NSW Legislative Council, Thursday, June 16, 2010

CONDUCT OF MAGISTRATE JENNIFER BETTS

[Attendance of Magistrate Jennifer Betts at the Bar of the House.]

The PRESIDENT: Order! I propose to call Magistrate Jennifer Betts to appear at the Bar of the House and address members in relation to the report of the Conduct Division of the Judicial Commission of New South Wales, dated 21 April 2011, and show cause why she should not be removed from office. I ask members to extend to Magistrate Betts the usual courtesies during her address. I remind those in the public gallery and in my gallery that the address is to be heard in silence. Anyone who transgresses that direction will be immediately removed from the Chamber. I remind members that the resolution does not allow members to address questions to Magistrate Betts at the conclusion of her address. I direct the Usher of the Black Rod to admit Magistrate Betts and conduct her to the lectern at the bar of the House.

[Magistrate Jennifer Betts was conducted onto the floor of the Chamber by the Usher of the Black Rod.]

MAGISTRATE BETTS: Mr President, honourable members, I am grateful for the opportunity given to me to address you in relation to the Conduct Division report concerning my conduct as a Local Court magistrate. From the outset I have acknowledged my wrongdoing and accept responsibility for my behaviour, and sincerely apologise to the respective complainants. I would like to point out that in its report the Conduct Division said this:
We wish to emphasise that this report ought not to be taken as the expression of opinion that the magistrate ought to be removed from office. That is a matter peculiarly within the province of Parliament.

All the Conduct Division report has found is that the complaints established against me could give rise to both Houses of Parliament petitioning the Governor that I be removed from office. The question of whether the Houses should do so is your decision alone, to be made after considering all of the evidence.

On 24 October 1994 I was sworn in as a magistrate for the State of New South Wales. On that day I took the Oath of Allegiance and the Judicial Oath, swearing to God that I would do right to all manner of people after the laws and usages of the State of New South Wales, without fear or favour, affection or ill will. On 29 June 2009, being the Castle matter, and 9 October 2009, being the Maresch matter, I let down the people of New South Wales when I did not adhere to that oath. That was in a period of time that I was not taking medication for my depressive illness. I voluntarily recommenced medication in early November 2009. During the course of the proceedings before the Conduct Division I received a full psychiatric assessment, and have been given a complete program of treatment and rehabilitation. I now understand that I am a person who needs to take medication for life, and I undertake to do so.

I am a hardworking magistrate who has a reputation for being fair and firm. Before becoming a magistrate I worked for eight years in the local courts of New South Wales, three years at the Attorney General's Department and eight years in the Office of the Director of Public Prosecutions. I returned from Hong Kong, where I was a Senior Crown Counsel for two and a half years, to take up the position of magistrate. I have given, I

believe, great service to the people of New South Wales for over 34 years. Throughout my working life I have endeavoured to serve the people of New South Wales with dedication and distinction. In my role as a solicitor in the Office of the Director of Public Prosecutions I earned high accolades for my role in the prosecution of the five men convicted of the murder of Anita Cobby. The learned Crown Prosecutor described me as being "one of the best instructing solicitors I have encountered during my career as a Crown Prosecutor". The learned trial judge described me as being a "hardworking, honest, reliable and efficient instructing officer". The police involved in that case said this:
In this instance we received the greatest co-operation, consideration, consultation and importantly encouragement from both Crown Officers. The harmony between the Police team and our Crown team was an important factor in the smooth running of the trial and its subsequent success.

The Deputy Commissioner of Police at that time said this:
I would like to take this opportunity of conveying to Mr Saunders and Ms Betts my sincere congratulations on the excellent manner they performed their duties during the proceedings in question.

In my 17 years on the bench I have endeavoured to continue to serve the people of New South Wales with that same determination, skill and ability. I appreciate that it is incumbent upon all judicial officers to ensure that they act judicially at all times—that is, to be impartial, to be fair, not to prejudge any matter before them, and to give all relevant parties the opportunity to be heard and to give a rational, balanced decision based on the admissible evidence and the applicable law.

Being a judicial officer involves the making of decisions that impact upon people's lives. It is an onerous task and, on occasions, an almost impossible one. I do not believe there is any judicial officer that derives pleasure in imposing sentences of imprisonment upon defendants who come before them. I know that I do not. But those hard decisions need to be made on occasions in the interests of justice.
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The public require and deserve a judicial system in which they have confidence. The standard of behaviour of a judicial officer is a high one but it is unrealistic to expect that we are perfect; we are not—that is just simply not attainable.

Apart from the two matters from 2009 and the two revived complaints from 2003 and 2007, I believe that I have been able to fulfil my judicial role with distinction. In my 17 years on the Bench I have dealt with over 50,000 matters. The proportion of matters for consideration by you amounts to 0.0008 per cent of all those matters I have dealt with in that time. This means that I have been able to discharge my duties in accordance with my oath on 99.9992 per cent of occasions. I am not known for making outlandish decisions, nor have I earned the wrath of any superior court. In fact, only one matter has gone to the Supreme Court for review, that being a matter from Sutherland Local Court in 1997 in which I refused an application for professional costs after dismissing a charge of goods in custody against the defendant. Justice Wood, as he then was, upheld my ruling and found no errors of law on my behalf.

The only other matter—that I can recall, that is—which went to a superior court was a matter involving the awarding of costs in a copyright case. That matter was determined by the Federal Court and was remitted back to me to calculate the actual costs, which involved professional work done in the United States of America. No error of law was made by me. There have been no stated cases from any of the matters I have dealt with

and no errors of law. Severity appeals to the District Court have been dealt with on their merits, as have the all grounds appeals. Defendants have automatic rights of appeal to the District Court; they are heard as a rehearing on the transcript alone and not on the basis of errors of law.

Since the Conduct Division report has become public by its tabling before both Houses I have been inundated with emails, letters, texts, and phone calls of support from colleagues, former colleagues, court staff, members of the legal profession, members of the public and even the police. I am indebted to each and every person who has expressed their support to me in what can only be described as the most difficult 19 months of my life. Only a handful of colleagues were aware of my being before the Conduct Division at the time and members of my family were only advised once public airing became inevitable. That includes my 90-year-old father, who is an uncomplicated man from the country.

My son is now aged 17 years and is in his final year of school. Being a very important year for him—it is his Higher School Certificate year—he has dealt with the situation with a maturity beyond his years and I can only say that I am very proud of him. It was with his encouragement that I decided to fight on and address you today. It is perhaps ironic that on the morning of the resumption of the inquiry, on 21 March 2011, he texted me to say that he had come first in Legal Studies. I will not discourage him from his ambition to study law, which in my view is one of the noblest professions of all where you can make a real difference in many people's lives. My son's school has been wonderful in ensuring that he receives appropriate pastoral care at this difficult time.

To appear before you today has been difficult in itself. I am a very private person who has recognised that I am not perfect. My privacy has been put aside whilst you debate my future, and I only have myself to blame for being in this position. This is also an historic occasion, being only the second time that Parliament has had to consider the future of a judicial officer. The first occurred in 1998, when this honourable House voted against the motion to dismiss that judicial officer. Your power comes from section 53 of the New South Wales Constitution Act 1902, which states:
No holder of a judicial office can be removed from office, except as provided by this Part.

Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office.

The Judicial Officers Act 1986 lays down those additional requirements. You must have a Conduct Division report that forms an opinion that the matter could—and I emphasise "could"—justify parliamentary consideration of the removal of the judicial officer complained of because of proven misbehaviour and/or proved incapacity. The Constitution Act 1902 provides that once the Conduct Division report is tabled both Houses of this Parliament are required to form a view that it has been proved to them that I do not have the capacity to perform my duties as a Local Court magistrate. I will endeavour today to persuade you that there is overwhelming evidence to show that I have the capacity to perform my duties as a Local Court magistrate.

The Conduct Division in my matter came to a determination that in three of the four matters under consideration the claim of misbehaviour was substantiated. I say that the extent of that misbehaviour does not warrant dismissal from office. In the Conduct Division's own words, you would "need a convincing accumulation of instances for dismissal." There is no such accumulation of instances here. In fact, the evidence is quite

to the contrary. The Conduct Division also came to the view, principally because of the manner in which I gave evidence before it, that I was incapable of performing the role of a Local Court magistrate. I would suggest that it would be a dangerous precedent to set to dismiss a judicial officer on the basis of evidence given at such an inquiry whilst effectively giving little or no weight to the other evidence in relation to capacity. There is no suggestion that my evidence was given dishonestly or incompletely. It was, as I perceive, the manner in which I answered questions that led the Conduct Division to find in that manner. In a speech given in Hong Kong on 14 June 1998 the Hon. Justice Michael Kirby said this:
The problem which the judiciary, and the community, face in such cases of judicial default is a difficult one. How can the independence of the institution be safeguarded without tolerating a performance of a highly skilled and important public function which falls short of the appropriate standard? The danger of a too easy and intrusive system of discipline for judges is that judges will be made constant targets by disgruntled litigants, professional rivals, media editorialists who thirst for simple (and generally more punitive) solutions to every problem, and politicians or others on the make?

I am not suggesting anybody here is on the make. I am medically fit for duties and there is no reason to suspect that I will unexpectedly lapse into an undiagnosed and untreated condition in the future. In reality, all judicial officers are at risk of succumbing to the stresses of judicial office, not just those who suffer from a medical condition such as depression. Those of us who have had such a condition should not be discriminated against because of it. I ask that you examine the report and the exhibits and my response in great detail. You must make a decision based on the facts and not on media speculation. I also ask that you also take into account that I have been a judicial officer for nearly 17 years. I have continued in my role for the past 18 months that this matter has been pending, with no complaints being made against me. There is no hint that I have not discharged my duties in accordance with my oath. That fact alone should give you great confidence that I can and will continue to perform my duties in the appropriate manner in the future.

The past 18 months have been very stressful and I have been able to conduct my court in accordance with my oath. At the present time I work in a very happy, collegiate environment at Parramatta Local Court.
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Magistrate Marsden, who is the coordinating magistrate at Parramatta, gave evidence to the effect to the Conduct Division. He said that I am a very valuable member of the team at Parramatta who did not shy away from any demands made of me. I am the most senior magistrate at that complex and I have made a useful contribution to the development of new magistrates who are rostered there.

I suffer from depression and have been on medication for that condition since late 1995. I sought professional assistance at that time to cope with a challenging career as well as being a single mother of a young child. I accepted at that time that was not Wonder Woman. My son was aged 14 months when I was sworn in. As all parents are aware, the demands of parenthood are immense. The calls from school about illnesses, the rushing from the workplace to pick up for sports training and the like, the rushing from work to pick up from after-school care are a full-time career, especially when it is done properly. It is a 24/7 commitment, which is perhaps the most rewarding career of all. I am currently prescribed Cipramil for my illness, which is a serotonin reuptake inhibitor. It is important for members to know how that mitigation works. In the evidence of Dr Phillips, he said:

... what happens in the body is that there are certain neurochemicals which control the mood state which we all experience. Let's take two of them, serotonin, which is probably of most importance, and noradrenaline. What happens in the brain is serotonin is pumped out into the spaces between the brain which allows an electrochemical circuit to continue. In depression there is failure or a diminution of this process to the degree that a person does not have sufficient chemicals to maintain their mood. A serotonin reuptake inhibitor does little more than to ensure that the molecules of serotonin are maintained in the space between the neurons and are not reabsorbed and degraded by the liver and secreted from the body. All it is doing is taking a person back to the homeostasis which they should have enjoyed, short of them being depressed.

This means that on medication I am well. I understand Dr Phillips' diagnosis of biological depression and I also appreciate the need to take medication for that condition for the rest of my life to remain well. In Dr Phillips' view, a person who has biological depression is less resilient to stressors and therefore at risk of an exacerbation of their disorder. The two complaints in 2009, the two most serious matters, occurred at a time when I was off medication and thus more vulnerable to life and work stressors. I acknowledge that my unilateral decision to wean myself off the medication without medical supervision was both foolish and unwise. I do not intend to ever make that mistake again. I now have the benefit of frank psychiatric assessment in written reports from Dr Klug and Dr Phillips, which confirm my condition is ongoing and that I need to be medicated for life. I did not appreciate that when I weaned myself off the medication in early 2009.

Dr Phillips was also of the view that in 2009 I was suffering from burnout, which is a "metaphor for someone who is worn down over a period of time by the stressors and the pressures of their particular profession". He later said that burnout is a reversible disorder with stressors being reduced with a reasonable break from the workplace. Since the Conduct Division handed down its report on Thursday 21 April 2011 I have been on leave. I have had a lengthy break and I am fit and well to continue in my role as a judicial officer once this matter has concluded. I will now briefly comment on the four matters which were before the Conduct Division.

The Passas and O'Regan complaints relate primarily to my hearing of an application by Ms Passas in 2003 at Burwood Local Court to revoke a personal violence order to which she had previously consented. That application did not meet the statutory threshold for revocation, which required a demonstrated change of circumstances. Ms Passas was a disgruntled member of Ashfield council. Her application was made in a context of significant personal animosity between members of a local council. There were multiple personal violence orders and cross personal violence orders between various councillors. When she appeared before me Councillor Passas was unhappy and aggressive in her demeanour. That is clearly demonstrated by listening to the tape. Nevertheless, I accept that I responded to her in a manner which was just not appropriate and which I now regret. The merits of the application were argued before me and I ruled against Ms Passas. It was open for Ms Passas to appeal my decision, which she did not do.

The other complainant in the same matter was Mr O'Regan, who was a supporter of Councillor Passas and who was sitting in the court gallery. He had no right of appearance in the matter. He interjected after I had ruled and I responded to that interjection quite sternly. I ask Parliament to accept that nothing I did in either of those two complaints constituting one matter would warrant removal from judicial office, whether individually or in conjunction with the other complaints. When the Judicial Commission dismissed these complaints in 2004, it did not provide any feedback or constructive criticism to me.

The next matter in chronological order is the 2007 matter, the Farago complaint. In Mr Farago's case, I was terse when I perceived that he had not provided me with authorities sufficiently in advance of the hearing date. I accept that I was discourteous to Mr Farago. I apologise to Mr Farago for my discourtesy. I stress that I listened carefully to Mr Farago's legal arguments and tested them through dialogue. I accepted his argument, upheld his submission and dismissed the charge of negligent driving against his client. I note that the Conduct Division does not find proven any misbehaviour on my behalf in relation to this complaint. When this matter was referred to the Chief Magistrate for counselling by the Judicial Commission, the Chief Magistrate and I had an extremely brief conversation in relation to it. There was no mention by him of any of the details of the determination of the commission and in my view that did not take the form of counselling.

The Castle matter is the matter that is of great concern to me. It concerns unfairness in the way I handled an administrative appeal against the cancellation of a young lady's provisional driver's licence. When I heard the tape-recording of the case, I was horrified at how I had dealt with it, and I still am. I took over questioning of the appellant, which was clearly not fair; nor was my tone or language. I acknowledge that I acted in a substantially inappropriate way. I fully appreciate the tone of my voice and the words I used gave the perception that I prejudged that matter. I did not intentionally prejudge that matter. This was a licence appeal and not a matter in which the court has to come to any findings of fact. There is no presumption of innocence in such proceedings.

I acknowledge and accept that Mr Castle was not given the opportunity to conduct the matter in the way in which he wished. This was also unfair. I acknowledge that the words and questioning by me was unfair. The decision I made was one that was not perverse in any way, shape or form, and was one available to me in the light of the evidence of the appellant. However, I accept that that decision is tainted by how I conducted those proceedings. I ask Parliament to consider that my behaviour at that time was influenced by my decision to cease taking antidepressant medication earlier that year, the fact that my illness was not being treated, and lastly the recent death of a close relative in a motor vehicle accident caused by a learner driver. That death occurred on 4 June 2009.

The last matter is the Maresch complaint, which was before me on 9 October 2009. It was not before me for a substantive hearing but for mention only. It was an administrative listing which occurred as a practice that I implemented to deal with the growing number of minor traffic matters being listed as defended hearings. This practice is also undertaken by many other magistrates of the Local Court.
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I found it useful for the court's administration to investigate in advance of the hearing the nature of the defence and the evidence that might be available. Mr Maresch would not otherwise have been entitled to see the photographic evidence, which might have defeated his defence at the hearing. I found that in some cases the process I adopted assisted defendants. Sometimes the photographic evidence supported their defence. Indeed, one of the random sample recordings of 2 May 2008 reviewed by the Judicial Commission involved a similar-type matter. The investigator there reported in that case:
It seems to me that Her Honour's actions saved both the court and the defendant considerable time and inconvenience and are to be commended.
But I accept that I should not have used the language or tone that I did in this instance. It appears also that Mr Maresch understandably misconstrued my reference to "people like you". By that I only meant other litigants with similar matters; I was not categorising or stereotyping him or intending any offence. I accept that he was offended and I sincerely

regret that. I did not decide Mr Maresch's case. I disqualified myself from hearing it after considering the matter further. Mr Maresch retained his right to defend the charge and the matter was heard by another magistrate on 8 December 2009 without prejudice to Mr Maresch. At the hearing before that other magistrate the prosecution case was proven.

I ask Parliament to consider that my behaviour at this time was influenced by my decision to cease taking antidepressant medication earlier that year and my underlying medical condition. What was also operating on my mind at that time was a sharp increase in defended matters at Ryde court, which is a one-magistrate complex. In relation to medical evidence, both Dr Phillips and Dr Klug are of the view that I am fit and capable to continue in the workplace. In their opinion, the risk to the community is negligible. In Dr Phillips' opinion I am "safe to continue in professional practice in the future." He said also that "the risk of further problems in her court as a consequence of her conduct will be minimal, if at all." In his most recent report of 9 June Dr Phillips says quite a number of things. I certainly will make available to the Clerk a copy of that report for each and every member of Parliament. I shall just quote some of it. Dr Phillips said:

Persons holding professional positions such as judicial officers, medical practitioners, even parliamentarians, are affected by mental health disorders. Fortunately, almost all persons suffering from mental health disorders can be successfully treated these days. People with mental health disorders will continue to live normal lives. They will be competent family members, responsible members of the community and at most times will continue to work in a completely successful manner. They will not bring risk to themselves or others.

Dr Phillips continues:

I am a very experienced psychiatrist having spent nearly 40 years as a consultant in this medical speciality. I treat persons with a full range of mental health disorders. I treat numerous high-ranking members of the legal and medical professions and a number of Australia's most senior aircraft pilots. These persons continue to work successfully almost all the time. They make a substantial and important contribution to the Australian community. I can categorically state that there is no reason why a judicial officer is any different to any other well-educated professional person. Judicial officers experience the same set of mental health disorders as other members of the community. As a group they have a somewhat better outcome because of their level of education and their motivation to do well.

He continues:

Obviously, where a judicial officer has a mental health disorder it is important to continue to monitor that person on a regular basis. Equally obvious is the need to remove the person temporarily from his or her job if the person were to suffer a significant recurrence of the disorder. Magistrate Betts is no exception to the rule. I have described her psychiatric problems in depth in my two reports being the reports before you of 25 October 210 and the report of 3 March 2011. Simply, magistrate Betts has suffered in the past from an adjustment disorder with depressed mood. This is a relatively low grade but very common mental health disorder. She has been without symptoms for a considerable period. She no longer can be diagnosed as suffering from an adjustment disorder. Whilst I accept that Magistrate Betts will require psychiatric monitoring in the future, she has a low risk of recurrence of the disorder and will continue to do well. As I highlighted in my earlier reports, Magistrate Betts has no mental health disorder which will affect her capacity to continue with her professional career. She will not put the public at risk.

No doubt that is a matter of concern to each and every one of you. Dr Phillips continues:

Further, Magistrate Betts does not have any cognitive impairment or physical impairment which will impede her future career.

He continues:

I do not dispute the risk that Magistrate Betts could again experience symptoms of an adjustment disorder with depressed mood. However, there will be little concern, assuming she continues to be monitored for mental health problems. The Parliament and the people of New South Wales can be assured that Magistrate Betts is competent to continue in her career and will present no danger to anyone.
There is also an updated report from my treating psychiatrist, Dr Klug, who I saw recently on 2 June and who I will be seeing again tomorrow. A copy of that report will be made available for each and every one of you. By examining the history of complaints about judicial officers I hope to give you a perspective in relation to my matter. Currently there are approximately 295 judicial officers in New South Wales who are subject to the complaint mechanism of the Judicial Commission. Of that number, 134 are Local Court magistrates. It is not surprising that the majority of complaints about judicial officers involve magistrates. Local Court magistrates deal with 98 per cent of criminal matters in this State. Their jurisdiction expands on a year-by-year basis not just in relation to criminal matters but also in relation to civil matters.

That workload also increases every year while the resources remain the same. Each magistrate conservatively deals with approximately 3,000 matters a year. The main causes of complaint lodged with the Judicial Commission are fail to give a proper hearing, bias, incompetence, inappropriate comments, discourtesy, delay, collusion, et cetera. In the period 1999 to 2010, 870 complaints were lodged with the Judicial Commission about the behaviour and conduct of judicial officers with nine references being received from the Attorney General. Such references are treated as complaints under the Act. In 2002 one of those complaints resulted in the constitution of a Conduct Division to inquire into the conduct of a magistrate who was allegedly involved in a cause of conduct designed to influence the outcome of a criminal prosecution in which he was presiding. One can only say that the conduct complained of in that matter was of an extremely serious nature. That judicial officer resigned.

In my respectful view, there is no comparison to the serious nature of the matters that are before you today. In 2004-05, 15 of the 118 complaints were of discourtesy or inappropriate comments, of which 53 matters, including the Passas and O'Regan matters, were summarily dismissed pursuant to section 20 (1) (h) of the Judicial Officers Act—namely, in all the circumstances further consideration of the complaint is unnecessary or unjustifiable. One matter that year that went to the Conduct Division involved allegations of a judge who suffered from a medical condition that caused him to fall asleep. The judge was declared medically unfit for office and was able to retire on medical grounds with his full judicial pension. In 2005-06, seven of the 68 complaints were classified as minor. The legislation has since been changed. Each of those matters was then referred to the respective head of jurisdiction, who can counsel the judicial officer or make administrative arrangements within the court designed to avoid a repetition of the problem.
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A Local Court magistrate has a far-reaching jurisdiction in both criminal and civil areas. Their work involves both list courts and defended hearing courts. List courts are the most stressful of a magistrate's work and require the judicial officer to be able to complete such a list with expediency and with competence. Upon appointment a new magistrate generally does defended hearings and is introduced to list work gradually. I note that in my case on the examination of the "random recordings" from 2008 the person who conducted such examination was of the view:
As in all sound recordings to which I have listened, her honour exercised strong control over the court. There is no doubt that she is very efficient at calling a list and dealing with matters in an efficient manner … I found no matters of rudeness or discourtesy.

In relation to the recordings of 2nd May 2008 he—I am assuming it is a he; I do not know who it was—said this:
In my respectful opinion the list was much too heavy for one magistrate to be expected to deal with.
That is not an uncommon situation for any Local Court magistrate. I recall on one Wednesday in 2009 at Ryde the list completed at 7.20 p.m. It was not uncommon regularly for the list at Ryde, being a one-court complex, to finish well and truly after four o'clock. That is part and parcel of a magistrate's office. In relation to the 2010 recordings, it was noted:
In my opinion the sound recording indicate that Her Honour dealt with the matters before her in an appropriate manner. While generally her remarks Her Honour made in imposing the penalties included a lengthy and stern lecture, I do not believe that it could be said that the remarks were necessarily inappropriate. In many instances the remarks were completely appropriate and in some instances quite perceptive.
He continues:
I found an interesting contrast between Her Honour's manner on 10th February 2010 with that exhibited on 5th May 2010. In February she appeared tense and very serious. However, in May her manner was more relaxed. This appeared to have a positive effect on those appearing before her.

I think it is fair to say that not only was there nothing in the three days of hearings I examined to justify any criticism of Her Honour, in a number of matters Her Honour demonstrated a sensitivity and understanding of a high order.
The significance of the difference between February and May 2010 was this. I received the letter from the Judicial Commission on 21 December 2009 indicating that those two matters from 2009 were being referred to a Conduct Division. I had leave and commenced work in early February, so those matters were still fresh in my mind. All the "random recordings" of Ryde in 2008 and from Parramatta in 2010 were of list courts and not defended hearings. This should also give you great confidence that I am capable of performing my judicial role and will continue to do so. It is important also to point out that there is no conduct on my behalf which was unlawful.

As can be seen from an examination of Conduct Division matters over the years, the serious nature of those matters involved allegations of misconduct that had within them an element of unlawfulness. In matters where incapacity was proven, it is clear that that incapacity was sufficiently serious to make the judicial officer incapable of performing their role as a judicial officer. I would respectively submit that the Conduct Division finding of incapacity in my case is not borne out by the evidence. I acknowledge that I was defensive in the witness box but this of itself should not see me dismissed.

The existence of the "random recordings" was first known to me and my legal team on the resumption of the hearing on 21 March 2011. We had no prior knowledge of that existence, and that matter was on my mind at the time I gave my evidence. The fact that I have been able to fulfil my role while I have had this matter pending, without any hint of any misbehaviour, discourteousness, unfairness and the like, should cause you to have great confidence that I will be able to continue to fulfil my role in the future in accordance with my oath.

To substantiate this claim, I will give you details from unsolicited correspondence I have received from persons who have appeared in my court from the period 2007 to 2009. As you can appreciate, a judicial officer rarely receives praise for their work. The reality is quite the opposite. Generally we get verbally abused in court and certainly are subject to

discourtesy, not just from members of the public but also members at the bar table. Our role is to make decisions which impact upon the lives of those who come before us, either as defendants or victims. It is an adversarial situation and there is always someone who is not happy with the court's decision. As I said before, it is an onerous task, and each and every one of you will have to undertake such a task when you consider my fate.

By letter of 11 May 2009, when I was not on medication, a lady wrote to me in relation to her experience of being in attendance at Ryde Local Court on Wednesday 6 May 2009. That was a very busy list day at Ryde, and the lady was accompanying her elderly mother who pleaded guilty to a serious traffic offence. She commences her letter with this:
I could not pass up the opportunity to tell you of my experience in your courtroom on Wednesday 6th May, I suppose there are not many people that correspond with you to inform you of the positive experience that they have had whilst in court.
She continues:
As Principal of a school for children with extreme and challenging behaviour, with students that at times have had very limited restrictions and boundaries placed on them as well as a history of not accepting consequences, it was refreshing to watch as you imposed realistic consequences on those appearing before you. At our school, we always inform our students of consequences of both positive and negative behaviour and enforce that life is all about making choices and when making choices that there needs to be an acceptance of the consequences of their choice. As I sat in the courtroom, listening to legal personnel and individuals delivering excuses for a variety of charges, I was impressed by the statement of the facts, especially in relation to P plate drivers and their irresponsible behaviour in the use of alcohol.
The lady continues:
Fortunately she—
meaning her mother—
appeared before a magistrate that recognised her excellent record and took that into account. I think that acknowledging that she had been driving since 1964 with only one red light incident in front of the court hopefully may have sent a message to others, that it is possible to be a law abiding citizen. The impact of losing her licence would have been huge for her as her pulmonary disease very much limits the distance she is able to walk. Therefore I am writing to thank you for your realistic approach and the message that you sent to many people on the day. Her 12 month good behaviour bond was a good outcome for all.
As I have said before, such letters rarely come across the table. In an email received from a plaintiff in a civil matter at Ryde dated 24 November 2009 this was said:
We refer to our presence in your court on two occasions. On both occasions when attending I was personally very moved and extremely impressed with how all the court staff, both in the office, the sheriffs and court staff and Magistrate Betts dealt with matters whilst very challenging at all times everyone conducted themselves in a very compassionate and professional manner. I feel compelled to take this opportunity to express my appreciation and gratitude to you all as in today's fast and uncompassionate world many of us don't appreciate what you all have to do every day.
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Today people in general don't understand the stress of what you [go] through day by day when faced with the distress that others who are less fortunate are faced with. You guys are the front line with respect to many social issues and I would personally like to express my gratitude to your efforts and empathy.
In March 2007 a young lady with special needs—she could not read or write—sent me a thank you card and with the assistance of her carers wrote, "to a very special Judge Jenny, thank you for understanding my problem. I have no designs of ever going down that

road. Another young lady wrote to me in 2008 about my dealing with her matter at Ryde. She said this:
..... to make a long story short, you told me that you wanted me to be able to walk down the street and see my father and not to react, and you sent me to counselling. I wanted to write this letter to you and tell you how much [you] have changed my life. I truly believe that had you not sent me to counselling that I would have continued down the destructive path that I was on.
That young lady was studying at university and was working in a youth crisis refuge. She continued:
I wanted to tell you this because I know without a doubt had I not received the counselling there is no way I would have been able to achieve the things that I have in my life. So let me end this letter by saying from the bottom of my heart, THANK YOU, for seeing beyond the broken girl who sat before you, and believing that I had the potential to be something more.

Another card I received in 2009—and I believe English is not the first language of this person—stated:
People say "courts are blind and even innocent people are denied justice many times. We have never seen a court that so scared us. Exposure to your court changed my whole wrong concept of court and magistrate. I believe now that court is a temple/church and the magistrate is Goddess sitting there (I saw in you), smiling, soft spoken and very kind and doing justice with everybody. You know who is right and who is wrong.
He then goes on to thank me. Another gentleman who appeared before me in March 2009 said this:
.... the magistrate displayed a well mannered, objective, positive, almost friendly without being too friendly, helpful attitude when dealing with all members of the community appearing before her. She did not display, as some judicial officers do, a superior or unctuous demeanour, especially when confronted with criminals guilty of horrendous crimes as happened on the day in question.
He then goes on to say how impressed he was. Another area of a judicial officer's role was to attend psychiatric hospitals and deal with mental health inquiries involving involuntary patients. Since June last year we are no longer involved in that sort of work. Whilst at Ryde I attended Macquarie Hospital on Tuesday mornings before then returning to Ryde to conduct hearings. In a Christmas card from staff at Macquarie it was noted "Magistrates hearings are now anticipated with great pleasure at Macquarie Hospital." And there was a brief "thank you".

Conducting mental health inquiries was not an easy task. I recall in my first week on the bench I went with a colleague to Rozelle Hospital to observe my colleague conducting such inquiries. Whilst there, one of the patients committed suicide by hanging himself in one of the wards. Thankfully nothing so eventful occurred again whilst I was on the bench. However, I was subject to a threat from a female patient who stood over me at St George Hospital. With persuasion from me she was able to settle and become compliant. I believe that I have always treated patients in the mental health jurisdiction with respect.

In conclusion, I respectfully submit that there is a plethora of evidence to show that the two matters from 2009 were an aberration and caused by my un-medicated medical condition. With my understanding of my illness and my willingness to continue to take such medication for the rest of my life I respectfully submit there is no likelihood of any such behaviour happening in the future. The past 19 months has been a difficult time for me. This process has cost the people of New South Wales quite a substantial amount of money. It has also cost me physically, mentally and financially. I know that I will never

behave in such a manner again and the deterrent effect alone is sufficient for me to ensure that I adhere to my oath at all times in the future.

If I were dismissed from judicial office then my future professional future is quite bleak. Magistrates do not have available to them any form of judicial pension. We are subject to the same superannuation rights as public servants. This no doubt is a leftover from the days of appointing magistrates from within the public service. But it creates an anomaly between the jurisdictions which may never be remedied because of the financial cost. Removal from office is a massive penalty. My professional future is in your hands and so too are my future prospects. Your role is to determine my fate on the evidence. I respectfully submit that the sanction of removal from office is far out of proportion to the findings of the Conduct Division. Once again I quote from the Conduct Division report which states:
The Conduct Division clearly wishes to emphasise to you that it "ought not to be taken as the expression of the opinion that the magistrate ought to be removed from office".
That is your decision, and yours alone. In conclusion, I ask that you have regard to the fact that my misconduct does not involve allegations of criminal, corrupt, or even unethical behaviour; my 17 years of otherwise unblemished service as a magistrate in New South Wales; my previous service to the people of New South Wales in my work for the Attorney General's Department and the Office of the Director of Public Prosecutions; the fact that these complaints comprise just four of the almost 50,000 matters—perhaps even more by now—I have dealt with in my time on the bench; the testimony from my peers, and, in particular, the coordinating magistrate at Parramatta, that I am a valuable contributor to the busy court complex there; the enormous burden I have endured during the more than 18 months that these proceedings have been with the Conduct Division.

I ask you also to have regard to the strong incentive I have to ensure that I never have to go through an ordeal of this type again; the overwhelming medical evidence that the underlying condition that contributed to my conduct is being effectively managed; the express medical evidence that I am fit to continue and should continue my duties as a magistrate; the message that dismissal from office would send to other members of the judiciary, the legal profession, and the community at large, who are or will be touched by any form of mental illness; the enormous financial impact that dismissal would have on me and my son; and that in doing so you give me a second chance to continue to make good the oath I took all those years ago by voting not to dismiss me from office. Thank you.

[Magistrate Betts was escorted from the Chamber by the Usher of the Black Rod.]
PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) BILL 2011
EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011

Bills received.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Duncan Gay agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for the next sitting day.

Bills read a first time and ordered to be printed.

Second readings set down as orders of the day for a future day.
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