



Law Council
OF AUSTRALIA

Ceremonial sitting of the High Court of Australia to mark the swearing-in of Justice James Edelman

Speech delivered by Fiona McLeod SC, President, Law Council of Australia at the High Court of Australia, Canberra.

30 January 2017

May it please the Court.

I too acknowledge the traditional custodians of the land on which we meet and pay my respects to their Elders, past and present.

It is a great honour to speak today on behalf the Law Council of Australia to welcome Your Honours appointment to this Court.

In Your Honour, we welcome to this Court a very fine lawyer, one who has excelled in academia, in practice and on the bench.

Your honour is also a true federalist. While you now reside in Queensland, you are a loyal Western Australian, having been born and raised in Perth, a trait you share with former Chief Justice French. You both went to the bench before you turned 40. You both run marathons. And you both have a special connection to the former High Court Justice, the late John Toohey.

Justice French lived in the same street as Justice Toohey when he was growing up and then convinced him in the early 1970s to set up the West Australian Aboriginal Legal Service. Your Honour's first job out of law school was as Justice Toohey's associate in his last full year on the Court - 1997. You both delivered heartfelt tributes on his passing.

The timing of Your Honour's appointment means you will serve 28 years on this Court. You are the first High Court judge to be born in the 70s, which makes you, along with Justice Gordon, a Gen X justice.

Gen X are typically perceived to be disaffected and directionless. I would hate to see what Your Honours career would have looked like had you been enthusiastic and resolute!

Your Honours service on the Court stretches ahead infinitely. It will be 2034 when Justice Gordon reaches the age of retirement. And after that Your Honour still has another 10 years to go.

What will make that journey easier is Your Honour's passion for the law.

Along with degrees in economics and commerce, you graduated in law - with first-class honours - from the University of Western Australia in 1997. On campus, the Edelman Notes - Your Honour's notes from the administrative law unit - were said to be "more popular than cheap beer". Especially after most of the Administrative Law class scored over 90 per cent in their final exam.

You were a Rhodes scholar and studied at Oxford, where you obtained a Doctor of Philosophy in Law in 2001. It was there that you met your wife Sarah.

In 2008, you were appointed a professor of the law of obligations at Oxford and a Fellow and Tutor of Keble College.

You have moved easily between academia and practice, maintaining posts with law schools in Queensland, Western Australia and New South Wales. At latest count the High Court has now quoted - with approval - six different articles and books by Your Honour.

While teaching at Oxford you built a thriving commercial practice at the London Bar - working out of One Essex chambers. The senior clerk, Darren Burrows described you as:

"a force of nature" who was in particular demand for cases that required "real legal brainpower".

You also kept your hand in at home, working out of the Chambers of Malcolm McCusker QC. And you can rightfully boast you never lost a case in the High Court with three appeals – all murder cases – for three wins, including the remarkable case of Andrew Mallard.

You were enticed back to Perth – you expected for good – in 2011 with an appointment to the Supreme Court. You perhaps didn't count on the welcome from your old University friend, now Minister for Social Services, Christian Porter, at your swearing in.

While conceding you were:

"remarkably smart", he described you as "a less than proficient driver; who is completely incapable of reading any sort of map; someone who is also not so good at cooking or shopping or cleaning the house; in fact someone very bad with following the practical rituals of day-to-day life generally".

On both the Supreme Court and the Federal Court you delighted Chief Justices with your capacity for work and astounded litigants with the speed of your judgments. In fact, Justice Perram has admiringly described you as "an animal".

Importantly, you have decided a wide variety of cases covering commercial, criminal, civil, administrative and constitutional law. You have also demonstrated a no-nonsense attitude to both counsel and witnesses.

There are other qualities that make yours a fine appointment. Your Honour has long exhibited a spirit of public service in both your personal and professional life. You have also been a captain of North Cottesloe Surf Club, vice-patron of Royal Life Saving Western Australia and a member of its Legal Advisory Committee.

Mr McCusker, a fellow member of North Cottesloe, said Your Honour was:

"always willing to help others". Perhaps this was ingrained by your grandmother, whom you have said "used to catch four buses a day to work as a volunteer with the disabled in our suburb, before collecting me from primary school".

You are a renowned law tragic, following generations of lawyers in the family tree. You have described how, at age 12, you were exposed to your first legal argument during a game of scrabble. Facing a challenge, the lawyers around the table attempted to define the word 'estoppel', placed on a triple word score. They failed – no doubt sparking an enduring curiosity in the topic and a desire to define the term with precision.

Your Honour is also a generous and valued work colleague and devoted to your wife Sarah and your children Jonah and Tatiana. We are pleased to assure your family that – after three job moves in five years – this is likely be the last one for some time.

The Law Council looks forward to the contribution Your Honour will make to the administration of justice – and to the nation – over a long and satisfying period of service.

May it please the Court.

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