

The Hon Justice Susan Kiefel

On 3 September 2007, the Hon Justice Susan Kiefel was sworn in as a justice of the High Court of Australia. On 5 October 2007, there was a special sitting of the High Court of Australia at Sydney to welcome her Honour. Michael Slattery QC spoke on behalf of the New South Wales Bar Association, and Shauna Jarrett spoke on behalf of the Law Society of New South Wales. Her Honour exercised her right of reply.

As might be expected, much was made on both occasions of her Honour's journey to the Court. Like Michael McHugh, her Honour arrived via the road less travelled. Her Honour was born in Cairns, left school in year 10, and spent her early working years other than in legal practice. Also like Michael McHugh, her Honour's formal legal education began via the Barristers' Admission Board. Where Michael McHugh was initially telegram boy and insurance salesman, after her Honour left Sandgate High School in north Brisbane (having enjoyed music, sport and Miss Bailey's English lessons), her Honour worked first for a building society, then for an architect, and later for an exploration company. Her Honour was pleased to learn, on the occasion of her welcome at Sydney, that at least initially upon leaving school she was better paid than Michael McHugh. While comparisons may be odious elsewhere, they are *de rigueur* in the law.

In 1971, her Honour became interested in the law while working as a legal secretary for Fitzgerald, Moynihan and Mack. In 1973, her Honour became a clerk at Cannan & Peterson, solicitors, and in 1975, her Honour completed the three year course offered by the Barristers Admission Board of Queensland. She was called to the Bar, aged 21.

Of her Honour's early years at the Bar, Michael Slattery QC said:

As you started at the Bar you quickly found the briefs which you so well deserved. It is here that the Queensland Bar and the New South Wales Bar show themselves at their best, as very efficiently rewarding prodigious talent such as that of your Honour.

Just as Michael McHugh was encouraged to come from Newcastle to Sydney by Clive Evatt QC, so did Peter Connolly QC, later Mr Justice Connolly of the Queensland Supreme Court, guide your Honour's early years and with a watchful eye help steer the first work opportunities to your Honour, what these days we call mentoring. You soon developed a broad and busy court and advisory practice, particularly in local government, defamation, probate and general commercial work. You quickly became a junior much in demand by McPherson QC, Hampson QC, Callinan QC, Jackson QC, Fitzgerald QC and Pincus QC. You also worked with Pat Keane QC, now Mr Justice Keane of the Queensland Court of Appeal, who once commented of your Honour, "You know that Sue Kiefel is a very helpful junior. She actually identifies the points that are likely to win the case." May I say at times I have found myself dreaming about such juniors.

Of her early years at the Bar, her Honour said:

It is not possible to thank all of those to whom thanks are due by me. ... The senior barristers with whom I more regularly worked, and who were influential in my earlier career, have been identified on a number of occasions. Ian Callinan QC, whose place I now take, was one of them. Peter Connolly QC, gave me an early instruction in terror, so necessary in the development of a novice barrister. In



The Hon Justice Susan Kiefel after being sworn in. Photo: Ray Strange / Newspix

the middle of a trial he informed me that he had decided that we should take the witnesses turn about. The next witness, for me, was an expert in plant genetics.

I could have no excuse for overlooking how much I learned from judges in my early career. Their teaching methods varied, but many were tolerant and instructive. On reflection they taught me much about the conduct necessary of a judge. I am aware that mention was made on the occasions of the swearing-in of Justices Callinan and Heydon of the high standing in which Sir Harry Gibbs was held. I recall him also for his kindness, and for the interest he showed in a young barrister – regularly inquiring about my progress from Gerald Patterson, his good friend and one of my solicitor mentors. ...

Like most young barristers my practice developed largely as a result of the recommendation of others, mostly more senior barristers and solicitors. The outstanding characteristic of the Bar was as a society, in the support and assistance members gave to each other despite the fact that tomorrow they may be adversaries.

On matters of style and substance, barristerial and judicial, Michael Slattery QC said:

If your Honour's style as a barrister could be captured it would probably be in Hemingway's famous description that "Courage is grace under pressure". With the special human insight that more is achieved by charm and determination than by direct attack, your Honour was a devastating and thorough cross-examiner. You have brought the same courtesy to the Bench with powerful results. Your rich and varied judicial work on the Federal Court has been much admired and referred to in this State as it has been elsewhere in the Commonwealth.

Her Honour took time away from practice as a junior barrister to study for the degree of Master of Laws at Cambridge University. That was an exceptional course for someone who did not have an undergraduate law degree. At her swearing-in, Kiefel J said of her time at Cambridge:

I wish again to acknowledge my gratitude to Professor Sir David Williams, who in 1984, as President of Wolfson College, Cambridge, gave someone with a non-traditional legal education the chance to undertake a Masters degree in law. He was influential in having the faculty overlook, for the first time, the absence of a first degree. I shall be forever grateful for my year in Cambridge, which I count amongst my best. It marked a turning point in my understanding and love of the law. I was there introduced to comparative law by Professors Tony Jolowicz and Basil Markesinis, both eminent in this field and gifted teachers. ... My year in Cambridge also introduced me to my husband, Michael Albrecht, an exceptional man. I am privileged to have enjoyed our partnership in life, the 'support account' of which I know I have overdrawn.

Continuing a pattern of youthful achievement, in 1987, two years after returning from Cambridge, her Honour took silk, aged 33. Not long after that, appointments of various kinds began to find her. In 1991, her Honour was appointed a part-time hearing commissioner at the Human Rights and Equal Opportunity Commission. Two years later, her Honour was appointed to the Supreme Court of Queensland. Very shortly after that, in 1994, her Honour was appointed to the Federal Court of Australia, where she served until her appointment to the High Court of Australia. Among numerous other appointments, her Honour has been a part-time commissioner of the Australian Law Reform Commission, and Deputy President (and later, President) of the Federal Police Disciplinary Tribunal. Her Honour's career has involved a series of firsts, including being the first woman to be appointed queen's counsel in Queensland, and the first woman from Queensland to be appointed to the Federal Court of Australia. To that, her Honour can now add her appointment as the third woman to be appointed to the High Court of Australia (and the first woman from Queensland).

At her swearing-in, her Honour said:

I have been surprised about the level of interest in my story, which I do not consider to be so very different from that of many others. The histories of my husband and of my friend, Helen Lynch, are examples. Helen left school at 15 years of age and worked as a clerk in what became the Westpac Bank at Charleville. Last year she retired as a director of its board. In each case we have made our way but we have also been given opportunities. I have been given the rare opportunity to serve on this court and to take part in judicial decision-making at its highest level. I feel deeply honoured to have been appointed to this office and conscious of its responsibilities and burdens. I shall endeavour in every way to fulfil the confidence which has been reposed in me.

I am fortunate to have served on three courts and to have benefited from the fellowship of many judges. I enjoyed my earlier career as a barrister – a very different life from that of a judge. The Queensland Bar, of which I am proud to be a life member, was very kind to me. ...

Since my departure from the Bar, I have been learning the craft of judging. The difference in the roles is not always appreciated. The work of a barrister of course provides training in all aspects of

litigation and the role of the judge in court is well understood by them. It should not however be assumed that the greater part of the work of a judge, the preparation for and writing of judgments, is so well understood.

On the occasion of her swearing-in, her Honour also paid tribute to the work of trial judges, saying:

The importance of a trial judge is sometimes lost sight of. Criticism is easily levelled at a trial judge after the conclusion of a trial, which may have been very complex or badly presented and difficult to manage. On appeal the issues are more clearly defined and the facts ordered. Tribute is not often paid to what can be a most difficult and demanding role, one requiring considerable powers of analysis. Complex or multi-party litigation can require an almost inhuman effort on the part of a trial judge in mastering enormous amounts of information, some of it confused or contradictory. The trial judge must sift, order and appraise the facts whilst at the same time keeping in mind the issues sought to be raised by the parties to which the facts are said to be relevant. It may be that the time has come to reassess whether one person can continue to undertake some of the cases which have been litigated in recent times. I refer not only to complex commercial cases, but to the demands imposed by native title determinations. The point I wish to make is that without skilled trial judges the work of appellate courts would be intolerable.

In her closing comments at her swearing-in, her Honour paid particular tribute to her family, former associates, and colleagues on various courts. Of her move to a different court and a different role as a judge, her Honour said that she looked forward to working with the other judges of the High Court of Australia, for whom she has great admiration – despite their reluctance, on occasions, to agree with her.

As Ms Jarrett observed, after reading much about her Honour, if anything can be ascertained about her Honour's character, it is her ability to pursue her ambitions, and view what lies ahead as a positive opportunity. As her Honour once remarked to a group of students:

You can usually do whatever you determine to do. The constraints or limits placed upon a person's life and career usually come from themselves. I hope you will focus on the possibilities open to you and not dwell on problems that others may tell you about too much.

Her Honour has inspired, and will continue to inspire, many people at the Bar and elsewhere, by the facts of her progress and recognition in the law, from an unconventional start, along an uncharted path, and without social or family connections. Her Honour's career and appointment are an encouragement to many things, not least among them being courage, persistence and optimism.