

# Swearing-in of Dr Elisabeth Peden SC to the New South Wales Supreme Court

By Kevin Tang

On the 6th of April 2022, Dr Elisabeth Peden SC was sworn-in as a judge of the Supreme Court of New South Wales in a ceremonial sitting of the Banco Court. In attendance were the Governor of NSW, Her Excellency the Honourable Margaret Beazley AC QC, the Honourable Chief Justice Bell, her Honour's spouse Professor Greg Tolhurst, and their four sons Joshua, Sam, Ben and Michael. Apologies were sent by Professor John Carter and the Honourable Michael McHugh AC QC. Her Honour noted and was grateful for the representation of the Sydney Bar and the presence of her great friends from the Sydney Law School: Professor Barbara McDonald, Professor Joellen Riley and Mr Lee Aitken. Also in attendance were Ms Ute Hill, spouse of the late Honourable Justice Graham Hill of the Federal Court of Australia, and their daughter Katrine.

Her Honour has practised law for some thirty years, most notably for the two decades leading up to her being called to the bar as an eminent Professor of Law at the University of Sydney. The attorney-general, the Honourable Mark Speakman SC MP, remarked that 'from a young age [her Honour] chased goals and worked determinedly until she not only achieved those goals but excelled at them.'

Her Honour attended Abbotsleigh and Barker College and subsequently went on to the University of Sydney. From a young age, her Honour was surrounded by the law, something which was a great family calling. Her Honour's grandfather was the late Sir John Peden KC and her father was Professor J.R. Peden, who was Foundation Dean at Macquarie University; anecdotally this may have facilitated her glimpse into academic life with dining tables full of textbook proofs and the checking and rechecking of essays and lists of marks.

Her Honour completed a Bachelor of Arts in German literature and a Bachelor of Laws, receiving First Class Honours in both fields and further distinguishing herself being awarded the University Medal in Law. Her Honour went on rotary exchange to the University of Freiburg and to this day



she speaks fluent German. It was remarked upon that her Honour's textbook writing skills were honed in the last few years of her undergraduate degree with her Honour having taken two courses where her textbook was on the prescribed reading list, and while still a student she edited Helmore's *Commercial Law & Property in NSW*.

Subsequently, her Honour attended Gonville and Caius Cambridge as a W.M. Tapp and Ivan Roberts Scholar where she completed a doctorate on implied terms in contract law under the supervision of the learned Professor Beatson, as he then was before his appointment to the English Court of Appeal. Her mother was in attendance at the famous graduation ceremony at the Gate of Honour, which is iconic at Caius.

Her Honour commenced her academic career as a lecturer at the Sydney Law School in 1999 where she was promoted to professor in 2008. She taught numerous subjects at undergraduate and postgraduate levels, primarily in contract and evidence law. Her Honour would also maintain her academic links with Gonville and Caius where she has regularly returned as a lecturer. She continues to have an international reputation in contract, commercial and evidence law,

having published numerous academic works and articles. Her Honour resigned from the Sydney Law School in March 2021 to devote more time to other endeavours in the law.

Early in her career, her Honour served as associate to the Honourable Justice John Stanley Lockhart AO QC in the Federal Court and then to the Honourable Justice McHugh AC QC in the High Court of Australia (as they then were). She was admitted as a legal practitioner in 1994 and was called to the bar in 1999. She practised as an academic barrister from the Twelfth Floor of Wentworth Chambers as the Sydney Law School reverted to the Camperdown campus. She practised in the areas of contract and general equity, regularly appearing in the Supreme Court of New South Wales and the Federal Court. Her Honour took silk in 2019.

Her Honour is a Fellow of the Australian Academy of Law and a member of the Legal Services Council's Admissions Committee. She has also served as an examiner and lecturer for the Legal Practitioners Admissions Board in contract and evidence law, as well as an examiner in the New South Wales Bar exams.

It was noted by all that her Honour had a certain quiet serenity which has carried her through the years as an academic, a barrister, senior counsel and now a judge of the Supreme Court. Her Honour was well-known among students for her sense of kindness and fun, particularly in a time when interaction between students and academics was limited and, if anything, forbidding. Accordingly, in evidence before the court at her Honour's swearing-in were many of her former students. It should not be forgotten that her Honour has also raised four sons with their full suite of academic and sporting activities alongside her substantial commitment and contributions to the law.

With characteristic humility, her Honour concluded her swearing-in speech with a quote from the famous German poet Goethe: 'the deed is everything, the glory nothing.'

BN

# Swearing-in of Elizabeth Raper SC to the Federal Court of Australia

By Kevin Tang

On Friday 10th of June 2022, Elizabeth Raper SC was officially welcomed to the Federal Court of Australia in courtroom one of Queen's Square by the Honourable Chief Justice James Allsop AO. This occurred after her swearing-in on Monday 2nd May 2022 in the presence of the judges which the Chief Justice remarked will be remembered because the occasion sparked the fire alarms in the building. The appointment of Justice Raper was much celebrated in the profession and by those who practise in the federal jurisdiction. In attendance were the Chief Justice of the Supreme Court, the President of the Court of Appeal, Justices Mitchelmore, Peden and Kirk and many other judges, a great number of her colleagues in chambers and a large representation from the wider Sydney Bar, in particular her friend and fellow academic Professor Joellen Riley, the Hon Justice Paul Munro (with whom she was associate) and Justice Suzanne Christie (of the Federal Circuit and Family Court) and her family.

Her Honour described herself as the contrary, precocious second child of an asymmetrical match. [Her] mother, a Greek-born, Sorbonne-educated linguist, one of the many feminists of her time. [Her] father, a 10 pound Pom, a gentlemen, a racket sport man, a conservative red Tory.

Her future could be foretold, not from coming from a legal family (which she does not), but raised in a family that 'argued' in intergenerational dinner time battles about politics, social issues and literature, often expressing deeply held opposing views – a forum where differing views were ordinary, accepted and respected.

Her Honour graduated from the University of Sydney with a Bachelor of Arts and Bachelor of Laws in 1998. Her legal career started as associate to the Honourable Justice Paul Munro, a senior deputy president of the Australian Industrial Relations Commission. Shortly thereafter she was admitted as a solicitor of the Supreme Court of NSW in April 1998 and worked at the international firm Baker & McKenzie and practised in the sphere of employment law, discrimination and some commercial litigation. Her Honour spent some time in 2001 at the firm's London office and became a senior associate in the Sydney office in 2004.

From 2003, her Honour has lectured at the Sydney Law School (both at an undergraduate and postgraduate level) and has co-authored



with Chris Ronalds AO SC two editions of *Discrimination Law and Practice*.

Her Honour was called to the bar in 2005. She read with Kate Eastman SC and Trish McDonald SC and in her first case, on her first day at the bar, acted for the ABC defending a freedom of information application brought by the Australian Centre for Independent Journalism over its coverage of the Iraq War. Her Honour practised at the bar primarily in the sphere of employment, discrimination and administrative law. She has also appeared in inquests and commissions of inquiry.

Her Honour has appeared in many significant employment and industrial cases, employment class actions and high-profile discrimination and harassment cases notably in *Richardson v Oracle Corporation Australia* – a high-profile sexual harassment case before the full Federal Court which contemplated the nature of damages to be awarded for victims of such harassment and discrimination.

Her Honour appeared for the Fair Work Ombudsman in a number of cases where workers were egregiously treated at the hands of unscrupulous employers.

Since 2008 her Honour was a member of the Fifth Floor of Wentworth Chambers. Throughout her time there, she was known as an extremely learned member of the Floor who offered unwavering support to her colleagues

by whom she will be greatly missed. Her Honour was much-loved at the bar and known to be a friendly, joyous, sensitive and very loyal friend and mentor to many.

In 2018 her Honour was elected to sit on the Bar Council. During that period her Honour's calm, courteous and thoughtful demeanour was appreciated, as was her assistance on the working party updating the best practice guidelines which commenced under the presidency of Tim Game SC and continued under Michael McHugh SC's erstwhile supervision. Her expertise on that working party was formidable in drafting changes that incorporated changes to the *Sex Discrimination Act* and fair work legislation culminating in updated guidelines circulated some few weeks ago.

Uniformly, her Honour is remembered as a dedicated, hardworking and highly respected member of the bar.

At her Honour's swearing-in it was observed by the President of the Bar, Ms Gabrielle Bashir SC, that the path to her Honour's swearing-in was permitted by fate.

On the morning of 26th of December 2004 while her Honour and her husband Sean were travelling in Sri Lanka, they decided to attend a church on a hill. That happy decision meant they were not struck by the tsunami that smashed into their resort and swept away whole villages on the coastal plain near to the area they were visiting.

Ms Bashir observed that her Honour possessed the requisite skill, training and experience that made her an eminent candidate to be a judge of the Federal Court of Australia, and an appointment that properly reflects the Federal Court's reputation here and abroad as a modern, dynamic and diverse jurisdiction.

Raper J concluded her speech by referring to the recent tremendous loss experienced by the profession with the passing of Sir Gerard Brennan and reflected on how he had described the role of the judge

as standing in the lonely, no man or woman's land between government and the governed, between the wealthy and the poor, the strong and the weak. She or he can identify with neither, for partisanship robs the judge of the authority essential to the discharge of judicial office.

Her Honour looks forward with enthusiasm and anticipation towards her new role as a judge of the Federal Court after many years of service at the Sydney Bar. **BN**

# Swearing-in of Mr Jeremy Kirk SC to the New South Wales Court of Appeal

By Kevin Tang

On the 21st of April 2022, Jeremy Kirk SC was sworn-in as a judge of the Supreme Court of New South Wales and as a judge of Appeal of that same court in a ceremonial sitting of the Banco Court. In attendance were the Honourable Chief Justice Dr Bell, the President of the NSW Court of Appeal the Honourable Justice Ward, other members of the Supreme Court of NSW, and dignitaries from the Federal and High Courts of Australia along with other courts. Also in attendance were his Honour's father Dr John Kirk, his Honour's immediate family of two children and co-parents Elizabeth and Jackie, as well as four of his five brothers and members of their respective families.

His Honour was the first of his family to be born in Australia. He attended secondary school at Daramalan College in Canberra where his keen interest in the Constitution emerged. His Honour expressed his gratitude to his father for fostering his interest in constitutional matters, recalling fond memories of the many half-hour drives with his father between Canberra and Murrumbateman – the location of the family winery, Clonakilla – when they discussed a myriad of subjects, from the law and politics to religion, scientific and environmental matters.

His Honour completed a Bachelor of Arts and Bachelor of Laws at the Australian National University where he would receive numerous academic accolades culminating in being awarded the University Medal in Law. Subsequently, his Honour was awarded a Rhodes Scholarship and in that great legal tradition went up to read for the Bachelor of Civil Law at Magdalen College, Oxford. His Honour continued his studies, completing a doctorate on implied rights in constitutional adjudication by the High Court of Australia since 1983, elements of which have since been referred to by that very court. His Honour has continued his contribution to academia, publishing sixteen academic articles and texts, many of which have similarly been referred to in various matters before Australian courts.

It was remarked upon by the NSW attorney-general the Honourable Mark



Speakman SC MP that at the end of his Honour's first year at Oxford, one of his supervisors wrote to Magdalen College complaining that he was not sufficiently studious being too preoccupied with the conviviality of college life. This was a manifestly specious observation as his Honour would go on to become a Vinerian Scholar placing himself firmly alongside the intellectual luminaries of the common law world.

Upon returning to Australia, his Honour commenced practising in commercial litigation at Freehills. His Honour cited that the highlight of his three years as a solicitor involved his work at the Shopfront Youth Legal Centre, praising the continued support from firms and the bar in committing themselves to pro bono matters and other such socially worthy cases.

His Honour was called to the bar in 2002. His tutor was Dr Andrew Bell SC (as he then was) on the Eleventh Floor of Wentworth Chambers. His Honour would go on to practise in the areas of constitutional, administrative, commercial, medical negligence and appeals generally for some twenty years. His Honour has appeared extensively in the Supreme Court and Court

of Appeal of New South Wales, in the Federal Court, in interstate courts and tribunals. In the High Court alone he appeared in some fifty matters. His Honour has also assisted in multiple commissions of inquiry, including as counsel assisting the Royal Commission into Institutional Responses to Child Sexual Abuse. His Honour took silk in 2011 after a brief period as junior counsel, expressing gratitude for his frequent leaders Michael Sexton SC and Stephen Gageler SC, Dr John Griffiths SC and Bret Walker SC (as they then were).

Notably in 2013, his Honour appeared for Australian Marriage Equality Inc. regarding same-sex marriage in the Australian Capital Territory in *Commonwealth v ACT* (2013) 250 CLR 441 and, in a demonstration of the breadth of his practice, his Honour would also go on to appear for Ms Amber Heard regarding the much-publicised importation of her dogs 'Pistol' and 'Boo'.

It was noted that his Honour was an engaging and respectful mentor to junior counsel, setting a particularly excellent example to younger members of the bar in maintaining a healthy work-life balance. The attorney-general noted his commitment to his family, always leaving chambers at 4.30pm to ensure he could spend time with his children after school – something his Honour expressed he was immensely proud of.

His Honour noted that he had no fondness for and had never insisted on his correct title and form of address. Rather, he adopted the approach of his mother, assiduously avoiding any reference to 'Doctor'. However, he noted that one title remained supremely important, and which meant more than anything to him – 'Dad'.

This was a rare event in that a distinguished senior silk was being appointed directly from the ranks of the bar to the Court of Appeal and follows in the tradition of other exceptional appointments to that court. His Honour concluded the ceremonial sitting by expressing his gratitude for and eagerness to embrace the new challenges and variety of prospects he will face on the bench going forward.

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# Swearing-in of Ms Anna Mitchelmore SC to the New South Wales Court of Appeal

By Kevin Tang

On 28 March 2022, in a ceremonial sitting in the Banco Court, Ms Anna Mitchelmore SC was sworn in as a judge of the Supreme Court of NSW and as a judge of appeal. The Chief Justice of the NSW Supreme Court congratulated her Honour on her appointment to the court and noted that her Honour has been a highly respected member of the bar for many years and a leader in all senses of the word, which was sure to continue during her time on the bench.

The ceremony was attended by Her Excellency the Honourable Margaret Beazley AC QC; her Honour's husband, Dr Tung Vu; her parents, Dean and Joanne; her siblings, Kylie, Damien and Scott; and her Honour's nieces and nephews.

Her Honour grew up in Huntley's Point and attended Santa Maria Del Monte Primary School where the school library was a favourite haunt. She attended high school at Loreto Kirribilli, where she was a keen student of Italian, and of Latin which she continued studying while undertaking a Bachelor of Arts and Bachelor of Laws at the University of Sydney. Her Honour continues a family legacy in the law, with her grandfather and father both solicitors, the latter of whom moved her Honour's admission in 2000.

Her Honour commenced her practice at Mallesons Stephen Jaques (now King & Wood Mallesons) as a summer clerk. In 2001, her Honour was an associate to the Honourable Justice Michael McHugh AC QC in the High Court of Australia, who was present at the swearing-in. In reflecting on her Honour's time as an associate, Justice McHugh noted that '[Her Honour]'s work was of such high quality that I recognised from the beginning that she was an outstanding talent and would become one of the leaders of our profession.'

Her Honour worked as an assistant adviser to then federal attorney-general the Honourable Daryl Williams AM QC MP, before practising at Gilbert + Tobin in dispute resolution. In 2004, her Honour



took up the position of Counsel Assisting the Solicitor-General and Crown Advocate of NSW. She commenced at the private bar in 2006.

Her Honour had chambers on the Sixth Floor of Wentworth and Selborne Chambers from where she had a wide practice for some sixteen years, mainly in administrative, constitutional, criminal law, local government & environmental cases, migration law and native title. In September 2021, her Honour was appointed as a commissioner of the Law Reform Commission of NSW.

Her Honour served on the Bar Council from 2015 until her appointment, culminating in election as junior vice president. Her Honour served on numerous committees including the selection committee for the Bar Association's Katrina Dawson Award.

Her Honour was recognised for her kindness and genuine interest in others' lives, and, as a practitioner, for her honesty, transparency and respect for the courts and legal institutions. The attorney general Mark Speakman SC MP praised her Honour's dedication, intellectual

curiosity, devotion to all manner of peoples and generosity with her time, especially as a mentor to young women. Ms van der Plaats, President of the Law Society, noted that her Honour's mentorship was described as guaranteeing a successful start at the bar.

The attorney general referenced her Honour's interest in the classics with a quote: *Ars est celare Artem* – true art conceals the means by which it is achieved – befitting the calm and quiet nature which belies her Honour's great expertise and skill as a legal practitioner.

In her Honour's reply, referring to the final words of the Proclamation – 'give your attendance and be heard' – her Honour stated that it was a privilege to be appointed as a judge in a system of law that recognises, values and protects the impartiality and independence of the judiciary and the application of procedural fairness.

Her Honour attributed her success to her family and her husband, thanking them for their collective support, love, and good humour. Her Honour also expressed her gratitude and good fortune for her time as associate to Justice McHugh. Her Honour thanked those who had given her opportunities at the bar, in particular her tutors, Stephen Lloyd SC, who had provided much guidance and advice over many years, and the Honourable Justice Leeming, and all of her friends and colleagues.

Her Honour also highlighted the work of her instructing solicitors, many of whom were instructed by or who worked directly in government departments or independent agencies. Her Honour observed that working for such clients was immensely rewarding.

Her Honour's hard work, sacrifice, and dedication to the law and those around her will be of great benefit and lasting value to the judiciary and the people of New South Wales. **BN**

# Appointments to the Supreme Court of the Australian Capital Territory

By Kevin Tang

## The Honourable Justice Lucy McCallum

### NSW COURT OF APPEAL

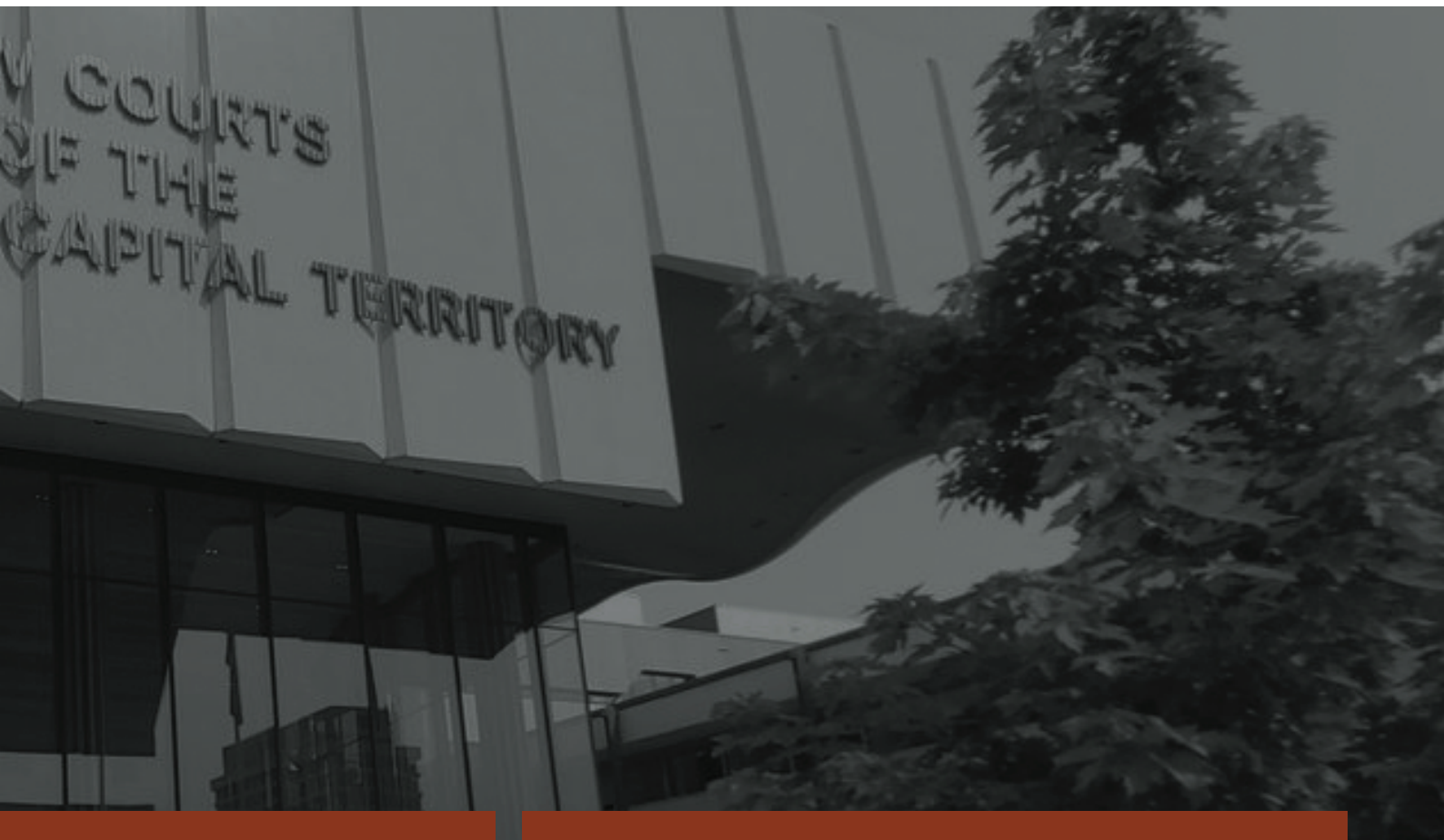
The Sydney Bar has congratulated the Honourable Justice Lucy McCallum on her appointment as Chief Justice of the ACT. Her Honour replaces the Honourable Chief Justice Helen Murrell who retired in March of this year after some 25 years in judicial office in NSW and the ACT.

Chief Justice McCallum was a judge of the NSW Supreme Court from 2008 and a judge of the NSW Court of Appeal from January 2019. Prior to then her Honour practised at the Sydney Bar for 16 years, taking silk in 2005. The Honourable Chief Justice Tom Bathurst AC, as he then was, welcomed the announcement of her Honour's appointment saying, 'I have no doubt that [her Honour] will do a terrific job as Chief Justice and will ensure that justice administered in the ACT continues to be of the highest calibre.'



## Belinda Baker SC

Later this year Ms Belinda Baker SC will be sworn-in as a judge of the Supreme Court of the ACT. Her Honour is currently deputy senior Crown prosecutor with the NSW Director of Public Prosecutions and has appeared in more than 200 criminal appeals since 2016, including in the High Court. Her Honour has previously worked as solicitor advocate in the NSW Crown Solicitor's Office and as counsel assisting the NSW Solicitor General and Crown Advocate. Her Honour attended Macquarie University where she obtained a Bachelor of Arts and Bachelor of Laws. She subsequently completed an LLM at Harvard University in 2004 where she was a Menzies Scholar. Her Honour is a Fellow of the Gilbert + Tobin Centre of Public Law at the University of NSW Law & Justice and co-authored the 4th edition of *Waller's Coronial Law and Procedure in NSW*. Ms Baker has been a member of the *Bar News* Committee for more than five years, and the Committee wishes her well on her appointment.



Ms Baker will replace the Honourable Justice Michael Elkaim who is due to retire in December of this year. Her Honour said she was honoured to be appointed to the court and was grateful to be able to work with Chief Justice McCallum whom she described as an 'inspiring jurist'.

## Geoffrey Kennett SC

On 21 March 2022, Mr Geoffrey Kennett SC was sworn-in as a judge of the Supreme Court of the ACT. His Honour is a graduate of the Australian National University where he obtained a Bachelor of Arts and Bachelor of Laws with Honours in 1989. He also holds a Master of Public Law (1993) and an LLM from the University of Sydney (2013). His Honour practised at the Sydney Bar from August 1998 where he maintained a distinguished practice in public and administrative law, including constitutional matters. His Honour was Chair of the Law Council of Australia's Administrative Law Committee and also served as a member of its Constitutional Law Committee. His Honour took silk in October 2010.

His Honour was not only a fine practitioner but also highly personable and kind, especially with younger members of the profession whom he often mentored. His Honour fills a vacancy created by the retirement of the Honourable Justice Burnes in August 2021 after lengthy service in judicial office.

