

RSB:SND

REVISED

IN THE DISTRICT COURT  
OF NEW SOUTH WALES

THE CHIEF JUDGE  
THE HONOURABLE JUSTICE D PRICE AM  
AND THE JUDGES OF THE COURT

TUESDAY 30 JANUARY, 2018

**SWEARING IN OF HER HONOUR GINA O'ROURKE SC AS A JUDGE OF  
THE DISTRICT COURT OF NEW SOUTH WALES**

Mr M McHugh SC, on behalf of the New South Wales Bar Association  
Mr R Harvey, Law Society of New South Wales, on behalf of solicitors

(Commission read)

(Oath of office taken)

PRICE J: Judge O'Rourke, on behalf of myself and all the judges of this Court

I very warmly welcome you and wish you all the very best in your judicial  
career.

JUDGE O'ROURKE: Thank you Chief.

PRICE J: Mr McHugh.

MCHUGH: May it please the Court. I begin by acknowledging the traditional  
custodians of the land on which we meet and pay respects to their elders past  
and present.

Your Honour, the President of the New South Wales Bar, Arthur  
Moses SC gives his apologies and congratulations. It is, however, my  
privilege to appear on behalf of the New South Wales Bar to welcome your  
appointment to the Court and acknowledge your stellar legal career.

Your Honour has said that your Honour always knew that you wanted to  
practise law. Others in your Honour's then home town of Ulverstone,  
Tasmania may have thought you were destined to be a competitive athlete  
understandably given the dedication of basketball and sport and making the

RSB:SND

regional and State teams and aside from your successes on the basketball court you were imagining so I am told standing in a Court of law.

You studied at the University of Tasmania where senior members of faculty recall your Honour did very well in law subjects and in studies of history and politics. The university is delighted at the news of your appointment and proud of you as an alumni.

After becoming Senior Counsel you visited the faculty to mentor law students and your generosity in doing so is notable. Your Honour is admired as a role model for many other young women in law. Your Honour has always enjoyed training and teaching and you have excelled in this area.

Just say something about your early career and commencement with the New South Wales DPP. Your own legal career was forged in the Northern Territory where your Honour honed your skills and practised at criminal law. I know from experience Alice Springs juries soon teach you the get to the point skill and you were also sent to remote indigenous communities to run trials, sometimes in places such as school rooms and underneath trees.

Such was the extent of your experience running trials when you joined the New South Wales office of the Director of Public Prosecutions that you were soon appointed a Crown Prosecutor. Judge Paul Conlon recalls when he joined the Sydney office of the DPP in 2002 you had adjoining chambers and his Honour was then the Deputy Senior Crown Prosecutor. Judge Conlon was impressed but not surprised by your excellent grounding in criminal law. You were meticulous in preparation from day 1 and demonstrated a no-nonsense approach to any case.

His Honour warmly recalls the occasion on which you returned a brief with what at first seemed an incredible excuse. You were attending the royal

RSB:SND

wedding of Frederik, Crown Prince of Denmark and one Mary Donaldson. You were, of course, good friends with Princess Mary from university and indeed you were invited to the royal wedding.

Judge Conlon says, without question, it is the best reason his Honour has ever heard to return for the return of a brief and I think it is available under the Bar rules as well.

Your attendance at the royal wedding, I am told, is legendary. Others tell of you rubbing shoulders with fellow guests, Roger Moore and Princesses Caroline and Stephanie and an instance with a train of your gown which the then Governor of Tasmania spectacularly stepped on as you were making your way to the church.

That aside it is a happy coincidence that after working closely together at the DPP you are now effectively Judge Conlon's replacement as a full-time judge in this Court. His Honour is, of course, delighted by your appointment and confident in your abilities and suitability for judicial office.

Your Honour is respected for your Honour's commitment to justice for victims and children in the criminal justice system. You have a legacy of helping to reduce trauma of victims of child sexual abuse and your Honour had carriage of implementing a pilot scheme enabling witness intermediary support and pre-recorded evidence and you were a witness to these experiences at the Royal Commission into institutional responses to child sex abuse.

Your Honour also helped to shape guidelines on forensic medical photography and sexual abuse in children. Colleagues say your Honour has remained deeply compassionate to victims of crime particularly children and you have not been hardened to their trauma even after working in this challenging area for many years.

RSB:SND

Now your Honour's exceptional service at the ODPP has been recognised in your appointments as a Senior Counsel, Deputy Senior Crown Prosecutor and Acting Deputy Director. As the Attorney General has previously noted your Honour prosecuted more than 200 jury trials in New South Wales including high profile matters, murder, sexual assaults, serious drug and fraud matters.

Your Honour we could be here all day recalling the many other achievements and milestones in your career. Perhaps a better way to convey your contributions to the legal profession is with further remarks and insights from your colleagues.

Kara Shead SC says that as an advocate and generally in life your Honour is courageous, passionate, skilled and entertaining. You love nothing better than doing a big criminal trial and you relish both cross-examination and giving a persuasive closing address. You have that indefinable quality and presence that somehow makes people listen to every word you say and your considerable natural abilities are backed up with, of course, the hard work, hard slog commitment and as Kara has noted a little bit of magic.

As an Acting Deputy Director your Honour excelled. You are decisive, knowledgeable, able to multi-task and give brilliant and practical advice. Ms Shead states that it was a pleasure to work with you in chambers and your stint together has been one of the highlights of her career.

Your Honour is the prosecutor other lawyers say they would want on the case if something had occurred to someone in their own families. Your innate sense of justice and fairness coupled with your immense skill as an advocate made you a feared and tough opponent. You were masterful in Court. Your Honour I am told, police wanted you as their prosecutor, solicitors wanted to

RSB:SND

instruct you and juniors wanted to junior you.

Judges were thrilled when you walked into the Court. Now with your elevation to the bench, practitioners know they will have a highly experienced learned and knowledgeable judicial officer. It has been said that your Honour has the judicial backbone needed to handle matters which call for strong penalties to be imposed as well as those where leniency is called for.

New colleagues can expect your Honour to be loyal and supportive and brave in your honesty. When asked for your opinion personally or professionally you will always be honest however difficult that might be with compassion and without holding back any of the hard truths.

Your generosity as an adviser does not come from a desire to regard others with your own stories. Your Honour is said to be that rare senior lawyer who does not dominate dinner party or other conversations with your war stories in Court assuming in quite a modest way that they would not be interesting to anyone else including other lawyers.

One colleague recalls how over the years you have virtually had to be forced to discuss even your most high profile and difficult matters and when able to wrestle a legal anecdote from you it is invariably self-deprecating.

Your Honour none of this should be taken to mean that your Honour does not have a great sense of fun, quite the opposite. You enjoy socialising and being with friends and colleagues and you especially enjoy a laugh. Your Honour has a ready sense of humour and your huge laugh is often accompanied by a clap of the hands.

At home you are a generous host and a great cook always providing, I am informed, at least two home-made desserts. The guests leave heavingly full. Your Honour I am told Italian cuisine is a speciality which may have

RSB:SND

rubbed off from your husband, Stephen's Italian heritage.

Friends say your family mean everything and you are a most devoted and loving mother to Joseph, Alessandra and Dominic. You prioritise family including your husband, children, parents, brother, nieces and nephews and in-laws. Your weekends are devoted to your children's activities and times with family and friends.

Incredibly, although they say if you want something done you should ask a busy person, your Honour still finds time for running. It is not unusual for your Honour to rise early in the morning for a run before work. As a Crown Prosecutor your Honour said that running gave you time to think about cross-examination and to plan closing addresses. No doubt this will become valuable time for your Honour's reflections on the harder reserved decisions.

Your Honour congratulations of your appointment to the Court and I extend the very best wishes from the New South Wales Bar. May it please the Court.

PRICE J: Thank you Mr McHugh. Mr Harvey.

HARVEY: May it please the Court. It is my great honour to come before this Court as Junior Vice President of the Law Society of New South Wales to join with the Bar in conveying the congratulations of those whom I represent today, the solicitors of New South Wales.

We have gathered today to witness the beginning of a new chapter of contribution to the administration of justice in New South Wales by one of this State's most respected Crown Prosecutors.

On the eve of the opening of law term and 160 since the *District Court Act* was passed in 1858, your Honour's appointment gives us the opportunity to reflect upon the significant role this Court plays in administering justice as a

RSB:SND

Court of record responsible for meeting the demands of the citizens of the State in adjudicating criminal trials and in the growing weight of litigation generally. As solicitors working within this system we warmly welcome your appointment and look forward to many more such appointments in 2018.

Growing up on the other side of Bass Strait your Honour's first Court was that of a different kind to the one in which we meet today. As a member of regional and State basketball teams in Ulverstone your Honour developed a reputation for your strength and tenacity. This reputation underpins your life in the law. Your almost quarter century contribution to the law thus far has seen your Honour work within a rich variety of settings. You worked with Legal Aid Tasmania in your home state before moving to the Northern Territory where you spent five years running trials, as we heard, on remote islands, under trees and in school rooms.

You then went on to the Commonwealth and New South Wales offices of the Director of Public Prosecutions. You were made a Crown Prosecutor at the age of 32, a Senior Counsel in 2015 and have served almost two years as Deputy Senior Crown Prosecutor.

The regard in which your Honour is held by your colleagues at the DPP including the many, many solicitors with whom you have worked is reflected in today's packed courtroom. Your Honour has been spoken of as the consummate legal professional, down to earth, informed and determined to do the best job possible, each and every time.

As a prosecutor your Honour brought a swag of skills to the table as well as a truly formidable knowledge of the law and a work ethic that one colleague said, "others have to enrol courses to achieve".

Your Honour has been described as a sharp and compassionate and an

RSB:SND

articulate communicator and a good listener, all in equal measure. Your Honour has acted as a mentor to many solicitors, all of whom consider themselves better practitioners for having worked with you.

You have prosecuted numerous high profile cases including the trials of *Robert Hughes* and *Ron Medich*. As an advocate those around you describe you as impeccably polished both in terms of content of your submissions and in style. Your Honour I am informed that you are known for your sharp Scanlan and Theodore suits as well as your wicked high heels and signature short black bob.

Your Honour is calm under pressure, uncompromising in rooting out the truth and diligent in preparation. A highly ethical advocate who is utterly devoted to representing the victims of crime and to the interests of justice and will surely make a fine judge.

One illustration of this devotion is the leadership role you undertook in developing the child sexual assault pilot at the at the DPP. This is a scheme which introduced pre-recording of child witness evidence so that the victim may be spared from repeating the events of their victimisation time and time again.

It was your Honour who shepherded this program right through from its conception to the successful busy list it is today. Those close to you say that it is your particular interest in protecting and advancing the rights of children within the criminal justice system which inspired you to pioneer this and other reforms and ultimately it was this that drove every one of your appearances in Court, the knowledge that your Honour could be a voice for victims.

By your innovative example your Honour has been a role model for many younger women in the DPP over the years. You have always made the time to



RSB:SND

support and assist junior colleagues. Your friends and colleagues emphasise that your Honour has a passion for every area of your life, your life as a prosecutor, a mother, a wife and a dear friend. Your loyalty in friendship has meant your larger than life personality could always be depended upon to brighten up chambers or organise a fantastic dinner or Christmas party.

Outside of the law your Honour's defining characteristic is your devotion to your family. As we have heard you and your husband, Stephen are parents to three children, Alessandra, Joseph and Dominic. You are joyfully involved in every aspect of their lives, successfully balancing a busy high level practice with the demands of raising three young children.

Over the years your Honour has been a steadfast support to Stephen who recently completed his doctorate and has now been admitted to the Bar. You also manage to maintain a wide circle of friendships, both in and outside of the legal world.

Owing to your long experience as a prosecutor your Honour can count among your friends and well-wishers today a range of adoring staff from those working in the mail room through to the witness assistance service, to the lawyers and all the way up to the Director's chambers where your Honour served your last few months.

Your Honour's colleagues are sad that you are leaving but could not be happier for your appointment. As you were a formidable prosecutor your Honour will be a formidable judge.

Your Honour will be fair, empathetic and unfailing in your respect for and application of the law. I have every confidence the people of New South Wales will be well served by Judge O'Rourke. As the Court pleases.

PRICE J: Thank you Mr Harvey. Judge?

RSB:SND

JUDGE O'ROURKE: Thank you Chief. Chief Judge, Mr Michael McHugh, Mr Richard Harvey, fellow judges and former judges, former colleagues, family and friends. Thank you Mr McHugh and Mr Harvey for your extremely generous and kind words. Thank you Justice Price for the warm welcome you have given me on my appointment to this Court and to the members of your Court I thank each of you for the warmth of your collective welcome.

I have been honoured by the notes, the emails and phone calls received from some and the generous offers of assistance from others, particularly former Judge Conlon and Judges Huggett and Herbert who have helpfully taken me through some of the potential traps confronting a new baby judge.

I am not entirely comfortable speaking in public on personal issues and therefore you will be relieved to know I do not plan to speak at any great length. I also aim to keep my emotions in check but my success in that endeavour remains to be seen.

I see this as an opportunity to give thanks and that is what I propose to do. I have been very fortunate in my life so far. I grew up in a small coastal town in Tasmania, raised in a very safe, loving and sporting household with a strong focus on the importance of family. During my youth my parents ensured I was too preoccupied with sport to ever have time to be involved in any significant amount of trouble. Throughout my legal career I have also been blessed with wonderful, intelligent and generous people to guide me and assist me in my chosen path.

As you have heard after a brief flirtation with the Legal Aid Commission in Hobart I relocated to Darwin. Not because it was the furthest Australian city from home but rather due to my daily harassment of the then NT DPP Len Flannigan QC to employ me had finally paid off and I was offered my dream

RSB:SND

job.

So off I went with a strong Tasmanian accent and a suitcase of confidence without any real idea of how long I would be gone for. On my first day I had the very good fortune to meet the delightful and much loved Michael Fox or Foxy who also started with the NT DPP having relocated from New South Wales. Indeed the NT DPP was known then as the “foreign legion” because none of us had actually come from NT. It was a stimulating place to work and due to its small size it provided many opportunities for those who sought them.

It was where I ran my first Supreme Court trial (there being no intermediate Court in the Northern Territory) which was a drug case solely involving police witnesses. At the conclusion of that trial with my confidence brimming, if not overflowing, and a fairly remarkable sense of self-belief, I informed the DPP I was ready for something bigger.

So without an outward flicker of hesitation he briefed me in an adult sexual assault trial and this is a trial that I remember very clearly. It was presided over by his Honour Justice Bailey and my opponent was a wily old fox, Mr Patrick Loftus, may he rest in peace whom I later found out was Justice Bailey’s boss in Hong Kong a few years earlier.

The trial indeed started well. When the accused ran out of the Court and vomited during my opening address, I must admit I thought I was pretty persuasive but then reality hit and I learned many salutary lessons in law and humility over the next two weeks as Mr Loftus proceeded to wash the courtroom floor with me. These lessons culminated, when just prior to my closing address, Justice Bailey questioned me about whether a Longman direction was warranted. I suspect my long silence, my blank and docile look

RSB:SND

told him all he needed to know and it also told me that I had a great deal to learn.

My five years in Darwin, however, were priceless. They were rich with experiences, strong friendships, adventures, opportunities and a gaining of a deep respect for the outback and the top end. I was also very fortunate to develop a friendship with Peter Bannon QC and his wife, Denise who was in the Northern Territory on a two year secondment as Deputy Director from his identical role in the New South Wales DPP.

They thankfully took me into their lives and became surrogate parents to me. I also worked with Peter and was led by him in various murder trials and CCA matters. I learned a great deal from this humble, wise and extremely effective and skilful barrister but his most salient piece of advice was that a Crown Prosecutor only speaks when it is really necessary to do so. "Otherwise Gina remain seated and shut up".

In 1999 I relocated to the Commonwealth DPP as they thankfully agreed to transfer me to the big smoke. In the Sydney office I was blessed. Not only was I placed into the special projects or "sexy projects" as it was then called which involved large scale drug operations involving the Mr Cornwells and the Mr Shepherds of this world but my supervisor was the remarkable street-smart, formidable and original, Julie Shouldice, or as my children came to call her 15 years later, Julie Cupcakes.

A kinder, more generous person you could not meet. It makes me very sad that she is not here today. I have no doubt she is raising a glass of champers, talking about one or two zeros that she had to manage whilst cooking up a batch of cupcakes in heaven.

My time in the Commonwealth DPP also provided me with the

RSB:SND

opportunity to make and consolidate lifelong friendships particularly with Lara Gallagher and Kay Marinos. It also created the path for me to meet my husband Stephen Dametto but we will get to him later.

After two years at the Sydney Commonwealth DPP I threw my hat in the ring for a Crown Prosecutor role with the New South Wales office without much thought of success. To my great surprise I was offered an interview. I immediately called Foxy, who by this time was a Crown in New South Wales, and sought his advice on what might be asked in the interview.

Foxy, for your sage and poignant advice, I am eternally grateful. After informing him who was on the panel which included then Deputy Director Roy Ellis SC, Foxy repeatedly reiterated to me that it was essential to read and digest the High Court case of *De Gruchy* on the question of motive in which Judge Ellis, as he now is, appeared in. Well thankfully Foxy I heeded your advice and I poured over that case for days. It was question number 2 on the interview and I nailed the interview and I got the job. So thank you very much.

When I started at the Office 15 years ago I felt like I had come home. I had also fortuitously left the Commonwealth DPP just prior to the implementation of the *Federal Criminal Code*, a piece of legislation that still bewilders, frightens and baffles me.

When I first started, as you have heard, I was blessed with landing chambers opposite Paul Conlon SC as he then was who took me under his wing and I quickly came to admire his robust and forthright advocacy and then his skill and manner as a judge of this Court. I do wish he was presiding for some time into my transition to help me but I am also deeply pleased and honoured to be the one chosen to replace him! I hope I prove myself worthy of the honour.

RSB:SND

I can truly say that I have loved every single day at the Office of the DPP and I have been constantly rewarded with challenging cases and strong friendships with amazing people of great intellect and integrity. Colleagues who have come to me so much more than simply workmates particularly Hun Baker SC, Sally Dowling SC, Kara Shead SC, Tanya Smith and Sharon Harris and former colleagues who are now judges, Judges Huggett, Pickering and Girdham.

I honestly do not know where I would mentally be without the availability to debrief after a harrowing day in Court or after receiving a gruelling dressing down. You would all, without hesitation, drop whatever was being worked on, provide sage advice (and written submissions), Band-Aid my wounds of battle, prop up my confidence and ensure that I was battle ready for the following 10am start and for that I truly thank you.

In addition, as I imagine is the case for all working mothers in our demanding profession, the most significant struggle I faced was the constant attempt to achieve and maintain a high standard of work in my professional life with raising a young family and raising them well.

I am and will be eternally grateful that I was able to hopefully achieve such a work/life balance but that would not have been possible without the attitude of those that lead in the ODPP. So I want to sincerely thank the Director, Lloyd Babb SC and his predecessor, Nick Cowdery QC and Mark Tedeschi QC for their trust, flexibility, understanding and for the respect they daily demonstrate to the women of the Office, those with and without children.

I was constantly given amazing opportunities, briefed in matters which were complex and mentally challenging but so rewarding. Specifically I would like to thank Mark for his friendship, his guidance and for playing such a

RSB:SND

wonderful mentoring role to me over the last 15 years. There is no better re-examiner than Mark Tedeschi. Every time I called from Court, knocked on your door post 4.30pm to seek advice, counselling or to seek some consolation, you were there and I thank you.

My last six months at the Office was in the Director's chambers which was a fascinating place to work. It was a deep learning curve for me of how the Office runs and I gained a respect for the extraordinary work the Crowns and the solicitors do in the office and the depth of the talent that the Office has.

At times, when I had a chance to breathe, it was also fun as I worked with a Director I greatly admire and respect, my long-term and likeminded friend, the brilliant Kara, recently retired Keith Alder, a team of bright and talented solicitors and super-efficient EAs, Fiona and Beck. It is trite to say that I will miss the Office deeply.

Now to those closer to home. To the real wives of Howard Street and other special school mums, thank you for your assistance over the years in the pickups, the drop-offs, the videos, the photographs of assemblies, awards missed and for never seeking to exacerbate my guilt for my absences. I am also very chuffed to look out and see my closest here today so thank you ladies.

To the Dametto family I thank you for opening your hearts so warmly and welcoming me into your fold, particularly when it initially coincided with such a difficult and sad time with the loss of Stephen's father, Redento. A man I sadly never met but who was clearly a man of great dignity, kindness and strength. I truly feel like one of the family. I particularly thank my mother-in-law, Teresa or Nonna for travelling over from Adelaide to be here today and for being such a great FIFO in the school holidays.

RSB:SND

To my mother and father thank you for providing such a safe and protective childhood. I used to take that for granted but after nearly 25 years in criminal law and seeing what I have seen, I no longer do and I value it enormously. Both of you instilled a strong work ethic and a deep antipathy for taking sick days. My children still do not believe I never took, or I was never allowed to take, a day off in primary school.

To mum thank you for assisting me with the kids throughout the school holidays, during big trials and for always agreeing to come up from Hobart without hesitation on the Nanna and the Nonna express airline. To dad thank you for being the kind of dad all girls deserve to have, one to whom I could do no wrong, one who would agree to go for a run after finishing a 14 hour shift at our sports store and one who always treated me like a princess. Thank you dad.

To my brothers, Daniel and Shaun, again I hit the jackpot. I have two brothers who are amazing and kind fathers and have always been there for me. Both of whom have followed my career with great interest and pride and have given unwavering love and support. I do hope my children have the same relationship as we do.

Particularly I would like to thank my younger brother Shaun or Dr Shaun (after obtaining his doctorate, which we are very proud of) for his sound advice and his biased belief in what I could achieve. Thank you also for coming all the way from Taipei today. Indeed I think he had booked and paid for his flight before I had even finished telling him the news.

To Daniel thank you also for travelling from Hobart with my gorgeous nephew, James and niece, Rose. Thank you for being such a kind and warm man, a super fun and much loved Uncky Dan to the kids and for your



RSB:SND

unquestionable loyalty, strength in adversity and positive approach to life. But most of all Daniel thank you for ultimately deciding not to wear any Richmond Football Club guernsey, scarf, T-shirt or shorts in Court today. I do appreciate how difficult that must have been for you.

Now to my immediate family. To Stephen, the love of my life. Our first conversation over the phone was an argument. To those that know us well that may come as no great surprise but we have more significant values, goals, interests and beliefs in common than not. You are my strength. You have made me a better person and have demonstrated far more enthusiasm, pride and joy in anything I have been able to achieve than I do myself. I thank you for being such a fabulous, loving and involved father to our children. I am constantly flabbergasted and at times, frustrated at all you do and achieve.

For example, whilst working full-time, heading up organised crime at the AFP, Stephen simultaneously coaches the boys in AFL, he leads the New South Wales Republic movement, he is a director of water safety at Clovelly, he obtained a law degree with Honours, passed his Bar exam and is now a PhD candidate in law. It makes me tired just outlining what you do and have achieved. I am very proud of you.

And now finally to my three gorgeous children, Alessandra, Joseph and Dominic. You all know how deeply I love you. To Alessandra my independent, tough and strong-willed little girl who is not so little any more and who likes to remind me that her legs are longer than mine, I am afraid darling that is no great feat.

To Joseph, my little Joey, my helpful considerate son with a rather powerful competitive streak, who when he is told by me that it is just for fun and not a competition, quickly informs me that "mum, life is a competition" and

RSB:SND

Dominic, my baby boy, with such a delightful disposition and a loving and affectionate nature and to top off he goes for Collingwood, I love you baby.

Thank you for understanding that mum cannot come to all school assemblies, awards, liturgies, sporting carnivals, et cetera. Thank you for being so resilient and adaptive. The three of you bring complete joy to my life and you fulfil me. Thank you for providing such clarity in defining what the real meaning and the purpose of my life is. Everything else pales into comparison. I am so very proud of all three of you and I love you deeply.

Finally thank you all for taking the time to be here today and for those who have travelled from interstate and across the seas I am extremely grateful.

Thank you.

PRICE J: Thank you Judge.