Prof. Helen Kruuse Opening Remarks

A warm welcome to everyone, and my sincere thanks to Justice Madlanga for joining us.

If anyone imagines that my invitation to Justice Madlanga was prompted by his position at the Madlanga Commission – and his justifiable incredulity at the lack of ethics of some of these individuals who have testified – let me say that my reasons go back much further.

First, he is a Rhodes law graduate and, indeed, our Chancellor.

Second, he might not own up to this, but he was an academic himself, albeit briefly, in my favourite part of the world, the Eastern Cape.

But, for my purposes, and most significantly for this occasion in 2019 he delivered the Rhodes University Law Faculty's opening address. On that occasion, he urged our students to repair the reputation of our profession. He remarked—and I quote—that "a lawyer must never be the source of his client's lies."

What stayed with me even more, however, was his response to a student who asked, echoing James Boswell who asked the famous 18th Century essayist Samuel Johnson, whether one should support a cause he believes to be wrong or a client one knows to be guilty. Justice Madlanga did not answer as Johnson famously did (and you can read about this in chapter 14 of the book!), nor did he adopt an unqualified stance. Instead, in a manner reminiscent of Sir Sydney Kentridge QC (which you can also read about in chapter 3), he suggested that there may be times when 'one's conscience rather than the general rule must govern one's conduct.'

This idea of conscience lies at the heart of our edited collection. The book proceeds from the premise that it is not enough to learn, in rote fashion, the code and rules of professional conduct, pass the examination, and leave it there.

Lawyers operate within a social contract. We are granted significant privileges, including a monopoly over certain forms of legal representation, and in return society is entitled to expect integrity of the highest order.

Whether, in our constitutional democracy, we have consistently met that expectation remains an open question. Lawyers will always, to some extent, serve as

scapegoats—we are problem-solvers operating in difficult spaces. But when we enable injustice rather than resist it, we place ourselves on the wrong side of history.

The conduct of certain legal practitioners in Road Accident Fund and medical negligence litigation, together with their role in facilitating elements of state capture and the growing abuse of court processes, indicates that these concerns are far from merely abstract. You can read all about it in chapters 5, 7, and 10 to 13.

It reminds me of a remark recorded by the *Yale Law Journal* in 1990 that "it is unfair to judge the entire profession by a few hundred thousand bad apples!" It was tongue in cheek, I hope!

And so, it is equally important to acknowledge the proud and principled tradition of lawyering in South Africa (which you can read about in chapters 2 and 8). Beyond cause lawyering (chapter 16), I see daily examples—particularly among our students and graduates—of work that advances both social and economic good: from complex commercial and project finance work across the continent and beyond, to challenging the refusal of a SASSA grant in Mqanduli.

What follows then is a short discussion with three of our contributors, whom I have – through cajoling, persuasion and threat – asked to represent the different parts of the book. This was deliberate for two reasons: first, these wonderful individuals reflect the different pathways within the profession – academia, the judiciary, and practice; and second, each part and person speaks to a distinct dimension of ethical engagement.

The first part of the book, which situates ethics within broader historical, social, and – dare I say – psychological contexts, is represented by Jonathan Klaaren. A former Head of School and Director of the Mandela Institute, he is someone I have long admired as a leading figure at the intersection of law and sociology.

For the second part, dealing with professional duties as they are complied with—or not—we turn to Deputy Judge President of the Gauteng Division Roland Sutherland, who brings the invaluable perspective of the bench. I always have enjoyed his judgments, and I should add that his earlier defence of neutral partisanship in his master's work at Wits was one with which I disagreed strongly enough to feel compelled to invite him to contribute.

Finally, in the third part—our capita selecta—we engage more specific and often difficult contexts questions: these chapters deal with the cab rank rule – chapter 14 - (with star appearances from Gilbert Marcus and Edwin Cameron), the role of lawyers outside private practice – chapter 15 - cause lawyering, and litigation involving children – chapter 16. Here, Karabo Ozah addresses the heightened ethical duties that arise in these contexts. Karabo heads up the Centre for Child Law, and fits this special place of practitioner, academic, and social justice warrior!

Before I hand over to them, let me briefly acknowledge the other contributors—

Michele van Eck, who you will hear from later: She has done more than most to advance the academic study of legal ethics by regularly publishing in journals especially *De Rebus,* the attorneys' journal, about legal ethics judgments.

Stephan van der Merwe, an attorney at the Stellenbosch Law Clinic whose energy and insistence in his now familiar call to me: "just finish it, man!"—carried this project over the line.

Franciscus Crouse, the youngest of our contributors (I think Fortunate and he are in competition) who is currently clerking at the Constitutional Court and who spent 6 months with me in 2025 as an Africa-Oxford intern correcting all my errors and contributing to the publication in his own right.

Cora van der Merwe, an excellent costs consultant and now attorney, who I met while she acted pro bono on a disgusting matter of overreach by a Gqeberha lawyer.

Adv Chris McConnachie from the Johannesburg Bar, with whom I had the pleasure of working on the cab rank chapter. He is one of the most intelligent and empathetic humans I have had the privilege to teach.

Fortunate Mongwai, a deeply committed lawyer at the Centre for Child Law.

And finally, Rosaan Kruger, the Rose of Steynsberg—she is my colleague, close friend, and an extraordinary constitutional lawyer.

Thank you all for being here. I now hand over to our panel.