

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BELL CJ
AND JUDGES OF THE
SUPREME COURT**

THURSDAY 8 JUNE 2023

**SWEARING IN CEREMONY OF KRISTINA ANNE STERN SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES
AND AS A JUDGE OF APPEAL**

(Commission read; oaths of office taken)

- 1 **BELL CJ:** Justice Stern on my own behalf and on behalf of your new colleagues on the bench I welcome you and I congratulate you on your appointment. The Court is most fortunate to have yet another very successful senior practitioner of such calibre agree to accept the public office of a judge of this State and in your case a judge of appeal. You have, as you will see, very very strong support from the profession which is entirely justified, so can I congratulate you and wish you the best in your judicial career. Mr Attorney do you move.

- 2 **THE HONOURABLE MICHAEL DALEY SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Thank you your Honour, may it please the Court. I acknowledge the traditional custodians of the land, the Gadigal people of the Eora nation and I pay my respects to elders past, present and emerging. I acknowledge our Aboriginal colleagues and friends here this morning. Your Honour Justice Stern, that sounds good doesn't it? On behalf of our State and the Bar it is my great pleasure to add to the Chief Justice's congratulations on your appointment as a judge of the Supreme Court of New South Wales and a judge of appeal.

- 3 I am sure you are delighted that we are joined today by so many special people in your life. I welcome your proud husband, Matthew, your children Hannah, her partner Ben, Grace, Felix and Amy and mum. Watching on proudly is your mum here today, Gabriele Medley AM, a beaming smile over there alongside

your sister Kaye and brother Tony. There are sadly people who cannot be with us today including your late father Werner, I am sure he is watching on from somewhere. Also joining us are friends and colleagues. Along with your family they have offered stories to paint a picture of who you are and the journey that you have taken to arrive at this proud moment.

- 4 Your Honour you were born in Dandenong, a suburb of Melbourne, your parents were both doctors. Your mother, pathologist and cytologist and your father a surgeon. Both were born in Germany and met in Australia at medical school. Kate is the oldest and you are the youngest. Kate confirmed that you both got most of the attention whilst the middle child Tony was stuck in the middle but generally not making a fuss. You have been described as a wilful child but never spoilt or entitled. This attitude of course came from your family. A good illustration of this attitude was when the family moved from Dandenong to the affluent Toorak. Your family insisted on telling people that you lived in Kooyong, as Kate recalls, to make it sound not quite so posh.
- 5 Your childhood later involved horse riding and trying to learn the violin. Later, says Kate, it mainly involved trying to avoid learning the violin so you had more time to hang out with the boys. Her words not mine. You went to school at Presbyterian Ladies College until year 8 and then transferred to Lauriston Girls' School. You insisted on this transfer and Kate offers this as an early example of one of your greatest qualities, doing life your way. At school you enjoyed studying English Literature and French, you were smart and productive. A reward for these skills was the honour of being named Dux of your school. You finished high school in 1982 and started at the University of Melbourne in 1983 where you studied law and arts. You graduated in 1987 of course with first class honours in law as well as receiving the Joan Rosanove QC memorial prize for being the top ranked final year female student.
- 6 You were admitted as a solicitor in 1988 and worked at Arthur Robinson & Hedderwicks. Soon, however, you moved to the United Kingdom. You were awarded a TAP Scholarship to study a Master of Laws at the University of Cambridge and then travelled to the UK to take up this trip in 1989. Two weeks

after arriving in Cambridge your doing life your way skill kicked in and you decided you were going to do a PHD instead. Your scholarship was extended and you completed your PHD in 1992.

- 7 From 92 to 96 you worked at the Kings College London lecturing in contract law, tort and medical law. In 1995 you lectured at University College London in the Law of Obligations. You were called to the UK bar in 1996 and took up pupillage at 39 Essex Street chambers. This is where I need to rewind a few years because not only were you successful professionally but you were also succeeding overall in life. Your daughter Hannah was born just three months prior to you starting at Essex Street Chambers because you had married your husband, Matthew, two years earlier in the Yorkshire dales. That sounds very romantic. You met Matthew in 1990 in Cambridge. He recalls you making a strong impression on him and him making almost no impression on you but that just sounds like Matthew being humble to me. Matthew remembers you mercilessly making fun of him over the course of the first year but by the end of that you were inseparable. You were engaged in 1993, married in 1994 and were parents in 1996.
- 8 The following years in the UK continued in the same vein both professionally and personally. Grace was born in 1998, Felix in 1999 and Amy in 2002. Your work also included many highlights including serving as junior counsel in 2003 in the Hutton Inquiry, an investigation into the controversial circumstances surrounding the death of David Kelly, a former UN weapons inspector in Iraq. And you also led on many cases in the House of Lords. You were admitted to the Northern Ireland Bar in 2005 and were appointed to the Treasury Panel of Counsel in the United Kingdom in 2006.
- 9 Your Honour for most people this would constitute a full career but we are not even halfway through your outstanding professional life. You left Essex Street Chambers in 2006 and after three months travelling around the UK and California you returned to Australia. You were admitted to the New South Wales Bar in the same year and are now widely regarded as one of Australia's leading Public Law and Commercial Law professionals. You took silk in 2011.

You have appeared in significant complex matters including in the Hobart International Airport litigation in the High Court and for Meta in the ongoing proceedings by the Australian Competition and Consumer Commission. You have appeared at numerous inquests and inquiries including into the death of our wonderful late cricketer Philip Hughes and those associated with the Quakers Hill Nursing Home fire, the Dungog floods and the Ruby Princess.

- 10 Friends and family have offered many words to describe your skills in chambers and at the bar. Formidable in cross-examinations is what your friend Justice Anthony Payne said. He also offered, “clever and quick” as well as “a wonderful writer”. Your daughter Grace, a solicitor herself, calls you “a precise surgeon of the law”, something you no doubt got from mum and dad. Colleagues at the Sixth Floor Chambers have always been impressed by your efficiency at getting to the heart of an issue. Louise Coleman has witnessed on many occasions your innate skill in anticipating what your opponent is going to do or say. She also considers you to be a wonderful mentor, proactive, nurturing, open and pleasant. I am told all of the juniors at chambers will miss you.
- 11 You have been a wonderful colleague and while you are an outstanding senior counsel, they would also like to offer something else that you are widely recognised for in chambers, your sweet tooth. You love a treat. This normally starts with a stop off at Flour and Stone on your way to work to get a zucchini bun where I am told you are often joined by Justice Payne on this endeavour. Lunch time brings doughnuts along with some balancing Pilates or Yoga. Surprisingly your love of sweets has assisted you in court on at least one occasion. Louise remembers you having chewy caramels in court and offering one to your opponent during a break. Your opponent willingly took it, popped it into his mouth and started chewing just as the presiding judge asked him to start speaking. The caramel however had weaved its magic and locked his jaw, perhaps loosening a filling just as he started to speak. You will take any advantage, won't you.
- 12 And there are more of those sorts of accomplishments. You were made Chair of the New South Wales Bar Association Inquest and Inquiries Committee in

2020 and also a member of its Climate Change Committee. In 2023 you became a member of the Australian Government Takeovers Panel, a peer review body that regulates corporate control transactions in widely held Australian entities. Throughout your career you have written and presented extensively in the fields of public and commercial law, you have been published in the Australian Journal of Administrative Law, Modern Law Review and the Australian Bar Review. You have also been a contributing author to work such as key issues in judicial law, key issues in public law and Bullen and Leake's Precedents and Pleadings. But your Honour, again, I have only touched on the surface of your career in Australia. You have conducted hundreds of cases across all jurisdictions. You are a wonderful colleague and a tough but fair opponent say all. All colleagues spoken for with this speech also unite on one thing, you are a good person.

- 13 Your family wholeheartedly agree and offer more. Your daughter Hannah thinks you are an amazing woman, hardworking and have shown her and many others that anything is actually possible if you want it badly enough and are prepared to work for it. Matthew has always been impressed by your commitment to family. You have always built a strong barrier to keep your work life separate because your family is the most important thing. You are almost always home for dinner and you have been a wonderful presence in your children's lives. Your sibling, Kate, has called you the perfect sister. You are humble and you hold no arrogance in relation to your position and its achievements. She adds that you bring a smile to everyone's face when you are in their company. Bronte in Sydney's east is home and you love nothing more than having a dip in the ocean all year round. I invite you to come to my beloved Maroubra Beach, your Honour, to join me for a swim down there.
- 14 You have many hobbies including cooking, running, hiking and Pilates, you love the theatre and cinema and you have recently become very committed to cryptic crosswords I hear. Travel is a passion and you somehow find time to read, with your taste ranging from critically acclaimed to, in the words of Grace Wade, trash. Together with all of these hobbies and interests, Matthew confirms that your absolute favourite pastime is still making fun of him. But all

of your family agree that they have never won an argument with you and it is very frustrating. Matthew laments his technique of shouting, sticking his fingers in his ears and running away has never proven to be successful. What has proven to be successful is your and Matthew's commitment to one another, you are best friends and wonderful parents. You both appreciate who the other is and what they do, a true partnership.

15 Your Honour you continue to do life your way and we will see how this pans out in your role as a judge. Hannah knows you will rise to the challenge in the same way you faced challenges throughout your whole life. She also thinks you will love the variety that this role in court will bring. Your friend and now colleague at the Supreme Court, Justice Payne, anticipates you will be the perfect fit for the collegiate environment of the Court of Appeal. Grace believes you to be thoroughly empathetic, a quality that you will leave no doubt in the minds of people who appear before you and they will know that they have been heard and treated fairly.

16 Louise Coleman offers, your presence and analytical mind as further qualities. Your sister Kate simply states that you will be yourself and that all who enter your court will benefit from that. Family, friends, colleagues and everyone present today firmly believe that too. Can I just conclude on a personal note your Honour and say, you are my first appointment, my first judicial appointment as newly minted attorney general so I feel like that we will share a little bit of this history and I look forward to watching your career on the bench and on behalf of the Bar and the people of New South Wales, thank you for your service. May it please the Court.

17 **MS CASSANDRA BANKS PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. I too acknowledge the Gadigal people of the Eora nation, the traditional custodians of the land on which this Court stands and I pay my respects to their elders past, present and emerging. I acknowledge and extend my respects to all Aboriginal and Torres Strait Islander people present today.

- 18 I am honoured to come before the Court on behalf of the solicitors of New South Wales and congratulate your Honour in your appointment. On all evidence before us and in the recollections of many colleagues you have been noted consistently for your diamond sharp intellect, warmth and ability to eloquently connect vast fields of law. You will no doubt contribute as vastly to this Court's valuable judgment, understanding and exposition on the law as any who have come before you.
- 19 Your legal career began at Melbourne University. You then worked to be admitted to practice as a solicitor in 1988. It was a brief but bright period in your legal career. This was especially true at the firm in which you started as a solicitor, Arthur Robinson & Hedderwicks in Melbourne. There, Wendy Peter was a partner when you were an article clerk knowing you simply as Tina at that point. Ms Peter recalled that while you were not her clerk you were clearly, in her words, stunningly bright, focused, brilliant and able to communicate the issues that would matter to a court.
- 20 In a nice symmetry, several decades later, Ms Peter who is now General Counsel at the Australian Competition and Consumer Commission, has instructed you in a series of consumer matters. It has been her great pleasure to see this development, but not surprising. In 1988 she felt you were destined for a brilliant career. Ms Peter, I note, is a very reluctant absence today but sends her warmest regards your Honour.
- 21 The impressions you made then with people far more experienced and senior than you is also illustrated very well by another former partner at Arthur Robinson & Hedderwicks, Mr Colin Galbraith. He recalled your time as an article clerk describing you as vibrant, fun and confident, balanced by having a measured approach. Mr Galbraith was one of Melbourne's top corporate lawyers then working at the apex of the 80s takeover frenzy, notably the battle for BHP. It was a struggle for control of Australia's biggest company and one of the things that Mr Galbraith used to do with his article clerks was to give them his work to check, a mutual learning. In his self-deprecating words, and I quote, "I also did that because they were much more up to date on the law than I was

and I was a bit lazy.” They were, and I quote, “usually pretty good” but for the most part his clerks were reticent to do it, wondering why such a thing was happening and what they could possibly add. I note the words “for the most part”. Your Honour was not reticent. I quote Mr Galbraith again.

“Kristina relished being given my work to correct and she did correct it and she corrected the law but importantly from the first she also added value to conclusions, she was able to translate her research into value for the client as advice about what they should do in a practical sense.”

22 Mr Galbraith also recalled meeting your mother at this time, remembering her as a very high achieving person and suspected this helped you find a successful academic path.

23 Your father was a highly respected surgeon and you record he also helped you dive into the law rather than medicine. One way he did this was by letting you watch an operation from the viewing gallery when you were very young and also very ill all while your family were off doing something fun. The experience firmly removed any interest in pursuing medicine, to the law’s gain.

24 In 1989 the firm was very disappointed when your Honour left but Mr Galbraith noted that it was always understood that you were going off to pursue further academic ambitions. Your Honour left Australia, as we have heard, to go to the other side of the world on a full TAP scholarship from Caius College Cambridge and a Commonwealth Cambridge Trust studentship studying and completing a PHD in law at the University of Cambridge. To ensure that I do not speak well into the day, I will not repeat the highlights of your career that we have already heard.

25 As we have also already heard you published widely in the fields of public and commercial law in well known publications and you have appeared in cases too numerous to list. Wen-Ts’ai Lim, a solicitor and partner at Ashurst recalls beginning work with you in the mid-noughties. When your Honour became a silk he recalled your modest approach. He had to urge you to add the title SC to your email signature line. “She is not someone for whom rank matters”, he noted. As a lawyer Mr Lim described your Honour as a talented allrounder,

adept at an extraordinarily broad practice. Given the difficulty of proficiency across a very broad range of things, Mr Lim put it simply, “It is usually a sign of someone with a very big brain”. At a personal level he noted your impeccable taste. The very elegant mid-century furniture in your chambers, down to the fine details, sometimes the singular orchid sitting on your desk. Mr Wen-Ts’ai gives his warmest regards. A mediation matter in Melbourne, the source of his absence today.

- 26 Gareth Jenkins, solicitor and partner at Clayton Utz Brisbane said one of your Honour’s great strengths is your ability to communicate with people and engage with them in a way they understand. Aside from your superb legal insight and knowledge he observed that you could be meeting the President of the United States, addressing an appellate court or talking through issues with legally unaware clients and instinctively hit the exact right tone and delivery while always remaining the same warm and engaging person. This extends to a knack of creating an atmosphere and team environment in which people were inspired to put in extra effort and I quote Mr Jenkins.

“That so many of my junior lawyers will miss her so much is testament to how much she was prepared to give professionally even to our young lawyers. An inspiring lawyer and an inspiring person and a wonderful choice as judge”.

- 27 This sentiment of extraordinary ability was shared by numerous other senior solicitors practising here and in other jurisdictions, however the long list is supplemented by those less heard in this court, young solicitors newer to the law. Bianca Fernandez is one such solicitor. During your work together your immediate recollection of obscure specific footnotes and paragraph numbers from various judgments was often something your Honour asked her to doublecheck. As a junior on the file Ms Fernandez was responsible for this and every recollection you had was, unflinching, found to be accurate.

- 28 Others have noted this hardworking accurate attention to detail was always balanced by a big picture strategic overview needed from a senior silk. Nevertheless Ms Fernandez remarked on your generosity with your time combined with a presence of mind in all of your interactions. Younger solicitors

have remarked on your effort in all of your dealings with them, marked by a genuine care for advancing the client's needs or interests or those seeking advice from you.

29 As you leave your legal practice and join the bench may I say that solicitors involved in working with you over the past decades have uniformly remarked that your Honour is quietly brilliant. The loss to the profession is a gain to the Court and the community of New South Wales. Someone who truly understands the broad sweep of the law, how it works and how it fits together leading to a greater degree of consistency and decision making across the law. On behalf of the solicitors of New South Wales, I wish you the very best with your appointment. As the Court pleases.

30 **STERN JA:** Your excellency, Chief Justice, Attorney, Ms Banks, your Honours, distinguished guests, colleagues, family and friends, I begin by acknowledging that this ceremony is taking place on land of which the Gadigal people of the Eora nation have been custodians for thousands of years. I pay my respects to their elders past, present and emerging and to all First Nations people.

31 Thank you Mr Attorney and Ms Banks for those generous remarks. Sitting here I only wish they were all true. Looking around the room I am honoured by the presence of so many people who have in so many ways been pivotal in both my personal and professional life. I am delighted, on this my first time sitting on this side of the courtroom, to see so many familiar and friendly faces, thank you all for coming.

32 I need to deliver two important votes of thanks at the outset. The first is to the Chief Justice for bringing me into the Banco Court a couple of days ago specifically to check that I would be able to raise my chair high enough that I would actually see all of you rather than having to peer over the lectern. It was indeed good news for me to learn that the furniture of the Banco Court readily accommodates those like me who are somewhat diminutive in stature. The second is to the very generous junior counsel who, obviously concerned at how I would fare speaking in court without a note from a junior to guide me, helpfully

recently sent me a draft, "Swearing-in speech for Justice Stern, prepared entirely by ChatGpt". Whilst I am grateful as ever for such guidance from junior counsel and I particularly liked the musical gavel jokes, on this occasion I have decided to go it alone.

33 I also want to thank the members of my family and friends who are in court today. I am acutely aware that my life as a barrister has given rise to burdens and impositions on those around me. Not only have they had to accommodate my untimely absences and many unreliabilities, they have had to endure days when I am present but preoccupied and probably worse, evenings when I am so buoyed by my success in court that I insist on sharing the minutiae of my penetrating and disarming cross-examination. I am enormously grateful to you for your loyalty and support and for your forbearance.

34 My children, Hannah, Grace, Felix and Amy are all here today. I have forgiven all of you for screening my calls and being too busy to pick up when I called to tell you the exciting news of my appointment. You lead busy lives I get it. I am grateful to each of you for your endless fun, loyalty and support and for your insights on life which have always showed wisdom well beyond your years. You are all remarkable people, I am immensely proud of each of you and so happy that you are here today.

35 I also thank my husband, Matthew, who I am happy to say is also here and on time today. As some of you know Matthew is a highly distinguished physicist, literally a rocket scientist. He gave up a lot to move to Australia. His generosity, kindness and loyalty continues to amaze me. He has supported us in every way possible, has kept me sane with his mostly excellent sense of humour and with his unparalleled baking, has ensured that I am well stocked with both carbohydrates and sugar for particularly torrid days in court and indeed this morning. I am very grateful for all that he is and does.

36 I am also delighted that my mother is here on this her 88th birthday. Sorry mum if that is too much information. She is a trailblazer in so many ways. As a doctor who, for many years, was a world leader in her field, as a woman in

medicine at a time when that was far from commonplace and as a working mother and primary carer for three children well before that was socially or professionally accepted. Despite her many professional commitments she had an uncanny ability to know when she would be needed and her arrival with crumpets and honey rescued me during many a personal trauma. She is and has always been a great source of inspiration to me.

37 My father sadly died many years ago. He taught us all that we needed to work hard and be self-sufficient. As something of a serial letter writer, a litigant in person, he did not have a lot of time for lawyers but he had a great deal of respect for judges. I think it likely that he would have been happy to see me sitting here today.

38 I am also delighted that both my siblings, Kate and Tony, are here today. They have given me endless support over the years and I am hugely grateful to both of them for everything that they have done for me.

39 As you have heard I began my career as a pupil at 39 Essex Street Chambers in London. I loved my life at both the London and New South Wales Bar. In my first few years at the Bar in England I oscillated between leave applications in the Crown Office list, sitting as second or third junior on complex cases and many long and often interrupted train journeys to attend regional county courts, usually to cross-examine taxi, bus and truck drivers in road traffic arbitrations using a combination of the laws of physics and matchbox cars. Unfortunately and perhaps unsurprisingly that technique was rarely successful. But I learnt a lot in those early years about resilience and looking calm when in truth I was surrounded by chaos. Both have stood me in good stead in my career.

40 My pupil masters all encouraged me to pursue a broad practice and that turned out to be excellent advice. I have been rarely bored and always challenged. When I moved to Sydney in 2006 I took whatever work I was offered and perhaps because of that I found myself again working across a broad spectrum of areas and jurisdictions, often seemingly playing catch-up as I tried quickly to learn the ins and outs of a new area of work or to understand the particular

quirks and shorthand expressions and acronyms used. Whilst that meant I was often far from my comfort zone, I felt very fortunate to be able to combine the public policy focus and very human concerns of inquests and inquiries with the quite different challenges of public law, regulatory and commercial work.

41 In my nearly 17 years at the New South Wales Bar there are so many people who have inspired, taught and supported me. I arrived with no practice, almost no contacts and what was worse as a Victorian. So many people were so generous with their time and advice including people who scarcely knew me and had nothing to gain from their kindness. I have learnt so much from those whom I have sought to assist as counsel assisting, from those who led me as a junior, from those I have led as a silk, from my opponents over the years, from my readers and from my instructing solicitors, I thank you all.

42 I have also developed strong friendships at the Bar without which life would have been far more difficult and much less fun. Whilst on this occasion I do not propose to name names, I am sure you all know who you are. I want particularly to acknowledge the collegiality and support on the Sixth Floor which has been one of the mainstays of my professional life. I am indebted to the floor members and annexures past and present for their generosity, insights and inspiration. It is a floor that in 2006 when I arrived was notable for the strength of both its male and female barristers and I have been delighted to see that position continue. It was a rare treat to be part of a floor where dinners for the women on the floor were attended by over 20 female barristers and there wasn't a dud seat in the house. I am also very grateful to my clerk, Lisa Stewart, and the staff on the Sixth Floor for all the many things that they have done for me over the years.

43 I would also like to thank the Chief Justice, President of the Court of Appeal and other Court of Appeal judges for the warmth with which I have been welcomed and the enormous help that has already been given to me. That support and assistance has done much to ease the transition.

- 44 I practiced as a barrister for nearly 27 years. It sounds like an inordinately long time but it has not felt like that. Over those years I have appeared in a number of different countries, jurisdictions and tribunals. The common threads have been the collegiality of the profession and the high quality of the judiciary. It has always seemed to me important to acknowledge that the work of a barrister is stressful. There are few professions in which often brilliant people are paid to identify each and every flaw in what you say or do in advancing your client's case. Sometimes it is hard to resist the temptation to take it personally. That is where the collegiality of the profession is so important. Professional courtesy and good faith between opponents enables the proper functioning of the adversarial system and the support and friendship of colleagues does much to ameliorate the stress of the barrister's work. Indeed I am not sure that I would have performed half so well in court were it not for the many mornings that Justice Mitchelmore and I spent together mimicking Usain Bolt's victory pose or punching the air before we went to court as we had read that this lowers cortisol and gives a good dose of bravado. We found this highly effective, I commend it to all of you.
- 45 The high quality of the judiciary has been a constant feature of the various jurisdictions in which I have practiced. That high quality in my experience reflects more than academic excellence and a depth of legal knowledge. It reflects humanity, a willingness to listen, an abiding sense of fairness and treating those who come to court with courtesy, candour and impartiality. It is those attributes that promote faith and confidence in the judiciary and which will be my goals in this next stage of my career.
- 46 It is a great honour to be appointed to serve as a justice of this Court and the Court of Appeal. I am very much aware of the high standards that have been set by the past and present members of this Court. I will do my utmost to live up to them.
- 47 **BELL CJ:** Thank you Justice Stern. The Court will now adjourn.