer or more satisfactory experience.
- 89 It is invidious to single particular people, however I should acknowledge the particular role of the heads of the three Divisions of the Court with whom I have served. Keith Mason and James Allsop as Presidents of the Court of Appeal. James Wood and Peter McClellan as Chief Judges at Common Law: David Hodgson, Peter Young and Paddy Bergin as Chief Judges of the Equity Division. Their contribution to the jurisprudence of the Court is of the highest order. However I more than others am aware of the contribution that they have made to ensure the effective and efficient operation of the Court in the day-to-day administration of their respective Divisions, particularly the performance of the pastoral functions that inevitably arise with respect to individual judges. They bear, and have borne the principal burden of much of the task of running an effective and efficient Court and the success of the Court during my term of office is in large measure due to their dedication and competence.
- 90 The Court operates through a structure of committees. It is not possible to list on this occasion all of the names of those who chaired these committees let alone all who served on them. Critical areas of the Court's activities – education, rules, information technology, the building – are dealt with either completely or at first by these committees.

- 91 I also express my appreciation to the staff of the library and to the registrars and staff of the Court, led for my most of my term of office with great skill by Megan Greenwood, now a magistrate. Their dedication, sometimes under great stress, has been of the highest order.
- 92 In consultations about legal policy and appointments to the Court, I have had the benefit of a close relationship with four Attorneys General who held office during my period. The late Jeff Shaw whose personal tragedy affected all members of the Court, was a fine lawyer and a fine Attorney. It was a pleasure to deal with him. Similarly with both Bob Debus and John Hatzistergos this close relationship continued and albeit briefly has also been manifest in my relationship with Greg Smith.
- 93 Of particular significance has been the consultation that has always occurred between each of the four Attorneys and myself on the issue of appointments to the bench. There was never an occasion on which I had any doubt that each of these Attorneys was determined to ensure that the appointment was of a person of whom the Court would be proud, and so it has proved to be.
- 94 Perhaps the most significant change during my term of office in this respect is the progress made to remedy the gender imbalance on the Court. When I was appointed there were two women judges and one woman master. There are now ten women judges, one an associate judge and we allowed one woman to go to the High Court.
- 95 I had fruitful dealings with a number of public servants. I cannot name them all. However Laurie Glanfield has been head of the Attorney General's Department throughout my thirteen years of office. He was first appointed head of a government department under the Greiner government and his survival skills are comparable to those of Talleyrand. My dealings with him were always positive and purposeful. He also

performed a very useful function for me. I could blame him for everything I did not want to do.

- 96 I also wish to acknowledge the contribution of those with whom I have served on the Judicial Commission of New South Wales, an organisation which makes an outstanding and Internationally recognised contribution to judicial education, to criminal justice particularly sentencing statistics and by the handling of complaints against judges. It is the forum in which I have met and worked closely with each of the heads of jurisdiction of the other courts in New South Wales, together with the non-judicial representatives on the Commission. We have been served exceptionally well by the dedicated staff of the Commission, led ably by its Chief Executive, Ernie Schmatt.
- 97 Throughout my term of office, I have had a first class staff. My first associate Sue Pearson who began in the Chief Justice's office during the term of Sir John Kerr served throughout the Street and Gleeson courts and for about half of my term. Her institution knowledge was invaluable. Throughout she served with competence, tact and discretion. I very much regret that she left on somewhat unhappy terms.
- 98 Her successor, Susie Packham has performed her duties with the highest level of competence and wisdom and consummate organisational skills. She is a woman with a wide range of interests with whom it has been a pleasure to work.
- 99 Christine Leondis has served in the Chief Justice's office since 1985. Her accumulated knowledge of legal terminology and the personalities of the law has ensured that she carried out her responsibilities with accuracy and speed. My driver Sean Doherty has been as delightful as a Tigers supporter could be, he has saved me enormous amounts of time which I could devote to my principal functions.

100 I have had the intellectual joy of having as staff members an array of legal talent almost all of whom were with me for two years during which they served principally as researchers for my judgments and speeches. There are too many to name, they were all intelligent young men and women, each of considerable accomplishment both in their studies and in extracurricular activities. I have thrived on the stimulus of interaction with the younger generation in a daily exchange of views. Collectively their contribution to my judgments and speeches has been of the highest order. I have watched with pride as their careers have developed since they left me and I look forward to their future success.

101 In conclusion I want to publicly express my debt to my wife Alice. Our marriage and family life has been, and remains the most important bond of my life. To some degree my role as Chief Justice and Lieutenant Governor has expanded our horizons. In other respects it has narrowed them. We have enjoyed many functions and events together, some not quite as fascinating as others. You attended all with grace and charm intact. I have always admired and received inspiration from your dedication and competence as a companion, as a mother, as a psychologist, as a writer and in the wide range of public activities to which you have contributed. Your work at the Benevolent Society and on the Boards of the Bundanoon Trust, the Australian Institute of Music, the National Institute of Dramatic Art, UN High Commission for Refugees, University of New South Wales Faculty of Architecture and Sculpture by the Sea, all these have ensured that I remained engaged in the world beyond the confines of the law. I have relied on your counsel on numerous occasions, particularly in any context involving a human dimension where your wisdom and instinct is unsurpassed.

102 You are my life partner and the prospect of spending time with you is my sole consolation about leaving this Court and the people I have come to know so well and whom I will miss.

103 For a final time I can now say:

“The Court will now adjourn.”
