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[Home](#) ▶ [the Court](#) ▶ [Judges](#)

## Speeches

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#### **Federal Court of Australia Ceremonial Sitting of the Full Court**

**to Farewell the Honourable Justice Tamberlin**

**THE HONOURABLE MICHAEL BLACK AC, CHIEF JUSTICE**

**THE HONOURABLE JUSTICE MOORE**

**THE HONOURABLE JUSTICE LINDGREN**

**THE HONOURABLE JUSTICE TAMBERLIN**

**THE HONOURABLE JUSTICE EMMETT**

**THE HONOURABLE JUSTICE DOWNES AM**

**THE HONOURABLE JUSTICE JACOBSON**

**THE HONOURABLE JUSTICE EDMONDS**

**THE HONOURABLE JUSTICE GRAHAM**

**THE HONOURABLE JUSTICE RARES**

**THE HONOURABLE JUSTICE COWDROY OAM**

**THE HONOURABLE JUSTICE BUCHANAN**

**THE HONOURABLE JUSTICE FLICK**

**THE HONOURABLE JUSTICE PERRAM**

**THE HONOURABLE JUSTICE JAGOT**

**THE HONOURABLE JUSTICE FOSTER**

#### **SYDNEY**

**9.31 AM, FRIDAY, 27 MARCH 2009**

BLACK CJ: The court is especially honoured today by the presence at this ceremonial sitting of many distinguished people, but I should mention, in particular, Justices Gummow and Bell of the High Court of Australia, former Chief Justice of the High Court Sir Gerard Brennan, the Honourable Michael Kirby, the Chief Justice of New South Wales, the President of the Court of Appeal, the judges of the Court of Appeal, and the judges of the Supreme Court, retired judges of this court, and other courts, and many others.

Before I invite the Solicitor-General to address the court, I want to address publicly the court's gratitude to Justice Tamberlin for his many and large contributions to the court and also, of course, to its jurisprudence. Others will, no doubt, speak of his many achievements as a trial and as an appellate judge, but I do

want to highlight two of those, and I also want to place on the public record some aspects of his work that may not be so widely known.

Justice Tamberlin has served the Federal Court for a long time. He was sworn in in former court 21A nearly 15 years ago, in August 1994. Of the many judges who sat with us on the bench on that occasion here in Sydney, only Justices Moore and Lindgren, and, I should add, the presiding judge have served for longer. Justice Tamberlin joined the court at an important time in its development, and at an important and difficult time in the development of one area of its speciality, namely its admiralty and maritime jurisdiction. He came to us with a quite startlingly brilliant academic record from Sydney University and the Harvard Law School, a very impressive record in practice and a large reputation at the bar.

Although highly respected in many areas, he was then not known as an admiralty and maritime lawyer, but that was one of the roles he was asked to assume. He approached that role with the acute intellect, energy and, might I add, charm that has characterised his work ever since. Moreover, he was asked to assume it on the retirement of the Federal Court's first great maritime judge in Sydney, Justice Ian Sheppard. It was a time of financial turmoil in the maritime world, such that there were many arrests and many new and challenging questions about the powers and duties of our Admiralty Marshal.

Justice Tamberlin quickly assumed a very important role in the disposition of that work in Sydney, and, indeed, I might say, elsewhere and soon became a master of the then new area of the court's jurisdiction. The cases had to be decided quickly and correctly and many of them broke new ground. I have counted - I won't say how many - decisions, but there are many, many reported decisions in which Justice Tamberlin developed that jurisprudence, as I said, often in new areas. The other thing that is noteworthy is that the proceedings in these cases were characteristically conducted not only with great expedition but also with great courtesy.

Justice Tamberlin has contributed to the jurisprudence of the court in many other fields, but I should mention particularly in the diverse fields that make up intellectual property. Many of those decisions are of lasting importance. Well, those matters are perhaps substantially on the public record, but there are many contributions that are not. These include his work in the administration of the court, and particularly in the field of information technology.

He played a pioneering role in the development of our eCourt forum and more recently the eCourt room. Interestingly, that foundational work was put to the test when he undertook 13 overlapping native title claims in a very remote part of Queensland. The success with which he used technology to provide access to widely dispersed stations and communities was noted internationally as an example of the way in which the imaginative use of technology can improve access to justice. I

mention these matters by way of illustration, but not, of course, by way of any comprehensive review of our colleague's many achievements.

Finally, the collegiate life of the court. This is important to any court, but it is especially important in a widely dispersed national court. We are all, all of us, enormously grateful to Justice Tamberlin for his contribution to our collegiate life, for his friendship, good humour and engaging personality.

One other matter that I should mention, and that is Justice Tamberlin's contribution to the work of the Australian judiciary and our work internationally. He has a great facility for, and delight in, European languages. His fluency in several of them has caused consternation from time to time to interpreters in migration cases. His fluency in the French language has been of particular value to the court since it has greatly assisted our engagement with the international association of supreme administration jurisdictions which is, in turn, closely associated with the Conseil d'Etat in Paris. It has provided us with an important link with the civil law system generally, and with the French system at its highest level. Justice Tamberlin, I am pleased to be able to tell you, will be the rapporteur for the tenth International Congress of that association to be held in Sydney early next year.

He has also made valuable contributions to our ongoing contacts with courts in our region, notably those in Indonesia with whom we have a special relationship, Thailand and Vietnam. On behalf of all Justice Tamberlin's judicial colleagues, I thank him, I thank him for the very many important contributions that he has made to the life and work our court and for having done so with such distinction over so many years. On behalf of all the judges of the court I also extend to him and to his family our very best wishes for the future.

Mr Solicitor for the Commonwealth, do you move?

MR S. GAGELER SC: If the court please. I acknowledge the traditional owners of the land on which we meet and honour their Elders past and present. In the absence of the Attorney-General, the pleasure and the privilege fall to me of speaking on behalf of the Australian government at this ceremonial sitting which marks the retirement of your Honour Justice Tamberlin as a Judge of the Federal Court. Although belied by your Honours youthful appearance it is the fact that your Honour is about to attain an age of constitutional significance and with it will come to an end over 14 years of distinguished service to the Federal Court and to the nation.

Your Honour was born on 30 March 1939 in Nottingham, England, and came to Australia a few years later as a boy. Here your Honour was educated at Marist Brothers, Parramatta and subsequently at the University of Sydney. Your Honour graduated from the University of Sydney first in 1958 with a Bachelor of Arts and then in 1962 with a Bachelor of Laws with first class honours. A very high achiever in that 1962 class, in a

class of very high achievers which included two members of the High Court who themselves have recently retired. Shortly afterwards, your Honour travelled to the United States where you graduated from Harvard Law School in 1963 with a Master of Laws and where you went on to work for a time as legal counsel with IBM in New York City.

Upon returning to Australia, your Honour spent two years working as a solicitor with Allen Allen & Hemsley, and your Honour was called to the bar in 1967, becoming Senior Counsel after what was then the appropriate period in 1981. As a barrister, your Honour practised widely in town planning law, commercial law, administrative law and equity. But your Honour was not confined to those areas. In 1994 your Honour was appointed counsel assisting in the inquiry into the Tasmanian Constitution.

It was also then in 1994, as the Chief Justice has mentioned, on 29 August that your Honour was appointed as a judge of this court. And, again, as the Chief Justice has singled out for attention, your Honour very quickly developed as a judge of the court an affinity for admiralty work and came very quickly to hold the position of Convenor of the Federal Court Admiralty Panel in Sydney, a position your Honour held until 2003 before handing on the baton, or perhaps more properly the mace.

It was in the exercise of the court's admiralty jurisdiction that your Honour presided over a series of notable cases in the late 1990s arising from the break-up of the Black Sea Shipping Company in the wake of the dissolution of the Soviet Union. Many of those cases were of considerable complexity, but one case your Honour did not find particularly difficulty to decide, and which in fact your Honour may well have forgotten entirely, was the colourfully named *Lloyd Werft Bremerhaven v the owners of the ship Zoya K as surrogate for the ship Kazakhstan*.

Your Honour was confronted in that case with a submission, seriously and elaborately advanced, that a decree of the Ukrainian Cabinet, which transferred ownership of the entire Black Sea shipping fleet to the Ukrainian Shipping Company, was invalid, and was invalid on the ground that it violated section 37A of the New South Wales Conveyancing Act. Your Honour rejected the submission in a fully reasoned judgment, pointing out that there were, and I am quoting your Honour, "several insurmountable obstacles in its path."

The complex cases with which your Honour dealt were not confined to admiralty, nor were they confined to intellectual property. In the usually short, sharp and fact-free field of administrative law, your Honour presided over a trial that went for some six weeks which involved quite a number of renowned international economic witnesses and a bevy of Senior Counsel. It involved a sophisticated challenge by two international credit card companies to decisions made by the Reserve Bank of Australia determining interchange fees for credit card transactions.

Your Honour's judgment, which occupies a very large part of volume 131 of the Federal Court Reports, is a model of clarity, not only in its explanation of the highly technical subject matter of the case, but in its exposition of legal principle and application of legal principle.

Your Honour's time as a judge has not been limited to sitting on the Federal Court. Your Honour has, since 2003, been a judge of the Supreme Court of the Australian Capital Territory, and since 2005 a presidential member of the Administrative Appeals Tribunal.

Your Honour has also engaged in teaching extensively to judges of national courts in Asia, including Thailand, Vietnam, China, Indonesia and the Philippines. Your Honour's hard work and dedication as a judge have always been accompanied by a conscientious, patient and exceedingly gracious demeanour. Your Honour has the important judicial quality of unflappableness which I can assure your Honour on the authority of the Macquarie Dictionary, one, is a real word, and, two, in marked contrast to "unfledgedness", which is the very next word in the Macquarie Dictionary, has nothing to do with a lack of feathers.

Along with your Honour's professional qualities and achievements, you are very much a family man. Your Honour has found time to dedicate to your wife, Eliane, and your three daughters, as well as your grandchildren. Your Honour has a profound love of travel which you enjoy sharing with your family. Your Honour has another related love, which is the love of languages which has been adverted to by the Chief Justice. Your Honour speaks fluent French. Your Honour speaks and reads Spanish and Italian and I am informed that your Honour also reads German.

Although retirement would usually provide ample time for one to pursue passions such as travel and languages, your Honour's retirement is only the end of this chapter of your Honour's career. Next week your Honour becomes a deputy president of the Administrative Appeals Tribunal, a position which will allow the Australian people to continue to benefit from the qualities that have made the last decade and a half a time when your Honour has become very much a well-liked and highly respected judge.

Your Honour, on behalf of the Australian government and the Australian people, I extend my sincere best wishes for the future. If the court pleases.

BLACK CJ: Thank you, Mr Solicitor. Mr Catanzariti, President of the Law Society and representing also the Law Council of Australia.

MR J. CATANZARITI: May it please the court. Your Honour, I am delighted to note that a seat has been provided for you on the occasion of this special ceremonial sitting. It is an issue your Honour will have no need for concern in the future, at least in

this court, where on several occasions an associate has realised too late that they have omitted to check that a chair has been provided. Once before a Full Court, your Honour was heard to remark that your associate had seen fit not to provide you with a chair, something your Honour took in your stride. I believe the associate was rather more traumatised.

Your Honour, I speak today on behalf of the solicitors of New South Wales and welcome the opportunity to add my valedictory remarks on this auspicious occasion. I also wish to convey the personal congratulations and best wishes of the President of the Law Council of Australia, John Corcoran, who regrets he is unable to be here today.

The year 1939 was a tremendous year in history. Germany's invasion of Poland heralded the start of World War II, we entered the computer age with the founding of Hewlett Packard and enduring movies such as the Wizard of Oz, Goodbye Mr Chips and Gone with the Wind hit the big screen. It was also a significant year for Ellen and John Tamberlin of Nottingham with the birth of their only child, son Brian. But it wasn't long before the lure of Australia beckoned, a land of opportunity, abundance and clement weather, a land your father had embraced in the 1920s when he explored the country on a motorbike. I make reference to those early years as a tribute to your late parents and the sacrifices they made to create a better life in Australia and to provide you with a good education, opportunities that saw your Honour complete Marist Brothers High School, Parramatta in 1955 and subsequently enrol in Arts and Law at the University of Sydney. The rest is history. But rest assured, your Honour, you have certainly done them proud.

No doubt memories remain of the lengthy sea journey made in 1947 from Southampton to Perth and then Sydney, a city in which you have continued to reside, apart from your Harvard Law School studies and a short stint with IBM in New York in the early sixties. It was long enough to meet your wife, Eliane, follow her to Geneva and marry her in 1964. In the words of one of your movie heroes, John Wayne, in his breakthrough movie as Ringo Kid in Stagecoach, "There are some things a man just can't run away from."

Those lines also come to mind in relation to your Honour's role in the delivery of your youngest of three daughters, Paola, in the ambulance en route to hospital. Your second born, Ludmilla, has been the only daughter to follow her father into the legal world. Bettina chose nursing and Paola teaching. Your Honour is now a grandfather to three grandchildren, Isabella, Xavier and Yasmin.

Shortly after your return from those heady Harvard days your Honour taught Constitutional law at Sydney University Law School where you successfully imparted your knowledge and experience to many impressionable young minds. It was a far cry from Harvard Law School, which was shocking according to your Honour's article in the 1968 edition of Blackacre, the Sydney University's Law School publication; it was shocking in terms of the high standard of the average student, the Socratic

active question, technique of teaching as opposed to lecturing, and the setting itself. Your Honour recalled those years with pride, gratitude and affection.

One of your Honour's early mentors when you came to the bar in 1967 was The Honourable Trevor Morling QC. A junior barrister, his Honour nonetheless quickly formed a high opinion of your abilities, amusing and quick witted his Honour recalled. Perhaps the latter had something to do with the fact that you managed to be sworn into this court on the very day his Honour has planned for you to be addressing Tasmanian school children on Constitutional law, a duty his Honour willingly assumed by default.

His Honour also described your Honour as cultivated and of even temperament. These sentiments were echoed your associate of 14 years, Judy Price, who said "Brian is lovely to work for. In all the years I have known him, he has been very calm and patient and never as much as even frowned at me. Everyone who knows him is very fond of him." I think that fond regard was very much in evidence at your Honour's farewell dinner last week where the anecdotes, accolades and reminiscences freely flowed.

Federal Court colleague, The Honourable Justice Arthur Emmett, does recall one instance when your Honour managed to appear, at least mildly, flustered when, in arriving late to the court and deciding to save time by taking the stairs, you discovered the door code had been changed, preventing your entry to the floor, at which juncture you hurriedly descended the stairs, back to square 1, minus those extra few minutes.

Your Honour has undoubtedly been presented with some extremely complex cases during your years on the Federal Court bench, some more challenging than others. I cite the Duff Beer case, the favoured brew of cartoon character Homer Simpson, marketed by the South Australia Brewing Company and subsequently sued by Twentieth Century Fox Film Corporation in 1995 where the company was found to have illegally tried to exploit a strong association with the Simpsons, and Duff Beer was barred from further sales. I believe there were two, or was it three, exhibits of this Duff Beer that came under your Honour's personal protection.

Another unusual case to come before your Honour involved Mr David Population Growth Zero, who failed to comprehend that he was breaking the law by selling the contraceptive pill online without prescription, trading as Crowded Planet. Moreover, he was in breach of the Trade Practices Act in claiming that the Australian Competition and Consumer Commission had given its approval to his operation. I understand, in the correspondence, he addressed your Honour with all the gravity befitting a Federal Court judge who had his future in his hands, with the likes of "Good Day, Judge," "Hi, Judge."

Another was the case of Schott Musik International GmbH v Colossal Records of Australia, or the Carmina Burana case,

where a Sydney club was being sued by the German family who had the rights to the music because it allegedly debased the original score by adapting it to dance music. It was a copyright case that Carl Orff's widow lost and the findings of which the Full Bench of the Federal Court subsequently upheld on appeal.

Your Honour is a bit of a music connoisseur, particularly enjoying the works of Gustav Mahler and Jacques Brel, and the soulful tones of the late Nina Simone and Jessye Norman. Your Honour is also known for enjoyment of chocolates, pastries, fine wine and foreign languages, being a fluent speaker of French, Italian and Spanish. The margins of your Honour's judgment notes are often dotted with poetic quotes revealing a passion for metrical composition.

Of particular influence are the collective works of the late James McCauley purporting the idea of a sense of order and dignity and the healing powers of nature discerned as a world of sense and use in the poem *At Rushie Lagoon*. The poetry of James McCauley was a gift from Sydney writer, poet and teacher, Peter Skrzynecki, with whose works you became familiar through your daughter, Bettina, in 1997. You developed a deep appreciation for Peter's writing and attended all his book launches and read the first draft of his latest novel which has just been accepted for publication. Peter said that you discovered that you both attended the same church and library in Sydney's western suburbs, both emigrated to Australia after World War II and share that strong sense of obligation to the past. For someone of Peter's background and talent, it is telling when he says, "It scares me how well read Brian is."

When your Honour takes up the role of deputy president of the Administrative Appeals Tribunal's Sydney Registry later this month, I trust you will be able to continue your laps at Cook+Phillip pool. Perhaps there will be more leisure time to also hone your new kayaking skills around the waters of Bobbin Head with son-in-law, Hamish. Your Honour will undoubtedly have some regrets as you retire from the Federal Court bench, none the least in giving up that famed loo with the telescopic view. I doubt the telescope will provide the same inspiration in your new quarters.

On behalf of the Law Society of New South Wales and the Law Council of Australia, I extend my very best wishes for the future. As the court pleases.

BLACK CJ: Thank you, Mr Catanzariti. Ms Katzmann, do you move?

MS A. KATZMANN SC: May it please the court. "Les Tamberlins" were a noble family of Norman French origin who, as Mr Catanzariti has observed, had every reason to be proud of their favourite son Brian, or Bertrand as he was christened, for his impressive achievements in their adopted country in the antipodes. It is my privilege this morning to speak on behalf of the Australian and New South Wales Bar Associations at your Honour's passing out parade, although it is sad to see you go.



Your Honour is a man of great intellect, but, unlike some others in public life, you do not trumpet it. You are a quiet achiever. You are devoid of pomposity. You do not affect an air of self-importance. You are unfailingly polite and charming, without any of the insincerity that sometimes goes with the territory. The lawyer who underestimated your Honour did so at his peril. I use the male pronoun deliberately.

On the bench, your Honour's judgments are marked by clear and precise language and an incisive appreciation of the law. At the bar, quietly but methodically, you took your opponent's witnesses apart. Your Honour's legal career is a long and distinguished one. At the bar you read with Denis Needham who went on to lead the bar before joining the bench of the Supreme Court. After a brief sojourn on the eighth floor of Wentworth Chambers, you moved to the tenth floor of Selbourne, the nursery for many fine judges, where you remained until the time of your appointment to this court.

Your Honour developed a thriving practice, principally in what was then the Local Government Appeals Tribunal, but also in equity, commercial and administrative law. As we have already heard, one of the first to spot your talents was Trevor Morling QC who saw you as the junior of choice to assist in a number of inquiries, most notably the 1994 Royal Commission into the size and constitution of the Tasmanian Parliament.

In your spare time your Honour served for four years on the Bar Council during which you did your fair share of committee work. You enjoy the highest respect of your peers, and as is apparent from Mr Catanzariti's address, from the legal profession as a whole.

Your Honour has a great intellectual curiosity that explains the array of interests to which the Chief Justice, Mr Gageler and Mr Catanzariti have already referred. You devour information. It is the combination of your powerful intellect, your intellectual curiosity and your capacity for hard work that explains why, with no background in admiralty law, you quickly took command of the maritime list, easily filling the large shoes left behind by Justice Sheppard on his retirement, and that was no mean feat.

But your Honour has not been all at sea. Your Honour also made an important contribution to the jurisprudence of this court in other fields, including trademark and copyright law. At times those cases attracted the attention of the fourth estate and the fertile imagination of many a sub-editor. Headlines, "Glamorous Witnesses and the Alleged Dirty Laundry of one of the World's Biggest Brands" was how the Weekend Australian reported the case of *Versace v Monte*. "Branson Loses his Virginity" screamed the headline following your Honour's decision in *Virgin Enterprises and Virgin Star Pty Ltd*, and "Eat my Shorts" was how The Sydney Morning Herald translated your Honour's finding in favour of Twentieth Century Fox and the Duff Beer case.

*Versace v Monte* excited the interest of the Australian's fashion

editor, Dominique Jackson who attended court, perhaps for the first time, in order to get a glimpse of fashion royalty. Ms Jackson mistook your Honour's customary courtesy for veneration as she reported almost breathlessly that, and I quote:

*The Versaces wowed the Federal Court Justice Brian Tamberlin, who referred to Donatella as Signora and thanked Santo at the end of his time in the witness box -*

as if courtesy were a quality reserved for the rich and famous. Still, your Honour so endeared yourself to the Versace family that they are shortly to release a new male cologne to be known as "Il Tambo".

Your Honour, the bar congratulates you on your outstanding service to the law and to the administration of justice and, for the next stage of your career, we wish you bon chance. May it please the court.

BLACK CJ: Thank you, Ms Katzmann. Justice Tamberlin.

TAMBERLIN J: Chief Justices, judges, distinguished guests and friends, I thank those at the bar table for the humour and positive spin in what they have said, and even more I appreciate their discretion in what they have not said. One always gets spin from the bar table, but this was pleasant spin today.

Discretionary reticence is a much rarer feature from the bar table at these events and I appreciate that. I notice that in welcome ceremonies speeches are deferential and lavishly praise the incoming judge. On departures, there is nothing to lose so speakers often lash out with sharper observations attuned to harsh reality, rather than indulging in cosy speculation as to the future.

But I have been lucky today. Speakers usually come armed with the benefit of a track record of judicial and personal eccentricities observed over many years, but fortunately not too many of those have emerged. The "Herald" two months ago in relation to the Virginia Bell's welcome in the High Court, contrasted the two types of ceremonies, and noted that in departure ceremonies departing judges have tended to let their hair down. For obvious reasons, I won't adopt that course.

They used to say of New York City that the banks **own** it (of course no one knows who owns it now) - the Irish **police** it and the Italians **enjoy** it. I have thoroughly enjoyed my 14 years on this bench. Fun is far too frivolous a word to use in this serious gathering, but the judicial and social interactions have been fascinating, satisfying and humanising. Throughout those years, I have never ceased to be aware of what Justice Annabelle Bennett described on her welcome as the "wow" factor which attaches to hearing cases. Over that period, on most, but not all, mornings it has been a pleasure to get up and come to court.

I am forever fascinated by the scenes which unfold in the course

of a hearing, the drama of the scene, the ambience. Courtroom confrontation generates strong emotions at times and usually the subject matter is very serious and the expressions grim, but on occasions the scene has elements of comedy. The drama comes from the interactions of counsel, solicitors and witnesses, and the comedy from the sometimes Pythonesque fumbling among documents in a desperate quest for some reasonable salvation to redeem a case which has collapsed in-chief. It is quite interesting, sitting on the bench, watching these dramas and interactions take place. It is rather like the rhythm of a Shakespearean play with its high and low crises and people coming in and out all the time.

I am not very good at being serious. During my first few weeks as a judge, I began to feel very important because people referred to my **elevation**, and senior lawyers bowed to me and honoured me and referred to me and went out in a humble way and addressed me as "your Honour", and I thought that I am a pretty important person. But this self-importance and sense of gravitas was exploded after only a couple of weeks.

A respondent was in the witness box being very, very successfully cross-examined by counsel for Microsoft on the allegations he was selling dodgy computers packed with mountains of stolen Microsoft software.

He was a rough, basic sort of character (not the usual type of litigant in this court) and he constantly referred to counsel as "mate". And every time he was asked a question, he said, "Yes, mate," "No, mate," "But, mate," and then, "I don't remember, mate." And after about half an hour I felt, having seen Sir Laurence Street in action, I should impose some semblance of gravitas on the situation. So I interrupted the questioning and said "Mr Slobowski, this is a courtroom, not a pub. It is not proper to call counsel mate. You could call him sir, or simply answer the question." Mr Slobowski looked at me, liked a stunned fish as a result of the unexpected interruption and said "Geez, I am sorry. I didn't know. Thanks, mate."

Seeking some comfort later about this deflation of my importance, I told Susan Kiefel about this and she simply said to me, "Toughen up, Brian! In Queensland, I get called Girlie." – I am sure she meant North Queensland.

I don't do **gravitas** very well, I am afraid. On a couple of occasions I haven't been able to contain myself. Reference has been made to the Homer Simpson case and Duff Beer. The allegation was misrepresentation. I had to watch for three hours in a crowded, dark courtroom every Simpson episode in which the word "Duff Beer" was shown or hinted at over five years. It was difficult at times not to laugh too loudly in the dark, despite pinching myself to the extent of bleeding. This was unsuccessful and I did burst out, but later David Catterns and Bob McFarlane, with all due solemnity, debated the many semantic implications of the word "Duff" in a wide range of unlikely contexts. McFarlane was arguing that "Duff" was an average, ordinary-day word, and didn't convey anything special, but any teenager that

you spoke to, or young person, over the age of three would tell you that "Duff" **was** Homer Simpson. There was no doubt.

At this moment, as I look around this courtroom today I see so many of those with whom my life has intersected as either classmates, friends, opponents, teachers, solicitors, counsel, mentors and acquaintances in the profession. I first began as a law student in 1958, some 50 metres from here across the road at the Law School, which is soon to move. The whole of my legal life as articulated clerk, solicitor, barrister and judge has been within a 300-metre radius of this room. So over that period we have grown to know each other in various roles over all parts of those five decades, and I am deeply appreciative of you being here today. We have seen our careers and lives developing in a myriad of different directions, with various degrees of success and tribulations, both personally and professionally.

Those decades have been for me what Anthony Powell would describe as "A Dance to the Music of Time", with characters, often extremely colourful, weaving in and out of an ongoing saga. It is said that the practice of law sharpens the mind by narrowing it. There is some truth in this observation. Most of those I know in the profession, however, have pretty broad horizons outside the law, some ranging from mountain climbing to sailing around Cape Horn, competing in marathons, and researching Roman feasts. I am there referring to Justice Emmett.

There are many positive benefits of belonging to such a small circle of friends over a long period of time in which the members have known and observed each other over a lifetime, with the attendant gossip, joys and sorrows. In all for me, life in all aspects of this profession in Sydney has been enriching, satisfying, sometimes daunting, but always stimulating.

I would just like to say a few words about the court. After only 32 years it has well earned its place in the Australian judicial structure. The court's main judgments are recorded in the 170 volumes of the Federal Court Reports since its creation. These reports are only a pale indicator of the tens of thousands of considered decisions actually made and the work of the court behind the scenes. Most of the judgments are the outcome of a lot of hard, lonely slog by judges after the battlefield of the court has been vacated by the profession and the echoes of battle have died. The judgments often embody the outcomes of intense work by members of the profession and, most importantly, they arise out of the emotions and thirst for justice of litigants who seek to have their positions vindicated.

The quality of the decisions is evident from even a cursory reading of some of these reports. The court has made an invaluable contribution to Australian law, as well as providing over those 30 years, seven justices of the High Court, two of whom have occupied the highest judicial position in the country. The court has been fortunate to attract many fine judges.

Three central contributors to every aspect of the court's life and

work were made by the much missed Brian Beaumont and John Lockhart, and also by Murray Wilcox who served with both the first and second generations of judges on this court.

Tragically some of our finest colleagues died while in office: Justices Lehane, Beaumont, Cooper, Hely, Hill and Selway. The fact that such fine lawyers accepted appointment to the court is, in itself, an enormous tribute to the court. The status and collegiality of the court had been nurtured by its two inspiring Chief Justices, both of whom have been in office over unusually long periods. I have been very privileged to have the opportunity to serve on this fine court under the present Chief Justice, together with colleagues whom I like, respect and admire.

In the debt department by far my greatest creditor in the gratitude stakes is my family on whom I have depended completely and who have sustained me over all these decades, and to my wife, Eliane, my daughters, and my grandchildren Isabella, Xavier and Yasmin, I thank and love you.

My debt to others is so great that, if I were a country, I would readily admit to being deep in recession. I have owed so much to so many for such a long time.

I was fortunate to have been on the tenth floor, Selborne, for 28 years. I learned so much from my fellow barristers and greatly value their ongoing friendship. That was a great experience which endures. Eight judges of this court have come from that small floor, including Sir Nigel Bowen, who was the first chief justice.

I was also extremely lucky to have stimulating teachers at the Law School such as Julius Stone, and to have served articles of clerkship with Rod McCloud at Freehills who was the finest type of commercial solicitor, and to have read and worked with my great friends, Trevor Morling, and Denis Needham, each of whom has been an exemplar of professional and personal excellence over so many years, both as counsel and friend.

I also learned so much from the careers and dedication to the bar of those two great veterans of the bar who are here at the bar table today, Bob Ellicott and Tom Hughes, who have given so much to the profession over the years. There have also been a vast multitude of others, and you will know who I am talking about - it is not practical to name them here - from whom I have learned so much, including Simon Sheller especially, with whom I worked closely for two years on a long and difficult case, which was settled.

I wish to acknowledge the invaluable assistance also received from fellow barristers, my four clerks, Dot Slater, Bill McCarthy, Ken Hall, Trish Hoff, who is here today, and to my ever-patient and tolerant personal assistants, Judith Price, who has worked with me for 14 years, seven months and 32 days, and Mary Nekic who has also worked with me.

I also am exceedingly grateful for my 13 associates. One of the

greatest joys of my life on this bench has been working with the brilliant young men and women associates who have helped me professionally and, to a large extent, kept me in contact with the aspirations, thinking and values of generation X, generation Y and generation Z, whatever that is. In many ways, they are far more accomplished with a richer and wider range of values and interests than our pre-boomer generation.

I noticed an article in "The Australian" this morning, referred to associates as "Judges' Little Helpers". Whether means for Santa Claus or Snow White, I am not sure, but it is a quaint little phrase.

I also thank the Registrars, Court Officers and all those in the State and Federal Registry for their friendly, warm contribution to the efficient working of my case list over the past 14½ years.

Ladies and gentlemen, guests, I greatly appreciate you giving up your valuable time and sharing this occasion with us. May you have as much satisfaction and joy in your careers as I have been privileged to experience on this court. Thank you.

BLACK CJ: The court will now adjourn. Ms Tanner, would you close the court, please.

[back to top](#)

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