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THE SUPREME COURT OF

WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE GETTING

FULL BENCH

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 30 JANUARY 2025, AT 4.16 PM

**QUINLAN CJ:** The Court sits this afternoon to welcome the Honourable Justice Michael Gething as a judge of the Court. In doing so, we acknowledge the Traditional Custodians of the land on which this Court sits, the Whadjuk people of the Noongar nation, and we pay our respects to their elders past and present. We warmly welcome members of his Honour's family who are here present, his Honour's wife, Kathy Gething; and his Honour's children, Christopher and his partner Oskar, Rebecca and Anna; and his Honour's brother, David. Joining us also via live stream are other invited guests who are unable to be here in person today. And we welcome many other members of his Honour's extended family, colleagues and friends.

We also welcome many other distinguished guests here this afternoon, including their Honours Justices Jackson and Vandongen of the Federal Court of Australia; her Honour Judge Julie Wager, Chief Judge of the District Court, and many of our judicial brothers and sisters from the District Court of Western Australia; his Honour Judge Hylton Quail, President of the Children's Court; Mr Michael Celenza, Manager of Superior Courts; Ms Racquel Flores, Acting Executive Manager of the Supreme Court; Mr Craig Bydder SC, Solicitor-General of Western Australia; Mr Robert Owen SC, Director of Public Prosecutions; Ms Nicola Bradshaw, representing the Commonwealth Director of Public Prosecutions; and Ms Catriona Macleod, President of Women Lawyers of Western Australia; together with many past members of this and other courts. Finally, I welcome those who will address the Court this afternoon, the Honourable Attorney-General MLA, the Honourable John Quigley; Ms Judy McLean, Deputy President of the Law Society of Western Australia; and Ms Julie Taylor SC, President of the WA Bar Association.

Justice Gething's appointment fills a vacancy in the General Division of the Court arising from the appointment of her Honour Justice Gail Archer to the Court of Appeal. I take this opportunity on behalf of the Court to publicly acknowledge and congratulate Justice Archer on her appointment to the Court of Appeal following what has already been more than seven years of dedicated service as a judge of this Court. Justice Archer's appointment to the Court of Appeal, in turn, follows the retirement of her Honour Justice Janine Pritchard, who formally retires from the Court tomorrow. Justice Pritchard was unable to be present today owing to a pressing family commitment and sent her apologies to Justice Gething.

Her Honour has, therefore, avoided being present when

I formally acknowledge her outstanding contribution to the administration of justice and to the community of this State for decades of service, both as a lawyer and as a judge. As a judge, Justice Pritchard may hold the record for the most judicial commissions issued by the Governor to a single individual. From June 2009, Her Honour was variously commissioned as a judge of the District Court, Deputy President of the State Administrative Tribunal, a judge of the Supreme Court, a judge of Appeal and President of the State Administrative Tribunal. As both a judge and head of jurisdiction, Justice Pritchard's career has been a model of commitment to the public good, and her Honour's contribution to the law in this State will be felt for many years to come. We wish her all the best in her future endeavours.

I turn then to his Honour Justice Gething, who is also no stranger to a multiplicity of judicial offices, having served as Principal Registrar of the District Court, Commissioner of the District Court, Principal Registrar of this Court, Acting Master of this Court and a judge of the District Court for almost nine years before his appointment as a judge of this Court. Having previously served as Principal Registrar and Acting Master of this Court, Justice Gething, therefore, is also no stranger to this Court and, as it were, returns home. His Honour may well appreciate the reference if I describe him as a prodigal son of the Court who returns home after nine years away.

There are, however, two principal differences between his Honour and the allegorical prodigal son. Firstly, his Honour has not in the last nine years squandered his gifts on life of dissipation and dissolute living but has rather been committed to the administration of justice and the development of his skills as a judge. And the second difference, of course, is that unlike the prodigal son, his Honour does not return from a land characterised by famine and unclean animals but rather comes from the District Court of Western Australia.

That his Honour and indeed now so many other judges of this Court come from the District Court is a testament to the high standing and commitment to excellence that so characterises our brothers and sisters on that Court. We again, therefore, thank Chief Judge Wager and the other judges of the District Court, not only for its contribution to the Bench of this Court but to the continued collegiality between our courts in our shared commitment to the people and community of this State.

In addition to his Honour's considerable legal skills and his now extensive judicial experience and expertise, Justice Gething's appointment to this Court brings another quality that is very dear to the heart of any head of jurisdiction, for his Honour is also one of those extremely rare judges who actually delights on serving on committees and preparing discussion papers for administrative and procedural reform.

No sooner had his Honour been provided with his access card that he was swiftly added to the Court's Accommodation Committee and to be a representative of the Court on the Courts and Tribunals and Technology Committee. Long may that contribution to the life of committees blossom and grow. Justice Gething, the judges, master, registrars and staff of the Court are delighted to have you join us on the Court and bring your talents to our work. Please be assured of our continued solicitude and support throughout what will no doubt be a continuation of your distinguished judicial career. Yes, Mr Attorney.

**QUIGLEY, MR:** Thank you, Chief Justice, and may it please the Court. I would like to begin by acknowledging the Whadjuk people of the Noongar nation upon whose lands the Court convenes this afternoon to celebrate the appointment of Justice Gething to the Supreme Court Bench. I would also like to acknowledge and pay my respects to Justice Gething's family here this afternoon, his wife, Kathy; his daughters, Anna and Rebecca; son, Christopher; and to brother, David, who has come along as well. It's a great honour to once again appear before the Court on behalf of the State of Western Australia and as well as the people of Western Australia to welcome you, your Honour, to the Supreme Court of Western Australia as a sitting justice.

I also acknowledge that your Honour graduated from the University of Western Australian Law School in 1989, and after completing your degree, you undertook articles of clerkship at Freehill Hollingdale & Page. Your Honour specialised in civil litigation and remained with that firm until 1994. Your Honour then left the firm and commenced your long career of public service by joining the Australian Securities and Investment Commission. Your Honour spent a decade or so at the Commission, rising to the position of Regional Commissioner. In 2004, your Honour was appointed as the Principal Registrar of the District Court and held that position until 2013, when you were appointed as the Principal Registrar of the Supreme Court.

Whilst Principal Registrar of this Court, your Honour also sat regularly as an Acting Master of the Court. Your Honour has the distinction of being the first and only person to be the Principal Registrar of both the District and the Supreme Courts. Your Honour left that role as Principal Registrar to become a judge of the District Court in 2016. And so, in a sense - and I was there - this is a repeat welcome for when you were first welcomed to judicial office back in 2016. I noted from your welcome that when you were appointed to the District Court, it was observed that the Supreme Court's loss was the District Court's gain, and this afternoon, this week, the tables have been turned, and now it's the District Court that has lost your Honour to this Bench.

Throughout your time at both the District and Supreme Court, whether as the Principal Registrar or a judge, your Honour has promoted progress towards electronic court files, improved court accommodation and increasing efficiency and effectiveness in case management and mediation practices. It was recently myself whilst investigating future options for the accommodation of this Court and the District Court for future options that I came across work that you had done yourself on how the courts might be accommodated in the interim.

I was very interested to see that not only in your heavy workload as a judge, you have still taken the time, as the Chief Justice has noted, to be involved in the administration of the Court that you sat on. The technology side, of course, has not solely been about improved process and technology, as important as they are. You were also known and highly regarded for mentoring your judicial and non-judicial colleagues, which is a trait and a quality that you've had throughout your career. Your Honour has done all this in addition to your heavy workload.

In referencing your heavy workload, it was, however, noted by staff that you were happy about taking a late last-minute hearing or a late hearing. I'm told that you did refuse a last-minute hearing on one occasion when you were advised that your appointment at this Supreme Court and the hearing of it was to fall after your commencement date, so there was a good reason there.

So, your Honour, it's a testament to your hard work, your judicial ethics, the highest regard with which you're held by the legal profession. That became obvious through the consultation process and the discussions I've had with

people in the profession that it's, I want to say obvious, but a well-regarded choice, that has been made to elevate you to the Supreme Court, and it's with much pride that I stand here this afternoon representing the people of Western Australia to congratulate you on your appointment and to wish you all the very best in your judicial career.

**QUINLAN CJ:** Thank you, Mr Attorney. Yes, Ms McLean.

**MCLEAN, MS:** Thank you, your Honour. May it please the Court. It is my privilege to appear this afternoon on behalf of the Law Society of Western Australia in welcoming his Honour Justice Michael Gething to the Bench of this Honourable Court. May I also welcome and congratulate members of His Honour's family and acknowledge friends and colleagues, distinguished guests and members of the judiciary present here today. The Law Society joins in acknowledging the Traditional Owners of the land on which we meet, the Whadjuk people of the Noongar nation. On the Society's behalf, I pay my respects to the elders past and present.

As we have heard today, your Honour is highly regarded and well respected in the legal profession. You have an outstanding career since your admission in 1991. The Honourable Attorney-General has clearly outlined many of your achievements. I think we're reading from the same hymn book at the moment, so I will shoot it across to some personal responses to your Honour from those who know you best.

His Honour Judge Sefton remarked that your Honour is an exceptional judge, a valued colleague and an individual of great integrity. He emphasised that your contributions to the District Court and to the justice system as a whole have been significant and far-reaching. Your Honour possesses an exceptional intellect and an impressive capacity for productivity, which is a rare find. This remarkable ability is matched only by your humility, stated by him.

Of particular note, said John Sefton, your Honour has always been extremely generous with your time, mentoring and support of others. Whether fellow judges, personal staff or other staff of the Court, your Honour always finds time to assist and goes above and beyond the call of duty. You're always the first to volunteer to take on a task to improve the system for everyone. And importantly, Judge Sefton notes, your signature red jumper will no doubt soon become well known in this Court if it has not already done

so.

Rebecca Bunney, member of the State Administrative Tribunal, recalled that she was lucky enough to co-present with your Honour in 2018 to 2021 as part of the Law Society's Essentials for Advocacy and Negotiations Seminar. Apart from the fact your Honour prepared all the presentations and handouts, Ms Bunney said she learned just as much from your Honour as the participants did about human behaviour, the effect of emotions on decision-making, how lawyers can act ethically to assist their clients, how to listen with intent and understanding. Many of the seminar participants commented to Ms Bunney about how engaging your Honour was, how kind and compassionate nature and how you were able to explain the practical application of complex theories and strategies.

His Honour Judge Troy spoke with fondness of your reputation as someone who is a fount of knowledge when it comes to obscure points of law. He states the carpet outside Justice Gething's District Court chambers became quickly quite worn with judges who had been former criminal lawyers coming to see him about some obscure civil point. He recalled, invariably, his Honour had written a judgment on that point. Judge Troy also mused about, in addition to your Honour's obvious civil expertise, your Honour became an extremely accomplished criminal judge. Your Honour would strive to achieve rulings and summings up that were, as he would put it, sticky in the way that anyone could envy.

Judge Troy also had fond memories of the adventures with your Honour outside of the courtroom, recalling a time when you hiked and indeed camped along an impressively long stretch of the Bibbulmun Track. "We conspired about future grand adventures," recalled Judge Troy. "Justice Gething is lean and very fit but could always be relied upon to produce at a remote campsite a steady supply of excellent Shiraz and Margaret River chocolate." Your Honour is also known as a consummate team player, a person of genuine faith, utterly dedicated and an extraordinary human being. When Judge Troy ruefully bemoaned the District Court's loss to one of your Honour's new colleagues, the new colleague simply responded, "Sorry, not sorry."

Throughout your career, your Honour, you have showcased a remarkable ability to administer justice effectively and efficiently. You have ensured that disputes, whether between private individuals or between State and citizens, are resolved as promptly as the circumstances would permit. Even in the face of

considerable pressure on the Court, you have consistently found ways to uphold this commitment to justice. In addition to your Honour's substantial judicial responsibilities, you also took a key role, such as Chair of the Law Society's Court, Technology and Support Committee, previously known as Technology Committee. Furthermore, you contributed to the Education Committee and were a devoted advocate of the Law Society's Continuing Professional Development program, where you shared your expertise through Essentials of Advocacy and Negotiation Course, particularly in delivering the negotiation training.

Your Honour also made time to meet with Law Society executives alongside the Chief Judge of the District Court. In these discussions, you addressed important issues facing the Court and explored the best ways for the Society to provide support. Your dedication to collaboration and shared progress was always valued and appreciated. Unsurprisingly, your Honour, colleagues and peers hold you in the highest regard. In closing, on behalf of the Law Society and the wider legal profession of Western Australia, we warmly congratulate your Honour on your appointment and wish you all the best in your new role serving the community and the administration of justice. May it please the Court.

**QUINLAN CJ:** Thank you, Ms McLean. Yes, Ms Taylor.

**TAYLOR, MS:** I, too, acknowledge that today we're meeting on the land of the Whadjuk people of the Noongar nation, who are its Traditional Custodians. On behalf of the WA Bar Association, I pay my respects to their elders past and present. It's an honour today to speak on behalf of the WA Bar Association to welcome your Honour Justice Gething as a judge of this Honourable Court. As has already been outlined, your Honour has made a significant contribution already to the administration of justice in this State and to the disposition of the rule of law. Your Honour is well-versed in the work of both the Supreme and District Courts. Indeed, your Honour must be amongst the most experienced judicial officers to be appointed to this Honourable Court.

With the wealth of that experience, several of your Honour's colleagues at the District Court have expressed the view that the only surprising connection with your Honour's appointment was that it did not come sooner. Those colleagues all say that they are immensely proud and that the appointment is richly deserved. The Chief Judge



of the District Court describes your Honour as an amazing person and a strategy guy who is forward-looking with the rare combination of all those traits in one person. You have been described as a civil guru and a computer guru who has been able to transfer those skills into criminal law when your Honour became a judge of the District Court. Your Honour can strategically think through complex matters, look at what's required in the future, work through data and evidence related to a given problem, reach a solution and be absolutely positive about it.

I'm told that your Honour worked with the Chief Judge closely in response to the District Court's pandemic response. Your Honour had a particular talent and drive to assist in that period in looking at what could be done to cause the least impact to the people of the State to keep jury trials running and ensure people were safe, and I'm further told that much of this work took place in un-air-conditioned court buildings throughout the heat of difficult parts of the year.

Your Honour has a reputation for having a voracious appetite for work and working particularly efficiently and effectively. Everything your Honour produces has been described as meticulous, perfectly footnoted and covers all aspects of what the topic is. Your Honour's sentencing remarks have become legendary and have been shared widely amongst your Honour's colleagues on the Bench, and the ability to churn out work has been described as legendary amongst your District Court colleagues. Indeed, some of them have described your Honour as a walking encyclopaedia, which I think was meant as a compliment rather than anything else.

No doubt due to your Honour's work as a Principal Registrar, your Honour is always determined to ensure that the court functions well. For new staff or new judges in particular, your Honour has always made yourself available to answer questions and deal with issues. One judge on the District Court told me that when they started, your Honour had already prepared a bundle of materials that you thought might be helpful to her - which, I'm told, they were - checked on her daily, ensured that she had the support and answers to all of the questions that she needed. Your Honour is also very popular with registrars because of your willingness to provide something of a conduit between judges' chambers and the registry, and your Honour is always the first person to take a last-minute case from the registry at almost any time.

One of your colleagues said this to me. "Academic

genius is one thing, but Justice Gething is also one of the most decent judges in terms of humanity and compassion for all of the people in the Court." Your Honour's tolerance and patience are also well known, and may I respectfully suggest that those qualities of care, compassion, tolerance and patience are really the most important qualities to make a great judge. I've heard that your colleagues fondly know you as Uncle Mike. At least that's how they refer to you amongst themselves, and they describe your Honour as always optimistic and always bouncy. For your farewell morning tea, your staff secretly told everyone that they must wear a red jumper in the heat of December, mimicking your own fondness for that item of clothing. This was a celebration of your Honour's optimism and in mid-summer, demonstrated the love and support that your Honour has from all of your colleagues.

In addition to red jumpers, I'm informed that your Honour has a passion for hiking, musical theatre and also for Disneyland. You have taken your family to nearly every Disneyland on the planet as well as on Disney cruises. You're dedicated to your family, and I'm told that you love spending time, particularly planned holidays, with them. Your Honour loves pizza making, and your chocolate pizzas in particular have reached a certain level of fame. And it's always your Honour that organises your old law school friends to catch up.

Plainly, in addition to your Honour's commitment to public service, your Honour also prioritises friends, family and community. The Chief Judge of the District Court has told me that her Honour truly had mixed emotions when you were appointed to the Supreme Court because your Honour will be fantastic, but the loss is significant, and I quote, "We will miss him." On behalf of the WA Bar, I congratulate your Honour on this very well-deserved appointment, and we look forward to assisting you in your role in the future.

**QUINLAN CJ:** Thank you, Ms Taylor. Your Honour.

**GETHING J:** I begin by adding my acknowledgement to that the Chief Justice and the other speakers that the hearing this afternoon is taking place in the land of which the Whadjuk people of the Noongar nation are the Traditional Custodians, and I pay respects to their elders past and present. Chief Justice, Mr Attorney, Ms McLean, Ms Taylor, thank you each for your most generous remarks, though, Chief Justice, there is a third division, or third difference, in the prodigal son story. The father in that

story gave the returning son a warm embrace and a feast. I guess the feast is this afternoon and I got a handshake so that's - as you say, the analogy is not quite perfect.

Thank you all to each of you, also, who have taken the time to come along this afternoon. I'm truly humbled to be in the presence of so many friends and colleagues. Some of my relationships with you are new, but for very many of us we go back decades. I've now spent just over 20 years in the court system in this State in roles in which the other speakers have gone through in some detail. The role they missed was a magistrate. I did a little bit of that as well, just for completeness' sake. I find the work of a judge to be challenging, though often not enjoyable by reason of the subject matter but always deeply meaningful. It is trite law that justice must be done and must be seen to be done, but, to me, there's a third dimension of justice. People must feel that justice has been done.

In all that I do, my aim is that the people who appear before me, in whatever capacity, leave the court feeling that justice has been done. One way I seek to do this, is borrowing from the title of a very insightful mediation book, is to try and bring peace into the room. Whether the room is a mediation room, a courtroom, or a virtual room, if I can bring peace into the room, it is my hope that those present will take away a little bit of that peace out of the room. In this way, I am seeking to be a peacemaker, someone whom Jesus encourages his disciples to be.

The part of my career I have always enjoyed thoroughly is the people whom I've had the pleasure of working with. During my time at the courts, I've worked for four chief judges, Chief Judges Kennedy, Martino, Sleight and Wager, in both judicial and management capacities. I worked with a fifth judicial officer, being Chief Justice Martin, during what I like to call my sabbatical at the Supreme Court in 2014 and 2015. I thank each of you for your support.

As has been apparent from the other speakers, I'm somewhat enthusiastic when it comes to management issues, and each of you were very supportive and didn't curb my enthusiasm unless it was justified. I did learn an enormous amount from each of you, in particular in relation to what I will call the dark art of judicial administration. Part of my role at the Supreme Court felt like a masterclass in mediation. I was grateful to have had the opportunity to attend the Advanced Mediation program at Harvard in Boston, which was a career highlight. I came away from that experience realising that even after

doing many hundreds of mediations, there's always more to discover about how to do one really well.

Registrars Davies, Whitbread and Gilich are still here from my time at the Supreme Court, as is Justice Whitby in her new role. Also on the mediation bench at that time were three legendary mediators, Sandra Boyle and Christopher Boyle, who are here this afternoon, and Simon Dixon, who sends me his apologies. I learned an enormous amount about mediation from working with you all. Mediation is a fascinating exercise in human psychology. One of the side benefits of coming back to the Supreme Court is I get the opportunity to do some mediation work, which I'm really looking forward to.

I returned to the District Court for my sabbatical in February 2016 to spend just under nine years as a District Court judge. The District Court is well known for its collegiate atmosphere. I take with me into the next stage of my judicial career a wealth of pleasant memories, of morning teas, of floor dinners and drinks, of Friday afternoon in the common room, of second and third opinions on tricky issues and the daily conversations about life, the universe and everything. So to my colleagues at the District Court, many of you who are present today, I thank you for making my season there so enjoyable. Chief Judge Wager, thank you again for your generous words at the staff Christmas party at the end of last year. And Judge Troy, thank you again for your animated speech at my surprise farewell morning tea on my last day at the Court.

Over the course of my judicial career, I've had the distinct pleasure of working with an ever-growing group of personal staff. At the District Court as the Principal Registrar, Marilyn Vialls was my first usher when I started working in crime and is the founding member of what I call Team Gething alumni. She was joined by Alison Rowswell, Cassie Beven and Cindy Godwin when I moved to the Supreme Court. Alison came with me to the District Court as my first associate. Together, we had to work out how to do a criminal trial. The learning curve was steep. The first criminal trial I sat through was the one I presided over.

After leaving the court - well, as I leave the court, I've done nearly 120 jury trials though still feeling like there is much to learn. One of my particular aims, which I never achieved, was to beat Judge Troy's record of a 22 minute closing to a jury. I never got close. Alison and I were joined by Zilke Wright as my first usher and then over time by Aoife Nugent, Christie Waldek, Johanna More,

Rachel Rima, Stephan Van Heerden, Carmen Grobbelaar, Lily Liew, Lucy Mercer, Ewan Christie, Oliver Sanderson and Olivia Birbeck. Nearly all of you are here today. I thank you all for your support throughout my career and value your friendship.

One of the highlights of my job is to watch the fresh legal graduates mature to become competent lawyers and advocates. On a number of occasions now, I've sat in the jury box in Court 1 at Stirling Gardens with the beaming families of a graduate with whom I've worked to watch their admission, feeling all the pride of a professional parent. Oliver and Olivia came with me to the Supreme Court, which made my transition very smooth.

My transition to the Supreme Court has also been made very smooth by the warm welcome I've received from the Chief Justice and my judicial colleagues here. My chambers is on the 13<sup>th</sup> floor, with most of the District Court alumni, Justices Whitby, Lemonis, Palmer, and Master Russell. The atmosphere is every bit as collegiate as the District Court, and I'm really enjoying my time there. To this, I add the considerable assistance provided by Anne Hatten, who organised this afternoon, and all the registry and secretarial staff. You've all made me feel most welcome, as have the personal staff of my judicial college.

None of what I've achieved, which has been described in great detail by those at the Bar table, would have been possible without the love of my family. David, thank you for coming this afternoon. We both know how much our parents would have loved to have been here and appreciate that what they gave us allowed us to both be where we are now. Oskar, I thank you for coming this afternoon. I hope that this is the most intense family gathering that you will need to experience. Christopher, Rebecca and Anna, thank you for your unwavering love and support throughout my career. Though with all children, we do have our ideological differences.

In April last year, Christopher and I spent a month exploring and hiking in South America. It was one of my most enjoyable life experiences. At one point when we were in the deep in the back box of Patagonia, Christopher managed to find some wi-fi and reported to Kathy with some indignation, "Dad's a communist". This was in response to what was, in his view, my unjustified enthusiasm at sleeping in a refugio bunk room with a smelly shared bathroom and my habit of bonding with fellow hikers at the commune. I, however, was equally put out when he managed to secure a business class upgrade to seat 1A on our 14-

hour flight home across the Pacific, leaving me in bassinet row in economy. I have to say he did try and redeem himself at one point. The purser came to find me in the bowels of the plane to deliver red wine in a proper glass and some cheese on a fine China plate.

Christopher, Rebecca and Anna, I'm enormously proud of the accomplished, thoughtful and compassionate young adults you are, and I love each of you very dearly, which leaves my favourite person of all, my wife, Kathy. I'm deeply grateful for your generous love for me over the nearly 40 years that we have been together. I'm only the person which the other speakers have described this afternoon because so much of you has rubbed off onto me. Thank you for your unwavering and enthusiastic support of my career and every other aspect of my life, and I love you very dearly. Thank you, Chief Justice.

**QUINLAN CJ:** Thank you, Justice Gething. That completes today's ceremonial sitting. You have one left, Mr Attorney. The Court will now adjourn.

AT 4.50 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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