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THE SUPREME COURT OF

WESTERN AUSTRALIA

CEREMONIAL SITTING

TO WELCOME THE HONOURABLE

JUSTICE J.C. CURTHOYS

McKECHNIE J

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 14 FEBRUARY 2014, AT 9.15 AM

THE ORDERLY: Your Honours, ladies and gentlemen, His Excellency the Governor of Western Australia, Mr Malcolm McCusker.

McKECHNIE J: We are sitting today to welcome the Honourable Justice Curthoys, whose appointment to this court concurrently with his appointment as President of the State Administrative Tribunal occurred last Monday, 10 February. The Chief Justice regrets being unable to be present this morning. He is attending a Chief Justices meeting in Sydney. Other judges of this court have sent their apologies as they are unable to be present because they are working in court commitments or they are on leave.

We acknowledge and welcome the presence of the Governor, His Excellency Malcolm McCusker QC AC CBO. We welcome members of his Honour's family, Dr Christopher Kendall, his sister Alison Maxwell, and friends Vivienne Stewart and Mandy Lowton and all the other friends and colleagues of his Honour who join us today. We acknowledge the presence at the bar table to speak today and we thank the Attorney-General, the Honourable Michael Mischin MLC; Mr Peter Quinlan, the President of the Bar Association; and Mr Konrad Mony de Kerloy, the President of the Law Society.

We acknowledge the presence at the bar table of the Solicitor-General, the State Council and the Director of Public Prosecutions and other members of the bar who have joined us this morning to welcome his Honour. For taking time to join us this morning we thank his Honour Judge Martino, Chief Judge of the District Court, and other members of that court; the Honourable Justice Thackray, Chief Judge of the Family Court; the Deputy Presidents of the State Administrative Tribunal, Judge Sharp and Judge Parry; and we also acknowledge and welcome members of SAT who have been able to join us today.

I acknowledge in the body of the court the presence of the State Solicitor, Mr Paul Evans; the Director General of the Department of the Attorney-General, Ms Cheryl Gwilliam; Mr Ray Warnes, Director Court and Tribunal Services; and Mr Gavin Jones, the Director of the High Courts. The Supreme Court is more than just the constitutional third arm of government, it also a community of individuals joined together in collegial service and so we are happy to welcome back on this occasion former judges Mr Tony Templeman QC, the Honourable Michael Murray OAM QC and Mrs Murray, the Honourable Kevin Parker AC RFD QC and

Mrs Parker, and the Honourable Nicholas Hasluck AO QC and Mrs Hasluck.

Justice Curthoys joins the court in 2014 as the 72nd Puisne Judge. I am the only judge still sitting who was appointed last century. A distinction I share with Master Sanderson. Upon my appointment in 1999, I became only the 48th Puisne Judge in nearly 140 years. Justice Curthoys therefore marks the 24th appointment of a Puisne Judge this century. And, of course, there has also been a change of Chief Justice. Justice Pullin, who joined the court in 2001, tells me - he's older than me - tells me that he has appeared before or been colleagues with all but the first 18 Supreme Court judges. This emphasises dramatic change and growth over the last 40 years.

Perhaps the constant turnover in the last 15 years has now slowed and Justice Curthoys appointment marks the beginning of a long period of stability. Justice Curthoys is also the 10th District Court judge to be appointed to this court and the sixth this century. What may have been once unusual has now become commonplace. His Honour is the third president of the State Administrative Tribunal, where he will preside for the next two years. And might I pause to acknowledge the former president, Justice Chaney, whose work the Attorney recently described:

...had helped make the Tribunal one of the most efficient and effective jurisdictions of its type in Australia.

His return to general duties gives us a welcome, if temporary, boost and you will be pleased to know that his list is already full. The State Administrative Tribunal is renowned for its collegial and team-based approach over its many areas of responsibility. I am sure that Justice Curthoys is ready to continue the leadership and the high judicial standards that have been set by his predecessors in that collegial team. Justice Curthoys was welcomed to the District Court only 16 months ago when details of his Honour's life and time of practice were publicly stated.

It will be no reflection on his Honour if I do not restate what has been so recently outlined and what is about to be outlined again, but perhaps they were best summarised by Mr Quail on behalf of the Law Society at that time when he said, and I quote:

Your Honour's appointment to this court has been greeted in the profession with much enthusiasm and considerable warmth. You are widely regarded as having

a first-rate legal mind and greatly admired for the time and energy you have expended on the teaching of advocacy and procedure through what has been an impressive legal career to date.

I'm sure in the last 16 months his Honour has had time to continue the teaching of advocacy in a more formal setting. Over the years, the profession has greatly benefited from your Honour's co-authorship of two fundamental loose-leaf text services; Wills, Probate and Administration in Western Australia; and Civil Procedure Western Australia, universally, of course, known as the Red Book. On behalf of all of our colleagues present and absent, I warmly welcome your Honour and Chris to the community and collegiality of the court. Yes, Mr Attorney.

M. J. MISCHIN MLC, MR: Thank you, your Honour. And I can only hope that your observation about your appointment in the last century is not an indication that you feel that the weight of the years is becoming too heavy. It's important to have that corporate knowledge and you can - I'm sure that the hours fly in the judicial chambers when you tell them about the good old days. It's my great pleasure, your Honour, on behalf of the government of Western Australia to welcome his Honour, Judge Jeremy Clyde Curthoys, to his new appointment as president of the State Administrative Tribunal as a justice of the Supreme Court. His Honour was born in 1957, and after seven years of education at Aquinas College, his Honour commenced attending the University of Western Australia in 1975.

He graduated with a Bachelor of Jurisprudence with honours in 1978 and a Bachelor of Laws in 1979, and obtained a further degree of Bachelor of Arts in 1992. Five years later, he attained a Master of Laws at Murdoch University. His Honour was articled to the legal firm of Messrs Parker & Parker in 1980 and commenced as a solicitor there the following year. At Parker & Parker, his work involved general civil litigation with an emphasis on commercial matters. He stayed until mid-1984, when he travelled to England and worked as a solicitor with a London firm, Freshfields, for a year, preparing criminal prosecutions in relation to counterfeit currency.

Upon his return to Perth in late 1985, his Honour joined the independent bar. As a barrister, he undertook a range of civil litigation in the Supreme Court, the District Court of Western Australia, and the Federal Court of Australia, until his appointment as a judge of the District Court in August 2011. His Honour has also

published a range of material in books and law journals. As a co-author or editor, his titles include: *Advocacy An Introduction*, *Civil Procedure in Western Australia*, which your Honour has referred to as the - more commonly know to the profession as the Red Book, and *Wills Probate And Administration of Western Australia*.

Other professional and community activities in which his Honour has been involved include being a tutor and guest lecturer at the Murdoch University Law School. He has been a lecturer in law, teaching the law of equity at the Australian Institute of University studies in Perth in 1997. He has been a supporter of fellow and junior practitioners, as has been outlined by Mr Quail on a previous occasion, and through being an instructor at the Young Lawyers Advocacy weekends between 2004 and 2005, the co-ordinator and instructor for numerous 13-week advocacy courses for the law society of Western Australia, a judge of the Law Society's high school mock trials competitions, a member of the Law Society's indigenous mentoring committee, a member of the American Bar Association Litigation section from 2004 to the present day, a judge for the Australian Law Students Association mooting competitions and a chairman of the board of directors of John Toohey Chambers from 2010 to the present. Well, until his appointment to the District Court, I should say.

The Government is confident that his Honour will bring to the State Administrative Tribunal distinction and a considerable contribution to the administration of justice in Western Australia. His Honour's appointment commenced on Monday, 10 February when Justice Chaney returned to the Supreme Court after five years as an exemplary president of that Tribunal.

Your Honour, both personally and on behalf of the government and the people of Western Australia, I welcome you as not only our newest Supreme Court judge but also as the new president of the State Administrative Tribunal. If it pleases the court.

McKECHNIE J: Thank you, Mr Attorney. Mr de Kerloy.

K.J.M. DE KERLOY, MR: May it please the court. On behalf of the Law Society Western Australia, it is my very great pleasure to welcome the Honourable Justice Jeremy Curthoys as a justice of the Supreme Court of Western Australia and as president of the State Administrative Tribunal.

The Law Society, as your Honour may be aware, is consulted by the government in relation to appointments to the bench. Your Honour's appointment was supported by the Law Society on the grounds of your well deserved reputation for decisiveness, efficiency, fairness and courtesy. The government is to be congratulated for making this appointment based solely on and with regard only to merit. It is a bonus, your Honour, that you are also a long term supporter of and a contributor to the society.

Some of those contributions have already been mentioned. Your Honour has been a member and involved in the society's courts committee, the court's delay reduction committee, professional mentoring scheme, Indigenous mentoring scheme, interschool mock trial competition. As well as being a presenter in numerous seminars for the society.

One of those seminars or series of seminars, which I wish to highlight, is the series that has already been mentioned by the Attorney General which your Honour taught with your partner, Dr Chris Kendall, a former president. It was initially designed to be a theoretically grounded one hour seminar on advocacy. Starting with the basics of case theory and including a solid overview of the role of the (indistinct) in court, including the importance of clear written advocacy.

In the end, it became a 10 week course toward every Saturday morning for four hours. The use of new technologies to teach and engage the minds of students was, at that time, unprecedented and, in short, such seminars were interesting, insightful and thought provoking. You repeated the experience again every Saturday in the following year. That was followed up by a book on advocacy, again, with Dr Kendall. Which is now nationally used by other law societies, the Australian Bar Associate, Bar Admission Advocacy Course and numerous law schools and teaching programs throughout the country. Kirby J wrote a preface in the following terms:

The authors of this book acknowledge that each advocate develops his or her own style. This is naturally inevitable. There is no objectively correct style of advocacy. It is a product of experience, the opportunities of (indistinct) of capacities inherited from unremembered ancestors. But if the basic lessons of this book or some of them can be incorporated in one style and the techniques and concrete examples taken to heart, natural talent can be emphasised so it

flourishes. This book is a good companion. It is helpful, truthful and wise.

The last observation could, with great respect, easily be applied to your Honour's judicial style.

Your Honour has been also co-editor of the red book, as has been mentioned, and the author of numerous articles with subjects as (indistinct) ethics, wills, probate, administration, intellectual property and a series of articles involving conversations with legal luminaries. Such as the current Chief Justice of Australia and the former Attorney General, Daryl Williams. The State Administrative Tribunal is an important dispensary of justice to the citizens of Western Australia. Citizens come to the Tribunal because they are aggrieved, often very aggrieved, at decisions that have been made.

The Tribunal makes decisions fairly according to substantial merits of the case, stands in the shoes of the original decision-maker when it deals with the review matter. It seeks to act speedily, and in a proportionate way and use as little formality as possible. Apart from your Honour, the Tribunal consists of two District Court judges, a member complement of 16 full-time members and over 100 sessional members. As head of this Tribunal, your Honour will face many challenges. The society is confident that your Honour's attributes and qualities make you very well suited at this important position. On behalf of the Law Society and our members, I extend our most sincere congratulations and best wishes to you. May it please the court.

McKECHNIE J: Thank you. Mr Quinlan?

P.D. QUINLAN SC, MR: May it please the court. I'm pleased to appear on behalf of the Western Australian Bar Association to welcome your Honour as a justice of this honourable court, and as the new president of the State Administrative Tribunal. The WA Bar congratulates your Honour on this achievement, which marks a new phase of your Honour's long and successful legal, and now judicial, career. In congratulating your Honour, we also acknowledge, and extend those congratulations, to your Honour's family, here present. And, in particular, Dr Kendall, who is also, of course, no stranger to achievements in the law.

Your Honour comes to this court from the District Court of Western Australia. Your Honour's departure from

that court, together with Judge Dean's departure which also occurs today, leaves a significant hole in the resources of that court. The association trusts that that hole will be speedily filled. Coming from the District Court, your Honour is well - now well used to hearing accounts of your Honour's career in the law, including in legal education and legal publication. Those achievements have been recounted and acknowledged by today's previous speakers, and do not require repetition by me.

However, what I would wish to repeat, and to emphasise, is that the most substantial part of your Honour's career prior to the appointment to the District Court was as an independent barrister, practising as a member of the Western Australian Bar Association. Indeed, at the time of your Honour's appointment to the District Court, of over 200 practising members of the association, only five had been members of the association longer than your Honour. And even then two of those, Cline and Percy, preceded your Honour by only a matter of months.

With over two and a half decades at the bar, your Honour therefore ranks as one of the most experienced and long-serving alumni the association has produced. And so we hope that the association can take some small credit for the qualities that your Honour brings to the judicial office. An important part of your Honour's appointment this week is, of course, your Honour's role as president of the State Administrative Tribunal. This year marks the 10 year anniversary of the enactment of the State Administrative Tribunal Act, and your Honour's appointment provides an opportunity to reflect back on the role of the Tribunal, and most importantly of its presidents over that time.

Since its inception, the Tribunal has become a vital and important jurisdiction in Western Australia. In many ways, the Tribunal deals with the most quotidian features of community life. That is not to belittle the jurisdiction. On the contrary, it is to emphasise how pervasive and significant the decisions of the Tribunal are.

In its planning and civil jurisdiction, the Tribunal influences where we live, our physical environment and the shape of our communities. The vocational regulation stream deals with how we work, what we are entitled to expect from those professionals whose assistance we seek. And the human rights jurisdiction deals not only with the most vulnerable in our community, but more broadly, with how we

treat one another, upholding the values of equality, opportunity and genuine respect for diversity.

As can be seen from that briefest of summaries, there are very few aspects of day to day life over which the Tribunal does not have a direct influence. That is one of the reasons why judicial skills such as your Honour's are so important in the leadership of the Tribunal. Following his appointment as a judge of the Federal Court and as President of the Commonwealth Administrative Appeals Tribunal, Sir Gerard Brennan wrote that, "As the mechanisms of social mechanisms are increasingly non-curial, and committees, boards, tribunals and commissions become an important part of social regulation, judicial skills are required to make them work efficiently."

"Those skills," Sir Gerard remarked, "are competence and learning, qualities of impartiality and independence, skills of factual analysis, an insistence on proof and not on rumour, and respect for the requirements of natural justice." Far be it from me to attempt to improve on Sir Gerard Brennan, but I would also add to that list of qualities, an even temperament. In that regard, your Honour's time on the District Court thus far has been one characterised by courtesy, politeness and patience. Those are qualities which we trust will translate well into the less formal atmosphere of the Tribunal.

But in addition to the judicial qualities that can be observed in the court room or the hearing room, the role of the President of the State Administrative Tribunal brings with it, as my learned friend Mr de Kerloy has said, additional challenges. Your Honour now becomes charged with principal responsibility for the smooth functioning and morale of a Tribunal membership of many and varied backgrounds, training and fields of expertise.

Creating cohesion and consistence of decision-making across such diversity is no small task, but it is, of course, essential to the work of the Tribunal. In that regard, your Honour is fortunate to bring not only your own skills and experience, but to have the example of your Honour's predecessors, Justices Barker and Chaney, in relation to whose work in establishing and consolidating the work of the Tribunal the community stands greatly in debt.

That is, however, work that necessarily occurs outside of the hearing room, and away from the gaze of the community and the legal profession. In that regard, and allow me, now, to invoke your Honour's Christian Brothers

education at Aquinas College, it is appropriate that today's welcome takes place on the feast of Saint Valentine. Not, of course, for the reasons usually associated with Saint Valentine's Day, but for what we actually know about Saint Valentine.

According to the Martyrology of Jerome, compiled in 460 AD, Saint Valentine, or Valentinus, was a 3rd century Roman who had been venerated for centuries. Despite this, and somewhat surprisingly, nothing else is known about him. So much so that when his feast was established in 496 AD, Pope Gelasius could only say that Valentinus was one of those "whose names are justly revered among all men and women, but whose acts are known only to God."

Perhaps the same might be said of those important tasks of the president of a busy jurisdiction, which must necessarily occur behind the scenes. In both that difficult role, and in your Honour's public judicial functions, the WA Bar Association wishes your Honour the very best. We look forward to continuing to appear before your Honour in this new role, and to provide whatever assistance we are able. We extend our best wishes to your Honour for a long and distinguished judicial career. May it please the Court.

McKECHNIE J: Thank you, Mr Quinlan. Your Honour.

CURTHOYS J: Your Excellency, Justice McKechnie, members of the Court, honoured guests, colleagues, friends and family. Occasions such as these provide those appointed to the bench an opportunity to reflect, acknowledge and thank those without whom they would not be where they now find themselves. I thank Justice McKechnie for his kind words. I'm honoured to have him presiding today. I would like to thank the Attorney-General for his very kind words.

I thank him and the government for seeing in me something that deserves the position that I now occupy. I will do my best to do what is expected and more of this position. I am extremely grateful for your confidence. I will undertake the tasks expected and required of me with professionalism and with an understanding that I am, indeed, privileged to be here today, surrounded as I am by some of the very best legal minds this state has to offer.

I also thank the president of the Law Society, Konrad de Kerloy, for his support and all that was said by him today. The Law Society of Western Australia has played a

central role in my life as a lawyer, barrister and judge. It has a membership of 3500 lawyers. Its slogan is:

The voice of the legal profession in Western Australia.

And that it is. No other organisation in Western Australia can make that claim. It has always provided and continues to provide a very important contribution to the practice of law and the development and maintenance of justice in this state. It provides a wide range of services, all of them important. To name but a few, I note its continuing professional development programs, its mental health initiatives and its much needed mentoring schemes for young lawyers and Aboriginal lawyers.

The Law Society has supported me throughout my career and for that, I am most grateful. I have reached a point in my career where I can now give back. The Young Lawyers' Committee of the society contributes much to the development of young lawyers through its mentoring and advocacy programs. I have been fortunate to work with the Young Lawyers' Committee since 2004 to develop an advocacy program of which I am quite proud.

I have taught and mentored gifted and passionate young lawyers who will, I have no doubt, ensure that the next generation of lawyers are committed to excellence in all its forms. I applaud the work done by this group of energetic lawyers and look forward to working with them in the future. I must say that at the time I did this work, I didn't appreciate how much it was an act of self-interest. Thank you also Mr Quinlan, speaking on behalf of the West Australian Bar Association.

I commenced my practice as a barrister at Bar Chambers, as it was then known, at law chambers in a building that no longer exists and then moved to Allendale where Bar Chambers became Francis Burt Chambers. I have many good memories of my years in chambers and in Bar Chambers and, as it then became, Francis Burt Chambers and I'm pleased to see my - a number of my former colleagues here today. Some two and a half years ago, I left John Toohey Chambers upon my appointment to the District Court, having spent 26 years at the bar.

I remain of the view that small chambers are an important addition to the practice at the West Australian Bar. Small chambers are consistent with the historical development of the Bar in England and the other states of Australia and they are effective in ensuring that a wide

range of views are expressed by all members of the bar. My time at John Toohey Chambers reminded me of the importance of community and acceptance. For me, this means a great deal personally and professionally.

My two and a half years at the District Court can only be described as absolutely rewarding professionally. One only needs to look at the District Court's daily court listings to see that it is a very hardworking and dedicated Court. The work is always interesting and the people who work there are a pleasure to work with. Oftentimes, the cases the District Court deals with are confronting and challenging. Fortunately, the District Court of Western Australia is a very collegial Court and my strong sense is that this assists in coping with the pressures and the challenges that these cases bring.

I always found my fellow judges willing to provide advice and, in particular, I found the template documents made available by Judge Stavrianou and Chief Judge Martino to be an invaluable resource. I thank my colleagues on the District Court for their generous assistance and their friendship. I will miss the morning coffee in Judge Stavrianou's chambers, as well as the laughter and the camaraderie. I note, in particular, the hard work of Chief Judge Peter Martino and the dedicated Court staff, from the principal registrar to the security staff. I note, in particular, Liz Pettigrew and Marilyn Vialls and I leave with fond memories.

I was very fortunate to have Kathryn Salisbury as my associate. She has always done a great job for me and made my life so much easier. Thank you Kat. I look forward to working with you at SAT. I also thank my ushers over the past two and a half years, Les, Nicky and Elyse. Much as I have enjoyed my time at the District Court, I look forward to new challenges at the State Administrative Tribunal. A very sound foundation was laid by Justice Barker and Justice John Chaney passes to me a very effective and efficient Tribunal.

He is a hard act to follow. Hopefully, the common education we found at Aquinas will serve me well. In the short time that I have been at the Tribunal, I have found my fellow judges and the SAT members to be very welcoming and helpful. I look forward to working with Judge Sharp and Judge Parry and all the members. It's also - I'm also fortunate to arrive at a time when the state government has provided funding for SAT to move to a new building as part of the development of the old Treasury building and associated areas.

The Tribunal is looking forward to that move and it bodes well for the provision of justice in this state for many years to come. I am also looking forward to being a member of this Court, particularly as I join a number of my friends. This Court has an excellent reputation. I'm honoured to be a part of it. I did my articles at Parker & Parker in 1979 and my appointment to the Supreme Court is the culmination of a legal career of over 30 years. It's impossible to mention all of those who played a part in the development of my skills and my career but there's one whom I must acknowledge and thank and that is Frank Callaway QC.

Frank Callaway, after a brilliant legal career as a solicitor and then a barrister, was one of the foundation members of the Victorian Court of Appeal. In my early years at the bar, Wayne Martin, as he then was, rang me to ask if I would accept a junior brief to a Melbourne silk. I accepted the brief and my leader was Frank Callaway. This was the start of a long friendship. As I have said, Frank was a brilliant lawyer and also a brilliant judge. In addition, he was and still is a wonderful mentor. And I take this occasion to thank him for his advice and support that he has given me over the years.

I thank the Governor for attending today. The Governor is of course one of the best advocates West Australia has produced. His presence here today reflects his continued interest in the legal profession and his support for the judiciary. Governor, you're a role model and we would all do well to emulate your passion for the law and justice. I thank Mandy Lowton and Vivienne Stewart for attending today. You continue to remind me of the meaning of friendship and the importance of laughter.

I would also like to thank my sister, Alison Maxwell, for attending today. It's a long way from Como. You have always been at my side through good times and bad times and I'm grateful for your love and support. I also wish to thank all of you for attending today, from those sitting with me on this bench to those who sit at the bar table and to all those present in court. Finally, at the risk of understatement, the most important person in my life has been and is my partner, Dr Christopher Kendall.

Those of you who know him know that he possesses a curriculum vitae that is rather daunting. Few of us get here without the love and support of our partners. My partner sacrificed a great deal so that I could be here today on this bench. We stayed in Western Australia, a very long way from his family and career path that he would have chosen. That required considerable sacrifice on his

part and there are no words to describe how much I appreciate that. Without his sacrifices and the support he has always given me, I would not have been appointed to the District Court and now the Supreme Court.

2014 is an important year in our lives, both because of my appointment to the Supreme Court and because it will, for us, mark 20 years together. I thank you, Christopher, for all that you have given me. I would not be who I am or where I am today without you. You don't get many days like this in a lifetime. Thank you for sharing it with me.

McKECHNIE J: Thank you, your Honour, the Court will now adjourn.

AT 9.49 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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