

## The Hon Justice Robert Macfarlan

On 8 September 2008 Robert Macfarlan QC was sworn in as a judge of the Supreme Court of New South Wales and as a judge of appeal.

His Honour was educated at Cranbrook School and graduated from Sydney University with a Bachelor of Arts majoring in economics and a first class honours degree in law. His Honour first worked as an associate for his father, a commercial and admiralty list judge of the court. He then undertook articles with Dawson Waldron, and was appointed an associate within a year of admission.

Macfarlan JA was called to the bar in September 1976, and read with David Bennett QC. His Honour practised from 13th Floor Wentworth Chambers for a year, before moving to Eleventh Floor Wentworth. His Honour was appointed silk after ten years at the bar. Spigelman CJ noted that he and Macfarlan JA had taken silk on the same day.

The president of the Bar Association, Anna Katzmann SC spoke on behalf of the New South Wales Bar and Hugh Macken spoke for the solicitors of NSW. Macfarlan JA responded to the speeches.

Katzmann SC noted that during his time at Dawson Waldron, his Honour had worked under the tutelage of Nick Carson, 'the man whose record defamation verdicts brought the High Court as close as it has ever come to departing from the principles in Planet Fisheries' and said that his Honour had been lured into the corporate takeovers unit which was referred to as F Troop.

The president referred to his Honour's reputation for attention to detail:

Your Honour is a neat man, compulsively if not obsessively so. Your desk is always clear at the end of each day's work and also for conferences enabling you to avoid distractions and demonstrate to those instructing you that you have their complete attention. You are meticulous in your work and remarkably efficient. One of your former juniors described you as the most focussed person he had ever met.

You also have an economy of language and a capacity to separate the wheat from the chaff reminiscent of the Honourable A M Gleeson QC. As always your Honour took the lead from your hero. 'A little less conversation, a little more action please. All this aggravation ain't satisfactioning me. A little more bite and a little less bark. A little less fight and a little more spark'. Good advice for any aspiring barrister.

The president's quote picked up her earlier reference to the music of Hoagy Carmichael and to his Honour being a fan of the popular music of his generation, from Elvis, to Roy Orbison, to the Animals, Gene Pitney and Patsy Kline.

The president described Macfarlan JA as 'the gentleman's gentleman', 'a hard and dangerous opponent, but utterly scrupulous, never devious and always charming and affable out of court'. His Honour is said to have taken to extremes the 'open door policy of which our bar can justifiably be proud'.

The president noted Macfarlan JA's contribution to the legal profession and the community, having served on the Bar Council for two years, as a director of the Barristers Sickness and Accident Fund for 14 years, representing the bar on the New South Wales Supreme Court Commercial List Users' Committee for 13 years, lecturing in equity at the University of Sydney, and having been appointed a member of the Legal Services Tribunal and later Legal Services Division of the Administrative Decisions



Tribunal. His Honour's contribution to the wider community included being a member of the Australian Theatre for Young People's Foundation Advisory Committee.

Mr Macken quoted Sandy Street SC describing his Honour as one of the finest legal minds in New South Wales, an awesome and fearsome advocate, someone he had always held in awe as one of the best role models and barristers in the legal profession:

I was working as a paralegal at Ebsworth & Ebsworth and thought Rob was the best and brightest at the bar. In fact he stood out like a shining beacon so I asked if I could read with him. I later found out that Rob had read with David Bennett QC, formerly solicitor-general, who had in turn read with the Honourable Ken Handley AO. Ken Handley had read with my father, the Honourable Sir Laurence Street AC KCMG QC, who in turn had read with Rob's father (former Justice Bruce Macfarlan OBE QC).

In his reply, Macfarlan JA said he had enjoyed being a barrister, never having thought there was an occupation which he would have preferred to undertake, although he said the bar did have its stresses and strains, especially in the early years.

I remember, for example, when I was in full sail in one of my first cross-examinations, having my brimming confidence instantly deflated by the District Court judge before whom I was appearing. He interrupted my enthusiastic cross-examination in a rather abrupt way to say 'Mr Macfarlan, please correct the jaunty angle at which your wig is positioned on your head'. The self-satisfied smile that came over the witness's face seemed to say, 'yes, I thought there was something a bit odd about you, but I could not quite put my finger on what it was'.

Opponents were always a rather annoying feature of life at the bar. The tactics they employed of course varied markedly. One tactic that sticks in my mind was used in a large commercial case in which I was led by a silk. The silk decided to allow me to do the cross-examination of the expert witness to be called by the other side. I prepared assiduously for what was for me a very big occasion. I made endless notes which laid out my opening gambit, and covered all the permutations and combinations of answers that might arise from it. The big moment finally arrived. When the senior silk on the other side completed his examination-in-chief and sat down, I rose with all the gravitas I could muster, ready or so I thought, to launch into my penetrating opening questions.

I think it was whilst I was giving the witness the requisite preliminary steely glare that panic first set in. My hands were groping for my notes. My eyes had to leave the witness to conduct a frantic search for the notes which were nowhere to be found. It was only after catching sight out of the corner of my eye of the smile on my opponent's face – and it seems he was not known as 'the smiler' for nothing – that I realised that a little shove here and there from him had sent the notes into a completely obscured position behind the lectern.

This setback to the cross-examination was followed about half an hour later by another. After what I thought was a reasonably effective

start to the cross-examination, the court adjourned for its mid-morning break. Counsel trooped into the judge's chambers for morning tea. No sooner had we sat down than the judge, referring to the witness I had just started to cross-examine, said to us all, as if there could not possibly be any disagreement, 'Well, she really is a very impressive witness, isn't she?'

His Honour paid particular tribute to members of the Eleventh Floor Wentworth / Selborne, where he had chambers for 31 of his 32 years at the bar, and to his friend of long standing, Rein J, a friendship commencing when as a solicitor Rein J briefed Macfarlan JA in the early 1980s, flourishing when Rein J read with his Honour on admission and continuing since. His Honour said

As a former pupil of mine, Justice Rein will no doubt have been pleased to note when my commission of appointment to the Supreme Court was read a little while ago that he was recorded as being senior to me. As his former pupil master it will however be my duty to point out to him that that seniority only lasted the few seconds it took the principal registrar to read out the following commission of my appointment to the Court of Appeal.

## The Hon Justice Julie Ward



On 29 September 2008 the Honourable Julie Kathryn Ward was sworn in as a judge of the Supreme Court of New South Wales.

Her Honour was educated at Newcastle Girls High School; in keeping with a record rich with academic achievement her Honour graduated dux of her year in 1976.

Her Honour then studied arts at the University of Sydney, before graduating in law in 1982, with first class honours and the university medal. Her Honour spent the first year after graduation as associate to Sir Nigel Bowen, the first chief justice of the Federal Court. Her Honour then resumed worked at Mallesons Stephen Jaques – having previously been employed by that firm as a summer clerk.

Two years later her Honour travelled to Oxford, where she completed a two year BCL course in one year, graduating with first class honours.

Her Honour then returned to Mallesons. In 1988 she became the firm's youngest ever partner.

Over the next 20 years her Honour built a formidable and well deserved reputation. The chief justice in his opening remarks noted:

You have for several decades been one of the most senior litigation solicitors in this state.

Bathurst QC, senior vice-president of the New South Wales Bar Association, remarked:

Your Honour quickly developed a justified reputation as one of the outstanding litigators in this city if not in the whole country.

Mr H Macken, president of the Law Society of New South Wales said:

Your Honour is an outstanding litigator and widely regarded as one of the most eminent commercial lawyers in the country. Your sharp legal mind has helped make New South Wales the centre of commercial litigation in the Asia-Pacific region.

In his address Bathurst QC was able to speak from personal experience of working with her Honour: