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IN THE DISTRICT COURT
OF NEW SOUTH WALES

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

THURSDAY 21 FEBRUARY 2019

**SWEARING IN OF HIS HONOUR JUDGE ALISTER JOHN ABADEE AS A
JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**

Mr P Khandhar SC on behalf of the New South Wales Bar Association
Ms E Espinosa, President, Law Society of New South Wales, on behalf of
solicitors

(Commissions read)

(Oaths of office taken)

PRICE J: Judge Abadee on behalf of all the Judges of the District Court of
New South Wales and on my own behalf I congratulate you and warmly
welcome you, I wish you all the very best in your judicial career.

KHANDHAR: I acknowledge the traditional custodians of the land on which we
meet and pay my respects to the elders past and present. Chief Judge,
Judges, Judge Abadee it is a privilege to appear on behalf of the New South
Wales Bar to acknowledge your contributions to the legal profession and to
welcome your appointment to this Court.

In a career spanning 25 years you have been an advocate and an
academic and a valued member of your local communities. In 1994
your Honour became Associate to Justice Foster with the Federal Court and it
was an excellent grounding for an eventual career at the Bar.

Your Honour was admitted as a solicitor the following year and spent
several years working in law firms in insurance and commercial litigation. As

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an instructing solicitor your Honour was highly regarded for identifying key points in a case.

Your Honour was called to the Bar in 2000 becoming a member of 7 Wentworth Chambers and quickly established and developed a wide ranging practice in areas too many to mention, but including commercial and equity matters, corporations law and professional liability, class actions and consumer law and administrative law.

At the Bar you gained a reputation as a skilled junior. Justice Stephen Gageler of the High Court who has led you as Senior Counsel has said that you left little for seniors to do and gave peace of mind that you were handling matters well. At the Bar table your Honour is described as a fierce defence counsel and formidable opponent.

Whilst it is hardly unusual in adversarial litigation for there to be disagreements with opponents, your Honour was always fair and courteous in professional dealings. Your Honour is described as counsel who talked through issues to find a way forward to progress litigation rather than arguing every point. If there was a common sense approach your Honour found it through sensible discussions ensuring issues were narrowed and litigation was as efficient as possible.

Your Honour has appeared across jurisdictions in many significant cases. In the Supreme Court you acted in a case concerning a well-known non-profit organisation to claim to recover moneys from the fraudulent conduct of its general manager.

In the New South Wales Court of Appeal your Honour worked on a consumer representative action concerning the application of Australian Consumer Law to disappointed passengers on a European river cruise.

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In the Federal Court your Honour appeared in a case concerning the constitutional validity of provisions of ASIC Act. A very significant case of your Honour's in terms of legal and consequentially social development was the NSW Register of Births and Deaths and Marriages v Norrie led by David Bennett QC in which you successfully represented the respondent who did not identify as male or female. This was a matter of statutory interpretation of the Act and a question of whether the Registrar had power to register a change of sex to non-specific. The High Court Bench led by Chief Justice French unanimously found that the Registrar did have such a power to enter a sex as non-specific as sex does not have a legal binary meaning of male or female. These of course are just four of the many matters in which your Honour appeared alongside and opposite leading senior counsel.

Outside of court another way your Honour has contributed to the legal profession is as an author and a teacher. An enduring contribution has been the text book your Honour co-authored, Professional Liability in Australia of which there have been numerous editions requiring significant dedication to write and edit.

As a university lecturer your Honour taught product liability and principles and lectured in foundations of law. Your Honour has also been in demand as a speaker at professional seminars and for in-house presentations on topics including contract disputes, class actions, solicitor's liability and professional liability.

In addition to your practice at the Bar and your academic pursuits your Honour has served as naval reservist and as a member of the New South Wales Navy Legal Panel acting for defence members in disciplinary proceedings and commissions of inquiry. Several of these have attracted

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considerable media interest including the high profile court-martial of a naval commander and the Sea King Board of Inquiry investigating that fatal helicopter crash in Indonesia.

It was not unusual to periodically see your Honour in chambers dressed in your white officer's uniform which was also so impossibly white that floor members could only gaze upon your Honour's radiance, but for a moment, before stumbling half blinded to nearby bookshelves.

Attention to appearance was reinforced at Naval Training College where it is said your Honour became so proficient with the use of a hot iron that your cohort called themselves the Easy Gliders. Thankfully for the litigants of this State your Honour's temperament is not known to be hot.

Your Honour is described as someone who is humble, yet acts with courage, energy and purpose. To quote your headmaster from your final school report, "Alister has a purpose in life and just gets on with it".

Notwithstanding your Honour's professional success your Honour has always maintained a work/life balance and outside of law you spend time nurturing your family's interests. Your Honour is there in the stands to watch your son Rob play schoolboy rugby and you spent a couple of years volunteering as President of Norths Pirates Junior Rugby Club when Rob was a younger player.

Your Honour is there in the audience to enjoy your daughter Libby singing with the Australian Girls' Choir. Your entire family has travelled overseas together following the choir on tour most recently in New Zealand. It is no surprise that your own children are accomplished in sport and music as your Honour exhibited these talents as a younger man. Your Honour was a first class cricket player playing First Eleven as a schoolboy and an able singer

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having roles in school musicals and later in the University of Sydney Law Review.

Your Honour's commitment to family, community and professional life will hold you in good stead in this next phase of your Honour's career. Indeed today is both a career milestone and an occasion shared by family, many of whom are here today.

Your wife Kerry is an accomplished lawyer, you met at university and have been married for over 20 years. Rob is here today but Libby is away experiencing a rite of passage on a school camp. Your mother Jenny was a legal secretary before coming one of the first ever female judge's associates in the Supreme Court and of course your father Alan Abadee, a former Supreme Court Judge and Deputy Judge Advocate General of the Australian Defence Force. Your sister Nicole Abadee who is a literary consultant and a reviewer and former barrister and her husband your Honour's brother-in-law is Justice Macfarlan. With your parents each celebrating their 80th birthdays and your Honour's transition into judicial life it is certainly a big year for milestones in the Abadee family.

Your Honour the barristers of New South Wales extend our sincere congratulations on your appointment and wish you many fulfilling years ahead.

PRICE J: Thank you Mr Khandhar. Ms Espinosa.

ESPINOSA: I acknowledge the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation and pay my respects to their elders past, present and emerging and I also acknowledge any indigenous people present today.

Judge Abadee, it is privilege to come before the Court as President of the Law Society of New South Wales to congratulate you on this honourable

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appointment.

Your elevation to the bench is justly deserved and fitting capstone to a distinguished career, first as a solicitor and then for nearly 20 years at the Bar.

Your Honour studied at the University of Sydney as we've heard where you served as president of sporting clubs, appeared in musical theatre and even won an interfaculty running race.

After attaining a Bachelor of Arts and Bachelor of Laws, you served as Associate to Justice Foster of the Federal Court of Australia before commencing your career as a solicitor in 1995.

You spent a year in the Insurance Litigation Department of Abbott Tout as it was then known and four years in the Commercial Litigation Department of Clayton Utz.

This formed a foundation for your career at the Bar as an expert in commercial and equity matters, corporations law and professional liability.

As counsel instructing solicitors say your Honour would turn work around efficiently, work hard and practice punctuality. You were extremely thorough and consistently well-prepared on both the facts and the law.

I personally am lucky to be counted among the solicitors who instructed you, having briefed your Honour with the respected law firm Moray & Agnew on a class action matter related to the alleged presence of asbestos. As I recall our mediator was Ian Callinan QC and we were opposed to the personal injury lawyer, David Marocchi.

To the benefit of clients and solicitors alike your Honour has a wealth of knowledge and experience appearing for clients as both trial and appellate level. In court, you were a talented advocate who was good on your feet and persuasive before judges. You were a tough negotiator you never took a

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backward step.

You appeared as junior to silks who went on to the bench, including Guy Parker SC, now on the Supreme Court and Richard White SC, now a judge of appeal. Instructing solicitors in the Surf Life Saving New South Wales case, which has been mentioned say it was your remarkable sense of strategy and organisation skills that won your side freezing orders almost immediately in the case of serious employee fraud.

Another solicitor has spoken at the time that he and your Honour unintentionally built up a small practice registering overseas arbitration awards in Australia.

In one case, this was done under the International Arbitration Act by which you attempted to enforce the award against assets held by the (curiously named) Democratic Republic of Congo.

The client had obtained a judgment for millions of dollars in Brussels against a mining entity based in the DRC.

That judgment was registered as a judgment in the UK High Court of Justice, your Honour then had the Supreme Court of NSW register this judgment.

However, you faced a problem with the service of documents and personal service in the DRC was a requirement. Your Honour applied to dispense with personal service given three facts:

First, address for service was the city of Lubumbashi which is approximately 1,100 kms from the capital of Kinshasa, near the border was Zambia.

Second, the DRC was then governed by a dictator Joseph Kabila. He became head of State following the assassination of his father in 2001.

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Third, the country was in fact in civil war and travel to the country was hazardous to say the least.

Needless to say the application was successful and your Honour obtained an order in Western Australia against an Australian mining company which had leases in the DRC.

You then provided advice leading to an Australian first, getting ICSID awards, or for those who don't know what ICSID, International Centre of Settlement of Investment Disputes but is more commonly known by the acronym.

Getting these awards recognise and enforce in Australia in the case of *Lahoud v The Democratic Republic of Congo*. With extensive experience in representative proceedings including consumer and investor class actions you have appeared against senior counsel in matters of considerable public interest. You were led by Noel Hutley SC in *Professional Investment Services v Jamieson*, the case which stimulated the onset of representative actions in New South Wales prior to the insertion of pt 10 of the Civil Procedure Act.

In *Moore v Scenic Tours Pty Limited*, of which we have heard, your Honour represented disappointed passengers on a European river cruise affected by flooding. The Court found that a defendant cannot use the terms and conditions of a contract to limit the operation of consumer protections afforded under the Australian Consumer Law. Now despite promises of a five-star luxury cruise replete with Egyptian cotton sheets, a Michelin star restaurant and other basic human rights, passengers were shunted around the continent largely by means of coach and a patchwork assortment of ships. Quite famously your Honour submitted in court that "the whole experience was, for your clients, a massive disappointment". You went on to point out that

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“the consumers did not pay for a backpackers’ Contiki tour”. The people at Contiki caught wind of this comparison. Accordingly they issued a media release taking exception to your Honour’s remarks and I quote from the said media release,

“For over 50 years we have been delivering quality holidays for young people and Alister Abadee’s comments made it pretty clear that he just doesn’t know us - so we, Contiki, want to invite him to join us on his very own Contiki experience and while having the time of his life learning exactly what we are about. Assuming Mr Abadee is under 35 years old, we invite him to contact our reservations team today to take his pick, free of charge. After such a busy week in the Supreme Court goodness knows he needs a Contiki holiday.”

Colleagues have expressed hope that your Honour will take advantage of this offer in time for your judicial sabbatical.

Your Honour’s involvement in two institutions, the Naval Reserve Legal Panel and the University of Sydney form a large aspect of your life. Noted members of the Naval Reserve Legal Panel have been appointed to the judiciary over the years. Among them are, and bear with me, the list is long, the late Sir Laurence Street, who indeed founded the panel in 1964; the late Justice Harold Glass of the Court of Appeal who went on to become an admiral; the retired Justice Terence Cole; the retired Justice Murray Tobias; and the Justice Advocate General, Rear-Admiral Justice Michael Slattery who records his regret at not being able to attend this ceremony.

There is also a former judge of the District Court, the late John Sinclair or Sinkers, as he was known, who originated from the panel. Together with Judge Kate Traill and Judge Nanette Williams, your Honour is the latest member of a triumvirate of Naval Reserve Legal Panel District Court Judges.

The panel has proven a highly fertile cradle for the production of judicial talent. You have been an active and supportive member of the panel engaged

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in administrative law, international law and discipline law. You have appeared in some of the most challenging and difficult inquiries and cases the navy has had to face in recent years, including the Sea King inquiry. This ran for approximately 18 months in 2005 and 2006 and it arose a helicopter crash killing nine people following Australia's decision to send troops to Indonesia in the wake of a 2004 tsunami. Your Honour appeared for a key witness in a very tough role and were opposed to several silk.

Your Honour has had a long and deep association with the University of Sydney from which you attained a Bachelor of Arts and Bachelor of Laws, and a Masters of Law where you have been a lecturer for many years. Your teaching has always been popular with students who have appreciated your depth of technical expertise and the way that you explain the law by reference to the day-to-day experience of practical justice. You have made a particular contribution to the life of first-year law students.

The Sydney Law School has recorded its intense pride in your Honour's appointment and notes that you now join an illustrious list of alumni and staff who have joined the bench.

As we have heard, family is of utmost importance to your Honour. You are beloved by wife Kerry and children Rob and Libby, whose pursuits in the world of music and sport have done you proud.

Your Honour's supportive parents, Alan and Jennie Abadee, are here today.

As we have heard, your father is a retired judge of the Supreme Court of New South Wales and served both as a Brigadier in the Army and as Deputy Judge Advocate General, Army.

I also recognise the presence of your parents-in-law, Graham and Jenny

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Wells.

Your interests include jazz music, sports, literature, ranging from British classics such as Dickens and Shakespeare to modern sports writing by Malcolm Knox and Gideon Haigh.

Fond of golfing, your Honour once got a hole-in-one at Killara, an impressive feat according to those in the know.

Judge Abadee, colleagues say three qualities will serve the people of New South Wales well on the bench.

First, you are a person of fairness through and through.

Second, your knowledge of the law will ensure your judgments are thorough in every respect, and

Third, you will be utterly courteous, but importantly you will not suffer fools gladly.

The solicitors of New South Wales look forward to seeing these gifts manifest themselves in your judicial role, and I congratulate you on their behalf and wish you well for your time on the bench.

As the Court pleases.

PRICE J: Thank you, Ms Espinosa. Judge?

ABADEE DCJ: Chief Judge, Mr Khandhar and Ms Espinosa, judges of this Court, and other Courts, members of the legal profession, ladies and gentlemen.

Thank you, Mr Khandhar and Ms Espinosa for your kind and somewhat over-extravagant praise and words.

This ceremony marks a unique courtesy from the Court to its latest appointed judicial officer. It is deeply moving for me to receive this recognition but I am acutely aware that it comes with responsibility that I do all that I can to

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preserve the honour and reputation of this Court.

Today offers me the opportunity to acknowledge and thank all of those who have made important contributions along my journey. As you've heard, I started my professional working life as an associate to the late Justice Michael Foster of the Federal Court. His Honour was a particularly effective trial judge and in the composition of his judgments and presentation in court, he left a lasting impression upon me in the way that he managed cases before him.

I was grateful for having the opportunity of working for two large city law firms for nearly five years. I had some short experience at what was then, Abbott Tout, doing personal injury work, and thereafter at Clayton Utz doing product liability cases and commercial litigation. I not only saw some effective litigation operators and learnt about client management but also the management of sometimes recalcitrant counsel.

I am profoundly grateful for all the loyal support I have received from solicitors over my years at the Bar, many of whom I'm honoured to see are here today. Some barristers sometimes lose sight of the contributions of solicitors. My own experience has been marked by almost universally high standards of assistance from my instructing solicitors.

To me the Bar is one of the few places left where one can find the pure professional sole trader. It was very good to me. It had the benefits of intellectual challenge and stimulation and the avoidance of stifling bureaucracy and conformism with the renowned collegiality of comrades in arms.

I was lucky to have read with Justin Gleeson SC and Michael Windsor SC. The former was only just about to take silk and was the undisputed leader of the junior commercial Bar at that point. You learnt much when you saw him in action but if he disapproved of what you had said or

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done, he might shoot you the kind of laser look that made you fear for your imminent prospects of fatherhood. The latter was and remains the thoroughly affable leader of the common law Bar with an extensive practice acting for the State.

I was privileged to join what was then the 7 Wentworth Chambers and to see some of the legends of the Bar in action. Who could not profit from observing Jackson QC with his vast High Court practice, Stitt QC's withering techniques of cross-examination, the urbane presentation of Slattery QC, now Justice Slattery, or see at first hand the application of the memorable laws of litigation of the late and great Chris Gee. A couple of gems were, "No case is not improved by a good verbal" and "Never smile in a jury trial." These laws will remain a permanent part of the folklore of the Bar.

Throughout my years on that floor I learnt much from working with quality advocates such as Adam Bell SC, Parker SC, now Justice Parker, Rees SC, now Justice Rees, and Miller SC.

A most satisfying feature of life at the Bar for me was the opportunity to work with and lead some highly credentialed and talented juniors including among them Ed Anderson, Tarik Abdulhak, and Shanaka Jayasuriya. These happy times were facilitated in no small way by the professional service of my clerks, Andrew Lachlan, Nick Tiffin, Simon Walker and Michael Reid.

An immensely enjoyable part of my working life has been working, as you heard, as a legal officer in the Navy Reserve. This presented a marvellous opportunity for me to serve and exposed me to defence members of varying rank and experience. It gave an insight to me as to how much value the rule of law provides, even in a defence context. To be able to have assisted, in a small way, the wonderful men and women of the defence force has provided

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great satisfaction to me. The experience confirms my belief in the ADF as, collectively, a national treasure. I have enjoyed the special comraderie of life in the New South Wales Navy Legal Panel with definite highlights being the annual weekend retreats at HMAS Creswell at lovely Jervis Bay.

I enjoyed the collaborative effort of putting together a professional liability in Australia text and I want to thank my co-authors. I especially want to thank Judge Walmsley who has been a mentor to me over the years.

Over the last few years I have derived much satisfaction in tutoring a Foundations of Law course for law students at the University of Sydney, my alma mater. It's a delight to be able to facilitate the steep transition of so many bright young things from school to university and their introduction to the discipline of law even if it makes you feel much older than you really are.

For all of these wonderful experiences there are too many people for me to single out, but any sustained career, particularly at the Bar, is built with the support and tolerance of family and friends.

I have had the immense good fortune and privilege to have had a comfortable upbringing. That is due to the devotion and plain hard work of my parents. I am so fortunate and grateful that my father Alan and my mother Jenny are both able to be here today. They provided me with a means to enjoy a liberal education - one of the greatest gifts any parents can bestow - and facilitated a household in which opinions were freely expressed even if, as the youngest family member, it was sometimes a struggle to get a word in edgeways over more voluble family members.

For my father it was nearly 30 years ago that he commenced his own judicial career. He has rightly been acclaimed for his dedicated service, decisiveness and punctilious sense of duty and propriety, qualities I intend to

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emulate. He also has been a model of devotion and support for my mother. I know today's ceremony will bring back many happy memories for him.

My mother, in turn, provided great support to my father throughout his working life and still does, even though she has had to endure much hardship in more recent years. It's a tribute to her courage and an honour for me that she is even here today. As my own career has developed, both have been extraordinarily generous to me and my family.

My sister Nicole's star has always shone brightly. She was an exceptional barrister in her own right and more recently has followed her passion into the literary consulting and book reviewing world and is making a great fist of that. As I commence my duties I hope that it is only her name and not mine that will appear regularly in newspapers. She has also been an enthusiastic supporter of mine.

I am also honoured by the presence of my brother-in-law, Rob, Justice Macfarlan and fondly recall the times when, as a leader of the commercial Bar in New South Wales, he led me in some high profile cases following corporate collapses.

On the other side of the family, thank you to Graham and Jenny Wells, my father and mother-in-law, travelling from the southern highlands to join me for today's occasion. They have always been interested and supportive of my career as well as providing unstinting help for an always busy domestic life.

Happiness begins at home and I am truly blessed to have two vibrant and wonderful children, Rob and Libby. The travails of life as a self-employed professional and the typical issues arising from teenage life might sometimes lead to certain stresses, but I have always treasured being part of your lives and am excited about helping you with life's challenges as you steadily move

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forward towards adulthood. Through good times and bad you know that I will always have your back. I am very proud of you both.

As to my wife Kerry, my feelings are too deep for easy public expression, so I content myself with echoing the words of former prime minister Joe Lyons, who upon his appointment to that office, wrote to his wife Enid,

“Whatever honours or distinctions come are ours, not mine. We have seen some changes and we have lived full lives in our years of married life and it is grand to know that our love for each other is still our most cherished and valued possession.”

Thanks to all of my friends who have come today to this ceremony and taken the time out to be here. My friendship with you becomes all the more important to me, not least as an antidote to taking oneself too seriously, but I look forward to continuing to be part of your lives with all of its highs and lows.

I hope you will pardon me for speaking over much about myself and my experiences. A useful object of swearings-in is to give us all the chance to take stock of where we are and how best we can continue in our own ways to serve the public, and in the case of the legal community, to do so through facilitating the administration of justice.

I am thrilled beyond measure that I have been given this opportunity to serve as a judge of this Court and I look forward to receiving the considered assistance of all, from the crustiest Queen’s counsel to the most greenhorn solicitor.

I am also excited at the prospect of meeting and developing friendships with my fellow judges. Already I have received a warm welcoming.

Only time will tell how effective I will be. I will do my best. It is my intention that my role will be somewhat akin to my approach to refereeing rugby over recent years. People did not come to watch those games to see

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me referee.

As a judge I will be very mindful of my own limited role and take guidance from the words of Sir Owen Dixon when he said, "Lawyers are often criticised because their work is not constructive. It is not their business to the constructive activities of the community, but to keep the foundations and framework steady."

I am very grateful to you all for honouring me and the Court by your presence this morning.

PRICE J: Thank you, Judge. The Court will now adjourn.