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International Women's Day Edition

The Honourable Justice Lucy McCallum Justice of the New South Wales Court of Appeals

Ashleigh Fehrenbach, Senior Associate at Reynolds Porter Chamberlain LLP and co-editor, speaks with **the Honourable Justice Lucy McCallum** about her honour's career as a judge on the NSW Court of Appeal and International Women's Day.

Her Honour started practising with the commercial litigation team at Malesons Stephen Jacques, before gaining experience in criminal law as prosecutor in the Commonwealth Director of Public Prosecutions Office and the Queensland Director of Public Prosecutions Office. In 1991, her Honour commenced practice as a barrister in New South Wales on the Sixth Floor at Selborne Wentworth Chambers, before taking silk in 2005, and being appointed to the Bar Council in 2007. During her time at the Bar, she had a wide and varied practice including: administrative law, environmental law, professional negligence, defamation, trade practices, and competition law. Her Honour has long held a very strong sense of justice and belief that the law should serve the underprivileged, reflected in the extensive pro bono work she has carried out during her time in legal practice, including: working at Redfern Legal Centre, working with PIAC to represent refugees in immigration detention, and providing pro bono representation to Greenpeace and the Environmental Defender's Office. Whilst still at university, her Honour helped to create the school's Legal Education Group for the purpose of organising law students to teach six-week courses in legal rights for disadvantaged intercity schools. In 2008, she was appointed to the Supreme Court of New South Wales as Justice in the Common Law Division. In January 2019, Justice McCallum was elevated to the New South Wales Court of Appeal.

ASHLEIGH FEHRENBACH: Did you always aspire to be a Judge? How did your career path lead you to where you are today?

JUSTICE MCCALLUM: I wouldn't say that being a judge was ever my ambition but I certainly reached a point where I hoped that might be where I would end up. Unlike many young women I now see, who are strategic and disciplined in the pursuit of their goals, the course of my time at the Bar was more in the nature of an unplanned adventure than anything that might be described as a "career path". A number of my so-called career choices were almost accidental. There was pretty much nothing I wouldn't turn my hand to, if asked.

I was extremely fortunate to be in the right place at a number of turns and to have the chance to work with people who gave me opportunities to establish a diverse practice and to spend a lot of time on my feet in court. I think that put me in good stead to be appointed to the Common Law Division, which has a very diverse range of jurisdiction. My eleven years on that Court in turn gave me a breadth of trial experience that was evidently considered likely to be helpful on the Court of Appeal.

FEHRENBACH: If there is one thing you would celebrate about International Women's Day in the legal profession, what would it be?

Continued on page 2 >

Contents

Interviews

The Honourable Justice Lucy McCallum.....	1
Beverley McGarvey	4
Rebecca Dunn	7
Karen Hayne.....	9
Anne Petterd.....	11
Zena Milicevic	12
Emma German	13
Shanti Berggren	15
Marina Olsen.....	16
Kate Barrett.....	17
Felicity Drexel.....	19
Alexandra Tselios	21
Hot Brown Honey.....	22
Cassandra Heilbronn.....	25
Sophie Malloch	27
Sue Chrysanthou SC.....	29
Jade Tyrrell.....	31
Clarissa Amato.....	33
Melissa Corbutt.....	34
Melissa Quinn.....	35
Marlia Saunders.....	37
Claudia Wallman.....	38
Jenna Adamson.....	39
Rebecca Lindhout.....	41
Samantha Walker	43
Joelle Vincent	44
Courtney Scallan.....	45
Lyndelle Barnett.....	46
Rebecca McCloy.....	47
Natasha Howitt.....	49
Tracey Scott.....	50
Sophie Dawson.....	51

CAMLA

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Editors' Note

Dear readers,

We hope you had an inspiring International Women's Day on 8 March. At CAMLA, we like to celebrate International Women's Month, because we believe it deserves more recognition than just a single day.

In connection with this important time of year, we are excited to share a special edition of the CLB celebrating the many illustrious and diverse contributions of some of our industry's leading women.

We've compiled a series of short interviews with around 30 leaders from a range of backgrounds and experiences across media, communications, IP, advertising, privacy, sport, entertainment and tech. We have celebrated the voices of brilliant women from the bench, the bar, private practice, in house, and executive roles. The CAMLA industries in Australia are driven by the intelligence, grit, warmth, leadership, talents and wisdom of many incredible women – and we can only capture a small sample of that in these pages.

One of our favourite questions asked is "who is one woman you really admire, and why?" If you're reading this, think about celebrating International Women's Month in 2021 by telling or emailing a woman you really admire to say that you look up to her, and what impact she has had on you.

We hope that we can repeat these special editions in future years and continue celebrating the achievements of women in our industry. If this Special Edition has demonstrated anything, it's that we certainly won't struggle for examples.

We'd love to hear how you celebrated International Women's Day/Month. Please send us an email at clbeditors@gmail.com - we'll try to include some of the responses in the next edition. Do you have any photos from the day? Even better – we'd love to see them too.

Finally, thank you to the wonderful women who gave their time to be featured, and to the Young Lawyers who conducted the interviews. Happy reading!

Always,

Ashleigh and Eli

MCCALLUM JA: I would answer that question by repeating a comment made by one of my colleagues after the ceremonial sitting to welcome the Honourable Justice Jacqueline Gleeson to the High Court, just a week before International Women's Day this year. It was a very warm occasion and the courtroom was brimming with excitement about Justice Gleeson's appointment. The remark my colleague made when we were driving back to Sydney was that, for the many women who attended the ceremony, the mood in the courtroom was joyful and welcoming. That might not sound particularly surprising, but her point was that, unlike the position, say, twenty years ago, we did not feel as though we were intruding on the hallowed ground usually occupied by men. It felt perfectly natural to be celebrating the appointment of a female judge

to the High Court in the presence of a crowd of senior judges and practitioners, many of whom just happened to be women.

FEHRENBACH: What important developments do you see as being on the horizon for the communications and media legal landscape?

MCCALLUM JA: The Uniform Defamation Law has recently been the subject of a significant overhaul led by the NSW Attorney General, Mark Speakman. Probably the most significant change from the point of view of the media is the proposed introduction of a defence of publication of matter concerning an issue of public interest. A source of frustration for journalists over the years has been the difficulty of establishing a defence of qualified privilege for a mass media publication, owing to the difficulty of proving reciprocity

of duty and interest as required to establish the defence at common law. Section 30 of the *Defamation Act 2005* was intended to extend the defence to circumstances where that reciprocity did not exist but was largely unsuccessful, partly due to a hard-line approach to the question whether the journalist had acted reasonably. The statutory defence thus failed to provide the protection anticipated. It will be interesting to see what difference the new defence makes.

FEHRENBACH: What energises you about your work?

MCCALLUM JA: I think what I love most about the work of a judge, and what gets me out of bed in the morning, is having the intellectual freedom to write what I consider to be the just outcome (according to law), rather than being paid, as barristers are, to adopt one or

another side of the argument. That is not to say that I did not enjoy the intellectual challenges of advocacy, but deciding cases is a whole different kind of discipline and one that I think suits my personality. I love the challenge of analysing whether the result that seems fair according to the interests of justice is the correct result according to law. Sometimes the answer is “no” and I think I even enjoy the discipline of accepting that, so long as I have done the best I can to immerse myself in the principles in question and work out why the case demands the result it does.

FEHRENBACH: If you could have dinner with any woman – living or passed, real or fictional, who would it be?

MCCALLUM JA: I would probably have answered this question differently at different times in my life. Today, the answer is that the woman I would most like to meet is the French rock-climber, MéliSSa Le Névé. But I think I would rather go outdoor climbing with her than have dinner. I recently saw a short film (part of Reel Rock 15) about her attempt to climb “Action Directe”, a famously difficult sport climb in Germany. She explained that, from the time it was first ascended in 1991, Action Directe became the holy grail of professional climbers. A number succeeded before her but, as she says in the film in her beautiful French accent, “only men”. Spoiler alert: she became the first woman to ascend the climb after training and trying and failing for six years. She quit the French national bouldering team to devote herself entirely to this one climb. The first move is a dynamic jump upwards and backwards to a two-finger hold. The film showed her falling time and again on that first move. Her story resonated with me because I sometimes feel overwhelmed, especially since joining the Court of Appeal, by the challenges of working in what remains a male-dominated profession. Watching this incredibly strong French woman train her body to achieve a seemingly



impossible task and throw herself relentlessly at the same piece of rock again and again was humbling and inspiring. Also she has the same breed of dog as me (a blue merle border collie). Surely that’s a sign? I would love to meet her.

FEHRENBACH: What advice would you give to the next generation of female leaders in the industry?

MCCALLUM JA: I don’t think I could function without my amazing circle of strong, kind female friends. My advice would be to foster your

friendships with other professionals and perhaps particularly with professional women. Be honest with them about your own struggles and be kind to those who are struggling themselves. My friends and I support each other, make cakes for each other (actually, it is mainly Natalie Adams J who makes cakes for everyone else), we make each other laugh and share our joys and our anxieties. We don’t compete with each other; we work together to be the best lawyers we can possibly be.